Cristal Advocates

Uganda's proposed tax changes for the year 2019/2020

A new direction

Cristal Tax Series

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1 Introduction

Uganda's Minister of Finance, Planning and Economic Development will formally read the national budget for the financial year 2019/2020 by the 15th June 2019. Activities to fulfill the budget preparation, approval and management requirements set out in the Public Finance Management Act 2015 ("PFMA 2015") aimed at having a transparent, credible and predictable annual budget are already underway.

It is now a requirement under the PFMA 2015 for the government to present the proposed annual budget to Parliament by 1st April of each year for approval by 31st May unlike in the past when budgetary proposals for the year were closely guarded and only revealed on the national budget reading day in June. The tax proposals and allocations were debated well into the start of the financial year which would disrupt planning and revenue collection targets in case some of the proposed measures were rejected by Parliament.

The budget framework paper for the financial 2019/2020 has already been presented to and approved by Parliament. The PFMA 2015 requires the budget framework paper to be submitted to Parliament by 31st December and approved by 1st February. This framework paper contains the medium-term macroeconomic forecast, the medium-term fiscal framework, medium-term fiscal forecast, statement of the annual budget for the next financial year, statement of policy measures, medium term expenditure framework and fiscal risks statement among others.

Based on the budget framework paper for 2019/2020, it is projected that government expenditure for the year will increase to Uganda Shillings (Ushs) 34 Trillion circa United States Dollars (USD) 9 Billion from Ushs 32 Trillion circa USD 8.6 Billion projected to be spent in the year 2018/19 as shown in the table below.

Projected resource envelope in UGX Billions

Issue	2018/2019	%	2019/2020	%	%+-
Tax Revenue	15,938.0	48.74	17,855.00	52.05	12.03
Non Tax Revenue	421.0	1.29	521	1.52	23.75
Petroluem Fund	200.0	0.61	0	0.00	-100.00
Budget Support	289.0	0.88	477.8	1.39	65.33
Domestic Borrowing	1,785.4	5.46	534.9	1.56	-70.04
External Financing	7,734.5	23.65	7,704.0	22.46	-0.39
Domestic Refinancing	5,271.5	16.12	6,020.0	17.55	14.20
Appropriation in Aid	1,063.5	3.25	1192.6	3.48	12.14
Total	**32,702.9**	**100.00**	**34,305.30**	**100.00**	**4.90**

Draft bills with tax proposals for 2019/2020 are also now available in public domain. These are the:

- The Value Added Tax (Amendment) Bill, 2019;
- The Income Tax (Amendment) Bill, 2019;
- The Excise Duty (Amendment) Bill, 2019;
- The Stamp Duty (Amendment) Bill, 2019;
- The Tax Procedures Code (Amendment) Bill, 2019.

These bills will go through 3 stages of Parliamentary deliberation before assent to by the President to have the force of law. The commencement date for the proposed tax changes is 1st July 2019. Following the enactment of the PFMA 2019, amendments to the tax laws as part of the budget cycle are passed timely. In the past, Uganda Revenue Authority (URA) would rely on an Interim Collection Order issued every year on 1st July of the financial year as stipulated in the Tax and Duties Act, 1963 to embark on the temporary collection of taxes introduced in the Tax Bills that were yet to be passed by Parliament.

This publication provides a discussion of the proposed amendment to the tax laws affecting both direct and indirect taxes for the financial year 2019/20 and where possible providing initial comments on their potential implications.

2 Overview of the proposed tax changes

In this snapshot, we provide an outline of the proposed tax changes for the financial year 2019/20. More detail is provided in the rest of this publication.

Tax issue	Amendment
Value Added Tax (VAT)	
New definition of 'citizen'	• Individuals who are citizens of EAC countries and companies they control are included in the proposed definition. This will clear ambiguity on the definition of a citizen for eligibility to exemptions on supplies for the construction of factories, warehouses, industrial parks and free zones.
Withholding VAT	• Clarifications are to be introduced to the rules regarding the obligation to withhold VAT on payments to suppliers • Designated taxpayers will be required to withhold 6% of the VAT payable as opposed to 100% introduced last year • Compliant taxpayers may be eligible for a waiver • Uncertainty still remains • There is scope for further policy refinement
VAT treatment of Islamic Financing	• The Minister of Finance, Planning and Economic Development will introduce regulations to clarify the VAT treatment. No further details are available at the time of publication. This proposal had been included in the VAT (Amendment) Bill, 2018 but was omitted in the final version that was passed by Parliament
Public International Organisations	• The list of Public International Organisations under the First Schedule to the VAT Act will be expanded to include UN Women. Public International Organisations and accredited personnel are able to claim a VAT refund in respect of the VAT they incur on their operations.
List of exempt supplies	• The Second Schedule to the VAT Act that provides that certain supplies will be treated as exempt will be expanded to include 7 additional categories of goods and services • The minimum investments required to qualify for VAT exemption on certain inputs in relation to activities in industrial parks and free zones are to be reduced.
List of zero-rated supplies	• Drugs and medicine manufactured in Uganda are to be added to the list of zero-rated items
Income Tax Act (ITA)	
New definitions	• A new definition of 'beneficial owner' is proposed. This will be relevant in the case of claims to relief under double tax treaties (see below) • A new definition of 'citizen' is to be introduced in line with the proposal in respect of VAT. Citizens will be eligible for income tax exemptions in respect of certain activities relating to investment in free zones
Tax on rental income	• Income tax on rental income is to be calculated separately for each let property. In the past, revenues and expenses from various rental property could be aggregated.

Tax issue	Amendment
Income tax exemptions	• Reductions are proposed to the minimum levels of investment required to qualify for tax exemptions for activities associated with industrial parks and free zones • Interest on infrastructure bonds (as defined) will be exempt from income tax
Interest deductions	• The limit on interest deductions in respect of companies forming part of a group is abolished for banks and insurance companies
Income tax for loss making companies	• Companies that have carried forward losses for 7 consecutive years will pay income tax from year 8 even if they continue to have losses. This proposal had been included in the Income Tax (Amendment) Bill, 2018 but was excluded in the final Act passed by Parliament. The proposed rate is 0.5% of gross turnover (as defined)
International agreements	• Reliefs under international agreements (mainly double tax treaties) is not be available unless the claimant is the beneficial owner of the relevant income • The definition of 'beneficial owner' is to be included in domestic law (see New definitions above)
Withholding tax – expanded scope	• Withholding at the rate of 6% will apply to consideration for the purchase of a business or business assets by a resident person
Requirement to provide a TIN	• No official licence, permit or authorization may be issued unless the applicant provides a Taxpayer Identification Number
Withholding tax - reduced rate	• The rate of withholding tax on payments of interest in respect of government securities with a maturity of 10 or more years is to be reduced from 20% to 10%. • Owing to unclear wording it is not clear which rate will apply to government securities with a maturity of precisely 10 years.
Excise Duty Act	
New definition of 'citizen'	• The definition is the same as that proposed for VAT and Income Tax. Citizens will be eligible for duty exemption on purchases made for certain activities.
Islamic Financing	• The Minister of Finance will introduce regulations to clarify the treatment • No further details are available at the time of publication
Registration	• New rules are proposed clarifying which entities are required to register for Excise Duty purposes
Late payment interest	• It is proposed to make clear that this applies to duty in respect of excisable services as well as goods
Rate change	• A rate reduction is proposed for non-alcoholic beverages (excluding fruit and vegetable juices)
Availability of nil rate	• A nil rate will be available for excisable inputs (mostly cement) used for qualifying construction • Proposal is in line with the proposed VAT exemptions for inputs in respect of industrial parks, free zones, technical and vocational institutes
Stamp Duty Act	
New definition of 'citizen'	• The definition is the same as that proposed for VAT, Income Tax and Excise Duty. Citizens engaged in qualifying activities will be eligible for duty exemption in respect of certain instruments.
Clarification of instruments subject to Stamp Duty	• Various types of bonds and guarantees will be subject to a fixed rate of UShs 100,000

Tax issue	Amendment
Stamp duty exemptions	• The minimum investments required to qualify for exemption on certain instruments executed in relation to activities in industrial parks and free zones are to be reduced • This relief is extended to qualifying investments in vocational and technical institutes, consistent with exemptions proposed for VAT and Excise Duty.
Tax Procedure Code Act	
List of tax returns	• A gap in the current Act is to be remedied by introducing a list of tax returns subject to the provisions of the Act.
Taxes payable by the Government	• The Minister of Finance will be required to pay any taxes for which the Government is responsible in relation to aid-funded projects • Any arrears of such tax at the end of 2018/19 will be waived
Waiver or fines and interest	• In case of a voluntary disclosure prior to litigation, the URA may waive fines and interest imposed in respect of tax offences
Payments to informers	• The URA is given the power to reward an informer with 5% of any delinquent taxes recovered as a result of his/her information
Amendment to Finance Act 2014	• The Finance Act 2014 previously provided for a reward of 10% of any delinquent taxes recovered as a result of his/her information. This has been repealed but a similar provision introduced in the Tax Procedures Code Act but with a reduced reward of 5%.

3 Value Added Tax (Amendment) Bill, 2019

The Value Added Tax (Amendment) Bill, 2019 proposes changes to the VAT Act Cap 348 as set out below.

a. New definition of 'citizen' introduced

All the principal tax laws have been amended to introduce a new definition of 'citizen'. The law did not initially provide for a definition of citizen. This is relevant for the purposes of determining eligibility of individuals and companies for tax benefits in connection with activities related to industrial parks and free zones (see section 3e below). The term includes not only Ugandan citizens but also individuals who are citizens of the other East African Community states and companies where at least 51% of the shares are owned by legal or natural persons who are themselves citizens. The same definition is proposed for purposes of Income Tax, Excise Duty and Stamp Duty (see sections 4, 5 and 6).

b. Clarification of requirement to withhold VAT

Section 5 of the VAT Act was amended in 2018 so that taxpayers designated by the Minister of Finance, Planning and Economic Development would deduct the VAT payable to their vendors and remit the same to the URA. Withholding VAT was to be deducted from VAT registered persons or persons required to register for VAT provided they made qualifying sales equal to Ushs 37.5 million (one quarter of the annual registration threshold).

The implementation of the withholding VAT system was suspended in 2018 two months after its introduction following widespread outcry by the business community that it was onerous and unclear in several respects. Though the withholding VAT system can help check tax fraud and evasion as well as encourage eligible enterprises register for VAT, it was initially established as a tax revenue raising measure causing untold hardships to businesses that initially had to fund repayment of VAT levied on the sales that their vendors withheld and remitted to the URA.

It was also not explicitly set out in the law whether the VAT withheld would be available to offset VAT liabilities of the person making the supply though we considered this would be the practice. It was not very certain on how the threshold for requirement to withhold VAT on non-VAT registered vendors would be determined; whether withholding agents would only consider individual supplies made or would also be under duty to withhold if subsequent supplies by the same vendors though falling below Ushs 37.5 million cumulatively exceeded the Ushs 37.5 million threshold. This uncertainty still remains despite the proposed amendments.

The VAT (Amendment) Bill, 2019 proposes some changes that make withholding VAT more palatable though there is still scope for further policy refinement.

- The amount to be withheld will be 6% of the taxable value. This mirrors Kenya's withholding VAT position. Therefore, it seems that the purchaser will pay the remaining 12% directly to the vendor and remit the 6% to the URA. This however does not affect the obligation of the vendor to account for the full 18% output VAT.
- The obligation to withhold may be waived if the Commissioner General is satisfied that the payer 'has regularly complied with the obligations imposed on a taxable person under the Act'. This position is lauded and is similar to the relief from withholding tax applicable to certain payments under section 119 (5) of the Income Tax Act for compliant tax payers.
- It is still not explicit that the vendor will be able to offset the withheld VAT against its VAT payment obligations, though this would seem logical in the context of the overall VAT system.
- It may be necessary for the government to also look at Zambia's withholding VAT system which is more equitable to taxpayers because it removes the vendor's obligation to pay VAT to the tax authorities where a withholding agent has deducted the VAT at source on payment and remitted the same to the tax authorities. This still remains a key omission in Uganda's regime and creates contradictions requiring vendors to account

for the VAT on their sales even though the same has been deducted at source by their customers. The vendor's obligation under the VAT system is to charge, collect and remit the VAT due from their customers to tax authorities. Requiring vendors to remit VAT on their sales even though the same has been deducted at source on payment by their customers is inequitable.

c. Tax treatment of Islamic finance products

It was proposed to amend section 12 of the VAT Act (providing for the VAT treatment of mixed/composite supplies) in 2018 to give legislative power to the Minister of Finance, Planning and Economic Planning to make regulations determining the tax treatment of supplies made as part of Islamic financial transactions. This was dropped from the final version of the 2018 VAT (Amendment) Bill, but it has now returned as a proposed amendment to Part IX of the VAT Act (a more appropriate location, perhaps). At the time of writing we are not aware of the proposed contents.

The lending of money at interest is prohibited under Islamic Law. Various transactions with similar economic effects which are compliant with Islamic Law may have a different VAT treatment to conventional lending (which is an exempt financial service) and we understand the intention is to introduce regulations to address these divergences.

We expect this will be a helpful clarification of the application of the law to an important category of transactions.

d. Amendment to the First Schedule – Public International Organisations

The First Schedule of the VAT Act provides a list of 'Public International Organisations' which are entitled under section 45 to refunds of input VAT that they incur. To this list is now added the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). UN Women and its accredited staff are now able to claim input VAT incurred on their operations.

e. Amendments to the Second Schedule – Exempt Supplies

VAT exemption removes the requirement for the supplier to charge VAT, but generally restricts the ability to recover input VAT. Vendors would therefore pass on the cost of the unrecoverable input VAT to their customers potentially making their sales more expensive. The categories of goods and services to be treated as exempt are amended to include the following additional items:

- Aircraft insurance services;
- The supply of rice mills and agricultural sprayers suitable for use only in agriculture;
- Various supplies of goods and services to operators of technical or vocational institutes; provided that the investment is not less than USD 10 million in the case foreign investors or USD 2 million in the case of citizens (as defined - see section 3a)
- Supplies of drugs and medicines
- Supplies of imported mathematical and geometry sets for use in technical and vocational education
- Supplies of woodworking, welding and sewing machines

VAT exemption is currently available for goods and services purchased by a developed in connection with planning and constructing industrial parks and free zones provided that the developer spends more than USD 100 million. This amount is now reduced to USD 50 million.

For businesses operating factories or warehouses within an industrial park or free zone carrying out certain qualifying activities, VAT exemption has also been available for certain construction costs. It is proposed to reduce the minimum investment required to qualify for the exemption from USD 15 million to USD 10 million in the case of foreign investors, and from USD 10 million to USD 2 million in the case of citizens (as defined). It is proposed to drop the previous requirement for the business to provide 'for substitution of 30% of the value of imported products'. Given the extreme vagueness of this requirement this should make the relief much more relevant for local businesses and foreign investors.

There has been no change to the law in relation to investment in a single factory or business 'outside' an industrial park or free zone qualifying for the same exemption. Our understanding is that this is intended to refer to activities close to the designated area and this is how the URA interpret it. The language is ambiguous however: anything that isn't inside a specific geographical area is, by definition, outside it, even if it is hundreds of kilometres away!

There is also a proposal to reduce the minimum required investment in hotels and tourism facilities from USD 15 million to USD 10 million. This exemption is currently available in respect of certain costs associated with the construction of hotels and facilities with a capacity exceeding 100 guests.

Since last financial year, it is noted that government is narrowing the scope of availability of zero rating for educational material supplies. In addition to narrowing the definition of supplies for educational purposes for eligibility to zero rate, imported mathematical and geometrical sets are now exempt from VAT as opposed to the more favourable zero rate. The income of education institutions is also now subject to corporation income tax following the removal of the exemption in 2014. The government ought to encourage private educational institutions that complement its efforts of extending educational amenities and services to the population.

f. Amendments to the Third Schedule – Zero-rated Supplies

Supplies of goods and services which are zero-rated enable the supplier to recover input VAT incurred which is a key difference from VAT exemption.

Only one change is proposed to the list of zero-rated goods and services in the Third Schedule: the addition of supplies of drugs and medicines manufactured in Uganda. 'Drugs and medicines' are also in the list of items proposed to be included in the Second Schedule (exempt supplies), but under section 77 of the VAT Act, the Third Schedule takes precedence over the Second, so VAT exemption will only apply to imports and local sales of imported drugs and medicine.

4 Income Tax (Amendment) Bill, 2019

The Income Tax (Amendment) Bill, 2019 proposes various changes to the Income Tax Act 340 (ITA).

a. New definitions

It is proposed to introduce two new definitions in section 2 of the ITA:

- The term 'beneficial owner' is defined as a natural person (i.e. an individual) who owns or has a controlling interest in a legal person (usually a company). Such a person exercises, 'control over the management and policies of a legal person or legal arrangement, directly or indirectly whether through ownership or voting securities, by contract or otherwise'. The relevance of this new definition is discussed below in section 4f.
- A new definition of 'citizen' is introduced. This is identical the proposed amendment to the VAT Act which is discussed in section 3a above. This is relevant to the proposed change discussed in section 4c below.

b. Payment of tax in respect of rental income

Previously the ITA permitted a landlord to consolidate income and expenses of all leased premises. The resulting net income was taxed separately from other sources of income and gains. The Income Tax (Amendment) Bill, 2019 proposes to introduce further ring-fencing of rental income so the taxable income of each property would be calculated and taxed individually.

This measure is most likely introduced to increase income tax collections but is unfair to individuals and property letting companies who will now not be able to take the benefit of tax deduction of costs on new investments against revenue generating properties.

c. Widening of income tax exemptions

Amendments to section 21 of the ITA are proposed to change and expand the scope of income tax exemptions available in respect of industrial parks and free zones by adding more categories of investment eligible for exemption but also reducing the current investment capital for eligibility to the exemption. Currently a developer is eligible for a 5-year income tax exemption from the date of commencement of construction provided at least USD 100 million is invested. An operator of an industrial park or free zone is eligible for a 5-year income tax exemption from the commencement of business provided its investment exceeds USD 15 million (in the case of a foreign investor) or USD 5 million (in the case of a Ugandan citizen).

As in the case of the proposed VAT changes discussed above, there has been no change to the law in relation to investment in a single factory or business 'outside' an industrial park or free zone qualifying for the same exemption. Our understanding is that this is intended to refer to activities close to the designated area and this is how the URA interpret it in practice. The language is ambiguous however: anything that isn't inside a specific geographical area is, by definition, outside it, even if it is hundreds of kilometres away!

Under the amendments proposed the exemptions for activities in industrial parks and free zones would be as follows:

- A person letting or leasing facilities would be eligible for a 10-year tax exemption from the date construction commenced (or from the date of an additional investment in the case of an existing developer) provided that the investment capital or additional investment is at least USD 50 million.
- A person operating in the designated area would be eligible for a 10-year exemption from the date of commencement of business provided that it invests at least USD 10 million in the case of a foreigner or USD 2

million in the case of a citizen. The proposed definition of 'citizen' is discussed in section 3a above. A person currently operating may be eligible if they make an additional investment.

- Persons operating in the designated area will be subject to an exemption which is not time limited if they carry out certain specified activities (which are similar to those qualifying for VAT exemption under the Second Schedule of the VAT Act). They must utilise at least 70% locally sourced raw materials and 60% of the employees should be citizens (as defined – see above). Qualifying activities include commercial farming, agro-processing, certain manufacturing activities, IT, logistics, etc.

An additional exemption from income tax is propose for interest on infrastructure bonds. These are to be defined as, 'all listed bonds, notes or other similar securities used to raise funds for public infrastructure and other social services, if those bonds have a maturity period of at least 5 years.

d. Restriction on interest deductions – removal for banks and insurance companies

Section 25 of the ITA was amended in 2018 to provide that the amount of interest deductible by companies which are part of a group in any year of income will not exceed 30% of the tax earnings before interest, tax, depreciation and amortisation. Typically, companies in the financial services sector are much more highly geared than other businesses (i.e. they have much higher debt: equity ratios and higher interest expenses). As a result, the 2018 change was unduly onerous for these companies and the Income Tax (Amendment) Bill, 2019 proposes to eliminate the cap on interest deductions for such companies. This is a sensible, pragmatic response to the concerns of affected taxpayers.

e. Income tax for loss-making companies

Many jurisdictions (e.g. Tanzania) impose income tax on companies which have losses, requiring a minimum level of payment. This is sometimes referred to as an 'alternative minimum tax' following the terminology used in the USA tax system. It was initially proposed to introduce such a system in Uganda in 2018 but the proposal was dropped prior to the 2018 Income Tax (Amendment) Act becoming law. It has now found its way into the 2019 Income Tax (Amendment) Bill.

Taxpayers (mainly companies, we expect) will be required to pay income tax equivalent to 0.5% of 'gross turnover' if they have carried forward losses for a consecutive period of 7 years. The tax will apply in the eighth year and each subsequent year of loss carry forward. The term 'gross turnover' is defined in section 2 of the ITA and includes not only revenue from regular business activities but also gains on disposals of capital assets.

This is likely to impact businesses which require significant up-front capital investments which may not fully utilise loss pools resulting from tax depreciation for several years after commencing operations. Companies involved in large, capital-intensive infrastructure projects such as pipelines, refineries and hydropower projects may be affected.

f. International agreements – definition of beneficial owner

As noted in section 4a above, the proposed amendments include a definition of 'beneficial owner'. This is relevant for the purposes of section 88 which incorporates international treaties into Ugandan tax law. The ITA requires any person claiming a benefit under such an international agreement (e.g. a reduced rate of withholding tax under a double tax treaty) to be the beneficial owner of the relevant income. Currently the law specifies that the term 'beneficial owner' is to be construed in accordance with the definition in the relevant treaty. It is not proposed to replace this with a domestic law definition of beneficial owner as set out in section 4a above. This is a sensible measure as tax treaties frequently do not actually themselves contain such a definition.

g. Withholding tax on the purchase of a business or business assets

Section 118B was introduced in 2013 to require any resident person acquiring an asset from a non-resident to withhold tax from the gross consideration at the rate of 10%. The intention was to capture tax on gains realised by sellers that were not registered taxpayers. It is now proposed to expand the scope to cover <u>any</u> acquisition of a business or business asset by a resident. The proposed rate of withholding is 6% of gross consideration. A seller who is a registered taxpayer should be able to offset this tax against its own income tax liability.

h. TIN required for issuing of official authorizations and licences.

The previous ambiguous wording of section 135 is amended to make it absolutely clear that no official licence, permit or authorization of any description may be issued to a person who has not provided their Taxpayer Identification Number ('TIN').

i. Changes to withholding tax rates for government securities

Currently a rate of 20% applies to interest on government securities which is paid to both residents and non-residents. The Income Tax (Amendment) Bill, 2019 proposes to reduce this to 10% in the case of securities with a maturity of 10 or more years, but a rate of 20% is retained for government securities with a maturity that 'does not exceed 10 years'. The wording is ambiguous: it is not clear which rate will apply to any securities with a maturity of precisely 10 years.

5 The Excise Duty (Amendment) Bill, 2019

The Excise Duty (Amendment) Bill, 2019 proposes amendments to the Excise Duty Act, 2014.

a. Definition of 'citizen'

The Bill proposes to introduce a definition of 'citizen' identical to that proposed in respect of VAT and Income Tax (see section 3a above)

b. Islamic Finance

As in the case of VAT, it has been decided to address Excise Duty issues which may arise in respect of Islamic financing transactions. These may involve transactions in excisable goods in some cases triggering duty, which of course would not arise in connection with conventional lending. The Minister of Finance, Planning and Economic Development is to be given authority to issue regulations, 'prescribing the equivalent tax treatment of supplies made in the course of Islamic financial transactions.' Further details are not available at the time of writing.

c. Registration

Excise duty traditionally applied to goods rather than services and the 2014 Act focuses on the requirement to license premises where excisable goods are processed or stored and does not have very clear rules on <u>who</u> is required to register. Given that certain telecommunications services have been subject to excise duty in Uganda for many years it is appropriate that the Bill proposes to replace Part III of the 2014 Act (Section 5 – Licensing of premises) with a new section dealing with the registration of providers of excisable goods or services as well as the registration of premises.

The administrative details outlined in the proposed new version of section 5 are similar to those in the current law, but it is now made explicit that 'a manufacturer, importer or provider of excisable goods and services … shall apply for registration <u>and</u> (our emphasis) the registration of the premises in which the manufacture, provision or dealing in excisable goods or excisable services … takes place.'

d. Late payment interest

Section 15A (3) of the Excise Duty Act imposes interest on late payment of duty on manufactured or imported goods at the rate of 2% per month, compounded. This does not make any mention of services and the proposed amendment eliminates the specific reference to manufacture and importation so that the interest charge clearly applies to late payments of duty on both goods and services.

e. Duty rate changes

Unusually, the Bill proposes only one duty rate change and that is a reduction. It remains to be seen whether the government has second thoughts about this generosity before the Bill is passed into law. The proposed rate reduction applies to non-alcoholic beverages (excluding fruit and vegetable juices) and the rate is to go down from 12% or 200 UShs (whichever is higher) to 11% or Ushs 185 per litre (whichever is higher). Perhaps the intention is to encourage us to drink less alcohol!

f. Application of a nil rate in respect of inputs for certain activities

Changes are proposed to bring excise tax rates on certain activities related to industrial parks and free zones into line with those available for VAT and Income Tax.

- The minimum level of investment required by a developer of an industrial park or free zone is reduced to USD 50 million from USD 100 million. Provided this threshold is met, construction materials are subject to a nil rate of excise tax (Schedule 2, part I, item 20). This will affect the procurement of cement for such projects which is normally subject to an excise tax of UShs 500 per 50Kg.

- The investment thresholds for operators in industrial parks and free zones to benefit from a nil rate on construction materials has been reduced from USD 15 million to USD 10 million in the case of foreigners, and USD 10 million to USD 2 million for 'citizens' (as defined). This is consistent with the proposed VAT exemption discussed above.

- A new item is introduced to the list in Schedule 2, part I, providing a nil rate for construction materials, etc used in constructing premises for technical or vocational institutes. The minimum levels of investment required are also USD 15 million to USD 10 million in the case of foreigners, and USD 10 million to USD 2 million for 'citizens' (as defined). This is consistent with the proposed VAT exemption discussed above.

As in the case of the proposed VAT and Income Tax changes discussed above, there has been no change to the law in relation to investment in a single factory or business 'outside' an industrial park or free zone qualifying for the nil rate of duty in respect of construction materials (Schedule 2, part I, item 21). Our understanding is that this is intended to refer to activities close to the designated area and it likely the URA would interpret it this way. The language is ambiguous however: anything that isn't inside a specific geographical area is, by definition, outside it, even if it is hundreds of kilometres away!

6 The Stamp Duty (Amendment) Bill, 2019

The Stamp Duty (Amendment) Bill, 2019 proposes amendments to the Stamps Duty Act 2014 providing for the following changes.

a. Definition of 'citizen'

A new definition is introduced in section 2 of the Act. This is consistent with the definition introduced into the Acts governing VAT, Income Tax and Excise Duty, discussed above.

b. Clarification of instruments subject to Stamp Duty

The Bill proposes the replacement of two categories of instrument listed in Schedule 2 of the Stamp Duty Act 2014:

- Item 36 (Indemnity Bonds) – currently attracting a rate of 1% ad valorem; and
- Item 48(c) (Insurance Performance Bonds) – currently attracting a fixed rate of UShs 50,000 per instrument

A new item 36 is proposed that includes both these types of instrument: 'Bank guarantees, insurance performance bonds, indemnity bonds and similar debt instruments'. The rate of duty proposed is UShs 100,000 per instrument.

c. Stamp Duty exemptions

Item 60A in Schedule 2 provides exemption from Stamp Duty for instruments executed, 'by, or on behalf of a company or Government for the sole purpose of implementing ... strategic investment project' which meet certain criteria. It is proposed to amend these criteria to be consistent with reliefs which are proposed to the legislation governing VAT, Income Tax and Excise Tax.

- The minimum level of investment required by a developer of an industrial park or free zone is reduced to USD 50 million from USD 100 million. Provided this threshold is met, a nil rate of stamp duty is provided for various categories of instrument including land leases and transfers, mortgages and share capital increases.

- The investment thresholds for operators in industrial parks and free zones to benefit from a nil rate for various categories of instrument (including land leases and transfers, mortgages and share capital increases) has been reduced from USD 15 million to USD 10 million in the case of foreigners, and USD 10 million to USD 2 million for 'citizens' (as defined). Interestingly, the qualifications to be met will continue to include 30% import substitution, a vague requirement which the proposed amendments to the VAT Act would eliminate.

- A new item is proposed for the list in Schedule 2, part I, providing a nil rate for various categories of instrument (including land leases and transfers, mortgages and share capital increases) executed by operators of technical or vocational institutes. The minimum levels of investment required are also USD 15 million to USD 10 million in the case of foreigners, and USD 10 million to USD 2 million for 'citizens' (as defined). This is consistent with the proposed VAT exemption discussed above.

As in the case of the proposed VAT, Income Tax and Excise Duty changes discussed above, there has been no change to the law in relation to investment in a single factory or business 'outside' an industrial park or free zone qualifying for the nil rate of duty. Our understanding is that this is intended to refer to activities close to the designated area and this is how the URA interpret it. The language is ambiguous however: anything that isn't inside a specific geographical area is, by definition, outside it, even if it is hundreds of kilometres away!

7 Tax Procedure Code (Amendment) Bill, 2019

The proposed amendments to the Tax Procedure Code Act, 2014 are as follows:

a. Tax returns – amendment to definition

It is proposed to clarify what constitute 'tax returns' for the purposes of the Act. The definition in section 3 is amended to refer to a new Schedule 4, which is included in the Bill and lists the following:

- VAT returns
- Income Tax returns
- Withholding Tax returns
- Excise Duty returns
- A return required under section 50 of the Lotteries and Gaming Act, 2016
- Stamp Duty returns

This is helpful as the current definition refers to Schedule 3 which actually deals with the requirement for companies having a turnover of UShs 500 million or more to provide audited financial statements.

b. Tax and duty payable by the Government

It is proposed to introduce a new section 40A which clarifies the responsibility for the Ministry of Finance, Planning and Economic Development to settle taxes which the Government has committed to pay on behalf of a person or owed by the Government 'as counterpart funding for aid funded projects'. It is also proposed to waive any such taxes unpaid as of 31st June 2019, a date which does not actually exist, of course. Perhaps the budget for the team drafting the Bill did not extend to the purchase of a calendar! A list of taxes waived is to be published in the Gazette.

c. Waiver of fines and interest in the case of voluntary disclosure

An amendment to section 66 is proposed, giving the Commissioner of the URA the power to waive all fines and interest on late payment of tax where a taxpayer voluntarily discloses a tax offence to the URA at any time prior to the commencement of court proceedings. This would not apply in the case of an offence under section 63 which deals with the bribing of URA officials.

This is a helpful clarification of the extent of the Commissioner's existing power under section 66 to settle cases with delinquent taxpayers without the need for litigation, which can be expensive and protracted for all parties concerned.

d. Payments to informers

The Bill proposes the introduction of a new section 74A which gives the Commissioner General the authority to make a payment to a person equivalent to 5% of tax or duty recovered as a result of information provided by that person.

Whilst the practice of making such payments is in line with international precedents we hope that the URA will be vigilant to ensure that it does not act on false information provided by individuals motivated by greed or grudges.

e. Proposed amendment to the Finance Act, 2014

It is proposed to repeal section 8 of the 2014 Finance Act. This provided for a payment equivalent to 10% of tax or duty recovered as a result of information provided by that person. It has now been reduced to 5%.

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At Deloitte, he lived and worked in Uganda, Kenya, Tanzania and the United Kingdom for over 6 years and subsequently became the firm's chief of staff for the Energy and Resources Industry Group seeing him play a lead advisory role in Uganda, Kenya, Tanzania, Mozambique, South Sudan, Somalia and Ethiopia.

Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

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Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

Bill is a graduate of Oxford University and completed his inspectors' training with the UK Inland Revenue in 1989.

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John leads the public policy and advocacy practice at the firm and combines unique public and private sector experience.

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 oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holding Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

Dickens was instrumental in UNOC's formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

He is a certified project control specialist (IFP) and holds a Master of Laws Degree in Petroleum Law and Policy from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University.

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Francis leads the litigation and dispute resolution practice at the firm. He is an Advocate of the High Court of Uganda with expertise in oil and gas, infrastructure and dispute resolution. He has been part of teams advising on projects in Uganda, Tanzania, Mozambique and South Africa. He specializes in regulatory compliance, national content, health and safety and dispute resolution.

He joined Cristal Advocates from Kizza, Tumwesige, and Ssemambo Advocates. He previously worked with the Advocates Coalition for Development and Environment (ACODE). He also undertook a traineeship with the oil and gas division of Webber Wetzel in Johannesburg, South Africa.

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