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LEGAL ALERT

What players in the technology, media, telecommunications and intellectual property space need to know about Uganda's Tax and Revenue Law Proposed Amendments, 2023

BY: BLAIR MICHAEL NTAMBI
ASSOCIATE AT KTA ADVOCATES
(TECHNOLOGY, MEDIA, TELECOMMUNICATIONS AND IP)

Introduction

The Tax and Revenue (Amendment) Bills, 2023 propose changes to the Income Tax Act Cap. 340, the Excise Duty Act, 2014, the Value Added Tax Act, Cap 349, The Tax Procedure Code Act, 2014, Act 14 of 2014, the Traffic and Road Safety Act Cap 361, the Lotteries and Gaming Act, 2016 and additionally give the force of law in Uganda, to the Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information. If passed, all these changes shall take effect on **1st July 2023.**

By extension, these proposed amendments may affect several industries including but not limited to the digital services industry, the lotteries and gaming industry, transport industry, the intellectual property regime, and many others.

This 'legal insight' highlights the proposed key changes in Uganda's tax and revenue laws as contained in the amendment bills and if passed, how they will affect players in the following industries:

1. The Digital Services Industry.
2. The Lotteries and Gaming Industry
3. The Transport Industry.
4. The Intellectual Property Regime.

1. The Digital Services Industry.

Overview

One of the proposed tax law amendments, the **Income Tax (Amendment) Bill, 2023** proposes the insertion of Section 86A in the principal Act (Income Act, Cap 340). This insertion provides for a 5% income tax rate to be imposed on every non-resident person deriving income from providing digital services in Uganda over the internet, electronic network, or an online platform.

The insertion further defines a "digital service" to include online advertising, data services, services delivered through an online marketplace including an accommodation online marketplace e.g. Amazon, Superbalist, Shein, Takealot, etc.; vehicle hire online market place and any other transport online market place e.g. uber, bolt, inDrive, etc.; digital content services including downloading and digital content e.g. Dropbox, OpenText, Apple Music, Tidal, Spotify, etc.; online gaming services e.g. Playtech, BlueOcean Gaming, etc.; cloud computing services e.g. Amazon Web Services, Google Cloud computing, etc.,; , data warehousing e.g. Firbolt, Google BigQuery, etc.; any other such services offer through a social media platform e.g. Facebook marketplace and WhatsApp for business or internet search engine including digital services that the Minister may prescribe for inclusion.

The other tax law amendment that is set to affect the digital services industry is the **Value Added Tax (Amendment) Bill, 2023** which proposes to narrow down the scope of applicability of the requirements to charge VAT on electronic services. The bill proposes that VAT on electronic services should specifically apply to non-resident persons where the recipient of the supply is not a taxable person or a person who makes a supply with a total annual value in excess of the annual registration threshold or a government entity that is not registered under **Section 7(5**) of the Act, and the services and electronic services delivered to a person in Uganda at the time of the supply. [1]

The definition of 'electronic services' is proposed to change to mean services supplied through an online or digital network by a supplier from a place of business outside Uganda to a recipient in Uganda including;

a) websites, web-hosting, or remote maintenance of programs and equipment;
b) software and the updating of software;
c) images, text, and information;
d) access to databases;
e) self-education packages;
f) music, films, and games including games of chance; or
g) political, cultural, artistic, sporting, scientific, and other broadcasts and events including television;
h) advertising platforms;
i) cab hailing services;
j) streaming platforms and subscription-based services
k) cloud storage;
l) Dataware housing;
m) any other service as the Minister may by statutory instrument determine.

Therefore, under the proposed amendment, only non-resident suppliers will be required to charge VAT on electronic services. Additionally, the scope of electronic services would be extended to specifically cover advertising platforms such as YouTube, streaming platforms such as Netflix, cloud storage such as Google Drive, and data ware housing such as Microsoft.

Implications

On the positive side, taxing non-resident players in the digital services industry will boost the government's revenue and fairly regulate competition with local businesses. This is not only because of the government's desire to tap into the growing revenue generated by web- hosted online, video streaming, social media and e-commerce platforms based overseas derived from the provision of services ultimately rendered in Uganda but also because when the government does not tax these companies, it means that it must rely on other forms of revenue, such as higher taxes on other businesses or borrowing, which could lead to economic instability.

Additionally, local businesses that are subject to taxes may be at a disadvantage when competing with the non-resident digital service providers, as they do not have the same tax exemptions.

1 **Section 16, Value Added Tax Cap 349, Laws of the Republic of Uganda**

However, on the negative side, implementing these taxes may be challenging since many of the non-resident digital service providers conduct their business over the open internet and have maintained their prices low for consumers since they did not have to pass the tax burden to their consumers.

Therefore, before government passes these amendments under the Income Tax (Amendment) Bill, 2023 and Value Added Tax (Amendment) Bill, 2023, it must weigh the need and its readiness to tax non-resident players in the digital services industry against the benefits of encouraging innovation and investment in the digital economy that the non-resident digital service providers bring along as they do business in Uganda.

2. The Lotteries and Gaming Industry

Overview

Two tax bills are proposing key changes in Uganda's lotteries and gaming industry. These tax bills are the Lotteries and Gaming (Amendment) Bill, 2023 and the Income Tax (Amendment) Bill, 2023.

The Lotteries and Gaming (Amendment) Bill, 2023 proposes an increase in the gaming tax rate on the total amount of money staked less the pay-outs (winnings) for the period of filing returns for the gaming activity from twenty percent (20%) as provided for in Schedule 4 of the Lotteries and Gaming Act, 2016 to thirty percent (30%).

The Income Tax (Amendment) Bill, 2023 proposes to repeal the provision for 15% withholding tax on winnings from gaming as provided for under the Income Tax Act Cap. 340. The bill further proposes that the 15% withholding tax be subjected to only (pay-outs) winnings from betting.

Implications

On the positive side, these tax proposals on the lotteries and gaming industry are set to increase tax revenues from gaming activities.

However, on the negative side, the amendments are set to increase the cost of operation of gaming companies and subsequently the increasing their tax burden because not only is the Income Tax (Amendment Bill), 2023 proposing a shift of the tax cost from the winnings of the gamer onto the revenue of the operator but also the Lotteries and Gaming (Amendment) Bill, 2023 proposes a 10% tax rate increase from the current rate in the principal Act.

3. The Transport Industry

Overview

The **Traffic and Road Safety (Amendment) Bill** proposes a substitution of the word "badge" as provided for in Under Section 70A (2)(ii) in the Traffic and Road Safety Act, Cap 361, with the phrase "professional driving permit".

The Bill also empowers the Minister of Works and Transport to prescribe speed limits in respect of all public roads. It proposes that the minister may do this by way of regulations or statutory order which may include temporary maximum speed limits for motor vehicles, trailers or engineering plants of different classes or descriptions on any part of any road for such period as may be prescribed in the order. The bill also prescribes liability limited to Ugx. 2,000,000 (Uganda shillings two million) or imprisonment not exceeding three years for breach.

Additionally, the bill proposes repealing of Section 52 of the Roads Act, 2019 which empowered the police to sell by auction a towed motor vehicle, trailer, or engineering plant after two months since towing and no person has claimed ownership of such motor vehicle, trailer, or engineering plant.

Implications

- According to the bill, all e-hailing operators such must ensure that their registered drivers have professional driving permits other than mere badges.
- The Minister shall also be empowered to change/ prescribe any speed limits as they deem fit on public roads effective 1st July 2023.
- Persons found in breach of the prescribed speed limits shall be liable to pay a fine of Ugx. 2,000,000 or serve prison time for a period not exceeding three (3) years.
- Lastly, effective 1st July, police will have no mandate to sell over-stay towed motor vehicles, trailers, or engineering plants. This is a win for players in the transport industry because they needn't worry about their cars being sold as they look for funds to repair them.

4. The Intellectual Property and Data Protection Regime.

Overview

IP Regime

The IP regime is set to be affected by the proposed amendment to the Income Tax Act Cap 340. The Income Tax (Amendment) Bill, 2023 proposes an insertion of Section 79 (ja) which provides that income arising from the disposal of industrial property or intellectual property used in Uganda should be taxed independently from income obtained from royalties arising from the use or right to use intellectual property in Uganda.

It should be noted that in the Principal Act, under Section 79 of the Income Tax Act Cap. 340 revenue from the disposal of industrial property or intellectual property used in Uganda is taxable under the general provision providing for a tax on the disposal of immovable property as a royalty.

Data Protection Regime

The data protection regime is also set to be affected by the proposed tax amendments particularly the **Tax Procedures Code (Amendment) Bill, 2023**. The Bill proposes an amendment of Section 42 of the Tax Procedures Code Act, 2014 which currently empowers the Commissioner of URA to issue notices to any taxpayer by notice in writing, whether or not liable for tax, to obtain information or evidence for purposes of administering any provision of a tax law.

The proposed amendment suggests an inclusion of subsection (4) (immediately after subsection (3))to Section 42, which states that if a taxpayer fails to provide the requested information under this section, they will not be permitted to provide such information during objection to a tax decision or during an alternative dispute resolution procedure.

Implications

Firstly, the proposed amendment of Section 79 of the Income Tax Act Cap. 340 to insert Section 79 (ja) clarifies that income from industrial or intellectual property in Uganda is taxable, notwithstanding that the owner of such property is not a tax resident of Uganda and whether or not such income is a royalty.

Taxpayers who dispose of or purchase industrial or intellectual property in Uganda should take note of this development and ensure that they are fully tax compliant on these transactions.

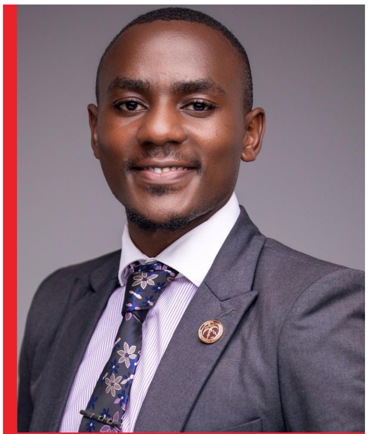
Secondly, whereas the amendment of Section 42 to include subsection (4) is intentioned to encourage compliance with information requests from tax authorities, the provision may conflict with evidence laws and privacy & data protection laws that courts have always safeguarded.

A case in point is the recent Constitutional Court decision in **ABC Capital Bank Ltd & 30 Ors. v. Attorney General & Another [Constitutional Petition No. 014 of 2018]** where the court held that a blanket request by the Commissioner of URA to access a person's personal data is unconstitutional because it arbitrarily violates bankers' right to privacy. It further advised that the Commissioner should firstly establish that there is a pending investigation into a person before such a person complies with the Commissioner's notice.

Since the amendment still empowers tax authorities to make a blanket request for information, tax payers' personal data may be put at risk of unjustified disclosure and this may undo the findings of the court in Constitutional Petition No. 014 of 2018.

Therefore, this particular amendment may pose a challenge to people and corporations that deal in collection of personal data and special personal data.

Author



Blair Michael Ntambi

Associate

Technology, Media, Telecommunications and IP

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ADVOCATES

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Contact Us

Floor 3, Plot 4 Hannington Road
Kampala, Uganda,P.O. Box 37366,

+256 414 530 114 / +256 414 531 078

partners@ktaadvocates.com

ktaadvocates.com