

PARLIAMENT OF THE REPUBLIC OF UGANDA

REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC DEVELOPMENT ON THE INCOME TAX (AMENDMENT) BILL, 2023

M. Mwanamye

**OFFICE OF THE CLERK TO PARLIAMENT
MAY, 2023**

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REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC DEVELOPMENT ON THE INCOME TAX (AMENDMENT) BILL, 2023

1.0 Introduction

The Income Tax (Amendment) Bill, 2023 was presented for First Reading on Thursday 30th March, 2023 in accordance with Rule 128 of Parliament's Rules of Procedure. Subsequently, in accordance with Rule 129, the Bill was referred to the Committee on Finance, Planning and Economic Development for examination.

Rt. Hon. Speaker and Colleagues, the Committee considered the Bill through consultations with different stakeholders, hence this report.

2.0 Object of the Bill

The object of this Bill is to amend the Income Tax Act, Cap. 340 to streamline the imposition of capital gains tax on the purchase of assets, to expand the exceptions to the provision for limiting interest deduction to include micro-finance deposit taking institutions and tier 4 micro-finance institutions; to provide for ZEP-RE (PTA Reinsurance Company) as a listed institution and for related matters.

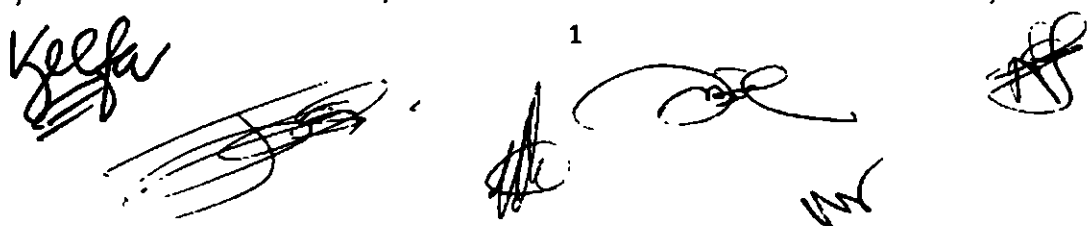
3.0 Methodology

The Committee held meetings and received memoranda from the following; -

- i) Minister of Finance, Planning and Economic Development (MFPED).
- ii) The Attorney General.
- iii) Uganda Revenue Authority (URA).
- iv) The Office of the Director of Public Prosecutions (ODPP).
- v) Uganda Law Society (ULS).
- vi) Tax Justice Alliance Uganda
- vii) Institute of Certified Public Accountants of Uganda (ICPAU)
- viii) Private Sector Foundation Uganda (PSFU).
- ix) Uganda Manufacturers Association (UMA).
- x) Price Waterhouse Coopers (PWC).
- xi) BDO East Africa Advisory Services Ltd and Signum Advocates
- xii) Libra Advocates and Consultants.
- xiii) Hon. Rachel Magoola
- xiv) Twed Properties Ltd.

4.0 Clauses withdrawn from the Income Tax (Amendment) Bill, 2023

On 13th April, 2023, the Hon. Minister of Finance, Planning and Economic Development appeared before the Committee to present the tax bills for the FY 2023/24. The Hon. Minister, in his submissions to the Committee, withdrew the

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following provisions that had earlier been included as part of the Income Tax Amendment Bill 2023;

- a) Clause 2(b) - Amendment of section 2(b) of the principal Act
- b) Clause 3 - Amendment of section 18 of principal Act
- c) Clause 4 - Amendment of section 19 of principal Act
- d) Clauses 5 (a) & (c) - Amendment of section 20 of principal Act
- e) Clause 6 - Amendment of section 21 of principal Act
- f) Clause 7 - Amendment of section 22 of principal Act
- g) Clause 9 - Amendment of section 27 of principal Act
- h) Clause 13 - Repeal of sections 49, 50 and 54 of principal Act
- i) Clause 14 - Amendment of section 77 of principal Act
- j) Clause 15 - Amendment of section 79 of principal Act
- k) Clause 22 - Substitution of section 118B of principal Act
- l) Clause 28 - Amendment of Paragraphs (b), (c) and (e) of the Third Schedule to principal Act.

4.1 Summary of withdrawn clauses

4.1.1 Definition of royalty

The Bill sought to repeal paragraph (mmm) (ii) which defines royalty to include any gain on disposal of an intellectual property right. The amendment further separates the sale of intellectual property from royalty.

4.1.2 Definition of "business income"

The Bill sought to amend section 18 of principal Act to delete reference to gains and losses on disposal of assets from the definition of Business income and repeals the definition of business asset. The amendment removes all reference to capital gains and losses. The amendment further removes the definition of a business asset from the provision of the composition of business income.

4.1.3 Collective investment schemes

The Bill sought to revise the tax regime on collective investment schemes. 

5.0 Observations and Recommendations of the Committee

Arising from the Committee's interactions with the stakeholders in 3.0, the Committee made the following observations and recommendations.

5.1 Domestic Revenue Mobilisation Strategy (DRMS)

The Ministry of Finance, Planning and Economic Development (MFPED) informed the Committee that the revenue strategy in FY 2023/24 is to continue the implementation of the Domestic Revenue Mobilization Strategy (DRMS) for the



medium term. The DRMS contains both tax policy and tax administration reforms whose core objectives are to: (i) mobilize sufficient revenue up to a tune of 16-18 percent of Gross Domestic Product (GDP) by end of FY 2026/27; and (i) provide the right incentives to support industrialization and development of domestic value chains.

The Ministry further noted that to reach the desired target of at least 16% of tax to GDP in the medium term, Government targets to increase revenue by at least 0.5% of GDP per year. This means that for FY 2023/24, Government aims to increase revenue from UGX 25.5 trillion (or 13.4% of GDP) projected in FY 2022/23 to UGX 29.3 trillion (or 14.0% of GDP) in FY 2023/24, hence additional revenues of UGX 3.7 trillion (or 0.6 percentage points of GDP).

The Committee raised concern regarding the implementation of the next phase of the DRMS, with the current strategy expected to conclude in June 2024. Further, the global economic outlook is dire, with the economy likely to have a downward trend of 0.3%, and this is shall affect domestic revenue mobilization.

The Committee further noted the negative impact of tax exemptions, which is leading to a slower growth in the Tax-GDP ratio.

Revenue sources for the projected increase of UGX 3.7 trillion shall be as described in **Table 1** below;

S/N	Source	Contribution (Trillion Ushs)
i)	Improved Levels of Economic Activity	2.7
ii)	Reduction of Tax expenditures	0.4
iii)	Tax Administration Reforms	0.6
iv)	Simplification of tax laws and others measures to enhance tax compliance	N/A
	TOTAL	3.7

Recommendation

- i. **The Committee recommends that Government's domestic revenue mobilization efforts be enhanced through the widening of the tax base.**
- ii. **MFPED should step up budgetary allocations to the Tax Policy Department and URA to enhance efforts to build capacity that includes staffing levels, digitalization of processes, training and research, analytical capacity in forecasting for both tax and non-tax revenues to implement the DRMS interventions.**

5.2 Clause 12- Amendment of section 38 of principal Act on capping of carried forward losses to 50%

MFPE informed the Committee that the amendment is intended to limit the avoidance of payment of corporation tax revenue by taking advantage of the current provision of the law which allows businesses to carry forward all tax losses indefinitely and without any restriction.

Tax Justice Alliance Uganda, in agreeing with the proposal, noted that this is a version of an alternative minimum tax. They noted that the amendment creates a liability for a taxpayer that would ordinarily not have a liability under the normal income tax regime.

Uganda Law Society(ULS) however was of the view that the proposal be dropped on the grounds that the status quo encourages innovation and risk-taking among entrepreneurs which can lead to the development of new products, services and industries. On the other hand, introducing limitations on carry forward losses could discourage such entrepreneurial efforts, potentially stiffening innovation and economic growth.

ICPAU, BDO East Africa Advisory Services Ltd and Signum Advocates also noted that the proposal disregards the fact that some businesses require a lot of preparatory time and costs at various stages such as feasibility studies, and the construction phase, which affects the time such businesses will break even. They therefore proposed that the amendment be dropped on the business reality that some business can still be loss-making even after five years. They further noted that the tax authority can technically manage the entities they believe are window dressing the losses, noting that URA under Section 90 and 91 of the Uganda Revenue Authority Act has powers to re-characterise incomes and expenditures, deny any deductions and redistribute or reallocate incomes, deductions or credits.

UMA proposed to the Committee that the time threshold for the carried forward losses should be extended from **five** to **seven** years. They justified the said proposition noting that payback period for industrial investments ranges from **seven** to **twelve** years varying from sector to sector. They further reiterated that the economic distortions occasioned by COVID-19 and global circumstances including the Russia-Ukraine war have triggered a global recession thus meriting support from government to the private sector. *(ICPAU, PSFU and ULS aligned themselves to the above proposal.)*

PWC noted that the carry forward of tax losses is a result of having excess tax deductions over a taxpayer's net income. This restriction of these carry forward

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losses means that while on the one hand, a person is allowed a deduction for expenses incurred in the production of income, the accumulated losses from these expenses will subsequently not be fully deductible. This defeats the purpose of the allowable deductions in the first place. They further noted that if passed, this provision will also discourage capital intensive investments that ordinarily take long to realise profits after years of accumulating losses or later discourage companies from undertaking significant capital investments to expand existing operations.

PWC therefore proposed that the amendment is rescinded in light of its adverse effect on capital intensive investments and difficulty in implementation. Further, that if the purpose of the proposed amendment is to discourage perpetual loss-making taxpayers, administrative measures are preferable, including URA constituting teams to majorly audit such companies. The outcome on revenue yield should then be discussed and used to inform the tax policy change. (*ULS and Libra Advocates aligned themselves to this opinion.*)

The Committee observed that while the witnesses provided a case for rejecting the proposal, their arguments were hinged on trading losses contrary to tax losses that the bill seeks to cap. It was observed that although a company makes profits and declares dividends that company would still claim tax losses and not pay any tax due to generous tax allowances.

The Committee further observed that the provision to carry forward tax losses indefinitely had been abused by tax payers and was used for tax planning purposes. It was working in favour of multinationals that had capacity to deploy tax planners at the expense of ignorance and capacity challenges of small companies that continued to beat the tax burden.

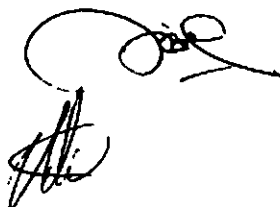
The Committee observed that the capping of tax losses is necessary to avoid incidences of tax avoidance. Further, with the amending of the principal Act, the losses arising out of the amended provisions should not be carried forward.

Recommendation

The Committee recommends;

- i. The losses are capped to five years;**
- ii. The unrecovered capital allowances for capital assets which were granted as initial allowances/accelerated depreciation as by law will be recovered over time of the asset at the depreciation rates as provided in the existing law.**

5.3 Clause 16 and 17: Insertion of section 86A of principal Act on WHT for income derived from non-resident digital service providers



The amendment seeks to impose a 5% Withholding Tax on digital services. **MFPE** informed the Committee that this tax targets tech giants including Amazon, Facebook and Google.

The Committee was informed that URA has administrative tax measures similar to this on VAT for multinational companies in as far as collecting of the proposed tax is, and hence this allays the fears advanced by some stakeholders interacted with that the tax will be transferred to the residents benefiting from supplies of such services.

The Committee observed that following the Annual Commissioner Generals of East Africa's meeting in Kampala in April, 2023, all regional tax bodies resolved to set the tax rate at 5%.

Recommendation

The Committee recommends that the proposed tax of 5% be maintained.

5.4 Exemption of taxes on salaries of State Prosecutors

The Office of the Director of Public Prosecutions (ODPP) made a presentation to the Committee regarding the amendment of Section 21 (1) (q) of the principal Act to include Public Prosecutors as persons whose employment income should be exempt from tax.

The ODPP informed the Committee that the criminal justice sector consists of five core players; the Uganda People's Defense Forces (UPDF), Uganda Police Force (UPF), the Uganda Prisons Service (UPS) and the Judiciary (Court). The DPP added that the rest of the core players in the criminal justice sector are exempt from tax, other than employees of the Office of the Directorate of Public Prosecutions.

The ODPP therefore gave as justification for the proposed amendment the following arguments;

- a) Correction of an anomaly: Prosecutors are the only actors in the criminal justice cluster whose employment income is still being taxed. This anomaly has to be corrected by way of amendment of the law.
- b) Harmony among players in the criminal justice system: There is need to harmonize the benefits and other incentives of players in the same cluster for better performance. Prosecutors for example have the same academic qualifications as their counterparts in the judiciary, work in the same environment, carry a similar workload, etc. It is only fair that their salaries are equally exempted from tax just like their counterparts.
- c) Staff retention: The rate of staff turnover at ODPP is very high. Every single year, the office loses a big number of staff to other institutions, especially the judiciary because of the tax incentive. The staff the DPP loses to the judiciary, private practice, and other agencies with better emoluments leave with very

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high skills accumulated over time that cannot easily be replaced hence leaving the ODPP in a state of stagnation over time.

- d) World over, people who render a critical service of a public good such as law enforcement are accorded special privileges in recognition of their services. In the western world for example, law enforcement officers get preferential treatment when boarding planes and other public means of transport, get special attention in health facilities, and are exempted from specific tax obligations. This is the spirit under which section 21(1)(q) of the Income Tax Act was enacted, save for the omission of public prosecutors.

The DPP further noted that through various correspondences with H.E the President, the Ministry of Finance, and the ODPP, the proposal was agreed upon as a directive from the H.E The President. Evidence to that effect was adduced to the Committee with letters dated 15th August, 2022 from H.E the President to the Minister of Finance, Planning and Economic Development directing that salaries of state prosecutors should be exempted from income tax.

The Committee, in agreeing with the above proposal by the ODPP, observed that the work of a public prosecutor contributes to the peace and stability of the country by ensuring that the laws designed for the protection and preservation of the security of the person and property are enforced. It is therefore important that the incentives accruing to the other sister agencies apply to the prosecutors so that they are motivated to work in harmony with the sister agencies in the criminal justice sector.

Recommendation

The Committee recommends that Section 21 (1) (q) of the Income Tax Act be amended to include the employment income of Prosecutors in the Office of the Director of Public Prosecutions as tax exempt employees.

5.5 Amendment of Sections 118F, 118G, 118H, and Part XII of the third schedule to principal Act - Withholding Tax on Commission by Financial Institutions to Agent Bankers

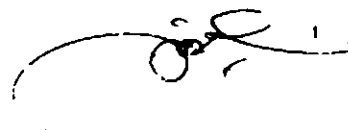
MFPEP proposed to amend Sections 118F, 118G, 118H, and Part XII of the third schedule to principal Act, in order to provide for withholding tax on all commission agents.

The Ministry noted that this will ease administration of tax by promoting voluntary compliance and increase revenue because it sought to widen the tax base. The objective is to expand application of tax on commissions to agent bankers and make the WHT on commissions a final tax. Further to increase the rate from 10% to 15%.

Recommendation

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The Committee recommends that Sections 118F, 118G, 118H, Part XII and XIII of the third schedule to the principal Act be amended to provide for withholding tax on all commission agents at a rate of 15%.



PROPOSED AMENDMENTS TO THE INCOME TAX (AMENDMENT) BILL, 2023

Clause 2: Amendment of Cap.340

Clause 2 is amended-

(a) by inserting a new paragraph immediately before paragraph (a) to read as follows-

by substituting for paragraph (n) the following-

“‘company’ means a body of persons corporate or unincorporated, whether created or recognised under the law in force in Uganda or elsewhere but does not include a trust or partnership.”

(b) by deleting paragraph (b).

Justification

- (1) To exclude the gain on the disposal of any right or property that gives rise to royalty; and
- (2) To amend the definition of company to exclude unit trusts. This is also a consequential amendment to clauses 5 and 6.

Clause 3: Amendment of section 18 of principal Act

Delete clause 3.

Justification

1. To reinstate gains and losses as derived by a person on the disposal of a business asset to mean business income; and
2. To exclude trading stock or a depreciable asset from forming ‘a business asset’

Clause 4: Amendment of section 19 of principal Act

Delete clause 4

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Justification

To re instate the amount of any gain derived by an employee on disposal of a right or option to acquire shares under an employee share acquisition scheme as part of employment income.

Clause 5: Amendment of section 20 of principal Act

Clause 5 is amended-

- (a) by deleting paragraphs (a);
- (b) in paragraph (b), by substituting for the words "including winnings derived from sports betting and pool betting" the words "including winnings derived from betting"; and
- (c) by deleting paragraph (c).

Justification

1. To exclude the profit on the contribution paid or credited to a participant of a collective investment scheme from forming part of property income; and
2. To separate the taxation of winnings for betting and gaming.

Clause 6: Amendment of section 21 of principal Act

Substitute clause 6 with the following-

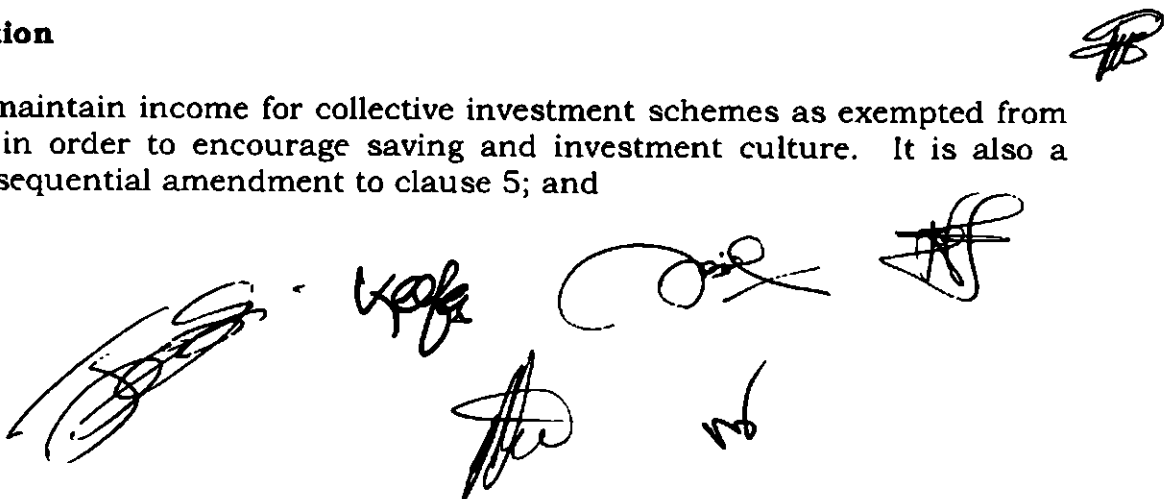
"Amendment of section 21 of principal Act

Section 21 of the principal Act is amended by inserting immediately after paragraph (qa), the following-

The employment income of a prosecutor in the Office of the Director of Public Prosecution;

Justification

1. To maintain income for collective investment schemes as exempted from tax in order to encourage saving and investment culture. It is also a consequential amendment to clause 5; and



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2. To exempt the employment income of a prosecutor in the Office of the Director of Public Prosecution from taxation.

Clause 7: Amendment of section 22 of principal Act

Delete clause 7

Justification

This is a consequential amendment to clause 3 which reinstates gains and losses as derived by a person on the disposal of a business asset to mean business income

Clause 9: Amendment of section 27 of principal Act

Delete clause 9.

Justification

This is a consequential amendment to clause 3 which reinstates gains and losses as derived by a person on the disposal of a business asset.

Insertion of new clause in the bill

The Bill is amended by inserting a new clause immediately after clause 11 to read as follows-

"27B Unrecovered Capital Allowances

Unrecovered capital allowances which were granted as initial allowances under the repealed section 27A or accelerated depreciation may be recovered over the useful life of the asset at the depreciation rate prescribed in Sixth Schedule to the Act."

Justification

To allow for recovery of capital expenditures.

Clause 12: Amendment of section 38 of principal Act

Clause 12 is amended by inserting a new sub clause immediately after the proposed (5a) to read as follows-

"(5b) The Minister may, with the approval of Parliament, extend the period of five years referred to in subsection (5a).

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Clause 21. Amendment of section 890 of principal Act

Delete clause 21

Justification

The committee was not availed information on the operationalisation of this clause to determine its effect on the economy.

Clause 22: Amendment of section 118B of principal Act

Delete clause 22.

Justification

This is a consequential amendment to clause 3 which reinstates gains and losses as derived by a person on the disposal of a business asset to mean business income.

Insertion of new clause

The Bill is amended by inserting a new clause immediately after clause 23 to read as follows-

"Amendment of section 118F of principal Act

Section 118F of the principal Act is amended-

- (a) by numbering the existing section 118F as subsection 118F (1)
- (b) by inserting immediately after subsection 118F (1), the following-
- (3) A financial institution that makes a payment of a commission to an agent carrying on agent banking shall withhold tax on the gross amount of the payment at the rate prescribed in Part XII of the Third Schedule"

Justification

To introduce a withholding tax on financial institutions that make a payment of a commission to an agent carrying on agent banking.

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Justification

To create an exception for taxpayers, with the approval of parliament to extend carry forward losses beyond the five years.

Clause 13: Amendment of sections 49, 50 and 54 of principal Act

Delete clause 13.

Justification

This is a consequential amendment to clause 3 which reinstates gains and losses as derived by a person on the disposal of a business asset to mean business income.

Clause 14: Amendment of section 77 of principal Act

Delete clause 14.

Justification

This is a consequential amendment to clause 3 which reinstates gains and losses as derived by a person on the disposal of a business asset to mean business income

Clause 15: Amendment of section 79 of principal Act

Delete clause 15.

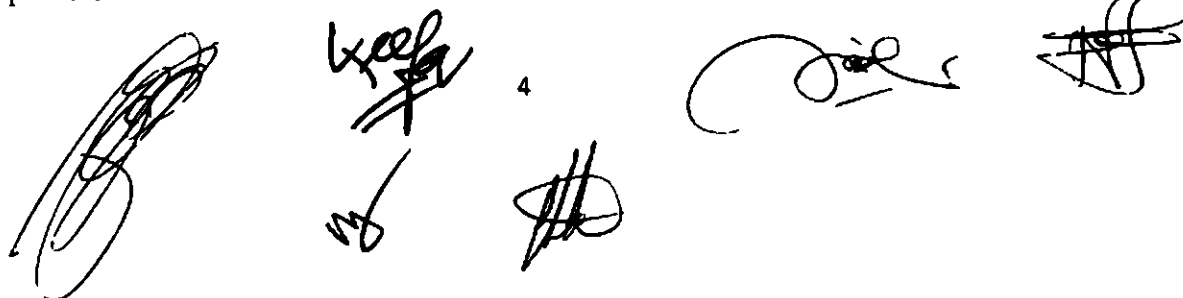
Justification

Maintain royalty and intellectual property together for sources of income.

Clause 16: Insertion of section 86A of principal Act

Clause 16 is amended by inserting a new sub clause immediately after sub clause (3) to read as follows-

"(4) A non-resident person under this section shall lodge a tax return with the Commissioner General within fifteen days after the end of the tax period."

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Justification

To remove the burden of remitting withholding tax on digital services from the Ugandan citizens.

Clause 17: Amendment of section 87 of principal Act

Delete clause 17

Justification

To avoid the practical challenges of consumers withholding tax on digital services which would transfer liability to them in the event of failure to withhold.

Clause 18. Amendment of section 89A of principal Act

Delete clause 18

Justification

The committee was not availed information on the operationalisation of this clause to determine its effect on the economy.

Clause 19: amendment of section 89GC of principal Act

Delete clause 19

Justification

The committee was not availed information on the operationalisation of this clause to determine its effect on the economy.

Clause 20. Amendment of section 89GE of principal Act

Delete clause 20

Justification

The committee was not availed information on the operationalisation of this clause to determine its effect on the economy.

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Clause 24: Insertion of section 118I in principal Act

Delete clause 24.

Justification

This is a consequential amendment to clause 5 which excludes the profit on the contribution paid or credited to a participant of a collective investment scheme from forming part of property income

Clause 25: Amendment of section 122 of principal Act

Clause 25 is substituted with the following-

"Amendment of section 122 of principal Act.

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

(ac) tax has been withheld under section 118G and 118F;"

Justification

To expand the application of tax on commissions to agents carrying on agent banking and make the withholding tax on commissions a final tax.

Clause 28: Amendment of Third Schedule to principal Act

Clause 28 is amended-

- (a) by deleting paragraph (b);
- (b) by deleting paragraph (c);
- (c) substitute for paragraph (d), the following-

"The withholding tax rate applicable to winnings from betting is 15%; and

- (d) by inserting new paragraphs immediately after paragraph (d) to read as follows-

"in Part XII by substituting for paragraph (2) the following-

The rate of withholding tax on payment of commission-

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(a) paid by telecommunications service providers on airtime distribution and mobile money services; or

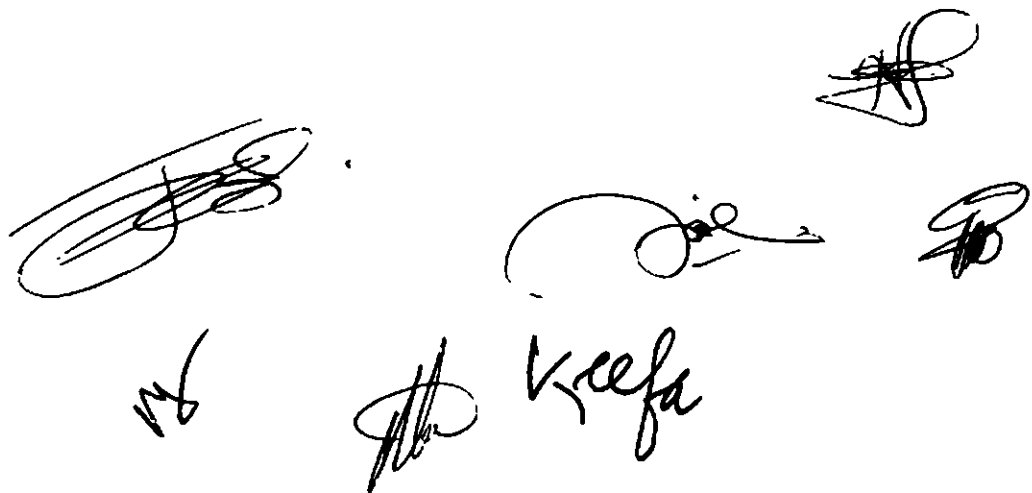
(b) paid by financial institutions to agents carrying on agent banking

is 15% of the gross amount of the payment.”

(e) by deleting paragraph (e).



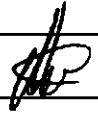
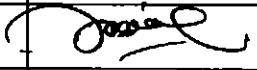
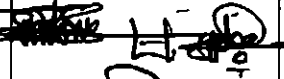
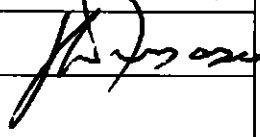
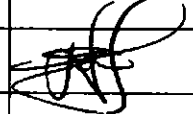

Justification


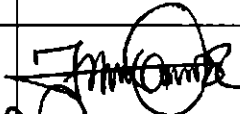
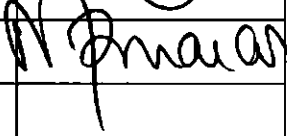
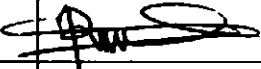
1. This is a consequential amendment to clauses 3 which reinstates gains and losses as derived by a person on the disposal of a business asset to mean business income and 5 which exclude the profit on the contribution paid or credited to a participant of a collective investment scheme from forming part of property income.
2. To expand the application of tax on commissions to agents carrying on agent banking and make the withholding tax a final tax.

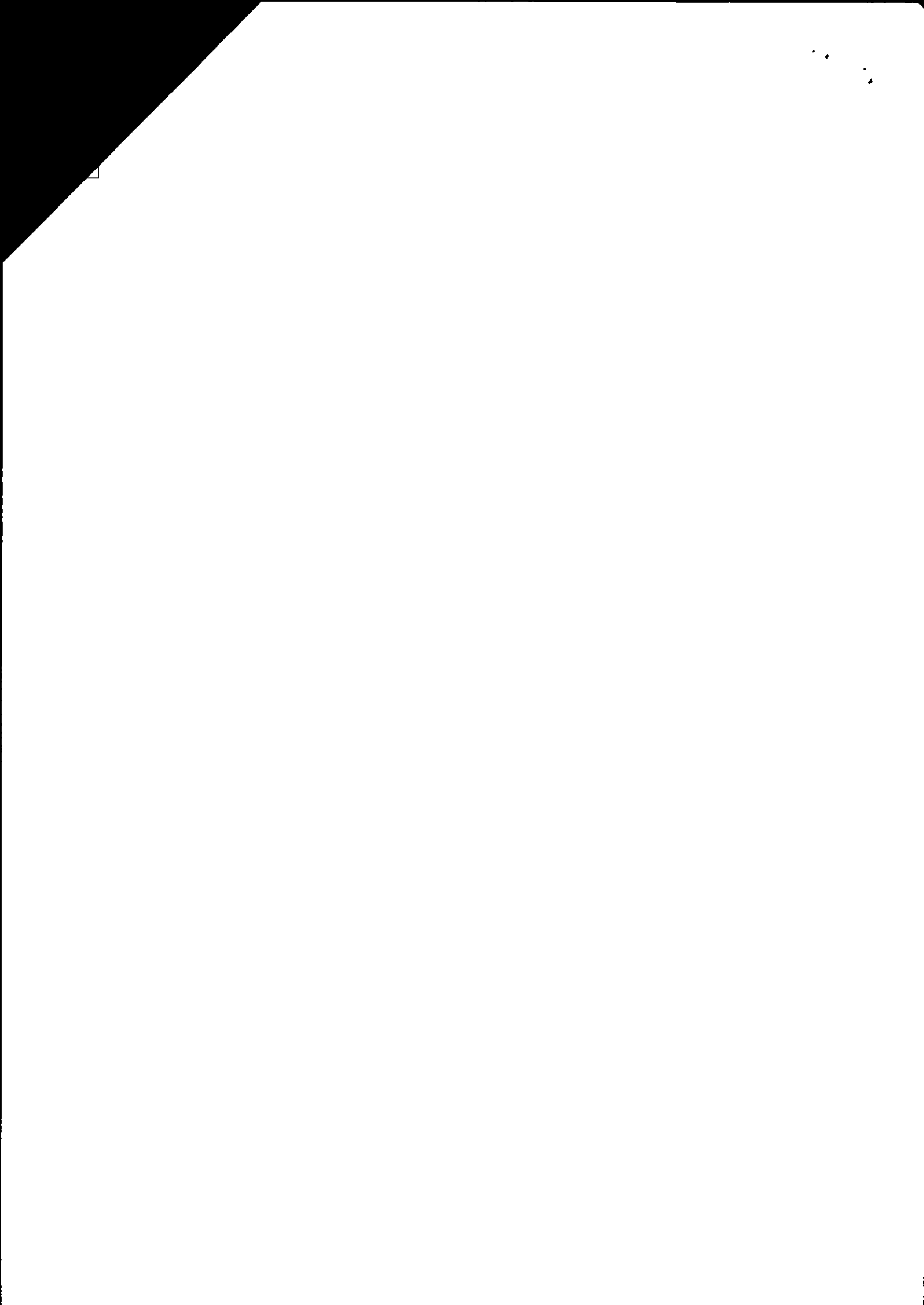


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MEMBERS OF THE COMMITTEE FINANCE, PLANNING AND ECONOMIC DEVELOPMENT; THE INCOME TAX (AMENDMENT) BILL OF 2022

NO	NAME	CONSTITUENCY	SIGNATURE
1	Dr. Keefa Kiwanuka C/P	Kiboga East County	
2	Hon. Avur Jane Pacuto D/CP	DWR Pakwach	
3	Hon. Wamakuyu Ignatious Mudimi	Elgon County	
4	Hon. Kankunda Amos Kibwika	Rwampara County	
5	Hon. Atima Jackson	Arua Central	
6	Hon. Bataringaya Basil	Kashari North County	
7	Hon. Asimwe K Enosi	Kabula County	
8	Hon. Aleper Moses	Chekwii County	
9	Hon. Ssejoba Isaac	Bukoto County Mid West	
10	Hon. Tayebwa Herbert Musasizi	Kashongi County	
11	Hon. Lematia John	Ayivu West County	
12	Hon. Kyooma Xavier Akampurira	Ibanda County North	
13	Hon. Nakut Faith Loru	DWR Napak	
14	Hon. Nangoli Gerald	Elgon North County	
15	Hon. Katali Loy	DWR Jinja	
16	Hon. Ochai Maximus	West Budama County North	
17	Hon. Opolot Patrick Isiagi	Kachumbala County	
18	Hon. Wanda Richard	Bungokho Central	

19	Hon. Okwir Samuel	Moroto County	
20	Hon. Nabukeera Hanifa	DWR Mukono	
21	Hon. Muwanga Kivumbi	Butambala County	
22	Hon. Ssenyonyi Joel	Nakawa West	
23	Hon. Nandala Mafabi	Budadiri West County	
24	Hon. Kalule Flavia	Jinja West County	
25	Hon. Akol Anthony	Kilak North	
26	Hon. Luttamaguzu Semakula P.K	Nakaseke South	
27	Hon. Ocan Patrick	Apac Municipality	
28	Hon. Omara Paul	Otuke County	
29	Hon. Muhammad Nsereko	Kampala Central Division	
30	Hon. Aciro Paska Menya	DWR Pader	
31	Hon. Masaba Karim	Mbale, Industrial Division	





PARLIAMENT OF UGANDA

**MINORITY REPORT ON THE INCOME TAX (AMENDMENT)
BILL, 2023**

MAY, 2023

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1.0 INTRODUCTION

On 30th March 2023, the Minister of Finance, Planning and Economic Development laid the Income Tax (Amendment) Bill 2023 before Parliament and referred it to the Committee on Finance, Planning and Economic Development for scrutiny.

The object of the Income Tax (Amendment) Bill, 2023 is to amend the Income Tax Act, Cap. 340 to streamline the imposition of capital gains tax on the purchase of assets, to expand the exceptions to limiting interest deduction to include micro-finance deposit-taking institutions and tier 4 micro-finance institutions; to provide for ZEP-RE (PTA Reinsurance Company) as a listed institution and for related matters.

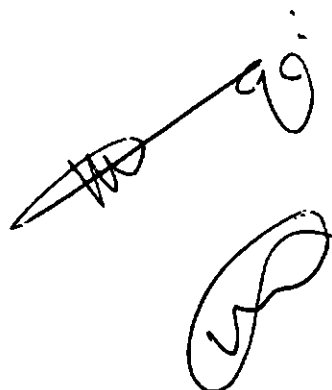
The Committee on Finance, Planning and Economic Development scrutinised the Bill and prepared a report.

Pursuant to Rule 205 of the Rules of Procedure of the Parliament of Uganda, this Minority Report indicates dissenting opinions from the majority of the Committee

2.0 AREAS OF DISSENT

Dissenting opinions regard;

- a) Exemption of taxes on employment income of state prosecutors in the Office of the Director of Public Prosecution
- b) Withholding tax on commission by Financial Institutions to Agent Bankers and by telecommunications service providers to mobile money agents
- c) Capping of carried forward losses to 50%
- d) Imposition of tax on non-residents providing digital services

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3.0 DISSENTING OBSERVATIONS

3.1 Exemption of taxes on employment income of state prosecutors in the Office of the Director of Public Prosecution

3.1.1 Procedural aspects

By proceeding to consider the request of the DPP to exempt the employment income of state prosecutors in the Office of the Director of Public Prosecution from taxes, the Committee breached Rule 199 (1) and (4) of the Parliamentary Rules of Procedure.

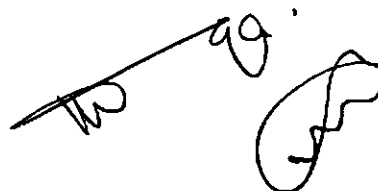
Rule 199 (1) of the Parliamentary Rules of Procedure mandates every Committee to confine its deliberations on matters referred by the House, and in the case of a Committee on a Bill, to the Bill committed to it and any relevant amendments.

The facts of the matter are that the Income Tax (Amendment) Bill 2023, which Parliament referred to the Committee on Finance, Planning and Economic Development laid on 30th March 2023, did not have any provision exempting employment income of prosecutors in the Office of the DPP from tax. It was during the examination of the Bill, on 17th April 2023 that the DPP appeared before the Committee with a request that Section 21 (1) (q) of the Income Tax Act be amended to exempt the employment income of the prosecutors in the office of the DPP. This was alien to the Rules of Procedure and ought to have been rejected at that stage, but when the issue was raised, the Chairperson ruled otherwise.

Later, the Chairperson backtracked on this issue and undertook to raise it on the floor of Parliament so that the DPP's request is regularised. However, on 27th April 2023, the Speaker informed the House that he received a petition from the Office of the Director of Public Prosecutions asking Parliament to amend the Income Tax Act to exempt the employment income of the prosecutors in the office of the DPP from taxation. This procedure was irregular and cannot inform amendment of the Bill under scrutiny.

Rule 199 (4) of the Parliamentary Rules of Procedure envisages that instruction to a committee extending or restricting the order of reference may be moved in the House, after notice, on any day prior to the report of the Committee.

Such petition, moreover introduced by the presiding officer, is not what is envisaged under Rule 199 (4) of the Rules. Indeed, the Speaker did not mention anywhere that the DPP's petition should be handled together with the amended Bill. The Speaker did not lay a copy of the petition as required by the

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Rules, and during report writing, none of that nature was brought to the attention of the Committee

It was, therefore, erroneous and illegal for the Committee to proceed with the DPP's request, and the subsequent amendment to Section 21 (1) of the Income Tax Act is unlawful for flouting the Parliamentary Rules of Procedure. This finding is premised on the principle set out in the case of **Oloka-Onyango & 9 Ors v Attorney General (Constitutional Petition No. 08 of 2014)**, where it was held that "Parliament as a law-making body should set standards for compliance with the Constitutional provisions and with its own Rules. The enactment of the law is a process, and if any of the stages therein is flawed, that vitiates the entire process and the law that is enacted as a result of it."

3.1.2 Substantial aspects

The dissenting view that the Committee wrongfully allowed the amendment to exempt prosecutors in the Office of the DPP from taxation is based on the following reasons:

i) Tax base erosion

In a letter that the Minister of Finance wrote to the President dated 06th January 2023, he indicated that the Government has already granted many tax exemptions in the various tax laws, and there is no fiscal space to grant any further exemptions because exemptions lead to loss of revenue to Government. He added further that exempting the income of State Prosecutors alone would lead to an additional loss of revenue amounting to Shs.7.5 billion annually, at the current wage and the number of employees.

In general terms, tax expenditures cost this country trillions of shillings. In a period of five years, from 2016/2017 to 2020/2021, Uganda lost over UGX 21.5 trillion in revenue foregone. This is almost the discretionary budget for Uganda for 2023/2024. Table 2 below shows the details of revenue foregone in the five financial years from 2017/2018 to 2020/2021.

Table 1: Revenue foregone in the period between 2017/2018 and 2020/2021

Exemption category	FY2016/17 (UGX billion)	FY2017/18 (UGX billion)	FY2018/19 (UGX billion)	FY2019/20 (UGX billion)	FY 2020/21 (UGX billion)
Total income tax loss	391.85	453.97	1,009.84	815.21	2,358.67
VAT Exemptions	815.15	1,323.55	1,434.34	1,855.49	2,195.34
Customs Tax Exemptions	960.02	912.46	1,716.37	2,065.15	3,168.51
Total Exemptions	2,167.02	2,689.80	4,160.55	4,771.85	7,722.52

Source: URA

Taking the example of income tax exemptions alone, it is clear that Uganda loses lots of tax revenue. **Table 2** below shows a few selected entities with income tax exemptions 2016/2017 to 2020/2021

Income tax Exemptions	2016/17	2017/18	2018/19	2019/20	2020/21
Employment income of armed forces	60.6	72.72	83.1	95.13	95.13
Incomes of collective investment schemes	0	0.2	0.22	0.75	2.19
Employment incomes of EADB employees	1.48	1.16	0.84	0.82	0.82
Business incomes of new investors in new plants and machinery for agro-processing	3.4	8.72	32.2	5.13	27.98
10-year tax holiday on business income tax for new investors manufacturing finished consumer and capital goods for export	4.16	19.04	18.45	11.33	4.97
Employment income, other than salary, of a person employed as a member of Parliament	102.91	99.77	98.73	126.64	126.64
Income of Bujagali Hydro Power Project	0	0	108.4	100.04	90.74
Business and investment income tax for SACCOS	0.34	1.95	11.37	7.95	25.45
Lump sum payment from employment income tax	3.84	4.01	4.46	3.44	0
Employment income of private retirement schemes	3.02	13.76	8.21	8.97	11.69
Dividends paid by a publicly traded company	3.49	0.62	1.3	0	0.73
Total loss from exemptions	183.24	221.95	367.26	360.2	386.34

Source: MFPEd

Further, in the letter dated 06th January 2023 cited above, the Minister indicated that in FY 2021/22, the revenue foregone on account of tax expenditures amounted to Shs. 2,862 billion (equivalent to 1.6% of GDP). Adding that the FY 2022/23 revenue target of 14.1% of GDP is still below the potential revenue effort of 18% by the end of FY 2024/25 as envisaged in the Domestic Revenue Mobilization Strategy and National Development Plan III

ii) Floodgates for exemptions and apathy to work over non exemptions

Exempting any given group of civil servants from paying tax on their employment income creates a non-neutral tax system, erodes the tax base and undermines tax morale. It will open floodgates whereby more people will request similar treatment.

State attorneys in the Ministry of Justice and Constitutional Affairs will demand tax exemptions on their salaries. Additionally, other agencies employ Attorneys and Prosecutors, who will certainly seek to benefit from this bonanza, for

instance: the Uganda Revenue Authority, Uganda National Bureau of Standards, Bank of Uganda, Kampala Capital City Authority, Uganda National Roads Authority; among others, to demand similar tax treatment. Question shall we be able to accommodate and sustain all these important officers on exemptions without a significant impact on the economy?

iii) Equity and Fairness

It is a basic understanding that exempting one group of people while taxing others undermines a good tax system's core principles of equity and fairness. Fairness in taxation requires that the burden among taxpayers is distributed equitably and justly. Continued tax exemptions and waivers significantly shift the burden of raising national revenue to individuals without any exempted bracket. Therefore, exempting the income of State Prosecutors would be unfair to other Government and non-Government employees, including civil servants and the general public whose incomes remain taxable.

It is not true that the Prosecutors fall in the same category of Government as judicial officers. It is elementary that the judicial officers are housed under the judiciary, an arm of the Government, and their exemption is premised on Article 128 (7) of the Constitution.

iv) Motive and agenda

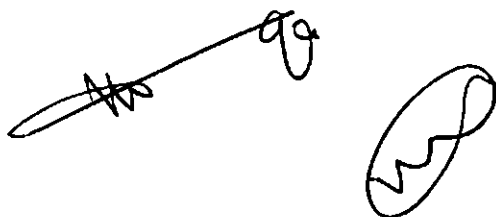
Without specific accusations against anyone, it is suspicious for the DPP to advocate and aggressively push for this exemption when her office is investigating and handling files relating to the misappropriation of corrugated iron sheets against a significant number of Ministers and Members of Parliament. For justice's sake, one would opine that let the DPP first handle and conclude the files against the accused and then seek this exemption. It defeats all tenets of fairness where the accused are the very people to debate and decide either for or against the person investigating them on graft-related charges.

Recommendation

1) Reject the proposal;

- i. for flouting the Parliamentary Rules of Procedure, and**
- ii. it will erode the tax base and cause a loss of revenue to the Country through unnecessary tax exemptions.**

2) Investigate all the existing tax exemptions and waivers with a view to disallowing them.

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3.2 Withholding tax on commission by financial institutions to agent bankers and by telecommunications service providers to mobile money agents

Amend Section 118F and Part XII of the third schedule to provide for withholding tax on all commission agents and repeal Section 118G, Section 118H and Part XIII of the third schedule.

The amendment seeks to rephrase Section 118F (1) of the ITA as follows, "**A Telecommunications service provider who makes a payment of a commission for airtime distribution or provision of mobile money services shall withhold tax on the gross amount of the payment at the rate prescribed in Part XII of the Third Schedule**"

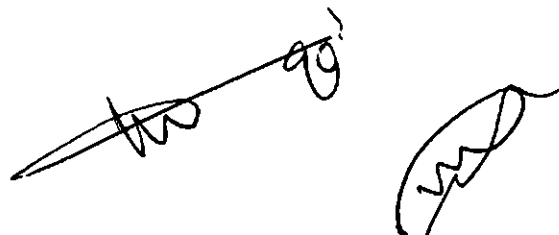
Section 118F (2) requires a Financial Institution that makes a payment of a commission for agency banking or to an agent banker to withhold tax on the gross amount of the payment at the rate prescribed in Part XII of the Third Schedule.

Part XII of the Third Schedule to the Income Tax Act imposes a Rate of withholding tax on payments of commission to Agent Bankers and commission paid by telecom service providers on airtime distribution and mobile money at a rate of 10% of the gross amount of the payment.

In justification of the amendment, the Minister of Finance stated that this proposal was from the industry and will ease the administration of tax by promoting voluntary compliance and increase revenue because it seeks to widen the tax base and the tax withheld will/is not creditable. A position which the Committee has agreed with

In dissent, it should be recalled that the introduction of mobile money and agency banking in our economy was intended to ensure wide and extensive financial inclusion of all persons across the Country and ease business operations through smoothed transfers and payments across the board. Taxation of the agents is certainly overbearing and will drive some out of business – thus defeating the intended purpose.

Many youths in this sector struggle to raise the rent for where they operate businesses and reside, plus other attendant costs. All these costs are covered by the little commission they earn from the transactions they handle. Imposition of tax on these people is not likely to do good to the economy. As the country

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continues devising means of curbing unemployment, the sectors that have opened employment opportunities for the jobless shouldn't be clogged with prohibitive taxes.

Therefore, tax should be imposed depending on given thresholds or be stayed for 3 (three) years to allow more people to enrol in this sector.

Recommendation

These amendments should be revised, and S. 118F be amendment by lowering the tax rates. This will ensure increased financial inclusion and ease business operation by all enterprises and individuals who earn a living on mobile money and agency banking.

3.3 CARRY FORWARD LOSSES

Section 38 of the ITA provides for carry-forward losses by allowing an "assessed loss" to be carried forward and allowed as a deduction in determining the taxpayer's chargeable income in the following year of income.

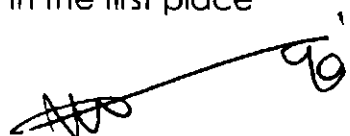
The amendment seeks to limit carrying forward assessed loss to a period of five years, after which a taxpayer shall only be allowed a deduction of fifty per cent of the loss carried forward at the beginning of the following year of income in determining the taxpayer's chargeable income in the subsequent years of income.

Let us put this into context;

What is an assessed loss, and why carrying it forward is important for a business?

According to Section 38 (1) of the Income Tax Act, an "assessed loss" occurs where, for any year of income, the total amount of income included in a taxpayer's gross income is exceeded by the total amount of deductions allowed to the taxpayer.

PWC noted that the carry forward of tax losses is a result of having excess tax deductions over a taxpayer's net income. This restriction of these carry-forward losses means that while, on the one hand, a person is allowed a deduction for expenses incurred in the production of income, the accumulated losses from these expenses will subsequently not be fully deductible. This defeats the purpose of the allowable deductions in the first place



There are limitations to this principle:

Where, during a year of income, there has been a change of 50% or more in the underlying ownership of a company, as compared with its ownership one year previously, the company is not permitted to deduct an assessed loss in the year of income or in subsequent years, unless the company, for a period of two years after the change or until the assessed loss has been exhausted if that occurs within two years after the change. –

(a) continues to carry on the same business after the change as it carried on before the change; and

(b) does not engage in any new business or investment after the change, where the primary purpose of the company or the beneficial owners of the company is to utilise the assessed loss so as to reduce the tax payable on the income arising from the new business or investment

It should be noted that likely abuse and leakage of a tax associated with an open-ended claim to carry forward loss can be cured through proper implementation of the existing as shown hereunder;

In case of self-assessments by taxpayers under S. 20 of the Tax Procedures Code Act provides. S. 23(1)(a) of the Tax Procedures Code Act sets out a safety net whereby URA is granted powers to make an additional assessment amending a tax assessment made for a tax period to ensure that for an assessed loss under the Income Tax Act, the taxpayer is assessed the correct amount of the assessed loss for the period

Additionally, under Section 90 of the Income Tax Act the Commissioner General is entitled to make adjustments to ensure that the income and expenditures resulting from transactions involving related parties are consistent with the arm's length principle.

Further, Section 91 avails the Commissioners with another instrument to track and delimit possible leakages. S 91 (i) states that

For the purposes of determining liability to tax under this Act, the commissioner may—

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- (a) recharacterise a transaction or an element of a transaction that was entered into as part of a tax avoidance scheme;**
- (b) disregard a transaction that does not have substantial economic effect; or**
- (c) recharacterise a transaction the form of which does not reflect the substance.**

In a nutshell, where the Commissioner has properly utilised Sections 90 and 91 of the Income Tax Act and S 23(1)(a) of the Tax Procedures Code Act, there would be limited tax leakages through abuse of the carry forward principle.

BDO East Africa and Signum Advocates, while appearing before the Committee, argued that the proposal disregards the fact that some businesses require much preparatory time at various stages such as feasibility studies, construction phase, etc. This affects the time such an entity will break even. Expecting such entities to break even in five years may be a short time.

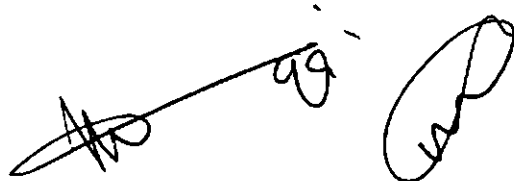
Recommendation

Reject the amendment since it is likely to cripple infrastructure-intensive businesses that incur large startup investment costs and significant losses before breaking even.

3.4 IMPOSITION OF TAX ON NON-RESIDENTS PROVIDING DIGITAL SERVICES

Clause 16 seeks to introduce a tax on non-residents providing digital services, including transport, television, sales, accommodation, online gaming and data services. This provision will have direct implications on business, education and other spheres of life that rely on digital / internet services. "Digital service" targeted include online advertising services, data services; services delivered through an online marketplace or intermediation platform, including an accommodation online marketplace, a vehicle hire online market place and any other transport online marketplace; digital content services, including accessing and downloading of digital content; online gaming services; cloud computing services; among others

Clause 28 seeks to set the income tax rate for a non-resident deriving income from digital services at 5%, whereas clause 29 provides that the withholding tax imposed under 86A shall be final.



Mr. Okuja, explains that the proposal is to target specific digital revenue streams for taxation and capture payments by persons in Uganda to non-residents for digital services through withholding tax rules. The proposed measures impose a WHT obligation as a final tax that will supposedly act as a collection mechanism for payments made by residents in Uganda to non-residents in respect of digital services. In the absence of a tax treaty or physical presence, the overall effect will transfer the liability to Ugandan consumers.

Last year, the government implemented administrative measures to begin collecting Value Added Tax ("VAT") on digital services provided by non-residents to private individuals who are not registered for VAT in Uganda. VAT being a consumption tax it goes without saying that the tax is currently borne by Ugandan users of such digital services.

Therefore, the new tax is imposed on the income or profit of businesses of the service providers. Mr. Okuja argues that Countries that have implemented digital services tax have succeeded because the multinational entities providing these digital services have some form of physical or legal presence (by way of an office or an agent) in those countries or by exploiting treaty on reporting and other transparency mechanisms under existing tax treaties with the countries where the multinational entities are located. Thus, Ugandan taxpayers might bear this tax, thereby increasing the cost of internet services. Therefore, there is need for a clear mechanism through which this tax will be imposed without leading to an escalation of internet costs in Uganda.

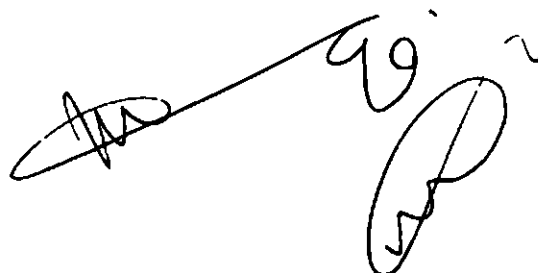
Besides, other countries in the region, including Kenya and Tanzania, levy a similar tax on digital services, albeit at lower rates of 1.5 per cent and 2 per cent, respectively. A rate of 5 per cent is likely to discourage such companies from investing in Uganda and should be reconsidered by the government.

Recommendation

A lower tax rates of 2 per cent be imposed pending further studies on the effect of this tax on the Country's technological advancement.

Conclusion

The proposals herein be considered

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PROPOSED AMENDMENTS

DIGITAL SERVICES TAX RATE;

Clause 28. Amendment of Third Schedule to principal Act

Substitute Clause 28 subclause (a) with the following,

(a) in Part IV, by inserting immediately after item 2 the following –

“3 The income tax rate applicable to a non-resident deriving income from digital services is 2% ”;

Recommendation

To impose a lower tax rate of 2 per cent pending further studies on the effect of this tax on the Country's technological advancement.

TAX ON COMMISSION AGENTS

By inserting new paragraphs immediately after paragraph (e) under clause 28 to read as follows-

(e) The rate of withholding tax on payment of commission-

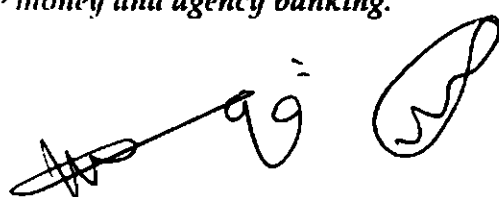
(i) paid by telecommunications service providers on airtime distribution and mobile money services, or

(ii) paid by financial institutions to agent bankers, is shown hereunder,

Chargeable Transactions	Rate of tax on the Commission earned
0 – but not exceeding shs 3,000,000	NIL
Exceeding shs. 3,000,000 but not exceeding shs 5,000,000	5%
Exceeding shs. 5,000,000 but not exceeding shs. 10,000,000	10%
Exceeding shs. 10,000,000	15%

Justification

To revise and lower the tax rates for taxes imposed on Commission Agents. This will ensure increased financial inclusion and ease business operation by all enterprises and individuals who earn a living on mobile money and agency banking.



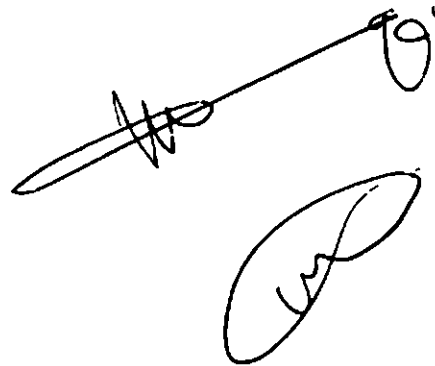
CARRY FORWARD

Clause 12: Amendment of section 38 of the principal Act

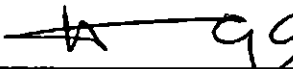

Delete clause 12

Justification

The provision discourages capital-intensive investments that ordinarily take long to realise profits after years of accumulating losses or later discourage companies from undertaking significant capital investments to expand existing operations.

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SIGNATURES OF MEMBERS IN SUPPORT OF THE MINORITY REPORT ON THE INCOME TAX (AMENDMENT) BILL, 2023

NO.	NAME	CONSTITUENCY	SIGNATURE
1.	Mwanga Kivumbi M	Ruhimbuzi	
2.	NABUKEERA HANIFA	MUKENDO DISTRICT	
3.	HON NABUNDA AYAZI	BUDADIRI WEST	