

BILLS SUPPLEMENT

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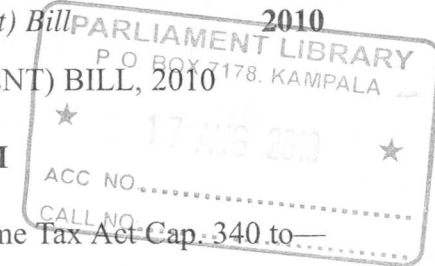
Income Tax (Amendment) Bill, 2010

THE INCOME TAX (AMENDMENT) BILL, 2010

MEMORANDUM

The object of this Bill is to amend the Income Tax Act, Cap. 340 to—

- (a) define certain terms used in the Act;
- (b) provide for the taxation of income earned by a contractor from activities other than petroleum operations;
- (c) prescribe the allowable contract expenditures that may be deducted for the purposes of ascertaining the chargeable income of the contractor from petroleum operations;
- (d) provide for the transfer of interest in a petroleum agreement;
- (e) prescribe for the calculation of withholding tax in relation to petroleum operations;
- (f) provide for arms length transactions, maintenance of accounts for contract areas in shillings and US dollars, and for the conversion of currencies in petroleum agreements;
- (g) provide for the valuation of petroleum;
- (h) provide for the application of certain Parts of the Income Tax Act, Cap. 340 to petroleum operations;



- (i) provide for the filing of petroleum revenue returns on a quarterly and annual basis and to penalise failure to file returns;
- (j) empower the Commissioner General to undertake audits for purposes of the Act;
- (k) provide for offences and penalties; and
- (l) amend the Eighth Schedule.

SYDA N.M. BBUMBA (MP),
Minister of Finance, Planning and Economic Development.

ARRANGEMENT OF CLAUSES

Clause

1. Commencement
2. Amendment of section 21 of the Income Tax Act
3. Amendment of section 40 of principal Act
4. Amendment of section 89A of principal Act
5. Amendment of section 89B of principal Act
6. Amendment of section 89C of principal Act
7. Amendment of section 89E of principal Act
8. Amendment of section 89F of principal Act
9. Amendment of section 89 G of principal Act
10. Amendment of section 89 H of principal Act
11. Substitution of section 89I of principal Act
12. Amendment of section 89J of principal Act
13. Repeal of section 89K of principal Act
14. Insertion of new section 89KA
15. Repeal of section 89L of principal Act
16. Repeal of section 89M of principal Act
17. Insertion of new section 89MA
18. Repeal of section 89N of principal Act
19. Substitution of section 89O of principal Act
20. Insertion of new section 89OA
21. Substitution of section 89P of principal Act
22. Repeal of section 89Q of principal Act
23. Insertion of new sections 89QA, 89QB and 89QC
24. Amendment of section 119 of principal Act
25. Amendment of section 119A of principal Act
26. Amendment of Third Schedule to principal Act
27. Amendment of Eighth Schedule to principal Act

A Bill for an Act

ENTITLED

THE INCOME TAX (AMENDMENT) ACT, 2010

An Act to amend the Income Tax Act, Cap. 340

BE IT ENACTED by Parliament as follows:

1. Commencement

(1) Sections 1, 2, 3, 17, 19, 20, 21, 22, 23, 24 and 25 shall come into force on 1st July 2010.

(2) Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 26 and 27 shall be deemed to have come into force on 1st July 1997.

2. Amendment of section 21 of the Income Tax Act

Section 21 of the Income Tax Act, in this Act referred to as the principal Act, is amended in subsection (1) by substituting for paragraph (k) the following—

“(k) any capital gain that is not included in business income, other than gains on the sale of shares in a private limited liability company;”

3. Amendment of section 40 of principal Act

The principal Act is amended in section 40 by substituting for subsection (3), the following—

“(3) A taxpayer who intends to change the taxpayer's method of accounting shall apply in writing to the Commissioner and the Commissioner may, by notice in writing, approve the application where he or she is satisfied that the change is necessary to clearly reflect the taxpayer's income.”

4. Amendment of section 89A of principal Act

The principal Act is amended in section 89A—

(a) by inserting immediately before the definition of “commencement of commercial production” the following definitions—

“allowable contract expenditures” means the deductions that may be allowed for the purposes of ascertaining chargeable income from petroleum operations;”

“barrel” means a quantity consisting of forty-two (42) United States gallons, liquid measure, corrected to a temperature of sixty degrees (60°) Fahrenheit;”

(b) by inserting immediately after the definition of “commencement of commercial production”, the following definition—

““commercial production” means the production of crude oil or natural gas or both and delivery of the crude oil or natural gas at the delivery point under a programme of regular production and sale;”;

(c) by substituting for the definition of “contract area”, the following—

““contract area” means an area that is the subject of a petroleum agreement and, where any part of that area is relinquished under the petroleum agreement, the contract area is the area which remains the subject of the petroleum agreement;”;

- (d) by substituting for the definition of “contractor”, the following—

“contractor” means a person with whom the Government enters into a petroleum agreement and includes a licensee;”;

- (e) by inserting immediately after the definition of 'contractor' the following definition—

““cost oil” means a contractor's entitlement to production as cost recovery under a petroleum agreement;”;

- (f) by substituting for the definition of “petroleum revenues” the following—

““petroleum revenues” means tax charged on income derived by a person from petroleum operations, Government share of production, signature bonus, surface rentals, royalties, Government participation share of production, and any other duties or fees payable to the Government from contract revenues under the terms of a petroleum agreement;”;

- (g) by inserting immediately after the definition of “subcontractor”, the following definition-

““year of income” is the period of twelve months ending on 31st December; and includes a substituted year of income as defined by section 39.”

5. Amendment of section 89B of principal Act

Section 89B of the principal Act is amended by inserting immediately after subsection (2), the following—

“(3) Income earned by a contractor from activities other than petroleum operations shall be taxed in accordance with this Act.

(4) The tax payable by a contractor under this Part is calculated by applying the rate specified in Part IX of the Third Schedule to this Act, to the contractor's production share.”

6. Amendment of section 89C of principal Act

Section 89C of the principal Act is amended—

- (a) in subsection (1) by substituting for “gross income”, the words “cost oil”;

- (b) by substituting for subsection (2) the following—

“(2) Where, in any year of income, the total deductions of a contractor in relation to petroleum operations undertaken in a contract area exceed the cost oil for that year of income arising from those operations in the contract area, the excess shall be carried forward to the next following year of income and is deductible for that year of income against the cost oil for that year of income arising from the petroleum operations in the contract area until the excess is fully deducted or the petroleum operations in the contract area cease.”

7. Amendment of section 89E of principal Act

Section 89E of the principal Act is amended in subsection (4) by substituting for “gross income of the contractor”, the words “contractor's production share”.

8. Amendment of section 89F of principal Act

The principal Act is amended by substituting for section 89F the following—

“89F. Allowable contract expenditures

The expenditures that may be deducted for the purposes of ascertaining the chargeable income of the contractor from petroleum operations are prescribed in the Eighth Schedule to this Act.”

9. Amendment of section 89G of principal Act

The principal Act is amended by substituting for section 89G the following—

“89G. Transfer of interest in a petroleum agreement

Where a contractor, in this Part referred to as the “transferor contractor” disposes of an interest in a petroleum agreement to another contractor or a person that as a result of the disposal will become a contractor in relation to those operations, in this Part referred to as the “transferee contractor”—

- (a) any excess costs under section 89C (2) attributable to the interest at the date of the disposal, are deductible by the transferee contractor, subject to the conditions prescribed in that section;
- (b) the transferee contractor continues to depreciate any allowable contract expenditure attributable to the interest at the date of disposal in the same manner and on the same basis as the transferor contractor would if the disposal had not occurred;
- (c) the cost base for the purposes of calculating any capital gain or loss on disposal of an interest in a petroleum agreement will be determined in accordance with Part VI of this Act;
- (d) in a subsequent disposal of the whole or part of the interest disposed under paragraph (c), the cost base for the purposes of calculating any capital gain or loss on disposal of the interest is the amount of the transferor contractor's capital gain on the prior disposal of the interest if any, less the sum of—
 - (i) the excess costs up to the date of the disposal that are deductible by the transferee contractor under paragraph (a);

- (ii) the depreciation of capital expenditure incurred up to the date of disposal that is deductible by the transferee contractor under paragraph (b);
- (e) the amount of the transferor contractor's capital loss on disposal of the interest, if any, is treated as income of the transferee contractor on the date of the transfer of the interest;
- (f) in the case of a depreciable or intangible asset, the transferee contractor continues to depreciate or amortise the asset in the same manner and on the same basis as the transferor contractor would if the disposal had not occurred; and
- (g) in the case of any other asset, the transferee contractor's cost base for the asset is the transferor contractor's cost base immediately before the disposal.”

10. Amendment of section 89H of principal Act

The principal Act is amended by substituting for section 89H the following—

“89H. Withholding tax

(1) The tax payable for the purposes of section 83(3) applicable to a participation dividend paid by a resident contractor to a non-resident company is calculated by applying the rate prescribed in Part IXA of the Third Schedule to this Act.

(2) The tax payable for the purposes of section 85(2) by a non-resident subcontractor deriving income under a Uganda-source services contract where the services are provided to a contractor and directly related to petroleum operations under a petroleum agreement is calculated by applying the rate specified in Part IXB of the Third Schedule to this Act.

(3) Section 85 applies to an amount treated as a royalty in section 2 (nnn) (i) (E), if it is paid by a contractor to a non-resident subcontractor in respect of the use of property in Uganda.

(4) A contractor is treated as a designated person for the purposes of section 119 in respect of payments made to a resident subcontractor.

(5) Section 119 applies to an amount treated as a royalty in section 2 (nnn) (i) (E), if it is paid by a contractor to a resident subcontractor in respect of the use of property in Uganda.”

11. Substitution of section 89I of principal Act

The principal Act is amended by substituting for section 89I the following—

“89I. Accounting principles

(1) A contractor shall account on an accrual basis.

(2) Except as may be otherwise agreed in writing between the Government and a contractor and subject to the provisions of section 89L, all transactions shall be accounted for at arm's length prices, and a contractor shall disclose all non-arm's length transactions in a return for a specified period if required to do so by the Commissioner.

(3) A contractor shall, for purposes of taxation—

(a) maintain accounts for a contract area in Uganda Shillings and in United States Dollars, and in the case of any conflict, the accounts maintained in United States Dollars shall prevail; and

(b) use the exchange rates prescribed for conversion of currencies as follows—

(i) the Government or a contractor shall not experience an exchange gain or loss at the expense of, or to the benefit of, the other; and any gain or loss resulting from the exchange of currency, will be credited or charged to the accounts;

(ii) amounts received and costs and expenditures made in Uganda Shillings, United States Dollars or any other currency shall be converted into Uganda Shillings or United States Dollars, as the case may be, on the basis of the average of the buying and selling exchange rates between the currencies in question as published by the Bank of Uganda, prevailing on the last business day of the calendar month preceding the calendar month in which the amounts are received, and costs and expenditures are paid;

(iii) in the event of an increase or decrease, one time or accumulative, of ten percent (10%) or more in the rates of exchange between the Uganda Shilling, the United States Dollar or the currency in question during any given calendar month, the following rates will be used—

(aa) for the period from the first of the calendar month to the day when the increase or decrease is first reached, the average of the official buying and selling exchange rates between the United States Dollar, the Uganda Shilling or the currency in question as issued on the last day of the previous calendar month.

(ab) for the period from the day on which the increase or decrease is first reached to the end of the calendar month, the average of the official buying and selling exchange

rates between the United States Dollar, the Uganda Shilling or the currency in question as issued on the day on which the increase or decrease is reached.

(4) A contractor shall maintain a record of the exchange rates used in converting Uganda Shillings, United States Dollars or any other currency.”

12. Amendment of section 89J of principal Act

Section 89J of the principal Act is amended by inserting immediately after the existing provision, the following—

“(2) Any exploration, development or production expenditure associated with a unit development involving a discovery area which extends into a neighbouring country shall be allocated on the basis of the petroleum reserves attributable to that portion of the discovery area located in Uganda.”

13. Repeal of section 89K of principal Act

The principal Act is amended by repealing section 89K.

14. Insertion of new section 89KA

The principal Act is amended by inserting immediately after section 89K the following—

“89KA.Valuation of petroleum

For the purposes of determining a contractor's gross income derived from petroleum operations from a contract area, petroleum shall be valued and measured in accordance with the provisions of the petroleum agreement, subject to any further procedures that may be agreed in writing between the Government and the contractor.”

15. Repeal of section 89L of principal Act

The principal Act is amended by repealing section 89L.

16. Repeal of section 89M of principal Act

The principal Act is amended by repealing section 89M.

17. Insertion of new section 89MA

The principal Act is amended by inserting immediately after section 89M the following—

“89MA. Application of Parts XI, XIV, XV and XVI

Parts XI, XIV, XV and XVI of this Act apply subject to the modifications in this Part, to a contractor in respect of—

- (a) Government petroleum revenues; and
- (b) taxes payable to the Government not included in Government petroleum revenues, in this Part referred to as “other taxes”.

18. Repeal of section 89N of principal Act

The principal Act is amended by repealing section 89N.

19. Substitution of section 89O of principal Act

The principal Act is amended by substituting for section 89O the following—

“89O Returns

(1) Sections 92, 93 and 94 apply to a contractor subject to the following modifications—

- (a) a contractor shall furnish a return for a year of income not later than one month after the end of the year;
- (b) a contractor shall furnish a return not later than 7 days after the end of every month in respect of the provisional payments required under section 89P(b);

- (c) not less than thirty days before the beginning of a year of income, a contractor shall furnish a return, including particulars for each calendar quarter of the year, estimated to the best of the contractor's judgment, and shall furnish updates of the return within 7 days after the end of each of the first three calendar quarters in the year;
- (d) the Commissioner may require any person, whether taxable or not, to furnish a return on the contractor's behalf or as an agent or trustee of the contractor;
- (e) in addition to a return furnished on a contractor's own behalf, the Commissioner may require a contractor acting as an operator in a contract area, to furnish a return in respect of that area on behalf of all contractors with an interest in the petroleum agreement;
- (f) a return required under this section shall include particulars of Government petroleum revenues and other taxes prescribed by the Commissioner;
- (g) a return required for any period shall be furnished, whether Government petroleum revenues or other taxes are payable for the period or not;
- (h) the Commissioner may make provision permitting or requiring a contractor to submit returns electronically.

(2) In addition to a return required under subsection (1), a contractor shall file an annual consolidated petroleum revenue return with the Commissioner at the end of each year of income, not later than ninety days after the expiry of the year of income.

(3) A person who fails to furnish a return of income for a tax period within the time required by this section commits an offence and is liable to pay a penal tax equal to 2 per cent per annum of the tax payable for that period."

20. Insertion of new section 89OA

The principal Act is amended by inserting immediately after section 89O the following—

"89OA. Application of sections 95, 96 and 97

(1) Sections 95, 96 and 97 apply to a contractor subject to the following modifications—

- (a) an assessment made by the Commissioner on a contractor may relate to petroleum revenues and not only to chargeable income;
- (b) the time limit in section 95(1) is three years instead of five years;
- (c) section 96(1), (2), (3) and (4) apply to a contractor, notwithstanding that a notice has not been published under section 96(5).

(2) Objections and appeals relating to petroleum revenues shall be determined in accordance with this Act."

21. Substitution of section 89P of principal Act

The principal Act is amended by substituting for section 89P the following—

"89P. Collection and recovery

Sections 103 to 113 and section 136 shall apply to contractors with the following modifications—

- (a) petroleum revenues and other taxes charged in any assessment shall be payable within 7 days after the due date for furnishing a return;
- (b) a contractor shall, in each calendar quarter, make a provisional payment consisting of—

- (i) in the case of income tax, one quarter of the contractor's estimated income tax for the year; and
- (ii) in the case of petroleum revenues other than income tax, the amounts payable for the quarter under the petroleum agreement;
- (c) unless otherwise agreed between the Government and a contractor, all payments or refunds of petroleum revenues other than those payable in kind and other taxes shall be made in United States dollars;
- (d) a contractor shall pay petroleum revenues other than those payable in kind or payable to the Government's nominee under the terms of a petroleum agreement, and other taxes to the Uganda Revenue Authority;
- (e) subject to paragraph (f), section 113 shall apply to refunds of petroleum revenues and other taxes payable to the Government;
- (f) late payment, or refunds of Government petroleum revenues and other taxes payable to the Government shall, for each day on which the sums are overdue during any month, bear interest compounded daily at an annual rate equal to the average London Interbank Offered Rate for six months as quoted at 11.00 a.m. on the first business day of that month by the London Office of Citibank N.A. plus five percentage points;
- (g) where a contractor has paid Government petroleum revenues in kind and the amount payable subsequently requires to be adjusted for any reason, the adjustment will be made in cash unless otherwise agreed between the Government and a contractor;

- (h) a payment of petroleum revenues made by a contractor shall be allocated by the Commissioner against amounts payable in the order in which they become due and in such a way as to minimise any interest or penalties payable by a contractor."

22. Repeal of section 89Q of principal Act

The principal Act is amended by repealing section 89Q.

23. Insertion of new sections 89QA, 89QB and 89QC

The principal Act is amended by inserting immediately after section 89Q the following—

"89QA. Failure to furnish returns

(1) A contractor who fails to furnish a return or any other document within the time prescribed by this Act is liable to a fine of not less than 50,000 United States dollars and not exceeding 500,000 United States dollars.

(2) A contractor who files false or inaccurate returns commits an offence and is liable on conviction to a fine of not less than 50,000 United States dollars and not exceeding 500,000 United States dollars or its equivalent in Uganda Shillings and where there is fraud, a fine of not less than 500,000 United States dollars or its equivalent in Uganda Shillings.

(3) Where a contractor convicted of an offence under subsection (2) fails to furnish the return or document to which the offence relates with a period specified by the court, or furnishes false or inaccurate returns, that contractor is liable to a fine not exceeding 100,000 United States dollars.

89QB Making false or misleading statements

(1) A contractor or person who—

- (a) makes a statement to an officer of the Uganda Revenue Authority that is false or misleading in a material particular; or

- (b) omits from a statement made to an officer of the Uganda Revenue Authority, any matter or thing without which the statement is misleading in a material particular; commits an offence and is liable on conviction—
 - (i) where the statement or omission was made knowingly or recklessly, to a fine not less than 500,000 United States dollars or imprisonment for a term not exceeding one year, or both; and
 - (ii) in any other case, to a fine not less than 50,000 United States dollars and not exceeding 500,000 United States dollars.

(2) A reference in this section to a statement made to an officer of the Uganda Revenue Authority is a reference to a statement made in writing to that officer acting in the performance of his or her duties under this Act, and includes a statement made—

- (a) in a return, objection, or other document made, prepared, given, filed, or furnished under this Act;
- (b) in information required to be furnished under this Act;
- (c) in a document furnished to an officer of the Uganda Revenue Authority otherwise than pursuant to this Act;
- (d) in answer to a question asked by an officer of the Uganda Revenue Authority; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to an officer of the Uganda Revenue Authority.

89QC. Application of sections 143 to 155

(1) Sections 143 to 155 of this Act apply to a contractor in respect of petroleum revenues and other taxes subject to the following modifications—

- (a) interest under section 89P(f) and not penal tax under section 54 shall be charged where provisional tax is understated;
- (b) a contractor shall not be prosecuted or fined under these sections if prosecuted or fined for the same offence under the Petroleum (Exploration and Production) Act or the petroleum agreement.

89QD. Right of Commissioner to undertake audit

Nothing in a petroleum agreement or in any law shall be construed as limiting the right of the Commissioner to undertake an audit for purposes of this Act.”

24. Amendment of section 119 of principal Act

The principal Act is amended in section 119(5) by substituting for paragraph (a), the following—

“(a) a supply or importation of petroleum or petroleum products including furnace oil, other than lubricants, cosmetics and fabrics or yarn manufactured out of petroleum products;”.

25. Amendment of section 119A of principal Act

The Principal Act is amended in section 119A by substituting for subsection (1), the following—

“(1) A resident person who pays management or professional fees to a resident professional shall withhold tax on the gross amount of the payment at the rate prescribed in Part VIII of the Third Schedule.”

26. Amendment of Third Schedule to principal Act

The Third Schedule to the principal Act is amended by inserting immediately after Part VIII, the following new Parts—

“Part IX**Income Tax Rate for Contractors**

The income tax rate applicable to contractors under section 89B is 30%.

S. 89H (1)

Part IXA**Income Tax Rate for Resident Contractors**

The income tax rate payable on a participation dividend paid by a resident contractor to a non-resident company is 15%.

Part IXB

S. 89H (2)

Income Tax Rate for Non- Resident Contractors

The income tax rate payable by a non- resident subcontractor deriving income under a Uganda sourced services contract is 15%.”

27. Amendment of Eighth Schedule to principal Act

The Eighth Schedule to the principal Act is amended—

- (a) in paragraph 8, by substituting for the words, “for the purpose of the calculation of income tax payable by a contractor”, the words “from cost oil”;
- (b) in paragraph 9 (2) (k)—
 - (i) by inserting at the beginning the following—

“interest and other financial charges incurred on loans raised by the contractor”; and
 - (ii) by substituting for “contract”, the word “condition”;

- (c) in paragraph 9(3), by substituting for subparagraph (d) the following—

“(d) materials purchased from affiliated companies of the contractor shall be charged at prices not higher than the following—

- (i) new material (condition “A”) shall be valued at the current international price which shall not exceed the price prevailing in normal arm's length transactions on the open market;
- (ii) used material (condition “B”) which shall be in sound and serviceable condition and is suitable for re-use for its original function without reconditioning and priced at seventy five per cent of the current price of new material (condition “A”);
- (iii) used material shall be material which cannot be classified as condition “B” but which after repair and reconditioning will be further serviceable for original function as good second hand material (condition “B”) and priced at fifty percent of the current price of new material (condition “A”);
- (iv) materials which cannot be classified as condition “B” or condition “C” shall be priced at a value commensurate with their use;
- (v) materials involving erection costs shall be charged at the applicable condition percentage of the current knocked down price of new material (condition “A”);

- (vi) where the use of material is temporary and its service to the petroleum operations does not justify the reduction in price as provided in this subparagraph, the material shall be priced on a basis that results in a net charge to the accounts under the petroleum agreement are consistent with the value of the service rendered; and
- (vii) stocks and consumables costs shall be charged to the accounts using the “average costs” method.”;
- (e) by repealing subparagraphs (3) (e), (f), (g), (h), (i), (j) and (k).

Cross References

The Petroleum (Exploration and Production) Act, Cap. 150.