

**ACTS SUPPLEMENT**

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**Act 19**                      *Income Tax (Amendment) (No. 2) Act*                      **2008**

THE INCOME TAX (AMENDMENT) (No. 2) ACT, 2008.

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ARRANGEMENT OF SECTIONS

*Section.*

1. Commencement
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6. Insertion of Part IXA to principal Act
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**THE INCOME TAX (AMENDMENT) (No. 2) ACT, 2008.**

**An Act to amend the Income Tax Act Cap. 340 to provide for the taxation of income of airlines; to provide incentives to persons engaged in agro-processing; to exempt business income of persons derived from operating and managing educational institutions; to exempt from tax interest on deposit auction funds; to provide for the deduction of local service tax; to provide for the taxation of petroleum operations; to provide for use of information technology in tax formalities and procedures and for related matters.**

DATE OF ASSENT: 18th October, 2008.

*Date of Commencement:* 1st July, 2008.

BE IT ENACTED by Parliament as follows:

**1. Commencement**

This Act shall be deemed to have come into force on 1st July 2008.

**2. Application of Act**

This Act applies to years of income commencing on or after 1st July 2008, except for Part IXA which shall apply to years of income commencing on or after 1st July 1997.

**3. Amendment of section 2 of principal Act**

Section 2 of the Income Tax Act, in this Act referred to as the principal Act, is amended by inserting the following definition in the appropriate alphabetical order—

“petroleum agreement” means an agreement for the grant of a licence for petroleum exploration, development and production between the Government and a contractor;”

**4. Amendment of section 21 of principal Act**

Section 21 of the principal Act is amended by—

(a) Substituting for subsection (1) (x) the following—

“(x) the income of a person derived from the operation of aircraft in domestic and international traffic or the leasing of aircraft;”

(b) inserting immediately after subsection (1) (y) the following—

“(z) the income of a person derived from agriculture where the person—

- (i) applies in writing to the Commissioner to be issued with a certificate of exemption at the beginning of his or her investment;
  - (ii) invests in new plant and machinery to process agricultural products for final consumption;
  - (iii) processes agricultural products grown or produced in Uganda;
  - (iv) is located at least 30 kilometres outside Kampala district;
  - (v) commits to regularly fulfil all obligations in this Act relating to his or her investment;
  - (vi) has been issued with a certificate of exemption by the Commissioner;
- (aa) income derived by a person from managing or running an educational institution;
- (ab) interest earned by a person on deposit auction funds issued by the Bank of Uganda for the purposes of liquidity management.”

**5. Amendment of section 22 (Expenses of deriving income) of principal Act.**

Section 22 of the principal Act is amended—

(a) by substituting for subsection (1) (d) the following—

“(d) local service tax paid by an individual;”

(b) by inserting immediately after subsection (1)(d) the following—

“(e) private employers who employ ten or more persons with disabilities either as regular employees, apprentices or learners on full times basis shall be entitled to tax deduction of fifteen percent of all payable tax upon proof to the Uganda Revenue Authority;

(f) section 17 of the Persons with Disabilities Act is repealed.”

(c) by repealing subsection (6).

**6. Insertion of Part IXA to principal Act.**

The following Part is inserted immediately after Part IX of the principal Act—

“PART IXA—SPECIAL PROVISIONS FOR THE TAXATION OF PETROLEUM OPERATIONS

**89A. Interpretation.**

(1) In this Part, unless the context otherwise requires—

“commencement of commercial production” means the first day of the period of thirty consecutive days during which production is not less than the level of regular production delivered for sale as determined by Government as part of the approval of, or amendment to a development plan, averaged over not less than twenty five days in the period;

- “contract area” means an area that is the subject of a petroleum agreement and, if any part of that area is relinquished under the petroleum agreement, the contract area is the contract area as originally granted;
- “contractor” means a person with whom the Government enters into a petroleum agreement;
- “decommissioning plan” means the decommissioning plan of a contractor approved under a petroleum agreement;
- “development expenditure” means expenditure incurred, after approval of a development plan, in undertaking development operations including in the acquisition of a depreciable asset used in such operations and an expenditure treated as development expenditure under a petroleum agreement, but does not include any expenditure incurred in the acquisition or construction of a pipeline (not for use in petroleum operations) or expenditure that is not allowed as a deduction under section 22(2) or 23;
- “development plan” means the plan for development and production of petroleum resources in the contract area approved under a petroleum agreement;
- “exploration expenditure” means expenditure incurred, prior to approval of a development plan, in undertaking exploration operations, including in the acquisition of a depreciable asset used in those operations and an expenditure treated as exploration expenditure under a petroleum agreement, but does not include expenditure that is not allowed as a deduction under section 22(2) or 23;
- “participation dividend”, in relation to a resident contractor, means a dividend paid by the contractor to a non-resident company that has a 10% or greater voting interest in the voting power of the contractor;

“petroleum operations” means exploration operations and development operations authorized under a petroleum agreement;

“recoverable cost” means a cost of a contractor that is recoverable under a petroleum agreement out of the gross revenues from the sale of petroleum;

“subcontractor” means a person supplying goods or services to a contractor in respect of petroleum operations.

(2) Unless the context otherwise requires, any term that is not defined in this Act but which is defined in the Petroleum (Exploration and Production) Act has the meaning assigned to it in the Petroleum (Exploration and Production) Act.

#### **89B. Taxation of contractors and subcontractors**

(1) A contractor and a subcontractor is subject to tax in accordance with this Act subject to the modifications in this Part.

(2) Where there is inconsistency in the taxation of a contractor or subcontractor as between this Part and the other Parts of this Act, this Part and the petroleum agreement prevail.

#### **89C. Limitation on deduction**

(1) An amount that a contractor may deduct under this Act in relation to petroleum operations undertaken by the contractor in a contract area in a year of income, is allowed as a deduction only against the gross income derived by the contractor from those operations in the contract area, for that year.

(2) If, in any year of income, the total deductions of a contractor in relation to petroleum operations undertaken in a contract area exceeds the total gross income arising from those operations in the contract area, the excess is carried forward to the next following year of income and is deductible in that year against the gross income arising from the petroleum operations in the contract area, and until the excess is fully deducted or the petroleum operations in the contract area cease.

**89D. Deductibility of petroleum royalties**

A contractor is allowed a deduction for a royalty provided for in a petroleum agreement only if the amount of the royalty is included in the contractor's gross income from the sale of petroleum.

**89E. Decommissioning costs reserve and decommissioning expenditure**

(1) Notwithstanding section 22(2)(e), if a contractor has a decommissioning plan, the amount that a contractor carries under the plan to the contractor's decommissioning costs reserve for a year of income in respect of petroleum operations is allowed as a deduction in that year.

(2) An amount is first deductible under this section in the year of income in which estimates of the monies required for funding of a decommissioning plan are first charged as a recoverable cost under the contractor's petroleum agreement.

(3) Decommissioning expenditure incurred by a contractor in a year of income (referred to as the "current year") is not deductible except to the extent that the total amount of decommissioning expenditure incurred by the contractor in the current year and previous years of income exceeds the amount calculated according to the following formula-

$$A + B$$

Where—

A is the total amount deductible under subsection (1) in the current year and previous years of income; and

B is the total amount deductible under this subsection in previous years of income.

(4) If, at the end of decommissioning of a contract area, the total amount deductible under subsection (1) exceeds the decommissioning expenditure actually incurred by the contractor, the amount of the excess is included in the gross income of the contractor for the year of income in which decommissioning ends.

**89F. Exploration and development expenditure**

(1) A contractor is allowed a deduction for exploration expenditure incurred in undertaking petroleum operations under a petroleum agreement in the year of income in which the asset is placed into service if it has an ascertained useful life and in other cases the year of income in which the expenditure is incurred.

(2) Subject to subsection (3), a development expenditure incurred by a contractor in undertaking petroleum operations under a petroleum agreement is treated as an intangible asset with a useful life equal to the expected life of the petroleum operations under the agreement or six years, whichever is the lesser.

(3) A contractor is allowed a deduction for expenditure incurred in installing facilities up to the delivery point on a unit of production basis.

(4) If an intangible asset referred to in subsection (2) is acquired, created, or constructed by a contractor before commercial production, section 31 applies to the asset on the basis that it was acquired, created, or constructed at the commencement of commercial production.

(5) Sections 27, 28, 29 and 30 do not apply to expenditure to which subsection (1) or (2) apply.

(6) For purposes of the section, “unit of production deduction” for each year of income shall be determined by dividing the total expenditure which remains unrecovered at the beginning of each year of income by the recoverable reserves in the contract area and multiplying the resulting figure by the total number of barrels of oil produced in the year of income.

**89G. Transfer of interest in a petroleum agreement**

If a contractor, in this Part referred to as “transferor contractor” disposes of a depreciable, intangible or other asset used in petroleum operations under a petroleum agreement, including the contractor’s interest in the 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) no gain or loss is taken into account in determining the chargeable income of the transferor contractor;
- (b) in the case of a depreciable or intangible asset, the transferee contractor continues to depreciate or amortizes the asset in the same manner and on the same basis as the transferor contractor would if the disposal had not occurred; and
- (c) 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.

#### **89H. Withholding tax**

(1) The rate of tax for the purposes of section 83(3) applicable to a participation dividend paid by a resident contractor to a non-resident company, is 15%.

(2) The rate of tax for the purposes of section 85(2) applicable to 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 15%.

(3) Section 85 but not section 83 applies to an amount treated as a royalty under the definition of "royalty" in section 2 (mmm) (i) (E), if it is paid by a contractor to a 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 under the definition of "royalty" in section 2 (mmm) (i) (E), if it is paid by a contractor to a subcontractor in respect of the use of property in Uganda.

#### **7. Amendment of section 157 of the principal Act.**

Section 157 of the principal Act is amended in subsection (3)—

- (a) in paragraph (c), by repealing the word “or”;
- (b) in paragraph (d), by inserting at the end of the paragraph the word “or”; and
- (c) by inserting the following after paragraph (d)—
  - “(e) the Minister responsible for petroleum exploration development and production or any person authorised by that Minister to the extent necessary, to ensure that amounts taken into account by a contractor for the purposes of this Act are consistent with amounts taken into account for the purposes of a petroleum agreement;”

**8. Insertion of new sections 158A, 158B and 158C to principal Act.**

The principal Act is amended by inserting immediately after section 158 the following—

**“158A. Use of information technology**

(1) Subject to such conditions as the Commissioner General shall prescribe, tax formalities or procedures may be carried out by use of information technology.

(2) A person who wishes to be registered as a user of a tax computerised system may apply in writing to the Commissioner General who may—

- (a) grant the application subject to such conditions as he or she may impose; or
- (b) reject the application.

(3) A person shall not access, transmit to or receive information from any tax computerised system unless that person is a registered user of the system.

**158B. Cancellation of registration**

The Commissioner General may at any time cancel the registration of the user where he or she is satisfied that a person who is a user of a tax computerised system—

- (a) has failed to comply with a condition of registration imposed by the Commissioner General under section 158A (1);
- (b) has failed to comply with or has acted in contravention of any condition under the regulations; or
- (c) has been convicted of an offence under this Act relating to improper access to or interference with tax a computerised system.

**158C. Offences**

- (1) A person commits an offence where he or she—
  - (a) knowingly and without lawful authority by any means gains access to or attempts to gain access to any tax computerised system;
  - (b) having lawful access to any tax computerised system, knowingly uses or discloses information obtained from a computer system for a purpose that is not authorised; or
  - (c) knowing that he or she is not authorised to do so receives information obtained from any tax computerised system and uses, discloses, publishes or otherwise disseminates such information.
- (2) A person who commits an offence under subsection (1) is liable on conviction—
  - (a) in the case of an individual, to imprisonment not exceeding two years or a fine not exceeding five hundred thousand shillings or both ; or
  - (b) in the case of a body corporate, to a fine not exceeding two million five hundred thousand shillings.
- (3) A person commits an offence where he or she knowingly—

- (a) falsifies any record or information stored in any tax computerised system;
- (b) damages or impairs any tax computerised system; or
- (c) damages or impairs any duplicate tape or disc or other medium on which any information obtained from the a tax computerised system is held or stored otherwise than with the permission of the Commissioner General,

and is liable on conviction to imprisonment not exceeding three years or a fine not exceeding one million shillings or both.”

### **Cross References**

Petroleum (Exploration and Production) Act, Cap. 150