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LAWS OF KENYA



VALUE ADDED TAX ACT

CHAPTER 476

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CHAPTER 476

VALUE ADDED TAX ACT

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CHAPTER 476

VALUE ADDED TAX ACT

[Date of assent: 22nd August, 1989.]

[Date of commencement: 1st January, 1990.]

An Act of Parliament to impose a tax to be known as value added tax on goods delivered in, or imported into Kenya; and on certain services supplied in Kenya and for connected purposes

[Act No. 20 of 1989, L.N. 395/1989, Act No. 10 of 1990, Act No. 8 of 1991, Act No. 3 of 1992, Act No. 9 of 1992, Act No. 8 of 1993, Act No. 9 of 1993, Act No. 6 of 1994, Act No. 7 of 1995, Act No. 13 of 1995, Act No. 8 of 1996, Act No. 8 of 1997, Act No. 5 of 1998, Act No. 4 of 1999, Act No. 9 of 2000, Act No. 6 of 2001, Act No. 7 of 2002, Act No. 15 of 2003, Act No. 4 of 2004, Act No. 6 of 2005, Act No. 10 of 2006, Act No. 9 of 2007, L.N. 135/2008, Act No. 8 of 2008; Act No. 8 of 2009; Act No. 10 of 2010; Act No. 4 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Value Added Tax Act.

2. Interpretation

(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 33;

“**assessment**” means an assessment made under paragraph 9(1) of the Seventh Schedule;

“**auditor**” means a person who holds a practising certificate or a written authority to practice issued under the provisions of the Accountants Act (Cap. 531);

“**authorized dealer**” *deleted by Act No. 8 of 1996, s. 11;*

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

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

“**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**” includes any trade, commerce or manufacture, or any concern in the nature of trade, commerce or manufacture;

“**certificate of registration**” means a certificate issued under the Sixth Schedule;

“Commissioner” means—

- (a) the Commissioner-General appointed under section 11(1) of the Kenya Revenue Authority Act (Cap. 469); or
- (b) with respect to the powers or functions that have been delegated under section 11(4) of the Kenya Revenue Authority Act (Cap. 469) to another Commissioner, that other Commissioner;

“company” means a company as defined in the Companies Act (Cap. 486) and body corporate formed under any other written law, and includes any association, whether incorporated or not, formed outside Kenya which the Minister may, by order, declare to be a company for the purposes of this Act;

“concessional loan” means a loan with at least twenty-five per cent grant element;

“construction” means the process by which a building, or part thereof, or an addition thereto, is erected, but does not include the manufacture of—

- (a) materials for the construction of buildings; or
- (b) component parts used in, wrought into, or attached to, buildings;

“contractor” means a person who undertakes the construction, demolition, repair or restoration of buildings, industrial plant, roads, bridges, dams, quays, wharves and other similar civil works and parts thereof including mechanical and electrical machinery and equipment;

“designated dealer” *deleted by Act No. 5 of 1998, s. 17;*

“designated person” *deleted by Act No. 6 of 2005, s. 4(a);*

“designated supplies” *deleted by Act No. 6 of 2005, s. 4(a);*

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

“entertainment” means an exhibition, performance or amusement to which person are admitted for payment, but does not include the following—

- (a) stage plays and performances which are conducted by education institutions, approved by the Minister for the time being responsible for education as part of learning;
- (b) sports, games or cultural performance conducted under the auspices of the Ministry of Culture and Social Services;
- (c) entertainment of a charitable, educational, medical, scientific or cultural nature as may be approved in writing by the Commissioner prior to the date of the entertainment for the benefit of the public; or
- (d) entertainment organized by a non-profit making charitable, educational, medical, scientific or cultural society registered under the Societies Act (Cap. 108) where the entertainment is in furtherance of the objects of the society as may be approved in writing by the Commissioner prior to the date of the entertainment;

“exempt supplies” means supplies of goods and services specified in the Second and Third Schedules respectively, which are not subject to tax;

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

“**foreign aid funded investment project**” means a project designated by the Minister by order published in the *Gazette*;

“**game of chance**” and “**winnings**” have the meanings respectively assigned to them in section 2 of the Betting, Lotteries and Gaming Act (Cap. 131);

“**hotel**” means premises on which accommodation is supplied, with or without food or the services other than those specified in the Third Schedule in exchange for money or money’s worth, and includes premises known as “service flats”, “service apartments”, “beach cottages”, “holiday cottages”, “game lodges”, “safari camps”, “bandas”, “holiday villas” and other premises or establishments used for similar purposes, but does not include—

- (a) premises on which the only supply is under a lease or licence of not less than one month, unless by prior arrangement the occupier may, without penalty, terminate that lease or licence on less than one month’s notice; or
- (b) *deleted by Act No. 8 of 2008, s. 12.*
- (c) premises operated by an educational or training institution approved by the Minister for the use of the staff and students of that institution; or
- (d) premises operated by a medical institution approved by the Minister for the time being responsible for health for the use of the staff and students of that institution;

“**import**” means to bring or cause to be brought from a foreign country or from an export processing zone;

“**importer**” means any person who imports taxable goods;

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

“**manufacture**” means—

- (a) in relation to any commodity, the activities of a manufacturer, including the bottling of water, but excluding the construction of buildings or the local treatment of water by a local authority or a person approved by the Minister for the time being responsible for water development for domestic or for industrial use; and
- (b) in relation to electricity, the generation thereof;

“**manufacturer**” means—

- (a) in relation to any commodity, any person who subjects any physical matter to any process by which that commodity is finally produced; or
- (b) any person whose trade consists of activities in connection with commodities included in paragraph (a) including assembly, packing, bottling, repacking, mixing, blending, grinding, cutting, bending, twisting, and joining, or similar activity by which such commodities are finally produced; or

- (c) any person who has goods as defined in paragraph (a) or (b) manufactured to his specification or design, for himself, or on his behalf by others; or
- (d) any person who generates electricity;

“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, organisation or any other aid agency;

“owner”, in respect of any goods (whether taxable or not), aircraft, vessel, vehicle, plant or other thing, includes any person (other than an officer acting in his official capacity being or holding himself out to be the owner, manufacturer, agent or person in possession of, beneficially interested in, or having control of, or power of disposition over, the goods, aircraft, vessel, vehicle, plant, or other thing;

“registered dealer” *deleted by Act No. 5 of 1998, s. 17;*

“registered manufacturer” means any manufacturer registered under the Sixth Schedule;

“registered person” means any person registered under the Sixth Schedule;

“regulations” means regulations made under section 58;

“residential buildings” means the part of any premises used to accommodate persons for residential purposes;

“restaurant” means any establishment supplying restaurant services, and includes cafeterias, fast-food outlets, snack bars, foodstalls at exhibitions or sports arenas and similar establishments, but does not include—

- (a) establishments operated by a charitable or religious organisation registered under the Societies Act for charitable or religious purposes; or
- (b) establishments operated by an educational or training institution approved by the Minister for the use of the staff and students of that institution; or
- (c) establishments operated by a medical institution approved by the Minister for the time being responsible for health for the use of the staff and students of that institution; or
- (d) canteens and cafeterias operated by an employer for the benefit of his low-income employees which the Commissioner may approve subject to such conditions as he may prescribe;

“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;

“service exported out of Kenya” means a service provided for use or consumption outside Kenya, whether the service is performed in or outside Kenya, or both inside and outside Kenya;

“service imported into Kenya” means a service provided by a person normally resident outside Kenya who is not required to register for tax in Kenya, or a service provided by an export processing zone enterprise for use or for consumption by a person in Kenya whether or not the service is provided from outside or in Kenya or both inside and outside Kenya;

“services” means—

- (a) any supply by way of business that is not a supply of goods or money; or
- (b) anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any right),

but does not include a service provided by an employee to his employer for a wage or salary;

“shipstores” means goods for use in aircraft and vessels engaged in international transport for consumption by passengers and crew and goods for sale on board;

“supply” includes—

- (a) the sale or provision or delivery of taxable goods to another person;
- (b) the sale or provision of taxable services to another person;
- (c) the appropriation by a registered person of taxable goods or services for his own use outside of the business;
- (d) the making of a gift of any taxable goods or taxable services;
- (e) the letting of taxable goods on hire, leasing or other transfers;

- (f) the provision of taxable services by a contractor to himself in constructing a building and related civil engineering works for his own use, sale or renting to other persons;
- (g) *deleted by Act No. 9 of 2007, s. 8(b);*
- (h) the appropriation by a registered person of taxable goods or services for his own use inside of the business where if supplied by another registered person, the tax charged on such goods or services is excluded from the deduction of input tax;
- (i) any other disposal of taxable goods or provision of taxable services;

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

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

“**tax period**” means one calendar month;

“**taxable goods**” includes electricity and any goods other than those specified in the Second Schedule;

“**taxable person**” means any person liable to apply for registration under the Sixth Schedule, but does not include an export processing zone enterprise;

“**taxable services**” means any services not specified in the Third Schedule;

“**taxable value**” means the value determined in accordance with section 9;

“**transit goods**” means good imported from a foreign place, through the territory of Kenya, to a foreign destination;

“**Tribunal**” means an Appeals Tribunal established under section 32;

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

“**vessel**” includes every description of conveyance for the transport by water of human beings or goods.

(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, *mutatis mutandis*, apply.

[Act No. 10 of 1990, s. 13, Act No. 8 of 1991, s. 36, Act No. 8 of 1993, s. 21, Act No. 6 of 1994, Act No. 2 of 1995, Act No. 5 of 1996, s. 11, Act No. 5 of 1998, s. 17, Act No. 4 of 1999, s. 18A, Act No. 9 of 2000, s. 22, Act No. 6 of 2001, s. 26, Act No. 7 of 2002, s. 23, Act No. 15 of 2003, s. 19, Act No. 4 of 2004, s. 29, Act No. 6 of 2004, s. 4, Act No. 6 of 2005, s. 4, Act No. 9 of 2007, s. 8, Act No. 8 of 2008, s. 12, Act No. 8 of 2009.]

PART II – ADMINISTRATION

3. Functions and powers of the Commissioner and other officers, etc.

- (1) *Deleted by Act No. 4 of 2004, s. 30.*

(2) 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 Minister, have the superintendence of all matters relating thereto.

(3) The Commissioner may—

- (a) authorize any other officer appointed under this section to perform any of the functions of the Commissioner under this Act or the regulations, except this subsection; or
- (b) subject to the approval of the Board of Directors of the Authority, by notice in the *Gazette*, appoint such other person as he may determine to perform any of the Commissioner's functions under this Act requiring expert knowledge or skill,

subject to such limitations as the Commissioner may think fit.

(3A) Subject to this Act, every appointment under paragraph (b) of subsection (3) shall be made upon such terms and conditions of service as may be approved by the Board of Directors of the Authority.

(4) Every 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 authorized officer or other person appointed under subsection (3) shall, on demand, produce such documents establishing his identity as may be approved by the Commissioner.

(6) Every authorized officer or other person appointed under subsection (3) shall, by a date to be determined by the Commissioner, make and subscribe before a magistrate or commissioner for oaths declaration in the form set out in the Ninth Schedule.

[Act No. 4 of 1999, s. 19, Act No. 4 of 2004, s. 30.]

4. Authorized officers to have powers of police officers

For the purposes of carrying out this Act, every authorized 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

5. Charge to tax

A tax, to be known as value added tax, shall be charged in accordance with the provisions of this Act on the supply of goods and services in Kenya (including anything specified by the Minister as such a supply) and on the importation of goods and services into Kenya.

[Act No. 10 of 1990, s. 15.]

6. Tax to be charged on taxable supplies and imported goods

(1) Tax shall be charged on any supply of goods or services made or provided in Kenya where it is a taxable supply made by a taxable person in the course of or in furtherance of any business carried on by him.

(2) The rates of tax shall be those specified in the First Schedule.

(3) A person who makes or intends to make taxable supplies is a taxable person while he is, or is required to be, registered under the Sixth Schedule; and a taxable supply is a supply of taxable goods or services made or provided in Kenya.

(4) Tax on any supply of goods or services 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 supply.

(5) Tax on the importation of goods into Kenya shall be charged as if it were a duty of customs and shall be payable by the person who imports the goods.

(6) Tax on services imported into Kenya shall be payable by the person receiving the taxable service.

(7) Notwithstanding the provisions of subsection (6), where the supplier of a service to which that subsection applies is normally resident outside Kenya, the Commissioner may, by notice in writing, appoint a person who is normally resident in Kenya, as an agent for collecting the tax payable on the service and remitting it to the Commissioner.

[Act No. 10 of 1990, s. 16, Act No. 9 of 2000, s. 23, Act No. 6 of 2001, s. 27,
Act No. 4 of 2004, s. 31.]

7. Minister may amend Schedules

(1) The Minister may by order published in the *Gazette*—

- (a) amend the First Schedule by increasing or decreasing any of the rates of tax by an amount not exceeding twenty-five per cent of the rate set out therein;
- (b) amend, vary or replace the Sixth and Seventh Schedules.

(2) Every order made under subsection (1) shall be laid before the National Assembly without unreasonable delay, and unless a resolution approving the order is passed by the National Assembly within twenty days of the day on which the National Assembly next sits after the order is so laid, it shall thenceforth be void, but without prejudice to anything previously done thereunder.

[Act No. 10 of 1990, s. 17, Act No. 8 of 1991, s. 37.]

8. Zero-rating

(1) Where a taxable person supplies goods or services and the supply is zero-rated, then no tax shall be charged on the supply, but it shall, in all other respects, be treated as a taxable supply and accordingly the rate at which tax is treated as charged on the supply shall be nil.

(2) A supply or importation of goods is zero-rated by virtue of this section if the goods are of the description for the time being specified in the Fifth Schedule or Part A and Part B of the Eighth Schedule or the supply is of a description so specified.

(3) A supply or importation of goods or services is zero-rated by virtue of this section if the goods or services are of the description for the time being specified in Part A of the Fifth Schedule or imported or purchased by persons specified in Part C of the Eighth Schedule.

[Act No. 10 of 1990, s. 18, Act No. 9 of 1992, s. 19, Act No. 8 of 1997, s. 17, Act No. 9 of 2000, s. 24,
Act No. 6 of 2004, s. 19.]

PART IV – TAXABLE VALUE

9. Value of supply and imported goods

(1) For the purpose of this Act, the taxable value of any supply of goods or services shall be—

- (a) in the case of a supply provided by the registered person to an independent person dealing at arm's length, the price for which the supply is provided;
- (b) otherwise than as provided under paragraph (a), the price at which the supply would have been provided in the ordinary course of business by a registered person to an independent person dealing at arm's length and, in cases where no such price can be determined, the price shall, subject to the regulations, be decided by the Commissioner;
- (c) in the case of taxable goods imported into Kenya, the sum of the following amounts—
 - (i) the value of such taxable 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 those goods; and
 - (ii) the amount of the duty of customs, if any, paid on those goods;
- (d) in the case of a taxable service imported into Kenya the price at which the supply is provided.

(2) In calculating the price of any goods for the purposes of subsection (1) there shall be included any amount charged in respect of—

- (a) any wrapper, package, box, bottle or other container in which the goods concerned are contained; and
- (b) any other goods contained in or attached to such wrapper, package, box, bottle or other container; and
- (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 (whether payable at the same time or some other time) including any excise duty chargeable under the Customs and Excise Act, where applicable, and any amount charged for, or to make provision for, advertising, financing, warranty, commission, transportation, erection or any other matter:

Provided that the regulations may make provisions for the deduction from the price of the whole or any portion of any such amount charged in respect of transportation, erection or returnable containers.

(3) 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 his supply to his 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.

(4) In calculating the price of accommodation and restaurant services—

- (a) any charge made in respect of the Catering, Training and Tourism Development Levy imposed under the Hotels and Restaurants Act (Cap. 494); and
- (b) any service charge made in lieu of tips or gratuities,

shall be excluded:

Provided that the proceeds of the service charge referred to in paragraph (b) shall be distributed directly to the employees of the hotel or restaurant, in accordance with a written agreement between the employer and employees, and the service charge shall not exceed ten per cent of the price of the service excluding, such service charge.

(5) *Deleted by Act No. 6 of 2001, s. 28.*

(6) In calculating the value of betting and gaming services—

- (a) the amount staked by a person shall be deemed to be the consideration for the supply of a service; and
- (b) the taxable value of a supply under paragraph (a) for any tax period shall be the total amount staked less the amount of winnings (if any) during that tax period and the taxable value shall be deemed to be inclusive of tax.

(6A) The taxable value of mobile cellular phone services shall be the value of such services as determined for the purposes of excise duty under the Customs and Excise Act (Cap. 472).

(7) In subsection (6), the “**amount staked**” means any payment made in cash or in kind as consideration for participating in a game of chance and includes any payment for the purchase or use of instruments of gaming within the meaning of the Betting, Lotteries and Gaming Act (Cap. 131).

(8) Notwithstanding the provisions of subsection (2)(c), financial charges incurred by a person who purchases taxable goods on hire purchase terms from a taxable person engaged in hire purchase business in accordance with the Hire Purchase Act (Cap. 507) shall be excluded from the taxable value.

(9) Notwithstanding the provisions of subsections (2)(c) and (3), interest incurred for late payment of the price of a taxable supply of goods or services shall be excluded from taxable value.

(10) *Deleted by Act No. 6 of 2005, s. 5(c).*

[Act No. 10 of 1990, s. 19, Act No. 8 of 1991, s. 38, Act No. 9 of 1992, s. 20, Act No. 9 of 1993, s. 22, Act No. 8 of 1996, s. 12, Act No. 8 of 1997, s. 18, Act No. 9 of 2000, s. 25, Act No. 7 of 2002, s. 24, Act No. 15 of 2003, s. 20, Act No. 8 of 2004, Act No. 6 of 2005, s. 5, Act No. 10 of 2006, s. 5, Act No. 8 of 2009, s. 8.]

PART V – DEDUCTION OF INPUT TAX

10. Interpretation of Part

For the purposes of this Part—

“**input tax**” means—

- (a) tax paid 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;

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

[Act No. 10 of 1990, s. 20.]

11. Credit for input tax against output tax

(1) Subject to the regulations and to the other provisions of this section, input tax or tax withheld by a tax withholding agent may, at the end of either tax period in which the supply, importation or withholding of tax occurred, or the next following tax period, be deducted by the registered person, so far as not previously deducted and to the extent and subject to the exemptions provided under this section, from the tax payable by him on supplies by him (referred to as “output tax” in that tax period:

Provided that no input tax or tax withheld may be deducted—

- (a) more than twelve months after that input tax becomes due and payable pursuant to section 13 or the tax is withheld, as the case may be; or
- (b) in the case of a motor vehicle or other asset purchased under a hire purchase or a lease financing agreement, more than twelve months after the issuance of a letter of undertaking or a clearance certificate for the purposes of the proviso to subsection (1A);

(1A) No input tax or tax withheld shall be deducted under subsection (1) unless a registered person is in possession of—

- (a) a tax invoice issued under paragraph (1) of the Seventh Schedule; or
- (aa) a withholding tax certificate issued under the Value Added Tax (Tax Withholding) Regulations, 2004 (L.N. 53/2004);
- (b) a customs entry duly certified by the proper officer and a receipt for the payment of tax; or
- (c) a customs receipt and a certificate signed by the Commissioner of Customs stating the amount of tax paid, in the case of goods purchased from a customs auction; or
- (d) an import declaration form duly certified by an authorized officer and proof of payment of the tax, in the case of imported taxable services:

Provided that, where a registered person purchases a motor vehicle or any other asset through a hire purchase or a lease financing agreement, such person shall, in addition to the documents required under paragraph (a), (b) or (c), require a letter of undertaking from the institution that financed the motor vehicle or other asset, undertaking that tax will be paid on resale of the asset in case it is repossessed or resold, or a clearance certificate certifying that all payments secured under the hire purchase or lease financing agreement have been made in full.

(1B) Where, under subsection (1)—

- (a) a registered person deducts input tax in respect of business premises in which taxable supplies are made; and
- (b) subsequent upon such deduction, the whole or any portion of such premises is—
- (i) sold or disposed of; or

- (ii) converted for use in making exempt supplies, before the expiry of five years from the date the construction of such premises was completed,

such tax, or the portion thereof relating to the construction of the sold, disposed of or converted premises, shall be refunded to the Commissioner within thirty days of such sale, disposal or conversion:

Provided that where the premises are sold or disposed of, the input tax refundable by the registered person shall be output tax for the purposes of the Act.

(1C) Where the refund is not made by a registered person within thirty days, interest equal to two per cent of the tax due shall be payable for each month or part thereof during which the tax remains unrefunded.

(1D) The Commissioner may grant remission of interest under subsection (1C) in individual cases where he is satisfied that such remission is justified, and shall make quarterly reports to the Minister of all remissions so granted:

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

(2) Where the amount of input tax that may be so deducted under subsection (1) exceeds the amount of output tax due, the amount of the excess shall be carried forward to 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—

- (a) making zero-rated supplies; or
- (aa) tax withheld by appointed tax withholding agents;
- (b) *deleted by Act No. 8 of 2008, s. 13.*

Provided that the investments are used in making taxable supplies.

(2A) Where excess input tax is payable under subsection (2), a registered person shall lodge a claim for the amount payable within twelve months from the date the tax became payable, or such longer period, not exceeding twenty-four months, as the Commissioner may allow.

(3) Subject to subsection (4), the input tax which may be deducted by a registered person shall be—

- (a) the whole of that tax, where all of his supplies are taxable; or
- (b) such part of that tax as may be shown by the registered person to the satisfaction of the Commissioner to be attributed to taxable supplies where only a proportion of his supplies are taxable; provided that the Commissioner may determine that all supplies shall be deductible where the tax attributable to exempt supplies would be less than such part of the whole tax as may be specified by the Commissioner.

(3A) *Deleted by Act No. 4 of 1999, s. 20.*

(4) The registered person shall secure a fair and reasonable attribution of input tax to taxable supplies and any determination of input tax in accordance

with the requirements of subsection (3)(b) shall be notified in writing by the registered person to the Commissioner at the time the determination is made and shall be subject to revision and amendment by the Commissioner in cases where he deems it fit to do so.

(5) Any person who, being a person required to make an attribution under subsections (3) and (4)—

- (a) fails to do so; or
- (b) having done so, fails to notify the Commissioner, shall be guilty of an offence.

(6) The Minister may, by order published in the *Gazette*, provide in relation to such supply and importation as the order may specify, that tax charged on them is to be excluded from the deduction of input tax under this section; and—

- (a) any such provision may be determined by reference to the description of goods or services supplied or goods or services imported or to the person of whom they are supplied, the purposes for which they are supplied or imported, or any circumstances whatsoever;
- (b) such an order may contain provision for consequential relief from output tax.

[Act No. 10 of 1990, s. 21, Act No. 8 of 1991, s. 39, Act No. 9 of 1992, s. 21, Act No. 9 of 1993, s. 23, Act No. 8 of 1996, s. 13, Act No. 4 of 1999, s. 20, Act No. 6 of 2001, s. 29, Act No. 9 of 2000, s. 25, s. 26, Act No. 6 of 2001, s. 29, Act No. 7 of 2002, s.s 24, 25, Act No. 15 of 2003, s. 21, Act No. 4 of 2004, s. 32, Act No. 6 of 2005, s. 6, Act No. 6 of 2006, s. 6, Act No. 8 of 2008, s. 13.]

11A. Deduction of input tax on locally refined petroleum products

Subject to section 6(5), input tax paid on ingredients and services used in the processing of locally refined taxable petroleum products may be deducted from the tax payable on those products in accordance with section 11.

[Act No. 8 of 1991, s. 40.]

11B. Deduction of tax on exempt goods

Where a registered person acquires any goods exempt from tax under Part II (i) of the Second Schedule, the price paid for such goods shall, notwithstanding any other provision of this Act, be deemed to be inclusive of tax which may be deducted in accordance with section 11.

[Act No. 6 of 2005, s. 7.]

12. Tax paid on stock registration

(1) Where—

- (a) a registered person makes exempt supplies which subsequently become taxable; or
- (b) on the date he becomes 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, or such longer period as the Commissioner may, in any particular case allow, claim relief from the 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 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) The Commissioner may, subject to such conditions as may be prescribed, authorize the registered person to make an appropriate deduction from the tax payable on his next return on being satisfied that the claim for relief is justified.

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

[Act No. 4 of 1999, s. 21, s. 22, Act No. 9 of 2000, s. 26, Act No. 10 of 2006, s. 6, Act No. 8 of 2009, s. 9, Act No. 10 of 2010, s. 12.]

PART VI – COLLECTION AND RECOVERY OF TAX

13. When tax due and payable

(1) Subject to subsection (2), tax chargeable under subsection (1) of section 6 shall become due and payable at the time when—

- (a) the goods are supplied or the services have been supplied to the purchaser;
- (b) an interim or final certificate is issued, by an architect, surveyor or any person acting as a consultant or in a supervisory capacity, in respect of the service;
- (c) an invoice is issued in respect of the supply; or
- (d) payment is received for all or part of the supply,

whichever time shall be the earliest.

(1A) The tax payable under subsection (6) of section 6 shall be due and payable at the time when—

- (a) the taxable service is received; or
- (b) an invoice is received in respect of the service; or
- (c) payment is made for all or part of the service,

whichever time shall be the earliest.

(2) Where supplies are made on a continuous basis, or by metered supplies, tax shall become chargeable with effect from the date of the first determination of the supply or the first meter reading following the introduction of the tax and subsequently tax shall become due and payable at the time of each determination or meter reading.

(3) Notwithstanding the provisions of subsections (1) and (2), 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, the Saturday or the Sunday.

(4) Notwithstanding the provisions of subsection (3), the Commissioner may require that a registered person shall pay tax at the time when he collects that tax from his customer as part of the price of a taxable supply.

(5) Any tax chargeable under subsection (5) of section 6 shall be due and payable—

- (a) in the case of taxable goods cleared for home use directly at the port of importation, or taxable 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 taxable 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 taxable goods removed from an export processing zone at the time of removal for home use.

(6) Where any registered person who ceases to carry on business has any taxable goods upon which tax has not been paid, he shall, in accordance with the regulations, forthwith pay the proper amount of tax due on the goods.

(7) Where any registered person who ceases to carry on business has any taxable goods upon which tax has not been paid, he shall, in accordance with the regulations, forthwith pay the proper amount of tax due on those goods.

[Act No. 10 of 1990, s. 22, Act No. 9 of 1992, s. 23, Act No. 9 of 1993, s. 24, Act No. 6 of 1994, s. 21, Act No. 8 of 1996, s. 14, Act No. 8 of 1997, s. 19, Act No. 9 of 2000, s. 27, Act No. 6 of 2001, s. 30, Act No. 4 of 2004, s. 33, Act No. 7 of 2002, s. 26.]

14. Relief because of doubt or difficulty in recovery of tax

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

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

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 Minister may, in writing direct the Commissioner—

- (a) to take such action as the Minister may deem fit; or
- (b) to obtain the direction of the Court upon the case.

[Act No. 4 of 2004, s. 34.]

14A. Amnesty for additional tax, penalties, etc.

(1) Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering any additional tax, penalties or fines in respect of any tax that was due before the 11th June, 2004, where—

- (a) the tax is paid; and

- (b) all returns, or amended returns, which should have been submitted in respect of the tax are submitted,

on or before 31st December, 2004:

Provided that this section shall not apply in respect of any tax if the person who should have paid tax—

- (i) has been assessed in respect of the tax or any matter relating to the tax; or
- (ii) is under audit or investigation in respect of the tax or any matter relating to the tax.

[Act No. 4 of 2004, s. 35.]

15. Interest for late payment

(1) Where any amount of tax remains unpaid after the date on which it becomes payable under section 13, interest equal to two per cent per month or part thereof of such unpaid amount shall thereupon forthwith become due and payable.

(2) Any interest charged under subsection (1) shall, for the purposes 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 Minister on the remission granted under this subsection:

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

(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 section (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.

[Act No. 8 of 1997, s. 20, Act No. 9 of 2000, s. 28, Act No. 6 of 2001, s. 31, Act No. 6 of 2005, s. 8, Act No. 8 of 2008, s. 14.]

16. Imported goods subject to customs control

(1) In the case of imported taxable goods, no person shall be entitled to obtain delivery of those goods from the control of the customs until the correct amount of tax has been assessed and paid in full.

(2) Notwithstanding the provisions of any other written law, any taxable goods which are imported by land 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 so to produce any such goods shall be guilty of an offence and the goods in respect of which the offence was committed shall be liable to forfeiture.

17. Any person leaving Kenya or business liquidated

(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 cease business; or
- (c) for any other sufficient cause,

the Commissioner may, whether or not the due date of the payment of that tax has arrived, by notice in writing served on that person require 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) shall be guilty of an offence.

[Act No. 4 of 2004, s. 36.]

18. Collection of tax by distraint

(1) Where any sum by way 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 authorized officer to exercise distress upon 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 execution of the distress:

Provided that—

- (i) where the full amount of the tax due and payable is not recovered by distress, the Commissioner may recover the deficiency in any other manner provided by this Act; and
- (ii) where the full amount of tax due and payable has been paid after the issue of an order under this section and before the execution 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 purposes of executing distress under this section the authorized 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) A distress levied 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 authorized 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 and 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.

[Act No. 8 of 1996, s. 15.]

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

(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 a taxable person; or
- (b) any person who holds or may subsequently hold money for or on account of the taxable person; or
- (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 so much thereof as is sufficient to pay the tax so 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 the reasons for his inability to do so.

(3) Unless the Commissioner is satisfied with the reasons given by such person 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 estopped 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 a notice,

shall be guilty of an offence and liable to a fine not exceeding fifteen 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.

[Act No. 13 of 1995, s. 54, Act No. 6 of 2005, s. 9.]

19A. Appointment of tax withholding agents

(1) The Commissioner may, in accordance with the regulations, appoint a person, being a purchaser of taxable goods or services, to be a tax withholding agent for the purposes of this section:

Provided that the Commissioner may, at any time, revoke an appointment under this subsection if he deems it appropriate to do so for the protection of revenue.

(2) A person appointed under subsection (1) shall, on purchasing taxable goods or services, withhold the tax payable thereon and remit the same directly to the Commissioner at such times as the Commissioner may direct:

Provided that—

- (a) no tax shall be withheld from suppliers who are subject to turnover tax as provided under section 12C of the Income Tax Act (Cap, 470), upon presentation of a valid turnover tax registration certificate;
- (b) the tax to be withheld by the Ministry responsible for roads, the Kenya Roads Board, the Kenya Rural Roads Authority, the Kenya Urban Roads Authority and the Kenya National Highways Authority shall be fifty per cent of the tax payable on the purchase made by these institutions.

(2A) A person withholding tax under subsection (2) shall issue a withholding tax certificate to the supplier at the time of making the payment for the supplies.

(3) For the avoidance of doubt, the withholding of tax under subsection (2) shall not relieve the supplier of taxable goods or services of the obligation to account for tax in accordance with this Act and the regulations.

(4) Notwithstanding the foregoing provisions of this section, the Commissioner may, on application by the supplier of any goods or services to which subsection (2) applies, waive the requirements of this section in respect of the tax due thereon, if satisfied that owing to the nature of the supplier's business, it is impracticable to withhold and account for the tax in accordance with this section.

[Act No. 4 of 2004, s. 37, Act No. 9 of 2007, s. 9, Act No. 8 of 2008, s. 15, Act No. 8 of 2009, s. 10, Act No. 10 of 2010, s. 13.]

19B. Preservation of funds

(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 of 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 have effect for 30 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 15 days of being served with the order, apply to the Court to discharge or vary the order or dismiss the application.

(4) Where the Court has issued an order under this section, the Commissioner shall, within a period of 30 days of the order, determine the tax due and payable, issue a notice of assessment 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.

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

(7) A person who preserves funds or any account pursuant to a Court order 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.

[Act No. 9 of 2007, s. 10.]

20. Security on property for unpaid tax

(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 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.

21. Tax payable to Commissioner

(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 shall be guilty of 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).

22. Tax to be recovered as civil debt

Without prejudice to any other remedy, any tax due and payable under this Act may be recovered by the Commissioner as 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.

[Act No. 13 of 1995, s. 55.]

22A. *Repealed by Act No. 6 of 1994, s. 22.*

PART VII – REMISSION, REBATE AND REFUND

23. Remission of tax

(1) Subject to subsection (3), the Minister 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.

(2) Where any remission is granted under this section on a 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 order concerned.

(3) Remission under subsection (1) shall only apply in respect of—

- (a) capital goods, excluding motor vehicles, of a total value of not less than one million shillings per investment, imported or purchased locally for new investments or the expansion of investments; and
- (b) taxable good 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 Minister responsible for disaster management, where—
 - (i) the goods are for use in areas where a natural disaster or calamity has occurred in Kenya; or

- (ii) the goods are intended for use in officially recognized refugee camps in Kenya; and
- (iii) the goods are household utensils, food stuffs, materials for provision of shelter or equipment and materials for health, sanitary or educational purposes; and
- (iv) 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:

Provided that the goods imported or purchased under this paragraph shall be of such quantities and subject to such limitations as the Commissioner may impose.

- (c) goods, including motor vehicles and aircraft, and taxable services imported or purchased by any company which has been granted an oil exploration or oil prospecting licence in accordance with a production sharing contract with the Government of Kenya and in accordance with the provisions of the Petroleum (Exploration and Production) Act (Cap. 308); and
- (d) capital equipment and machinery imported or purchased solely for use in the manufacture of goods in a licensed customs bonded factory for export only; and
- (e) official aid-funded projects; and
- (f) *deleted by Act No. 9 of 2007, s. 11;*
- (g) *deleted by Act No. 4 of 2004, s. 38;*
- (h) goods, including motor vehicles imported or purchased by any company which has been granted a geothermal resources licence in accordance with a production sharing contract with the Government of Kenya and in accordance with the provisions of the Geothermal Resources Act, Cap. 12 of 1982; and
- (i) goods for official use of Kenya Armed Forces in accordance with the East African Community Customs Management Act, 2004; and
- (j) goods imported under bond for manufacture of exports, indirect exports, goods free of import duty, goods for use in official aid-funded projects and goods for use in manufacture of goods which are in turn supplied to another manufacturer of goods under the Essential Goods Support Programme;
- (k) taxable goods and services supplied by a registered person for use in the construction or expansion of private universities (excluding student hostels and staff housing) with the approval of the Minister, on the recommendation of the Minister responsible for Education;
- (l) taxable goods and services supplied by a registered person to a specific project approved by the Minister, on the recommendation of the Minister responsible for Housing, for the construction of not less than twenty housing units for low income earners, subject to such conditions as may be prescribed.

(4) Pending the publication of an order under subsection (1), the Minister may 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 Minister 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.

(5) *Deleted by Act No. 9 of 2000, s. 29.*

[Act No. 9 of 1992, s. 24, Act No. 9 of 1993, s. 25, Act No. 13 of 1995, s. 56, Act No. 8 of 1996, s. 16, Act No. 5 of 1998, s. 19, Act No. 4 of 1999, s. 22, Act No. 9 of 2000, s. 29, Act No. 6 of 2001, s. 32, Act No. 7 of 2002, s. 27, Act No. 4 of 2003, s. 38, Act No. 15 of 2003, s. 22, Act No. 4 of 2004, s. 38, Act No. 8 of 2004, Act No. 6 of 2005, s. 10, Act No. 9 of 2007, s. 11, Act No. 8 of 2008, s. 16, Act No. 8 of 2009, s. 11.]

24. Refund of tax

Where—

- (a) taxable goods have been manufactured in or imported into Kenya and tax has been paid in respect of those goods and, before being used, those goods have been subsequently exported under customs control; or
- (b) any tax has been paid in error; or
- (c) in the opinion of the Minister, it is in the public interest to do so,

the Commissioner shall, except as otherwise provided by the regulations, refund the tax which has been paid in respect of those goods:

Provided that no refund shall be made under paragraph (b) of this section unless the claim in respect thereof is lodged within twelve months from the date the tax became due and payable under section 13.

[Act No. 8 of 1997, s. 21, Act No. 4 of 1999, s. 24.]

24A. Remission or refund of tax on bad debts

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 with the prior approval of the Minister, 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.

[Act No. 10 of 1990, s. 23, Act No. 6 of 1994, s. 23, Act No. 7 of 2002, s. 28.]

25. Erroneous refund, remission or rebate of tax

(1) Where any tax has been remitted or refunded, or any rebate of tax has been allowed in error, the person to whom the refund, remission or rebate has been erroneously made or allowed, shall, on demand by the Commissioner, pay the amount erroneously remitted or repay the amount refunded in error, or in respect of which rebate has been allowed 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 thereupon forthwith be due and payable:

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 (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 Minister of all the remissions granted under this subsection:

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

(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 part only 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 per cent per month or part thereof shall forthwith be due and payable.

[Act No. 8 of 1997, s. 22, Act No. 9 of 2000, s. 30, Act No. 6 of 2001, s. 33, Act No. 6 of 2004, Act No. 6 of 2005, s. 11, s. 11, Act No. 8 of 2008, s. 17.]

25A. Fraud in relation to claims for tax refund

(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 40.

[Act No. 10 of 2006, s. 7.]

26. Arrangements for bilateral relief from tax

The Minister may, from time to time by notice in the *Gazette*, declare that arrangements specified in that notice, being arrangements that have been made between the Government of Kenya and any other Government with a view to the mutual relief of tax, shall, notwithstanding section 6, have effect in relation to tax payable under this Act and every such notice, shall, subject to this section, have effect according to its tenor.

PART VIII – REGISTRATION AND COLLECTION

27. Registration

The Sixth Schedule shall have effect with regard to the registration of taxable persons and de-registration of registered persons.

28. Administration, collection, etc.

The Seventh Schedule shall have effect with regard to the administration, collection and enforcement of the tax.

28A. Application of information technology

(1) Subject to such conditions as the Commissioner may prescribe, tax formalities or procedures may be carried out by use of information technology.

(2) For the purposes of subsection (1), the Commissioner may, by notice in the *Gazette*, specify—

- (a) the tax formalities and procedures which may be carried out by use of information technology; and
- (b) the persons authorised to carry out such formalities and procedures by use of information technology.

[Act No. 6 of 2005, s. 12, Act No. 10 of 2010, s. 14.]

28B. Users of the tax computerized system

(1) A person who wishes to be registered as a user of a tax computerized system may apply to the Commissioner who may—

- (a) grant the application subject to such conditions as he may impose; or
- (b) reject the application.

(2) A person shall not access, transmit to, or receive information from, a tax computerized system unless that person is a registered user of the system.

[Act No. 6 of 2005, s. 12, Act No. 10 of 2010, s. 15.]

28C. Cancellation of registration of registered user

Where at any time the Commissioner is satisfied that a person who is a registered user of a tax computerised system has—

- (a) failed to comply with any condition of registration imposed by the Commissioner under section 28B of this Act;
- (b) failed to comply with, or has acted in contravention of, any condition under the regulations; or
- (c) been convicted of an offence under this Act relating to improper access to or interference with a tax computerised system,

the Commissioner may cancel the registration of that user.

[Act No. 6 of 2005, s. 12.]

28D. Unauthorized access to or improper use of tax computerized system

(1) A person commits an offence if he—

- (a) knowingly and without lawful authority, by any means gains access to or attempts to gain access to any tax computerized 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 authorized; 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.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction—

- (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;
- (b) in the case of a body corporate, to a fine not exceeding one million shillings.

[Act No. 6 of 2005, s. 12.]

28E. Interference with tax computerized system

A person commits an offence if he knowingly—

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

and shall be liable on conviction to imprisonment for a term not exceeding three years, or to a fine not exceeding eight hundred thousand shillings.

[Act No. 6 of 2005, s. 12.]

PART IX – PREVENTION OF EVASION OF TAX

29. Commissioner may require security

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, and in such amount, as may be prescribed, and any person who, without reasonable excuse, fails to comply with such requirement within such reasonable time as the Commissioner may allow shall be guilty of an offence.

30. Production of books, records, information, etc.

(1) For the purpose of obtaining full information in respect of the tax liability of any person or class of persons or for any other purposes, the Commissioner or an authorized officer may require—

- (a) the production for examination, at such time and place as he may specify, any records, books of account, statements of assets and liabilities, or other documents which he may consider necessary for such purpose;
- (b) the production forthwith, for retention for such period as may be reasonable for the examination thereof, of any records, books of account and other documents which he may specify;

- (c) any person to attend, at such time and place as may be specified, for the purpose of being examined respecting any matter or transaction appearing to be relevant to the 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 authorized 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 used solely for the purpose of the Act.

(2) Any person who, without reasonable excuse, fails to comply with any requirement made under subsection (1) shall be guilty of an offence and liable to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding six months or to both.

[Act No. 13 of 1995, s. 57, Act No. 4 of 1999, s. 23, Act No. 7 of 2002, s. 29.]

31. Powers of inspection, etc.

(1) An authorized 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, mark and take copies of, any record, book, account or other document kept on the premises relating, or appearing to relate, to the provision of any taxable supply;
- (b) take possession of and remove any record, book, account or other document which he has reasonable ground for suspecting 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, or to any entry therein, and to render such explanations, and give such information, in respect of the business concerned as the authorized 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 authorized 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) Any person who—

- (a) resists, hinders or obstructs, or attempts to resist, hinder or obstruct, an authorized officer acting under this section; 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,

shall be guilty of an offence.

PART X – OBJECTIONS AND APPEALS

[Act No. 6 of 2004, s. 34.]

32. Appeals Tribunal

(1) The Minister shall, by order published in the *Gazette*, establish an Appeals Tribunal for any area specified in the order for the purpose of hearing appeals under this Part.

(2) The Tribunal shall consist of a chairman, and not less than two but not more than five other members who shall be appointed by the Minister and shall hold office for such period and upon such terms and conditions as the Minister may determine.

(3) The quorum for a meeting of a Tribunal shall be the Chairman and two other members.

(4) All matters before the Tribunal shall in the event of a difference of opinion be decided by the votes of a majority of the members thereof.

(5) The members of the Tribunal shall be entitled to receive such subsistence and travelling allowances as the Minister may determine.

[Act No. 5 of 1998, s. 20, Act No. 6 of 2001, s. 34, Act No. 10 of 2010, s. 16.]

32A. Objections

(1) A person who disputes an assessment made upon him under paragraph 9 of the Seventh Schedule 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 it states precisely the grounds of objection to the assessment and is

received by the Commissioner within 30 days after the date of service of the notice of assessment; but 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 a notice of objection has been received, the Commissioner may—
- (a) amend the assessment in accordance with the objection; or
 - (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 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 as to 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—
- (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 and he 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.

[Act No. 6 of 2001, s. 35.]

33. Appeals

(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—

- (i) in the case of a dispute arising from an assessment of tax by the Commissioner under paragraph 9 of the Seventh Schedule, the person shall, before filing the appeal, pay to the Commissioner assessed tax not in dispute or such part thereof as the Commissioner may require; and
- (ii) 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) A party to an appeal under subsection (1) who is dissatisfied with the decision of the Tribunal may appeal to the High Court within fourteen days of being notified of the decision:

Provided that, before filing the appeal—

- (i) where the person appealing under this subsection is not the Commissioner; and
- (ii) the appeal is in respect of a dispute to which paragraph (i) of the proviso to subsection (1) applies,

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

(3) 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 credited to such person.

[Act No. 5 of 1998, s. 21, Act No. 6 of 2001, s. 36, Act No. 15 of 2003, s. 23.]

34. Powers of Tribunal

(1) On the 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.

(2) Where the Tribunal considers it desirable for the purpose of avoiding expense or delay or any other special reason so to do, 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 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 summons, 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.

35. Disobedience of summons to give evidence, etc.

Any person summoned by the Tribunal to attend and give evidence or to produce any records, books of account. Statements, or other documents, or 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 which are in his possession or under his control mentioned or referred to in any summons served on him,

shall be guilty of an offence and liable to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding two years, or to both.

[Act No. 13 of 1995, s. 58.]

36. Enforcement of orders for costs

(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 have been awarded and, upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such:

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

37. Rules

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 (Cap. 21) shall apply as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction.

38. Stay of suit pending appeal

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 33 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.

[Act No. 13 of 1995, s. 59.]

PART XI – OFFENCES AND EVIDENCE

39. Offences

Any person who fails to comply with—

- (a) the conditions of the Sixth Schedule or the Seventh Schedule;
- (b) any regulations made under section 58,

shall be guilty of an offence.

[Act No. 4 of 1999, s. 24.]

40. False statements, etc.

(1) Any person who—

- (a) makes any false statement, fraudulent 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; or

- (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; or
- (c) is knowingly concerned in or involved in the taking of steps with a view to the fraudulent evasion of tax by him or by any other person,

shall be guilty of an offence and liable to a fine not exceeding four hundred thousand shillings or double the tax evaded, whichever is the greater, 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.

[Act No. 10 of 1990, s. 24, Act No. 13 of 1995, s. 60, Act No. 4 of 1999, s. 24, Act No. 4 of 2004, s. 39, Act No. 10 of 2006, s. 8.]

40A. *Repealed by Act No. 6 of 1994, s. 24.*

41. Liability of employers and officers of companies

(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 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.

[Act No. 7 of 2002, s. 30.]

41A. Protection of officers

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

[Act No. 13 of 1995, s. 61.]

42. Disclosure of information

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, shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

[Act No. 13 of 1995, s. 62.]

42A. Disclosure of information

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.

[Act No. 10 of 1990, s. 26.]

43. General penalty

Any person guilty of any 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.

[Act No. 13 of 1995, s. 63, Act No. 5 of 1998, s. 22.]

44. Evidence

In any proceedings, whether criminal or civil, under this Act—

- (a) other than upon an appeal, a certificate from the Commissioner or from the Tribunal 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.

[Act No. 8 of 1996, s. 18.]

45. Powers of sentence

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 (Cap. 75), impose the maximum sentence prescribed by this Act for the offence.

46. Powers of officers to prosecute

An authorized officer may appear and prosecute in a prosecution before a subordinate court for an offence under this Act.

PART XII – FORFEITURE AND SEIZURE

47. Taxable goods, vessels, etc., to be liable to forfeiture

(1) In addition to any other circumstances in which goods are liable to forfeiture under this Act, any taxable goods found to have been sold by a

registered person without payment of tax, and, subject to subsection (3), any aircraft, vehicle, vessel, animal or other thing made use of in the removal, conveyance, carriage or transportation of taxable goods liable to forfeiture shall itself be liable to forfeiture.

(2) Where any aircraft, vehicle, vessel, and animal or other thing is liable to forfeiture under this Act, then the tackle, apparel, furniture and all other gear used in connection therewith shall also be liable to forfeiture.

(3) An aircraft, or a vessel of two hundred and fifty tons register or more made use of in the removal, conveyance, carriage or transportation of taxable goods liable to forfeiture under this Act shall not itself be liable to forfeiture but the master of the aircraft or vessel shall be guilty of an offence and liable to a fine of such amount as court deems just; and the aircraft or vessel may be seized and detained until the fine is paid or security therefore given.

48. Power to seize packaging

Where taxable goods are liable to forfeiture under this Act, then the package in which the goods are, and all the contents of the package, shall also be liable to forfeiture therewith.

49. Provisions relating to goods liable to forfeiture

(1) The Commissioner may require any person in possession of any taxable goods sold by a registered person to produce proof that tax has been paid on such goods.

(2) Where any person who is required under subsection (1) to produce proof that tax has been paid on any goods fails to do so within seven days those goods shall be liable to forfeiture.

(3) The Commissioner may seize any taxable goods, aircraft, vehicle, vessel, animal or other thing liable to forfeiture under this Act or which he has reasonable grounds, to believe is liable to forfeiture; and the taxable goods, aircraft, vehicle, vessel, animal or other thing may be seized whether or not a prosecution for an offence under this Act which rendered it liable for forfeiture has been, or will be, taken.

(4) Any taxable goods, aircraft, vehicle, vessel, animal or other thing seized and detained under this Act shall be kept or taken to such place of security as the Commissioner may decide.

(5) The Commissioner may, at any time prior to the commencement of proceedings under this Act relating to an aircraft, animal, vehicle, vessel, taxable goods or other thing which has been seized under this Act, release it to the person from whom it was seized, if he is satisfied that it was not liable to seizure.

(6) No officer shall be liable to legal proceedings for any action taken in good faith in accordance with this section.

50. Procedure on seizure

(1) Where a thing has been seized under this Act, then, unless the thing was seized in the presence of the owner, or in the case of a vessel, or aircraft, of the master thereof, the officer effecting the seizure shall, within one month of the

seizure, give notice in writing of the seizure and of the reasons therefore to the owner thereof or, in the case of the vessel or aircraft, the master thereof:

Provided that—

- (i) no notice shall be given where a person has, within the period of one month, been prosecuted for the offence by reason of which the thing has been seized, or the offence has been compounded under section 54 and if, after the notice has been given but before condemnation of the thing in accordance with this Act—
 - (a) a prosecution is brought, then the thing shall be dealt with in accordance with section 51 as if no notice has been given;
 - (b) the offence has been compounded, then the thing shall be dealt with in accordance with section 54 as if no notice has been given;
- (ii) where the thing has been seized in the presence of a person coming within the definition of the owner for the purposes of this Act, then it shall not be necessary for the officer effecting the seizure to give notice thereof to any other person coming within that definition;
- (iii) a notice given to a person coming within the definition of owner shall be deemed to be notice to all other persons coming within that definition;
- (iv) where no person coming within the definition of owner is known, then it shall not be necessary for the officer effecting the seizure to give notice thereof to any person.

(2) Where goods which are of perishable nature are seized the Commissioner may direct that the goods shall be sold forthwith, either by public auction or by private treaty, and that the proceeds of sale shall be retained and dealt with as if they were the goods.

(3) Where anything liable to forfeiture has been seized then—

- (a) if a person is being prosecuted for the offence by reason of which the thing was seized, the thing shall be detained until the determination of such prosecution and dealt with in accordance with section 51;
- (b) in any other case the thing shall be detained until one month after the date of seizure, or the date of notice given under subsection (1), as the case may be; and if no claim is made therefore as provided in subsection (4) within the period of one month, the thing shall thereupon be deemed to be condemned.

(4) Where anything liable to forfeiture under this Act has been seized, then subject to proviso (i) to subsection (1) and to subsection (3)(a), the owner thereof may, within one month of the date of the seizure or the date of a notice given under subsection (1), as the case may be, by notice in writing to the Commissioner claim the thing.

(5) Where a notice of claim has been given in accordance with subsection (4), then the thing seized shall be detained by the Commissioner to be dealt with under this Act:

Provided that the Commissioner may permit the thing to be delivered to the person making the claim (hereinafter in this Part referred to as “the claimant”)

subject to the claimant giving payment for the value thereof, as determined by the Commissioner in the event of its condemnation.

51. Effect of conviction, etc., on things liable for forfeiture

(1) Where a person is prosecuted for an offence under this Act and anything is liable to forfeiture by reason of the commission of that offence, the conviction of that person for that offence shall, without further order, have effect as the condemnation of that thing.

(2) Where a person is prosecuted for an offence under this Act and anything is liable to forfeiture by reason of the commission of that offence, then, on the acquittal of that person, the Court may order that thing either—

- (a) to be released to the person from whom it was seized or to the owner thereof; or
- (b) to be condemned.

52. Procedure after notice of claim

(1) Where a notice of claim has been given to the Commissioner in accordance with section 50, then the Commissioner may within a period of two months from the receipt of the claim, either—

- (a) by notice in writing to the claimant, require the claimant to institute proceedings in a court of competent jurisdiction for the recovery of the thing within two months of the date of the notice; or
- (b) himself institute proceedings in a court of competent jurisdiction for the condemnation of the thing.

(2) Where the Commissioner fails within a period of two months to require the claimant to institute proceedings, or himself to institute proceedings, in accordance with subsection (1), then the goods shall be released to the claimant.

(3) Where the Commissioner has, in accordance with subsection (1) required the claimant to institute proceedings within a period of two months and the claimant has failed to do so, then on the expiry of that period the thing shall be condemned and shall be forfeited and may be sold or otherwise disposed of as the Commissioner may direct.

(4) Where the proceedings have been instituted in accordance with this section, then—

- (a) if the Court is satisfied that the thing was liable to forfeiture under this Act it shall be condemned;
- (b) if the Court is not satisfied, the thing shall be released to the claimant:

Provided that the Court shall not so release the thing to the claimant unless it is satisfied that the claimant is the owner thereof or, by reason of an interest therein, is entitled to the possession thereof, and if the Court is not so satisfied, the thing shall be condemned as if no claim thereto had been made.

53. Provisions relating to condemnation

(1) Where anything has been seized under this Act as being liable to forfeiture, then the condemnation of the thing shall be in no way affected by the fact that an owner of the thing was in no way concerned with the act which rendered it liable to forfeiture.

(2) Where anything is condemned under this Act then—

- (a) subject to section 55, the thing shall be forfeited and may be sold, destroyed or otherwise disposed of as the Commissioner may think fit;
- (b) condemnation of a thing shall have effect as from the date when the liability to forfeiture arose;
- (c) condemnation shall subject to any appeal against proceedings which resulted in the condemnation, be final, save as provided in section 54, no application or proceedings for restoration shall lie.

(3) Where goods have been condemned and are in the possession of some authority other than the Commissioner they shall be returned to the Commissioner for disposal under subsection (2).

(4) Where goods are sold by public auction thirty days' notice of sale shall, be given in such manner as the Commissioner may direct.

(5) Where goods are sold under this section the proceeds thereof shall be applied in the discharge of—

- (a) the value added tax, if any;
- (b) the expenses of removal and sale;
- (c) the rent and charges due to the Commissioner; and
- (d) the freight and any other charges.

(6) The balance, if any, left after application of the proceeds under subsection (5) shall be paid to the Value Added Tax revenue.

[Act No. 13 of 1995, s. 64.]

54. Restoration of seizures

Where anything has been seized under this Act, then the Minister may, whether or not the thing has been condemned, direct that it shall be released and restored to the person from whom it was seized or to the owner thereof, upon such conditions as the Minister may think fit.

PART XIII – SETTLEMENT OF CASES BY THE COMMISSIONER

55. Power of Commissioner to compound offences by agreement

(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 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) Where the Commissioner makes an order under this section—
- (a) the order shall be put into writing and shall have attached to it the request of the person to the Commissioner to deal with the matter; and
 - (b) the order shall specify the offence which the person committed and the penalty imposed by the Commissioner; and
 - (c) a copy of the order shall be given to the person if he so requests; and
 - (d) the person shall not be liable to further prosecution in respect of the offence except with the express consent of the Attorney-General; and unless that consent has been given, if a prosecution is brought it shall be a good defence for that person to prove that the offence with which he is charged has been compounded under this section; and
 - (e) subject to paragraph (d), the order shall be final and not be subject to appeal and may be enforced in the same manner as a decree or order of the High Court.

PART XIV – MISCELLANEOUS PROVISIONS

56. Effect on imposition or variation of tax

(1) If, after any agreement has been entered into for the sale or delivery of any taxable supply at a price expressly or implicitly inclusive of taxes or duties, any alteration takes place in the amount of tax payable to that supply before the tax becomes due, then, in the absence of express written provision 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, after payment, whether directly or indirectly, of the tax, may 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 the 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.

57. Application of Customs and Excise Act to imported goods

(1) Subject to this Act, the East African Community Customs Management Act (Cap. 472), 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 subparagraph (i) of paragraph (c) of subsection (1) of section 9 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.

[Act No. 10 of 1990, s. 27, Act No. 6 of 2005, s. 13.]

58. Regulations

The Minister 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 procedure 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 any other thing which is to be prescribed for the purposes of any provision of this Act.

[Act No. 9 of 2000, s. 31.]

59. Agents

(1) 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 authorized by him.

(2) Without prejudice to any provision under this Act, the Minister may make regulations prescribing conditions for any person authorized to act as an agent under this section.

[Act No. 8 of 2008, s. 18.]

FIRST SCHEDULE

[Section 6, Act No. 10 of 2006, s. 9, L.N. 135/2008, s. 2.]

RATES OF TAX

PART I

Subject to Part II of this Schedule and Parts A, B and C of the Fifth Schedule, the rate of tax referred to in section 6 shall be 16 per cent of the taxable value.

Value Added Tax

FIRST SCHEDULE—*continued*

PART II

The taxable goods listed below shall be charged tax at the rate of 12 per cent of the taxable value.

<i>Tariff No.</i>	<i>Goods Description</i>
2710.19.32	Diesel oil (industrial heavy, black, for low speed marine and stationary engines).
2710.19.41	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 125 centistrokes.
2710.19.42	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 180 centistrokes.
2710.19.43	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 280 centistrokes.
2710.19.49	Other residual fuels.
2716.00.00	Electrical energy.

SECOND SCHEDULE

[Section 2(1), Act No. 13 of 1995, s. 66, Act No. 8 of 1996, s. 20, Act No. 4 of 1999, s. 26, Act No. 9 of 2000, s. 33, Act No. 6 of 2001, s. 37, Act No. 7 of 2002, s. 31, Act No. 15 of 2003, s. 25, Act No. 4 of 2004, s. 40, Act No. 6 of 2005, s. 14, Act No. 10 of 2006, s. 10, Act No. 9 of 2007, s. 12, Act No. 8 of 2008, s. 19, Act No. 8 of 2009, s. 12, Act No. 10 of 2009, s. 17.]

EXEMPT GOODS

PART I

<i>Tariff No.</i>	<i>Tariff Description</i>
0101.10.00	Live pure-bred breeding horses, asses, mules and hinnies.
0101.90.00	Other live horses, asses, mules and hinnies.
0102.10.00	Live pure-bred breeding bovine animals.
0102.90.00	Other live bovine animals.
0103.10.00	Live pure-bred breeding swine.
0103.91.00	Other live swine weighing less than 50 kg.
0103.92.00	Other live swine weighing 50 kg. or more.
0104.10.10	Pure-bred breeding sheep.
0104.10.90	Other live sheep.
0104.20.10	Live pure-bred breeding goats.
0104.20.90	Other live goats.
0105.11.10	Live day-old fowls of the species <i>Gallus domesticus</i> , weighing not more than 185g.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
0105.11.90	Other live fowls of the species <i>Gallus domesticus</i> , weighing not more than 185g.
0105.12.10	Live day old turkeys not weighing more than 185g.
0105.12.90	Other live turkeys not weighing more than 185g.
0105.19.00	Other live poultry weighing not more than 185g.
0105.94.00	Live fowls of the species <i>Gallus domesticus</i> weighing more than 185g.
0105.99.00	Live ducks, geese and guinea fowls weighing more than 185g.
0106.11.00	Primates.
0106.12.00	Whales, dolphins and porpoises (mammals of the order <i>Cetacean</i>); manatees and dugongs (mammals of the order <i>Sirenia</i>).
0106.19.00	Other mammals.
0106.20.00	Reptiles (including snakes and turtles).
0106.31.00	Birds of prey.
0106.32.00	<i>Psittaciformes</i> (including parrots, parakeets, macaws and cockatoos).
0106.39.00	Other birds.
0106.90.00	Other live animals not elsewhere specified.
0201.10.00	Carcasses and half-carcasses of bovine animals, fresh or chilled.
0201.20.00	Other cuts with bone in, of bovine animals, fresh or chilled.
0201.30.00	Boneless meat of bovine animals, fresh or chilled.
0202.10.00	Carcasses and half-carcasses of bovine animals, frozen.
0202.20.00	Other cuts with bone in, of bovine animals, frozen.
0202.30.00	Boneless meat of bovine animals, frozen.
0203.11.00	Carcasses and half-carcasses of swine, fresh or chilled.
0203.12.00	Hams, shoulders and cuts thereof, with bone in, of swine, fresh or chilled.
0203.19.00	Other meat of swine, fresh or chilled.
0203.21.00	Carcasses and half-carcasses of swine, frozen.
0203.22.00	Hams, shoulders and cuts thereof, with bone in, of swine, frozen.
0203.29.00	Other meat of swine, frozen.
0204.10.00	Carcasses and half-carcasses of lamb, fresh or chilled.
0204.21.00	Carcasses and half-carcasses of sheep, fresh or chilled.
0204.22.00	Other cuts with bone in, of sheep, fresh or chilled.
0204.23.00	Boneless meat of sheep, fresh or chilled.
0204.30.00	Carcasses and half-carcasses of lamb, frozen.
0204.41.00	Carcasses and half-carcasses of sheep, frozen.
0204.42.00	Other cuts with bone in, of sheep, frozen.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
0204.43.00	Other boneless meat of sheep, frozen.
0204.50.00	Meat of goats, fresh, chilled or frozen.
0205.00.00	Meat of horses, asses, mules or hinnies, fresh, chilled or frozen.
0206.10.00	Edible offal of bovine animals, fresh or chilled.
0206.21.00	Tongues of bovine animals, frozen.
0206.22.00	Livers of bovine animals, frozen.
0206.29.00	Other edible offal, of bovine animals, frozen.
0206.30.00	Edible offal of swine, fresh or chilled.
0206.41.00	Livers of swine, frozen.
0206.49.00	Other edible offal of swine, frozen.
0206.80.00	Edible offal of sheep, goats, horses, asses, mules and hinnies, fresh or chilled.
0206.90.00	Edible offal of sheep, goats, horses, asses, mules or hinnies, frozen.
0207.11.00	Meat of fowls of the species <i>Gallus domesticus</i> , not cut in pieces, fresh or chilled.
0207.12.00	Meat of fowls of the species <i>Gallus domesticus</i> , not cut in pieces, frozen.
0207.13.00	Cuts and edible offal, of fowls of the species <i>Gallus domesticus</i> , fresh or chilled.
0207.14.00	Cuts and edible offal, of fowls of the species <i>Gallus domesticus</i> , frozen.
0207.24.00	Meat of turkeys not cut in pieces, fresh or chilled.
0207.25.00	Meat of turkeys not cut in pieces, frozen.
0207.26.00	Cuts and edible offal, of turkeys, fresh or chilled.
0207.27.00	Cuts and edible offal, of turkeys, frozen.
0207.32.00	Meat of ducks, geese or guinea fowls, not cut in pieces, fresh or chilled.
0207.33.00	Meat of ducks, geese or guinea fowls, not cut in pieces, frozen.
0207.34.00	Fatty livers of ducks, geese or guinea fowls, fresh or chilled.
0207.35.00	Other meat and edible offal of ducks, geese or guinea fowls, fresh or chilled.
0207.36.00	Other meat and edible offal of ducks, geese or guinea fowls, frozen.
0208.10.00	Meat and edible meat offal, of rabbits or hares, fresh, chilled or frozen.
0208.20.00	Frog's legs, fresh, chilled or frozen.
0208.30.00	Other meat and edible offal of primates, fresh chilled or frozen.
0208.40.00	Other meat and edible offal of whales, dolphins, porpoises (mammals of the order <i>Cetacean</i>); of manatees and dugongs (mammals of the order <i>Sirenia</i>) fresh, chilled or frozen.

Value Added Tax

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
0208.50.00	Other meat and edible offal of reptiles (including snakes and turtles) fresh, chilled or frozen.
0208.90.00	Other meat and edible meat offal, fresh, chilled or frozen.
0301.10.00	Live ornamental fish.
0301.91.00	Live trout.
0301.92.00	Live eels.
0301.93.00	Live carp.
0301.94.00	Live Bluefin Tunas (<i>Thunnus thynnus</i>).
0301.95.00	Live Southern Bluefin tuna (<i>Thunus maccoyii</i>).
0301.99.00	Other live fish.
0302.11.00	Trout, fresh or chilled.
0302.12.00	Pacific, Atlantic and Danube Salmon, fresh or chilled.
0302.19.00	Other salmonidae, fresh or chilled.
0302.21.00	Halibut, fresh or chilled.
0302.22.00	Plaice, fresh or chilled.
0302.23.00	Sole, fresh or chilled.
0302.29.00	Other flat fish, fresh or chilled.
0302.31.00	Albacore or longfinned tunas, fresh or chilled.
0302.32.00	Yellowfin tunas, fresh or chilled.
0302.33.00	Skipjack or stripe-bellied bonito, fresh or chilled.
0302.34.00	Bigeye tunas (<i>Thunnus obesus</i>) fresh or chilled.
0302.35.00	Bluefin tunas (<i>Thunnus thynnus</i>) fresh or chilled.
0302.36.00	Southern bluefin tunas (<i>Thunnus maccoyii</i>) fresh or chilled.
0302.39.00	Other tunas, fresh or chilled.
0302.40.00	Herrings, fresh or chilled.
0302.50.00	Cod, fresh or chilled.
0302.61.00	Sardines, sardinella, brisling or sprats, fresh or chilled.
0302.62.00	Haddock, fresh or chilled.
0302.63.00	Coalfish, fresh or chilled.
0302.64.00	Mackerel, fresh or chilled.
0302.65.00	Dogfish and other sharks, fresh or chilled.
0302.66.00	Eels, fresh or chilled.
0302.67.00	Swordfish (<i>Xiphias gladius</i>), excluding livers and roes, fresh or chilled.
0302.68.00	Toothfish (<i>Dissostichus spp.</i>), excluding livers and roes, fresh or chilled.
0302.69.00	Other fish, fresh or chilled.
0302.70.00	Livers and roes of fish, fresh or chilled.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
0303.11.00	Sockeye salmon (red salmon) (<i>Oncorhynchus nerka</i>) frozen.
0303.19.00	Other pacific salmonidae, frozen.
0303.21.00	Trout, frozen.
0303.22.00	Atlantic salmon and Danube salmon, frozen.
0303.29.00	Other salmonidae, frozen.
0303.31.00	Halibut, frozen.
0303.32.00	Plaice, frozen.
0303.33.00	Sole, frozen.
0303.39.00	Other flat fish, frozen.
0303.41.00	Albacore or longfinned tunas, frozen.
0303.42.00	Yellowfin tunas, frozen.
0303.43.00	Skipjack or stripe-bellied bonito, frozen.
0303.44.00	Bigeye tunas (<i>Thunnus obesus</i>) frozen.
0303.45.00	Bluefin tunas (<i>Thunnus thynnus</i>) frozen.
0303.46.00	Southern bluefin tunas (<i>Thunnus maccoyii</i>) frozen.
0303.49.00	Other tunas, frozen.
0303.51.00	Herrings (<i>Clupea harengus</i> , <i>Clupea pallasii</i>), excluding livers and roes, frozen.
0303.52.00	Cod (<i>Gadus morhua</i> , <i>Gadus ogac</i> , <i>Gadus macrocephalus</i>), excluding livers and roes, frozen.
0303.61.00	Swordfish (<i>Xiphias gladius</i>), excluding livers and roes, frozen.
0303.62.00	Toothfish (<i>Dissostichus spp.</i>), excluding livers and roes, frozen.
0303.71.00	Sardines, frozen.
0303.72.00	Haddock, frozen.
0303.73.00	Coalfish, frozen.
0303.74.00	Mackerel, frozen.
0303.75.00	Dogfish and other sharks, frozen.
0303.76.00	Eels, frozen.
0303.77.00	Sea bass, frozen.
0303.78.00	Hake, frozen.
0303.79.00	Other fish, frozen.
0303.80.00	Livers and roes of fish, frozen.
0304.11.00	Swordfish (<i>Xiphias gladius</i>) fillet, whether or not minced, fresh or chilled.
0304.12.00	Toothfish (<i>Dissostichus spp.</i>) fillet, whether or not minced, fresh or chilled.
0304.19.00	Other fish fillet and fish meat, whether or not minced, fresh or chilled.
0304.20.00	Frozen fillets of fish.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
0304.21.00	Swordfish (<i>Xiphias gladius</i>) meat, whether or not minced, frozen.
0304.22.00	Toothfish (<i>Dissostichus spp.</i>) meat, whether or not minced, frozen.
0304.29.00	Other fish meat, whether or not minced, frozen.
0304.90.00	Other fish fillets and other fish meat (whether or not minced), frozen.
0304.91.00	Swordfish (<i>Xiphias gladius</i>) meat, whether or not minced, frozen.
0304.92.00	Toothfish (<i>Dissostichus spp.</i>) meat, whether or not minced, frozen.
0304.99.00	Other fish meat, whether or not minced, frozen.
0306.11.00	Rock lobster and other sea crawfish, frozen.
0306.12.00	Lobsters, frozen.
0306.13.00	Shrimps and prawns, frozen.
0306.14.00	Crabs, frozen.
0306.21.00	Rock lobster and other sea crawfish, not frozen.
0306.22.00	Lobsters, not frozen.
0306.23.00	Shrimps and prawns, not frozen.
0307.21.00	Live scallops, including queen scallops, of the genera <i>Pecten</i> , <i>Chlamys</i> or <i>Placopecten</i> , fresh or chilled.
0307.31.00	Mussels, live, fresh or chilled.
0307.41.00	Cuttle fish and squid, live, fresh or chilled.
0307.51.00	Octopus, live, fresh or chilled.
0407.00.00	Birds' eggs, in shell, fresh, preserved or cooked.
0408.11.00	Egg-yolks, dried.
0408.19.00	Egg yolks, other than dried.
0408.91.00	Birds' eggs, not in shell, dried.
0408.99.00	Other birds' eggs, not in shell, fresh, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter.
0511.10.00	Bovine semen.
0511.91.10	Fish eggs and roes.
0511.91.20	Fish waste.
0511.91.90	Other products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3, unfit for human consumption.
0511.99.10	Animal semen other than of bovine.
0511.99.90	Other animal products not elsewhere specified or included.
0603.10.00	Cut flowers, and flower buds, fresh.
0603.11.00	Cut flowers and flower buds of Roses, fresh.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
0603.12.00	Cut flowers and flower buds of Carnations, fresh.
0603.13.00	Cut flowers and flower buds of Orchids, fresh.
0603.14.00	Cut flowers and flower buds of Chrysanthemums, fresh.
0603.19.00	Other cut flowers and flower buds, fresh.
0603.90.00	Other cut flowers and flower buds.
0701.90.00	Potato, other than potato seed, fresh or chilled.
0702.00.00	Tomatoes, fresh or chilled.
0703.10.00	Onions and shallots, fresh or chilled.
0703.20.00	Garlic, fresh or chilled.
0703.90.00	Leeks and other alliaceous vegetables, fresh or chilled.
0704.10.00	Cauliflowers and headed broccoli, fresh or chilled.
0704.20.00	Brussels sprouts, fresh or chilled.
0704.90.00	Cabbages, kohlrabi, kale and similar edible brassicas, fresh or chilled.
0705.11.00	Cabbage lettuce (head lettuce), fresh or chilled.
0705.19.00	Other lettuce, fresh or chilled.
0705.21.00	Witloof chicory, fresh or chilled.
0705.29.00	Other chicory, fresh or chilled.
0706.10.00	Carrots and turnips, fresh or chilled.
0706.90.00	Salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled.
0707.00.00	Cucumbers and gherkins, fresh or chilled.
0708.10.00	Peas, shelled or unshelled, fresh or chilled.
0708.20.00	Beans, shelled or unshelled, fresh or chilled.
0708.90.00	Other leguminous vegetables, shelled or unshelled, fresh or chilled.
0709.10.00	Globe artichokes, fresh or chilled.
0709.20.00	Asparagus, fresh or chilled.
0709.30.00	Aubergines (egg-plants), fresh or chilled.
0709.40.00	Celery other than celeriac, fresh or chilled.
0709.51.00	Mushrooms of the genus <i>agaricus</i> , fresh or chilled.
0709.52.00	Truffles, fresh or chilled.
0709.59.00	Other mushrooms and truffles fresh or chilled.
0709.60.00	Fruits of the genus <i>Capsicum</i> or of the genus <i>Pimenta</i> , fresh or chilled.
0709.70.00	Spinach, New Zealand spinach and orache spinach (garden spinach), fresh or chilled.
0709.90.00	Other vegetables, fresh or chilled.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
0710.10.00	Potatoes (uncooked or cooked by steaming or boiling in water), frozen.
0710.21.00	Peas, shelled or unshelled, (uncooked or cooked by steaming or boiling in water), frozen.
0710.22.00	Beans, shelled or unshelled, (uncooked or cooked by steaming or boiling in water), frozen.
0710.29.00	Other leguminous vegetables, shelled or unshelled, (uncooked or cooked by steaming or boiling in water), frozen.
0710.30.00	Spinach, New Zealand spinach and orache spinach (garden spinach), (uncooked or cooked by steaming or boiling in water), frozen.
0710.40.00	Sweet corn, (uncooked or cooked by steaming or boiling in water), frozen.
0710.80.00	Other vegetables, (uncooked or cooked by steaming or boiling in water), frozen.
0710.90.00	Mixtures of vegetables, (uncooked or cooked by steaming or boiling in water), frozen.
0712.20.00	Onions, dried, whole, cut, sliced, broken or in powder, but not further prepared.
0712.31.00	Mushrooms of the genus <i>Agaricus</i> , dried, whole, cut, sliced, broken or in powder, but not further prepared.
0712.32.00	Wood ears (<i>Auricularia</i> spp.), dried, whole, cut, sliced, broken or in powder, but not further prepared.
0712.33.00	Jelly fungi (<i>Tremella</i> spp.), dried, whole, cut, sliced, broken or in powder, but not further prepared.
0712.39.00	Other dried vegetables, dried, whole, cut, sliced, broken or in powder, but not further prepared.
0712.90.00	Other vegetables; mixtures of vegetables, dried, whole, cut, sliced, broken or in powder, but not further prepared.
0713.10.00	Peas (<i>pisum sativum</i>) dried, shelled, whether or not skinned or split.
0713.20.00	Chickpeas (<i>garbanzos</i>), dried, shelled, whether or not skinned or split.
0713.31.00	Beans of the species <i>Vima mungo</i> (1) <i>Hepper</i> or <i>Vigna quine</i> (1) <i>Wilczek</i> , dried, shelled, whether or not skinned or split.
0713.32.00	Small red (Adzuki) beans (<i>phaseolus</i> or <i>vagna agularisaris</i>), dried, shelled, whether or not skinned or split.
0713.33.00	Kidney beans, including white pea beans (<i>phaseolus vulgaris</i>), dried, shelled, whether or not skinned or split.
0713.39.00	Other beans of the species <i>Vigna</i> spp., <i>Phaseolus</i> spp., dried, shelled, whether or not skinned or split.
0713.40.00	Lentils, dried, shelled, whether or not skinned or split.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
0713.50.00	Broad beans (<i>vicia faba</i> var. <i>major</i>) and horse beans (<i>vicia faba</i> var. <i>quine</i> , <i>faba</i> var. <i>minor</i>), dried, shelled, whether or not skinned or split.
0713.90.00	Other leguminous vegetables, dried, shelled, whether or not skinned or split.
0714.10.00	Manioc (cassava), fresh or dried, whether or not sliced or in the form of pellets.
0714.20.00	Sweet potatoes, fresh or dried, whether or not sliced or in the form of pellets.
0714.90.00	Arrowroot, salep, Jerusalem artichokes and similar roots and tubers with high starch or insulin content, fresh, chilled, frozen or dried, whether or not sliced or in the form of pellets; sago pith.
0801.11.00	Coconuts, fresh or dried, whether or not shelled or peeled, desiccated.
0801.19.00	Coconuts, fresh or dried, whether or not shelled or peeled, not desiccated.
0801.21.00	Brazil nuts, in shell, fresh or dried.
0801.22.00	Brazil nuts, shelled, fresh or dried.
0801.31.00	Cashew nuts, in shell, fresh or dried.
0801.32.00	Cashew nuts, shelled, fresh or dried.
0802.11.00	Almonds in shell, fresh or dried.
0802.12.00	Almonds, shelled, fresh or dried.
0802.21.00	Hazelnuts or filberts, in shell, fresh or dried.
0802.22.00	Hazelnuts or filberts, shelled, fresh or dried.
0802.31.00	Walnuts in shell, fresh or dried.
0802.32.00	Walnuts shelled, fresh or dried.
0802.40.00	Chestnuts (<i>Castanea</i> spp.), fresh or dried, whether or not shelled or peeled.
0802.50.00	Pistachios, fresh or dried, whether or not shelled or peeled.
0802.60.00	Macadamia nuts, whether or not shelled or peeled fresh or dried.
0802.90.00	Other nuts, fresh or dried, whether or not shelled or peeled.
0803.00.00	Bananas, including plantains, fresh or dried.
0804.10.00	Dates, fresh or dried.
0804.20.00	Figs, fresh or dried.
0804.30.00	Pineapples, fresh or dried.
0804.40.00	Avocados, fresh or dried.
0804.50.00	Guavas, mangoes and mangosteens, fresh or dried.
0805.10.00	Oranges, fresh or dried.
0805.20.00	Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids, fresh or dried.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
0805.40.00	Grapefruit, fresh or dried.
0805.50.00	Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>) and limes (<i>Citrus aurantifolia</i> , <i>Citrus latifolia</i>), fresh or dried.
0805.90.00	Other citrus fruit, fresh or dried.
0806.10.00	Grapes, fresh.
0806.20.00	Grapes, dried.
0807.11.00	Watermelons, fresh.
0807.19.00	Other melons and papaws (papayas), fresh.
0807.20.00	Fresh papaws (papayas)
0808.10.00	Apples, fresh.
0808.20.00	Pears and quinces, fresh.
0809.10.00	Apricots, fresh.
0809.20.00	Cherries, fresh.
0809.30.00	Peaches, including nectarines, fresh.
0809.40.00	Plums and sloes, fresh.
0810.10.00	Strawberries, fresh.
0810.20.00	Raspberries, blackberries, mulberries and loganberries, fresh.
0810.30.00	Black, white or red currants and gooseberries, fresh.
0810.40.00	Cranberries, bilberries and other fruits of the genus <i>Vaccinium</i> , fresh.
0810.50.00	Kiwifruit, fresh.
0810.60.00	Durians, fresh.
0810.90.00	Other fruit, fresh.
0813.10.00	Apricots, dried.
0813.20.00	Prunes, dried.
0813.30.00	Apples, dried.
0813.40.00	Other dried fruit.
0813.50.00	Mixtures of nuts or dried fruits of Chapter 8.
1001.10.10	Durum wheat specially prepared for sowing.
1001.10.90	Other durum wheat.
1001.90.10	Other wheat and meslin especially prepared for sowing.
1001.90.20	Other hard wheat.
1001.90.90	Other wheat and meslin.
1002.00.10	Rye specially prepared for sowing.
1002.00.90	Other rye.
1003.00.10	Barley specially prepared for sowing.
1003.00.90	Other barley.
1004.00.00	Oats.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
1005.90.00	Other maize (corn).
1007.00.00	Grain sorghum.
1008.10.00	Buckwheat.
1008.20.00	Millet.
1008.30.00	Canary seed.
1008.90.00	Other cereals.
1102.10.00	Rye flour.
1102.30.00	Rice flour.
1102.90.00	Other cereal flours.
1103.11.00	Groats and meal of wheat.
1103.13.00	Groats and meal of maize (corn).
1103.19.00	Groats and meal of other cereals.
1103.20.00	Pellets of cereals.
1104.12.00	Rolled or flaked grain of oats.
1104.19.00	Rolled or flaked grain of other cereals.
1104.22.00	Oats grains, otherwise worked.
1104.23.00	Maize (corn) grains otherwise worked.
1104.29.00	Other cereal grains otherwise worked.
1104.30.00	Germ of cereals, whole, rolled, flaked or ground.
1105.10.00	Flour, meal and powder of potatoes.
1105.20.00	Flakes, granules and pellets of potatoes.
1106.10.00	Flour, meal and powder of the dried leguminous vegetables of heading No. 07.13.
1106.20.00	Flour, meal and powder of sago or of roots or tubers of heading No. 07.14.
1106.30.00	Flour, meal and powder of the products of Chapter 8.
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.
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.
1207.10.00	Palm nuts and kernels, whether or not broken.
1207.20.00	Cotton seeds, whether or not broken.
1207.30.00	Castor oil seeds, whether or not broken.
1207.40.00	Sesamum seeds, whether or not broken.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
1207.50.00	Mustard seeds, whether or not broken.
1207.60.00	Safflower seeds, whether or not broken.
1207.91.00	Poppy seeds, whether or not broken.
1207.99.00	Other oil seeds and oleaginous fruits, whether or not broken.
1208.10.00	Flours and meals of soya beans.
1208.90.00	Other flours and meals of oil seeds or oleaginous fruits, other than those of mustard.
1211.10.00	Liquorice roots.
1211.20.00	Ginseng roots.
1211.30.00	Coca leaf.
1211.40.00	Poppy straw.
1211.90.10	Cinchona bark.
1211.90.20	Pyrethrum flower.
1211.90.90	Other plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not cut, crushed or powdered.
1212.10.00	Locust beans, including locust bean seeds.
1212.20.00	Seaweeds and other algae.
1212.30.00	Apricot, peach or plum stones and kernels.
1212.91.00	Sugar beet, other than seed.
1213.00.00	Cereal straw and husks, unprepared, whether or not chopped, ground, pressed or in the form of pellets.
1214.10.00	Lucerne (alfalfa) meal and pellets.
1214.90.00	Swedes, mangolds, fodder roots, hay, clover, sainfoin, forage kale, lupines, vetches and similar forage products, whether or not in the form of pellets.
1905.90.30	Ordinary bread, gluten bread and unleavened bread.
2302.10.00	Bran, sharps and other residues of maize (corn), whether or not in the form of pellets.
2302.20.00	Bran, sharps and other residues of rice, whether or not in the form of pellets.
2302.30.00	Bran, sharps and other residues of wheat, whether or not in the form of pellets.
2302.40.00	Bran, sharps and other residues of other cereals, whether or not in the form of pellets.
2302.50.00	Bran, sharps and other residues of leguminous plants, whether or not in the form of pellets.
2307.00.00	Wine lees; argol.
2709.00.00	Petroleum oils and oils obtained from bituminous minerals, crude.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
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.
2710.19.29	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 gases in gaseous state.
3706.10.00	Cinematographic film, exposed and developed whether or not incorporating sound track or consisting only of sound track of a width of 35 mm or more.
3706.90.00	Other cinematographic film, exposed and developed, whether or not incorporating sound track or consisting only of sound track.
4101.20.00	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.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
4103.20.00	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 reptile.
4103.30.00	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 swine.
4103.90.00	Other raw hides and skins other than of reptiles, swine, goats or kids.
4402.00.00	Wood charcoal (including shell or nut charcoal), whether or not agglomerated.
4402.10.00	Wood charcoal (including shell or nut charcoal), whether or not agglomerated of bamboo.
4402.90.00	Other wood charcoal (including shell or nut charcoal), whether or not agglomerated.
4902.90.00	Other Newspapers, journals and periodicals whether or not illustrated or containing advertising materials.
4907.00.90	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.
7118.90.00	Other coins.
8502.39.10	Unassembled solar DC generating sets.
8502.39.30	Assembled or partly assembled DC generating sets.
8502.39.90	Other assembled or partly assembled DC generating sets.
8504.31.00	Other transformers having a power handling capacity not exceeding 1KVA.
8504.32.00	Other transformers having a power handling capacity exceeding 1 KVA but not exceeding 16 KVA.
8517.12.00	Telephones for cellular networks or for other wireless networks.
8802.11.00	Helicopters of an unladen weight not exceeding 2,000 kg.
8802.12.00	Helicopters of an unladen weight exceeding 2,000 kg.
8802.20.00	Aeroplanes and other aircraft, of an unladen weight not exceeding 2,000 kg.
8802.30.00	Aeroplanes and other aircraft, of an unladen weight exceeding 2,000 kg but not exceeding 15,000 kg.
8802.40.00	Aeroplanes and other aircraft, of an unladen weight exceeding 15,000 kg.
8802.60.00	Spacecraft (including satellites) and suborbital and spacecraft launch vehicles.
8805.10.00	Aircraft launching gear and parts thereof, deck-arrestor or similar gear and parts thereof.

SECOND SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
8805.21.00	Air combat simulators and parts thereof.
8805.29.00	Other ground flying trainers and parts thereof.
9301.11.00	Self-propelled artillery weapons (for example, guns, howitzers and mortars), other than revolvers, pistols and the arms of heading 93.07.
9301.19.00	Other artillery weapons (for example, guns, howitzers and mortars).
9301.20.00	Rocket launchers; flame-throwers; grenade launchers; torpedo tubes and similar projectors.
9301.90.00	Other military weapons (for example, guns, howitzers and mortars), other than revolvers, pistols and the arms of heading 93.07.

PART II

- (i) Taxable goods sold by registered persons where input tax included in the price of such goods was not allowed.
- (ii) Motor vehicles sold by unregistered persons where no input tax was deducted by a previous owner of such vehicles.
- (iii) Acorns and horse chestnuts.
- (iv) Wooden coffins.
- (v) *deleted by Act No. 8 of 2008, s. 19.*
- (vi) Meslin Flour.
- (vii) Electrical energy saving bulbs for lighting, also known as compact fluorescent bulbs.
- (viii) Aquaria pumps.
- (ix) Outboard engines of 10 HP.
- (ix) Single 2 volt cell units for 300 Ah and above.
- (xi) Inverters

[Act No. 10 of 2006, s. 10, Act No. 10 of 2010, s. 17.]

THIRD SCHEDULE

[Section 2(1), Act No. 13 of 1995, s. 67, Act No. 8 of 1996, s. 21, Act No. 8 of 1997, s. 24, Act No. 5 of 1998, s. 24, Act No. 9 of 2000, s. 34, Act No. 6 of 2001, s. 38, Act No. 7 of 2002, s. 32, Act No. 15 of 2003, s. 26, Act No. 4 of 2004, s. 41, Act No. 10 of 2006, s. 11, Act No. 8 of 2008, s. 20, Act No. 8 of 2009, s. 13, Act No. 10 of 2010, s. 18.]

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 debits 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 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 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.

[Act No. 10 of 2006, s. 11, Act No. 8 of 2008, s. 20, Act No. 8 of 2009.]

2. Insurance and reinsurance services excluding the following—
 - (a) management and related insurance consultancy services;
 - (b) actuarial services;
 - (c) services of insurance accessors and loss adjustors.

[Act No. 10 of 2006, s. 11(b).]
3.
 - (1) Subject to subparagraph (2), education and training services offered to students by institutions and establishments registered by the Government.
 - (2) Subparagraph (1) shall not apply in respect of business or user training and other consultancy services designed to improve work practices and efficiency of an organisation.
4. Medical, veterinary, dental and nursing services.
5. Sanitary and pest control services rendered to domestic households.

6. Agricultural, animal husbandry and horticultural services.
7. 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 Organizations Co-ordination Act, 1990 (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.
8. Burial and cremation services, including services provided in the making of arrangements for or in connection with the disposal of the remains of the dead.
9. Transportation of passengers by any means of conveyance but excluding where the means of conveyance is hired or chartered.
10. (1) Renting, leasing, hiring or letting of—
 - (a) land;
 - (b) residential buildings; and
 - (c) *deleted by Act No. 9 of 2007, s. 13,*
Provided that this paragraph shall not apply where such services are supplied in respect of—
 - (i) car park services; or
 - (ii) conference or exhibition services, except where such services are provided for educational institutions as part of learning.
- (2) Sale of buildings.
[Act No. 7 of 2002, s. 32, Act No. 8 of 2009, s. 13.]
11. Postal services provided through supply of postage stamps, including rental of post boxes and mail bags and any subsidiary services thereto.
12. Community, social and welfare services provided by local authorities.
13. Insurance agency, insurance brokerage, stock exchange brokerage and tea and coffee brokerage services.
14. (1) Subject to paragraph 2, the hiring, leasing or chartering of the goods listed in Part I of the Second Schedule and Part B of the Fifth Schedule, but excluding the chartering of aircrafts and the hiring of buses.
(2) Paragraph 1 shall not apply in respect of the chartering of aircrafts for the provision of air ambulance services.
15. Tour operation and travel agency services including travel, hotel, holiday and other supplies made to travellers but excluding in-house supplies and services provided for commission other than commission earned on air ticketing.
For purposes of this paragraph **in-house supplies** means supplies which are either—
 - (i) made from own resources; or

- (ii) bought in from third parties but materially altered so that the supply made is substantially different to that purchased.

[Act No. 7 of 2002, s. 32(b).]

16. Services rendered by—

- (a) trade, professional and labour associations;
 (b) educational, political, religious, welfare and other philanthropic associations,

to their members:

Provided that this paragraph shall not apply where any such services are rendered by way of business.

17. (1) The following entertainment services—

- (a) stage plays and performances which are conducted by educational institutions, approved by the Minister for the time being responsible for education as part of learning;
 (b) sports, games or cultural performances conducted under the auspices of the Minister for the time being responsible for Culture and Social Services;
 (c) entertainment of a charitable, educational, medical, scientific or cultural nature as may be approved in writing by the Commissioner prior to the date of entertainment for the benefit of the public; or
 (d) entertainment organized by a non-profit making charitable, educational, medical, scientific or cultural society registered under the Societies Act (Cap. 108) where entertainment is in furtherance of the objects of society as may be approved in writing by the Commissioner prior to the date of the entertainment;
 (e) entertainment performed wholly by artistes who are resident in Kenya.

(2) For the purposes of this paragraph, “**resident**” means a person who—

- (a) has a permanent home in Kenya; or
 (b) has no permanent home in Kenya, but—
 (i) was present in Kenya for a period or periods amounting, in the aggregate, to 183 days or more in each calendar year; or
 (ii) was present in Kenya in the calendar year of performance and in each of the two immediately preceding calendar years, for the periods amounting in the aggregate to more than 122 days in each calendar year.

[Act No. 15 of 2003, s. 26, Act No. 10 of 2006, s. 11(c).]

18. Accommodation and restaurant services provided within the following premises by the proprietors thereof—

- (a) *deleted by Act No. 8 of 2008, s. 20.*

- (b) establishments operated by an educational training institution approved by the Minister for the use of the staff and students by that institution; or
- (c) establishments operated by a medical institution approved by the Minister for the time being responsible for Health for the use by the staff and patients of such institutions; or
- (d) canteens and cafeterias operated by an employer for the benefit of his low-income employees which the Commissioner may approve subject to such conditions as he may prescribe.

[Act No. 4 of 2004, s. 41.]

- 19. 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.
- 20. Car park services provided by local authorities and by an employer to his employees on the premises of the employer.
- 21. Transportation of tourists by any means of conveyance.
- 22. The supply of airtime by any person other than by a provider of cellular mobile telephone services or wireless telephone services.
- 23. Landing and parking services provided for aircraft.

[Act No. 8 of 2008, s. 20(c).]

[Act No. 10 of 2010, s. 18.]

FOURTH SCHEDULE

[Repealed by No. 9 of 2007, s. 14.]

FIFTH SCHEDULE

[Section 8(2).]

ZERO-RATING

PART A – ZERO-RATED SUPPLIES

[Act No. 9 of 1992 s. 30, Act No. 9 of 1993 s. 30, L.N. 218/1993, Act No. 8 of 1996, s. 23, Act No. 5 of 1998, s. 26, Act No. 4 of 1999, s. 28, Act No. 9 of 2000, s. 36, Act No. 6 of 2001, s. 40, Act No. 7 of 2002, s. 34, Act No. 15 of 2003, s. 27(a), Act No. 6 of 2005, s. 16, Act No. 10 of 2006, s. 12(a), Act No. 9 of 2007, s. 15, Act No. 8 of 2008, s. 21, Act No. 8 of 2009, s. 14., Act No. 10 of 2010, s. 19.]

Where, subject to the satisfaction of the Commissioner, 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 or taxable services.

FIFTH SCHEDULE—*continued*

2. The supply of goods or taxable services to designated foreign aid funded capital investment projects where the agreement specifically provides for tax exemption, provided that the supplies are acquired prior to payment of taxes.

3. 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.

4. The supply of goods to any person or organisation specified in the Eight Schedule or taxable services to persons or organisations specified in Part C of the Eight Schedule.

5. Shipstores supplied to international sea and air carriers on international voyage or flight.

6. *Deleted by Act No. 10 of 2010, s. 19.*

7. The supply of taxable goods or taxable services under a contract to an official aid-funded project where the agreement specifically provides for the remission of tax.

8. Services supplied by hotel establishments to foreign travel and tourism promoters undertaking a tour in the promotion of tourism in Kenya provided that the tour is recommended by the Director of Tourism and conducted in conjunction with local tour associations in accordance with a predetermined written itinerary.

9. The supply of coffee and tea for export to coffee and tea auction centres and taxable supplies in respect of tea or coffee bought from the auction centres provided the tea or coffee is for export.

[Act No. 8 of 2009, 2nd Sch.]

10. The supply of electrical energy to a domestic household where the consumption does not exceed two hundred kilowatt-hours.

11. The supply of taxable services in respect of goods in transit.

12. The supply of taxable airport services to transit aircraft.

13. Taxable supplies to Aid Agencies for their official use.

14. The supply of taxable goods or services to any person who carries out cotton ginning.

15. The supply of water drilling services including any services supplied in connection therewith.

16. The treatment and supply of natural water, excluding bottled water, by a local authority or a person approved by the Minister for the time being responsible for water development, for domestic and industrial use.

17. The supply of transportation services in respect of unprocessed agricultural and agro-forest produce.

18. Transportation of passengers by air carriers on international voyage or flight.

FIFTH SCHEDULE—*continued*

19. The supply of taxable goods or taxable services for use in construction of grain soils upon approval by the Director of Agriculture.

[Act No. 8 of 2009, 2nd Sch.]

20. The supply of taxable goods, including motor vehicles, and taxable services to Kenya Red Cross Society.

[Act No. 8 of 2009, 2nd Sch.]

21. The supply of taxable good and taxable services to a film producer approved by the Minister responsible for Information.

[Act No. 8 of 2009, 2nd Sch.]

22. The supply of taxable services to ships.

[Act No. 8 of 2009, 2nd Sch.]

PART B – ZERO-RATED GOODS

[Act No. 13 of 1995, s. 69, Act No. 7 of 2002, s. 24, Act No. 6 of 2005, s. 16, Act No. 10 of 2006, s. 12(b), Act No. 9 of 2007, s. 15(c), Act No. 8 of 2008, s. 21, Act No. 8 of 2009, s. 14.]

<i>Tariff No.</i>	<i>Tariff Description</i>
0401.10.00	Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of a fat content, by weight, not exceeding 1%.
0401.20.00	Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of a fat content, by weight, exceeding 1% but not exceeding 6%.
0401.30.00	Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of a fat content, by weight, exceeding 6%.
0402.10.00	Milk and cream, concentrated or containing added sugar or other sweetening matter in powder, granules or other solid forms, of a fat content, by weight, not exceeding 1.5%.
0402.21.10	Milk and cream in powder, granules or other solid forms of a fat content by weight exceeding 1.5% not containing added sugar or other sweetening matter specially prepared for infants.
0402.21.90	Other milk and cream, not containing added sugar or other sweetening matter in powder, granules or other solid forms, of fat content, by weight, exceeding 1.5%.
0402.29.10	Other milk and cream concentrated or containing added sugar specially for infants.
0402.29.90	Other milk and cream containing added sugar or other sweetening matter in powder, granules or other solid forms, of fat content, by weight, exceeding 1.5%.
0402.91.10	Other milk and cream not containing added or other sweetening matter specially prepared for infants.
0402.99.10	Milk, specially prepared for infants.
0601.10.00	Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
0601.20.00	Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, in growth or in flower; chicory plants and roots.
0602.10.00	Unrooted cuttings and slips of live plants.
0602.20.00	Trees, shrubs and bushes, grafted or not, of kinds which bear edible fruit or nuts.
0602.30.00	Rhododendrons and azaleas, grafted or not.
0602.40.00	Roses, grafted or not.
0602.90.00	Other live plants (including their roots), cuttings and slips; mushroom spawn.
0701.10.00	Potato seed, fresh or chilled.
0901.11.00	Coffee, not roasted or decaffeinated.
1005.10.00	Maize (corn) seed.
1006.10.00	Rice in the husk (paddy or rough).
1006.20.00	Husked (brown) rice.
1006.30.00	Semi milled or whole milled rice, whether or not polished or glazed.
1006.40.00	Broken rice.
1102.20.00	Maize (corn) flour.
1209.10.00	Sugar beet seed of a kind used for sowing.
1209.21.00	Lucerne (alfalfa) seed, of a kind used for sowing.
1209.22.00	Clover (<i>Trifolium</i> spp.) seed, of a kind used for sowing.
1209.23.00	Fescue seed, of a kind used for sowing.
1209.24.00	Kentucky blue grass seed, of a kind used for sowing.
1209.25.00	Rye grass seed, of a kind used for sowing.
1209.26.00	Timothy grass seed, of a kind used for sowing.
1209.29.00	Other seeds of forage plants, other than beet seed, of a kind used for sowing.
1209.30.00	Seeds of herbaceous plants cultivated principally for their flowers, of a kind used for sowing.
1209.91.00	Vegetable seeds, of a kind used for sowing.
1209.99.00	Other seeds, fruit and spores, of a kind used for sowing.
1702.30.00	Glucose and glucose syrup, not containing fructose or containing in the dry state less than 20% by weight of fructose.
1702.40.00	Glucose and glucose syrup containing in the dry state at least 20% by weight of fructose excluding invert sugar.
1702.50.00	Chemically pure fructose.
1702.60.00	Other fructose and fructose syrup, containing in the dry state more than 50% by weight of fructose, excluding invert sugar.
1702.90.00	Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50% by weight of fructose.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
1901.10.00	Preparations for infant use, put up for retail sale.
2106.90.10	Food preparations not elsewhere specified or included specially prepared for infants.
2304.00.00	Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soya-bean oil.
2305.00.00	Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of ground-nut oil.
2306.10.00	Oil-cake and other residues of cotton seeds whether or not ground or in the form of pellets resulting from the extraction of vegetable fats or oils, other than those of heading 23.04. or 23.05.
2306.20.00	Oil-cake and other residues of linseed whether or not ground or in the form of pellets resulting from the extraction of vegetable fats or oils, other than those of heading 23.04. or 23.05.
2306.30.00	Oil-cake and other residues of sunflower seeds whether or not ground or in the form of pellets resulting from the extraction of vegetable fats or oils, other than those of heading 23.04. or 23.05.
2306.41.00	Oil-cake and other residues of low erucic acid rape or colza seeds.
2306.49.00	Other oil-cake and other residues of rape or colza seeds.
2306.50.00	Oil-cake and other residues of coconut or copra whether or not ground or in the form of pellets resulting from the extraction of vegetable fats or oils, other than those of heading 23.04. or 23.05.
2306.60.00	Oil-cake and other residues of palm nuts or kernels whether or not ground or in the form of pellets resulting from the extraction of vegetable fats or oils, other than those of heading 23.04 or 23.05.
2306.70.00	Oil-cake and other solid residues of maize (corn) germ, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats or oils, other than those of heading 23.04 or 23.05.
2306.90.00	Other oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats and oils, other than those of heading 23.04 or 23.05.
2309.90.00	Other preparations of a kind used in animal feeding.
2710.19.21	Kerosene type jet fuel.
2710.19.22	Illuminating kerosene (1K).
2711.11.00	Liquefied natural gas.
2711.12.00	Propane.
2711.13.00	Butanes.
2711.14.00	Ethylene, propylene, butylenes et butadiene.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
2711.19.00	Other liquefied petroleum gases.
2801.10.00	Chlorine.
2818.30.00	Aluminum hydroxide.
2825.50.00	Copper oxides and hydroxides.
2827.41.00	Chloride oxides and chloride hydroxides of copper.
2827.49.00	Other chloride oxides and chloride hydroxides.
2828.10.00	Commercial calcium hypochlorite, and other calcium hypochlorites.
2833.22.00	Sulphates of aluminium.
2936.10.00	Provitamins, unmixed.
2936.21.00	Vitamins A and their derivatives, unmixed.
2936.22.00	Vitamin B1 and its derivatives, unmixed.
2936.23.00	Vitamin B2 and its derivatives, unmixed.
2936.24.00	D- or DL- Pantothenic acid (Vitamin B3 or Vitamin B5) and its derivatives, unmixed.
2936.25.00	Vitamin B6 and its derivatives, unmixed.
2936.26.00	Vitamin B12 and its derivatives, unmixed.
2936.27.00	Vitamin C and its derivatives, unmixed.
2936.28.00	Vitamin E and its derivatives, unmixed.
2936.29.00	Other vitamins and their derivatives, unmixed.
2936.90.00	Intermixture of provitamins and vitamins, including natural concentrates and their derivatives whether or not in any solvent.
2937.11.00	Somatotropin, its derivatives and structural analogues.
2937.12.00	Insulin and its salts.
2937.19.00	Other polypeptic hormones.
2937.21.00	Cortisone, hydrocortisone, prednisone (dehydrocortisone) and prednisolone (dehydrohydrocortisone).
2937.22.00	Halogenated derivatives of adrenal cortical hormones.
2937.23.00	Oestrogen and progestogens.
2937.29.00	Other adrenal cortical hormones and their derivatives.
2937.31.00	Epinephrine.
2937.39.00	Other catecholamine hormones, their derivatives and structural analogues.
2937.40.00	Amino-acids derivatives.
2937.50.00	Prostaglandins, thromboxanes and leukotrienes, their derivatives and structural analogues.
2937.90.00	Other hormones.
2941.10.00	Penicillins and their derivatives with a penicillanic acid structure; salts thereof.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
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.
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 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.
3004.20.00	Medicaments containing other antibiotics put up in measured doses or in forms or packings for retail sale.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
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	Others 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 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.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
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 ostomy use.
3006.92.00	Waste Pharmaceuticals.
3101.00.00	Animal or vegetable fertilizers, whether or not mixed together or chemically treated; fertilizers produced by the mixing or chemical treatment of animal or vegetable products.
3102.10.00	Urea, whether or not in aqueous solution.
3102.21.00	Ammonium sulphate.
3102.29.00	Double salts and mixtures of ammonium sulphate and ammonium nitrate.
3102.30.00	Ammonium nitrate, whether or not in aqueous solution.
3102.40.00	Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances.
3102.50.00	Sodium nitrate.
3102.60.00	Double salts and mixtures of calcium nitrate and ammonium nitrate.
3102.70.00	Calcium cyanamide.
3102.80.00	Mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution.
3102.90.00	Other mineral or chemical fertilisers, nitrogenous including mixtures not specified in the foregoing subheadings.
3103.10.00	Superphosphates.
3103.20.00	Basic slag.
3103.90.00	Other mineral or chemical fertilizers, phosphatic.
3104.10.00	Carnallite, sylvite and other crude natural potassium salts.
3104.20.00	Potassium chloride.
3104.30.00	Potassium sulphate.
3104.90.00	Other mineral or chemical fertilizers, potassic.
3105.10.00	Goods of this Chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg.
3105.20.00	Mineral or chemical fertilizers containing the three fertilizing elements nitrogen, phosphorus potassium.
3105.30.00	Diammonium hydrogenorthophosphate (diammonium phosphate).
3105.40.00	Ammonium dihydrogenorthophosphate (monoammonium phosphate) and mixtures thereof with diammonium hydrogenorthophosphate (diammonium phosphate).

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
3105.51.00	Other mineral or chemical fertilizers containing nitrates and phosphates.
3105.59.00	Other mineral or chemical fertilizers containing the two fertilizing elements nitrogen and phosphorous.
3105.60.00	Mineral or chemical fertilizers containing the two fertilizing elements phosphorus and potassium.
3105.90.00	Other fertilizers.
3604.90.00	Signalling flames, rain rockets, fog signals and other pyrotechnic articles.
3701.10.00	Photographic plates and film in the flat, sensitized, unexposed of any material other than paper, paperboard or textiles, for x-ray.
3702.10.00	Photographic film in rolls sensitised, unexposed of any material other than paper, paperboard or textiles, for x-rays.
3702.51.00	Other photographic film on rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; for colour photograph (polychrome) of a width not exceeding 16 mm and of a length not exceeding 14 m.
3702.52.00	Other photographic film on rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; for colour photograph (polychrome) of a width not exceeding 16 mm and of a length exceeding 14 m.
3702.53.00	Other photographic film on rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; for colour photograph (polychrome) of a width exceeding 16 mm but not exceeding 35 mm and of a length not exceeding 30 m, for slides.
3702.54.00	Other photographic film on rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; for colour photograph (polychrome) of a width exceeding 16 mm but not exceeding 35 mm and of a length exceeding 30 m other than for slides.
3702.55.00	Other photographic film on rolls, sensitized unexposed, of any material other than paper, paperboard or textiles; for colour photograph (polychrome) of a width exceeding 16 mm but not exceeding 35 mm and of a length exceeding 30m.
3808.10.20	Mosquito coils, chips, mats and similar insecticidal products designed for use by burning or heating.
3808.50.00	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers), containing one or more of the following substances: aldrin (ISO); binapacryl (ISO); camphechlor (ISO) (toxaphene); captafol (ISO); chlordane (ISO); chlordimeform (ISO); chlorobenzilate (ISO); DDT (ISO) (clofenotane (INN), 1,1,1-trichloro-2,2-bis(p-chlorophenyl) ethane);

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
	dieldrin (ISO INN); dinoseb (ISO), its salts or esters; ethylene dibromide (ISO) (1,2-dibromoethane); ethylene dichloride (ISO) (1,2-dichloroethane); fluoroacetamide (ISO); heptachlor (ISO); hexachlorobenzene (ISO); 1,2,3,4,5,6-hexachlorocyclohexane (HCH (ISO)), including lindane (ISO, INN); mercury compounds; methamidophos (ISO); monocrotophos (ISO); oxirane (ethylene oxide); parathion (ISO); parathion-methyl (ISO) (methyl-parathion); pentachlorophenol (ISO); phosphamidon (ISO); 2,4,5-T (ISO) (2,4,5-trichlorophenoxyacetic acid), its salts or its esters.
3808.91.10	Naphthalene balls insecticides.
3808.91.20	Mosquito coils, chips, nets and similar insecticidal products designed for use by burning or heating.
3808.91.31	Pyrethrum based aerosol spray insecticides.
3808.91.39	Other aerosol spray insecticides.
3808.91.90	Other insecticides put up in forms or packings for retail sale or preparations or articles.
3808.92.00	Fungicides.
3808.93.00	Herbicides, anti-sprouting products and plant growth regulators.
3808.94.00	Disinfectants put up in forms or packings for retail sale or preparations or articles.
3808.99.00	Rodenticides and other similar products, put up in forms or packings for retail sale or as preparations or articles (for example sulphur-treated bands, wicks and candles and fly-papers).
3813.00.00	Preparations and charges for fire-extinguishers; charged fire extinguishing grenades
3821.00.00	Prepared culture media for development of micro-organisms.
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 heading No. 30.02 or 30.06.
3926.90.10	Floats for fishing nets.
4014.10.00	Sheath contraceptives.
4015.11.00	Surgical gloves of rubber.
4818.40.10	Sanitary towels and tampons.
4820.20.00	Exercise books.
4901.91.00	Dictionaries and encyclopaedias, and serial instalments thereof.
4901.99.00	Other printed books, brochures, leaflets and similar printed matter.
4902.10.00	Newspapers, journals and periodicals whether or not illustrated or containing advertising materials, appearing at least four times a week.
4903.00.00	Children's picture, drawing or colouring books.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
4904.00.00	Music, printed or in manuscript, whether or not bound or illustrated.
4905.10.00	Globes, printed.
4905.91.00	Maps and hydrographic or similar charts of all kinds including atlases, wall maps and topographical plans, printed, in book form.
4905.99.00	Other maps and hydrographic or similar charts of all kinds including atlases, wall maps, and topographical plans, printed.
4911.99.10	Instructional charts and diagrams.
4911.99.20	Examination papers, excluding stationery.
5601.10.00	Sanitary towels and tampons.
5608.11.00	Made up fishing nets of man-made textile materials.
6304.91.10	Mosquito nets.
7010.10.00	Ampoules of a kind used for the conveyance or packing of goods.
7015.10.00	Glasses for corrective spectacles.
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 5×10^{-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.
7326.90.10	Traps and snares for destruction of pests, of iron or steel.
7326.90.20	Reels for fire hose, of iron or steel.
8412.39.00	Other pneumatic power engines and motors.
8413.20.00	Hand pumps for liquids, other than those of subheading 8413.11 or 8413.19.
8418.69.10	Other refrigerating or freezing equipment for dairying or fishing.
8419.20.00	Medical, surgical or laboratory sterilizers.
8419.31.00	Dryers, for agricultural products.
8424.10.00	Fire extinguishers whether or not charged.
8424.81.00	Other appliances for agricultural or horticultural use.
8432.10.00	Ploughs.
8432.21.00	Disc harrows.
8432.29.00	Other harrows, scarifiers, cultivators, weeders and hoes.
8432.30.00	Seeders, planters and transplanters.
8432.40.00	Manure spreaders and fertilizers distributors.
8433.20.00	Other mowers, including cutter bars for tractor mounting.
8433.30.00	Other haymaking machinery.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
8433.40.00	Straw or fodder balers, including pick-up balers.
8433.51.00	Combine harvester-threshers.
8433.52.00	Other threshing machinery.
8433.53.00	Root or tuber harvesting machines.
8433.59.00	Other harvesting machinery.
8433.60.00	Machines for cleaning, sorting or grading eggs, fruits or other agricultural produce.
8433.90.90	Parts of harvesting or threshing machinery including straw or fodder balers, grass or hay mowers, of machines for cleaning, sorting or grading eggs, fruit or other agricultural produce other than parts of lawn mowers.
8434.10.00	Milking machines.
8434.20.00	Dairy machinery.
8434.90.00	Parts of milking machines and dairy machinery.
8436.10.00	Machinery for preparing animal feeding stuffs.
8436.21.00	Poultry incubators and brooders.
8436.29.00	Poultry-keeping machinery.
8436.80.00	Other agricultural, horticultural, forestry, grinding, milling or beekeeping machinery, including germination plant fitted with mechanical or other thermal equipment.
8436.91.00	Parts of poultry-keeping machinery or poultry incubators and brooders.
8436.99.00	Other parts of agricultural, horticultural, forestry, grinding, milling or bee-keeping machinery including germination plant fitted with mechanical or other thermal equipment.
8437.10.00	Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables.
8438.30.00	Machinery for sugar manufacture.
8443.31.00	Machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or a network.
8443.32.00	Other printers capable of connecting to an automatic data processing machine or to a network.
8444.00.00	Machines for extruding, drawing, texturing cutting man-made textile materials.
8445.11.00	Carding machines for preparing textile fibres.
8445.12.00	Combing machines for preparing textile fibres.
8445.13.00	Drawing or roving machines for preparing textile fibres.
8445.19.00	Other machines for preparing textile fibres.
8445.20.00	Textile spinning machines.
8445.30.00	Textile doubling or twisting machines.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
8445.40.00	Textile winding (including weft winding) or reeling machines.
8445.90.00	Other machines and machinery for producing textile yarns; and machines for preparing textile yarns for use on the machines of heading No. 84.46 or 84.47.
8446.10.00	Weaving machines (looms) for weaving fabrics of a width not exceeding 30 cm.
8446.21.00	Power looms for weaving fabrics of a width exceeding 30 cm, shuttle type.
8446.29.00	Other looms for weaving fabrics of a width exceeding 30 cm, shuttle type.
8446.30.00	Weaving machines (looms) for weaving fabrics of a width exceeding 30 cm, shuttleless type.
8447.11.00	Circular knitting machines with cylinder diameter not exceeding 165 mm.
8447.12.00	Circular knitting machines with cylinder diameter exceeding 165 mm.
8447.20.00	Flat knitting machines; stitch bonding machines.
8447.90.00	Other knitting machines and machines for making gimped yarn, tulle, lace, embroidery, trimmings, braid or net and machines for tufting.
8448.11.00	Dobbies and Jacquards; card reducing, copying, punching or assembling machines for use therewith.
8448.19.00	Other auxiliary machinery for machines of heading Nos. 84.44, 84.45, 84.46 or 84.47.
8448.20.00	Parts and accessories of machines of heading No. 84.44 or of their auxiliary machinery.
8448.31.00	Card clothing machines.
8448.32.00	Parts of machines for preparing textile fibres, other than card clothing.
8448.33.00	Spindles, spindle flyers, spinning rings and ring travellers.
8448.39.00	Other parts and accessories of machines of heading No. 84.45 or of their auxiliary machinery.
8448.41.00	Shuttles for weaving machines (looms) or of their auxiliary machinery.
8448.42.00	Reads for looms, healds and heald frames.
8448.49.00	Other parts and accessories of weaving machines (looms) or of their auxiliary machinery.
8448.51.00	Sinkers, needles and other articles used in forming stitches.
8448.59.00	Other parts and accessories knitting machines, stitch-bonding machines and machines for making gimped yarn, tulle, lace embroidery, trimmings, braids, net or tufting of heading No. 84.47 of their auxiliary.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
8449.00.00	Machinery for the manufacture or finishing of felt or non-wovens in the piece or in shapes, including machinery for making felt hats; blocks for making hats.
8471.10.00	Analogue or hybrid automatic data processing machines.
8471.30.00	Portable digital automatic data processing machines, weighing not more than 10kg, consisting of at least a central processing unit, a keyboard and a display.
8471.41.00	Other digital automatic data processing machines comprising in the same housing at least a central processing unit and input and output unit, whether or not combined.
8471.49.00	Other digital automatic data processing machines presented in the form of systems.
8471.50.00	Other digital processing units other than those of sub-heading 8471.41 or 8471.49 whether or not containing in the same housing one or two of the following types of units: storage units, input units, output units.
8471.60.00	Input or output units whether or not containing storage units in the same housing.
8471.70.00	Storage units.
8471.80.00	Other units of automatic data processing machines.
8471.90.00	Other automatic data processing machines and units not elsewhere specified as included.
8473.30.00	Parts and accessories of the machines of heading 84.71.
8501.31.00	DC generators of an output not exceeding 750w.
8501.32.00	DC generators of an output not exceeding 750w but not exceeding 75kw.
8501.33.00	DC generators of an output exceeding 75kw but not exceeding 375kw.
8501.34.00	DC generators of an output exceeding 375kw.
8502.11.00	Generating sets of output not exceeding 75 KVA.
8502.12.00	Generating sets an output exceeding 75 KVA but not exceeding 375 KVA.
8502.13.00	Generating sets of an output exceeding 375 KVA.
8502.20.00	Generating sets with spark ignition internal combustion piston engines.
8502.31.00	Wind powered generating sets.
8502.39.00	Other generating sets.
8504.40.00	Static converters.
8515.21.00	Fully or partly automatic machines and apparatus for resistance welding of metal.
8515.29.00	Other machines and apparatus for resistance welding of metal.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
8515.31.00	Fully or partly automatic machines and apparatus for arc (including plasma arc) welding of metals.
8515.39.00	Other machines and apparatus for arc (including plasma arc) welding of metals.
8521.90.00	Other video recording or reproducing apparatus whether or not incorporating a video tuner.
8523.21.10	Unrecorded Magnetic media cards incorporating a magnetic stripe.
8525.50.00	Transmission apparatus.
8525.60.00	Transmission apparatus incorporating reception apparatus.
8525.80.00	Television cameras, digital cameras and video camera recorders.
8528.41.00	Cathode-ray type monitors of a kind solely or principally used in an automatic data processing system of heading 8471.
8528.51.00	Other monitors of a kind solely or principally used in an automatic data processing system of heading 8471.
8528.61.00	Projectors of a kind solely or principally used in an automatic data processing system of heading 8471.
8542.31.00	Processors and controllers, whether or not combined with memories, converters, logic circuits, amplifiers, clock and timing circuits or other circuits.
8701.10.00	Pedestrian controlled tractors.
8701.20.10	Unassembled road tractors for semi-trailers.
8701.20.90	Other road tractors for semi-trailers.
8702.10.91	Vehicles (eg. buses), unassembled, with a seating capacity exceeding 25 passengers, for assembly into complete vehicles by a vehicle manufacturer.
8702.10.99	Vehicles (eg. buses), assembled, with seating capacity of more than 25 passengers (diesel or semi-diesel).
8702.90.91	Vehicles (eg. buses) with seating capacity of more than 25 passengers (other than diesel or semi-diesel), unassembled, for assembly into complete vehicles by a vehicle manufacturer.
8702.90.99	Assembled buses, with seating capacity of more than 25 passengers (other than diesel or semi-diesel).
8703.90.10	Ambulances and hearses.
8705.30.00	Fire fighting vehicles.
8711.10.00	Motor cycles with reciprocating internal combustion piston engine of a cylinder capacity not exceeding 50cc.
8711.20.00	Motor cycles with reciprocating internal combustion piston engine of a cylinder capacity exceeding 50cc but not exceeding 250cc.
8712.00.00	Bicycles and other cycles (including delivery tricycles), not motorised.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
8713.10.00	Invalid carriages, not motorised, nor mechanically propelled.
8713.90.00	Other invalid carriages motorised or otherwise mechanically propelled.
8714.20.00	Parts of invalid carriages.
9001.30.00	Contact lenses.
9001.40.00	Spectacles lenses of glass.
9001.50.00	Spectacles lenses of other materials.
9002.11.00	Lenses for cameras, projectors or photographic enlargers or reducers.
9004.90.10	Spectacles for correcting vision.
9006.30.00	Cameras specially designed for underwater use, for aerial survey or for medical or surgical examination of internal organs; comparison cameras for forensic or criminological purposes.
9006.53.00	Other cameras for roll film of a width of 35 mm.
9006.69.00	Other photographic flashlight apparatus and flash bulbs.
9006.91.00	Parts and accessories for cameras.
9010.50.00	Other apparatus and equipment for photographic (including cinematographic) laboratories; negatoscopes.
9011.10.00	Stereoscopic microscopes.
9011.20.00	Other microscopes, for photomicrography, cinephoto-micrography or microprojection.
9011.80.00	Other microscopes.
9011.90.00	Parts and accessories of compound optical microscopes, including those for photomicrography, cinephoto-micrography or micro-projection.
9012.10.00	Microscopes other than optical microscopes and diffraction apparatus.
9012.90.00	Parts and accessories of diffraction apparatus and microscopes other than optical microscopes.
9018.11.00	Electro-cardiographs.
9018.12.00	Ultrasonic scanning apparatus.
9018.13.00	Magnetic resonance imaging apparatus.
9018.14.00	Scientigraphic apparatus.
9018.19.00	Other electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters).
9018.20.00	Ultra-violet or infra-red ray apparatus.
9018.31.00	Syringes with or without needles.
9018.32.00	Tubular metal needles and needles for sutures.
9018.39.00	Catheters, cannulae and the like.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
9018.41.00	Dental drill engines, whether or not combined on a single base with other dental equipment.
9018.49.10	Dentists chairs incorporating dental equipment or any other dental appliances classifiable in heading No. 90.18.
9018.49.00	Other instruments and appliances, used in dental sciences.
9018.50.00	Other ophthalmic instruments and appliances.
9018.90.00	Other instruments and appliances used in medical, surgical, dental or veterinary sciences.
9019.20.00	Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus.
9020.00.00	Other breathing appliances and gas masks excluding protective masks having neither mechanical parts nor replaceable filters.
9021.10.00	Orthopaedic or fracture appliances.
9021.21.00	Artificial teeth.
9021.29.00	Artificial dental fittings.
9021.31.00	Artificial joints.
9021.39.00	Other artificial parts of the body.
9021.40.00	Hearing aids, excluding parts and accessories.
9021.50.00	Pacemakers for stimulating heart muscles, excluding parts and accessories.
9021.90.00	Other appliances which are worn or carried or implanted in the body, to compensate for a defect or disability.
9022.12.00	Computed tomography apparatus.
9022.13.00	Other apparatus based on X-rays for dental uses.
9022.14.00	Other apparatus based on X-rays for medical, surgical or veterinary uses.
9022.19.00	Apparatus based on the use of X-rays, for other uses, including radiography or radiotherapy apparatus.
9022.21.00	Apparatus based on the use of alpha, beta or gamma radiations for medical, surgical, dental or veterinary uses.
9022.29.00	Apparatus based on the use of alpha, beta or gamma radiations, for other uses, including radiography or radiotherapy apparatus.
9022.30.00	X-ray tubes.
9022.90.00	Other X-ray generators, high tension generators, control panels and desks, screens, examinations or treatment tables, chairs and the like, including parts and accessories.
9402.90.10	Operating or examination tables, and hospital beds, fitted with mechanical devices.
9406.00.10	Pre-fabricated green houses, cold rooms.
9507.10.00	Fishing rods.

FIFTH SCHEDULE—*continued*

<i>Tariff No.</i>	<i>Tariff Description</i>
9507.20.00	Fish-hooks whether or not snelled.
9507.90.00	Other line-fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 92.08 or 97.05) and similar hunting or shooting requisites.

PART C – ZERO-RATED GOODS

[Act No. 6 of 2005, s. 16, Act No. 10 of 2006, s. 12, Act No. 9 of 2007, s. 15,
Act No. 8 of 2008, s. 21, Act No. 8 of 2009, s. 14.]

1. Plasters specially prepared for use in dentistry.
2. Contact lens or artificial eye cleaning, disinfecting or soaking solution.
3. Very (light) flares and railways signals.
4. Rain rockets, anti-hail rockets and cartridges; distress and life-saving rockets.
5. Laboratory equipment whether or not graduated or calibrated.
6. Aluminium milk containers.
7. Wind engines (windmills) and motors thereof.
8. Other agricultural or forestry machinery for soil preparation or cultivation.
9. Parts of agricultural, horticultural and forestry machinery for soil preparation or cultivation.
10. Computer software.
11. Photosensitive semi-conductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes.
12. Other special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example breakdown lorries, spraying lorries, mobile workshops, mobile radiological unit, refrigerated trucks, garbage collection trucks and insulated milk tankers).
13. Public Service hand carts for the collection and disposal of refuse.
14. Wooden school rulers.
15. Mechno-therapy appliances, other massage apparatus; psychological aptitude testing apparatus.
16. Writing or drawing chalk.
17. Parts of agricultural tractors and parts, semi-trailers for agricultural tractors and agricultural tractor tyres.
18. Napkins and napkin liners for babies.
19. Feeding bottle for babies.
20. Wheat flour.

FIFTH SCHEDULE—*continued*

21. Locally assembled water pumps.
22. Specialized solar equipment and accessories including deep cycle sealed batteries which exclusively use and/or store solar power.
23. Locally assembled bodies for motor vehicles (buses) for the transport of more than 25 persons.
24. Pyrethrum extract.
25. Ordinary bread, gluten bread and unleavened bread.
26. Locally produced and ginned cotton.

SIXTH SCHEDULE

[Section 27, Act No. 10 of 1990, Act No. 8 of 1991, Act No. 13 of 1995, s. 70; Act No. 8 of 1996, s. 24; Act No. 5 of 1998, s. 27; Act No. 4 of 1999, s. 29; Act No. 9 of 2000, s. 37; Act No. 7 of 2002, Act No. 4 of 2004, s. 42; Act No. 6 of 2005, s. 17, Act No. 10 of 2006, s. 13, Act No. 9 of 2007, s. 16.]

REGISTRATION, DEREGISTRATION AND CHANGES AFFECTING
REGISTRATION

1. Any person who, in the course of his business—

- (a) has supplied taxable goods or taxable services, or expects to supply taxable goods or taxable services or both, the value of which is Shs. 5,000,000 or more in a period of twelve months; or
- (b) is about to commence supplying taxable goods or taxable services or both which, in the opinion of the Commissioner, shall exceed any of the values prescribed in subparagraph (a) for the relevant period; or
- (c) *deleted by Act No. 9 of 2007, s. 16(a)*

shall be a taxable person and shall, within thirty days from the date on which he becomes a taxable person, apply in the prescribed manner to the Commissioner to be registered.

[Act No. 13 of 1995, s. 70, Act No. 4 of 1999, s. 29, Act No. 7 of 2002, s. 35(i), Act No. 10 of 2006, s. 13(a).]

2. (1) For the purposes of this Schedule, where—

- (a) taxable goods are manufactured in Kenya in any three months, and more than thirty per cent of the value of those goods are supplied by the manufacturer to one or more persons related to the manufacturer; or
- (b) taxable goods are manufactured in Kenya in any three months and more than thirty per cent of the value of those goods are supplied by the manufacturer to one or more persons who then supply them to one or more persons related to the manufacturer,

any person to whom such goods are supplied shall be deemed to be the manufacturer of those goods in Kenya and any supplies by him shall be deemed to be supplies of goods manufactured by him.

(2) Where a person who is related to another person owns, operates or controls one or more business entities, the value of his taxable supplies for the purposes of registration under this Act shall be the aggregate value of taxable supplies of all business entities owned, operated or controlled by the person.

(3) For the purpose of this paragraph, a person is related to another person if—

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

[Act No. 4 of 1999, s. 29.]

3. (1) Any person who makes or intends to make taxable supplies of goods or services to any other person or any person who exports or intends to export any goods or taxable services may, notwithstanding that paragraph 1 does not apply to him, apply in the prescribed manner to the Commissioner to be registered as a registered person.

(2) Where the Commissioner is satisfied that the interests of the business of an applicant under subparagraph (1) requires registration under paragraph 1, the Commissioner shall duly register such person under such terms and conditions as he thinks fit.

[Act No. 8 of 1996, s. 24, Act No. 4 of 2004, s. 42.]

4. Where a taxable person supplies taxable goods or taxable services similar to or of the same type as those for which the person is registered or is required to be registered, such goods or services shall be deemed to be taxable supplies.

[Act No. 4 of 1999, s. 29.]

5. Where the Commissioner is satisfied that a person is required to be registered under paragraph 1 or 3 the Commissioner shall issue a certificate in the prescribed form on receipt of a proper application, and the certificate shall be personally collected, and signed for, by the registered person or sent by registered mail within ten working days after receipt by the Commissioner of the proper application.

[Act No. 4 of 1999, s. 29.]

6. Where a proper application is received by the Commissioner within thirty days from the date the applicant becomes a taxable person, registration is deemed to be effective from the date on which the applicant receives the certificate.

7. Where the certificate is sent by registered mail, it shall be deemed to have been received within seven days after posting.

8. Where an application for registration is received by the Commissioner after thirty days from the date a person becomes a taxable person, registration shall be deemed to be effective from the 30th day from the date the person becomes a taxable person.

9. The Commissioner can vary the effective date of registration where he is satisfied that there are reasonable grounds justifying such variation.

10. (1) Every registered person shall display the certificate of registration and any other form of identification as the Commissioner may require in a clearly visible place or places in his business premises; and where the taxable person has more than one place of business, certified copies of the certificate shall be displayed at each of those places.

(2) Any person who does not display the certificate or other required forms of identification in such form and in a clearly visible place as required under subparagraph (1) shall be liable to a default penalty of twenty thousand shillings and, in addition, shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

[Act No. 13 of 1995, s. 70.]

11. Any person who applies for registration after the time limit allowed under paragraph 1 shall be liable to a default penalty of twenty thousand shillings.

[Act No. 13 of 1995, s. 70.]

12. Any person who is registered under subparagraph (a) of paragraph 22 shall be liable to a default penalty of one hundred thousand shillings.

[Act No. 13 of 1995, s. 70.]

12A. The Commissioner may grant remission of a default penalty imposed under paragraphs 11 and 12 in individual cases where he is satisfied that it is justifiable to do so, and shall make quarterly reports to the Minister on each remission so granted:

Provided that where the amount of the penalty exceeds five hundred thousand shillings, the grant of remission shall be subject to the written approval of the Minister.

[Act No. 9 of 2000, s. 37.]

13. Where a group of companies is owned or substantially controlled by another person that person may with the concurrence of those concerned apply to the Commissioner for the group to be treated as one registered person for the purposes of this Act.

14. (1) On receipt of an application made under paragraph 13, the Commissioner shall, if he deems it fit to do so, allow the group of companies to be registered as one registered person with one certificate of registration and each company shall become jointly and severally responsible for the tax due and payable on all supplies to persons not within the registered group.

(2) Where upon registration under subparagraph (1), the Commissioner is satisfied—

- (a) that such registration has caused or is causing undue risk to revenue;
- (b) that one of the companies in the group has ceased to supply taxable goods or services;
- (c) that the person in whose name the group of companies is registered no longer owns or substantially controls the group,

the Commissioner may upon giving thirty days' notice to each of the companies in the group, deregister such group.

(3) Where the Commissioner deregisters such a group under subparagraph (2), each company therein shall be registered forthwith and shall become individually responsible for the tax which is due and payable on all taxable supplies.

[Act No. 5 of 1998, s. 27, Act No. 4 of 1999, s. 29.]

15. Where a person ceases to make taxable supplies he shall, without delay, notify the Commissioner of the date of cessation and shall furnish to the Commissioner, a return showing details of—

- (a) materials and other goods in stock and their value and shall pay any tax due hereon; and
- (b) all other taxable assets and their value,

within thirty days from the date on which he ceased to make such supplies.

[Act No. 6 of 2005, s. 17(b).]

16. Where the value of taxable supplies made by a registered person in any period of twelve months is less than five million shillings, the registered person shall notify the Commissioner of the values of his supplies and shall be subject to the provisions of the turnover tax under section 12C of the Income Tax Act (Cap. 470).

[Act No. 12 of 1995, s. 70, Act No. 4 of 1999, s. 29, Act No. 10 of 2006, s. 13(b), Act No. 9 of 2007, s. 16(b).]

17. Deleted by Act No. 7 of 2002, s. 35(iii)

18. On receipt of a notification under paragraph 16, the Commissioner shall, if satisfied that the person should be deregistered, deregister that person with effect from the date when the registered person pays the tax due and payable on supplies made on stocks of materials and other goods on which tax has not been paid or on which tax has been credited as deductible input tax.

[Act No. 7 of 2002, s. 35.]

19. The registered person shall notify details to the Commissioner within fourteen days of any of the following changes occurring—

- (a) whenever the address of the place of business is changed; or
- (b) additional premises are used, or will be used, for purposes of the business; or
- (c) premises used for the business cease to be so used; or

- (d) the name, or trading name, of the business is changed; or
- (e) in the case of a limited company, an interest of more than thirty per cent of the share capital has been obtained by a person or group of persons; or
- (f) the person authorized to sign returns and other documents is changed; or
- (g) the partners in a partnership are changed; or
- (h) a change occurs in the trade classification of the goods or services being supplied.

20. Where a person dies, becomes insolvent, or is legally incapacitated, the executor, liquidator, or other person conducting the business, as the case may be, shall notify details to the Commissioner without delay.

21. Where any person disposes of a registered business as a going concern to another registered person—

- (a) both registered persons shall, within thirty days provide the Commissioner with details of the transaction, of the arrangements made for payment of tax due on supplies already made, of the description, quantities and value of assets and stocks of taxable goods on hand at the date of disposal, and of arrangements made for transferring the responsibility for keeping and producing books and records relating to the business before disposal;
- (b) unless the Commissioner has reason to believe that there would be undue risk to the revenue, and notifies the registered persons accordingly within fourteen days of receipt of the notification required in subparagraph (a), the assets and stocks of taxable goods on hand may be transferred without payment of the tax otherwise due and payable;
- (c) notwithstanding that the business is being disposed of by the registered person as a going concern that registered person shall remain registered and be responsible for all matters under this Act in relation to the business prior to its disposal, up to the time of its disposal, until such time as the requirements of this Act have been properly complied with.

[Act No. 8 of 1996, s. 24, Act No. 9 of 2000, s. 37, Act No. 6 of 2005, s. 17(c).]

22. Where in the opinion of the Commissioner—

- (a) any person is a taxable person under paragraph 1 or paragraph 2 and that person has failed to apply for registration in the prescribed manner, the Commissioner may register that person forthwith; or
 - (b) any taxable person has failed to notify cessation of trading under paragraph 15, the Commissioner may deregister that person forthwith and require that person to pay the tax due and payable on supplies made and on stocks of materials and other goods on which tax has not been paid or on which tax has been credited as deductible input tax.
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SEVENTH SCHEDULE

[Sections 28, Act No. 9 of 1992, s. 32, Act No. 4 of 1993, s. 32, Act No. 13 of 1995, s. 71, Act No. 8 of 1996, s. 25, Act No. 5 of 1998, s. 28, Act No. 4 of 1999, s. 30, Act No. 9 of 2000, s. 38, Act No. 4 of 2004, s. 43, Act No. 6 of 2005, s. 18, Act No. 10 of 2006, s. 14, Act No. 8 of 2009, s. 15, Act No. 4 of 2012, s. 7.]

INVOICES, RECORDS AND RETURNS

1. Subject to paragraph 2, a registered person who makes a taxable supply shall, in respect of that supply, furnish the purchaser with a tax invoice containing the prescribed details—

- (a) in the case of a supply on credit, at the time of the supply or within fourteen days of the completion thereof; or
- (b) in the case of a cash sale, immediately upon payment for the supply:

Provided that a registered person may, subject to such conditions as the Commissioner may impose—

- (i) where cash sales are made from retail premises, furnish the purchaser with a simplified tax invoice containing the prescribed details of
- (ii) where cash sales to any one person in day do not exceed five hundred shillings, account for tax in such a manner as the Commissioner may authorize.

[Act No. 4 of 1999, s. 30.]

2. Notwithstanding the provisions of paragraph 1, where upon application by a registered person, the Commissioner is satisfied that owing to the nature of a business, it is impracticable for the registered person to issue a tax invoice in accordance with that paragraph, the registered person may account for tax in such other manner as the Commissioner may authorize.

[Act No. 4 of 1999, s. 30.]

3. The amount of tax payable, if any, shall be recoverable by the registered person from the purchaser in addition to the sale price.

4. (1) No invoice showing an amount which purports to be tax shall be issued on any supply—

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

(2) Any person who issues an invoice in contravention of subparagraph (1) shall be guilty of an offence, and any tax shown thereon shall become due and payable to the Commissioner within seven days of the date of the invoice.

[Act No. 13 of 1995, s. 71.]

5. (1) Any person who fails to comply with the requirements of paragraph 1 shall be guilty of an offence and any goods in connection with which the offence was committed shall be liable to forfeiture.

(2) Notwithstanding the provisions of subparagraph (1), any person who fails to comply with the provisions of paragraph 1 shall be liable to pay a default penalty of not less than ten thousand shillings but not exceeding two hundred thousand shillings.

[Act No. 13 of 1995, s. 71, Act No. 4 of 1999, s. 30.]

6. (1) Every taxable person shall, in accordance with the regulations, keep full and true records written up-to-date of all transactions which may affect his tax liability.

(2) Any person who fails to keep records as prescribed under subparagraph (1) shall be liable to pay a default penalty of not less than ten thousand shillings but not exceeding two hundred thousand shillings.

(3) Every person required by subparagraph (1) to keep records shall at all reasonable times make them available to an authorized officer and shall give the officer every facility necessary to inspect the records.

(4) Any person who contravenes subparagraph (3) shall be guilty of an offence.

(5) For the purposes of this paragraph, the Commissioner may, in accordance with the regulations, require any person to use a General Packet Radio Service (GPRS) enabled 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 such person.

(6) A person to whom subparagraph (5) applies shall be entitled, with the prior approval of the Commissioner, to recover the cost of the electronic tax register from the tax payable by such person:

Provided that this subparagraph shall only apply to electronic tax registers acquired and installed on or before 31st December, 2006.

[Act No. 13 of 1995, s. 71, Act No. 4 of 2004, s. 43, Act No. 10 of 2006, s. 14, Act No. 4 of 2012, s. 7.]

7. Every registered person shall, not later than the twentieth day of each month, submit to the Commissioner a return in the prescribed form—

- (a) showing separately for each rate of tax particulars of the total value of supplies, the rate of tax to which the supplies are liable and the amount of tax payable, for any taxable supplies made by him during the month immediately preceding that in which the return is made;
- (b) showing separately for each rate of tax the total value of taxable supplies, the tax rate at which tax was paid, and the amount of tax paid in respect of which deductible input tax is claimed;
- (c) if such be the case, stating that no such supplies were made or received during the preceding month; and
- (d) containing such other matters as may be prescribed.

8. A return sent by a registered person by post shall be deemed to have been received by the Commissioner on the post mark date provided that the envelope containing the return is sent on or before the 15th day of the month referred to in paragraph 7:

Provided that if the post mark date is not legible, the return shall be deemed to have been received by the Commissioner within three working days before the date of receipt.

9. (1) Where, in the opinion of the Commissioner, any person has failed to pay any of the tax which has become payable by him under this Act by reason of—

- (a) his failure to keep proper books of account, records or documents, required under this Act, or the incorrectness or inadequacy of those books of account, record, or documents; or

- (b) his failure to make any return required under this Act, or delay in making any such return or the incorrectness or inadequacy of any such return; or
- (c) his failure to apply for registration as a taxable person under this Act,

the Commissioner may, on such evidence as may be available to him, assess the amount of tax due and that amount of tax shall be due and payable forthwith by the person liable to pay the tax:

Provided that the Commissioner may, in special cases referred to him by an authorized officer, adjust or review the amount of tax assessed under this paragraph in such manner as may be just and reasonable in the circumstances.

(2) Any registered person who fails to submit a return as required under subparagraph (1) within the period allowed shall be liable to a penalty of ten thousand shillings or five per cent of the tax due, whichever is the higher:

Provided that a registered person who submits a return within the period allowed under paragraph 7 but fails to pay the tax as required under section 13 shall be liable to a default penalty of ten thousand shillings.

(2A) A registered person who fails to submit a return under paragraph 7(c) shall be liable to a penalty of ten thousand shillings.

(3) The Commissioner may grant remission of a default penalty imposed under paragraphs 5(2), 6(2) and 9(2) in individual cases where he is satisfied that it is justifiable to do so and shall make quarterly reports to the Minister on each remission so granted:

Provided that where the amount of the penalty exceeds five hundred thousand shillings, the grant of remission shall be subject to the written approval of the Minister.

[Act No. 5 of 1998, s. 28, Act No. 4 of 1999, s. 30, Act No. 9 of 2000, s. 38, Act No. 4 of 2004, s. 43.]

10. (1) Any appointed tax withholding agent who fails to—

- (a) withhold and remit the tax as required under section 19A(2);
- (b) issue a withholding tax certificate as required under regulation 3(b) of the Value Added Tax (Tax Withholding) Regulations; or
- (c) submit a return as required under the Value Added Tax (Tax Withholding) Regulations,

shall be liable to a penalty of ten thousand shillings, or ten per cent of the tax due, whichever is the higher.

(2) Any person who, not being a tax withholding agent, holds himself out as such, shall be liable to a penalty of ten thousand shillings, or ten per cent of the tax withheld, whichever is the higher.

[L.N. 53/2004, Act No. 6 of 2005, s. 18.]

EIGHTH SCHEDULE

[Section 8(2), [Act No. 10 of 1990, Sch., Act No. 8 of 1991, s. 49, Act No. 3 of 1992, s. 6, Act No. 9 of 1992, s. 33, Act No. 8 of 1996, s. 26, Act No. 8 of 1997, s. 26, Act No. 5 of 1998, s. 29, Act No. 4 of 1999, s. 31, Act No. 9 of 2000, s. 39, Act No. 6 of 2001, s. 41, Act No. 7 of 2002, s. 36, Act No. 15 of 2003, s. 28, Act No. 4 of 2004, s. 44, Act No. 6 of 2005, s. 19(a), Act No. 9 of 2007, s. 17, Act No. 4 of 2012, s. 8.]

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

Taxable goods 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. The President

Goods for use by the President.

2. The Kenya Armed Forces

All goods, including materials, supplies, equipment, machinery and motor vehicles for the official use of the Kenya Armed Forces.

3. Commonwealth and other Governments

(1) 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 a vessel.

(2) Goods for the use of any of the armed forces of any allied power.

4. Diplomatic Privileges

(1) 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.

(2) 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 zero-rated status is made by the Minister responsible for Foreign Affairs.

(3) On first arrival in Kenya or within ninety days of the date of arrival, the household and personal effects, including one motor vehicle, imported or purchased by an employee of the United Nations or of its specialized agencies, a Commonwealth high commission, or a 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 a zero-rated status under item 5(1) and (2) under this Part, or item 6(3) of Part B, of this Schedule.

5. Aid Agencies

(1) Household and personal effects of any kind including one motor vehicle imported or purchased by entitled personnel or their dependants within ninety days of their first arrival in Kenya, or such longer period, not exceeding three hundred and sixty days from the date of arrival, as may be approved by the Treasury in specific cases, where the entitled personnel and their dependants have not been granted zero-rated status under item 4(3) of this Part, or item 6(3) of Part B, of this Schedule:

Provided that this zero-rated status 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 aid project;
- (ii) only once in every four years in respect of a motor vehicle where there is an ongoing project;
- (iii) to an additional motor vehicle where there is a bilateral agreement between the Government and an aid agency entered into prior to the 10th June, 1999.

(2) One motor vehicle which the Commissioner is satisfied is imported or purchased as replacement for a motor vehicle originally imported or purchased under paragraph (1) which has been written off due to accident, fire or theft, where the Minister's written approval of such importation or purchase is obtained:

Provided that the tax shall be payable at the appropriate rate if the goods referred to in paragraphs (1), (2) and (3) of this item are disposed of locally, unless they are sold to persons or a body entitled to purchase such goods without the payment of tax.

(3) Goods imported for official use of the Aid Agencies subject to approval by the Treasury.

[Act No. 4 of 1999, s. 31, Act No. 6 of 2001, s. 41.]

6. The East African Development Bank

Goods and equipment imported by the East African Development Bank for its official use.

7. The War Graves Commission

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

8. The British Council

Goods for use by the British Council which are or will be a charge against the funds of the Council, not including goods for resale or for the personal use of the staff of the Council.

9. Charitable Institutions

(1) *Deleted by Act No. 9 of 2007, s. 17.*

(2) Goods consigned to or purchased by the St. John Ambulance for use in its activities and for first aid training.

(3) (a) Goods consigned to or purchased by the Kenya Red Cross for free distribution in relief work, subject to such limitations and conditions as the Commissioner may impose; and

(b) equipment, motor vehicles and aircraft donated for alleviation of hardship or disaster, subject to such limitations and conditions as the Commissioner may impose, provided the Treasury has given its approval in writing where the tax exceeds Sh. 500,000.

(4) Articles or equipment not intended for resale and not including consumable stores or provisions, for use by the Missions to Seamen or other similar organizations approved for the purpose of this paragraph by the Minister, subject to such limitations and conditions as the Commissioner may impose.

(5) Foodstuffs, vehicles, equipment and other commodities imported or purchased for the National Freedom from Hunger Committee in Kenya exclusively for use in connection with the official activities of the National Freedom from Hunger Campaign of Kenya.

(6) *Deleted by Act No. 6 of 2001, s. 41.*

[Act No. 8 of 1997, s. 26, Act No. 9 of 2000, s. 39, Act No. 6 of 2001, s. 41.]

10. *Repealed by No. 6 of 2001, s. 41.*

11. Disabled, Blind and Physically Handicapped Persons

Materials, articles and equipment, including motor vehicles, which—

- (a) are specially designed for sole use by disabled or physically handicapped persons, or
- (b) are intended for the educational, scientific or cultural advancement of the blind for the use of an organisation approved by the Government for the purpose of zero-rating:

Provided that—

- (i) the zero-rating in paragraph (a) shall only apply—
 - (AA) once in every four years;
 - (BB) to a person who has not enjoyed another zero rating under this provisions of this Act;
- (ii) paragraph (b) does not apply to motor vehicles.

[Act No. 8 of 1997, s. 26, Act No. 9 of 2000, s. 39, Act No. 6 of 2001, s. 41, Act No. 4 of 2004, s. 44.]

12. *Repealed by Act No. 6 of 2001, s. 41.*

13. The President's Award Scheme

Badges and record books for use exclusively in the President's Award Scheme.

14. The Desert Locust Control Organization and International Red Locust Control

(1) Goods, including motor vehicles, scientific equipment, apparatus, chemicals, petroleum fuels and other materials imported or purchased by the Desert Locust Control organization for East Africa for its official use or for the personal use of such members of that Organization as may be declared to be entitled officers by the Ministry responsible for Foreign Affairs.

(2) One motor vehicle imported or purchased within three months of first arrival in Kenya by an entitled officer of the Desert Locust Control Organization for his personal use.

(3) Goods imported or purchased for the official use of the International Red Locust Control Organization for Central and Southern Africa.

15. The Navy, Army and Air Force Institute and the Armed Forces Canteen Organization

Goods for the Navy, Army and Air Force Institute and the Armed Forces Canteen Organization, subject to such limitations as the Commissioner may specify, provided that such goods are marked with the inscription "NAAFI" or "AFCO", as the case may be, or where it is unsuitable to mark the goods, the containers, bags or packets thereof shall be so marked.

16. *Repealed by Act No. 6 of 2001, s. 41.*

17. The Wellcome Trust

(1) All equipment and drugs imported or purchased by the Wellcome Trust, with the prior approval of the Ministry of Health, for use in connection with medical research.

(2) Motor vehicles imported or purchased by the Wellcome Trust, with the prior approval of the Ministry of Health and paid for by the Trust, for use by personnel of the science laboratories operated by the Trust.

18. The African Medical and Research Foundation

Bona fide gifts, or materials and equipment, consigned to or purchased by the African Medical and Research Foundation including—

- (1) high frequency single side band radio transceivers, spares and accessories; antenna materials and fittings, radio alert alarm transmitter receivers and accessories;
- (2) filming materials, strip slide projectors and surgical instruments;
- (3) drugs;
- (4) aircraft, aircraft equipment and spares, but not including (either as gifts or otherwise) motor vehicles:

Provided that materials and equipment specified in subparagraphs (1), (2) and (3) shall be for the sole use of the above Foundation or for loan to hospitals and clinics but not for the purpose of distribution to any person or institution by way of gift.

19. Museum Exhibits and Equipment

(1) Museum and natural history exhibits and specimens and scientific equipment for public museums; and

(2) Chemicals, reagents, films, film strips and visual aids equipment, imported or purchased prior to clearance through customs by the National Museums.

[Act No. 6 of 2001, s. 41.]

20. *Repealed by Act No. 4 of 2004, s. 44.*

21. Returning Kenya Government's Foreign Missions Personnel

One personal motor vehicle (excluding buses and mini-buses of seating capacity of more than 13 passengers and a load carrying vehicle of a load carrying capacity exceeding two tonnes) imported by an officer or his spouse returning from a posting in Kenya's missions abroad and which is not zero-rated under item 6(4) of Part B of this Schedule:

Provided that zero-rating under this item shall not apply—

- (a) unless the public officer is recalled by the Government before he completes his normal tour of duty;
- (b) unless, in the case of an officer's spouse, the spouse had accompanied the officer in the foreign mission and is returning with the officer;
- (c) to an officer who has been recalled for re-posting to another mission outside Kenya;
- (d) unless the motor vehicle was purchased prior to such recall;
- (e) unless the zero-rating is approved in writing by the Treasury;
- (f) if the officer or the spouse has either enjoyed a similar privilege within the previous four years from the date of importation or has imported a motor vehicle free of tax under item 6(4) of Part B of this Schedule within the two years immediately before his arrival;
- (g) unless the vehicle is imported within ninety days of the date of the arrival of the officer or spouse, or such longer period, not exceeding three hundred and sixty days from such arrival, as the Commissioner may allow.

[Act No. 8 of 1997, s. 26, Act No. 15 of 2003, s. 28.]

22. Safari Rally Drivers

(1) One motor vehicle for each Safari Rally driver and spare parts specified in paragraph (2), which—

- (a) are imported or purchased prior to clearance through customs for use in the Safari Rally;
- (b) having been temporarily imported under section 117 of the East African Community Customs Management Act, 2004, for use in the Safari Rally, are purchased during the period of temporary importation by a rally driver resident in Kenya for use in the Safari Rally;

- (c) having been imported under conditions whereby they have been zero-rated under this Schedule, or whereby remission or refund of tax has been granted by the Minister, are purchased by a rally driver resident in Kenya for use in the Safari Rally; and
- (d) in the case of vehicles only, are assembled in Kenya and purchased by a rally driver for use in the Safari Rally.

(2) Paragraph (1) shall apply to the following spare parts imported by a rally driver for use in the Safari Rally—

- (a) one engine assembly complete, or such individual parts making up one engine as the rally driver requires, including, in either case, a starter motor, alternator and clutch;
- (b) one gear box assembly complete;
- (c) one differential assembly and one front and rear axle assembly, or such individual parts making up one front and rear axle assembly as the rally driver requires;
- (d) not more than four front suspension assemblies, or such individual parts making up those assemblies as the rally driver requires;
- (e) not more than two sets of rear shock absorbers;
- (f) not more than twelve rally type rims; and
- (g) not more than thirty rally tyres.

(3) Zero-rating under paragraph (1) is made on the conditions that—

- (a) it applies only to motor vehicles and parts imported or purchased for use by *bona fide* rally drivers resident in Kenya and recommended by the Safari Rally Limited;
- (b) *deleted by Act No. 6 of 2001, s. 41.*
- (c) where the motor vehicles or parts cease to be used, or, in the case of parts, to be assigned for use, for Safari Rally purposes, or are disposed of in Kenya to persons not entitled to zero rating, or remission of tax, tax shall, subject to paragraph(5), immediately become payable at the appropriate rate.

(4) Nothing in paragraph (3)(a) or (c) shall prevent a motor vehicle or spare parts from being used in other rallies in Kenya.

(5) Where a person to whom zero-rating or remission of tax has been granted under this item fails to take part in the rally, tax shall become payable at the rate applicable on the date the rally ends.

[Act No. 9 of 2000, Act No. 6 of 2001, s. 41, s. 39, Act No. 6 of 2005, s. 19.]

23. Kenya Police, National Security Intelligence Service, Administration Police, Kenya Wildlife Service and Kenya Prisons

Equipment, machinery, uniforms, uniform materials and motor vehicles, including aircraft and vessels, imported or purchased for the official use of the Kenya Police, National Security Intelligence Service, Administration Police, Kenya Wildlife Service and Kenya Prisons, with the written approval of the Treasury.

[Act No. 8 of 1997, s. 26, Act No. 4 of 1999, s. 31, Act No. 15 of 2003, s. 28.]

24. *Repealed by Act No. 6 of 2001, s. 41.*

25. Sports Goods and Equipment

Goods imported or purchased by or on behalf of, or for donation to, the Ministry for the time being responsible for sports, with prior written approval of the Permanent Secretary to the Treasury given on the recommendation of the Permanent Secretary to the Ministry responsible for sports, for the sole use in the promotion of sports in Kenya.

[Act No. 6 of 2001, s. 41, Act No. 15 of 2003, s. 28.]

26. Registered Manufacturers in Customs Bonded Factories

Taxable goods imported by registered manufacturers approved by the Treasury, which are used in, wrought into or attached to goods manufactured by them for sale in the course of manufacture in a customs bonded factory.

27. *Repealed by Act No. 6 of 2001, s. 41.*

28. Aga Khan Development Network

Materials and equipment, including motor vehicles imported pursuant to the accord of co-operation for development, between the Government and the Aga Khan Development Network, subject to the written authority of the Permanent Secretary to the Treasury.

[Act No. 9 of 2000, s. 39.]

29. Entrants in Motorcycle Rallies

(1) One motorcycle specially designed for rallying for each entrant in a motorcycle rally and the spare parts thereof specified in paragraph (2), which—

- (a) are imported or purchased prior to clearance through customs for use in a motorcycle rally;
- (b) having been imported under section 143 of the Customs and Excise Act (Cap. 472) for use in a motorcycle rally, are purchased during the period of temporary importation by an entrant in a motorcycle rally resident in Kenya for use in the rally;
- (c) having been imported under conditions whereby they have been zero-rated under this Schedule, or whereby remission or refund of tax has been granted by the Minister, are purchased by an entrant in a motorcycle rally resident in Kenya for use in the rally; and
- (d) in the case of motorcycles, are assembled in Kenya and purchased by an entrant in a motorcycle rally for use in the rally.

(2) Paragraph (1) shall apply to the following spare parts imported or purchased by an entrant in a motorcycle rally for use in the rally—

- (a) one engine assembly;
- (b) four sets of front shock absorbers;
- (c) four sets of rear shock absorbers;
- (d) twelve pairs of tyres.

(3) Zero-rating under paragraph (1) shall be granted on condition that—

- (a) it applies only to motorcycles and parts thereof imported or purchased for use by *bona fide* entrants in a motorcycle rally resident in Kenya and recommended by the Automobile Association of Kenya; and
- (b) *deleted by Act No. 6 of 2001, s. 41;*
- (c) where the motorcycle or spare parts thereof cease to be assigned for use in rallying or are disposed of in Kenya to persons not entitled to zero-rating or remission of tax, tax shall become immediately payable at the appropriate rate; and
- (d) where a motorcycle imported or purchased pursuant to this item is not used in a rally, tax thereon shall immediately become payable at the rate applicable on the date the rally ends.

[Act No. 9 of 2000, s. 39, Act No. 6 of 2001, s. 41.]

29. Rural Electrification Authority

All goods, including materials, supplies, equipment and machinery procured or sourced by the Rural Electrification Authority for the implementation of the Rural Electrification Programme.

[Act No. 4 of 2012, Second Sch.]

30. Kenya Military and Police Officers returning from United Nations peace-keeping missions outside Kenya

One passenger motor vehicle (excluding buses and minibuses of a seating capacity of more than 8 passengers and load carrying vehicles of a load carrying capacity exceeding 1.5 tonnes) imported by a military or police officer returning from a United Nations peace-keeping mission outside Kenya:

Provided that—

- (a) the motor vehicle was purchased prior to the return of the officer into the country;
- (b) the exemption from tax liability shall not exceed the limits specified in the table hereunder—

Category	Military Officers	Police Officers	Maximum Tax exempted
Category I	Private to Senior Sergeant	Constable to Senior Sergeant	KShs. 800,000/=
Category II	Warrant officer to Captain	Inspector to Chief Inspector	KShs. 1,200,000/=
Category III	Major to Full Colonel	Superintendent to Assistant Commissioner	KShs. 1,500,000/=
Category IV	Brigadier and above	Senior Assistant Commissioner and above	KShs. 2,000,000/=

[Act No. 15 of 2003, s. 28.]

PART B – SPECIAL GOODS SUBJECT TO ZERO-RATING

[Act No. 9 of 2000, s. 39, Act No. 7 of 2002, s. 36, Act No. 5 of 1998, s. 29, Act No. 15 of 2003, s. 28, Act No. 6 of 2001, s. 41, Act No. 8 of 1996, Act No. 6 of 2005, s. 19(b), Act No. 10 of 2006, s. 15, Act No. 9 of 2007, s. 17, Act No. 8 of 2008, s. 22, Act No. 10 of 2010, s. 20.]

The following goods imported or purchased before clearance through the customs or purchased before the payment of tax generally or leased, hired or chartered shall be zero rated:

1. Aircraft Operations

(1) Any of the following goods which are imported or purchased for use by any airline designated under an air service agreement between the Government and a foreign Government—

- (a) aircraft; parts and accessories thereof, including engines; air navigational instruments; lighting, radio and radar apparatus and equipment; equipment of a specialised nature for the repair, maintenance and servicing of an aircraft; specialised aircraft loading and unloading equipment; ground signs, stairways for boarding and loading aircraft; catering stores;
- (b) kerosene and aviation spirit solely for use in aircraft engines.

(2) Any of the following goods which are leased or imported or purchased for use by an approved ground handler or caterer—

- (a) equipment of a specialised nature for repairs, maintenance and servicing of an aircraft;
- (b) specialised aircraft loading and unloading equipment; and
- (c) stairways for boarding and loading aircraft.

(3) Aircraft spare parts imported or purchased by aircraft operators or persons involved in the business of aircraft maintenance:

Provided that such spare parts shall be imported or purchased on the recommendation of the Director of Civil Aviation in such quantities and subject to such conditions as the Commissioner may specify.

(4) Jet fuel (Kerosene type) purchased by an aircraft owner or operator for use in an aircraft engine.

[Act No. 8 of 1997, s. 26, Act No. 5 of 1998, s. 29, Act No. 9 of 2007, s. 17.]

2. Deceased Persons' Effects

Used personal effects, subject to such limitations as the Commissioner may impose, which are not for resale and have been the property of a deceased person and have been inherited or bequeathed to the person to whom they are consigned.

3. Life Saving Apparatus

Life-belts, lifebuoys and other life saving equipment.

[Act No. 9 of 2000, s. 39.]

4. 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, perfumes, 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 seating capacity of more than 13 passengers or load-carrying vehicles of a load carrying capacity exceeding two tonnes) 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 that—

- (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 officer 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 when 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 grammes 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 traveller in respect of goods, other than goods referred to in paragraph (8), shall be zero rated when imported by the traveller 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.

[Act No. 8 of 1997, s. 26, Act No. 5 of 1998, s. 29, Act No. 4 of 1999, s. 31, Act No. 9 of 2000, s. 39, Act No. 6 of 2005, s. 19(b), Act No. 10 of 2010, s. 20.]

5. *Repealed by Act No. 7 of 2002, s. 36.*

6. 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.

[Act No. 9 of 2000, s. 39, Act No. 6 of 2001, s. 41.]

7. Ships and other Vessels

(1) Passenger and cargo vessels of all kinds of twenty-five net register tonnage or more, cable ships, ice breakers, floating factories, whale-catching vessels, trawlers and other commercial and non-commercial fishing vessels (other than sport-fishing vessels), weather ships, hopper barges; lighters, pontoons (being flat decked vessels used for the transportation of persons or goods) and ferry boats; parts and accessories, but not including batteries and sparking plugs leased, imported or purchased by a ship or vessel operator.

(2) Lighthouses, buoys and other non-portable accessories imported or purchased for installation to guide vessels.

[Act No. 10 of 2006, s. 15, Act No. 9 of 2000, s. 39, Act No. 9 of 2007, s. 17.]

8. *Repealed by Act No. 7 of 2002, s. 36.*

9. *Repealed by Act No. 6 of 2001, s. 41.*

10. Materials and Equipment for use in the Construction of Tourist Hotels Financed from External Sources

All materials and equipment, excluding vehicles, the importation of which is approved by the Permanent Secretary to the Treasury, for use in the construction of a tourist hotel financed from external sources, subject to the production of such evidence as the Commissioner may require as to the quantity, quality and type of goods required for the project.

[Act No. 9 of 2000, s. 39.]

11. *Repealed by Act No. 6 of 2001, s. 41.*

12. *Repealed by Act No. 7 of 2002, s. 36.*

13. *Repealed by Act No. 6 of 2001, s. 41.*

14. Rewards Earned by Kenyan Sportsmen

Goods including one motor vehicle (excluding buses and minibuses of seating capacity of more than 13 passengers and load carrying vehicles of load capacity exceeding two tonnes) imported under written authority of the Permanent Secretary to the Treasury on the recommendation of the Commissioner responsible for sports and games, by a returning Kenyan sportsman (excluding rally drivers), and upon the production of a certificate issued by a national or internationally recognized sports organisation that the goods have been received as his or part of his award.

[Act No. 9 of 2000, s. 39.]

15. Containers

(1) Imported containers specially designed for repetitive use, printed or inscribed with the name of a foreign buyer of Kenyan produce, for packing and exporting Kenyan produce.

(2) Imported containers which the Commissioner, on the recommendation of the Director of Veterinary Services, is satisfied are specially designed for storing semen for artificial insemination.

[Act No. 8 of 1996, Act No. 9 of 2000, s. 39.]

16. *Repealed by Act No. 7 of 2002, s. 36.*

17. Equipment for Electric Power Generation

Capital equipment, excluding motor vehicles and office equipment, for privately financed electric power generation projects with capacity to sell electricity into the national grid:

Provided that the zero-rating granted under this item shall, unless earlier revoked, expire on 31st December, 2003.

[Act No. 9 of 2000, s. 39, Act No. 7 of 2002, s. 36.]

18. Chemically Defined Compounds used as Fertilisers

Calcium Nitrate, Magnesium Sulphate, Magnesium Nitrate, Potassium Nitrate, Plant Nutrient Chelates (Iron, Zinc, Sulphur, Calcium, Molybdenum, Manganese and Boron) or such other compounds, which are used as fertilisers and which the Commissioner is satisfied, upon the recommendation of the Director of Agriculture, are for agricultural use, in such quantities and on such conditions as the Commissioner may specify.

[Act No. 9 of 2000, s. 39, Act No. 6 of 2001, s. 41.]

19. Urine Bags, Diapers for Adults and Hygienic Bags

Urine bags, diapers for use by adults and hygienic bags for medical or hygienic use, in such quantities as the Commissioner may allow.

[Act No. 4 of 2004, s. 44.]

20. Tea supplied to Tea Auction Centres

Coffee and tea purchased from coffee and tea auction centres, provided that such coffee and tea shall be exported by the purchaser.

[Act No. 5 of 1998, s. 29, Act No. 4 of 1999, s. 31, Act No. 9 of 2000, s. 39.]

21. Specialized ship loading and unloading equipment

Specialized equipment for ship loading and unloading, leased or imported or purchased by Gazetted Port Operators and Inland Container Depot Operators, in such quantity as the Commissioner may allow.

[Act No. 9 of 2000, s. 39, Act No. 9 of 2007, s. 17(b)(iii).]

22. *Repealed by Act No. 6 of 2001, s. 41.*

23. Plastic Sheetings for Agricultural, Horticultural or Floricultural use

(a) Shade netting or materials of plastics;

- (b) reinforced sheetings of polymers of vinyl chloride (PVC) or of polyethylene;
- (c) high density polyethylene (HDPE) sheetings in rolls for use in lining dams in a farm;
- (d) polyvinyl chloride (PVC) or polyethylene for use in covering greenhouses,

which the Commissioner is satisfied, upon the recommendation by the Director of Agriculture, that they are for agricultural, horticultural or floricultural use in such quantities as the Commissioner may allow.

[Act No. 9 of 2000, s. 39.]

24. *Repealed by Act No. 7 of 2002, s. 36.*

25. *Repealed by Act No. 7 of 2002, s. 36.*

26. Jet Fuel and Aviation Spirit

Jet fuel and aviation spirit purchased by an aircraft owner or operator for use in an aircraft engine.

[Act No. 15 of 2003, s. 28.]

27. Electrical energy imported for distribution into the national grid

[Act No. 15 of 2003, s. 28.]

28. Electronic Tax Register

Electronic tax registers of such type and description as may be prescribed, imported or purchased locally prior to the 30th June, 2006 on the recommendation of the Commissioner and subject to such conditions as the Commissioner may specify.

[Act No. 4 of 2004, s. 44.]

PART C – ZERO-RATING OF GOODS AND SERVICES IMPORTED OR PURCHASED BY PERSONS WITH DIPLOMATIC PRIVILEGES

[Act No. 5 of 1998, s. 29.]

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

PART D

Repealed by Act No. 9 of 2000, s. 39.

NINTH SCHEDULE

[Section 3(6), Act No. 10 of 1990, s. 33.]

DECLARATION BY OFFICER

I, do declare that I will be true and faithful to the best of my knowledge and power in the execution of the trust committed to my charge and inspection in the service of the Value Added Tax Department, and that I will not acquire, take or receive any fee, perquisite, gratuity or reward whether pecuniary or of any sort of description whatever, either directly or indirectly, for any service, act, duty, matter or thing done or performed, or to be done or performed, in the execution or discharge of any of the duties of my office or employment on any account whatsoever, other than my salary and what is, or may be, allowed me by law or by a special order of the Government.

CHAPTER 476

VALUE ADDED TAX ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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VALUE ADDED TAX (DISTRRAINT) REGULATIONS, 1990

ARRANGEMENT OF REGULATIONS

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SCHEDULE – RATES OF REMUNERATION

[Subsidiary]

VALUE ADDED TAX (DISTRAINT) REGULATIONS, 1990

[L.N. 227/1990, L.N. 123/1996.]

1. Citation

These Regulations may be cited as the Value Added Tax (Distraint) Regulations, 1990.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**distrainee**” means the registered person or debtor named in an order;

“**distraitor**” means an officer in the service of the Value Added Tax Department who is authorized to levy distress;

“**distraint agent**” means a person appointed as such under regulation 3;

“**distress**” means a distress levied pursuant to an order;

“**distress debt**” means the amount of tax, and interest charge thereon, specified in the order;

“**goods**” means all movable property of distrainee (other than growing crops and goods which are liable to perish within ten days of attachment) which is liable under the law to attachment and sale in execution of a decree of a court.

“**order**” means an order issued by the Commissioner under section 18(1) of the Act.

3. Distraint agents

(1) An authorized officer may appoint distraint agents to assist him in the execution of orders.

(2) No person shall be appointed a distraint agent unless he satisfies the authorized officer that he—

- (a) is of good repute and of good financial standing;
- (b) is qualified under the Law relating thereto to levy distress by way of attachment of movable property in execution of a decree of a court; and
- (c) has contracted a policy of insurance in an adequate sum against theft, damage or destruction by fire of goods which may be placed in his custody by reason of the performance of his duties as a distraint agent.

4. Distraint agent to furnish security

(1) A distraint agent shall on appointment furnish the Commissioner with security, by means of deposit of the sum of thirty thousand shillings, or in such other manner as the Commissioner may approve, and that security shall be refunded or cancelled on the termination of the appointment of the agent unless it is forfeited under this regulation.

(2) If a distraint agent is convicted of an offence involving fraud or dishonesty in connection with any function performed by him as agent, the court by which he is convicted may make an order as to forfeiture of the security furnished by him under paragraph (1), or any part thereof, and the provisions of the Criminal Procedure Code (Cap. 75), in so far as they relate to forfeiture of recognizance, shall apply *mutatis mutandis* to the forfeiture of security under this regulation.

5. Execution of orders

(1) An order may be executed at any time after it has been duly served on the distrainee in the manner provided by regulation 6.

(2) An order shall be executed by attachment of such goods of the distrainee as in the opinion of the distrainor are of a value which on sale by public auction, would realize a sum sufficient to meet the distress debt and the costs and expenses of the distress incurred by the distrainor.

6. Service of orders

(1) Every order shall be issued by the Commissioner in duplicate and service thereof shall be effected by service by the distrainor of a copy of the order on the distrainee in person or, if after using all due and reasonable diligence the distrainee cannot be found, by service of a copy on an agent of the distrainee empowered to accept service or an adult member of the family of the distrainee who is residing with him.

(2) A person served with a copy of an order under this regulation shall endorse on the order acknowledgement of service, and if he refuses to make endorsement the distrainor shall leave the copy of the order with the person or his agent after stating in writing thereon that the person or his agent upon whom he served the order refused to sign the acknowledgement and that he left at the time, date and place stated therein, a copy of the order with that person and the name and address of the person (if any) by whom the person on whom the order was served was identified, and thereupon the order shall be deemed to have been duly served.

[L.N. 123/1996, r. 2.]

7. Forceable entry

(1) In executing any distress, no outer door of a dwelling-house shall be broken open unless the dwelling-house is in the occupancy of the distrainee and he refuses or in any way prevents access thereto, but when the distrainor executing distress has duly gained access to a dwelling-house he may break open the door of any room in which he has reason to believe any goods of the distrainee to be.

(2) When a room in a dwelling-house is in the actual occupancy of a woman who, according to her religion or local custom does not appear in public the distrainor shall give notice to her that she is at liberty to withdraw; and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter the room for the purpose of attaching any goods therein, using at the time every precaution consistent with these provisions to prevent their clandestine removal.

8. Steps subsequent to attachment

As soon as practicable after the attachment of goods under these Regulations, the distrainor shall—

- (a) issue a receipt in respect thereof to the distrainee;
- (b) forward to the Commissioner a report containing an inventory of all items attached, the value of each item as estimated by the distrainor, the address of the premises at which the goods are kept pending sale, the name and address of the distraint agent in whose custody the goods have been placed and the arrangements, if any, made or to be made for the sale by public auction of the goods on the expiration of ten days from the date of attachment.

9. Limitation on sale of attached goods

On the sale by public auction of any goods attached under these Regulations, the distrainor shall cause the sale to be stopped when the sale has realized a sum equal to or

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exceeding the distress debt and the costs and expenses incurred by the distrainor, and thereupon any of the goods remaining unsold shall at the cost of the distrainee be restored to the distrainee.

10. Return on completion of sale

Immediately after the completion of a sale by publication of goods attached under these Regulations, the distrainor shall make a return to the Commissioner specifying the items which have been sold, the amount realized by the sale and the manner in which the proceeds of the sale were applied.

11. Restoration of attached goods on payment, etc.

(1) Where a distrainee has within ten days of attachment of his goods under these Regulations, paid or given security accepted by the Commissioner for the whole of the tax due from him together with the whole of the costs and expenses incurred by the distrainor in executing the distress, the distrainor shall at the cost of the distrainee forthwith restore the attached goods to the distrainee and return the order to the Commissioner who shall cancel it.

(2) Any money paid by a distrainee under this regulation shall be applied by the Commissioner first in settlement of the costs and expenses incurred by the distrainor and as to the balance in settlement of the distress debt or such part thereof as the Commissioner shall direct.

12. Livestock

Where any goods attached under these Regulations comprise or include livestock, the distrainor may make appropriate arrangements for the transport, safe custody and feeding thereof and any costs and expenses incurred by the distrainor thereby be recoverable from the distrainee under regulation 9 or 11, as the case may be, as costs and expenses.

[L.N. 123/1996, r. 2.]

13. Costs for levying distress

In addition to a claim for any other costs and expenses which may be incurred by the Commissioner or the distrainor in levying distress under these Regulations, there may be claimed by the distrainor and recovered under regulations 9 and 11, as the case may be, costs at the rate specified in the Schedule.

14. Remuneration of distraint agents

The maximum rates of remuneration which a distraint agent shall be entitled to demand from the distrainor for his assistance in executing a distress under these Regulations, and which may be recovered by the distrainor under regulation 9 or 11, as the case may be, shall be those specified in the Schedule.

15. Commission payable to auctioneer

The maximum rates of commission to be paid to an auctioneer by the distrainor as remuneration for his services for the sale by public auction of any goods attached under these Regulations, and which may be recovered by the distrainor under regulation 9, shall be five per cent of the amount realized on the sale, and where an auctioneer has also rendered services as a distraint agent he shall be entitled, in addition to any commission, to remuneration for those services as provided in regulation 14.

16. Matters included in rates of remuneration

The rates of remuneration specified in the Schedule shall be deemed to include all expenses of advertisements, inventories, catalogues, insurance and necessary charges for safeguarding goods attached under these Regulations.

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SCHEDULE

[Rule 16.]

RATES OF REMUNERATION

1. *Distraitor's Charges*

Where no distress is levied and the distress debt and any costs and expenses incurred by the distraitor are paid by the distraitee on demand or within thirty minutes thereafter the distraitee shall pay the distraitor the following costs—

- (a) where the distress debt does not exceed Sh. 3,000 Sh. 120
- (b) where the distress debt exceeds Sh. 3,000 Sh. 300

2. *Distraint Agent's Charges*

(a) Where no distress is levied and the distress debt and any costs and expenses incurred by the distraitor are paid by the distraitee on demand or within thirty minutes thereafter the distraint agent shall be entitled to remuneration of Sh. 120

- (b) For attaching goods or attaching and keeping possession thereof for ten days or part thereof, when the estimated value of the property, or the distress debt and costs and expenses, whichever is less—
- (i) does not exceed Sh. 30,000 4 per cent thereof
 - (ii) exceeds Sh. 30,000 3 per cent thereof

(c) Where the goods or any part thereof are sold by public auction, the distraint agent's charges shall instead be calculated in the manner directed above by reference to the total amount realized on sale after deduction of the auctioneer's commission under regulation 15.

(d) For keeping possession of any attached goods after the expiration of ten days from the date of attachment for each day, or part thereof—
 ¼ per cent of the value of the goods with a maximum of Sh. 60.

(e) Reasonable expenses incurred by the distraint agent in transporting goods attached, and such travelling expenses by car, or a rateable proportion thereof, as the Commissioner may approve.



VALUE ADDED TAX (TRIBUNAL) RULES, 1990

ARRANGEMENT OF RULES

Rule

1. Citation.
 2. Interpretation.
 3. Appointment of secretary.
 4. Form and time for lodging an appeal.
 5. Memorandum of appeal.
 6. Statement of facts of Commissioner.
 7. Service of memorandum of appeal.
 8. Statement of facts of Commissioner.
 9. Notice and place of hearing.
 10. Procedure at hearing of appeal.
 11. Tribunal to determine own procedure in certain matters.
 12. Copies of documents admissible.
 13. Fees and costs.
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VALUE ADDED TAX (TRIBUNAL) RULES, 1990

[L.N. 229/1990, L.N. 71/2000.]

1. Citation

These Rules may be cited as the Value Added Tax (Tribunal) Rules, 1990.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**appeal**” means an appeal to the Tribunal under section 33(1);

“**appellant**” means a person entering an appeal and the advocate or duly authorized agent of that person;

“**chairman**” means the chairman of the Tribunal appointed under section 32(2);

“**memorandum**” means a memorandum of appeal presented under rule 4;

“**secretary**” means the secretary to the Tribunal appointed pursuant to rule 3;

“**section**” means a section of the Act.

[L.N. 71/2000, r. 2.]

3. Appointment of secretary

(1) The Commissioner shall appoint a person to be the secretary to the Tribunal, and that person may be an officer of the Value Added Tax Department.

(2) The secretary shall, in matters relating to appeals to the Tribunal and procedure therefor, comply with general and special directions lawfully given by the chairman.

(3) The secretary shall by notice in the *Gazette* notify his address for the presentation or service of documents for the purposes of these Rules, and shall in the same manner notify any change in that address.

4. Form and time for lodging an appeal

An appeal shall be entered by presentation of a memorandum of appeal, together with ten copies thereof, to the secretary within fourteen days after the date on which the appellant gives notice of appeal in writing to the Commissioner pursuant to section 33(1); but where the Tribunal is satisfied that, owing to absence from his normal place of residence, sickness or other reasonable cause, the appellant was prevented from presenting a memorandum within that period, and that there has been no unreasonable delay on his part, the Tribunal may extend that period notwithstanding that the period has already expired.

[L.N. 71/2000, r. 3.]

5. Memorandum of appeal

A memorandum shall be signed by the appellant and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

6. Statement of facts of Commissioner

Each copy of a memorandum shall be accompanied by—

- (a) a copy of the decision of the Commissioner disputed by the appellant;
- (b) a copy of the notice of appeal; and

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- (c) a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to documentary or other evidence which it is proposed to adduce at the hearing of the appeal, and to which shall be annexed a copy of each document or extract from a document upon which the appellant proposes to rely as evidence at the hearing of the appeal.

7. Service of memorandum of appeal

Within forty-eight hours after the presentation of a memorandum to the secretary, a copy thereof and of the statement of facts of the appellant and the documents annexed thereto shall be served by the appellant upon the Commissioner.

8. Statement of facts of Commissioner

(1) The Commissioner shall, if he does not accept any of the facts of the appellant, within twenty-one days after service thereof upon him under rule 7, file with the secretary a statement of facts together with ten copies thereof and the provisions of rule 6(c) shall *mutatis mutandis* apply to the statement of facts.

(2) At the time of filing a statement of facts pursuant to paragraph (1), the Commissioner shall serve a copy thereof, together with copies of any documents annexed thereto, upon the appellant.

(3) If the Commissioner does not desire to file a statement of facts under this rule, he shall forthwith give written notice to that effect to the secretary and to the appellant, and in that case the Commissioner shall be deemed at the hearing of the appeal to have accepted the facts set out in the statement of facts of the appellant.

[L.N. 71/2000, r. 4.]

9. Notice and place of hearing

(1) As soon as may be convenient after receipt by him of the memorandum the secretary shall notify the chairman thereof.

(2) The chairman shall, after the Commissioner has filed a statement of facts or has notified the secretary that he does not intend to do so, fix a time, date and place for a meeting of the Tribunal for the purpose of hearing the appeal, and the secretary shall cause notice thereof to be served on the appellant and the Commissioner.

(3) The secretary shall cause to be supplied to each member of the Tribunal a copy of the notice of hearing and of all documents received by him from the parties to the appeal.

(4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

10. Procedure at hearing of appeal

At the hearing of an appeal, the following procedure shall be observed—

- (a) the Commissioner shall be entitled to be present or be represented;
- (b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence, but, save with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than a ground stated in the memorandum and may not adduce evidence of facts or documents unless those facts have been referred to in, and copies of those documents have been annexed to, the statement of facts of the appellants;

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- (c) at the conclusion of the statement, and evidence on behalf of the appellant, the Commissioner may make submissions, supported by relevant evidence, and subparagraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the Commissioner;
- (d) the appellant shall be entitled to reply but may not raise a new issue or argument;
- (e) the chairman or a member of the Tribunal may at any stage of the hearing ask any questions of the appellant or the Commissioner or a witness examined at the hearing, which he considers necessary to the determination of the appeal;
- (f) a witness called and examined by either party may be cross-examined by the other party to the appeal;
- (g) a witness called and examined by the Tribunal may be cross-examined by either party to the appeal;
- (h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary, on such terms as it may determine;
- (i) before the Tribunal considers its decision, the parties to the appeal shall withdraw from the meeting, and the Tribunal shall deliberate the issue according to law and reach its decision thereon;
- (j) the decision of the Tribunal shall be determined by a majority of the members present and voting at the meeting, and in the case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote;
- (k) minutes of the meeting shall be kept and the decision of the Tribunal recorded therein.

11. Tribunal to determine own procedure in certain matters

In matters of procedure not governed by these Rules or the Act, the Tribunal may determine its own procedure.

12. Copies of documents admissible

Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence, but the Tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

13. Fees and costs

No fees shall be payable, and a Tribunal shall not make any order as to costs, on an appeal save where the grounds of appeal are held by the Tribunal to be frivolous, in which case the Tribunal may order the appellant to pay costs to the Commissioner a sum not exceeding one thousand shillings.

VALUE ADDED TAX REGULATIONS, 1994

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement.
 2. Interpretation.
 3. Application for registration.
 4. Tax invoice.
 5. Simplified tax invoice.
 - 5A. Waiver.
 6. Credit note and debit note.
 7. Records to be kept by taxable persons.
 8. Samples of taxable goods.
 9. VAT returns and payments by cheque.
 10. Export of taxable goods and services
 11. Application for tax refund.
 12. Claims for tax refund.
 13. Tax paid on stocks on hand, assets, building, etc.
 - 13A. Auditor Certificate.
 14. Security.
 15. Powers of Commissioner of Customs.
 - 15A. Declaration of imported taxable services.
 16. Determination of selling price.
 17. Deductible input tax.
 18. Sale of taxable goods in returnable containers.
 19. Prices of taxable goods or services to unregistered persons.
 - 19A. *Deleted.*
 20. Services supplied in Kenya.
 21. Revocation of L.N. 400/1989.
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VALUE ADDED TAX REGULATIONS

[L.N. 195/1994, L.N. 213/1995, L.N. 121/1996, L.N. 42/1997, L.N. 100/1997, L.N. 122/1997, L.N. 544/1997, L.N. 70/1998, L.N. 67/1999, L.N. 165/1999, L.N. 96/2001, L.N. 176/2001, L.N. 94/2002, L.N. 52/2004, L.N. 49/2005, L.N. 54/2006, L.N. 37/2007, L.N. 78/2008, L.N. 95/2009, L.N. 81/2010.]

1. Citation and commencement

These Regulations may be cited as the Value Added Tax Regulations, 1994 and shall come into operation on the 17th June, 1994.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**personal identification number**” means the personal identification number required under section 132 of the Income Tax Act (Cap. 470).

“**register**” means an electronic tax register referred to in paragraph 6(5) of the Seventh Schedule to the Act and includes an electronic tax printer and a special secure fiscal device for record signing;

[L.N. 49/2005, r. 2.]

3. Application for registration

(1) Applications for registration under paragraphs 1 and 3 of the Sixth Schedule to the Act shall be submitted on a form prescribed by the Commissioner.

(2) Any person who knowingly—

- (a) gives false information;
- (b) fails to give full information; or
- (c) makes an application to register a person who is already registered, in the form referred to in paragraph (1), shall be guilty of an offence.

(3) The certificate of registration shall be issued on a form prescribed by the Commissioner.

[L.N. 95/2009, r. 2.]

4. Tax invoice

(1) The tax invoice to be issued under paragraph 1 of the Seventh Schedule to the Act shall be serially numbered and—

- (a) generated through a register; or
- (b) attached to a register receipt containing details of all transactions.

(2) The tax invoice shall include the following information—

- (a) the name, address and personal identification number of the person making the supply;
- (b) the serial number of the invoice;
- (c) the date of the invoice;
- (d) the date of the supply, if different from that given under sub-paragraph (c);
- (e) the name and address, if any, and Personal Identification Number of the person to whom the supply was made, if known to the supplier;
- (f) the description, quantity and price of the goods or services being supplied;

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- (g) the taxable value of the goods or services, if different from the price charged;
- (h) the rate and amount of tax charged on each of those goods and services;
- (i) details of whether the supply is a cash or credit sale and details of cash or other discounts, if any, that apply to the supply;
- (j) the total value of the supply and the total amount of VAT charged.
- (k) the logo of the business of the person issuing the invoice; and
- (l) the identification number of the register.

[L.N. 70/1998, r. 2, L.N. 165/1999, r. 2, L.N. 49/2005, r. 3, L.N. 54/2006, r. 2, L.N. 95/2009, r. 3.]

5. Simplified tax invoice

(1) The simplified tax invoice referred to in the proviso to paragraph (1) of the Seventh Schedule to the Act shall be a register receipt and shall include the following information—

- (a) the name, address and personal identification number of the user of the register;
- (b) the logo and identification number of the register;
- (c) the serial number of the receipt;
- (d) the date and time of issue of the receipt;
- (e) the name, quantity, unit price, unit name, chargeable tax rate and the value of the recorded sale of goods or services;
- (f) the tax amount payable; and
- (g) the total amount payable inclusive of tax.

(2) Where, under the proviso to paragraph 1 of the Seventh Schedule to the Act, the Commissioner has authorised other methods of accounting for tax—

- (a) the registered person shall record the value and brief details of each supply as it occurs and before the goods, or the customer, leaves the business premises;
- (b) the registered person shall keep a cash register, book, or other suitable record at each point of sale in which shall be entered details of all cash received and cash payments made at the time that they are made and at the end of each day the record shall be totalled and a balance shall be struck;
- (c) at the end of each day the output tax chargeable on supplies made and the deductible input tax shown on tax invoices in respect of supplies received shall be recorded in the appropriate records.

[L.N. 70/1998, r. 3, L.N. 165/1999, r. 3, L.N. 49/2005, r. 4, L.N. 54/2006, r. 3, L.N. 95/2009, r. 4.]

5A. Waiver

The Commissioner may, for any purpose relating to value added tax, if satisfied that reasonable grounds exist so to do, waive the application to any of the provisions of regulations 4(1) and 5(1), in respect of any period commencing the 15th June, 2006 and terminating 31st December, 2006, both days inclusive.

[L.N. 37/2007, r. 2.]

6. Credit note and debit note

(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 twelve months after the issue of the relevant tax invoice.

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(2) Where a credit note is issued under this regulation it shall be serially numbered and shall include details of the name, address, registration number 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.

(3) A registered person who issues a credit note under the conditions specified in this regulation 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.

(4) 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 so credited.

(5) 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, he shall in respect of the further charge being made, issue either a further tax invoice, or a serially numbered debit note containing all the details specified in regulation 4, and shall show on it the details of the tax invoice issued at the time of the original supply.

(6) A registered person who receives a further tax invoice or a debit note issued in compliance with paragraph (5) 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.

[L.N. 70/1998, r. 4, L.N. 165/1999, r. 2, L.N. 52/2004, s. 2, L.N. 95/2009, r. 5.]

7. Records to be kept by taxable persons

(1) Records to be kept and produced to an authorised officer under this regulation include—

- (a) copies of all 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;
- (e) a VAT 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) details of goods manufactured and delivered from the factory of the taxable person;
- (g) copies of all stock records kept periodically as the Commissioner may determine;
- (h) 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.

(2) All records required to be kept under this regulation shall be included in the audit of accounts of the taxable person that may be subject to such audit by a competent person.

(3) Where the Commissioner considers that a taxable person is not complying with requirements of this regulation, or where he considers that other records should be kept

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by the taxable person to safeguard the tax revenue, he shall issue a notice to the taxable person requiring him to keep such records or take such action as the Commissioner may specify and any person failing to comply with such notice shall be guilty of an offence.

(4) Where a notice issued under sub-paragraph (3) is not complied with and without prejudice to any other action that he may take, the Commissioner may, from such information as is available to him, assess the amount of tax that he considers to be due from the taxable person during each period that the offence continues.

(5) All records required to be kept under this regulation shall be maintained up-to-date and details of all tax charged shall be entered in the appropriate records without delay.

(6) All records shall be kept in the Kiswahili or English language and shall be kept for a period of five years from the date of the last entry made therein.

(7) Where records relating to a business are being kept in any language other than those prescribed, the Commissioner may require a registered person to produce, at that person's expense, an authenticated translation of those records.

[L.N. 121/1996, r. 2, L.N. 70/1998, r. 5, L.N. 96/2001, r. 2, L.N. 176/2001, r. 2.]

8. Samples of taxable goods

Where taxable goods—

- (a) are distributed free as samples by a registered person for furtherance of his business; and
- (b) have a value of less than two hundred shillings for each sample; and
- (c) are freely available; and
- (d) are not limited in distribution to fewer than thirty persons in any one calendar month,

they shall not be liable to tax.

9. VAT returns and payments by cheque

(1) The return required by paragraph 7 of the Seventh Schedule to the Act shall be on Form VAT 3.

(2) Where payment is made by cheque, the cheque shall be made payable to the "Commissioner of Value Added Tax" and shall be crossed and endorsed with the words "account payee only".

(3) All tax payments shall be made by banker's cheque, bank guaranteed cheque or cash or by such other method of payment as may be approved by the Commissioner.

(4) Where any cheque is not honoured upon presentation, the amount stated thereon shall be deemed not to have been paid and additional tax shall become due and payable in respect of that amount until such time as it is paid, notwithstanding that the cheque may subsequently be honoured on representation.

(5) Any fraction of a shilling due on any return shall be ignored.

[L.N. 121/1996, r. 3, L.N. 52/2004, r. 3.]

10. Export of taxable goods and services

(1) Subject to section 8 of the Act and the Fifth Schedule to the Act, any goods or taxable services exported by a registered person or supplied by that person to an export processing zone enterprise shall be zero-rated if evidence of exportation consisting of—

- (a) a copy of the invoice showing the sale of the goods or services to the purchaser; and

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- (b) in the case of goods, copies of the bill of lading, road manifest or airway bill, as the case may be; and
- (c) in the case of goods, the export entry duly certified by the proper officer of Customs at the port of export is maintained on file by the registered person for examination by an authorised officer on demand; and
- (d) in the case of sugar and all excisable goods, a certificate signed by the Commissioner of Customs that the goods have been examined and loaded into sealable vehicles or containers under a tamper proof seal and the seal number duly endorsed on the export entry.

(2) Subject to section 8 of the Act and the Fifth Schedule to the Act, any taxable goods or taxable services supplied by a registered person to a registered person manufacturing goods in a customs bonded factory for export, or to any person or organization as specified in the Eighth Schedule to the Act shall be zero rated if evidence of the supply consisting of—

- (a) a copy of the invoice showing the supply of the goods or services to the purchaser;
- (b) proof of the payment made in respect of the goods or services supplied;
- (c) a certificate signed by the purchaser that the goods have been received; and
- (d) in the case of goods, the export entry duly certified by the proper officer of Customs at the port of export,

is maintained on the file by the registered person for examination by an authorized officer on demand.

(2A) Where taxable goods are manufactured or purchased for export, supplied to an export processing zone enterprises, or to a registered person manufacturing goods in a customs bonded factory or are subject to remission, rebate or refund of value added tax, such goods as may be specified by the Commissioner shall be marked with the inscription "FOR EXPORT ONLY".

(2B) *Deleted by L.N. 81/2010, r. 2.*

(3) Subject to paragraph (4), where an exporter who is not a registered person exports by way of business any taxable goods that he has imported or purchased from a registered person and claims a refund of the tax paid on those goods he shall submit his claim to the Commissioner on Form VAT 4 and shall attach to any such claim, the following—

- (a) a copy of the invoice showing the sale of the goods to the purchaser; and
- (b) the export entry duly certified by the proper officer of customs at the port of export; and
- (c) evidence of the value of the goods and the payment by him of tax due thereon, being a copy of the tax invoice issued by a registered person, or a copy of the customs entry on which the goods were imported, as the case may be; and
- (d) proof of payment made in respect of goods exported;
- (e) in the in the case of sugar, a certificate signed by the Commissioner of Customs that the sugar has been examined and loaded into sealable vehicles or containers under a tamper proof seal and the seal number duly endorsed on the export entry.

(4) The Commissioner shall not issue a tax remission certificate referred to in Form VAT 4B unless the application is accompanied by—

- (a) bond security on Form VAT 4 B1 duly executed and guaranteed by a bank, insurance company or financial institution licensed to operate in Kenya; and

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- (b) an irrevocable letter of credit and proof of payment made in respect of the exported goods; or
- (c) a *pro forma* invoice from the registered manufacturer or dealer.

(5) A VAT remission certificate issued under paragraph (4) shall be valid for ninety days only from the date of issue.

(6) Upon completion of exportation, the exporter shall resubmit to the Commissioner within ninety days from the date of issue, the duplicate copy of the VAT remission certificate supported by documentary evidence of exportation of the goods.

(7) A bond security provided under subregulation (4)(a) shall be cancelled upon the exporter satisfying the Commissioner—

- (a) that the goods have been duly exported;
- (b) that appropriate payment in respect of the exported goods has been received by him.

(8) Where an exporter fails to comply with the provisions of paragraph (6) and (7), the appropriate tax shall be payable in full forthwith together with a penalty of two per cent per month or part thereof calculated from the date of issue of the tax remission certificate by the Commissioner under paragraph (4):

Provided that the Commissioner may, in individual cases grant remission of the penalty if satisfied that such remission is justified and shall make quarterly returns to the Minister of all remissions so granted but such remission shall be subject to the prior written approval of the Minister where the amount of the penalty exceeds five hundred thousand shillings.

(9) No refund shall be made under this regulation—

- (a) where the amount to be refunded is less than five hundred shillings; or
- (b) where the exportation took place more than twelve calendar months previously or such further period as the Commissioner may in any particular case determine.

(10) Zero-rating of exported goods or refund of tax paid shall not be allowed under this regulation in respect of any goods which have been used before they were exported.

(11) Where the Commissioner considers that there is doubt about the exportation of any goods he may require any person exporting the goods to produce to him within a reasonable time a certificate, signed and stamped by a competent customs authority outside Kenya, that the goods were duly landed and reported to the proper customs authority at the port or place of foreign destination, and payment of any claim may be deferred until such a certificate has been produced and accepted as satisfactory by the Commissioner.

(12) Where a person who is not a registered person supplies by way of business any taxable goods that he has imported or purchased from a registered person to an export processing zone or to a foreign aid funded investment project or to a person manufacturing goods in a customs bonded factory, and claims a refund of the tax paid on those goods he shall submit his claim to the commissioner on Form VAT 4 and shall attach to any such claim, the following—

- (a) a copy of the invoice showing the sale of the goods to the purchaser; and
- (b) evidence of the value of the goods and the payment by him of tax due thereon, being a copy of the tax invoice issued by a registered person or a copy of the Customs entry on which the goods were imported, as the case may be; and

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- (c) a certificate signed by the purchaser that the goods have been received and that they have been purchased as part of a specified project or in accordance with the approved operations of the export processing zone, as the case may be.

[L.N. 213/1995, r. 2, L.N. 121/1996, r. 4, L.N. 42/1997, r. 2, L.N. 100/1997, r. 2, L.N. 122/1997, r. 2, L.N. 70/1998, r. 6, L.N. 67/1999, r. 2, L.N. 96/2001, r. 3, L.N. 94/2002, r. 2, L.N. 49/2005, r. 5, L.N. 95/2009, r. 6, L.N. 81/2010.]

11. Application for tax refund

An application for tax refund under sections 11(2), 24(a), (b) or (c) and 24A shall be made in Form VAT 4.

[L.N. 121/1996, r. 5.]

12. Claims for tax refund

(1) Any claim for refund of tax by a registered person under section 24A of the Act shall be accompanied by—

- (a) a document issued to him by the person with whom he proves in the insolvency of the debtor, specifying the total amount proved, except where a claim is made because over three years have elapsed since the registered person paid the tax;
- (b) a copy of the tax invoice provided in respect of each taxable supply upon which the claim is based;
- (c) records or other documents, showing that the tax has been accounted for and paid on each supply upon which the claim for a refund of tax is based;
- (d) evidence that every reasonable effort has been made to have the debt settled; and
- (e) a declaration by him that he and the buyers are independent of each other.

(2) No refund is payable unless the registered person is up-to-date in submitting all VAT returns on Form VAT 3 together with the appropriate tax.

13. Tax paid on stocks on hand, assets, building, etc.

(1) A registered person shall submit to the Commissioner, his claim for relief from tax paid on stocks on hand, assets, building or civil works on the date he becomes registered on Form VAT 5 within thirty days of that date.

(2) Where the Commissioner considers that there is good and valid reason why the registered person could not submit his claim under paragraph (1) within the thirty days he may accept a claim made within such longer period as he deems to be fair and reasonable.

(3) The Commissioner may require the registered person to produce to an authorised officer evidence of—

- (a) the quantities, descriptions and values of goods in stock on the date of registration;
- (b) the proper use or disposal of such goods after the date of registration.

13A. Auditor Certificate

(1) Every application for tax refund and every claim for relief from tax of an amount exceeding one million shillings shall be accompanied by an auditor's certificate that the application or claim is true and that the amount is properly refundable under the act.

(1A) An auditor who certifies a refund claim in accordance with paragraph (1), shall not later than the 20th of the following month after the tax period, furnish the Commissioner with a return of all claims certified by him in the last tax period.

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(2) An auditor who issues a certificate in contravention of paragraph (1) shall be guilty of an offence.

[L.N. 544/1997, r. 2, L.N. 70/1998, r. 7, L.N. 95/2009, r. 7.]

14. Security

(1) A security required by the Commissioner under section 29 of the Act shall be in such sum not exceeding the total tax payable and, unless the person from whom the security is required opts to deposit the required sum or equivalent securities with the Commissioner, shall take the form of a bond in such form, and given by such sureties, as the Commissioner may approve.

(2) Where a bond given under this regulation is discharged, the Commissioner shall cause the bond to be cancelled and shall advise the person giving it accordingly.

(3) Where any person who is a surety to a bond under this regulation—

- (a) dies; or
- (b) is adjudged bankrupt or enters into any composition with his creditors; or
- (c) leaves Kenya,

the person on whose behalf the bond was given shall notify the Commissioner accordingly and the Commissioner may cancel the bond and require a fresh surety to be given.

15. Powers of Commissioner of Customs

By virtue of section 57 of the Act—

- (a) the Commissioner appointed under the Kenya Revenue Authority Act (Cap. 469) shall be responsible for the collection of tax chargeable in respect of imported taxable goods and shall account for that tax to the Commissioner; and
- (b) the Commissioner and other proper officers of Customs appointed under the Kenya Revenue Authority Act (Cap. 469) shall, subject to the Act and the East African Community Customs Management Act, 2004 (No. 8 of 2004), have and exercise in respect of imported taxable goods all the powers and duties conferred or imposed on them by the East African Community Customs Management Act, 2004.

15A. Declaration of imported taxable services

(1) For the purposes of subsection (6) of section 6 of the Act, any person who receives any imported taxable services shall make a declaration of such services on Form VAT 7.

(2) Any person who contravenes this regulation shall be guilty of an offence.

[L.N. 100/1997, r. 3.]

16. Determination of selling price

For the purposes of section 9(b) of the Act, the price determined by the Commissioner shall be the open market selling price where the seller and buyer are independent of each other.

17. Deductible input tax

(1) Where a registered person supplies both taxable goods and services and exempt goods and services, he can only deduct that part of his input tax which is attributable to taxable supplies which attribution shall be approved by the Commissioner, but he may use either of the undermentioned methods to determine the amount of deductible input tax without the approval of the Commissioner—

- (a)
$$\frac{\text{Value of taxable supplies}}{\text{Value of total supplies}} \times \text{Input tax} = \text{Deductible input tax}$$

[Subsidiary]

- (b) (i) full deduction of all the input tax attributable to taxable goods purchased and sold in the same state;
- (ii) no deduction of any input tax which is directly attributable to exempt outputs, and
- (iii) deduction of the input tax attributable to the remainder of the taxable supplies, calculated as under subparagraph (a).

(2) Notwithstanding paragraph (1) where the amount of input tax attributable to exempt supplies is less than five per cent of the total input tax, then all the input tax can be deducted.

(3) Where there is a difference between the amount of claimable input tax for a year and the total amount deducted for the same period, the amount so calculated shall be declared as over declaration or under declaration, as the case may be, and such amount shall be entered in the return for the first tax period following the end of the accounting year.

[L.N. 121/1996, r. 6, L.N. 94/2002, r. 3.]

18. Sale of taxable goods in returnable containers

Where taxable goods are sold by a registered person in returnable containers then—

- (a) if the registered person has purchased or imported those containers tax paid, the amount of any tax payable by virtue of subsection (2) of section 9 of the Act in respect of the containers shall be remitted; or
- (b) in any other case, the amount of tax so payable upon those containers which are returned to the registered person, and upon which he has given a credit to the purchaser, shall be remitted by means of a credit taken by the registered person on his next succeeding tax return.

19. (a) Where a registered person is a retailer or is primarily supplying taxable goods or taxable services to unregistered persons, prices of such goods or services shall be quoted or labelled including the amount of the tax.

(b) Where prices are quoted inclusive of tax, the value of the tax shall be estimated in the case of *ad valorem* tax rate by a tax that is multiplied by such a tax inclusive price reduced by any exclusion from the taxable value allowed under section 9 of the Act. The tax factor is equal to $t/(1+t)$ where t is the *ad valorem* tax rate specified in the First Schedule to the Act.

19A. Deleted by L.N. 52/2004, s. 4.

[L.N. 94/2002, r. 4.]

20. Services supplied in Kenya

(1) Except as is otherwise provided in the Act, services shall be deemed to have been supplied in Kenya—

- (a) where the supplier has established his business or has a fixed physical establishment in Kenya and the services are physically used or consumed in Kenya regardless of the location of the payer;
- (b) in connection with immovable property, the property is situated in Kenya; or
- (c) in connection with receiving a signal or service for the supply of television, radio, telephone or any other communication services, the person receiving the signal or service is in Kenya.

(2) Where transportation ends outside the country, the transport services shall be deemed to have been supplied outside the country.

[L.N. 78/2008, r. 2, L.N. 95/2009, r. 8.]

21. Revocation of L.N. 400/1989

The Value Added Tax Regulations are revoked.

SCHEDULE

FORM VAT 7

KENYA REVENUE AUTHORITY
VALUE ADDED TAX DEPARTMENT

DECLARATION OF SERVICES IMPORTED INTO KENYA

Importer's Name		Serial No.	
Address			
VAT Registration No. (if any)		PIN	
Supplier's Name			
Address			
Description of service(s) (a)			
.....		Code	
..... (b)			
.....		Code	
..... (c)			
.....		Code	
Value of services in foreign currency			
Exchange Rate			
Value of services in <i>figures KSh.</i>			
Value of services in <i>words KSh.</i>			
Taxable Value in <i>figures KSh.</i>		Rate of tax	
Tax payable in <i>figures KSh.</i>			
Tax payable in <i>words KSh.</i>			
I,, the receiver of the services specified herein certify that all the particulars given are true.			
FOR OFFICIAL USE			
Cheque/Cash		Checked and certified correct	
Cheque No.			
Receipt No.			
KSh.			
Received for payment of Value Added Tax			
.....	Signature Date	
<i>Cashier</i>	<i>Date</i>	<i>for Commissioner</i>	

VALUE ADDED TAX ACT ORDER, 2002

[L.N. 95/2002, L.N. 68/2003.]

1. This Order may be cited as the Value Added Tax Order, 2002 and shall come into operation on the 14th June, 2002.
2. Any tax payable on the goods and services specified in the Schedule shall be excluded from deduction of input tax under sections 11 and 11A of the Act except where the goods are purchased as stock-in-trade.
3. The Value Added Tax Order, 1997 (L.N. 545/1997, Sub. Leg) is revoked.

SCHEDULE

[Paragraph 2.]

1. All oils for use in vehicles (including motor-vehicles and similar vehicles), ships, boats and other vessels.

[L.N. 68/2003, s. 2.]

2. (1) Passenger cars and minibuses, bodies, parts and services for the repair and maintenance of such vehicles and the leasing or hiring services of such vehicles other than—

- (a) goods and services used in the supply of passenger car and minibus hire and leasing services;
- (b) bodies, parts and repair and maintenance services, used in the supply of repair and maintenance services for passenger cars and minibuses; and
- (c) passenger car and minibus parts used in the manufacture or repair and maintenance of taxable goods;
- (d) vehicles specifically designed or modified and primarily used for the supply of taxable goods or services, subject to prior approval by the Commissioner.

(2) All motor vehicles (other than passenger cars and minibuses), bodies, parts and services for the repair and maintenance of such vehicles, except where the goods are used primarily for the supply of taxable goods and services.

(3) For the purposes of this Order, “**motor vehicle**” means a self propelled vehicle intended for use on roads but does not include a tractor.

3. Furniture, fittings and ornaments of decorative items in buildings other than—
 - (a) items permanently attached to buildings; or
 - (b) such goods for use in hotels and restaurants subject to approval of the Commissioner.
4. Household or domestic electrical appliances other than those approved by the Commissioner for use in the manufacture of taxable goods or the supply of taxable services.
5. Entertainment services.
6. Restaurant services.

Value Added Tax

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SCHEDULE—*continued*

7. Accommodation services.

8. Taxable supplies for use in staff housing and similar establishments for the welfare of staff.

**VALUE ADDED TAX (REMISSION) (OFFICIAL AID FUNDED PROJECTS)
ORDER, 2003**

[L.N. 67/2003, L.N. 3/2004.]

1. This Order may be cited as the Value Added Tax (Remission) (Official Aid Funded Projects) Order, 2003 and shall come into operation on the 13th June, 2003.

2. The whole of the tax payable on taxable services, materials and equipment, including vehicles, which the Commissioner is satisfied are for use in the construction, equipping or execution of an aid funded project, to be, or in the process of being carried out pursuant to an agreement between the Government and a foreign government, or a foreign or international agency, institution, foundation or organization, supplying or making available aid funds, materials or equipment (in this Order referred to as "the aid agency") is remitted subject to the conditions set out in paragraph 3.

3. The conditions referred to in paragraph 2 are that—

- (a) the agreement expressly provides for remission of tax on taxable services, materials and equipment, including vehicles;
- (b) the agreement provides that—
 - (i) the materials and equipment, including vehicles, shall become the property of the Government, any public university, the Kenya Medical Research Institute, the Kenya Bureau of Standards or such other non-profit making organization in Kenya as the Minister may, by notice in the *Gazette*, specify for the purposes of this Order; or
 - (ii) the materials and equipment belong to, and whilst in Kenya, continue to belong to the aid agency; or
 - (iii) that both the conditions specified in this subparagraph apply;
- (c) the implementing agency shall, at all reasonable times, make the records of the materials and equipment available to an authorized officer and shall give the officer every facility necessary to inspect and audit such records;
- (d) within ninety days after the completion of the project, the aid agency shall provide the Commissioner—
 - (i) in the case of a situation referred to in subparagraph (b)(i), with a detailed list of items of equipment which have been used in the execution of the project and which, not forming part of the project itself, have become the property of the Government or other organization referred to in that subparagraph;
 - (ii) in the case of a situation referred to in subparagraph (b)(ii), with a detailed list of items of equipment which have been used in the execution of the project and which remain the property of the aid agency; and
- (e) the Commissioner may, if he considers it necessary, inspect the project at any time during its execution.

4. The remission of tax under paragraph 2 shall not apply to—

- (a) fuels and oils for use in vehicles and equipments for the projects:
Provided that the Minister may grant remission under this subparagraph after taking into consideration the terms and conditions of the funding agreement;
- (b) all taxable services, except those specified in any remission Order published under section 23 of the Act.

[L.N. 3/2004, s. 2.]

Value Added Tax

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5. Notwithstanding the provisions of paragraph 2, tax shall become payable if goods which are the subject of this Order are used or disposed of in a manner inconsistent with the purpose for which the remission is granted.

6. Legal Notice No. 93/2002 is revoked.

VALUE ADDED TAX (REMISSION) (INVESTMENTS) REGULATIONS, 2004

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Application for remission.
 3. Minister may require further information, inspection.
 4. Only one application per investment.
 5. Remission not for certain goods.
 6. Condition relating to inspection, etc.
 7. Further conditions to remission.
 8. Revocation of remission.
-

[Subsidiary]

VALUE ADDED TAX (REMISSION) (INVESTMENTS) REGULATIONS, 2004

[L.N. 51/2004.]

1. Citation

These Regulations may be cited as the Value Added Tax (Remission) (Investments) Regulations, 2004 and shall come into operation on the 10th June, 2004.

2. Application for remission

(1) An application for remission of tax under section 23(3)(a) of the Act shall be made in writing to the Minister.

(2) The application referred to in paragraph (1) shall be submitted together with a detailed list of the goods in respect of which the application is made.

(3) The application referred to in paragraph (1) shall include the following for the investment referred to in section 23(3)(a) of the Act—

- (a) the total value of the investment in Kenya shillings;
- (b) a full description of the investment including, where applicable, the physical location of the investment;
- (c) the personal identification number of the applicant;
- (d) a report of a feasibility study of the investment with sufficiently detailed *pro forma* cash flow statement including the itemization of the cash flows for—
 - (i) all traded or tradable goods to be produced, undertaken or purchased; and
 - (ii) any financial obligations or commitments.

3. Minister may require further information, inspection

The Minister may require the applicant to—

- (a) furnish such further information as the Minister may consider appropriate; and
- (b) allow and facilitate the inspection of the goods to which the application relates.

4. Only one application per investment

(1) Only one application shall be made with respect to an investment except as provided in paragraph (2).

(2) A second application in respect of the same investment may be made if the applicant demonstrates to the satisfaction of the Minister that the additional application relates to a separate phase of the investment or an expansion thereof.

5. Remission not for certain goods

Remission shall not be granted in respect of stocks in trade, consumables, office furniture, typewriters, copying equipment, stationery, kitchenware, crockery, linen, draperies, carpets (in single pieces), safes and refrigerators.

6. Condition relating to inspection, etc.

It is a condition of a remission that the person to whom a remission has been granted shall—

- (a) allow and facilitate the inspection of the goods in respect of which the remission relates; and

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- (b) avail to the Commissioner the records of such goods for purposes of inspection and audit.

7. Further conditions to remission

The Minister may attach such further conditions to a remission as he considers necessary.

8. Revocation of remission

The Minister may revoke a remission if any condition set out in regulation 6 or attached under regulation 7 is breached.

VALUE ADDED TAX (TAX WITHHOLDING) REGULATIONS, 2004

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement.
 2. Interpretation.
 3. Records, acknowledgement of payment.
 4. Where no tax is withheld for a period.
 5. Supplier to issue invoice.
 6. Suppliers still to file returns.
 7. Inspection of records.
-

[Subsidiary]

VALUE ADDED TAX (TAX WITHHOLDING) REGULATIONS, 2004

[L.N. 53/2004, L.N. 94/2009.]

1. Citation and commencement

These Regulations may be cited as the Value Added Tax (Tax Withholding) Regulations, 2004 and shall come into operation on the 11th June, 2004.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**supplier**” means a person who receives a payment for taxable supplies from a tax withholding agent;

“**tax withholding agent**” means a person who has been appointed as such under section 19A of the Act.

3. Records, acknowledgement of payment

Upon making payment to a supplier and deducting tax therefrom, a tax withholding agent shall—

- (a) keep such records and in such form and manner as the Commissioner may direct, and
- (b) furnish the supplier with a tax withholding certificate in such form as the Commissioner may direct.

[L.N. 94/2009, r. 2.]

4. Where no tax is withheld for a period

Where no tax is withheld with respect to a period for which the tax withholding agent would otherwise remit tax to the Commissioner under section 19A (2) of the Act, the tax withholding agent shall furnish the Commissioner with a return showing that no tax was withheld in that period.

5. Supplier to issue invoice

A supplier who makes taxable supplies in respect of which tax is withheld by the tax withholding agent shall issue an invoice showing separately the amount of tax chargeable.

6. Suppliers still to file returns

The withholding of tax by a tax withholding agent shall not relieve a supplier of any obligation to file returns in accordance with the Act.

7. Inspection of records

For the purposes of obtaining full information in respect of accounting for tax withheld, the Commissioner may require any person—

- (a) to produce for examination, at such time and place as the Commissioner may specify, records, books of accounts, documents and other records relating to the calculation or withholding of tax in respect of any period specified by the Commissioner;
- (b) to attend at such time and place as the Commissioner may specify, for the purpose of being questioned, in respect of any matter or transaction appearing to be relevant to the tax liability of any person.

VALUE ADDED TAX (ELECTRONIC TAX REGISTERS) REGULATIONS, 2004

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement.
2. Interpretation.
3. Application.
4. Prescribed type and description of register.
5. Use of register, etc.
6. User to prepare daily, monthly and annual reports.
7. User to ensure correct operation of register, etc.
8. Register ledger.
9. Penalty.

SCHEDULES

- FIRST SCHEDULE – TECHNICAL REQUIREMENTS FOR A REGISTER
- SECOND SCHEDULE – INFORMATION TO BE CONTAINED IN A RECEIPT
PRINTED FROM A REGISTER
-

[Subsidiary]

VALUE ADDED TAX (ELECTRONIC TAX REGISTERS) REGULATIONS, 2004

[L.N. 110/2004, Corr. No. 66/2004, L.N. 50/2005.]

1. Citation and commencement

These Regulations may be cited as the Value Added Tax (Electronic Tax Registers) Regulations, 2004 and shall come into operation on the 1st January, 2005.

[Corr. No. 66/2004.]

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**register**” means an electronic tax register referred to in paragraph 6(5) of the Seventh Schedule to the Act and includes an electronic tax printer and a special secure fiscal device for record signing;

“**user of a register**” means any person required, under paragraph 6(5) of the Seventh Schedule to the Act, to use a register.

[Corr. No. 66/2004, L.N. 50/2005, r. 2.]

3. Application

(1) These Regulations apply to persons who are required, under paragraph 6(5) of the Seventh Schedule to the Act, to use a register.

(2) A user of a register shall use the register as required and in accordance with these Regulations.

4. Prescribed type and description of register

Registers of the type and description that satisfy the technical requirements set out in the First Schedule to these Regulations are prescribed for the purposes of paragraph 6(5) of Seventh Schedule to the Act.

5. Use of register, etc.

A user of a register shall—

- (a) submit a logo unique to his business to the Commissioner, who shall keep a register of such logos;
- (b) have the register examined and recorded by the Commissioner and obtain a unique register identification number in respect of that register before putting it into use;
- (c) permanently affix the register's identification number obtained under paragraph (b) on the register;
- (d) use the register to record only own sales and not to allow its use to record the sales of any other persons;
- (e) ensure—
 - (i) the recording of each sale with the use of the register;
 - (ii) the printing of the receipt (in duplicate) in respect of each sale and in which receipt shall contain the information set out in the Second Schedule to these Regulations and deliver the original receipt to the purchaser;
- (f) in case of non-availability for use of the register, promptly inform the Commissioner and subsequently record the sales with the use of such substitute means as the Commissioner may approve.

6. User to prepare daily, monthly and annual reports

A user of a register shall prepare daily, monthly and annual reports, which reports shall set out—

- (i) the date of the report and the period in respect of which it applies;
- (ii) the name and address of the user of the register;
- (iii) the VAT identification number of the user of the register;
- (iv) the unique identification number of the register obtained under regulation 5(b);
- (v) the total value of sales in respect of the period covered by the report;
- (vi) the total amount of tax paid in respect of the period covered by the report.

7 User to ensure correct operation of register, etc.

A user of a register shall—

- (a) ensure that the register operates correctly with particular regard to correct programming of the names or descriptions of goods and services and the correct allocation of their respective tax rates;
- (b) promptly report any malfunctioning of the register to a service person;
- (c) on demand by a person authorized by the Commissioner, avail the register for inspection;
- (d) ensure the inspection of the register by a service person every six months;
- (e) keep copies of the reports referred to in regulation 6 for a period of five years and avail such reports for inspection by the Commissioner whenever required to do so;
- (f) ensure the inspection, before further use, of a register which has been, or is suspected to have been, interfered with.

8. Register ledger

(1) A user of a register shall keep a register ledger in which he shall record the servicing of the register.

(2) A user of a register shall ensure that the following are recorded in the register ledger—

- (a) the name and address of the person servicing the register;
- (b) an entry for each time the register is serviced, describing the servicing and signed by the person performing the service.

(3) A user of a register shall safely keep the register ledger and avail it for inspection whenever required by the Commissioner to do so.

9. Penalty

Any person who fails to comply with these Regulations shall be guilty of an offence and 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.

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FIRST SCHEDULE

[Rule 4.]

TECHNICAL REQUIREMENTS FOR A REGISTER

A register shall—

- (a) have a module with a memory and in case of a network system, the memory shall be inbuilt into each register being part of that network system;
- (b) have two display screens and a monitor; one screen for use by a purchaser and the other screen for use by the cashier;
- (c) have a memory built into the register and which memory shall—
 - (i) not be accessible to the user or to any other unauthorized person;
 - (ii) be placed in a socket and permanently placed in a casing and covered with a hard, non-transparent substance;
- (d) enable—
 - (i) the registration in memory of the reports referred to in regulation 6;
 - (ii) the resetting (to the zero status) of the register memory at the end of each report referred to in regulation 6;
 - (iii) modification of the rates of tax on goods and services;
- (e) include a safety device to prevent the erasure of records in its memory;
- (f) have a casing sealed with a leaden seal bearing the stamp of the Commissioner which would result in the seal's self destruction in case of an attempt to break into the memory;
- (g) have an emergency power supply in the form of network battery (accumulator batteries) capable of lasting for forty-eight hours commencing at the time the network power supply ceases;
- (h) have the potential for interconnectivity with external networks;
- (i) have capability to record in its memory the following data—
 - (i) the date and time of commencing and ceasing the operations in its module;
 - (ii) the register's identification number and the user's personal identification number (PIN);
 - (iii) the tax rates assigned to the description of goods and services;
 - (iv) the value of the sales without the tax, the value of sales exempted from tax, the tax amounts divided into categories of individual tax rates, total amount of the tax and the total amount of the sales, including tax;
 - (v) the serial numbers and the dates for the resetting of the report every twenty four hours;
 - (vi) the numbers and dates of the resetting of the register memory and the information on the initiation of resetting and the method of its performance;
- (j) have capability to—
 - (i) store data in such manner as to be unintelligible to persons not authorized to access it;
 - (ii) protect itself against change or erasure of data;
 - (iii) print out the daily monthly and annual reports as per Regulation 6;

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- (iv) print the sales records from its memory as per standard time units (day, month, year);
- (v) print data recorded in the memory and by commands given through the keyboard;
- (vi) store the recorded data in the memory and record that data in the control paper roll;
- (vii) operate without loss of continuity in the event of interruption in power supply;
- (viii) record in the memory, the dates of all transactions;
- (ix) print in the English language.

SECOND SCHEDULE

[Rule 5(e)(ii).]

INFORMATION TO BE CONTAINED IN A RECEIPT PRINTED FROM A REGISTER

A receipt printed from a register shall contain—

- (i) the name and address of the user of the register;
 - (ii) the VAT identification number of the user of the register;
 - (iii) the personal identification number (PIN) of the user of the register;
 - (iv) the identification number of the register referred to in regulation 5(b);
 - (v) the name, quantity, unit price, unit name, tax rate chargeable on, and the value of the recorded sale of goods or services;
 - (vi) the tax amount payable;
 - (vii) the date and time of issue of the receipt;
 - (viii) the total amount payable, inclusive of tax;
 - (ix) the logo referred to in regulation 5(a).
-

VALUE ADDED TAX (REMISSION) ORDER, 2007

[L.N. 18/2007.]

1. This Order may be cited as the Value Added Tax (Remission) Order, 2007.
2. The tax payable on the items listed in the Schedule hereto being imported for the Kwale Titanium Mining project by Tiomin Kenya Limited within the year 2007 be remitted wholly:

Provided that the tax remitted by this Order shall be payable by Tiomin Kenya Limited in the event that the Minister determines that Tiomin Kenya Limited is in breach of any of the terms of the Agreement in relation to a Special Mining Lease granted by the Government of Kenya to Tiomin Resources Inc. et al entered on 2nd February, 2005.

SCHEDULE

<i>Description</i>	<i>Qty</i>	<i>Unit</i>	<i>Ex-works</i>
Air Receiver	2	ea	\$5,000
Anchor	6	ea	\$3,000
Attritioner	2	ea	\$193,966
Bag House	2	ea	\$570,288
Bank of Spirals	29	ea	\$687,020
Belt Conveyor	29	ea	\$1,561,528
Belt Feeder	2	ea	\$72,047
Belt Weightometer	4	ea	\$32,054
Bucket Elevator and Motor Assembly	20	ea	\$574,842
CD Tank	1	ea	\$3,060
Chain Hoist	7	ea	\$14,000
Clamshell Feeder	3	ea	\$15,000
Classifier	1	ea	\$36,998
Compressor	4	ea	\$86,520
Conveyor	5	ea	\$1,281,720
Cyclone	2	ea	\$7,612
Cyclone Cluster Assembly	31	ea	\$747,570
Dosing Pump	4	ea	\$14,802
Double-deck Wet Table	12	ea	\$315,640
Electric Hoist	4	ea	\$33,241
Electric Motor	7	ea	\$70,000
Electrostatic Plate Separator	2	ea	\$81,400
Electrostatic Roll Machine	18	ea	\$1,688,843
Fan Assembly	1	ea	\$8,743
Filter	1	ea	\$6,762
Fire Extinguisher	181	ea	\$3,263
Fire Hydrant Assembly, incl. Hose Reel	8	ea	\$2,133
Fire Water Pump Assembly	3	ea	\$36,048
Fluid Bed Dryer Assembly	3	ea	\$2,015,507
Gland Seal Water Pump	2	ea	\$4,165

Value Added Tax

[Subsidiary]

SCHEDULE—continued

<i>Description</i>	<i>Qty</i>	<i>Unit</i>	<i>Ex-works</i>
Inclined Plate Weighter/Sampler	3	ea	\$37,722
Induction Magnet Separator	8	ea	\$690,272
Kelsy Jig	2	ea	\$650,534
Kibble	10	ea	\$3,000
Launder	1	ea	\$15,000
Low Intensity Magnetic Separator (LIMS)	1	ea	\$43,186
Maintenance Trolleys	6	ea	\$11,500
Mixer	1	ea	\$205,740
Monitors	1	ea	\$70,000
Pontoon	3	ea	\$217,249
Pump Hopper	5	ea	\$21,420
Rare Earth Roll Separator	6	ea	\$356,088
Re-heater	1	ea	\$98,552
Rope	1200	meters	\$12,000
Safety Signs	200	ea	\$2,000
Sampler	21	ea	\$185,378
Screw Feeder	7	ea	\$121,801
Slurry Pump	75	ea	\$1,860,513
Sump Pump	26	ea	\$1,854,715
Thickener Assembly	1	ea	\$888,000
Vibrating Feeder	1	ea	\$17,632
Vibrating Screen	10	ea	\$476,456
Water Pump	9	ea	\$286,317
Water Pump Assembly, incl. Motor	12	ea	\$120,000
Water Tank	3	ea	\$15,000
Water Tank and Pump Assembly	1	ea	\$12,000
Water Treatment Plant	1	ea	\$214,296
Weighbridge	1	ea	\$31,406
Wet High Intensity Magnetic Separator (WHIMS)	4	ea	\$1,290,275
Wet Table	1	ea	\$132,208
Winch	6	ea	\$12,000
Generator Sets	4	ea	\$6,331,000
Mechanical Engine Auxiliary Equipment	1	Lot	\$1,952,340
Exhaust Heat Recovery System	1	Lot	\$0
MCD and Scada System	1	Lot	\$345,800
Mainboard MV/LV	1	ea	\$505,960
Distribution Board	1	ea	\$186,030
Transformer Feeders (incl. in MV/LV Board)	4	ea	\$0
Auxiliary Transformer	1	ea	\$23,790
Control Voltage Supply (UPS System)	1	ea	\$34,970
Black Start Generator 500kWe/400-230V	1	ea	\$86,294
Standard Set of Spares for Engines	1	set	\$15,795

Value Added Tax

[Subsidiary]

SCHEDULE—continued

<i>Description</i>	<i>Qty</i>	<i>Unit</i>	<i>Ex-works</i>
Special Tools Set for Normal Maintenance	1	set	\$30,875
Set of HFO, LFO, Waste, LO and DO Tanks	1	lot	\$101,739
Fire-fighting System, Complete	1	ea	\$175,500
HFO Separator	1	ea	\$215,254
Fuel Oil Supply Unit	1	ea	\$94,510
Aux. Transformer and Equipment to integrate	1	lot	\$53,950
1000l Air Receiver	1	ea	\$9,620
Diesel-driven Aircompressor	1	ea	\$12,480
Telescoping Shiploaders	2	ea	\$1,103,993
Belt Conveyors, complete	12	ea	\$1,995,712
Chain and Bucket Elevators	3	ea	\$498,928
Weigh-belt Feeders	4	ea	\$665,237
Electrical and Instrumentation	1	lot	\$15,713,624
Field Piping	1	lot	\$11,511,088
Linings	2000	m2	\$921,229
Mobile Equipment	1	lot	\$1,573,429
Platwork	570	t	\$6,222,647
Structural Steel (Heavy)	310	t	\$1,256,101
Structural Steel (Medium)	2410	t	\$4,444,223
Structural Steel (Light)	1	lot	\$3,662,458
Rebar	2300	t	\$3,438,500
Sand Drill with its components	1	ea	\$300,000

**VALUE ADDED TAX (REMISSION) (LOW INCOME HOUSING PROJECTS)
ORDER, 2008**

[L.N. 115/2008, L.N. 43/2009.]

1. This Order may be cited as the Value Added Tax (Remission) (Low Income Housing Projects) Order, 2008.

2. In this Order, unless the context otherwise requires—

“**applicant**” means a person making an application under paragraph 3 of this Order;

“**low income earner**” means a person whose monthly gross earning amounts to thirty five thousand shillings or less;

“**low income house**” means a house put up at a construction cost of not more than one million six hundred thousand shillings and of plinth area of not less than thirty square meters;

“**low income housing project**” means a project of not less than twenty housing units intended for low income earners;

“**Minister**” means the Minister for the time being responsible for Finance.

3. (1) An application for tax remission under section 23(3)(1) of the Act shall be made in writing to the Minister through the Minister for the time being responsible for Housing.

(2) An application under this paragraph shall—

- (a) be submitted together with the detailed certified list of goods and services to be rendered in respect of which the application is made;
- (b) include the following—
 - (i) the location of the project;
 - (ii) evidence of construction cost;
 - (iii) approved designs of the project;
 - (iv) the number of units to be constructed;
 - (v) the approval of the development by relevant authorities;
 - (vi) the Personal Identification Number (PIN) of the applicant; and
 - (vii) tax compliance certificate.

4. The Commissioner may require an applicant to—

- (a) furnish such further information as the Commissioner may consider necessary; and
- (b) allow and facilitate the inspection of the goods or services rendered to which the application relates by a person authorized by the Commissioner.

5. (1) Except as provided in sub-paragraph (2) below, only one application shall be made with respect to a given project.

(2) A second application in respect of the same project may be made if the applicant demonstrates that the additional application relates to a separate phase of the project or an expansion thereof.

6. A person granted tax remission under this Order shall—

- (a) construct low income houses;

Value Added Tax

[Subsidiary]

- (b) allow and facilitate the Minister for the time being responsible for Housing or the Commissioner to inspect the projects, including the goods and services rendered;
- (c) avail the records of such goods and services rendered for purposes of inspection and audit to the Minister for the time being responsible for Housing or the Commissioner;
- (d) sell, rent or lease the houses to low income earners;
- (e) sell the housing units at a price which is not more than thirty per cent above the construction cost;
- (f) ensure the rent charged for the houses constructed under the scheme reflect the reduced cost of construction as a result of tax remission.

[L.N. 43/2009, o. 2.]

7. Where the Commissioner and the Minister for the time being responsible for Housing is satisfied that an applicant granted tax remission under this Order has failed to comply with the provisions of paragraph 6 above, the Commissioner shall require the applicant to refund the tax remitted.

8. An applicant shall, if he sells, leases, rents or converts a house for uses other than as provided under paragraph 6(d), before the expiry of five years from the date the construction was completed, be required to refund the tax remitted or such portion thereof as the Minister may determine relating to the construction of the part so converted.
