

No.

2013



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THE REPUBLIC OF KENYA

HIS EXCELLENCY THE PRESIDENT  
UHURU KENYATTA

I assent

A handwritten signature in black ink, appearing to read 'U. Kenyatta'.

President

14<sup>th</sup> AUGUST

, 2013

An Act of Parliament to review and update the law relating to value added tax; to provide for the imposition of value added tax on supplies made in, or imported into Kenya, and for connected purposes

**THE VALUE ADDED TAX ACT, 2013**

**No. of 2103**

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**THE VALUE ADDED TAX ACT, 2013**

**An Act of Parliament to review and update the law relating to value added tax; to provide for the imposition of value added tax on supplies made in, or imported into Kenya, and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Value Added Tax Act, 2013 and shall come into operation on such date as the Cabinet Secretary may, by notice in the Gazette, appoint which date shall not be later than one month from the date of publication of this Act in the Gazette.

Short title and commencement.

2. (1) In this Act, unless the context otherwise requires—

Interpretation

“aircraft” includes every description of conveyance for the transport by air of human beings or goods;

“assessment” means –

- (a) a self-assessment return submitted under section 45;
- (b) an assessment made by the Commissioner under section 45; or
- (c) an amended assessment under section 46;

“Authority” means the Kenya Revenue Authority established by the Kenya Revenue Authority Act;

Cap.469

“authorised officer”, in relation to any provision of this Act, means any officer appointed under section 3 who has been authorised by the Commissioner to perform any functions under or in respect of that provision;

“business” means-

- (a) trade, commerce or manufacture, profession, vocation or occupation;

- (b) any other activity in the nature of trade, commerce or manufacture, profession, vocation or occupation;
- (c) any activity carried on by a person continuously or regularly, whether or not for gain or profit and which involves, in part or in whole, the supply of goods or services for consideration; or
- (d) a supply of property by way of lease, licence, or similar arrangement,

but does not include –

- (i) employment;
- (ii) a hobby or leisure activity of an individual; or
- (iii) an activity of a person, other than an individual, that if carried on by an individual would come within subparagraph (ii);

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

“Commissioner” means the Commissioner-General appointed under the Kenya Revenue Authority Act, or, with respect to powers or functions that have been delegated under that Act to another Commissioner, that other Commissioner;

Cap 469

“company” means a company as defined in the Companies Act or a corporate body formed under any other written law, including a foreign law, and includes any association, whether incorporated or not, formed outside Kenya which the Cabinet Secretary may, by order, declare to be a company for the purposes of this Act;

Cap 486

“duty of customs” means import duty, excise duty, export duty, countervailing duty, levy, cess, tax or surtax charged under any law for the time being in force relating to customs or excise;

“electronic notice system” has the meaning assigned to it in section 39;

“exempt supplies” means supplies specified in the First Schedule which are not subject to tax;

“export” means to take or cause to be taken from Kenya to a foreign country or to an export processing zone;

“export processing zone” means an export processing zone designated under the Export Processing Zones Act; Cap.517

“goods” means tangible movable and immovable property and includes electrical or thermal energy, gas and water, but does not include money;

“information technology” means any equipment or software for use in storing, retrieving, processing or disseminating information;

“importation” means to bring or cause to be brought into Kenya from a foreign country or from an export processing zone;

“importer”, in relation to goods, means the person who owns the goods, or any other person who is, for the time being, in possession of or beneficially interested in the goods at the time of importation;

“input tax” means -

- (a) tax paid or payable on the supply to a registered person of any goods or services to be used by him for the purpose of his business; and
- (b) tax paid by a registered person on the importation of goods or services to be used by him for the purposes of his business;

“money” means -

- (a) any coin or paper currency that is legal tender in Kenya;
- (b) a bill of exchange, promissory note, bank draft, or postal or money order;
- (c) any amount provided by way of payment using a debit or credit card;



“non-resident person” has the meaning assigned to it in section 9;

“official aid funded project” means a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency;

“output tax” means tax which is due on taxable supplies;

“person” means an individual, company, partnership, association of persons, trust, estate, the Government, a foreign government, or a political subdivision of the Government or foreign government;

“registered person” means any person registered under section 34, but does not include an export processing zone enterprise;

“regulations” means any subsidiary legislation made under this Act;

“services” means anything that is not goods or money;

“service exported out of Kenya” means a service provided for use or consumption outside Kenya;

“ship stores” means goods for use in aircraft or vessels engaged in international transport for consumption by passengers and crew and includes goods for sale on board such aircraft or vessels;

“supply” means a supply of goods or services;

“supply of goods” means –

- (a) a sale, exchange, or other transfer of the right to dispose of the goods as owner; or
- (b) the provision of electrical or thermal energy, gas or water;

“supply of services” means anything done that is not a supply of goods or money, including –

- (a) the performance of services for another person;
- (b) the grant, assignment, or surrender of any right;
- (c) the making available of any facility or advantage; or
- (d) the toleration of any situation or the refraining from the doing of any act;

“supply of imported services” means a supply of services that satisfies the following conditions –

- (a) the supply is made by a person who is not a registered person to a person who is a registered person or a non registered person;
- (b) the supply would have been a taxable supply if it had been made in Kenya; and
- (c) the registered person would not have been entitled to a credit for the full amount of input tax payable if the services had been acquired by the person in a taxable supply;

“tax” means the value added tax chargeable under this Act;

“tax computerized system” means any software or hardware for use in storing, retrieving, processing or disseminating information relating to tax;

“tax period” means one calendar month or such other period as may be prescribed in the regulations;

“tax registration certificate” means a tax registration certificate issued by the Commissioner under section 34;

“tax representative” means a tax representative appointed under section 9;

“taxable supply” means a supply, other than an exempt supply, made in Kenya by a person in the course or furtherance of a business carried on by the person, including a supply made in connection with the commencement or termination of a business

“taxable value” means the value determined in accordance with section 13 and 14;

“vehicle” includes every description of conveyance for the transport by land of human beings or goods;

“zero-rated supply” means a supply listed in the Second Schedule.

(2) For the purposes of this Act, goods shall be classified by reference to the tariff numbers set out in Annex 1 to the Protocol on the Establishment of the East African Community Customs Union and in interpreting that Annex, the general rules of interpretation set out therein shall, with the necessary modifications, apply.

## **PART II—ADMINISTRATION**

3. (1) The Commissioner shall be responsible for the control and collection of, and accounting for, tax and shall, subject to the direction and control of the Cabinet Secretary, have the superintendence of all matters relating thereto.

Functions and powers of the Commissioner and other officers

(2) The Commissioner shall appoint such officers as may be necessary for carrying out the purposes of this Act.

(3) The Commissioner may authorise any officer appointed under this section to perform any of the functions of the Commissioner under this Act or the regulations, other than the functions of the Commissioner under this section.

(b) have the responsibility for doing all things required of the non-resident under this Act; and

(c) with the non-resident person, be jointly and severally liable for the payment of all taxes, fines, penalties, and interest imposed under this Act.

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

(5) 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.

(6) The Commissioner may prescribe the mode, manner, and requirements for appointment of a tax representative and the responsibilities of the representative.

10. (1) If a supply of imported taxable services is made to a registered person, the registered person shall be deemed to have made a taxable supply to himself.

Treatment of  
imported services

(2) If a registered person referred to in subsection (1) is entitled to –

(a) a credit for part of the amount of input tax payable, the value of the taxable supply under subsection (1) shall be reduced by an amount equal to the supply that is entitled for the input tax credit; or

(b) a full input tax credit payable on the imported taxable services under subsection (1), the value of the taxable services shall be reduced to zero.

(3) The output tax in respect of a deemed taxable supply under subsection (1) shall be payable by the registered person at the time of the supply

(4) For the purposes of this section, if a registered person carries on a business, both in and outside Kenya, the part of the business carried on outside Kenya shall be treated as if it were carried out by a person separate from the registered person

11. A supply of goods occurs in Kenya if –

Place of supply of  
goods

- (a) the goods are delivered or made available in Kenya by the supplier;
- (b) the supply of the goods involves their installation or assembly at a place in Kenya; and
- (c) the goods are delivered outside Kenya, the goods were in Kenya when their transportation commenced.

12. (1) Subject to subsection (3), the time of supply, including a supply of imported services, shall be the earlier of –

Time of supply of  
goods and  
services

- (a) the date on which the goods are delivered or services performed;
- (b) the date a certificate is issued by an architect, surveyor or any other person acting as a consultant in a supervisory capacity;
- (c) the date on which the invoice for the supply is issued; or
- (d) the date on which payment for the supply is received, in whole or in part.

(2) The time of supply of goods by means of a vending machine, meter, or other device operated by use of a coin, note, or token shall be on the date the coin, note, or token is taken from the machine, meter, or other device by or on behalf of the supplier.

(3) If –

- (a) goods are supplied under a rental agreement; or
- (b) goods or services are made by metered supplies, or under an agreement or law that provides for periodic payments,

the goods or services shall be treated as successively supplied for successive parts of the period of the lease or agreement, or as determined by law, and the time of each successive supply shall be the earlier of the date on which payment for the successive supply is due or received.

(4) The time of supply of imported goods shall be –

- (a) in the case of goods cleared for home use directly at the port of importation, or goods entered for removal to an inland station and there cleared for home use, at the time of customs clearance;
- (b) in the case of goods removed to a licensed warehouse subsequent to importation, at the time of final clearance from the warehouse for home use;
- (c) in the case of goods removed from an export processing zone, at the time of removal for home use;
- (d) in any other case, at the time the goods are brought into Kenya.

#### **PART V—TAXABLE VALUE**

13.(1) Subject to this Act, the taxable value of a supply, including a supply of imported services, shall be-

Taxable value of supply

- (a) the consideration for the supply; or
- (b) if the supplier and recipient are related, the open market value of the supply.

(2) The taxable value of a supply of mobile cellular services shall be the value of the services as determined for the purposes of the duty imposed under the law relating to excise.

(3) Subject to subsections (4) to (6), the consideration for a supply, including a supply of imported services, shall be the total of –

- (a) the amount in money paid or payable, directly or indirectly, by any person, for the supply; or
- (b) the open market value at the time of the supply of an amount in kind paid or payable, directly or indirectly, by any person, for the supply; and
- (c) any taxes, duties, levies, fees, and charges (other than value added tax) paid or payable on, or by reason of the supply,

reduced by any discounts or rebates allowed and accounted for at the time of the supply.

(4) The consideration for a supply shall include the amount charged for –

- (a) any wrapper, package, box, bottle, or other container in which goods are supplied;
- (b) any other goods contained in or attached to the wrapper, package, box, bottle or other container referred to in paragraph (a); or
- (c) any liability that the purchaser has to pay to the vendor by reason of or in respect of the supply in addition to the amount charged as price.

(5) In calculating the value of any services for the purposes of subsection (1), there shall be included any incidental costs incurred by the supplier of the services in the course of making the supply to the client:

Provided that, if the Commissioner is satisfied that the supplier has merely made a disbursement to a third party as an agent of his client, then such disbursement shall be excluded from the taxable value.

(6) The consideration for a supply shall not include –

- (a) in the case of a supply of goods under a hire purchase agreement, any financial charge payable in relation to a supply of credit under the agreement; or

- (b) any interest incurred for the late payment of the consideration for the supply.

(7) The consideration for a supply of accommodation or restaurant services shall not include the Tourism Levy imposed on the supply under the Tourism Act; or

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(8) For the purposes of this Act, a person is related to another person if-

- (a) either person participates, directly or indirectly, in the management, control or the capital of the business of the other;
- (b) a third person participates, directly or indirectly, in the management, control or capital of the business of both; or
- (c) an individual who participates in the management, control or capital of the business of one, is associated by marriage, consanguinity or affinity to an individual who participates in the management, control or capital of the business of the other.

14.(1) The taxable value of imported goods shall be the sum of-

Taxable value of imported goods

- (a) the value of the goods ascertained for the purpose of customs duty, in accordance with the East African Community Customs Management Act, 2004, whether or not any duty of customs is payable on the goods;
- (b) to the extent not included under paragraph (a) -
  - (i) the cost of insurance and freight incurred in bringing the goods to Kenya; and
  - (ii) the cost of services treated as part of the imported goods under this section; and
- (c) the amount of duty of customs, if any, paid on those goods.

(2) Unless the context otherwise requires, a supply of services that is ancillary or incidental to the importation of goods shall be treated as part of the importation.



15. (1) An application of taxable supplies by a registered person for use outside his business shall be a taxable supply made by the person.

Deemed taxable  
supply

(2) A taxable supply under subsection (1) shall be deemed to have been made by the person on the date the supply is first used outside the business.

16. (1) Where goods are returned to the registered person or, for good and valid reason the registered person decides for business reasons, to reduce the value of a supply after the issue of a tax invoice, a credit note shall be issued for the amount of the reduction:

Debit and credit  
note

Provided that a credit note may be issued only within six months after the issue of the relevant tax invoice.

(2) A registered person who issues a credit note under this section shall reduce the amount of his output tax in the tax period in which the credit note was issued by an amount that bears the same proportion to the tax originally charged as the amount credited bears to the total amount originally charged and the amount of tax so credited shall be specified on the credit note.

(3) A registered person who receives a credit note for the supply in respect of which he has claimed deductible input tax, shall reduce the amount of deductible input tax in the month in which the credit note is received, by the amount of tax credited.

(4) Where a registered person has issued a tax invoice in respect of a taxable supply and subsequently makes a further charge in respect of that supply, or any transaction associated with that supply, the person shall, in respect of the further charge being made, issue a debit note, and shall show on it the details of the tax invoice issued at the time of the original supply.

(5) A registered person who receives a debit note issued in compliance with subsection (4) may, if the supply is eligible therefor and in so far as it has not previously been claimed, claim as deductible input tax such further amount of tax that is being charged, in the month in which the further charge was made, or in the next subsequent month.

(6) A credit or debit note issued under this section shall be serially numbered and shall include details of the name, address and personal identification number of the person to whom it is issued and sufficient details to identify the tax invoice on which the supply was made and the tax that was originally charged.

#### **PART VI—DEDUCTION OF INPUT TAX**

17. (1) Subject to the provisions of this section and the regulations, input tax on a taxable supply to, or importation made by, a registered person may, at the end of the tax period in which the supply or importation occurred, be deducted by the registered person, subject to the exceptions provided under this section, from the tax payable by the person on supplies by him in that tax period, but only to the extent that the supply or importation was acquired to make taxable supplies.

Credit for input  
tax against output  
tax

(2) If, at the time when a deduction for input tax would otherwise be allowable under subsection (1), the person does not hold the documentation referred to in subsection (3), the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation.

Provided that 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.

(3) The documentation for the purposes of subsection (2) shall be -

- (a) an original tax invoice issued for the supply or a certified copy;
- (b) a customs entry duly certified by the proper officer and a receipt for the payment of tax;
- (c) a customs receipt and a certificate signed by the proper officer stating the amount of tax paid, in the case of goods purchased from a customs auction;

- (d) a credit note in the case of input tax deducted under section 16(2); or
- (e) a debit note in the case of input tax deducted under section 16(5).

(4) A registered person shall not deduct input tax under this Act if the tax relates to the acquisition of-

- (a) passenger cars or mini buses, and the repair and maintenance thereof including spare parts, unless the passenger cars or mini buses are acquired by the registered person exclusively for the purpose of making a taxable supply of that automobile in the ordinary course of a continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses; or
- (b) entertainment, restaurant and accommodation services unless –
  - (i) the services are provided in the ordinary course of the business carried on by the person to provide the services and the services are not supplied to an associate or employee; or
  - (ii) the services are provided while the recipient is away from home for the purposes of the business of the recipient or the recipient's employer.

Provided that no tax shall be charged on the supply where no input tax deduction was allowed on that supply under this subsection:

(5) Where the amount of input tax that may be deducted by a registered person under subsection (1) in respect of a tax period exceeds the amount of output tax due for the period, the amount of the excess shall be carried forward as input tax deductible in the next tax period:

Provided that any such excess shall be paid to the registered person by the Commissioner where the Commissioner is satisfied that such excess arises from making zero-rated supplies.

(6) Subject to this Act, if a taxable supply to, or a taxable import by, a registered person during a tax period relates partly to making taxable supplies and partly for another use, the input tax deductible by the person for acquisitions made during the tax period shall be determined as follows –

- (a) full deduction of all the input tax attributable to taxable supplies;
- (b) no deduction of any input tax which is directly attributable to other use; and
- (c) deduction of input tax attributable to both taxable supplies and other uses calculated according to the following formula:

$$\frac{A \times B}{C},$$

where –

- A** is the total amount of input tax payable by the person during the tax period on acquisitions that relate partly to making taxable supplies and partly for another use;
- B** is the value of all taxable supplies made by the registered person during the period; and
- C** is the value of all supplies made by the registered person during the period in Kenya.

(7) If the fraction of the formula in subsection (6) for a tax period –

- (a) is more than 0.90, the registered person shall be allowed an input tax credit for all of the input tax comprising component A of the formula; or

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- (b) is less than 0.10, the registered person shall not be allowed any input tax credit for the input tax comprising component A of the formula.

**18. (1) Where—**

Tax paid prior to  
registration

- (a) on the date exempt supplies made by a registered person become taxable, and the person had incurred input tax on such supplies; or
- (b) on the date he is registered, a person has incurred tax on taxable supplies which are intended for use in making taxable supplies,

the person may, within three months from that date, claim relief from any tax shown to have been incurred on such supplies:

Provided that this subsection shall apply where such supplies are purchased, within the period of twenty-four months immediately preceding registration or the exempt supplies becoming taxable.

(2) Where the Commissioner is satisfied that the claim for relief is justified, he shall authorise the registered person to make an appropriate deduction of the relief claimed under subsection (1) from the tax payable on his next return.

(3) The claim for relief from tax under subsection (1) shall be made in the prescribed form.

**PART VII - COLLECTION AND RECOVERY OF  
TAX**

19. (1) Tax shall be due and payable at the time of supply.

When tax is due

(2) Notwithstanding the provision of subsection (1), a registered person may defer payment of tax due to a date not later than the twentieth day of the month succeeding that in which the tax became due.

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20. (1) Notwithstanding the provisions of this Act, the Commissioner may, with the prior approval of the Cabinet Secretary, in any case where he is of the opinion that there is—

Relief because of doubt or difficulty in recovery of tax

- (a) impossibility, or undue difficulty or expense, of recovery of tax; or
- (b) hardship or inequity,

refrain from assessing or recovering the tax in question and thereupon liability to the tax shall be deemed to be extinguished or the tax shall be deemed to be abandoned or remitted, as the case may be.

(2) In any case which has been referred to him and where he considers it appropriate, the Cabinet Secretary may, in writing, direct the Commissioner —

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

21. (1) Where any amount of tax remains unpaid after the date on which it becomes payable under section 19, an interest equal to two percent per month or part thereof of the unpaid amount shall forthwith be due and payable.

Interest for late payment of tax

(2) Any interest charged under subsection (1) shall, for the purpose of this Act relating to the collection and recovery of tax, be deemed to be tax and any interest which remains unpaid after becoming due and payable under subsection (1) shall attract further interest equal to two per cent per month or part thereof:

Provided that the interest chargeable under this subsection shall not exceed one hundred percent of the tax originally due.

(3) The Commissioner may, upon application by a person from whom any interest is due under subsection (1) or (2), grant remission of the whole or part of the interest due, if satisfied that such remission is justified, and shall make quarterly reports to the Cabinet Secretary on the remission granted under this subsection:

Provided that where the amount of interest exceeds one million five hundred thousand shillings, remission shall be subject to the prior written approval of the Cabinet Secretary.

(4) Upon receipt of an application under subsection (3), the Commissioner shall, where the applicant has paid the principal tax in full, suspend the charging of the interest pending the determination of the application.

(5) Where the remission under subsection (3) is not granted or is granted in respect of only part of the interest, the balance of the interest shall become due and payable within ninety days of the determination of the application.

(6) If the balance of the interest payable under subsection (5) remains unpaid after the expiry of the prescribed period, a surcharge at the rate of two percent per month or part thereof, shall forthwith be due and payable.

(7) The Commissioner shall maintain a public record of each remission together with the reasons thereof which shall be reported to the Auditor General on a quarterly basis.

22.(1) A person shall not be entitled to obtain delivery of imported taxable goods from the control of the customs unless the person has paid, in full, the correct amount of tax due.

Imported goods  
subject to customs  
control

(2) Notwithstanding the provisions of any other written law, any taxable goods which are imported by air, land or water shall be produced by the importer to a proper officer of customs at the customs station at or nearest to the place of entry, and any importer who fails to produce any such goods commits an offence and the goods in respect of which the offence was committed shall be liable to forfeiture.

## (3) The Commissioner of Customs –

- (a) shall collect tax payable under this Act on imported goods at the time of importation and shall, at that time, obtain such information as may be prescribed in respect of the importation; and
- (b) may make arrangements for such functions to be performed on his behalf in respect of imported goods through the postal service.

(4) For the purposes of this section, the Commissioner of Customs may exercise any power conferred upon him by the East African Community Customs Management Act, 2004 as if the reference to import duty in that Act includes a reference to tax payable on imported goods under this Act.

23. (1) Notwithstanding any other provision of this Act, where the Commissioner has reason to believe that any tax payable by any person is at risk of non-payment -

Risk of non-payment of tax.

- (a) due to the imminent departure of the person from Kenya;
- (b) where the person, being a company, is about to be liquidated or otherwise wound up or to cease business; or
- (c) for any other sufficient cause,

the Commissioner may, whether or not the due date for the payment of that tax has reached, by notice in writing, issue an assessment of the tax owing, requiring that person to pay the tax within the time specified in the notice.

(2) Any person who fails to pay tax when required to do so under subsection (1) commits an offence.



24. (1) Where any amount of tax is due and payable by a person, the Commissioner may, instead of suing for the tax, recover it by distress, and for that purpose may, by order under his hand, empower an authorised officer to levy distress on the goods and chattels of the person from whom the tax is recoverable and the officer may, at the cost of that person, employ such servants or agents as he may think necessary to assist him in the levying the distress:

Provided that where the full amount of tax due and payable –

- (a) is not recovered by distress, the Commissioner may recover the outstanding amount in any other manner provided by this Act; or
- (b) has been paid after the issue of an order under this section and before the levying of distress, any costs and expenses incurred by the Commissioner before payment of the tax shall be deemed to be a debt due and payable to the Government by the person in respect of whom the order was issued and may be recovered by the Commissioner as tax under this Act.

(2) For the purpose of levying distress under this section, the authorised officer may, in addition to employing such servants or agents as he may consider necessary, require a police officer to be present while distress is being levied, and any police officer so required shall comply with the requirement.

(3) Any property distrained under this section shall be kept for ten days, either at the premises at which distress was levied or at such other place as the authorised officer may consider appropriate, at the cost of the person from whom the tax is recoverable:

Provided that where goods are of a perishable nature, the Commissioner may direct that the goods shall be sold forthwith, either by public auction or by private treaty, and that the proceeds of sale shall be retained and dealt with as if they were the goods.

(4) If the person from whom tax is recoverable by distress does not pay the tax together with the costs of the distress within the period of ten days referred to in subsection (3), the goods or chattels distrained upon shall be sold by public auction for payment of the tax and costs and the proceeds of the sale shall be applied first towards the cost of taking, keeping and selling the goods and chattels distrained upon and then towards the tax, and any remaining proceeds shall be paid to the person from whom the goods were distrained.

25. (1) Where any sum by way of tax is due and payable by a registered person, the Commissioner may, by notice in writing, require –

Power to collect tax from person owing money to the registered person

- (a) any person from whom any money is due or accruing or may become due to the registered person;
- (b) any person who holds or may subsequently hold money for or on account of the registered person;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to the registered person; or
- (d) any person having authority from some other person to pay money to the registered person,

to pay to the Commissioner that money or such sum as is sufficient to pay the tax that is due and payable.

(2) Where a person required under subsection (1) to pay money to the Commissioner claims to be or to have become unable to do so by reason of lack of moneys held by, or due from him, he shall within seven working days notify the Commissioner accordingly, in writing, stating the reasons for his inability to do so.

(3) Unless the Commissioner is satisfied with the reasons given under subsection (2) –

- (a) sufficient moneys for the payment of the tax specified in the notice shall be presumed to be held by such person for, or due from him to, the registered person in respect of whom the notice is given under subsection (1); and

- (b) in any proceedings for the collection or recovery of that tax, such person shall be stopped from asserting the lack of those moneys.

(4) The Commissioner may, by notice in writing, at any time require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of the notice, with a return showing any moneys which may be held by that person for, or due by him to, the registered person from whom tax is due

(5) All payments made in accordance with a notice under this section shall be deemed to be made on behalf of the registered person and of all other persons concerned, and shall constitute a good and sufficient discharge of the liability of such person to the registered person, or any other person.

(6) Any person who, without lawful authority or excuse –

- (a) fails to comply with the requirement of any notice given to him under subsection (1) or (4); or
- (b) discharges any liability to a registered person in disregard of such notice,

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both, and shall also be personally liable to pay to the Commissioner the amount of any liability so discharged.

26. (1) Where the Commissioner has reasonable cause to believe that a person –

- (a) has made taxable supplies on which tax has not been charged; or
- (b) has collected tax which has not been accounted for; and
- (c) is likely to frustrate the recovery of tax if information on the Commissioner's suspicion under this subsection is disclosed to him,

Preservation of funds

the Commissioner may make an *ex-parte* application to the High Court, in this section referred to as "the Court", and the Court may issue an order to any person or institution holding funds belonging to the person, prohibiting the transfer, withdrawal or disposal of, or any other dealings involving such funds.

(2) An order under subsection (1) shall be valid for thirty days and may be extended by the Court on application by the Commissioner.

(3) A person whose funds are the subject of an order under this section may, within fifteen days of being served with the order, apply to the Court to discharge or vary the order or dismiss the application under subsection (2).

(4) Where the Court has issued an order under this section, the Commissioner shall, within thirty days of the order, determine the tax due and payable, issue a notice of assessment to that person and commence recovery of such tax in accordance with the provisions of this Act.

(5) Upon issuance of a notice of assessment under subsection (4), the order shall automatically expire unless extended by the Court upon application by the Commissioner under subsection (2).

(6) A person served with an order under this section who, in any way, interferes with the funds to which the order relates commits an offence.

(7) A person who preserves funds or any account pursuant to a Court order issued under this section, shall for all purposes, be deemed to have acted within the authority thereof and such person and all other persons concerned shall be indemnified in respect of the actions taken in connection therewith, against all proceedings, civil or criminal and all process, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

27. (1) Where a person being the owner of land or buildings on land situated in Kenya fails to pay a tax due and payable under this Act, the Commissioner may by notice in writing inform that person of his intention to apply to the Chief Land Registrar for the land or buildings to be the subject of security for tax of an amount specified in the notice.

Security on  
property for  
unpaid tax.

(2) If a person on whom a notice has been served under this section fails to pay the whole of the amount specified in the notice within thirty days of the date of service of the notice, the Commissioner may, by notice in writing, direct the Chief Land Registrar that the land and buildings, to the extent of the interest therein, be the subject of security for the tax of a specified amount and the Registrar shall, without fee, register the direction as if it were an instrument of mortgage over, or charge on, as the case may be, the land and buildings and thereupon, that registration shall, subject to any prior mortgage or a charge, operate while it subsists in all respects as a legal mortgage over or charge on the land or buildings to secure the amount of the tax.

(3) The Commissioner shall, upon the payment of the whole of the amount of tax secured under subsection (2), by notice in writing to the Chief Land Registrar, cancel the direction made under that subsection and the Registrar shall, without fee, record the cancellation thereupon and the direction shall cease to subsist.

28. (1) Any tax payable under this Act shall be paid to the Commissioner.

Tax payable to  
the  
Commissioner

(2) Any person who fails to pay tax due from him on or before the day upon which it is payable commits an offence.

(3) The amount of any tax payable under this Act shall not be abated by reason only of the conviction of the person liable for the payment thereof for an offence under subsection (2).

29. Without prejudice to any other remedy, any tax due and payable under this Act may be recovered by the Commissioner as a civil debt due to the Government, and, where the amount of the tax does not exceed one hundred thousand shillings, the debt shall be recoverable summarily.

Tax to be  
recovered as civil  
debt.

#### **PART VIII—REFUND OF TAX**

30. Where, in respect of any supply, tax has been paid in error, the Commissioner shall, except as otherwise provided by the regulations, refund such tax:

Refund of tax  
paid in error

Provided that no refund shall be made under this section unless a claim in respect thereof is lodged within twelve months from the date the tax became due and payable under section 19.

31. (1) Where a registered person has made a supply and has accounted for and paid tax on that supply but has not received any payment from the person liable to pay the tax, he may, after a period of three years from the date of that supply or where that person has become legally insolvent, apply to the Commissioner for a refund of the tax involved and subject to the regulations, the Commissioner may refund the tax:

Refund of tax on  
bad debts

Provided that no application for a refund shall be made under this section after the expiry of five years from the date of the supply.

(2) Where the tax refunded under subsection (1) is subsequently recovered from the recipient of the supply, the registered person shall refund the tax to the Commissioner within thirty days of the date of the recovery.

(3) If payment is not made within the time specified under subsection (2), an interest of two per cent per month or part thereof of the tax refunded shall forthwith be due and payable:

Provided that the interest payable shall not exceed one hundred per cent of the refunded amount.

32.(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.

Erroneous refund  
of tax

(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 and if payment is not made within thirty days of the date of service, an interest of two percent 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.

(3) The Commissioner may, upon application by a person from whom any interest is due under subsection (2), grant remission of the whole or part of the interest due, if satisfied that such remission is justified, and shall make quarterly reports to the Cabinet Secretary of all the remissions granted under this subsection:

Provided that where the amount of interest exceeds one million five hundred thousand shillings, remission shall be subject to the prior written approval of the Cabinet Secretary.

(4) Upon receipt of an application under subsection (3), the Commissioner shall, where the applicant has paid the principal tax in full, suspend the charging of the interest pending the determination of the application.

(5) Where remission under subsection (3) is not granted, or is granted in respect of only part of the interest, the balance of the interest shall become due and payable within ninety days of the determination of the application.

(6) Where the balance of the interest payable under subsection (5) remains unpaid after the expiry of the specified period, a surcharge at the rate of two percent per month or part thereof shall forthwith be due and payable.

33. Any 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.

Fraud in relation  
to claims for tax  
refund

#### **PART IX—REGISTRATION AND DEREGISTRATION**

34. (1) A person who in the course of a business –

Application for  
registration

- (a) has made taxable supplies or expects to make taxable supplies, the value of which is five million shillings or more in any period of twelve months; or
- (b) is about to commence making taxable supplies the value of which is reasonably expected to exceed five million shillings in any period of twelve months,

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shall be liable for registration under this Act and shall, within thirty days of becoming so liable, apply to the Commissioner for registration in the prescribed form.

(2) In determining whether a person exceeds the registration threshold for a period, the value of the following taxable supplies shall be excluded—

- (a) a taxable supply of a capital asset of the person; and
- (b) a taxable supply made solely as a consequence of the person selling the whole or a part of the person's business or permanently ceasing to carry on the person's business.

(3) Notwithstanding subsection (1), a person who makes or intends to make taxable supplies may apply, in the prescribed form, to the Commissioner for voluntary registration.

(4) The Commissioner shall register a person who has applied for voluntary registration under subsection (3) if satisfied that -

- (a) the person is making, or shall make taxable supplies;
- (b) the person has a fixed place from which the person's business is conducted;
- (c) if the person has commenced carrying on a business, the person-
  - (i) has kept proper records of its business; and
  - (ii) has complied with its obligations under other revenue laws; and



No.

(d) there are reasonable grounds to believe that the person shall keep proper records and file regular and reliable tax returns.

(5) The Commissioner shall issue a registered person with a tax registration certificate in the prescribed form.

(6) If the Commissioner is satisfied that a person eligible to apply for registration has not done so within the time limit specified in subsection (1), the Commissioner shall register the person.

(7) The registration of a person under subsection (1) or (6) shall take effect from the beginning of the first tax period after the person is required to apply for registration, or such later period as may be specified in the person's tax registration certificate.

(8) The registration of a person under subsection (4) shall take effect from the date specified in the person's tax registration certificate.

(9) The Cabinet Secretary may, in regulations, provide for the registration of a group of companies as one registered person for the purposes of the Act.

35.(1) A registered person shall display in a conspicuous place –

Registered person  
to display  
certificate

(a) the tax registration certificate at the principal place at which the person carries on business; and

(b) a copy of the certificate at every other place at which the person carries on business.

(2) A registered person shall notify the Commissioner, in writing, of any change in the name (including the business name), address, place of business, or nature of the business of the person within twenty-one days of the change.

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*Value Added Tax*

No.

Cancellation of  
registration

36. (1) A registered person who ceases to make taxable supplies shall apply in writing to the Commissioner, for the cancellation of the person's registration, within thirty days of the date on which the person ceases to make taxable supplies.

(2) A registered person who continues to make taxable supplies whose annual value does not exceed the registration threshold may apply in writing to the Commissioner, for cancellation of the person's registration.

(3) The Commissioner shall, by notice in writing, cancel the registration of a person if –

- (a) the person has applied for cancellation under subsection (1) and the Commissioner is satisfied that the person has ceased to make taxable supplies; or
- (b) the person has not applied for cancellation but the Commissioner is satisfied that the person has ceased to make taxable supplies and is not otherwise required to be registered

(4) Where a person applies for cancellation of registration under subsection (2) and the Commissioner is satisfied that the person is not required to be registered –

- (a) the Commissioner shall, if the person has been registered for a period of more than twelve months, by notice in writing, cancel the registration; or
- (b) the Commissioner may, if the person has been registered for a period of twelve months or less, by notice in writing, cancel the registration.

(5) The Commissioner may, by notice in writing, cancel the registration of a person who is no longer required to be registered, if the Commissioner is satisfied that the person has not–

- (a) kept proper tax records;
- (b) furnished regular and reliable returns; or
- (c) complied with obligations under other revenue laws, and there are reasonable grounds to believe that the person will not keep proper records or furnish regular and reliable returns.

(6) The cancellation of a person's registration shall take effect from the date specified in the notice of cancellation.

(7) Where a person's registration is cancelled under this section, the person shall—

- (a) immediately cease to hold out that the person is a registered person, including on any documentation used by the person;
- (b) submit a final return and pay all tax due, including the tax due under subsection (9), within fifteen days after the date of cancellation of the person's registration.

(8) Notwithstanding the cancellation of registration of a person under this section, the person shall be liable for any act done or omitted to be done while registered.

(9) A person whose registration is cancelled shall be deemed to have made a taxable supply of any trading stock on hand at the time the registration is cancelled if the person was allowed an input tax credit for the acquisition or import of the stock, or in respect of the acquisition or import of goods that have been subsumed into that stock.

(10) The taxable supply under subsection (1) shall be deemed to have been made by the person immediately before the person's registration is cancelled and the person shall be liable for an amount of output tax in respect of the supply equal to the amount of the input tax credit allowed to the person on acquisition or import of the stock.

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Value Added Tax

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37. A person who –

Offences relating  
to registration

- (a) fails to apply for registration as required under this Act;
- (b) applies for cancellation of registration when still required to be registered;
- (c) fails to apply for cancellation of registration as required under this Act; or
- (d) fails to comply with section 35 or 36(7)(a),

commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

#### **PART X—APPLICATION OF INFORMATION TECHNOLOGY**

38. (1) Subject to subsection (2), and in accordance with the regulations, the following tax formalities and procedures shall be carried out by use of information technology-

Application of  
information  
technology

- (a) an application for registration;
  - (b) a return or statement required to be furnished under this Act;
  - (c) any payment or repayment;
  - (d) any notice or other document required to be issued by the Commissioner; or
  - (e) any act or thing which requires to be done under this Act.
- (2) The Commissioner may exempt-
- (a) any person or class of persons from carrying out tax formalities and procedure; or
  - (b) procedures or formalities from being carried out

by use of information technology.

39.(1) The Commissioner may establish and operate a procedure for electronic filing of tax returns or other documents by registered persons and electronic service of notices and other documents by the Commissioner and, for this purpose, the Commissioner may provide written conditions for –

- (a) the registration of persons to participate in the electronic notice system;
- (b) the issuing and cancellation of authentication codes to registered users;
- (c) the tax returns and other documents that may be transmitted through the electronic notice system, including the form and manner in which they are to be transmitted;
- (d) the correction of errors in or amendments to electronic returns or other documents;
- (e) the use of the electronic notice system, including the procedure applicable if there is a breakdown or interruption in the system;
- (f) the use, in any electronic transmission, of symbols, codes, abbreviations or other notations to represent any particulars or information required under a tax law; and
- (g) any other matters for the better provision of the electronic notice system.

(2) A registered user may, in accordance with the conditions set by the Commissioner under subsection (1), file a tax return or other document to the computer account of the Commissioner.

(3) The Commissioner may, in accordance with the conditions set under subsection (1), serve a notice or other document to the computer account of a registered user.

(4) If a tax return or other document of a registered user has been transmitted to the computer account of the Commissioner using the authentication code assigned to the registered user –

- (a) either with or without the authority of the registered user; and
- (b) before the registered user has applied to the Commissioner for cancellation of the authentication code,

the return or other document shall, for the purposes of this Act, be presumed to have been filed by the registered user unless the registered user proves the contrary.

(5) For the purposes of this Act, an electronic tax return, notice, or other document, or a copy thereof, shall not be ruled inadmissible in evidence merely on the basis that it was filed or served without the filing or delivery of any equivalent document or counterpart in paper form.

(6) The contents of any electronic tax return, notice or other document admissible under subsection (5) shall, unless the contrary is proved, be deemed to have been accurately transmitted.

(7) A person furnishing an electronic tax return or other document on behalf of another person shall not divulge or disclose the contents of the return or document, or a copy thereof to any other person, without the prior written consent of the Commissioner.

(8) A person who contravenes any of the provisions of this section commits an offence.

40. (1) A person who –

- (a) knowingly and without lawful authority, by any means, gains access to or attempts to gain access to any tax computerised system;
- (b) having lawful access to any tax computerized system, knowingly uses or discloses information obtained from such system for a purpose that is not authorised; or

Unauthorized  
access to or  
improper use of  
tax computerized  
system

- (c) knowing that he is not authorized to do so, receives information obtained from any tax computerized 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 an individual, 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.

41. (1) A person who knowingly -

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

Interference with  
tax computerized  
system

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.

#### **PART XI—INVOICES, RECORDS, RETURNS AND ASSESSMENTS**

42. (1) Subject to subsection (2), a registered person who makes a taxable supply shall, at the time of the supply furnish the purchaser with the tax invoice containing the prescribed details for the supply.

Tax invoice

(2) No invoice showing an amount which purports to be tax shall be issued on any supply-

- (a) which is not a taxable supply; or
- (b) by a person who is not registered.

(3) Any person who issues an invoice in contravention of this subsection commits an offence and any tax shown thereon shall become due and payable to the Commissioner within seven days of the date of the invoice.

(4) A registered person shall issue only one original tax invoice for a taxable supply, or one original credit note or debit note, but a copy clearly marked as such may be provided to a registered person who claims to have lost the original.

43.(1) Every registered person shall, for the purposes of this Act, keep in the course of his business, a full and true written record, whether in electronic form or otherwise, in English or Kiswahili of every transaction he makes and the record shall be kept in Kenya for a period of five years from the date of the last entry made therein.

Keeping  
records of

(2) The records to be kept under subsection (1) shall include -

- (a) copies of all tax invoices and simplified tax invoices issued in serial number order;
- (b) copies of all credit and debit notes issued, in chronological order;
- (c) purchase invoices, copies of customs entries, receipts for the payment of customs duty or tax, and credit and debit notes received, to be filed chronologically either by date of receipt or under each supplier's name;
- (d) details of the amounts of tax charged on each supply made or received and in relation to all services to which section 10 applies, sufficient written evidence to identify the supplier and the recipient, and to show the nature and quantity of services supplied, the time of supply, the place of supply, the consideration for the supply, and the extent to which the supply has been used by the recipient for a particular purpose;



- (e) tax account showing the totals of the output tax and the input tax in each period and a net total of the tax payable or the excess tax carried forward, as the case may be, at the end of each period;
- (f) copies of stock records kept periodically as the Commissioner may determine;
- (g) details of each supply of goods and services from the business premises, unless such details are available at the time of supply on invoices issued at, or before, that time; and
- (h) such other accounts or records as may be specified, in writing, by the Commissioner.

(3) Every person required under subsection(1) to keep records shall, at all reasonable times, avail the records to an authorised officer for inspection and shall give the officer every facility necessary to inspect the records.

(4) For the purposes of this section, the Commissioner may, in accordance with the regulations, require any person to use an electronic tax register, of such type and description as may be prescribed, for the purpose of accessing information regarding any matter or transaction which may affect the tax liability of the person.

(6) A person who contravenes any of the provisions of this section commits an offence.

44.(1) Every registered person shall submit a return, in the prescribed form and manner, in respect of each tax period not later than the twentieth day after the end of that period.

Submission of  
returns

(2) A registered person may, in writing, apply to the Commissioner for an extension of time to submit a return.

(3) An application under subsection (2) shall be made before the due date for submission of the return.

(4) The Commissioner may, upon satisfaction that there is reasonable cause, grant an application under subsection (2) and shall serve notice of the decision on the applicant.

(5) A person who fails to submit a return as required under this section shall be liable to a penalty of ten thousand shillings or five percent of the amount of tax payable under the return, whichever is higher.

45. (1) For the purposes of this Act, a registered person who has submitted a return shall be treated as having made an assessment of the amount of tax payable for the tax period to which the return relates, being the amount set out in the return.

Assessment of tax.

(2) If a registered person fails to -

- (a) submit a return;
- (b) keep proper books of accounts, records or documents; or
- (c) apply for registration as a registered person,

as required under this Act, the Commissioner may, based on such evidence as may be available, make an assessment of the tax payable (including interest and any penalty where applicable) by the registered person.

(3) An assessment under subsection (2) shall not alter the due date for the payment of the tax as determined under the Act.

(4) The Commissioner shall cause a notice of the assessment under subsection (2) to be served on the person assessed, and the notice shall state the amount of tax payable and shall inform the person assessed of his rights under this Act.

(5) Subject to subsection (6), an assessment made under subsection (2) shall not be made after five years immediately following the last date of the tax period in which the liability to pay tax arose.

(6) The time limit under subsection (5) shall not apply in the case of gross or wilful neglect, evasion or fraud.

46.(1) Subject to this section, the Commissioner may amend an assessment by making such alterations or additions to the assessment as he considers necessary to ensure that a registered person is liable for the correct amount of tax in respect of the tax period to which the assessment relates and shall serve notice of the amendment on the registered person.

Amendment of  
assessment

(2) A registered person who has made a self-assessment pursuant to section 45 may apply to the Commissioner, within the period specified in subsection (4)(b), to make an amendment to the assessment.

(3) If an application has been made under subsection (2), the Commissioner may –

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

and the Commissioner shall serve the registered person with a notice of the decision on the application within thirty days of the receipt of application.

(4) The amendment of an assessment under subsection (1) may be made –

- (a) in the case of gross or wilful neglect, evasion or fraud by or on behalf of the registered person, at any time; or
- (b) in any other case, within five years of–
  - (i) a self-assessment, the date that the registered person submitted the return; or
  - (ii) any other assessment, the date the Commissioner served notice of the assessment,

and the Commissioner shall serve the registered person with a notice of an amended assessment within thirty days.

(5) Subject to subsection (6), if an assessment has been amended under subsection (1), the Commissioner may further amend the original assessment within the later of –

- (a) five years after the Commissioner served notice of the original assessment on the registered person or, in the case of a self assessment, five years after the registered person submitted the return treated as the original assessment; or
- (b) one year after the Commissioner served notice of the amended assessment on the registered person.

(6) In any case to which subsection (5)(b) applies, the Commissioner shall be limited to amending the alterations or additions made in the amended assessment to the original assessment.

(7) In this Part, "assessment" includes a self assessment under section 45.

### PART XII—ENFORCEMENT

47. (1) The Commissioner may, in order to secure the payment by any person of any tax, or other sum payable under this Act, require the person concerned to furnish security thereof in such manner as may be prescribed and for such amount as the Commissioner considers reasonable having regard to the circumstances.

Commissioner  
may require  
security

(2) Any person who, without reasonable excuse, fails to comply with a requirement of the Commissioner under this section within such reasonable time as the Commissioner may allow commits an offence.

48. (1) For the purposes of obtaining full information, whether on a data storage devise or otherwise, in respect of the tax liability of any person or class of persons, or for any other purposes, the Commissioner or an authorised officer may require any person, by notice in writing, to-

Production of  
records

- (a) produce for examination, at such time and place as may be specified in the notice, any records, books of account, statements of assets and liabilities or other documents that are in the person's custody or under the person's control relating to the tax liability of any person;
- (b) furnish such information relating to the tax liability of any person in the manner specified in the notice;

- (c) attend, at such time and place as may be specified in the notice, for the purpose of giving evidence in respect of any matter or transaction appearing to be relevant to tax liability of any person:

Provided that where the person required to produce any records, books of account, statements of assets and liabilities or other documents for examination under this section is a bank or financial institution –

- (i) the records, books of account, statements of assets and liabilities or other documents shall not, in the course of the examination, be removed from the premises of the bank or financial institution or other premises at which they are produced;
- (ii) the Commissioner or an authorised officer carrying out the examination may make copies of such records, books of account, statements of assets and liabilities or other documents for purposes of any report relating to the examination; and
- (iii) all information obtained in the course of the examination shall be treated as confidential and shall be used solely for the purposes of the Act.

(2) A person who, without reasonable excuse, fails to comply with any requirement made under subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(3) The Commissioner may require that the information or evidence referred to in subsection (1) be–

- (a) given on oath, verbally or in writing, and, for that purpose, the Commissioner may administer the oath; or

- (b) verified by statutory declaration or in any other manner.

(4) This section shall have effect notwithstanding—

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

49. (1) The Commissioner or an authorised officer may, at all reasonable times enter, with warrant, any premises upon which any person carries on business, or in which he has reasonable grounds to believe that a person is carrying on business, in order to ascertain whether this Act is being complied with, whether on the part of the occupier of the premises or any other person, and on entry he may —

Power of  
inspection etc.

- (a) require the production of, and may examine, make and take copies of, any record, book, account or other document, whether on a data storage device or otherwise, kept on the premises;
- (b) take possession of and remove any record, book, account or other document, whether on a data storage device or otherwise (including the data), which he has reasonable grounds to suspect to be, or to contain, evidence of the commission of any offence under this Act;
- (c) require the occupier of the premises or any person employed therein to answer questions relating to any record, book, account or other document, whether on a data storage device or otherwise, or to any entry therein, and to render such explanation and give any information relating to the business concerned that the authorised officer may require for the exercise of his functions under this Act;

- (d) require any safe, container, envelope or other receptacle in the establishment to be opened;
- (e) at the risk and expense of the occupier of the premises, open and examine any package found therein;
- (f) take and retain without payment such reasonable samples of any goods as he may think necessary for the exercise of his functions under this Act.

(2) Notwithstanding subsection (1), the Commissioner or an authorized officer may, prior to obtaining a warrant, secure the premises for purpose of ascertaining whether this Act is being complied with.

(3) Where an authorised officer enters any premises in exercise of the powers conferred by subsection (1), he may take with him such persons as he considers necessary for the carrying out of his functions under this Act

(4) An authorised officer shall not be entitled to enter or remain on any premises or place if, upon request by the owner or lawful occupier, the officer is unable to produce the Commissioner's written authorisation permitting the officer to exercise the powers conferred by subsection (1).

(5) The owner or lawful occupier of the premises to which an exercise of power under subsection (1) relates shall provide all reasonable facilities and assistance to the Commissioner or authorised officer in the exercise of the power.

(6) A person whose accounts, documents, or records have been seized under subsection (1) may examine them and make copies, at the person's expense, during office hours.

(7) A person whose data storage device has been seized under subsection (1) may have access to the device during office hours on such terms and conditions as the Commissioner or authorized officer may specify.

(8) The Commissioner or authorised officer shall sign for all accounts, documents, records or data storage devices removed and retained under this section and return them to the owner within fourteen days of the conclusion of the examination to which they relate and all related proceedings:

Provided that the Commissioner shall not retain the accounts, documents, records or data storage devices for a period longer than six months unless the accounts, documents, records or data storage devices are required for the purposes of any proceedings under this Act or any other written law.

(9) 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, accounts, documents, or records (including in electronic format); or
- (b) any contractual duty of confidentiality.

(10) Any person who -

- (a) resists, hinders or obstructs, or attempts to resist, hinder or obstruct, an authorised officer acting under this section, or fails to comply with subsection (5); or
- (b) fails to comply fully with any requirement made under this section; or
- (c) makes any statement in response to any such requirement, knowing it to be false or incomplete in any material particular, or not having reason to believe that it is true or complete in all material respects; or
- (d) procures or attempts to procure, by any means, any other person to act as aforesaid,

commits an offence.



(11) The Commissioner shall allow the registered person or his authorised representative access to documents or equipment during the audit or examination and the Commissioner shall return the documents or equipment after completing such audit or examination.

(12) Any audit or examination of the records of a registered person pursuant to this section shall be finalized within six months from the date it commences.

(13) In the event that the audit or examination is not completed within six months as contemplated in subsection (12), an authorized officer may request the Commissioner to extend the period for conducting the audit or examination and, if such extension is granted, the authorised person shall inform the registered person accordingly.

(14) Where an audit or examination is not concluded upon expiry of six months from the date of commencement of the audit or examination, a registered person or his or her authorised representative shall, upon request, be issued with an interim certificate indicating the progress made during the audit or examination.

### PART XIII—OBJECTIONS

50. (1) A person who disputes an assessment made by the Commissioner under section 45 or 46 may, by notice in writing to the Commissioner, object to the assessment.

Objections

(2) A notice given under subsection (1) shall not be a valid notice of objection unless -

- (a) it states precisely the grounds of objection to the assessment; and
- (b) it is received by the Commissioner within thirty days after the date of service of the notice of assessment:

Provided that if the Commissioner is satisfied that owing to absence from Kenya, sickness or other reasonable cause, the person objecting to the assessment was prevented from giving the notice within that period and there has been no unreasonable delay on his part, the Commissioner may, upon application by the person objecting, admit the notice after the expiry of that period and the admitted notice shall be a valid notice of objection.

(3) Where notice of an objection has been received under this section, the Commissioner shall, within thirty days—

- (a) amend the assessment in accordance with the objection;
- (b) amend the assessment in the light of the objection according to the best of his judgment; or
- (c) refuse to amend the assessment.

(4) Where the Commissioner, in respect of an objection under this section, either—

- (a) agrees to amend the assessment in accordance with the objection; or
- (b) proposes to amend the assessment in the light of the objection and the person objecting agrees with the Commissioner on the proposed amendment,

the assessment shall be amended accordingly and the Commissioner shall, within fifteen days, cause a notice setting out the amendment and the amount of tax payable to be served on that person.

(5) Where the Commissioner, upon consideration of an objection under this section —

- (a) proposes to amend the assessment in the light of the objection and the person objecting does not agree with the Commissioner as to the proposed amendment, the assessment shall be amended as proposed by the Commissioner who shall, within fifteen days, cause a notice setting out the amendment and the amount of the tax payable to be served on that person; or

- (b) refuses to amend the assessment, he shall, within fifteen days, cause a notice confirming the assessment to be served on that person.

(6) A person's objection to an amended assessment under this section shall be limited to the alterations or additions made in it.

(7) Where the Commissioner fails to communicate the decision on a person's objection within sixty days of the receipt of the objection, the Commissioner shall be deemed to have agreed to amend the assessment in accordance with the objection.

#### PART XIV—FORFEITURE AND SEIZURE

51. (1) Any taxable supplies found to have been sold by a registered person without payment of tax shall be liable to forfeiture:

Power to seize goods.

Provided that the Commissioner may permit the goods liable to forfeiture to be delivered to the person making the claim after the tax due on the goods is paid.

(2) The Commissioner may seize any goods liable to forfeiture if he has reasonable grounds to believe that the tax due and payable in respect of the supply or importation of the goods has not been, or is likely not be, paid.

(3) Goods seized under subsection (2) shall be stored in a place approved by the Commissioner.

(4) Immediately after the seizure of the goods, a written statement shall be obtained from the owner of the goods or the person who has custody or control stating the quantity and quality of the goods.

(5) Where goods have been seized under subsection (2), the Commissioner shall, within ten days after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before 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; and
- (c) setting out the terms for the release or disposal of the goods.

(6) The Commissioner shall not be required to serve a notice under subsection (5) if, after making reasonable enquiries, the Commissioner does not have sufficient information to identify the person on whom the notice should be served.

(7) Where subsection (6) applies, the Commissioner may serve a notice under subsection (5) on a person claiming the goods:

Provided a notice under this subsection shall only be given in favour of a person where that person has given sufficient information to enable the notice to be served.

(8) The Commissioner may authorise any goods seized under subsection (2) to be delivered to the person on whom a notice under subsection (5) has been served where 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.

(9) Where subsection (8) does not apply, the Commissioner shall detain the goods seized under subsection (1) -

- (a) in the case of perishable goods, for a period that the Commissioner considers reasonable having regard to the condition of the goods; or
- (b) in any other case -
  - (i) twenty days after the seizure of the goods; or
  - (ii) twenty days after the due date for payment of the tax,

whichever is earlier.

(10) Where the detention period under subsection (9) has expired, the Commissioner may sell the goods in the manner specified in section 24(4) and apply the proceeds of sale as set out in that section.

**PART XV—SETTLEMENT OF CASES AND RULINGS BY THE COMMISSIONER**

52. (1) The Commissioner may, where he is satisfied that a person has committed an offence under this Act 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 would have been liable if he had been prosecuted and convicted for the offence, as he may think fit and he may order anything liable to forfeiture in connection therewith to be condemned:

Power of the Commissioner to compound offences by agreement

Provided that the Commissioner shall not exercise his powers under this section unless the person admits in writing that he 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 compounding of offences.

(3) The order referred to in subsection (1) 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 in 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 express consent of the Attorney General.

53.(1) The Commissioner may make a public ruling in accordance with section 54 setting out the Commissioner's interpretation on the application of this Act.

Binding public rulings

(2) A public ruling made in accordance with section 54 shall be binding on the Commissioner until withdrawn, but shall not be binding on the tax payer.

54. (1) A public ruling by the Commissioner under section 53 shall be by notice in at least two daily newspapers of national circulation.

Making a public ruling

(2) A public ruling shall bear a heading specifying the subject matter of the ruling and an identification number.

(3) A public ruling shall have effect from the date specified in the ruling or where no date is specified, from the date of its publication.

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

Withdrawal of a public ruling

(2) If, subsequent to a public ruling, legislation is passed, or the Commissioner makes a another public ruling that is inconsistent with an existing public ruling, the existing public ruling shall be treated as withdrawn to the extent of the inconsistency.

(3) The withdrawal of a public ruling, in whole or part, shall have effect –

- (a) where subsection (1) applies, from the date specified in the notice of withdrawal and if no date is specified, from the date the notice of withdrawal is published in at least two daily newspapers of national circulation; or
- (b) where subsection (2) applies, from the effective date of the legislation or of the new public ruling.

(4) A public ruling that has been withdrawn, in whole or in part –

- (a) shall continue to apply to a transaction commenced before the public ruling was withdrawn; and
- (b) shall not apply to a transaction commenced after the ruling was withdrawn to the extent of the withdrawal.

56. (1) Subject to section 57, the Commissioner shall, upon application in writing by a registered person, issue to that person a private ruling setting out the Commissioner's position regarding the application of this Act to a transaction entered into, or proposed to be entered into, by the registered person.

Binding private rulings.

(2) If the taxpayer has made a full and true disclosure of all aspects of the transaction relevant to the making of a private ruling and the transaction has proceeded in all material respects as described in the registered person's application for the ruling, the ruling shall be binding on the Commissioner in relation to the registered person.

(3) A private ruling shall not be binding on the registered person to whom it is issued.

(4) If a private ruling is inconsistent with an existing public ruling, the private ruling shall have priority to the extent of the inconsistency.

57. (1) The Commissioner may refuse an application for a private ruling if –

Refusing an application for a private ruling

- (a) the Commissioner has already decided the matter that is the subject of the application in a tax assessment;
- (b) the Commissioner is of the opinion that an existing public ruling adequately covers the matter that is the subject of the application;
- (c) the application relates to a matter that is the subject of a tax audit or an objection;
- (d) the application is frivolous or vexatious;
- (e) the arrangement to which the application relates has not been carried out and there are reasonable grounds to believe that it shall not be carried out;
- (f) the applicant has not provided the Commissioner with sufficient information to make a private ruling; or
- (g) in the opinion of the Commissioner, it would be unreasonable to comply with the application, having regard to the resources needed to comply and any other matters the Commissioner considers relevant.

(2) The Commissioner shall serve the applicant with a written notice of refusal to make a private ruling under this section.

58.(1) The Commissioner shall make a private ruling by serving written notice of the ruling on the applicant.

Making a private ruling

(2) The Commissioner may make a private ruling on the basis of assumptions about a future event or other matter as considered appropriate.



(3) A private ruling shall set out the matter ruled on, identifying –

- (a) the registered person;
- (b) the specific section relevant to the ruling;
- (c) the tax period to which the ruling applies;
- (d) the arrangement to which the ruling relates; and
- (e) any assumptions on which the ruling is based.

(4) A private ruling shall be effective from date the applicant is served with notice of the ruling and shall remain in force for the period specified in the ruling.

59.(1) The Commissioner may, for reasonable cause, withdraw a private ruling, in whole or part, by written notice served on the applicant.

Withdrawal of a private ruling

(2) If legislation is made, or the Commissioner publishes a public ruling that is inconsistent with a private ruling, the private ruling shall be treated as withdrawn to the extent of the inconsistency.

(3) The withdrawal of a private ruling, in whole or in part, shall have effect –

- (a) where subsection (1) applies, from the date specified in the notice of withdrawal; or
- (b) where subsection (2) applies, from the date of application of the inconsistent legislation or public ruling.

(4) A private ruling which has been withdrawn shall –

- (a) continue to apply to a transaction commenced before the ruling was withdrawn; and

- (b) not apply to a transaction commenced after the ruling was withdrawn to the extent that the ruling is withdrawn.

**PART XVI—OFFENCES AND PENALTIES**

**60.** A member of the Authority, staff or other person having any duty to perform pursuant to any written law relating to any matter under this Act—

Offences by  
members and staff  
of the Authority

- (a) makes, in any record, return or other document which they are required to keep or make, an entry which they know or have reasonable cause to believe to be false, or do not believe to be true;
- (b) wilfully refuses to do anything which they know or have reasonable cause to believe is required to be done by them under this Act or other written law,
- (c) interferes with any other person or process under this Act, so as to defeat the provisions or requirements of this Act;
- (d) where required under this Act or any other law to do anything to give effect to the provisions of this Act, fails to do such thing;
- (e) without reasonable cause does or omit to do anything in breach of his or her duty under this Act;
- (f) wilfully contravenes the provision of this Act to give undue advantage or favour to another person;
- (g) fails to prevent or report to the Authority or any other relevant authority, the commission of an offence committed under this Act,

commits an offence and is liable on conviction, to a fine not exceeding one million five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

61. (1) Where any offence under this Act is committed by an employee or agent, the person by whom that employee or agent is employed shall also be culpable for that offence unless he or she proves to the satisfaction of the court that he or she did not know, and could not reasonably be expected to know, that the act or omission constituting the offence was taking place and that he or she took all reasonable steps to ensure that the offence was not committed.

Liability of  
employers and  
officers of  
companies

(2) Where an offence under this Act has been committed by a body corporate, every person who, at the time of the commission of the offence, was a director, general manager, secretary, or other similar officer of the body corporate, or was acting or purporting to act in that capacity, shall also be culpable for that offence, unless he or she proves that the offence was committed without his or her consent or knowledge and that he or she exercised all the diligence to prevent the commission of the offence that he or she ought to have exercised having regard to the nature of his or her functions in that capacity and in all circumstances.

62. In any civil proceedings under this Act, the burden of proving that any tax has been paid or that any goods or services are exempt from payment of tax shall lie on the person liable to pay the tax or claiming that the tax has been paid or that the goods or services are exempt from payment of tax.

Burden of proof

63. A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

General penalty

#### **PART XVI—MISCELLANEOUS PROVISIONS**

64. (1) If, after any agreement has been entered into for the supply of any taxable supply at a price that is expressly or implicitly inclusive of taxes or duties, and any alteration takes place in the amount of tax payable in respect of that supply before the tax becomes due, then, in the absence of express written provisions to the contrary between the parties to the agreement, and notwithstanding the provisions of any other written law, the agreement shall have effect as follows –

Effect on  
imposition  
or variation of  
tax

- (a) in the case of the alteration being a new or increased tax, the registered person may, after payment of the tax, whether directly or indirectly, add the difference caused by the alteration to the agreed price;
- (b) in the case of the alteration being the abolition or reduction of tax, the purchaser may, if the registered person has not, directly or indirectly, paid the tax or has paid the tax at a lower rate, deduct the difference caused by the alteration from the agreed price;
- (c) any refund or payment of increased tax resulting from the alteration not being finally adopted shall be adjusted between the parties to the agreement as the case may require.

(2) If, under any law relating to the control of prices or charges, a price is fixed, or any variation in price is prohibited or regulated, in relation to any taxable supply then, notwithstanding any provision of that law, where tax in relation to that supply is imposed or altered the price may be varied strictly in accordance with that imposition or variation when the registered person has, directly or indirectly, been affected by that imposition or alteration.

65. Subject to this Act, the East African Community Customs Management Act, 2004 and any rules made thereunder relating to customs generally, whether made before or after the commencement of this Act, shall have effect, with such exceptions and adaptations as may be prescribed, in relation to imported taxable goods, whether liable to any duty of customs or not, as if all such goods were liable to duties of customs and as if those duties included tax.

Application of  
East African  
Community  
Customs  
Management, Act  
2004

66. (1) Notwithstanding anything in this Act, if the Commissioner is satisfied that –

Tax avoidance  
schemes

- (a) a scheme has been entered into or carried out;
- (b) a person has obtained a tax benefit in connection with the scheme; and
- (c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain a tax benefit,

the Commissioner may determine the tax liability of the person who obtained the tax benefit as if the scheme had not been entered into or carried out.

(2) If a determination is made under subsection (1), the Commissioner shall issue an assessment giving effect to the determination.

(3) A determination under subsection (1) shall be made within five years from the last day of the tax period to which the determination relates.

(4) In this section –

“scheme” includes a course of action, and an agreement, arrangement, promise, plan, proposal, or undertaking, whether express or implied, and whether or not legally enforceable; and

“tax benefit” means –

- (a) a reduction in the liability of a person to pay tax;
- (b) an increase in the entitlement of a person to a deduction for input tax;
- (c) an entitlement to a refund;
- (d) a postponement of a liability for the payment of tax;

- (e) an acceleration of an entitlement to a deduction for input tax;
- (f) any other advantage arising because of a delay in payment of tax or an acceleration of the entitlement to a deduction for input tax;
- (g) anything that causes a taxable supply or taxable import not to be a taxable supply or taxable import, as the case may be; or
- (h) anything that gives rise to a deduction for input tax for an acquisition or import that is used or is intended to be used other than in making taxable supplies.

67. (1) The Cabinet Secretary may make regulations for the better carrying of the provisions of this Act, and without prejudice to the generality of the foregoing, the regulations may –

Regulations

- (a) prescribe conditions and procedures for the registration of registered persons;
- (b) provide for the submission of returns and the place at which returns are to be submitted and tax is to be paid;
- (c) prescribe the form of notices, returns or other forms required for the purposes of this Act;
- (d) prescribe offence and penalties thereto;
- (e) prescribe rules for particular types of supplies and in relation to input tax credits; or
- (f) prescribe any other thing required to be prescribed for the purposes of any provision of this Act.

(2) Regulations made under this section shall be tabled before the National Assembly for approval before they take effect.

**68. (1) The Value Added Tax Act is repealed.**

Repeal of Cap  
476, transitional  
and savings  
provisions

(2) Notwithstanding the repeal of the Value Added Tax Act, the provisions of that Act shall remain in full force and effect for the purposes of the assessment and collection of any tax and the recovery of any penalty, payable under the Act and outstanding at the date upon which such repeal becomes effective.

(3) Any subsidiary legislation made under the repealed Act in force at the commencement of this Act shall remain in force, so far as it is not inconsistent with this Act, until subsidiary legislation with respect to the same matter is made under this Act.

(4) Where a remission of tax was granted under the repealed Act on any taxable goods or services, such remission shall continue to remain in force for a period of five years from the date of commencement of this Act.

(5) Where a tax was due to be paid or refunded under the repealed Act but was not so paid or refunded, it shall be paid or refunded as though it were a sum due under this Act".

(6) Unless a contrary intention appears, the commencement of this Act shall not-

- (a) revive anything not in force or existing at the time at which the commencement take effect;
- (b) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the repealed Act in force at the commencement of this Act;
- (c) affect an investigation, legal proceedings or remedy in respect of a right, privilege, obligations, liability, penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and such penalty forfeiture or punishment may be imposed as if this Act has not been passed; or
- (d) affect the employment or appointment of any person to the services of the Authority subsisting at the commencement of this Act.

## FIRST SCHEDULE

## EXEMPT SUPPLIES

## PART I—GOODS

## Section A

The supply or importation of the following goods shall be exempt supplies.

1. Bovine semen of tariff no.0511.10.00
2. Fish eggs and roes of tariff no. 0511.91.10.
3. Animal semen other than bovine of tariff no. 0511.99.10.
4. Soya beans, whether or not broken of tariff nos.1201.10.00 and 1201.90.00
5. Groundnuts, not roasted or otherwise cooked, in shell of tariff no.1202.41.00.
6. Groundnuts, not roasted or otherwise cooked, shelled, whether or not broken of tariff no1202.42.00.
7. Copra of tariff no1203.00.00.
8. Linseed, whether or not broken of tariff no.1204.00.00
9. Low erucic acid rape or colza seeds of tariff no.1205.10.00.
10. Other rape or colza seeds of tariff no.1205.90.00.
11. Sunflower seeds, whether or not broken of tariff no1206.00.00.
12. Cotton seeds, whether or not broken of tariff nos.1207.21.00 and 1207.29.00.
13. Sesamum seeds, whether or not broken of tariff no.1207.40.00.
14. Mustard seeds, whether or not broken of tariff no.1207.50.00
15. Safflower seeds, whether or not broken of tariff no.1207.60.00.
16. Other oil seeds and oleaginous fruits, whether or not broken of tariff no.1207.99.00
17. Pyrethrum flower of tariff no.1211.90.20
18. Live Animals of chapter 1.



- No.
19. Meat and edible meat offals of chapter 2 excluding those of tariff heading 0209 and 0210.
  20. Fish and crustaceans, molluscs and other aquatic invertebrates of chapter 3 excluding those of tariff heading 0305, 0306 and 0307.
  21. Unprocessed milk.
  22. Fresh birds eggs in shell
  23. Edible Vegetables and certain roots and tubers of chapter 7, excluding those of tariff heading 0711.
  24. Edible fruits and nuts, peel of citrus fruits or melon of chapter 8 excluding, those of tariff heading 0811, 0812, 0813 and 0814.
  25. Cereals of chapter 10, excluding seeds of tariff heading 1001, 1002 and 1003.
  26. Fertilisers of chapter 31.
  27. Plants and machinery of chapter 84 and 85.
  28. Maize (corn) seed of tariff no. 1005.10.00.
  29. Taxable supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in the construction of a power generating plant, by a company, to supply electricity to the national grid approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for energy.
  30. Tax supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration, by a company granted prospecting or exploration license in accordance with Geothermal Resources Act (No. 12 of 1982), production sharing contracts in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap. 308) or mining license in accordance with the Mining Act (Cap. 306), upon recommendation by the Cabinet Secretary responsible for energy or the Cabinet Secretary responsible for mining, as the case may be.
  31. Agricultural pest control products.
  32. Syringes, with or without needles of tariff no. 9018.31.00
  33. Disposable plastic syringes of tariff no. 9018.31.10
  34. Other syringes with or without needles of tariff no. 9018.31.90.
  35. Tubular metal needles and needles for sutures of tariff no. 9018.32.00

36. Catheters, cannulae and the like of tariff no. 9018.39.00
37. Blood bags
38. Blood and fluid infusion sets
39. (1) Subject to paragraphs (2) and (3), materials, articles and equipment, including motor vehicles, which—
- (a) are specially designed for the sole use by disabled, blind and physically handicapped persons;
- (b) are intended for the educational, scientific or cultural advancement of the blind for the use of an organisation approved by the national Government for purposes of exemption
- (2) The exemption under paragraph (1) shall only apply—
- (a) once in every four years in respect of motor vehicles; and
- (b) to a person who has not enjoyed another exemption under the provisions of this Act.
- (3) Paragraph (1)(b) does not apply to motor vehicles.

2941.20.00	Streptomycins and their derivatives; salts thereof.
2941.30.00	Tetracyclines and their derivatives; salts thereof.
2941.40.00	Chloramphenicol and its derivatives; salts thereof.
2941.50.00	Erythromycin and its derivatives; salts thereof.
2941.90.00	Other antibiotics.
3001.20.00	Extracts of glands or other organs or of their secretions.
3001.90.10	Heparin and its salts.
3001.90.90	Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included.
3002.10.00	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes.

3002.20.00	Vaccines for human medicine.
3002.30.00	Vaccines for veterinary medicine.
3003.20.00	Medicaments containing other antibiotics not put up in measured doses or in forms or packings for retail sale.
3003.31.00	Medicaments containing insulin, not put up in measured doses or in forms or packings for retail sale.
3003.39.00	Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale.
3003.40.00	Medicaments containing alkaloids or derivatives thereof but not containing hormones or other products of heading No. 29.37 or antibiotics, not put up in measured doses or in forms or packings for retail sale.
3003.90.10	Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale.
3003.90.90	Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale.
3004.10.00	Medicaments containing penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives, put up in measured doses or in forms or packings for retail sale.
3004.20.00	Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale.
3004.31.00	Medicaments containing insulin put up in measured doses or in forms or packings for retail sale.

2013

*Value Added Tax*

No.

- (k) the issue, transfer, receipt or any other dealing with bonds, debentures, treasury bills, shares and stocks and other forms of security or secondary security;
  - (l) the assignment of a debt for consideration;
  - (m) The provision of the above financial services on behalf of another on a commission basis.
2. Insurance and reinsurance services excluding the following-
- (a) management and related insurance consultancy services;
  - (b) actuarial services, and
  - (c) services of insurance assessors and loss adjusters;
3. The supply of education services
- For the purposes of this paragraph, education services means education provided by-
- (a) a pre-primary, primary, or secondary school,
  - (b) a technical college or university ;
  - (c) an institution established for the promotion of adult education, vocational training or, technical education
- but shall not apply in respect of business or user training and other consultancy services designed to improve work practices and efficiency of an organization
4. Medical, veterinary, dental and nursing services.
5. Agricultural, animal husbandry and horticultural services
6. Burial and cremation services.
7. Transportation of passengers by any means of conveyance excluding international air transport or where the means of conveyance is hired or chartered.
8. Supply by way of sale, renting, leasing, hiring, letting of land or residential premises,
- “residential premises” means land or a building occupied or capable of being occupied as a residence, but not including hotel or holiday accommodation
- Provided that this paragraph shall not apply where such services are supplied in respect of –
- (a) car park services, or

- (b) conference or exhibition services, except where such services are provided for educational institutions as part of learning”;
9. Community, social and welfare services provided by National Government, County Government or any Political Sub-division thereof.
10. Insurance agency, insurance brokerage, stock exchange brokerage and tea and coffee brokerage services.
11. The supply of –
- (a) services rendered by educational, political, religious, welfare and other philanthropic associations to their members, or
- (b) social welfare services provided by charitable organizations registered as such, or which are exempted from registration, by the Registrar of Societies under section 10 of the Societies Act Cap 108, or by the Non- Governmental Organizations Co-ordination Board under section 10 of the Non Governmental Organization Co-ordination Act, No. 19 of 1990 and whose income is exempt from tax under paragraph 10 of the First Schedule to the Income Tax Act, Cap 470, and approved by the Commissioner of Social Services.
- Provided that this paragraph shall not apply where any such services are rendered by way of business.
12. The following entertainment services –
- (a) stage plays and performances which are conducted by educational institutions, approved by the Cabinet Secretary for the time being responsible for education as part of learning;
- (b) sports, games or cultural performances conducted under the auspices of the Ministry for the time being responsible for culture and social services”;
13. Accommodation and restaurant services provided within the following premises by the proprietors thereof:-
- (a) establishments operated by an educational training institutions approved by the Cabinet Secretary for the

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*Value Added Tax*

No.

time being responsible for education for the use of the staff and students by that institution; or

- (b) establishments operated by a medical institution approved by the Cabinet Secretary for the time being responsible for health for the use by the staff and patients of such institutions; or
- (c) canteens and cafeterias operated by an employer for the benefit of his employees.

- 14. Conference services conducted for educational institutions as part of learning where such institutions are approved by the Ministry for the time being responsible for Education.
- 15. Car park services provided by National Government, County Government, any Political Sub-division thereof by an employer to his employees on the premises of the employer.
- 16. The supply of airtime by any person other than by a provider of cellular mobile telephone services or wireless telephone services.
- 17. Betting, gaming and lotteries services.
- 18. Hiring, leasing and chartering of aircrafts

**SECOND SCHEDULE**

S. 7(2)

**ZERO-RATING****PART A – ZERO RATED SUPPLIES**

Where the following supplies, excluding hotel accommodation, restaurant or entertainment services where applicable, take place in the course of a registered person's business, they shall be zero rated in accordance with the provisions of Section 7 –

- 1. The exportation of goods or taxable services.
- 2. The supply of goods or taxable services to an export processing zone business as specified in the Export Processing Zones Act (Cap.517), as being eligible for duty and tax free importation.
- 3. Shipstores supplied to international sea or air carriers on international voyage or flight.
- 4. The supply of coffee and tea for export to coffee or tea auction centers.
- 5. Transportation of passengers by air carriers on international flight.

6. The supply of taxable services to international sea or air carriers on international voyage or flight.
7. The transfer of a business as a going concern by a registered person to another registered person.
8. The supply of natural water, excluding bottled water, by a National Government, County Government, any political subdivision thereof or a person approved by the Cabinet Secretary for the time being responsible for water development, for domestic or for industrial use.

### **PART B**

#### **ZERO RATED SUPPLIES TO PUBLIC BODIES, PRIVILEGED PERSONS AND INSTITUTIONS**

The following taxable supplies shall be zero-rated when supplied by a registered person before the imposition of tax or imported before clearance through the customs by or on behalf of the following persons subject to the limitations specified in this Schedule:-

#### **1. Supply to Commonwealth and Other Governments**

- (a) Goods consigned to officers or men on board a naval vessel belonging to another Commonwealth Government for their personal use or for consumption on board such vessel.
- (b) Goods for the use of any of the Armed Forces of any allied power.

#### **2. Supply to Diplomat or First Arrivals Persons**

(1) Household and personal effects of any kind imported by entitled personnel or their dependants including one motor vehicle imported or supplied to them prior to clearance through customs within ninety days of their first arrival in Kenya or such longer period not exceeding three hundred and sixty days from the date of his arrival, as may be approved by the Commissioner of Customs in specific cases where the entitled personnel have not been granted zero rating status in any other section of this schedule.

Provided that the zero rating shall apply to entitled personnel who may have arrived for a new contract notwithstanding their previous residential status in Kenya while in execution of another assignment, provided further that each contract is for a term not less than two years.

(2) One motor vehicle which the ministry responsible for foreign affairs is satisfied as having been supplied or imported as a replacement

for a motor vehicle originally imported or supplied under paragraph (1) which has been written off due to accident, fire or theft:

Provided that tax shall be payable at the appropriate rate if the written off motor vehicle is disposed of locally.

(3) Taxable supplies for the official use of the United Nations or its specialized agencies or any Commonwealth High Commission, or of any foreign embassy, consulate or diplomatic mission in Kenya.

(4) Taxable supplies for the use of a high official of the United Nations or its specialized agencies, or a member of the diplomatic staff of any Commonwealth or foreign country, where specific provision for such zero rating status is made by the Cabinet Secretary responsible for foreign affairs

(5) Taxable supplies Goods for the United Nations or any of its specialized agencies for the support of a project in Kenya.

(6) On first arrival in Kenya or within three months of that date, the household and personal effects, including one motor vehicle, of an employee of the United Nations, or of its specialized agencies, of any Commonwealth High Commission, or of any foreign embassy, consulate or diplomatic mission, where the employee:

(a) is not engaged in any other business or profession in Kenya ; and

(b) has not been granted any other zero rating status under this schedule.

(7) Any motor vehicle acquired under zero rating status pursuant to the provisions of this paragraph shall on re-sale or upon other disposition, whether or not for any material consideration, be liable to tax.

### **3. Supply to Donor Agencies with Bilateral or Multilateral Agreements**

(1) Household and personal effects of any kind, including one motor vehicle imported by or supplied prior to clearance through Customs to the entitled personnel or their dependants, within ninety days of their first arrival in Kenya or such longer period not exceeding three hundred and sixty days from the date of his arrival, as may be approved by the relevant authority in specific cases where the entitled personnel have not been granted any zero rated status under this schedule.

Provided that the zero rated status under this paragraph shall apply:



- (i) to entitled personnel who may have arrived for a new contract for a term of not less than two years, not withstanding their previous residential status in Kenya while in execution of another assignment;
- (ii) only once every four years where there is an on going project; and
- (iii) to an additional motor vehicle where there is a bilateral agreement between the Government and aid agency.

(2) One motor vehicle, which the Commissioner is satisfied, is supplied or is imported as a replacement of another motor vehicle originally supplied or imported under paragraph (1) and which has been written off due to accident, fire or theft:

Provided that any motor vehicle acquired free of tax pursuant to the provisions of this item shall on resale or upon other disposition whether or not for any material consideration be liable for tax.

#### **4. Supply to International and Regional Organizations**

Goods and equipment imported by or supplied to donor agencies, international and regional organisations with Diplomatic accreditation or bilateral or multilateral agreements with Kenya for their official use.

#### **5. Supply to the War Graves Commission.**

Taxable supplies including official vehicles, for the establishment and maintenance of war cemeteries by the Commonwealth War Graves Commission, but excluding office supplies and equipment and the property of the Commission's staff.

#### **6. Passengers' Baggage and personal effects**

Goods imported by passengers arriving from places outside Kenya, subject to the limitations and conditions specified in the following paragraphs.

- (1) The goods shall be -
  - (a) the property of and accompanying the passenger, except as provided in paragraph (7);
  - (b) for the personal or household use of the passenger in Kenya; and
  - (c) of such kinds and in such quantities as the proper officer may allow.

(2) Notwithstanding paragraph (1)(c), the following goods shall not be zero-rated under this item -

- (a) alcoholic beverages of all kinds, perfumed spirits and tobacco and manufactures thereof, except as provided in paragraphs (6) and (7);
- (b) fabrics in the piece;
- (c) motor vehicles except, as provided in paragraphs (3) and (4);
- (d) any trade goods, or goods for supply or disposal to other persons;

(3) Subject to paragraphs (1) and (2), the following goods may be zero-rated under this item when imported as baggage by a person on first arrival or by a returning resident of Kenya whom the proper officer is satisfied is *bona fide* changing residence from a place outside Kenya to a place within Kenya-

- (a) wearing apparel;
- (b) Personal and household effects of any kind which were in his personal or household use in his former place of residence;
- (c) one motor vehicle, (excluding buses and minibuses of a seating capacity of more than 13 passengers and load-carrying vehicles of a load carrying capacity exceeding two tones) which the passenger has personally owned and used outside Kenya for at least twelve months (excluding the period of the voyage in the case of shipment):

Provided -

- (i) the person has attained the age of eighteen years; and
- (ii) where the person has previously been granted zero-rating under this paragraph, any subsequent zero-rating shall not apply unless such person has used the motor vehicle so imported into Kenya for a period of not less than four years, and tax has been paid for the motor vehicle upon which zero rating had previously been granted.

(4) Subject to paragraphs (1) and (2) the following goods may be zero-rated under this item when imported as baggage by a person whom

the proper office is satisfied is making a temporary visit not exceeding three months to Kenya -

- (a) non-consumable goods imported for his personal use during his visit which he intends to take out with him when he leaves at the end of his visit;
- (b) consumable provisions and non-alcoholic beverages, in such quantities and of such kinds as are, in the opinion of the proper officer, consistent with his visit;
- (c) goods imported by a returning resident, being an employee of an international organization the headquarters of which are in Kenya, and who has been recalled for consultations at the organization's headquarters.

(5) Subject to paragraphs (1) and (2), the following goods may be zero rated under this item imported as baggage by a person who the proper officer is satisfied is a resident of Kenya returning from a visit outside Kenya and who is not changing residence in accordance with paragraphs (3) and (4)-

- (a) wearing apparel;
- (b) personal and household effects which have been in his personal or household use.

(6) Subject to paragraph (1) and subject to subparagraph (b) of this paragraph, tax shall not be levied on the following goods imported by, and in the possession of a passenger-

- (a) spirits (including liquors) or wine, not exceeding one litre or wine not exceeding two litres;
- (b) perfume and toilet water not exceeding in all one half litre, of which not more than a quarter may be perfume;
- (c) cigarettes, cigars, cheroots, cigarillos, tobacco and snuff not exceeding in all 250 grams in weight:

Provided that the tax free allowance under this paragraph shall be granted only to passengers who have attained the age of eighteen years.

(7) Subject to paragraphs (1) and (2) -

- (a) the zero rating granted in accordance with paragraphs (3), (4) and (5) may be allowed in respect of baggage imported within ninety days of the date of arrival of the passenger or such further period, not exceeding three

hundred and sixty days from such arrival, as the Commissioner may allow;

- (b) the tax free allowances granted in accordance with paragraph (6) shall not be allowed in respect of goods specified in the paragraph imported in unaccompanied baggage.

(8) where any person who has been granted zero-rating under paragraphs (3) or (4) changes his residence to a place outside Kenya within ninety days from the date of his arrival, he shall export his personal or household effects within thirty days, or such further period, not exceeding sixty days from the date he changes such residence to a place outside Kenya, as the Commissioner may allow, otherwise tax shall become due and payable from the date of importation.

(9) subject to paragraphs (1) and (2), goods up to the value of three hundred United States Dollars for each traveler in respect of goods, other than goods referred to in paragraph (9), shall be zero rated when imported by the traveler in his or her accompanied baggage, or upon his or her person and declared by him or her to an officer, provided that the person has been outside Kenya for a period in excess of twenty-four hours.

#### **7. Relief goods supplied or imported for emergency use**

Taxable goods for emergency relief purposes for use in specific areas and within a specified period, supplied to or imported by the Government or its approved agent, a non-governmental organization or a relief agency authorized by the Cabinet Secretary responsible for disaster management, where-

- (a) the goods are for use in areas where a natural disaster or calamity has occurred in Kenya; or
- (b) the goods are intended for use in officially recognized refugee camps in Kenya;
- (c) the goods are household utensils, food stuffs, materials for provision of shelter or equipment and materials for health, sanitary or educational purposes; and,
- (d) in the case of a natural disaster or calamity, the importation or purchase locally is made within six months or such further period, not exceeding twelve months, as the Commissioner may permit in each case:

**8. Supply to National Red Cross Society and St. John Ambulance**

Taxable goods supplied or imported for official use in the provision of relief service.

**9. Supply of Protective Apparel, Clothing Accessories and Equipment.**

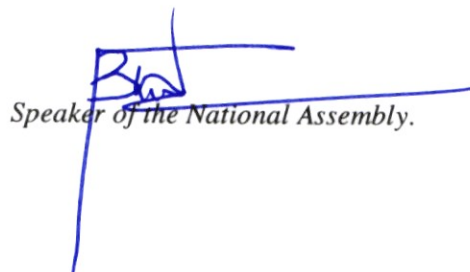
Articles of apparel, clothing accessories and equipment specially designed for safety or protective purposes for use in registered hospitals and clinics or by county government or local authorities in fire fighting.

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 6th August, 2013.



*Clerk of the National Assembly.*

Presented for assent in accordance with the provisions of the Constitution of Kenya on the 14<sup>th</sup> August, 2013 at the hour of 5:30 p.m.



*Speaker of the National Assembly.*

