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PRIVATE SECTOR POSITION PAPER ON THE FY 2023/24 TAX BILLS AND ITS IMPACT TO THE PRIVATE SECTOR SUBMITTED

TO THE

PARLIAMENTARY COMMITTEE OF FINANCE PLANNING & ECONOMIC DEVELOPMENT- PARLIAMENT OF THE REPUBLIC OF UGANDA

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Position Paper on the various Tax bills and how they impact the private sector investments in preparation of the FY 2023/24 National budget.

East Committee Room South Wing, Parliament of Uganda

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1.0 Introduction

Private Sector Foundation Uganda (PSFU) appreciates the Parliament of the Republic of Uganda through the Committee on Finance, Planning and Economic Development for supporting private sector development through continuous engagement and dialogue in the budget policy.

This paper is composed of proposals which the private sector believes, once adopted and implemented, will make a meaningful contribution towards stimulating the economy to create more work opportunities for young people in Uganda. It has been developed with consultations from the wider membership of the private sector including financial institutions, investment clubs, soft drinks and beverage companies, alcohol association, manufacturers, and traders.

2.0 General Tax Policy issues - Cross Cutting areas

The Tax Amendment bills should be able the get the optimal tax revenue while at the same time promoting business formalization and growth. The tax regimes therefore should have the following characteristics;

a. **Ensure a predictable (stable) tax regime** to enable proper planning and implementation of investment plans by enterprises. Any new tax measure should be thoroughly scrutinised to assess its impact on macro-economic stability and competitiveness of the sector in line with NDP 3 and the policy of export promotion and import substitution. Note that on average, tax accounts for between 45% and 55% of the price of a final product. The Excise Duty regime is reviewed on an annual basis and yet investment is planned for a period of 3-5 years. **Our proposal is that the Government develops an Excise Duty regime for 2-3 years to facilitate proper planning.**

b. **Digital Tax Stamps:** The FY 2018/19 budget approved the use of DTS with the objective of addressing tax leakages in Excise Duty payments. Although the objective is much appreciated, the implementation of the regime increases the costs of doing business through installation costs incurred by companies. In addition, it is increasing costs of exports as companies are forced to change branding designs just to incorporate the DTS, especially for export products. Information from compliant tax payers does not show an increase in the excise duty collected by URA as a result of DTS. We recommend that;

i. **Digital Tax Stamp (DTS) payments be restructured to consider the increased Excise Duty collections, to ensure the government and country benefits commensurately from this solution.**

ii. **DTS be applied only to taxpayers who have proven to be continuously under-declaring the right excise duty payable.**

c. **Strengthen the capacity of URA in tax administration through effective Private Public Partnerships.** The rate at which the private sector is growing cannot be matched with continued recruitment of staff. The established-on line systems need information to support the efficiency which is still provided by people. Through this PPP, Government would partner with Private Sector Tax experts to conduct tax assessments and audits for the general business community while the URA concentrates on regulation. This could support closing tax leakages and also generate information in areas such as real estate and other opportunities to widen the tax base and increase collections.

d. **Develop different tiers/threshold** on the Excise Duty regime for new innovative products which utilize local raw materials, mainly in the agriculture industry. This should consider products at introduction stage to enable them benefit from the sunken costs (research) so targeting them for tax discourages innovations but also reduces the expected revenue development through the value chain - especially supply chains.

3.0 Specific Proposals on the Tax bills

No.	Issue	Implications	Proposal	Justification
	A. Income Tax (amendment) Bill 2023			
1.	Capital Gains Tax: Clauses 3,4,7,13 and 22. Overhaul of the CGT & introduction of 5% WHT on sale of assets. The Bill seeks to repeal this form of taxation when assets are disposed of and replace it with a WHT of 5% on sale value with this being a final tax. The Bill defines the term "asset" to mean any resource with economic value that is expected to provide future benefits to its holder except trading stock.	1. WHT is on **income instead of taxing capital gains**. Does not apply in case of capital gain. 2. The bill proposes taxing **investments even when losses** are made. This is mainly common for depreciable asset. 3. Taxing non-business transactions 4. **Revenue loss** on indirect sale of businesses in Uganda via offshore holding structure since these transactions may not be captured after repealing this later.	Disregard all the proposal and maintain the status quo.	Withholding tax as per the definition is applicable to income and not on capital gain/loss. Most companies are in recovery mode from effects of COVID-19 and its attendant macro-economic offshoots. The sales of business assets are mainly for survival and business restructuring. Applying withholding tax on the sale of these assets will worse their economic and investment situation.
2.	Clause 6 Amendment of section 21 of principal Act. Sec 21 (1) of the Bill proposes the inclusion of the income of a	15% tax rate is inconsistent with the NDP III & and the Strategic Plan of Uganda's Capital Markets Authority with respect to savings.	**There is a need to defer the proposed tax regime to allow the Collective Investment Schemes sector to grow as a vehicle for**	This will facilitate savings for investments across the country.

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	collective investment scheme as property income which will be liable for taxation.	15% is too high and a disincentive considering the low levels of savings in Uganda thus putting a cap based on capital invested instead of returns earned will discourage savings through collective investment schemes. Investors may withdraw their investments to avoid the tax, thus leading to premature sale of assets held by collective investment schemes and such a disposal would be at a loss given the current market conditions.	**mobilizing savings in the country and a key participant in the capital markets.** **Maintain the current tax regime**.	Investments will generate work opportunities for young people across the various chains. More tax revenue will be collected because of increase in the savings level. Risk of worsening the low 8.7% savings to GDP against global average of 23% will be minimized.
3.	**Clause 10 of the bill proposes to repeal of section 27A of principal Act.** The bill proposes to amend the principal Act by **repealing section 27A.** This implies that establishment of businesses outside the radius of Kampala will be denied an opportunity	1. cost of establishing investments outside Kampala will rise. 2. established industrial parks will be negatively affected. 3. NDP III program 17 on rural development will be affected. 4. Negative effects of urban migration will be realized.	Maintain the current position.	**Government has invested in 22 industrial parks** across the country. All these parks are more than 15km. This amendment will lead to disinvestment in these parks leading them to become white elephants.

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	to benefit from an incentive of 50% ITA.			**65% of Uganda's GDP** is concentrated around Kampala. The proposed bill will continue to worsen this situation which deprives the rural communities an opportunity to effectively participate in the economy.
4.	**Clause 12 of the bill proposes. Amendment of section 38 of principal Act** The Bill proposes amendment of Section 38 of the principal Act by inserting immediately after subsection. "(5a) Notwithstanding the provisions of this section, a taxpayer who after a period of five years of income carries forward assessed losses shall only be allowed a deduction of 50% of the loss carried forward at the beginning of the following year of income in	ITA if applied to losses, will mean that government must reimburse companies. High cost of capital; reinvestment of profits into the business is cheaper than borrowing at high interest rates. Companies always adopt this approach to generate growth. Tax assessments/ audits by URA are not often done to prove the right tax liability.	PSFU proposes to adjust the threshold from 5 to 7 years. Build the capacity of URA to verify whether business indeed made profits, losses or reinvested the income. This will guide on the right tax liability. Increase the number of certified auditors to enable more regular audits to be done.	The payback period for industrial investments in the region is ranging from 7 to 12 years varying from sector to sector. The economic distortions arising from the COVID 19 and later the Russia-Ukraine war that has triggered a global recession are a painful reality, meriting such support to ease recovery of the economy.

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	determining the taxpayer's chargeable income in the subsequent years of income."			
5.	**Clause 16 of the bill. Insertion of Section 86A of the Principal Act** Sec 86a (1) of the Bill proposes A tax is imposed on every non-resident person deriving income from providing digital services in Uganda to a customer in Uganda at 5%. These services include online advertising, data services, services delivered through an online marketplace/ intermediation platform, digital content, online gaming, cloud computing, data warehousing, any other digital service the Minister of Finance may prescribe by Statutory Instrument.	This proposal is appreciated as an attempt to widen the tax base while promoting local innovations arising out of the use of digital services. There is a likelihood of this affecting the resident users when the proposed Bill is applied. The proposed rate of 5% on digital services is one of the highest in the East Africa region, with Kenya charging 1.5% and Tanzania charging 2%. The OECD countries are struggling with the tax regime on digital services.	PSFU recommends government to study the methodology of disinterring this proposal while safeguarding the nascent growing industry, reducing the risk of friction in the digital service space, factoring in the development in the OECD global taxation framework for digital services and what is happening across our major trade partners in the region.	The study will inform government on how best to apply the tax on big nonresident tech companies. The administration cost and approach is not clearly defined.

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B.	Tax Procedures Code Bill 2022			
6	**Clause 2 of the bill.** **Amendment of section 19B of the principal Act** Sec. 19B sub section (6a) of the bill proposes that a person who makes an unauthorized interference to, or tampers with, a digital tax stamps machine commits an offense and is liable on conviction, to a fine not exceeding 1500 currency points or imprisonment not exceeding 10 years,"	The administration of this clause is liable to abuse.	The law needs to clearly define what tampering or interference means.	This proposal does not clearly define interference, or tampering and how it will be applied.
7	**Clause 4 of the bill. Insertion of section 40D to principal Act** The bill proposes to insert a new section 40D to give the Commissioner powers to waive payment of interest and penalty by a taxpayer, where the taxpayer voluntarily pays	This encourages investment and tax compliance.	This proposal is appreciated as it supports private sector recover from COVID and its related effects, however, we propose that the cut-off timeline should be 30th June 2024 instead of 31st December	The economic distortions from Covid19 and the Russia Ukraine war that has triggered a global recession are a very painful reality, meriting such support to

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	the principal tax outstanding on 30th June, 2023 by 31st December, 2023;		2023 so that it covers the entire Financial Year.	ease recovery from the economy.
8	**Clause 5 of the bill proposes.** **Amendment of section 42 of principal Act** The Bill proposes to amend section 42 of the Bill to prevent a taxpayer from providing evidence previously requested and not provided, at the objection to a tax decision or during alternative dispute resolution procedure proceedings."	The proposal of rejecting information at objection or alternative dispute resolution stage is inconsistent with the principles of fair hearing and the non derrogable Constitutional right of the taxpayer to be heard and the Tax Appeals Tribunal Act. Besides, there reasons why taxpayers often share information beyond set timelines. Most of the time these are because of the conduct of the URA- tax assessments are on average done after 4 years.	PSFU proposes that this proposal is dropped. Consider supporting the URA to build its capacity in executing timely tax audits, assessments to reduce on the level of required information. PPP with private sector would support.	This Amendment raises constitutional challenges as it would deny a taxpayer a fair hearing at the stage of objections or Alternative Dispute Resolution. It is unclear what such a provision would achieve since a taxpayer can provide the evidence upon appeal to TAT. If implemented, this provision would essentially result in URA collecting illegal taxes not properly owed by the taxpayer simply because they have been denied the right to present documentation reflecting their tax position.

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D.	**Value Added Tax (Amendment) Bill 2023**			
9.	**Clause 2 of the bill.** **Amendment of Value Added Tax Act** The proposed amendment in section 10 treats the auctioning of goods as a supply of goods wherein the auctioneer is the supplier. The Bill provides for this as being separate from the supply of the auction services by the auctioneer.	This is likely to create a mismatch with input tax credit claim by the owners of the auctioned goods since the auctioneer will be the one accounting for output tax on the sale. The proposal will also give rise to VAT at 18% which would not arise if the goods were sold by an owner who is not required to register for VAT. Inability to borrow by the PS because the value of collateral is going to be less by 18%.	Maintain status quo.	The financial institutions Act mandates financial institutions to recover the amount lent out and because of this, collateral is valid and so normally engage the service of the auctioneer. When banks are valuing collateral, they will factor in VAT on the forced sale value which will make it harder for the private sector to access credit.
10.	**Clause 6 of the bill proposes.** **Amendment of section 42 of principal Act** The Bill proposes to amend Section 42 of the principal Act	Absence of consent from the taxpayer deviates from the fairness principle of taxation.	In the principle of public private partnerships, the private sector appreciates to be partners with government in tax revenue	The cost of capital in Uganda hovers at about 19%, already a high figure. A reduction in trust of the

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	to delete "with consent of taxable person" from the current section 42 (2) (b) to allow the CG unilaterally to apply a taxpayer's excess input tax credit above shs.5m to offset future VAT liabilities or any other tax liability of the taxpayer.	Instant withdrawal of credit from a business constrains liquidity which can spur business growth. If this proposal passes into law, this will cause a spiral to the bottom as the cost of bank deposits continue to raise due to reduced savings by the private sector and increased lending rates.	mobilization. This calls for good relations and engagement between the taxpayer and the tax body. PSFU therefore proposes that the status quo per the current VAT Act is maintained.	banking institutions by the private sector will further boost informality and reduce cash in the banks that is available for onward lending thus increasing the cost of capital even further. This will boost informality.
11.	**Clause 10 of the bill proposes.** **Amendment of Second Schedule to principal Act** Clause 10 of the Bill attempts to originate a raft of amendments to the Second Schedule of the VAT Act as thus: Exception of adult diapers only excluding baby diapers the supply of animal feeds, premixes, concentrates and seed cake"	Animal feeds industry will become cheaper. Tax on diapers affects health of the taxpayers.	PSFU proposes that. Both baby and adults' diapers should be exempted. PSFU in agreement with proposition (b)	Both adult and baby diapers should be made cheaper so that they are affordable for health reasons The proposal on animal feeds will promote the industry.
D	**Excise Duty Amendment Bill 2023**			

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12	**Excise duty on opaque beer** 12% or 150shs per litre whichever is higher.	One of the companies in the alcohol sector innovated and set up Chibuku factory which unfortunately closed in 2018 over unprogressive excise duty on opaque beer which rendered it uncompetitive with other local brews such as tonto, ajono, mulamba, malwa etc. due to this, **annual VAT worth UGX5 billion was lost, average of 3.6 million Kgs of maize annually locally, over 1,000 farmers supplying maize lost market, 6,000 direct** and indirect jobs linked factory were lost. The proposal to reduce opaque beer excise rate from **UGX. 230 or 30% and now to UGX. 150 or 12% in the Excise Bill 2022 is not** optimum for the business to operate again.	Consider charging UGX. 50 per litre or 5% whichever is higher	The **5% plus 18% VAT** would allow government collect **23% tax** from a product where it has collected **zero** for the last four years, since the company closed the Chibuku plant. This will ensure that over 1,000 direct and indirect jobs will be provided, generate more VAT revenues and ensure that over 1,000 farmers are able to access this market to sell their products.
13	**definition of —fruit juice** fruit juice means unfermented liquid extracted from the edible	The proposed re-definition of fruit juice goes against the conventional definition of juice, as provided for in the UNBS Standards that are aligned	"Fruit juice" means unfermented liquid extracted from the edible part of a fresh fruit whether the extracted liquid is diluted or not	This will go against the principles of excise duty regime as it will be taxing a raw material as opposed to

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	part of a fresh fruit whether the extracted liquid is diluted or not - vegetable juice means unfermented liquid extracted from the edible part of a vegetable whether the extracted liquid is diluted or not;	with international definitions and classifications of juice. Re-defining juice in the manner proposed in the Amendments will bring raw materials (juice pulp and puree) under Excise Duty levies, which goes against the purpose of the tax (consumption). The proposed wording will also lead to double taxation because fruit puree and pulp will attract Excise Duty as will the final products they are used to manufacture (the juice itself).	<u>but does not include fruit puree for industrial use that is not ready for final consumption.</u> Consider the definition according to Uganda standards: UN 62:2011-Fruit Juice drinks- specifications, under clause 3: "terms and definitions "has the following definitions; Fruit-edible part of the plant that contains the seed. Fruit juice- liquid obtained from edible part of sound, appropriately mature and fresh fruit or fruit maintained in sound condition by suitable means and; Fruit pulp (puree) – soft juicy part of a fruit We therefore propose the definition to read as follows:	the final product. Worse of, this is not an externality! This re-definition will ensure that there is no double taxation of both the fruit pulp – the raw material – and the fruit juice itself. It will also ensure that farmer gate prices are not negatively affected because, instating excise duty on pulp will mean that the cost will be extended to farmers in form of reduction in prices. The rationale is to exclude puree for industrial use, but maintain the tax on ready-to-drink juice, whether diluted or not, and to avoid double duty on both the

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				puree and the final fruit juice.
14	**100% of shs 2,500 per litre whichever is higher.** Any other un denatured spirit that is imported with alc volume of less that 80%.	The prices of several alcohol products have increased by x% as a result of current rising commodity prices. Increasing duty on imported spirits by 20% from 80% to 100%, would force the formal sector to increase price by an estimated 25% further widening the price variance between formal and informal sector manufacturers. A similar price increment was introduced in 2018, which saw the consumption/ purchase volume collapse by 30% with consumers shifting to illicit alcohol. This increase will not only impact our members business operations but will inadvertently cause a reduction in revenue collections by Government from the formal sector, and its related value chain actors-	Consider - 80% or shs. 2,000 per litre, whichever is higher	In addition to the impact of the COVID 19 pandemic, the alcohol industry is currently grappling with the unprecedented increase of **illicit alcohol production and sale by the informal sector estimated at 65% according to the Euromonitor Research conducted in 2021.** The Research revealed that 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**.

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		distributors, farmers, transporters among others. which can be avoided once we heed to the private sector proposal.		
E	**Traffic and Road Safety Amendment Bill 2023**			
15	**Clause 2 of the bill proposes to Amendment of Cap.361** section 70A (2) (ii) of the Bill proposes an amendment by substituting for the word. “badge” the words “professional driving permit”.	This implies that the operators of online digital. platforms that provide public service transport will be required to have all the drivers registered on their platform to have a professional driving permit instead of a badge.	We propose that we retain both the badge and Professional Driving Permit as the badge would serve as a certificate of practice and the Professional Drivers Permit as a permit. The badge could be given by a private sector professional body for drivers other than the Ministry doing both.	
16	**Clause 3 of the bill:** Insertion of the Section 119A in principal Act Section 119A (3) of the Bill		The PSFU proposes that the government introduce a point-reduction method of a driver’s	

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	proposes to increase the penalty for convicted speeding drivers to Shs2m fine or three-year jail term, or both.		license under which repeat traffic offenders could lose their licenses and be forced to return to driving school. As regards the fine, PSFU recommends that the status quo be maintained.	

4.0 Conclusion

The business community believes that if the above are considered, we shall be able to grow businesses both directly and through value chains, increase in tax revenue, and provide more employment thus contributing to the country's vision of prosperity for all. We once again thank the Parliament of the Republic of Uganda for continued support and consulting with the private sector on matters that affect us.

For God and My Country.