COMMENTS ON THE PROPOSED INCOME TAX (AMENDMENT) BILL, 2023 SUBMITTED TO THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC DEVELOPMENT OF THE UGANDA PARLIAMENT

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Introduction

The Proposed Income Tax (Amendment) Bill, 2023 (the bill) will degrade universal access and use of digital tools. The bill, which among others seeks to streamline the imposition of capital gains tax on the purchase of assets, proposes in clause 16 for the introduction of section 86A. The section would provide as follows:

> **"86A. Taxation of non-residents providing digital services**
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> (1) A tax is imposed on every non-resident person deriving income from providing digital services in Uganda to a customer in Uganda at the rate prescribed in Part IV of the Third Schedule to this Act.
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> (2) For the purposes of subsection (1), income is derived from providing a digital service in Uganda to a customer in Uganda, if the digital service is delivered over the internet, electronic network or an online platform.
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> (3) For the purposes of this section "digital service" includes—
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> (a) online advertising services;
> (b) data services;
> (c) services delivered through an online marketplace or intermediation platform, including an accommodation online marketplace, a vehicle hire online marketplace and any other transport online marketplace;
> (d) digital content services, including accessing and downloading of digital content;
> (e) online gaming services;
> (f) cloud computing services;
> (g) data warehousing;
> (h) services, other than those services in this subsection, delivered through a social media platform or an internet search engine; and
> (i) any other digital services as the Minister may prescribe by statutory instrument made under this Act."

Emerging Concerns

The proposed amendment bill once passed will have the following implications.

1. It means that non-resident providers of digital services will have to pay a 5% tax rate on income derived from providing digital services. The tax is high and would be an addition to the already existing digital taxes that affect access and use of digital tools and services. Since July 1, 2022, web hosting, software and streaming services are required to [pay a mandatory value added tax of 18%]() on services utilised through intermediaries and platforms such as Amazon, Meta (Facebook), Twitter and Zoom. The 18% VAT is charged on the consumer and remitted by the service provider to the Uganda Revenue Authority. The addition of the proposed 5% would constitute a digital

taxation rate way above those imposed by Uganda's comparable neighbours - Kenya (1.5%) which the government is even planning to drop and Tanzania (2%).

2. In a Digital Taxation in Uganda: A Hindrance to Inclusive Access and Use of Digital Technologies policy brief by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA), digital taxes were noted to be a hindrance to access and use of digital tools and services as "they translate into high cost of services, devices, hardware and software, with suppliers and service providers passing on the financial burden onto consumers, thereby aggravating the affordability challenge." While in July 2021 Uganda abolished the Over-the Top (OTT) tax which was introduced in 2018 over failure to generate prospected incomes, a 12% levy on the net price of internet data was imposed, after which a VAT of 18% applies. The proposed 5% tax rate in the bill would further raise the costs to be borne by consumers of digital goods and services.

3. The affordability challenge is already one of the major hindrances to digital transformation of the country. According to the GSMA report of 2019, Uganda: Driving inclusive socio-economic progress through mobile-enabled digital transformation, affordability hinders the implementation of mobile-enabled solutions as it blocks access. Poorly planned and unfair taxations systems are likely to widen the exclusion gap. Yet access to reliable and affordable digital content and services is essential for building a wide knowledge economy. Uganda fares poorly in mobile connectivity. The 2021 GSMA Mobile Connectivity Index scores Uganda at 47.4% with an affordability rate of 35.3%, consumer readiness (50.4%) and content and services (50.6%) behind its neighbours Tanzania, and Kenya, and performing only slightly better than Rwanda, South Sudan and the Democratic Republic of Congo.

4. According to the Digital Economy Scorecard of 2021 by the United Nations Capital Development Fund (UNCDF), Uganda's digital economy score is 53%, digital inclusiveness is 61% while the women inclusiveness score is rated 77%. The results in the scorecard indicate that affordability of digital services is still poor. Addition of taxes to the already heavily taxed sector will further limit access to digital tools and services. The tax is likely to push the digital economy into regression as opposed to progression.

5. The vulnerable segments such as women, youth, elderly, refugees, migrants, rural inhabitants and people with disabilities continue to suffer the largest pinch of exorbitant taxes on digital tools and services. The UNCDF Score Card of 2021 found that the digital divide or groups most excluded from the digital economy in Uganda are the elderly (80%), rural communities (64%), persons with disabilities (74%), the youth (33%), refugees (80%) and migrants (75%).

6. According to the CIPESA Policy brief on Removing Barriers to ICT Accessibility for Persons with Disabilities in Kenya, Tanzania and Uganda, amongst the key impediments to inclusion of persons with disabilities in access and use of digital tools and services is the high cost of assistive technologies. The cost of screen readers, text-to-speech software and Augmentative and Alternative Communication (AAC) devices is unaffordable to the majority of those who need them. The high costs are usually a transferred burden of high taxes imposed on service providers and importers of the relevant devices.

7. Innovation is a prerequisite for the provision of digital services, including but not limited to advertising, data services, marketing, cloud computing services, and data warehousing. Most of these tools and services are developed outside Uganda, which means that imposing high taxes on non-residents that provide them could limit access to critical tools and services that are essential for building a broad knowledge economy. That would ultimately push Ugandans further into the margins of the global digital economy.

8. Imposing high taxes will discourage and hinder innovation in the technology sector. Innovators will automatically be pushed out of the desire and initiatives to locally develop digital applications and platforms in fear of high taxes. The proposed amendment in as far as it lists a broad category of use of online tools and services will hinder innovation and technological advancements in the country.

9. The levying of high taxes on non-residents who offer digital services is anticipated to cause a rise in costs. This, in turn, is likely to result in a decrease in access and affordability, which are a notable impediment to the adoption of mobile-based solutions in Uganda. The significance of affordability as a crucial element in the digital transformation of a nation cannot be overstated. Inadequately designed and inequitable taxation frameworks have the potential to exacerbate the digital divide.

10. Freedom of expression and access to information are inter-related fundamental rights which should be enjoyed in both the offline and online spaces. Limiting the key players such as the providers of the online spaces and platforms by imposing high taxes limits expression, information sharing and dissemination. It also affects the capacity of individuals to assemble and associate since it inhibits access to the online platforms by imposing high taxes.

11. Given the potential effects of the proposed taxation of non-residents providing digital services, including hindering access to digital tools and services, widening the exclusion gap, curtailing freedom of expression, access to information, assembly and association, hampering digital transformation and worsening affordability, it is imperative that the Committee on Finance, Planning and Economic Development:

    (a) Drops the entire proposed clause 16 of the Income Tax (Amendment) Bill, 2023;
    (b) Conducts wide consultations with the affected stakeholders including the tech community, innovators, the business community and civil society on the potential effects of the proposed amendment.
    (c) Conducts a tax impact assessment to weigh the potential effects of the proposed tax on access and use of digital tools and services. The impact assessment should specifically spell out the anticipated positive impacts and weigh them against the anticipated negative effects.
    (d) Takes into consideration and supports all the progressive policies that seek to increase and enhance accessibility and usage of digital tools and services such as tax incentives which usually lead to lowering of the costs to be borne by consumers in purchase and use of digital tools and services.