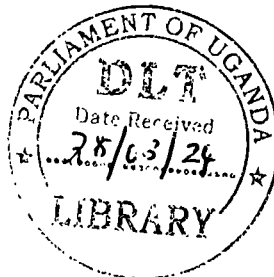

BILLS**SUPPLEMENT No. 4****27th March, 2024****BILLS SUPPLEMENT***to The Uganda Gazette No. 22, Volume CXVII, dated 27th March, 2024*Printed by UPPC, Entebbe, by Order of the Government.

Bill No. 52*Income Tax (Amendment) Bill***2024****THE INCOME TAX (AMENDMENT) BILL, 2024****MEMORANDUM**

The object of this Bill is to amend the Income Tax Act, Cap. 340; to expand the definition of the retirement fund; to impose a tax on the disposal of non-business assets; to exempt income derived from or by private equity or venture capital fund, the manufacture of electric vehicle and electric vehicle charging equipment, operation of a specialised hospital facility; to replace reference to a branch with permanent establishment for purposes of international taxation; to provide for withholding tax on commission paid to a payment service provider; to amend the First Schedule to provide for African Reinsurance Corporation (Africa Re), International Regulatory Board of the East African Power Pool and Islamic Cooperation for the Development of the Private Sector as listed institutions and for related matters.



MATIA KASAIJA (MP),
Minister of Finance, Planning & Economic Development.

THE INCOME TAX (AMENDMENT) BILL, 2024**ARRANGEMENT OF CLAUSES***Clauses*

1. Commencement
2. Amendment of the Income Tax Act
3. Insertion of section 5A to principal Act
4. Amendment of section 21 of principal Act
5. Amendment of section 54 of principal Act
6. Amendment of section 78 of principal Act
7. Insertion of sections 78A and 78B to principal Act
8. Amendment of section 79 of principal Act
9. Amendment of section 83 of principal Act
10. Amendment of section 85 of principal Act
11. Amendment of Part IX of principal Act
12. Amendment of section 90 of principal Act
13. Insertion of section 118I of principal Act
14. Amendment of First Schedule to principal Act
15. Amendment of Third Schedule to principal Act

A Bill for an Act

ENTITLED

THE INCOME TAX (AMENDMENT) ACT, 2024

An Act to amend the Income Tax Act, Cap. 340; to expand the definition of the retirement fund; to impose a tax on the disposal of non- business assets; to exempt income derived from or by private equity or venture capital fund, manufacture of an electric vehicle and electric vehicle charging equipment, operation of a specialised hospital facility; to replace reference to a branch with permanent establishment for purposes of international taxation; to provide for withholding tax on commission paid to a payment service provider; to amend the First Schedule to provide for African Reinsurance Corporation (Africa Re), International Regulatory Board of the East African Power Pool and Islamic Cooperation for the Development of the Private Sector as listed institutions and for related matters.

BE IT ENACTED by Parliament as follows:

1. Commencement

This Act shall come into force on 1st July, 2024.

2. Amendment of the Income Tax Act

The Income Tax Act, Cap. 340, in this Act referred to as the principal Act, is amended in section 2 by inserting immediately after paragraph (III) (ii) the following—

“(iii) the provision of benefits for members of the fund in the event of termination of service or upon the occurrence of an event specified in the written law, agreement or arrangement;”

3. Insertion of section 5A to principal Act

The principal Act is amended by inserting immediately after section 5 the following—

“5A. Tax imposed on disposal of non-business assets

(1) A tax shall be charged on the gains from the disposal of non-business assets at a rate of five percent on the gain computed under subsection (4).

(2) The tax payable by a person under subsection (1), shall arise from the gains from the disposal of—

- (a) shares of a private company;
- (b) land in cities or municipalities except the principal place of residence; and
- (c) rental property that is subject to rental tax under section 5 of this Act.

(3) This section shall not apply to gains from the disposal of non-business assets—

- (a) by involuntary disposal of non-business assets through auction, court order, mortgages, divorce settlement or spousal separation agreement;
- (b) the transmission of non-business assets of the deceased to a trustee or beneficiary; or

(c) arising from the disposal of investment interest of a registered venture capital fund or private equity.

(4) Sections 50 (1) and (2), 51, 52 and 53 shall apply with modifications in computation of the gain under this section.

(5) The tax imposed under this section on a person is a final tax and separate from any other tax imposed by any provision of this Act.

(6) The tax imposed under this section shall be paid within fifteen days after the disposal or transfer of a non-business asset.

(7) A person who fails to pay the tax imposed under this section within the time specified in subsection (6), shall be liable to pay interest in accordance with section 136 of the Act.

(8) Where a person disposes of a non-business asset he or she shall notify the Commissioner General in writing of the details of the disposal within fifteen days from the date of disposal.

(9) For purposes of this section “non-business assets” means assets specified in subsection (2) and does not include business assets.

4. Amendment of section 21 of principal Act

Section 21 of the principal Act is amended in subsection (1)—

(a) by inserting immediately after paragraph (t) the following—

“(ta) income derived from or by private equity or venture capital fund regulated under the Capital Markets Authority Act, Cap. 84;

“(tb) income derived from the disposal of government securities on the secondary market;”; and

(b) by inserting immediately after paragraph (af) (vii) the following—

“(viii) manufactures an electric vehicle, electric battery or electric vehicle charging equipment or fabricates the frame and body of an electric vehicle;

(ix) operates a specialised hospital facility.”

5. Amendment of section 54 of principal Act

Section 54 of the principal Act is amended by repealing subsection (1) (e) and (1a).

6. Amendment of section 78 of principal Act

Section 78 of the principal Act is amended by repealing paragraph (a);

7. Insertion of sections 78A and 78B to principal Act

The principal Act is amended by inserting immediately after section 78 the following—

“78A. Permanent establishment

(1) For purposes of this Part, “permanent establishment” means a fixed place of business through which the business of the enterprise is wholly or partly carried on and includes—

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

- (f) a warehouse, in relation to a person providing storage facilities to others;
- (g) a mine, an oil or gas well, a quarry or any other place of exploration for or extraction or exploitation of natural resources;
- (h) a farm, plantation or other place where agricultural, forestry plantation or related activities are carried on;
- (i) a sales outlet;
- (j) a building site or a construction, installation or assembly project, or supervisory activities in connection with the site, project or activity that lasts for at least ninety days in any twelve months period;
- (k) the furnishing of services, including consultancy services, by a person through employees or other personnel engaged by the person for such purposes provided that such activities continue in Uganda for a period of, or periods amounting in aggregate to, one hundred and eighty three days or more in any twelve month period that commences or ends during the year of income; or
- (l) substantial equipment or machinery that is operated, or is available for operation, in Uganda for a period of, or periods amounting in aggregate to, ninety days or more in any twelve month period that commences or ends during the year of income.

(2) The duration of activities referred to under subsection (1) (j), (k) and (l) shall be determined by aggregating the period during which activities are carried on in Uganda by associates,

provided that the activities of such associate in Uganda are connected.

(3) Where there are two or more associates carrying on concurrent activities, the period referred to under subsection (1) (j), (k) and (l), shall be counted only once for the purpose of determining the duration of activities.

(4) Notwithstanding the provisions of subsection (1), (2) and (3), permanent establishment shall not include—

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the person;
- (b) the maintenance of a stock of goods or merchandise belonging to the person solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the person solely for the purpose of processing by another person;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information for the person;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the person, any other activity; or
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e),

provided that such activity, or in the case of subparagraph (f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

(5) Subsection (4), shall not apply to a fixed place of business that is used or maintained by a person if the same person or associate carries on business activities at the same place or at another place in Uganda and—

- (a) that place or other place constitutes a permanent establishment for the person or the associate under this section; or
- (b) the overall activity resulting from the combination of the activities carried on by the two persons at the same place, or by the same person or associate at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two persons at the same place, or by the same person or associates at the two places, constitute complementary functions that are part of a cohesive business operation.

(6) Notwithstanding the provisions of subsection (1), but subject to the provisions of subsection (7), where a person is acting in Uganda on behalf of another person, that principal shall be deemed to have a permanent establishment in Uganda in respect of any activities which the agent undertakes on behalf of the principal, if such agent—

- (a) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the principal, and these contracts are—
 - (i) in the name of the principal;
 - (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by

the principal or that the principal has the right to use; or

(iii) for the provision of services by the principal,

unless the activities of the agent are limited to those mentioned in subsection (4) which, if exercised through a fixed place of business other than a fixed place of business to which subsection (5) would apply, would not make this fixed place of business a permanent establishment under subsection (5); or

(b) does not habitually conclude contracts nor plays the principal role leading to the conclusion of such contracts, but habitually maintains in Uganda a stock of goods or merchandise from which the agent regularly delivers goods or merchandise on behalf of the principal;

(c) does not habitually conclude contracts nor plays the principal role leading to the conclusion of such contracts, but habitually manufactures or processes in Uganda for the principal, goods or merchandise belonging to the principal; or

(d) does not habitually conclude contracts nor plays the principal role leading to the conclusion of such contracts, but habitually secures orders in Uganda wholly or almost wholly for the principal or associates.

(7) Subsection (6) shall not apply where the agent acting in Uganda on behalf of the principal carries on business in Uganda as an independent agent and acts for the principal in the ordinary course of that business.

(8) For purposes of subsection (7) “independent agent”

is where, an agent acts exclusively or almost exclusively on behalf of one or more principals to which the agent is associated.

78B. Calculation of chargeable income of permanent establishment

(1) The income of a non-resident person attributable to activities of a permanent establishment shall be taxed in Uganda including—

- (a) the income derived from the sales of goods or merchandise in Uganda of same or similar kind as those sold through the permanent establishment; or
- (b) the income of other business activities carried on in Uganda that are of the same or similar kind as those carried out through the permanent establishment.

(2) A permanent establishment shall not be allowed a deduction in respect of amounts, paid by the permanent establishment to the head office of the non- resident person or any of its other offices by way of—

- (a) royalties, fees or other similar payments in return for the use of patents or other rights;
- (b) commission, for specific services performed or for management; or
- (c) interest on moneys lent to the permanent establishment, except, in case of financial institution.

(3) Subject to subsection (2), in the determining the chargeable income of permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment.

(4) Subject to subsection (3), a permanent establishment shall be a distinct and separate entity from the non-resident person of which it is a permanent establishment and the transactions between the permanent establishment and non-resident person are subject to section 90 and 89I of this Act.

(5) The gross income of a permanent establishment, shall not include charges by the permanent establishment to the head office of the non-resident person or any of its other offices, by way of—

- (a) royalties, fees or other similar payments in return for the use of patents or other rights;
- (b) commission for specific services performed or for management; or
- (c) interest on moneys lent to the head office of the permanent establishment or any of its other offices except, in case of a financial institution.

8. Amendment of section 79 of principal Act

Section 79 of principal Act is amended—

- (a) in paragraph (m), by inserting immediately after subparagraph (ii), the following—

“(iii) the annuity is paid by a non-resident person as expenditure of a business carried on by the non-resident person through a permanent establishment in Uganda;”

- (b) by inserting immediately after paragraph (q), the following—

“(qa) derived from the payment of insurance premium, if the premium relates to the insurance or reinsurance of a risk in Uganda;”

9. Amendment of section 83 of principal Act

Section 83 of the principal Act is amended—

- (a) in subsection (1), by inserting immediately after the words “natural resource payment” the word “annuity”;
- (b) by substituting for subsection (5), the following—

“(5) Interest paid by a resident person in respect of debentures is subject to tax at rate prescribed in Part IV of the Third Schedule where the following conditions are satisfied—

- (a) the interest is paid by a resident person to a financial institution;
 - (b) the financial institution referred to in paragraph (a) is unrelated to, and dealing wholly independently with, the resident person that is the borrower; and
 - (c) the interest is not paid as part of an arrangement involving a back-to-back loan or other arrangement that is economically equivalent and intended to have a similar effect to a back-to-back loan.”
- (c) by inserting immediately after subsection (5), the following—

“(5a). Notwithstanding the provisions of subsection (5), interest paid by Government to a non-resident person in respect to debentures is exempt from tax.”

10. Amendment of section 85 of principal Act

Section 85 of the principal Act is amended by inserting immediately after subsection (5) the following—

“(6) Subsection (1) does not apply to an amount attributable to the activities of a permanent establishment of the non-resident in Uganda and such amount is subject to the operation of section 17.”

11. Amendment of Part IX of principal Act

Part IX of the principal Act is amended by substituting for the word “branch” the words “permanent establishment” wherever it appears.

12. Amendment of section 90 of principal Act

Section 90 of the principal Act is amended by inserting immediately after subsection (3), the following—

“(4) A person to whom this section applies shall at the time of filing returns, submit transfer pricing information to the Commissioner, in the format prescribed by the Commissioner.”

13. Insertion of section 118I of principal Act

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

118I. Withholding tax on commission paid to payment service provider

(1) A person who pays a commission to a payment service provider shall withhold tax on the commission paid to the payment service provider at the rate prescribed in Part XVI of Third Schedule.

(2) For avoidance of doubt, this section shall apply to commission paid to banking agents or any other agent offering financial services.”

14. Amendment of First Schedule to principal Act

The First Schedule to the principal Act is amended by inserting the following in its appropriate alphabetical position—

“African Reinsurance Corporation (Africa Re);
International Regulatory Board of the East African Power Pool;
Islamic Cooperation for the Development of the Private Sector;”

15. Amendment of Third Schedule to principal Act

The Third Schedule of the principal Act is amended—

- (a) in Part IV, by inserting immediately after item 3 the following—

“4. The withholding rate for interest payment by resident person in respect of debentures under section 83 (5) is 2% of the interest paid.”

- (b) by inserting immediately after Part XIII the following—

Section 118I

Part XIV

Withholding tax rate on commissions paid to payment service provider

The rate of withholding tax on commission paid to a payment service provider is 10% of the commission to a payment service provider.”