Cristal Advocates

Uganda's 2021/22 Proposed Tax Amendments

Are the new taxes timely?

Cristal Knowledge Series

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1. Introduction

Uganda's Parliament has commenced debate on the tax proposals for the financial year 2021/22 projected to take effect from 1st July 2021. These measures are contained in the following Bills that have been tabled before Parliament for enactment by the Ministry of Finance and Economic Planning.

- Income Tax Amendment Bill 2021;
- The Value Added Tax (Amendment) Bill 2021;
- The Excise Duty Amendment Bill 2021;
- The Stamp Duty (Amendment) Bill, 2021;
- Tax Procedure Code (Amendment) Bill 2021;
- The Mining (Amendment) Bill 2021;
- Traffic and Road Safety (Amendment) Bill 2021;
- Tax Appeals Tribunal (Amendment Bill) 2021;
- The External Trade (Amendment) Bill, 2021;
- Fish (Amendment) Bill, 2021.

The raging coronavirus has adversely affected government revenue collections resulting in a fiscal deficit. Keen to plug this gap so as to bolster its revenues to be able to meet the debt repayment, development and recurrent expenditure obligations, government is considering the introduction of new taxes subject to Parliamentary approval.

The proposed measures have attracted mixed reactions from both members of the public and Parliament with questions whether the timing is appropriate for the new taxes when the business community and taxpayers are struggling to cope amidst a raging global pandemic. It remains to be seen how the concerns of both the government, taxpayers and the business community will be harmonised in the final laws that Parliament shall enact.

2. Snapshot of the proposed tax changes

This segment contains an outline of the proposed tax changes. More detail is provided in the body of this publication.

Tax issue	Amendment
a) Value Added Tax (VAT)	
Input Tax Credit	• Any taxable person intending to utilise an input tax credit must include the same in the VAT return within 6 months from the date of the invoice.
VAT return	• Non-resident persons providing electronic, digital and related services deemed by law to be supplies in Uganda must file a VAT return within 15 days after the end of 3 consecutive calendar months.
Refunds	• Non VAT registered persons are eligible to apply for a refund of 5% VAT incurred on the purchase of goods or services worth Ugx. 10,000,000 and above, within a period of 30 consecutive days, from a taxable person that issues e-invoices or e-receipts.
False or misleading statements	• Impose strict liability with regard to making false or misleading statements to the Uganda Revenue Authority ("URA") that results into payment of less tax than what would have been assessed.
Exempt supplies	• Expanded to include liquefied gas and supply of services to strategic investments
Zero-rated supplies	• To include the supply of leased aircraft, aircraft engines, spare parts for aircraft, aircraft maintenance equipment and repair services.
Standard rate supplies	• A couple of supplies previously exempt from VAT are now proposed to be subject to VAT at the standard rate of 18%.

Refund of VAT	• The Africa Export-Import Bank (Afriexim Bank) and the International Union for Conservation of Nature are proposed to be added to the list of international organisations eligible for a refund of VAT that they incur.
b) Income Tax	
Definitions	• Redefines a beneficial owner as a natural person who has final ownership or control of another person or on whose behalf a transaction is concluded. • Defines consideration as a payment in money or in kind, paid or payable for any supply less any discounts or rebates allowed and accounted for. • Substitutes the public character test for the not-for-profit test when determining whether a religious, charitable or educational institution is an exempt organisation.
Rental income	• Ringfences rental income accruing from different buildings even if owned by the same person. • Increases allowable deductions for an individual from 20% to 60% of their annual rental income though the rental income tax rate for individuals is also proposed to be increased to 30% from 20%.
Capital allowances	• Consolidates depreciable assets into 3 classes from the previous 4 for the purposes of claiming tax wear and tear. • The concurrent deduction of initial allowance and depreciation allowance is also up for elimination by way of a deferral mechanism.
Capital gains	• Introduces indexation relief for assets that are sold after a period of 12 months from the date of their purchase when computing the gains arising from their disposal. • Gains arising on the disposal of assets of registered venture capital funds are out of scope for tax purposes to the extent 50% or more of the proceeds are re-invested in the same year. If less than 50% is re-invested, the gains or losses not recognised for tax purposes shall be pro-rata the percentage of proceeds re-invested.
Exemptions	• Repeals the exemption of income derived from agro-processing activities though such activities can still benefit from the exemption available to strategic investment meeting the requisite capital investment requirements. • The income of manufacturers whose investment capital is at least $50million for over a period of at least 10 years from commencement of business, or from the date of additional investment of $50 million is exempt from income tax to the extent locally available raw materials are used and locals are employed. • Adds the Africa Export-Import Bank and the International Union for Conservation of Nature to the list of institutions exempt from tax.
Exemption from withholding tax	• Regularly compliant taxpayers would be relieved from withholding tax upon disposal of business assets
Exchange of Information	• Proactive steps to operationalise the process of automatic exchange of information under any applicable double tax agreements.

Due date of payment of tax	• Provides for the due date of payment of tax as either the date of furnishing the tax return in cases of self-assessment, or within 45 days from the date of service of a notice of assessment.
Tax refund	• Provides for what the date of receipt of an application for a refund of tax is.
c) Excise Duty	
Internet	• Replaces the controversial over the top tax ("OTT") with an ad-valorem tax of 12% of the fee charged.
Revised rates	• Opaque Beer – 30%. • Locally manufactured non-alcoholic beverages -30%. • Plastics -5%. • Value-added services – 12%.
Licensing	• Not necessary anymore to renew the underlying excise duty license annually.
Remission of taxes	• Allows the Commissioner to remit the excise duty paid if satisfied that it was on plastic packaging for exported goods, medicaments or manufactured from recycled plastic.
d) Stamp Duty	
Exemptions	• Several instruments of eligible strategic investments are exempt from stamp duty. Such would be ventures whose investment capital is at least $50 million or in the event of additional investment equivalent to $50 million but also utilize at least 50% of locally produced raw materials, subject to availability and the employment of a minimum of 100 citizens. • Any instrument executed by, or on behalf of a company or the government of Uganda for the sole purpose of a project that fits the description of a strategic investment is proposed to be exempt from stamp duty.
Increased rate	• Increase stamp duty payable for an instrument of settlement (including a deed of dower) or an instrument revoking the settlement from Ugx 5,000 to Ugx. 15,000.
e) Tax Procedure Code	
Tax decisions	• Expands on decisions excluded from the meaning of a tax decision.
Tax Identification Number ("TIN")	• Imposes an obligation on local authorities, government institutions or regulatory bodies to only issue licenses, or any form of authorisation, to people who have a TIN.
Leave to make an additional assessment	• Increases the time within which to apply to the Commissioner for leave to make an additional assessment from 12 months to 3 years.
Penal tax	• Introduces penal tax for persons who attempt to acquire or actually acquire; or sell a tax stamp without goods; or persons who affix a tax stamp on goods other than those that were approved.
Alternative Dispute Resolution	• Seeks to establish a formal structure for alternative dispute resolution mechanisms for tax objections where a tax payer is dissatisfied with a decision of the URA.
Powers of the Commissioner	• Expands further the powers of the URA during an investigation.

f) Mining	
Export Levy	• Imposes a levy on exports of processed gold and unprocessed minerals.
g) Traffic and Road Safety	
Annual licence	• Introduces an annual license for persons in possession, ownership or use of a motor vehicle, trailer or engineering plant.
h) Tax Appeals	
Appeals	• Introduces appeals from the High Court to the Court of Appeal, and from the Court of Appeal to the Supreme Court.
i) External Trade	
Levy	• Proposes a levy on exports of wheat bran, cotton cake, maize bran and other milling industry by-products
j) Fish	
Levy	• Introduces a levy on exports of fish maw

3. The Value Added Tax (Amendment) Bill 2021

This Bill proposes the following amendments to the Value Added Tax Act ("VATA").

a) *Input Tax Credit*

A taxable person who intends to utilise an input tax credit must include the eligible invoice in the applicable VAT returns within six (6) months from the date of the invoice. This is consistent with the requirements for the same in the other East African countries namely Kenya and Tanzania.

b) *Tax Returns*

The Bill introduces the requirement for non-resident providers of electronic and digital services, and the like, deemed to be supplied in Uganda to lodge a VAT tax return with the URA within fifteen (15) days after the end of three (3) consecutive calendar months. Though URA has intensified efforts to levy VAT from non-resident providers of digital services to consumers in Uganda, it is unclear whether there is significant headway in this respect.

c) *VAT refunds*

Non VAT registered persons shall be entitled to a refund of 5% of the VAT paid when they purchases goods or services from a taxable person and are issued with an electronic receipt or invoice worth Ugx 10,000,000/= (Ten Million Shillings) or more within a period of 30 consecutive days. Whether the URA would indeed timely make the refunds without triggering off an onerous audit process is another matter. This measure is intended to deepen the use of fiscal receipts and invoices that have been touted as a novel measure of combating tax evasion.

d) *Strict liability*

The Bill imposes strict liability with regard to making false or misleading statements to URA that result into payment of tax that is less than what would have been assessed. Previously, there was a need for URA to prove that the tax payer made the false or misleading statement knowingly or recklessly. The tax payers will now have to ensure that all information availed to URA is accurate or risk facing a penal tax equal to double the amount of the excess tax.

e) *List of Exempt Supplies*

The Bill proposes to exempt the following items from VAT.

- The supply of liquefied gas
- The supply of services to a manufacturer, whose investment capital is at least 50 million dollars, to conduct a feasibility study or undertake design or construction works. However, there is need to prove that the relevant manufacturer has the capacity to use at least 70% of locally sourced raw materials and also has at least 70% of their employees being Ugandan citizens earning an aggregate wage of at least 70% of the total wage bill.

f) *Standard –rated supplies*

The following supplies previously exempt from VAT are now proposed to be subject to VAT at the standard rate of 18%.

- The supply of locally produced materials for construction of premises, equipment or fittings which are not manufactured on the local market to a hotel or tourism facility developer whose investment capital is ten million dollars and has a room capacity exceeding 100 guests.
- The supply of all production inputs into iron ore smelting into billets and the supply of billets for further value addition in Uganda.
- The supply of all production inputs into limestone mining and processing into clinker in Uganda and the supply of clinker for further value addition in Uganda.

g) *Zero-rated supplies*

Supplies of leased aircraft, aircraft engines, spare parts for aircraft, aircraft maintenance equipment and repair services are proposed to be zero-rated for VAT purposes.

h) *Refund of VAT to diplomatic and international organisations*

The Africa Export-Import Bank (Afriexim Bank) and the International Union for Conservation of Nature are proposed to be added to the list of international organisations eligible for a refund of VAT incurred on their operations and activities.

4. Income Tax Amendment Bill, 2021

The Income Tax (Amendment) Bill, 2021 proposes the following changes to the Income Tax Act ("ITA").

a. Definitions

Certain definitions in the ITA are amended or new ones are introduced altogether.

- A beneficial owner in relation to legal persons, trusts and other persons similar to trusts is defined to mean a natural person who has final ownership or control of another person or on whose behalf a transaction is concluded. However, it is not necessarily the case that a beneficial owner in all instances must be an individual or natural person under comparative international tax principles.
- There is a new definition for consideration as any payment in money or in kind, paid or payable for any supply less any discounts or rebates allowed and accounted for. This will help clear any ambiguity in the law in relation to revenue recognition for income tax computation purposes in such instances.
- The public character test was a key element among others in determining whether a religious, charitable or educational institution was eligible for exemption from income tax as an exempt organisation. This is now proposed to be replaced with the not-for-profit test.

b. Rental Tax

There is particular focus on rental income tax compliance by the government and the URA. In addition to contracting in 2020 an American company Ripple Nami Inc to bolster government efforts to collect, there are sustained legislative efforts to expand the rental tax base. The ITA (Amendment) Bill, 2021 proposes to:

- Ring-fence rental income accruing from different commercial buildings regardless of whether or not they are owned by the same taxpayer. Parliament rejected this similar proposal last year.
- Increase the income tax rate on individuals' rental income from 20% to 30% which is the same rate applicable to companies.
- Increase individuals' deductions to 60% of their rental income derived in a year. The deduction has previously

been restricted to 20%. Despite the increased allowance, it still not tax optimal to undertake rental business as an individual.

c. Capital allowances

- Tax depreciable asset classes are proposed to be reduced from the current four to three. These would be computers and data handling in class 1 with a depreciation rate of 40%; personal protective equipment used in farming, manufacturing and mining in class 2 with a depreciation rate of 30% and automobiles and any other depreciable asset in class 3 with a depreciable rate of 20% from the previously applicable rates of 35% and 30%.
- The concurrent deduction of initial allowance and depreciation allowance is also up for elimination by way of a deferral mechanism.

d. Capital gains

- Though it has taken a long time to consider this, the government is introducing an indexation relief for assets that are sold after a period of 12 months from the date of their purchase when computing the arising gains at disposal to eliminate inflation from the gain computation. The window of indexation of relief covered under the transitional clauses of the ITA has been very narrow and inconsequential.
- All gains arising on disposals of assets by registered venture capital fund are out of scope of tax to the extent 50% or more of the proceeds are reinvested within the same year of income. If less than 50% of the proceeds are reinvested, the gains or losses from the disposal not recognised for tax purposes shall be pro-rata the percentage of proceeds re-invested.

e. Exempt Income

The ITA (Amendment) Bill, 2021 proposes to:

- Repeal the exemption of income derived from agro-processing activities. Agro-processors would however still be able to benefit from the exemption if the underlying investment meets the capital thresholds applicable to new investments in Uganda.
- Introduce an exemption from income tax for manufacturers of chemicals for agricultural and industrial use, textiles, glassware, leather products, industrial machinery, electrical equipment, sanitary pads and diapers
- Introduce an exemption from income tax for manufacturers whose investment capital is at least $ 50 million for over a period of at least 10 years from commencement of business, or from the date of additional investment of $ 50 million. The additional requirements to benefit from this exemption include using at least 50% of locally produced raw-materials as well as employing a minimum of 100 citizens. It is unlikely many investments would benefit from this measure.
- Add the Africa Export-Import Bank (Afriexim Bank) and the International Union for Conservation of Nature to the list of institutions that are exempt from tax.

f. Exemption from withholding tax

Taxpayers that are designated as regularly complaint for tax purposes by the URA shall be relieved from withholding tax on the sale of business assets. The applicable rate of withholding tax on disposal of business assets in Uganda is 6% for resident persons.

g. Automatic exchange of information

The Bill proposes to provide for the automatic exchange of information under any applicable double tax agreement and would require the Minister responsible for Finance to make regulations that would facilitate the same. This comes at a time of sustained collaborative international efforts for the automatic exchange of information by revenue authorities to curb tax evasion and avoidance.

h. Due date of payment of tax

The Bill proposes timelines within which tax must be paid. This is either the date of furnishing the tax return in cases of self-assessment, or within forty-five (45) days from the date of service of a notice of assessment.

i. *Refund of Tax*

The Bill proposes what the date of receipt of an application for a tax refund would be. This is either the date on which the application for refund is received by the URA, or in the case where the URA requests for additional information, the date on which the additional information is received by the URA.

5. The Excise Duty Amendment Bill, 2021

The Excise Duty (Amendment) Bill, 2021, proposes the following amendments to the Excise Duty Act, 2014.

a) *Licensing*

A license in the form of a certificate of registration for premises in which the manufacture or provision of excisable goods and services has previously been valid for one year from the date of issue and had to be renewed annually. This is now proposed to be removed meaning that the URA will only maintain a register for manufacturers, importers and providers of excisable goods and services.

b) *Remission of excise duty*

The Bill proposes to empower the URA to remit the excise duty paid under the Excise Duty Act if satisfied that excise duty was paid on plastic packaging for exported goods, for medicaments; or manufactured from recycled plastics unless the recycled plastic used in the manufacture of the plastic packaging is equivalent to at least fifty percent of the raw material used.

c) *Excise duty rates*

The Bill proposes to revise excise duty rates on a number of items below including the controversial OTT internet tax that is being converted into an ad-valorem tax of 12%.

Commodity	New Excise Duty Rate
Opaque Beer	30% or ugx 230 per litre; whichever is higher
Any other alcoholic beverage locally produced	30% or ugx 230 per litre; whichever is higher
Any other non-alcoholic beverage locally produced other than opaque beer, made out of fermented sugary tea solution with a combination of yeast and bacteria	30% or ugx 230 per litre; whichever is higher
Plastic packaging and plastic granules	5% or $ 150 per ton, whichever is higher.
Internet data, except data for provision of medical services and education services	12% of the fee charged
Value added services	12% of the fee charged
Any other fermented beverages including cider, perry, mead, spears or near beer	60% or ugx 950 per litre whichever is higher
Construction materials of a manufacturer, other than a manufacturer referred to in item 21, whose investment capital is, at least $ 50 million or, in the case of any other manufacturer, who makes additional investment equivalent to $ 50 million fifty	Nil
Wheat grain	Shs 100 per kilogram

6. The Stamp Duty (Amendment) Bill, 2021

The Bill proposes the following amendments to the Stamp Duty Act, 2014.

a) *Exemptions*

- The following instruments below for manufacturers whose investment capital is at least $ 50 million or in the event of additional investment equivalent to $ 50 million are exempt from stamp duty:

- debenture; whether a mortgage debenture or not, being of a marketable security – of total value;
- further charge; any instrument imposing a further charge on a mortgaged property –of total value;
- lease of land – of total value;
- increase of share capital;
- transfer of land;
- Agreement to provide services on conducting a feasibility study or developing a design for construction."

Further criterion for eligibility for the foregoing stamp duty exemption as a strategic investor includes the utilization of at least 50% of locally produced raw materials, subject to availability and the employment of a minimum of 100 citizens.

- Any instrument executed by, or on behalf of a company or the government of Uganda for the sole purpose of a project that fits the description of a strategic investment is also exempt.

b) ***Increased duty***

Stamp Duty payable for an instrument of settlement or an instrument revoking the settlement including a deed of dower is proposed to be increased to Ugx 15,000.

7. Tax Procedures Code (Amendment) Bill, 2021

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

a) Penal tax

The Bill proposes a penal tax for a person who attempts to acquire or acquires or sells a tax stamp without goods or a person who affixes a tax stamp on goods other than those that were approved. The penalty is double the tax due on the goods or Ugx. 10,000,000, whichever is higher.

b) More stringent penalties

There are more stringent penalties proposed in relation to offences under the principal Acts. These offences are; failure to furnish a tax return, failure to comply with obligations under the principal Act, failure to maintain proper records, use of a false Tax Identification Number ("TIN"), making false or misleading statements, aiding or abetting tax offences, offences relating to recovery of tax and offences relating to registration.

c) Alternative Dispute Resolution

The Bill puts forward alternative dispute resolution mechanisms for tax objections where a tax payer is dissatisfied with a decision of the Commissioner. Though URA has previously accommodated requests for further review as a means of resolving tax disputes, there was no formal framework in the law under which such was being done.

d) Powers of the Commissioner

The Bill also seeks to bestow various powers to the Commissioner of the URA during an investigation namely; effect an arrest with an arrest warrant, issue an order for interim closure of premises, record charge and caution statement and execute a bond with or without security.

e) Expands decisions that should be excluded from the meaning of a tax decision

The Bill proposes to expand decisions that should be excluded from the meaning of a tax decision. The implication is that tax payers aggrieved by such decisions cannot invoke the objection process under the Tax Procedure Code Act. However, this can be remedied by applying for review under the Tax Appeals Tribunal Act.

f) Amendment of tax returns

The Bill proposes to increase the window for amending a tax return from 12 months to three (3) year upon discovery of an error in the previous furnished returns.

g) *TINs*

The law proposes to make it mandatory for any applicant to have a TIN before any local authority, Government institution or regulatory body can issue a licence or any form of authorisation necessary for purposes of conducting any business in Uganda

8. The Mining (Amendment) Bill 2021

The Bill proposes to amend the Mining Act, 2003 by introducing a levy of $ 200per kilogram on processed gold exported out of Uganda and 1% of the value of the unprocessed minerals which are exported out of Uganda.

9. Traffic and Road Safety (Amendment) Bill, 2021

The Bill proposes to re-introduce an annual licence for the possession, ownership or use of a motor vehicle, trailer or engineering plant. The annual license fee would be determined by the Minister of Works and Transport through regulations. Noncompliance will result into payment of a fine to the tune of Ugx. 2,000,000 or imprisonment for a year or both.

10. Tax Appeals Tribunal (Amendment Bill) 2021

The Tax Appeals Tribunal (Amendment Bill) 2021 proposes to:

- Introduce appeals from the High Court to the Court of Appeal, and from the Court of Appeal to the Supreme Court. The current position is that the Court of Appeal and the Supreme Court do not have appellate jurisdiction in tax matters. This proposal seeks to change that.
- Provide that whenever an application for review or appeal of a taxation decision is before the Tax Appeals Tribunal, High Court, Court of Appeal or Supreme Court, the respective court may make an order for stay of the operation or implementation of that decision.

11. The External Trade (Amendment) Bill, 2021

This Bill proposes to introduce a levy on wheat bran, cotton cake, maize bran and other by-products of the milling industry, which are exported out of Uganda at a rate of USD 0.4 per kilogram.

12. Fish (Amendment) Bill, 2021

This Bill introduces a levy on fish maw exported out of Uganda at a rate of ugx 70,000 per kilogram.

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