

PARLIAMENT OF THE REPUBLIC OF UGANDA

**REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC
DEVELOPMENT ON THE INCOME TAX (AMENDMENT) BILL, 2022**

OFFICE OF THE CLERK TO PARLIAMENT

MAY, 2022

REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC DEVELOPMENT ON THE INCOME TAX (AMENDMENT) BILL, 2022

1.0 Introduction

The Income Tax (Amendment) Bill, 2022 was, at the 18th Sitting of the 3rd Meeting of the 1st Session of the 11th Parliament of Uganda held on Thursday 31st March, 2022, presented for First Reading and referred to the Committee on Finance, Planning and Economic Development for further scrutiny.

Rt. Hon. Speaker, the Committee considered the Bill through consultations with different stakeholders, hence this report.

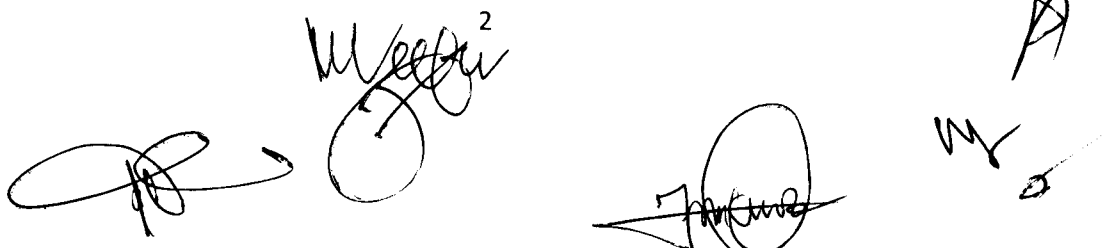
2.0 Object of the Bill

The object of this Bill is to amend the Income Tax Act, Cap. 340 to substitute the definition of a “beneficial owner”; to amend the definition of an “exempt organization”; to amend the tax rate applicable to individuals and companies for purposes of rental income; to provide for a ceiling on deductible expenses on rental income for non-individuals; to provide for the extension of the tax holiday for Bujagali Hydro Power Project for five years; to provide for the harmonisation of the scope of qualifying sectors for tax incentives and related investment thresholds under the Income Tax Act, Cap. 340, Value Added Tax Act, cap. 349, Excise Duty Act, 2014 and Stamp Duty Act, 2014; to provide for exclusion of income from transportation of cargo embarking outside Uganda; to clarify the apportionment of income qualifying for exemption under the ten year tax holiday; to repeal section 89QA; to provide for the definition of a “business asset” for purposes of section 118B (2); to provide for the listing of International Development Law Organisation as a listed institution and for related matters.

3.0 Methodology

The Committee held meetings and received memoranda from the following;-

- i) Minister of Finance, Planning and Economic Development;



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- ii) Uganda Revenue Authority;
- iii) Institute of Certified Public Accountants;
- iv) Private Sector Foundation Uganda;
- v) Uganda Manufacturers Association;
- vi) Price Waterhouse Coopers;
- vii) Graphic Systems Ltd;
- viii) Uganda Ginners and Cotton Exporters Association Ltd;
- ix) BDE East Africa Advisory Services Ltd;
- x) Erastus Ngirabakunzi, a tax consultant;
- xi) Reuben Desire Kamanzi, a retired public servant.

4.0 Observations of the Committee

The Committee identified various cross-cutting issues and made the following observations regarding the Income Tax (Amendment) Bill, 2022;

A. Cross-cutting Issues

The following cross-cutting issues were identified by the Committee in its deliberations regarding the Income Tax Amendment Bill, 2022;

4.1 Non-Clearance of Motor Vehicles Nine Years or older;

The Committee observed that Uganda Revenue Authority issued a notice to the public in April 2022, that all motor vehicles of nine (9) years and older from the date of manufacture, will be compelled to have their final clearances done at the port of entry that is either at Mombasa or Dar es Salaam, effective 1st July 2022.

The Committee further observed that the 3,000-strong business community under this sector usually does not have ready cash to execute transactions all through without resorting to borrowing, whereby most Businesses operate using borrowed money, in this regard, banks and other credit facilitators have to verify goods; vehicles, before extending the Facility. In addition, the resale value of most of the imported vehicles is always based on “current number plate”.

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The Committee noted that this will greatly affect the market since these vehicles will be acquiring number plates and it takes some time to reach the customer or even the bonded warehousing. This has been possible through the warehousing regime which allows vehicle importers to warehouse them for up to 270 days.

Recommendation;

The Committee therefore recommends that;

- a) The proposal by Uganda Revenue Authority that ‘all motor vehicles aged nine (9) years and older from the date of their manufacture are to be compelled to have their final clearances done at the port of entry’ should be deferred to the FY 23/24, when the economy is fully open and able to effectively trade;**
- b) The exercise be undertaken in a phased approach with the first year targeting vehicles 15 years and older;**

4.2 Widening the Tax base;

The Committee observed the urgent need to widen the tax base through measures that stimulate growth in the economy. The Committee identified key strategic interventions to that effect that include but are not limited to;

- I. Enactment of the National Local Content Bill into law to enforce local content provisions and increase participation of the private sector in public procurement. The Committee took cognizant of the fact that, the bill has now been referred to the committee and that the Committee shall soon be considering the bill and reporting back to the House. The Committee also noted that, if enacted, potentially the private sector participation will increase from 30% to 60% within two (2) years, resulting in 130,000 new jobs, and about US\$3 billion tax revenue earnings as VAT and Corporation Tax.
- II. Enactment of the Real Estates Agency Bill: The Committee noted that the enactment of the Real Estate Agency Bill will regulate real estate actors, bringing all these actors into the tax base. The Committee noted that this has a potential

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to add over one million unregulated real estate players on the tax register, which increases earnings out of corporation tax.

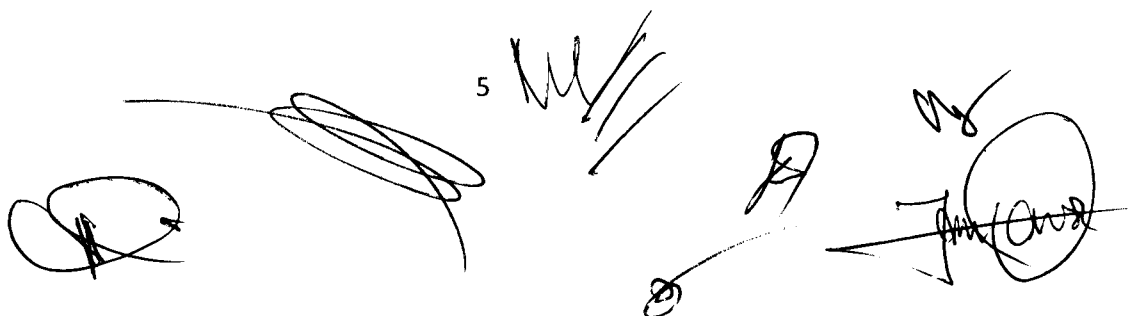
- III. Reduction in Illicit trade: The Committee noted that Uganda's informal sector is responsible for 65% and 25% of the alcohol and cigarettes market respectively, although the sector does not contribute to the tax base and is outside the tax radar. The Committee noted that the high frequency of illicit trade in the alcohol and cigarette industries is due to the price elasticity of these products as a result of the high tax rates levied on these products in comparison to Uganda's neighbors in the EAC.
- IV. The Committee noted that consumers always shift to cheap smuggled products and informal market products. According to Euromonitor Research conducted in 2021, whereas the total market size for alcohol had grown by a 9.1% Compound Annual Growth Rate (CAGR) for the period 2017 to 2021, the size of the illicit (unregistered and untaxed) sector had grown by 17% CAGR in the same period.
- V. The Committee noted that if the illicit trade on alcohol from 65% to 50% were to be realized, the Government will generate an extra USD 68 million as tax revenue. To achieve this, Government needs to;
- a) Ensure that taxes on especially fast-moving goods are competitive with other tax levels within the region;
 - b) Enact competition and anti-counterfeit laws to enforce anti illicit trade measures;
 - c) Increase funding to boost capacity of enforcement officers under the UNBS, Uganda Police and URA about the fight against illicit trade.

Recommendations

The Committee recommends that Government undertakes active efforts to expand the tax base through:-

- a) *Fast-tracking the implementation of the objectives of the Domestic Revenue Mobilisation Strategy;***
- b) *the enactment of the Local Content Bill and the Real Estate Agency Bill, 2022;***

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B. Specific Observations of the Committee

4.3 Clause 2(b) amending Section 2(bb) of the Income Tax Act – Definition of “Exempt Organisation”.

The Committee observed that the clause amends the definition of an “exempt organization” in Section 2(bb) of the principal Act to include a research institution whose object is not for profit. The purpose of this inclusion is to provide for a tax exemption for not-for-profit research institutions under the Income Tax Act.

The Committee further observed that the above definition of “exempt organisation” is ambiguous in that it does not go far enough as to clarify whether not-for-profit oriented companies supporting the business community in business development are exempted. The Business Management Organizations that could benefit from a clear definition of a research institution to include associations such as Uganda Manufacturers Association (UMA) and the Uganda Small Scale Industries Association (USSIA).

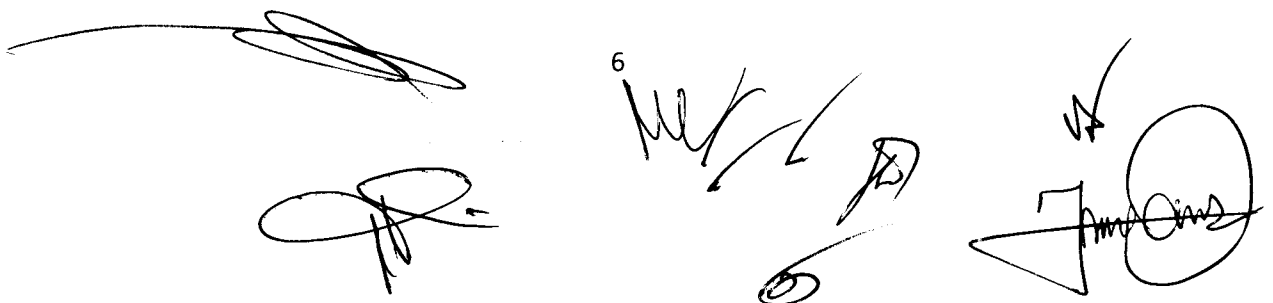
The Committee noted that including not-for-profit oriented companies under “research institutions” would be in line with the NDP III program of private sector development as more members of the private sector will be organized and supported to grow through these associations. This will also strengthen the Vision 2040 goal of a private sector-led economy.

Recommendation:

The Committee recommends that Clause 2 (b) be amended to include not-for-profit oriented companies in the definition of a “research organisation” in the definition of “research organisation.”

4.4 Taxation of rental income – Amendment to Sections 5, 22 and the Third Schedule

The Committee observed the following that there is need to amend Sections 5, 22 and the 3rd Schedule to the Income Tax Act to simplify the collections of rental tax. The Committee further noted that record-keeping is a big challenge to many



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individuals in business, and as such, there is need to tax incomes and not expenses in regard to their rental income. The Committee further noted that due to the high taxation on rental income, compliance remains low since the current taxes are high.

The Committee took cognisance of the agreement between the Government of Uganda and Ripple Nami Inc. to assist in the collection of rental tax through digital solutions. The Committee further noted that any increase in rental tax has a bottom line advantage to Ripple Nami Inc., which shall benefit from higher revenues. The Committee noted the need to monitor and evaluate the performance of Ripple Nami Inc.'s contract in future to ascertain if it has a positive impact through expanding the tax base in the rental income tax head.

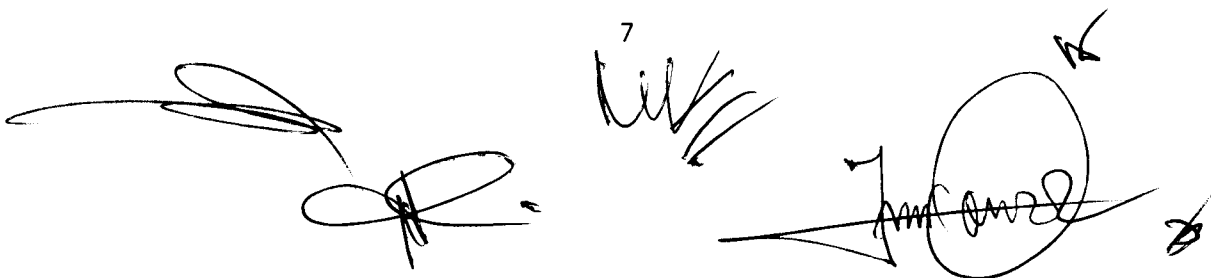
Recommendation

The Committee recommends that;

a) all individuals are taxed on gross income as follows;

S/N	Gross rental income	Rate of tax
1.	Not exceeding Ushs. 2,820,000 per annum (235,000pm)	Nil
2.	Exceeding Ushs. 2,820,000 but not exceeding Ushs. 12,000,000 (1,000,000 pm)	7.5%
3.	Exceeding Ushs. 12,000,000 but not exceeding Ushs. 60,000,000 (5,000,000 pm)	10%
4.	Exceeding Ushs. 60,000,000	15%

b) Non-Individuals are taxed on gross income at 15%.



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4.5 Clause 4(b) amending Section 21(1) - Income tax exemption for manufacturers and hospital developers;

The Committee observed that the Bill seeks to exempt manufacturers and hospital developers from income tax for a period of ten (10) years from the date of commencement of business. The Committee observed that there is need to assess all exemptions and other tax incentives before more exemptions are granted.

Recommendation:

The Committee therefore recommends that Clause 4 (b) amending Section 21 (1) of the Income Tax Act be deleted and government undertakes a comprehensive study on tax exemptions.

4.6 Clause 4(a)- Amendment of section 21 of the principal Act- Extension of tax exemption to Bujagali Hydro-Power Project from 2022 to 2027-

Observations of the Committee

a) No return on equity on GOU, Non-Remittance of Dividends and No board member by GOU

While Government of Uganda is a majority shareholder of ordinary shares in the Bujagali Electricity Limited, it has never received any dividend and it has no board member. Out of the 460,000 shares the Government owns 360,000. The value for each share of the Government classified as Class “C” is worth UGX 100,000 yet the value for each of share for the other shareholder classified as Class “A” has a value of a mere UGX 100. Based on the Power Purchase agreement, Government is entitled to retained earnings also known as Return on Investment or equity for the shareholders of 19%. This is provided under Section 4.4 of Annex D of the Power Purchase Agreement.

Table 1: Summary of Critical Aspects on Bujagali Electricity Limited

Aspect	Owner	Investment (USD)	2018	2019	2020	2021	Total
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Shares		Dividends					
Ordinary - Class A	Foreign	10,000,000	3,807,967	4,002,536	3,835,763	3,613,400	15,259,666
Ordinary - Class C	GOU	20,000,000	-	-	-	-	-
Preference s - Class B	Foreign	67,910	64,692,033	67,997,464	65,164,237	61,386,600	194,548,301
Total		30,067,910	3,807,967	72,000,000	69,000,000	65,000,000	209,807,967
							-
Interest on Equity or Return on Equity(For eigners)			103,074,709	99,485,061	97,378,258	95,023,152	394,961,180
Loans			392,596,840	368,601,281	342,600,007	316,598,874	1,420,397,002
Retained Earnings			248,979,313	237,147,460	224,980,053	239,807,138	950,913,964
Deferred Income Tax			204,078,530	195,511,128	191,265,883	193,735,984	784,591,525

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Source: Bujagali Energy Limited Annual Report and Financial Statements for the years 2018 - 2021

b) Non-Remittance of Returned Earnings

Section 4.9 of Annex D of the Power Purchase Agreement provides for Return on Government of Uganda Equity. However, the Government does not receive any equity because the Power Purchase Agreement allocated no voting powers to Class “C” shareholders. However, Class “A” shareholders who are the minority receive their earnings. Secondly preference share of value 67,910 US dollars, receive dividends every year more than 70,000,000 US dollars per year.

For the last 4 years i.e. 2018 – 2021, retained earnings worth a total of USD 950.91 million (UGX 3.61 trillion) has not been deposited in the consolidated fund.

c) Drivers of Electricity Tariff Based on Power Purchase Agreement

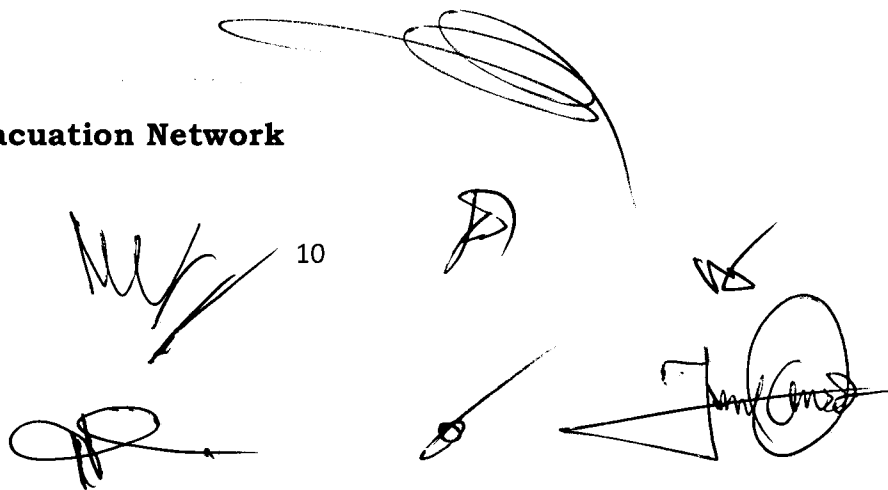
The high electricity tariffs are attributed to the cost arising from payment for capacity charges. Debt principal (22%), Debt Interest (20%), Operation and Maintenance costs (6%) and Return on Equity (52%) constitute the cost of capacity charges.

However, it should be noted that Return on Equity is misclassified as a cost yet it is an earning or dividends. The rest of the items i.e. debt principal and debt interest are paid by the Government of Uganda through the debt refinancing undertaken in 2018. Bujagali Electricity Limited only meets Operation and Maintenance costs.

Additionally, when computing return on equity for Bujagali Electricity Limited, they incorporate costs of Corporate Income Tax. However, it is critical to note that Section 4.5 of Annex D of the Power Purchase Agreement, the Company is obliged to use its reasonable efforts to keep its corporate income tax liabilities to a minimum i.e. zero. Therefore, the proposal to exempt the company of Corporate Income Tax is unfounded. Besides Corporate tax is charged on profit. So, it cannot be a cost.

Unfortunately, the Company is overpricing the capacity charges so as to generate excess income after knocking off their return on investment to the disadvantage of the Government of Uganda. This leads to getting dividends for BEL.

d) Inadequate Evacuation Network



It ought to be noted that the main driver for high power tariffs is not the cost of power generation but rather deemed energy i.e. costs for unconsumed power. This is attributed to inadequate evacuation networks that constrain demand for the power generated. Hence the need to incur capacity charges. Therefore, the best suited intervention would have been to reduce the cost of developing evacuation networks and attract investments. On average UGX 783.08 billion is required annually for the development of evacuation and distribution network¹.

e) Foregone Revenue

Concern is raised on the fact that for the period FY2018/19 – FY2020/21, a total of UGX 299.18 billion had been foregone due to income tax exemptions to Bujagali Hydro Power Project². The foregone revenue for FY2021/22 is yet to be established at the close of the financial year. Nevertheless, the new proposed exemption period will amount to foregone revenue of a total of USD 113.8 million (UGX 432.44 billion) in the years 2023 - 2027³ in return for a tariff reduction of only 4.7%.

It has been established that Government forecasts to grant income tax exemptions to the company until 2032. Unfortunately, despite repeated requests, Government was unable to furnish the Committee with the benefits in monetary terms that have accrued from the exemption as well as enumeration of other exemptions that the company is benefiting from.

Table 1: Revenue foregone from Income Tax Exemptions towards Bujagali Hydro Power Project for FY2018/19 – 2020/21

Financial Year	Foregone Revenue (UGX Billion)
2018/19	108.4
2019/20	100.04
2020/21	90.74

¹ National Planning Authority, 2020. NDPIII Sustainable Energy Development Programme Implementation Action Plan

² Ministry of Finance, Planning and Economic Development, 2021. Tax Expenditure Report FY2020/21

³ Ministry of Energy and Mineral Development, 2021. Request for Extension of Corporate Tax Waiver for Bujagali Energy Limited

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Total

299.18

Source: MoFPED

f) Lack of Value for Money

It should be noted that the anticipated tariff reduction from the new proposed exemption will be lesser than the expiring exemption which has been asserted to have led to a tariff reduction from US Cents 13.83 per kWh on 1st July 2017 to a projection of US Cents 10.62 per kWh on 30th June 2022. This translates to a reduction of 23.2%. Hence there is a value for money concern as to why the anticipated tariff reduction of 4.7% from the proposed exemption is far less than 23.2% for the same period. Ideally, based on precedent the new exemption would reduce the tariff to US Cents 8.15 per kWh not US Cents 10.12 per kWh.

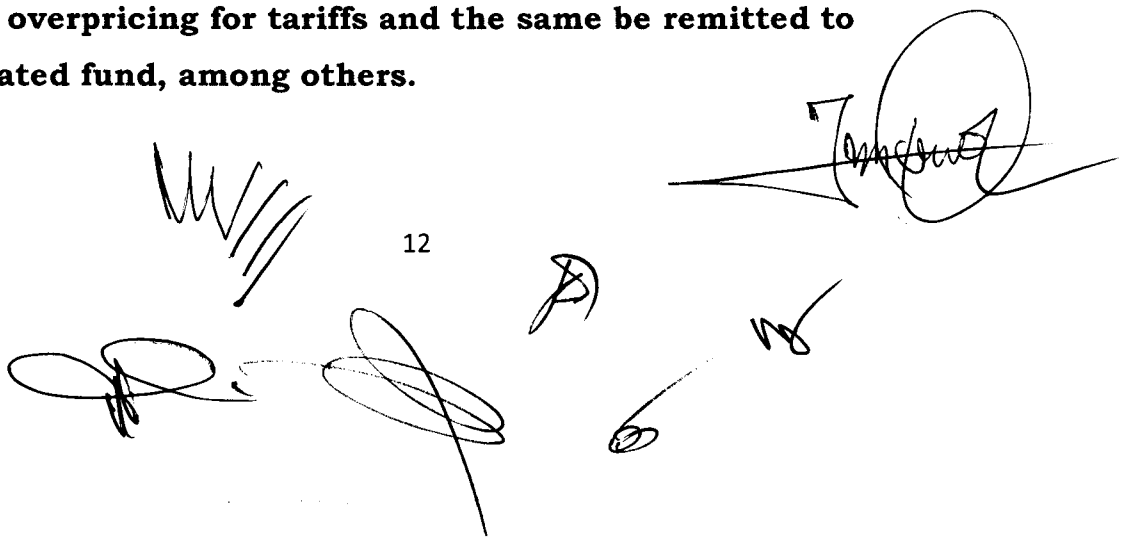
The committee believes that BEL has already collected enough money for them to lower the tariffs at the consumer level without a tax waiver.

g) The return on equity for BEL is 19% per annum and it is deducted as an expense in the profit and loss account which violates the principle of economy. Therefore, if this is agreed, then there is no need for corporate tax.

Recommendation

- i. The committee was not therefore satisfied with the explanations justifying another five year Corporate Income Tax waiver for Bujagali Energy Ltd. The Committee is therefore recommending that request be declined, because the cost has been exaggerated by BEL**
- ii. The committee recommends that the Auditor General of Uganda carries out a forensic audit on BEL to establish the excess money collected as a result of overpricing for tariffs and the same be remitted to consolidated fund, among others.**

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- iii. **That the cost of restructuring the loan costed Uganda additional 45 million dollars was not necessary and there is need to review the resolutions.**
- iv. **The committee recommends that when you review the accounts of BEL, it clearly shows that BEL which is taking interest and dividend is basically increasing tariff of power for no equity of theirs.**
- v. **The committee recommends early retirement of the loans as there is enough money to meet the obligations.**
- vi. **Government should ensure all types of agreements which commit government and people of Uganda should be scrutinised by Parliament.**

4.7 Clause 7; Amendment of section 89GB of the principal Act- Treatment of an intangible asset as a depreciable cost with a 100% depreciable rate

The Committee noted that Clause 7 provides that where the cost of acquiring an intangible asset to a licensee contractor is treated as petroleum exploration expenditure, then such cost qualifies for full deduction in the year of income as other petroleum exploration expenditure.

The Committee took cognisance of the fact that the purpose of this amendment is to clarify that the same rate of writing off the cost of an intangible asset referred to in Section 89GB(2) is the depreciation rate of 100% which is referred to in Section 89GB(1)(b).

That notwithstanding, the Committee noted that Section 89 GB of the Income Tax Act already provides for the manner of the treatment of the cost of acquiring a depreciable asset in petroleum exploration.

Recommendation

The Committee recommends that Clause 7 amending Section 89GB be deleted.

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Amendment of Section 22 of the Income Tax Act to exclude seasonal farmers in agriculture

The Committee observed that Section 22(2) (m) of the Income Tax Act (as amended in 2015) permits for purposes of ascertaining the chargeable income of a person for a year of income, a deduction for any expenditure above five million shillings in one transaction on goods and services from a supplier who does not have a tax payer identification number.

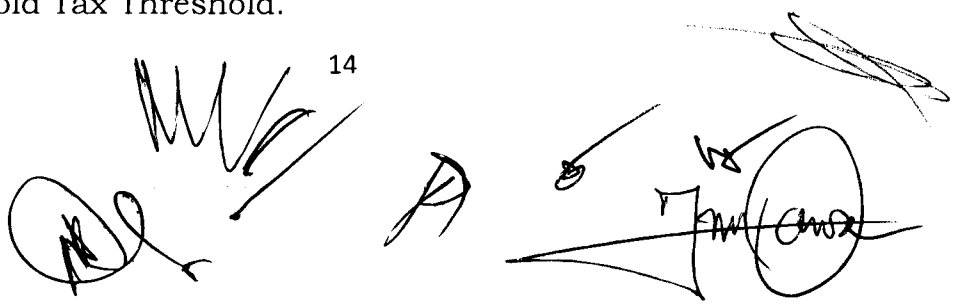
The purpose of Section 22 (2) (m) of the ITA, the Committee noted, is to incentivise unregistered suppliers of goods and services such as farmers to acquire TIN numbers in order to remain competitive. However, with regards to agriculture in general and cotton in particular, this approach may not be practicable.

The Committee noted that while the solution appears simple, in that the farmers should register or tax in order to remain competitive, the situation on the ground is quite different.

To shed light on the difficulty of the application of Section 22(2) (m), the Committee noted that cotton is a seasonal crop and is mainly owned by small scale farmers holding ½ to 2 acres of land with an average yield of 300-500kgs per acre. The Ginners buy cotton in small lots from various farmers. Generally, these small scale farmers are not very sophisticated business owners and therefore may not understand the rationale for TIN registration or the procedures involved in the registration with the Uganda Revenue Authority.

The Committee further noted that many of the farmers may not have the requisite documentation such as a National Identity Card or Business Registration Number to successfully register themselves. Additionally, many farmers may not even meet the threshold of a gross turnover of UGX 10,000,000 in one year in one year, the presumptive threshold Tax Threshold.

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