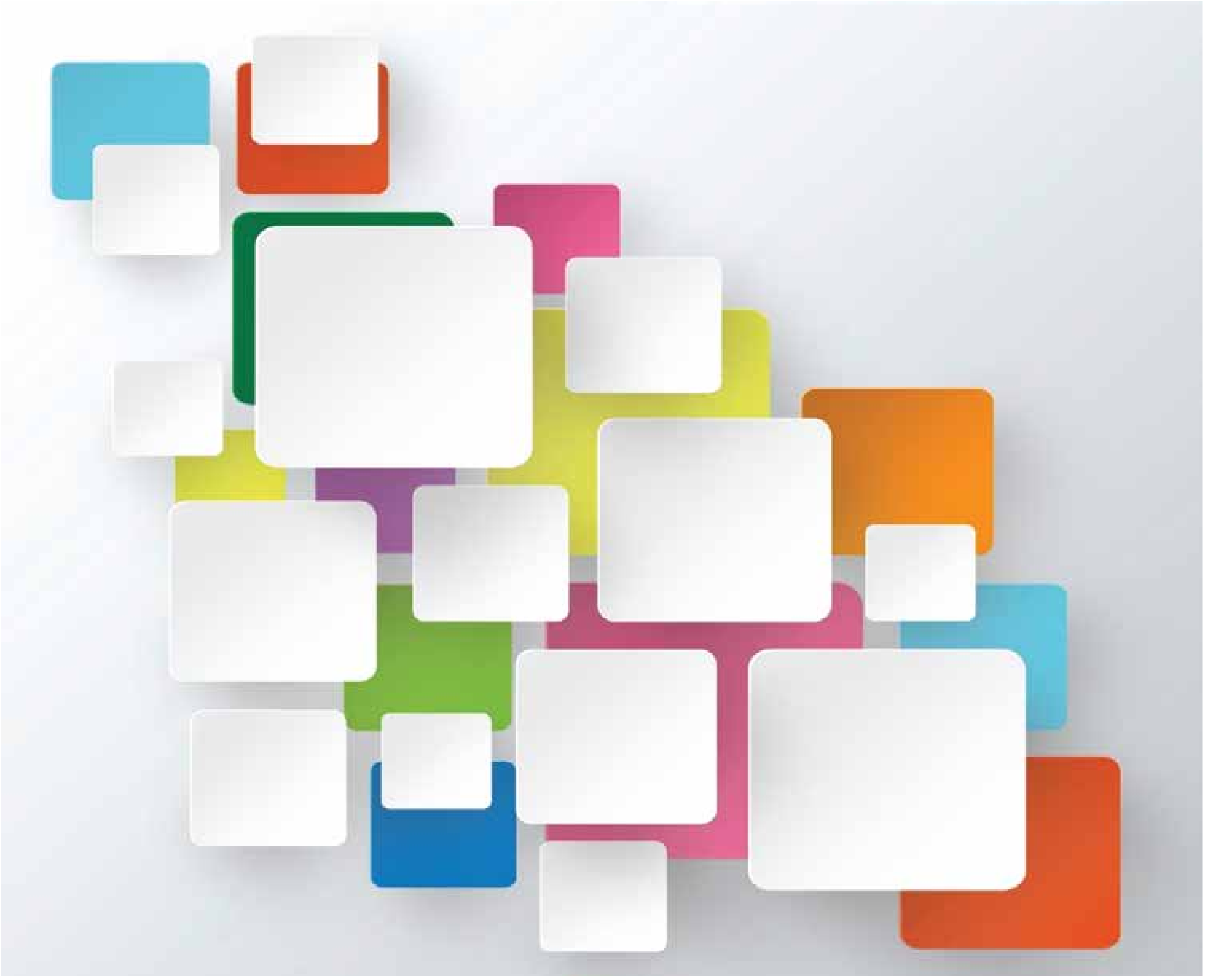
Cristal Advocates

Uganda's Proposed Tax Amendments 2023/24
Keeping you ahead of the curve



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Cristal Knowledge Series
April 2023

1 Introduction

The government has presented new tax measures to Parliament for deliberation in the face of mounting pressure to boost tax revenue collections from Uganda Shillings ("UGX") 25 trillion projected in the current financial year ending on 30th June 2023, to UGX 28 trillion in the upcoming 2023/24 financial year.

Unless rejected or amended by Parliament, the tax proposals outlined in the Income Tax (Amendment) Bill, 2023, the Value Added Tax (Amendment) Bill, 2023, the Tax Procedure Code (Amendment) Bill, 2023, the Excise Tariff (Amendment) Bill, 2023, the Traffic and Road Safety (Amendment) Bill, 2023, and the Lotteries and Gaming (Amendment) Bill, 2023 will come into effect on 1st July 2023.

In this commentary, we discuss how some of these measures not only deviate from established tax principles but also fail to align with the country's economic goals.

2. Snapshot of the contentious proposals

This section outlines the 4 main tax proposals that have sparked controversy within the business community and have the potential to impede the ease of doing business in Uganda.

a) 'Capital gains'

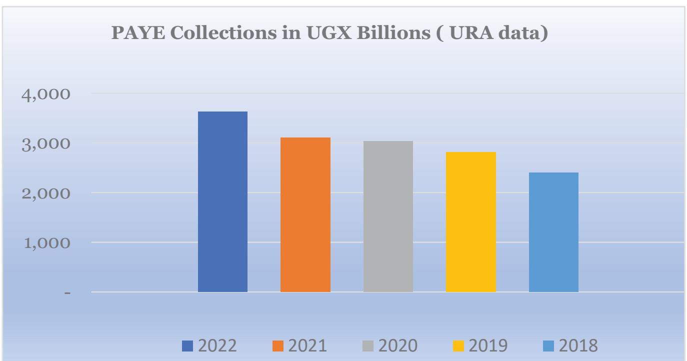
The proposal to impose a final 5% withholding tax ("WHT") on all asset disposals, including chattels, regardless of whether profits are made or not, goes against the principle that capital gains are only realized when an asset is sold for more than its original purchase price.

While this may increase tax revenues, it will likely burden an already limited section of compliant taxpayers. Additionally, it remains to be seen how the Uganda Revenue Authority ("URA") will enforce this tax and track buyers of ordinary chattels in the local community that will undertake the majority of the transactions.

Currently, capital gains are taxable only if derived in the course of business, taking into account the acquisition and related selling costs so that only the gain is taxed. The proposed imposition of tax is not only burdensome but also difficult to enforce uniformly across all taxpayers.

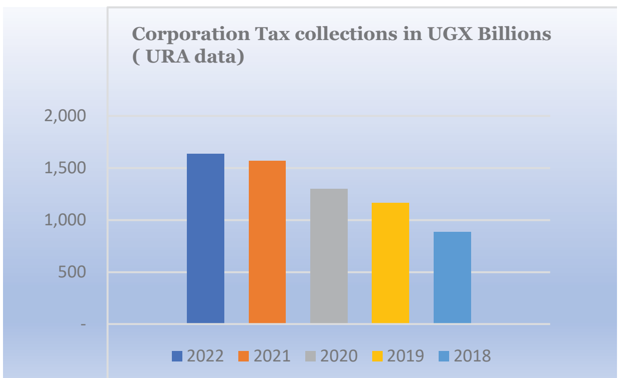
Uganda Revenue Collections in UGX Billions

2022	2021	2020	2019	2018
3,634	3,109	3,040	2,811	2,396



Uganda Revenue Collections in UGX Billions

2022	2021	2020	2019	2018
1,636	1,568	1,302	1,168	884



b) Collective Investment Schemes (Unit Trusts)

Participants in collective investment schemes will be subject to a final 5% withholding tax ("WHT") on profit distributions for contributions below UGX 100 million and 15% for contributions exceeding 100 million. Additionally, participants contributing more than UGX 100 million will be required to furnish a tax return, which could discourage their participation due to this onerous disclosure requirement.

It is unclear why such a WHT and disclosure requirement would be imposed on the growing investments in unit trusts, given that the country is eager to boost domestic revenue mobilization through increased savings.

Interestingly, to encourage foreign lenders to extend credit to local borrowers, the Income Tax Act ("ITA") exempts underlying interest repayments from taxation in Uganda under section 83(5). Domestic savers should be given the same incentive as foreign lenders to encourage savings.

c) Tax losses

The government is proposing, for the third time in under 6 years, to restrict taxpayers' ability to indefinitely carry forward their assessed tax losses. The new proposal allows for only a 50% deduction of losses carried forward after 5 years of making tax losses. Parliament has rejected this proposal twice before.

This measure is particularly punitive, especially if the tax losses arise due to tax depreciation resulting from heavy capital investment. It would be unfair to restrict taxpayers from fully carrying forward their tax losses in such a scenario.

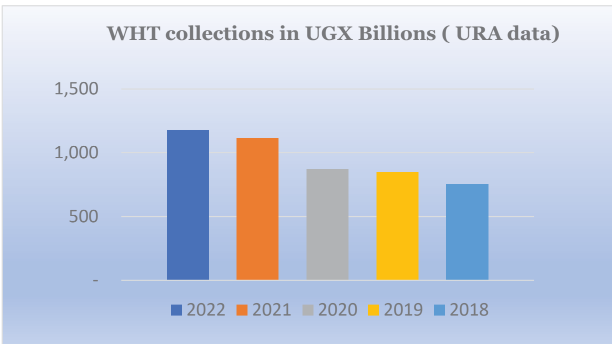
d) Auctions

In the past, the URA unsuccessfully argued that the sale of foreclosed property by financial institutions was subject to VAT at the rate of 18%. The financial institutions successfully disputed this position, contending that such sales are part and parcel of the cycle of financial services exempt from VAT.

Now, a new proposal suggests that the supply of goods by auction will be deemed a supply of goods made by the auctioneer. This proposal is absurd and ignores the substance-over-form nature of auction transactions. In reality, an auctioneer is merely an agent of the seller facilitating the sale transaction without taking ownership of the auctioned goods.

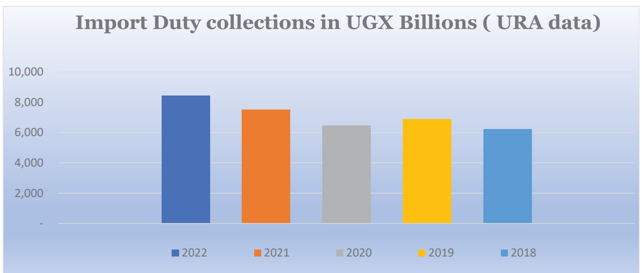
Uganda Revenue Collections in UGX Billions

2022	2021	2020	2019	2018
1,177	1,119	872	847	754



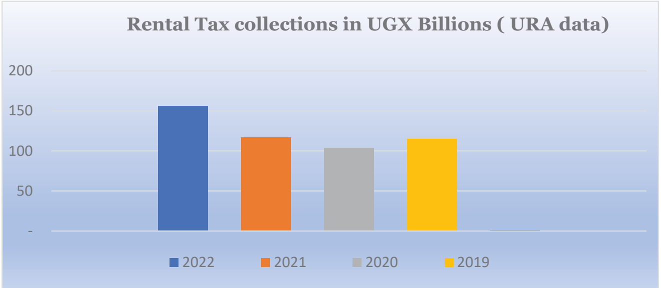
Uganda Revenue Collections in UGX Billions

2022	2021	2020	2019	2018
8,434	7,506	6,447	6,884	6,211



Uganda Revenue Collections in UGX Billions

2022	2021	2020	2019
156	117	104	115



3. Highlights of the proposed tax changes

Below is a table outlining the proposed tax measures for the 2023/2024 financial year:

Tax issue	Proposed amendment
1) Income Tax (Amendment), 2023	
a) Definition of Petroleum Agreement	• Section 2(yya) of the ITA, defining petroleum agreements, is to be repealed. This is because Part IXA of the ITA already covers the taxation of petroleum operations and defines petroleum agreements, making the inclusion of section 2(yya) redundant.
b) Definition of royalty	• Section 2(mmm)(ii) of the ITA, which includes gains on the disposal of any royalty rights in the definition of royalties, will be repealed. This amendment seeks to harmonize the provisions of the law and will not have a significant impact.
c) Business income	• Capital gains/losses on the disposal of business assets are to be excluded from the scope of business income under section 18(1) of the ITA. Additionally, section 18(4) of the ITA that currently excludes trading stock and depreciable assets from business assets will be repealed. These changes are intended to ensure that the proposed WHT on asset disposal proceeds is treated as a final tax.
d) Employment Income	• Gains derived by an employee from the disposal of a right or option to acquire shares under an employee share acquisition scheme are to be excluded from the scope of employment income under section 19(1)(h) of the ITA. However, it should be noted that such gains may still be taxable under section 20 of the ITA.
e) Property Income	• Profits earned by contributors to collective investment schemes/unit trusts will be subject to a final withholding tax of 5% on the total profit paid for contributions less than UGX 100 million and 15% for contributions exceeding UGX 100 million. Such profits will be taxable as property income under section 20(1) (ba) of the ITA.

Tax issue	Proposed amendment
	• The scope of property income under section 20(1)(d) of the ITA is to be amended to exclude winnings derived from sports betting and pool betting.
f) Exempt income	• Section 21(k) of the ITA, which previously exempted gains on asset disposals not included in business income from taxation, is proposed to be repealed. This will expand the reach of the proposed WHT to both business and non-business asset disposals. • Section 21(t) of the ITA is proposed to be amended so that profits distributed out of collective investment schemes to participants are subjected to tax in Uganda. • Both amendments are intended to facilitate the imposition of WHT on unit trust profit distributions and asset disposal proceeds.
g) Allowable deductions	• Section 22(1)b of the ITA that allowed for the deduction of losses from the disposal of business assets will be repealed, making such losses non-deductible. • Section 22(5) of the ITA, which previously excluded trading stock and depreciable assets from the definition of business assets, will be repealed. • These amendments aim to harmonize the relevant provisions in the ITA relating to the proposed final WHT on asset disposals.
h) Interest deduction limit	• Microfinance deposit-taking institutions and Tier 4 microfinance institutions that are members of a group will be allowed to deduct interest in excess of 30% of their tax earnings before interest, tax, depreciation, and amortization ("TEBITDA") in respect of all debts owed, under section 25 of the ITA. • Thin capitalisation rules ordinarily don't apply to financial institutions that this proposal seeks to achieve.
i) Tax depreciation	• Under the current system, taxpayers can deduct the proceeds of an asset disposal from the pool of assets to which the disposed asset belonged. However, under the proposed amendment to section 27(4) of the ITA, the base available for tax depreciation will not be reduced in the event of the disposal of an underlying asset. • The rationale for this proposal is unclear, but it may be an attempt to offset the impact of the proposed WHT on asset disposals. • The other proposed repeal of sections 27(5), (13), (14) and (16) of the ITA harmonise the relevant provisions of the law to augment the proposed asset disposal WHT regime.
j) Initial allowance	• Section 27A of the ITA that provides for initial allowance deduction, a form of accelerated tax depreciation, is to be repealed. • Section 29(1a) of the ITA that provides for initial allowance deduction on industrial buildings, a form of accelerated tax depreciation, is also to be repealed. • The rationale for these proposals is unclear, but investors generally

Tax issue	Proposed amendment
	prefer accelerated tax depreciation incentives that enable them to recoup their investments faster before paying corporation taxes.
k) Tax losses	• Section 38 of the ITA is to be amended to restrict the carry forward of tax losses to 5 years. Thereafter, any losses carried forward will be limited to 50% of the available assessed tax losses. • It is punitive fettering taxpayers right to carry forward indefinitely all their tax losses moreso if such losses arise because of tax depreciation consequent to heavy capital investment.
l) Capital gains and losses	• Sections 49, 50, and 54 of the ITA are proposed to be repealed, which currently deal with gains and losses on asset disposals and the non-recognition of gains or losses. As a result of these proposed changes, asset disposals will be taxed based on gross sales proceeds, rather than gains derived from the sale.
m) Rollover relief	• The proposed amendment to Section 77 of the ITA emphasizes that the final WHT on asset disposals will not apply to the cancellation of the transferee's shares in a liquidated company.
n) Source of income	• Section 79 of the ITA will be amended to incorporate proceeds arising from the sale of industrial or intellectual property used within Uganda as part of the income sourced within Uganda. It is important to note that for income to be subject to taxation in Uganda, it must have a source within the country.
o) Non-residents Digital Services Tax	• A new provision, section 86A, is to be introduced to impose a final 5% WHT on payments made to non-residents who provide digital services to customers in Uganda. • Digital services will cover a range of activities such as online advertising services, data services, services delivered through online or intermediation platforms, digital content services, online gaming services, cloud computing services, data warehousing, and any other digital services that the Minister may prescribe.
p) Non-Resident Final Tax	• Section 87 of the ITA is to be amended to include the WHT deducted on digital services payments as a final tax. Thus, non-resident vendors receiving such payments will not bear any further tax obligations in Uganda in respect of this income once the WHT has been deducted by the payer.
q) Taxation of Petroleum Operations	• Section 89A (4) of the ITA is to be amended such that all the provisions in section 22 of the ITA will apply in the determination of tax-deductible expenses for petroleum operations.

Tax issue	Proposed amendment
	• Section 89GC of the ITA is to be amended so that the cost of intangible assets is tax deductible in accordance with section 31 of the ITA if the petroleum development expenditure is incurred before the commencement of commercial production. • Section 89 GE of the ITA is proposing to limit the scope of farm outs in the Act to the partial disposal of mining or petroleum rights. However, there are still challenges in the current tax legislation concerning the taxation of farm outs that need to be addressed. • An amendment is proposed for section 89(O)1(a) of the ITA to provide clearer emphasis on the tax returns that a licensee is required to submit.
r) WHT on disposal of assets	• An amendment is set to be made to section 118B of the ITA, introducing a final 5% WHT on the purchase of any asset, excluding trading stock. • The following asset disposal transactions will be exempted from this WHT: transfers of assets between spouses, transfers of assets between former spouses as part of a divorce settlement or bona fide separation agreement, involuntary disposals of assets where the proceeds are reinvested in an asset of similar kind within one year of the disposal, transmission of assets forming the estate of the deceased taxpayer to a trustee or beneficiary, and sale of the investment interest of a registered venture capital fund, provided that at least 50% of the sale proceeds are reinvested within the same year.
s) WHT on payments for winnings and betting	• Section 118C of the ITA is to be amended to maintain the imposition of WHT on payments of winnings of betting though reference to winnings of gaming is removed.
t) WHT on unit trust distributions	• A new section, 118I, is proposed to be introduced in the ITA, to levy a WHT on profits earned by contributors to collective investment schemes. Additionally, contributors with investments exceeding UGX 100 million in these schemes will file a tax return.
u) Withholding tax as final tax	• An amendment is proposed for section 122 of the ITA, providing that the WHT deducted on the purchase of an asset or on profit distribution to contributors of collective investment schemes is a final tax in Uganda. This implies that taxpayers who are subjected to this WHT will not have any further tax obligations in Uganda regarding this income.
v) Interest on unpaid tax	• An amendment is proposed to repeal and relocate section 136(8) of the ITA, which waived interest that was due and payable as of 30th June 2017. This provision will be moved to the Tax Procedures Code Act.

Tax issue	Proposed amendment
w) First schedule to the ITA	• An amendment is proposed for the First Schedule to ITA, which will include ZEP-RE (PTA Reinsurance Company) as a tax-exempt person.
2) Value Added Tax (Amendment) Bill, 2023	
a) Supply of goods by Auction	• An amendment is proposed for section 10 of the Value Added Tax Act (VATA), which will treat the supply of goods by auction as a supply made by the auctioneer as the supplier, during the process of auctioning goods.
b) Place of supply of services for electronic services	• Section 16 of the VATA is once again being amended, to broaden the scope of circumstances where persons without in country business presence will be deemed to have supplied services in Uganda. Consequently, these persons will have an obligation to register for VAT, file returns, and remit the underlying tax. The proposed amendment covers a vast array of digital and electronic services among others.
c) Electronic services	• The scope of electronic services provided by persons without in country business presence, but are deemed as a local supply of services under section 16 of the VATA, is proposed to be expanded. • The expansion will include online advertising services, data services, services delivered through online platforms or intermediation platforms, digital content services, online gaming services, cloud computing services, data warehousing, and any other digital services that the Minister may prescribe. As a result, these persons will be required to register and file VAT returns.
d) Credit for input VAT	• Section 28 of the VATA is to be amended to disallow the claiming of input VAT credit for expenses related to entertainment provided to members of a club, association, or society of a sporting, social, or recreational nature. Additionally, input VAT credit cannot be claimed for goods or services acquired by a taxable person without a place of business in Uganda, as per section 16(2) of the VATA. • There has been a debate in the past whether taxpayers can claim input VAT in respect of business units within a larger group yet to generate taxable supplies for VAT purposes. It is unclear whether the proposed amendment under section 28(6a) fully addresses this issue, but it appears to be an attempt to restrict the claiming of input VAT only to related businesses that are generating taxable supplies.
e) VAT returns	• Section 31A of the VATA is proposed to be amended to require persons, other than VAT taxable persons, who make a supply with an annual value exceeding UGX 150,000,000 and who import a service, to file a tax return within 15 days after the end of the tax period in which the service was imported.

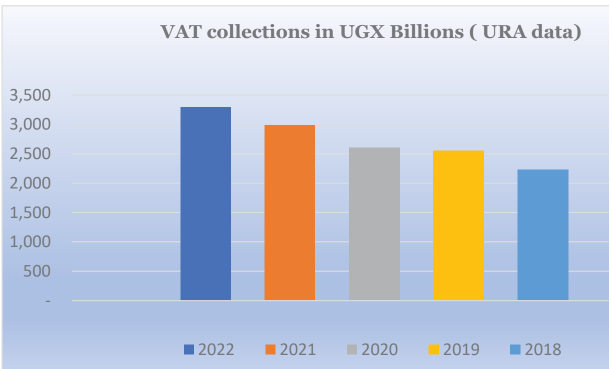
Tax issue	Proposed amendment
f) Refund of Tax	• Section 42 of the VAT Act is to be amended to grant the Commissioner the power to offset overpaid VAT against any outstanding tax liability of the taxpayer without seeking their consent, as is currently required.
g) Interest on unpaid tax	• Section 65A of the VATA that waived interest due and payable as of June 30th, 2017, is proposed to be repealed and relocated to the Tax Procedures Code Act.
h) Electronic services	• The proposed amendment to section 73 of the VAT Act is to allow taxpayers who are deemed to have supplied services locally, even though without in country business presence under section 16(2) of the VATA, to file their tax returns and pay the tax in United States Dollars.
i) First schedule	• The first schedule to the VATA is proposed to be amended to include ZEP-RE The majority of the entities listed in this schedule are Public International Organizations, hence eligible to claim a refund from URA for input VAT incurred on their activities.
j) Second schedule	• Adult diapers will be exempt from VAT • The supply of animal feeds, premixes, concentrates, and seed cake will also be exempt from VAT. This exemption settles a long-standing dispute between poultry farmers and the URA. • The supply of billets for further value addition in Uganda will also be exempt from VAT. • However, the production inputs for processing hides and skins, as well as the supply of leather products wholly made in Uganda, will no longer be exempt from VAT. • Similarly, the supply of all production inputs into iron ore smelting into billets will no longer be exempt from VAT.
3) Tax Procedures Code (Amendment) Bill 2023	
a) Tampering with Digital Tax Stamp Machines	• Under section 19B of the Act, a penalty of up to UGX 30 million for individuals or entities found guilty of unauthorized interference or tampering with a digital tax stamps machine is proposed.
b) Waiver of Interest	• The relevant sections on interest waiver in both the ITA and the VATA are to be deleted and moved to the Tax Procedures Code under section 40D (1), specifically for the waiver of interest in excess of the total amount of interest due and payable under a tax law as of July 1, 2017, if this amount exceeds the combined total of the principal tax and the Penal tax.

Tax issue	Proposed amendment
c) Voluntary tax amnesty programme	• Section 40D (2) of the Tax Procedure Code Act proposes to waive any arising interest and penalty if a taxpayer voluntarily pays the principal tax outstanding at 30th June 2023, by 31st December 2023.
d) Information request	• Section 42 of the Act is to be amended prescribing that all the information requested during an audit to be provided at that stage otherwise it would not be admitted at objection and alternative dispute procedure proceedings.
e) Penalty for stamping wrong goods	• It is proposed to be an offence under section 62H of the Act if a taxpayer fixes and activates a tax stamp on a wrong good, brand or volume.
4) Traffic and Road Safety Act, Cap. 361	
a) Replacement of "badge" with "professional driving permit"	• Section 70A(2)(ii) of the Act is to be amended to ensure that drivers hosted on digital platforms providing public service transport to passengers or goods are accredited and issued with professional driving permits.
b) Speed limit on Public roads	• A new section, 119A is proposed where the Minister will have the power to prescribe speed limits on public roads and for specific classes of vehicles. • Non-compliance with set speed limits will attract a fine of not more than UGX 2,000,000/= or imprisonment not exceeding three years or both.
c) Repeal of Section 52 of the Roads Act, 2019	• Section 52 of the Roads Act, 2019 is repealed and re-enacted as Section 119A in the Traffic and Road Safety Act, Cap. 361 as outlined already above.
5) Excise Duty (Amendment) Bill, 2023 The proposals in this Bill are a restatement of the 2022 excise duty tax submissions. There was a contention last year between Parliament and the Executive on these proposals.	
a) Definitions	• The bill seeks to insert the definitions of fruit juice, undenatured spirits and vegetable juice.
b) Change in rates	• Proposes to reduce the duty payable for opaque beer to either 12% or UGX. 150 per litre, whichever is higher

Tax issue	Proposed amendment
c) Duty payable for undenatured spirits	• Proposes to charge duty on undenatured spirits depending on the alcoholic strength.
d) International calls	• The bill proposes to include the United Republic of Tanzania in the list of countries to which an exemption to excise duty on incoming international calls applies under item 13 (g) of Schedule 2 to the Act.
e) Clarification	• Clarifies on fermented beverages from locally produced raw materials.
f) Iinvestment capital	• Seeks to reduce the investment capital of an investor for eligibility to the nil excise duty rate in respect of the purchase of construction materials.
6) Lotteries and Gaming (Amendment) Bill, 2023	
a) Separating betting from gaming and providing different rates of tax.	• The Bill proposes to different tax rates for betting and gaming activities. The tax rate for betting activities is 20% and that of gaming activities 30%

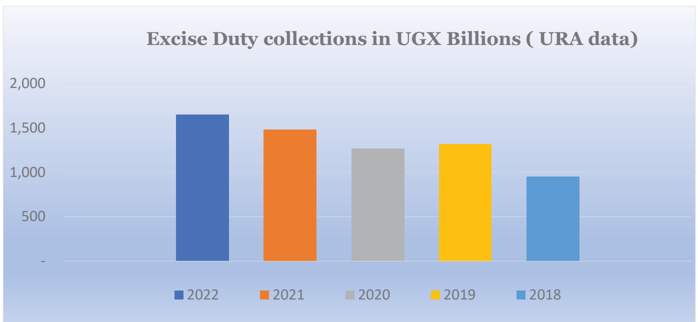
Uganda Revenue Collections in UGX Billions

2022	2021	2020	2019	2018
3,296	2,993	2,609	2,554	2,235



Uganda Revenue Collections in UGX Billions

2022	2021	2020	2019	2018
1,647	1,480	1,266	1,317	954



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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.

He holds a Master of Laws degree in Petroleum Taxation and Finance 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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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.

He holds a Bachelor of Laws degree from Makerere University and a Post Graduate Diploma in Legal Practice from the Law Development Centre and various other qualifications. ■

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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.

He holds a Master of Laws degree in Petroleum Law and Policy from the University of Dundee in the United Kingdom and various other qualifications. ■

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