Evolution of the law on income taxation of small businesses in Uganda

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Abstract
Purpose – This paper aims to analyse how the law on income taxation of small businesses in Uganda has evolved from the pre-colonial to the present day.
Design/methodology/approach – The study used doctrinal legal research based on existing documentation on empirical research from Ugandan laws, institutional writings, books and journal articles.
Findings – The study established that there has been various promulgations and amendment of the law on income taxation of small businesses geared at simplifying the law, expanding the tax base and improving the tax yield from this sector. However, the law still bears limitations, some of which have existed from way back before the current legal regime on presumptive tax. Thus, the income tax yield from small businesses continues to be low over the years. It posits that it is not clear whether small business owners understand the legislations on presumptive income tax to enable us to determine with certainty that further amendments have the potential of enhancing an increased tax yield, which has not been attained over the years.
Originality/value – Limited work has been undertaken on the historical development of the income taxation of small businesses in a developing country like Uganda. This study provides an initial synthesis of the literature on the evolution of income tax laws for small businesses in an economy that had been earlier neglected by scholars.
Keywords Fairness, Presumptive tax, Small businesses, Income tax history, Uganda
Paper type Literature review

1. Introduction
It is crucial to explore the evolution of the law on income taxation of small businesses (SBs), to understand the problem of taxing SBs in Uganda. This enables us to draw lessons and further establish loopholes in the law. This will assist the government in taking appropriate action to raise more revenue from this sector.

There are existing studies on the evolution of income tax and tax generally as indicated hereunder. Firstly, Roman (2022) examined the evolution of corporate income tax in the

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Republic of Moldova. Secondly, Richter (2019) explored the evolution of the tax system in Paraguay from the 1980s to 2012, mapping reforms within that time that were intended to widen the tax base and enhance the revenue yield and challenges encountered in the process. Thirdly, Das (2022) investigated the evolution of the tax system of India before, after attaining independence and post-independence, accomplishments and impediments encountered. Fourthly, García-Miralles et al. (2019) examined the impact of the evolution of the before and after taxation of income, tax liabilities and tax credits on individuals’ incomes and households in Spain. Finally, Reiss and Schuster (2020) explored the evolution of the Austrian implicit tax rate (TR) on labour from 1976 to 2016.

However, existing studies present limitations. Firstly, some of the existing studies focus on the evolution of general tax systems (Richter, 2019; Das, 2022), whereas others focus on the evolution of specific taxes like corporate income tax (Roman, 2022) and the evolution of the before and aftereffects of taxation of income tax liabilities, tax credits on individual’s incomes and households (García-Miralles et al., 2019) and evolution of TRs on labour (Reiss and Schuster, 2020). This study, however, specifically focuses on the evolution of income taxation of small businesses, which has not been covered in previous studies.

Secondly, existing studies were conducted in developed country settings (Roman, 2022; Richter, 2019; García-Miralles et al., 2019; Reiss and Schuster, 2020), while this study is conducted in Uganda, a developing country with high poverty levels. Hardly, any previous study investigates the development of the law on income taxation of small businesses in a developing country, which is the contribution this study makes. Thirdly, this study explicitly scrutinises the development of the law on taxation of small businesses over time, to identify the gaps and draw lessons for the Ugandan Government unlike existing studies that do not specifically address the law but tackle other issues like TRs, effects of tax liabilities, among others as advanced above.

This study focuses on the income taxation of small businesses in Uganda because they have, over time, posed challenges to the government in raising adequate revenue from the sector. Yet, they represent a dominant portion of the economy. In Uganda, SBs comprise over 50% of the economy, contribute 90% to production in the private sector, accord employment to over 2.5 million people and contribute 75% of gross domestic product (CSBAG, 2017; FSD, 2015). Like in other developing countries, they comprise the poor population, stay out of the regulatory framework and tax net, are informal and primarily operate underground. They tend to indulge in tax evasion practices by either functioning entirely outside the tax net or hiding particular sections of their business transactions from the taxman, which hampers a government’s anticipated revenue yield (Valevich and Kiesewetter, 2004). Despite the sector’s dominance, the country still faces challenges raising the anticipated revenue from this sector. It is crucial to explore the evolution of the law on income taxation of SBs to establish the loopholes in the previous and current laws to enable us to draw lessons, which will assist the government in taking appropriate action to raise more revenue from the small businesses sector.

We applied the doctrinal legal research method, which involved an in-depth analysis of the legislation on the income taxation of small businesses from the pre-colonial period to the present. This involved scrutiny of existing documentation on empirical research from Ugandan laws, institutional writings, books and journal articles.

The study makes the following contributions. Firstly, it contributes to the body of knowledge on income taxation of small businesses. Secondly, it avails a compilation of information on the evolution of the legislation on income taxation of small businesses to enable the government to identify commonalities in the past and present legislations and loopholes and draw lessons to aid in laying strategies to improve the tax yield from the
small businesses sector. Thirdly, it identifies to the government of Uganda and other developing countries that continuous amendments of legislation on income taxation of small businesses are not a sure way to solve the problem of low-income tax yield from this sector. Still, measures like creating awareness of the legislation among the taxpayers and correcting the loopholes and limitations in existing laws are key.

The rest of the paper is structured as follows – Section 2: a brief on the evolution of the definition of small businesses for income tax purposes. Sections 3 and 4 are a narrative of the income taxation for small businesses before and during colonialism. Section 5: an investigation and analysis of the income taxation for small businesses following independence, specifically during the reign of President Idi Amin, the various amendments to the Income Tax Decree (ITD), salient features and limitations of the said laws. Section 6: an investigation and analysis of the presumptive tax (PT) system introduced under the National Resistance Movement government, the various amendments, rationale for the modifications, salient features and loopholes therein. Section 7 presents the study’s conclusions and recommendations to the government and policymakers.

2. Build up to small businesses income taxation
We can trace the first definition of a SB for income tax purposes in the Income Tax Act of 1997 (ITA, 1997). Under this Act, SBs were those with an annual gross turnover (AGT) of less than or equal to UGX50 m derived from carrying on a business in a year of income [1]. However, the thresholds of businesses classified as small for income tax purposes was a minimum of UGX of 5 million [2], later revised to a minimum of UGX of 10 million and a maximum of UGX shillings 150 million. Therefore, SBs, which are the subject of this study (post-colonial times to present day), are those with an AGT of between UGX10 and 150 million.

However, before the ITA 1997, there was trade between natives in societies and kingdoms but without clear demarcation in business size for income tax purposes.

3. Income taxation of small businesses in Uganda before colonialism
Pre-colonial Uganda was primarily characterised by subsistence production due to the absence of a cash economy (Kasimbazi, 2004; Jamal, 1978, p. 418). Thus, there was no developed policy on income taxation due to the absence of cash as a medium of exchange (Kuhanen, 2000). Although natives engaged in trade, there was no outright distinction between small and large businesses. Trade was conducted internally between individuals and societies and externally between natives of kingdoms on barter exchange terms. Kingdoms such as Bunyoro-Kitara that were endowed with mineral resources like salt and iron ore exchanged these for products they lacked (Kuhanen, 2000, pp. 76,80; Uzoigwe, 1972; Ssekamwa, 1970, p. 7; Gray and Dunbar, 1966, p. 24). Exchanges within kingdoms were mainly on a small scale (Kuhanen, 2000).

The tax was imposed by rulers of kingdoms on items of trade such as baskets, pots, salt, iron and animal products and was payable in kind (Ssekamwa, 1970, p. 7; Tumwine, 2017, p. 56). Traders paid tax in the form of tribute to the king and chiefs in their areas of operation, with the amount payable dependent on a trader’s stock levels or quantity of the product put up for sale (Uzoigwe, 1972, p. 451; Kuhanen, 2000, p. 76; SEATINI, 2013, p. 18).

4. Income taxation of small businesses in Uganda under British Colonial Rule
Like the pre-colonial period, there was no differentiation in businesses on the basis of size. Thus, there was no specific mode of taxation for SBs during colonialism. Taxation of business income was introduced in Uganda by the British in 1945 through a Protectorate Ordinance in a quest for funds to finance Britain’s engagement in World War 1 (Balunywa,
The ordinance imposed income tax on only the Europeans and Asians, excluding the natives. This was so because Europeans and Asians operated all businesses in the country, derived income and were, therefore, able to pay the tax (Kasimbazi, 2004). Native Africans, on the other hand, could not pay income tax as they primarily engaged in subsistence production and thus did not possess any cash to pay the tax (Kasimbazi, 2004).

The British instead imposed other forms of taxes on native traders, including market dues, a 5% tax on total sales and a 48 yearly license on hawking. In addition, natives in the Bunyoro-Kitara Kingdom paid an export tax levied on cotton exports in 1919 (Jamal, 1978). Ugandans were required to pay a customs duty of 5% on all imports getting into Uganda through Kenya from the ports of Mombasa, Tanganyika and Tanga with the Customs Union formalisation in 1917 (SEATINI, 2013).

5. Income taxation of small businesses in Uganda after attainment of independence
Following the promulgation of the East African Income Tax Management Act, Cap 24 in 1970, East African (EA) territories were mandated to establish tax laws tailored to their political and economic circumstances at the time. Consequently, the ITD, 1974 was enacted for Uganda in 1971.

Before the ITD, Uganda’s business sector was dominated by Asians who were highly enterprising, shrewd in business with good record-keeping skills (SEATINI, 2013). They dominated business enterprises in the country, leading to the private sector’s progression. Therefore, this ethnic group and the Europeans provided a sizeable income tax revenue base for the colonial government in 1945. Native Ugandans, on the other hand, did not engage in business but primarily dealt in agriculture for subsistence (SEATINI, 2013). This meant that natives were not a viable revenue source to meet the colonial government’s growing needs, except for the minimal revenue they contributed through the hut, poll and “luwalo” [3] tax levies.

However, in 1972, all the Asians and Europeans were expelled from Uganda by the ruling political power. Subsequently, all the previously foreign-owned businesses were placed under the control of the native Africans, who were largely illiterate, not shrewd in business and lacked the competence to keep daily business records. This negatively impacted the economy, the anticipated revenue yield and the provision of public services to the natives. As a result, natives did not feel obligated to pay taxes as the state provided hardly any services, further destroying the tax-paying culture the British inculcated. To raise revenue to bridge the tax gap left upon the expulsion of the Asians, the government enacted the IT in 1974.

5.1 Income Tax Decree, 1974 and its implications on the taxation of small businesses
For the first time in Uganda’s tax history, taxation for businesses’ was instituted through the ITD. The ITD imposed a tax on income generated by resident persons carrying out business within Uganda and other EA states; income of non-residents from operations within Uganda; or gains and profits generated from business operations. The ITD, however, did not specifically classify SBs as a particular category in taxation matters [4].

Despite the enactment of the ITD, hardly any taxes were raised, primarily due to the absence of books of records and accounts by the Africans who took over formerly foreign-owned businesses. Therefore, proper tax liabilities were unascertainable based on profits without reliable business records. A gap in taxation was occasioned, thus necessitating the amendment of the ITD, leading to the Income Tax (Amendment) Decree, 1976 (ITD, 1976).
5.2 Income Tax (Amendment) Decree, 1976: implications on taxation of small businesses

In the ITD, 1976, persons undertaking business in specified places [5] were required to pay income tax in line with the Act [6]. The tax liability was determined and payable, irrespective of the existence or absence of an assessment. This prompted the classification of the tax as a “deposit tax (DT)”.

5.2.1 Deposit tax system. Under the ITD, 1976, taxes were paid as a deposit before an individual commenced a business venture. The amount of tax payable was pre-determined and specified in the ITD, 1976. Tax payment was a pre-condition for granting business licenses or vehicle registration through the submission of a tax clearance certificate [7].

Variations in individuals’ tax liability depended on the nature of business (retail, static wholesalers, mobile wholesalers, clearing and forwarding and commission agents) or location of the business, categorised into Grade 1 (city, municipality or town), “others” for specified businesses, rural trading areas and Grades II, III, IV [8]. The tax liability was fixed at varying pre-determined amounts or based on a taxpayer’s AGT for a year of income, whichever ensuing amount was higher. In 1976, the amount of tax payable for the various business categories was reduced but put at fixed rates and tax payment on AGT was repealed [9].

5.2.2 Rationale behind payment of tax through the deposit tax system. Tax payment as deposits sought to guarantee revenue collection in the form of taxes, from businesses, amidst challenges in determining tax liability based on profits, owing to the absence of business records. Therefore, a taxpayer’s tax liability was pre-determined and was payable in the form of deposits before the commencement of business without considering whether a person had made any business profits. Secondly, reduction in administration costs on tracking, assessing and enforcing the tax. Furthermore, the deposit tax system (DTS) inadvertently curbed tax evasion and avoidance, with tax payment as a pre-condition for grant or renewal of business licenses.

5.2.3 Criticisms of the deposit tax system. The DTS presented limitations concerning assessing and paying tax before engaging in business. Persons with existing businesses were hesitant to start new ones for fear of paying more taxes, contrary to the tax principle of neutrality, which requires that a tax should not discourage engagement in business activities. Emphasis on payment of the DT created presumption to taxpayers that the tax payable upon starting businesses or renewal of business licenses was the final and only tax. This eroded the tax-paying culture among the taxpayers and limited the tax base and continuity in tax collection.

5.3 Weaknesses of the Income Tax Decree, 1974 (as amended)

The ITD (as amended), which introduced the DT system, had complications that led to its repeal. The ITD had been amended 22 times, creating difficulty in identifying the law on a tax matter, thereby limiting implementation and enforcement. There was also general ignorance of the whole tax law owing to the numerous amendments. The requirement for business operators to submit returns when declaring their liability to tax was unrealistic due to their illiteracy and inability to hire professionals to prepare returns on their behalf – this limited voluntary tax compliance. Thus, business owners continued paying taxes under the DTS, which had grave limitations.

The DTS was abolished during the tax reforms of the 1995/1996 financial year, leaving businesses that were formerly subject to tax under this tax system tax-free until the enactment of the ITA in 1997.
6. Income taxation of small businesses under the National Resistance Movement Government

On taking over power in 1986, the National Resistance Movement government working with the World Bank and the International Monetary Fund introduced the Economy Recovery Program in 1987, which necessitated the promulgation of new tax law (Kuteesa, 2007; Kasimbazi, 2004). A commission was instituted that noted the exceptional nature of businesses and difficulties in complying with their tax obligations under the DTS. This prompted a more straightforward tax system to ease this sector’s compliance (Engelschalk, 2005). Thus, the introduction of presumptive income taxation (PrIT) for SBs, under the ITA, 1997, now Cap, 340 (ITA) (Kasimbazi, 2004). This was the first time in Uganda’s tax history that SBs were given special treatment in taxation policy.

6.1 Presumptive income taxation of small businesses in Uganda under the Income Tax Act, 1997

PrIT is an income tax imposed on SBs with an AGT of between Ugandan shillings (UGX) 10 and 150 million in a year of income [10]. The law has since been revised several times with the ultimate objective of improving the revenue yield from this sector (Engelschalk, 2005). The legal regime intended to provide a simplified taxation method for SBs that cannot pay tax under the ordinary taxation rules (URA, 2016) to ease compliance of this sector at minimal or no compliance costs. Nevertheless, there is an option for taxpayers falling under the specified range of gross turnover above to opt to be subject to tax under the ordinary taxation rules.

6.1.1 Assessment of presumptive income tax based on gross turnover. Although PT is an income tax, it is assessed based on a taxpayer’s gross turnover for a year of income [11]. Gross turnover refers to an individual’s total sales or gains from carrying out a business (es) in a year of income and may be established from a taxpayer’s accounts [12].

The tax was initially imposed on persons with businesses not exceeding AGT of 50 million UGX [13]. These were characterised by the inability to keep proper and accurate books of accounts and, therefore, unable to pay tax according to the ordinary taxation rules. In 2015, to broaden the tax base, the application of PT was revised to a maximum AGT of 150 million UGX (Private Sector Foundation, 2009; MoFPED, 2015) [14]. The ITA [15] did not initially set a minimum AGT subject to PT. This was later fixed at 5 million UGX in 2003, exempting SBs with an AGT of less than that amount from payment of income tax (URA, 2016; Private Sector Foundation, 2009). This was further revised in 2015, setting the minimum AGT of SBs subject to PT at 10 million UGX [16].

6.1.2 Presumptive income tax and deduction of expenses and losses. Ordinarily, income tax is assessable on the chargeable income of persons for a year of income less the allowable tax credits [17]. Chargeable income encompasses the gross income of a taxpayer in a year of income less the allowable deductions under the ITA, which include expenses and losses incurred in the production of business income [18]. However, PTpyrs are not permitted to make such deductions in the computation of income tax payable [19]. The ITA provides exceptions to this rule for credits that are allowable under the Act; [20] notably:

- any monies paid as withholding tax and included in a taxpayer’s AGT; and
- credits allowable under the Act [21] for monies paid as provisional tax of the actual tax due.

Disallowing the deduction of expenses and losses for PTpyrs is due to poor record-keeping, making it challenging to accurately determine taxpayers’ expenses and losses. Although this
appears to go contrary to the principle of equity that requires homogenous treatment of similarly situated persons, we acknowledge that many persons in this category cannot keep proper records. Furthermore, PTpyrs may opt to pay tax under the ordinary taxation rules.

6.1.3 Businesses excluded from application of presumptive income tax. The law excludes the applicability of PT to persons engaged in providing professional services like medical, architecture, engineering, audit, accountancy, legal practice, public entertainment, construction and public utility, among others. The law presumes that operators of such businesses possess specialised skills, thus capable of maintaining accurate records. Furthermore, they ought to have the technical know-how of accounting systems or engage technical persons for that purpose. The application of PT to clinics was abolished under the Income Tax (Amendment) Act, 2016 (ITAA, 2016).

6.1.4 Presumptive income tax rates under the Income Tax Act, Cap 340. The ITA, 1997 (now Cap 340) laid initial steps to providing TRs for SBs under the PT regime. PT payable by SBs at the time of introducing the tax was fixed at defined rates or 1% of the AGT of a taxpayer, whichever ensuing amount was lower. Thus, taxpayers with an AGT of 20 million and below were subject to a tax amount of 100,000 UGX, whereas for those with 20–30 million, tax payable was UGX250,000 or 1% of a taxpayer’s AGT, whichever resultant amount was lower. For taxpayers with an AGT above 30–40 million UGX, tax payable was UGX350,000 or 1% of a taxpayer’s gross yearly turnover, whichever resultant amount was lower. Finally, for taxpayers with an AGT of 40–50 million UGX, the tax due was UGX450,000 or 1% of a taxpayer’s AGT, whichever resultant amount was lower.

Despite the introduction of PT, which seeks to simplify the income taxation of SBs, tax collections from this sector have remained low over the years. The recurring low tax yield from the PT system before the financial year 2015/2016 occasioned the need to simplify the tax system further, devise measures to widen the tax base and bring more SBs into the tax net in a bid to increase the revenue yield from this sector (Private Sector Foundation, 2009). As a result, the PT legal regime underwent several amendments in 2003, 2015 and 2016.

6.2 Income Tax (Amendment) Act, 2015 and modifications in income taxation of small businesses

Private Sector Foundation Uganda recommended overhauling the PT legal regime to include more SBs in the tax bracket. This motivated the promulgation of the Income Tax (Amendment) Act, 2015 (ITAA, 2015), which had a bearing on SB’s income taxation. Firstly, an increment of the threshold of the AGT of PT from UGX50–150 million intended to bring more SBs into the tax net.

Secondly, introducing new PT rates for SBs with categorisations grouped into two:

(1) general rates for persons with AGT of above UGX50–150 million; and
(2) persons with a gross yearly turnover of UGX10–50 million.

This was intended to provide a simplified taxation schedule for this category of taxpayers. Businesses with AGT above UGX50 million were expected to be in a position to compute the tax payable without difficulty, given the large amounts of capital under their management. TRs payable in the latter category were based on a business enterprise’s location, Kampala City and its divisions, municipalities, towns and trading centres and on the nature of the business, which similarly was a basis for variations in tax amounts payable. Businesses in Kampala City were said to make higher sales than others, whereas some enterprises were presumed to derive higher returns (Tumusiime et al., 2020). The TRs are thus shown hereunder.
From the Tables 1–4, TRs for SBs with AGT of 50 million UGX and below were at fixed rates and based on location and the nature of the business. On the other hand, for those with AGT of between 50 and 150 million UGX, tax payable was based on gross turnover without further consideration. This sowed seeds of inequity in the tax system. In addition, the minimum AGT subject to income tax was 10 million UGX and the maximum was 150 million UGX. Thus, SBs with a gross yearly turnover below 10 million UGX were untaxed. It is argued that subjecting such persons to income tax would plunge them far below the poverty line (SEATINI, 2018). However, another line of thought could infer that the tax principle of equity, which requires all persons to contribute to the state’s revenue, was violated by this exemption. In turn, one can contend that the country’s goal of increasing domestic mobilisation of revenue was hampered by further reduction of the tax base.

The ITAA, 2015 bore limitations concerning the income taxation of SBs. Firstly, the Second Schedule of the ITAA, 2015, which provided for SB income TRs, provided classifications of AGT tax brackets whose borderlines fell into the next bracket. This created uncertainty in determining tax amounts payable where a taxpayer’s AGT fell in two marginal tax brackets. For instance, classifications were made thus “with a turnover of between UGX 35m–50m, 20m–35m, 10m–20m”. This caused uncertainty about the income tax amount payable by taxpayers with AGT of UGX35 million and 20 million as these amounts fell in three tax brackets. Secondly, the ITAA, 2015 incorporated clinics as one of the businesses subject to PT, contrary to the ITA, which excluded the application of PrIT to

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<tr>
<th>AGT (in Ugandan Million [M] shillings (UGX))</th>
<th>Tax rates</th>
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<tr>
<td>GT of over 50 M but less than or equal to 75 M</td>
<td>Tax payable was 937,500 or 1.5% of taxpayer’s AGT, whichever resultant amount was lower</td>
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<td>AGT of more than 75 M but less than or equal to 100 M</td>
<td>Tax payable was 1,312,500 or 1.5% of taxpayer’s AGT, whichever resultant amount is lower</td>
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<td>AGT of more than 100 M but less than or equal to 125 M</td>
<td>Tax payable was 1,687,500 or 1.5% of taxpayer’s AGT, whichever resultant amount was lower</td>
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<td>AGT of more than 125 M but less than or equal to 150 M</td>
<td>Tax payable is 2,062,500 or 1.5% of taxpayer’s AGT, whichever resultant amount was lower</td>
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**Source:** Income Tax Act, Cap 340 (as amended by ITAA, 2015), Second Schedule, Part 1

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**Source:** Income Tax Act, Cap 340 (as amended by ITAA, 2015), Second Schedule, Part 11 (i)
persons engaged in providing medical services \[32\]. These gaps occasioned the amendment of the Second Schedule of the ITA, thus the ITAA, 2016.

6.3 Income taxation of small businesses under the Income Tax (Amendment) Act, 2016
To partly cure the defects of the ITAA, 2015, the ITAA, 2016 abolished the application of PrIT on persons engaged in the business of clinics \[33\]. Secondly, the amount of tax payable by drug shops in the third column in all the tax brackets of AGT categories in Part II of the Second Schedule of the ITAA, 2015 was replaced with “UGX 250,000” in place of “UGX 350,000” \[34\]. Thirdly, replacing title heads for ranges of AGT in the tax brackets to avoid a figure of AGT falling in between two tax brackets, as thus, “where the gross turnover exceeds UGX 35 million but does not exceed UGX 50 million”, followed by “where the gross turnover exceeds UGX 20 million but does not exceed UGX 35 million”, among others.

Despite the various changes in the law ushered in by the ITAA, 2015 and the ITAA, 2016, the ITA (amended), which comprised the legal regime on income taxation of SBs until the financial year 2019/2020, faced numerous criticisms, as indicated below.

6.4 Limitations of the Income Tax (Amendment) Act, 2015 (as amended) and general limitations of the legal regime on presumptive income taxation of small businesses
Although the PT system is currently the most suitable mode of income taxation for SBs in Uganda, the legal regime governing it has limitations. Firstly, SB operators with varying gross turnover were required to pay a similar tax as long as they were in the same tax bracket. This violated the tax canon of equity, which requires persons with similar incomes.

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**Source:** Income Tax Act, Cap 340 (as amended by ITAA, 2015), Second Schedule, Part 11 (ii)

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</tr>
</tbody>
</table>

**Source:** Income Tax Act, Cap 340 (as amended by ITAA, 2015), Second Schedule, Part 11 (iii)
or abilities to pay to be subject to tax in a similar manner and for persons to contribute to the state’s revenue per their abilities to pay. This created unfairness in the tax system, thus giving room to tax evasion, with persons seeking to fall in the lowest tax bracket or one where they could pay minimal tax, or none at all, contrary to their actual income.

The provision for an alternative of paying 1% of the AGT for taxpayers with AGT exceeding 50 million UGX posed a threat of tax evasion, with the possibility of under-declaration, in a bid to pay less or no tax at all. Furthermore, businesses falling in the same AGT tax bracket but situated in the same location were subject to varying TRs, contrary to the tax canon of equity. Some were charged highly, whereas others lower rates. In addition, businesses in Kampala City were subject to higher TRs than others. For instance, in Kampala City and its divisions, for businesses with AGT of between 35 and 50 million UGX, TRs for general trade, carpentry and drug shops were 500,000 UGX; garages, hair and beauty salons and restaurants and bars 550,000 UGX; and others 450,000 UGX. The reasoning behind this variation was that operators of businesses in Kampala City and the municipalities were presumed to make higher sales due to their location and the presence of a significant concentration of businesses in these areas than those in towns and trading centres (Private Sector Foundation, 2009). These variances further sought to enhance income redistribution, with less developed regions (towns and trading centres) subject to lower TRs and vice versa. This inequity inadvertently destroys taxpayers’ morale and lays the ground for tax evasion (CSBAG, 2017).

More so, reliance on gross turnover as a basis of taxation is not realistic as it does not necessarily connote the profitability of a business which is the regular basis of taxation of business income. Worse still, the law does not provide the criteria for determining gross turnover, nor has Uganda Revenue Authority (URA) expressly offered any. Thus, tax assessors, in determining gross turnover and resultant tax payable by SBs, instead use their judgement based on the nature of stock, business size, location of the enterprise (street or building) and the number of employees among others. This has inadvertently created uncertainty in the tax system and left the taxpayer at the mercy of the tax collector concerning the determination of the gross turnover and tax due in the absence of business records. This gives room for bribery in assessing and collecting. This further inhibits the inculcation of a culture of voluntary compliance as taxpayers have to wait for revenue officers to evaluate them to tax, except for those who file returns.

Determination of tax payable in the absence of explicit guidelines breeds inequity with different revenue officers assessing taxpayers to varying amounts of tax payable due to variance in discretion. Tax officers have also largely not bothered to look at SB taxpayers’ business records, even where they exist, but merely rely on the indicators above. This further discourages the culture of record keeping, which is already prevalent amongst SBs.

Denying the opportunity to deduct expenses and losses in the computation of PT payable is unrealistic. Although the ITA under Sections 4(5) and (6) permits SBs to opt to pay tax normally, this is still challenging for SBs. Allowance for deduction of expenses for SBs with some simple records would be viable in encouraging record keeping by this sector. Total denial to deduct such costs attracts resistance to the tax system. Consequently, some opt to register their enterprise’s location remotely, while the significant business is operational in Kampala. Others choose to stock their goods in hidden stores and display a few items, engage with clients on the phone and make deliveries to clients’ specified destinations. Some taxpayers choose to run away from the taxman when assessing tax physically. Others, especially those in Kampala city, connive with tax assessors for lower tax assessments or alert them about tax assessors’ visits beforehand, so they close shop.
Granting persons subject to PT the opportunity to opt to be taxed under the ordinary taxation rules allows persons to consistently remain in the PT category where TRs are low, contrary to their actual income.

The above limitations did not remedy the challenges of taxation of SBs in Uganda as anticipated with the promulgation of the ITAA, 2015. The PT yield has remained low over the years. Although more SBs were brought onto the tax base under the Taxpayer Expansion Registration Programme, many do not pay tax as anticipated, despite the spirit of simplification of the law and expansion of the tax base, in the ITAA, 2015 (Tumusiime et al., 2020). Nevertheless, the law on PrIT has further been amended in the tax amendments for the financial year 2020/2021, thus the Income Tax (Amendment) Act, 2020 (ITAA, 2020). A question, however, arises as to whether this amendment will improve income tax compliance and the resulting tax yield of SBs in Uganda, which the previous amendments have not successfully achieved over the years.

6.5 Income Tax (Amendment) Act, 2020 and implications on income taxation of small businesses

The ITAA, 2020, in a bid to cure the defects in the law and improve SBs’ income tax compliance, is geared at making TRs for PT more progressive, reducing PT rates and encouraging the keeping of business records. To achieve these objectives, SBs’ PT under the new amendment is still chargeable on gross turnover. Taxpayers with business records are subject to lower TRs with fixed tax amounts, whereas those without records pay tax as a percentage of AGT. TRs payable by SBs are generally reduced and there is still no allowance for deduction of expenses and losses in the computation of PT payable.

However, the affixation of TRs based on the absence or presence of business records is unlikely to improve SBs tax yield because even with the previous amendments, tax assessors did not bother to look at business records in assessing a taxpayer’s gross turnover and tax payable. In any case, the TRs payable as set in the ITAA, 2020 are too low that they cannot compel a taxpayer to bother with records, whereas the variance is slight between those with records and those without. Nevertheless, it is worth a try to inculcate a record-keeping culture among SBs. This will, however, possibly only be successful if strictly enforced by the Revenue Authority, which still faces hindrances of low personnel and high costs associated with a big labour force in the field.

The ITAA, 2020 serves as the fourth amendment to the PT regime. Still, it is more or less premised on the same principles as the previous amendments except for the lowering of TRs, the existence of one single schedule of TRs for all PTpyrs and variance in tax amounts based on possession of business records.

7. Conclusion

This article explores the evolution of the law on the income taxation of SBs in Uganda. It contributes to the literature on the history of income taxation for SBs in Uganda and identifies gaps in the various laws as they have evolved to inform policy and enable the closure of the loopholes in the legislation. It establishes that SBs’ income taxation in Uganda evolved in 1974 under the ITD through the DTS up to the PT regime prevalent today. The ITD and subsequent amendments had numerous limitations that rendered the tax system complex. The enactment of the ITA in 1997 and the introduction of the PT regime for SBs were expected to cure the complexity of the law and ensure adequate revenue yield from this sector by simplifying the law and introducing a single schedule with TRs for SBs. However, despite this, the tax yield from PTpyrs has remained low over the years, thus occasioning amendments to the law in
2003, 2015, 2016 and now 2020, all geared at further simplifying the tax system for SBs, expansion of the tax base to improve the revenue yield from this sector.

The article posits that despite the various amendments in the law, the tax yield from SBs has remained low over the years and it is probable that further amendments to the law will not solve this problem. In any case, it is not clear whether SB owners understand the various legislation on presumptive income tax to enable us to determine with certainty that further amendments have the potential of enhancing an increased tax yield, which has not been attained over the years. We recommend that given the loopholes identified with previous revisions of the law, as shown above, there is a need to conduct a further study to establish how the law on income taxation of SBs influences their income tax compliance. Otherwise, it is possible that the law will be amended many more times but have no positive effect on SBs income tax compliance, possibly due to ignorance of the tax law, among other factors.

Notes
1. Income Tax Act, Cap 340, Section 4(5).
3. A form of tax imposed on all able bodied african males who failed or were unable to pay their poll taxes. Luwalo tax therefore required of them to pay taxes by way of performing compulsory communal work such as construction of roads, schools, administration structures/blocks, cash crop growing, technically termed “Luwalo”, in place of the taxes they were meant to pay. This was enforced by the local authorities who were given tax collection rights inform of luwalo by the colonial administrators.
4. Id., Schedule 3 Head B clause 1. (Amended by Finance Act, 1983).
5. ITD (1976), Section 43 (A) (1) (a) and Schedule 4A.
8. ITD 1974, Schedule 4B and 4C.
11. ITA, Section 4(5).
12. ITA, Section 2 gg.
13. ITA, Section 4(5), (previously, Section 4 (5) ITA, 1997).
14. ITAA, 2015 Section 3.
15. ITA, Second Schedule.
17. ITA, Section 4 (1-2).
18. ITA, Section 15, 22(f).
19. ITA, Section 4 (5) b and c.
20. ITA, Section 128 (3).
21. ITA, Section 111(8).
References


Private Sector Foundation (2009), “Widening Uganda’s tax base and improving tax administration”.


Further reading


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