

Read on 03/04/2018 by Hon.
David Bahati

BILLS
SUPPLEMENT No. 3

29th March, 2018.

BILLS SUPPLEMENT

to the Uganda Gazette No. 16, Volume CXI, dated 29th March, 2018

Printed by UPPC, Entebbe by Order of the Government

Bill No. 9

Income Tax (Amendment) Bill

2018

THE INCOME TAX (AMENDMENT) BILL, 2018

MEMORANDUM

The object of this Bill is to amend the Income Tax Act, Cap. 340 to provide for exception of expenditure incurred during a year of income in acquiring returnable containers as a deductible expense; to empower the Minister to make regulations for tax accounting for Islamic financial transactions; to provide for taxation of income arising from change of ownership of a business; to redefine immovable property; to provide for restrictions on deductible interest; to provide for a new definition of mining exploration rights and to repeal the definition of petroleum exploration rights; to include a transfer for the whole interest of the transferor in a mining right or petroleum agreement; to prescribe a tax rate for a person with assessed losses that are carried forward; to provide for furnishing of returns of income; to provide for payments for winnings of betting and gaming; to provide for withholding tax on payments for agricultural supplies and commissions paid by telecommunications service providers on airtime distributions and mobile money transactions; and for related matters.

MATIA KASAIJA, (MP)

Minister of Finance, Planning and Economic Development.

THE INCOME TAX (AMENDMENT) BILL, 2018

ARRANGEMENT OF CLAUSES

Clause

1. Commencement
2. Amendment of Cap. 340.
3. Amendment of section 22 of principal Act.
4. Amendment of section 25 of principal Act.
5. Amendment of section 26 of principal Act.
6. Amendment of section 38 of principal Act.
7. Insertion of section 55A of principal Act.
8. Amendment of section 75 of principal Act.
9. Amendment of section 78 of principal Act
10. Amendment of section 79 of principal Act.
11. Amendment of section 88 of principal Act.
12. Repeal of section 89 of principal Act.
13. Amendment of section 89A of principal Act.
14. Amendment of section 89G of principal Act.
15. Amendment of section 89GE of principal Act
16. Insertion of section 92A in principal Act.
17. Amendment of section 118C of principal Act.
18. Insertion of sections 118E and 118D in principal Act.
19. Amendment of section 122 of principal Act.
20. Amendment of Third Schedule to principal Act.

A Bill for an Act

ENTITLED

THE INCOME TAX (AMENDMENT) ACT, 2018.

An Act to amend the Income Tax Act, Cap. 340 to provide for exception of expenditure incurred during a year of income in acquiring returnable containers as a deductible expense; to empower the Minister to make regulations for tax accounting for Islamic financial transactions; to provide for taxation of income arising from change of ownership of a business; to redefine immovable property; to provide for restrictions on deductible interest; to provide for a new definition of mining exploration rights and to repeal the definition of petroleum exploration rights; to include a transfer for the whole interest of the transferor in a mining right or petroleum agreement; to prescribe a tax rate for a person with assessed losses that are carried forward; to provide for furnishing of returns of income; to provide for payments for winnings of betting and gaming; to provide for withholding tax on payments for agricultural supplies and commissions paid by telecommunications service providers on airtime distributions and mobile money transactions; and for related matters.

BE IT ENACTED by Parliament as follows:

1. Commencement

This Act shall come into force on 1st July, 2018

2. Amendment of Cap 340.

The Income Tax Act, in this Act referred to as the principal Act is amended in section 21—

- (a) by repealing paragraph (ad);
- (b) by inserting immediately before subsection (2) the following new paragraphs—

“(ac) the income of a developer of an industrial park or free zone whose investment capital is at least two hundred million United States Dollars for a period of ten years from the date of commencement of construction;

(af) the income of an operator in an industrial park or free zone or other business outside the industrial park or free zone whose investment capital is at least thirty million Dollars in the case of a foreigner or ten million United States Dollars in the case of a Ugandan citizen for five years from the date of commencement of business.”.

3. Amendment of section 22 of principal Act.

Section 22 of the principal Act is amended in subsection (1) by inserting immediately after paragraph (c) the following paragraph—

“(ca) interest on a mortgage from a financial institution as expenditure incurred by an individual to acquire or construct premises that generate rental income;”.

4. Amendment of section 25 of principal Act.

Section 25 of the principal Act is amended by inserting immediately after subsection (2) the following subsections—

“(3) The amount of deductible interest in respect of all debts owed by a taxpayer who is a member of a group shall not exceed thirty percent of the tax earnings before interest, tax, depreciation and amortisation.

(4) A taxpayer whose interest exceeds thirty percent of the tax earnings before interest, tax, depreciation and amortisation may carry forward the excess interest for not more than three years, and the excess interest shall be treated as incurred during the next year of income.

(5) In this section—

- (a) “tax earnings before interest, tax, depreciation and amortisation” means the sum of—
 - (i) gross income less allowable deductions, except a deduction under subsection (1);
 - (ii) depreciation; and
 - (iii) amortisation;
- (b) “group” means persons other than individuals, with common underlying ownership.”

5. Amendment of section 26 of principal Act.

Section 26 of the principal Act is amended—

- (a) in subsection (2), by inserting immediately after the word “asset”, the following—

“except returnable containers”;
- (b) by inserting immediately after subsection (2) the following—

“(2a) The Commissioner shall allow a deduction of an amount representing the diminution in value of returnable containers, not being machinery or plant, as a deduction for each year of income.”.

6. Amendment of section 38 of principal Act.

Section 38 of the principal Act is amended by inserting immediately after subsection (5), the following subsection—

“(5a) A taxpayer who has carried forward losses for a consecutive period of seven years of income shall pay a tax at a rate of 0.5 percent of the gross turnover for every year of income in which the loss continues after the seventh year.”.

7. Insertion of section 55A in principal Act.

The principal Act is amended by inserting immediately after section 55, a the following section—

“55A. Tax accounting for Islamic financial transactions.

The Minister shall make regulations for tax accounting of Islamic financial transactions.”

8. Amendment of section 75 of principal Act.

Section 75 of the principal Act is amended—

- (a) by renumbering section 75 as subsection (1);
- (b) by inserting immediately after subsection (1) the following subsection—

“(2) For the purposes of section 79 (ga), a person other than an individual, a government, a political subdivision of a government and a listed institution, that changes its ownership by fifty percent or more, within a period of three years shall be treated as—

- (a) realising all its assets and liabilities immediately before the change;
- (b) having parted with ownership of each asset and deriving an amount in respect of the realisation equal to the market value of the asset at the time of the realisation;
- (c) re-acquiring the asset and incurring expenditure of the amount referred to in paragraph (b) for the acquisition;
- (d) realising each liability; and is deemed to have spent the amount equal to the market value of that liability at the time of the realisation; and
- (e) re-stating the liability for the amount referred to in paragraph (d).”.

9. Amendment of section 78 of principal Act

Section 78 of the principal Act is amended in paragraph (aa) by inserting immediately after the words “petroleum information” the following—

“any intangible asset which is a business asset or any part of the business”.

10. Amendment of section 79 of principal Act.

Section 79 of the principal Act is amended—

- (a) by inserting immediately after paragraph (g) the following paragraph—

“(ga) derived from the direct or indirect change of ownership by fifty percent or more of a person other than an individual, a government, a political subdivision of a government and a listed institution located in Uganda;”

11. Amendment of section 88 of principal Act.

Section 88 of the principal Act is amended in subsection (6) by inserting immediately after paragraph (b) the following—

“(c) the Inter-Governmental Agreement on the East African Crude Oil Pipe Line.”

12. Repeal of section 89 of principal Act.

The principal Act is amended by repealing section 89.

13. Amendment of section 89A of principal Act.

Section 89A of the principal Act is amended in subsection (1)—

(a) by substituting for the definition of “mining exploration right” the following—

“ “mining exploration right” means a prospecting, exploration or retention licence granted under the Mining Act;”;

(b) by repealing the definition of “petroleum exploration right”.

14. Amendment of section 89G of principal Act.

Section 89G of the principal Act is amended in subsection (3), by repealing the repeated phrase “a licensee in relation to” where it first appears.

15. Amendment of section 89GE of principal Act

Section 89GE of the principal Act is amended in subsection (1) by substituting for paragraph (a) the following—

“(a) A licensee (referred to as the “transferor”) has entered into an agreement (referred to as a “farm - out agreement”) with a person (referred to as the “transferee”) for the transfer of the whole or part of the interest of the transferor in a mining right or petroleum agreement.”.

16. Insertion of section 92A in principal Act.

The principal Act is amended by inserting immediately after section 92 the following section—

“92A. Furnishing of return of income

(1) Subject to section 93, every taxpayer shall furnish a return of income for each year of income not later than six months after the end of that year.

(2) A return of income shall be in the form prescribed by the Commissioner and shall be furnished in the manner prescribed by the Commissioner.

(4) Where a taxpayer is legally incapacitated, the legal representative of the taxpayer shall sign the return.

(5) A return of income of a taxpayer who is carrying on business shall be accompanied by a statement of income and expenditure and a statement of assets and liabilities of the taxpayer.

(6) A person, other than an employee of the taxpayer, who, for remuneration, prepares or assists in the preparation of a return of income, a balance sheet, a statement of income and expenditure or any other document submitted in support of a return, shall sign the return certifying that the person has examined the books of accounts and all other relevant documentation of the taxpayer, and that, to the best of the person’s knowledge, the return or document correctly reflects the data and transactions to which it relates.

(7) Where a person refuses to sign a certificate referred to in subsection (6), that person shall furnish the taxpayer with a statement in writing of the reasons for the refusal and the taxpayer shall include that statement with the return of income to which the refusal relates.”.

17. Amendment of section 118C of principal Act.

The principal Act is amended by substituting for section 118C the following section—

“118C. Withholding of tax on payments for winnings of betting or gaming

A person who makes payment for winnings of betting or gaming shall withhold tax on the gross amount of the payment at the rate prescribed in Part X of the Third Schedule to this Act.”

18. Insertion of sections 118D and 118E in principal Act.

The principal Act is amended by inserting immediately after section 118C the following section—

“118D. Withholding of tax on payments for agricultural supplies.

A person who makes a gross payment for agricultural supplies in excess of one million shillings shall withhold tax on the gross amount of the payment at the rate prescribed in part XII of the Third Schedule, if the payer is designated by the Minister to withhold tax.

118E. Withholding tax on commission paid by telecom service providers on airtime distribution and mobile money

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.”

19. Amendment of section 122 of principal Act.

Section 122 of the principal Act is amended by inserting immediately after paragraph (a) the following—

“(ab) tax has been withheld under section 118E on a payment of commission for airtime distribution and provision of mobile money services to a resident individual;”.

Amendment of First Schedule to principal Act.

The principal Act is amended in the First Schedule by inserting immediately after African Development Fund the following—

“African Trade Insurance Agency”.

20. Amendment of Third Schedule to principal Act.

The Third Schedule to the principal Act is amended by adding immediately after Part XI the following—

“Part XII

Section 118D and 118E

Rate of withholding tax on payments of agricultural supplies and commission paid by telecom service providers on airtime distribution and mobile money

(1) The rate of withholding tax on payment of agricultural supplies is one percent of the gross amount of the payment.

(2) The rate of withholding tax on payment of commission paid by telecommunications service providers on airtime distribution and mobile money services is ten percent of the gross amount of the payment.”

Cross references

Mining Act, 2003