

Our Ref: MDA/012

17 December 2020

Hon. Matia Kasaija,
Minister of Finance, Planning and Economic Development,
Plot 2/12 Apollo Kaggwa Road,
Kampala.

Dear Sir,

**SUBMISSION OF LAWS AND REGULATIONS THAT IMPEDE THE EASE OF DOING
BUSINESS**

Please refer to your letter, referenced IPS/239/428/01 and dated August 25 2020 on the above captioned subject.

The Institute of Certified Public Accountants of Uganda (ICPAU), as a key stakeholder, welcomes the opportunity to submit input on the regulatory frameworks that impede the ease of doing business.

We have enclosed our submissions on a number of issues and they are attached as Appendix 1.

Yours faithfully,


CPA Derick Nkajja
SECRETARY/CEO

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INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA

PROPOSALS ON LAWS AND REGULATIONS THAT IMPEDE THE EASE OF DOING BUSINESS

1. The Stamps Duty (Amendment) Act, 2020

Issues Arising	Recommendation (s)
<p>The Stamps Duty (Amendment) Act, 2020 amended Schedule 2 of the Stamps Duty Act, 2014; by imposing a duty of UGX 100,000 on payment of a professional license or certificate by every professional offering professional services.</p> <p>In order to streamline the conduct of professionals in their respective fields, the different Professional Associations issue annual certificates of practice and/or licenses to all those practicing a particular profession. The Professional Associations equally conduct periodical inspections and reviews of the work done by their respective professionals to ensure compliance with national laws and legislations particularly pertaining tax compliance.</p> <p>We take note that acquisition of a professional license or certificate by different professionals is already subject to payment of the professional license fees. Additionally, under the Trade (Licensing) (Amendment), 2015, professionals' places of business are liable to paying trade license fees to local authorities within which they operate. More so, self-employed Professionals are also required to pay income tax on profits from their business undertakings, while employed/salaried professionals are required to pay tax in various forms including Pay As You Earn (PAYE), as well as Local Service Tax (LST) to Local Governments for both self-employed and employed professionals.</p>	<p>In the above sense therefore, we recommend that you reconsider the amendment to Schedule 2 of the Stamps Duty Act, 2014, so as to avoid multiple taxation.</p> <p>Principles of taxation should be taken into consideration; a tax should be fair, affordable and double taxation should as much as possible be avoided.</p> <p>Resultantly, affordable taxes ease compliance and consequently widen the tax base. The payment of the proposed UGX 100,000 as stamp duty by professionals amounts to double taxation. It is our humble request that the amendment is revisited in the spirit of supporting professionalism.</p>

<p>The Act does not expressly define the word 'professional license or certificate'. This alone creates a discord as to the application of this provision since a number of professionals are required in each given year to pay for a number of certificates and/or licenses. The Bill is thus not only ambiguous since the provision is not clear as to whether the proposed stamp duty will be imposed on one or all the certificates, but it equally introduces a burdensome cost to the carrying on of professional business that will stifle growth of professional services. Professional services will be suffocated with multiple levies and taxes given the already existing tax levies.</p>	
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2. The Companies Act, 2012

<p>Issue 1: Form for registration of a company Section 18 of the Act states that a company shall be registered by filling in the particulars contained in the registration form in the second schedule upon which the registrar shall register the company and assign it with a registration number and a certificate that the company is incorporated.</p> <p>The above section implies that an applicant intending to incorporate a company is only required to submit the mentioned form for registration. This section is misleading because it ignores all the other requirements including the memorandum and articles of association, share capital, etc.</p>	<p>We recommend that this section be re-phrased to state that this form is among the requirements that are needed to incorporate a company.</p>
<p>Issue 2: Mergers and Acquisition The Act is silent with regards to the concept of mergers and acquisition, therefore leaving companies that want to undertake such business combinations to look to common law and practice as the law applicable.</p>	<p>We recommend that the Act should be amended to provide for the concept of mergers and acquisitions, the circumstances under which it is permissible, the board and shareholder authorizations required among others, and thus provide elaborately for this concept.</p>
<p>Issue 3: Cross border amalgamations Section 237 of the Act provides that two or more companies may amalgamate and continue as one company which may be one of the amalgamating companies or may be a new company.</p>	<p>We are of the view that consideration should be made to include cross border amalgamation provisions in the Companies Act because they have the potential to improve investments in Uganda.</p>

A company under the Act is defined as a company formed and registered under this Act or an existing or a re-registered company under this Act. The definition of a company implies that only companies incorporated or registered under the Companies Act, 2012 may amalgamate, and does not provide for a foreign company incorporated outside Uganda that is desirous of merging with a company incorporated under the Act.

With businesses no longer limited by borders, cross-border amalgamations present significant opportunities for economic gain and increased shareholder or investor value. Various factors including the ever-increasing need of companies to tap new markets and set up global operations, cost reduction and the need to secure natural resources influence cross-border amalgamations. Cross-border amalgamations are also supported by technological advancements, low cost financing arrangements and robust market conditions, which are good and necessary for business success.