

LAWS OF KENYA

THE TAX PROCEDURES ACT

CHAPTER 469B

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CHAPTER 469B**THE TAX PROCEDURES ACT***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, Act No. 10 of 2018, Act No. 23 of 2019, Act No. 2 of 2020, Act No. 8 of 2020, Act No. 8 of 2021, Act No. 22 of 2022, Act No. 4 of 2023.]

PART I – PRELIMINARY**Short title**

1. This Act may be cited as the Tax Procedures Act.

Object and purpose of the Act

2. (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.

Interpretation

3. (1) In this Act, except where when the context otherwise requires—
 - “accounting officer” has the meaning assigned under the Public Finance Management Act (Cap. 412A);
 - “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 (Cap. 469);
 - “Authority” means the Kenya Revenue Authority established under the Kenya Revenue Authority Act (Cap. 469);

“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 (Cap. 472);

“income tax” means income tax imposed under the Income Tax Act (Cap. 470);

“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 (Cap. 300);

“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 (Cap. 30); or
- (b) a foreign limited partnership within the meaning in the Partnerships Act (Cap. 29);

“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 71;

“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 (Cap. 470) applies, the accounting period of the taxpayer;
- (b) for withholding tax under the Income Tax Act (Cap. 470), 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 (Cap. 476), 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 taxpayer 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 (Cap. 470); 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 section 15, section 17 and section 18;
- (d) a decision on an application by a self-assessment taxpayer under section 31(2);
- (e) *deleted by Act No. 4 of 2023, s. 49 (a);*
- (f) a decision under section 48 requiring repayment of a refund; or
- (g) a demand for a penalty or late payment interest;

“tax law” means—

- (a) this Act;
- (b) the Income Tax Act (Cap. 470), Value Added Tax Act (Cap. 476), Excise Duty Act (Cap. 472) and Miscellaneous Fees and Levies Act (Cap. 469C); and
- (c) any Regulations or other subsidiary legislation made under this Act or the Income Tax Act (Cap. 470), Value Added Tax Act (Cap. 476), Excise Duty Act (Cap. 472) and Miscellaneous Fees and Levies Act (Cap. 469C);

“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 (Cap. 470);
- (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 (Cap. 469A);

“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 (Cap. 167) 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 valued added tax imposed under the Value Added Tax Act (Cap. 476); and

“withholding tax” means tax that a person is required to withhold under the Income Tax Act (Cap. 470) or the Value Added Tax Act (Cap. 476).

(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 (Cap. 476); 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, Act No. 10 of 2018, s. 34, Act No. 8 of 2021, s. 34, Act No. 4 of 2023, s. 49.]

PART II – ADMINISTRATION OF TAX LAWS

Functions and powers of the Commissioner

4. (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.

Delegation

5. (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.

Confidentiality

6. (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.]

International tax agreements

6A. (1) Any multilateral agreements and treaties that have been entered into by or on behalf of the Government of Kenya relating to international tax compliance and prevention of evasion of tax or exchange of information on tax matters shall have effect in the manner stipulated in such agreements or treaties.

(2) Notwithstanding any other provision of this Act or any other written law, the information obtained pursuant to agreements specified under subsection (1) shall not be disclosed except in accordance with the conditions specified in the agreements.

(3) Any multilateral agreement or treaty that has been entered into by or on behalf of the Government of Kenya relating to mutual administrative assistance in the collection of taxes shall have effect in the manner stipulated in such agreement or treaty.

[Act No. 8 of 2021, s. 35, Act No. 4 of 2023, s. 50.]

Common reporting standard obligations

6B. (1) In this section—

“common reporting standard” means the reporting and due diligence standard for the automatic exchange of financial account information;

“financial institution” means a custodial institution, a depository institution, an investment entity or a specified insurance company; and

“Kenyan financial institution” means—

- (a) any financial institution that is resident in Kenya but does not mean any branch of that financial institution that is located outside Kenya; or
- (b) any branch of a financial institution that is not resident in Kenya, if that branch is located in Kenya.

(2) A reporting financial institution shall comply with the due diligence procedures and record keeping requirements as set out in the common reporting standard Regulations prescribed under subsection (6).

(3) A reporting financial institution shall identify reportable accounts as specified by the common reporting standard Regulations prescribed under subsection (6) and file with the Commissioner—

- (a) an information return on reportable accounts held, managed or administered by that reporting financial institution; or
- (b) a return marked "nil" if no account held, managed or administered by that reporting financial institution is identified as a reportable account.

(4) The date by which and the manner in which an information return or a 'nil' return shall be filed with the Commissioner shall be as set out in the common reporting standard Regulations prescribed under subsection (6).

(5) Where a financial institution, intermediary, service provider, or any other person enters into any arrangements or engages in a practice the main purpose or one of the main purposes of which can reasonably be considered to be to avoid an obligation imposed under this section or under Regulations made under this Act, the arrangement or practice shall be deemed not have been entered into or engaged in and this section shall apply as if the arrangement or practice had not been entered into or engaged in.

(6) The Cabinet Secretary may, by Regulations, prescribe common reporting standards for the purposes of this Act.

[Act No. 8 of 2021, s. 35.]

Authorised officers to have powers of police officers

7. (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

Registration of taxpayers

8. (1) A person who—

- (a) has accrued a tax liability or who expects to accrue a tax liability under the Income Tax Act (Cap. 470) or the Value Added Tax Act (Cap. 476);
- (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.]

Supply of information upon change in particulars

9. 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 whether the entity is carrying out business or not;
 - (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.

[Act No. 22 of 2022, s. 37.]

Deregistration

10. (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 license shall be cancelled on the effective date of the deregistration.

Personal identification number

11. 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.

Issue of a PIN

12. (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) 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.

(5A) The Commissioner may, upon receipt of an application made by or on behalf of any person or class of persons, exempt such person or class of persons from the requirement for a PIN for any of the transactions 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.

[Act No. 10 of 2018, s. 35, Act No. 23 of 2019, s. 27.]

Use of a PIN

13. (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.

Cancellation of a PIN

14. (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.

Taxpayer's tax representative

15. (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, 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, or 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 (j)), 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.

Appointment of tax representative by non-resident person

15A. (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.]

Liabilities and obligations of tax representatives

16. (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 the tax obligation for which the tax representative has been appointed.

(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, Act No. 10 of 2018, s. 36.]

Duties of appointed person

17. (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.]

Liability for tax payable by a company

18. (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.
- (c) *deleted by Act No. 15 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.]

Application for tax agent licence

19. (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.]

Licensing of tax agents

20. (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.

Limitation on the performance of tax services for taxpayers

21. (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.

Cancellation of tax agent's licence

22. (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**Record-keeping**

23. (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.

(2A) Despite subsection (2), the unit of currency in books of account, records, paper registers, tax returns or tax invoices in respect of a non-resident person carrying on business through a digital marketplace shall be in convertible foreign currency as may be approved by the Commissioner.

(2B) The provisions of subsection (2) shall not apply to a non-resident person who files returns and makes payments through a resident tax representative or non-resident person with a permanent establishment.

(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.

(3A) A trustee resident in Kenya who administers a trust registered in Kenya or outside Kenya shall maintain and avail to the Commissioner records required under a tax law, whether the income generated is subject to tax in Kenya or not.

(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.

[Act No. 8 of 2021, s. 36, Act No. 4 of 2023, s. 51.]

Electronic tax invoices

23A. (1) The Commissioner may establish an electronic system through which electronic tax invoices may be issued and records of stocks kept for the purposes of this Act.

(2) A person who carries on business shall —

- (a) issue an electronic tax invoice through the system established under subsection (1); and
- (b) maintain a record of stocks in the system established under subsection (1).

(3) Where an electronic tax invoice required to ascertain tax liability is issued by a resident person or the permanent establishment of a non-resident person, that invoice shall be generated through the system established under subsection (1).

(4) The electronic tax invoice referred to in subsection (3) may exclude emoluments, imports, investment allowances, interest, airline passenger ticketing and similar payments.

(5) The Commissioner may, by notice in the *Gazette*, exempt a person from the requirements of this section.

[Act No. 4 of 2023, s. 52.]

PART V – TAX RETURNS**Submission of tax returns**

24. (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.

Duty to submit third party returns

24A. 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.]

Extension of time to submit tax return

25. (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 to submit the return.

(2) An application under subsection (1) shall be made at least—

- (a) fifteen days before the due date in the case of a monthly return; or
- (b) thirty days before the due date in the case of an annual return.

(3) The Commissioner may grant an application under this section if satisfied that there is reasonable cause and shall notify the applicant accordingly at least five days before the due date:

Provided that—

- (a) where no notification is received under this subsection, the application shall be deemed to have been granted;
- (b) only one extension may be granted to an applicant in respect of a tax period.

(4) The grant of an extension 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.

(5) The provision of section 83 relating to penalties for late submission of returns shall not apply where an extension to submit a return has been granted under this section.[Act No. 10 of 2018, s. 37.]

Commissioner may require taxpayer to submit a tax return

26. (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.

Tax return duly submitted

27. 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**Self-assessment**

28. (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.

Default assessment

29. (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 (Cap. 476), 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.

Advance assessment

30. (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.

Amendment of assessments

31. (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 (Cap. 476), 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 amended self-assessment return has been submitted under subsection (2), the Commissioner may accept or reject the amended self-assessment return and where he rejects, he shall furnish the taxpayer with the reasons for such rejection 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:

Provided that in the case of value added tax, the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.

(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 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.

[Act No. 10 of 2018, s. 38, Act No. 22 of 2022, s. 38, Act No. 4 of 2023, s. 53.]

PART VII – COLLECTION AND RECOVERY OF TAX AND REFUND OF TAX

Tax as a debt due to the State

32. (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.

Mutual administrative assistance in the recovery or collection tax claims

32A. (1) The Commissioner may recover or collect a tax claim pursuant to an international tax agreement contemplated in section 6A (3).

(2) The recovery of the tax claim under subsection (1), shall be in response to a request by the competent authority of a party to the international tax agreement.

(3) The request under subsection (2) shall be in respect of a tax claim which forms the subject of the international tax agreement permitting its enforcement in the requesting party and, unless otherwise agreed between the parties, which is not contested:

Provided that where the tax claim is against a person who is not a resident of the requesting state, this section shall only apply, unless otherwise agreed between the parties to the international tax agreement, where the claim may no longer be contested.

(4) The Commissioner, in respect of a request under subsection (2) —

- (a) may apply for an order under section 43 (3); and
- (b) shall issue to the person who is alleged to be liable to pay the tax a notice requiring that person to state, within the period specified in the notice, whether that person admits liability for the amount or a lesser amount.

(5) The request under subsection (2) shall —

- (a) be in the prescribed form;
- (b) be accompanied by a tax claim issued by the requesting party in the form provided for by the relevant law of that requesting party;
- (c) indicate the amount of the tax due;
- (d) indicate whether liability for the amount is contested under the laws of the requesting party;
- (e) indicate, where liability for the amount is contested, whether the requesting party believes that the purpose of the dispute is to delay or frustrate the collection of the amount alleged to be due; and

- (f) indicate whether there is a risk of the person who is alleged to be liable to pay the tax due, dissipating or concealing assets.

(6) Where the person who is alleged to be liable to pay the tax due admits liability, the Commissioner may issue a notice requiring that person to pay the amount for which the person has admitted liability, on a date specified in the notice.

(7) Where the person who is alleged to be liable to pay the tax due contests liability, the Commissioner shall, after consulting the requesting party, determine whether —

- (a) the liability for the amount due is not disputed in terms of the relevant laws of the requesting state;
- (b) despite the liability for the tax due being contested, the purpose of the dispute is to delay or frustrate the collection of the tax due; or
- (c) there is a risk of the person who is alleged to be liable to pay the tax due, dissipating or concealing assets,

and the Commissioner may then issue a notice requiring that person to pay the tax due or amount specified in the notice, on a date specified in the notice.

(8) If the person fails to comply with the notice under subsection (6), the Commissioner may commence proceedings for the recovery of the tax claim.

(9) The steps taken to assist the requesting party shall not affect the right of the person who is alleged to be liable to pay the tax due to have the liability for the tax determined in accordance with the Laws of Kenya.

(10) Where the Commissioner recovers or collects the tax due to the requesting party, the Commissioner shall deposit the amount into a dedicated account in the Central Bank of Kenya after which the amount shall be remitted to an account specified by the requesting party.

[Act No. 4 of 2023, s. 54.]

Extension of time to pay tax

33. (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.]

Priority of tax

34. (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 (Cap. 476);
- (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 (Cap. 472);
- (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.

Order of payment

35. (1) When a taxpayer is liable to pay a penalty or a 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.

Security for payment of tax

36. 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. *Repealed by Act No. 4 of 2023, s. 55.*

37A. *Repealed by Act No. 8 of 2021, s. 38.*

Commissioner to refrain from assessing tax for income earned outside Kenya

37B. (1) 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, 2017, and from following up on the sources of income under the amnesty where—

- (a) that income has been declared for the year 2017 by a person earning taxable income outside Kenya;
- (b) the returns and accounts for the year 2017 are submitted on or before the 30th June, 2019; and
- (c) the funds declared voluntarily have been transferred back to Kenya.

(2) 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 any matter relating to the tax; or
- (b) is under audit, investigation or is a party to ongoing litigation in respect of the undisclosed income or any matter relating to the undisclosed income.

(3) 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 ten percent shall be levied on the remittance.

(4) The funds transferred under the amnesty shall be exempt from the provisions of Proceeds of Crime and Anti-Money Laundering Act (Cap. 59A) or any other Act relating to reporting and investigation of financial transactions, to the extent of the source of the funds excluding funds derived from proceeds of terrorism, poaching and drug trafficking.

[Act No. 38 of 2016, s. 39(b), Act No. 15 of 2017, s. 27, Act No. 10 of 2018, s. 39.]

Commissioner to refrain from recovering penalties or interest from companies that list on the growth segment

37C. (1) Notwithstanding any other provision of this Act, the Commissioner shall refrain from recovering penalties or interest from a company that lists on the growth segment of a securities exchange in Kenya, in respect of any year of income prior to the date of listing where the company makes full disclosure of its past income, assets and liabilities for the two years immediately preceding the date of listing:

Provided that the principal tax shall be paid in full.

(2) 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 any matter relating to the tax; or
- (b) is under audit or investigation in respect of the undisclosed income or any matter relating to the undisclosed income.

(3) Notwithstanding subsection (1), a company that delists from the exchange in which it is listed before the expiry of five years from the date of listing shall be assessed for all taxes, penalties or interest for the years it was in operation prior to listing.

(4) The provisions of subsection (1) shall cease to apply after three years from the commencement of this section.[Act No. 23 of 2019, s. 28.]

Voluntary Tax Disclosure Programme

37D. (1) There is established a programme to be known as the Voluntary Tax Disclosure Programme which shall be for a period of three years with effect from the 1st January, 2021.

(2) For purpose of this section, "voluntary tax disclosure programme" means a programme where a person discloses the person's tax liabilities to the Commissioner for the purpose of being granted relief of penalties and interest on the tax disclosed.

(3) A person with a tax liability may apply to the Commissioner for relief in the prescribed form with respect to tax liabilities that accrued within a period of five years prior to the 1st July, 2020.

(4) A person granted relief under this section shall not be prosecuted with respect to the tax liability disclosed under this section and shall be granted-

- (i) where the disclosure is made and tax liability paid in the first year of the programme, a full remission of the interest and penalty;
- (ii) where the disclosure is made and tax liability paid in the second year of the programme, remission of fifty per cent of the interest and penalty; and
- (iii) where the disclosure is made and tax liability paid in the final year of the programme, remission of twenty-five percent of the interest and penalty.

(5) An application under subsection (3) shall be voluntary and disclose all material facts.

(6) Where the Commissioner is satisfied with the facts disclosed in the application under subsection (3), the Commissioner shall grant the relief applied for:

Provided that the relief shall not result in the payment of a refund to the person.

(7) Where the Commissioner grants relief under subsection (6), the Commissioner shall enter into an agreement with the person setting out the terms of payment of the tax liability and the period within which the payment shall be made which shall not exceed one year from the date of the agreement.

(8) Where a person fails to meet the terms of the agreement under subsection (7), that person shall be liable to pay the full interest and penalty that had been remitted under the agreement.

(9) A person granted relief under this section shall not seek any other remedy including the right to appeal with respect to the taxes, penalties and interest remitted by the Commissioner.

(10) Where, before the expiry of the agreement between the Commissioner and the person, the Commissioner establishes that the person failed to disclose a material fact in respect of the relief granted under this section, the Commissioner may-

- (a) withdraw any relief granted;
- (b) assess and collect any balance of the tax liability; or
- (c) commence prosecution under section 80.

(11) A person aggrieved by a decision of the Commissioner under subsection (10) may appeal against the decision.

(12) This section shall not apply to a person if the person-

- (a) is under audit, investigation or is a party to ongoing litigation in respect of the tax liability or any matter relating to the tax liability; or
- (b) has been notified of a pending audit or investigation by the Commissioner.

(13) The disclosure of a tax liability under this section shall be confidential.

[Act No. 8 of 2020, s. 18.]

Commissioner to refrain from recovering interest, penalties or fines.

37E. (1) Notwithstanding any other provision of this Act, the Commissioner shall refrain from recovering penalties or interest on tax debt where a person had paid all the principal tax due before the 31st December, 2022.

(2) Where all the principal tax due had not been paid before the 31st December, 2022, a person shall apply to the Commissioner for an amnesty of interest or penalties on the unpaid tax, and propose a payment plan for the outstanding amount.

(3) For the purposes of subsection (2)—

- (a) the amnesty shall be on interest or penalties on the unpaid tax that have accrued up to the 31st December, 2022;
- (b) the amnesty shall only be granted once if the person —
 - (i) applies for amnesty and pays all the outstanding principal taxes not later than the 30th June 2024;
 - (ii) does not incur a further tax debt; and
 - (iii) signs a commitment letter for the settlement of all outstanding taxes that the person may owe.

(4) Despite subsection (2), any amount of principal tax as at 31st December, 2022 that remains unpaid on the 30th June, 2024, shall attract interest and penalties for which no amnesty shall be granted under this section.

(5) Despite subsection (1) the Commissioner shall not remit, in whole or in part, any penalty or interest payable by a person, imposed under section 85.

[Act No. 4 of 2023, s. 56.]

Late payment interest

38. (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.

Recovery of unpaid tax by suit

39. (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.

Penalty for failure to deduct or withhold tax

39A. Where a person who is required under a tax law to deduct or withhold tax and remit the tax to the Commissioner fails to do so, the provisions of this Act relating to the collection and recovery of tax, and the payment of penalties and interest thereon, shall apply to the collection and recovery of that tax not deducted or withheld as if it were tax due and payable by that person and the due date for the payment shall be the date on which the amount of tax should have been remitted to the Commissioner.

[Act No. 23 of 2019, s. 29.]

Security on property for unpaid tax

40. (1) Where a taxpayer, being the owner of property in Kenya, fails to pay a tax by the due date, the Commissioner may notify the Registrar in writing that the property, to the extent of the taxpayer's interest in the property, shall be the subject of a security for the unpaid tax specified in the notification:

Provided that the Commissioner shall, within seven days from the date of the notification to the Registrar, by notice in writing inform the taxpayer and any other person who may have an interest in the property about the notification.

(2) Where the Registrar has been notified by the Commissioner under subsection (1), the Registrar shall, without levying or charging a fee, register the Commissioner's notification as if it were an instrument of restraint on the disposal, mortgage on, or charge, as the case may be, the property specified in the notification.

(3) A registration under subsection (2) shall, subject to any prior restraint on disposal, mortgage or charge, operate as a legal restraint on the disposal, mortgage, or charge on, the property to secure the amount of the unpaid tax, and any prior restraint shall supersede the Commissioner's notification.

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

(5) Where the taxpayer fails to pay the tax liability described in the notification under subsection (1) within two months after receipt of the notification, the Commissioner or authorised officer may, at the cost of the taxpayer, dispose of the property that is the subject of the restraint on disposal, mortgage or charge, by public auction or private treaty, or as provided for under the relevant Act for the recovery of the tax:

Provided that where a plan has been agreed between the taxpayer and the Commissioner, the liability shall be settled within the agreed payment plan before the notification by the Commissioner is lifted.

(6) Subject to section 34, where the property is subject to a prior restraint, that prior restraint shall have priority if the property is disposed of under subsection (5).

(7) For the purpose of this section—

“property” means land or building, aircraft, ship, motor vehicle, or any other property which the Commissioner may deem sufficient to serve as security for unpaid taxes;

“Registrar” includes—

- (a) the Land Registrar defined in section 3 of this Act;
- (b) the Registrar of Ships appointed under section 14 of the Kenya Maritime Authority Act (Cap. 370);
- (c) the Director-General of the Kenya Civil Aviation Authority appointed under section 19 of the Civil Aviation Act (Cap. 394);
- (d) the Director-General of the National Transport and Safety Authority appointed under section 15 of the National Transport and Safety Authority Act (Cap. 404); or
- (e) any other person who the Commissioner is satisfied has authority to hold property sufficient to serve as security for unpaid taxes;

“relevant Act” includes the Kenya Maritime Authority Act (Cap. 370), Merchant Shipping Act (Cap. 389), Civil Aviation Act (Cap. 394), Land Registration Act (Cap. 300), Land Act (Cap. 280), National Transport and Safety Act (Cap. 404), or any other Act that provides for the registration of property.

[Act No. 22 of 2022, s. 39.]

Distress orders

41. (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.

Power to collect tax from person owing money to a taxpayer

42. (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 "an agent")—

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

(6) When an agent 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 an agent on behalf of, or due by an agent to the taxpayer, an agent shall notify the Commissioner in writing within fourteen days of receiving the notice, setting out the reasons for an agent's inability to comply.

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

- (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 agent 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 under this subsection (2), when serving the agent.

(10) A payment made by an agent 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 agent of any liability to the taxpayer or any other person.

(11) The Commissioner shall credit any amount paid by an agent 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.

(14) The Commissioner shall not issue a notice under this section unless—

- (a) the taxpayer has defaulted in paying an instalment under section 33 (2);
- (b) the Commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period;
- (c) the taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines;
- (d) the taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed; or
- (e) the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.

[Act No. 38 of 2016, s. 40, Act No. 10 of 2018, s. 40, Act No. 22 of 2022, s. 40, Act No. 4 of 2023, s. 57.]

Appointment of Value Added Tax withholding agent

42A. (1) The Commissioner may appoint a person to withhold two 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:

Provided that the withholding tax shall not apply to the taxable value of zero-rated supplies and registered manufacturers whose value of investment in the preceding three years from the 1st July, 2022 is at least three billion.

(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) *Deleted by Act No. 8 of 2021, s. 39.*

(4B) The tax withheld under this section shall be remitted to the Commissioner within five working days after the deduction was 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 fifth working day after 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 (Cap. 476) 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, Act No. 23 of 2019, s. 30,
Act No. 8 of 2021, s. 39, Act No. 22 of 2022, s. 41, Act No. 4 of 2023, s. 58.]

Appointment of digital service tax agent

42B. (1) The Commissioner may appoint an agent for the purpose of collection and remittance of digital service tax to the Commissioner.

(2) An appointment under subsection (1) may be revoked at any time by the Commissioner.

[Act No. 8 of 2020, s. 19.]

Appointment of rental income tax agents

42C. (1) The Commissioner may appoint an agent for the purpose of the collection and remittance of rental income tax to the Commissioner.

(2) An appointment under subsection (1) may be revoked at any time by the Commissioner.

[Act No. 4 of 2023, s. 59.]

Preservation of funds

43. (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.

Seizure and forfeiture of goods

44. (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.

Departure prohibition order

45. (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 or tax representative.

(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 or tax representative.

(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 tax representative; 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 or tax representative.

(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 (Cap. 171).

Transferred tax liabilities

46. (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.

Offset or refund of overpaid tax

47. (1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner, in the prescribed form—

- (a) to offset the overpaid tax against the taxpayer's outstanding tax debts and future tax liabilities; or
- (b) for a refund of the overpaid tax within five years, or six months in the case of value added tax, after the date on which the tax was overpaid.

(2) The Commissioner shall ascertain and determine an application under subsection (1) within ninety days and where the Commissioner ascertains that there was an overpayment of tax—

- (a) in the case of an application under subsection (1)(a), apply the overpaid tax to such outstanding tax debts or future tax liability; and
- (b) in the case of an application under subsection (1)(b), refund the overpaid tax within a period of six months from the date of ascertainment and, if the Commissioner fails to refund, the overpaid tax shall be applied to offset the taxpayer's outstanding tax debt or future tax liabilities.

(3) Where the Commissioner fails to ascertain and determine an application under subsection (1) within ninety days, the same shall be deemed ascertained and approved.

(4) The Commissioner may, for purposes of ascertaining the validity of an application under subsection (1), subject the application to an audit.

(4A) Where an application under subsection (1) has been subjected to an audit under subsection (4), the Commissioner shall ascertain and determine the application within one hundred- and twenty-days failure to which, the application shall be deemed to have been ascertained and approved.

(5) Where the application is for a refund of tax under subsection (1)(b), the Commissioner shall apply the overpayment in the following order—

- (a) in payment of any other tax owing by the taxpayer under the specific 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.

(6) Where the Commissioner fails to refund the overpaid tax within the period specified in subsection (2)(b), the amount due shall attract interest of one per cent for each month or part thereof during which the amount remains unpaid.

(7) Where the Commissioner notifies a taxpayer that an application under subsection (1)(a) has been ascertained and applies the overpaid tax liability to offset an outstanding tax in accordance with subsection (2)(a), interest or penalties shall not accrue on the amount applied to offsetting the outstanding tax liability from the date of the notification.

(8) Where the Commissioner has applied the overpaid tax to offset an outstanding tax liability under subsection (2)(a), any outstanding tax after such application shall accrue interest and penalties in accordance with this Act.

(9) Notwithstanding any other provision of this section, where a person overpays an instalment tax due under section 12 of the Income Tax Act (Cap. 470), the Commissioner shall apply the overpaid tax to offset the taxpayer's future instalment tax liability.

(10) Where, after the application of the overpaid tax under subsection (9), the Commissioner later determines that there was no overpayment of instalment tax, the amount of the tax that was used to offset the taxpayer's future instalment tax liabilities under subsection (9) shall be treated as a tax due to the Commissioner in the subsequent tax period.

(11) The amount due under subsection (10) shall be due from the date that the Commissioner applied that amount to offset an instalment tax liability.

(12) The Commissioner shall notify the taxpayer in writing of the amount due under subsection (10) and specify in the notification—

- (a) the interest on the amount due; and
- (b) any penalties due in respect of the amount due.

(13) A person aggrieved by a decision of the Commissioner under this section may appeal to the Tribunal within thirty days after being notified of the decision.

[Act No. 38 of 2016, s. 42, Act No. 8 of 2021, s. 40, Act No. 22 of 2022, s. 42, Act No. 4 of 2023, s. 60.]

Refund of tax paid in error

47A. (1) Where tax has been paid in error, the Commissioner shall, except as otherwise provided in this Act or the relevant tax law, refund such tax.

(2) In processing a refund under subsection (1), the provisions of section 47(1), (2), (3), (4) and (5) shall apply, with the necessary modifications.

(3) For the purposes of this section, "tax paid in error" means any tax paid which the Commissioner is satisfied ought not to have been paid.

[Act No. 22 of 2022, s. 43.]

Refund of tax paid on exempted or zero-rated supply

47B. The Commissioner may, upon approval by the Cabinet Secretary, refund a tax paid in error in any case where the supply is exempt or zero-rated under the Act

but such exemption or the zero rating was not processed within the specified period due to circumstances beyond the control of the taxpayer.

[Act No. 22 of 2022, s. 43.]

Erroneous refund of tax

48. (1) Where any tax has been refunded 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

Statement of reasons

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

Conclusiveness of tax decisions

50. (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.

Objection to tax decision

51. (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;
- (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 or has applied for an extension of time to pay the tax not in dispute under section 33(1); and
- (c) all the relevant documents relating to the objection have been submitted.

(4) Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall within a period of fourteen days notify the taxpayer in writing that the objection has not been validly lodged and request the taxpayer to submit the information specified in the notice within seven days after the date of the notice.

(4A) Despite subsection (3), where a taxpayer fails to provide the information required under subsection (4) or fails to provide the information within the specified period, the Commissioner may make an objection decision within sixty days after the date on which the notice of objection was 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 shall consider and may allow an application under subsection (6) 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.

(7A) The Commissioner shall notify the taxpayer of the decision made under subsection (7) within fourteen days after receipt of the application,

(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) The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection failure to which the objection shall be deemed to be allowed.

(12) A person who is dissatisfied with the decision of the Commissioner under subsection (11) may appeal to the Tribunal within thirty days after being notified of the decision.

[Act No. 10 of 2018, s. 41, Act No. 23 of 2019, s. 32, Act No. 22 of 2022, s. 44, Act No. 4 of 2023, s. 61.]

Appeal of appealable decision to the Tribunal

52. (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 (Cap. 469A).

(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.

Appeals to High Court

53. 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 (Cap. 469A).

Appeals to Court of Appeal

54. 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.

Settlement of dispute out of Court or Tribunal

55. (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 one hundred and twenty 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.

[Act No. 4 of 2023, s. 62.]

General provisions relating to objections and appeals

56. (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.

Admissibility of evidence

57. 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 58, 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.

[Act No. 8 of 2021, s. 41.]

PART IX – ENFORCEMENT

Power to inspect goods, records, etc.

58. (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.

Production of records

59. (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.

Data management and reporting system

59A. (1) The Commissioner may establish a data management and reporting system for the submission of electronic documents including detailed transactional data relating to those documents.

(2) The Commissioner shall notify in writing the persons required to submit electronic documents through the system established under subsection (1).

(3) The electronic documents referred to in subsection (2) include electronic invoice returns—

- (a) of payments made by a person in the ordinary course of business where goods were exchanged for consideration by a person not employed in the business;

- (b) for payments made by a person in the ordinary course of business where services were rendered, or in anticipation of services to be rendered, by a person not employed in the business;
 - (c) for payments for services rendered, or in anticipation of services to be rendered, in connection with the formation, acquisition, development, or disposal of a business or a part of it, by persons not employed in the business;
 - (d) for periodical or lump sum payments in respect of a royalty; or
 - (e) for such other commercial or financial transaction as may be designated by the Commissioner.
- (4) For the purposes of this section—
- (a) “transactional data” includes—
 - (i) the names and addresses of each person to whom a payment was made;
 - (ii) where the payment is for services, the amount of the payment specifying whether the payment is a commission of any kind or is for expenses incurred in connection with rendering the services;
 - (iii) where the payment is in any form of valuable consideration other than money, the particulars of the consideration; and
 - (iv) such other particulars as the Commissioner may specify;
 - (b) references to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of expenses incurred in connection with the rendering of services; and
 - (c) references to the making of payments include references to the giving of any form of valuable consideration, and the requirement imposed by paragraph (a)(iii) to state the amount of a payment shall, in relation to any consideration given otherwise than in the form of money, be construed as a requirement to give particulars of the consideration.

[Act No. 4 of 2023, s. 63.]

Power of search and seize

60. (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.

Notice to appear before the Commissioner

61. 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

Binding public rulings

62. (1) The Commissioner may make a public ruling in accordance with section 63 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.

[Act No. 10 of 2018, s. 42.]

Making a public ruling

63. (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 (Cap. 469A).

Withdrawal of a public ruling

64. (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.

Binding private rulings

65. (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 sixty 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.[Act No. 2 of 2020, Sch.]

Refusing an application for a private ruling

66. (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.

Making a private ruling

67. (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 (Cap. 469A).

Withdrawal of a private ruling

68. (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. *Repealed by Act No. 2 of 2020, Sch.*

PART XI – COMMUNICATIONS, FORMS AND NOTICES

Official languages

70. 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.

Prescribed form

71. (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.

Tax Compliance Certificate

72. (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.

Manner of submitting documents to the Commissioner

73. (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.

Service of notices by the Commissioner

74. (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.

Application of electronic tax system

75. (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.

Admissibility of documents produced electronically

76. 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.

Due date for submission and payment

77. 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 where a person who submits a notice of objection in electronic form or a tax return in electronic form, or pays the tax electronically, the due date shall remain the date specified in the relevant tax law.

[Act No. 8 of 2021, s. 42.]

Defect not to affect validity of tax assessments or other documents

78. (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, or 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.

Rectification of mistakes

79. 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

General provisions relating to administrative penalties and offences

80. (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 47, and the person shall not pay a penalty, in the case of a prosecution, unless the prosecution is withdrawn.

[Act No. 10 of 2018, s. 43.]

Penalties relating to registration or licensing

81. (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.

Penalty for failing to keep documents

82. (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.

Late submission penalty

83. (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) one thousand shillings if it is in relation to a return required to be submitted under Turnover Tax; or
- (c) five per cent of the amount of tax payable under the return or ten thousand shillings, whichever is the higher, if it is in relation to value added tax or excise duty;

- (d) in any other case—
 - (i) five per cent of the amount of tax payable under the return or twenty thousand shillings, whichever is the higher, in respect of a person other than an individual; or
 - (ii) five per cent of the amount of tax payable under the return or two thousand shillings, whichever is the higher, for an individual:

Provided that in the calculation of the late submission penalty for purposes of this section, the amount of tax payable or due under the return shall be reduced by the amounts already paid and withholding tax credits.

(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.

[Act No. 10 of 2018, s. 44, Act No. 23 of 2019, s. 33, Act No. 2 of 2020, Sch.]

Late payment penalty

83A. A person who fails to pay tax on the due date shall be liable to pay a late payment penalty of five percent of the tax due and payable.

[Act No. 10 of 2018, s. 45.]

Tax shortfall penalty

84. (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.
- (b) *deleted by Act No. 23 of 2019, s. 34.*

(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.

[Act No. 23 of 2019, s. 34.]

Tax avoidance penalty

85. 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.

Penalty for failing to comply with electronic tax system.

86. (1) Where a tax law requires a taxpayer to issue an electronic tax invoice, submit a tax return in electronic form or pay a tax electronically, and the taxpayer fails to comply with that tax law, the Commissioner shall issue a notice in writing to the taxpayer requesting the reasons for the non-compliance.

(2) Where the reasons given under subsection (1) do not satisfy the Commissioner, the taxpayer shall be liable to a penalty of two times the tax due.

[Act No. 4 of 2023, s. 64.]

Penalties for failure to appear before the Commissioner

87. 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.

Penalty in relation to fraudulent claim for refund

88. 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.

Penalties for non-compliance with common reporting standard obligations

88A. (1) A person who makes a false statement or omits any information required to be included in an information return under section 6B, shall be liable to a penalty of one hundred thousand shillings for each such false statement or omission to imprisonment for a term not exceeding three years or to both unless, in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information from that other person.

(2) A reporting financial institution that fails to file an information return or a "nil" return when required under section 6B shall be liable to pay a penalty of one million shillings for each such failure.

(3) A person who fails to comply with a duty or obligation under section 6B shall be liable, where no other penalty is prescribed, to a penalty of twenty thousand shillings, and twenty thousand shillings for each day during which non-compliance continues for a period not exceeding sixty days.

[Act No. 8 of 2021, s. 43.]

General provisions relating to penalty

89. (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 shall 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) *Deleted by Act No. 4 of 2023, s. 65 (a).*

(7) *Deleted by Act No. 4 of 2023, s. 65 (b).*

(8) *Deleted by Act No. 4 of 2023, s. 65 (c).*

(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, Act No. 10 of 2018, s. 46, Act No. 4 of 2023, s. 65.]

Offences relating to registration or licensing

90. (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.

Offences relating to PINs

91. (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.

Offences by tax agent

92. 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.

Failure to maintain documents

93. (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.

Failure to submit tax return or other document

94. (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.

Failure to pay tax

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

False or misleading statements

96. (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.

Commissioner may seek intervention from relevant authorities

96A. The Commissioner may seek the intervention of a relevant authority in the collection of tax where a person who provides services over the internet or an electronic network including through a digital marketplace has not fulfilled the person's tax obligations.

Fraud in relation to tax

97. 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.

Offence of impersonating an authorized officer

97A. (1) A person who is not an authorised officer commits an offence if that person assumes the name or designation of an authorised officer and performs or procures the performance of any act which that person is not entitled to do.

(2) A person convicted of an offence under subsection (1) shall be liable to imprisonment for a term not exceeding three years.

[Act No. 4 of 2023, s. 66.]

Offences relating to recovery of tax

98. (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 —
 - (i) the securing of the property or goods; and
 - (ii) the discovery of proof of the commission of an offence;
- (e) *deleted by Act No. 8 of 2021, s. 45(b).*
- (f) *deleted by Act No. 8 of 2021, s. 45(c).*
- (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).

[Act No. 8 of 2021, s. 45.]

Offences relating to enforcement powers

99. (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 section 59 (1)(a) or (b);
- (b) fails to appear before the Commissioner; or
- (c) fails to answer any question put to the person by the Commissioner or authorised officer in accordance with section 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).

[Act No. 8 of 2021, s. 46.]

Obstruction of authorised officer

100. 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.

Aiding or abetting an offence

101. 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.

Offences by officers and staff of the Authority

102. (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) wilfully 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.

Offences by employees, agents, and companies

103. (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.

Unauthorized access or improper use of computerized tax system

103A. (1) A person who—

- (a) knowingly and without lawful authority, by any means, gains access to or attempts to gain access to any computerized tax system;
- (b) having lawful access to any computerized tax system, knowingly uses or discloses information obtained from such system for a purpose that is not authorised; or
- (c) knowing that he is not authorized to do so, receives information obtained from any computerized tax system, and uses, discloses, publishes, or otherwise disseminates such information, commits an offence.

- (2) A person convicted of an offence under subsection (1) shall be liable—
- (a) in the case of a natural person, to imprisonment for a term not exceeding two years, or to a fine not exceeding four hundred thousand shillings, or to both; or
 - (b) in the case of a body corporate, to a fine not exceeding one million shillings.[Act No. 10 of 2018, s. 47.]

Interference with computerized tax system

103B. (1) A person who knowingly—

- (a) falsifies any record or information stored in any computerized tax system;
- (b) damages or impairs any computerized tax system; or
- (c) damages or impairs any duplicate tape or disc or other medium on which any information obtained from a computerized tax system is held or stored otherwise than with the permission of the Commissioner,

commits an offence.

(2) A person convicted of an offence under subsection (1) shall be liable to imprisonment for a term not exceeding three years, or to a fine not exceeding eight hundred thousand shillings, or to both.

[Act No. 10 of 2018, s. 47.]

Sanctions for offences

104. (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 or to imprisonment for a term not exceeding three years, or to both.

(2) A person convicted of an offence under section 98(1) or section 102(1) is liable to a fine not exceeding two million shillings or 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.

[Act No. 10 of 2018, s. 48, Act No. 4 of 2023, s. 67.]

Payment of tax on conviction

105. 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.

Jurisdiction to try cases

106. (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.

Authorised officer may appear on prosecution

107. (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 (Cap. 6B).

Tax to be paid despite prosecution

108. 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.

Power of the Commissioner to compound offences

109. (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. *Spent.*

Protection of officers

111. No officer shall be personally liable for any act or omission done or committed in good faith 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.

[Act No. 8 of 2021, s. 47.]

Regulations

112. (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.

Transitional and saving

113. (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

(s. 12)

[Act No. 23 of 2019, s. 35, Act No. 8 of 2021, s. 48, Act No. 22 of 2022, s. 45.]

- (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.
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- (15) Registration of a trust.

SECOND SCHEDULE
CONSEQUENTIAL AMENDMENTS

(s. 101)

Spent

CHAPTER 469B

THE TAX PROCEDURES ACT

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THE TAX PROCEDURES (COMMON REPORTING STANDARDS) REGULATIONS

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THE TAX PROCEDURES (COMMON REPORTING STANDARDS) REGULATIONS

[L.N. 8/2023, L.N. 74/2023]

PART I – PRELIMINARY

Citation and commencement.

1. These Regulations may be cited as the Tax Procedures (Common Reporting Standards) Regulations, 2023, and shall be deemed to have come into operation on the 1st of January, 2023.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Account Holder" means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account:

Provided that—

- (a) a person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of these Regulations, and such other person is treated as holding the account;
- (b) in the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract;
- (c) if no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract; and
- (d) upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder;

"Active NFE" means any NFE that meets any of the following criteria—

- (a) less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- (b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- (c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- (d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

- (e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution:
 Provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- (f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution; and
- (g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity:
 Provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;
- (h) where the NFE is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare, the NFE shall meet all the following requirements—
 - (i) NFE is exempt from income tax in its jurisdiction of residence;
 - (ii) NFE has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - (iii) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
 - (iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof;

"Anti-Money Laundering/Know Your Customer (AML/KYC) Procedures" means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject;

"Annuity Contract" means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals, including a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years;

"Broad Participation Retirement Fund" means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered;

[Subsidiary]

Provided that the fund—

- (a) does not have a single beneficiary with a right to more than 5% of the fund's assets;
- (b) is subject to government regulation and provides information reporting to the tax authorities; and
- (c) satisfies at least one of the following requirements—
 - (i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
 - (ii) the fund receives at least 50% of its total contributions, other than transfers of assets from other plans described under the Narrow Participation Retirement Fund, Pension Fund of a Governmental Entity, International Organisation or Central Bank or from retirement and pension accounts or another Broad Participation Retirement Fund described under these Regulations from the sponsoring employers;
 - (iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death, except rollover distributions to other retirement funds described in the Narrow Participation Retirement Fund, Pension Fund of a Governmental Entity, International Organisation or Central Bank or from retirement and pension accounts or another Broad Participation Retirement Fund or penalties that applied to distributions or withdrawals made before such specified events; or
 - (iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed USD 50 000 annually, applying the rules provided for under Regulations 27, 28, 29, 30 and 31 to these Regulations;

"Cash Value" means the greater of—

- (a) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan); and
- (b) the amount the policyholder can borrow under or with regard to the contract, Provided that the term "Cash Value" does not include an amount payable under an Insurance Contract—
 - (i) solely by reason of the death of an individual insured under a life insurance contract;
 - (ii) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
 - (iii) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
 - (iv) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph (ii); or
 - (v) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of

the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract;

"Cash Value Insurance Contract" means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value;

"Central Bank" means an institution that is by law or government sanction the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency and such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction;

"Controlling Persons" means the natural persons who exercise control over an Entity:

Provided that Controlling Persons shall be interpreted in a manner consistent with the Financial Action Task Force (FATF) Recommendations (as adopted in February 2012) and shall apply as follows—

- (a) for an Entity that is a legal person, the words "Controlling Persons" means—
 - (i) the natural person(s) who exercises control over the Entity and "Control" over an Entity is exercised by the natural person(s) who owns more than 10%;
 - (ii) where no natural person(s) exercises control through ownership interests, the natural person(s) who exercises control of the Entity through other means;
 - (iii) where no natural person(s) is identified as exercising control of the Entity, the natural person(s) who holds the position of senior managing official;
- (b) in the case of a trust, the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, including any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership);
- (c) in the case of a legal arrangement other than a trust, persons in equivalent or similar positions as those that are Controlling Persons of a trust; and
- (d) in relation to legal persons, those that are functionally similar to trusts, including foundations, persons identified by Reporting Financial Institutions through similar customer due diligence procedures as those required for trusts;

Note: Where a Reporting Financial Institution relies on information collected and maintained pursuant to AML/KYC Procedures for purposes of determining the Controlling Persons of an Account Holder of a New Entity Account, such AML/KYC Procedures must be consistent with Recommendations 10 and 25 of the Financial Action Task Force (FATF) Recommendations (as adopted in February 2012), including always treating the settlor(s) of a trust as a Controlling Person of the trust and the founder(s) of a foundation as a Controlling Person of the foundation and for purposes of determining the Controlling Persons of an Account Holder of a Pre-existing Entity Account, a Reporting Financial Institution may rely on information collected and maintained pursuant to the Reporting Financial Institution's AML/KYC Procedures.

"Custodial Account" means an account (other than an Insurance Contract or Annuity Contract) which holds one or more Financial Assets for the benefit of another person;

"Custodial Institution" means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of—

[Subsidiary]

- (a) the three-year period that ends on the 31st December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or
- (b) the period during which the Entity has been in existence;

"Depository Account" includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business and includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon;

"Depository Institution" means any Entity that accepts deposits in the ordinary course of a banking or similar business;

"Documentary Evidence" includes any of the following—

- (a) a certificate of residence issued by an authorised government body of the jurisdiction in which the payee claims to be a resident;
- (b) with respect to an individual, any valid identification issued by an authorised government body that includes the individual's name and is typically used for identification purposes;
- (c) with respect to an Entity, any official documentation issued by an authorised government body that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised; or
- (d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report;

"Entity" means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation and an Entity is a "related Entity" of another Entity if either Entity controls the other Entity, or the two Entities are under common control and control includes direct or indirect ownership of more than 50% of the vote and value in an Entity;

"Equity Interest" means—

- (a) in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership; or
- (b) in the case of a trust that is a Financial Institution, an Equity Interest considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust;

Note: A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust. For these purposes, a beneficiary who may receive a discretionary distribution from the trust will only be treated as a beneficiary of a trust if such person receives a distribution in the calendar year or other appropriate reporting period (i.e. either the distribution has been paid or made payable). The same is applicable with respect to the treatment of a Reportable Person as a beneficiary of a legal arrangement that is equivalent or similar to a trust, or foundation.

"Excluded Account" means any of the following accounts—

- (a) a retirement or pension account that satisfies the following requirements—
- (i) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
 - (ii) the account is tax-favoured (i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
 - (iii) information reporting is required to the tax authorities with respect to the account;
 - (iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
 - (v) either annual contributions are limited to USD 50 000 or less; or there is a maximum lifetime contribution limit to the account of USD 1 000 000 or less, in each case applying the rules set forth in Regulations 27, 28, 29, 30 and 31 to these Regulations;

Note: A Financial Account that otherwise satisfies the requirement of subparagraph (v) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of paragraphs (a) or (b) or from one or more retirement or pension funds that meet the requirements under paragraph (c)(i) through (iv) in the definition of "Broad Participation Retirement Fund", "Narrow Participation Retirement Fund" and "Pension Fund of a Governmental Entity, International Organisation or Central Bank";

- (b) an account that satisfies the following requirements—
- (i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;
 - (ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
 - (iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
 - (iv) annual contributions are limited to USD 50 000 or less, applying the rules set forth in Regulations 27, 28, 29, 30 and 31 of these Regulations;

Note: A Financial Account that otherwise satisfies the requirement of paragraph (b) (iv) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of paragraph (a) or (b) or from one or more retirement or pension funds that meet the requirements of any of paragraph (c)(ii) and (iii) in the definition of "Broad Participation Retirement Fund," "Narrow Participation Retirement Fund" and "Pension Fund of a Governmental Entity, International Organisation or Central Bank".

[Subsidiary]

- (c) a life insurance contract with a coverage period that will end before the insured individual attains age 90:

Provided that the contract satisfies the following requirements—

- (i) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
 - (ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
 - (iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
 - (iv) the contract is not held by a transferee for value;
- (d) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate;
- (e) an account established in connection with any of the following—
- (i) a court order or judgment;
 - (ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements—
 - (aa) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
 - (bb) the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
 - (cc) the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
 - (dd) the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset, and
 - (ee) the account is not associated with an account described in paragraph (f);
 - (iii) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;
- and
- (iv) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time;

- (f) a Depository Account that satisfies the following requirements—
 - (i) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
 - (ii) beginning on or before the 1st January, 2023, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in Regulations 27, 28, 29, 30 and 31 of these Regulations:

Provided that for this purpose, a customer overpayment shall not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;

- (g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in paragraphs (a), (b), (c), (d), (e) and (f) and is included in the list of Excluded Accounts (published by the Commissioner):

Provided that the status of such account as an Excluded Account does not frustrate the purposes of these Regulations.

"Exempt Collective Investment Vehicle" means an Investment Entity that is regulated as a collective investment vehicle:

Provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons;

"Financial Account" means an account maintained by a Financial Institution, and includes a Depository Account and a Custodial Account, but does not include Excluded Account;

Notes: When defining "Financial Account", the following shall be noted:

- (a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution shall be taken into consideration. Notwithstanding the foregoing, the term "Financial Account" does not include any equity or debt interest in an Entity that is an Investment Entity solely because it—
 - (i) renders investment advice to, and acts on behalf of; or
 - (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;
- (b) in the case of a Financial Institution not described in paragraph (a), any equity or debt interest in the Financial Institution, if the class of interests was established with the purpose of avoiding reporting; and
- (c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

"Financial Institution" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company;

"Financial Asset" includes a security (including shares of stock in a corporation, partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust, note, bond, debenture, or other evidence of indebtedness), partnership interest,

[Subsidiary]

commodity, swap (including interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract and does not include a non-debt, direct interest in real property;

"Governmental Entity" means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing;

Notes:

This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction, and for this purpose—

- (a) an "integral part" of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity;
- (b) a "controlled entity" means an entity which is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity:

Provided that—

- (i) the entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
 - (ii) the entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
 - (iii) the entity's assets vest in one or more Governmental Entities upon dissolution;
- (c) income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a Governmental Entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons;

"High Value Account" means a Pre-existing Individual Account with an aggregate balance or value that exceeds USD 1 000 000 as of the 31st December, 2022 or 31st December of any subsequent year;

"Information Return" means a report, setting out certain information as specified by these Regulations, which a Reporting Financial Institution is required to file with the Commissioner;

"Insurance Contract" means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk;

"Investment Entity" means any Entity —

- (a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer—
 - (i) trading in money market instruments (including cheques, bills, certificates of deposit, derivatives), foreign exchange, exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 - (ii) individual and collective portfolio management; or
 - (iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
- (b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in paragraph (a);

Notes:

For the purposes of the definition of "Investment Entity"—

- (a) an Entity is "managed by" another Entity if the managing Entity performs, either directly or through another service provider, any of the activities or operations described in paragraph (a) in the definition of "Investment Entity" on behalf of the managed Entity. However, an Entity does not manage another Entity if it does not have discretionary authority to manage the Entity's assets (in whole or part). Where an Entity is managed by a mix of Financial Institutions, NFEs or individuals, the Entity is considered to be managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in paragraph (a) in definition of "Investment Entity", if any of the managing Entities is such another Entity.
- (b) an Entity is treated as primarily conducting as a business one or more of the activities described in paragraph (a) in the definition of "Investment Entity" or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for the purposes of paragraph (b) in the definition of "Investment Entity", if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of—
 - (i) the three-year period ending on the 31st December of the year (or the final day of a non-calendar year accounting period) preceding the year in which the determination is made; or
 - (ii) the period during which the Entity has been in existence.

Note: The term "Investment Entity" does not include an Entity that is an Active NFE because that Entity meets any of the criteria in paragraphs (d), (e), (f) and (g) in the definition of "Active NFE".

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

"International Organisation" means any international organisation or wholly owned agency or instrumentality thereof and this category includes any intergovernmental organisation (including a supranational organisation)—

- (a) that is comprised primarily of governments;
- (b) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and
- (c) the income of which does not inure to the benefit of private persons.

[Subsidiary]

"Kenyan Financial Institution" has the meaning assigned in the Act

"Lower Value Account" means a Pre-existing Individual Account with an aggregate balance or value as of the 31st December, 2022 or 31st December of any subsequent year that does not exceed USD 1 000 000;

"New Account" means a financial account maintained by a Reporting Financial Institution opened on or after the 1st January, 2023;

"NFE" means Non- Financial Entity;

"Non-Reporting Financial Institution" means any Financial Institution that is—

- (a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
- (b) a Broad Participation Retirement Fund, a Narrow Participation Retirement Fund, a Pension Fund of a Governmental Entity, International Organisation or Central Bank, or a Qualified Credit Card Issuer;
- (c) any other Entity that presents a low risk of being used to evade tax and has substantially similar characteristics to any of the Entities described in subparagraphs (a) and (b) above and is included in the list of Non-Reporting Financial Institutions:

Provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of these Regulations;

- (d) an Exempt Collective Investment Vehicle; or
- (e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported with respect to all Reportable Accounts of the trust;

"Participating jurisdiction" means a jurisdiction which is specified in the Schedule of these Regulations;

"Passive Income" includes the portion of gross income that consists of—

- (a) dividends;
- (b) interest;
- (c) income equivalent to interest;
- (d) rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFE;
- (e) annuities;
- (f) the excess of gains over losses from the sale or exchange of Financial Assets from which income described in paragraphs (a) to (e) may be derived;
- (g) the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Financial Assets;
- (h) the excess of foreign currency gains over foreign currency losses;
- (i) net income from swaps; or
- (j) amounts received under Cash Value Insurance Contracts;

Note: Notwithstanding the foregoing, Passive Income will not include, in the case of a NFE, that regularly acts as a dealer in Financial Assets, any income from any transaction entered into in the ordinary course of such dealer's business as such a dealer.

"Passive NFE" means any NFE that is not an Active NFE or an Investment Entity described in subparagraph (b) of the definition of "Investment Entity" that is not a Participating Jurisdiction Financial Institution;

"Pension Fund of a Governmental Entity, International Organisation or Central Bank" means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants who are current or former employees (or persons designated by such employees), or who are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank;

"Pre-existing Account" means a Financial Account maintained by a Reporting Financial Institution as of the 31st December, 2022;

"Pre-existing Entity Account" means a Pre-existing Account held by one or more Entities;

"Pre-existing Individual Account" means a Pre-existing Account held by one or more individuals;

"Qualified Credit Card Issuer" means a Financial Institution satisfying the following requirements—

- (a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
- (b) beginning on or before the 1st January, 2023, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in Regulations 27, 28, 29, 30, and 31 of these Regulations and for this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;

"Reportable Account" means a Financial Account that is maintained by a Reporting Financial Institution and is held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person and identified as such pursuant to the due diligence procedures described in these Regulations;

"Reportable Jurisdiction" means—

- (a) for the purposes of applying the due diligence procedures described in these Regulations, a jurisdiction other than the United States of America or Kenya; and
- (b) for the purposes of applying reporting requirements, a jurisdiction which is published by the Commissioner as such under these Regulations;

"Reportable Jurisdiction Person" means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction;

Note: For this purpose, an Entity such as a partnership, limited liability partnership or similar legal person or arrangement, which has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated. A legal

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person or a legal arrangement (other than a trust that is a Passive NFE) is considered "similar" to a partnership and a limited liability partnership where it is not treated as a taxable unit in a Reportable Jurisdiction under the tax laws of such jurisdiction;

"Reportable Person" means a Reportable Jurisdiction Person other than—

- (a) a corporation the stock of which is regularly traded on one or more established securities markets;
- (b) any corporation that is a Related Entity of a corporation described in paragraph (a);
- (c) a Governmental Entity;
- (d) an International Organisation;
- (e) a Central Bank; or
- (f) a Financial Institution;

"Specified Insurance Company" means any entity that is an insurance company (or the holding company of an insurance company) which issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract;

"TIN" means Tax Identification Number, such as the Personal Identification Number, (or functional equivalent in the absence of a Tax Identification Number).

Application of the Regulations.

3. These Regulations shall be applied and interpreted in accordance with the Common Reporting Standard, including the Commentaries, approved by the Organisation for Economic Co-operation and Development (OECD) on the 15th July, 2014, and as amended from time to time.

PART II – REPORTING AND RECORD-KEEPING OBLIGATIONS

Reporting obligations.

4. (1) Reporting Financial Institutions shall comply with the due diligence procedures set out in these Regulations.

(2) Reporting Financial Institutions shall file with the Commissioner, for each calendar year and each subsequent calendar year, a declaration setting out the information to be reported in accordance with these Regulations, in respect of each Financial Account identified as a Reportable Account that they maintain during a calendar year.

(3) Reporting Financial Institutions shall transmit to the Commissioner the Information Return containing the information to be reported not later than 31st May of the year following the year in respect of which the declaration is filed.

(4) The return to be filed shall be submitted electronically using technology approved or provided by the Commissioner and in the format required by the Commissioner.

(5) If, after applying the due diligence set out in these Regulations, a Reporting Financial Institution does not identify any accounts to be reported for a year, it shall file a return marked "nil".

Record-keeping obligations.

5. Reporting Financial Institutions shall—

- (a) establish, maintain and document the Due Diligence procedures set out in these Regulations;
- (b) keep records that the institution obtains or creates for the purpose of complying with these Regulations, including self-certifications, the steps taken in identifying

the Reportable Accounts and records of Documentary Evidence maintained either in electronic form or paper based; and

- (c) retain those records for a period of at least five years after the end of the period within which the institution must report the information required to be reported under these Regulations.

Self-certification.

6. As from the 1st January, 2023, and in the circumstances where the Due Diligence procedures described in these Regulations require a self-certification to be obtained by a Financial Institution, the Account Holder shall provide a self-certification to establish their tax residence and, where applicable, the Account Holder or Controlling Person shall provide such self-certification in respect of the Controlling Person.

PART III – GENERAL REPORTING AND DUE DILIGENCE REQUIREMENTS

General reporting requirements.

7. (1) Subject to regulation 8, each Reporting Financial Institution must report to the Commissioner the following information with respect to each Reportable Account of such Reporting Financial Institution—

- (a) the name, address, jurisdiction(s), residence, Tax Identification Number (TIN(s)) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account;
- (b) in the case of any entity that is an Account Holder and that, after application of the due diligence procedures consistent with these Regulations, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s), residence and TIN(s) of the entity and the name, address, jurisdiction(s), residence, TIN(s) Number and date and place of birth of each Reportable Person;
- (c) the account number (or functional equivalent in the absence of an account number);
- (d) the name and identifying number (if any) of the Reporting Financial Institution;
- (e) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
- (f) in the case of any Custodial Account—
 - (i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
 - (ii) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- (g) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and

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- (h) in the case of any account not described in paragraphs (f) or (g), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

(2) Each Reporting Financial Institution must file an Information Return with the Commissioner containing the information described in subregulation (1) on or before the 31st May of the year following the calendar year to which the return relates.

(3) If a Reporting Financial Institution applies the due diligence procedures described in these Regulations for a calendar year and no Financial Account is identified as a Reportable Account, the Reporting Financial Institution shall file an Information Return, which provides that the Reporting Financial Institution maintains no such Reportable Accounts in respect of that year, with the Commissioner on or before the 31st May of the year following the calendar year to which the information relates.

Exception to requirements to be reported.

8. Notwithstanding the provisions of regulation 7(1)(a)—

- (a) with respect to each Reportable Account that is a Pre-existing Account or with respect to each Financial Account that is opened prior to becoming a Reportable Account, the TIN or date of birth is not required to be reported if such TIN or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under any law, but a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN and date of birth with respect to Pre-existing Accounts by the end of the second calendar year following the year in which Pre-existing Accounts were identified as Reportable Accounts;
- (b) the TIN is not required to be reported if not issued by the Reportable jurisdiction or the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction;
- (c) the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it and it is available in the electronically searchable data maintained by the Reporting Financial Institution.

Information required for reporting of amounts.

9. For reporting of amounts—

- (a) the information reported must identify the currency in which each amount is denominated; and
- (b) in the case of an account denominated in more than one currency, the information may be reported in a currency in which the account is denominated:

Provided that any currency translation under this paragraph shall be by reference to the spot rate of exchange as of the last day of the calendar year or other appropriate reporting period for which the account is being reported.

PART IV – GENERAL DUE DILIGENCE REQUIREMENTS

General due diligence requirements.

10. (1) A Reporting Financial Institution must establish, maintain and document the due diligence procedures set out in these Regulations that are designed to identify Reportable Accounts maintained by the institution.

(2) An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in these Regulations and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.

(3) The balance or value of an account shall be determined as of the last day of the calendar year or other appropriate reporting period.

(4) Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.

(5) A Reporting Financial Institution may use a service provider to fulfil the reporting and due diligence obligations imposed on such institution, but these obligations shall remain the responsibility of the Reporting Financial Institution.

(6) A Reporting Financial Institution may apply—

- (a) the Due Diligence procedures for New Accounts to all Pre-existing Accounts or with respect to any clearly identified group of Pre-existing Accounts, and the rules otherwise applicable to Pre-existing Accounts shall continue to apply; and
- (b) the Due Diligence Procedures for High Value Accounts to Lower Value Accounts.

PART V – DUE DILIGENCE FOR PRE-EXISTING INDIVIDUAL ACCOUNTS

Accounts not required to be reviewed, identified, or reported.

11. A Pre-existing Individual Account that is a Cash Value Insurance Contract or an Annuity Contract is not required to be reviewed, identified or reported:

Provided that the Reporting Financial Institution is effectively prevented by law from selling such Contracts to residents of a Reportable Jurisdiction.

Lower Value Accounts.

12. (1) The following procedures shall apply with respect to Lower Value Accounts—

- (a) in case of residence address, if the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person;
- (b) if the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in paragraph (a), the Reporting Financial Institution must review electronically

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searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply subregulations (2), (3), (4) and (5)—

- (i) identification of the Account Holder as a resident of a Reportable Jurisdiction;
- (ii) current mailing or residence address (including a post office box) in a Reportable Jurisdiction;
- (iii) one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution;
- (iv) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction;
- (v) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or
- (vi) a "hold mail" instruction or "in-care-of" address in a Reportable Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder.

(2) If none of the indicia listed in subregulation (1)(b)((i)-(iv)) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.

(3) If any of the indicia listed in subregulation (1)(b)((i)-(v)) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply the provision of subregulation (5) and one of the exceptions in that subregulation in respect to the account.

(4) If a "hold mail" instruction or "in-care-of" address is discovered in the electronic search and no other address and none of the other indicia listed in subregulation (1)(b)((i)-(v)) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in regulation 13(1)(b) and (c), or seek to obtain, from the Account Holder, a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder and if the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account as an undocumented account to the Commissioner.

(5) Notwithstanding a finding of indicia under subregulation (1)(b), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Reportable Jurisdiction if—

- (a) the Account Holder information contains a current mailing or residence address of the Reportable Jurisdiction, one or more telephone numbers of the Reportable Jurisdiction (and no telephone number of the Reporting Financial Institution) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in the Reportable

Jurisdiction, and the Reporting Financial Institution obtains, or has previously reviewed and maintains, a record of—

- (i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction;
 - and
 - (ii) Documentary Evidence establishing the Account Holder's jurisdiction(s) of residence for tax purposes other than such Reportable Jurisdiction;
- (b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the Reportable Jurisdiction, and the Reporting Financial Institution obtains, or has previously reviewed and maintains, a record of—
- (i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction; or
 - (ii) Documentary Evidence establishing the Account Holder's Jurisdiction(s) of residence for tax purposes other than such Reportable Jurisdiction.

Enhanced review procedures for High Value Accounts.

13. The following procedures shall apply with respect to High Value Accounts—

- (a) the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in regulation 12(1)(b);
- (b) if the Reporting Financial Institution's electronically searchable databases include fields for, and capture all of the information described in Regulation 14, then a further paper record search is not required;
- (c) if the electronic databases do not capture all of the information envisaged under paragraph (b), then with respect to a High Value Account, the Reporting Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia described in Regulation 12(1)(b)—
 - (i) the most recent Documentary Evidence collected with respect to the account;
 - (ii) the most recent account opening contract or documentation;
 - (iii) the most recent documentation obtained by the Reporting Financial Institution pursuant to Anti- Money Laundering/Know Your Customer (AML/KYC) procedures or for other regulatory purposes;
 - (iv) any power of attorney or signature authority forms currently in effect; and
 - (v) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.

Exception to the extent databases contain sufficient information.

14. A Reporting Financial Institution is not required to perform the paper record search described in regulation 13(1)(b) and (c) to the extent the Reporting Financial Institution's electronically searchable information includes the following—

- (a) the Account Holder's residence status;

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- (b) the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
- (c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
- (d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);
- (e) whether there is a current "in-care-of" address or "hold mail" instruction for the Account Holder; and
- (f) whether there is any power of attorney or signatory authority for the account.

Relationship manager inquiry for actual knowledge.

15. In addition to the electronic and paper record searches described in regulation 13, a Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the account is held by a resident for tax purposes in a Reportable Jurisdiction.

Effect of finding or not finding indicia.

16. (1) If none of the indicia listed in regulation 12 are discovered in the enhanced review of High Value Accounts described in regulation 13, and the account is not identified as held by a resident for tax purposes in a Reportable Jurisdiction in regulation (15), then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.

(2) If any of the indicia listed in regulation 12(1)(b)(i-v) are discovered in the enhanced review of High Value Accounts described in regulation 13 or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified unless it elects to apply regulation 12(5) and one of the exceptions in that regulation applies with respect to that account.

(3) If a "hold mail" instruction or "in-care-of" address is discovered in the enhanced review of High Value Accounts described in regulation 13, and no other address and none of the other indicia listed in regulation 12(1)(b)(i)-(v) are identified for the Account Holder, the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder and if the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account as an undocumented account to the Commissioner.

(4) If a Pre-existing Individual Account is not a High Value Account as of the 31st December, 2022, but becomes a High Value Account as of the 31st December, 2023 or the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in Regulations 13, 14, 15 and 16 with respect to such account within the calendar year following the year in which the account becomes a High Value Account and if based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.

(5) Once a Reporting Financial Institution applies the enhanced review procedures described in regulation 13, 14, 15 and 16 to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in regulation 15, to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should re-apply them annually until such account ceases to be undocumented.

(6) If there is a change in circumstances with respect to a High Value Account that results in one or more indicia described in regulation 12(1)(b) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply regulation 12(5) and one of the exceptions in that subregulation applies with respect to that account.

(7) A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account, including a change in the mailing address.

(8) Any Pre-existing Individual Account that has been identified as a Reportable Account under this Part must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

Timeline for review.

17. Review of Pre-existing High Value Individual Accounts must be completed by the 31st December, 2022, and review of Pre-existing Lower Value Individual Accounts must be completed by the 31st December 2023.

PART VI – DUE DILIGENCE FOR NEW INDIVIDUAL ACCOUNTS

Applicable procedures in respect of New Individual Accounts.

18. (1) With respect to New Individual Accounts, and upon account opening, the Reporting Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to Anti-Money Laundering/Know Your Customer (AML/KYC) Procedures.

(2) If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to regulation 8(b)) and date of birth.

(3) If there is a change in circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution must not rely on the original self-certification and must obtain either –

- (a) a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder; or
- (b) a reasonable explanation and documentation (as appropriate) supporting the validity of the original self-certification (and retain a copy or a notation of such explanation and documentation).

PART VII – DUE DILIGENCE FOR PRE-EXISTING ENTITY ACCOUNTS

Entity Accounts not required to be reviewed, identified or reported.

19. Unless the Reporting Financial Institution elects otherwise, either with respect to all Pre-existing Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Pre-existing Entity Account with an aggregate account balance or value that does not exceed USD 250 000 as of the 31st December, 2022, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds that amount as of the 31st December, 2023, or the last day of any subsequent calendar year.

Entity Accounts subject to review.

20. A Pre-existing Entity Account that has an aggregate account balance or value that exceeds USD 250 000 as of the 31st December, 2022, and a Pre-existing Entity Account that does not exceed USD 250 000 as of the 31st December, 2022, but the aggregate account balance or value of which exceeds USD 250 000 as of the 31st December, 2023, or the last day of any subsequent calendar year, must be reviewed in accordance with the procedures specified in regulation 22.

Entity Accounts with respect to which reporting is required.

21. With respect to Pre-existing Entity Accounts described in regulation 20, only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts.

Review procedures for identifying entity accounts with respect to which reporting is required.

22. (1) For Pre-existing Entity Accounts described in regulation 20, a Reporting Financial Institution must apply the following review procedures—

- (a) when determining the residence of the Entity, the Reporting Financial Institution—
 - (i) must review information maintained for regulatory or customer relationship purposes (including information collected pursuant to Anti-Money Laundering/Know Your Customer (AML/KYC) procedures) to determine the Account Holder's residence and for this purpose, information indicating that the Account Holder's residence includes a place of incorporation or organisation, or an address in a Reportable Jurisdiction; and
 - (ii) if the information indicates that the Account Holder is a Reportable Person, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person;
- (b) when determining the residence of the controlling persons of a passive NFE—
 - (i) with respect to an account holder of a pre-existing Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE

with one or more Controlling Persons and determine the residence of such Controlling Persons;

- (ii) if any of the controlling person of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account,

Provided that in making these determinations the Reporting Financial Institution must follow the guidance in regulation 22 (1) ((a)-(d)) in the order most appropriate under the circumstances.

- (c) when determining whether the Account Holder is a Passive Non-Financial Entity (NFE), the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity that is not a Participating Jurisdiction Financial Institution;
- (d) when determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to Anti- Money Laundering/Know Your Customer Procedures;
- (e) when determining the residence of a Controlling Person of a Passive NFE, a Reporting Financial Institution may rely on —
 - (i) information collected and maintained pursuant to Anti-Money Laundering/ Know Your Customer Procedures in the case of a Pre-existing Entity Account held by one or more NFEs with an aggregate account balance or value that does not exceed USD 1 000 000; or
 - (ii) a self-certification from the Account Holder or such Controlling Person of the jurisdiction(s) in which the controlling person is resident for tax purposes.

(2) If a self-certification is required to be collected and is not obtained with respect to a Controlling Person of a Passive NFE, the Reporting Financial Institution must search for any of the indicia described in regulation 12(1)(b) in its records for such Controlling Person and if any of such indicia are discovered, or if there is a change in circumstances that results in one or more indicia being associated with the Controlling Person, it must treat the Controlling Person as resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified.

(3) With respect to a Pre-existing Entity Account, Reporting Financial Institutions may use as Documentary Evidence any classification in the Reporting Financial Institution's records with respect to the Account Holder that was determined based on a standardised industry coding system recorded by the Reporting Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes) implemented by the Reporting Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account:

Provided that the Reporting Financial Institution does not know or does not have reason to know that such classification is incorrect or unreliable.

(4) For the purposes of subregulation (3), "standardised industry coding system" means a coding system used to classify establishments by business type for purposes other than tax purposes.

Timing of review and additional procedures applicable to Pre-existing Entity Accounts.

23. (1) Review of Pre-existing Entity Accounts—

- (a) with an aggregate account balance or value that exceeds USD 250 000 as of the 31st December, 2022, must be completed by the 31st December, 2023;

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- (b) with an aggregate account balance or value that does not exceed USD 250 000 as of the 31st December, 2022, but exceeds USD 250 000 as of the 31st December, 2023, or the last day of any subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds USD 250 000.

(2) If there is a change in circumstances with respect to a Pre- existing Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the following procedures by the later of the last day of the relevant calendar year, or 90 calendar days following the notice or discovery of the change in circumstances—

- (a) with respect to the determination whether the Account Holder is a Reportable Person, a Reporting Financial Institution must obtain either—
 - (i) a self-certification; or
 - (ii) a reasonable explanation and documentation (as appropriate) supporting the reasonableness of the original self-certification or documentation (and retain a copy or a notation of such explanation and documentation):

Provided that if the Reporting Financial Institution fails to either obtain a self-certification or confirm the reasonableness of the original self-certification or documentation, it must treat the Account Holder as a Reportable Person with respect to both jurisdictions;

- (b) with respect to the determination whether the Account Holder is a Financial Institution, Active NFE or Passive NFE, a Reporting Financial Institution must obtain additional documentation or a self-certification (as appropriate) to establish the status of the Account Holder as an Active NFE or Financial Institution and if the Reporting Financial Institution fails to do so, it must treat the Account Holder as a Passive NFE;
- (c) with respect to the determination whether the Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution must obtain either—
 - (i) a self-certification; or
 - (ii) a reasonable explanation and documentation (as appropriate) supporting the reasonableness of a previously collected self-certification or documentation (and retain a copy or a notation of such explanation and documentation):

Provided that if the Reporting Financial Institution fails to either obtain a self-certification or confirm the reasonableness of the previously collected self-certification or documentation, it must rely on the indicia described in regulation 13(1)(b) it has in its records for such Controlling Person to determine whether it is a Reportable Person.

(3) For purposes of this regulation, the provisions of regulation 25 applicable to Documentary Evidence shall apply to any other documentation relied upon pursuant to the procedures set forth in regulation 22.

PART VIII – DUE DILIGENCE FOR NEW ENTITY ACCOUNTS

Applicable procedures for New Entry Accounts.

24. (1) For New Entity Accounts, a Reporting Financial Institution must apply the following review procedures—

- (a) when determining the residence of the Entity, a Reporting Financial Institution—
 - (i) must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures:

Provided that if the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder;

- (ii) must, where the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, treat the account as a Reportable Account, unless it reasonably determines based on information in its possession or that is publicly available that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction;
- (b) when determining the residence of the Controlling Persons of a Passive NFE with respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons and if any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account:

Provided that in making these determinations the Reporting Financial Institution must follow the guidance provided for under these Regulations in the order most appropriate under the circumstances;
- (c) when determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity that is not a Participating Jurisdiction Financial Institution;
- (d) when determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC procedures; and
- (e) when determining the residence of a Controlling Person of a Passive NFE, a Reporting Financial Institution may only rely on a self-certification from the Account Holder or such Controlling Person.

(2) If there is a change in circumstances with respect to a New Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures specified in regulation 23(2).

PART IX – SPECIAL DUE DILIGENCE RULES**Reliance on Self-Certifications and Documentary Evidence.**

25. A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

Alternative Procedures for Financial Accounts held by Individual Beneficiaries.

26. (1) A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person.

(2) A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described regulation 12(1)(b) and if a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in regulation 12(1)(b).

(3) A Reporting Financial Institution may treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee or certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements —

- (a) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees or certificate holders;
- (b) the employee or certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- (c) the aggregate amount payable to any employee or certificate holder or beneficiary does not exceed USD 1 000 000.

(4) For the purposes of this regulation—

- (a) "Group Cash Value Insurance Contract" means a Cash Value Insurance Contract that—
 - (i) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and
 - (ii) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group; and
- (b) "Group Annuity Contract" means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

Aggregation of Individual Accounts.

27. (1) For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution shall aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity.

(2) Subregulation (1) shall only apply to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated and each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account.

Aggregation of Entity Accounts.

28. (1) For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution shall take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a related Entity.

(2) Subregulation (1) shall only apply to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated and each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account.

Special Aggregation Rule to apply to Relationship Managers.

29. For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a financial account is a High Value Account, a Reporting Financial Institution shall, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, aggregate all such accounts.

Amounts read to include equivalent in other currencies.

30. (1) All dollar amounts are in US dollars and shall be read to include equivalent amounts in other currencies.

(2) If the balance or value of a Financial Account or other amount is denominated in a currency other than US dollars, for the purposes of the thresholds or limits described in these Regulations, a Reporting Financial Institution shall translate such balance, value or amount into the equivalent amount in US dollars by reference to the spot rate of exchange on the date for which the Reporting Financial Institution must determine the equivalent amounts in US dollars.

Accounts with negative balance.

31. An account with a balance or value that is negative shall be deemed to have a balance or value equal to nil.

**PART X – COMPLEMENTARY REPORTING AND DUE
DILIGENCE RULES FOR FINANCIAL ACCOUNT INFORMATION**

Current residence address.

32. (1) For the purposes of the residence address test in regulation 12(1)(a) a residence address is considered to be "current" where it is the most recent residence address that was recorded by a Reporting Financial Institution with respect to the individual Account Holder, but a residence address is not considered to be "current" if it has been used for mailing purposes and mail has been returned undeliverable-as-addressed (other than due to an error).

(2) Notwithstanding the provisions of subregulation (1), a residence address associated with an account that is a dormant account is considered to be "current" during the dormancy period.

[Subsidiary]

(3) For the purposes of subregulation (2), an account (other than an Annuity Contract) is a "dormant account" if—

- (a) the Account Holder has not initiated a transaction with regard to the account or any other account held by the Account Holder with the Reporting Financial Institution in the past three years;
- (b) the Account Holder has not communicated with the Reporting Financial Institution that maintains such account regarding the account or any other account held by the Account Holder with the Reporting Financial Institution in the past six years; and
- (c) in the case of a Cash Value Insurance Contract, the Reporting Financial Institution has not communicated with the Account Holder that holds such account regarding the account or any other account held by the Account Holder with the Reporting Financial Institution in the past six years.

(4) An account ceases to be a dormant account when —

- (a) the Account Holder initiates a transaction with regard to the account or any other account held by the Account Holder with the Reporting Financial Institution; or
- (b) the Account Holder communicates with the Reporting Financial Institution that maintains such account regarding the account or any other account held by the Account Holder with the Reporting Financial Institution.

When current residence address is based on documentary evidence.

33. (1) A current residence address in the Reporting Financial Institution's records is based on Documentary Evidence if the Reporting Financial Institution's policies and procedures ensure that—

- (a) it is the same address, or in the same jurisdiction, as that on the Documentary Evidence;
- (b) where it has government-issued Documentary Evidence but such Documentary Evidence does not contain a recent residence address or does not contain an address at all, the current residence address in the Reporting Financial Institution's records is the same address, or in the same jurisdiction, as that on recent documentation issued by an authorised government body or a utility company, or on a declaration of the individual Account Holder under penalty of perjury; or
- (c) the jurisdiction in the residence address corresponds to the jurisdiction of issuance of government-issued Documentary Evidence.

(2) For the purposes of subregulation (1)(b), acceptable documentation issued by an authorised government body includes, formal notifications or assessments by a tax administration and acceptable documentation issued by utility companies relating to supplies linked to a particular property such as a bill for water, electricity, landline telephone, gas, or oil.

(3) A declaration of an individual Account Holder under penalty of perjury in subregulation (1)(b) is acceptable only if—

- (a) the Reporting Financial Institution has been required to collect it under domestic law for a number of years;
- (b) it contains the Account Holder's residence address; and
- (c) it is dated and signed by the individual Account Holder under penalty of perjury.

Absence of documentary evidence.

34. (1) Where the Reporting Financial Institution does not hold Documentary Evidence in relation to an account and applicable AML/KYC Procedures do not require Documentary Evidence to be obtained at the time of opening the account, or at any time since, a current residence address in the Reporting Financial Institution's records shall be treated as based on Documentary Evidence—

- (a) if the Reporting Financial Institution's policies and procedures ensure that the current residence address in its records is the same jurisdiction as —
 - (i) that of the address on the most recent documentation collected by such Reporting Financial Institution such as a utility bill, real property lease, or declaration by the individual Account Holder under penalty of perjury; and
 - (ii) that reported by the Reporting Financial Institution with respect to the individual Account Holder under any other applicable tax reporting requirements (if any); or
- (b) in the case of a Cash Value Insurance Contract, until any of the following events occur—
 - (i) a change in circumstances that causes the Reporting Financial Institution to know or have reason to know that the current residence address a Reporting Financial Institution has in its records is incorrect or unreliable;
 - (ii) a pay-out (full or partial); or
 - (iii) the Cash Value Insurance Contract matures.

(2) The standards of knowledge specified in regulation 25 to Documentary Evidence shall also apply to the other documentation relied upon by the Reporting Financial Institution under this regulation.

Change in circumstances.

35. (1) If a Reporting Financial Institution has relied on the residence address test described regulation 32 and there is a change in circumstances that causes the Reporting Financial Institution to know or have reason to know that the original Documentary Evidence or other documentation is incorrect or unreliable, the Reporting Financial Institution must, by the later of the last day of the relevant calendar year (or other appropriate reporting period), or 90 calendar days following the notice or discovery of such change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder and if the Reporting Financial Institution cannot obtain the self-certification and new Documentary Evidence by such date, the Reporting Financial Institution must apply the electronic record search procedure described in regulation 12(1)(b).

- (2) For the purposes of this regulation, a "change in circumstances" includes—
 - (a) any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status;
 - (b) any change or addition of information to the Account Holder's account (including the addition or substitution; or
 - (c) other change of an Account Holder or any change or addition of information to any account associated with such account applying the account aggregation rules described in regulations 27, 28 and 29 if such change or addition of information affects the status of the Account Holder.

[Subsidiary]

Residence of a Financial Institution.

36. (1) A Financial Institution is "resident" in a Participating Jurisdiction if it is subject to the jurisdiction of such Participating Jurisdiction in that the Participating Jurisdiction is able to enforce reporting by the Financial Institution.

(2) In the case of a trust that is a Financial Institution (irrespective of whether it is resident for tax purposes in a Participating Jurisdiction), the trust is considered to be subject to the jurisdiction of a Participating Jurisdiction if one or more of its trustees are resident in such jurisdiction except if the trust reports all the information required to be reported under these Regulations with respect to Reportable Accounts maintained by the trust to another Participating Jurisdiction being a resident for tax purposes in such other jurisdiction.

(3) Where a Financial Institution (other than a trust) does not have a residence for tax purposes, it is considered to be subject to the jurisdiction of a Participating Jurisdiction and it is, therefore, a Participating Jurisdiction Financial Institution, if—

- (a) it is incorporated under the laws of the Participating Jurisdiction;
- (b) it has its place of management (including effective management) in the Participating Jurisdiction; or
- (c) it is subject to financial supervision in the Participating Jurisdiction.

(4) Where a Financial Institution (other than a trust) is resident in two or more Participating Jurisdiction, such Financial Institution shall be subject to the reporting and due diligence obligations of the Participating Jurisdiction in which it maintains the Financial Account(s).

Maintaining of account.

37. In general, an account shall be considered to be maintained by a Financial Institution, if—

- (a) in the case of a Custodial Account, the Financial Institution holds custody over the assets in the account (including a Financial Institution that holds assets in street name for an Account Holder in such institution);
- (b) in the case of a Depository Account, the Financial Institution is obligated to make payments with respect to the account (excluding an agent of a Financial Institution regardless of Whether such agent is a Financial Institution);
- (c) in the case of any equity or debt interest in a Financial Institution constitutes a Financial Account, by such Financial Institution;
- (d) in the case of a Cash Value Insurance Contract or an Annuity Contract, the Financial Institution is obligated to make payments with respect to the contract.

Address of entity's principal office.

38. (1) The address of the Entity's principal office shall be generally the place in which its place of effective management is situated.

(2) The address of a Financial Institution with which the Entity maintains an account, a post office box, or an address used solely for mailing purposes shall not be the address of the Entity's principal office unless such address is the only address used by the Entity and appears as the Entity's registered address in the Entity's organisational documents.

(3) An address that is provided subject to instructions to hold all mail to that address shall not be the address of the Entity's principal office.

39. Deleted by L.N. 74 of 2023, r. 2..

SCHEDULE

(r. 2 in the definition of "Participating Jurisdictions")

PARTICIPATING JURISDICTIONS

For the purposes of these Regulations, the following are Participating Jurisdictions:

Andorra
Anguilla
Antigua
Argentina
Aruba
Australia
Austria
Azerbaijan
The Bahamas
Bahrain
Barbados
Barbuda
Belgium
Belize
Bermuda
Brazil
British Virgin Islands
Brunei Darussalam
Bulgaria
Canada
Cayman Islands
Chile
China
Colombia
Cook Islands
Costa Rica
Croatia
Curacao
Cyprus

[Subsidiary]

Czech Republic
Denmark
Dominica
Estonia
Faroe Islands
Finland
France
Germany
Ghana
Gibraltar
Greece
Greenland
Grenada
Guernsey
Hong Kong (China)
Hungary
Iceland
India
Indonesia
Ireland
Isle of Man
Israel
Italy
Japan
Jersey
Korea
Kuwait
Latvia
Lebanon
Liechtenstein
Lithuania
Luxembourg
Macau (China)
Malaysia
Marshall Islands
Mauritius

Monaco
Malta
Mexico
Montserrat
Nauru
New Zealand
Nigeria
Niue
Netherlands
Norway
Oman
Pakistan
Panama
Peru
Poland
Portugal
Qatar
Romania
Russia
Samoa
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Saudi Arabia
Singapore
Saint Maarten
Switzerland
San Marino
Seychelles
Slovak Republic
Slovenia
South Africa
Spain
Sweden
Trinidad and Tobago
Turkey

[Subsidiary]

Turks and Caicos Islands

United Arab Emirates

United Kingdom

Uruguay

Vanuatu

Regulations under section 112

THE TAX PROCEDURES (UNASSEMBLED MOTOR
VEHICLES AND TRAILERS) REGULATIONS

ARRANGEMENT OF REGULATIONS

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 2. Interpretation
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 4. Application for approval of importation
 5. Conditions for approval as an importer
 6. Assembling of motor vehicles or trailers
 7. Transfers between bonded warehouse facilities
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-

**THE TAX PROCEDURES (UNASSEMBLED MOTOR
VEHICLES AND TRAILERS) REGULATIONS**

[L.N. 84/2019, L.N. 139/2020]

Citation.

1. These Regulations may be cited as the Tax Procedures (Unassembled Motor Vehicles and Trailers) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"authorized assembler" means a person approved by the Cabinet Secretary to assemble motor vehicles or trailers in a bonded warehouse facility;

"assembly plant" means a bonded warehouse facility with plant and equipment for the assembly of motor vehicles or trailers by an authorized assembler;

"authorized importer" means a person approved by Cabinet Secretary to import completely knocked down kits for the assembly of motor vehicles or trailers in an assembly plant;

"automotive glass" means front and rear windscreens, and front and rear passenger glass;

"bonded warehouse facility" means a place or premises approved by the Commissioner where completely knocked down kits of unassembled motor vehicles or trailers are stored and used in the assembly of motor vehicles or trailers as the case may be;

"commercial vehicle" means a motor vehicle, other than a motorcar or a F.W.D. vehicle, with four or more wheels which is used primarily on roads;

"Commissioner" has the meaning assigned to it under section 2 (1) of the East African Community Customs Management Act, 2004 (No. 1 of 2005);

"completely knocked down kit" means a motor vehicle or trailer kit comprising parts and sub-assemblies used for the assembly of a motor vehicle or trailer;

"F.W.D. vehicle" means a motor vehicle, other than a motorcar, with power transmittable to at least two front and two rear wheels which has a load capacity of not more than two tonnes;

"fasteners" means bolting or clipping;

"interior trim" means seats, floor mats, door panels or roof lining;

"light commercial vehicle" means any commercial vehicle having a load capacity of less than three tonnes;

"localization" means the development, manufacture or production of local motor vehicle or trailers parts, components, subassemblies and systems for use in the assembly of motor vehicles or trailers and after-sales support;

"medium or heavy commercial vehicle" means commercial vehicle having a load capacity of three tonnes or more;

"monocoque body" or "mono-construction body" means a vehicle body in which the body frame is integrated or combined with the chassis as a single unit;

"motorcar" means a saloon or a station-wagon or a motorcar type and size;

"original equipment manufacturer" means a manufacturer of parts and sub-assemblies where the manufacturer owns the intellectual property rights in the parts or sub-assemblies;

"part" means an individual component shaped, fashioned or otherwise manufactured from one piece of metal or any other material and not joined or connected in any way to another component or material;

"sub-assembly" means a component consisting of any two or more parts joined together by any means;

"trailer" means any unpowered vehicle designed to be drawn by a tractor;

"tractor" means a vehicle constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not the vehicle contains subsidiary provision for the transport, in connection with the main use of tractor, of tools, seeds, fertilisers or other goods;

"system" means a set of items working together as parts of a motor vehicle or trailer mechanism; and

"unassembled" means a completely knocked down kit consisting of parts and sub-assemblies used for the assembly of motor vehicles or trailers.

Importation of unassembled motor vehicles or trailers.

3. (1) A person who intends to import unassembled motor vehicles or trailers shall comply with the conditions specified in these Regulations.

(2) The importation of kits shall be classified as unassembled only if the kits are imported in accordance with these Regulations.

(3) Parts or sub-assemblies may be imported from different countries of origin and the importer shall ensure that all import documentation complies with these Regulations.

Application for approval of importation.

4. (1) A person shall not import unassembled motor vehicles or trailers unless that person is an authorized importer.

(2) A person who intends to import unassembled motor vehicles or trailers shall apply to the Cabinet Secretary for authorization.

(3) An application under subregulation (2) shall provide the details of models of motor vehicles or trailers to be imported.

(4) The Cabinet Secretary shall review an application under subregulation (2) and approve or decline the application.

(5) Upon approval, the applicant shall apply to the Commissioner for a license to operate a bonded warehouse facility.

(6) Despite subregulation (5), upon approval, an importer of unassembled motor vehicle or trailers may import knocked down kits if the importer satisfies the Commissioner that the importer has access to, or use of, a bonded warehouse facility.

Conditions for approval as an importer.

5. A person applying for approval as an authorized importer of unassembled motor vehicles or trailers shall—

- (a) be incorporated in Kenya;
- (b) have an assembly plant or a contract with an assembly plant licensed by the Commissioner as a bonded warehouse facility; and
- (c) be tax compliant.

[Subsidiary]

Assembling of motor vehicles or trailers.

6. (1) The assembling of motor vehicles or trailers shall be undertaken in a bonded warehouse facility licensed by the Commissioner.

(2) The Commissioner may allow in bonded warehouse facilities the receiving of locally purchased parts and sub-assemblies as components for the assembly of motor vehicles or trailers.

Transfers between bonded warehouse facilities.

7. (1) The Commissioner may permit the transfer of unassembled or assembled motor vehicles or trailers from one bonded warehouse facility to another.

(2) Notwithstanding subregulation (1), the Commissioner may impose such conditions as may be necessary for the transfer of unassembled or assembled motor vehicles or trailers from one bonded warehouse facility to another.

Knocked down kits for motor vehicles.

8. Knocked down kits for motor vehicles shall be imported as individual parts or sub-assemblies as specified in the First and Second Schedules to these Regulations.

Knocked down kits for trailers.

9. Knocked down kits for trailers shall be imported as individual parts or sub-assemblies as specified in the Fourth Schedule to these Regulations.

Parts to be excluded.

10. (1) Parts or sub-assemblies imported as part of completely knocked down kits shall not include any of the parts that are specified in the Third Schedule to these Regulations.

(2) The excluded parts sub-assemblies when imported with the rest of the completely knocked down kits shall be declared separately and relevant duties paid by the importer.

(3) The parts and sub-assemblies that are specified in the Third Schedule or Fourth Schedule to these Regulations shall be reviewed after every two years or such other time as may be necessary, by the Cabinet Secretary, in consultation with the Cabinet Secretary responsible for matters relating to industry.

Annual reports.

11. An authorised assembler or importer shall submit to the Cabinet Secretary an annual report on the number and type of assembled or imported vehicles or trailers as the case may be.

Transition.

12. Despite the provisions of these Regulations in respect of levels 1 and 2, the timelines specified in the agreements between the Government and the assemblers entered into before the commencement of these Regulations shall continue to apply.

Offences.

13. A person who contravenes any of the provisions of these Regulations commits an offence and shall be liable, on conviction, to the relevant penalties specified under the Act.

[Spent].

14.

FIRST SCHEDULE

KNOCKED DOWN KITS FOR MOTOR VEHICLES

(r. 8)

1. General Provisions

- (1) Except where otherwise specified in these Regulations, each individual part or sub-assembly shall be imported un-attached to other parts or sub assemblies.
- (2) Brackets, anchors or clinch nuts, clips and similar fasteners may be attached to parts or sub-assemblies in accordance with the provisions of paragraph (1).
- (3) Parts or sub-assemblies which have undergone any of the following manufacturing processes may be permitted—
 - (a) the covering of metal with rubber or plastic material;
 - (b) the bonding of rubber or plastic material to metal or glass;
 - (c) bright metal plating; or
 - (d) imitation wood graining.
- (4) Parts or sub-assemblies shall be permitted if joined or attached by any of the following processes—
 - (a) automatic arc-welding;
 - (b) flash butt-welding;
 - (c) projection welding;
 - (d) hydraulic pressure-welding;
 - (e) high amp spot-welding;
 - (f) di-electrical welding;
 - (g) thermal bonding process; or
 - (h) automatic or multi-spot welding.
- (5) Parts or sub-assemblies not specifically mentioned in this Schedule may be imported in the condition supplied:

Provided that the parts or sub-assemblies shall not be attached or joined to any other parts or sub-assemblies.

2. Chassis frames

- (1) Where the chassis frame whether of box channel, tubular or other construction is in a form consisting of side, cross, cruciform or other members, each part of such member shall be imported adrift, except where each part of such member is welded or riveted together by the original equipment manufacturer.
- (2) Welded chassis frames shall be broken down into major subassemblies for welding in plant and all cross members and outriggers shall be shipped loose.
- (3) Riveted chassis frames shall be broken down into major subassemblies for riveting in plant.
- (4) Bolted chassis frames shall be broken down into major subassemblies for bolting in plant.

[Subsidiary]

- (5) Where the conventional chassis frame is replaced by welded floor components such as seat risers, floor pans, wheel houses and toe boards instead of side, cross, cruciform or other members, such floor components shall, except where welded or riveted together, be adrift.

3. Body or chassis panels, stamping and pressing

- (1) Cowls, scuttles, bulkheads or firewalls may be assembled, but shall not be surface treated in any way except with a coat of primer or other anti-rust preparation or substance.
- (2) The cabs shall be broken down to the extent that the following major items shall be imported as sub-assemblies—
- (a) doors;
 - (b) floor assemblies;
 - (c) roof panels;
 - (d) bonnets;
 - (e) cab back panels;
 - (f) wheel larches;
 - (g) radiator grilles;
 - (h) grille surround panels;
 - (i) dash assemblies;
 - (j) bulk-head assemblies;
 - (k) door pillars;
 - (l) door surrounds;
 - (m) windscreen surrounds; and
 - (n) bumper valances.
- (3) Instrument or dashboard panels, glove boxes and doors may be in the condition supplied by the manufacturer, but shall be devoid of all instruments and controls.
- (4) Windscreen frames may be imported with reinforcements or other attachments but shall be without glass.
- (5) Toe and running boards may be imported with reinforcements attached but shall not be surface treated in any way except with a coat of primer or other anti-rust preparation or substance.
- (6) Doors may be assembled with all internal fittings in position and may include deadeners or anti-drum materials but shall be devoid of—
- (a) door locks;
 - (b) window winding mechanisms;
 - (c) glass;
 - (d) trim; or
 - (e) upholstery material,

and shall not be surface-treated in any way except with a coat of primer or anti-rust preparation or substance.

- (7) Door pillars may be assembled with metal fittings in position.
- (8) Mudguards or fenders may be imported with holes made therein and reinforcements added but shall not be surface-treated in any way except with a coat of primer or other anti-rust preparation or substance.

- (9) Trunks, boot lids, bonnets or engine covers may be assembled with fitting and deadeners or anti-drum materials attached but shall not be surface treated in any way except with a coat of primer or other antirust preparation or substance.
- (10) Chassis and body panels, pressing and stampings not elsewhere provided for may be imported with holes made therein and reinforcements added and deadeners or anti-drum material attached but shall not be surface-treated in any way except with a coat of primer or other anti rust preparation or substance.
- (11) Roof panels, pressings or stamping that comply with these regulations may have drip moulding attached.

4. Engines

- (1) Engines shall be unattached to any supporting sub-frames or chassis members but may be complete with—
 - (a) electrical equipment;
 - (b) manifolds;
 - (c) pumps; or
 - (d) final drive units where such units are incorporated within the engine housings.
- (2) Primary differential drive shafts and flanges may be fitted to differentials, where applicable.
- (3) Radiators, including radiator shells and mounting frames may be assembled.
- (4) Exhaust pipes and mufflers may be assembled, but not fitted together unless permanently attached.
- (5) Fuel tanks complete with filter housings and covers may be imported in the condition supplied by the original equipment manufacturer.

5. Controls

- (1) Steering boxes may have the shaft columns attached, but the steering wheels, gear linkages, if any, and electrical equipment shall be adrift.
- (2) Pedals and linkages may be assembled.

6. Axles, brakes and suspension systems

- (1) Rigid or beam type of front suspensions shall have the following parts or sub-assemblies adrift—
 - (a) front axle beams complete with stub-axles, steering arms and braking equipment;
 - (b) shock absorbers;
 - (c) radius rods and other steering linkages;
 - (d) brake pipes and hoses; and
 - (e) tie rods and other steering linkages.
- (2) In the case of multi-drive vehicles, driving front axles may be complete with differential, half-shafts, constant velocity joints and braking equipment.
- (3) In the case of brake shoes contained within a single brake drum being operated by twin slave cylinders, the bridging pipe connecting the cylinders may be left in position.

[Subsidiary]

7. Front and rear suspensions

- (1) The independent type of front suspension shall have the following parts or sub-assemblies adrift—
 - (a) suspension frames;
 - (b) stub axles complete with wishbones, constant velocity joints, steering arms and braking equipment;
 - (c) radius rods, anti-roll bars and other suspension linkages;
 - (d) brake pipes and hoses;
 - (e) shock absorbers; and
 - (f) springs excluding leaf springs.
- (2) In the case of McPherson type front suspension, the stub axle may be complete with integral shock absorber and springs.
- (3) In the case of brake shoes contained within a single brake drum being operated by twin slave cylinders, the bridging pipe connecting the cylinders may be left in position.
- (4) The rigid or beam type of rear suspension shall have the following parts or sub-assemblies adrift—
 - (a) rear axle completes with differential half-shafts and braking equipment;
 - (b) springs excluding leaf springs;
 - (c) shock absorbers;
 - (d) radius rods and other similar suspension linkages; and
 - (e) brake pipes and hoses.
- (5) The independent type of rear suspension shall have the following parts or sub-assemblies adrift—
 - (a) suspension frame;
 - (b) stub axles complete with bearing housings and brake equipment;
 - (c) differential housings complete with differential and primary differential drive shafts;
 - (d) radius rods and other similar suspension linkages;
 - (e) brake cables, linkages, pipes and hoses;
 - (f) propeller shafts;
 - (g) shock absorbers; and
 - (h) springs (excluding leaf springs).
- (6) Single pivot and double pivot swing type rear axles, where the half-shafts are enclosed in pivoted axle tubes may be assembled.

8. Instruments

Instruments including the cables may be clustered but may not be mounted in the instrument panel.

9. Miscellaneous materials, parts and accessories for motor vehicles

- (1) Miscellaneous materials, parts and accessories for motor vehicles shall comply with the following conditions—
- (a) anti-squeak and anti-drum materials may be cut to size;
 - (b) weather strips may be in the piece;
 - (c) glass shall be devoid of any attachments;
 - (d) seat frames may be assembled but not upholstered;
 - (e) upholstery or cushion springs may be loose or in cages; and
 - (f) carpeting, upholstery, headlining, convertible tops and vinyl roof coverings may be in the condition supplied by the original equipment manufacturer.

[Subsidiary]

- (2) The following fittings and accessories may be imported in the condition supplied—
- (a) bonnet catch sub-assemblies;
 - (b) bonnet ornaments;
 - (c) radiator grilles;
 - (d) window and door handles;
 - (e) window winding mechanisms;
 - (f) window support frames;
 - (g) window fasteners;
 - (h) window glass channels;
 - (i) window sash weather strip metal and felt;
 - (j) door arm-rests;
 - (k) door check straps, metal or other material;
 - (l) door pulls and assist cords;
 - (m) arm-rest sub-assemblies including hinges and support or brackets thereof but excluding upholstery;
 - (n) direction indicators;
 - (o) electrical sockets and fittings;
 - (p) cigar and cigarette lighters;
 - (q) clocks;
 - (r) windscreen wipers;
 - (s) horns or hooters;
 - (t) ash trays;
 - (u) robe rails;
 - (v) parcel nets;
 - (w) guiding and lifting adjustable seals;
 - (x) guiding and lifting adjustable seat level slides and locking devices;
 - (y) safety belts including fittings and anchorages;
 - (z) upholstery wire stiffeners;
 - (aa) ventilator window frames and operating mechanism including coal ventilator sub-assemblies;
 - (bb) step plates (running boards);
 - (cc) rubber engine mountings;
 - (dd) stone guards and dust shields;
 - (ee) ornamental mouldings and monograms including window reveals or garnish moulding to imitate wood;
 - (ff) bolts, nails, nuts, rivets, tacks and washers, excluding U-bolt nuts and U-bolts as catered for under the exclusions;
 - (gg) hinges and locks including hinger arm sub-assemblies;
 - (hh) chains and hooks;
 - (ii) metal brackets, braces, supports, reinforcements;
 - (jj) forgings, castings, anchor plates or nuts;
 - (kk) nailing strips with nails inserted;
 - (ll) tacking or trim strips; and
 - (mm) boot cardboard panels.

SECOND SCHEDULE

SPECIFIC BREAK DOWN OF COMPLETELY KNOCKED DOWN KITS

(r. 8)

PART A - SPECIFIC BREAK DOWN OF COMPLETELY KNOCKED DOWN KITS FOR TRUCKS AND BUSES

1. Provisions for completely knocked down kits under level 3-trucks and buses

The requirements for completely knocked down kits under level 3 for trucks and buses shall be in accordance with the First Schedule to these Regulations.

2. Provisions for completely knocked down kits under level 2- trucks and buses

The special breakdown level 2 of completely knocked down kits for trucks and buses shall be in accordance with the First Schedule to these Regulations save for the following—

- (a) the cab may be imported as a sub-assembly with the doors adrift, in the welded condition as supplied by the original equipment manufacturer but not dressed;
- (b) the cab may be surface treated with paint, primer or other anti-rust preparation or substance;
- (c) a monocoque body, chassis, cab or other metal or plastic assemblies which are welded or glued together may be surface treated with paint, primer or other anti-rust preparation or substance; and
- (d) vehicles with monocoque bodies shall be supplied not trimmed and the following parts shall be supplied adrift; the wheels, tyres, the suspension system, doors, windscreen, bonnet assembly, boot assembly, drive shafts, brake shoe assembly, exhaust system, front and rear bumper assembly, engine, transmission and body trims in the condition supplied by the original equipment manufacturer.

PART B - SPECIFIC BREAK DOWN OF COMPLETELY KNOCKED DOWN KITS FOR PICK-UP

1. Provisions for completely knocked down kits under level 3-pickups

The requirements for completely knocked down kits under level 3 for pickups shall be in accordance with the First Schedule to these Regulations save for the following—

- (a) The panel components for the pick-up body and the rear bodywork shall be shipped loose, provided that the following may be shipped as sub-assemblies—
 - (i) doors;
 - (ii) bulk-heads;
 - (iii) scuttles; and
 - (iv) dash assemblies;

[Subsidiary]

- (b) where stiffeners and brackets are required to be welded to panels to prevent damage during transit these sub-assemblies may be imported in this condition; and
- (c) the chassis longitudinal members shall be supplied in a welded condition but with the cross members and out-riggers supplied loose.

2. Provisions for completely knocked down kits under level 2 - pickups

(1) The special breakdown level 2 of completely knocked down kits for pickups shall be in accordance with the First Schedule to these Regulations, save for the following—

- (a) the cab may be imported as a sub-assembly with the doors adrift, in the welded condition as supplied by the manufacturer but not dressed;
- (b) the cab may be surface treated with paint, primer or other anti-rust preparation or substance; and
- (c) all chassis cross members and outriggers may be imported as riveted or welded together by the original equipment manufacturer. The chassis parts may also be imported treated with paint, primer or other anti-rust preparation or substance.

(2) The authorized assembler assembling completely knocked down kits at this level shall work with local content suppliers to ensure localization of parts and components.

(3) The authorized assembler shall facilitate technology transfer to local parts and components manufacturers to ensure quality of parts and components to be locally produced.

***PART C - SPECIFIC BREAK DOWN OF COMPLETELY KNOCKED
DOWN KITS FOR PASSENGER VEHICLES AND STATION WAGONS***

1. Provisions for completely knocked down kits under level 3 - passenger cars including station wagons

The requirements for completely knocked down kits under level 3 for passenger cars including station wagons shall be in accordance with the First Schedule of these Regulations save for the following—

(1) Body and Chassis

Vehicles with monocoque type bodies or chassis shall be supplied in sub-assemblies for arc or spot welding in plant.

(2) The following sub-assemblies shall be imported complete—

- (a) doors;
- (b) floor assemblies;
- (c) roof panels;
- (d) bonnets and boots;
- (e) cab back panels;
- (f) wheel arches;
- (g) radiator grilles;
- (h) grille surround panels;
- (i) dash assemblies;
- (j) bulk-head assemblies;
- (k) door pillars;
- (l) door surrounds;

- (m) windscreen surrounds; and
- (n) bumper valances.

(3) Where stiffeners and brackets are required to be welded to panels to prevent panel damage during shipment, these sub-assemblies may be imported in this condition.

2. Provisions for completely knocked down kits under level 2 - passenger cars including station wagons

(1) The special breakdown level 2 of completely knocked down kits for passenger cars including station wagons shall be in accordance with the First Schedule and the provisions under level 3 for passenger vehicles and station wagons in these Regulations, save for the following—

- (a) a monocoque body, chassis cab or other metal or plastic assemblies which are welded or glued together shall be surface treated with paint, primer or other anti-rust preparation or substance;
- (b) vehicles with monocoque bodies shall be supplied not trimmed and the following parts shall be supplied adrift; the wheels, tyres, the suspension system, doors, windscreen, bonnet assembly, boot assembly, drive shafts, brake shoe assembly, exhaust system, front and rear bumper assembly, engine, transmission and body trims in the condition supplied by the original equipment manufacturer;
- (c) vehicles with chassis frame shall be supplied with the side members and cross members assembled together except the following which shall be supplied adrift; wheels, tyres, the suspension system, drive shafts, brake shoe assembly, engine, transmission, propeller shafts, front and rear axle assembly in the condition supplied by the original equipment manufacturer;
- (d) chassis parts may be imported treated with paint, primer or other anti-rust preparation or substance; and
- (e) cab bodies for vehicles with chassis frame shall be supplied not trimmed and the following parts shall be supplied adrift; the suspension system, doors, windscreen, bonnet assembly, boot assembly, drive shafts, brake shoe assembly, exhaust system, front and rear bumper assembly, engine, transmission and body trims in the condition supplied by the original equipment manufacturer.

(2) The authorized assembler shall work with local content suppliers to ensure localization of parts and components.

(3) Vehicles having a welded chassis frame shall have the chassis frame broken down into major sub-assemblies with all cross members and outriggers shipped loose for welding in plant.

(4) Authorized assembly using knock down kits level 2 for passenger cars including station wagons shall only be allowed for a maximum of two years per vehicle model.

(5) The authorized assembler shall facilitate technology transfer to local parts and components manufacturers to ensure quality of parts and components to be locally produced.

3. Provisions for completely knocked down kits under level 1 - passenger cars including station wagons

(1) The special breakdown provisions for level 1 completely knocked down kits for passenger cars including station wagons shall be as follows—

- (a) a monocoque body, chassis, cab or other metal or plastic assemblies which are welded or glued together shall come fully painted with the final paint coat;

[Subsidiary]

- (b) vehicles with monocoque bodies shall be supplied fully trimmed except the following parts which shall be supplied adrift; the wheels, tyres, the suspension system, doors fitted with glass, bonnet assembly, boot assembly, drive shafts, brake shoe assembly, propeller shafts, front and rear axle assembly exhaust system, front and rear bumper assembly, and the engine attached to the transmission, shall all come adrift in the condition supplied by the original equipment manufacturer; and
 - (c) vehicles with chassis frame shall be supplied with the side members and cross members assembled together except the following which shall be supplied adrift; wheels, tyres, the suspension system, doors fitted with glass, bonnet assembly, boot assembly, drive shafts, brake shoe assembly, the engine attached to the transmission, propeller shafts, front and rear axle assembly, front and rear bumper assembly, in the condition supplied by the original equipment manufacturer.
- (2) Components that have staining, bonding, lacquering, wood graining and riveting, are all allowed as supplied by the original equipment manufacturer.
- (3) Items that do not meet the categories stated herein above shall be delivered in the supply condition as provided for by the original equipment manufacturer.
- (4) The authorized assembly using knock down kits level 1 for passenger cars including station wagons shall only be allowed for a maximum of 2 years per vehicle model.

THIRD SCHEDULE

PARTS EXCLUDING FROM COMPLETELY KNOCKED DOWN KITS

(r. 10)

PART I

The following items shall not be allowed as constituting parts or sub-assemblies of the unassembled motor vehicles specified in the First Schedule and Second Schedule—

- (a) batteries;
- (b) battery cables;
- (c) engine air filters;
- (d) exhaust pipes and silencers;
- (e) leaf springs assembly and leaf springs;
- (f) U-Bolts, U-bolt nuts and central bolts;
- (g) wiring harnesses;
- (h) in vehicle literature;
- (i) vehicle VIN plates and decals;
- (j) radio, USB, compact disc or DVD players;
- (k) automotive paints and painting preparation chemicals;
- (l) speed governors and accessories;
- (m) seat frames;
- (n) seat foam pads (polyurethane foam);
- (o) seat upholstery;

- (p) soft interior trim;
- (q) canvas;
- (r) spare-wheel carrier;
- (s) shackle pins for leaf springs;
- (t) windscreen, side and rear glass; and
- (u) radiators.

Part II

The following items shall not be allowed as constituting parts or sub-assemblies of unassembled motor vehicles specified in the First and Second Schedule—

- (a) oils;
- (b) greases;
- (c) fuels;
- (d) hydraulic fluid;
- (e) sealers;
- (f) adhesives;
- (g) paint;
- (h) toughened flat glass;
- (i) canvas hoods, covers and screens;
- (j) soft trim upholstery;
- (k) sound deadening material;
- (l) pre-mixed metal pre-treatment chemicals;
- (m) hydraulic jacks;
- (n) scissor jacks; and
- (o) tool kits.

FOURTH SCHEDULE

COMPLETELY KNOCKED DOWN KITS FOR TRAILERS

(r. 9)

[L.N. 139/2020, r. 2]

(1) The following parts or sub-assemblies shall constitute the complete knocked down kits for trailers—

- (a) axles;
- (b) suspensions;
- (c) air braking kits;
- (d) rims;
- (e) landing gears;

[Subsidiary]

- (f) turntables;
- (g) king pin;
- (h) hydraulic tipping jack kits; and
- (i) manhole assembly, valves and pump kits for tankers or bulkers.

(2) The axle and suspension in paragraph 1 of this Schedule shall consist of the following parts and sub-assemblies—

- (a) brackets;
 - (b) casting blocks;
 - (c) equalizers;
 - (d) fixed and adjusters arms;
 - (e) shock absorbers;
 - (f) springs (parabolic, air and helical);
 - (g) air chambers;
 - (h) axle lift kits;
 - (i) axle beams complete with stubs, studs, hubs, drums and braking equipment; and
 - (j) steeling axles complete with stubs, hubs, suds, steering arms and linkages.
-

THE TAX PROCEDURES (SETTLEMENT OF TAX
DISPUTES OUT OF COURT OR TRIBUNAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

1. Citation
 2. Interpretation
 3. Settlement of tax disputes out of court or tribunal
 4. Tax disputes that may be settled out of court or tribunal
 5. Facilitators
 6. Settlement process
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 8. Settlement agreements
 9. Filing of settlement agreements
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-

**THE TAX PROCEDURES (SETTLEMENT OF TAX
DISPUTES OUT OF COURT OR TRIBUNAL) REGULATIONS**

[L.N. 123/2020]

Citation.

1. These Regulations may be cited as the Tax Procedures (Settlement of Tax Disputes Out of Court or Tribunal) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"appointed representative" means a person appointed in writing by a party in a tax dispute to represent that party to a tax dispute settlement process and whose appointment has been communicated to the facilitator and the other party;

"Authority" means the Kenya Revenue Authority established under section 3 of the Kenya Revenue Authority Act (Cap. 469);

"facilitator" means a person who mediates in a dispute settlement process between parties to a tax dispute;

"parties in a tax dispute" means the Commissioner and a taxpayer with whom a tax dispute exists;

"settlement agreement" means an agreement between parties in a tax dispute specifying the terms of settlement of the dispute which is witnessed by the facilitator;

"tax dispute resolution consent" means a settlement agreement between parties to a tax dispute that is recorded in Court or Tribunal specifying the terms of the settlement agreement between the parties; and

"Tribunal" means the Tax Appeals Tribunal established under the Tax Appeals Tribunal Act (Cap. 469A).

Settlement of tax disputes out of court or tribunal.

3. (1) Where a tax dispute has been permitted to be settled out of court or tribunal in accordance to section 55 of the Act or section 28 of the Tax Appeals Tribunal Act (Cap. 469A) the settlement shall be done in accordance with these Regulations.

(2) A party to a tax dispute may apply to the court or tribunal to settle the tax dispute out of court or tribunal as the case may be.

(3) Where the parties to a tax dispute agree to settle the dispute out of court or tribunal—

(a) the agreement to settle the dispute out of court or tribunal shall be entered into voluntarily;

(b) the party seeking to settle the dispute out of court or tribunal shall obtain the consent of the other party before applying to the court or tribunal under paragraph (2); and

(c) the parties shall be committed to the settlement process.

(4) The parties to a tax dispute shall conclude the settlement process within ninety days from the date the court or tribunal grants permission to settle the dispute out of court or tribunal.

(5) A tax dispute shall be referred back to the court or tribunal where the parties fail to reach a settlement agreement within ninety days under paragraph (4).

Tax disputes that may be settled out of court or tribunal.

4. A tax dispute shall not be settled out of court or tribunal if—

- (a) the settlement of the dispute would be contrary to the Constitution, the tax law or any other written law;
- (b) the tax dispute involves the interpretation of the law;
- (c) there is evidence that the taxpayer has committed fraud in relation to tax; or
- (d) the parties to the tax dispute have previously failed to settle the dispute out of court or tribunal.

Facilitators.

5. (1) Where the court or tribunal has permitted the parties to a tax dispute to settle the dispute out of court or tribunal, a facilitator may be nominated, with the consent of the other party to the dispute—

- (a) by the Commissioner from amongst the staff of the Authority; or
- (b) by the taxpayer from a list of mediators accredited by an institution recognized in Kenya.

(2) The nomination of a facilitator under paragraph (1) shall be done within fourteen days after the court or tribunal has granted the parties to a tax dispute permission to settle the dispute out of court or tribunal.

(3) A facilitator nominated under paragraph (1)(a) shall not have been involved in any way in the matter which is the subject to the tax dispute.

(4) A facilitator nominated under paragraph (1)(b) shall not—

- (a) be a practicing tax agent;
- (b) represent or have represented the taxpayer in any matter; or
- (c) have any interest in the tax dispute.

(5) The facilitator nominated under paragraph (1) shall be notified in writing of the nomination by the Commissioner.

(6) The facilitator shall, for the purposes of resolving the tax dispute—

- (a) hold such number of meetings as may be appropriate;
- (b) guide the parties to the tax dispute in the settlement of the dispute;
- (c) promote and protect the integrity, confidentiality, fairness and efficiency of the process;
- (d) act independently and avoid circumstances that may result in a conflict of interest; and
- (e) employ procedures that shall lead to the expeditious resolution of the dispute.

(7) The facilitator shall disclose in writing to the parties to the tax dispute any conflict of interest which may arise before the commencement of the proceedings for the settlement of the tax dispute or which may arise during the proceedings.

(8) Upon the disclosure of a conflict of interest by a facilitator under paragraph (7), the facilitator shall immediately recuse himself or herself from dealing with the tax dispute and another facilitator shall be nominated in accordance with paragraph (1).

[Subsidiary]

(9) A facilitator who has been nominated under paragraph (7) shall take over the settlement process from the point at which the previous facilitator had recused himself or herself.

Settlement process.

6. (1) Subject to paragraph (1), the facilitator shall convene the first meeting between the parties to the tax dispute within fourteen days of being notified under regulation 5(5) of his or her nomination, where the parties shall—

- (a) identify the issues for settlement;
- (b) agree on a schedule of meetings;
- (c) decide on the service of documentary material relevant to the tax dispute;
- (d) agree on the conduct of the meetings; and
- (e) agree on any other issues necessary to facilitate the settlement of the tax dispute.

(2) Upon commencement of the settlement meetings, the parties to the tax dispute or the parties' appointed representatives shall not communicate with the facilitator in the absence of the other party and any communication with the facilitator shall only be in relation to the tax dispute.

(3) During meetings convened by the facilitator, the parties or their appointed representatives shall—

- (a) maintain confidentiality and uphold decorum;
- (b) uphold integrity and fairness;
- (c) make full disclosure of material facts and documents relevant to the tax dispute; and
- (d) strictly adhere to the agreed timelines.

(4) Where a party to a tax dispute is unable to meet any timelines agreed upon at a meeting convened by the facilitator, that party shall notify the facilitator and the other party in writing of the inability and specify the reasons for the inability.

(5) Where a party to a tax dispute or that party's appointed representative fails, without justifiable cause, to attend a meeting convened by the facilitator, the facilitator may appoint another date for the meeting or terminate the process in accordance with regulation 7 (1)(c).

(6) Where, in the course of resolving a tax dispute, a party requires an expert, that party may, with the consent of the other party—

- (a) invite the expert to attend the meetings convened by the facilitator to provide expert testimony at the meeting; or
- (b) provide the expert's testimony in writing.

(7) The parties may enter into a settlement agreement based on the evidence submitted during the meetings convened by the facilitator.

Termination of Proceedings.

7. (1) Settlement proceedings may be terminated for the following reasons—

- (a) where a party to the tax dispute opts to terminate the proceedings and notifies the other party, the court or tribunal in writing of the intention to terminate the proceedings;

- (b) where both parties to the tax dispute mutually agree to terminate the proceedings and notify the court or tribunal in writing of the intention to terminate the proceedings;
- (c) where a party fails to attend three consecutive meetings convened by the facilitator without any justifiable cause; or
- (d) where the ninety days timeline required to resolve the dispute has lapsed and an extension of time by the court or the tribunal has not been granted.

(2) Upon the termination of settlement proceedings, the facilitator shall send a notice of termination in writing to the parties and the matter shall be referred back to the court or the tribunal.

Settlement agreements.

8. (1) Where the parties to a tax dispute have settled the dispute out of court or tribunal, the parties shall set down in writing the settlement agreement.

(2) The settlement agreement shall specify—

- (a) the background of the dispute and the issues in contention;
- (b) the processes and specific exercises undertaken during the proceedings;
- (c) the agreed issues and disputed issues;
- (d) the taxes payable, where applicable, and justifications thereof; and
- (e) the conditions of the settlement.

(3) The settlement agreement shall constitute the decision between the parties and shall—

- (a) be dated and signed by the parties or their appointed representatives and witnessed by the facilitator;
- (b) form the basis for preparation of tax a dispute resolution consent for filing before the court or tribunal, as the case may be;
- (c) be binding to both parties;
- (d) be a full and final settlement of the dispute save where the parties have expressly specified otherwise in the Agreement;
- (e) be confidential and entered into on a "without prejudice" basis; and
- (f) not be the basis for judicial precedent.

(4) Where the parties fail to reach a settlement agreement, the tax dispute shall be referred back to the court or tribunal, as the case may be, for determination.

Filing of settlement agreements.

9. (1) Where a tax dispute is settled wholly or partially a consent agreement between the parties to a tax dispute setting down the terms of the settlement agreement shall be filed with the court or tribunal, as the case may be.

(2) A consent agreement between parties to a tax dispute shall be recorded by the court or tribunal as an order of the court or tribunal.

Enforcement of settlement agreements.

10. Where a party to a tax dispute violates the terms of a settlement agreement between the parties, the other party may apply to the court or the tribunal for enforcement of the agreement.

[Subsidiary]

Costs.

11. (1) Each party shall bear its own costs for the settlement of the tax dispute out of court or the tribunal.

(2) Where a party invites an expert in accordance with regulation (6), that party shall bear the costs of such expert.

(3) Where a taxpayer has nominated a facilitator in accordance with regulation 5(1)(b), the taxpayer shall bear any cost that may be payable to the facilitator.

(4) The Commissioner shall provide a venue for the meetings and where the other party prefers a different venue, that party shall bear the costs of that different venue.

Savings and transitional provisions.

12. Any process for the settlement of a tax dispute out of court or tribunal that commenced before the coming into force of these Regulations shall be dealt with in accordance with the framework under which the process commenced.

THE TAX PROCEDURES (TAX AGENTS) REGULATIONS

ARRANGEMENT OF REGULATIONS

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 4. Determination whether a person is fit and proper
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 7. Register of tax agents
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 11. Conduct of business
 12. Functions of the Committee
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-

THE TAX PROCEDURES (TAX AGENTS) REGULATIONS

[L.N. 111/2020]

Citation.

1. These Regulations may be cited as the Tax Procedures (Tax Agents) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Committee" means the Tax Agents Committee established under regulation 7;

"misconduct" includes making false tax declarations, aiding and abetting tax evasion, and any conduct that is prohibited by any tax law;

"person" includes an individual and a partnership;

"practicing certificate" means a certificate issued to a person by a recognised professional association which permits that person to practice that profession;

"registration certificate" means the certificate issued by the Commissioner under regulation 5;

"tax agent" means a person registered by the Commissioner as a tax agent under regulation 5; and

"Tribunal" means the Tax Appeals Tribunal established under the Tax Appeals Tribunal Act (Cap. 469A).

Registration of tax agents.

3. (1) A person who wishes to act as a tax agent shall apply in writing to the Commissioner for registration.

(2) An application under paragraph (1) shall be accompanied by a non-refundable fee of twenty thousand shillings.

(3) The Commissioner may register a person as a tax agent if that person is fit and proper and—

- (a) is a member of the Institute of Certified Public Accountants of Kenya and with at least three years' experience;
- (b) is an advocate of the High Court of Kenya, holds a current practicing certificate and with at least three years' experience;
- (c) is a former tax administrator with at least ten years' experience in tax administration; or
- (d) holds any other relevant qualifications and possesses experience recognised by the Commissioner as sufficient for a tax agent.

(4) This regulation shall not apply to a non-resident person who is temporarily in Kenya for the sole purpose of representing a client on tax matters.

Determination whether a person is fit and proper.

4. In determining whether a person is fit and proper to be registered as a tax agent under regulation 3, the Tax Agents Committee shall consider—

- (a) whether the person is tax compliant;
- (b) the person's probity, competence and soundness of judgment in fulfilling the responsibilities of a tax agent;

- (c) whether the person has ever been involved in financial irregularities including misappropriation of funds or manipulation of tax transactions;
- (d) whether the person has ever been convicted of an offence involving fraud; or
- (e) whether the person has been convicted of any tax offence under a tax law or an anti-corruption law.

Licensing of tax agents.

5. (1) Where an applicant has satisfied the requirements of regulations 3 and 4, the Commissioner shall issue the applicant with a registration certificate.

(2) The registration certificate issued under paragraph (1) shall be deemed to be the tax agent's licence for purposes of section 20.

(3) Where an application for registration as a tax agent is rejected, the Commissioner shall specify the reasons for the rejection in writing.

Functions of tax agents.

6. (1) The functions of a tax agent shall be to—

- (a) prepare and submit tax returns on behalf of a taxpayer;
- (b) liaise with the Commissioner on behalf of a taxpayer on matters relating to tax; or
- (c) advise and represent a taxpayer in tax matters before the Tribunal.

(2) An advocate of the High Court of Kenya acting in the ordinary course of the advocate's profession shall not be required to register as a tax agent to perform the functions under paragraph (1)(b) and (c).

Register of tax agents.

7. (1) The Commissioner shall maintain a register of licensed tax agents.

(2) The register shall contain—

- (a) the names of tax agents;
- (b) the qualifications of the tax agents;
- (c) the principal address of business of the tax agents and any other place where the tax agents may operate from; and
- (d) such other information as the Commissioner may specify.

(3) A tax agent shall notify the Commissioner of any change of particulars in the register within fourteen days of such change.

Register of clients.

8. A tax agent shall maintain a register containing the following details—

- (a) the names of the tax agent's clients;
- (b) the date of engagement as a tax agent by each client;
- (c) the physical addresses, postal addresses and any other contact information of each client;
- (d) information relating to the nature of the business that each client is engaged in; and
- (e) such other particulars as the Commissioner may specify.

[Subsidiary]

Tax Agents' Committee.

9. (1) The Cabinet Secretary shall, by notice in the *Gazette*, appoint a Tax Agents' Committee.

(2) The Committee shall comprise of—

- (a) a chairperson who shall be from the private sector, have at least fifteen years' relevant experience, and hold a degree in taxation, finance, accounting, economics or law from a university recognised in Kenya;
- (b) a representative of the Institute of Certified Public Accountants of Kenya;
- (c) a representative of the Law Society of Kenya; and
- (d) four other persons who have at least ten years' relevant experience and hold a degree in taxation, finance, accounting, economics or law from a recognized university.

(3) The Commissioner shall appoint a secretary to the Committee from the staff of the Authority.

Tenure of members of Committee.

10. (1) The chairperson or a member of the Committee shall hold office—

- (a) in case of the Chairperson, for a term not exceeding five years and shall not be eligible for re-appointment; and
- (b) in case of a member, for a term not exceeding three years but may be eligible for re-appointment for one final term not exceeding three years.

(2) The office of the chairperson or a member of the Committee shall become vacant if the holder—

- (a) resigns by notice in writing to the Cabinet Secretary;
- (b) is convicted of a criminal offence;
- (c) is declared bankrupt by a court of competent jurisdiction;
- (d) fails to attend three consecutive meetings without notice to the chairperson or, in case of the chairperson, to the Commissioner;
- (e) is unable to perform the functions of the office by reason of prolonged illness; or
- (f) is otherwise unable or unfit to discharge the functions of the office.

Conduct of business.

11. (1) The Chairperson shall preside at every meeting of the Committee and in the absence of the Chairperson, the members present shall appoint one of them to preside over the meeting.

(2) The quorum for a meeting of the Committee shall be five members.

(3) The members of the Committee shall be paid such remuneration as the Cabinet Secretary may, in consultation with Salaries and Remuneration Commission, determine.

Functions of the Committee.

12. The Tax Agents Committee shall—

- (a) consider applications for registration of tax agents and recommend to the Commissioner whether or not an application should be granted or rejected; and

- (b) where any allegation of misconduct is made against a tax agent, carry out investigations and make recommendations to the Commissioner regarding the action to be taken with respect to the allegation.

Investigation of allegations of misconduct.

13. (1) A complaint of misconduct against a tax agent shall be referred by the Commissioner to the Committee for investigation.

(2) The Committee may, in the course of its investigations under paragraph (1), hear any witnesses and receive any documents that will assist it in the investigation.

(3) Before the Committee makes a decision on an allegation against a tax agent, it shall grant the tax agent an opportunity to be heard, call witnesses and present evidence before the Committee.

(4) The Committee shall not, later than seven days after the conclusion of the investigation, submit a report to the Commissioner recommending that the Commissioner—

- (a) clears the tax agent of the allegations;
- (b) cautions, warns or reprimands the tax agent;
- (c) suspends the registration of the tax agent;
- (d) deregisters the tax agent; or
- (e) take such other action that may be appropriate in the circumstances.

(5) The Commissioner shall, within fourteen days of receiving the report of the Committee, take action as recommended under paragraph (4).

(6) Where the Commissioner takes action under paragraph (4)(c) or (d) against a tax agent who is a member of a recognised professional association, the Commissioner shall notify the association of the allegations against the tax agent and the action taken thereof.

Offences.

14. (1) A person commits an offence if that person—

- (a) fraudulently makes, or causes or permits to be made, any false or incorrect entry into a register maintained for the purposes of these Regulations;
- (b) fraudulently procures or attempts to procure registration as a tax agent;
- (c) fraudulently makes any statement which is false or misleading with a view to gaining any advantage, concession or privilege under these Regulations;
- (d) purports to operate as a tax agent without being registered; or
- (e) contravenes any provision of these Regulations.

(2) Where a person commits an offence under these Regulations, the relevant sanctions under the Act shall apply.

Transitional provisions.

15. Any person who was registered as a tax agent by the Commissioner before the coming to force of these Regulations shall be deemed to have been registered as a tax agent under these Regulations.

THE TAX PROCEDURES (UNASSEMBLED MOTORCYCLES) REGULATIONS

ARRANGEMENT OF REGULATIONS

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 2. Interpretation
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 3. Restriction on importation of unassembled motorcycles
 4. Application for approval
 5. Conditions for approval
 6. Duty Remission Committee to ensure compliance
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 8. Assembly plant
 9. Approval to transfer
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 - Part III – MOTORCYCLE COMPLETELY KNOCKED DOWN KITS
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-

THE TAX PROCEDURES (UNASSEMBLED MOTORCYCLES) REGULATIONS

[L.N. 112/2020, L.N. 192/2021, L.N. 223/2021]

Citation.

1. These Regulations may be cited as the Tax Procedures (Unassembled Motorcycle) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"assembly" means the manufacturing process which utilises precision jigs, fixtures, and specialised facilities and equipment;

"assembly plant" means a bonded warehouse facility with plant and equipment for the assembling of motorcycles operated by an authorised assembler;

"assembly line" means an arrangement of machines, tools and persons in which a motorcycle is assembled by having each machine, tool or person perform a specific successive or progressive operation on an incomplete unit as it passes by in a series of stages organised in a direct line;

"authorised assembler" means a person approved by the Cabinet Secretary to assemble motorcycles in a bonded warehouse facility;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to finance;

"chassis frame" means a motorcycle's core structure that supports the engine, provides the hinge points for both front and rear suspension and supports the rider;

"Commissioner" has the meaning assigned to it under the East African Community Customs Management Act, 2004;

"component" means a uniquely identifiable input, part, piece, system or subsystem which is intended to be included as a part of a motorcycle;

"completely knocked down kit" means a motorcycle kit comprising parts used for the assembling of a motorcycle;

"Council" means the Council of Ministers of the East African Community established by Article 9 of the Treaty for the Establishment of the East African Community;

"duty remission" means the reduction of import duty on goods that is granted by the Council under section 140 of the East African Community Customs Management Act, 2004;

"duty remission committee" means the committee established under Regulation 4 of the East African Community Customs Management (Duty Remission) Regulations, 2008;

"engine" means a machine with moving parts that converts power into motion;

"motorcycle" means a vehicle having a seat or a saddle for the use of the rider and designed to travel on two wheels or three wheels in contact with the ground that is powered by a motor;

"part" means an individual component shaped, fashioned or otherwise manufactured from one piece of metal or any other material and not joined or connected in any way to another component or material; and

"unassembled" means a completely knocked down kit consisting of parts used for the assembling of a motorcycle.

PART II – APPROVAL FOR ASSEMBLING OF MOTORCYCLES

Restriction on importation of unassembled motorcycles.

3. (1) A person who intends to import unassembled motorcycles under duty remission shall comply with the conditions specified in these Regulations.

(2) Motorcycles shall be classified as unassembled if imported in the conditions specified in these Regulations.

(3) A person shall not import unassembled motorcycles under duty remission if that person is not an authorised assembler.

(4) A person shall not be granted duty remission if that person does not source locally available parts as follows—

- (a) in the case of parts specified in regulation 14(1), three months from the coming into force of these Regulations; and
- (b) in the case of parts specified in regulation 14(2), twelve months from the coming into force of these Regulations.

Application for approval.

4. (1) A person shall not be permitted to import unassembled motorcycles under duty remission unless that person is approved as an assembler in accordance with these Regulations.

(2) A person seeking approval as an assembler shall apply to the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for matters relating to industrialisation.

(3) The application for approval shall provide details of the types and models of motorcycles the applicant intends to assemble.

(4) The Cabinet Secretary shall, on receipt of an application under paragraph (2), approve or decline the application.

(5) A decision under paragraph (4) shall be communicated to the applicant in writing and if the application is declined, the communication shall include the reasons thereof.

Conditions for approval.

5. A person applying for approval as an authorised assembler shall—

- (a) be incorporated in Kenya;
- (b) have an assembly plant;
- (c) be tax compliant;
- (d) be required to provide a time-bound localisation plan for sourcing locally manufactured motorcycle parts within the East Africa Community;
- (e) provide a plan for the transfer of technology, knowledge and skills through training, mentoring and participation of Kenyan citizens; and
- (f) provide any other information or documents as may be required by the Cabinet Secretary.

Duty Remission Committee to ensure compliance.

6. The Duty Remission Committee shall be responsible for ensuring that authorised assemblers have complied with the provisions of the East African Community Customs Management (Duty Remission) Regulations, 2008, and these Regulations.

Assembling of motorcycles.

7. (1) The assembling of motorcycles shall be undertaken in an assembly plant which shall be a bonded warehouse facility licensed by the Commissioner for the assembling of motorcycles.

(2) The Commissioner may allow the entry of locally manufactured parts into a bonded warehouse facility for the assembly of the motorcycles.

Assembly plant.

8. (1) An authorised assembler shall be required to assemble motorcycles at an assembly plant licenced by the Commissioner.

(2) The assembly plant shall have an assembly line which shall—

- (a) have quality control procedures;
- (b) have been approved by the National Environment Management Authority;
- (c) comply with health and safety Regulations; and
- (d) meet any other requirement as may be specified by the Commissioner.

(3) The process of an assembly line shall be clearly defined in a process flow chart and positioned visibly within the assembly plant.

Approval to transfer.

9. (1) An authorised assembler shall not transfer completely knocked down kits to another assembler without the approval of the Commissioner.

(2) The Commissioner may impose such conditions as may be necessary to an approval granted under paragraph (1).

Notification on cessation.

10. (1) An authorised assembler who ceases or intends to cease the assembling of motorcycles shall notify the Commissioner and the Cabinet Secretary within one month of the intended date of cessation.

(2) A person who ceases the assembly of motorcycles shall comply with the provisions of the East Africa Community Customs Management Act, 2004, after the cancellation of the bonded warehouse licence.

Submission of report.

11. An authorised assembler shall, at least once in each year, submit a report to the Cabinet Secretary responsible for industrialisation and a copy thereof to the Cabinet Secretary with respect to the implementation of the localisation plan.

Offences.

12. A person who contravenes any of the provisions of these Regulations commits an offence and shall be liable, on conviction, to the relevant penalties specified under the Act.

PART III – MOTORCYCLE COMPLETELY KNOCKED DOWN KITS

Breakdown of completely knocked down kits.

13. (1) A completely knocked down kit shall be imported with the engine and chassis frame unattached to other parts.

[Subsidiary]

(2) Despite paragraph (1), the following parts shall be imported unattached to each other

—

- (a) the engine box kit;
- (b) the chassis frame;
- (c) fuel or petrol tank;
- (d) silencer or muffler;
- (e) seat;
- (f) frame fittings;
- (g) engine mountings;
- (h) swing arm;
- (i) shock absorbers;
- (j) rider and pillion footrests;
- (k) gear changers or levers;
- (l) front and rear mudguards or fenders;
- (m) tyres;
- (n) tubes;
- (o) rim wheels;
- (p) front and rear hubs;
- (q) front and rear brake panels;
- (r) lever;
- (s) transmission mechanism;
- (t) fork suspension;
- (u) fuel cap;
- (v) fuel gauge;
- (w) speed meter gauge;
- (x) control cable;
- (y) drive and transmission sprocket;
- (z) drive chain;
- (aa) head lamp;
- (bb) fairing;
- (cc) tail lamp;
- (dd) indicator light;
- (ee) horn;
- (ff) wiring harness;
- (gg) switches;
- (hh) flashers;

- (ii) starter relay;
- (jj) fuse;
- (kk) lock set;
- (ll) cables;
- (mm) handle bar;
- (nn) mirrors; and
- (oo) rubber hoses.

Parts to be sourced locally.

14. (1) The following parts shall be excluded from the completely knocked down kits for motorcycles within six months after the publication of these Regulations—

- (a) centre or main stands;
- (b) crash guards;
- (c) pillion handle bar or pillion or grip set;
- (d) right third rider footrest or pillion set;
- (e) left third rider footrest or pillion rest;
- (f) side stand, kick stand or prop stand; and
- (g) battery liquid, acid or fluid.

(2) The following parts shall be excluded from the completely knocked down kits for motorcycles on or before 30th June, 2022—

- (a) air cleaner filter;
- (b) wire harness;
- (c) seat;
- (d) battery;
- (e) brakes rod or stopper;
- (f) headlight stay; and
- (g) main stay or bar-step.

[L.N. 192/2021, r. 2, L.N. 223/2021, r. 2.]

Transition.

15. A person who was an assembler of motorcycles before the commencement of these Regulations shall apply for approval as an authorised assembler in accordance with these Regulations within a period of three months from the coming into force of these Regulations.

THE TAX PROCEDURES (ELECTRONIC TAX INVOICE) REGULATIONS

ARRANGEMENT OF PROVISIONS

1. Citation
 2. Interpretation
 3. Application
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 5. Availability of a system
 6. Obligations of the user of a system
 7. Tax invoices, credit notes and debit notes
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 9. Transmission of invoice data and security
 10. Electronic tax invoicing exclusions
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 13. Revocation, L.N. 225/2023
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THE TAX PROCEDURES (ELECTRONIC TAX INVOICE) REGULATIONS

[L.N. 64/2024]

Citation.

1. These Regulations may be cited as the Tax Procedures (Electronic Tax Invoice) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“Authority’s system” means a system prescribed by the Commissioner;

“emoluments” means income subject to tax under section 5 of the Income Tax Act (Cap. 470);

“foreign country” means any country other than Kenya;

“imports” means goods imported from a foreign country in accordance with the East Africa Community Customs Management Act, 2004, or services imported from a foreign country;

“input tax” has the meaning assigned to it under section 2(1) of the Value Added Tax Act (Cap. 476);

“system” means an electronic tax invoicing or receipting system that is maintained and used in accordance with these Regulations; and

“user of a system” means a person who carries on business.

Application.

3. These Regulations shall apply to any person carrying on business unless the person is exempted in accordance with section 23A of the Act.

Use of a system.

4. (1) Each user of a system shall use the system in accordance with these Regulations.

(2) Despite the generality of subregulation (1), each user of a system shall ensure that—

- (a) each sale is recorded in the system;
- (b) an invoice is generated in respect of each sale through the system; and
- (c) each invoice generated through the system for a sale shall contain the information specified in regulation 7.

(3) The user of a system shall—

- (a) transmit the invoice generated with respect to the sale to the buyer;
- (b) transmit the invoice details to the Commissioner in accordance with regulation 8; and
- (c) maintain the stock in and stock out records in the system as follows—
 - (i) record each local purchase and import;
 - (ii) notify the Commissioner in writing within thirty days before closure of business indicating records of current stock;
 - (iii) in case there is transfer of stock upon closure of business, the person shall notify the Commissioner in writing of the current stock quantity or levels; and
 - (iv) upon closure of the business, the person shall account for all relevant taxes under the applicable tax laws.

[Subsidiary]

(4) The Commissioner may require the following persons to use a system that does not maintain a record of stocks—

- (a) persons providing services;
- (b) persons who are not registered under the Value Added Tax Act (Cap. 476), and who have an annual turnover that is less than twenty-five million shillings using a simplified system prescribed by the Commissioner; and
- (c) any other person using a system that is prescribed by the Commissioner.

Availability of a system.

5. (1) The user of a system shall ensure continuity of operations of the system at all times.

(2) Where a user of a system cannot use the system for any reason, the user shall—

- (a) notify the Commissioner in writing within twenty-four hours of the user's inability to use the system; and
- (b) record sales using any other means as may be specified by the Commissioner.

(3) Where the user of a system regains the use of the system, the user shall enter into the system the sales recorded under paragraph (2)(b).

Obligations of the user of a system.

6. (1) Each user of the system shall—

- (a) ensure the availability of the system at the point of sale;
- (b) facilitate inspection of the system by an authorised officer;
- (c) ensure the system is regularly updated to maintain the system's proper functioning at all times;
- (d) keep and maintain a system ledger in which a record of the maintenance and update of the system's software is entered and which shall contain—
 - (i) the name and address of the person maintaining the system; and
 - (ii) an entry for each time maintenance is undertaken on the system, describing the maintenance and the name of the person performing the service; and
- (e) comply with such other requirements as may be specified by the Commissioner.

(2) Where a user of a system intends to discontinue the use of a system due to—

- (a) change of business model;
- (b) closure of business; or
- (c) any other reason, the user of the system shall notify the Commissioner, in writing, of the intended discontinuation within thirty days before the discontinuation:

Provided that where the intended discontinuance is due to the closure of the business and the closure was unplanned, the user of the system shall notify the Commissioner within seven days after the closure of the business.

(3) Where a notification is made under subregulation (2), the Commissioner may, by notice in writing, and within thirty days after receipt of the notification, retire the system.

Tax invoices, credit notes and debit notes.

7. (1) Each electronic tax invoice generated from a system shall contain—

- (a) the Personal Identification Number of the user of the system;

- (b) the time and date of issuance of the invoice;
- (c) the serial number of the invoice;
- (d) where the buyer intends to claim the expense or the input tax, the buyer's Personal Identification Number;
- (e) the total gross amount;
- (f) the total tax amount where applicable;
- (g) the item code of supplies as provided by the Commissioner;
- (h) a brief description of the goods and services;
- (i) the quantity of supply;
- (j) the unit of measure;
- (k) the applicable tax rate;
- (l) the unique system identifier;
- (m) the unique invoice identifier;
- (n) a quick response code; and
- (o) any other information as may be specified by the Commissioner.

(2) Where a user of a system issues a credit note or a debit note, the credit note or debit note shall make reference to the original invoice number to which the supply relates.

System specifications.

8. Each system shall—

- (a) be capable of interconnectivity with other information technology networks including the Authority's systems;
- (b) have sufficient data storage capacity to maintain records;
- (c) clearly display messages in English or Kiswahili;
- (d) be secure and tamper-proof; and
- (e) be capable of—
 - (i) integrating with the Authority's systems;
 - (ii) transmitting data to the Authority's systems;
 - (iii) having adjustments made to it so that it may be consistent with any changes to the tax laws; and
 - (iv) recording and storing information required under these Regulations.

Transmission of invoice data and security.

9. Each system shall be capable of—

- (a) transmitting to the Authority's system electronic tax invoice data in the manner specified by the Commissioner;
- (b) printing or providing stored data;
- (c) maintaining the integrity of data;
- (d) securing authentication for authorized users;
- (e) recording and storing a log of all activities on the system; and

[Subsidiary]

- (f) assigning a unique identifier to each invoice.

Electronic tax invoicing exclusions.

10. The following transactions shall be excluded from the requirement of an electronic tax invoice—

- (a) emoluments;
- (b) imports;
- (c) investment allowances including internal accounting adjustments;
- (d) airline passenger ticketing;
- (e) interest;
- (f) fees charged by financial institutions;
- (g) expenses subject to withholding tax that is a final tax;
- (h) services provided by a non-resident person without a permanent establishment in Kenya; and
- (i) any other exclusion as may be provided under section 23A of the Act.

Electronic tax invoicing exemption.

11. (1) The Commissioner may, by notice in the *Gazette*, exempt a person from the requirements of the use of an Electronic Tax Invoice.

(2) The Commissioner may, by notice in the *Gazette* for reasons to be specified in the notice, revoke an exemption granted under subregulation (1).

(3) The Commissioner may exempt a person from the requirement of issuing an electronic tax invoice where—

- (a) the business income in relation to a transaction is received through a payment platform recommended by the Commissioner; and
- (b) the information is transmitted to the Authority's system.

(4) A person who is required to issue an electronic tax invoice may, with reasons, apply to the Commissioner in writing to be exempted from the requirements of these Regulations where—

- (a) an alternative automated method for recording, storing and transmitting the data relating to the transactions to the Commissioner is available and upon recommendation by the relevant authority; or
- (b) the person's transactions are not under the mandate of a Ministry or any other regulatory authority.

Offences and penalties.

12. (1) A person commits an offence if that person—

- (a) fails to comply with any provisions of these Regulations; or
- (b) tampers with, manipulates or interferes with the proper functioning of the system including uninstallation and change of the device without notifying the Commissioner.

(2) A person who commits an offence under these regulations shall be liable to the penalty specified under section 86 of the Act.

Revocation, L.N. 225/2023.

13. The Tax Procedures (Electronic Tax Invoice) Regulations 2023, are revoked.
