

# CIVIL SOCIETY POSITION ON THE TAX BILLS 2017/18

April 2017



# ACKNOWLEDGMENT

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This paper was produced jointly by the Tax Justice Alliance Uganda with support from Oxfam in Uganda and ActionAid Uganda. The Tax Justice Alliance-Uganda is a loose coalition established in 2014, comprising of civil society organisations following the realization that it was important for civil society to come together and discuss and analyse tax policy and practice at local, national, regional and global level. The alliance envisions a fair, just and accountable tax system in Uganda. It comprises of the following civil society organisations: SEATINI Uganda, Uganda Debt Network, ActionAid Uganda (AAIU), Civil Society Budget Advocacy Group (CSBAG), Citizens Watch- IT, Water Governance Institute (WGI), Food Rights Alliance (FRA), Inter-University Tax Justice Network Forum, Democratic Dialogue Centre, Women and Girl Child Development Association

# INTRODUCTION

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The Minister responsible for Finance is mandated by the Public Finance Management Act 2015 section 13(11) (a) to present to Parliament the annual budget together with the Appropriation Bill and any other bills necessary to implement the budget for approval.

The Minister of Finance Planning and Economic Development has developed and presented the tax revenue measures for FY 2017/18 contained in the Excise Duty (Amendment) Bill 2017, Value Added Tax (Amendment) Bill 2017, The Income Tax (Amendment) Bill 2017 and the Tax Procedures codes Bill, 2017. For the first time, we have observed that the bills were submitted along with certificates of financial implication, a practice that we commend. The revenue measures proposed in the three bills will raise an additional UGX 30.7bn specifically from the Excise Duty Amendment Bill 2017.

As of half year of the FY2016/17, we have revenue shortfall of UGX 166.44bn partly coming from the customs shortfall of UGX 206.58bn and an offset from the domestic side over performance of UGX 40.14bn. Tax revenue for the FY2017/18 is projected to be UGX 14,682bn (87.9% of total revenue and grants – 16,698bn) which a 16.9% increase from the FY2016/7 estimates.

Since January 2017, Members of the Tax Justice Alliance Uganda have had a series of engagements with stakeholders on FY 2017/18 tax measures. In addition, we have also reviewed and analyzed the tax bills presented by MoFPED and have made observations and recommendations that government could consider.

# INCOME TAX AMENDMENT BILL

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## Clause 2: Amendment of Income Tax Act, Cap. 340.

The income Tax Act, in this Act referred to as the principle Act is amended in section 2 by inserting immediately after paragraph (bb) (c) the following

“(D) A body established by law for the purpose of regulating the conduct of professionals;”

### Observation

We observe that the referencing of the Bill in relation to the principle Act does not exist. The Bill refers to paragraph (bb) C, yet the principle Act has (bb) (i) this intervention can help such bodies to retain income to support their operation and growth since these bodies are not in business rather receive subscriptions, donations or grants for them to perform their core functions and other administrative functions.

### Recommendation

The Clause be re drafted to match the Section in the principle Act.

## Clause 3: Amendment of section 5 of the principle Act.

Section 5 in the principle act is amended by inserting immediately after subsection (3), the following new subsections

4) for the purposes of assessing rental tax under this section, the Minister shall, by statutory instrument, prescribe estimates of rent based on the rating of the rental property in a specific location.

5) a statutory Instrument made under subsection (4) shall only apply to a person who fails to file a return in accordance with subsection (1) or whose return is misleading on the face of it and has been contested by the Commissioner.”

### Observation

We observe that Sub section (5), will encourage landlords to formalise their businesses of rental properties hence enlarging the tax base of Uganda.

### Recommendation

The Clause be retained.

We propose a multi stakeholder consultation on the rates that shall be proposed in the instrument. The instrument should propose a framework through which URA will collaborate with other institutions both government and non-government to identify and encourage land lords to formalize their businesses of rental properties.

## Clause 4: Amendment of section 21 of the Principal Act.

Section 21 of the principal Act is amended in the subsection (1) by inserting immediately after paragraph (ab), the following-

"(ac) the income of Bujagali Hydro power project up to 30th June 2033,"

### Observation:

While the intention of the exemption of income tax for Bujagali Hydropower project appears good, it is enshrined with many risks. Most exemptions have not translated into the intended outcomes. They are subject to abuse/violation through manipulation of records. They are an ultimate cost to government and the tax payer.

### Recommendation

Government should demonstrate how the exemption is going to translate into the intended benefit to the Ugandans and end users of the electricity

This exemption needs to be reviewed every five years by Parliament

## Clause 5: Insertion of section 27A (Initial Allowance) in the Principal Act.

The principal Act is amended by inserting a new section 28 as follows-

"27A. Initial allowance

(1) A person who places an item of eligible property into service for the first time outside a radius of 50km from Kampala, during a year of income is allowed a deduction for that year for an amount equal to 50 percent of the cost base of the property at the time it was placed into service.

### Observation:

We commend to the 50km radius. This will redirect investment outside Kampala and will promote forward and backward linkages, value addition initiatives outside Kampala, and decongest the city.

**Recommend:**

We welcome this clause however; the effective administrative centre of the property has to lie within the limits of the radius.

**Clause 6: Amendment of Sec 90 of the principle Act**

Section 90 of the principal Act is amended by substituting for sub section (1) the following-

"(1) In any transaction between associates or persons who are in an employment relationship, the commissioner may distribute, apportion or allocate income, deductions or credits as the case may be, as is necessary to reflect the chargeable income realized by the taxpayer in an arm's length transaction."

**Observation:**

We welcome the proposed amendment since it seeks to clarify who the tax payers are in the context of Uganda in relation to international taxation and also seeks to clarify on the applicability of the arm's length principle.

**Recommendation:**

Maintain Clause 6 as stated in the Bill.

**Clause 7: Amendment of Sec 118C of the principle Act**

The principal Act is amended by substituting for section 118C the following-

"118C. Payments for winnings for sports betting or pool betting.

A person who makes payments for winnings of sports betting or pool betting shall withhold tax on the gross amount of the payment, at the rates prescribed in part X of the Third schedule to this Act."

**Observation:**

The proposal is aimed at restructuring of the sports betting fiscal regime by imposition of income tax by withholding on income derived by consumers of gambling services. The current situation is that the owner bears the tax of 35% and this has paused administrative challenges. Therefore this amendment is to have the owner of the machine or casino and winner of the game and bets share the tax, with the owner paying 20% and the winner 15%. However, we observed that the amendment in clause 7 is exactly the same as section 118 C

in the principle law.

**Recommendation:**

Delete Clause 7 from the Bill.

**Clause 8: Insertion of section 123A in principal Act.**

The principal Act is amended by inserting immediately after section 123 a new section 123A as follows-

"123A) Advance tax for transport services.

A tax payer who provides a passenger transport service or a freight transport service where the goods vehicle used has a loading capacity of at least two tonnes shall pay an advance at the rates specified in part III of the second schedule."

**Observation:**

We welcome the proposal of advance tax for the transport services, as it will increase our tax base for the country.

**Recommendation:**

Maintain Clause 8 as is in the Bill.

**Clause 9: Insertion of section 130A in principal Act.**

The principal Act is amended by inserting immediately after section 130 the following new section-

"130A. Requirement to report financial transactions

A financial institution, Micro Finance Institution, Forex Exchange Bureau and Money transferring institution shall report any transaction exceeding one thousand currency points to the commissioner every month not later than fifteen days after the end of the month to which the transaction relates or as may be required by the commissioner."

**Observation:**

We welcome the amendment as it will help URA track high value tax payers who are not compliant.

## **Recommendation:**

Maintain Clause 9 as is in the Bill

## **Clause 10: Insertion of section 136 of principal Act.**

Section 136 of the principal Act is amended by inserting immediately after sub section (6) the following-

“(7) The interest due and payable under sub section (1) which exceeds the aggregate of the principal tax and the penal tax shall be waived.

(8) For the avoidance of doubt, where interest due and payable as at 30th June 2017 exceeds the aggregate of the principal tax and the penal tax, the interest in excess of the aggregate shall be waived.”

## **Observation:**

We welcome the proposed amendment because it will encourage compliance and safe guard the survival of entities that could be financially stressed. However, it could encourage continuous defaulting over a long period of time with the knowledge that the excess to tax liability will be laid off. This could cost Government revenue loss.

It will discourage compliance and encourage tax evasion. It waters down the spirit in which section 136 of the income tax law was made. If there are businesses that are under cash flow stress due to the provisions of Sec 136 of the Act, a special consideration should be made as opposed to allowing continuous defaulting.

## **Recommendations:**

This amendment should be given a time limit of 5 years to which it should apply. There should be a limit on the number of times a company should benefit from this.

## **Clause 11: Amendment of second Schedule to principle Act.**

The second schedule to principal Act Amended in part III-

(a) By substituting for the reference to “134(e) ” in the head note, the reference “123A”;  
and

(b) In paragraph (b) by substituting for the words ‘per person’ the words ‘per seat’

**Observation:**

The amendment is ok because Clause 11A is an alignment of the Bill with Schedule 2. Under 11b, it seeks to clarify from passenger to number of seats so as to make it easier to quantify.

**Recommendation:**

Maintain clause 11 as provided in the Bill

**Clause 12: Amendment of third schedule to principal Act.**

The third schedule to the principal Act is amended by inserting after part IX the follows-

Withholding tax rate for winnings from sports betting and pool betting

The withholding tax rate applicable to winnings from sports betting and pool betting is 15%

**Observation:**

Amendment of the third Schedule to principal Act. The amendment is ok. We don't see any objection to a 15% WHT on winnings from sports and pool betting.

**Recommendation:**

Maintain the clause as is in the Bill.

**Clause 13: Amendment of fifth Schedule to principal Act.**

The fifth schedule to the principal Act is amended by substituting for paragraph (3) the following –

“(3) Where a benefit provided by an employer to an employee consists of the use or availability for use, of a motor vehicle wholly or partly for the private purposes of the employee, the value of the benefit is calculated according to the following formula-

$[20\% \times A \times B/C]-D$

Where-

A – is the market value of the motor vehicle at the time when it was first provided for the private use of the employee, depreciated on a reducing balance basis at a rate of 35% per annum for the subsequent years.

## Observation:

The amendment bill welcomed as it now clarifies the good rate of reducing percentage of 35% thereby giving the tax payer more disposal income.

## Recommendation:

Maintain the clause as is in the Bill

# THE EXCISE DUTY (AMENDMENT) ACT, 2017

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## Clause 2: Amendment of the Excise Duty Act, 2014, Act 11 of 2014.

The Excise Duty Act, 2014, is amended in Part 1 of schedule 2 –

### a) By substituting for item 1(a) the following –

“(a) Soft cup – Shs. 55000 per 1,000 sticks”

**Observation:** In FY2015/16 soft cup was taxed at Shs.45, 000 per 1,000 sticks and in FY2016/17 Shs.50, 000 per 1,000 sticks

The proposal to increase Excise duty from UGX50, 000 to 55,000 per 1000 sticks is welcome. We believe this will increase revenue that can fund the health sector.

### (b) By substituting for item 2 the following -

“2. Beer

(a) Malt beer - FY2017/18 proposed tax is 60% or 1860 per litre, whichever is higher

(b) Beer whose local raw material content, excluding water, is at least 75% by weight of its constituent – 30% or Shs. 700 per litre, whichever is higher

(c) Beer produced from barley grown and malted in Uganda – 30% or Shs. 950 per litre, whichever is higher.”

**Observation:** In the principal act we observe that the last FY16/17, malt beer was at 60% per litre. There has been an inclusion in the amendment Shs 1860/- per litre. This proposal is welcome.

## Recommendation

We commend the amount UGX 1860 stated by the law.

### (d) By Substituting for item 3 the following -

"3. Spirits

- (a) Made from locally produced raw materials – 60% or Shs. 5000 per litre, whichever is higher
- (b) Undenatured spirits – 100% or Shs. 2500 per litre, whichever is higher
- (c) Other spirits – 80%

## Observation

- We observe that the excise duty on spirits, the percentages have been maintained alongside the amount per litre.
- However, on (c) other spirits, there is no amount alongside the proposed tax percentage,

## Recommendation

An amount be included with the percentage

### (d) By substituting for item 4 (b) the following-

"(b) Other wines – 60% or Shs. 6000 per litre, which

## Observation

We observe that the excise duty, an inclusion of the percentages alongside with the amount per liter.

## Recommendation

We recommend that it remains as it is.

### (e) By substituting for item 5 the following -

"5 – Non Alcoholic Beverages

- a) Non Alcoholic Beverages not including fruit or vegetable juices – 13% or Shs. 240per litre

**Observation:** The proposed tax is still the same from 13% or shs. 240 per Litre FY2016/17.

**Recommendation:** We believe this is a fair tax.

b) Fruit juice and vegetable juice made from at least 30% of pulp from fruit and vegetables grown in Uganda.

**Observation:**

the inclusion of another categorization for the Fruit Juice and vegetable juice, except juice made from at least 30% of pulp from fruit and vegetables grown in Uganda.

This encourages our home industries and strengthens the Buy Uganda Build Uganda policy, the agriculture sector will be boosted. Fruit factories that are coming up such as those in Fruit factory in Soroti District more need to be encouraged to come up.

**Recommendation**

This amendments needs to be popularized among local farmers, investors/manufacturers to encourage them to benefit from this exemption.

**(f) By substituting for item 16 the following -**

"16 Sugar confectionaries (chewing gum, sweets and chocolates)

**Observation:**

Previously the law had sugar confectionaries to be taxed at 20%, currently the tax has been removed.

- We note that this exemption will benefit both locally produced sugar confectionaries and imported sugar confectionaries.
- Sugar confectionaries that are locally produced should be the ones to benefit from the exemption.

**Recommendation**

We recommend that the sugar confectionaries which are not locally produced should bear the previous 20% excise tax. Whereas the locally produced confectionaries should benefit from the amendment like it has been done for furniture.

**(g) By substituting for item 17 the follows -**

Furniture manufactured in Uganda using local materials but excluding furniture which is assembles in Uganda. 20% Excise duty on imported furniture and furniture assembled in Uganda

## Observation

- We welcome this proposal as it is in line with we proposed to the Ministry of Finance to increase excise duty on imported furniture and furniture assembled in Uganda from 10% to 20%.
- It was 10% in the previous FY2016/17, currently it has been increased

## Recommendations

There is need to put in more mechanisms to support local industries to produce high quality furniture for the local market and international markets.

# TAX PROCEDURES CODE (AMENDMENT) BILL

## Clause 2: Amendment of Tax procedures code Act 2014, Act 14 of 2014

The Tax procedure Code Act 2014, in this Act referred to as the principal Act is amended in section 16(8)-

### Observation:

The Previous FY 2016/17 law- The tax payer was required to furnish provision of a return of provisional tax estimate on or before the last day of the 6th and 12th months of the year of income of the tax payer not later the first

This proposed procedure for FY2017/18 shows individuals will pay under 4 installments and companies will pay under 2 installments. We believe this makes it easier for the tax payer to remit their taxes. This amendment also harmonizes with the income tax act which was providing for the four installments.

### Recommendation

The procedure is recommended, however, we need the capacity to make sure tax payer systems are efficient.

(b) By substituting for paragraph (g) the following -

“(g) in the case of the Lotteries and Gaming Act, 2016, a licensed person shall furnish returns with the commissioner as follows-

- i. a weekly return, by Wednesday of the following week; and

ii. a monthly return by the fifteenth day of the following month;"

Previous FY2016/17 law states –

- g. In the case of the Gaming and Pool Betting Act, a person who is required to furnish a return with the Commissioner shall do so in the period specified under the Act;
- h. In case of any other return required to be furnished under a tax law, a person is required to furnish such return with the commissioner in the period specified under the tax law to which the return relates;
- i. In case of any form required to be furnished under a tax law containing information relating to an assessment of tax, a person is required to furnish such a form with the commissioner in the period specified by the Commissioner.

### **Observation**

We recognize the need for the weekly return in the Act will facilitate URA to collect tax efficiently to avoid under declaring by the lotteries and gaming companies.

### **Recommendation**

We commend the proposed law, seeing that the companies should be registered under URA which is in the interest for the companies to file their returns.

URA Should be able to ensure compliance of this law by these companies

### **19A. Tax stamps**

- i. A person dealing in goods, whether locally manufactured or imported affix a tax stamp on any goods locally manufactured or imported maybe prescribed by the Minister under subsection (3)

### **Observation**

This is new addition to the Tax Procedures Code Act. It is an important addition which will enable enforcement and compliance by the tax payers.

### **Recommendation**

We urge parliament to follow-up the statutory instrument that is supposed to operationalize the section or clause

## Clause 4: Amendment of section 38 of Principal Act

Section 38 of the principle Act is amend in sub section (1) by substituting for paragraph (a), the following –

### **“(a) in Payment of the principal tax,”**

Observation: In FY2016/17, the law stated that the Order of Payment (1) when a taxpayer is liable for penal tax and interest in relation to a tax liability and the taxpayer makes a payment that is less than the total amount of tax, penal tax, and interest due, the amount paid is applied in the following order–

- a. in payment of the tax liability;
- b. in payment of penal tax; and
- c. the balance remaining is applied against the interest due.

(2) If a taxpayer has more than one tax liability at the time a payment is made, subsection (1) applies to the earliest liability first.

**Recommendation:** We recommend the amendment.

## Clause 5: Insertion of section 49A in the Principal Act

The principal Act is amended by inserting immediately after section 49 the following new session–

“49A. Penal tax for failure to provide information.

1. A person who, upon request by the commissioner, fails to provide records in respect of transfer pricing within 30days after the request, is liable to a penal tax equivalent to fifty million shillings.
2. A person who fails to provide information other than information referred to in subsection (1), to the commissioner upon request, is liable to a penal tax of twenty million shillings.”

### **Observation**

We see an inclusion of a clause in the Act which to furnish information about transfer pricing.

### **Recommendation**

The clause is welcome in curbing tax evasion through transfer pricing

49A (2) we also recommend and is a strong principle to curbing transfer pricing and ensure transparency and accountability of companies.

## VALUE ADDED TAX (AMENDMENT) BILL

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### Clause 2: Amendment of Value Added Tax Act

Insertion of S.24 "(7) For purposes of this section, the tax payable on a taxable supply made to a Government Ministry, Department or Agency by a contractor executing an aid funded project is deemed to have been paid by that ministry, department or agency if the supply is for use solely and exclusively for aid funded project"

#### **Observation:**

The insertion is very specific and allows more clarity. However, this can be abused at the time of execution especially verifying the "sole and exclusive" use of the aid funded project supply.

#### **Recommendation:**

Parliament should take consideration for the potential abuse of the provision by unscrupulous individuals and companies.

### Clause 3: Amendment of Section 25 of Principal Act

Section 25 of the principal Act is amended-

#### **a. by substituting for sub section (2), the following-**

"(2) For a contractor, component X of the formula in paragraph 1 (b) of the Fourth Schedule, for a tax period does not include the amount of the tax that the licensee is deemed to have paid to the contractor under Section 24(5) for the period"

S.25 (b) by inserting immediately after sub section (2) the following new sub section-

"(2a) "For the supplier, component X of the formula in paragraph 1(b) of the fourth schedule, for a tax period does not include the amount of tax that the contractor is deemed to have paid to the supplier under S.24(6) for the period".

S.25 (c) by inserting immediately after subsection (3) the following-

"(4) For a contractor of Government ministry, department or agency , component X of the formula in paragraph 1(b) of the fourth schedule , for a tax period does not include the amount of a tax that the government ministry , department or agency is deemed to have paid to the contractor under section 24(7) for the period."

**Observation:**

- This amendment is good because it clarifies that both the contractor and the supplier are not required to declare the tax liable under Government aided contracts.

**Recommendation:**

This amendment should be adopted.

### Clause 4: Amendment of section S.28 of principal Act

S.28 (5d) "a taxable supply for which the input tax is paid or payable in cash and is at least five thousand currency points, excluding the tax."

**Observation:**

We welcome this proposal as it is intended to create an enforcement trail for significant amounts of input VAT that are credited in order to address the challenge of missing VAT traders by encouraging the use of banks.

### Clause 5: Insertion of new Section 30A in principal Act

S.30 on Due date for payment

1. Tax payable under this Act is due and payable-

(a) in the case of a taxable supply by a taxable person in respect of a tax period, on the date the return for the tax period must be lodged;

(b) in the case of an assessment issued under this Act, on the date specified in the notice of assessment; or

2. The tax payable by a taxable person under subsection (1) shall be determined in accordance with this part.

3. Where an objection to or a notice of appeal against an assessment has been lodged, the tax payable under the assessment is due and payable, and may be recovered notwithstanding that objection or appeal.
4. Upon written application by a person liable for tax, the commissioner General may, where good cause is shown, extend the time for payment of tax beyond the date on which it is due and payable, or make such better other arrangements as appropriate to ensure payment of the tax due.

**Observation:**

- S. 30A (4) was found to be a good one for adoption it gives room for the tax payer to write to the commissioner for extension of payment date.
- We observed that S.30A (8) gives a lot of power to the Minister which waters down the spirit of 30A (1) and (4).

**Recommendation:**

The clause 30A (8) should be deleted.

## Clause 6: Insertion of new section 65A in the principal Act

S.65 A (1) the interest due and payable on unpaid tax shall not exceed the aggregate of the principal and penal tax.

(2) For the avoidance of doubt, where the interest due and payable as at 30th June 2017 exceeds the aggregate referred to in subsection (1) , the interest in excess of the aggregate shall be waived."

**Observation:**

We are in agreement with this insertion and find it a fair one in general.

**Recommendation:**

This should be adopted as it will encourage tax payers to pay their taxes.

Clause 7: Amendment of the second Schedule to the principal Act

- a. In paragraph 1(a), by inserting immediately after the word "products" the words "except wheat grain;"
- b. By inserting immediately after paragraph (q) the following-

“(qa) the supply of animal feeds and premixes;”

c. By inserting immediately after paragraph (s) the following –

“(sa) the supply crop extension services;

(sb) the supply of irrigation works, sprinklers and ready to use drip lines;

(sc) the supply of deep cycle batteries and composite lanterns;

(sd) the supply of tourist arrangement services, access to tourist sites, tour guide and game driving services;

(se) the supply of menstrual cups;”

### **Observations:**

- The revisions in the schedule speak a lot to improving production and productivity of the agricultural sector through exemptions on wheat grain, animal feeds and premixes, supply of crop extension services among others.
- The exemptions on tourist arrangement services will promote the tourism sector.

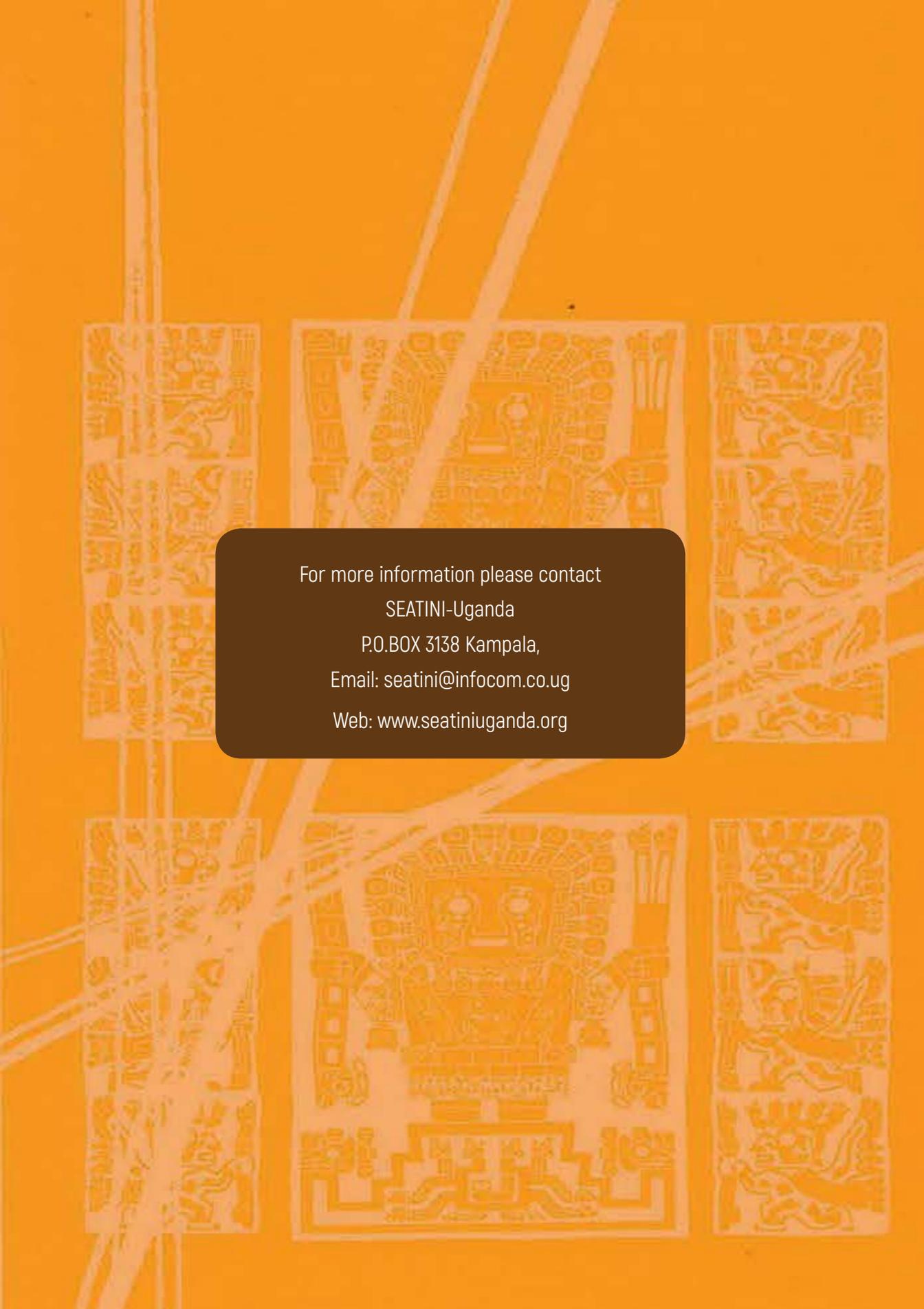
### **Recommendation:**

- This exemption should be adopted and followed with a commensurate reduction in the prices of the products as expected.

## Conclusion

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As Civil Society Organisations, we call upon Government and other stakeholders to put into consideration the above observations and recommendations. Together for an improved tax regime, gender responsive and equitable national development because every shilling counts.



For more information please contact  
SEATINI-Uganda  
P.O.BOX 3138 Kampala,  
Email: [seatini@infocom.co.ug](mailto:seatini@infocom.co.ug)  
Web: [www.seatiniuganda.org](http://www.seatiniuganda.org)