INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA

ICPAU PROPOSALS FOR CONSIDERATION BY THE DRM4D IN THE PROCESS OF REVIEW AND RE-DRAFTING OF THE PRIMARY TAX LAWS

1.0 Introduction

The Ministry of Finance, Planning & Economic Development published the Domestic Revenue Mobilization Strategy (DRMS) 2019/20-2023/24, a medium-term strategy for government revenue mobilization at the start of this year. The core objective[1] of the DRMS is to improve revenue collection, lift Uganda's tax-to-GDP ratio to between 16-18% within the next five financial years and bring Uganda closer to its theoretical potential and exceed the target of a 16% tax-to-GDP ratio as set out in the Second National Development Plan (NDP II) and the Charter of Fiscal Responsibility.

In setting the above objective, government aims to achieve a better balance between competing needs:
1. to raise additional revenues;
2. to encourage a healthy flow of investment; and
3. to address issues of fairness and transparency in the tax system.

The country's revenue strategy[2] over the Third National Development Plan (NDP III) period focuses on improving compliance and efficiency in tax revenue collections through implementation of the DRMS. The DRMS introduces reforms to reduce tax avoidance, expand the tax base by tapping into semi-formal economic activities, and improve the efficiency of the URA.

[1] Ministry of Finance, Planning, and Economic Development Domestic Revenue Mobilization Strategy
[2] Third National Development Plan (NDPIII) 2020/21 – 2024/25

The USAID-funded Uganda Revenue Mobilization for Development (DRM4D) Project, is supporting the Ministry of Finance and Economic Development (MoFPED), to review and redraft the primary tax laws to give effect to the recommendations contained in the government's DRMS.

2.0 PROPOSALS BY ICPAU

The Institute of Certified Public Accountants of Uganda (ICPAU) as a key stakeholder, welcomes the opportunity to participate in this review process. ICPAU has considered the DRMS and provided proposals/ recommendations on areas where we seek improvements and/ or change to support government in implementing this strategy. These are discussed here below:

SECTION	OBSERVATION	COMMENT
	THE INCOME TAX ACT (ITA)	
Taxing the Untaxed Economy	The DRM Committee noted that *one of the principal challenges for improving tax collection is broadening the base of taxpayers in Uganda. They noted that the current registered and active taxpayers represent only a small proportion of the economically active population of the country, which puts pressure on those who comply with business registration and tax registration rules, by requiring tax rates to be unnecessarily high and keeping the tax yield lower than it should be.* We believe the major focus now should be on how to unlock the informal sector (including commercial agriculture and agro-processing activities, which employ a critical mass of the rural population) as well as e-commerce activities that are largely untaxed but have the potential to be the leaders in driving this economy going forward.	**Our proposal** Build taxpayer morale and facilitate voluntary compliance. Such a program could well be connected to the TREP project whose focus now is mainly business registration. We believe TREP has that potential if it focused on the development of the informal sector in order to create a tax culture among businesses. At the moment, tax compliance among these businesses is enforced rather than voluntary. Voluntary compliance is a more sustainable solution for domestic revenue collection as it aims to increase tax morale and facilitate long-term compliance. **Justification** To drive tax expansion in the country and also ensure that the domestic tax base is widened without hurting

SECTION	OBSERVATION	COMMENT
		the already- burdened traditional tax sources and cause further social discomfort.
Section 2 of the ITA ***Interpretation***	Section 2(ea) was introduced to define a "beneficial owner". At the same time, Section 88(5)(a) of the ITA was amended to remove the words "*within the meaning accorded to that term by the relevant international agreement and….*". Sub-section 2(ea) is part of Section 2, which is the primary interpretation provision in the ITA and a definition in Section 2 will not apply where the context in which it is used in the body of the Act requires otherwise.	**Our proposal** We propose that section 2(ea) be re-worded to read as follows: ***s.2(ea) "beneficial owner" means a natural person who owns or has a controlling interest over the income received by a legal person other than an individual and who exercises control over the management and policies of the income received by the legal person or legal arrangement, directly or indirectly whether through ownership or voting securities, by contract or otherwise."*** **Justification** To align the definition with the OECD guidelines, which provide best practice for international tax. Section 88(5) is a "limitation on benefits" provision intended to restrict the application of DTA benefits based on a person's beneficial ownership of the relevant income and possessing economic substance in the treaty country in which they are resident, and not based on their control of a legal entity.
Section 6(1) of the ITA ***Rates of Tax for Individuals*** **AND Part 1 of the Third Schedule to this Act**	Section 6(1) of the ITA prescribes the rates of tax and thresholds applicable to chargeable income of individuals as prescribed in part 1 of the Third Schedule to the Act.	**Our proposals** a. Increase the PAYE threshold from the current Ushs. 235,000 to Ushs. 410,000. This is just about USD 1.79 above the international poverty line. We therefore propose that Part 1 of the Third Schedule to this Act be revised as follows:

<table>
<tr><th>SECTION</th><th>OBSERVATION</th><th>COMMENT</th></tr>
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<td><u>Income Tax Rates for Individuals</u></td>
<td>The DRMS[3] clearly recognizes that ‘the current personal income tax thresholds start at low levels of income and the progressivity of the rates is steep. This, may encourage non-compliance or less-than-full compliance and reduce incentives to work in the formal sector, as well as disproportionately disadvantage employees whose incomes are taxed at source under PAYE’.

The lower band of the PAYE threshold has been fixed at Ushs. 235,000 since July 2012. This brings low income earners into the tax net at very low income levels stifling their capacity to save, invest and consume as their disposable income shrinks in real terms. The above surely works against the poverty alleviation objectives of the government. Under the current structure, the 1st tax bracket (10%) starts at incomes of Ushs. 2,820,000 per annum. This equates to just Ushs. 235,000 per month or Ushs. 7,833 per day. At an exchange rate of Ushs. 3,702 to the US dollar, taxation of income thus begins at USD 2.12 per day. Considering that the international poverty line is at USD 1.90 per day, PAYE starts at very low-income levels. Furthermore, the 3rd band is very wide, applying to annual incomes between Ushs. 4,920,001 and Ushs. 120,000,000. This also gives an indication of how quickly the brackets climb – Ushs. 4,920,001 per annum equates to just Ushs. 13,667 per day or USD 3.69 per day.

It has been proved that increasing the threshold does not necessarily lead to reduced tax revenue. When the threshold was increased in 2012, PAYE collections increased by 20% from 2011/2012 to 2012/13. Below is the PAYE performance as shown</td>
<td>“The income tax rates applicable to resident individuals are-
<table>
<tr><th>Chargeable income</th><th>Rate of Tax</th></tr>
<tr><td>Not exceeding Ushs. 4,920,000 (410,000 pm).</td><td>Nil</td></tr>
<tr><td>Exceeding Ushs. 4,920,000 (410,000 pm) but not exceeding Ushs. 7,440,000 (620,000 pm).</td><td>10% of the amount by which chargeable income exceeds Ushs. 4,920,000 (410,000 pm).</td></tr>
<tr><td>Exceeding Ushs. 7,440,000 (620,000 pm) but not exceeding Ushs. 9,960,000 (830,000 pm)</td><td>Ushs. 120,000 (10,000 pm) plus 20% of the amount by which chargeable income exceeds Ushs. 7,440,000 (620,000 pm)</td></tr>
<tr><td>Exceeding Ushs. 9,960,000 (830,000 pm)</td><td>a. Ushs. 300,000 plus 30% of the amount by which chargeable income exceeds Ushs. 9,960,000 (830,000 pm); and
b. Where the chargeable income of an individual exceeds Ushs. 120,000,000 (10,000,000 pm) an additional 10% on the amount by which chargeable income exceeds Ushs. 120,000,000 (10,000,000 pm).</td></tr>
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[3] Domestic Revenue Mobilisation Strategy 2019/20 – 2023/24

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<tr><th>SECTION</th><th>OBSERVATION</th><th>COMMENT</th></tr>
<tr><td></td><td>on Page 55 of the MoFPED Background to the Budget 2014/15 Fiscal Year:
<table><tr><th></th><th>2011/2012</th><th>2012/2013</th><th>Increment</th><th>% increase</th></tr><tr><td>PAYE UGX Bn</td><td>996.9</td><td>1,196.5</td><td>199.6</td><td>20.0</td></tr></table></td><td>b. Eliminate all kinds of personal income tax exemptions particularly those relating to official employment income of Members of Parliament and judicial officers, among others. These individuals are Ugandan Citizens and must bear their fair share of the financial burden of administering the country. They should thus not be immune to sharing with other citizens the material burden of financing government, and therefore their payment of a non-discriminatory tax laid generally on all citizens should not be considered as a burden for as long as they earn beyond the set thresholds.

<u>Justification</u>
Reducing the PAYE threshold, as it is a direct tax, will increase purchasing power of the populace for economic stimulation and savings.</td></tr>
<tr><td>Section 25 of the ITA <u>Interest</u></td><td>Sec. 25 of the ITA as amended excludes financial institutions and insurance companies from the interest deduction limitation, which limits the amount of deductible interest in any year of income to 30% of EBIDA (Earnings Before Interest Depreciation and Amortization) for all debts owed by a taxpayer who is a member of a group.

The implications of the above provision are such that;
1. Apart from the banks and insurance companies, all other sectors have to abide by the 30% cap to claim interest deductibility. This has constrained economic growth and development as the economy undertakes massive</td><td><u>Our proposals</u>
1. The 30% restriction on interest deductibility should only apply to related party debt and not all debt (including 3rd party debt) in the spirit of what the thin capitalization rules used to apply, and equally to all businesses. We propose that s.25(3) be amended as follows: “The amount of deductible interest in respect of all debts owed by a taxpayer <u>who borrows within a group to which the taxpayer is a member</u>, shall not exceed thirty percent of the tax earnings before interest, depreciation and amortization.”</td></tr>
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SECTION	OBSERVATION	COMMENT
	infrastructure development to provide the much needed big push to the other sectors. If the intention of the provision was to ensure and augment the fact that financial institutions and insurance companies take center-stage in the development of the country, it is important to note that this may be contrary to the original thin capitalization rules whose principle objective was to deter arbitrary repatriation of profits in pretext of loan servicing taking fact that many of the players in the banking and insurance sectors have a cross-border orientation. 2. Deducting the accumulated tax loss when determining EBITDA under section 25(3) of the ITA distorts the prevailing earnings against which the capped interest deduction should be offset. This is because, by allowing a tax deduction in respect to the previous year's tax losses, when determining the current year tax EBITDA, the basis for deducting interest expense (i.e. by matching interest with activities that generate taxable income and value creation) is lost. Assessed losses arise from an excess of allowable revenue expenses and / or capital allowances over gross income for a particular year of income. Accordingly, whilst these expenses are allowed a tax deduction in a particular year, the same expenses, in some instances, are used to the detriment of a taxpayer in determining interest deductibility. This is because the inclusion of an assessed loss in some instances results in negative tax EBITDA irrespective of an entity's earnings capacity in the current year. In this instance, no interest will be deductible for that particular year of income.	2. Assessed tax losses should be disregarded in the EBITDA computation when determining the interest expense. **Justification** 1. To allow tax deduction on interest payment on only debts contracted within a group without any exception. This will not only re-echo the intentions of thin capitalization, but will also affirm the OECD objectives under BEPS. 2. In order to reflect the true economic activity of an entity for a given year of income, only earnings arising from that specific year of income should be taken into consideration for purposes of deriving the EBITDA used for interest capping.

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	Disallowing interest expense based on negative tax EBITDA (created by the mechanics of the tax law and not economic activity), in principle results in taxation of an otherwise tax-deductible cost which is not equitable. In addition, BEPS Action 4 made some recommendations for interest deductibility in respect to lossmaking entities within a group of companies.	
Section 50(1) *<u>Gains and losses on disposal of assets</u>*	Section 50(1) of the ITA provides that; "The amount of any gain arising from the disposal of an asset is the excess of the consideration received for the disposal over the cost base of the asset at the time of disposal." The current provision does not cater for changes in the value of assets that may arise purely from macroeconomic dynamics like inflation. An asset that was acquired 15 years ago cannot be assessed on the same cost base as it was 15 years later. The lack of indexation means that a taxpayer is taxed based on imaginary gains instead of real gains. These are on indexed values to cater for the effect of inflation.	**<u>Our proposals</u>** We propose that the section be redrafted. **<u>Justification</u>** To cater for changes in the value of an asset due to macroeconomic dynamics, specifically removing the effect of inflation from the gain in asset values and also allow for property to be transferred seamlessly by corporates as part of group restructuring for operational efficiency and encourage business growth.
Rental Tax Policy	The DRM Committee established that, '*the rental income tax collections have greatly suffered on account of widespread under-reporting of income. The Committee then proposed rationalizing of the rental income tax structure to minimize abuse and profit shifting, for property owners to account for rental tax for each property separately*'. We believe however, that this proposal may just increase the compliance burden of the property owners but with no positive results.	**<u>Our proposals</u>** a. Government must put in place a mechanism to identify rental units where there are no written agreements and also leverage on the Landlord - Tenant Law to compel parties to execute written agreements. b. Government should also harmonize the two taxes (rental tax and property rates) and allow for a single collector.

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	Also, the existing rent tax formula allows for double taxation as local council property fees are not deducted before applying the URA rental tax rate.	c. Interest on loans for the rental business should also be allowed while calculating the taxable rental income.
Tax Exemptions and Exclusions	The country has incurred a sizable loss of revenue through ill-designed exemptions and/or exclusions, such as costly tax holidays and other incentives that fail to attract investment. Additionally, discretionary granting of exemptions provides opportunities for corruption. In addition to the revenue directly lost from these exemptions, there is revenue indirectly lost from the non-beneficiaries because of the unfair competition created. Tax incentives like tax holidays produce tax avoidance strategies and substantially lower compliance across taxpayers. We believe the tax authority can ably broaden the tax base by reducing exemptions and exclusions, and instead provide a tax policy that incentivizes formalization and supports micro, small and medium enterprises.	**Our proposals** a. Government should implement a comprehensive exemption policy reform with main elements that include eliminating the power of the executive and finance minister to grant discretionary exemptions; publishing exemptions annually; limiting income tax holidays to every 5 or 10 years, depending on the sector; and setting up mechanisms for monitoring and evaluating the intended benefits for which the exemptions were granted. b. The management of exemptions and exclusions at the Authority must be improved, including close monitoring of exempt taxpayers to require beneficiaries of exemptions and exclusions to furnish this information plus the related agreements in their returns; instituting harsh penalties equivalent to the tax exempted for exempt taxpayers who do not file returns, which will also help URA identify those other income sources that are taxable, which should not go untaxed; developing a clear approach as to which sectors should benefit from the incentives, which could be considered based on the Country's aspirations as mapped out within the NDP III.

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<tr><th>SECTION</th><th>OBSERVATION</th><th>COMMENT</th></tr>
<tr><td></td><td></td><td><u>Justification</u>
Curbing exemptions can reduce the tax system's complexity while boosting revenue by broadening the tax base.</td></tr>
<tr><td colspan="3"><u>THE VAT ACT</u></td></tr>
<tr><td>Section 3 of the VAT Act <u>Rate of Tax</u></td><td>The DRMS[4] seeks to 'review the current VAT threshold and rate to ensure that together these minimize administrative and compliance costs, encourage small business growth and safeguard revenues'. We applaud the Committee on this proposed intervention.

The VAT has proved to be an efficient and strong revenue booster. Making VAT broad-based, with a lower rate of 16 percent and a limited number of exemptions will yield greater revenue. The revenue lost from lower tax rates will be made up through a broader tax base, better compliance, and stricter enforcement.</td><td><u>Our proposals</u>
We propose that the VAT rate be reduced to 16% - a fairly moderate rate to encourage compliance and generate adequate revenue, as the current high rate encourages evasion. In the current situation where the economy has suffered disruption from COVID-19 and is likely to suffer some other forms of shocks, reducing VAT rate would boost demand and economic activities. Though common to Uganda, Tanzania and Rwanda, the VAT rate in Uganda is considerably higher than Kenya's at 16%. Kenya has even reduced it further to 14% as a COVID-19 response measure.

Other progressive economies in Africa also have a lower rate of VAT as shown below:
<table><tr><th>Country</th><th>Standard Rate</th></tr><tr><td>Botswana</td><td>12%</td></tr><tr><td>Egypt</td><td>14%</td></tr><tr><td>Ghana</td><td>12.5%</td></tr><tr><td>Mauritius</td><td>15%</td></tr></table></td></tr>
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[4] Domestic Revenue Mobilisation Strategy 2019/20 – 2023/24

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<tr><th>SECTION</th><th>OBSERVATION</th><th>COMMENT</th></tr>
<tr><td></td><td></td><td><table><tr><td>South Africa</td><td>15%</td></tr></table>
Empirical evidence indicates that reduction of indirect tax rates such as VAT actually results into more tax collections due to increased consumption especially where the demand is elastic, contrary to the widely held belief that higher indirect taxes bring in more tax revenue.

<u>Justification</u>
VAT being a tax on consumption has a tendency of dampening consumption, impinges heavily on the poor and is generally regressive in nature, often pushing the responsibility on to the most vulnerable populations – the women and low-income households.</td></tr>
<tr><td>Section 42 <u>Refund of Overpaid Tax</u></td><td>Currently, VAT refunds follow an audit verification process which helps to reduce refund fraud, but in the process results in administrative delays and a buildup of unpaid claims adversely impacting the private sector. In the 2020/21 National Budget, government dedicated an additional UGX 120.3bn for payment of outstanding VAT refunds. This is only about 50% of the entire VAT outstanding as of FY2019/20.

The delayed payment of refunds directly and/or indirectly freezes business operations as a result of cash flows tied up, which eventually affects the volume of trade and subsequently impacts the likely tax revenues.

In a bid to fast track the refund application process and support the economy in recovery from the COVID-19 effects, URA put in</td><td><u>Our proposals</u>
The weaknesses in the VAT refund system should be addressed, as a reasonable refund system is essential for the integrity of the VAT system. Being a tax on consumption, VAT requires both timely and accurate refunds.

In this context, we propose that URA considers;
a. Settling refunds out of gross VAT receipts by establishing escrow accounts to satisfy future refunds and mitigate potential problems in cash management, and
b. Use risk-based audit verification approaches, whereby audits are selective and based on an</td></tr>
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SECTION	OBSERVATION	COMMENT
	place mechanisms to streamline the refund and offset process and make it faster. The administrative guidelines issued require taxpayers to submit full documentation at once within 2 days after submission of the claims and ensure that the claims are 100% legitimate, to allow for faster and easier processing of refunds.	assessment of risks to help expedite the settlement of VAT refunds.
Para 2(f) of the Second Schedule to the VAT Act)	Section 19(1) of the VAT Act provides that "a supply of goods or services is an exempt supply if it is specified in the second schedule". Paragraph 1(d) of the Second Schedule to the VAT Act provides that the supply of health insurance, life insurance and micro insurance qualify as exempt supplies and as a result are not subject to 18% VAT. Further still, insurance services are defined in paragraph 2(f) of the second schedule to include only brokerage. An insurance company is obliged to charge VAT on the (taxable) general insurance services, while insurance services detailed in paragraph 1(d) are exempt from VAT. Accordingly, the commissions paid for bancassurance services in respect of the exempt life and medical insurance products should be exempt from VAT. This is on the basis that the bancassurance services are incidental and ancillary to the respective exempt life and medical insurance policies. However, for any services that have not been expressly included in the VAT Act as an exempt service (as was the case for brokerage services under paragraph 2(f) of the Second Schedule to the VAT Act), a strict interpretation of the law may exclude their exemption.	**Our proposals** Following the possibility of having two interpretations, we propose that paragraph 2(f) is amended to read as follows: ***"insurance services include brokerage, bancassurance services and other services that are incidental to insurance services"***. **Justification** To provide clarity to bancassurance agents and other incidental services which are not expressly covered but in substance comprise insurance services.

SECTION	OBSERVATION	COMMENT
	This creates two different possible treatments of the respective bancassurance services; a. On one hand, given that bancassurance business is not expressly included within the definition of insurance services as explained in paragraph 2(f) of the Second Schedule to the VAT Act it is possible for one to conclude that the commissions earned by a bancassurance business should all be treated as subject to 18% VAT although for all intents and purpose bancassurance is a form of insurance and commissions earned are incidental. This would be regardless of whether the services provided are in connection with the provision of either life or general insurance services. b. On the other hand, the Insurance Regulatory Authority (IRA) as per their letter addressed to all bancassurance agents, dated 30 January 2018, communicated that charges related to life and medical insurance products are exempt from the 18% VAT. Accordingly any insurance service that is not listed as exempt would accordingly be subject to VAT. This is based on discussions and an understanding between IRA and URA. According to Britam vs URA 2018, UTODA Entebbe Branch vs URA 2009 and AON vs URA 2008, services that are deemed to be incidental and ancillary to exempt services, may also be treated as exempt services. Accordingly, this would mean that the commissions paid for bancassurance services in respect of exempt life and medical insurance products should be exempt from VAT. This is on the basis that the bancassurance takes the nature of insurance services and any services related are incidental and ancillary to the respective exempt life and medical insurance policies.	

SECTION	OBSERVATION	COMMENT
Section 26(1) *Cash basis accounting*	VAT is a tax based on records, as reflected in section 8(2)(b) of the VAT Act. However, for small taxpayers with a turnover of below 2 billion, sometimes it is hard to account for VAT on accrual basis especially where Government takes ages to pay for supplies received. While Electronic Fiscal Receipting and Invoicing Solution (EFRIS) may help on record keeping, cash flow remains a big challenge.	**Our proposal** We recommend amendment of section 26(1) of the VAT Act to increase the cash accounting limit to Ushs.2 billion. The amended Section 26(1) **"This Section applies to a taxable person, the annual value of whose taxable supplies does not exceed *two billion* shillings"** **Justification** This will not only increase revenue but also improve compliance as many small taxpayers who have been failing to comply for fear of huge penalties will come on board.
Section 65A *Payment of tax*	The waiver of interest as at 30th June 2017 as indicated in section 65A (2) of the VAT Act that was waived, most times keeps moving due to re-allocation of payments already allocated to specific periods. This distorts the tax ledger and keeps taxpayers unable to reconcile and know their position. In many cases, taxpayers have been taken by surprise getting huge bills beyond their capacity to pay.	**Our proposal** We propose that s. 65A of the VAT Act be amended to read as follows: Section 65A **"The interest due and payable on unpaid tax shall not exceed the aggregate of the principle tax and penal tax *assessed minus tax for the period*".** **Justification** To promote greater fairness in the tax system.
Fifth Schedule of the VAT Act Calculation of interest penalty	The Schedule provides that the rate of interest chargeable as penalty shall be 2% per month, compounded. Interest for VAT therefore has remained compounded, which has made VAT compliance very difficult and discouraging. This	**Our proposal** We propose to amend the fifth schedule of VAT act to make interest being charged to be simple.

SECTION	OBSERVATION	COMMENT
	translates to more than 26.8% by year end, whereas other tax heads attract a maximum of 24% being simple interest. We believe there is need to harmonize the interest rate. This very approach makes the capping of interest for VAT irrelevant since interest becomes tax that attracts interest gain.	**Justification** This will improve VAT compliance and promote fairness and equity among the taxpayers.
Application of VAT on electronic services	URA issued a Public Notice on 13 December 2018 regarding taxation of non-residents providing electronic services to non-taxable persons in Uganda. URA's Public Notice was based on section 16(2)(d) of the VAT Act, which provides that any non-resident person who supplies electronic services to a non-taxable person in Uganda, makes a taxable supply in Uganda. Accordingly, such a person is required to register for and account for VAT on these transactions. This meant that even though this non-resident entity supplying electronic services has no place of business in Uganda from which the service is supplied to a non-taxable person in Uganda, such services if supplied to a nontaxable person in Uganda would be deemed to be a supply taking place in Uganda.	**Our proposal** We propose that the Minister introduces "THE VALUE ADDED TAX (ELECTRONIC SERVICES) REGULATIONS, 2021" under Sections 16 and 78 of the Value Added Tax Act Cap 349. **Justification** To provide clarification on the application of the main sections of the VAT law to the electronic services regime. These are described below;
	The effective date of accounting for VAT on electronic services in Uganda The VAT Act contains place of supply rules that create a place of supply in Uganda for electronic services supplied by non-residents to non-VAT registered persons in Uganda (Section 16(2)(d) of the VAT Act). However, since the introduction of this section in 2011, there has been no mechanism in place for non-residents to register and account for VAT. On 24 October 2019, URA issued a public	**Our Proposal** The proposed Regulations should state the commencement date when the accounting for VAT on electronic services come into force. **Justification** This is because despite the introduction of section 16(2)(d) in 2011 followed by the URA public notice on 24 October 2019, it has not been possible for the non-resident service providers of electronic services to

SECTION	OBSERVATION	COMMENT
	notice setting out the procedure for non-residents to register for VAT. However, there was no clarification on the effective date for implementing the provisions governing the accounting for VAT on electronic services.	register for VAT in Uganda or even account for the VAT on electronic services through appointed agents.
	Registration of non-residents for VAT purposes The absence of a place of business in Uganda means that in practice the non-resident is unable to register directly for VAT or a Tax Identification Number (TIN) because they do not have a registered place of business in Uganda. The legislation allows a non-resident to appoint a tax representative who assumes personal liability for the non-resident's filing and payment obligations.	**Our proposal** The administrative procedure and requirements to register for VAT should be amended to allow non-residents to acquire a TIN and register for VAT without the requirement to have a principle business address in Uganda. The proposed regulations should introduce a framework for a simplified tax registration process. **Justification** This will be in line with the proposed OECD unified approach on international profit allocation rules, which inter-alia provide that no physical presence should be required for digital services providers. Furthermore, it may be difficult for the non-resident supplier to acquire a place of business in Uganda, maintain proper tax records and submit regular and reliable tax returns for purposes of accounting for VAT in Uganda. A non-resident person does not need to have a place of business in Uganda in order to account for taxes in Uganda.
	Flexibility to allow the non-resident to appoint either an agent or a tax representative and to enable a tax representative to register a non-resident client	**Our Proposal** The procedure for appointment of a VAT representative and their role in supporting registration of non-

SECTION	OBSERVATION	COMMENT
	The VAT online registration template was updated to allow non-residents to register for VAT through an agent. However, URA's public notice on 24 October 2019 makes reference to a tax representative and yet the VAT registration template does not have a section to cater for the details of a Tax representative who may be appointed to register a non-resident. One of the obligations of a Tax Representative under the Tax Procedures Code Act ("TPCA") is to perform any duty or obligation imposed by a tax law on the taxpayer including the submission of tax returns and payment of tax. On the other hand, the TPCA defines an agent to mean, an individual, partnership or company whom the Committee of the URA may register as an agent.	residents for VAT should be clarified and the relevant templates designed to support this procedure. By way of example, the VAT registration template should be amended to allow a tax representative to register the non-resident for VAT purposes by including another Section F where the Tax representative will fill in their details. **Justification** The non-resident should be given clear guidance on the appointment of either an agent or a Tax Representative to undertake the VAT registration process of the non-resident as well as filing VAT returns on behalf of the non-resident.
Determination of the VAT registration threshold	The supplies made to VAT registered customers do not fall within the ambit of electronic services as provided for under section 16(2)(d) of the VAT Act. According to this section, in order for electronic services to be supplied in Uganda, the recipient of the supply should be a non-taxable person. The VAT law should therefore clarify that when determining the VAT registration threshold, the non-resident service providers for electronic services will be required to only consider the value of supplies made to non-VAT registered persons. However, this imposes an additional burden onto the non-resident service provider to track the value of services supplied to non-registered taxpayers in Uganda in order to determine the point at which they satisfy the threshold points described in Section 7(1) of the VAT Act.	**Our Proposals** 1. We propose an amendment to Section 7(2) of the VAT Act by re-wording the Section 7(2) to read as follows; ***"The annual Threshold is one hundred and fifty million shillings"***. 2. To introduce Section 7(5A) immediately after Sub-section 5, to read as follows: ***"Notwithstanding subsection (1) and (2), a non-resident person providing electronic services shall apply for registration at the date of commencement of those activities or on the effective date of accounting for VAT on electronic services as specified in the Regulations whichever is later"***

SECTION	OBSERVATION	COMMENT
		<u>Justification</u> 1. To reduce the administrative burden / obligation of a non-resident person having to follow up their activities in the Ugandan jurisdiction and distinguish which supplies were made to non-taxable persons in Uganda among all its global operations. 2. Furthermore, to void the need for determining whether the non- resident is eligible to register under Section 7(1) by tracking the value of the supplies made to the non-taxable persons in Uganda to establish the point at which they attained the specified threshold of UGX 150M.
Whether a foreign supplier merely acting as an intermediary providing a digital platform will be excluded from the scope of VAT	According to Section 13(1) of the VAT Act, a supply of goods or services made by a person as an agent for another person being the principal, is a supply by the principal. There is a potential risk of interpreting the above section as though it applies to the services supplied by an intermediary providing electronic services to a main supplier as an agent-principle relationship. In light of the above provision of the VAT Act, where the foreign supplier is merely acting as an Intermediary, for example by providing a digital platform for advertising and/or sale of electronic services by another person selling their products (the principal), then VAT on electronic services should be accounted for by the foreign supplier who is providing the digital advertising or selling platform. An example of the above scenario is that of an individual buying goods, e.g. an i-phone from Amazon.	**<u>Our Proposals</u>** The obligation to account for tax on income sourced from Uganda from the supply of the goods will fall on the underlying supplier (Apple for the Iphone), while the VAT obligation for the electronic services provider should fall on the provider of the digital platform (Amazon). To make this clearer in the tax law, we propose an amendment to section 13(2) of the VAT Act as follows: ***"Subsection (1) does not apply to an agent's supply of services as agent to the principal, including the provision of electronic advertising or marketing services by non-resident suppliers of electronic services."***

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	(i) Apple will be a non-resident person supplying a good to a non-taxable person in Uganda. Currently, there is a revenue leakage in terms of income tax on income sourced from Uganda by foreign suppliers like Apple because an individual cannot withhold tax on a payment for goods and services. (ii) On the other hand, Amazon will have supplied the electronic service of linking the individual in Uganda to Apple, the non-resident seller. Amazon in this case will have supplied electronic services to the individual in Uganda. This transaction should not be misconstrued as a transaction falling under Section 13(1) as though it was an agent principle relationship between Amazon and Apple. The transaction comprises of two distinct supplies as explained above.	**Justification** The supply of electronic advertising or marketing services by a non-resident supplier of electronic services should not be confused for an agent-principal relationship, and therefore it should be clear that the obligation to account for VAT on electronic services provided by a non-resident supplier should be borne by the provider of the electronic services and not the supplier of the goods or services.
Issuance of tax invoices	In our view, the requirement to issue a tax invoice should exclude the non-resident suppliers of electronic services.	**Our Proposal** We propose that section 29 (1) is amended to introduce a new Sub-section 29(1A) to read as follows: Section 29(1A) ***"Notwithstanding Sub-section 29(1), a non-resident supplier of electronic services shall not be required to issue a tax invoice provided that the supplier shall issue an invoice or receipt showing the value of the supply and the tax charged thereon".*** **Justification:** URA did not clarify whether the foreign supplier is required to issue a proper tax invoice to its Ugandan customers (regardless of whether they are businesses or private individuals). In addition, the non-resident person should not be burdened by having to alter their

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		invoices according to Uganda's specifications of a proper tax invoice and yet they have to follow the requirements in their own jurisdictions which may be different.
	<u>THE TAX PROCEDURES CODE ACT (TCPA)</u>	
Section 16(5) of the TPCA ***<u>Furnishing of tax returns</u>***	As rightly noted in the DRMS, "*the government's ability to collect taxes depends highly on citizens' willingness to pay them. Encouraging tax compliance depends on creating a predictable and consistent tax system that ensures that registration, filing and payment is efficient among others*". Section 16(5) of the TPCA requires a taxpayer with an annual turnover of the amount prescribed in Schedule 3 to furnish with the taxpayer's return of income, audited financial statements prepared by an accountant registered by the Institute of Certified Public Accountants of Uganda (ICPAU). Ever since Section 16(5) of the TPCA was passed into law, there has been a lot of implementation difficulties. The motivation behind the clause was to ensure the reliability and accuracy of the returns submitted. However, to date the tax body has failed to implement or check that taxpayers' returns abide by this provision of the law. In addition, URA's Information systems have not been improved to allow upload of audited financial statements to accompany the tax returns. Due to this laxity, many taxpayers have continued to file returns based on unaudited financial statements and the amounts declared in respect to tax liability left at the volition of the taxpayer. In other instances, some unregulated persons	**<u>Our proposals</u>** We propose; a. That the tax authority works with ICPAU as the regulator of the accountancy profession, to implement an innovative concept of a Unique Document Identifier (UDI) that ICPAU has developed to secure the documents attested/certified by practicing accountants. This will enable Agencies such as the URA to check the authenticity of the documents submitted. The UDI shall be a 17-Digit system-generated unique number for every document certified/attested by practicing accountants. The platform will directly link the documents that have been submitted to the particulars of licensed practicing accountants. b. URA updates its information systems to allow easy upload of audited financial statements and also be able to track emerging tax bases. **<u>Justification</u>** a. To give effect to this provision of the law. b. To curb the habit of third parties misrepresenting themselves as practicing accountants and

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	have continued to file returns for taxpayers and in case of any under declaration, such people cannot effectively be brought to book.	misleading authorities such as yourselves and stakeholders.
Section 38 of the TPCA *Order of Payment*	Section 38 of the TPCA gives order of allocating the payment being Principle tax, Penal tax and interest. This in itself is not bad, but where tax is in dispute, URA proceeds to credit the payment to tax in dispute and continues to demand tax that was paid. This needs to be clarified.	**Our proposals** We propose to introduce 2 new sections; a. Section 38(1)(d) of the TPCA that limits payment allocation to tax outstanding at the time of payment that is not in dispute or not objected to. ***When an objection is made where tax is already paid and objection is allowed, tax credit released should be allocated to next available oldest liability not in dispute.*** b. Section 38(1)e of the TPCA to allow inter-tax type transfer of credit where the taxpayer has credit or over payment without first going through a refund process.