CSO POSITION PAPER ON THE TAX BILLS FOR FY 2023/24

ABRIDGED VERSION

Presented to Parliamentary Committee on Finance, Planning and Economic Development on Wednesday 26th April 2023

Introduction

I. About Tax Justice Alliance Uganda

Tax Justice Alliance Uganda (TJAU) was established in 2014 following the realization that it was important for CSOs in Uganda to come together and deliberate on tax issues and pool human, financial and technological resources for common and/or joint action. Since then, the Alliance has spearheaded civil society debate and engaged different stakeholders on tax issues in Uganda. The Tax Justice Alliance Uganda is a gradually growing network both in membership and the number of issues it covers. It currently has 50 members both at national and regional chapters across the country.

II. Budget FY 2023/24

We note that Uganda's preliminary resource envelope FY 2023/24 has been adjusted upwards to UShs 50.871 trillion from UShs 47.328 trillion in FY 2022/23. Of this total, Ush 28.922 trillion is domestic revenues; Ushs 2.471 trillion is budget support; Ushs 2.010 trillion is domestic borrowing; Ushs 8.870 trillion is project support; Ushs 8.358 trillion is domestic refinancing; Ushs 238.5 billion is Appropriation in Aid (AIA) and Ushs 90.39 billion is NTR[1.]

During the month of April 2023, TJAU members including CSOs at national and subnational level as well as representatives of the Small and Medium Enterprises met and analysed the seven tax bills[2] and made the following observations. The bills are mainly aimed at strengthening tax administration to enhance compliance and widen the tax base.

Over the years, some key alternative proposals advanced by the CSOs have received attention and consideration by Government. These include among others; introduction of a digital services tax at 5%, revisions in the capital gains tax regime, improved management of carried forward losses, taxation of undenatured spirits and reconciliation of various provisions in domestic laws.

---

[1] The second Budget call Circular (2nd BCC) on finalisation of the Budget estimates for Financial Year 2023/2024, Issued on the 15th of February 2023.

[2] the Excise Duty (Amendment) Bill 2023, the Income Tax (Amendment) Bill 2023, Value Added Tax (VAT) Amendment Bill 2023, Tax Procedures Code (Amendment) Bill 2023, the Traffic and Road Safety (Amendment) Bill 2023, the Lotteries and Gaming (Amendment) Bill 2023 and the Convention on Mutual Assistance in Tax Matters Implementation Bill 2023.

General Observations

The Committee report on Bujagali Tax Waiver; We note that the report of the Ad hoc Committee on Bujagali tax waiver was concluded in December 2022 and submitted to the office of the Clerk to Parliament in February 2023. One of the issues noted is the haemorrhage and repatriation of resources from Uganda has been modernised through treaties and memoranda of understanding. The committee strongly called upon Parliament to compel the government to renegotiate with Bujagali Energy Limited, the terms in the Public Partnership Agreement, before deciding to extend the tax waiver. We note with concern that the tax bills are silent on the issue yet the extended exemption of one year will expire soon.

Tax Harmonisation: Although, the tax systems of the Partner States are harmonised in terms of design and principle, there are significant differences in definitions of tax bases, tax rates, tax deductions, tax incentives for investments, treatment of capital gains tax across Partner States. We are concerned that un-harmonised excise duties and discriminatory taxes cause distortions in cross-border transactions and investment decisions for businesses.

The changing International Tax Architecture: Discussions on tax at the global level are fast changing and are likely to impact tax policy and administration in Uganda. We note that Government is continuously taking part in processes with African Tax Administration Forum (ATAF), Organisation for Economic Co-operation and Development (OECD) and United Nations (UN) to improve DRM in Uganda. It is important that the international tax architecture is put into consideration during the process of reviewing the tax bills.

Strategies adopted to improve DRM in Uganda; The core objective of the DRMS is to improve tax collection and ultimately increase tax to GDP ratio to between 16-18% by 2025. During the next financial year 2023/24, Government intends to meet the target of raising domestic revenues by 0.5% of GDP in line with the NDP III annual revenue enhancement target and the Domestic Revenue Mobilization Strategy (DRMS)[3]. The Public Investment Finance Strategy (PIFS) which was launched in March 2023 explores additional financing from domestic, external, emerging and innovative financing options to meet the increasing development aspirations of Government embedded in the National Development Plans and the Sustainable Development Goals. It also provides a framework for collaboration with the private sector in the implementation and financing of public investments.

Despite these good initiatives, it should be noted that whereas the resource envelope for FY 2023/24 is expected to increase to Ushs.50.8 trillion, the discretionary resource envelope is expected to reduce by Ushs. 3.3 trillion due to projected increase in the interest obligations and obligations to settle BOU redemptions. Approximately 30% of the revenue expected to be collected this year will go to

[3] Budget Strategy FY 2023/24, MoFPED, September 2022

domestic refinancing. This projection coupled with the commitment from Government not to introduce new taxes implies that more pressure will be exerted on the tax administration to bridge the revenue gap. We hope that this will not translate into a higher tax burden onto the already few and highly burdened taxpayers but bring on board more taxpayers who have previously not been captured in the tax net.

The section below presents a synthesis of the seven tax amendment Bills and makes recommendations for consideration by the Committee on Finance, Planning and Economic Development.

III. Lotteries and Gaming (Amendment) Bill 2023

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.

Proposal: Amendment of Schedule 4 to increase the tax rate for Gaming Activity from 20% to 30% while maintain the tax rate for betting at 20%.

Gaming and Pool Betting services do not attract VAT. Therefore, a higher tax rate can support Government efforts to address this moral hazard alongside attaining increased revenues as well as promoting equity in the tax system.

The amendment will ease administration by removing the withholding tax under Section 118C of the Income Tax Act from gaming in the Casinos and instead provide for a tax rate on betting and gaming from 20% and 30% under the Lotteries and Gaming Act.

We propose that the tax rate applicable to gaming be raised to 35% to provide for harmonisation with the betting tax which constitutes 15% WHT and 20% tax under the Lotteries and Gaming Act.

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

The bill seeks to put in force two treaties: -

the Multilateral Competent Authority Agreement on Automatic Exchange of Information which Uganda ratified on 18th November 2021; and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ratified on 6th May 2016.

The Bill puts into force broader definitions of beneficial owner and provides frameworks for automatic exchange of information amongst a host of jurisdictions.

The Bill covers all forms of domestic taxes including income tax, VAT, excise duty while excluding customs duties, taxes on ownership of motor vehicles, social security contributions, and taxes or levies on behalf of political subdivisions or local authorities.

The standard of information sharing with requirements which every member must meet. Eases sharing of information. It will address the issues of reciprocity of sharing/delay in sharing information. Currently two mechanisms exist-Exchange of Information on request; and spontaneous exchange of information which takes longer. The two frameworks will continue in existence. Information of non-residents will be collected, put in a general pool, Uganda can be in position to collect information from of non-residents for tax purposes. It can help to detect of deter money laundering.

The Bill if passed will enable URA control for and support detection of aggressive tax planning and tax evasion practices

The definition for a beneficial owner should be Considered and should be adopted into the other laws since it is broader (Income Tax, Company Act, among others). Taxpayers should be allowed a period of Voluntary asset disclosure of between 6 months to one year prior to use of information accessed through automatic exchange of information. This is a global norm, best practice which has been adopted by some countries including USA, South Africa and Nigeria. After the stipulated period of voluntary asset disclosure, clear penalties o should be imposed for individuals and financial institutions. For the law to be effective, regulations should be developed to include among others how information will be declared, how to benefit from amnesty, the penalties, among others.

V. Tax Procedures Code (Amendment) Bill, 2023

Amendment of Section 19B: Penalties relating to interference with digital Stamp machines

The amendment proposes upon conviction, a fine not exceeding UGX 3OMn or imprisonment not exceeding ten years. It targets manufacturers of gazetted products who are implicated in tampering with DTS machines.

This amendment if passed requires prosecution, yet the TPC already provides for both administrative and prosecution penalties. An administrative penalty is an offence which should not require going to court and can be imposed by URA directly.

URA may have difficulty tracking taxpayers engaging in this non-compliance. Additionally, the proposed penalty **"not exceeding one thousand five hundred currency points (UGX 30Mn)"** is very low and may not necessarily deter the habit of tampering with the DTS machines.

Two provisions should be considered.

i) *Create an administrative penalty under 19B which does not require the offender to be taken to court before it is imposed.*
ii) *Create /insert in Section 62 (I) a clause that deals with tampering with DTS machines.*
iii) *Furthermore, the fine on conviction should be increased to two thousand five hundred currency points (UGX 50Mn) as a deterrent.*

Insertion of Section 40D to principal Act: Waiver on payment of interest and penalty where the taxpayer voluntarily pays the principal tax

This amendment proposes a waiver of interest and penalty for taxpayers who comply by paying their principal tax. This proposal raises several issues:

Past application of amnesties has been subjected to litigation where the outcome turned against URA based on misapplication of the waiver under section 40C. Therefore, this amendment does not cure the controversies arising from this misapplication of 40C. An amendment that provides for proper application of Section 40C is more appropriate.

Secondly, Uganda has issued a number of tax amnesties in the past. In 2007, a waiver of interest and penalties for voluntary disclosure was introduced. In 2008 principal tax, duty, interest and penalties on arrears outstanding on or before 30th June 2002 and still outstanding by 30th June 2008 was waived. In 2016, SACCO arrears were waived. In 2019, Government arrears were waived. In 2020, outstanding principal and interest was waived to cushion against adverse impact of COVID-19. ***The impact of these various amnesties remains unclear.***

There are a lot of administrative arrears within the URA system that could be written off through this provision. However, this is reliant on acceptability by the taxpayers of the liability. More still, frequent waivers will have a negative impact on tax morale in the country. Taxpayers will be discouraged from being compliant and wait to receive waivers under forthcoming amendments. More still, this is a new tax expenditure, yet Government is supposed to be reducing on tax expenditures. The provision also gives too much power to the commissioner by allowing him to waive taxes.

i) Amend Section 40C to give effect to the court ruling in *K-Files v URA* TAT No 69 of 2021 which will compel URA to comply with it.

ii) Commission a study the impact of tax amnesties on tax morale in the country.

Other Proposals for consideration under the Tax Procedures Code Act

Amendment of Section 40A of the TPCA to require Government / the minister to account for payments made on behalf of taxpayers.

Section 40A (1) of the TPCA provides that the Minister shall pay any tax due and payable by Government arising from a commitment made by Government to pay tax on behalf of a person or owing from Government as counterpart funding for aid funded projects. This provision allows the Minister of Finance to make a commitment to pay taxes on behalf of any taxpayer. This provision was notably used by the Attorney General in his defence of the legality of the Vinci Agreement with Government which gave more incentives than those available in the law. The Vinci Agreement exempted the company from paying PAYE for its employees.

We note that section 77 of the Public Finance Management Act 2015 provides of quarterly tax expenditure reports to be presented to parliament by the Minister. The report should include details on beneficiaries, how much revenue was foregone, benefits to the country among others. However, the law in its form needs to be strengthened to provide for more transparency specifically by allowing access by the general public for scrutiny. A case in point are the 2019 waivers. Therefore, Section 40A (1) of the TPCA contributes to the opacity of the tax incentives regime.

Amend Section 40A to require the Minister to Gazette companies that the Government commits to pay taxes for such that this can be public knowledge and also publish beneficial contract information on the Ministry of Finance Website.

Creation of the office of the Tax Ombudsman where service complaints (as opposed to legal complaints) against the tax authority can be submitted.

The DRMS 2019/20 - 2023/24 observes that "Uganda does not provide a credible avenue for taxpayers to vent their unresolved service, procedural, and administrative complaints, such as a Taxpayer Ombudsman or Advocate." (MoFPED, 2019). DRMS recommends the establishment of "…a separate Taxpayers Ombudsman function to investigate service-related complaints with clear rules, procedures, and implications… This function will improve URA's credibility, transparency, and accountability, as well as give taxpayers the confidence that administering tax laws is an objective process" (MoFPED, 2019). According to the DRMS Road Map in the URA Corporate Plan 2020/21 - 2024/25, a Taxpayers' Ombudsman is to be established in the year 2022/2023 (URA, 2020). However, the 2022 DRMS semi-annual report reveals that no progress had been made towards establishing this office (MoFPED, 2022). The institutions that currently

have oversight over URA such as the Ministry of Finance, Office of the Auditor General, the Inspectorate General of Government, the Tax Appeals Tribunal and Parliament are unable to address the challenge of taxpayer service complaints for a number of reasons.

This will improve service delivery by URA and avoids unnecessary litigation when good service delivery could suffice. The Tax Ombudsman would not have power to override URA decisions but would engage and negotiate with the URA and publish a report at the end of the year.

Create a new Part XVII of the law in the Tax Procedures Code Act to read:

Section 79: Establishment of office of Tax Ombudsman

There is hereby established an office to be known as Tax Ombudsman which shall be responsible for reviewing and addressing any complaint by a taxpayer regarding service, procedural or administrative matter arising during administration tax laws by the Commissioner.

Section 80: Appointment of Tax Ombudsman

(1) The Minister shall appoint a person with competent knowledge in tax administration matters to be a Tax Ombudsman.

(2) The Tax Ombudsman shall be in charge of and carry out the functions of the Tax Ombudsman Office independently and impartially without interference from any institution, agency or department of the Government or any other person.

(3) Notwithstanding subsection (2), the Tax Ombudsman's findings shall directly be submitted to the Commissioner General and the Minister as recommendations for the Minister's deliberations and directives.

(4) The decisions or recommendations of the Tax Ombudsman shall not bind the Commissioner or the taxpayer whose complaint or matter formed the subject matter of such decision or recommendation.

(5) The Tax Ombudsman shall submit a report of cases handled and resolved or pending to the Finance Committee of Parliament on annual basis. Neither the Commissioner nor the Minister will have any editorial control of the report submitted to Parliament.

VII. Excise Duty Amendment Bill (2024)

Amendment to Item 3 of Schedule 2 to the principal Act to introduce alcohol strength by volume in determining the tax treatment of undenatured spirits.

Item 3(a) - Un-denatured spirits of alcoholic strength by volume of 80% or more made from locally produced raw materials taxed at a rate of 60% or Shs.1500 per litre whichever is higher.

Item 3(b) - Un-denatured spirits, of alcoholic strength by volume of 80% or more made from imported raw materials taxed at a rate of 100% or Shs. 2500/= per litre, whichever is higher.

This provision is increasing the rate on imported spirits.

This introduces the use of alcohol strength by volume in determining the tax treatment of undenatured spirits. This is similar to the concept which is used in Kenya (Excise Duty Act No. 23 of 2015) and Tanzania (The Excise (Management and Tariff) Act) to impose excise duty based on the alcohol strength. This will go a long way in promoting tax harmonisation.

This makes the provision easier to administer as URA can easily measure alcoholic strength by volume (rather than quantity/per litre).

Further, the HS Code uses alcoholic strength by volume description hence ease in administration of the provision proposal.

The amendment will help ease the process of administration for this provision. Furthermore, the differentiation between spirits manufactured with Locally produced

This should be adopted premised on the need to increase competitiveness of our local production on the local market.

Schedule 2 to the principal Act is proposed to be amended by substituting for item 5 (b):

"fruit juice and vegetable juice, except juice made from at least 30% pulp or at least 30% juice by weight or volume of the total composition of the drink from fruits and vegetables grown locally."

The current provision suggests that the requirement of 30% applies to the pulp content in the juice instead of the total juice content. The proposed amendment applies the 30% on the total juice content requiring that the pulp be 30% of the total content.

It is doubtful that the requirement of 30% pulp by total composition of the juice content from locally sourced fruits is industrially viable as such juice would likely be too expensive.

Agriculture being the bone of Uganda, Government has invested a lot of money in the sector through programmes such as Operation Wealth Creation, NAADs among others to boost local production.

Despite this investment, juice manufacturers are instead buying more of the imported concentrates as opposed to produce from local farmers in argument that they are cheaper. This amounts to losses for farmers are selling at a loss because there is no/limited market for their produce, hence the likelihood that the provision will work in their favour.

To avoid losses, a higher percentage of the pulp, a higher should be sourced from local farmers.

This provision might be intended to limit the preferential treatment of NIL excise duty to very few players in the industry, if at all any.

Increase the percentage from 30% to 50% of pulp locally sourced to encourage use of local inputs like fruits. The base should be pulp content and not total juice content.

VIII. VALUE ADDED TAX AMENDMENT BILL (2023)

Amendment of 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."

The current law obliges the auctioneer to account for VAT on the auctioneer services offered by the auctioneer 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. This is likely to complicate the process of input tax claim by the owners of the auctioned goods. Secondly, where the owner of the goods auctioned goods is not required to register for VAT, the provision does not give rise to VAT at 18%. We also note that the Uganda Revenue Authority auctions goods for the sole purpose of collecting tax, it is not clear weather URA as an auctioneer will be required to account VAT on the same tax collected from auctioned items. These intricacies will complicate tax administration.

Should create an exception to target only sales by an auctioneer of goods owned by non-taxable persons.

Taxation of Electronic services

(c) 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

This targets mainly financial services and government agencies which are not VAT registered yet importing (and not supplying). Currently, the burden lies on non-residents to account. 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 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.

(b) 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

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 ware housing; and any other service as the Minister may by statutory instrument determine.

The amendment provides for non-residents to remit VAT to URA in United States Dollars to facilitate compliance. The proposed amendment if passed makes enforcement easier.

Adopt the recommendation subject to consideration of the key observations made.

Broadening the Scope of Costs that do not qualify for input VAT Credit

Section 28 of principal Act is proposed to be amended in 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."

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 attempts to overturn this position to restrict input to the specific business stream to which it relates.

The following will not qualify for input tax credit:

i) Entertainment payment for membership in a club, association, sports society, social or recreational nature

ii) Costs incurred in Uganda by non- residents providing services to customers in Uganda

There will likely be disputes regarding what amounts to related businesses. While it is clear in some cases that business streams owned by the same person are unrelated, in others it may not be clear.

Need clarity on the definition of a related business. A practice note should be issued to guide on the implementation of the provision

The requirement of URA to seek Consent from a taxable person on the utilisation of tax credits

Amendment of section 42 of principal Act

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

This amendment removes 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. Currently, there is a delayed refund process; the 2019 TADAT report revealed that only 6% of VAT refunds are processed within 30 days. Currently, where the difference between the amount claimed under VAT refund application and the amount determined after a refund audit exceeds 50,000shillings, the taxpayer loses their right to claim interest in case of a delayed refund.

Giving the commissioner full power to decide whether to offset tax credits would hinder effective implementation of the provision.

Therefore, there is need to balance the power with an incentive on the side of URA, the 50,000 shillings should be replaced with a percentage of the amount claimed (5-10%)- to avoid delays during the refund process.

Revisions of supplies in the exemptions schedule

1. *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"

This replaces the exemption of diapers with an exemption of adult diapers. Ordinary baby diapers now become standard rated. Diapers are a necessity for babies. The proposal is bound to increase hours spent on care work if women are to wash nappies. Given the limited access to soap and water in many communities, hygiene and the health of babies would be negatively impacted.

All diapers should be exempt

IX. Income Tax Bill (Amendment) Bill 2023

Review of the Capital Gains Tax

1. Proposed substitution of section 118B of principal Act

The principal Act is proposed to be amended by substituting for section 118B which charges withholding tax of 10% on a resident person who purchases an asset from a non-resident person and withholding tax at a rate of 6% on a resident person who purchases a business or business asset.

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."

This provision combined with the proposed amendments in Sections 2, 18, 19, 21, 22, 27, 49, 50, 54 and 77 of the Act is part of the wider repeal of the Capital Gains Tax regime. Currently, a gain is determined on the profit gained when an asset is disposed of. Capital gains is therefore taxed at a rate of 30% for corporations and the graduated rate from 10% to 40% for individuals. Capital gains tax is only applicable on business assets. The sale of personal property like an owner-occupied residential home is not included in business income and is exempt from CGT.

This reform proposes to expand the assets to which the tax is applied to include all assets generally with the word "asset" meaning a resource with economic value that is expected to provide a future benefit to its holder but does not include trading stock. The proposal is reducing the rate to 5% and this is a final withholding tax on the gross payment amount. We note the following about this proposed amendment:

1. The provision ring-fences capital gains from other business income. The reduced rate of 5% will be especially welcome for individuals to whom the 40% applied to the gains which was quite high;
2. The proposed definition of an asset for purposes of Section 118B is extremely ambiguous and wide reaching. Essentially the sale of anything (used furniture, motor vehicles, computers, and all manner of miscellaneous assets) where the seller is not holding it as stock can be subjected to this tax. In practice this will translate into arbitrary application of this provision whenever URA wills it. It creates extreme uncertainty and will result in distortions and disruption of business transactions.
3. The current iteration of Section 118B(2) has previously generated considerable controversy and litigation due to URA attempting to extend it to apply to non-commercial transactions

especially the sale of land and use of arbitrary valuation methods - *Luwa Luwa Investments Limited v URA* TAT No 39 of 2021, *Silver Springs Limited v URA* TAT No 43 of 2022, *Mingdong Global Investment Limited v URA* TAT No 104 of 2021, and *Comfort Homes (U) Limited v URA* TAT No 66 of 2020. The proposed amendment will only exacerbate these controversies.

4. The proposed repeal of Section 21(1)(k) of the Income Tax Act will make the withholding tax applicable to the sale of shares in publicly listed companies which will discourage the growth of capital markets.
5. It will also extend the withholding tax to apply to personal assets like the sale of owner-occupied residential homes and empty plots of land not used for commercial purposes. The sale of untitled land will, however, be difficult to detect and therefore this measure will have the distortionary effect of according to high favour dealings in untitled land over titled land.

Although Capital Gains Tax reform would be welcome; However, these are sweeping changes whose effect is not clearly understood.

- Expanding the base to personal assets rather than just business assets is very problematic. This will be difficult to enforce and will result in selective enforcement and application of the law by URA.
- The rate of 5% appears to be too low when applied to certain sectors like the extractives and telecom industry. If there is to be reform of Capital Gains Tax this should be done with such sectors ring-fenced to have their own higher tax regime.
- The reform is further extending existing differences in treatment of business income for tax purposes. This against the 2014 EAC Council of Ministers Directive on Harmonisation of domestic tax laws by partner states. For instance, Tanzania has no separate income tax regime, Rwanda has CGT at 30% for immovable property and 5% for shares while Kenya charges 15% CGT and Burundi 20% CGT.
- Application of 5% WHT as a final tax on gross income implies that even an asset sold at a loss will be subject tax, this can discourage investment
- The proposal imposes on the buyer the burden of collecting WHT and remitting it to URA as opposed to the CGT which required the seller to account for tax. Tracing the buyer for compliance is more cumbersome unless if tagged to Stamp duty at the time of transfer of ownership. The reform may complicate tax administration.

The amendment should be limited to business assets.

Exclude telecom and extractive sectors in the application of this provision (should be subjected to the original CGT regime).

Another alternative could be to increase the stamp duty on the sale of assets.

This amendment should be shelved and studied further for its implications to be appreciated.

Proposed repeal of section 27A- Deduction of initial allowance for property set up the first time outside a radius of 50km from the boundaries of Kampala

This 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.

The interpretation of the original provision in the Income Tax Act was considered by the Tax Appeal Tribunal in *Security Group Alarms Ltd v URA* TAT 10 of 2004 (decided on 7 March 2005) which considered the purpose of the provision to be: "…intended to give some incentive to investors who put certain items of eligible property into service for the first time with the exception of goods or passenger transport vehicles."

We note that this provision was initially repealed in 2014 and reintroduced with slight modifications in 2017. When it was being reintroduced, the Finance Committee of Parliament stated in its report that:

"This is in line with the government policy of industrial free zones, foreign investors bring foreign exchange for the country, it will create employment opportunities for the rural population and this will decongest Kampala City".

The question therefore in considering its appeal is whether there has been a shift in Government policy towards attracting investment through attractive capital deductions. It should also be noted that capital deductions are generally considered a better means of granting incentives to investors than outright tax holidays such as those under Section 21(1)(af) of the Income Tax Act. Repealing Section 27A will likely make investors seek to benefit more from the incentives in the nature of ten year tax holidays available under Section 21(1)(af) of the Income Tax Act.

This measure should be adopted as a means of reducing tax expenditure in Uganda. Investors now have the tax exemptions under Section 21(1)(af) to rely on instead.

Amendment of section 38 of principal Act

Section 38 of the principal Act is proposed to be 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."

We note that this is a version of an alternative minimum tax. It creates a liability for a taxpayer that would ordinarily not have a liability under the normal income tax regime. This proposed amendment caps the carry forward of losses to 50% of the losses carried forward after five years. We note the following about this proposed amendment:

1. The proposed amendment as currently drafted is ambiguous. It is unclear whether the losses should be carried forward for five consecutive years in order for the losses to be capped or whether any period of five years of income in which some losses have been claimed would trigger its application;
2. The existence of an alternative minimum tax is a regional norm. In Tanzania, Paragraph 3(3) of the First Schedule to the Tanzania Income Tax Act provides that income of a corporation with perpetual unrelieved loss for three consecutive years shall be taxed at the rate of 0.5 percent of the turnover of the third year of perpetual unrelieved loss. In Kenya Section 12D of the Kenya Income Tax Act provides for payment of minimum tax at the rate of 1% of the gross turnover;

   In 2019 a proposal with a similar effect of imposing a tax on a company in a loss position was attempted. The proposal to have a 0.5% income tax rate applicable to taxpayers who have carried forward losses for seven consecutive years was rejected by Parliament. The Minority Report of the Finance Committee of Parliament which was adopted by the full house of Parliament during the plenary session rejected the proposed amendment stating:

"If this provision is passed, companies that are genuinely making losses will be taxed. Companies that are making losses should not be penalized for making losses. Companies incur losses as a result of business costs as well as investment allowances provided by government in the tax law. To allow a business expense as well as capital allowances a tax deduction and later seek to tax a person/business to which the allowance was given is contradictory and a disincentive for investment promotion… Despite carrying forward losses, these companies employ Ugandans and other nationals who are paying PAYE. In addition, these companies are paying indirect taxes such as Value Added Tax. If we imposed this tax of 0.5% of turnover, some of the companies may be forced out of business…. This does not qualify to be income tax since there is no taxable income. Unless we are creating on Act called Loss Tax Act."

This suggests that Parliament may not look favourably on this measure as its effect is essentially that of the previously rejected measure.

This proposed amendment will make tax holiday incentives under Section 21(1)(af) of the Income Tax Act more attractive to investors as a means of avoiding taxation while incurring losses.

There is no relief available for small businesses which may continue to operate while making genuine losses for various reasons. The proposed amendment is targeting businesses that may have book entry losses through taking advantage of the tax system. This may make sense for businesses that engage in sophisticated tax planning which are likely to be bigger businesses. However, it is possible that some businesses will have genuine losses, even over a period of more than five years. This proposed amendment would be a challenge especially for small businesses. A provision separating the wheat of legitimate losses claimed from the chaff of book entry losses may be necessary for the proper operationalisation of the provision.

This measure should be adopted subject to considerations of the potential risks and challenges highlighted.

Digital Services Tax on non-residents

Insertion of section 86A of principal Act

The principal Act is proposed to be amended by inserting immediately after section 86 the following—

"86A. Taxation of non-residents providing digital services

This provision introduces a Digital Service Tax (DST) on non-residents providing online services such as Facebook, Netflix, Google etc.

We note the following regarding this provision:

1. It is unclear how it will be implemented, that is, whether by a withholding tax or by the non-resident filing tax returns. If by the latter, the obligation for them to file returns is not clear;

2. URA has only begun implementing the VAT on similar electronic services in 2022. Expanding this to include a DST may be premature;

3. In its 2020 *Suggested Approach to drafting legislation on Digital Services Tax*, the Africa Tax Administration Forum (ATAF) recommends a rate

between 1-3% yet Uganda proposes a rate of 5%. This is significantly higher that the recommendation;

4. DST may be of limited utility in circumstances where the non-resident provider of online services is located in a country with which Uganda has a Double Taxation Agreement such as Mauritius or Netherlands;
5. 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.

We note that high digital services tax rate may discourage investment in the same sector. The tax if implemented will raise operational costs of Multi-National Companies.

DST should be adopted at a lower rate of 1-3%.

The measure should be studied further to establish administrative ease and also compare with the potential benefits of Uganda joining the inclusive framework.

Other proposals for consideration under the Income Tax Act

Amend Section 119(5)(f) of the ITA to clarify the limits of discretion of the Commissioner regarding WHT Exemption.

In 2022 the Commissioner came up with non-statutory conditions such as minimum payment of UGX 100 million in taxes in one year. This disadvantages small businesses considerably. As a result of these non-statutory hurdles, compliant small businesses have been denied WHT exemption by URA. It is only large businesses some of which may not be fully compliant that are able to benefit from this facility. Yet given the fact that small businesses generally have more cash flow challenges than the big businesses, they need the WHT exemption facility more.

The rationale of WHT Exemption is to encourage compliance among businesses which wish to qualify for this facility. It appears that URA is using it as a revenue raising measure instead which defeats its purpose. There is need to limit the discretionary powers of the

Commissioner General. The amount paid should not be used as a measure for compliance. The arbitrary nature of the amount selected also creates uncertainty which is not good for investors. If such a criterion should be used then let it be set in statute.

We recognize that compliance is a moving target which will vary from year to year as URA comes up with new innovations and requirements. Therefore, the Commissioner's power to determine compliance should not be fettered. Nonetheless we consider that allowing the Commissioner to arbitrarily set an amount of tax paid as a requirement from benefiting from this facility disadvantages small businesses and struggling loss making businesses or young businesses which need this facility most. The corporate ETR in Uganda for last year is less than 4%, on average it means that withholding 6% is a big is a big challenge for small businesses.

This will clarify the Commissioner's power to exempt from WHT. Allow small businesses to benefit from WHT exemption.

Section 119(5)(f) is amended to expressly bar the Commissioner from considering the amount of tax paid as part of the criteria for satisfaction of compliance.

The criteria to be considered should be gazetted as well as put in a Public Notice three months prior to the commencement of the WHT Exemption Applications. Currently URA only issues a generic public notice. We believe that this requirement should be put in the law.

Clarify the law on taxation of air transport

Section 21(1) (x) of the ITA exempts the income of a person derived from the operation of aircraft in domestic and international traffic or the leasing of aircraft. Section 86(1) of the ITA imposes tax on every non-resident person carrying on the business of ship operator, charterer, **or air transport operator** who derives income from the carriage of passengers who embark, or cargo or mail which is embarked in Uganda and on a road transport operator who derives income from the carriage of cargo or mail which is embarked in Uganda. This is a contradiction that needs to be resolved for purposes of clarity in the law.

We note that the current ambiguity may discourage investment in air transport. The law should be clarified whether it is actually exempted.

Amend Section 86(1) of the ITA to clarify the law.

We the undersigned organisations;

Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI Uganda) | Oxfam in Uganda | Civil Society Budget Advocacy Group (CSBAG) | Advocates Coalition for Development and Environment (ACODE) | Public Services International (PSI) | Uganda Debt Network (UDN) | Water Governance Institute (WGI) | ActionAid International Uganda (AAIU) | Youth For Tax Justice Network (YTJN) | Eastern African Sub-regional Support Initiative for the Advancement of Women (EASSI) | Forum for Women in Democracy (FOWODE) | Uganda Women's Network (UWONET) | Uganda Youth Network (UYONET) | Africa Freedom for Information Center (AFIC) | The Open Forum Initiative (TOFI) | Food Rights Alliance (FRA) | Uganda National Health Consumers Organization (UNHCO) | Rwenzori Anti-Corruption Coalition (RAC) | Transparency International Uganda (TIU) | Twaweza Uganda | Initiative for Social and Economic Rights (ISER) | Kick Corruption Out of Uganda (KICK) | Kanungu Community Efforts for Rural Transformation (KACOERT) | Gulu NGO Forum | Kalangala NGO Forum (KADINGO) | CEED | Forum For Rights Awareness and Monitoring- Uganda (FORAMO) | Mukono NGO Forum, Kitgum Women Peace Initiative (KIWEPI) | Yumbe NGO Forum | Nebbi NGO Forum | Arua NGO Forum | Mukono NGO Forum | Public Affairs Center of Uganda (PAC-Uganda) | South Buganda Anti- corruption Organization | Community Empowerment for Rural Development (CEFORD) | West Nile Youth Empowerment Center | Koboko Civil Society Network (KOSCINET) | Advocates in Research and Development (ARID) | Forum for Women in Democracy (FOWODE) | Women & Girl Child Development Association (WEGCDA) | Resource Rights Africa (RRA) | African Center for Trade and Development (ACTADE) | Publish What You Pay (PWYP)- Uganda | Institute for Social Transformation (IST) | Federation for Small and Medium Enterprises (FSME) |The Populace Foundation International (TPFI) | Akina Mama wa Afrika | Jay Mallow Foundation |Touch The Heart Uganda

Supported By:

Disclaimer:

This publication was produced with support of USAID, Diakonia, ActionAid International Uganda, and Oxfam. Its contents are the sole responsibility of Tax Justice Uganda members.

For more information please contact:
The Tax Justice Alliance Secretariat
SEATINI-Uganda
P.O.BOX 3138 Kampala,
Email: info@seatiniuganda.org
Web: www.tjau.org
www.seatiniuganda.org