

**THE VALUE ADDED TAX BILL, 2011**

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**THE VALUE ADDED TAX BILL, 2011**

**A Bill for**

**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 goods delivered in, or imported into Kenya and on certain services supplied in or imported into Kenya, and for connected purposes**

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

**PART I - PRELIMINARY**

Short title.

**1.** This Act may be cited as the Value Added Tax Act, **2011.**

Interpretation.

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

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

“appeal” means an appeal under section 52;

“assessment” means –

- (a) a self-assessment return submitted under section 45;
- (b) a default assessment made by the Commissioner under section 46; or
- (c) an amended assessment under section 47;

Cap.469. “Authority” means the Kenya Revenue Authority established by the Kenya Revenue Authority Act;

“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;

“building” includes garages, dwellings, apartment houses, hospitals and institutional buildings, colleges, schools, churches, office buildings, factories, warehouses, theatres, cinemas, silos and similar roofed structures affording protection and shelter”;

“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 sub-paragraph (ii);

Cap.469 “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.486. “company” means a company as defined in the Companies Act and 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;

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

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

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

“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.

“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 35;

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

“restaurant services” means the supply of food or beverages prepared for immediate consumption, whether or not such consumption is on the premises of the restaurant, and includes outside catering;

“sale”, in relation to any goods, means –

- (a) any transaction whereby the goods are delivered by one person to another person pursuant to a contract of sale or other disposition whereby the ownership in the goods has passed or will pass to the person to whom the goods are delivered or to any other person for whom such person is acting as an agent; or
- (b) any transaction whereby one person passes the possession of any goods to any other person under an agreement, whether oral or in writing, which provides for the purchase of goods by the person to whom the possession thereof is delivered, or which provides that the property in the goods will or may pass to that person on the happening of any event; or
- (c) any transaction whereby the owner of the goods delivers to any person the possession of the goods on hire or any other arrangement whatsoever, which permits the person to whom the possession is delivered to use the goods for his own purposes or for the purposes of any other person, whether for any specified period or indefinitely, and whether or not that person is required to give the owner any consideration for the use of the goods by him or by any other person; or
- (d) any use of the goods for his own purposes outside of the business by the registered person or any other person liable to pay tax;

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

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

“service imported into Kenya” means a service provided by a person normally resident outside Kenya, or a service provided by an export processing zone enterprise for use or consumption by a person in Kenya;

“shipstores” 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 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;

“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;

“tax registration certificate” means a tax registration certificate issued by the Commissioner under section 35;

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

“taxable person” means any registered person or any person liable to apply for registration under section 35, but does not include an export processing zone enterprise;

“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;

“Tribunal” means the Appeals Tribunal established under section 53

“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.

(3) Until after the first general elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

## **PART II - ADMINISTRATION**

Functions and powers of the Commissioner and other officers.

**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.

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

(3) The Commissioner may authorize 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 subsection or section. 70.

(4) Every authorised officer appointed under this section shall enforce, and ensure due compliance with, the provisions of this Act and the regulations, and shall make all due inquiries in relation thereto.

(5) Every authorised officer appointed under this section shall, on demand, produce such documents establishing his identity as may be approved by the Commissioner.

(6) Every authorised officer shall, in carrying out the provisions of this Act, regard and deal with all documents and information relating to tax and all confidential instructions in respect of the administration of this Act which may come into his possession or to his knowledge in the course of his duties as secret.

(7) Any decision made and any notice or communication issued or signed by any authorised officer may be withdrawn or amended by the Commissioner or by the authorised officer concerned, and shall be for the purposes of this Act, until it has been so withdrawn, be deemed to have been made, issued or signed by the Commissioner.

Authorised officers to have powers of police officers.

**4.** For the purposes of carrying out the provisions of this Act, every authorised officer shall, in the performance of his duties, have all the powers, rights, privileges and protection of a police officer.

### **PART III - CHARGE TO TAX**

Charge to tax.

**5.**(1) A tax, to be known as value added tax, shall be charged in accordance with the provisions of this Act on –

- (a) a taxable supply made by a taxable person;
- (b) the importation of taxable goods; and
- (c) a supply of imported taxable services.

(2) The rate of tax shall be –

- (a) in the case of a zero-rated supply, zero percent; or
- (b) in any other case, sixteen percent of the taxable value of the taxable supply or importation.

(3) Tax on a taxable supply shall be a liability of the person making the supply and, subject to the provisions of this Act relating to accounting and payment, shall become due at the time of the supply.

(4) The amount of tax payable on a taxable supply, if any, shall be recoverable by the registered person from the receiver of the supply in addition to the sale price.

(5) Tax on the importation of taxable goods shall be charged as if it were duty of customs and shall become due and payable by the importer at the time of importation.

(6) Tax on the supply of imported taxable services shall be a liability of the taxable person receiving the supply and, subject to the provisions of this Act relating to accounting and payment, shall become due at the time of the supply.

Cabinet Secretary  
may amend the  
rate of tax.

**6.(1)** The Cabinet Secretary may, by order published in the Gazette, amend the rate of tax by increasing or decreasing any of the rates of tax by an amount not exceeding twenty-five per cent of the rate specified in section 5.

(2) Every order made under subsection (1) shall be laid before the National Assembly without unreasonable delay, and shall cease to have effect if a resolution of the National Assembly disapproving the order is passed within twenty days of the day on which the National Assembly next sits after the order is laid, but without prejudice to anything previously done thereunder.

Zero rating.

**7.**(1) Where a taxable person supplies goods or services and the supply is zero rated, no tax shall be charged on the supply, but it shall, in all other respects, be treated as a taxable supply.

(2) A supply or importation of goods or services shall be zero-rated under this section if the goods or services are of the description for the time being specified in Second and Third Schedule.

#### **PART IV - PLACE AND TIME OF SUPPLY**

Place of supply of services.

**8.** (1) A supply of services shall be deemed to be made in Kenya if the place of business of the supplier from which the services are supplied is in Kenya.

(2) If the place of business of the supplier is not in Kenya, the supply of services shall be deemed to be made in Kenya if the recipient of the supply is not a registered person and-

- (a) the services are physically performed in Kenya by a person who is in Kenya at the time of supply;
- (b) the services are directly related to immovable property in Kenya;
- (c) the services are radio or television broadcasting services received at an address in Kenya;

- (d) the services are electronic services delivered to a person in Kenya at the time of supply; or
- (e) the supply is a transfer or assignment of, or grant of a right to use, a copyright, patent, trademark, or similar right in Kenya.

(3) In this section –

“electronic services” means any of the following services, when provided or delivered on or through a telecommunications network –

- (a) websites, web-hosting, or remote maintenance of programs and equipment;
- (b) software and the updating of software;
- (c) images, text, and information;
- (d) access to databases;
- (e) self-education packages;
- (f) music, films, and games, including games of chance; or
- (g) political, cultural, artistic, sporting, scientific and other broadcasts and events including broadcast television.

Appointment of tax representative

**9.** (1) A person who is required to apply for registration under section 35 but who does not have a fixed place of business in Kenya (referred to as a “non-resident person”) shall—

- (a) appoint a tax representative in Kenya; and
- (b) if required to do so by the Commissioner, lodge a security with the Commissioner in accordance with section 27.

(2) If a non-resident person to whom this section applies fails to appoint a tax representative within the period prescribed under section 35, the Commissioner may appoint a tax representative for the person.

(3) The tax representative of a non-resident person shall

- (a) be a person normally residing in Kenya;
- (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.

Treatment of imported services.

**10.** (1) Subject to subsection (2), the value of a taxable supply of imported services shall be –

- (a) if the supplier and recipient are associates, the fair market value of the supply of the imported services; or
- (b) in any other case, the consideration for the supply of imported services.

(2) If a registered person receiving imported taxable services 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 imported taxable services under subsection (1) shall be payable by the registered person.

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

Place of supply of goods.

**11.** Goods shall be regarded –

- (a) as supplied in Kenya if their supply does not involve their removal from Kenya;
- (b) as supplied in Kenya if their supply involves their installation or assembly at a place in Kenya; and
- (c) as supplied outside Kenya if their supply involves their installation or assembly at a place outside Kenya.

Time of supply of goods and services.

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

- (a) the date on which the goods are delivered or services performed;
- (b) the date on which the invoice for the supply is issued; or
- (c) 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 importation of 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**

Taxable value of supply and of imported goods.

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

- (a) in the case of a supply by a person to an independent person dealing at arm's length, the consideration for the supply; or
- (b) in any other case, 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) Except as provided in this Act, the value of a supply for which there is no consideration shall be nil.

(4) Subject to subsections (5) to (7), 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;
- (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.

(5) 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 sale in addition to the amount charged as price.

(6) 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.

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

- (a) in the case of a sale 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

(8) The consideration for a supply of accommodation or restaurant services shall not include –

- Cap.494
- (a) the Catering Training and Tourism Development Levy imposed on the supply under the Hotels and Restaurant Act; or
  - (b) a service charge payable or paid in respect of the supply, if the service charge is distributed to employees of the hotel or restaurant in accordance with a written agreement between the employer and employees and the amount of the charge does not exceed ten percent of the consideration for the service.

Taxable value of import.

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

- No.1 of 2005.
- (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.

Deemed taxable supply.

**15.** (1) An application of goods or services by a taxable person for use outside his business shall be a taxable supply made by the person.

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

Debit and credit note.

**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 may be issued for the amount of the reduction:

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 may reduce the amount of his output tax in the month 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 serially numbered 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**

Credit for input tax  
against output tax.

**17.** (1) Subject to the provisions of this section and the regulations, input tax 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 (referred to as “output tax”) in that tax period:

Provided that in cases of assets purchased under hire purchase or lease finance agreement, the input tax deduction may be made in the tax period in which the installment payment is made.

(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.

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

- (a) an original tax invoice issued for the supply;
- (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 taxable 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 taxable 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.

(5) Where the amount of input tax that may be deducted by a taxable 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 taxable 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 calculated according to the following formula-

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

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 taxable person during the period; and
- C** is the value of all supplies made by the taxable person during the period in Kenya.

(7) If the fraction  $\frac{B}{C}$  of the formula in subsection (6) for a tax period –

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

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

Tax paid on stock, assets, building etc on registration.

**18.(1) Where -**

- (a) a registered person makes exempt supplies which subsequently become taxable; or
- (b) on the date he is registered, a person-
  - (i) has in stock goods on which tax has been paid and which are intended for use in making taxable supplies; or
  - (ii) has constructed a building or civil works or has purchased assets for use in making taxable supplies,

he may, within three months, claim relief from any tax shown to have been paid on goods in stock, or on the construction of such buildings, or civil works or the purchase of such assets:

Provided that this subsection shall apply where such buildings or civil works are constructed or such goods or assets 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**

When tax is due.

**19.** (1) Tax shall be due and payable at the time of supply or importation of taxable goods.

(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:

Provided that where the twentieth day of the month falls on a public holiday, a Saturday or a Sunday, the return together with the payment of the tax due, shall be submitted on the last working day prior to that public holiday, Saturday or Sunday.

Relief because of doubt or difficult in recovery of tax.

**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

- 
- (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.

Interest for late payment of tax.

**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 per cent per month or part thereof of the unpaid amount shall forthwith be due and payable.

(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 per cent 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 specified period, a surcharge at the rate of two per cent per month or part thereof, shall forthwith be due and payable.

Imported goods  
subject to customs  
control.

**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.

(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.

No.1 of 2005.

(4) Except where a contrary intention appears, the provisions of the East African Community Customs Management Act, 2004 relating to the import, transit, coastwise carriage and clearance of imported goods, and the payment and recovery of duty shall, in so far as relevant and with such exceptions and modifications as necessary, apply in relation to tax payable on imported goods.

(5) 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.

**Risk of non-payment of tax-**

**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 -

- (a) due to the imminent departure of the person from Kenya; or
- (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.

**Collection of tax by distraint.**

**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;

(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.

(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.

Power to collect tax from person owing money to the taxable person.

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

- (a) any person from whom any money is due or accruing or may become due to the taxable person;
- (b) any person who holds or may subsequently hold money for or on account of the taxable person;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to the taxable person; or
- (d) any person having authority from some other person to pay money to the taxable 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 taxable 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 taxable 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 taxable person and of all other persons concerned, and shall constitute a good and sufficient discharge of the liability of such person to the taxable 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 taxable 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.

Preservation of funds.

**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,

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.

Security on  
property for unpaid  
tax.

**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 Registrar of Lands for the land or buildings to be the subject of security for tax of an amount specified in the notice.

(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 Registrar of Lands 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 Registrar of Lands, cancel the direction made under that subsection and the Registrar shall, without fee, record the cancellation thereupon and the direction shall cease to subsist.

Tax payable to the  
Commissioner.

**28.** (1) Any tax payable under this Act shall be paid 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).

Tax to be recovered as civil debt.

**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.

**PART VIII – REMISSION AND REFUND OF TAX**

Remission of tax.

**30.** (1) The Cabinet Secretary may, by order in the Gazette, remit wholly or partly, tax payable in respect of any taxable goods or taxable services, if he is satisfied that it is in the public interest to do so, subject to such terms or conditions as may be specified in the order.

(2) Where any remission is granted under this section on condition that tax shall be payable in the event of the breach of any term or condition, or on the occurrence of any event, the tax shall, on the breach of that term or condition or on the occurrence of that event, forthwith become due and payable by such persons as may be specified in the respective order.

(3) The Cabinet Secretary may, pending the publication of an order under subsection (1), direct the Commissioner to remit tax as though the order had actually been published:

Provided that the order shall be published within ninety days from the date the Cabinet Secretary issues the direction under this subsection, and the fact that the order is not published shall not affect the validity of anything done pursuant thereto during the period of ninety days.

Refund of tax paid in error.

**31.** 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.

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

Remission or refund of tax on bad debts.

**32.** (1) Where a registered person has supplied goods or services 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 or remission of the tax involved and subject to the regulations, the Commissioner may refund or remit the tax:

Provided that no application for a refund or remission 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 taxable person shall refund the tax.

Erroneous refund or remission of tax.

**33.** (1) Where any tax has been remitted or refunded in error, the person to whom the refund or remission has been erroneously made shall, on demand by the Commissioner, pay the amount erroneously remitted or repay the amount refunded in error, as the case may be.

(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 per cent 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.

Fraud in relation to claims for tax refund.

**34.**(1) 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.

(2) The penalty provided for in subsection (1) shall not be part of any fine imposed under section 65.

### **PART IX - REGISTRATION AND REREGISTRATION**

Application for registration.

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

- (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,

shall be a taxable person and shall, within thirty days from the date on which the person became a taxable person, 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 by way of the sale 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 enterprise or permanently ceasing to carry on the person's enterprise.

(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 subsections (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 enterprise is conducted;

- (c) if the person has commenced carrying on a business, the person-
  - (i) has kept proper records of its enterprise; and
  - (ii) has complied with its obligations under other tax laws; and
- (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 who is required to apply for registration has not done so within the time limit specified in section, 35 the Commissioner shall register the person.

(7) The registration of a person under subsection (1) or (5) 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 (3) 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.

Registered person to display certificate.

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

- (a) the original copy of the tax registration certificate at the principal place at which the person carries on its enterprise; and
- (b) a certified copy of the certificate obtained from the Commissioner at every other place at which the person carries on its enterprise.

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

Cancellation of registration.

**37.** (1) A registered person who ceases to make taxable supplies shall apply to the Commissioner, in the prescribed form, for the cancellation of the person's registration, within seven 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 to the Commissioner, in the prescribed form, 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 must –

- (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; and
- (c) immediately return the person's tax registration certificate and any certified copies thereof to the Commissioner.

(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.

Offences relating  
to registration.

**38.** A person who

- (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 36 or 37(7)(a) or (c),

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**

Application of information technology.

**39.** (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-

- (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.

Electronic returns and notices.

**40.** (1) The Commissioner may establish and operate a procedure (referred to as the “electronic notice system”) 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 (referred to as “registered users”);
- (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.

Unauthorized access to or improper use of tax computerized system.

**41.** (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; or
- (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
- (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.

Interference with tax computerized systems.

**42.** (1) A person who knowingly-

- (a) falsifies any record or information stored in any tax computerised system; or
- (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,

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 AND RETURNS**

Tax invoice.

**43.**(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 original tax invoice containing the prescribed details for the supply.

(2) A registered person may, subject to such conditions as the Commissioner may impose-

(a) where cash sales are made from retail premises, furnish the purchaser with a simplified tax invoice in the prescribed form; or

(b) where cash sales to any one person in a day do not exceed five hundred shillings, account for tax in such manner as the Commissioner may authorise.

(3) 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.

(4) 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.

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

Keeping of records.

**44.** (1) Every taxable 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 language, 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.

(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) all 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 all 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;
- (h) such other accounts or records as may be specified by the Commissioner.

(3) A record required to be kept under subsection (1) shall be in either of the official languages.

(4) In subsection (3), the expression “official languages” shall have the meaning assigned to it in Article 7 of the Constitution.

(5) 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.

(6) 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.

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

Submission of returns.

**45.**(1) Every taxable 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 the period.

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

(3) An application under subsection (1) 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 per cent of the amount of tax payable under the return, whichever is higher.

Assessment of tax.

**46.**(1) For the purposes of this Act, a taxable person who has submitted a return shall be treated as having made an assessment (referred to as a “self-assessment”) of the amount of tax payable for the tax period to which the return relates, being the amount set out in the return.

(2) If a taxable person fails to -

- (a) submit a return;
- (b) keep proper books of accounts, records or documents; or
- (c) apply for registration as a taxable 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 taxable 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 willful neglect, evasion or fraud.

Amendment of  
assessments

**47.** (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 taxable 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 taxable person.

(2) A taxable person may, within thirty days of receipt of a notice under subsection (1), apply to the Commissioner to make an amendment under subsection (1) to a self-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 taxable person with notice of the decision on the application within thirty days of the decision.

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

(a) in the case of gross or willful neglect, evasion or fraud by or on behalf of the taxable person, at any time; or

(b) in any other case, within five years of –

(i) for a self-assessment, the date that the taxable person submitted the return treated as the self-assessment; or

(ii) for any other assessment, the date the Commissioner served notice of the assessment on the taxpayer.

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

(5) Subject to subsection (6), if an assessment (referred to as the “original 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 taxable person or, in the case of a self assessment, five years after the taxable person submitted the return treated as the original assessment; or
- (b) one year after the Commissioner served notice of the amended assessment on the taxable person.

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

(7) In this Part, “assessment” includes a self assessment under section 46.

## **PART XII – ENFORCEMENT**

Commissioner  
may require  
security.

**48.** (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.

(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.

Production of records.

**49.** (1) For the purposes of obtaining full information, whether on a data storage device 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 -

- (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.

Power of  
inspection etc.

**50.** (1) The Commissioner or an authorised officer may, at all reasonable times, enter without 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 –

- (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) 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

(3) 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).

(4) 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.

(5) 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.

(6) 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 authorised officer may specify.

(7) The Commissioner or authorized 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 investigation to which they relate and all related proceedings.

(8) This section shall have effect notwithstanding –

- (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.

(9) 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 (4); 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 of an offence.

(10) The Commissioner shall allow the taxable person or his authorised representative access documents or equipment during the audit or investigation and return the documents or equipment after completing such audit or investigation.

### **PART XIII - OBJECTIONS AND APPEALS**

Objections.

**51.** (1) A person who disputes an assessment made by the Commissioners under section 46 or 47 may, by notice in writing to the Commissioner, object to the assessment.

(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 objection has been received under this section, the Commissioner may –

- (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 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 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 cause a notice confirming the assessment to be served on that person.

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

Appeals.

**52.** (1) A person who disputes the decision of the Commissioner on any matter arising under the provisions of this Act may, upon giving notice in writing to the Commissioner, within thirty days of being notified of the decision, appeal to the Tribunal:

Provided that –

(a) in the case of a dispute arising from an assessment of tax by the Commissioner, the person shall, before filing the appeal, pay to the Commissioner that part of the assessed tax not in dispute and fifty percent of the tax in dispute; or

(b) in the case of any other dispute, such person shall, before filing the appeal, make all returns of tax where applicable as required, and shall pay the amount of tax shown thereon as being due and payable.

(2) The Tribunal may, on receipt of an application in writing, extend the time for making an application to the Tribunal under subsection (1).

(3) A party to an appeal under subsection (1) who is dissatisfied with the decision of the Tribunal thereon may appeal to the High Court within fourteen days of being notified of the decision:

Provided that before filing the appeal -

(a) where the person appealing under this subsection is not the Commissioner; and

(b) the appeal is in respect of a dispute to which paragraph (a) of the proviso to subsection (1) applies,

such person shall deposit with the Commissioner the full amount of the tax in dispute .

(4) The Tribunal may exercise all the powers of the Commissioner under this Act relating to the decision of the Commissioner under appeal.

(5) Any tax deposited with the Commissioner pursuant to the provisions of this section shall, where the decision of the Tribunal or the High Court, as the case may be, is in favour of the aggrieved person, be refunded to that person.

Appeals Tribunal.

**53.** (1) The Cabinet Secretary shall, by order published in the Gazette, establish an Appeals Tribunal for the purpose of hearing appeals under this Part.

(2) The Tribunal shall consist of a chairperson and not less than two but not more than five other members, who shall be appointed by the Cabinet Secretary and shall hold office for a term of three years, renewable for one further term of a period not exceeding three years, upon such terms and conditions of service as the Cabinet Secretary may determine.

(3) A person shall be qualified for appointment as a member of the Tribunal if the person-

(a) has met his tax obligations and has not been liable to a penalty or been convicted of an offence under any tax law and has not been subject to an order compounding tax offences;

(b) is of high moral character and integrity;

(c) has not been convicted of any criminal offence and is not an undischarged bankrupt;

(d) holds a degree in taxation, finance, accounting or law from a university recognised in Kenya and has at least five years' experience in the related field;

(e) is not an employee of the Authority or the civil service;

f) in case of former employee of the Authority or the civil service, has completed three years since leaving such employment.

- (4) The office of a member of the Tribunal appointed under subsection (3) shall fall vacant if the member-
- (a) becomes an undischarged bankrupt;
  - (b) becomes an employee of the Authority;
  - (c) is liable to a penalty, or is convicted of an offence under any tax law, or is subject to an order compounding tax offences;
  - (d) resigns from office, by notice in writing, to the Cabinet Secretary;
  - (e) is convicted of a criminal offence;
  - (f) is removed by the Cabinet Secretary by notice in writing, for inability to perform the duties of the office or for proven misconduct; or
  - (g) is otherwise unable or unfit to discharge the functions of the office.

(5) The Commissioner shall designate an officer of the Authority to be the secretary to the Tribunal.

(6) The quorum for a hearing by the Tribunal shall be the Chairperson and two other members:

Provided that in the case of the absence of the chairperson, the members present shall elect one from amongst their number to be the chairperson for that hearing.

(7) All matters before the Tribunal shall, where there is no consensus, be decided by the votes of a majority of the members thereof, but in the event of a tie, the chairperson shall have a casting vote.

(8) A decision made under this section shall be binding on all the parties for the purpose of that hearing.

(9) A member of the Tribunal who has a material, pecuniary, or other interest in any proceeding that could conflict with the proper performance of the member's functions shall disclose the interest to the parties and such member shall not take part in that proceeding.

(10) The members of the Tribunal shall be paid such allowances for expenses as the Cabinet Secretary may determine.

(11) The expenses of the Tribunal, including the allowances for expenses of the members of the Tribunal, shall be paid by the Authority.

Decisions of  
Tribunal.

**54.** (1) If the appeal relates to a decision on an assessment of tax, the Tribunal may make an order to –

- (a) affirm, reduce, increase, or otherwise vary the assessment to which the decision relates; or
- (b) refer the assessment to the Commissioner for reconsideration in accordance with the directions of the Tribunal.

(2) If the appeal relates to any other decision, the Tribunal may make an order to affirm, vary, or set aside the decision.

(3) The Tribunal shall –

- (a) make a written decision on an appeal within fourteen days after the hearing has been completed; and
- (b) cause a copy of its decision to be served on each party to the proceedings within seven days of the decision.

(4) A decision referred to in subsection (3) shall include the Tribunal's reasons for the decision and its findings on material questions of fact and reference to the evidence or other material on which those findings were based.

(5) Subject to subsection (6), all decisions of the Tribunal shall be public records.

(6) In releasing information or allowing access to information under subsection (5), the Tribunal shall ensure that –

- (a) the identity and affairs of the applicant and any other person concerned are concealed; and
- (b) trade secrets or other confidential information are not disclosed.

Powers of  
Tribunal.

**55.** (1) On hearing of an appeal, the Tribunal shall have all the powers of a subordinate court of the first class to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents, whether in electronic form or otherwise.

(2) Where the Tribunal considers it desirable for the purpose of avoiding expense or delay or any other special reason to do so, it may receive evidence by affidavit and administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply to the interrogatories within the time specified by the Tribunal.

(3) In its determination of any matter the Tribunal may take into consideration any evidence which it considers relevant to the subject of an appeal before it, notwithstanding that the evidence would not otherwise be admissible under the law relating to evidence.

(4) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be taxed in accordance with any scale prescribed for suits in High Court or to award a specific sum as costs.

(5) All summonses, notices or other documents issued under the hand of the chairman of the Tribunal shall be deemed to be issued by the Tribunal.

(6) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may, in its discretion, admit to be heard on behalf of the party.

Disobedience of  
summons to give  
evidence, etc

**56.** Any person summoned by the Tribunal to attend and give evidence or to produce any records, books of account, statements, or other documents, whether in electronic form or otherwise, or who is required to answer interrogatories, and who, without sufficient cause –

- (a) refuses or fails to attend at the time and place mentioned in the summons served on him; or

- (b) refuses or fails to answer, or to answer fully and satisfactorily, to the best of his knowledge and belief all questions lawfully put to him by or with the concurrence of the Tribunal; or
- (c) refuses or fails to produce any records, books of account, statements or other documents, whether in electronic form or otherwise, which are in his possession or under his control, mentioned or referred to in any summons served on him,

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.

Contempt of  
Tribunal.

**57.** (1) A person who –

- (a) insults a member of the Tribunal in, or in relation to, the exercise of his powers or functions as member;
- (b) interrupts any proceedings of the Tribunal;
- (c) creates a disturbance, or takes part in creating a disturbance, in or near a place where the Tribunal is sitting; or
- (d) does any other act or thing that would, if the Tribunal were a Court, constitute a contempt of that Court,

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 six months, or to both.

Enforcement of orders for costs.

**58.** (1) Where the Tribunal awards costs in any appeal, it shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of the costs.

(2) Every certificate issued under subsection (1) may be filed in the High Court by the person in whose favour the costs are awarded and, upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such:

Cap.40. Provided that an order for costs against the Government shall not be enforced save in the manner provided for by the Government Proceedings Act.

Appeals rules.

Cap.21. **59.** The Chief Justice may make rules governing appeals and providing for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed therein and the manner of notifying the parties thereto, and until such rules are made, and subject thereto, the provisions of the Civil Procedure Act shall apply as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction.

Stay of suit pending appeal.

**60.** Where in any suit for the recovery of any tax or other amount payable under this Act, the court is satisfied that any party to the suit has appealed to the Tribunal under section 52 on any matter affecting any of the issues involved in the suit, the court shall, on such conditions as it may think fit, stay the proceedings in the suit pending the determination of the appeal.

**PART XIV - OFFENCES AND EVIDENCE**

Offences.

**61.** (1) A person who –

- (a) knowingly makes any false statement, false claim for a refund, produces any false document or information, or makes any false return concerning any material particular relating to any matter under this Act;
- (b) not being a registered person or being a person who has ceased to be a registered person, holds himself out as a registered person;
- (c) fails to keep, retain, or maintain accounts, documents, or records as required under this Act; or
- (d) is knowingly concerned in or involves in the taking of steps with a view to the fraudulent evasion of tax by him or by any other person,

commits an offence and shall be liable on conviction to a fine not exceeding four hundred thousand shillings or double the tax evaded, whichever is the higher, or to imprisonment for a period not exceeding three years, or to both.

(2) Where a person is convicted of an offence under this section, the court may, in addition to any penalty which may be imposed, order the forfeiture of any taxable goods which have passed in connection with the commission of the offence or, if the taxable goods cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the taxable goods.

Liability of employers and officer of companies.

**62.**(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 guilty of the offence unless he proves to the satisfaction of the court that he 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 took all reasonable steps to ensure that the offence was not committed.

(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 guilty of the offence, unless he proves that the offence was committed without his consent or knowledge and that he exercised all the diligence to prevent the commission of the offence that he ought to have exercised having regard to the nature of his functions in that capacity and in all circumstances.

Protection of officers.

**63.** No officer shall be personally liable for any act or omission done or committed in the performance of his functions under this Act unless, having regard to the circumstances of the case, such act or omission is found to be –

- (a) done or committed willfully or dishonestly by such officer;
- (b) attributable to the negligence of such officer;
- (c) done or committed by such officer in contravention of any provision of this Act or the regulations.

Disclosure of information.

**64.** (1) Any person employed in the performance of any function under this Act who, by virtue of the performance of that function, becomes possessed of any information and who directly or indirectly communicates that information to any person otherwise than –

- (a) in the normal performance of his functions under this Act; or
- (b) in the course of any proceedings in a court or the Tribunal; or
- (c) with the express permission of the Commissioner,

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 twelve months, or to both.

(2) Notwithstanding any other provision of this Act, the Commissioner may disclose information to a person in the services of the Government in a revenue or statistical department where the information is needed for the purposes of the official duties of that person solely for revenue or statistical purposes.

General penalty.

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

Evidence.

**66.** In any proceedings, whether criminal or civil, under this Act -

- (a) other than upon an appeal, a certificate from the Commissioner stating that any amount is due from any person by way of tax, or other liability under this Act, shall be conclusive evidence that the amount is due and payable from that person;
- (b) 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;
- (c) a statement by the Commissioner that a person is registered or is not registered under this Act, shall be conclusive evidence of the fact unless that person proves the contrary.

Power of sentence.

Cap.75.

**67.** Where any person is convicted of an offence under this Act by a court of competent jurisdiction presided over by a resident magistrate, the court may, notwithstanding the provisions of section 7 of the Criminal Procedure Code, impose the maximum sentence prescribed by this Act for the offence.

Power of officers to prosecute.

**68.** An authorised officer may with the approval of the Director of Public prosecution appear and prosecute in a prosecution before a subordinate court for an offence under this Act.

**PART XV - FORFEITURE AND SEIZURE**

Power to seize goods.

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

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 XVI - SETTLEMENT OF CASES AND RULINGS BY THE COMMISSIONER**

Power of the  
Commissioner to  
compound  
offences by  
agreement.

**70.**(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:

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;
- (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.

Binding public  
rulings.

**71.(1)** The Commissioner may make a public ruling in accordance with section 72 setting out the Commissioner's interpretation on the application of this Act.

(2) A public ruling made in accordance with section 72 shall be binding on the Commissioner until withdrawn, but shall not be binding on the tax payer.

Making a public ruling.

**72.**(1) A public ruling by the Commissioner under section 71 shall be by notice in the Gazette.

(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 in the Gazette.

Withdrawal of a public ruling.

**73.** (1) The Commissioner may withdraw a public ruling, in whole or part, by publishing notice of the withdrawal in the Gazette.

(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 the Gazette; 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.

Binding private rulings.

**74.**(1) Subject to section 75, the Commissioner shall upon application in writing by a taxpayer, issue to the taxpayer 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 taxpayer.

(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 taxpayer's application for the ruling, the ruling shall be binding on the Commissioner in relation to the taxpayer.

(3) A private ruling shall not be binding on the taxpayer 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.

Refusing an application for a private ruling.

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

- (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.

Making a private ruling.

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

(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 taxpayer;
- (b) the tax law 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 made at the time the applicant is served with notice of the ruling and shall remain in force for the period specified in the ruling.

(5) The making of a private ruling shall not be a tax decision for the purposes of this section.

Withdrawal of a private ruling.

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

(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 XVII - MISCELLANEOUS PROVISIONS**

Effect on  
imposition  
or variation of tax.

**78.**(1) If, after any agreement has been entered into for the sale or delivery 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 –

- (a) in the case of the alteration being a new or increased tax, the seller 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 seller 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 seller has, directly or indirectly, been affected by that imposition or alteration.

Application of East African (No.1 of 2005) Community Customs Management, 2004.

**79** (1) 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.

(2) Except for the purposes of paragraph (c) (i) of section 9(i) of this Act, that section shall have effect to the exclusion of section 122 of the East African Community Customs Management Act, 2004, in relation to taxable goods.

Agents.

**80.** Where under the provisions of this Act a registered person is required to perform any act, that act may be performed on his behalf by an agent authorised by him.

Regulations.

**81.** The Cabinet Secretary may make regulations for the better carrying out or giving effect to the purposes and provisions of this Act, and without prejudice to the generality of the foregoing, the regulations may –

- (a) prescribe conditions and procedures for the registration of taxable 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) allow for the remission of small amounts of tax at the discretion of the Commissioner
- (d) prescribe the form of notices, returns or other forms required for the purposes of this Act;
- (e) prescribe offence and penalties thereto;
- (f) prescribe rules for particular types of supplies and in relation to input tax credits; or
- (g) prescribe any other thing required to be prescribed for the purposes of any provision of this Act.

Tax avoidance schemes.

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

- (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.

Cap. 476  
Transitional and  
savings Provisions.

**83(1)** The Value Added Tax Act is repealed.

(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.

**FIRST SCHEDULE**

**EXEMPT SUPPLIES**

**PART 1-GOODS**

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

**Part A**

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<i>Tariff No.</i>	<i>Tariff Description</i>
0511.10.00	Bovine semen.
0511.91.10	Fish eggs and roes.
0511.99.10	Animal semen other than bovine.
1201.00.00	Soya beans, whether or not broken.
1202.10.00	Groundnuts, not roasted or otherwise cooked, in shell.
1202.20.00	Groundnuts, not roasted or otherwise cooked, shelled, whether or not broken.
1203.00.00	copra
1204.00.00	Linseed, whether or not broken.
1205.10.00	Low erucic acid rape or colza seeds.
1205.90.00	Other rape or colza seeds.
1206.00.00	Sunflower seeds, whether or not broken.

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<b><i>Tariff No.</i></b>	<b><i>Tariff Description</i></b>
1207.20.00	Cotton seeds, whether or not broken.
1207.40.00	Sesamum seeds, whether or not broken.
1207.50.00	Mustard seeds, whether or not broken.
1207.60.00	Safflower seeds, whether or not broken.
1207.99.00	Other oil seeds and oleaginous fruits, whether or not broken.
1211.90.20	Pyrethrum flower
2709.00.00	Petroleum oils and oils obtained from bituminous minerals, crude.
2710.11.10	Motor spirit (gasoline) regular
2710.11.20	Motor spirit (gasoline), premium.
2710.11.30	Aviation spirit
2710.11.40	Spirit type jet fuel.
2710.11.50	Special boiling point spirit and white spirit.
2710.11.90	Other light oils and preparations.
2710.19.10	Partly refined (including topped crudes).
2710.19.21	Kerosene type jet fuel.
2710.19.22	Illuminating kerosene (1K)
2710.19.29	Other medium petroleum oils and preparations.
2710.19.31	Gas oil (automotive, light, amber, for high speed engines).
2710.19.39	Other gas oils.
2711.21.00	Natural gas in gaseous state
2711.29.00	Other natural gas in gaseous state.
3822.00.00	Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents whether or not on a backing, other than those of

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<b><i>Tariff No.</i></b>	<b><i>Tariff Description</i></b>
4101.20.00	heading No.30.02 or 30.06 Whole hides and skins, of a weight per skin not exceeding 8 kg when simply dried, 10 kg when dry-salted, or 16 kg when fresh, wet-salted or otherwise preserved.
4101.50.00	Whole hides and skins, of weight exceeding 16 kg.
4101.90.00	Other, including butts, bends and bellies.
4102.10.00	Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1 (c) to Chapter 41.
4102.21.00	Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1 (c) to Chapter 41.
4102.29.00	Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1 (c) to Chapter 41.
4103.10.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to Chapter 41, of goats or kids
4103.20.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further

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<i>Tariff No.</i>	<i>Tariff Description</i>
4103.30.00	prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to Chapter 41, of reptile Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to Chapter 41, of swine.
4103.90.00	Other raw hides and skins other than of reptiles, swine, goats or kids.
6304-91.10	Mosquito nets
7017.10.00	Laboratory, hygienic or pharmaceutical glassware whether or not graduated or calibrated of fused quartz or other fused silica.
7017.20.00	Laboratory, hygienic or pharmaceutical glassware of other glass having a linear coefficient of expansion not exceeding $5 \times 10^{-6}$ per Kelvin within a temperature range of 0 °C to 300 °C
7017.90.00	Other laboratory hygienic or pharmaceutical glassware, whether or not graduated or calibrated
7118.90.00	Other coins.

**Part B**

1. Live Animals of chapter 1.
2. Meat and edible meat offals of chapter 2 excluding those of tariff heading 0209 and 0210.

3. Fish and crustaceans, molluscs and other aquatic invertebrates of chapter 3 excluding those of tariff heading 0305, 0306 and 0307.
4. Unprocessed milk.
5. Fresh birds' eggs in shell
6. Edible Vegetables and certain roots and tubers of chapter 7, excluding those of tariff heading 0711.
7. Edible fruits and nuts, peel of citrus fruits or melon of chapter 8 excluding, those of tariff heading 0811, 0812, 0813 and 0814.
8. Cereals of chapter 10, excluding seeds of tariff heading 1001, 1002, 1003 and 1005
9. Machinery of chapter 84 and 85.
10. Unused postage, revenue or similar stamps of current or new issue in the country in which they have or will have a recognized face value; a Stamp-impressed paper, bank notes, stock, share or bond certificates and similar documents of title.

**PART II**

**EXEMPT SERVICES**

The following services shall be exempt services for the purposes of the Act –

**1.** The following financial services-

- a. the operation of current, deposit or savings accounts, including the provision of account statements;
- b. the issue, transfer, receipt or any other dealing with money, including money transfer services, and accepting over the counter payments of household bills, but excluding the services of carriage of cash, restocking of cash machines, sorting or counting of money;
- c. issuing of credit and debit cards;
- d. automated teller machine transactions, excluding the supply of automated teller machines and the software to run it;
- e. telegraphic money transfer services
- f. foreign exchange transactions, including the supply of foreign drafts and international money orders;
- g. cheque handling, processing, clearing and settlement, including special clearance or cancellation of cheques;

- h. the making of any advances or the granting of any credit;
- i. issuance of securities for money, including bills of exchange, promissory notes, money and postal orders;
- j. the provision of guarantees, letters of credit and acceptance and other forms of documentary credit;
- 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 management of a unit trust or collective investment scheme registered by the Capital Markets Authority and managed by the trustees of the scheme
- n. credit rating bureau services provided by a credit agency registered by the Capital Market Authority;
- o. the provision of the above financial services on behalf of another on a commission basis.
- p. a supply of credit under a hire purchase agreement, if the credit for the goods is provided for as a separate charge and the charge is disclosed to the recipient of the goods;”

**2. Insurance and reinsurance services excluding the following-**

- (a) management and related insurance consultancy services;
  - (i) actuarial services; and

(ii) 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-

- (i) a pre-primary , primary, or secondary school;
- (ii) a technical college or university ;
- (iii) an institution established for the promotion of adult education, vocational training, technical education, or the education or training of persons with disabilities.

**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 Local Authorities.

**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 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 local authorities and 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** Landing and parking services provided for aircraft.
- 18** Betting, gaming and lotteries services.

**SECOND SCHEDULE**

**ZERO-RATING**

**Part A – Zero Rated Supplies**

Where the following supplies take place in the course of a registered person's business, they shall be zero rated in accordance with the provisions of Section 8:

1. The exportation of goods and taxable services.
2. The supply of goods or taxable services to an export processing zone enterprise as specified in the Export Processing Zones Act (Cap.517), as being eligible for duty and tax free importation.
3. Ship stores supplied to international sea and air carriers on international voyage or flight.
4. The supply of coffee and tea for export to coffee and tea auction centers and taxable supplies in respect of tea or coffee bought from the auction centres provided the tea or coffee is for export.
5. Transportation of passengers by air carriers on international voyage or flight.
6. The supply of taxable services to international sea and 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 treatment and supply of natural water, excluding bottled water, by a local authority or a person approved by the Cabinet Secretary for the time being responsible for water development, for domestic or for industrial use.

### **PART B – GOODS**

**The supply or importation of the following good is zero rated.**

2941.10.00	Penicillins and their derivatives with a penicillanic acid structure; salts thereof.
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.
3001.10.00	Glands and other organs, dried, whether or not powdered.
3001.20.00	Extracts of glands or other organs or of their secretions.
3001.90.00	Heparin and its salts and 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.

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3002.20.00	Vaccines for human medicine.
3002.30.00	Vaccines for veterinary medicine.
3002.90.00	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; toxins, cultures of micro-organisms (excluding yeasts) and similar products.
3003.10.00	Medicaments containing penicillins or derivatives thereof, with a penicillanic acid structure, of streptomycins or their derivatives, not put up in measured doses or in forms or packings for retail sale.
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.
3003.90.00	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.

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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.
3004.32.00	Medicaments containing corticosteroid hormones put up in measured doses or in forms or packings for retail sale.
3004.39.00	Other medicaments containing hormones or other products of heading No. 29.37 but not containing antibiotics, put up in measured doses or in forms or packings for retail sale.
3004.40.00	Medicaments containing alkaloids or derivatives thereof but not containing hormones, or other products of heading No. 29.37 or antibiotics, put up in measured doses or in forms or packings for retail sale.
3004.50.00	Other medicaments containing vitamins or other products of heading No. 29.36 put up in measured doses or in forms or packings for retail sale.
3004.90.00	Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.
3005.10.00	Adhesive dressings and other articles having an adhesive layer impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.
3005.90.10	White absorbent cotton wadding impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.
3005.90.90	Other wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical

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	substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.
3006.10.00	Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure, sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics.
3006.20.00	Blood-grouping reagents.
3006.30.00	Opacifying preparations for X-ray examinations; diagnostic reagents designed to be administered to the patient.
3006.40.00	Dental cements and other dental fillings; bone reconstruction cements.
3006.50.00	First-aid boxes and kits.
3006.60.00	Chemical contraceptive preparations based on hormones or spermicides.
3006.70.00	Gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments.
3006.91.00	Appliances identifiable for astomy use.
3006.92.00	Waste Pharmaceuticals.

**THIRD SCHEDULE**

**PART A - PUBLIC BODIES, PRIVILEGED PERSONS AND INSTITUTIONS WITH ZERO-RATED STATUS ON IMPORTS AND PURCHASES**

Taxable supplies shall be zero-rated when imported or purchased before clearance through the customs or purchased before the imposition of tax by or on behalf of the following public bodies, privileged persons and institutions subject to the limitations specified in this Schedule:-

**1. 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. Diplomatic and First Arrival Privileges**

(1) Household and personal effects of any kind imported by entitled personnel or their dependants including one motor vehicle imported or purchased by 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 an exemption under item 4(4) of Part A or item 5(3) of Part B:

Provided that this exemption shall apply to entitled personnel who may have arrived for a new contract notwithstanding their previous residential status in a 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 imported as a replacement for a motor vehicle originally imported under paragraph (1) which has been written off due to accident, fire or theft:

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

(3) Goods 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) Goods 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 exemption is made by the Cabinet Secretary responsible for foreign affairs.

(5) 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 an exemption under item 4(1), (2) and (4) of Part A or item 5(3) of Part B

(7) Any motor vehicle acquired free of duty pursuant to the provisions of this item shall on re-sale or upon other disposition, whether or not for any material consideration, be liable to duty notwithstanding that the period of two years allowed has elapsed.

#### **5. Donor Agencies with Bilateral or Multilateral Agreements**

(1) Household and personal effects of any kind imported by entitled personnel or their dependants, including one motor vehicle imported or purchased by 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 relevant authority in specific cases where the entitled personnel have not been granted an exemption under item 4(4) of Part A or item 5(3) of Part B:

Provided that the exemption 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, notwithstanding 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 imported as a replacement of another motor vehicle originally imported under paragraph (1) and which has been written off due to accident, fire or theft:

Provided that any motor vehicle acquired free of duty pursuant to the provisions of this item shall on resale or upon other disposition whether or not for any material consideration be liable for duty notwithstanding that the period of two years has elapsed.

#### **6. International and Regional Organizations**

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

#### **7. The War Graves Commission.**

Taxable supplies including official vehicles but not including office supplies and equipment and the property of the Commission's staff, for the establishment and maintenance of war cemeteries by the Commonwealth War Graves Commission.

#### **8. Persons with diplomatic privileges**

Taxable goods or services imported or locally purchased by persons with diplomatic privileges under the Privileges and Immunities Act, Cap 179 certified by the Cabinet Secretary for the time being responsible for foreign affairs subject to such conditions as the Commissioner may require

**PART B - SPECIAL GOODS SUBJECT TO ZERO- RATING**

**1. 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 sale 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.

## **2. Diapers, Urine bags and hygienic bags**

Diapers, Urine bags and hygienic bags for medical use, in such quantities as the Commissioner may allow.

## **3. Relief goods imported for emergency use**

Taxable goods for emergency relief purposes for use in specific areas and within a specified period, imported or purchased locally 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:

Goods for emergency relief purposes of such quantities and within a specified period imported by government or its approved agent or a non-governmental organization or a relief agency as authorised by the ministry responsible for disaster management:

Provided that;

- (a) the goods are household utensils, food stuffs, materials for provision of shelter, and equipment and materials for health, sanitary and education purposes,
- (b) the goods are for use in areas where a natural disaster or calamity has occurred the importation shall be made within 6 months or such further period not exceeding 12 months as the Commissioner may impose.

#### **4. National Red Cross Societies and St. John Ambulance**

The supply or importation of goods for official use in the provision of relief service.

**5. 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 local authorities in fire fighting.

**6. Official Aid Funded Project**

Taxable supplies imported or locally purchased for use in the official aid funded projects.