



# Income Tax (Amendment) Bill, 2023

The Hon. Minister of Finance, Planning & Economic Development tabled the Tax Amendment Bills, 2023. The bills are due for discussion in parliament and if passed into law, will take effect from 1<sup>st</sup> July 2023.

Please find ahead a brief of what is contained in the Income Tax (Amendment) Bill, 2023, including our understanding of its' implications and comments, if any.



# Executive summary of key proposed amendments:

No	Section	Amendment
1	Amendment of section 2 and Section 79 ;	<ul style="list-style-type: none"> <li>• Repealing definition of the term “Petroleum Agreement”</li> <li>• Repealing subparagraph (ii) in paragraph (mmm) to align the treatment of the disposal of a royalty with the disposal of any other asset under the proposed amendment to Section 118B. Section 79 of the Act is also amended to align with the above amendment.</li> </ul>
2	Amendment of section 118B; Amendment of Section 18; Amendment of Section 19; Amendment of section 21(1)(k) and 21(1)(t); Amendment of Section 22 Amendment of Section 27; Repeal of sections 49, 50 and 54; Amendment of Section 77; Insertion of section 118I; and Amendment of Section 122.	<ul style="list-style-type: none"> <li>• Withholding tax of 10% to be deducted by the resident person on purchase of an asset from the non-resident person and Withholding tax of 6% to be deducted by resident person on purchase of a business asset from another resident person is proposed to be eliminated.</li> <li>• Withholding tax at the rate of 5% is to be deducted on the gross payment made by the person, who purchases any asset situated in Uganda. The above WHT deducted will be considered as final tax and seller will have no further capital gains tax liability.</li> <li>• The above is an overhaul of the entire capital gains tax regime. This includes removal of exemption of capital gains tax on sales of shares in public listed companies or sale of non-business-like asset (like Residential home), change of treatment of the disposal of a right or option to acquire shares under an employee share acquisition scheme from employment income now to withholding tax.</li> <li>• Withholding tax is on gross payment with no deductions to be allowed.</li> <li>• Scrapping of rules to determine any gains on loss on disposal of asset.</li> <li>• Section 118B (Withholding Tax on sale of asset) not applicable on liquidation of company.</li> <li>• Withholding tax at the rate of 5% on income distributed, where the contribution by the individual to the Collective Investment scheme is less than UGX 100 million and 15% where, the contribution to the scheme exceeds UGX 100 million.</li> <li>• The bill proposes that WHT deducted under sections 118B and 118I on the purchase of the asset and payment of a profit on contribution to a participant of a collective investment scheme respectively is a final tax.</li> </ul>
3	Amendment of Section 25	Non applicability of interest capping provisions to micro-finance deposit taking institution, tier 4 micro- finance institution.



## Executive summary of key proposed amendments:

No	Section	Amendment
4	Repeal of section 27A and Amendment of section 29.	No initial allowance to be allowed on Plant and Machinery and Industrial Building.
5	Amendment of section 38.	The proposed amendment caps the carry forward of losses to 50% of the losses carried forward after five years.
6	Amendment of section 118C; and Amendment of section 20;	The proposed amendment limits the application of the withholding tax to betting by excluding gaming.
7	Insertion of section 86A.	The bill proposes to introduces a Digital Service Tax (DST) at 5% on non-residents providing online services such as Facebook, Netflix, Google etc.
8	Amendment of section 87; Amendment of section 89GC; and Amendment of Section 89A.	This are housecleaning provision to ensure that the Income Tax Act reads correctly.
9	Amendment of section 89GE.	Restriction on applicability of Section 89GE to farm outs.
10	Amendment of section 89O.	The proposal seeks to clarify that monthly petroleum return is required to be filed in addition to quarterly and the annual consolidated returns
11	Amendment of section 136.	Harmonization of waiver and capping of interest in excess of principal and penal tax under Proposed Section 39 of the Tax Procedures Code (Amendment) Bill, 2023.
12	Amendment of First Schedule.	The Income of "ZEP-RE (PTA Reinsurance Company)" is proposed to be exempt from income tax.

# Details of all the amendments with their implications and comments.

## 1. Amendment of section 2 and Section 79 of principal Act

*The Income Tax Act, in this Act referred to as the principal Act, is amended in section 2—*

*(a) by repealing paragraph (yya); and*

### Implication / Comment:

The Definition of Petroleum agreement in Section 2(yya) of the Income Tax Act (ITA) was resulting in significant ambiguity. The provision refers to an agreement between “Government and a contractor” because the 2008 ITA amendment which introduced it also defined a contractor in Section 89A to mean a person with whom the Government enters into a petroleum agreement. However, in 2015 the definition of a contractor in Section 89A was amended to mean a person supplying services or goods other than as an employee, to a licensee in respect of mining operations undertaken by the licensee; and a licensee in respect of petroleum operations undertaken by the licensee.

The amendment brings clarity to the law relating to petroleum taxation in Uganda.

*(b) in paragraph (mmm), by repealing subparagraph(ii) Section 79 of the principal Act is amended—*

*(a) in paragraph (j) by repealing subparagraph (iii); and*

*(b) by inserting immediately after paragraph (j) the following—*

*“(ja) an amount arising from the disposal of industrial property or intellectual property used in Uganda;”.*

### Implication / Comment:

The above proposed amendment is part of the wider Capital Gains Tax reform and aligns the treatment of the disposal of a royalty with the disposal of any other asset under the proposed Section 118B.

## 2. Amendment of section 18 of the Principal Act

*Section 18 of the principal Act is amended—*

*(a) in subsection (1) by substituting for paragraph (a) the*

*following—*

*“(a) the amount of any gain on the satisfaction or cancellation of a business debt, whether or not the asset or debt was on revenue account.”; and*

*(b) by repealing subsection (4).*

### Implication / Comment:

This Bill proposed to remove the gains from disposal of business assets from the definition of Business Income because the gains from disposal of the business asset will now be subject to the final withholding tax under the proposed amendment to Section 118B.

## 3. Amendment of section 19 of the Principal Act.

*Section 19 of the principal Act is amended in subsection (1) by repealing paragraph (h).*

### Implication / Comment:

The disposal of a right or option to acquire shares under an employee share acquisition scheme is currently taxed under employment income. The proposed amendment now seeks to tax the above disposal under Section 118B, where Withholding Tax deducted on gross payment would be considered as final tax.



#### 4. Amendment of section 20 of principal Act

Section 20 of the principal Act is amended—

(a) in subsection (1) by inserting immediately after paragraph (b) the following—

*“(ba) the profit on the contribution paid or credited to a participant of a collective investment scheme;”*

##### Implication / Comment:

This proposed amendment includes the profit on the contribution paid or credited to a participant of a collective investment scheme in the definition of property income. This provision is linked to the proposed amendment inserting Section 118I in the Act which provides for withholding tax on profit paid or credited to a participant of a collective investment scheme

(b) in subsection (1) (d) by deleting the words *“including*

*winnings derived from sports betting and pool betting,”*;

##### Implication / Comment:

The proposed amendment removes winnings from sports betting and pool betting from being treated as property income.

(c) by inserting immediately after subsection (2) the following—

*“(3) The income under section 20 (1) (ba) shall be charged a tax in accordance with section 118I of this Act at the rate prescribed in Part IX of the Third Schedule to this Act.”*

##### Implication / Comment:

The above proposed amendment is linked to the proposed amendment inserting Section 118I in the Act which provides for withholding tax on profit paid or credited to a participant of a collective investment scheme.

#### 5. Amendment of section 21 of the principal Act

Section 21 of the principal Act is amended—

(a) in subsection (1) by repealing paragraph (k); and

##### Implication / Comment:

The bill proposes to repeal the exemption applicable to sales of non-business assets or personal property such as one's personal home, furniture etc. It also removes the exemption on sale of shares in a publicly listed company. This is part of wider capital gains tax reform where gross payment received on the disposal of the above assets would be subjected to final withholding tax under Section 118B.

*“(t) the income of a collective investment scheme, subject to section 20 (1) and (3) of this Act;”*.

##### Implication / Comment:

The above amendment is linked to the proposed amendment inserting Section 118I in the Act which provides for withholding tax on profit paid or credited to a participant of a collective investment scheme.

#### 6. Amendment of section 22 of the principal Act

Section 22 of the principal Act is amended—

(a) in subsection (1), by repealing paragraph (b); and

(b) by repealing subsection (5);

##### Implication / Comment:

The bill proposes non allowability of any expense on sale of business assets by repealing the provision that was allowing it. This is because the proposed withholding tax amendment in Section 118B will be a final tax on the gross payment for which there will be no deductions.

#### 7. Amendment of section 25 of principal Act

Section 25 of the principal Act is amended in subsection (3) by inserting immediately after the words *“financial institution”* the words *“micro-finance deposit taking institution, tier 4 micro- finance institution”*

##### Implication / Comment:

Section 25 currently limits the amount of deductible interest in respect of all debts owed by a taxpayer who is a member of a group, other than a financial institution or person carrying on insurance business, to 30% of the tax earnings before interest, tax, depreciation and amortisation.

The bill now also proposes to keep, micro-finance deposit taking institution, tier 4 micro-finance institution outside the ambit of the provisions of Section 25.



# Details of all the amendments with their implications and comments.

## 8. Amendment of section 27 of principal Act:

*Section 27 of the principal Act is amended—*

*(a) by substituting for subsection (4) the following—*

*“(4) The written down value of a pool at the end of a year of income is the total of—*

*(a) the written down value of the pool at the end of the preceding year of income after allowing for the deduction under subsection (3) for that year; and*

*(b) the cost base of the assets added to the pool during the year of income.”; and*

*(b) by repealing subsections (5), (13), (14) and (16).*

### Implication / Comment:

The Proposed modification of Section 27(4), by deleting the words relating to disposal of depreciable assets and the proposed repeal of sub-sections 5, 13, 14, and 16, is part of the wider Capital Gains Tax reform and aligns the treatment of the disposal of a any asset under the proposed Section 118B Capital Gains tax.

The proposal does not seem to address circumstances where the consideration is less than the Written Down Values.

## 9. Repeal of section 27A of principal Act and Amendment of section 29 of principal Act

*The principal Act is amended by repealing section 27A*

*Section 29 of principal Act is amended by repealing subsection (1a)*

### Implication / Comment:

The proposed amendment would repeal a provision that functions as an investor incentive allowing an investor to claim 50% of the cost base of plant and machinery wholly used in the production of income in the first year that it is put to use. Also, Initial allowance on Industrial building of 20% is proposed to be repealed.

The consequential amendment is proposed to be made in Section 29(1a) which currently provides that where an industrial building or Plant and Machinery which qualifies for initial allowance under Section 27A, the industrial building deduction or wear and tear is deferred to the next year of income such that the taxpayer does not benefit from both deductions in the same year. This provision is now proposed to be repealed.

## 10. Amendment of section 38 of principal Act

*Section 38 of the principal Act is amended by inserting immediately after subsection (5), the following—*

*“(5a) Notwithstanding the provisions of this section, a taxpayer who after a period of five years of income carries forward assessed losses shall only be allowed a deduction of fifty percent of the loss carried forward at the beginning of the following year of income in determining the taxpayer’s chargeable income in the subsequent years of income.”*

### Implication / Comment:

The bill proposes that if a person has been carrying forward losses for a consecutive period of five (5) years, in year six, and the subsequent years, only 50% of the losses shall be carried forward.

This proposal is akin to the alternative minimum tax proposal which was rejected by parliament last year.

## 11. Repeal of sections 49, 50 and 54 of principal Act

*The principal Act is amended by repealing sections 49, 50 and 54*

### Implication / Comment:

Section 49, 50 and 54 relate to the calculation of gains or loss on disposal of an asset. The bills propose to repeal these provisions as part of the wider Capital Gains Tax reform and aligns the treatment of the disposal of a any asset under the proposed Section 118B Capital Gains tax.

## 12. Amendment of section 77 of principal Act

*Section 77 of principal Act is amended in subsection (2) by substituting for paragraph (d) the following—*

*“(d) section 118B shall not apply on the cancellation of the transferee’s shares in the liquidated company.”*

### Implication / Comment:

Under the current law, no gain or loss is taken into account on the cancellation of the transferee’s shares in a liquidated company. The proposed Section 118B (Withholding Tax on sale of asset) is not applicable on liquidation of company. Thus the status quo on above is proposed to be maintained.

# Details of all the amendments with their implications and comments.

## 13. Insertion of section 86A of principal Act.

*The principal Act is amended by inserting immediately after section 86 the following—*

### **86A. Taxation of non-residents providing digital services**

*(1) A tax is imposed on every non-resident person deriving income from providing digital services in Uganda to a customer in Uganda at the rate prescribed in Part IV of the Third Schedule to this Act.*

*(2) For the purposes of subsection (1), income is derived from providing a digital service in Uganda to a customer in Uganda, if the digital service is delivered over the internet, electronic network or an online platform.*

*(3) For the purposes of this section “digital service” includes—*

- (a) online advertising services;*
- (b) data services;*
- (c) services delivered through an online market place or intermediation platform, including an accommodation online market place, a vehicle hire online market place and any other transport online market place;*
- (d) digital content services, including accessing and downloading of digital content;*
- (e) online gaming services;*
- (f) cloud computing services*
- (g) data ware housing;*
- (h) services, other than those services in this subsection, delivered through a social media platform or an internet search engine; and*
- (i) any other digital services as the Minister may prescribe by statutory instrument made under this Act.*

*Part IV of the Third Schedule is proposed to be amended by inserting immediately after item 2 the following—*

*“3. The income tax rate applicable to a non-resident deriving income from digital services is 5%.”*

### **Implication / Comment:**

The bill proposes to introduce a Digital Service Tax (DST) on non-residents providing online services such as Facebook, Netflix, Google etc

- it is unclear how the above proposed amendment will be implemented, that is, whether by a withholding tax or by the non-resident filing income tax returns.
- There is no provision excluding the application of Section 85 which provides for a final withholding tax at a rate of 15% on every non-resident person deriving income under a Ugandan-source services contract when the DST is applied. If both provisions are applied, then the effective rate becomes 20%. This is a conflict that ought to be resolved.



# Details of all the amendments with their implications and comments.

## 14. Amendment of section 87, 89A and 89GC of the principal Act.

Section 87 of principal Act is amended—

- (a) in the headnote by inserting immediately after number “86” number “86A”; and
- (b) in subsection (1) by inserting immediately after number “86 (4)” the number “86A”

Section 89A of the principal Act is amended in subsection (4) by deleting the reference to subsection “(3)”.

Section 89GC of the principal Act is amended in subsection (4) by inserting immediately after the words “section 27”, the words “or 31”

### Implication / Comment:

This are housecleaning provision to ensure that the Income Tax Act reads correctly.

## Amendment of section 89GE of the principal Act.

Section 89GE of the principal Act is amended in subsection (1) (a) by deleting the words “the whole or”.

### Implication / Comment:

Restriction on applicability of Section 89GE to farm outs and exclude its applicability to disposal of the whole interest which will be subjected to Withholding tax under the proposed amendment of Section 118B.

## 15. Amendment of section 89O of the principal Act.

Section 89O of the principal Act is amended in subsection (1) (a) by deleting the word “(b)”.

### Implication / Comment:

The proposed amendment seeks to clarify that a monthly petroleum return is required in addition to quarterly returns and the annual consolidated returns provided for under Section 89P(b).

## 16. Substitution of section 118B of principal Act

The principal Act is amended by substituting for section 118B the following—

“118B. Withholding of tax by the purchaser of an asset (1) A person who purchases an asset situated in Uganda shall withhold tax on the gross amount of the payment, at the rate prescribed in Part VIII of the Third Schedule to this Act.

(2) Subsection (1) shall not apply to—

- (a) transfer of assets between spouses;
  - (b) a transfer of assets between a former spouse as part of a divorce settlement or bona fide separation agreement;
  - (c) an involuntary disposal of an asset to the extent to which the proceeds of the disposal are reinvested in an asset of a like kind within one year of the disposal;
  - (d) the transmission of an asset forming the estate of the deceased taxpayer to a trustee or beneficiary; or
  - (e) the sale of the investment interest of a registered venture capital fund, if at least fifty percent of the proceeds on sale is reinvested within the year of income.
- (3) For purposes of this section, “asset” means a resource with economic value that is expected to provide a future benefit to its holder but does not include trading stock.”

## Amendment of Third Schedule to principal Act

The Third Schedule to the principal Act is amended—

- (b) in Part VIII item 2, by substituting the word “10%” with the word “5%”;
- (c) in Part VIII, by repealing item 3;

### Implication / Comment:

- The proposed amendment requires all sales of capital assets other than trading stock to be subjected to tax. This covers residents and non-residents sale of all assets held in Uganda.
- The proposed rate of tax applicable to sale of these assets under the Third Schedule Part VIII thereof is 5% and a FINAL TAX (Not creditable or claimable)
- The definition of “asset” is ambiguous. Defining an asset as a resource with economic value does not spell out what exactly is meant.
- The Bill does not clarify tax treatment for the transaction mentioned in Section 79(g) and 79(ga) of The Income Tax Act.
- The implementation of the above proposal would be a challenge since it applies to depreciable assets and the assets of personal nature like used furniture, motor vehicles, computers, and all types of miscellaneous assets.



# Details of all the amendments with their implications and comments.

## 17. Substitution of section 118C of principal Act

The principal Act is amended by substituting for section 118C the following—

*“118C. Withholding of tax on payments for winnings of betting*

*A person who makes payment for winnings of betting shall withhold tax on the gross amount of the payment at the rate prescribed in Part X of the Third Schedule to this Act.”*

### Implication / Comment:

The proposed amendment limits the application of the withholding tax to betting by excluding gaming.

This amendment follows on the heels of the Tax Appeals Tribunal case of Fortuna Limited v URA TAT 132 of 2020 where practical challenges of applying the WHT provisions to the games in casinos were highlighted.

## 18. Insertion of section 118I in principal Act

*“118I. Withholding tax on profit paid or credited to a participant of a collective investment scheme*

*(1) A person who credits or makes payment of a profit on the contribution to a participant of a collective investment scheme shall withhold tax on the profit at the rate prescribed in Part XIV of the Third Schedule to this Act.*

*(2) Notwithstanding subsection (1), a participant who contributes to more than one collective investment scheme and whose contribution, in aggregate, exceeds one hundred million shillings within a year of income, shall furnish a return and pay tax at the rate prescribed in Part XIV of the Third Schedule to this Act and section 128 (3) shall apply.*

*(3) For purposes of this section “contribution” includes deposits made by a participant to a collective investment scheme and undistributed profits, if any.”*

The Third Schedule to the principal Act is amended—by inserting immediately after Part XIII the following—

*“Part XIV*

*Withholding tax rate on profit payable to participants of collective investment schemes*

Item	Contribution of participant to a collective investment scheme	Rate of tax
(a)	Contribution of a participant to collective investment scheme not exceeding one hundred million shillings	5% of the total profit paid or credited to the participant of the collective investment scheme
(b)	Contribution by a participant of a collective investment scheme exceeding one hundred million shillings	15% of the total profit paid or credited to the participant of the collective investment scheme

### Implication / Comment:

Withholding tax at the rate of 5% where the contribution to the scheme is less than UGX 100 million and 15% where the contribution exceeds UGX 100 million is proposed to be made applicable to the participants of the Collective investment scheme.

This clarification of the law provides a lower rate of tax for small savers.

## 19. Amendment of section 122 of principal Act

Section 122 of the principal Act is amended by inserting immediately after paragraph (ab) the following—

*(aba) tax has been withheld under sections 118B and 118I, on the purchase of the asset and payment of a profit on contribution to a participant of a collective investment scheme respectively;”*

### Implication / Comment:

The tax withheld under sections 118B and 118I on the purchase of the asset and payment of a profit on contribution to a participant of a collective investment scheme respectively is proposed to be a final tax.

## Details of all the amendments with their implications and comments.

### 20. Amendment of section 136 of principal Act

*Section 136 of the principal Act is amended by repealing subsection (8).*

#### **Implication / Comment:**

This is to harmonize the waiver and capping of interest in excess of principal and penal tax under the Proposed Section 39 of the Tax Procedures Code (Amendment) Bill, 2023.

### 21. Amendment of First Schedule of principal Act

*The First Schedule to principal Act is amended by inserting the following in its appropriate alphabetical position—*

*“ZEP-RE (PTA Reinsurance Company)”*

#### **Implication / Comment:**

The Income of “ZEP-RE (PTA Reinsurance Company)” is proposed to be exempt from income tax.





# How can we help you?

Whereas the above analysis in respect of bills which are currently under discussion by the Parliament, Grant Thornton Taxation Service Limited is available to provide further guidance as well as interpretation on current laws wherever required.

## Contact us



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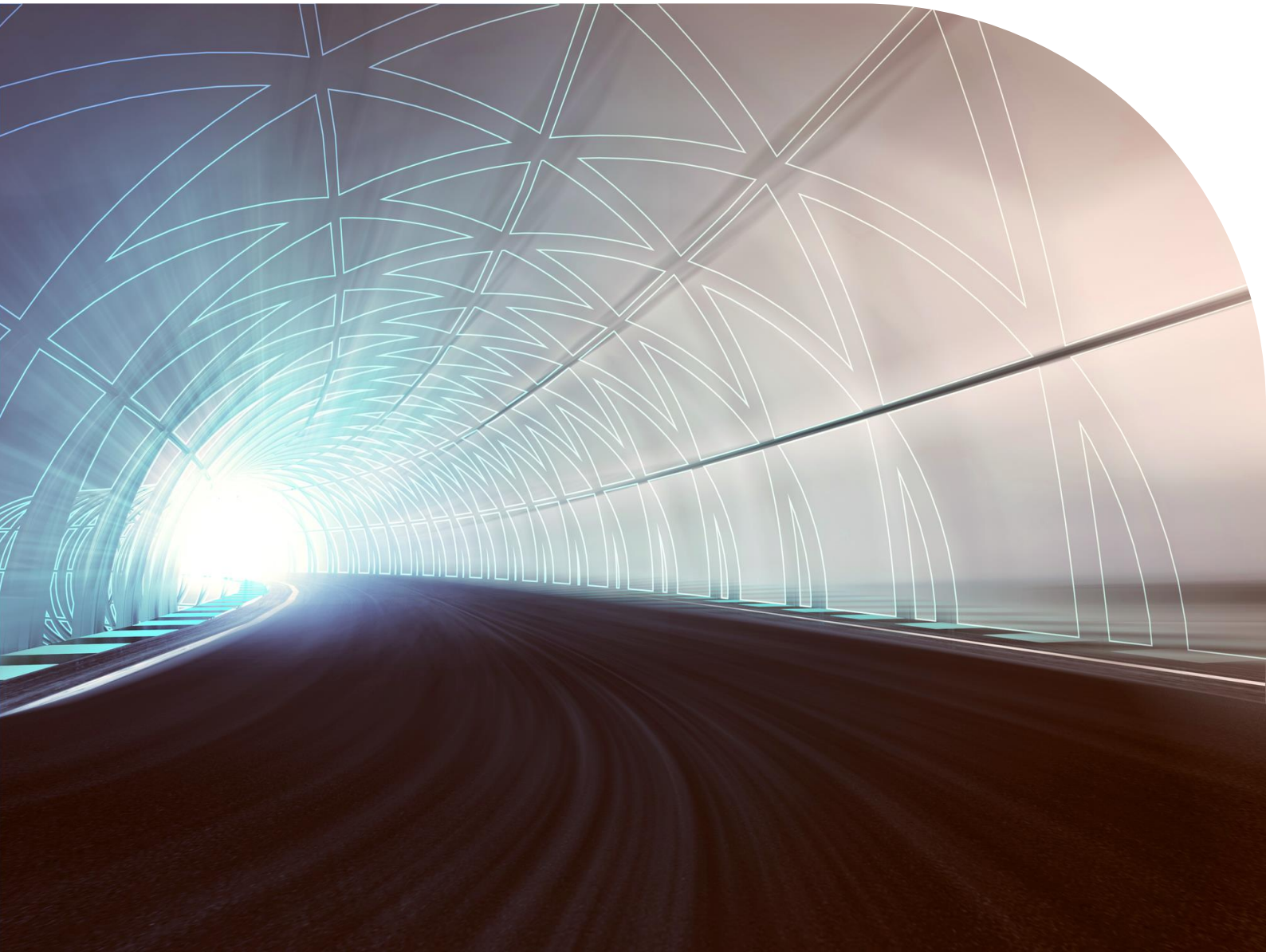
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# VAT Tax (Amendment) Bill, 2023

The Hon. Minister of Finance, Planning & Economic Development tabled the Tax Amendment Bills, 2023. The bills are due for discussion in Parliament and if passed into law, will take effect from 1<sup>st</sup> July 2023.

Please find ahead a brief of what is contained in the VAT Amendment Bill 2023, including our understanding of its' implications and comments.





## Executive summary of key proposed amendments:

No	Section	Amendment
1	Amendment of Section 10	<ul style="list-style-type: none"> <li>Obligation for auctioneers to account for VAT on the sale of auctioned goods.</li> </ul>
2	Amendment to Section 16	<ul style="list-style-type: none"> <li>Obligation of a non-taxable person who makes supplies above the VAT registration threshold to account for VAT, when they import electronic services.</li> <li>Clarification of when electronic services are considered to be delivered in Uganda.</li> <li>Clarifying and broadening the scope of electronic services.</li> </ul>
3	Amendment of Section 28	<ul style="list-style-type: none"> <li>Limitation of input tax claimed on non-business-related entertainment expenses.</li> <li>Limitation to the claim of input tax in relation to the output tax of the business stream.</li> </ul>
4	Amendment of Section 31A	<ul style="list-style-type: none"> <li>Obligation of filling a return by non-registered persons who make supplies above the registration threshold and import a service.</li> </ul>
5	Amendment of Section 65A	<ul style="list-style-type: none"> <li>Harmonization of the capping of interest with the proposed amendment to Section 39 of the Tax Procedures Code Act.</li> </ul>
6	Amendment of Section 73	<ul style="list-style-type: none"> <li>Permitting non-resident service providers to make payments in United States (US) dollars.</li> </ul>
7	Amendment of the first schedule	<ul style="list-style-type: none"> <li>Addition of the PTA Reinsurance Company.</li> </ul>
8	Amendment of the Second schedule	<ul style="list-style-type: none"> <li>Baby diapers now become standard rated.</li> <li>Extension of VAT exemption to premixes, concentrates and seed cake.</li> <li>Elimination of VAT exemption on the supply of all production inputs into iron ore smelting into billets.</li> <li>Elimination of VAT exemption on Supply of all production inputs necessary for processing of hides and skins into finished leather products.</li> <li>Elimination of VAT exemption on supply of leather products wholly made in Uganda.</li> <li>Elimination of VAT exemption on supply of cotton seed cake</li> <li>Exemption to the supply of liquefied gas and denatured fuel ethanol (even if it is not made from cassava).</li> </ul>

# Details of all the amendments with their implications and comments.

## 1. Amendment to Section 10

The principal Act is proposed to be amended in section 10 which defines a supply of goods by inserting immediately after subsection (3) the following—

*“(3) The supply of goods by auction is suited as supply of goods made by the auctioneer as the supplier in the course of auctioning goods.” and*

*(4) For avoidance of doubt, the treatment of the supply of goods by the auctioneer under subsection (3) is separate from the treatment of the supply of the auction services by the auctioneer.”*

### Implication / Comment:

Under the current law, Section 13(2) obliges the auctioneer to account for VAT on the auctioneer services offered but does not provide for charging VAT on auctioned items by auctioneers. The proposed amendment introduces an obligation for auctioneers to account for VAT on sale of auctioned goods.

## 2. Amendment to Section 16

Section 16 of the principal Act is proposed to be amended

By substituting for subsection (2) the following—

*“(2) Notwithstanding subsection (1), a supply of services by a person who carries on business outside Uganda and who does not have a place of business in Uganda shall take place in Uganda if the recipient of the supply is not a taxable person or a person who makes a supply with a total annual value in excess of the amount specified in section 7(2) or a government entity that is not registered under section 7(5) of this Act and-*

*(a) the services are physically performed in Uganda by a person who is in Uganda at the time of the supply;*

*(b) the services are in connection with immovable property in Uganda;*

*(c) the services are radio or television broadcasting services received at an address in Uganda;*

*(d) the services are electronic services delivered to a person in Uganda at the time of the supply;*

*(e) the supply is a transfer, assignment or grant of a right to use a copyright, patent, trademark or similar right in Uganda; or*

*(f) the services are the supply of telecommunications services initiated by a person in Uganda, other than a supply initiated by—*

*(i) a supplier of telecommunications services; or*

*(ii) a person who is roaming while temporarily in Uganda.*

### Implication / Comment:

The current law imposes the obligation to account for VAT on a non-resident supplier of electronic services when they supply a non-taxable person. This assumes a B2C context once the recipient is not VAT registered. However, there are entities that are not VAT registered but importing electronic services in a B2B context such as schools, hospitals, insurance companies and so on. This proposed amendment imposes an obligation on a non-taxable person who makes supplies above the VAT registration threshold to account for VAT when they import electronic services.

Section 16 of the principal Act is proposed to be amended by inserting immediately after subsection (4) the following—

*“(4a) Electronic services shall be delivered to a person in Uganda at the time of supply as referred to in subsection (2) (d). ; and*

*(4b) The Minister may by statutory instrument prescribe the rules of determining that the electronic services are delivered to a person in Uganda.”; and*

### Implication / Comment:

This proposal seeks to clarify when electronic services are considered to be delivered in Uganda. This is currently a subject of contention and has given rise to jurisprudence in the Tax Appeals Tribunal such as Ernst and Young v URA TAT Application No. 30 of 2020.

The proposal also seeks to empower the Minister to issue a Statutory Instrument for determining that the electronic services are delivered to a person in Uganda.



# Details of all the amendments with their implications and comments.

Section 16 of the principal Act is proposed to be amended in subsection (5) by substituting for paragraph (a) the following—

*“(a) electronic services” means services supplied through an online or digital network by a supplier from a place of business outside Uganda to a recipient in Uganda including—*

- (i) websites, web-hosting or remote maintenance of programs and equipment;*
- (ii) software and the updating of software;*
- (iii) images, text and information;*
- (iv) access to databases;*
- (v) self-education packages;*
- (vi) music, films and games; including games of chance;*
- (vii) political, cultural, artistic, sporting, scientific and other broadcasts and events; including television;*
- (viii) advertising platforms;*
- (ix) streaming platforms and subscription-based services;*
- (x) cab-hailing services;*
- (xi) cloud storage;*
- (xii) data ware housing; and*
- (xiii) any other service as the Minister may by statutory instrument determine.”*

## Implication / Comment:

This provision adds the following services to the definition of electronic services - advertising platforms; streaming platforms and subscription-based services; cab-hailing services; cloud storage; data warehousing; and any other service as the Minister may by statutory instrument determine. Key to note is that the proposed addition of the streaming services shall alleviate any ambiguity linked to service providers such as Netflix, Amazon, whose indirect tax compliances are still subject to debate.

## 3. Amendment to Section 28

Section 28 of principal Act is proposed to be amended in subsection (5), by inserting immediately after paragraph (c) the following—

*“(d) payment for entertainment made by a taxable person for membership of a person in a club, association or society of a sporting, social or recreational nature; or*

*(e) goods or services incurred by a taxable person provided for under section 16 (2) of this Act.”*

## Implication / Comment:

The proposed amendment seeks to add to payments by taxable person for memberships in sporting, social or recreational to the list of supplies with non-creditable input. In addition, the proposal seeks to deny input tax to non-residents supplying services that are deemed to be supplied in Uganda under Section 16(2) of the VAT Act.

*by inserting immediately after subsection (6) the following—*

*“(6a) For the purposes of subsection (1), (2), or (3) “business use” or “use in the business” applies only to the related business, generating a taxable supply.”*

## Implication / Comment:

This provision appears to be attempting to limit the claim of input tax to the output of a business stream in which the input was used. Thus, where a taxpayer has multiple business streams, input VAT can only be claimed in relation to the specific business stream in which it was used.

This amendment appears to be a reaction to interpretations of the current law and the recent decision in *Chestnut Uganda Limited v URA TAT No. 94 of 2019* (decided on 31st March 2021) where Chestnut owned Arena Mall and was in the business of developing, managing and exploiting it. Chestnut was making a taxable supply in the form of renting advertising space to Outdoor Atom Limited and as such was VAT registered. Chestnut made a claim for input tax credit incurred on the construction of Arena Mall while it was still under construction and URA attempted to deny the claim of input. The Tax Appeals Tribunal held in favor of Chestnut stating that there is nothing in the VAT Act that requires a taxpayer to restrict credit of input tax to only one business.



#### 4. Amendment to Section 31A

*Section 31A of the principal Act is amended by inserting immediately after section (1a) the following—*

*“(1b) Notwithstanding subsection (1), a person who makes a supply of a total annual value in excess of the amount specified in section 7(2) and who imports a service, shall lodge a tax return with the Commissioner General within fifteen days after the end of the tax period in which the service was imported.”*

##### Implication / Comment:

This proposed amendment imposes an obligation to non-registered persons who make supplies above the registration threshold and imports a service to file a return.

#### 5. Amendment to Section 42

*Section 42 of principal Act is proposed to be amended in subsection (2) (b) by deleting the words “with consent of the taxable person”.*

##### Implication / Comment:

This proposal seeks to remove the consent of the taxpayer in deciding whether to offset tax credits or seek a refund. The Commissioner will have full discretion in making that decision. This move could be linked to the current drive of the URA to reduce the “perpetual offsets” by taxpayers, and as such widen the tax collections

#### 6. Amendment of Section 65A

*Section 65A of principal Act is proposed to be amended by repealing subsection (2).*

##### Implication / Comment:

In 2017 the capping of interest was introduced in the different tax legislations. The purpose of this repeal is to have the capping of interest harmonized under the proposed amendment to Section 39 of the Tax Procedures Code Act in the Tax Procedures Code (Amendment) Bill, 2023. The original intent of the Tax procedures Code was to refine the principal tax statutes by repealing all procedural related provisions. Interest capping being a procedural related issue, has been proposed to be included in the same.

#### 7. Amendment of Section 73

*Section 73 of principal Act is proposed to be amended by inserting immediately after subsection (2) the following—*

*“(3) Notwithstanding subsection (1), a taxpayer under section 16 (2) of this Act may file a return and may pay the tax in the return in United States dollars.”*

##### Implication / Comment:

This proposed amendment permits non-resident providers of services who are required to register for VAT to make payment in US dollars. This shall ease compliance for such taxpayers whose primary currency of operation is the US Dollar.



# Details of all the amendments with their implications and comments.

## 8. Amendment of First Schedule to principal Act

*The First Schedule to the principal Act is amended by inserting the following in its appropriate alphabetical position—*

*“ZEP-RE (PTA Reinsurance Company)”*

### Implication / Comment:

This exempts ZEP-RE (PTA Reinsurance Company) from VAT. It should be noted that institutions under the first schedule are able to claim the input VAT incurred albeit not being registered for VAT

## 9. Amendment of Second Schedule to principal Act

*(a) The Second Schedule to the principal Act is amended in paragraph 1 in subparagraph (q), by substituting for item (viii) the following—*

*“(viii) adult diapers”*

### Implication / Comment:

This replaces the word ‘diapers’ with the word ‘adult diapers’. This means that baby diapers are proposed to be made standard rated supplies. This move could prove an unpopular one given that one of the causes of infant mortality in Uganda is linked to infant hygiene.

*(b) The Second Schedule to the principal Act is amended in paragraph 1 by substituting for subparagraph (qa) the following—*

*“(qa) the supply of animal feeds, premixes, concentrates and seed cake”*

### Implication / Comment:

This proposed amendment extends the VAT exemption to concentrates and seed cake.

*(c) The Second Schedule to the principal Act is amended in paragraph 1 by substituting for subparagraphs (ww) the following—*

*“(ww) the supply for billets for further value addition in Uganda”*

### Implication / Comment:

This eliminates VAT exemption on the supply of all production inputs into iron ore smelting into billets and leaves the supply for billets for further value addition in Uganda as exempt.

*(d) The Second Schedule to the principal Act is amended in paragraph 1 by repealing subparagraphs (yy) and (fff)*

### Implication / Comment:

This eliminates VAT exemption on the supply of all production inputs necessary for the processing of hides and skins into finished leather products in Uganda, the supply of leather products wholly made in Uganda and supply of cotton seed cake. Supplies of Cotton seed cake were proposed to be removed from the Second schedule last year as well. However, with ambiguity created due to paragraph (qa) at that time, the proposal was dropped. This is now linked to the proposed amendment of Paragraph 1(qa) which exempts all seed cakes including cotton seed cake.

*(e) The Second Schedule to the principal Act is amended in paragraph 1 in subparagraph (ooo) by deleting the words “from cassava”*

### Implication / Comment:

This proposed amendment exempts the supply of liquefied gas and denatured fuel ethanol (even if it is not made from Cassava).

There appears to be a drafting error instead of (ooo) it should be (hhhb).

# How can we help you?

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# Tax Procedures Code (Amendment) Bill, 2023

The Hon. Minister of Finance, Planning & Economic Development tabled the Tax Amendment Bills, 2023. The Bills are due for discussion in Parliament and if passed into law, will take effect from 1<sup>st</sup> July 2023.

Please find ahead a brief of what is contained in the Tax Procedures Code Bill, 2023 including our understanding of its implications and comments.





## Executive summary of key proposed amendments:

No	Section	Amendment
1	Amendment of section 19B	Penalty for manufacturers of gazetted products who temper with DTS machines.
2	Amendment of section 39	Harmonizing of interest capping provisions across the different tax legislations.
3	Insertion of section 40D	Waiver of interest and penalty for taxpayers who comply by paying their outstanding principal taxes.
4	Amendment of section 42	Denial of the right of a taxpayer to provide information during objections which was not provided during an investigation.
5	Amendment of section 62H	Penalty for taxpayers who fix and activate tax stamps wrongly.



# Details of all the amendments with their implications and comments.

## 1. Amendment of section 19B

*The principal Act is proposed to be amended in section 19B by inserting immediately after subsection (6) the following—*

*“(6a) A person who makes an unauthorised interference to, or tampers with, a digital tax stamps machine commits an offence and is liable, on conviction, to a fine not exceeding one thousand five hundred currency points or imprisonment not exceeding ten years.”*

### Implication/Comment:

The proposed amendment imposes a penalty on the manufacturers of gazetted products implicated in tampering with DTS machines. The maximum penalty of UGX 30,000,000 or maximum imprisonment of ten years upon conviction.

This showcases how lawmakers are serious about accurate compliance under the Digital Tax Stamps regime.

## 2. Amendment of section 39

*Section of 39 of the principal Act is proposed to be amended by inserting immediately after subsection (3) the following—*

*“(4) For the avoidance of doubt, where interest due and payable under a tax law as at 1st July, 2017 exceeds the aggregate of the principal tax and the penal tax, the interest in excess of the aggregate is waived.”*

### Implication/Comment:

Section 136(8) of the Income tax Act and Section 65A(2) of the VAT Act contain provisions of limiting the interest that can be charged to a taxpayer. These provisions are now proposed to be repealed and inserted in TPC Act which collates all procedural aspects of tax legislation. .

## 3. Insertion of section 40D

*The principal Act is proposed to be amended by inserting immediately after section 40C the following—*

*“40D Waiver of interest on payment of principal tax*

*(1) The Commissioner shall waive the payment of interest and the penalty by a taxpayer, where the taxpayer voluntarily pays the principal tax outstanding at 30th June, 2023, by 31st December, 2023.*

*(2) The Commissioner shall waive the payment of interest and the penalty by a taxpayer on a pro-rata basis, where the taxpayer voluntarily pays part of the principal tax outstanding at 30th June, 2023, by 31st December, 2023.”*

### Implication/Comment:

The bill proposes a waiver of interest and penalty for taxpayers who comply by paying their principal tax outstanding (if any) as at 30<sup>th</sup> June 2023. This is to cure the ongoing issues of outstanding tax liabilities that are appearing in the e-Tax ledgers of the taxpayers in the books of URA. Although the attempt to clear the matter is welcome, in our opinion, this proposal raises an issue which requires clarification:

As a result of the way in which URA applies the waiver of penalty and interest under Section 40C, the principal tax in most cases remains in dispute. This was exhibited in K-Files v URA TAT No 69 of 2021, in which it was held that URA was misapplying the waiver under Section 40C by misinterpreting Section 38 of the Tax Procedures Code Act. This amendment does not cure the controversies arising from this misapplication of 40C due to the implications of Section 38(2) of the TPC Act. In our opinion, an amendment that provides for the proper application of Section 40C is more appropriate.





#### 4. Amendment of section 42

Section 42 of the principal Act is proposed to be amended by inserting immediately after subsection (3) the following—

*“(4) Where a taxpayer fails to provide the information requested under this section, the taxpayer shall not be allowed to provide that information at objection to a tax decision or during alternative dispute resolution procedure proceedings.”*

#### Implication/Comment:

This proposed amendment attempts to deny a taxpayer the right to provide information at objections that was not provided during an investigation. This proposed amendment raises constitutional challenges as it would deny a taxpayer a fair hearing at the stage of objections or Alternative Dispute Resolution.

It is unclear what such a provision would achieve. Tax should be based on facts that may be proven by documentation regardless of when it is submitted. If new documentation is available at the stage of objections it is unclear why URA would choose to reject it if it clarifies the taxpayer's true tax position. If implemented, it would essentially result in URA collecting taxes not properly proven as owed by the taxpayer simply because they have been denied the right to present documentation reflecting their tax position.

#### 5. Insertion of section 62H: Penalty for taxpayers who fix and activate the tax stamp wrongly.

The principal Act is proposed to be amended by inserting immediately after section 62G the following—

*“62H. Fixing tax stamp on wrong goods, brand or volume*

*A taxpayer who fixes and activates a tax stamp on a wrong good, brand or volume other than a good, brand or volume for that tax stamp commits an offence and is liable, on conviction, to a fine not exceeding five hundred currency points or imprisonment not exceeding three years or both.”*

#### Implication/Comment:

This penalizes a taxpayer who fixes and activates a tax stamp on a wrong good, brand or volume other than the correct good, brand or volume.



# How can we help you?

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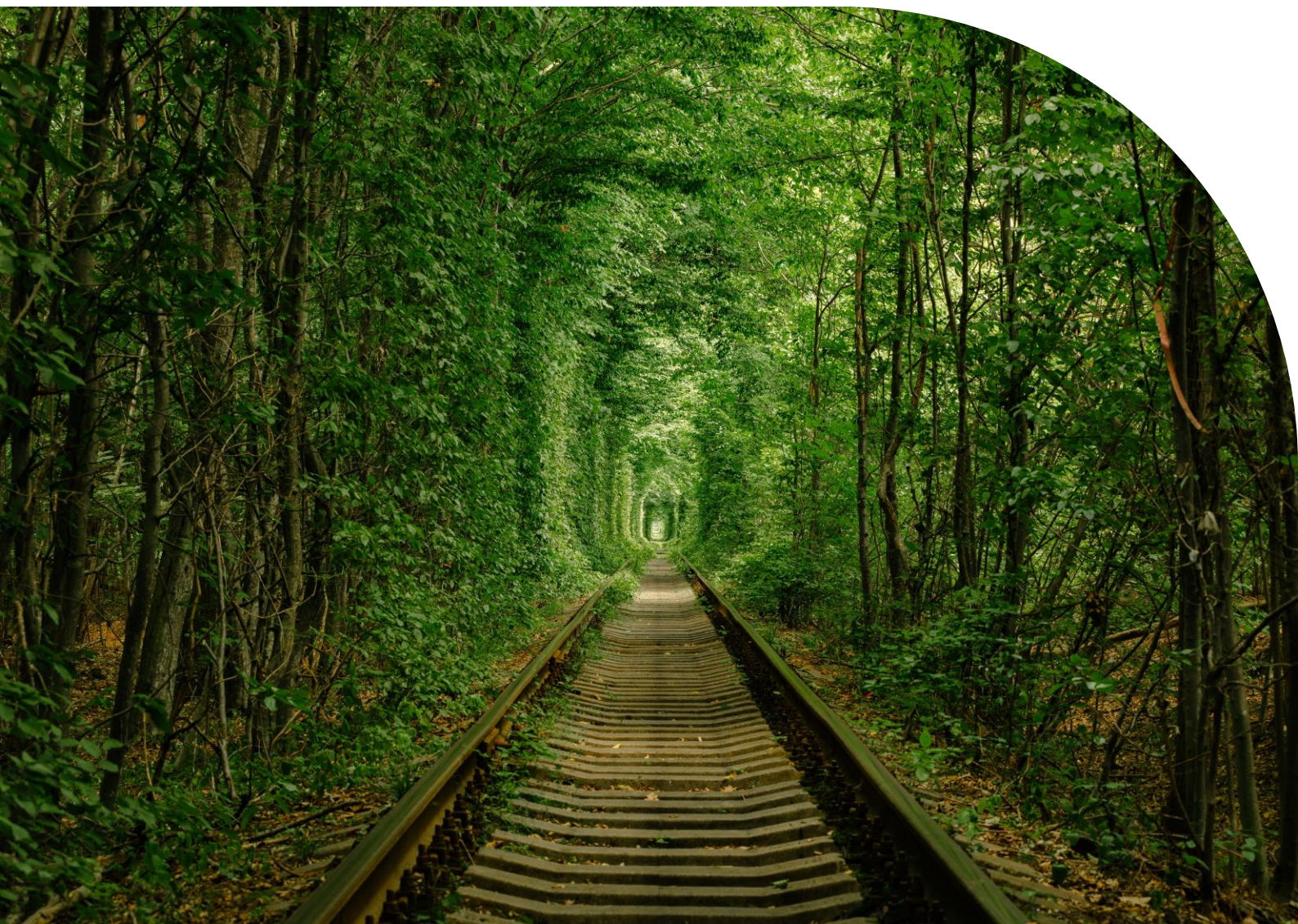




# Excise Duty (Amendment) Bill 2023

The Hon. Minister of Finance, Planning & Economic Development tabled the Tax Amendment Bills 2023. The bills are due for discussion in Parliament and if passed into law, will take effect from 1<sup>st</sup> July, 2023.

Please find ahead a brief of what is contained in the Excise Amendment Bill 2023 including our understanding of its implications and comments.





# Details of all the amendments with their implications and comments.

## Amendment in section 2 – Inserting of Definition of “Fruit Juice”, “Un-denatured Spirits” and “Vegetable Juice”.

The Excise Duty Act 2014, in this Act referred to as the principal Act is amended in section 2 —

- a) by inserting immediately after the definition of “export” the following—  
*““fruit juice” means unfermented liquid extracted from the edible part of a fresh fruit whether the extracted liquid is diluted or not;”*
- b) by inserting immediately after the definition of “tribunal” the following—  
*““un-denatured spirits” means spirits that are not mixed with any substance so as to render the spirit unfit for human consumption or capable of being rendered unfit for human consumption and includes neutral spirits or alcoholic beverages made from neutral spirits that are fit for human consumption”.*
- c) by inserting immediately after the definition of “value added tax” the following—  
*““vegetable juice” means unfermented liquid extracted from the edible part of a vegetable whether the extracted liquid is diluted or not;”*

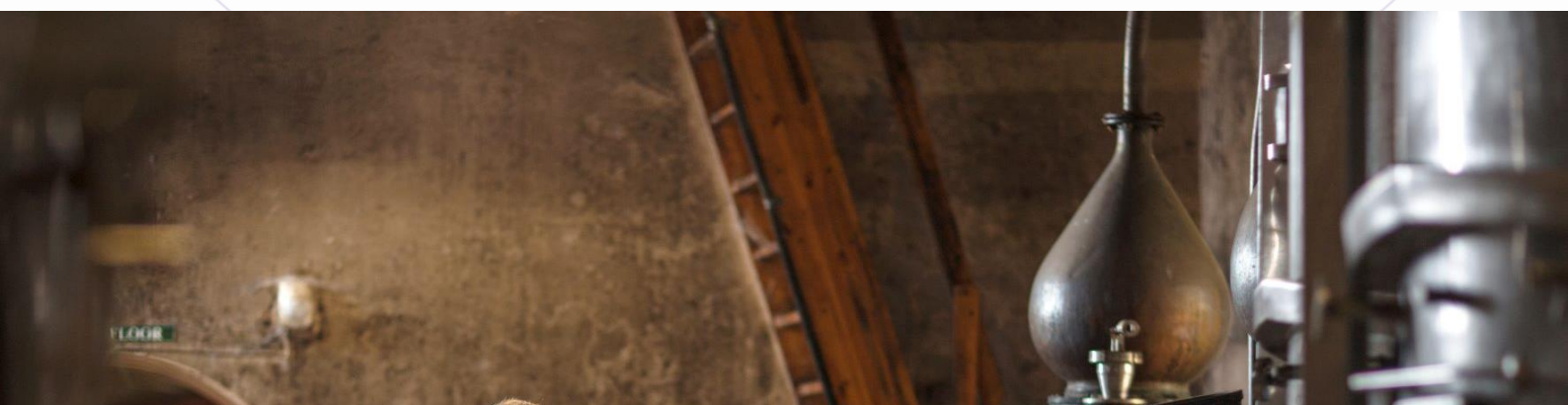
### Implications / comments:

The Excise Duty Act in Schedule 2 levies the duty of excise on various products where the words “Fruit Juice”, “Un-denatured spirits” and “Vegetable juice” have been mentioned but these terms were never defined in the Act. The proposed amendment is intended to make clarity by defining the terms “fruit juice”, “un-denatured spirits” and “vegetable juice”.

This will attempt to create more clarity other than reliance on customs nomenclature or generally used definitions for the items in question.

**Amendment of Schedule 2: The excise duty on the below-mentioned items is proposed to be changed as follows:**

No.	Excisable item	Category	Current legislation	Nature of proposal	Proposed legislation	Price Impact
1	Opaque beer	Beer	20% or Shs. 230 per litre, whichever is higher	Change in rate	12% or Shs 150 per litre, whichever is higher	▼
2	Any other non-alcoholic beverage locally produced other than the beverage referred to in subparagraph (a) made out of fermented sugary tea solution with a combination of yeast and bacteria	Non-alcoholic	12% or Shs.250 per litre whichever is higher	Change in the fixed amount per litre	12% or Shs 150 per litre whichever is higher	▼







**Amendment of Schedule 2: The excise duty on the below-mentioned excisable good or services is proposed to kept unchanged but the specific requirements/criteria for the goods or service in question are proposed to be changed as follows:**

Sr. No	Item	Excisable item as per Current Legislation	Excisable item as per proposed amendment	Significance of proposed Amendment	Rate of Excise duty
1	Spirits	Un-denatured spirits made from locally produced raw materials	Un-denatured spirits of alcoholic strength by volume of 80% or more made from locally produced raw material	Specification of the proportion of Alcohol content	60% or Shs. 1500 per litre whichever is higher
2		Un-denatured spirits made from Imported raw materials	Un-denatured spirits of alcoholic strength by volume of 80% or more made from imported raw material		100% or Shs. 2500/= per litre, whichever is higher
3		NA	Any other un-denatured spirits that are locally produced of alcoholic strength by volume of less than 80% or		80% or Shs. 1700/= per litre whichever is higher
4		NA	Any other un-denatured spirits that is imported of alcoholic strength by volume of less than 80%.		100% or Shs. 2500/= per litre whichever is higher

**Amendment of Schedule 2: The excise duty on the below-mentioned items is proposed to be changed as follows:**

Sr. No.	Item	Excisable item as per Current Legislation	Excisable item as per proposed amendment	Significance of proposed Amendment	Rate of Excise duty
1	Spirits	N/A	un-denatured spirits made from locally produced raw materials that are used in the production of disinfectants and sanitizers for the prevention of the spread of COVID-19 of alcoholic content by volume not less than 70%	Introduced in 2021 in a statute which was not widely available.	NIL

## Details of all the amendments with their implications and comments.

Sr. No.	Item	Excisable item as per Current Legislation	Excisable item as per proposed amendment	Significance of proposed Amendment	Rate of Excise duty
2	Tele-communication Services	Incoming international calls, except calls from the Republic of Kenya, the Republic of Rwanda and the Republic of South Sudan.	Incoming international calls, except calls from the Republic of Kenya, United Republic of Tanzania, the Republic of Rwanda and the Republic of South Sudan.	To include the Republic of Tanzania in the list of countries, where inbound international calls are exempt from duty.	USD 0.09 per minute
3	Fermented Beverages	Any other fermented beverages made from locally grown cider, perry, mead, spears or near beer	any other fermented beverages including cider, perry, mead or near beer produced from locally grown or produced raw materials	Change description in	30% or shs 550 per litre whichever is higher
4	Investment-linked exemption	Construction materials of a manufacturer, other than a manufacturer referred to in item 21, whose investment capital is, at least fifty million United States Dollars or, in the case of any other manufacturer, who makes an additional investment equivalent to fifty million United States Dollars	construction materials of a manufacturer, other than a manufacturer referred to in item 21, whose investment capital is, at least thirty-five million United States Dollars in case of a foreigner or five million United States Dollars in the case of a citizen	Harmonizing investment-linked exemption threshold limit with Income Tax, VAT and Stamp Duty Act	NIL



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# The Convention on Mutual Administrative Assistance in Tax Matters (Implementation) Bill 2023.

The Hon. Minister of Finance, Planning & Economic Development tabled the Tax Amendment Bills 2023. The bills are due for discussion in Parliament and if passed into law, will take effect from 1<sup>st</sup> July, 2023.

Please find ahead a brief of what is contained in the proposed bill including our understanding of its implications and comments.



# Background

The Convention on Mutual Administrative Assistance in Tax Matters facilitates international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. It provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes. This co-operation ranges from exchange of information, including automatic exchange of information (AEOI), to the recovery of foreign tax claims. 147 jurisdictions currently participate in the Convention including India, Mauritius, Cayman Islands, Jersey, United States, United Kingdom etc. Cabinet of the Republic of Uganda ratified the Convention on Mutual Administrative Assistance in Tax Matters on 6th May 2016.

In this framework, information of persons who are in other jurisdictions but have assets or accounts in Uganda is collected by reporting financial institutions such as banks, insurance companies and other investment vehicles and shared with their respective jurisdictions. In determining whether the assets or accounts should be reported, the beneficial ownership test is used such that indirect ownership of assets in Uganda by persons in other jurisdictions will still be reported. The benefit for Uganda is that other participating jurisdictions will similarly collect information relating to persons in Uganda who hold assets in those jurisdictions based on the same beneficial ownership test and share the information with Uganda, specifically, Uganda Revenue Authority.

## Analysis of the key provisions in the bill:

No	Description	Comments
1	Clause 2 : Definition of term beneficial owner	The “Beneficial Owner” definition in line with the one in Income Tax is proposed to be introduced.
2	Clause 3: Convention to have force of law in Uganda	The Bill proposes that the Convention on Mutual Administrative Assistance in Tax Matters specified in Schedule 2 to the Act shall have the force of law in Uganda
3	Clause 4: Agreement on Automatic Exchange of Financial Account Information to have force of law in Uganda	The Bill proposes that the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information specified in Schedule 3 to the Act shall have the force of law in Uganda.
4	Clause 6: Due diligence	This clause requires financial institutions such as banks and insurance companies and other investment vehicles to apply due diligence requirements set out in the Common Reporting Standard with effect from January 01, 2024. The lead time given to them is for purposes of familiarising themselves with these new requirements and communicating the new obligations to their clients.
5	Clause 7: Reporting obligations	Reporting Financial institutions will be required to file returns with URA for a year ending on 31st December by the by the 31st day of May of the following year in which they will communicate the desired information.
6	Clause 8: Offences relating to automatic exchange of information	The bill proposes the penalties for the reporting institutions which are non-compliant. These penalties are designed to replace those introduced in 2022 in Section 62H of the Tax Procedures Code Act (TPCA). However, the amendment to this effect is not made under TPCA.
7	Clause 9: Anti- avoidance provision	The bill proposes to introduce an anti-avoidance mechanism to prevent schemes for avoiding reporting by reporting financial institutions.

# How can we help you?

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# Lotteries and Gaming (Amendment) Bill, 2023

The Hon. Minister of Finance, Planning and Economic Development tabled the Tax Amendment Bills 2023. The bills are due for discussion in Parliament and if passed into law, will take effect from 1<sup>st</sup> July 2023.

Please find below a brief of what is contained in the Lotteries and Gaming (Amendment) Bill, 2023 including our comments and its implications:



# Proposed Amendments:

## Amendment to Schedule 4;

*The Lotteries and Gaming Act, 2016 is amended by substituting Schedule 4 with the following—*

*“Rate of tax*

- 1. Twenty percent of the total amount of money staked less the payouts (winnings) for the period of filing returns for a betting activity.*
- 2. Thirty percent of the total amount of money staked less the payouts (winnings) for the period of filing returns for the gaming activity.”*

## Implications / Comments:

This proposed amendment is linked to the proposed amendment of Section 118C of the Income Tax Act which eliminates the 15% withholding tax from gaming. This comes out from;

- the interpretation of what amounted to winning for the purposes of withholding tax payable on gaming services; and
- at what point it should be collected?

It was a challenge to apply the tax the way the authority desired as each game would have to be stopped at every round to administer withholding tax for each player who won yet some of the games like slot machines ran up to 20 spins per minute with each spin constituting a separate bet. Further, wins from games are usually wagered over and over again and clients wanted to have lost wagers offset on a wager won prior to being taxed yet the law does not cover that. Section 118C did not define at what point a winning should be determined which raised questions of whether it was at every game or at the end of the day when the punter wanted a cash out.

The purpose of this amendment is therefore to ease administration by removing the withholding tax under Section 118C of the Income Tax Act from gaming in the Casinos and instead increasing the tax rate on gaming from 20% to 30% under the Lotteries and Gaming Act.



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