



PARLIAMENT OF UGANDA

REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC
DEVELOPMENT ON

THE TAX PROCEDURE CODE BILL 2014

OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDINGS
KAMPALA - UGANDA

September, 2014

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1.0 Introduction

Rt. Hon. Speaker and Hon. Members, permit me to present to you a report of the Committee of Finance, Planning and Economic Development on the Tax Procedures Code Bill 2014. The Bill was referred to the Committee after being read for the first time by the Minister of Finance, Planning and Economic Development on 16th May 2014.

1.1 Methodology

The Committee held consultative discussions with;

- 1) The Minister for Finance, Planning and Economic Development;
- 2) The Uganda Revenue Authority;
- 3) The Uganda Law Society; and
- 4) The Institute Of Certified Public Accountants Of Uganda

Their submissions informed the content of this report. The Committee also took into consideration the Taxation regime in the East Africa region.

2.0 The Object of the Bill

The Bill seeks to provide for a Code to regulate the procedures for the administration of Excise Duty Act, the Income Tax act, the Value Added Tax Act to harmonize, consolidate and streamline tax procedures into a single law in order to simplify tax administration and promote compliance.

The Salient features of the Bill include the following;

- (a) Registration of tax payers;
- (b) Registration of tax agents;
- (c) record keeping and tax returns;
- (d) Tax assessments;
- (e) Collection and recovery of tax;
- (f) Remission of tax;
- (g) Investigations;
- (h) Tax clearance certificates;
- (i) Practice noted and rulings;
- (j) Tax officers;
- (k) Penal tax;

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- (l) Offences; and
- (m) Objections and repeals.

3.0 OBSERVATIONS OF THE COMMITTEE

3.1 Harmonization of tax administration

The Bill attempts to;

- streamline tax administration in Uganda by separating tax policy from tax administration.
- The different procedures spread across the tax laws were overlapping and not consistent.

The committee welcomes this initiative and recommends that Parliament passes the bill subject to the proposed amendments.

3.3 Registration of Tax Agents

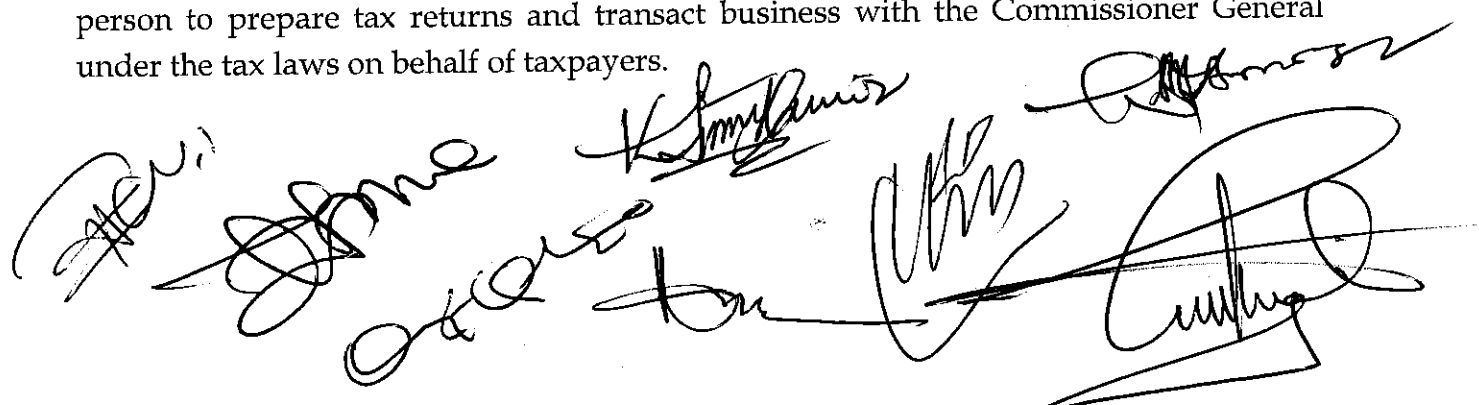
Clause 7 requires tax agents to register with URA upon payment of a fee to be prescribed by the Minister.

The Committee observes that, while there is need to regulate and control who should be a tax agent. The requirement for a fee on application is unfair to professionals that are recognized as qualified to dispense tax advice especially the Accountants and the advocates, who already pay fees to their respective professional bodies for practicing certificates.

The Committee recommends that the requirement for payment of fees should be deleted.

3.4. Criteria for determining whether a person is a fit and proper person to register as a tax agent

Clause 8 provides that in case of an application by an individual, the Commissioner General shall register the person only if satisfied that the applicant is a fit and proper person to prepare tax returns and transact business with the Commissioner General under the tax laws on behalf of taxpayers.

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The Committee observes that the Bill does not provide the criteria for assessing a fit and proper person as is done with such legislation that provides for fit and proper test.

The Committee recommends that;

- (1) A criterion for determining whether a person is a fit and proper person to register as a tax agent be clearly detailed in the Bill.
- (2) There is need for establishment of a Tax Agents Registration Committee. Which shall be an independent committee to register tax agents? This is to ensure;
 - (a) ensure objectivity and transparency in the registration process;
 - (b) minimize conflict of interest;
 - (c) create a level of professionalism among tax agents.

3.5. Objection to a tax decision

Clause 23 provides for objections to a tax decision, sub clause 3 requires a tax payer to pay 30% of the difference, if any, between the amount assessed by the Commissioner and the amount of tax paid by the person.

The Committee observes that currently the requirement to pay 30% is only required when a tax payer is appealing a decision of the Commissioner General to the Tax Appeals Tribunal.

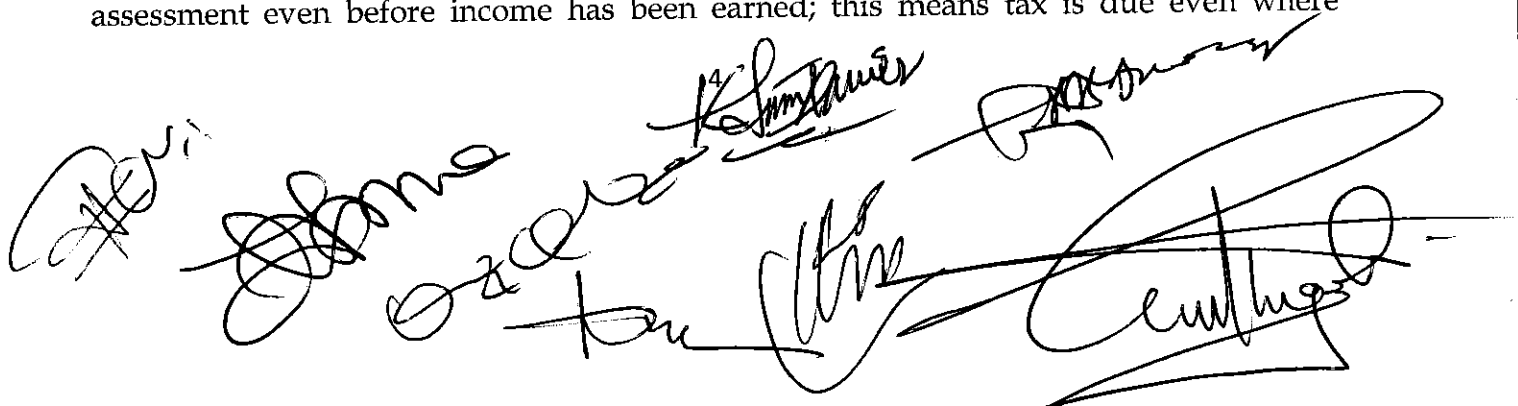
The requirement to pay 30% for the Commissioner to consider the objection will restrict taxpayers from objecting tax decisions some of which may lack merit. This should be scrapped as it can act as a barrier to taxpayers seeking justice.

The Committee recommends that if a tax payer is dissatisfied with an assessment or tax decision they should be able to object to Commissioner General without being required to pay up disputed sums. Only on appeal outsider URA levels should the requirement be enforced.

3.6 Advanced assessment.

Clause 21 provides that where the Commissioner is satisfied that there is risk that a taxpayer may delay, obstruct prevent, or render ineffective payment or collection of tax that has not yet become due.

The Committee observes that the provision implies that the URA can make an assessment even before income has been earned; this means tax is due even where

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income has not arisen and to challenge this assessment 30% of the assessed amount must be paid on objection.

We find this provision unfair, since tax cannot be due on income that has not been earned.

The Committee recommends that Clause 21(1) should be rephrased as follows;

“this section applies to a taxpayer specified in section 17 and where the Commissioner is satisfied that there is a risk that a taxpayer may delay, obstruct, prevent, or render ineffective payment or collection of tax that has not yet become due.

Rt. Hon. Speaker and Hon. Members, the committee recommends that the bill be passed subject to the proposed amendments.

I beg to report.

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PROPOSED AMENDMENTS

A. Clause 3. Interpretation

- **Definition of a tax return**

Replace the definition with the following;

"A tax return is a form prescribed by the Commissioner, which shall state the information required, and shall be furnished in the manner prescribed by the commissioner".

Justification

The definition of tax return under section 3 is defective. Reference to the third schedule is also erroneous to the extent that it refers to amount of turnover in respect of which audited financial statements are required.

- **Definition of Tax representative**

Replace paragraph (g) as follows;

"(g) in the case of a non-resident person, the individual controlling the person's affairs in Uganda, including a manager of a business of that person or any representative appointed by the person in Uganda."

Justification

This seems not to cater for representatives of a non resident person under the VAT law and hence there is likely to be confusion in this area.

B. Clause 7: Tax agents

- Change the headnote from "Registration of Tax Agent" to "Tax Agent".
- insert a new sub clause (3) as follows:

"(3) For purposes of this Act, a tax agent is a person engaged:

- (a) in the preparation, certification, and filing tax returns, information returns or other statements or reports required by the Authority.
- (b) in the preparation of requests for ruling, petitions for reinvestigation, protests, objections, requests for refund or tax certificates, compromise settlements and/or abatement of tax liabilities and other official papers and correspondences with the Authority.

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(c) in meetings, conferences, and hearings before any matter in URA officially on behalf of the taxpayer or client in all matters relating to a client's rights, privileges or liabilities under the laws or regulations administered by the Authority."

Justification. The approach used to introduce the idea of tax agents seems to be borrowed from the *East African Customs Management Act (Sec 145)* where *Customs Agents* are provided for. However, in the Tax Procedures Code, the role of tax agents is not clearly defined.

C. Clause 7. Registration of Tax agents:

In sub clause (2) delete the words "and shall be accompanied by the prescribed fee."

Justification

- The requirement for a fee on application is unfair to professionals that are recognized as qualified to dispense tax advice especially the Accountants and the advocates, who already pay fees to their respective professional bodies for practicing certificates.
- An extra fee (the prescribed fee) is making the environment of doing business for professionals much harder.

D. Clause 8: Registration of Tax agents

- Insert a new sub clause (6) as follows:

"(6) An individual applying for registration as a tax agent, or in the case of an application by a partnership or company, the partner or employee specified as the nominee of the partnership or company respectively, shall meet the following requirements:

- (a) have been awarded a degree or a post-graduate award from an approved tertiary institution in the discipline that is relevant for the provision of tax agent services; or
- (b) have successfully completed a course in taxation that is recognised by the Tax Registration Committee; or

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in the coming into force of this Act, have been engaged in the equivalent of 24 months of full-time tax practice in the preceding 5 years.

Justification. The Bill does not provide conditions or requirements for one to be registered as a tax agent other than paying a fee.

- insert new sub clause (7) as follows:

(7) In assessing whether an applicant is a fit and proper person, reference shall be made to Schedule 4.

Justification. The Bill does not provide a criterion for assessing a fit and proper person.

E. New clause on Setting up of an Tax Agents Registration Committee

Insert a new clause immediately before clause 7 as follows;

Tax Agents Registration Committee

- (1) There shall be a Tax Agents Registration Committee to handle registration, renewal of registrations and cancellation of tax agent's registration.
- (2) The Committee shall comprise of the following members:
 - a. The Commissioner General, or his or her representative for purposes of this Act, who shall be the Chairperson;
 - b. One representative from the accountancy profession nominated by the Institute of Certified Public Accountants of Uganda;
 - c. One representation from the legal profession nominated by the Uganda Law Society; and
 - d. Two members from the private sector appointed by the Board, who in the opinion of the Board have expertise or relevant experience in economics, finance or taxation.
- (3) In exercise of its functions under this Act, the Committee shall make rules to govern its own procedure.
- (4) The Commissioner shall receive and maintain a register of all registered tax agents.

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Justification. The regulation does not provide for an independent committee to register tax agents. This should be done to ensure objectivity and transparency in matters of tax

F. Clause 15. Furnishing of tax returns

Insert a new sub clause (9) as follows -

“(8) For purposes of subsection (7), the applicable time frame for lodging a return shall be as follows -

- a) In the case of a return of income, every taxpayer shall furnish a return of income for each year of income of the taxpayer not later than six months after the end of that year.
- b) In the case of a return of rental income, every taxpayer shall furnish a return of rental income for each year of income of the taxpayer not later than six months after the end of that year.
- c) In the case of a provisional tax estimate, every taxpayer is required to furnish a return of provisional tax estimate on or before the last day of the sixth and twelfth months of the year of income, in respect of the taxpayer's liability for a period of the six or twelve months.
- d) In the case of a business information return, a person who is required to furnish a business information return with the commissioner should do so within sixty days after the end of the year of income in which the payment was made.
- e) In the case of the Value Added Tax Act, a taxable person shall lodge a Value Added Tax return with the Commissioner General for each tax period within fifteen days after the end of the tax period.
- f) In the case of an Excise Duty return, a person who is required to furnish an excise duty return with the Commissioner General shall do so by the fifteenth day of the following month.

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- g) In the case of the Gaming and Pool Betting Act, a person who is required to furnish a return with the Commissioner shall do so in the period specified under the Act
- h) In case of any other return required to be furnished under a tax law, a person is required to furnish such return with the commissioner in the period specified under the tax law to which the return relates.
- i) In case of any form required to be furnished under a tax law containing information relating to an assessment of tax, a person is required to furnish such a form with the commissioner in the period specified by the Commissioner."

G. Clause 16: Certification of Tax Return by a Tax Agent

In sub clause (1) (b) delete the phrase "*a true and fair view of*" so that this clause reads "certifying that the tax agent has examined the documents of the taxpayer and that, to the best of the tax agent's knowledge, the return together with any supporting documentation, reflects the data and transactions to which it relates."

Justification. The concept of a *true and fair view* has a specific meaning in accountancy practice and denotes the provision of auditing services which are regulated by another law.

H. Clause 19. Self-assessment

In sub- clause (5), insert a new paragraph (d) as follows;

"(d) A return required to be furnished under the excise duty law"

I. Clause 21(1): Advanced assessment

Rephrase sub section (1) as follows;

"(1) This section applies to a taxpayer specified in section 17 and the Commissioner is satisfied that there is a risk that a taxpayer may delay,

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obstruct, prevent, or render ineffective payment or collection of tax that has not yet become due.

Justification

This provision is unfair, since tax cannot be due on income that has not been earned. URA can make an assessment even before income has been earned, this means tax is due even where income has not arisen and to challenge this assessment 30% of the assessed amount must be paid on objection.

J. Clause 22. Additional Assessment

- In sub clause (5), the reference in this clause should be subsection '2(b)' and not '4(b)'.
- Rephrase sub clause (6) (d) to read as follows;

"(d) the due date for payment of any tax, penal tax and interest being a date that is not less than **forty five** days from the date of service of the notice; and"

Justification. The clause is not built on the tenet of fairness which is one of the principles of a good tax. This inconsistency implies that potentially URA will collect the full 100% tax before a taxpayer can object or raise the 30% required for the objection to be heard.

K. Clause 23: Objection to a tax decision

Delete sub clause (3) (c).

Justification. The requirement to pay 30% for the Commissioner to consider the objection will restrict taxpayers from objecting tax decisions some of which may lack merit. This should be scrapped as it can act as a barrier to taxpayers seeking justice.

L. Clause 24. Review of an objection decision

Substitute for Clause 24 with the following -

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"(24) A person dissatisfied with an objection decision may, within 30 days after being served with a notice of the objection decision, lodge an application with the Tax Appeals Tribunal for review of the objection decision".

Justification. To include timelines

M. Clause 30. Recovery of tax through persons owing money to the tax payer.

In sub clause (4), delete "a pension" appearing in the second line.

Justification. A pension is tax exempt and not attachable or assignable in most laws.

N. Clause 34. Seizure of goods

In sub clause (1), delete the words "or will not be".

Justification. The provision should only operate for tax that is due and payable but not yet paid by the taxpayer.

O. Clause 36. Priority of withholding tax and VAT

Delete sub clause (3)

justification.

1. sub clause (3) excludes withholding tax and vat from liquidation proceedings
2. This clause attempts to amend provisions of the Companies act and Insolvency act to do with priority of payment of debts in the case of winging up.

3. S. 12(6) of the Insolvency act provides that

(6) After paying the sums referred to in subsection (5), the liquidator shall then pay –

- (a) the amount of any tax withheld and not paid over to the Uganda Revenue Authority for twelve months prior to the commencement of insolvency; and
- (b) contributions payable under the National Social Security Fund Act.

This section shall apply notwithstanding any other law.

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P. Clause 39. Recovery of tax where a company is left with insufficient assets

Delete clause 39.

Justification.

1. The clause empowers URA to lift the corporate veil without giving the tax payer opportunity to defend.
2. All instances of lifting the corporate veil and holding officials personally liable should be subjected to a court process where the guilt of the official is determined by Court.

Section 20 of the Companies Act provides that;

The High Court may, where a company or its directors are involved in acts including tax evasion, fraud or where, save for a single member company, the membership of a company falls below the statutory minimum, lift the corporate veil.

3. URA should not on its own determine that an arrangement was entered into with the "purpose or effect of rendering a company unable to pay tax". The conclusion should be reached by an impartial tribunal or a court.

Q. Clause 76. Repeals

In sub-clause (1) delete paragraph (a) and insert the following-
"Sections 92, 94-110"

Justification. To correct the cross reference.

R. Schedule 2. Tax Laws

Insert new paragraph (e) as follows;

"(e) Gaming Pool Betting (Control and Taxation) Act.

Justification. This is also a tax law and should therefore be included in the application of the Code.

S. Schedule IV:

Insert a new Schedule 4 as follows:

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CRITERIA FOR DETERMINING WHETHER A PERSON IS A FIT AND PROPER PERSON TO REGISTER AS A TAX AGENT

Qualities for Professional suitability.

1. In order to determine, for the purposes of this Act, the professional and moral suitability of persons proposed to register as a tax agent, the Commissioner, shall have regard to the following qualities, in so far as they are reasonably determinable, in respect of the person concerned –

- (a) his or her general probity;
- (b) his or her competence and soundness of judgment for the fulfilment of the responsibilities of the of a tax agent;
- (c) the diligence with which he or she is likely to fulfil those responsibilities; and
- (d) his or her qualifications and experience.

Previous conduct and activities

2. For the purposes of and without prejudice to the generality of paragraph 1, the Commissioner may have regard to the previous conduct and activities of the person concerned in business or financial matters, and in particular to any evidence that the person –

- (a) has been convicted of the offence of fraud, or any other offence of which dishonesty is an element; or
- (b) has contravened the provisions of any Act designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice.

Additional information

3. The Commissioner may request any person to furnish additional information as may be necessary in determining the professional suitability of a person proposing to register as a tax agent.

Justification

The Bill does not provide the criteria for assessing a fit and proper person.

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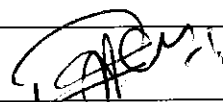
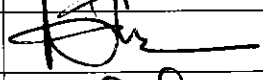
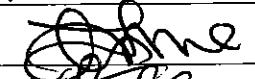
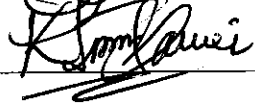
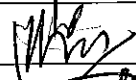

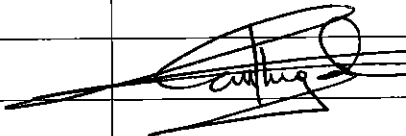
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MEMBERS OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC DEVELOPMENT WHO SIGNED THIS REPORT

NO	NAME	CONSTITUENCY	SIGNATURE
1	Hon. Kasule Robert Sebunya	Kyadondo North	
2	Hon. Okello Anthony	Kioga	
3	Hon. Musasizi Henry	Rubanda East	
4	Hon. Kyooma Xavier	Ibanda North	
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26	Hon. Ochwa David	NRM	