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**TAX PROCEDURES ACT**

NO. 29 OF 2015

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**NO. 29 OF 2015**

**TAX PROCEDURES ACT**  
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**NO. 29 OF 2015**

**TAX PROCEDURES ACT**

[Date of assent: 15th December, 2015.]

[Date of commencement: 19th January, 2016.]

**AN ACT of Parliament to harmonise and consolidate the procedural rules for the administration of tax laws in Kenya, and for connected purposes**

[Act No. 29 of 2015, L.N. 12/2016, Act No. 38 of 2016, Act No. 15 of 2017.]

**PART I — PRELIMINARY**

**1. Short title**

This Act may be cited as the Tax Procedures Act, 2015.

**2. Object and purpose of the Act**

(1) The object and purpose of this Act is to provide uniform procedures for—

- (a) consistency and efficiency in the administration of tax laws;
- (b) facilitation of tax compliance by taxpayers; and
- (c) effective and efficient collection of tax.

(2) Unless a tax law specifies a procedure that is unique to the administration of a tax thereunder, the procedures provided for under this Act shall apply.

(3) This Act shall be interpreted to promote the object of the Act.

**3. Interpretation**

(1) In this Act, except where when the context otherwise requires—

**“accounting officer”** has the meaning assigned under the Public Finance Management Act, 2012;

**“advance assessment”** means an advance assessment made by the Commissioner under section 30;

**“amended assessment”** means an amended assessment made by the Commissioner under section 31;

**“appealable decision”** means an objection decision and any other decision made under a tax law other than—

- (a) a tax decision; or
- (b) a decision made in the course of making a tax decision;

**“assessment”** means a self-assessment, default assessment, advance assessment, or amended assessment, and includes any other assessment made under a tax law;

**“authorised officer”**, in relation to a tax law, means the Commissioner or an officer appointed by the Commissioner under the Kenya Revenue Authority Act;

**“Authority”** means the Kenya Revenue Authority established under the Kenya Revenue Authority Act;

**“Cabinet Secretary”** means the Cabinet Secretary for the time being responsible for matters relating to finance;

**“Commissioner”** means the Commissioner-General appointed under the Kenya Revenue Authority Act;

**“company”** means—

- (a) a company as defined in the Companies Act (Cap. 486) or a corporate body formed under any other written law, including a foreign law; or
- (b) an association, whether incorporated or not, formed outside Kenya that the Cabinet Secretary has, by order, declared to be a company for the purposes of this Act;

**“controlling member”** has the meaning assigned to it in section 18(4)(b);

**“default assessment”** means a default assessment made by the Commissioner under section 29;

**“document”** includes—

- (a) a book of account, record, paper, register, bank statement, receipt, invoice, voucher, contract or agreement, tax return, Customs declaration, or tax invoice; or
- (b) any information or data stored on a mechanical or electronic data storage device;

**“due date”** means the date by which taxes are due and payable as specified in the respective tax laws or such other date as the Commissioner may specify in a notice;

**“excise duty”** means excise duty imposed under the Excise Duty Act;

**“income tax”** means income tax imposed under the Income Tax Act;

**“international organisation”** means an organisation with international membership, scope or presence and the membership are sovereign powers or the governments of sovereign powers;

**“Land Registrar”** means Chief Land Registrar, County Land Registrar and Land Registrars appointed under section 12 and 13 of the Land Registration Act, 2012 (No. 8 of 2012);

**“late payment interest”** means interest imposed under section 38;

**“late submission penalty”** means a penalty imposed under section 83;

**“licensed person”** means a person registered or licensed under a tax law;

**“tax agent”** means a person licensed as a tax agent under section 20;

**“limited partnership”** means—

- (a) a limited liability partnership registered under the Limited Liability Partnerships Act, 2011 (No. 42 of 2011); or
- (b) a foreign limited partnership within the meaning in the Partnerships Act, 2012 (No. 16 of 2012);

**“objection decision”** has the meaning in section 51(8);

**“official language”** means Kiswahili or English;

**“penalty”** means a penalty imposed under a tax law;



“**person**” includes an individual, company, partnership, limited partnership, association of persons, trust, National Government, foreign government, political subdivision of the National Government or foreign government, or an international organisation;

“**personal identification number**” or “**PIN**” means the personal identification number issued under section 12;

“**political subdivision**” in relation to a government, means a state, provincial, county, local, or other government at a level lower than the national government;

“**prescribed form**” has the meaning assigned to it in section 70;

“**refund decision**” means a decision referred to in section 47(3);

“**relative**”, in relation to an individual, means—

- (a) an ancestor, a descendant of any of the grandparents, or an adopted child, of the individual;
- (b) an ancestor, a descendant of any of the grandparents, or an adopted child of a spouse of the individual; or
- (c) the spouse of the individual or of any person specified in paragraph (a) or (b);

“**reporting period**” means—

- (a) for the income tax, the year of income or, when section 27 of the Income Tax Act applies, the accounting period of the taxpayer;
- (b) for withholding tax under the Income Tax Act, the period for which the deduction of tax relates;
- (c) for Value Added Tax—
  - (i) for a registered person, each calendar month; or
  - (ii) for an importer, the time of the import;
  - (iii) for withholding tax under the Value Added Tax Act, the time for payment for the taxable supplies;
- (d) for excise duty—
  - (i) for a licensed person, each calendar month; or
  - (ii) for an import of excisable goods, the time of import; or
  - (iii) in the case of an advanced assessment, the period stated in the notice of assessment;
- (e) for any other tax imposed under a tax law, the period for which the tax is charged;

“**self-assessment**” means an assessment made by a taxpayer or his representative under section 28;

“**self-assessment return**” means a self-assessment return submitted by a tax payer or his representative in accordance with a tax law;

“**spouse**”, in relation to an individual, means an individual who is married to the first-mentioned individual under any system of law;

“**tax**” means—

- (a) a tax or penalty imposed under a tax law;

- (b) an instalment tax imposed under section 12 of the Income Tax Act; or
- (c) withholding tax;

“**tax avoidance**” means a transaction or a scheme designed to avoid liability to pay tax under any tax law;

“**Tax Compliance Certificate**” means a certificate issued by the Commissioner if satisfied that the person has complied with the tax law in respect of filing returns and has paid all the tax due based on self-assessment or has made an arrangement with the Commissioner to pay any tax due;

“**tax decision**” means—

- (a) an assessment;
- (b) a determination under section 17(2) of the amount of tax payable or that will become payable by a taxpayer;
- (c) a determination of the amount that a tax representative, appointed person, director or controlling member is liable for under sections 15, 17, and 18;
- (d) a decision on an application by a self-assessment taxpayer under section 31(2);
- (e) a refund decision;
- (f) a decision under section 48 requiring repayment of a refund; or
- (g) a demand for a penalty;

“**tax law**” means—

- (a) this Act;
- (b) the Income Tax Act, Value Added Tax Act, and Excise Duty Act; and
- (c) any Regulations or other subsidiary legislation made under this Act or the Income Tax Act, Value Added Tax Act, and Excise Duty Act;

“**tax representative**”, in relation to a taxpayer, means a person who is the tax representative of the taxpayer under section 15;

“**tax return**” means a return required to be submitted under a tax law and includes the following—

- (a) a statement of exempt income to be submitted under section 62 of the Income Tax Act;
- (b) a statement and declaration form specified in rule 9A of the Income Tax (PAYE) Rules and rule 11(1) of the Income Tax (Withholding Tax) Rules;

“**taxpayer**” means a person liable for tax under a tax law whether or not they have accrued any tax liability in a tax period;

“**Tribunal**” means the Tax Appeals Tribunal established under the Tax Appeals Tribunal Act, 2013 (No. 40 of 2013);

“**trust**” means—

- (a) a trust within the meaning in the Trustee Act; or
- (b) an entity (other than a partnership, limited partnership, or company) created outside Kenya that has legal characteristics substantially similar to those of a trust settled or created in Kenya;

“**trustee**” means a person recognized as trustee under the Trustee Act and includes a person who owes a fiduciary responsibility to an entity treated as a trust under paragraph (b) of the definition of “trust”;

“**unpaid tax**” means any tax that has not been paid by the due date or, if the Commissioner has extended the due date under section 33, the extended due date, and includes any late payment interest in respect of a tax liability;

“**value added tax**” means value added tax imposed under the Value Added Tax Act, 2013 (No. 35 of 2013); and

“**withholding tax**” means tax that a person is required to withhold under the Income Tax Act (Cap. 167) or the Value Added Tax Act.

(2) For the purposes of this Act, the following are related persons—

- (a) persons who are treated as related persons under section 13(8) of the Value Added Tax Act; or
- (b) an individual and a relative of the individual.

(3) For the purposes of enforcement and collection of tax—

- (a) late payment interest, penalty, fines, or any other imposition under a tax law shall be treated as tax; and
- (b) the person liable for the amount specified in paragraph (a) shall be treated as a taxpayer.

(4) When this Act applies in respect of a tax law, any term not defined in this Act has the meaning assigned in that tax law.

[Act No. 38 of 2016, s. 32, Act No. 15 of 2017, s. 19.]

## PART II — ADMINISTRATION OF TAX LAWS

### 4. Functions and powers of the Commissioner

(1) The Commissioner shall be responsible for—

- (a) the control and collection of taxes;
- (b) accounting for collected taxes; and
- (c) subject to the direction and control of the Cabinet Secretary, for the general administration of tax laws.

(2) The Commissioner shall appoint such authorised officers as may be necessary for the administration of a tax law.

(3) An authorised officer shall enforce, and ensure due compliance with, the provisions of the tax law, and shall make all due inquiries in relation thereto.

(4) An authorised officer shall produce on demand such documents approved by the Commissioner establishing the officer’s identity.

### 5. Delegation

(1) The Commissioner may, in relation to a tax law, delegate in writing to an authorised officer the performance of any of the powers or functions of the Commissioner under that tax law, other than the power of the Commissioner under section 4.

(2) The Commissioner may revoke, in writing, a delegated power or function at any time and nothing in this section prevents the Commissioner from exercising a delegated power or performing a delegated function.

(3) A decision made, and a notice or communication issued or signed, by an authorised officer may be withdrawn or amended by the Commissioner or by that authorised officer, and shall, for the purposes of the tax law to which it relates and until it has been withdrawn, be deemed to have been made, issued or signed by the Commissioner.

## **6. Confidentiality**

(1) The Commissioner or an authorised person shall, in relation to the administration of a tax law, protect the confidentiality of the documents or information obtained in the course of administering the tax law.

(2) Despite subsection (1), the Commissioner or an authorised officer may disclose documents or information obtained in the course of administering a tax law to—

- (a) another authorised officer for the purposes of carrying out any duty arising under a tax law;
- (b) an authorised customs officer for the purposes of carrying out any duty under a law related to customs;
- (c) the Tribunal or a court to the extent necessary for the purposes of any proceedings under a tax law;
- (d) the Director-General of the Kenya National Bureau of Statistics for the performance of the Director-General's official duties;
- (e) the Auditor-General for the performance of the Auditor-General's official duties;
- (f) a competent authority of the government of a foreign country or an international organization with which Kenya has entered into an agreement which provides for the exchange of information to the extent permitted under that agreement; or
- (g) the Authority responsible for investigation of corruption and matters related to the integrity of public officers;
- (h) any other institution of the government of Kenya for the purposes of performance of the duties of that institution;
- (i) any other person with the written consent of the person to whom the documents or information relate.

(3) Subsection (1) shall apply to a person receiving documents or information under subsection (2) as if the person were an authorised officer.

(4) In this section, "authorised officer" includes any person engaged by the Authority in any capacity and includes a director or former director of the Authority, or a former authorised officer or employee of the Authority.

[Act No. 15 of 2017, s. 20.]

## **7. Authorised officers to have powers of police officers**

(1) For the purposes of administering a tax law, an authorised officer shall, in the performance of that officer's duties, have all the powers, rights, privileges and protection of a police officer.

(2) Without prejudice to the generality of subsection (1), the authorised officer shall have the power to enter and search any premises or vessels and seize, collect and detain evidence and produce such evidence in any proceedings before a court of law or tax appeals tribunal.

[Act No. 15 of 2017, s. 21.]

### PART III — TAXPAYERS

#### 8. Registration of taxpayers

(1) A person who—

- (a) has accrued a tax liability or who expects to accrue a tax liability under the Income Tax Act or the Value Added Tax Act, 2013;
- (b) expects to manufacture or import excisable goods; or
- (c) expects to supply excisable services;

shall apply to the Commissioner to be registered.

(2) An application for registration under subsection (1) shall be—

- (a) made in the prescribed form;
- (b) accompanied by documents that the Commissioner may require, including documents of identity; and
- (c) made within thirty days of the applicant becoming liable for that tax.

(3) Where a person liable for a tax under a tax law is required or has the option to register under that tax law, that person shall comply with the provisions of that tax law and this Act regarding registration.

(4) The Commissioner shall register a person who has applied for registration if the Commissioner is satisfied that the person is liable for tax under a tax law.

(5) When the Commissioner refuses to register a person who has applied for registration, the Commissioner shall inform that person in writing within fourteen days of the decision not to register that person.

(6) The Commissioner may use the information obtained under subsection (2) to register or license the applicant under the provisions of any other tax law without requiring that applicant to separately apply to be registered or licensed under that other tax law.

(7) If the Commissioner decides to register or license an applicant under subsection (6), the Commissioner may require the applicant to provide additional information or documents for the purposes of that other registration or licensing.

(8) The Commissioner may, on his or her own motion, register a person who was required to apply for registration under subsection (1) but who has not applied for registration.

(9) The Commissioner shall notify in writing a person registered under subsection (8) of that person's registration.

[Act No. 15 of 2017, s. 22.]

#### 9. Supply of information upon change in particulars

Every person carrying on a business shall, within thirty days of the occurrence of a change, notify the Commissioner of any changes—

- (a) in the place of business, trading name and registered address;

- (b) in the case of—
  - (i) an incorporated person, of the persons with share-holding of ten per cent or more of the issued share capital;
  - (ii) a nominee ownership, to disclose the beneficial owner of the shareholding;
  - (iii) a trust, the full identity and address details of trustees and beneficiaries of the trust;
  - (iv) a partnership, the identity and address of all partners; or
  - (v) cessation or sale of the business, all relevant information regarding liquidation or details of ownership.

## **10. Deregistration**

(1) A person who ceases to be required to be registered for the purposes of a tax law shall apply to the Commissioner for deregistration under that specific tax law.

(2) A registered person shall apply for deregistration under subsection (1)—

- (a) in the prescribed form; and
- (b) within thirty days of ceasing to be required to be registered under that tax law.

(3) Where a tax law requires a registered person to apply for deregistration in addition to the requirement under this section, that person shall also apply for deregistration in accordance with the provision of that tax law.

(4) The Commissioner shall notify in writing a registered person of the deregistration of that person if the Commissioner is satisfied that the person is no longer required to be registered for the purpose of a tax law.

(5) The Commissioner may, on his or her own motion and by notice in writing to a person or a person's tax representative, deregister the person when satisfied that the person is eligible for deregistration, including when the person is a natural person who has died, a company that has been liquidated, or any other person that has otherwise ceased to exist.

(6) A person shall cease to be a registered person on the date of notification by the Commissioner in relation to the deregistration.

(7) Where the Commissioner fails to respond to the application for deregistration within six months, the applicant shall be deemed to be deregistered.

(8) Where the deregistration of a person requires the cancellation of that person's registration or licence under a tax law, that registration or licence shall be cancelled on the effective date of the deregistration.

## **11. Personal identification number**

The Commissioner shall issue a number, to be known as a personal identification number ("PIN"), to a person registered for the purposes of a tax law and that person shall use the PIN as may be required under this Act.

## **12. Issue of a PIN**

(1) The Commissioner shall issue a PIN to a person registered under section 8.

(2) A registered person shall use a PIN for the purposes of all tax laws and a registered person shall be issued with only one PIN at any time.

(3) A person who has not been registered under section 8 but who requires a PIN for the purposes of a transaction specified in the First Schedule may apply to the Commissioner for a PIN.

(4) An application for a PIN under subsection (3) the application shall be—

- (a) in the prescribed form; and
- (b) accompanied by documents that the Commissioner may require, including documents of identity or registration.

(5) The Commissioner shall issue a PIN to an applicant under subsection (3) if the Commissioner is satisfied that the applicant requires a PIN for the purposes of a transaction specified in the First Schedule.

(6) A PIN is issued to a person when the Commissioner notifies that person in writing of the issuance of the PIN.

### **13. Use of a PIN**

(1) A person shall state his or her PIN—

- (a) on any return, notice or other document submitted, lodged, or used for the purposes of a tax law, or as otherwise required under a tax law; or
- (b) on any documentation required for a transaction specified in the First Schedule.

(2) Subject to subsection (3), one PIN shall be issued to each person and it shall not be used by a person other than the person to whom it was issued.

(3) The PIN of a person may be used by a tax agent when—

- (a) the person has given written permission to the tax agent to use the PIN; and
- (b) the tax agent uses the PIN only in respect of the tax affairs of the person.

### **14. Cancellation of a PIN**

(1) A person issued with a PIN under section 12(3) but who is not registered under section 8 shall notify the Commissioner in writing when that person no longer requires a PIN for the purposes of a transaction specified in the First Schedule.

(2) The Commissioner shall, by notice in writing, cancel the PIN of a person when satisfied that—

- (a) the person has been deregistered under section 10;
- (b) the person is required to notify the Commissioner under subsection (1) but has failed to do so;
- (c) the person has notified the Commissioner under subsection (1);
- (d) a PIN has been issued to the person under an identity that is not the person's true identity; or
- (e) the person had been previously issued with a PIN that is still in force.

(3) The Commissioner may, at any time and in writing, cancel a PIN issued to a person and issue the person with a new PIN.

**15. Taxpayer's tax representative**

(1) A person is the tax representative of another person for the purposes of this Act or a tax law, in the case of—

- (a) an individual under a legal disability, if that person is the guardian or other legal representative who receives or is entitled to receive income on behalf, or for the benefit, of the individual;
- (b) a company within paragraph (a) of the definition in section 3, if that person is the chief executive officer, managing director, company secretary, treasurer, trustee or a resident director or similar officer of the company acting or purporting to act in such a position;
- (c) an association of persons, if that person is responsible for accounting for the receipt or payment of moneys or funds on behalf of the association;
- (d) a partnership or limited partnership, if that person is a partner in the partnership or a manager of the partnership responsible for accounting for the receipt or payment of moneys or funds on behalf of the partnership;
- (e) a trust (other than the estate of a deceased taxpayer), if that person is a trustee of the trust;
- (f) the National Government, government, or a county government, the judiciary and the Parliamentary Service Commission if that person is the accounting officer;
- (g) a company within paragraph (b) of the definition in section 3, a foreign government, political subdivision of a foreign government, car international organisation, if that person is responsible for accounting for the receipt or payment of moneys or funds in Kenya on behalf of the company, foreign government, political subdivision of the foreign government, or international organisation;
- (h) a taxpayer to whom section 17 applies if that person is the person appointed in respect of the taxpayer under that section;
- (i) in the case of a non-resident person, if that person is controlling the non-resident person's affairs in Kenya, including a manager of a business of that non-resident person; or
- (j) any person (including a person referred to in paragraphs (a) to (i)), if that person is the agent or representative of the person as provided for under a tax law or specified by the Commissioner, by notice in writing to the agent or representative.

(2) In this section—

**"individual under a legal disability"** includes a minor or an individual who is unable to comply with the requirements of a tax law because he or she is impaired by a physical or mental disability;

**"non-resident person"** means a person who is not a resident for the purpose of a tax law and includes a partnership or trust settled or formed outside Kenya;

**"resident"** has the meaning assigned to it under the Income Tax Act; and

**"resident director"** means a director who is resident.



**15A. Appointment of tax representative by non-resident person**

(1) In a case where a non-resident person with no fixed place of business in Kenya is required to register under a tax law, the non-resident person shall appoint a tax representative in Kenya in writing.

(2) Where a person required to appoint a tax representative in accordance with sub section (1) fails to do so, the Commissioner may appoint a tax representative for that person, and the tax representative so appointed shall have the duties and obligations specified under section 15.

(3) The registration of the tax representative shall be in the name of the non-resident person being represented.

(4) A person may be a tax representative for more than one non-resident person, in which case the person shall have a separate registration for each non-resident person.

(5) The Commissioner shall issue a PIN to the tax representative.

[Act No. 38 of 2016, s. 33, Act No. 15 of 2017, s. 23.]

**16. Liabilities and obligations of tax representatives**

(1) A tax representative of a taxpayer shall be responsible for performing any duty or obligation imposed by a tax law on the taxpayer, including the submission of returns and the payment of a tax.

(2) Despite the provisions of this Act, if a tax law requires a tax representative to perform a duty or an obligation in respect of the taxpayer, that tax representative shall comply with the requirements of that other tax law in addition to complying with the provisions of this Act.

(3) Where a taxpayer has more than one tax representative, each tax representative shall be responsible for all of the obligations of the taxpayer as required under this Act or any other tax law.

(4) Where a tax representative pays a tax on behalf of a taxpayer with the authority of that taxpayer, that tax representative shall be indemnified by the taxpayer in respect of that payment.

(5) Except as provided under a tax law and subject to subsection (6), any tax that is payable by a tax representative of a taxpayer under this section shall be recoverable from the tax representative only to the extent of the income or assets of the taxpayer that are in the possession or under the control of the tax representative.

(6) Subject to subsection (7), a tax representative shall be personally liable for the payment of any tax due by the tax representative in that capacity if, during the period when the amount remains unpaid, the tax representative—

- (a) alienates, charges, or disposes of any monies received or accrued in respect of which the tax is payable; or
- (b) disposes of or parts with any monies or funds belonging to the taxpayer that are in the possession of the tax representative or which come to the tax representative after the tax is payable, when such tax could legally have been paid from or out of such monies or funds.

(7) A tax representative shall not be personally liable for a tax under subsection (6) if—

- (a) the monies were paid by the tax representative on behalf of a taxpayer and the amount paid has priority, in law or equity, over the tax payable by the taxpayer; or
- (b) at the time the monies were paid, the tax representative did not know, and could not reasonably be expected to know, of the taxpayer's tax liability.

(8) This section does not relieve a taxpayer from performing any obligation imposed on the taxpayer under a tax law that the tax representative of the taxpayer has failed to perform.

(9) A reference in this section to a tax liability of a taxpayer includes any penalty or late payment interest payable in respect of the liability.

[Act No. 15 of 2017, s. 24.]

### **17. Duties of appointed person**

(1) An administrator, personal representative, executor of a will, trustee-in-bankruptcy, receiver, or liquidator (referred to as the "appointed person") who has been appointed to administer, manage, liquidate, or wind up the affairs of a taxpayer, including a deceased taxpayer, shall notify the Commissioner, in writing, of the appointment within fifteen days of the date of the appointment.

(2) The Commissioner shall notify an appointed person in writing of the amount of tax that is payable or will become payable by the taxpayer whose assets are under the control of the appointed person within two months of the Commissioner receiving a notification under subsection (1).

(3) Subject to subsection (4), an appointed person shall—

- (a) not dispose of an asset of the taxpayer whose assets are under the control of the appointed person without prior approval of the Commissioner until the appointed person has been notified under subsection (2) or the two month period specified in subsection (2) has expired without the Commissioner notifying the appointed person of the tax payable;
- (b) set aside the amount notified by the Commissioner under subsection (2) out of the proceeds of sale of an asset, or a lesser amount as is subsequently agreed to by the Commissioner; and
- (c) be personally liable to the extent of the amount required to be set aside for the tax payable by the taxpayer who owned the asset.

(4) Subsection (3) shall not prevent an appointed person from paying the following in priority to the amount notified under subsection (2)—

- (a) a debt that has priority, in law or equity, over the tax referred to in the notice served under subsection (2); or
- (b) the expenses properly incurred by the appointed person in the capacity as such, including the appointed person's remuneration.

(5) Where there is more than one appointed person in respect of a taxpayer, the obligations and liabilities under this section shall apply jointly and severally to both appointed persons but may be discharged by any one of them.

(6) A reference in this section to a tax liability of a taxpayer includes any penalty or late payment interest payable in respect of the liability.

[Act No. 38 of 2016, s. 34, Act No. 15 of 2017, s. 25.]

#### **18. Liability for tax payable by a company**

(1) Subject to subsection (2), where an arrangement has been entered into by any director, general manager, company secretary, or other senior officer or controlling member of the company with the intention or effect of rendering a company unable to satisfy a current or future tax liability under a tax law, every person who was a director or controlling member of the company when the arrangement was entered into shall be jointly and severally liable for the tax liability of the company.

(2) A director, general manager, company secretary, or other senior officer or controlling member of a company shall not be liable under subsection (1) for the tax liability of the company if that director, general manager, company secretary, or other senior officer or controlling member did not derive a financial or other benefit from the arrangement and if—

- (a) the director, general manager, company secretary, or other senior officer or controlling member notified in writing the company of his or her opposition to the arrangement on becoming aware of the arrangement and notified in writing the Commissioner of the arrangement; or
- (b) at the time the arrangement was entered into, that director, general manager, company secretary, or other senior officer or controlling member was not involved in the executive management of the company and had no knowledge of and could not reasonably have been expected to know of the arrangement; and
- (c) *deleted by Act No. 17 of 2017, s. 26(a).*

(3) A reference in this section to a tax liability of a taxpayer includes any penalty or late payment interest payable in respect of the liability.

(4) In this section—

**“arrangement”** means any contract, agreement, plan or understanding, or an act, whether express or implied and whether or not enforceable in legal proceedings which is contrary to the provisions of a tax law;

**“controlling member”**, in relation to a company, means a member who beneficially holds, directly or indirectly, either alone or together with a related person or persons—

- (a) fifty per cent or more of the voting rights attaching to membership interests in the company;
- (b) fifty per cent or more of the rights to dividends attaching to membership interests in the company; or
- (c) fifty per cent or more of the rights to capital attaching to membership interests in the company;

**“member”**, in relation to a company, means a shareholder or any other person with a membership interest in the company;

**“membership interest”**, in relation to a company, means a share or other ownership interest in the company; and

**"private company"** has the same meaning assigned to it in the Companies Act (Cap. 486).

[Act No. 15 of 2017, s. 26.]

### **19. Application for tax agent licence**

(1) An individual or a partnership may apply to the Commissioner for a licence as a tax agent.

(2) An application under subsection (1) shall be in the prescribed form and accompanied by the prescribed fee.

(3) An applicant shall, in addition to the requirements set out in subsections (1) and (2), be required to be recommended for registration by the Tax Agents Committee.

[Act No. 38 of 2016, s. 35.]

### **20. Licensing of tax agents**

(1) The Commissioner shall issue a licence to an applicant under section 19 if the applicant is a fit and proper person to prepare tax returns, notices of objection, or otherwise transact business with the Commissioner under a tax law on behalf of a taxpayer.

(2) The Commissioner shall issue a licence to a partnership under section 19 if—

- (a) a partner in the partnership or an employee of the partnership is a fit and proper person to prepare tax returns, notices of objection and transact business with the Commissioner on behalf of a taxpayer; and
- (b) every partner in the partnership is of good character and integrity.

(3) The Regulations under this Act may provide for guidelines for determining whether or not a person is a fit and proper person to prepare tax returns, notices of objection, or transact business with the Commissioner on behalf of taxpayers.

(4) The licence issued to a tax agent shall be valid until it is cancelled under section 22.

(5) The Commissioner shall notify in writing an applicant under section 19 of the decision on the application.

(6) The Commissioner may, from time to time, publish, a list of persons issued with licenses to act or operate as tax agents.

### **21. Limitation on the performance of tax services for taxpayers**

(1) A person, other than a tax agent, shall not—

- (a) represent another person as that other person's tax agent; or
- (b) offer assistance to another person for a reward in respect of that other person's rights or obligations under a tax law.

(2) Subsection (1) (b) shall not apply to a legal practitioner acting in the ordinary course of the person's profession.

### **22. Cancellation of tax agent's licence**

(1) A tax agent who ceases to carry on business as a tax agent shall notify the Commissioner in writing at least seven days before ceasing to carry on business as a tax agent.

- (2) A tax agent may apply in writing to the Commissioner to cancel the licence.
- (3) The Commissioner shall cancel the licence of a tax agent if—
- (a) a tax return prepared and filed by the tax agent is false in any material particular, unless the tax agent satisfies the Commissioner that the falsification was not due to any wilful or negligent conduct of the tax agent;
  - (b) the tax agent ceases to satisfy the conditions for licensing as a tax agent;
  - (c) the tax agent has ceased to carry on business as a tax agent.
- (4) The Commissioner shall notify a tax agent in writing of the cancellation of the licence.
- (5) The cancellation of the licence of a tax agent shall take effect on—
- (a) the date the tax agent ceases to carry on business as a tax agent; or
  - (b) sixty days after the tax agent has been notified by the Commissioner of the cancellation of the tax agent's licence, whichever is the earlier.

[Act No. 38 of 2016, s. 36.]

#### PART IV — RECORD-KEEPING

### 23. Record-keeping

- (1) A person shall—
- (a) maintain any document required under a tax law, in either of the official languages;
  - (b) maintain any document required under a tax law so as to enable the person's tax liability to be readily ascertained; and
  - (c) subject to subsection (3), retain the document for a period of five years from the end of the reporting period to which it relates or such shorter period as may be specified in a tax law.
- (2) The unit of currency in books of account, records, paper registers, tax returns or tax invoices shall be in Kenya shillings.
- (3) When, at the end of the period specified in subsection (1)(c), a document—
- (a) relates to an amended assessment, the person shall retain the document until the period specified in section 31(7) has expired; or
  - (b) is necessary for a proceeding commenced before the end of the five year period, the person shall retain the document until all proceedings have been completed.
- (4) When a document referred to subsection (1) is not in an official language, the Commissioner may, by notice in writing, require the person required to keep the document to provide, at the person's expense, a translation into an official language by a translator approved by the Commissioner by the date specified in the notice.
- (5) Despite anything in any tax law, the Regulations may provide for a simplified system of record-keeping for small businesses.

## PART V — TAX RETURNS

**24. Submission of tax returns**

(1) A person required to submit a tax return under a tax law shall submit the return in the approved form and in the manner prescribed by the Commissioner.

(2) The Commissioner shall not be bound by a tax return or information provided by, or on behalf of, a taxpayer and the Commissioner may assess a taxpayer's tax liability using any information available to the Commissioner.

**24A. Duty to submit third party returns**

A person shall, upon being required to do so by the Commissioner, furnish the Commissioner with returns showing such information, in such form and manner and within such time as the Commissioner may prescribe.

[Act No. 38 of 2016, s. 37.]

**25. Extension of time to submit tax return**

(1) A person required to submit a tax return under a tax law may apply in writing to the Commissioner for an extension of time required to submit the tax return.

(2) An application for the extension of time shall be made before the due date for the submission of the tax return.

(3) The Commissioner may grant an application under this section if the Commissioner is satisfied that there is reasonable cause, and shall notify the applicant in writing of the extension of time.

(4) An extension of time granted under this section shall not alter the date for payment of any tax due (referred to as the "original due date") under the return as specified in the tax law under which the return has been made and late payment interest shall be payable from the original due date.

**26. Commissioner may require taxpayer to submit a tax return**

(1) This section shall apply where, during a reporting period—

- (a) bankruptcy, winding up or liquidation proceedings have been instituted against a taxpayer;
- (b) the Commissioner has reason to believe that a taxpayer is about to leave Kenya permanently; or
- (c) a taxpayer has ceased, or the Commissioner has reason to believe that a taxpayer will cease, carrying on any business in Kenya; or
- (d) a taxpayer has died.

(2) The Commissioner may at any time during a reporting period, by notice in writing, require—

- (a) the taxpayer or the taxpayer's tax representative to submit a tax return for the reporting period by the date specified in the notice being a date that may be before the date that the return for the reporting period would otherwise be due; and
- (b) pay any tax due in relation to the return.

(3) Where a taxpayer is subject to more than one tax, this section shall apply separately for each tax.

**27. Tax return duly submitted**

A tax return purported to have been submitted by or on behalf of a taxpayer by another person shall be treated as having been submitted by the taxpayer or with the taxpayer's authority unless the contrary is proved.

**PART VI — TAX ASSESSMENTS****28. Self-assessment**

(1) A taxpayer who has submitted a self-assessment return in the prescribed form for a reporting period shall be treated as having made an assessment of the amount of tax payable (including a nil amount) for the reporting period to which the return relates being the amount set out in the return.

(2) If a taxpayer liable for income tax has submitted a self-assessment return in the prescribed form for a year of income and the taxpayer has a deficit for the year, the taxpayer shall be treated as having made an assessment of the amount of the deficit for the year being the amount set out in the return.

(3) If a registered person has submitted a self-assessment return in the approved form for a tax period and the taxpayer's total input tax for the period exceeds the taxpayer's output tax for the period, the registered person shall be treated as having made an assessment of the amount of the excess input tax for the period being that amount set out in the return.

(4) A tax return in the approved form completed and submitted electronically by a taxpayer shall be a self-assessment return despite—

- (a) the form containing pre-entered information provided by the Commissioner; or
- (b) the tax payable being computed electronically as information is being entered into the form.

**29. Default assessment**

(1) Where a taxpayer has failed to submit a tax return for a reporting period in accordance with the provisions of a tax law, the Commissioner may, based on such information as may be available and to the best of his or her judgement, make an assessment (referred to as a "default assessment") of—

- (a) the amount of the deficit in the case of a deficit carried forward under the Income Tax Act (Cap. 470) for the period;
- (b) the amount of the excess in the case of an excess of input tax carried forward under the Value Added Tax Act, 2013 (No. 35 of 2013), for the period; or
- (c) the tax (including a nil amount) payable by the taxpayer for the period in any other case.

(2) The Commissioner shall notify in writing a taxpayer assessed under subsection (1) of the assessment and the Commissioner shall specify—

- (a) the amount assessed as tax or the amount of a deficit or excess of input tax carried forward, as the case may be;
- (b) the amount assessed as late submission penalty and any late payment penalty payable in respect of the tax, deficit or excess input tax assessed;

- (c) the amount of any late payment interest payable in respect of the tax assessed;
- (d) the reporting period to which the assessment relates;
- (e) the due date for payment of the tax, penalty, and interest being a date that is not less than 30 days from the date of service of the notice; and
- (f) the manner of objecting to the assessment.

(3) A written notification by the Commissioner of an assessment under this section shall not alter the due date (referred to as the "original due date") for payment of the tax payable under the assessment as determined under the tax law imposing the tax, and any late payment penalty or late payment interest shall remain payable based on the original due date.

(4) This section shall not apply for the purposes of a tax that is not collected by assessment.

(5) Subject to subsection (6), an assessment under subsection (1) shall not be made after five years immediately following the last date of the reporting period to which the assessment relates.

(6) Subsection (5) shall not apply in the case of gross or wilful neglect, evasion or fraud by a taxpayer.

### **30. Advance assessment**

(1) Subject to subsection (2), the Commissioner may, based on the available information and to the best of his or her judgement, make an assessment (referred to as an "advance assessment") of the tax payable by a taxpayer specified in section 26 for a reporting period.

(2) The Commissioner shall make an advance assessment of a taxpayer if the taxpayer has not submitted a return for the reporting period.

(3) An advance assessment—

- (a) may be made before the date on which the taxpayer's return for the period is due; and
- (b) shall be made in accordance with the tax law in force at the date the assessment is made.

(4) The Commissioner shall notify in writing a taxpayer assessed under subsection (1) of the advance assessment and specify—

- (a) the amount of tax assessed;
- (b) the amount of any penalty payable in respect of the tax assessed;
- (c) the reporting period to which the assessment relates;
- (d) the due date for payment of the tax and penalty; and
- (e) the manner of objecting to the assessment.

(5) An advance assessment may be amended under section 31 so that the taxpayer is assessed in respect of the whole of the reporting period to which the advance assessment relates.

(6) Despite the provisions of this section, a taxpayer shall submit a tax return as required by this Act or the relevant tax law in relation to an advance assessment of tax by the Commissioner.



**31. Amendment of assessments**

(1) Subject to this section, the Commissioner may amend an assessment (referred to in this section as the "original assessment") by making alterations or additions, from the available information and to the best of the Commissioner's judgement, to the original assessment of a taxpayer for a reporting period to ensure that—

- (a) in the case of a deficit carried forward under the Income Tax Act (Cap. 470), the taxpayer is assessed in respect of the correct amount of the deficit carried forward for the reporting period;
- (b) in the case of an excess amount of input tax under the Value Added Tax Act, 2013 (No. 35 of 2013), the taxpayer is assessed in respect of the correct amount of the excess input tax carried forward for the reporting period; or
- (c) in any other case, the taxpayer is liable for the correct amount of tax payable in respect of the reporting period to which the original assessment relates.

(2) A taxpayer who has made a self-assessment may apply to the Commissioner, within the period specified in subsection (4)(b)(i), to make an amendment to the taxpayer's self-assessment.

(3) Where an application has been made under subsection (2), the Commissioner may—

- (a) amend the self-assessment; or
- (b) refuse the application,

and the Commissioner shall notify the taxpayer in writing of the decision within thirty days of receiving the application.

(4) The Commissioner may amend an assessment—

- (a) in the case of gross or wilful neglect, evasion, or fraud by, or on behalf of, the taxpayer, at any time; or
- (b) in any other case, within five years of—
  - (i) for a self-assessment, the date that the self-assessment taxpayer submitted the self-assessment return to which the self-assessment relates; or
  - (ii) for any other assessment, the date the Commissioner notified the taxpayer of the assessment.

(5) Despite subsection (4)(b) (i) the Commissioner shall make an amended assessment on an application of a self-assessment taxpayer under subsection (2) if the application was submitted within the time specified in subsection (4)(b)(i).

(6) Where an assessment has been amended, the Commissioner may further amend the original assessment—

- (a) five years after—
  - (i) for a self-assessment, the date the taxpayer submitted the self-assessment return to which the self-assessment relates; or
  - (ii) for any other assessment, the date the Commissioner served notice of the original assessment on the taxpayer; or

- (b) one year after the Commissioner served notice of the amended assessment on the taxpayer, whichever is the later.

(7) In any case to which subsection (6)(b) applies, the Commissioner shall only amend the alterations or additions made in the amended assessment to the original assessment.

(8) When the Commissioner has made an amended assessment, he or she shall notify the taxpayer in writing of the amended assessment and specify—

- (a) the amount assessed as tax or the deficit or excess input tax carried forward, as the case may be;
- (b) any amount assessed as late payment penalty payable in respect of the tax assessed;
- (c) any amount of late payment interest payable in respect of the tax assessed;
- (d) the reporting period to which the assessment relates;
- (e) the due date for payment of any tax, penalty or interest being a date that is not less than thirty days from the date of the taxpayer received the notice; and
- (f) the manner of objecting to the assessment.

(9) Despite any notification to a taxpayer under this section, the due date for the payment of the tax payable under assessment (referred to as the "original due date") shall not be altered and the late payment penalty and late payment interest shall also remain payable based on the original due date.

#### PART VII— COLLECTION AND RECOVERY OF TAX AND REFUND OF TAX

### **32. Tax as a debt due to the State**

(1) A tax payable by a person under a tax law shall be a debt due to the Government and shall be payable to the Commissioner.

(2) A taxpayer who is required to pay a tax electronically under a tax law or section 75 of this Act shall pay the tax electronically unless he or she is authorised in writing by the Commissioner to use another method of payment.

### **33. Extension of time to pay tax**

(1) A taxpayer may apply in writing to the Commissioner for an extension of time to pay a tax due under a tax law.

(2) When a taxpayer applies for an extension the Commissioner may, if the Commissioner is satisfied that there is reasonable cause—

- (a) grant the taxpayer an extension of time for payment of the tax; or
- (b) require the taxpayer to pay the tax in such instalments as the Commissioner may determine.

(3) The Commissioner shall notify the taxpayer in writing of the decision regarding the application for extension of time, within 30 days of receiving the application for extension of time.

(4) Where a taxpayer who has been permitted to pay a tax by instalments under subsection (2) defaults in the payment of an instalment, the whole balance of the tax outstanding at the time of default shall become immediately payable.

(5) Despite being granted an extension of time to pay a tax or permission to pay a tax due by instalments by the Commissioner, a taxpayer shall be liable for any late payment interest arising from the original date the tax was due for payment.

[Act No. 38 of 2016, s. 38.]

### 34. Priority of tax

(1) The following amounts shall be held in trust for the Government by the person receiving or withholding the amount—

- (a) the value added tax payable on taxable supplies made by the person (net of any deduction for input tax allowed) when the person is a registered person under the Value Added Tax Act, 2013 (No. 35 of 2013);
- (b) the excise duty payable on the removal of excisable goods from the person's factory or the supply of excisable services by the person when the person is a licensed person under the Excise Duty Act (No. 23 of 2015);
- (c) withholding tax; and
- (d) an amount that a payer is required to pay under a notice issued under section 41(2).

(2) If the person referred to in subsection (1) is liquidated or is declared bankrupt, the amount referred to in subsection (1) shall not form part of the estate of the person in liquidation or bankruptcy and shall be paid to the Commissioner before any distribution of property is made.

(3) Despite the provision of any other written law, the withholding tax deducted by a person—

- (a) shall not be subject to attachment in respect of any debt or liability of that person;
- (b) shall be a first charge on the payment or amount from which the tax is withheld or deducted; and
- (c) shall be deducted prior to any other deduction that the person may be required to make from the payment or amount under an order of any court.

### 35. Order of payment

(1) When a taxpayer is liable to pay a penalty or a Order of payment. late payment interest in relation to a tax liability and the taxpayer makes a payment that is less than the total amount of tax, penalty and interest due, the amount paid shall be applied in the following order—

- (a) firstly in payment of the tax liability;
- (b) secondly in payment of penalty; and
- (c) finally the balance remaining shall be applied against any late payment interest.

(2) When a taxpayer faces more than one tax liability at the time a payment is made, the payment shall be applied against the tax liabilities in the order in which the tax liabilities arose.

(3) Where the interest payable under this section accrues, the aggregate interest payable shall not exceed the principal tax liability.

**36. Security for payment of tax**

The Commissioner may, for the purposes of securing the payment of any tax due or which shall become due, require a person to furnish a security in such manner and in such amount as the Commissioner may prescribe.

**37. Relief because of doubt or difficulty in recovery of tax**

(1) This section applies where the Commissioner determines that—

- (a) it may be impossible to recover an unpaid tax;
- (b) there is undue difficulty or expense in the recovery of an unpaid tax; or
- (c) there is hardship or inequity in relation to the recovery of an unpaid tax.

(2) Despite the provision of any tax law, the Commissioner may, with the prior written approval of the Cabinet Secretary, refrain from assessing or recovering an unpaid tax and the liability in relation to the tax shall be deemed to be extinguished or the tax shall be deemed to be abandoned or remitted, as the case may be.

(3) In any case referred to the Cabinet Secretary under subsection (1) and where appropriate, the Cabinet Secretary may direct the Commissioner in writing—

- (a) to take such action as the Cabinet Secretary may deem fit; or
- (b) to obtain the directions of the court in relation to the case.

**37A. Commissioner to refrain from assessing in some cases**

(1) Subject to subsection (2) and notwithstanding any other provisions of this Act, the Commissioner shall, with effect from the 1st July, 2015, refrain from assessing or recovering—

- (a) taxes, penalties or interest thereon in respect of any period before and during the 2013 year of income; or
- (b) penalties or interest thereon in respect of the 2014 and 2015 years of income, where—
  - (i) the income is in respect of gains or profits for the use or occupation of property earned by an individual; and
  - (ii) the returns or amended returns for the 2014 and 2015 years of income are submitted and the tax paid on or before the 30th June, 2016.

(2) Where a person has no documentation to support expenditure, such person shall be allowed a deduction of forty per cent of the expenditure.

(3) This section shall not apply in respect of any tax where the person who should have paid the tax—

- (a) has been assessed in respect of the tax; or
- (b) is under audit or investigation in respect of undisclosed income for the years of income to which this section applies or any matter relating to such undisclosed income.

[Act No. 38 of 2016, s. 39(a).]

**37B. Commissioner to refrain from assessing tax for income earned outside Kenya**

Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering taxes, penalties or interest in respect of any year of income ending on or before the 31st December, 2016, and from following up on the sources of income under the amnesty where—

- (a) that income has been declared for the year 2016 by a person earning taxable income outside Kenya; and
- (b) the returns and accounts for the year 2016 are submitted on or before the 30th June 2018:

Provided that —

- (a) this section shall not apply in respect of any tax where the person who should have paid tax —
  - (i) has been assessed in respect of the tax or any matter relating to the tax; or
  - (ii) is under audit or investigation in respect of the undisclosed income or any matter relating to the undisclosed income;
- (b) where no funds have been transferred within the period of the amnesty, there shall be a five year period for remittance but a penalty of 10% shall be levied on the remittance;
- (c) the voluntarily declared funds have been transferred back to Kenya.

[Act No. 38 of 2016, s. 39(b), Act No. 15 of 2017, s. 27.]

**38. Late payment interest**

(1) Subject to subsection (2), a person who fails to pay a tax on or before the due date for the payment of the tax shall be liable for late payment interest at a rate equal to one per cent per month or part of a month on the amount unpaid for the period commencing on the date the tax was due and ending on the date the tax is paid.

(2) If it is found that the principal amount or part of the principal amount was not payable, the late payment interest paid by a person under subsection (1) shall be refunded to that person to the extent that the principal amount to which the interest relates is found not to have been payable.

(3) The late payment interest payable under this section shall be computed as simple interest.

(4) The late payment interest payable under this section shall be in addition to any late payment penalty or sanction imposed under Part XII in respect of the same act or omission.

(5) The late payment interest shall be payable to the Commissioner and shall be treated as a tax payable by the person liable for the interest.

(6) Where the Commissioner notifies a person of the person's outstanding tax liability under a tax law or this Act and that person pays the outstanding tax in full (including late payment interest payable up to the date of the notification) within the time specified in the notification, a late payment interest shall not accrue for the period between the date of notification and the date of payment.

(7) A late payment interest payable by a person—

- (a) in respect of withholding tax payable by the person; or
- (b) in respect of an amount referred to in section 16(5) or (6), 17(3)(c), 18(1) or (2), 42(3), 43(9) or 46, payable by the person, shall be borne personally by the person and shall not be recoverable from any other person.

(8) The accrued late payment interest shall not, in aggregate, exceed the principal tax liability.

### **39. Recovery of unpaid tax by suit**

(1) Despite any other written law for the time being in force, the Commissioner may recover an unpaid tax as a civil debt due to the Government and, where the amount of unpaid tax does not exceed one hundred thousand shillings, the debt shall be recoverable summarily.

(2) In any suit for the recovery of an unpaid tax, the production of a certificate signed by the Commissioner stating—

- (a) the name and address of the person who is the defendant in the suit; and
- (b) the amount of tax and late payment interest (if any) due by the person,

shall be conclusive evidence that the amount stated on the certificate is due from that person.

### **40. Security on property for unpaid tax**

(1) Where a taxpayer, being the owner of land or a Security on property building in Kenya, fails to pay a tax by the due date, the for unpaid tax. Commissioner may direct the Land Registrar in writing that the land or building, to the extent of the taxpayer's interest in the land or building, be the subject of a security for the unpaid tax specified in the notification to the Land Registrar:

Provided that the Commissioner shall notify the taxpayer in writing of the direction within seven days from the date of the notification to the Land Registrar.

(2) Where the Land Registrar has been notified by the Commissioner under subsection (1), the Land Registrar shall, without levying or charging a fee, register the Commissioner's direction as if it were an instrument of mortgage over, or charge on, as the case may be, the land or building of the taxpayer specified in the notice.

(3) A registration under subsection (2) shall, subject to any prior mortgage or a charge, operate as a legal mortgage over, or charge on, the land or building of the taxpayer to secure the amount of the unpaid tax and the provisions of the Land Registration Act relating to the rights of the mortgagee shall apply.

(4) The Commissioner shall, upon the payment of the whole of the amount of unpaid tax secured under this section, direct the Land Registrar in writing to cancel the direction made under subsection (2), and the Registrar shall, without levying or charging a fee, record the cancellation of the direction and the direction shall cease to apply.

#### **41. Distress orders**

(1) The Commissioner or an authorised officer may issue an order (referred to as a "distress order"), in writing, for the recovery of an unpaid tax by distress and sale of the movable property of a taxpayer.

(2) A distress order shall specify—

- (a) the taxpayer against whose property the order is issued;
- (b) the amount of the unpaid tax liability;
- (c) the property against which the distress proceedings are to be executed; and
- (d) the location of the property against which the distress proceedings are to be executed.

(3) For the purposes of executing a distress order, the Commissioner or authorised officer may—

- (a) at any time, enter any house or premises described in the distress order to secure the property that is subject to the proceedings;
- (b) at the cost of the taxpayer, engage such persons as the Commissioner considers necessary to assist in the execution of the distress order; and
- (c) require a police officer to be present while the distress order is being executed.

(4) A police officer to whom subsection (3)(c) applies shall comply with the requirement to be present when the distress order is being executed.

(5) The property that is the subject of the distress order—

- (a) shall be identified by attaching a notice stating the property has been impounded for failure to comply with a tax obligation; and
- (b) shall be kept at the premises where the distress is executed or at any other place that the Commissioner or authorised officer may consider appropriate, at the cost of the taxpayer.

(6) When the taxpayer does not pay the tax liability described in the distress order, together with the costs of the distress proceedings—

- (a) in the case of perishable goods, within the period that the Commissioner or authorised officer notifies the taxpayer in writing as reasonable having regard to the condition of the goods; or
- (b) in the case of other personal property, within ten days after the property has been secured by the Commissioner or authorised officer under subsection (5), the property that is the subject of the distress order may be sold by public auction or private treaty as the Commissioner or authorised officer may direct.

(7) The Commissioner or an authorised officer shall apply the proceeds of sale of the property that is the subject of the distress order towards the cost of taking, keeping, and selling the property with the balance, if any, applied in the following order—

- (a) in payment of the unpaid tax due by the taxpayer;
- (b) the remainder of the proceeds, if any, shall be paid to the taxpayer.

(8) When the proceeds of disposal of the property that is the subject of the distress order is less than the total of the taxpayer's unpaid tax and the cost of taking, keeping and selling the property, the Commissioner may initiate proceedings to recover the shortfall.

(9) For the purpose of subsection (8), the unpaid amount of the cost of taking, keeping and selling the property that is the subject of the distress order shall be treated as a tax payable by the taxpayer.

#### **42. Power to collect tax from person owing money to a taxpayer**

(1) This section applies when a taxpayer is, or will become liable to pay a tax and—

- (a) the tax is unpaid tax; or
- (b) the Commissioner has reasonable grounds to believe that the taxpayer will not pay the tax by the due date for the payment of the tax.

(2) The Commissioner may, in respect of the taxpayer and by notice in writing, require a person (referred to as the "payer")—

- (a) who owes or may subsequently owe money to the taxpayer;
- (b) who holds or may subsequently hold money, for or on account of, the taxpayer;
- (c) who holds or may subsequently hold money on account of some other person for payment to the taxpayer; or
- (d) who has authority from some other person to pay money to the taxpayer, to pay the amount specified in the notice to the Commissioner, being an amount that shall not exceed the amount of the unpaid tax or the amount of tax that the Commissioner believes will not be paid by the taxpayer by the due date.

(3) When a notice served under subsection (2) requires a payer to deduct a specified amount from a payment of a salary, wages or other similar remuneration payable at fixed intervals to the taxpayer, the amount required to be deducted by the payer from each payment shall not exceed twenty per cent of the amount of each payment of salary, wages, or other remuneration (after the payment of income tax).

(4) This section shall apply to a joint account when—

- (a) all the holders of the joint account have unpaid tax liabilities; or
- (b) the taxpayer can withdraw funds from the account (other than a partnership account) without the signature or authorisation of the other account holders.

(5) A payer shall pay the amount specified in a notice under subsection (2) by the date specified in the notice, being a date that that does not occur before the date that the amount owed by the payer to the taxpayer becomes due to the taxpayer or held on the taxpayer's behalf.



(6) When a taxpayer who has been served with a notice under subsection (2) fails to comply with the notice by reason of a lack of monies held by the payer on behalf of, or due by the payer to the taxpayer, the payer shall notify the Commissioner in writing within seven days of receiving the notice, setting out the reasons for the payer's inability to comply.

(7) When the Commissioner is notified by a payer under subsection (6) that the payer is unable to pay the amount due, the Commissioner shall within a period of thirty days, in writing to the payer—

- (a) accept the notification and cancel or amend the notice issued under subsection (2); or
- (b) reject the notification.

(8) The Commissioner shall notify the payer in writing of a revocation or amendment of a notice given under subsection (2) where the taxpayer pays the whole or part of the tax due or has made an arrangement satisfactory to the Commissioner for the payment of the tax.

(9) The Commissioner shall serve the taxpayer with a copy of a notice served on a payer under this section.

(10) A payment made by a payer to the Commissioner in accordance with a notice issued under this section is treated as having been made on behalf of the taxpayer and shall discharge the payer of any liability to the taxpayer or any other person.

(11) The Commissioner shall credit any amount paid by a payer under this section against the tax owed by the taxpayer.

(12) The Commissioner may require, in writing, any person, within a period of at least thirty days, to provide a return to the Commissioner showing any monies which may be held by that person for a taxpayer referred to in subsection (1) or monies held by that person which are due to a taxpayer referred to in subsection (1).

(13) A taxpayer who without reasonable cause fails to comply with a notice or a requirement by the Commissioner under this section shall be personally liable for the amount specified in the notice or requirement.

[Act No. 38 of 2016, s. 40.]

#### **42A. Appointment of Value Added Tax withholding agent**

(1) The Commissioner may appoint a person to withhold six per cent of the taxable value on purchasing taxable supplies at the time of paying for the supplies and remit the same directly to the Commissioner.

(2) The Commissioner may, at any time, revoke the appointment of a tax withholding agent made under subsection (1), if the Commissioner deems it appropriate to do so.

(3) Subsection (1) shall not apply to taxable supplies for official aid-funded projects.

(4) For the avoidance of doubt, the withholding of tax under subsection (1) shall not relieve the supplier of taxable supplies of the obligation to account for tax in accordance with this Act and the regulations.

(4A) The Commissioner may at any time exempt any supplier from the provisions of this section if such supplier has sufficiently demonstrated that due to the nature of his business, and due to the application of this section, he is going to be in a continuous credit position for a period of not less than twenty-four months.

(4B) The tax withheld under this section shall be remitted to Commissioner on or before the twentieth day of the month following the month in which the deduction is made.

(4C) A person who is required under this section to withhold tax commits an offence if the person —

- (a) fails to withhold the whole amount of the tax which should have been withheld; or
- (b) fails to remit the amount of the withheld tax to the Commissioner by the twentieth day of the month following that in which the deduction was made.

(4D) A person who commits an offence under subsection (4C) is liable on conviction to a penalty of ten per cent of the amount involved.

(5) A person who, prior to the commencement of this section, was appointed to withhold tax under section 25A of the Value Added Tax Act, 2013 shall, notwithstanding the repeal of that section, be deemed to be a person appointed under subsection (1),

provided that this provision shall not be construed to impose any penalty whatsoever on any such person who ceased to withhold tax for any period following the repeal of that section upto the 8th June, 2016.

[Act No. 38 of 2016, s. 41, Act No. 15 of 2017, s. 28.]

#### **43. Preservation of funds**

(1) This section applies if the Commissioner reasonably believes—

- (a) that a taxpayer—
  - (i) has made taxable supplies, has removed excisable goods, or has derived an income, in respect of which tax has not been charged; or
  - (ii) has collected a tax, including withholding tax, that has not been accounted for; and
- (b) that the taxpayer is likely to frustrate the recovery of the tax.

(2) The Commissioner may by notice in writing, in respect of a taxpayer to whom this section applies, require a person—

- (a) who owes or may subsequently owe money to the taxpayer;
- (b) who holds or may subsequently hold money for or on account of the taxpayer;
- (c) who holds or may subsequently hold money for on account of another person for payment to the taxpayer; or
- (d) who has the authority from some other person to pay money to the taxpayer,

to preserve such money, and that person shall not transfer, withdraw, dispose of or otherwise deal with that money except as provided for in the notice for a period of ten working days or until the application by the Commissioner made in accordance with subsection (3) is heard and determined by the High Court.

(3) The Commissioner shall apply, in the absence of the taxpayer, to the High Court for an order against any person holding funds belonging to the taxpayer, prohibiting that person from transferring, withdrawing, disposing of or otherwise dealing with such funds.

(4) The Court may issue an order under subsection (3) if the Court is satisfied that the conditions specified under subsection (1) have been met.

(5) An order made under this section shall be valid for a period of thirty days but the Commissioner may apply to the Court for an extension of the period beyond the initial thirty days.

(6) The Commissioner shall serve the order under this section on the taxpayer as soon as is practicable and upon service, the taxpayer may, within fifteen days, apply to the Court to discharge or vary the order.

(7) If the order made under this section is not discharged or varied, the Commissioner shall, within thirty days of serving the taxpayer with the order, assess the tax due and payable by the taxpayer, notify the taxpayer of the assessment and commence proceedings for the recovery of the tax.

(8) An order issued under this section shall expire on the service of a notice of assessment under subsection (7) unless the Court extends the order.

(9) Despite the provisions of any written law, contract or agreement, a person who complies with an order made by the High Court under this section shall be indemnified in respect of the actions taken in connection with the order against all proceedings or processes.

(10) A person who, without reasonable cause, fails to comply with an order of the High Court under this section shall be personally liable for the amount specified in the order.

#### **44. Seizure and forfeiture of goods**

(1) This section shall apply to—

- (a) any goods in respect of which the Commissioner or authorised officer reasonably believes that the value added tax or excise duty payable in respect of the supply, removal, or import of the goods has not been or will not be paid; or
- (b) goods for which excise duty has not been paid, unless the owner of the goods has made arrangements that have satisfied the Commissioner for the payment of the excise duty, which may include the giving of a security;
- (c) excisable goods subject to excise control that have been moved, altered, or in any way interfered with, except with the permission of the Commissioner;
- (d) excisable goods in respect of which, any person, in any matter relating to excise, makes or produces a declaration, certificate, application or other document, answer, statement or representation, that is false or incorrect in any particular; or
- (e) excisable goods in respect of which a refund of excise duty has been unlawfully obtained.

(2) The Commissioner or an authorised officer may seize any goods to which this section applies.

(3) The goods seized under this section shall be stored in a place approved by the Commissioner or authorised officer.

(4) Subject to subsection (5), when goods have been seized under this section, the Commissioner or authorised officer shall, as soon as practicable after the seizure and having regard to the condition of the goods, serve the owner of the goods or the person who had custody or control of the goods immediately before their seizure, a notice in writing—

- (a) identifying the goods;
- (b) stating that the goods have been seized under this section and the reason for seizure;
- (c) setting out the terms for the release or disposal of the goods; and
- (d) stating that the goods maybe forfeited to the Commissioner if they are not claimed in accordance with subsection (7).

(5) The Commissioner or authorised officer shall not be required to serve a notice under this section if, after making reasonable enquiries, the Commissioner or authorised officer has insufficient information to identify the person on whom the notice should be served.

(6) When the Commissioner or authorised officer is unable to serve the notice on the person who is required to be served under this section, the Commissioner or authorised officer may serve the notice on the person who claims the goods if that person has given sufficient information to enable the notice to be served.

(7) The Commissioner or authorised officer may authorise that goods that have been seized under this section be delivered to the person on whom a notice has been served when that person has paid, or has given security for the payment of, the tax due and payable, or that will become due and payable, in respect of the goods.

(8) If the tax due and payable, or the tax that will become due and payable, has not been paid and security for the payment of the tax has not been given, the Commissioner or authorised officer shall detain the seized goods—

- (a) in the case of perishable goods, for a period that the Commissioner or authorised officer considers reasonable having regard to the condition of the goods; or
- (b) in any other case—
  - (i) for ten days after the seizure of the goods; or
  - (ii) for ten days after the due date for payment of the tax due in respect of the supply, removal, or import of the goods, whichever is the earlier.

(9) Where the detention period under subsection (8) has expired, the goods shall be forfeited to the Commissioner.

(10) The Commissioner or authorised officer may sell forfeited goods in the manner specified in section 41(6) and apply the proceeds of the sale of the forfeited goods in the following order—

- (a) towards the cost of taking, keeping, and selling the forfeited goods;
- (b) towards the payment of the Value Added Tax or excise duty that is, or will become, payable in respect of the supply, removal, or import of the goods; and

- (c) the remainder of the proceeds, if any, shall be retained by the Commissioner.

(11) When the proceeds of the disposal of forfeited goods are less than the total of the tax payable in respect of the supply, removal or import of the goods and cost of taking, keeping, and selling the forfeited goods, the Commissioner may proceed to recover the shortfall from the owner of the goods or the person who had custody or control of the goods immediately before they were seized as if the shortfall was a tax payable by that person.

#### **45. Departure prohibition order**

(1) This section applies when the Commissioner has reasonable grounds to believe that a person may leave Kenya without paying—

- (a) a tax that is or will become payable by the person; or
- (b) a tax that is or will become payable by a company in which the person is a controlling member.

(2) The Commissioner may issue a departure prohibition order, in writing, to the Director in relation to a person to whom this section applies stating—

- (a) the name and address of the person; and
- (b) the amount of tax that is or will become payable by the person or by a company in which the person is a controlling member.

(3) The Commissioner shall, as soon as practicable after issuing a departure prohibition order under subsection (1), serve a copy of the order on the person named in the order.

(4) Where the Director has been issued with an order under this section, the Director or an officer authorised by the Director, shall, so far as is permitted by any other written law or this Act, shall prevent the person named in the order from departing Kenya, including by the confiscation and retention of the person's passport, identity card, visa, or other travel document authorising the person to leave Kenya.

(5) A person who is the subject of a departure prohibition order shall not be granted customs or immigration clearance.

(6) A departure prohibition order shall remain in force until it is revoked by the Commissioner.

(7) The Commissioner shall revoke a departure prohibition order if—

- (a) the person named in the order pays in full the tax payable or that will become payable by that person or by a company in which that person is a controlling member; or
- (b) the person named in the order makes an arrangement satisfactory to the Commissioner for the payment of the tax that is or will become payable by that person or by a company in which that person is a controlling member.

(8) As soon as practicable after making a decision to revoke a departure prohibition order, the Commissioner shall notify the Director and the person named in the order.

(9) No proceedings, criminal or civil, may be instituted or maintained against the Government, the Director, the Commissioner, an officer authorised to act under this section, or a customs, immigration, police, or any other person for anything lawfully done under this section.

(10) In this section—

“**company**” means a company within paragraph (a) of the definition in section 3; and

“**Director**” means the Director-General of the Kenya Citizens and Foreign Nationals Management Service appointed under section 13 of the Kenyan Citizenship and Foreign Nationals Management Service Act, 2011 (No. 12 of 2011).

#### **46. Transferred tax liabilities**

(1) When a taxpayer (referred to as the “transferor”) has a tax liability in relation to a business carried on by the taxpayer and the taxpayer has transferred all or some of the assets of the business to a related person (referred to as the “transferee”), the transferee shall be liable for the tax liability (referred to as the “transferred liability”) of the transferor.

(2) Despite subsection (1), the Commissioner may recover the whole or part of the transferred liability from the transferor.

#### **47. Refund of overpaid tax**

(1) When a taxpayer has overpaid a tax under a tax law the taxpayer may apply to the Commissioner, in the approved form, for a refund of the overpaid tax within five years of the date on which the tax was paid.

Provided that for value added tax the period of refund shall be as provided for under the Value Added Tax Act, 2013 (No. 35 of 2013).

(2) The Commissioner may, for purposes of ascertaining the validity of the refund claimed, subject the claim to an audit.

(3) The Commissioner shall notify in writing an applicant under subsection (1) of the decision in relation to the application within ninety days of receiving the application for a refund.

(4) Where, in relation to an application for a refund made under this section or made under any other tax law, the Commissioner is satisfied that a taxpayer has overpaid a tax, the Commissioner shall apply the overpayment in the following order—

- (a) in payment of any other tax owing by the taxpayer under the tax law;
- (b) in payment of a tax owing by the taxpayer under any other tax law; and
- (c) any remainder shall be refunded to the taxpayer.

(5) The Commissioner shall repay the overpaid tax within a period of two years from the date of application, failure to which the amount due shall attract an interest of 1% per month or part thereof of such unpaid amount after the period of two years.

[Act No. 38 of 2016, s. 42.]

#### **48. Erroneous refund of tax**

(1) Where any tax has been refunded tax in error, the person to whom the refund has been erroneously made shall, on demand by the Commissioner, pay the amount erroneously refunded.

(2) Where a demand has been made for any amount of tax under subsection (1), that amount shall be deemed to be due from the person liable to pay the tax on the date upon which the demand is served upon him or her and if payment is not made within thirty days of the date of service, an interest equal to 1% per month or part thereof of such unpaid amount shall forthwith be due and payable, provided that the interest chargeable under this subsection shall not exceed one hundred percent of the tax originally due.

[Act No. 38 of 2016, s. 43.]

## PART VIII — TAX DECISIONS, OBJECTIONS AND APPEALS

### 49. Statement of reasons

Where the Commissioner has refused an application under a tax law, the notice of refusal shall include a statement of reasons for the refusal.

### 50. Conclusiveness of tax decisions

(1) Except in proceedings under this Part—

- (a) the production of a notice of an assessment or a document under the hand of the Commissioner shall be conclusive evidence of the making of the assessment and that the amount and particulars of the assessment are correct; and
- (b) in the case of a self-assessment, the production of the original return of the self-assessment or a document under the hand of the taxpayer shall be conclusive evidence of the contents of the return.

(2) When the Commissioner serves an assessment on a taxpayer electronically, a copy of the notice of assessment shall be treated as a certificate under the hand of the Commissioner identifying the assessment and specifying the details of the electronic transmission of the assessment.

(3) When a taxpayer has submitted a return of a self-assessment electronically, a copy of the return shall be treated as a return under the hand of the taxpayer identifying the return and specifying the details of the electronic transmission of the return.

(4) In this section, "**proceedings under this Part**" means—

- (a) an objection made under section 51;
- (b) an appeal made to the Tribunal under section 52 in relation to an appealable decision;
- (c) an appeal made to the High Court under section 53 in relation to a decision of the Tribunal; or
- (d) an appeal made to the Court of Appeal under section 53 in relation to a decision of the High Court.

### 51. Objection to tax decision

(1) A taxpayer who wishes to dispute a tax decision shall first lodge an objection against that tax decision under this section before proceeding under any other written law.

(2) A taxpayer who disputes a tax decision may lodge a notice of objection to the decision, in writing, with the Commissioner within thirty days of being notified of the decision.

(3) A notice of objection shall be treated as validly lodged by a taxpayer under subsection (2) if—

- (a) the notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments; and
- (b) in relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute.

(4) Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall immediately notify the taxpayer in writing that the objection has not been validly lodged.

(5) Where the tax decision to which a notice of objection relates is an amended assessment, the taxpayer may only object to the alterations and additions made to the original assessment.

(6) A taxpayer may apply in writing to the Commissioner for an extension of time to lodge a notice of objection.

(7) The Commissioner may allow an application for the extension of time to file a notice of objection if—

- (a) the taxpayer was prevented from lodging the notice of objection within the period specified in subsection (2) because of an absence from Kenya, sickness or other reasonable cause; and
- (b) the taxpayer did not unreasonably delay in lodging the notice of objection.

(8) Where a notice of objection has been validly lodged within time, the Commissioner shall consider the objection and decide either to allow the objection in whole or in part, or disallow it, and Commissioner's decision shall be referred to as an "objection decision".

(9) The Commissioner shall notify in writing the taxpayer of the objection decision and shall take all necessary steps to give effect to the decision, including, in the case of an objection to an assessment, making an amended assessment.

(10) An objection decision shall include a statement of findings on the material facts and the reasons for the decision.

(11) Where the Commissioner has not made an objection decision within sixty days from the date that the taxpayer lodged a notice of the objection, the objection shall be allowed.

## **52. Appeal of appealable decision to the Tribunal**

(1) A person who is dissatisfied with an appealable decision may appeal the decision to the Tribunal in accordance with the provisions of the Tax Appeals Tribunal Act, 2013 (No. 40 of 2013).

(2) A notice of appeal to the Tribunal relating to an assessment shall be valid if the taxpayer has paid the tax not in dispute or entered into an arrangement with the Commissioner to pay the tax not in dispute under the assessment at the time of lodging the notice.



**53. Appeals to High Court**

A party to proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal in relation to an appealable decision may, within thirty days of being notified of the decision or within such further period as the High Court may allow, appeal the decision to the High Court in accordance with the provisions of the Tax Appeals Tribunal Act, 2013 (No. 40 of 2013).

**54. Appeals to Court of Appeal**

A party to proceedings before the High Court who is dissatisfied with the decision of the High Court in relation to an appealable decision may, within thirty days of being notified of the decision or within such further period as the Court of Appeal may allow, appeal the decision to the Court of Appeal.

**55. Settlement of dispute out of Court or Tribunal**

(1) Where a Court or the Tribunal permits the parties to settle a dispute out of Court or the Tribunal, as the case may be, the settlement shall be made within ninety days from the date the Court or the Tribunal permits the settlement.

(2) Where parties fail to settle the dispute within the period specified in subsection (1), the dispute shall be referred back to the Court or the Tribunal that permitted the settlement.

**56. General provisions relating to objections and appeals**

(1) In any proceedings under this Part, the burden shall be on the taxpayer to prove that a tax decision is incorrect.

(2) An appeal to the High Court or to the Court of Appeal shall be on a question of law only.

(3) In an appeal by a taxpayer to the Tribunal, High Court or Court of Appeal in relation to an appealable decision, the taxpayer shall rely only on the grounds stated in the objection to which the decision relates unless the Tribunal or Court allows the person to add new grounds.

**57. Admissibility of evidence**

Notwithstanding anything to the contrary in any other written law—

- (a) a document, or copy of or extract from a document, relating to the affairs of any person which has been seized or obtained by an authorised officer under section 59 or section 60 as the case may be; or
- (b) a statement made by a person relating to his affairs is made to an authorised officer in accordance with the provisions of this Act;

shall, if relevant, be admissible in civil or criminal proceedings under this Act to which that person is a party.

## PART IX — ENFORCEMENT

**58. Power to inspect goods, records, etc**

(1) Notwithstanding anything to the contrary in any written law, an authorised officer may inquire into the affairs of a person under any tax law, and shall at all times have full and free access to all lands, buildings, places to inspect all goods, equipment, devices and records, whether in the custody or control of a public officer, or of a body corporate or of any other person, and may make extracts from or copies of those records.

(2) An officer acting under subsection (1) may require the owner or employee, or a representative of the owner of the business, to give him all assistance and to answer all questions relating to the inquiry.

**59. Production of records**

(1) For the purposes of obtaining full information in respect of the tax liability of any person or class of persons, or for any other purposes relating to a tax law, the Commissioner or an authorised officer may require any person, by notice in writing, to—

- (a) produce for examination, at such time and place as may be specified in the notice, any documents (including in electronic format) that are in the person's custody or under the person's control relating to the tax liability of any person;
- (b) furnish information relating to the tax liability of any person in the manner and by the time as specified in the notice; or
- (c) attend, at the time and place specified in the notice, for the purpose of giving evidence in respect of any matter or transaction appearing to be relevant to the tax liability of any person.

(2) If the person required to produce documents under subsection (1)(a) is a financial institution—

- (a) the documents shall not, while they are being examined, be removed from the premises of the financial institution or other premises at which they are produced;
- (b) the Commissioner or authorised officer carrying out the examination may make copies of such documents for the purposes of any report relating to the examination; and
- (c) the confidentiality of the information obtained in the course of the examination by the Commissioner or authorised officer shall be maintained and the information shall be used solely for the purposes of the tax laws.

(3) The Commissioner or authorised officer may require that the information referred to in subsection (1) be—

- (a) given on oath, verbally or in writing, and, for that purpose, the Commissioner or authorised officer may administer the oath; or
- (b) verified by a statutory declaration or in any other manner that the Commissioner may prescribe.

(4) This section shall have effect despite—

- (a) any law relating to privilege or the public interest with respect to the giving of information or the production of any documents (including in electronic format); or

- (b) any contractual duty of confidentiality.

**60. Power of search and seize**

(1) The Commissioner or an authorised officer shall, with a warrant, have full and free access to any building, place, property, documents, or data storage device for the purposes of administering a tax law.

(2) The Commissioner or an authorised officer may secure the building, place, property, documents, or data storage device to which access is sought under subsection (1) before obtaining a warrant.

(3) In the exercise of the power under subsection (1), the Commissioner or authorised officer may—

- (a) make an extract or copy of any documents or information stored on a data storage device to which access is obtained under subsection (1);
- (b) seize any documents that, in the opinion of the Commissioner or authorised officer, may be material in determining the tax liability of a taxpayer and retain such documents for the period specified in subsection (9);
- (c) seize and retain a data storage device when a physical copy or electronic copy of information stored on the device has not been provided for in the period specified in subsection (9);
- (d) require the owner or lawful occupier (including an employee) of a building or place to which access is obtained under subsection (1) to answer questions relating to any document found in the building or place, whether on a data storage device or otherwise, or to any entry in the document, and to render such explanation and give any information that the Commissioner or authorised officer may require in relation to a tax law;
- (e) require the owner or lawful occupier (including an employee) of a building or place to which access is obtained under subsection (1) to provide access to decryption information necessary to decrypt data to which access is sought under this section;
- (f) at the risk and expense of the occupier of the premises to which access is obtained under subsection (1), open and examine any package found in the premises; or
- (g) take and retain without payment such reasonable samples of any goods as the Commissioner or authorised officer may think necessary for the exercise of functions under a tax law.

(4) The Commissioner or an authorised officer may require a police officer to be present for the purposes of exercising any power under this section.

(5) An authorised officer shall not enter or remain in any building or place if, upon request by the owner or lawful occupier, the officer is unable to produce written authorization by the Commissioner permitting that officer to exercise the powers conferred by this section.

(6) The owner or lawful occupier of a building or place to which an exercise of a power under this section relates shall provide all reasonable facilities and assistance to the Commissioner or authorised officer in the exercise of the power.

(7) A person whose documents have been seized under this section may examine them and make copies of the seized documents, at that person's expense, during the business hours of the Authority.

(8) A person whose data storage device has been seized under this section may have access to the device during the business hours of the Authority on such terms and conditions as the Commissioner or an authorised officer may specify.

(9) The Commissioner or an authorised officer shall not retain any document or a data storage device seized under this section for a period longer than six months unless the document or data storage device is required for the purposes of any proceedings under this Act or any other written law.

(10) This section shall have effect despite—

- (a) any law relating to privilege or the public interest with respect to access to premises, or the production of any property or documents, including documents in electronic format; or
- (b) any contractual duty of confidentiality.

#### **61. Notice to appear before the Commissioner**

Where the Commissioner is satisfied that a person has committed an offense under a tax law, the Commissioner may, by notice in writing, require the person to appear before him.

### **PART X — RULINGS**

#### **62. Binding public rulings**

(1) The Commissioner may make a public ruling in accordance with section 62 setting out the Commissioner's interpretation of a tax law.

(2) A public ruling made in accordance with section 63 shall be binding on the Commissioner until the ruling is withdrawn by the Commissioner.

(3) A public ruling shall not be binding on a taxpayer.

#### **63. Making a public ruling**

(1) The Commissioner shall make a public ruling by publishing a notice of the public ruling in at least two newspapers with a nationwide circulation.

(2) A public ruling shall state that it is a public ruling and have a heading specifying the subject matter of the ruling and an identification number.

(3) A public ruling shall take effect on the date specified in the public ruling or, when a date has not been specified, from the date the ruling is published in accordance with the provisions of subsection (1).

(4) A public ruling shall set out the Commissioner's opinion on the application of a tax law in the circumstances specified in the ruling; and shall not be a decision of the Commissioner for the purposes of this Act or the Tax Appeals Tribunal Act, 2013.

#### **64. Withdrawal of a public ruling**

(1) The Commissioner may withdraw a public ruling, in whole or in part, by publishing a notice of the withdrawal in at least two newspapers with a nationwide circulation.

(2) Where a law is enacted or the Commissioner makes another public ruling that is inconsistent with an existing public ruling, the existing public ruling shall

either be withdrawn or shall be withdrawn to the extent that it is inconsistent with the law or the new public ruling.

- (3) The withdrawal of a public ruling, in whole or part, shall take effect from—
  - (a) where subsection (1) applies—
    - (i) the date specified in the notice of withdrawal; or
    - (ii) the date that the notice of withdrawal of the ruling is published in compliance with subsection (1);whichever is the later; or
  - (b) where subsection (2) applies, the commencement date of the law or commencement date of the new public ruling is published.
- (4) A public ruling that has been withdrawn, in whole or part shall—
  - (a) continue to apply to a transaction commenced before the public ruling was withdrawn; and
  - (b) not apply to a transaction commenced after the public ruling was withdrawn to the extent that the ruling is withdrawn.

#### **65. Binding private rulings**

(1) A taxpayer may apply to the Commissioner for a private ruling which shall set out the Commissioner's interpretation of a tax law in relation to a transaction entered into, or proposed to be entered into, by the taxpayer.

- (2) An application under this section shall be in writing and—
  - (a) shall include all relevant details of the transaction to which the application relates together with all relevant documents;
  - (b) shall specify precisely the question on which the Commissioner's interpretation is required; and
  - (c) shall give a full statement setting out the interpretation by the applicant of the tax law in relation to the transaction.

(3) Subject to section 66, the Commissioner shall issue a private ruling to an applicant within forty five days of receiving an application for a private ruling under this section.

(4) If the taxpayer has made a complete and accurate disclosure of the transaction in relation to an application for a private ruling and the transaction has proceeded in all material respects as described in the application, the private ruling shall be binding on the Commissioner.

(5) A private ruling shall not be binding on a taxpayer.

(6) A private ruling that is inconsistent with a public ruling that is in existence at the time of the making of the private ruling shall supersede the public ruling to the extent of the inconsistency with the public ruling.

#### **66. Refusing an application for a private ruling**

- (1) The Commissioner may refuse an application for a private ruling if—
  - (a) the Commissioner has already decided the question that is the subject of the application in—
    - (i) a notice of an assessment served on the applicant;
    - (ii) a public ruling made under section 63 that is in existence; or
    - (iii) a ruling published under section 69 that is in existence;

- (b) the application relates to a matter that is the subject of a tax audit in relation to the applicant or an objection lodged by the applicant;
- (c) the application is frivolous or vexatious;
- (d) the transaction to which the application relates has not been carried out and there are reasonable grounds to believe that the transaction will not be carried out;
- (e) the applicant has not provided the Commissioner with sufficient information to make a private ruling;
- (f) in the opinion of the Commissioner, it would be unreasonable to make a private ruling in relation to the application, having regard to the resources needed to make the private ruling and any other matter the Commissioner considers relevant; or
- (g) the making of the ruling involves the application of a tax avoidance provision.

(2) If the Commissioner decides not to make a private ruling under this section, the Commissioner shall notify the applicant in writing of the decision.

### **67. Making a private ruling**

(1) If the Commissioner makes a private ruling, the Commissioner shall notify the applicant of the ruling in writing.

(2) The Commissioner may make a private ruling based on assumptions about a future event or any other appropriate ground.

(3) A private ruling shall state that it is a private ruling, set out the question ruled on, and identify—

- (a) the taxpayer;
- (b) the tax law relevant to the private ruling;
- (c) the reporting period to which the ruling applies;
- (d) the transaction to which the ruling relates; and
- (e) any assumptions on which the ruling is based.

(4) A private ruling shall take effect when the applicant is served with written notice of the ruling and the ruling shall remain in force until it is withdrawn.

(5) A private ruling shall set out the Commissioner's opinion on the question raised in the ruling and is not a decision of the Commissioner for the purposes of this Act or the Tax Appeals Tribunal Act, 2013 (No. 40 of 2013).

### **68. Withdrawal of a private ruling**

(1) The Commissioner may, for reasonable cause, withdraw a private ruling, in whole or part, by notifying the applicant in writing.

(2) If a law is enacted or the Commissioner makes a public ruling that is inconsistent with a private ruling, the private ruling shall be withdrawn to the extent of the inconsistency of the private ruling with the law or the public ruling.

(3) The withdrawal of a private ruling, in whole or part, shall take effect from—

- (a) the date specified in the notice of withdrawal if subsection (1) applies; or
- (b) the date of the enactment of the inconsistent law or inconsistent public ruling if subsection (2) applies.

- (4) A private ruling that has been withdrawn—
- (a) shall continue to apply to a transaction by the applicant that commenced before the ruling was withdrawn; and
  - (b) shall not apply to a transaction of the applicant that commenced after the ruling was withdrawn to the extent the ruling is withdrawn.

**69. Publication of private rulings**

(1) The Commissioner shall publish a ruling made under section 67 in at least two daily newspapers with a national circulation except that the identity of the applicant to whom the ruling relates shall not be published.

(2) Subject to subsection (3), any person may rely upon a ruling published under subsection (1) as a statement binding on the Commissioner with respect to the application of the relevant tax law to the facts set out in the ruling and for the reporting period covered by the ruling.

(3) When a ruling has been withdrawn in accordance with section 68, the Commissioner shall immediately publish a notice of withdrawal in at least two daily newspapers with a national circulation that shall state that the ruling shall cease to be binding from the date the notice is published.

**PART XI — COMMUNICATIONS, FORMS AND NOTICES****70. Official languages**

The official languages of Kenya shall be the official languages of the tax laws and the Commissioner may refuse to recognize any communication or document that is not in an official language.

**71. Prescribed form**

(1) A tax return, application, notice, statement, or other document required to be submitted or lodged with the Commissioner under a tax law shall be in the prescribed form if the document—

- (a) in the form prescribed by the Commissioner for that type of tax return, application, notice, statement, or document; and
- (b) contains the information (including any attached documents required) and is signed as required by the form.

(2) The Commissioner or authorised officer shall notify in writing a person when a tax return, application, notice, statement, or other document submitted or lodged by the person is not in the prescribed form.

**72. Tax Compliance Certificate**

(1) Any person may apply to the Commissioner for a Tax Compliance Certificate.

(2) The Commissioner may issue a Tax Compliance Certificate, which shall be valid for the period specified in the certificate, upon the applicant fulfilling conditions that the Commissioner may impose.

(3) The Commissioner may revoke a Tax Compliance Certificate issued under sub-section (2) if the Commissioner finds that the person has failed to honour a demand for tax issued by the Commissioner or has violated the provisions of a tax law.

**73. Manner of submitting documents to the Commissioner**

(1) A person required under a tax law or by the Commissioner under section 75 to submit or lodge a tax return, application, notice, statement, or other document with the Commissioner electronically shall do so unless authorised by the Commissioner by notice in writing to submit in accordance with subsection (2).

(2) A person who is not required to submit or lodge a tax return, application, notice, statement, or other document in electronic form shall submit or lodge the tax return, application, notice, statement, or other document by personal delivery or normal post.

**74. Service of notices by the Commissioner**

(1) Except as otherwise provided in a tax law, a notice or other document required to be served on, or given to, a person by the Commissioner under a tax law may be served or given by—

- (a) delivering it to the person or the person's tax representative;
- (b) leaving it at, or sending it by post to, the person's usual or last known place of business or residence; or
- (c) transmitting it in electronic form.

(2) When a person—

- (a) refuses to accept delivery of a letter addressed to him or her; or
- (b) fails to collect a letter after being informed that the letter is available for collection at a post office;
- (c) the letter shall be treated as having been delivered to the person on the date on which that person refused to accept delivery of the letter or was informed that the letter was at the post office.

(3) The validity of service of a notice or other document shall not be challenged by a person who complies wholly or partly with the notice or document.

(4) In this section, "tax representative", in relation to a taxpayer, shall include the tax agent of the taxpayer.

**75. Application of electronic tax system**

(1) The Commissioner may, authorise the following to be carried out through the use of information technology, including computer systems, mobile electronic devices, electronic and mobile communication systems—

- (a) an application for registration under a tax law;
- (b) the submitting or lodging of a tax return or other document under a tax law;
- (c) the payment or repayment of a tax under a tax law; or
- (d) the doing of any other act or thing that is required to be done under a tax law.

(2) A certificate of registration, service of a notice, issuing of any document, or other act or thing that is required to be issued, served, made, or done by the Commissioner under a tax law, may be issued, served, made, or done through a computer system, mobile electronic device or other form of electronic or mobile communication.



**76. Admissibility of documents produced electronically**

In any proceedings under this Act, a statement contained in a document in electronic form shall be admissible as evidence of any fact stated in that document if the document is produced in the manner prescribed by this Act or any other tax law.

**77. Due date for submission and payment**

If the date for—

- (a) submitting or lodging a tax return, application, notice, or other document;
- (b) the payment of a tax; or
- (c) taking any other action under a tax law,

falls on a Saturday, Sunday, or public holiday in Kenya, the due date shall be the previous working day:

Provided that a person who submits a tax return in electronic form and pays the tax electronically, the due date remains the date specified in the relevant tax law.

**78. Defect not to affect validity of tax assessments or other documents**

(1) When a notice of assessment or any other document purporting to be made, issued, or executed under a tax law is, in substance and effect, in conformity with, is consistent with the intent and meaning of, the tax law under which it has been made and the person assessed, intended to be assessed, or affected by the document, is designated in it according to common intent and understanding—

- (a) the validity of the notice of assessment or other document is not affected by reason that any of the provisions of the tax law under which it has been made or issued have not been complied with;
- (b) the notice of assessment or other document shall not be quashed or deemed to be void or voidable for want of form; and
- (c) the notice of assessment or other document shall not be affected by reason of any mistake, defect, or omission therein.

(2) An assessment shall not be impeached or affected by reason of a mistake in the assessment as to—

- (a) the name of the person assessed;
- (b) the description of any income, supply, or removal; or
- (c) the amount of tax charged; or
- (d) any variance between the assessment and the duly served notice of the assessment that is not likely to deceive or mislead a person affected by the assessment.

**79. Rectification of mistakes**

When a notice of an assessment or other document served by the Commissioner under a tax law contains a mistake that is apparent from the record and the mistake does not involve a dispute as to the interpretation of the law or facts of the case, the Commissioner may, for the purposes of rectifying the mistake, amend the assessment or document any time before the expiry of five years of the date of service of the notice of the assessment or other document.

## PART XII — ADMINISTRATIVE PENALTIES AND OFFENCES

**80. General provisions relating to administrative penalties and offences**

(1) A person shall not be subject to both the imposition of a penalty and the prosecution of an offence in respect of the same act or omission in relation to a tax law.

(2) If a person has committed an act or omission that may be liable under a tax law to both the imposition of penalty and the prosecution of an offence, the Commissioner shall decide whether to make a demand for the penalty or to prosecute the offence.

(3) If a person has paid a penalty under a tax law and, in respect of the same act or omission for which the penalty was paid, the Commissioner commences a prosecution, the penalty shall be repaid to the person as a refund of tax under section 48, and the person shall not pay a penalty, in the case of a prosecution, unless the prosecution is withdrawn.

**81. Penalties relating to registration or licensing**

(1) Subject to subsections (3) and (4), a person who fails to apply for registration as required under a tax law without reasonable excuse shall be liable to a penalty equal to one hundred thousand shillings for every month or part of a month for the period—

- (a) commencing from the month the person was first required to apply for registration; and
- (b) ending on the month immediately preceding the month the person submits an application for registration or the person is registered by the Commissioner on the Commissioner's own motion.

(2) Subject to subsections (3) and (4), a person who fails to apply for deregistration or cancellation of registration as required under a tax law without reasonable excuse shall be liable to a penalty equal to one hundred thousand shillings for every month or part of a month for the period—

- (a) commencing from the month the person was first required to apply for deregistration or cancellation of registration; and
- (b) ending on the month immediately preceding the month the person submits an application for deregistration or cancellation of registration, or the person is deregistered or has their registration cancelled by the Commissioner on the Commissioner's own motion.

(3) A penalty imposed under subsection (1) or (2) shall not exceed one million shillings.

(4) When a tax law, other than this Act, provides for registration, deregistration or cancellation of registration, this section shall apply only if that tax law does not impose an administrative penalty for failing to apply for registration, deregistration or cancellation of registration, as the case may.

(5) In this section, a reference to registration under a tax law includes licensing under a tax law.

**82. Penalty for failing to keep documents**

(1) A person who, without reasonable cause, fails to keep, retain, or maintain a document as required under a tax law without reasonable cause for a reporting period shall be liable to a penalty equal to the higher of—

- (a) ten per cent of the amount of tax payable by the person under the tax law to which the document relate for the reporting period to which the failure relates; or
- (b) the amount specified in subsection (2).

(2) When no tax is payable by the person for the reporting period to which the failure referred to in subsection (1) relates, the penalty shall be one hundred thousand shillings.

**83. Late submission penalty**

(1) A person who submits a tax return after the due date shall be liable to a penalty—

- (a) of twenty five percent of the tax due or ten thousand shillings whichever is higher, if it is in relation to a return required to be submitted on account of employment income;
- (b) five thousand shillings if it is in relation to a return required to be submitted under Turnover Tax; or
- (c) in any other case—
  - (i) five per cent of the amount of tax payable under the return; or
  - (ii) twenty thousand shillings,whichever is the higher.

(2) A person who fails to submit a document, other than a tax return, as required under a tax law by the due date shall be liable to a penalty of one thousand shillings for each day or part day of default but the total penalty shall not exceed fifty thousand shillings.

(3) For the purposes of subsection (2), a person ceases to be in default at the time the document is received by the Commissioner.

**84. Tax shortfall penalty**

(1) This section applies to a person—

- (a) if that person knowingly makes a statement to an authorised officer that is false or misleading in a material particular or knowingly omits from a statement made to an authorised officer any matter or thing without which the statement is false or misleading in a material particular; and
- (b) if the tax liability of that person or of another person computed on the basis of the statement made by that person is less than it would have been had the statement not been false or misleading (the difference being referred to as the "tax shortfall").

(2) Subject to subsections (3) and (4), a person to whom this section applies shall be liable to a tax shortfall penalty of—

- (a) seventy-five per cent of the tax shortfall when the statement or omission was made deliberately; or
- (b) twenty per cent of the tax shortfall in any other case.

(3) The amount of a tax shortfall penalty imposed under subsection (2) on a person shall be increased by—

- (a) ten percentage points when this is the second application of this section to that person; or
- (b) twenty five percentage points when this is the third or a subsequent application of this section to that person.

(4) The amount of a tax shortfall penalty imposed under subsection (2) on a person shall be reduced by ten percentage points when that person voluntarily discloses to the Commissioner the statement or omission to which the section applies prior to—

- (a) discovery by the Commissioner of the tax shortfall; or
- (b) the commencement of an audit of the tax affairs of the person to whom the statement relates,

whichever is the earlier.

(5) A tax shortfall penalty shall not be payable under subsection (2) when—

- (a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular;
- (b) the tax shortfall arose as a result of a taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in submitting a self-assessment return; or
- (c) the failure was due to a clerical or similar error, other than a repeated clerical or similar error.

(6) A position taken by a taxpayer in making a self-assessment shall not be regarded as a reasonably arguable position for the purposes of subsection (5)(b) if it contradicts any of the following where they are in force at the time the self-assessment is made—

- (a) a public ruling; or
- (b) a private ruling issued by the Commissioner to the taxpayer.

(7) Despite subsection (5), the Commissioner or authorised officer may impose a late payment interest in respect of a tax shortfall when the tax is not paid by the due date for payment.

(8) For the purposes of this section, a statement made to an authorised officer includes a statement made, in writing or orally—

- (a) in an application, certificate, declaration, notification, return, objection, or other document submitted or lodged under a tax law;
- (b) in information required to be provided under a tax law;
- (c) in a document provided to an authorised officer;

- (d) in an answer to a question asked of a person by an authorised officer; or
- (e) in a statement to another person with the knowledge or reasonable expectation that the statement would be passed on to an authorised officer.

**85. Tax avoidance penalty**

If the Commissioner has applied a tax avoidance provision in assessing a taxpayer, the taxpayer is liable for a tax avoidance penalty equal to double the amount of the tax that would have been avoided but for the application of the tax avoidance provision.

**86. Penalty for failing to comply with electronic tax system**

(1) When a taxpayer is required under a tax law or by the Commissioner to submit a tax return in electronic form or to pay a tax electronically and fails to do so, the Commissioner shall by notice in writing request the reasons for the failure.

(2) A taxpayer who fails to satisfy the Commissioner within fourteen days of the notice under subsection (1) shall be liable to a penalty of one hundred thousand shillings.

**87. Penalties for failure to appear before the Commissioner**

Any person who fails to appear before the Commissioner pursuant to a notice issued by Commissioner under section 61 shall be liable to a penalty of—

- (a) ten thousand shillings in case of an individual; and
- (b) one hundred thousand shillings for any other case.

**88. Penalty in relation to fraudulent claim for refund**

A person who fraudulently makes a claim for a refund of tax shall be liable to pay a penalty of an amount equal to two times the amount of the claim.

**89. General provisions relating to penalty**

(1) Each penalty shall be calculated separately with respect to each section in this Division.

(2) If the same act or omission imposes more than one penalty under a tax law on a taxpayer, the Commissioner may determine which penalty applies.

(3) A person shall be liable to a penalty only when the Commissioner notifies in writing that person of a demand for the penalty setting out the amount of the penalty payable and the due date for the payment being a date that is at least 30 days after the date of the notification.

(4) Subsection (3) applies also to a penalty imposed under a tax law other than this Act.

(5) A penalty payable by a person shall be due and payable on the date specified in the notification under subsection (3).

(6) A person liable to a penalty or interest may apply in writing to the Commissioner for the remission of the penalty or interest payable and such application shall include the reasons for the application.

(7) The Commissioner may, upon an application under subsection (6) or on the Commissioner's own motion and with the approval of the Cabinet Secretary, remit, in whole or in part, any penalty or interest payable by a person except a penalty imposed under section 85,

Provided that the remission of interest is by reason of—

- (a) uncertainty as to any question of law or fact;
- (b) consideration of hardship or equity; or
- (c) impossibility or undue difficulty or expense, of recovery of tax.

(8) The Commissioner shall maintain a public record of each remission together with the reasons for the remission and the record of remissions shall be reported to the Auditor-General once in every three months.

(9) This Act shall not preclude the imposition of penalty under any other tax law and the same act or omission shall not be subject to—

- (a) the imposition of a penalty under more than one provision of that other tax law; or
- (b) both the imposition of a penalty and prosecution for an offence under that other tax law.

[Act No. 38 of 2016, s. 44.]

#### **90. Offences relating to registration or licensing**

(1) Subject to subsection (2), a person commits an offence if that person, without reasonable excuse, does not apply for registration, deregistration or cancellation of registration as required under a tax law.

(2) A person commits an offence if that person applies for deregistration or the cancellation of registration when that person is still required to be registered under a tax law.

(3) If a tax law, other than this Act, does not provide for an offence specified in subsection (1) or (2) in relation to registration, deregistration or cancellation of registration, this section shall apply.

(4) In this section, a reference to registration under a tax law includes licensing under a tax law.

#### **91. Offences relating to PINs**

(1) A person commits an offence if that person uses a false PIN on a tax return or other document used for the purposes of a tax law.

(2) A person who uses the PIN of another person shall be treated as having used a false PIN, unless the PIN has been used in the circumstances specified in section 13(3).

(3) A person commits an offence if the person obtains a PIN using a false document, a forged document or through fraud, misrepresentation or deceit.

**92. Offences by tax agent**

A tax agent shall have committed an offence when the tax agent—

- (a) fails to notify the Commissioner as required under section 22(1); or
- (b) contravenes the provisions of section 21;
- (c) assists a taxpayer to create a tax avoidance scheme, or abets or aides a taxpayer to evade tax.

**93. Failure to maintain documents**

(1) A person commits an offence if the person fails to keep, retain or maintain a document that may be required to be kept, retained or maintained in accordance with a tax law without reasonable excuse during a reporting period.

(2) A person commits an offence if the person deliberately prepares or maintains or authorises another person to prepare or maintain false documents in relation to a tax law.

(3) A person commits an offence if the person falsifies or authorises another person to falsify any in relation to a tax law.

**94. Failure to submit tax return or other document**

(1) A person commits an offence if the person without reasonable cause fails to submit a tax return or other document required under a tax law by the due date.

(2) If a person is convicted of an offence under subsection (1), the person, in addition to any sanction imposed on him or her, shall furnish the tax return or other document within the time that may be specified by the Court.

(3) This section shall apply if a tax law does not provide for an offence in relation to the submission of a document other than a tax return required to be submitted under that tax law.

**95. Failure to pay tax**

A person commits an offence if that person fails to pay tax by the due date.

**96. False or misleading statements**

(1) A person commits an offence when the person deliberately—

- (a) makes a statement to an authorised officer that is false or misleading in a material particular; or
- (b) omits from a statement made to an authorised officer any matter or thing without which the statement would be false or misleading in a material particular.

(2) Section 84(8) shall apply in determining whether a person has made a statement to an officer.

**97. Fraud in relation to tax**

Any person who, in relation to a tax period, knowingly—

- (a) omits from his or her return any amount which should have been included; or
- (b) claims any relief or refund to which he or she is not entitled; or
- (c) makes any incorrect statement which affects his or her liability to tax; or
- (d) prepares false books of account or other records relating to that other person or falsifies any such books of account or other records; or
- (e) deliberately defaults on any obligation imposed under a tax law,

commits an offence.

**98. Offences relating to recovery of tax**

(1) A person commits an offence when the person, without reasonable cause—

- (a) contravenes section 17;
- (b) does not provide security for payment of a tax as required by the Commissioner under section 36;
- (c) fails to rescue property distrained under section 41 or goods seized under section 44;
- (d) before, at or after any distress proceedings under section 41 or the seizure of goods under section 44, staves, breaks or destroys the property that is subject to the distress proceedings or the goods subject to the seizure order, or destroys documents relating to such property or goods to prevent—
- (e) the securing of the property or goods; or
- (f) the discovery of proof of the commission of an offence;
- (g) subject to subsection (2), does not comply with a notice issued under section 42;
- (h) does not comply with a High Court order made under section 43;
- (i) departs or attempts to depart from Kenya in contravention of a departure prohibition order made under section 45; or
- (j) does not pay a transferred tax liability as required under section 46.

(2) A person who notifies the Commissioner in writing under section 42(4) is in compliance with a notice served on the person under section 42(2) until the Commissioner serves the person with a notice section 42(5) cancelling or amending the notice served under section 42(2) or rejecting the person's notice under section 42(4).



**99. Offences relating to enforcement powers**

(1) A person commits an offence when that person—

- (a) fails to provide information or produce any document for examination as required by the Commissioner under section 59(1)(a) or (b);
- (b) fails to appear before the Commissioner as required under section 59(1)(c); or
- (c) fails to answer any question put to the person by the Commissioner or authorised officer in accordance with section 59(1)(c).

(2) A person commits an offence when the person, without reasonable excuse, fails to provide reasonable facilities and assistance as required by section 60(3) (d), (e), and (f), and (6).

**100. Obstruction of authorised officer**

A person commits an offence if the person hinders or obstructs the Commissioner or an authorised officer in the performance of the Commissioner's or authorised officer's duties under a tax law.

**101. Aiding or abetting an offence**

A person commits an offence if that person aids, abets, assists, incites or induces another person to commit an offence under a tax law (referred to as the "principal offence") and that person shall be liable for the same sanction as imposed for the principal offence.

**102. Offences by officers and staff of the Authority**

(1) An authorised officer commits an offence when that officer—

- (a) makes an entry that he or she knows or has reasonable cause to believe to be false or does not believe to be true in any record, return, or other document that he or she is required to keep or make;
- (b) willfully refuses to do anything that he or she knows or has reasonable cause to believe is required to be done by he or she under a tax law;
- (c) interferes with any other person or process under a tax law in order to defeat the provisions or requirements of that tax law;
- (d) fails to do anything that the authorised officer is required to do to give effect to the provisions of a tax law;
- (e) without reasonable cause, acts or omits to act in breach of his or her duty under a tax law;
- (f) willfully contravenes the provision of a tax law in order to give undue advantage or favour to another person; or
- (g) fails to prevent or report to the Authority or any other relevant authority, the commission of an offence in contravention of a provision of a tax law.

(2) A person commits an offence if that person contravenes the provisions of section 6.

(3) In this section, "authorised officer" includes a person employed or engaged by the Authority in any capacity and a former officer or employee of the Authority.

**103. Offences by employees, agents, and companies**

(1) If a person acting as an employee or an agent commits an offence under a tax law that person's employer or principal shall be treated as having also committed the offence.

(2) If the person that commits an offence under a tax law is a company, the offence shall be treated as having been committed by an individual who, at the time the offence was committed, was—

- (a) the chief executive officer, managing director, a director, company secretary, treasurer or other similar officer of the company; or
- (b) acting or purporting to act as the chief executive officer, managing director, a director, company secretary, treasurer or other similar officer of the company.

(3) Subsection (1) or (2) shall not apply to a person if—

- (a) the offence was committed without that person's consent or knowledge; and
- (b) that person, having regard to the nature of that person's functions and all the circumstances, has exercised reasonable diligence to prevent the commission of the offence.

**104. Sanctions for offences**

(1) Subject to subsection (2) or (3), a person convicted of an offence under this Act shall be liable to a fine not exceeding one million shillings and to imprisonment for a term not exceeding three years, or to both.

(2) A person convicted of an offence under sections 98(1) or 102(1) is liable to a fine not exceeding two million shillings and to imprisonment for a term not exceeding five years, or to both.

(3) A person convicted of an offence under section 97 shall be liable to a fine not exceeding ten million shillings or double the tax evaded, whichever is higher or to imprisonment for a term not exceeding ten years, or to both.

(4) A person convicted of an offence under section 92 shall be liable to a fine equal to double the tax evaded or to a fine not exceeding five million shillings whichever is higher or to imprisonment for a term not exceeding five years, or to both.

**105. Payment of tax on conviction**

Where a person is convicted of an offence under a tax law and for which taxes were not paid the court may order the convicted person to make payment to the Commissioner of the whole or such part as remains unpaid either in addition to, or in substitution of, any other penalty.

**106. Jurisdiction to try cases**

(1) Despite any other written law and subject to subsection (2), a person charged with the commission of an offence under a tax law may be prosecuted in any place in Kenya in which the person may be in custody for the offence as if the offence had been committed in that place, and the offence shall be treated as having been committed in that place.

(2) Nothing in subsection (1) shall preclude the prosecution, trial or punishment of a person in any place in which, but for this section, the person might have been prosecuted, tried or punished.

(3) Despite any other written law, an offence under this Act may be tried in the court designated to try offences of corruption or economic crimes.

#### **107. Authorised officer may appear on prosecution**

(1) Despite any other written law, an authorised officer may appear in any court on behalf of the Commissioner in proceedings in which the Commissioner is a party and, subject to the direction of the Director of Public Prosecutions, that officer may prosecute a person accused of committing an offence under a tax law.

(2) An authorised officer conducting a prosecution in accordance with subsection (1) shall have all the powers of a public prosecutor under the Office of the Director of Public Prosecutions Act, 2013 (No. 2 of 2013).

#### **108. Tax to be paid despite prosecution**

The amount of any tax or late payment interest due and payable under a tax law shall not be abated by the prosecution of a taxpayer for an offence under a tax law.

#### **109. Power of the Commissioner to compound offences**

(1) The Commissioner may, where he is satisfied that a person has committed an offence under a tax law in respect of which a penalty of a fine is provided, or in respect of which anything is liable to forfeiture, compound the offence and may order that person to pay such sum of money, not exceeding the amount of the fine to which he or she would have been liable if he or she had been prosecuted and convicted for the offence, as the Commissioner may think fit and the Commissioner may order anything liable to forfeiture in connection therewith to be condemned:

Provided that the Commissioner shall not exercise his or her powers under this section unless the person admits in writing that he or she has committed the offence and requests the Commissioner to deal with the offence under this section.

(2) For the purposes of subsection (1), the Commissioner shall constitute a committee of not less than three officers to consider applications for the compounding of offences.

(3) An order by the Commissioner in accordance with this section shall—

- (a) be in writing under the hand of the Commissioner and the offender, and witnessed by an officer;
- (b) specify the name of the offender, the offence committed, the sum of money ordered by the Commissioner to be paid, and the date or dates on which payment is to be made;
- (c) have a copy of the written admission referred to under subsection (2) attached;
- (d) be served on the offender;
- (e) be final and not be subject to appeal; and
- (f) on production in any court, be treated as proof of the conviction of the offender for the offence specified, and may be enforced in the same manner as a decree of a court for the payment of the amount stated therein.

(4) If the Commissioner compounds an offence under this section, the offender shall not be liable for prosecution or penalty in respect of same act or omission, the subject of the compounded offence except with the express consent of the Director of Public Prosecutions.

### PART XIII — MISCELLANEOUS PROVISIONS

#### **110. Consequential amendments**

The Income Tax Act (Cap. 470) and the Value Added Tax Act, 2013 (No. 35 of 2013) are amended as specified in the Second schedule.

#### **111. Protection of officers**

No officer shall be personally liable for any act or omission done or committed in the performance of his or her functions under a tax law unless, having regard to the circumstances of the case, such act or omission is found to be—

- (a) done or committed wilfully or dishonestly by such officer;
- (b) attributable to the negligence of such officer;
- (c) done or committed by such officer in contravention of any provision of a tax law or regulations made there under.

#### **112. Regulations**

(1) The Cabinet Secretary may make Regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

- (a) prescribe conditions and procedures for registration;
- (b) provide for the submission of returns and the place at which returns are to be submitted and tax to be paid;
- (c) prescribe offence and penalties thereto;
- (d) provide rules and procedure for collection of unpaid tax by distraint;
- (e) prescribe any other thing required to be prescribed.

#### **113. Transitional and saving**

(1) Subject to this section, this Act shall apply to any act or omission that occurred or is occurring for which no prosecution has been commenced, or any assessment made against which no appeal has been made, before the commencement date.

(2) Any appeal or prosecution commenced before the commencement date may be continued and disposed of as if this Act had not come into force.

(3) If the period for any application, appeal or prosecution had expired before the commencement date, nothing in this Act shall be treated as having enabled the application, appeal, or prosecution to be made under this Act by reason only that a longer period is specified in this Act.

(4) Any tax liability that arose before the commencement date may be recovered under this Act despite any action already taken for the recovery of the tax.

FIRST SCHEDULE

TRANSACTIONS FOR WHICH A PIN IS REQUIRED

[Section 12.]

- (1) Registration of titles and stamping of instruments.
- (2) Approval of development plans and payment of water deposits.
- (3) Registration of motor vehicles, transfer of motor vehicles, and licensing of motor vehicles.
- (4) Registration of business names.
- (5) Registration of companies.
- (6) Underwriting of insurance policies.
- (7) Trade licensing.
- (8) Importation of goods and customs clearing and forwarding.
- (9) Payment of deposits for power connections.
- (10) All contracts for the supply of goods and services to Government Ministries and public bodies.
- (11) Opening accounts with financial institutions and investment banks.

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SECOND SCHEDULE

CONSEQUENTIAL AMENDMENTS

[Section 101, Act No. 38 of 2016, s. 45.]

1. This Schedule amends the Income Tax Act, the Kenya Revenue Authority Act, 1995, and the Value Added Tax Act, 2013
2. The Income Tax is amended in Part VI by deleting sections 35 (6B), 37 (6) and 51A (a).
3. The Income Tax Act is amended in Part VII by deleting sections 55 and 56.
4. The Income Tax Act is amended in Part VIII by deleting sections 69, 70, 71, 72A, 74B, 75, 75B, 77, 78, 79, 80, and 81.
5. The Income Tax Act is amended in Part X by deleting sections 84 to 91A.
6. The Income Tax Act is amended in Part XI by deleting sections, 92(6), 92(7), 92(8), 93 to 96A, and 100 to 103.
7. The Income tax Act is amended in Part XII by deleting sections 110 to 121.
8. The Income Tax Act is amended in Part XIII by deleting sections 122 to 126.
9. The Income Tax Act is amended in Part XIV by deleting sections 127 to 129 and section 132.

- 10.** The Kenya Revenue Authority Act, 1995, is amended by deleting sections 24, 24A and 25.
  - 11.** The Value Added Tax Act, 2013, is amended in Part II by deleting sections 3 and 4.
  - 12.** The Value Added Tax Act, 2013, is amended in Part IV by deleting section 9.
  - 13.** The Value Added Tax Act, 2013, is amended in Part VII by deleting sections 20, 21, and 23 to 29.
  - 14.** The Value Added Tax Act, 2013, is amended in Part VIII by deleting section 32.
  - 15.** The Value Added Tax Act, 2013, is amended in Part X by deleting sections 38 and 39.
  - 16.** The Value Added Tax Act, 2013, is amended in Part XI by deleting sections 45 and 46.
  - 17.** The Value Added Tax Act, 2013, is amended in Part XII by deleting sections 47, 48 and 49.
  - 18.** The Value Added Tax Act, 2013, is amended in Part XIII by deleting section 50.
  - 19.** The Value Added Tax Act, 2013, is amended in Part XIV by deleting section 51.
  - 20.** The Value Added Tax Act, 2013, is amended in Part XV by deleting sections 52 to 59.
  - 21.** The Value Added Tax Act, 2013, is amended in Part XVI by deleting sections 60 and 61.
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