

Legal Alert



WHAT YOU NEED TO KNOW ABOUT YOUR TAX LAWS THAT TAKE EFFECT ON 1 JULY 2024

Introduction

In accordance with the Public Finance Management Act, 2015, Parliament passed the national budget for the financial year 2024/2025 on 16 May 2024, approving a total expenditure of UGX 72.136 trillion (approximately USD 19.412 billion). It is anticipated that 45% of the budget, that is, UGX 32.3 trillion (approximately USD 8.692 billion) will be sourced from domestic revenue comprising both tax and non-tax revenue.

Accordingly, to achieve the set targets, the Minister responsible for Finance and Economic Development presented to Parliament tax and revenue bills which empower Government to obtain money from taxes, fees, charges and other impositions.

This article seeks to analyze the respective tax amendments that were passed by Parliament and will be coming into force on 1st July 2024.

Income Tax (Amendment) Act, 2024

Exempt income:

The following amounts have been exempted from income tax:

- income derived from or by private equity or venture capital funds regulated by the Capital Markets Authority;
- income derived from the disposal of government securities on the secondary market;
- income of persons whose investment capital over a period of 10 years from the date of commencement of business (or additional investment capital) is at least USD 10 million for foreigners and USD 300,000 for citizens operating or USD 150,000 for citizens operating upcountry who, subject to availability, use at least 70% of locally sourced raw materials and employ at least 70% citizens earning an aggregate wage of at least 70% of the total wage bill and either manufacture electric vehicles, electric batteries or electric vehicle charging equipment or fabricate the frames and bodies of electric vehicles; or operate specialized hospital facilities.

The exemption granted to private equity and venture capital funds will not only encourage domiciliation by these entities in Uganda thereby improving Uganda's position in the region but will also boost the economy as local entities will have access to more sources of funding for their operations.

Following the introduction of the exemption of income of regulated private equity and venture capital funds, the provision on non-recognition of capital gains arising from the sale of investment interest of a registered venture capital fund if at least 50% of the proceeds on sale is reinvested within the year of income has been repealed.

Replacement of branch with permanent establishment:

The Income Tax Act (Cap, 340) ("ITA") has been amended by repealing the definition of a branch and replacing the same with permanent establishment to align with the nomenclature under the international tax treaties Uganda is party to. A permanent establishment is defined to include among others, a fixed place of business through which the business of an enterprise is wholly or partly carried on and includes a place of management, a branch, an office, a factory, a workshop.

Agents who habitually conclude contracts or play the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the principal, where the contracts are (i) in the name of the principal; (ii) for transfer of ownership of, or granting the right to use property owned by the principal or that the principal has the right to use; or (iii) for provision of services by the principal, may also create a permanent establishment for the principal in Uganda.

Even agents who do not habitually conclude contracts nor play the principal role leading to the conclusion of such contracts, but habitually

(i) maintain in Uganda a stock of goods or merchandise from which the agent regularly delivers goods or merchandise on behalf of the principal; (ii) manufacture or process in Uganda for the principal, goods or merchandise belonging to the principal; or (iii) secure orders in Uganda wholly or almost wholly for the principal or associates, may create permanent establishments for the principal.

It is therefore necessary for non-resident entities to carefully consider the terms of engagement between them and the persons they contract in Uganda to avoid inadvertently creating permanent establishments in Uganda through agency relationships.

A permanent establishment is to be treated as a distinct and separate entity from the non-resident person whose income attributable to activities of a permanent establishment will be taxed in Uganda, including income derived from sales of goods or merchandise in Uganda of same or similar kind as those sold through the permanent establishment; or income of other business activities carried on in Uganda that are of the same or similar kind as those carried out through the permanent establishment.

The gross income of permanent establishments shall exclude charges by the permanent establishment to the head office of the non-resident person or any of its other offices by way of:

- royalties, fees or other similar payments in return for the use of patents or other rights;
- commission, for specific services performed or for management; or
- interest on moneys lent to the permanent establishment, except, in case of a financial institution.

Permanent establishments shall also not be allowed a deduction in respect of the above-

mentioned amounts paid to the head office of the non-resident person or any of its other offices.

To avoid double taxation, the income attributable to activities of a permanent establishment of a non-resident in Uganda is not subject to withholding tax imposed on non-resident persons who derive income under Ugandan-source services contracts.

Withholding tax on commission payments:

A withholding tax of 10% has been introduced on commission paid to payment service providers, that is, banking agents or other agents offering financial services, thereby widening the tax base.

Value Added Tax (Amendment) Act, 2024

Persons liable for value added tax ("VAT"):

The scope of persons liable to pay VAT has been expanded to include recipients of the proceeds of the auction where goods are supplied through auction. These recipients will be treated as the suppliers of the goods that are auctioned. This tax treatment is akin to the reverse charge VAT treatment for imported services where the recipient is liable for the VAT.

Supplies by employers to employees:

Taxable supplies have also been expanded to include supplies of goods or services by employers who are taxable persons to their employees for no consideration. These supplies are to be regarded as supplies of goods or services for consideration as part of the employer's business activities.

Accordingly, employers will be required to maintain a record of any goods or services they provide to their employees and charge VAT on the same. There is however a thin line between what will constitute benefits given by virtue of the employment relationship and what amounts

to a supply of goods or services for VAT purposes.

Threshold for VAT refund claims expanded:

The threshold for when the Commissioner General shall offset a taxpayer's input tax credit where it exceeds the tax liability for a given period has been increased to UGX 10 million (USD 2,690). Previously, the Commissioner General would, where a taxable person's input credit exceeds his liability by less than UGX 5 million (USD 1,345), offset that amount against the future liability of the taxable person except for licensees or persons providing mainly zero-rated supplies.

Therefore, taxpayers whose input tax credit exceeds the tax liability by more than UGX 10 million will have to give consent before the Commissioner General offsets the excess against a future tax liability or applies the excess in reduction of any other tax not in dispute. This amendment in effect reduces further the instances when a taxpayer may receive a refund for overpaid VAT and will thereby affect taxpayers cashflows

Exempt supplies:

To align with the exemption in the ITA, the supply of locally manufactured electric vehicles; frames and bodies of locally fabricated electric vehicles; electric vehicle charging equipment and charging services of electric vehicles will be exempt from VAT.

In addition, the supply of cooking stoves assembled in Uganda that use fuel ethanol, will also be exempt from VAT until 30th June 2028.

The Tax Procedures Code (Amendment) Act, 2024

Notification prior to destroying goods:

Taxpayers who intend on claiming a deduction of or credit for goods destroyed because of damage

or expiry of trading stock; damage or expiry of manufactured stock; or obsolete stock, must give prior written notice to the Commissioner using a prescribed form otherwise they will not be entitled to claim a deduction of or credit for the destroyed goods.

The prerequisite for prior notice undermines the fact that the need to destroy certain products may be abrupt therefore keeping them for long while notice is being given might have undesired consequences. Exceptions for post notice within a given timeframe should have been made for certain categories of taxpayers.

Waiver of interest and penalty on payment of principal tax:

To boost revenue collection, interest and penalties outstanding as of 30th June 2023 are to be waived provided the taxpayer pays the principal tax by 31st December 2024.

In the case of partial payment of the principal tax outstanding on 30th June 2023 by 31st December 2024, the payment of interest and penalty shall be waived on a pro rata basis.

The Stamp Duty (Amendment) Act, 2024

Exemption from stamp duty:

Investors acquiring shares in a private equity or venture capital fund, or private equity or venture capital funds regulated by the Capital Markets Authority will not be required to pay stamp duty on:

- nominal share capital or any increase of share capital;
- a transfer of shares or other securities, to or by them.

With the above exemptions, it is expected that there will be a rise in investments in or by private equity and venture capital funds in Uganda and this will increase revenue collection for example from the license fees to be paid to the Capital

Markets Authority as well as from the entities in which the private equity and venture capital funds will be investing.

In addition, manufacturers of electric vehicles, electric batteries or electric vehicle charging equipment or fabricators of frames and bodies of electric vehicles who meet the minimum investment capital of USD 10 million for foreigners, or USD 300,000 for citizens or USD 150,000 for citizens investing up country, will also be exempt from paying stamp duty if they have capacity to use at least 80% of locally produced raw materials, subject to availability; and 80% of at least their employees are citizens earning an aggregate wage of at least 80% of the total wage bill.

Also, instruments such as debentures, further charges, among others, that these entities execute will be exempt from stamp duty if the manufacturers provide for substitution of at least 30% of the value of imported products.

It is imperative to note that some of the thresholds to be met by entities already operating in strategic investment projects to qualify for stamp duty exemptions have been increased, for example, they should also:

- have the capacity to use at least 80% (previously 50%) of locally produced raw materials, subject to availability; and
- have at least 80% of employees who are citizens earning an aggregate wage of at least 80% of the total wage bill as opposed to mere having capacity to employ a minimum of 100 citizens.

The Excise Duty (Amendment) Act, 2024

Excise duty has been introduced on construction materials such as adhesives, grout, white cement and lime.

Also, payment services of withdrawals of cash provided through a payment system except for

withdrawal services provided by a financial institution or a micro finance deposit taking institution and an agent of a financial institution will attract excise duty of 0.5% of the value of the transaction.

Considering that other forms of withdrawals such as withdrawal services by operators licensed or permitted to provide communications or money transfers, mobile money withdrawals and withdrawal fees for transactions through financial institutions already attract excise duty, the introduction of another excise duty, albeit to align with the forementioned transactions, re-emphasizes the fact that all monies in Uganda's financial or

payment system are subject to the same tax in the hands of the same person through the different platforms it can be withdrawn. Such aggressive taxation will discourage financial inclusion in the economy.

Conclusion

Whereas some of the tax amendments have been warmly welcomed, for example those affecting private equity and venture capital funds, some have been met with mixed feelings. We await to see if the targets set in the national budget will indeed be met through the domestic revenue collections as anticipated.



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