



THE UNITED REPUBLIC OF TANZANIA

**THE INCOME TAX REGULATION,
2004**

GOVERNMENT NOTICE NO. 464 published on 5/11/ 2004

THE INCOME TAX ACT, 2004

(Act No. 11 of 2004)

REGULATIONS

Made under section 129

PART I

PRELIMINARY

- | | |
|---|--------------------------|
| 1. These Regulations may be cited as the income Tax Regulations, 2004; | Citation |
| 2. In these Regulations, unless the context requires otherwise:- | Interpretation |
| “Act” means the Income Tax Act, 2004; and | Act. No
11 of
2004 |
| “generally accepted accounting principles” means accounting principles adopted by the National Board of Accountants and Auditors from time to time. | |

PART II

INCOME TAX BASE

- | | |
|--|----------------------------|
| 3.-(1) The power of the Minister to:- | Exemption and
Remission |
| (a) grant an exemption under section 10 of the Act or vary an exemption on terms that reduce a person's liability to tax; or | |
| (b) remit tax under section 125 of the Act, shall be exercised only with the prior approval of Cabinet and, in addition, only for the purposes of alleviating the effects of an emergency, and the purposes for which those powers are granted shall be interpreted accordingly. | |

Income Tax Regulations

G. N. No. 464 (cont.)

(2) For the purposes of this regulation, "emergency" means any occasion for which assistance is needed to supplement local efforts to:-

- (a) save lives and to protect property and public health and safety;
or
- (b) lessen or avert the threat of a catastrophe.

Certain
Expen-
diture
of an
employer
not
Deducti-
ble

4. Expenditure incurred by an employer for the benefit of or on behalf of employees is not wholly and exclusively incurred in the production of income unless:-

- (a) the payments is included in calculating the income of an employee; or
- (b) the amount of the expenditure is so small as to make it unreasonable or administratively impracticable to account for it.

Apporti-
onment
of In-
kind
Benefits

5. Where a payment or benefit to be included in calculating a person's income (such as income from employment) is not easily attributed to a particular month (such as the use of a motor vehicle or hours then from the purposes of these Regulations the amount shall be treated as paid to the person proportionately over each month during which the payment or benefit is provided.

Transfer
Pricing
and other
arrang-
ements
between
Asso-
ciates

6. Section 33(1) of the Act shall be construed in such a manner as best secures consistency with the transfer pricing guidelines in the Practice Notes issued by the Commissioner pursuant to Section 130 of the Act.

Replace-
ment
interests
under a
merger
recon-
struction

7. Where under a merger or reconstruction of an entity a person replaces a security in the entity with:-

- (a) another security in the entity; or
- (b) a security in another entity, the entity or the person may apply to the Commissioner and the Commissioner may treat the replacement as an involuntary disposal for the purposes of section 45(4) of the Act.

PART III
SPECIAL INDUSTRIES

8.-(1) For the purposes of the definition of “approved retirement fund” in section 3 of the Act, the following entities shall be treated as having a ruling under section 131 stating that they are an approved retirement fund:-

- | | | |
|--|------------------------------|--------------------|
| (a) the Parastatal Pensions Fund established under the Parastatal Pensions Act, 1978; | Approval of Retirement funds | Act No. 14 of 1978 |
| (b) the National Social Security Fund established under the National Social Security Fund Act, 1997; | Act No. 28 of 1997 | |
| (c) the Public Service Pensions Fund established under the Public Service Retirement Benefits Act, 1999; and | Act No 2 of 1999 | |
| (d) the Local Government Provident Fund established under the Local Government Provident Fund Act, 2000. | Act No. 6 of 2000 | |

(2) Any resident retirement fund not provided for in paragraph (1) of this regulation seeking approval under the Act shall:-

- (a) apply to the Commissioner in the prescribed form stating its tax identification number; and
- (b) attach to the application:-
 - (i) two copies of the instrument under which the fund is established and the rules under which the fund is regulated; and
 - (ii) any other information that the Commissioner may prescribe.

(3) The Commissioner shall not approve an application under paragraph (2) of this regulation unless the Commissioner is satisfied that:-

- (a) the applicant is both a retirement fund and a resident entity as defined under section 3 of the Act; and
- (b) the rules of the fund comply with regulation 9 of these Regulations.

(4) After consideration of any application referred to in paragraph (2), of this regulation the Commissioner shall inform the fund in writing of the Commissioner’s decision and, in the case of approval, the year of income from which the fund is approved and any conditions to which the approval is subject.

Income Tax Regulations

G. N. No. 464 (cont.)

(5) Where there is any alteration to the instrument under which an approved retirement fund is established or the rules under which the fund is regulated, the fund shall, within 14 days of the alteration, provide the Commissioner with two copies of the alteration document.

(6) The Commissioner may at any time by notice in writing withdraw an approval granted to a retirement fund, other than a fund mentioned in paragraph (1), of this regulation where:-

- (a) the Commissioner is of the opinion that the fund no longer complies with requirements under paragraph (3) of this regulation;
- (b) the fund fails to provide the Commissioner with a copy of an alteration document within the time prescribed by paragraph (5), of this regulation or;
- (c) the Commissioner is of the opinion that the fund is not complying with the rules referred to in regulation 9 of these Regulations.

9. The rules of an approved retirement fund, other than a fund referred to under paragraph (1) of regulation 8(1) shall provide that:-

Rules
and
Invest-
ments of
approved
retire-
ment
funds

- (a) where the fund accepts retirement contributions from an employer on behalf of employees, the fund is managed independently of the employer;
- (b) retirement contributions made to the fund and amounts accruing to the fund on its investments must be invested within 15 days of the date of contribution;
- (c) retirement payments shall only be made by the fund with respect to a beneficiary:-
 - (i) upon the beneficiary reaching:-
 - (aa) the compulsory retirement age provided by law or the age of 55, whichever is lower; or
 - (bb) some greater age; or
 - (ii) upon the death or permanent disability of the beneficiary;
- (d) every beneficiary of the fund or nominated relatives thereof shall have a right to specific retirement payments on the happening of the events referred to in paragraph (c) of this regulation;
- (e) the rights referred to in paragraph (e) are conferred on a non-discriminatory basis (such as on the basis of period of service or contributions made by or on behalf of a beneficiary);

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- (f) upon becoming a beneficiary, beneficiaries shall be informed in writing of their rights to receive retirement payments from the fund;
- (g) retirement payments shall not be surrendered or assigned by any beneficiary or relative of a beneficiary entitled to the payment;
- (h) in the event of the fund being wound up, its assets and the beneficiaries rights thereto shall be transferred only to another retirement fund that is an approved retirement fund.

10. For the purposes of section 61(2) of the Act, the statutory amount shall be:-

- (a) where the total contribution to an approved retirement fund required by a statute in relation to an employee is in excess of Shs. 2,400,000 per year, the amount of that obligation; or
- (b) in any other case, Shs. 2,400,000.

Retirement Contributions to approved retirement funds

11.-(1) Where funds are transferred from one approved retirement fund to another approved retirement fund in respect of the transfer of a person's interest in the first-mentioned fund to the second-mentioned fund, the funds transferred shall not be considered as a retirement contribution or a retirement payment.

Transfer of retirement fund interest

(2) Where funds are transferred from an approved retirement fund to an unapproved retirement fund in respect of the transfer of a person's interest in the first-mentioned fund to the second-mentioned fund, the funds transferred:-

- (a) shall be included in the assessable income of the transferee fund; and
- (b) shall not be treated as a retirement payment

(3) Where funds are transferred from an unapproved retirement fund to an approved retirement fund in respect of the transfer of a person's interest in the first-mentioned fund to the second-mentioned fund, the funds transferred:-

- (a) shall not be deductible to the transferor fund; and
- (b) shall not be considered as a retirement contribution or a retirement payment.

(4) Where funds are transferred from one unapproved retirement fund to another unapproved retirement fund in respect of the transfer of a person's interest in the first-mentioned fund to the second-mentioned fund, the funds transferred:-

Income Tax Regulations

G. N. No. 464 (cont.)

Registration of charitable and religious organisations

(a) shall not be deductible to the transfer or fund but shall be exempt to the transferee fund; and

(b) shall not be treated as a retirement payment.

12.-(1) Any resident entity seeking status as a charitable or religious organisation for the purposes of the Act shall:-

(a) apply to the Commissioner in the prescribed form stating its tax identification number; and

(b) attach to the application:-

(i) two copies of the certificate of registration of the entity confirming its status issued by the Government or relevant public authority or association;

(ii) two copies of the instrument under which the organisation is established and the rules under which it is regulated; and

(iii) any other information that the Commissioner may prescribe.

(2) After consideration of any application referred to in paragraph (1), of this regulation the Commissioner shall inform the organisation in writing of the Commissioner's decision and, in the case of approval, the year of income from which the organisation is considered a charitable or religious organisation and any conditions to which the approval is subject.

(3) Where there is any alteration to the instrument under which a charitable or religious organisation is established or the rules under which it is regulated, the organisation shall, within 14 days of the alteration, provide the Commissioner with two copies of the alteration document.

(4) The Commissioner may at any time by notice in writing withdraw the status of an organisation as a charitable or religious organisation under the Act where:-

(a) the organisation fails to provide the Commissioner with a copy of an alteration document within the time prescribed by paragraph (3) of this regulation;

(b) the Commissioner is of the opinion that an alteration to the instrument under which the organisation is established or the rules under which it is regulated means that it no longer qualifies as a charitable or religious organisation; or

Income Tax Regulations

G. N. No. 464 (cont.)

- (c) the Commissioner is of the opinion that the organisation is not complying with the instrument under which it is established or the rules under which it is regulated.

13. Where during a year of income an individual:-
- (a) farms land;
 - (b) essentially lives off the produce of the land;
 - (c) sells produce from the land for less than Shs. 3,000,000; and
 - (d) has no chargeable income from any other activity, the individual's farming activity does not constitute a business for the purposes of the Act.

Agricu-
lural
business

PART IV TAX PAYMENT PROCEDURE

- 14.-(1) For the purpose of section 78(2) of the Act, a person shall pay tax:-

- (a) where the person has received a notice from the Department, at the place prescribed by the notice; and
- (b) in any other case, at any bank approved for this purpose by the Tanzania Revenue Authority or at the tax office where the person is registered, at the person's choice.

Payment
proce-
dure,
method
and
place of
payment

(2) Where a person pays tax to a bank in accordance with paragraph (1), of this regulation he shall notify the tax office where he is registered as to the payment.

(3) For the purposes of section 78(2) of the Act, a person shall pay tax in the following forms:-

- (a) if the payment is made to a tax office:-
 - (i) where the payment does not exceed the limits prescribed by the tax office, in cash; or
 - (ii) by cheque made out to the Commissioner for Income Tax, crossed and endorsed with the words "A/C Payee Only"; or
- (b) if the payment is made to a bank, in cash, by cheque made out to the Commissioner for Income Tax, crossed and endorsed with the words "A/C Payee Only", or by direct account transfer.

(4) Payment of tax is considered to be not made if a cheque is tendered and the cheque, on receipt by the bank or on presentation to the bank on which it is drawn, is dishonoured for any reason whatsoever.

Income Tax Regulations

G. N. No. 464 (cont.)

Order of Payment of tax	15. Where a person:- (a) has more than one amount of tax payable; and (b) offers payment which is less than the total amount outstanding, the Commissioner shall in the Commissioner's absolute discretion determine which amount of tax is considered paid by the offer.
Main- tenance of docu- men-ta- tion	16. For the purposes of subsection (2) of section 80 of the Act, the Commissioner is treated as having issued a written notice requiring the following documents to be retained for the following periods of time:- (a) where a person makes an objection or appeal, all documents relevant to the matter in dispute shall be retained until the matter is finally determined; (b) where a person makes an application to the Commissioner, all documents relevant to the application shall be retained until the application is finally concluded; (c) where a person seeks a refund of tax, all documents relevant to calculation of the refund shall be retained until the refund is made; and (d) where a person has received notice of an investigation by the Commissioner, all documents relevant to the investigation shall be retained until the Commissioner notifies the person in writing that the investigation is finalised.
Withhold- ing by employ- ers	17.-(1) Subject to regulation 18, for the purposes of paragraph 4(a)(j) of the First Schedule of the Act the Commissioner shall produce:- (a) a table of the amounts that employers are required to withhold per month from the income from employment paid to employees; and (b) instructions and a form regarding an end of year reconciliation to ensure that overall for a year of income the appropriate amount of tax is withheld from income from employment paid to employees. (2) Where during a month an employer makes payments to an approved retirement fund of:- (a) employer's retirement contributions that are included in calculating the income of an employee; or

(b) employee's retirement contributions that are withheld from an employee's remuneration;

then, to the extent that those and similar contributions are not likely over the relevant year of income of the employee to exceed the statutory amount for the employee specified in regulation 10, of these Regulations the employee's income from employment for the purposes of paragraph (1) shall be reduced by those contributions.

18-(1) Where an employee has two or more concurrent employments under which the employers are required to withhold tax under section 81 of the Act, the employee shall, at the employee's choice, select one of those employments to be the employee's primary employment and the remaining employments shall be secondary employments.

Seco-
ndary
employ-
ment

(2) An employee shall, at the time the employee is first engaged in concurrent employments, notify all of the employee's secondary employers that they are secondary employers.

(3) An employee who fails to make a choice under paragraph (1) of this regulation or fails to comply with paragraph (2) of this regulation shall be treated as having made a false or misleading statement to the Commissioner for the purposes of sections 101 and 106 of the Act.

(4) For the purposes of paragraph 4(a)(i) of the First Schedule of the Act, a secondary employer shall withhold tax at the highest rate mentioned in paragraph 1 of the First Schedule of the Act from each payment to the employee that constitutes income from employment (without any reduction under paragraph 18(2)).

(5) Where:-

(a) a secondary employer is required to withhold in accordance with paragraph (4) of this regulation;

(b) withholding at the rate mentioned in paragraph (4) of this regulation cause hardship for the employee by reason that none of the employee's total income for the year is likely to be taxed at that rate, the Commissioner may, on application from the employee, reduce the rate at which the secondary employer shall withhold tax.

**PART V
NON-COMPLIANCE**

*Division I
General*

23. Failure to comply with these Regulations shall be considered a failure to comply with the Act and Part VIII of the Act shall apply to such a failure.

Breach
of regu-
lations
treated
as breach
of act

*Division II
Distraint Officers and Agents*

24.-(1) The Commissioner may appoint, in such numbers and for such areas as the Commissioner thinks fit, individuals to be known as distraint officers to:-

Appoint-
ment of
distraint
officers
and
agents

- (a) serve notices under subsection (1) of section 113 of the Act.
- (b) take possession and sell charged assets of a tax debtor on behalf of the Commissioner under section 113 of the Act; and
- (c) exercise such other powers of the Commissioner under section 113 of the Act as the Commissioner may specify in writing.

(2) The Commissioner may appoint, in such numbers and for such areas as the Commissioner thinks fit, individuals to perform the functions of "distraint agents" to assist distraint officers in fulfilling the tasks assigned to them under paragraph (1) of this Regulation.

(3) No individual shall be appointed as a distraint agent unless the Commissioner is satisfied that the individual:-

- (a) is of good repute and financial standing;
- (b) is a court broker or if not a court broker, qualifies to be appointed as a court broker;
- (c) has contracted a policy of insurance in an adequate sum against theft, damage and destruction by fire of any charged assets that may be placed in the individual's custody; and

Income Tax Regulations

G. N. No. 464 (cont.)

Conduct
of dis-
traint
agents
and offi-
cers

Act No.
49 of
1966

Act No:
9 of
1985

(d) has furnished adequate security, in the form and amount to be specified by the Commissioner, against the individual's actions as distraint agent.

(4) The Commissioner may terminate or vary, in any respect, the terms of appointment of any distraint agent or officer at any time and without assigning a reason for such termination or variation.

25.-(1) An individual appointed as a distraint agent shall undertake in writing on a prescribed form that the person shall:-

(a) in taking possession of any charged assets, ensure safe custody of the assets and shall be personally liable to pay the value of any such assets that are destroyed, damaged or lost while in the individual's custody; and

(b) in executing any instructions to take possession and sell charged assets:-

(i) not exceed those instructions and any limitations specified therein;

(ii) comply with the provisions of section 113 of the Act; and

(iii) to the extent they are not inconsistent with section 113 of the Act, comply with the provisions of the Civil Procedure Code, 1966 relating to execution of decrees by attachment and sale, as if the instructions were an attachment order made by a court.

(2) Distraint agents and officers are bound by any directions that the Commissioner issues for regulating their conduct in exercising powers under section 113 of the Act.

(3) Where a distraint agent has been appointed to a distraint officer, the agent shall, in exercising the agent's functions as such, follow the instructions of the officer to the extent they are not inconsistent with the requirements of paragraph (1) or directions issued under paragraph (2) of this regulation.

(4) If a distraint agent is convicted of an offence involving fraud, dishonesty, misconduct or negligence in connection with agent's functions as such, the convicting court may order the forfeiture of the agent's security referred to in subparagraph (d) of paragraph (3) of regulation (24).

(5) Any forfeiture under paragraph (4) of this regulation shall be made in accordance with the provisions of the Criminal Procedure Act, 1985 as though the security were a recognizance for the purposes of that Act.

Income Tax Regulations

G. N. No. 464 (cont.)

26.-(1) In serving a notice under subsection (1) of section 113 of the Act upon a tax debtor that is an individual, a distrain officer shall use the officer's best endeavours to serve the notice upon the individual in person.

Service
of sec-
tion
113(1)
Notice

(2) Where the best endeavours of a distrain officer fail under paragraph (1) or in serving a notice under subsection (1) of section 113 of the Act upon a tax debtor that is not an individual, the distrain officer may use any of the methods of service as provided for in subsection (1) of section 136 of the Act.

(3) Where a tax debtor is served with a notice under paragraph (b) of subsection (2) of subsection (1) of section 113 of the Act:-

(a) in the case of a tax debtor that is an individual served in person, the individual shall endorse an acknowledgement of service on a copy of the notice stating the time, date and place of service; or

(b) in any other case, the distrain officer shall endorse a copy of the notice stating the time, date, place and method of service and, where relevant, the name and address of the person to whom the notice was handed.

27.-(1) In exercising the power of entry under paragraph (b) of subsection (3) of section 113 of the Act, a distrain officer shall not break open any outer door of a dwelling house unless he reasonably believes the house to be occupied by the tax debtor and the tax debtor refuses or in any way prevents access thereto.

Access
to prem-
ises in
taking
posse-
ssion

(2) If a distrain officer has gained access to a dwelling house in accordance with paragraph (1), of this regulation the officer may break open the door of any room of the house in which the officer has reason to believe assets of the tax debtor are located.

(3) Where, in exercising the powers under paragraph (b) of subsection (2) of section 113 of the Act a male distrain officer seeks to enter a room in a dwelling house that is occupied by a woman, he shall give the woman notice and a reasonable time to withdraw, after which the officer may enter the room for the purpose of seizing any asset of the tax debtor therein.

(4) A female shall not be searched except by a woman.

28. Where a distrain agent takes possession of charged assets under the instruction and in the presence of the distrain officer, the agent shall:-

Proce-
dure
after tak-
ing pos-
session

Income Tax Regulations

G. N. No. 464 (cont.)

- (a) prepare an inventory of the assets;
- (b) provide the tax debtor with a receipt for the goods and a copy of the inventory;
- (c) provide for safe custody of the assets (including, in the case of livestock, transport and feeding); and
- (d) forward to the Commissioner a report containing:-
 - (i) the inventory of the assets;
 - (ii) the value of each asset as estimated by the officer;
 - (iii) in the case of moveable tangible assets, the address at which the assets are kept pending sale; and
 - (iv) the arrangements (if any) made or to be made for the sale of the assets.

Return
of goods
upon
payment
of Tax
Debt

29. Where:-

- (a) a distraint agent takes possession of the assets of a tax debtor; and
- (b) prior to the sale of those assets the charge over those assets is released by reason of payment meeting the requirements of sub-section (5) of section 112 of the Act,

the Commissioner shall inform the agent of the release and the agent shall forthwith restore the assets to the debtor's possession and notify the Commissioner of the restoration in writing.

Distraint
Agent's
fees

30.-(1) A distraint agent shall be entitled to the fees specified in the Schedule to these Regulations.

(2) For the avoidance of doubt, the fees and remuneration paid to a charge and sale for the purposes of sections 112 and 113 of the Act.

Interpreta-
tion

31. For the purposes of this Division-

"charge assets" has the same meaning as in subsection (10) of section 113 of the Act;

"distraint agent" means an individual appointed as such under regulation 24; and

"distraint officer" means an individual appointed as such under regulation 24 of these Regulations.

PART VI
ADMINISTRATION

Division 1: General

32.—(1) In the interest of transparency, the Commissioner may delegate the following powers and duties under the Act to the officers of the Tanzania Revenue Authority of the following ranks—

Delegati-
on by the
Commis-
sioner

<i>Rank of Officer</i>	<i>Description of Powers and Duties</i>
Principal Officers	Powers and duties under Sections 20, 21, 29, 35, 64, 71, 79, 80, 92, 93, 110, 113, 114, 117, 120 and 126 of the Act and Regulation 8 and 34 as well as those powers and duties of Senior Officers.
Senior Officers	Powers and duties under Sections 3 definition of “associate”), 15, 26, 28, 34, 37, 50, 75, 84, 89, 90, 91, 94, 95, 96, 103, 112, 116, 118, 121, 122, 126, 138 and 139 of the Act and Regulations 16, 26, 35, 38, 39, 40 and 41.

(2) Notwithstanding paragraph (1), of this regulation the Commissioner may further delegate powers and duties in accordance with section 127 of the Act.

33.—(1) Subject to section 33 of the Act and regulation 6, of these Regulations, the Commissioner may enter into an agreement with a person as to the manner in which an arm’s length price shall be determined for the purposes of subsection (1) of section 33 of the Act with respect to particular amounts to be included or deducted in calculating the person’s income.

Advance
Pricing
Agree-
ments

- (2) An agreement under paragraph (1)-
- (a) shall be in writing;
 - (b) may be concluded with one or more persons;
 - (c) shall be signed by all persons concluding the agreement and the Commissioner;
 - (d) shall be for a period not exceeding five years of income but may be renewed;
 - (e) binds all persons signing the contract, including the Commissioner and the Government; and
 - (f) may be withdrawn with respect to a particular person but only with the written consent of the person and the Commissioner.

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G. N. No. 464 (cont.)

Tax
Identifi-
cation
Number

34.—(1) A tax identification number issued under section 133 of the Act is personal to the person to whom it has been issued and may not be transferred to or used by a person other than the person to whom it has been issued.

(2) A person who is the current holder of a tax identification number shall not purport to apply to the Commissioner for a further tax identification number.

(3) A person shall not represent to any other person, including an officer of the Tanzania Revenue Authority, that they are the holder of or have been issued with a particular tax identification number when that is not the case.

(4) A person who breaches paragraph (2) or (3) of this regulation shall be treated as having made a false or misleading statement to the Commissioner for the purposes of sections 101 and 106 of the Act.

(5) A person making an application of the type referred to in subsection (4) of section 133 of the Act, shall produce for the institution the person's TIN certificate or a copy of that certificate authorised by the Commissioner.

(6) Where the Commissioner makes a request by notice in writing, the institutions referred to in the Fourth Schedule of the Act shall furnish a written statement specifying—

- (a) the value of the transactions conducted with the institution and referred to in the second column of the Fourth Schedule during the time period specified in the Commissioner's notice; and
- (b) the names, addresses and taxpayer identification numbers of the persons with which those transactions were conducted.

(7) Every person that is required to apply for a tax identification number under subsection (2) of section 133 of the Act or that has a tax identification number, shall notify the Commissioner in writing within 15 days of—

- (a) any changes in the details recorded in the person's TIN certificate; or
- (b) ceasing to conduct any business referred to in subsection (2) of section 133.

(8) Upon receipt of a notification under paragraph (7), of this regulation, the Commissioner may, where the Commissioner thinks it appropriate, issue the person with an amended TIN certificate.

(9) For the purposes of this regulation, "TIN certificate" means the document under which the Commissioner issues a tax identification number.

35. Section 136 and 137 of the Act apply to documents served or issued under these Regulations.

36. A person shall not be entitled to any reimbursement of expenses incurred in complying with a notice issued under section 139 of the Act.

Division II: Tax Consultant:

37.—(1) Individuals meeting the following conditions may apply to the Commissioner in the prescribed form and attaching the prescribed fee for approval as a Tax Consultant for the purposes of the Act—

- (a) an individual holding one of the following academic qualifications—
 - (i) a degree in Accountancy, Finance, Financial Management, Commerce, Economics or Laws awarded by any University or other recognised Institution of higher learning; or
 - (ii) a post graduate diploma in Tax Management or equivalent qualification as may be recognized by the Commissioner for the purposes of this paragraph; or
- (b) a practitioner who is duly registered under the Auditors and Accountants (Registration) Act, 1972.

Document
Served or
Issued

Notice to
Obtain In-
formation

Applicati-
on and
Approval
as Tax
Conselta-
nt

Act No.
33 of
1972

(2) Subject to paragraph (4), the Commissioner shall assess applications made under paragraph (1) of this regulation and, if satisfied that the person is of good character and has sufficient knowledge and experience with respect to matters arising under the Act, may approve and register the person as a Tax Consultant for the purposes of the Act and issue the person with a certificate to that effect.

(3) For the purpose of assessing a person under paragraph (2), of this regulation the Commissioner may require the application to take an examination or other form of assessment.

(4) The Commissioner shall not approve an individual as a Tax Consultant if the individual has been convicted of—

- (a) a criminal offence carrying a maximum penalty of a fine of not less than shillings 500,000 or imprisonment; or
- (b) gross professional misconduct.

Income Tax Regulations

G. N. No. 464 (cont.)

(5) A person's approval as a Tax Consultant expires after a period of two years from the date of approval but may be renewed.

(6) A Tax Consultant shall display the certificate issued under paragraph (2) in a conspicuous position at the place where the person practices as a tax Consultant.

(7) The Commissioner shall maintain and keep up to date a Register of Tax Consultants containing the names, addresses, qualifications and other particulars of Tax Consultants as the Commissioner may consider appropriate.

(8) The Commissioner shall cause to be published on a timely basis in a newspaper with national circulation-

- (a) new entries in the Register of Tax Consultants including the name, address and registration number of each new Tax Consultant; and
- (b) any other amendments to the Register of Tax Consultants including persons deleted from the Register.

(9) A person who contravenes subsection (1) of section 134 of the Act shall be treated as impeding the administration of the Act for the purposes of section 107 of the Act.

Conduct
and Beha-
viour of
Tax Cons-
ultants

38.- (1) In practicing as a Tax Consultant, a Consultant shall generally provide quality services to clients so as to enable them to comply with the provisions of the Act and these Regulations and shall specifically-

- (a) be well mannered, honest, sincere and truthful and when handling clients affairs and shall furnish the Commissioner or other officers of the Tanzania Revenue Authority with only such information as, to the best of the Consultant's knowledge and belief, is correct;
- (b) refrain from using information acquired in the course of practicing as a Tax Consultant to the personal advantage of the Consultant or any associate of the Consultant;
- (c) advise clients accurately and in a timely manner on the progress of their tax affairs;
- (d) use funds entrusted to the Consultant by clients only for the purposes for which the funds were provided and provide clients with appropriate receipts and evidence of expenditure, including proof of payment of tax, on a timely basis;

Income Tax Regulations

G. N. No. 464 (cont.)

- (e) refrain from entering into any arrangement whereby the Consultant authorises tax advice prepared by another person being other than an employee of the Consultant;
- (f) exhibit a high degree of skill and professional competency, ensure a high level of conversancy with tax laws and tax practice, and ensure that the Consultant's technical knowledge is kept up to date;
- (g) to the best of the Consultant's ability, ensure that all returns and tax computations submitted to the Tanzania Revenue Authority are properly completed, with required supporting statements and schedules, and that such submissions are in compliance with the law;
- (h) only take cases and advise clients with respect to matters that are within the Consultant's experience and competency;
- (i) when making appeals against any assessment, take proper care to ensure that such appeals are based on valid grounds;
- (j) educate clients on the importance of maintaining proper records of all transactions, especially clients engaged in business;
- (k) advise clients of the necessity to make sufficient provision for the payment of tax as well as the importance of keeping to instalment plans for the payment of tax so as to avoid late payment interest and penalties;
- (l) quote the Consultant's registration number on all correspondence with the Commissioner;
- (m) not express an opinion or permit the Consultant's name to be used with respect to a tax matter unless the Consultant (or an employee under the direct supervision of the Consultant) has been appropriately instructed by the client;
- (n) be personally responsible for the actions of any employees of the Consultant in providing tax services to clients;
- (o) keep and maintain a register in which the name of every client is recorded together with-
 - (i) the client's tax identification number;
 - (ii) the client's home or business address as well as the client's postal address;
 - (iii) the date the person became a client;
 - (iv) the due dates for submission of the client's return or any other statements or documents;

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- (v) the due dates for submission of the client's return or any other statements or documents;
 - (vi) the due dates for payment of tax and dates when tax is paid;
 - (vii) consultancy fees charged to and paid by the client; and
 - (viii) such other information as the Commissioner may specify by notice in writing; and
- (p) inform the Commissioner in writing when the Consultant ceases to act for a particular client, including the client's name and tax identification number.
- (2) While an entity shall not be approved as a Tax Consultant, where individual managers of an entity are so approved the following rules shall apply-
- (a) where only one manager of the entity is approved as a Tax Consultant, that manager
 - (i) shall maintain a register under paragraph (1) (o) of this regulation, of clients that the manager acts for in tax matters on behalf of the entity; and
 - (ii) is personally responsible for the actions of any employees of the entity under the manager's supervision in providing tax services to clients; and
 - (b) where more than one manager of an entity is approved as a Tax Consultant, all such managers of the entity
 - (i) shall maintain a single register under subparagraph (o) of paragraph (1) of this regulation of clients that they act for in tax matters on behalf of the entity; and
 - (ii) are joint and severally personally responsible for the actions of each such manager and any employees under the supervision of any such managers in providing tax services to clients.

Committee of Inquiry

39.—(1) The Commissioner shall, for the better regulation of Tax Consultants, appoint three persons with impeccable character, substantial experience and unblemished professional records to constitute a standing "Committee of Inquiry".

(2) The Commissioner may, based on any information whatsoever, convene a meeting of the Committee for the purposes of inquiring into any allegation of poor services or misconduct of a Tax Consultant, including misconduct based on a breach of regulation 38.

(3) Where the Commissioner decides to convene a meeting under paragraph (2) of this regulation and considers it to be more likely than not that the Consultant shall be guilty of the allegation, the Commissioner may suspend the Consultant as an approved Tax Consultant pending the recommendation of the Committee and the Commissioner's decision thereon.

(4) At a meeting convened under paragraph (2), of this regulation the Committee shall inquire into, hear and deal with the allegation subject to the following rules-

- (a) the Committee shall inform the Consultant of the allegation in writing and give the Consultant an opportunity to inspect any supporting documentation not less than seven days before the hearing;
- (b) the Consultant has the right to appear and be heard in person before the Committee;
- (c) the Committee may hear witnesses and receive documentary evidence that are relevant to the allegation;
- (d) having heard the allegation, the Committee may recommend that the Consultant-
 - (i) be cleared of the allegation;
 - (ii) have approval as a Tax Consultant suspended;
 - (iii) have approval as a Tax Consultant terminated; or
 - (iv) be given a warning or such other action as the Committee thinks appropriate; and
- (e) the Committee shall submit to the Commissioner its recommendation within 14 days from the date of the hearing together with a transcript of the proceedings of the Committee.

(5) Upon receiving recommendations in accordance with subparagraph (e) of paragraph (4), of this regulation the Commissioner-

- (a) shall, where the Committee has cleared the Consultant of the allegation, clear the Consultant; or
- (b) may, in any other case, make such order, including suspension or termination of approval as a Tax Consultant, as the Commissioner thinks appropriate.

40. A person shall cease to be a Tax Consultant for the purposes of the Act where-

- (a) the person is convicted of a criminal offence carrying a maximum penalty of fine of not less than Shs. 500,000 or imprisonment, or of gross professional misconduct;

Terminat-
ion of
Approval
as a Tax
Consult-
ant

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- (b) the person becomes bankrupt;
- (c) the person's approval expires under paragraph (5) of regulation 37 and is not renewed; or
- (d) the Commissioner makes a decision to that effect under paragraph (5) of regulation 40 after the hearing of the Committee of Inquiry.

Division III: District Tax Advisory Committees

Establishment and Membership

41.—(1) There shall be established for every district in the United Republic a District Tax Advisory Committee.

(2) Each Committee established under paragraph (1) of this regulation shall consist of the District Commissioner of the District, who shall chair the Committee, the District Revenue Officer of the district, who shall be the Secretary to the Committee, and six of the following persons as selected by the Chair and Secretary—

- (a) the District Council Chairman of the district;
- (b) the Mayor of each town, municipality or city situated in the District;
- (c) the Member or Members of Parliament or the House of Representatives of the district;
- (d) the District Executive Director of the District;
- (e) the Town, Municipal, or City Director of each town, municipality or city situated in the District;
- (f) the District Co-operative Officer of the District;
- (g) the Officer Commanding District of the District;
- (h) the District Trade Officer of the District; and
- (i) up to two members nominated by the Regional Commissioner representing the business community of the district.

(3) A maximum of two other persons may be co-opted to attend sessions of the Committee as, in the opinion of the Chairman and Secretary, are fit to facilitate the work of the Committee.

(4) The members of a Committee shall elect Vice-Chairman of the Committee from amongst their number.

(5) The Vice-Chairman shall, subject to continuing to hold office as a member, hold office as Vice-Chairman for a period of two years from the date of his election and shall be eligible for re-election.

(6) A person who is a member of a Committee by virtue of holding an office mentioned in paragraph (2) of this regulation shall cease to be a member upon ceasing to hold an office mentioned in such paragraph.

42.—(1) A Committee shall have such other functions, powers and duties mentioned in paragraph (2) as are assigned to the Committee by the Commissioner in writing.

Functions,
Powers
and Duties

- (2) The functions, powers and duties referred to in paragraph (1) are—
- (a) to maintain a list of all persons resident within the district that hold a tax identification number;
 - (b) to identify—
 - (i) persons resident within the district that do not hold a tax identification number but that are obliged to apply for a tax identification number under subsection (2) of section 133 of the Act; and
 - (ii) persons that have a tax identification number who have moved to the District or moved from the District;
 - (c) transmit to the Commissioner and the Revenue Manager for the District at regular and timely intervals a list of the persons referred to in subparagraph (b) of paragraph (2) of this regulation including their names, postal addresses, physical addresses, economic activities and tax identification numbers, as the case requires;
 - (d) to facilitate and undertake awareness and education programs, whether by seminar, public meetings or otherwise—
 - (i) to enhance within the District an understanding of the provisions and purposes of the Act and the responsibility to comply with the Act; and
 - (ii) for furthering the objectives, functions and duties of the Committee;
 - (e) to advise and provide necessary information to the Commissioner that may be taken into account when assessing the tax liability of a resident of the District;
 - (f) to assist and advise the Commissioner in all matters relating to the efficient administration of the Act in the district, on being requested by the Commissioner; and

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(g) to deal with taxpayer's general complaints where they are directed to the Committee's attention and provide non-binding recommendations with respect thereto, but shall not be involved in assessing tax or adjudicating tax disputes.

(3) For the purposes of paragraphs of paragraph (2) (a) to (c), the Secretary of a Committee may, by notice in writing, require any person within the district to give such information and particulars or attend such interviews as the Secretary considers necessary.

(4) Every member of a Committee shall observe the provisions of section 140 of the Act relating to official secrecy.

Calling of Meetings

43.-(1) Subject to subparagraphs (a) to (c) of paragraph (2), of this regulation a Committee shall meet at least every six months and all meetings shall be convened by the Chairman or, in the Chairman's absence from the district or incapacity through illness, the Vice-Chairman, who shall appoint a suitable time, place and date for the holding of each meeting.

(2) The Chairman or, in the Chairman's absence from the district or incapacity through illness, the Vice-Chairman may convene a special meeting if necessary for the purposes of disposing of any matter pending before the Committee.

Procedure at Meetings

44.-(1) The Chairman or, in the Chairman's absence, the Vice-Chairman shall preside at meetings of a Committee.

(2) In the absence of both the Chairman and the Vice-Chairman, the members present at a meeting shall elect one of their number to chair the meeting.

(3) A meeting shall not proceed unless it is quorate and a quorum is 40 percent of the total number of members of the Committee.

(4) Subject to this Division and any directions of the Commissioner, a Committee has the power to regulate its own procedure.

Decisions

45.-(1) A Committee shall make decisions by resolution of members present at meetings of the Committee.

(2) A decision of the majority of members present and voting at a meeting of the Committee is a decision of the Committee.

(3) Every member of a Committee shall have one vote and, in the event of an equality of votes, the person chairing the meeting shall have a casting vote in addition to that person's deliberative vote.

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(4) Notwithstanding paragraph (2), where the Chairman so directs, a decision may be made by a Committee without a meeting by circulation of the relevant papers among all the members and the expression in writing of their views.

(5) The view of a majority of members expressed under paragraph (4) is a decision of the Committee unless any member requires, when expressing their view, that the decision be deferred until a meeting of the Committee.

(6) Every decision of a Committee shall be certified by the Chairman or the Vice-Chairman or the temporary chairman presiding at the meeting at which the decision was made, and a copy of the decision shall be served upon the Commissioner within 30 days from the day on which the decision was made.

46.—(1) the Secretary shall prepare minutes of each meeting of a Committee, which shall be confirmed at the next meeting of the Committee and signed by the chair of that next meeting.

Minutes of
Meeting

(2) The Secretary shall, as soon as practicable, transmit a copy of the duly confirmed minutes to—

- (a) the Regional Commissioner;
- (b) the Commissioner;
- (c) the Commissioner for Value Added Tax; and
- (d) the Regional Manager of the Tanzania Revenue Authority.

47.—(1) Members of a Committee may be entitled to such sitting allowance as may be prescribed by the Minister from time to time.

Allow-
ances of
Members

(2) The Minister may make provision for a special fund to be administered by the Secretary to meet the costs of a Committee.

48. For the purposes of this Division—
“Chairman” of a Committee means the person designated as such under regulation 41;
“Committee” means a District Tax Advisory Committee established under regulation 42;
“Secretary” of a Committee means the person designated as such under regulation 42; and
“Vice-Chairman” of a Committee means the person designated as such under regulation 42.

Interpreta-
tion

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PART VII
TRANSITIONAL

- Transition:
Act No. 33
of 1973
- 49.-(1) Where a person own and employs depreciable assets wholly and exclusively in the production of the person's income from a particular business at the time the Income Tax Act, 1973 ceases to apply to the person, the person shall at that time-
- (a) place those assets in pools of the appropriate class in accordance with paragraph 1 of the Third Schedule of the Income Tax Act, 2004; and
- (b) add to the depreciation basis of the appropriate pool the net cost of the assets added to the pool as determined in accordance with section 144 of the Income Tax Act, 2004.
- Act No. 11
of 2004
- (2) Losses incurred by a person that are first recognised under the provisions of the Income Tax Act, 1973 shall countinue to be subject to any restrictions on the use of those losses, including as to carryover, that apply under that Act.
- (3) Sections 26 and 32 of the Income Tax Act, 2004 apply to contracts, annuities, instalment sales and finance leases entered into by a person after the Income Tax Act, 1973 ceases to apply to the person.
- Existing
Charitable
and Relig-
ious Orga-
nisations:
Act No. 11
of 2004
50. Charitable and religious organisations that are approved by the Commissioner as such at the time the Income Tax Act, 1973 ceases to apply are treated as approved under regulation 12 at the commencement of the Income Tax Act, 2004.
- Revocation:
Act No. 33
of 1973
- 51.-(1) All regulations made under the Income Tax Act, 1973 (the "revoked regulations") are hereby revoked.
- (2) The revoked regulations continue to apply for any year of income of a person to the extent that any related provisions of the Income Tax Act, 1973 continue to apply.

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SCHEDULE

(Made under regulation 30)

DISTRAINT FEES

PART I

ATTACHMENT

1. For attaching or taking possession of a charged asset and keeping possession of the same for 30 days or part thereof, when the sale value or, if the asset is not sold, the distraint officer's estimated value of the same-

<i>Value</i>	<i>Fees</i>
(a) does not exceed - Shs. 200,000/-.....	5%
(b) exceeds Shs. 200,000/- but does not exceed Shs 2 Million.....	3%
(c) exceeds Shs. 2 Million but does not exceed Shs. 50 Million.....	2%
(d) exceeds Shs. 50 Million.....	1%

Provided that where it is considered necessary to hold the asset for a longer period the distraint agent shall, in addition to the fee calculated on the basis of this paragraph, be reimbursed for the additional costs and expenses which, in the opinion of the Commissioner, are properly incurred.

2. For attending to attach or take possession of a charged asset where no property is found the distraint agent shall be reimbursed for actual expenses incurred in the exercise.

PART II SALE

3. For selling a charged asset where the amount realised:

<i>Value</i>	<i>Fees</i>
(a) does not exceed Shs. 200,000/-.....	5%
(b) exceeds Shs. 200,000/- but does not exceed Shs. 2 Million.....	3%
(c) exceeds Shs. 2 Million but does not exceed Shs. 50 Million.....	2%
(d) exceeds Shs. 50 Million.....	1%

4. Where an order of sale has been made but the distraint agent is informed by the Commissioner that the charge over the asset has been released, the order for sale has been set aside, the sale is postponed or the asset is for any other reason unsold or where the distress amount and costs (including costs of charge and sale) are tendered to the distraint agent or proof is given to his satisfaction that such amount and costs have been paid:

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<i>Value</i>	<i>Fees</i>
(a) before commencement of sale;.....	no fees, except under Part 1
(b) after commencement of the sale process where the distress officer's estimated value of the asset ordered to be sold-	
(i) does not exceed Shs. 200,000/=.....	3%
(ii) exceeds Shs. 200,000/= but does not exceed Shs/= 2 Million.....	2%
(iii) exceeds Shs. 2 Million but does not exceed Shs. 50 Million.....	1.5%
(iv) exceeds Shs. 50 Million.....	1%

5. Where the charged asset is divided into lots for the purpose of being sold separately and any lot is unsold because no bid has been received for it or no bid equal to the reserve price, as the case may be, the fees prescribed respectively by item 4(b) above shall apply.

6. Where the charged asset or part of it is sold the distress agent shall be paid reasonable expenses incurred by him in transporting the asset and such travelling expenses by car or a rateable proportion thereof as the Commissioner may approve.

Dar es Salaam,
22nd October, 2004

BASIL P. MRAMBA (MP),
Minister for Finance