Amendment Bills - 2013/August 2013

Tax watch

This newsletter summarises the amendments to the law affecting both direct and indirect taxes, following the publication of a number of Bills of Parliament in July 2013.

Update on the recent changes in the laws of Uganda

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The Income Tax (Amendment) Bill, 2013

The Bill objective is to make various changes in the law on income tax that shall be deemed to have come into force on 1 July 2013, as explained below;

Modification of Sections

Bonus Shares are Dividends

The issue of bonus shares to shareholders has been included in the definition of dividends.

This therefore means that where a company issues bonus shares to its shareholders out of the company's accumulated distributable reserves, the bonus shares will be treated as a dividend and withholding tax will be due and payable.

This change in the tax law is likely to affect in the near future many insurance companies that are required to raise their minimum paid up capital in order to comply with the new requirements of the Insurance Amendment Act 2011.

Bonus Shares included in the definition of dividends

Before this amendment, the general view was that the issue of bonus shares would only give rise to a dividend, if, the value of the bonus shares issued by the company to its shareholders was deemed to be an asset provided by the company to its shareholders, and, the value of the bonus shares issued by the company to its shareholders is a transaction which in substance is a distribution of profits.

Employment income of intelligence services personnel is exempt income

The amendment proposes to include intelligence services organisations among personnel whose official employment income is exempt from income tax.

This means that the official employment income of personnel working with intelligence services will not be subject to income tax.

Proceeds and credits earned by petroleum contractors are taxable

A contractor is a person with whom the Government enters into a petroleum agreement and includes a licensee.

Any other proceeds and credits earned by contractors from their petroleum operations in Uganda now form part of the revenue of the contractors that is subject to tax.

This amendment makes clarity that any proceeds or credits derived by the contractor for example a gain realised on the sale of the contractor's interest forms part of the revenue of the contractor, which will be subject to tax.

Withholding tax on management or professional payments to resident persons

A resident person who pays management or professional fees to a resident person shall withhold tax on such payments.

Tax will now be withheld from the gross amount of payments made to a resident person by a resident person for management or professional fees at 6%.

The amendment substitutes "resident professional" with "resident person". There have been challenges as to the definition of "resident professional" not to include a company, therefore the amendment seeks to remove the ambiguity of who a resident professional constitutes by including all persons whether in the capacity of an individual or a body corporate. Therefore, tax is now imposed on payment of professional and management fees to any resident person. Accordingly, a resident person who pays management or professional fees to a resident person shall withhold tax on such payments.

Furnishing of PAYE Returns

It is now a requirement for every employer who withholds tax from a payment of employment income to furnish a withholding tax return for every month, not later than 15 days after the end of the month to which the withholding tax relates for all employees liable to tax.

Prior to this amendment, there was no specific provision requiring a withholding tax agent who withholds PAYE to furnish the URA with a return.

The introduction of this amendment provides clarity on the requirements of filing withholding tax returns for all employees by employers.

Insertion of New Sections

Withholding tax on purchase of Commercial Buildings from non residents

A new Section 119B has been inserted that requires a resident person who purchases a commercial building from a non resident person to withhold tax on the gross amount payable to the non resident. The rate of tax is 10%.

Input-Output ratios in determining Chargeable income

Section 56A has been inserted proposing the use of input – output ratios and other methods of allocating costs and revenue under valuation in determining the chargeable income of a person. The introduction of the input-output ratios in determining chargeable income will likely affect the manufacturing industry.

Withholding tax on interest payments on government securities to non residents

Withholding tax rate applicable for interest payments on government securities to a non resident person has increased from 15% to 20%.

Last year's amendment bills increased the tax on interest payments on government securities to residents from 15% to 20%. This meant that the rate of interest payments on government securities to non residents was 15%, compared to the rate of interest payments on government securities to residents of 20%.

This amendment therefore seeks to align the rate of interest payments on government securities to both non residents and resident persons.

Repealing of Sections

Section 21 (1) (ab)

Subsection (1) (ab) of Section 21 of the ITA has been repealed. Therefore the interest earned by a person on deposit auction funds issued by the Bank of Uganda for the purposes of liquidity management is now subject to tax.

Legal Notices; The Income Tax (Designation of Payers) Notice 2013

An amended list of withholding tax agents has been issued. The list has increased in number from 253 to 392 designated withholding tax agents. This has been done to widen the tax base as was mentioned in the Budget Speech read earlier in June.

Update on the recent changes in the Excise Laws. 1 July 2013

Telecommunications services and value added service defined

The East African Excise Management (Amendment) Bill, 2013 proposes to amend Section 2 of the Act to provide for definitions of the terms ‘supply, telecommunications services and value added service’.

The term *“Supply”* as used in relation to services has the same meaning assigned to it in the Value Added Tax Act (VAT). According to Section 11 of the VAT Act, a *supply of services means a supply which is not a supply of goods or money, including- a) the performance of services for another person, b) the making available of any facility or advantage, c) the toleration of any situation or the refraining from the doing of any activity.*

“Telecommunications services” have been defined to mean a service for the transmission, emission, or reception of signals, writing, images, sounds, or information of any kind by wire, radio, optical, or other electromagnetic systems and includes the related transfer or assignment of the right to use capacity for such transmission, emission, or reception the provision of access to global or local information networks, but does not exclude a private network for the exclusive use of the person.

“value added services” on the other hand means content, products or services offered in the telecom sector via the mobile platform and includes short messaging service and multimedia messaging service which afford the user flexibility in accessing other services including mobile betting, games, paying for services, products or promotions but does not include standard voice calls, peer to peer short messaging service and multimedia messaging operators licensed to provide a communication service or money transfer services. The duty rate is 10%

The taxable value of the value added services, incoming international calls and mobile money transfer services shall be the price paid or payable by the consumer of that service, fax transmission, internet, mobile money transactions and games promoted by a value added service provider licensed by the National Lotteries Board.

The above definitions are intended to cover the amendments contained in the Excise Tariff Amendment Bill.

Excise duty introduced on value added services, incoming international calls and money transfer services

The Excise Tariff (Amendment) Bill 2013 proposes to insert immediately after Section 3 AA, Section 3B which will provide for excise duty on value added services, incoming international calls and money transfer services, except by banks.

The duty on value added services, which are defined in The East African Excise Management (Amendment) Bill shall be levied on the charges by mobile cellular phone service providers like MTN, UTL and Airtel for the value added services. The applicable excise duty rate will be 20%.

The Amendment Bill also introduces an excise duty rate of USD 0.09 per minute on the charges by international telephone services providers for incoming international calls.

The excise duty on value added services and incoming international calls will be collected and paid by all mobile phone operators licensed by the Uganda Communications Commission.

The charges for mobile money transfer services are set to increase following the introduction of Excise duty to be levied on the charges payable by the consumer of the service, excluding VAT and excise Duty chargeable under the VAT Act and Excise Tariff, respectively. This provision will avoid having a tax on tax impact on the mentioned excisable goods.

Also, where no usage fee is charged, or where there is an application to own use by the suppliers for the purpose of their own business activities, the excise duty shall be charged on the market value of the services provided, as if this were a sale in the open market. The implication of this is that, telecommunication service providers will incur an increased cost in providing a platform for incoming international call services which in turn will reduce on the profit that the players in the telecommunication industry will receive.

Changes in the Schedule to the Excise Tariff Act

The Excise Tariff (Amendment) Bill 2013 also proposes to raise excise duty on cigarettes, undenatured spirits and fuel.

The amended Schedule also reflects the new excise duty rates on telecommunication services. The increase is aimed at raising additional tax revenue in order to further enable the Government fund its own budget.

This amendment in effect will result in an increase in the prices of the above mentioned commodities. As a result,

Item	Previous Excise Duty Rate	Current Excise Duty Rate (Effective 1 July 2013)
Cigarettes		
Soft cup (whose local content is more than 70% of its constituents)	Ushs 22,000 per 100 sticks	Ushs 32,000 per 1000 sticks
Other soft cup	Ushs 25,000 per 1000 sticks	Ushs 35,000 per 1000 sticks
Hinge Lid	Ushs 55,000 per 1000 sticks	UShs. 69,000 per 1000 sticks
Spirits		
Undenatured spirits	Ushs 2000 per litre or 80% whichever is higher	Ushs 4000/= per litre or 140% whichever is higher
Fuel		
Motor spirit (gasoline) – Petrol	Ushs 850 per litre	Ushs 900/- per litre
Gas oil (automotive, light, amber for high speed engine) – Diesel	Ushs 530 per litre	Ushs 580/- per litre
Illuminating kerosene	Nil since July 2011	Ushs 200/- per litre
Cosmetics and perfumes		
Cosmetics and perfumes	10%	10%
Telecommunication Services		
Value added services	Nil	20%
Incoming international call services	Nil	USD $0.09 per minute
Money transfer services, except by Banks	1	10% of the fees charged by the operators licensed or permitted to provide communications or money transfer services

production levels of commodities such as cigarettes, spirits and undenatured spirits may also fall, leading to an inevitable effect on the income of the local suppliers who provide the local raw materials to manufacture these commodities.

An increase in the excise duty rates of fuel in particular, may result in petroleum companies increasing the prices of diesel and petroleum which in turn will lead in an increase of transportation costs and other activities that are dependant on fuel. This is likely to cause an economic downturn stemming from the increased costs of conducting business activities.

The Value Added Tax (Amendment) Bill 2013

Refund or claim of VAT on stock lost due to accidents or natural causes

The recognition that stock lost due to accidents or natural causes is eligible for refund or claim has been made through the amendment of Section 42(2)(a) of VAT Act. Previously the section only took into account VAT refunds or claims on input tax paid on goods lost due to theft or fire.

The implication of this amendment is that in case a taxable person loses supplies of stock due to theft, fire, accidents or natural causes after paying input VAT on such stock, the Commissioner General may grant the company a refund of the VAT incurred or allow a credit on the lost stock provided that there is evidence to justify the losses.

The Schedules to the VAT Act have also been amended.

Amendments to the Second Schedule (Exempt supplies) of the VAT Act.

Exempt unprocessed products to exclude wheat grain

Paragraph 1(a) of the Second Schedule to the VAT Act has been amended to exclude wheat grain from exempt unprocessed agricultural products. Prior to the amendment, Paragraph 1(a) provided for an exemption from VAT on all supplies of unprocessed agricultural products.

The implication of this amendment is that the supply of wheat grain is now a taxable supply subject to tax at the rate of 18%.

Reorganisation of the VAT exemption in relation to dental, medical and veterinary goods

Paragraph 1(q) of the Second Schedule to the VAT Act has been amended by introducing the definition of "goods" in relation to the exempt supply of dental, medical and veterinary goods. The term goods has been defined to include various medical goods which before the amendment had been provided for under various paragraphs of the Second Schedule.

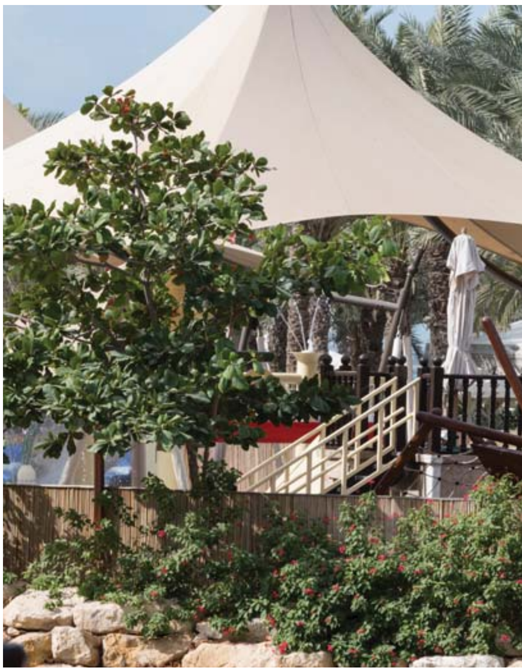
The amendment aims at reorganisation of the Schedule so that dental, medical and veterinary goods are covered in the same paragraph. In our view this reorganisation consolidates the goods under one paragraph.

VAT is applicable on accommodation in lodges and hotels in Kampala and outside Kampala

Paragraph 1(u) exempted VAT on the supply of accommodation in tourist lodges and hotels outside Kampala District. The paragraph has been repealed.

The implication of repealing the section is that the supply of accommodation in tourist lodges and hotels is now a taxable supply.

The VAT Act previously only applied to only tourist lodges and hotels in Kampala, but the amendment is making the supply a taxable supply. The



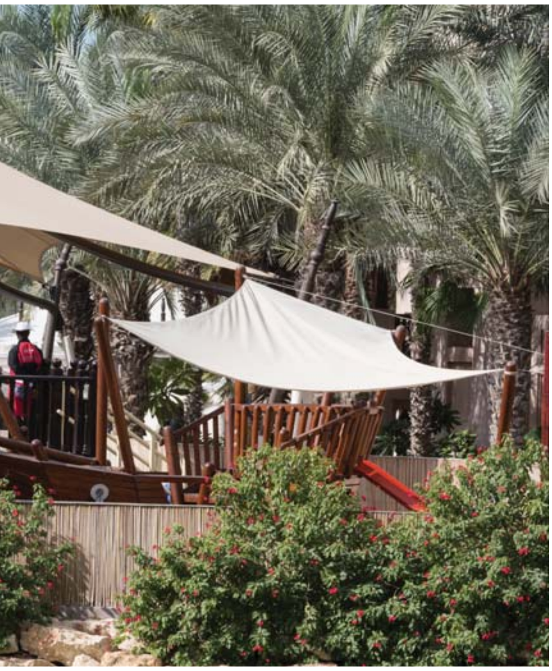
operators of the hotels will be in position to claim VAT on the inputs in their business.

The supply of goods and services to contractors and subcontractors of hydro electric power projects no longer exempt from VAT

Paragraph 1(dd) exempted from VAT the supply of any goods and services to the contractor or subcontractor of hydroelectric power projects. This paragraph has been repealed.

The implication or repealing this paragraph is to the effect that the supplies of goods and services to contractors and subcontractors of hydro electric power projects are taxable. There were challenges with the implementation of this section, where some of the supplies were not favoured by the exemption.

Some of the suppliers were dealing in mixed supplies and the ratio of taxable to exempt was not in their favour. On the other hand given the cost of construction of the hydro power projects, the contractors and subcontractors had benefited from the exemption making their costs cheaper through the VAT exemption.



The amendment will address the challenge which was faced by the suppliers who ended up making mixed supplies but were constrained due to partial input VAT claims.

Amendment to the Third Schedule of the VAT Act

Zero rating of the supply of cereals modified to exclude the word produced

The zero rating on the supply of cereals has been modified to exclude cereals produced in Uganda. The new Paragraph 1(f) provides for a zero rating on "the supply of cereals where the cereals are grown and milled in Uganda"

The implication of this amendment is that for cereals to qualify for VAT at 0%, they should meet both conditions of being grown and milled in Uganda.

Education materials of an audio nature

Paragraph 4(a) has been modified to include among zero rated education materials of an audio nature. This has been done by inserting immediately after the word "materials" the words "whether printed or audio"

The new Paragraph 4(a) of the Third Schedule to the ITA now defines education materials to mean "materials whether printed or audio suitable for use only in public libraries and educational establishments."

The amendment recognises that educational materials include materials of an audio nature.

The Finance Bill 2013
Uganda Citizenship and Immigration Control Act, Cap 66

The Finance Bill, 2013 proposes to revise immigration fees. These fees were last revised in 2009 as published in the Uganda Citizenship and Immigration Control (Fees) Regulations, 2009.

According to the Bill, all immigration fees have been revised. Notably the fee for Class G work permit for expatriate employees has been increased from USD 600 per year to USD 1000 fee per year effective 1 July 2013.

The increment of Class G work permits has a direct financial effect on employers who are responsible for obtaining work permits for their expatriate employees as it increases the cost of employment.

The increased financial burden as well as other strict requirements for obtaining works permits which have been introduced by the Directorate of Immigration since 2010 highlights the desire of the Government to advance employment of Ugandan citizens. Increased costs of employment and more restrictions on granting of work permit may also discourage long-term employment of expatriates.

All together the changes in immigration requirements and increased fees will help to address the public outcry on illegal immigration and employment of foreigners in jobs which can be performed by Ugandan. This is in addition to increased revenue for the Government

The penalty for illegal stay has been increased from $30 per day to $100 per day to show Government's commitment in enforcing compliance with immigration laws.

It is expected that this penalty will deter illegal immigrants. In spite of the fact that Section 66 of the Uganda Citizenship and Immigration Control Act makes it illegal for foreigners to unlawfully enter into the country, and Section 59 makes it illegal for foreigners to live and work in Uganda without permit there are still numerous incidents of illegal foreign workers. For example in June 2013 it was reported that a court in Gulu ordered thirty two illegal workers to formalise their stay or risk deportation. The new Minister for the Ministry of Internal Affairs in his speech during the handover process said that dealing with illegal immigrants was going to be top on his agenda.

The Bill has also introduced a penalty of USD 3000 on airlines or carriers which bring illegal immigrants into Uganda. This is a new penalty which is meant to force airlines and carriers to screen their travelers to ensure that they have valid travel documents before entering Uganda.

The table below contain the new immigration fees:

Passports and Immigration	Uganda Citizenship and Immigration Control (Fees) Regulations, 2009	Finance Bill, 2013 revised fees
Work Permits		
Class A2 (Parastatal) per year	$250	$300
Class B (Agriculture) per year	$500	$1000
Class C (Mining) per year	$500	$1500
Class D (Investors) per year	$1500	$2500
Class E (Manufacturing) per year	$500	$1500
Class F (Professionals) per year	$750	$1000
Class G (Expatriate Employees)	$600	$1000
Certificate of Residence		
5 years	$1000	$2500
10 years	$1000	$2000
15 years	$1000	$2500
For Life	$1000	$2500
Due to Marriage	$250	$500
Other Fee		
Temporary Movement Permit	5,000/=	10,000/=
Illegal Stay	$30 per day	$100 per day
Airlines or Carriers	$2500	$3000

It remains to be seen how this penalty is going to be enforced considering that most foreigners can enter Uganda as visitors or tourists by getting visas at the airport in Entebbe or border entry ports to Uganda.

Fees payable to the Registrar of Companies under The Companies Act, 2012

The Finance Bill 2013 is proposing to amend fees payable to the Registrar General. The highlight of the revisions is the significant increase in the fee payable on registration of a company whose share capital exceeds UShs 5,000,000.

The fee is now 1% of the nominal share capital, as opposed to UShs 186,000 that was previously charged. Registration fee for increase of share capital is now 1% of the amount by which the increased share capital exceeds the share capital on the preceding increase.

The fee is in addition to stamp duty which is chargeable at the rate of 0.5% of nominal capital. Before the increase the fee was also chargeable depending on the amount of stamp duty but was approximately 10% of the amount of stamp duty.

This is a substantial increase and will certainly increase the cost of registering a business in Uganda and may be a disincentive to register a company especially for a small investment.

Caveat

The advice (including analysis and opinions) in this report, including any appendices, is based on:

(a) The background information and facts as set out in this report or as provided to us. If this information is incorrect or incomplete please let us know immediately as this may affect our advice.

(b) Our knowledge and interpretation of the relevant law and practice, which are likely to change over time. Such changes may affect our advice and accordingly you should keep abreast of developments and seek updated advice as necessary.

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