

CIVIL SOCIETY POSITION ON TAX REVENUE MEASURES FOR FY 2019/20



APRIL 2019

The Minister of Finance, Planning and Economic Development (MoFPED) presented the tax revenue measures for FY 2019/20 contained in the; Income Tax (Amendment) Bill 2019, Excise Duty (Amendment) Bill 2019, Value Added Tax (Amendment) Bill 2019, Tax Procedures Code (Amendment) Bill, 2019, Stamp Duty (Amendment) Bill, 2019.

The objective of the tax policy for FY 2019/20 is to increase revenue by 0.5 percentage points of GDP, consistent with Government policy. In addition, it is intended to accelerate development through streamlining incentives and protection of viable and competitive sectors. The total resource envelope for FY2019/20 is US\$ 39,548.50 Billion with domestic revenue expected to contribute US\$ 20,487.00 Billion From Domestic Revenue including Appropriation in Aid¹.

In the FY 2017/18, net revenue of UGX 14,456.11 billion was collected posting a momentous growth of UGX 1,736.48 billion (13.65%) compared to the FY 2016/17. However, the collections were UGX 606.32 billion below the FY 2017/18 target of UGX 15,062.43 billion.

Therefore, in order to cover up the shortfalls, Government of Uganda has had to greatly rely on external and domestic debt which currently stands at an amount of UGX 41.51 trillion as at June 2018. It is thus important that the country generates as much revenue as it can domestically in order to reduce the debt burden and be able to finance its own development. However, in the quest to mobilise revenue domestically, government should do it in a fair and just way.

Tax Justice Alliance Uganda members² have reviewed and analysed the tax bills which were presented by MoFPED and have made observations and recommendations for consideration by the Parliament of Uganda as indicated below:

POSITIVE TAX PROPOSALS

We welcome the following tax proposals to improve revenue collection and facilitate investment in the FY 2019/20 and beyond including:

- **The amendment of section 5 of the Income Tax Act to require a person earning from rental income to pay tax for each property separately.**

¹ STATEMENT FOR THE BUDGET FOR FY2019/20, BY HON. MATIA KASAJA (M.P.) MINISTER OF FINANCE, PLANNING & ECONOMIC DEVELOPMENT, 28TH MARCH, 2019

² Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI)- Uganda, Civil Society Budget Advocacy Group, Uganda Debt Network (UDN), Water Governance Institute (WGI), Action Aid Uganda, Youth For Tax Justice Network (YTJN), Citizens Watch Uganda (CEW-IT), Eastern African Sub-regional Support Initiative for the Advancement of Women (EASSI), Uganda Youth Network (UYONET), Africa Freedom for Information Center (AFIC), The Open Forum Initiative (TOFI), Cyber Law Initiative (Cyber-Line), Uganda National Health Consumers Organization (UNHCO), Rwenzori Anti-Corruption Coalition (RAC), Oxfam in Uganda, Transparency International Uganda, Twaweza Uganda, Equality Now Uganda, Initiative for Social and Economic Rights (ISER), Kick Corruption Out of Kigezi (KICK), Gulu NGO Forum, Kalangala NGO Forum, Mukono NGO Forum, Public Affairs Center of Uganda (PAC-Uganda), South Buganda Anti-corruption organization, West Nile Youth Empowerment Center, CHEMISE Enterprise, Forum for Women in Democracy (FOWODE), Women & Girl Child Development Association (WEGCDA), Agri Point, Resource Rights Africa, and Youth representatives from Higher Institutions of learning

- The amendment of section 25 of the Income Tax Act to exclude financial institutions and insurance services from those that have a cap on the interest that can be deducted while computing tax payable.
- The amendment of section 38 to impose a tax of 0.5% of the total turnover for a tax payer who carries forward losses consecutively for 7 years.
- The amendment of section 88 (5)(a) which aims to ensure that only beneficial owners benefit from exemptions or reductions in the taxes arising due to international agreements.
- The insertion of section 118B(2) which now requires a resident person who purchases a business or business asset to withhold a tax amounting to 6% of the gross payment.
- The insertion of Section 66 (1a) of the Tax Procedures Code Act 2014 (TPC 2014) to provide for compounding of offences in cases of voluntary compliance by a tax payer.
- The insertion of Section 74A in the TPC 2014 to provide for the principal Act by inserting section 74A which provides for a payment amounting to an equivalent of five percent of the principal tax or duty recovered to a person who provides information leading to the recovery of a tax or duty.

CIVIL SOCIETY CONCERNS ON SELECTED TAX PROPOSALS

We welcome the following tax proposals to improve revenue collection and facilitate investment in the FY 2019/20 and beyond including:

INCOME TAX (AMENDMENT) BILL 2019

Amendment of section 135B (3) to require Local authorities, government institutions or regulatory bodies to only issue licenses or any form of authorization for purposes of conducting any business in Uganda, to only persons with Tax Identification Numbers (TINs)

Observations:

- The provision is seeking to establish identification of businesses and individuals that are not paying income tax. While it is a good thing to increase the number of taxpayers on the register, the provision does not foster compliance among the registered or already licensed taxpayers as they are not required to present a Tax Clearance Certificate upon application for renewal of a license.
- Furthermore, the provision does not provide repercussions for any licenses issued without a TIN.
- We also note that local authorities, government institutions or regulatory bodies do not have the capacity and infrastructure to verify the authenticity of Tax Identification Numbers submitted by applicants for licenses.
- Majority of the citizens have limited knowledge not only on how to acquire a TIN but also on filing tax returns. More still, there is limited access to internet services across the country hence limiting citizens' access to URA portals.
- Alternatively, scale up the Taxpayer Register Expansion Project (TREP) which will address the challenges above.

Recommendations:

- The provision should introduce a penalty for each license issued without a TIN.
- A provision should be put in place requiring the persons who apply for renewal of a license to present a Tax Clearance Certificate to the local authorities, government institutions or regulatory bodies.
- A system should be put in place to enable the local authorities, government institutions or regulatory bodies to verify the authenticity of the TINs before issuance of the license. For instance,
 - » An app can be developed and included on the URA website to check for the authenticity of TINs.

» In the short term, URA can always be notified before the license is issued. However, this will not only increase the work load on the already constrained staff of URA, but also slow down businesses.

- The process of acquiring a TIN should be simplified to enable more citizens acquire it with ease. An option would be a system which simply requires one to provide a National Identification Number (NIN) for a TIN to be processed.

The amendment of section 38 to impose a tax of 0.5% of the total turnover for a tax payer who carries forward losses consecutively for 7 years.

Observation:

Although we commend this proposal, we note that the amendment seeks to impose tax of 0.5% of the total turnover if a tax payer carries forward losses consecutively for 7 years. However, it is worth noting that tax losses are not necessarily business losses. Some of these companies make profits but because of the many statutory deductions and abuse of these privileges, tax payers reduce their chargeable income to negative.

Recommendations:

- We propose that the period over which a company is allowed to consecutively carry forward losses is reduced to five years to minimize revenue loss.
- We also propose that a mechanism to verify losses through audit is put in place so as to prevent perpetual declaration of losses by companies especially in cases where by it would be cheaper to pay the penalty for declaring losses than pay the actual corporate tax.
- The government should also be able to develop a schedule with an estimate of the rate of return on investment in different businesses. This will enable Uganda Revenue Authority (URA) to assess the viability of businesses which have continuously declared losses but have remained operational.

Amendment of Paragraph 3 in Part V of the third schedule to provide for a 20% WHT rate on government securities whose period of maturity is less than ten years and 10% for government securities whose maturity is ten years or more.

Observation:

The amendment seeks to provide a lower tax rate for government securities that are ten years or more. Although, it will benefit the taxpayers, by paying less tax on their earnings, it is bound to increase domestic borrowing by the government. This will crowd out the private sector hence an increase in the cost of credit. This in turn will lead to a decline in investment across the country.

Recommendation

Although we recommend the adoption of this proposal efforts should be directed towards ensuring that there are controls in place to limit domestic borrowing by government. This will ensure that Uganda's debt remains sustainable.

VALUE ADDED TAX (AMENDMENT)BILL 2019

Amendment of Section 5(2) of the Principle Act to require persons designated to collect withholding tax to remit 6% of the taxable value referred to in sections 21 and 23 to URA.

Observation:

The amendment is commendable as it seeks to enhance revenue productivity of VAT and in addition, ease the compliance burden for taxpayers who have proven themselves to be compliant as regards their obligations under the VAT Act.

However, evidence available suggests that the level of VAT compliance is generally low. For instance, the Fair Tax Monitor study by SEATINI Uganda and Oxfam 2018 Uganda indicates that seller firms declare amounts lower than those declared by the buyer resulting in a high tax revenue loss about UGX 747 Bn (US \$ 217 Mn) in 2016. This is affirmed by the IGC report (2015) which noted that when URA reached out to these taxpayers, some amended their returns. However,

the pattern of under reporting was reflected in the subsequent periods by the same taxpayers. Hence, there was no change in taxpayer behaviour.

Additionally, some agencies withhold VAT but do not remit it to URA and in the case of government entities, some of these tax arrears are written off. In lieu, the proposed amendment doesn't address these pains specifically for under reporting of VAT.

Recommendation:

- URA needs to have an easy and continuous way of monitoring buyer and seller discrepancies. To this effect, government should allocate more resources to URA to cater for monitoring buyer and seller discrepancies.

The amendment of the second schedule and third schedule to provide for exemption and zero rating the “supply of drugs and medicines” and “supply of drugs and medicines manufactured in Uganda” respectively.

Observation:

We note that the amendment is aimed at ensuring the availability of affordable drugs in Uganda which is commendable. However government efforts in the past to waive taxes in order to make commodities more available and affordable did not result in the desired effect. There is no evidence that a tax incentive on a basic commodity translates into a reduction in the prices of commodities. In fact, research suggests that the prices either remain constant or increase. This is partly attributed to the fact that there is no price regulation in Uganda and citizens are not aware of the exemptions awarded and how they (exemptions) could translate into more affordable prices.

More still, the second schedule provides for a general exemption on the supply of drugs and medicines whether or not they are manufactured in Uganda yet the third schedule ring fences drugs and medicines manufactured in Uganda. This creates confusion.

These are some of the questions to ponder on:

- » *Will this exemption translate into reduction of the prices for locally manufactured drugs?*

- » *Will this increase access to drugs and medicines?*
- » *Will government be more proactive and vigilant to monitor the benefits from this provision?*
- » *Will drugs and medicines manufactured in Uganda be treated as part of the second or third schedule?*

Recommendation:

- Government should put in place a price fixing mechanism to ensure that the exemption results in reduced prices for drugs and medicines.
- Alternatively, government should put a clear regular review mechanism for the exemption so that if it doesn't translate into reductions, it is scrapped.
- The amendment should clearly indicate that the exempted drugs and medicines are those manufactured outside Uganda as is the case with Zero rated supplies in the third schedule.

EXCISE DUTY (AMENDMENT) BILL 2019

Amendment of Part III of the Principle Act to streamline provision on Registration of manufacturers to conform to other provisions of the Act on the same.

Observation:

Although, sub-section (4) requires the applicant to meet specified conditions before registration of the applicant or the premises, the minimum conditions are not set out in further sections of the law.

Sub section (14) also requires a registered person to only use the premises solely for the purpose for which they are registered. However, this is restrictive in terms of freedom and diversification of entrepreneurship. It limits diversity in terms of creativity in business and contravenes Article 40(2) of the constitution of Uganda of 1995 as amended - “A citizen has a right to carry on any lawful profession, trade or business.”

Recommendation:

- The law should spell out the minimum conditions which should be met before a company can apply to be registered. This will prevent a back and forth process for the taxpayers and URA about the said conditions and further ease the process of administration of that section.
- The law should not be restrictive especially in terms of the utilisation of the approved premises. Therefore, the law should allow for the importers or providers of excisable goods to utilise their premises for any other lawful business provided they are accounted for while filing tax returns, failure of which could trigger a penalty.

Amendment of Schedule 2 to the Principal Act item 5(a) by reducing the excise duty on non-alcoholic beverages not including fruit or vegetable juice from 12% or Shs. 200 whichever is higher to 11% or Shs 185 per litre, whichever is higher.”

Observation:

Non-alcoholic beverages such as soda, energy drinks and non-fruit juices are sin goods which with increased consumption could negatively affect the health of the consumer. Furthermore, the reduction in the tax will lead to a tremendous loss in government revenue.

Recommendation:

The current rate 12% or shs. 200 whichever is higher should be maintained.

TAX PROCEDURES CODE (AMENDMENT) BILL, 2019

Insertion of a new section 40A to require the minister to pay any tax due and payable by Government, arising from a commitment made by Government to pay tax on behalf of a person or owing from Government as counterpart funding for aid funded projects; write off all unpaid taxes by government as at 31st June 2019 and require the Minister to publish in the gazette a list of all taxes waived.

Observation:

The amendment seeks to require the minister to pay tax arising from the commitment made by government to pay tax on behalf of a person or owing from Government as counterpart funding for aid funded projects.

We have noted that this provision is not specific on the tax heads that can be paid for by government. In the past, government has paid taxes on behalf of these companies including Pay as You Earn (PAYE) that is not a tax for these companies but for their employees.

Furthermore, the provision allows for a waiver on all unpaid taxes by government, which will cost the government an enormous amount of revenue in form of unpaid taxes. However, in May 2017 the budget parliamentary committee refused to grant the Ministry of Finance, Planning and Economic Development a supplementary budget of shs. 47.7 billion to pay tax on behalf of private companies. Additionally, in May 2018 parliament rejected a clause in the Tax Procedures Code Bill which sought to give the minister powers to grant tax exemptions to some companies. Therefore, the re-instatement of a provision to waive tax arrears and pay on behalf of companies compromises these decisions by parliament.

Furthermore, there is no time frame stated within which government is to publish the list of all taxes waived under the amendment which might be prone to abuse.

Finally, the date 31st June 2019 cited in the amendment does not exist.

Recommendations:

- Government should clearly state the type of taxes that will be paid. We recommend that the exemption only applies to VAT and only for aid funded projects.
- Earlier parliamentary decisions on waivers and government commitments to pay on behalf of taxpayers should be maintained.
- Any tax waivers should be awarded through a clear and transparent process.
- The date should be adjusted to 30th June 2019.

CROSS CUTTING AMENDMENTS

The insertion to define a citizen as “a natural person who is a citizen of a Partner State of East African Community;” or “a company or a body of persons incorporated under the laws of a Partner State of the East African Community in which at least fifty-one percent of the shares are held by a person who is a citizen of a Partner State of East African Community;”

Observation:

The proposed amendment widens the meaning of a citizen to include natural persons and companies within the six countries of the EAC. Despite the fact that this is the furtherance the EAC spirit of federation, it would create a situation of more preference to the EAC partner states citizen at the expense of the Uganda citizen in as much as the latter is equally a partner state citizen.

The proposed amendment also seems to be conflicting with ongoing government policies like Buy Uganda Build Uganda (BUBU), Promotion of Local Content, etc. and therefore is likely to harm such policies by opening up Ugandans to unnecessary competition from their East African Neighbors.

More still, the conditions for investment by Ugandans in the other EAC partner states are not favorable and it therefore makes no sense to keep an open door policy for other citizens of EAC partner states while we suffocate home grown enterprises.

Finally, this amendment could lead to distortions in the Ugandan Economy given the different sizes of the East Africa Economies and differences in currencies.

Recommendations:

- Citizen should be re-defined to factor in the Uganda citizen separate and distinct from the rest of the EAC citizens
- The Ministry should come up with regulations to harmonize the clause with government existing policies like Buy Uganda Build Uganda Policy.

- In the case of a company incorporated under the laws of a partner state of East Africa, a Ugandan should at least hold 40% shares.
- If other countries within the EAC are not applying the same definition, then it should not be adopted.

The insertion which requires the Minister to make Regulations prescribing the equivalent tax treatment of supplies made in the course of Islamic financial transactions.”

Observation:

Despite the fact that Uganda has the financial Institutions Act which was amended to factor in Islamic banking aspect, Uganda does not have a fully-fledged Islamic banking Act which leaves gaps and grey areas.

However, there is likely to be economic growth as the Companies that take this up will be seen to grow by the lenders who do not charge interest but share in profits. This creates an avenue where the business people are not only tied to banks. They have a somewhat easier option to run to in case of failure to raise requisite credit worthiness. This creates an opportunity to take advantage of Musaharakah (Equity sharing agreement) as stated in the Financial Institutions (Islamic banking) regulations, 2018 Reg 2.

Section 152(1) of the 1995 constitution of Uganda states thus “no Tax shall be imposed except by an act of parliament”.

However we believe there are differences in business and finance terms as defined in Islamic banking and as defined in our normal banking fraternity.

Recommendation:

- There should be a specific Act on Islamic banking that empowers the minister to either or vary or waiver the tax imposed. As it stands it is illegal, in as much as we have the Financial Institutions Act that was amended to include aspects of Islamic banking.
- Encourage government to embrace Islamic banking because it will increase access to credit, improve transparency, accountability and good governance among businesses

- There ought to be citizenry participation. When the power to impose tax is only in the hands of the minister, the rationale of participation is hindered and risks promoting rent seeking.

The amendment to reduce the capital requirement for developers of an industrial park from 100 million US dollars to 50 million USD and for operators within the industrial park from 15 million USD to 10 million for foreigners and 5 million USD to 2 million USD for a citizen.

Observation:

The amendment seeks to attract more investors in the country from both the East African Community and the international community. However, the drop from 100million USD to 50 million USD is very high and not justified. The initial proposal in the tax bills for FY 2018/19 was 200 million USD which was reduced to 100 million USD at the time the bills were passed.

In less than a year, the government is proposing to reduce the amount to 50 million USD before an analysis has been done to ascertain the benefits or losses accruing from the previous and the proposed provision.

Recommendation:

- The previous provision in the law should be maintained until a detailed evaluation is done to justify the reduction.

The incentives awarded to technical or vocational institute operators whose investment capital is at least ten million United States Dollars in case of a foreigner or two million United States Dollars in case of a citizen;

Observation:

Although this proposal is aimed at encouraging investment in technical and vocational institutes and further enable young people acquire the required vocational and technical skills, we note that government is implementing a similar initiative to set up vocational institutes across the country. Furthermore, the thresholds are not justified hence the possibility of being exploited.

Recommendation:

The recommendation should only be passed on condition that the thresholds are justified.

There should be a strong periodic review mechanism for this incentive so as to make sure that it is benefiting the intended beneficiaries.

CONCLUSION

As Civil Society Organisations, we call upon Parliament and other stakeholders to put into consideration the above observations and recommendations. Together for a fair, just and accountable tax system in Uganda.

FOR GOD AND OUR COUNTRY



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