

Commentary on
Somaliland Revenue Act (Act No. 72/2016)

Taking into account the Revenue Act Regulations 2017

Published April 2018

Table of Contents

Chapter 1: General provisions	7
Part 1: Applications and interpretation	7
Section 1: Application of the Act	7
Section 2: Interpretation	7
Section 3: New section inserted in the Somali language version	7
Section 4: Legal basis for taxation	7
Section 5: Persons regulated by the Act	8
Section 6: Exempt persons	8
Part 2: Collection and Recovery of Tax	8
Section 7: Due date for payment of tax	8
Section 8: Tax as a Debt due to Government of Somaliland	9
Section 9: Tax Clearance Certificate	9
Section 10: Recovery of Tax from Person owing Money to the Taxpayer	9
Section 11: Collection of Tax by Distraint	11
Section 12: Recovery from Agent of Non-resident	12
Section 13: Receivers	13
Section 14: Security on Property for Unpaid Tax	14
Section 15: Writing-off tax	14
Part 3: Offences and Penalties	15
Section 16: Late Payment Fees on Unpaid Tax	15
Section 17: Failure to Furnish a Return	16
Section 18: Failure to comply with Recovery Provision	16
Section 19: Failure to maintain Proper Records	16
Section 20: Improper use of Tax Identification Number	17
Section 21: Making False or Misleading Statements	17
Section 22: Obstructing an Officer of the Authority	17
Section 23: Aiding and Abetting	17
Section 24: Offences by and Relating to Officers and Persons employed to carry out this Act and Penalties	17
Section 25: Offences by Companies	18
Section 26: Officer may appear on behalf of Director	18
Section 27: Compounding Offences	18
Section 28: Place of Trial	19
Section 29: Tax charged notwithstanding Prosecution	19
Part 4: Penal tax	19
Section 30: Penal Tax for Failure to Furnish a Return	19
Section 31: Penal Tax in relation to Records	19
Section 32: Penal tax in relation to False or Misleading Statements	19
Section 33: Penal tax for understating Provisional Tax Estimates	19
Section 34: Recovery of Penal Tax	20
Part 5: Administration	21
Section 35: Tax Identification Number	21
Section 36: Delegation	21
Section 37: Confidentiality of Tax Return Information	21
Section 38: Accounts and Records	22
Section 39: Access to Books, Records and Computers	22
Section 40: Notice to obtain Information or Evidence	23
Section 41: Books and records not in Somali language	23
Part 6: Forms, Notices and Rules	23
Section 42: Forms, Notices and Authentication of Documents	23
Section 43: Service of Notices and other Documents	24
Section 44: Practice Notes	24
Section 45: Private Rulings	24
Part 7: Remission of Tax and Avoidance	25

Section 46: Remission of Tax	25
Section 47: Transactions between Associates	25
Section 48: Recharacterisation of Income and Deductions	25
Part 8: Miscellaneous	25
Section 49: Amounts stated in Somaliland Shillings	26
Section 50: Consolidated Fund	26
Section 51: Regulations	26
Section 52: Amendment of Monetary Amounts and Schedules.....	26
Section 53: Transitional	26
Section 54: Repealed Legislation	27
Chapter 2: Income Taxes	27
Part 1: Imposition of Taxes and rates	27
Section 55: Income Tax imposed	27
Section 56: Rental Tax imposed.....	28
Section 57: Rates of Tax for individuals	29
Section 58: Rate of Income Tax for Companies	29
Section 59: Rate of Income Tax for Trustees and Retirement Funds	29
Part 2: Residents and Non-residents	29
Section 60: Resident Individual.....	29
Section 61: Resident Company	30
Section 62: Resident Trust	31
Section 63: Resident Partnership.....	31
Section 64: Resident Retirement Fund	31
Section 65: Non-Resident Person	31
Part 3: Chargeable Income	31
Section 66: Chargeable Income	32
Section 67: Chargeable income arising from insurance business.....	32
Section 68: Gross Income	32
Section 69: Business Income.....	32
Section 70: Employment Income	33
Section 71: Property Income	34
Part 4: Exempt Income and Deductions	34
Section 72: Exempt Income	34
Section 73: Expenses of deriving income.....	35
Section 74: Meals, refreshment and Entertainment Expenditure.....	35
Section 75: Bad debts	35
Section 76: Expenses related to debt obligations.....	35
Section 77: Repairs and minor capital expenditure.....	35
Section 78: Depreciable assets	36
Section 79: Initial Allowance.....	36
Section 80: Industrial Buildings.....	36
Section 81: Start-up costs	36
Section 82: Costs of intangible assets.....	36
Section 83: Scientific Research expenditure.....	36
Section 84: Training expenditure.....	37
Section 85: Charitable donations.....	37
Section 86: Farming	37
Section 87: Mineral Exploration Expenditures	37
Section 88: Apportionment	37
Section 89: Carry Forward Losses	37
Part 5: Tax Accounting Principles	37
Section 90: Substituted year of income.....	38
Section 91: Method of Accounting	38
Section 92: Cash-Basis Taxpayer.....	38
Section 93: Accruals-basis Taxpayer	38
Section 94: Pre-payments.....	39
Section 95: Claim of Right.....	39

Section 96: Long-Term Contracts.....	39
Section 97: Trading Stock.....	39
Section 98: Foreign Currency Debt Gains and Losses.....	40
Part 6: Gains and Losses on Disposal of Assets	40
Section 99: Application of Part 6	41
Section 100: Carry Forward Losses	41
Section 101: Disposals	41
Section 102: Cost Base.....	41
Section 103: Special rules for Consideration received.....	42
Section 104: Non-recognition of Gain or Loss	42
Part 7: Miscellaneous rules for Determining Chargeable Income.....	43
Section 105: Income of Joint Owners	43
Section 106: Valuation	43
Section 107: Currency Conversion	43
Section 108: Indirect Payments and Benefits	43
Section 109: Financial Leases.....	43
Section 110: Exclusion of Doctrine of Mutuality.....	44
Section 111: Compensation receipts	44
Section 112: Recouped Expenditure.....	44
Part 8: Persons Assessable	44
Section 113: Taxation of Individuals	44
Section 114: Principles for the taxation of Partnerships	45
Section 115: Calculation of Partnership Income or Loss.....	45
Section 116: Taxation of Partners.....	45
Section 117: Formation, Reconstitution, or Dissolution of a Partnership	46
Section 118: Cost Base of Partner’s Interest	47
Section 119: Principles of Taxation of Trusts.....	47
Section 120: Principles of Taxation of Trustees and beneficiaries.....	48
Section 121: Taxation of Estates of Deceased Persons	48
Section 122: Principles of Taxation for Companies	49
Section 123: Change in control of companies	49
Section 124: Roll-Over relief	49
Part 9: International Taxation.....	50
Section 125: Source of Income	50
Section 126: Foreign Employment Income.....	52
Section 127: Foreign Tax Credit	52
Section 128: Taxation of Branch Profits.....	53
Section 129: Tax on International Payments	53
Section 130: Tax on payments to Non-resident Public Entertainers or Sports Persons	54
Section 131: Tax on Payments to Non-Resident Contractors or Professionals	54
Section 132: Taxation of Non-Residents providing Shipping, Air Transport or Telecommunications Services	54
Section 133: General Provisions relating to Taxes imposed	55
Section 134: International Agreements	55
Part 10: Procedure relating to Income Tax.....	55
Section 135: Filing of Returns	56
Section 136: Business Information Returns.....	58
Section 137: Assessments.....	59
Section 138: Objections and Appeals	61
Section 139: Payment of Provisional Tax.....	63
Section 140: Estimated Tax Payable	64
Section 141: Refunds	65
Section 142: Rental Tax Return.....	65
Part 11: Withholding Tax at Source	66
Section 143: Withholding Tax on Employment Income.....	66
Section 144: Withholding Tax on Dividends for Resident Shareholders	66
Section 145: Withholding Tax on Supply of Goods and Services	67

Section 146: Withholding Tax on International Payments	67
Section 147: Withholding Tax as a Final Tax	68
Section 148: Payment of Withholding Tax.....	68
Section 149: Failure to Pay Withheld Tax	68
Section 150: Record of Payments and Tax Withheld.....	68
Section 151: Treatment and Priority of Tax Withheld	69
Chapter 3: Goods and Services Tax	70
Part 1: Goods Tax.....	70
Section 152: Goods Tax Imposed.....	70
Section 153: Definition of Taxable Supply	71
Section 154: Taxable Import	72
Section 155: Time of Supply of Goods	72
Section 156: Taxable Amount	73
Section 157: Post-Sale Adjustments	74
Section 158: Registration of Manufacturer	75
Section 159: Goods Tax Invoices and Notices.....	77
Section 160: Goods Tax Return.....	78
Section 161: Seizure and Forfeiture of Goods	78
Section 162: Coordination of Customs and Domestic Tax Administration.....	79
Part 2: Services Tax.....	79
Section 163: Definition of Services Provider.....	79
Section 164: Services Tax Imposed	79
Section 165: Taxable services	79
Section 166: Place of Supply	80
Section 167: Time of Supply	80
Section 168: Taxable Amount	80
Section 169: Registration of Services Provider	81
Section 170: Port Service Tax.....	82
Section 171: Services Tax Invoices.....	82
Section 172: Services Tax returns	82
Part 3: General Provisions	82
Section 173: Tax Collected Held in Trust	83
Section 174: Recovery of Tax from Recipient of a Supply	83
Section 175: Offences and Penalties	83
Section 176: Procedure for Taxpayer Protest and Appeal.....	83
Section 177: Determination of Fair Market Value	83
Section 178: Tax Period	84
Section 179: Definitions.....	84
Chapter 4: Excise Taxes	84
Section 180: Earths and Stone and Asbestos Products.....	84
Section 181: Tobacco and Tobacco Products	84
Section 182: Cosmetic Aids and Non Alcoholic Beverages	84
Section 183: Luxury Goods	85
Section 184: Telecommunications.....	85
Section 185: Payment of Excise Tax.....	85
Section 186: Amount Payable.....	85
Section 187: Excise Returns	86
Section 188: Amounts Collected in Trust.....	86
Section 189: Seizure of Goods and Protest of Seizure.....	87
First Schedule: Currency Point	87
Second Schedule: Listed Institutions.....	87
Fourth Schedule: Chargeable Income Arising from Short-Term insurance Business	87
Fifth Schedule: Depreciation rates and Vehicle Depreciation ceiling.....	88
Sixth Schedule: Valuation of Benefits.....	88
Seventh Schedule: Taxes to be administered by Somaliland Revenue Authority	88
Eighth Schedule: Meetings of the Board	88

Introduction

This Commentary acts as a guide to explain the major provisions of the Somaliland Revenue Act, Act No. 72 of 2016. The Commentary covers Chapters 1 to 4 of the Act, dealing with General Provisions (Chapter 1), Income Taxes (Chapter 2), Goods Tax and Services Tax (Chapter 3), and Excise Taxes (Chapter 4). (Chapters 5 and 6 are more administrative and self-explanatory - they relate to the proposed establishment of a Somaliland Revenue Authority and Tax Appeals Tribunals respectively).

The Commentary explains the provisions, in clear language, so that the Act may be understood by those administering the law and by taxpayers who are required to comply with the law.

The Commentary is not a definitive interpretation of the law. It is a guide as to how it should be applied, in light of the express wording of each provision, taking into account prevailing practice and concepts in relation to tax law and administration elsewhere in the region and worldwide.

The Commentary does not prevent any person from exercising their rights to dispute any assessment in accordance with the Act. It is not binding in law.

Where relevant, examples are given of how the provisions are expected to be applied. These examples are not exhaustive.

The Commentary refers to the Act and also the Regulations. These must be read together, for the purpose of applying the Act.

Structure, references and terms

The Act is divided in Chapters, Parts and Sections. The reference to a section is a reference to a section of the Act. Sometimes "section" is shortened to "s." ["sections" is shortened to "ss."]. Sections are numbered sequentially ["1., 2." etc.]. Some sections are subdivided into subsections. These are also numbered sequentially ["(1), (2)" etc.]. When reading a section, it is necessary to take account of all of the subsections to ensure a correct meaning of the provision.

In this Commentary, a reference to –

“SLRA” means the Somaliland Revenue Authority

“Director” means Director-General of the SLRA

“GoSL” means Government of the Republic of Somaliland

“Regulations” means regulations made (or to be made) by the Minister in accordance with the Act

Chapter 1: General provisions

Chapter 1 sets out general provisions. These have application to the administration and management of all the taxes that are imposed by the Act. It contains 54 sections and is divided into 8 Parts that deal with the following matters –

- Part 1 - Applications and Interpretation (ss.1-6)
- Part 2 - Collection and Recovery of Tax (ss.7-15)
- Part 3 - Offences and Penalties (ss.16-29)
- Part 4 - Penal Tax (ss.30-34)
- Part 5 - Administration (ss.35-41)
- Part 6 - Forms, Notices and Rules (ss.42-45)
- Part 7 - Remission of Tax and Avoidance (ss.46-48)
- Part 8 - Miscellaneous (ss.49-54)

Part 1: Applications and Interpretation

Part 1 of Chapter 1 sets out some general provisions relating to the application of the Act and its interpretation.

Section 1: Application of the Act

Section 1 provides that the name of the Act is the Revenue Act 2016, Law No. 72/2016, and that it governs taxation in the Republic of Somaliland. Section 249 provides that the Act came into force when the President signed it and it was published in the Official Gazette. It was published in the Gazette on 6 August 2016.

Section 2: Interpretation

Section 2 lists in alphabetical order 79 key words and phrases that are defined specifically for their use in this Act. Wherever a term is used in a provision of the Act, its meaning is the meaning given in section 2, unless there is an express alternative meaning given in that provision. If a provision contains a variation of a term (such as a plural or a derivative), then the variation takes a similar meaning according to the circumstances.

Section 3: Purposes of the Act

Section 3 specifies the purposes of the Act as:

- (1) To specify that the Somaliland Revenue Authority is an independent institution.
- (2) To strengthen the ability of Inland Revenue to collect.
- (3) To be implemented equally for all taxpayers.
- (4) To disclose the Inland Revenue Act to all citizens.
- (5) To specify that all citizens have a right to know of revenue information.
- (6) To increase Government revenue.
- (7) To simplify revenue collection processes.

Section 4: Legal basis for taxation

This section provides that every person is obliged to pay tax for which they are liable, and that no person may be required to pay tax that is not provided for in the Act. This provision

provides a defence against any attempts to alter the scope of taxation, as approved by the Parliament in the Act.

Section 5: Persons regulated by the Act

Section 5 sets out a list of persons who are subject to the Act, namely taxpayers (natural and legal persons); tax agents; tax offices, their agencies and employees, including the Somaliland Revenue Authority; customs offices, their agencies and employees; Ministry of Finance; other agencies of officials responsible for tax collection; the Tax Appeal Tribunal members; and, any other person whose right or authority is determined by the Act.

Section 6: Exempt persons

This section defines which entities are exempt persons, and by reason of that status, are exempt from tax. There are three categories of exempt persons. Subsection (1) provides for, first, the GoSL and Government agencies to be exempt; and, second, charitable and not-for-profit organisations that are approved by and registered with the SLRA. Exempt organisations are defined in section 2, as being –

- one of the listed organisations;
- that has been issued with a written ruling from the Director stating that it is an exempt organisation; and
- does not, through income or assets, confer, or may confer, a private benefit on any person.

The listed organisations are –

- amateur sporting associations – see s.2;
- religious, charitable or educational institutions of a public character; and
- trade unions, employees' associations or association of employers registered under Somaliland law; associations established for the purpose of promoting farming, mining, tourism, manufacturing, or commerce and industry in Somaliland.

Subsection (2) additionally specifies that foreign governments, foreign diplomatic representatives, foreign consular officials, international organisations and officials of international organisations are exempt from tax to the extent provided under any international agreement that provides for an exemption. In addition, these entities and officials enjoy exemptions under the Revenue Act.

Part 2: Collection and Recovery of Tax

Part 2 sets out provisions that have general application for the collection and recovery of tax.

Section 7: Due date for payment of tax

Section 7 sets out the rules for determining when tax is payable. The rules are subject to express provisions in the Act. The liability for payment of tax flows from the process of assessment, and its notification, which in turn flows from the furnishing of a return. These obligations are set out in Chapter 2, Part 10 (Procedure relating to Income Tax).

The standard rule is that for taxpayers subject to s.137, the due date for payment is the date on which the return must be furnished. In all other cases, it is 30 days from the date of service of a notice of assessment.

Where a taxpayer lodges a notice of objection to an assessment, the amount of at payable is the greater of: 30% of the total assessed tax and 100% of the assessed tax not in dispute.

However, under subsection (3), in the case of objections, the Director has a discretionary power to waive all or some of the assessed tax if the objection has reasonably been made to the assessment. Generally, it is not good practice to exercise this discretionary power as, first, it requires the Director to prejudge the objection and, second, it will encourage taxpayers to object, thus causing unnecessary objections and deferring payment of tax for a considerable period of time (until the objection and appeal process is resolved).

Under subsection (4), if a taxpayer applies to the Director, by showing good cause, the Director may determine to allow the tax to be paid in instalments. The Regulations set out the criteria that constitute “good cause” and detail the process to be followed, and the information to be provided. Under subsection (5), if a taxpayer fails to adhere to an instalment agreement made with the Director, the whole of the balance outstanding becomes due.

However, any agreement to pay by instalments does not avoid any potential liability for Late Payment Fees that are imposed under Section 16: Late Payment Fees on Unpaid Tax.

Section 8: Tax as a Debt due to Government of Somaliland

Section 8 establishes the legal status of tax once it becomes due and payable as a debt due to the GoSL. It is payable in the manner and at the place prescribed. This is prescribed in the regulations.

If tax is not paid by the due and payable date, it may be recovered as a civil debt through the Somaliland court system. The Director will raise the court action in his/her official capacity, but be subject to general directions of the Solicitor-General, the government’s principal legal advisor.

To avoid the need for oral evidence, a certificate of the taxpayer’s name, address and tax debt due and payable is sufficient evidence for the civil action.

Section 9: Tax Clearance Certificate

Section 9 prohibits certain transactions being undertaken by taxpayers, or to be treated differently, if they are not in possession of a tax clearance certificate. These transactions are:

- The departure from Somaliland by non-resident taxpayers, to be enforced by the Department of immigration
- Government agencies and non-state actors may not claim tax clearance certificates
- No notary may provide property transfer of ownership documents
- New or renewed business licenses may not be issued
- No bidding for contracts or tenders.

Section 10: Recovery of Tax from Person owing Money to the Taxpayer

Section 10 authorises the Director to recover money from some specified persons in respect to a person who owes income tax but has not paid it by the due date. The tax must be from an assessment that has been agreed to by the taxpayer i.e. where there is no objection or protest against the assessment.

The Director will accordingly by a notice in writing oblige any of the following persons to pay to him/her the tax due on the date so specified:

- (a) A person owing or who may (in future) owe money to the taxpayer;
- (b) A person holding or who may subsequently hold money for, or on account of, the taxpayer;
- (c) A person holding or who may subsequently hold money on account of some other person for payment to the taxpayer; or
- (d) A person having authority from some other person to pay money to the taxpayer.

There are three important aspects mentioned in the Act on this recovery arrangement:

- (a) section 10(2) states that the due date to be specified in the notice under section 10(1) for paying over the money to the Director must be a date after the money that the becomes due to the taxpayer, or is held on behalf of the taxpayer.
- (b) section 10(3) obliges the Director to give a copy of notice obliging the person to remit to the money to the concerned taxpayer.
- (c) section 10(8) affirms that any amount due under section 10 will be treated for all purposes of this Act as if it were tax due.

Section 10(4) concedes that the only acceptable reason for non-compliance will be non-availability of money to pay over to the Director. Where a person required by the Director to remit the money for settlement of tax for a specified taxpayer is unable to comply with the notice due to lack of funds (due to, payable to or owed to the taxpayer), the person shall as soon as is practicable but in any case not later than the specified due date inform the Director of his/her inability to comply with the notice. The notification to the Director should be in writing and the person should clearly state the reasons that account for his/her inability to pay the money as required by the Director. The second important matter that can be deduced from section 10(4) is that if the person waits for the expiry of the due date, then he/she can no longer plead non-availability of funds and would have no option but to comply with the Director's notice.

The person's notice to the Director is treated as a notice of objection. The Director's decision to require the person to remit the money to him/her under section 10(4) is accordingly deemed an assessment under the Act. Section 10(5) provides that the Director's [objection] decision on the person's notice of objection against the assessment issued in section 10(4) which will be relayed through a written notice to the concerned person. The available options to the Director as responses to the person's notice are principally three:

- (a) to fully accept the notification by the person and cancel or withdraw the notice requiring the person requiring the person to remit the money to the Director.
- (b) to amend the notice issued by varying the amount of the money the person should remit to the SLRA. This may, for example, be based on the realisation that the person has considerably less funds than what the Director had presumed that he/she holds.
- (c) to reject the notification in its entirety and oblige the person to comply with the notice as originally issued.

If a person dissatisfied with the Director's decision under section 10(5), then he/she may only challenge it [the decision] under the objection and appeal procedure in the Act (see section 10(6)).

The Act protects the person making the payment under section 10(1) under section 10(7). Such person is considered to have been acting under the authority of the taxpayer and/or of all other persons concerned. The person is accordingly indemnified in respect of the

payment against all proceedings, civil or criminal, and all processes, judicial or extra-judicial, notwithstanding any provisions to the contrary in any written law, contract, or agreement.

Section 11: Collection of Tax by Distraint

Section 11 provides for recovery of unpaid tax through distress on movable property (more often referred to as goods and chattels) of a defaulting taxpayer, who is called a “person liable” in the Act.

There is a realisation in the Act that distress proceedings is an invasive process and would accordingly require elaborate rules that will be promulgated through a statutory instrument. Section 11(8) obliges the Minister of Finance to do this within three months from the date of coming into effect of the Act.

The procedure for instituting distress proceedings is however detailed in the Act as follows:

- (a) The Director would, under section 11(1), issue an order in writing against the person liable whom the distress proceedings are to be effected against. The order would indicate the location of the property and the relevant tax liability. In order to assure that the proceedings are managed well, the Act makes two important provisions:
 - (i) That the Director’s written order may include a requirement that a police officer is present during the distress proceedings. This is necessary to assure security and integrity of the proceedings.
 - (ii) Section 11(2) authorises the Director to enter any house or premises specified in the written order authorising distress proceedings. This provision is meant to ensure that the Director’s efforts to distraint on goods are not constrained by the fact that the premises are not open during the official working time.
- (b) After instituting the distress proceedings, the person liable is given some reasonable time depending on the nature of the goods to settle the due tax liability before the property may be sold. Section 11(3) accordingly authorises the Director to keep the property for 10 days either at the place where the property was found or any other place he/she may find appropriate. The taxpayer meets the cost of storing the distressed goods. In case of perishable goods, the Director has discretionary powers depending on the nature and condition of the goods to determine the appropriate time of retaining the goods.
- (c) After the expiry of the time as decided by the Director in section 11(3) and the taxpayer has not settled the tax liability, he/she (Director) will order for the goods to be sold by public auction or through such other manner as may be found appropriate by the Director.

The most appropriate, time-proven and transparent manner of disposal of the distrained goods is by public auction. In case of perishable or goods for which public auction is not appropriate, goods may be sold by private treaty or such other accepted method. It is important that whatever method chosen, it meets the international standards of disposal of public goods.

- (d) The proceeds that are realised from the disposal of the distrained goods are to be utilised in the following order:
 - (i) Firstly, towards the cost of taking, keeping and selling of the goods. The money would be paid to the auctioneer and/or seller of the goods for

his/her commission/fees and other incidental expenses, for the cost of conveyance of the goods to the point of sale, and for the security and storage of the goods.

Section 11(7) affirms that recovery of all the costs of the distress proceedings will be made from the taxpayer as if they were part of the due tax liability. This is made under the spirit that a taxpayer should voluntarily comply with established tax collection procedures. When this is not done, this artificially inflates the cost of collection and the responsible taxpayer should meet this added cost of collection.

- (ii) Secondly, towards settlement of the tax liability.
- (iii) Thirdly, if there is some money still unused, this would be given back to the taxpayer. If however, the proceeds do not clear the tax liability, the Director is empowered under section 11(6) to recover the due tax under section 8.

Section 12: Recovery from Agent of Non-resident

Residence for tax purposes (residents and non-residents) is defined in sections 60 to 65. Though the concept of residence for tax purposes is not equivalent to presence in Somaliland, more often non-resident persons operate in other jurisdictions that are their area of primary occupancy and may not be easily accessible in Somaliland. Non-residents therefore have another area where they would have priority in settling their tax liability. This explains why it was found appropriate to provide for recovery of tax due from non-residents in Somaliland.

Section 12 provides for the recovery of the tax from non-residents, and provides in section 12(6) that all amounts recovered under this section are treated as if they were tax due under the Act.

The following are the circumstances are under which tax may be recovered from non-resident persons:

- (a) Any person who is in possession of an asset (this includes money) belonging to a non-resident taxpayer may be required by the Director through a written notice to pay the outstanding tax to the Director. The person's obligation can only be stretched up to market value of the asset and he/she cannot be obliged to pay an amount in excess of the determined tax liability.
- (b) In case of a non-resident who has a tax liability determined out of his/her share of gross income under section 116, section 12(3) allows the Director to recover such tax from either the assets of the partnership or from the resident partner personally.

This provision is meant to pre-empt loss of tax revenue from a partnership where the resident partner may, for example, feign inability to reach a non-resident partner who may have received his/her share of the partnership income.

- (c) An arrangement similar to the one for a non-resident partner is put in place by section 12(4) in respect of the tax arising from amounts received from a trust and included in the gross income of a non-resident beneficiary under section 120 or 121. This amount received is assessed in the name of a trustee and the Director may recover the due tax from either the trust or from the trustee personally.

The provision to recover from the partner or trustee 'personally', implies that for all intents this person is treated as the taxpayer. He/she cannot for example submit that he/she did not enjoy the income or any other reason as the basis to be excused from paying the tax.

It is noteworthy that in the three cases above, the persons in possession of assets or moneys belonging to another party are compelled by the Act to remit such money to the Director without recourse to the owner of the asset/money. Section 12(5) protects these persons against any action in respect to their compliance with the Act. The Act accordingly provides that a person making a payment under section 12(1), (3) and (4) is considered to have received appropriate and competent authorisation from the concerned non-resident taxpayers/persons to remit the due tax to the Director. The implication is that no action can be sustained in any court of law or other forum against such person in respect of the payment, whether the action taken is civil or criminal, judicial or extrajudicial. This position of the Act cannot be affected by any provisions to the contrary in any written law, contract, or agreement.

Under section 12(2), the Act places the obligation to pay tax on the person operating an aircraft or ship of a non-resident person who is the captain of the vessel. The provision is accordingly that the captain of any aircraft or ship owned or chartered by a non-resident person is deemed to be in possession of the aircraft or ship for the purposes of this section.

Section 13: Receivers

The term 'receiver' as used in law refers to a person who is responsible for managing the winding up of a company or who takes possession of a bankrupt company. Section 13(6) widens the meaning of the term 'receiver' to include the following:

- (a) a liquidator of a company;
- (b) a receiver appointed out of court or by any court;
- (c) a trustee for a bankrupt;
- (d) a mortgagee in possession;
- (e) an executor of a deceased's estate; or
- (f) any other person conducting the business of a person legally incapacitated.

This is a category of persons who deserve to be guided on how they would manage tax liability that accrues to the company or estate that they are detailed to administer. The Act makes the following framework:

- (a) When a person is appointed as a receiver or takes possession of an asset in Somaliland (whichever comes first), such person is obliged to formally inform the Director through a written notice within fourteen days from the date of appointment or taking possession of the asset (section 13(1)).
- (b) The Act then provides in section 13(2) that the Director would then in writing advise the receiver of the tax liability that is due or the estimated tax liability that will be owed by the person whose estate/asset he/she is in possession of. This would form the basis of determining the amount of money to be set aside by the receiver as provision sufficient to meet the due tax liability.
- (c) Nevertheless the Act in section 13(3) still protects any probable tax loss by restraining the receiver to sell or part with any asset held in Somaliland in his/her capacity as receiver without the prior written permission of the Director.

- (d) Section 13(4) then defines the obligations of the receiver to be as follows:
- (i) To set aside funds, out of sale proceeds of the asset, to meet the tax liability as advised by the Director. The Act seems to insinuate that in event of the Director estimating the due liability, he/she can only subsequently vary it by reducing it. The Act accordingly provides that that the receiver will set aside the amount originally advised by the Director or any other lesser amount subsequently agreed on by the Director;
 - (ii) He/she is liable to the extent of the amount set aside for the tax of the person who owned the asset. This implies he/she takes personal responsibility to ensure security and ultimate remission of the tax to the Director. This position is affirmed by section 13(5) which asserts that the receiver is personally liable to the extent of any amount required to be set aside under section 13(4) for the tax as defined by the Director in section 13(2) if, and to the extent that, the receiver fails to comply with the requirements of this section.
 - (iii) The Act, however, recognises that the receiver has obligations beyond payment of tax liability. It accordingly provides that the receiver may accordingly pay any debt that has priority over the tax referred to in section 13, notwithstanding any provision of under the said section.

Section 14: Security on Property for Unpaid Tax

This provision in section 14 is meant to place a caveat on real assets of a person who has failed to settle some outstanding tax liability and there is justifiable fear that he/she may liquidate his/her assets. This gives the Director a point of recourse if all other avenues of tax recovery have failed.

Section 14(1) therefore provides that in case of any person who is the owner of land or buildings situated in Somaliland and who fails to pay tax when due, then the Director may, by notice in writing, notify the concerned person of his/her intention to attach the land or buildings as security for tax as specified in the notice.

The notice gives the taxpayer some time within which to settle the due tax. If a period of 30 days from the date of service of the notice referred to in section 14(1) elapses without settlement of the due tax, then section 14(2) authorises the Director to register a lien or charge on such land or building. The lien or charge is meant to secure the amount of unpaid tax. This implies that the owner of the land or building does not have the right to transfer or dispose of the land or building until the unpaid tax is settled. The Director registers the lien or charge on the property without a fee. The lien or charge does not however precede any other mortgage or charge that is found registered over the property.

When the taxpayer pays all the due tax, section 14(3) obliges the Director to cancel the lien or the charge. This is done without payment of any fee to the concerned authority.

Section 15: Writing-off tax

Section 15(1) gives the Director the power to write off bad debts owed by taxpayers for taxes, penalties, and late payment fees in the following circumstances:

- (a) Where the expiration of the statute of limitations for collection of tax has been effected;
- (b) Where there is cessation of the tax obligation on grounds established by the Act or other Acts of tax legislation.

Section 15(2) allows the Director to write-off bad tax debts in any other case if there are specific procedures established by regulations.

Part 3: Offences and Penalties

Part 3 (sections 16 to 29) sets out provisions that impose penalties, penal tax and fees in relation to failure to comply with the Act, and also criminal offences for more serious cases of non-compliance. Penalties, penal tax and fees are imposed administratively by the Director. Fines and imprisonment are sentences of a court imposed following conviction for an offence.

Section 16: Late Payment Fees on Unpaid Tax

The late payment fees on unpaid tax arises when a taxpayer fails to pay tax by the scheduled due date as defined in the Act. The late payment fees on unpaid tax is deemed to be tax and section 16(5) states that the provisions of the Act relating to the collection and recovery of tax apply to the late payment fees charged under section 16 as if the fees were tax due.

Section 16(1) provides that if a taxpayer fails to pay unpaid tax on or before the scheduled due date, he/she would be liable to pay late payment fees on unpaid tax equal to two per cent per month on the amount unpaid tax calculated from the date on which the payment was due until the date on which tax payment is made.

The late payment fees on unpaid tax would accordingly arise when the taxpayer fails to pay the following tax on time:

- (a) any tax, including provisional tax;
- (b) any penal tax; or
- (c) any tax withheld or required to be withheld by the person from a payment to another person and payable to the Director, on or before the due date for payment.

Section 148 obliges the withholding agent to remit the tax within 15 days after the end of the month in which the amount was withheld. Whereas Part 11 of Chapter 2 allows the withholding agent to recover the principal tax due from the payee, section 16(4) bars the withholding agent to recover the late payment fees on unpaid withholding tax from the payee. This arises out of the withholding agent's failure to comply with section 148. The rationale is that the payee has no control whatsoever on determining when the withholding agent would remit the tax withheld to the Director.

The determination of whether a taxpayer is liable to pay late payment fees on unpaid tax is actually a matter of fact. If it is however found by the Director that late payment fees were paid by a person which were not correctly imposed and therefore not due, then section 16(2) provides that such late payment fees may be refunded to the taxpayer.

In event that the late payment fees were correctly imposed but the taxpayer can give justifiable reason or a good cause why he/she found himself/herself in this situation, then he/she would naturally submit a request for remission of the tax. The powers to remit tax lie with the Minister of Finance and would only be done on the advice of the Director. The taxpayer would accordingly submit a formal and written application under section 16(3) to the Minister through the Director indicating the reasons or the good cause why he/she did not pay the tax on or by the scheduled due date. If convinced by the taxpayer's submission,

the Director would advise or recommend to the Minister to remit the entire late payment fees or part thereof.

Section 17: Failure to Furnish a Return

Provision of a return of income is the bedrock on which tax administration lies and the Act underscores this position. It is actually an essential ingredient of voluntary tax compliance. Section 17(1) accordingly provides that a person who fails to furnish a return or any other document required, under the Act by the Director, within 15 days, commits an offence and is liable on conviction to a fine not exceeding fifteen currency points.

If a person convicted of an offence under section 17(1) fails to furnish the return or document to which the offence relates within the period specified by the Court, then section 17(2) provides that the person commits an offence and is liable on conviction to a fine not exceeding 20 currency points.

Section 30 also provides for payment of penal tax if a person does not file a return as required by the Director. The section states that a person who fails to furnish a return within the time required under the Act is liable to pay penal tax equal to 2% of the tax payable for that year or one currency point per month, whichever is the greater, for the period the return is outstanding.

Section 18: Failure to comply with Recovery Provision

Section 18(1) identifies the following infringements as offences for which a liable person on conviction would be obliged to pay a fine not exceeding 25 currency points, and these are:

- (a) Failure to comply with the notice, to pay to the Director any money that a person owes or holds or has authority to pay on to a taxpayer who owes some tax to SLRA, in section 10.
- (b) Failure to comply with requirements placed on the receiver under section 13.

Section 18(2) provides that in addition to imposing the penalty for the offence under section 18(1)(a), the court shall order the convicted person to pay the amount that he/she was obliged to remit to the Director as a settlement of the tax.

If a person has written to the Director under section 10(4) informing him/her that that he/she has no money to remit to the Director and when he/she has not received a formal response from the Director under section 10(5) he/she is treated as in compliance with the notice under section 10(1).

Section 19: Failure to maintain Proper Records

The Act attaches great value to maintenance of proper records and accordingly provides in section 19 that a person who fails to maintain proper records commits an offence and is liable on conviction to –

- where the failure was deliberate, a fine of not less than 15 currency points or to imprisonment for a term not exceeding one year; or
- in any other case, a fine not exceeding 25 currency points.

In addition, section 31 provides that a person who deliberately fails to maintain proper records for a year in accordance with the requirements of the Act is liable to pay a penal tax equal to double the amount of tax payable by the person for that year.

Section 20: Improper use of Tax Identification Number

Section 20 creates a criminal offence in relation to the use (knowingly or recklessly) of a false tax identification number on a return or other prescribed document. It does not matter if the tax identification number belongs to another person. A person convicted of an offence is liable to punishment of a fine of at least 20 currency points or to imprisonment (maximum term of one year), or both the fine and the imprisonment.

Section 21: Making False or Misleading Statements

Section 21 creates a criminal offence where a person makes a statement to an SLRA officer, or makes an omission from a statement to an SLRA officer, that is false or misleading in a material way. On conviction by a court, there are two levels of punishment. First, if the statement or omission is made knowingly or recklessly, the fine is not less than 25 currency points, or imprisonment of up to one year, or both. Second, in all other cases, a fine of not more than 25 currency points.

It is a valid defence to a charge if the accused can demonstrate that he or she did not know that the statement was false or misleading, or could not have reasonably known that.

A written statement is defined to mean a statement made to an SLRA officer performing his or her duties under the Act, and specifically includes –

- Any application, certificate, declaration, notification, return, objection or other document prepared, filed or otherwise furnished under the Act
- Any information furnished under the Act
- Any document furnished to an SLRA officer, other than in pursuance of the Act
- An answer to a question asked by an SLRA officer
- A statement made to another person knowing, or reasonably expected to know, that the statement would be conveyed to an SLRA officer.

Section 22: Obstructing an Officer of the Authority

Section 22 creates an offence where a person obstructs an SLRA officer in the performance of their duties under the Act. On conviction, the person may be fined up to 25 currency points.

Section 23: Aiding and Abetting

Section 23 creates an offence where a person aids and abets another person to commit an offence under the Act, or counsels or induces another person to commit an offence. On conviction, the person is liable to a fine of not more than 25 currency points, or imprisonment of up to one year, or both.

Section 24: Offences by and Relating to Officers and Persons employed to carry out this Act and Penalties

Section 24 sets out provisions to protect the integrity of the SLRA. It creates offences for situations where SLRA officers inappropriately discharge their duties, and also where persons attempt to bribe SLRA officers.

Section 24(1) creates an offence where a SLRA officer asks (directly or indirectly) for, in connection with any of the officer's duties, a payment or reward of any type, or security for such a payment or reward. Similarly, an offence is created if the officer enters into

agreement to do, or refrain from so doing, any act where revenue is defrauded, or may be defrauded, otherwise contrary to the Act or the proper execution of the officer's duties.

Section 24(2) creates an offence where a person offers, or gives a payment to a SLRA officer that the officer is not entitled to receive. Similarly, if a person proposed to a SLRA officer to agree to do something, or to abstain from doing something, resulting in the defrauding of revenue, or contrary to the Act or the proper execution of the officer's duties, they commit an offence.

The punishment for all such offences, on conviction, is a fine of not less than 45 currency points or imprisonment of not less than three months.

However, if a SLRA officer commits an offence and subsequently volunteers information to the Director (before prosecution), the officer is not to be prosecuted and is subject to a fine of 20% of the fine available on conviction.

Similarly, under section 24(4), a person who commits an offence but volunteers information to the Director is not to be prosecuted, and is liable to tax only to the extent agreed with the officer to whom the offence relates.

A SLRA officer, in addition to any penalty imposed upon conviction, is liable to pay a penalty calculated as the difference between the tax due and the tax payable under section 24(4)(b). This penalty is recoverable from the officer as if it were tax.

Section 25: Offences by Companies

Section 25 provides for offences committed by companies. Note that "company" is defined in Section 2: as a body of persons corporate or unincorporated, whether created or recognised under the law in force in Somaliland or elsewhere, but does not include a trust or partnership.

Where a nominated officer, director, general manager, secretary or other similar officer of the company acts in that role at the time of the company committing the offence, he/she is deemed to have committed the offence.

However, an officer is not so liable if the company's offence was committed without the officer's knowledge or consent; or, the officer had committed all due diligence to prevent the company committing the offence.

Section 26: Officer may appear on behalf of Director

Section 26 authorises the Director to be represented in any court proceedings (to which the Director is a party) by an officer of SLRA. Subject to directions from the Attorney-General, the officer is deemed to have the powers of a public prosecutor under the laws of Somaliland.

Section 27: Compounding Offences

The compounding of an offence is the process whereby a person who has committed an offence may, in exchange for payment of an agreed sum, be entitled not to be prosecuted for the offence. It is a common provision in relation to offences against revenue laws. Section 27(1) requires the compounding to take place before the commencement of a prosecution, and that the maximum amount payable under a compounding is the maximum fine imposable for the offence. Section 27(2) requires that the person who has committed an offence must formally admit the offence. Section 27(3) sets out the procedures and formal requirements, including that the Director must issue a decision in writing specifying

the offence, the amount to be paid, the date for payment and have attached the admission of guilt. This is served on that person. It is not appealable to any court. It can be enforced for payment as if it were a court order for payment. Section 27(4) confirms that in these circumstances the person is no longer liable to be prosecuted for the compounded offence.

Section 28: Place of Trial

This section specifies the location where criminal proceedings may be undertaken in respect of offences committed against the Act. All criminal proceedings may be undertaken in the location where the person is held in custody, but may also be held in any other location in Somaliland.

Section 29: Tax charged notwithstanding Prosecution

This section confirms that the undertaking of a prosecution does not negate or delay any liability for payment of tax or late payment fees under the Act (including any amount that is compounded under Section 27: Compounding Offences).

Part 4: Penal tax

Part 4 (sections 30 to 34) sets out provisions that impose penal tax for certain cases of non-compliance. Penal tax is imposed by the Director administratively. Penal tax is generally recoverable as if it were tax.

Section 30: Penal Tax for Failure to Furnish a Return

Section 30 provides for payment of penal tax if a person does not file a return as required by the Director. The section states that a person who fails to furnish a return within the time required under the Act is liable to pay penal tax equal to 2% of the tax payable for that year or one currency point per month, whichever is the greater, for the period the return is outstanding.

Section 31: Penal Tax in relation to Records

Section 31 provides that a person who deliberately fails to maintain proper records for a year in accordance with the requirements of the Act is liable to pay a penal tax equal to double the amount of tax payable by the person for that year.

Section 32: Penal Tax in relation to False or Misleading Statements

This section imposes penal tax on a person who knowingly or recklessly makes a statement to an officer of SLRA that is false or misleading in a material way.

The term “makes a statement” is to be interpreted in accordance with subsection (3) of Section 21: Making False or Misleading Statements.

Section 33: Penal Tax for understating Provisional Tax Estimates

Under sections 139 and 140 certain taxpayers are required to estimate and pay provisional tax. The requirement applies to those who receive income that is not subject to withholding tax under s.143 or not charged to tax under Section 6: Exempt persons. Also, section 33 does not apply to taxpayers in the business of agricultural, plantation or horticultural farming.

Section 33(1) applies to provisional taxpayers whose estimate or revised estimate of chargeable income for a year of income, under s.140, is less than 90% of the actual chargeable income assessed for the year. In this case, penal tax is imposed, and is 20% of the difference between the provisional taxpayer's estimated chargeable income (as revised) and the tax calculated in respect of 90% of the provisional taxpayer's actual chargeable income.

Example:

Under s.140, a taxpayer estimates chargeable income to be US\$80,000.

The actual chargeable income, on assessment, is US\$95,000.

The estimated chargeable income is 84.21% of the assessed chargeable income. This is less than 90% and therefore penal tax is payable.

The amount of the penal tax is 20% of the difference between the tax on the estimated chargeable income and the tax on the assessed chargeable income.

*Estimated chargeable income of US\$80,000. Tax = 80,000 * 10% = \$8,000*

*Assessed chargeable income of US\$95,000. Tax = 95,000 * 10% = \$9,500*

Difference is US\$9,500 – US\$8,000 = US\$1,500

*Penal tax is US\$1,500 * 20% = US\$300.*

Section 33(2) applies to provisional taxpayers whose estimate or revised estimate of gross turnover for a year of income, under s.140, is less than 90% of the actual gross turnover for the year. In this case, penal tax is imposed, and is 20% of the difference between the provisional taxpayer's estimated (as revised) gross turnover and the tax calculated in respect of 90% of the provisional taxpayer's actual gross turnover.

Example:

Under s.140, a taxpayer estimates gross turnover to be US\$80,000.

The actual gross turnover is US\$87,000.

The estimated gross turnover is 91.95% of the actual gross turnover. This is more than 90% and therefore no penal tax is payable.

Section 34: Recovery of Penal Tax

Section 34 sets out rules on how penal tax is calculated and recovered. Penal tax is calculated separately for each section that imposes penal tax. It is payable in addition to (and despite) any late payment fees imposed under Section 16: Late Payment Fees on Unpaid Tax and any penalty imposed upon conviction for an offence.

However, section 34(2) provides that penal tax is not payable under Section 31: Penal Tax in relation to Records or Section 32: Penal Tax in relation to False or Misleading Statements if a person has been convicted under either Section 19: Failure to maintain Proper Records or Section 21: Making False or Misleading Statements.

Similarly, if the Director commences a prosecution for an offence under either of those two sections, any penal tax paid must be refunded. If the prosecution is withdrawn the penal tax again becomes payable.

All penal tax under sections 30 to 33 is treated as an assessment under the Act (and therefore may be recovered as if it were tax).

Under section 34(5), a person who is liable to pay penal tax may apply in writing to the Minister for the penal tax to be remitted. This may only occur where the Director advises remission in light of good cause being shown. The regulations set out in greater detail the procedure and criteria for an application.

Part 5: Administration

Part 5 (sections 35-41) sets out general administrative provisions relating to tax identification numbers, delegations, confidentiality of taxpayer information and accounts and record keeping.

Section 35: Tax Identification Number

Section 35 empowers the Director to issue Tax Identification Numbers to every taxpayer. This number serves as the unique identifier for all the registered taxpayers. The regulations provide for the process for registering to obtain a tax identification number.

In addition, the Director may require a tax identification number to be shown on any return, notice or similar document. It is expected that the use of the tax identification number is compulsory for all administrative matters under the Act.

Section 36: Delegation

Section 36 empowers the Director to delegate to any SLRA officer any duty, power or functions that is conferred on the Director under the Act. This does not include the power to compound offences under Section 27: Compounding Offences and the power under this section to delegate.

Section 37: Confidentiality of Tax Return Information

Section 37 highlights the importance of confidentiality of Tax Return Information. This actually refers to the taxpayer information that the SLRA would have access to. Section 37(1) debars any officer, agent or employee of SLRA from disclosing any confidential information received in an official capacity. This could be information received during the course of registration, tax collection and enforcement, assessment and auditing, and investigation. If this is to be done, then it requires the taxpayer's written consent.

Section 37(2) however indicates exceptions to the general rule, where it would be permissible to disclose taxpayer information to another party (without even requiring the taxpayer's consent), and these are disclosures to:

- (a) Other agents or employees of the tax authorities in the course of and for the purpose of carrying out their official duties;
- (b) Law enforcement agencies, for the purpose of the prosecution of a person who has committed tax violations or offences;
- (c) A court, in proceedings to establish a taxpayer's tax liability, responsibility for tax violations or offences, or in a criminal case;
- (d) The tax authorities of a foreign country in accordance with international treaties or agreements;

- (e) Government financial authorities of the Republic of Somaliland to the extent necessary in administering the law on budget; and
- (f) Customs authorities, for purposes of administering the customs legislation, and also to authorities that have the right to administer taxes according to the Act, for purposes of administering those taxes.

Persons who have received information under section 37(2) are also required to maintain confidentiality of this information, subject to the minimum disclosure necessary for the purpose of achieving the object of the permitted disclosure. Otherwise, under section 37(4) the information must not be disclosed and all documents must be returned to the Director.

Section 37(5) provides that a person who discloses confidential information in violation of section 37, is guilty of a criminal offence and, if convicted, will be subjected to a penalty (fine) of up to 50 currency points or a term of imprisonment of up to one year, or both.

Section 38: Accounts and Records

Section 38(1) requires taxpayers to maintain in Somaliland such records as may be necessary to explain the information provided in a return or in any other document that they would be obliged to submit to the Director under the Act, or to enable an accurate determination of the tax payable by the taxpayer.

The importance of records in supporting the accurate determination of tax payable is highlighted in section 38(2). The section empowers the Director to disallow a claim for a deduction of an expenditure or loss against gross income if the taxpayer cannot show a receipt or other record of the transaction, or cannot produce evidence relating to the circumstances giving rise to the claim for the deduction. The Act however gives the Director the discretion to consider the claim if the taxpayer can give reasonable excuse for his/her failure to show the document or record. This could, for example, be that the records were lost say in a fire or burglary.

The Act obliges the taxpayer to keep and retain the records or evidence for five years after the end of the year of income to which the records or evidence relate.

Section 39: Access to Books, Records and Computers

Section 39(1) gives the Director or any other SLRA officer expressly authorised in writing by the Director to have unfettered access (i.e. access can be made at any time and without any prior notice) to any premises, place, book, record or computer of the taxpayer. In addition, the Director or authorised officer is allowed to:

- (a) make an extract from the records and books, or copy data from the computer;
- (b) seize any book or record that may provide material evidence in determining the liability of any person to tax, late payment fees, penal tax, or penalty under the Act;
- (c) retain for as long as is necessary, any book or record that may be required for determining a person's tax liability or for any proceedings under the Act;
- (d) retain for as long as is necessary, a computer on which information is stored, but for which a hard copy or computer disk of information is not provided.

Section 39(3)-(8) makes the following administrative provisions to ensure proper management of the access to the books, records and computers:

- (a) The occupier of the premises (a term defined in the Act under section 39(8) which is defined to mean the owner, manager, or any other responsible person on the premises or place) is obliged to provide all reasonable facilities and assistance for the effective exercise of the power to access the premises etc. by the Director.
- (b) When the Director opts to retain the books, records or computers, he/she is obliged to sign for them and to return them to the owner after using them.
- (c) The owner of the books, records, computers retained by the Director can access them but only during office hours.
- (d) In event that the books, records and computers are destroyed while still in the possession of the Director, the Act obliges him/her to compensate the owner.
- (e) No other provisions or laws using arguments like privileged information or public interest may be used to deny the Director access to the records, books and computers.

Section 40: Notice to obtain Information or Evidence

Section 40 details the Director's power to oblige any person through a notice in writing, whether such person is liable to tax or not, to provide required information or be obliged to physically avail himself/herself and be examined under oath.

Section 41: Books and records not in Somali language

The Act presupposes in section 41 that all records and information kept and availed to the Director shall be in Somali language. Where the person has kept his/her books and records in any other language, then the Act obliges the person to meet the expense of translating the record and books to Somali language.

Part 6: Forms, Notices and Rules

Part 6 (sections 42 to 45) sets out the provisions relating to forms and notices issued or required under the Act, and also Practice Notes and Rulings that may be issued by the Director.

Section 42: Forms, Notices and Authentication of Documents

In order to support the process of tax administration, SLRA requires information from the taxpaying public and other stakeholders. The Act empowers the Director to define the form and structure in which such information may be conveyed to SLRA.

Section 42(1) therefore provides that for the efficient administration of the Act, the Director may determine the form and structure of the forms, notices, returns, statements, tables and other documents to be used. Although the Act does not oblige the Director to publish these documents in the Official Publication of the Government of Somaliland or to be gazetted, section 42(2) requires the Director to make them available to the public at say SLRA offices or other suitable locations, by mail or through any other avenue that the Director would determine to be appropriate.

If the Director is to issue, serve or give any of the documents detailed above, then section 42(3) provides that the documents would be deemed sufficiently authenticated if the name

or title of the Director or authorised officer, is printed, stamped, or written on the notice or document.

Section 43: Service of Notices and other Documents

For the Director to deliver and serve mail on any person, it is important that service of a notice is clearly defined.

Section 43 defines the general standards to be met for a notice to be deemed served, and these are:

- (a) In case of a resident individual, other than when it is in a representative capacity, a notice or document will be deemed sufficiently served if:
 - (i) It is personally served or delivered to the person;
 - (ii) It is left at the person's usual or last known place of abode, office, or place of business in Somaliland and the service witnessed by a member of the executive committee of the local council;
 - (iii) It is sent by post to such place of abode, office, or place of business, or to the person's usual or last known address in Somaliland.

- (b) In case of other persons i.e. persons other than individuals, say a company, partnership etc, a notice or document will be deemed sufficiently served if:
 - (i) It is personally served on the nominated officer of the person;
 - (ii) It is left at the registered office of the person or the person's address for service of notices under this Act; or
 - (iii) It is left at or sent by post to any office or place of business of the person in Somaliland.

Section 43 opens with the phrase "Unless otherwise provided in this Act", which provides for specific exceptions, when the standards may not be met. Take for example, there are situations when it is not possible to effect the service as say in the case of a person intending to permanently leave Somaliland under Section 9: Tax Clearance Certificate; one cannot argue lack of service of notice to frustrate the recovery of tax.

Section 44: Practice Notes

Practice Notes are tools that SLRA can use to give guidance to taxpayers to fulfil their compliance requirements under the Act by stating the approach to be adopted by the Director in relation to specific tax issues. Section 44 empowers the Director to issue practice notes for the purpose of achieving consistency in the administration of the Act.

Section 45: Private Rulings

In addition to general practice notes, the Director may issue private rulings that apply to an individual taxpayer. Section 45(1) empowers the Director to issue a ruling in respect of an application from a taxpayer regarding the application of the Act to a transaction proposed or entered into by the taxpayer. Section 45(2) provides that the ruling is binding on the Director, only if there has been full and true disclosure of the nature of all aspects of the transaction, and that the transaction has proceeded in accordance the description in the application. A ruling is not affected by a subsequent change in the law, and continues to be

binding. However, if the transaction does not proceed as described in the application, or the taxpayer does not make a full and accurate disclosure of the circumstances of the transaction, the Director is not bound by the private ruling and can apply an alternative application of the Act, in light of the actual circumstances of the transaction. In the case of a private ruling conflicting with a practice note, the terms of the private ruling prevail.

Part 7: Remission of Tax and Avoidance

Part 7, Remission of Tax and Avoidance, sets out three sections (ss.46-48) dealing with remission of tax, transactions between associates and recharacterisation of income and deductions.

Section 46: Remission of Tax

Where all or any part of tax due under the Act cannot, in the Director's opinion, be effectively recovered, by reason of (a) considerations of hardship or (b) impossibility, undue difficulty or excessive cost of recovery, the Director can refer the taxpayer case to the Minister.

If a taxpayer's case is referred to the Minister, and the Minister is satisfied that the tax cannot be effectively recovered, the Minister may remit all or part of the tax.

The regulations make provision on how this section is to be applied. Note that there is an overlap with Section 15: Writing-off tax which provides for write-off of tax bad debts (similar to this section).

Section 47: Transactions between Associates

Sections 47 and 48 set out powers to deal with anti-avoidance of tax. Section 47 deals with transactions between associates. An associate is defined in Section 2: Interpretation. Where there is a transaction between associates or those in an employment relationship, the Director is empowered to adjust the transaction (in the ways specified in the section) so as to reflect the chargeable income of the parties that would have been realised if the transaction had been an arm's length transaction. The term "arm's length transaction" is not defined in the Act but is defined in Regulation 13 of the Revenue Act Regulations 2017.

Section 48: Recharacterisation of Income and Deductions

Section 48 is a basic power of the Director to tackle anti-avoidance schemes. The Director is empowered to recharacterise a transaction (or an element of a transaction) if it was entered into as part of a tax avoidance scheme. The term "tax avoidance scheme" is defined in Section 2: Interpretation. In addition, the Director may recharacterise a transaction if the form of the transaction does not reflect its substance.

Part 8: Miscellaneous

Part 8 (consisting of sections 49 to 54) sets out miscellaneous provisions relating to currency, payment of collected tax by the SLRA to the Consolidated Fund, amendment of the Act, and transitional and repeal provisions.

Section 49: Amounts stated in Somaliland Shillings

Section 49 deals with the amounts stated in the Act and how they are accounted for. The section provides as follows –

- Any amount stated in shillings means an amount in Somaliland Shillings
- Taxation books of account (records etc.) must be kept in shillings
- Tax is to be assessed in shillings
- Tax may be paid in either shillings or other currencies such as US dollars
- Where US dollars are used to pay tax, the rate of exchange to be used is the market rate of exchange, on the date of the payment, published by the Central Bank.

Section 50: Consolidated Fund

Section 50 is a provision relating to the public financial management of collected tax revenues. All tax revenues are to be considered as general revenues of the Republic of Somaliland (unless a law otherwise provides). Therefore, all tax revenues collected under the Act must be paid into the Consolidated Fund. Thereafter, they are available for appropriation.

Section 51: Regulations

Section 51 empowers the Minister to make regulations for the better carrying into effect of the purposes of the Act. The purposes of the Act are defined in Section 3. Regulations may specifically include –

- Transitional or saving provisions
- Offences (with maximum penalties of fines up to 25 currency points and/or 6 months imprisonment, and additional five currency points for continuing offences)

Section 52: Amendment of Monetary Amounts and Schedules

Section 52 empowers the Minister to amend (a) monetary amounts in the Act and (b) the Schedules. The Minister must make the amendment by statutory instrument, and this is subject to the approval of Parliament. This power allows the Minister to adjust monetary amounts, to ensure that they maintain their value and continue to be at the appropriate level in light of changing economic circumstances. The Minister may also amend the Schedules; thus he/she may adjust the value of currency points, listed exempt institutions, small business tax rates, the basis of determining the chargeable income of short-term insurance business, depreciation rates, the taxes to be administered by SLRA, and the procedures for the meetings of the Board of the SLRA.

Section 53: Transitional

Section 53 provides for the transition from the repealed law to the Act. The repealed law applies to the year of income up to 2015 (the year before the year in which the Revenue Act came into force. The Act therefore applies from the year of income 2016 onwards.

Section 53 also makes provision for the continuity of appointments under the repealed law and existing arrangements for the avoidance of double taxation (through there are no such arrangements in place with the Government of Somaliland).

In addition –

- all forms and notices may continue to be used, and have effect subject to any references being to corresponding references;
- a reference to a preceding year of income includes a reference to a year of income covered by the repealed law;
- transition to the Act's depreciation rates in respect of depreciable assets held before the date of commencement;
- sections 81 and 82 (start up cost and costs of intangible assets) are deemed to have been in effect in relation to the repealed law;
- section 112 (recoupment of deductions) extends to deductions claimed under the repealed law.

Section 54: Repealed Legislation

Section 54 repeals the laws specified in section 2. These are Laws on Direct Taxation No.89/96 and the Sales Tax Law No. 84/96, together with all amendments, and all regulations made under those laws.

Chapter 2: Income Taxes

Chapter 2 provides for the imposition of income tax, according to taxpayer type and type of income, rates of tax, and the methodologies for calculating chargeable income. Chapter 2 consists of 11 parts, setting out the fundamental concepts:

- Part 1 - Imposition of Tax and Rates (ss.55-59)
- Part 2 - Residents and Non-residents (ss.60-65)
- Part 3 - Chargeable Income (ss.66-71)
- Part 4 - Exempt Income and Deductions (ss.72-89)
- Part 5 - Tax Accounting Principles (ss.90-98)
- Part 6 - Gains and Losses on Disposals of Assets (ss.99-104)
- Part 7 - Miscellaneous rules for Determining Chargeable Income (ss.105-112)
- Part 8 - Persons Assessable (ss.113-124)
- Part 9 - International Taxation (ss.125-134)
- Part 10 - Procedure relating to Income Tax (ss.135-142)
- Part 11 - Withholding Tax at Source (ss.143-151)

Part 1: Imposition of Taxes and rates

Part 1 is the imposition of tax and the rates of tax (ss.55-59). It imposes income tax (s.55) and rental tax (s.56). Note that other impositions of tax are found in this Chapter for non-residents, namely –

- s.128 taxation of branch profits (at 10%)
- s.129 tax on international payments (at 10%)
- s.130 tax on payment to non-resident public entertainers or sports persons (at 10%)
- s.131 tax on payments to non-resident contractors or professionals
- s.132 tax on non-residents providing shipping, air transport or telecommunications services.

Section 55: Income Tax imposed

Section 55 is the critical provision that imposes income tax. It provides that income tax is imposed in each year of income on every person who has chargeable income in that year.

The amount of tax is calculated by applying the rates in the Act to the taxpayer's chargeable income, and deducting from that amount any allowable tax credits for that year of income. Note that the rates of tax are set out in s.57 (individuals), s.58 (companies), s.59 (trustees and retirement funds). For each, the rate of income tax is 10%.

The order for applying multiple allowable tax credits is –

- Foreign tax credits (see s.127)
- Tax credits under the provisional tax arrangements (see s.139(8))
- Tax credits under the withholding arrangements (see s.151(5)).

However, a taxpayer whose only source of income in the year of income is employment income from a single employer is not liable for any further income tax, and the amount deducted by the employer is deemed to be the amount of tax otherwise payable.

Also, for “small” taxpayers carrying on business (those with turnover greater than Shs. 5 million and less than Shs. 50,000,000), there is an alternative tax treatment, as set out in the Third Schedule. The details of the tax treatment are found there. Under the alternative treatment

- The tax calculated under the Third Schedule is a final tax,
- No deduction may be claimed for expenditure or losses,
- No tax credits, other than those provided in the Third Schedule are allowed.

(Note the Regulation 3(2)(c) of the Revenue Act Regulations 2017 defines a “small” taxpayer as having turnover greater than Shs. 5 million and less than Shs. 250,000,000. This assumed that a statutory instrument that proposed such an extended turnover range for small taxpayers would be signed by the Minister of Finance and approved by Parliament in accordance with section 52 of the Act. This action has however not happened and accordingly the current narrower band of small taxpayers continues to apply).

A small taxpayer may elect to specifically not be taxed in this way and to be subject to the normal tax rules. An election must be lodged with the Director no later than the due date for the lodging of the tax return to which it relates.

However, the alternative arrangements for small taxpayers are not available to resident taxpayers carrying on business providing medical, dental, archaeological, engineering, accounting, legal or other professional services, public entertainment services, public utility services or construction services.

Section 56: Rental Tax imposed

Section 56 imposes on individuals rental tax on rental income for each year of income. The rate of rental tax is the same as that provided in s.57(2), namely 10%. Rental tax is separate from income tax imposed under s.55. Where rental tax is imposed –

- an individual's rental income is not included in gross income
- deductions for expenditure and losses are restricted to those allowed under s. 73(1)(b)
- the individual may not claim any tax credits under the Act

Section 56(4) also defines “year of income” in exactly the same terms as the definition in section 2.

Section 57: Rates of Tax for individuals

The rate of tax imposed on chargeable income of individuals (other than employment income) for a year of income is 10%. Note that the rate of tax on employment income is to be determined in the Regulations (s.143(1)). The rate in the Regulations is set at 10%, allowing for a tax free element equivalent to the lower threshold for business taxpayers. The rate of tax on rental income of individuals is 10%.

Section 58: Rate of Income Tax for Companies

The rate of tax imposed on chargeable income of companies for a year of income is 10%. Note that “company” is defined in s.2.

Section 59: Rate of Income Tax for Trustees and Retirement Funds

The rate of tax imposed on trustees of a trust is 10% of chargeable trust income of the trust for a year of income.

The rate of tax imposed on trustees of a trust, being the estate of a deceased taxpayer who, at the date of death, was a resident individual, is 10% of chargeable trust income of the trust for the year of income in which the death occurred and the following year of income.

The rate of tax imposed on trustees of a trust of an incapacitated person is 10% of chargeable trust income of the trust for the year of income.

The rate of tax imposed on a retirement fund is 10% of chargeable income for the year of income.

Part 2: Residents and Non-residents

Part 2 (sections 60 to 65) sets out the definitions and rules for determining residency and non-residency of taxpayers. The concept of residency is crucial for determining whether a taxpayer is liable for taxation in Somaliland, and in respect of which classes of income.

Section 60: Resident Individual

This section sets out the criteria for determining an individual person’s residency for tax purposes in Somaliland. There are three criteria, and if any one is satisfied, the person is resident. The three criteria are –

- having a permanent home in Somaliland
- presence in Somaliland (as determined below)
- being an employee or official of GoSL posted abroad.

Presence in Somaliland is determined in one of two ways. First, presence in Somaliland for a period of 183 days, or several periods that in aggregate are 183 days, in any 12-month period that ends or begins in the year of income. Second, presence of an average 122 days in each of the year of income and the immediate two preceding years of income.

Examples:

For the year of income 2020:

Taxpayer is continuously present in Somaliland from 21st February to 30th September 2020.

Number of days in present in Somaliland = 21st to 29th February inclusive
9+31+30+31+30+31+31+30 = 223 days => resident

Taxpayer is present in Somaliland as follows:

1 st March to 14 th May 2019	= 31+30+14	75 days
25 th June to 12 th August 2019	= 6+31+12	49 days
14 th October to 30 th November 2019		48 days
20 th January to 31 st January 2020		12 days

Total of 184 days in a 12-month period ending on 31st January 2020, for the year of income 2020. => resident for year of income 2020

However, if an individual is resident for a year and non-resident for the preceding year of income, the individual is resident in the later year of income only from that date that the presence in Somaliland commences.

Taxpayer is non-resident in 2019. The taxpayer is present in Somaliland from 1st June 2020 to 31st December 2020 (more than 183 days). The individual is deemed resident from 1st June 2020 (not 1st January 2020).

Similarly, if a year of income of residency is followed immediately by a year of income of non-residency, the residency in the former year of income ends from the date that the individual leaves Somaliland.

Section 61: Resident Company

Companies are resident in Somaliland for a year of income if any one of the following three criteria is satisfied –

- The company is incorporated or formed under the laws of Somaliland
- Its management and control is exercised in Somaliland at any time during the year of income (as determined below).
- Undertakes the majority of its operations in Somaliland in the year of income (as determined below).

In assessing management and control (criterion 2) the following factors should be taken into account

- the meetings of the board of directors are usually held in Somaliland;
- where meetings of the board of directors are not usually held in Somaliland, the substantive business of the directors is deliberated and decided at those meetings of the board of directors held in Somaliland;
- the chief executive officer and other senior executives of the company usually carry on their activities, or exercise their powers, in Somaliland;
- where the management of the company's commercial and non-commercial activities are undertaken in Somaliland and another country, if the commercial activities are managed, wholly or substantively, in Somaliland;
- the headquarters of the company are located in Somaliland;
- the accounting records, whether paper or electronic, are kept in Somaliland;
- the company's principal bank account is kept in Somaliland; or
- the place of residence of the company's chief executive officer is in Somaliland.

In assessing whether the majority of operations are carried out in Somaliland (criterion 3) the following factors should be taken into account

- at least 50% of its employees are employed in, or perform their employment, in Somaliland;
- at least 50% of its salary expenses are incurred in respect of employees performing their employment in Somaliland;
- at least 50% of the company's assets value (before any secured or unsecured borrowings) are located in Somaliland;
- at least 50% of the value of the company's sales are made in Somaliland; or
- at least 50% of the value of the company's purchases of goods or services are made in Somaliland.

Section 62: Resident Trust

A trust is resident in Somaliland for a year of income if any one of the following three criteria is satisfied –

- The trust was established in Somaliland
- A trustee is a resident person (at any time in the year of income)
- The management and control of the trust was exercised in Somaliland at any time in the year of income.

Section 63: Resident Partnership

A partnership is resident in Somaliland for a year of income if any of the partners is resident in Somaliland at any time of during the year.

Section 64: Resident Retirement Fund

A retirement fund is resident in Somaliland for a year of income if any one of the following three criteria is satisfied –

- The fund is organised under the laws of Somaliland
- The fund is operated for the principal purpose of providing retirement benefit funds to resident individuals, or
- The fund's management and control is exercised in Somaliland at any time during the year of income.

Section 65: Non-Resident Person

Non-residency is simply defined. A person is non-resident for a year of income if the person is not a resident person for that year. However, a person may be non-resident for part of the year, in accordance with s.60(2) or (3), which relates to a year of income of residency immediately preceded or followed by a year of income of non-residency.

Part 3: Chargeable Income

Part 3 (sections 66 to 71) sets out the core concept of chargeable income. Essentially, chargeable income is the income upon which tax is imposed. The Part also makes specific provision for insurance business chargeable income, gross income, business income, employment income, and property income.

Section 66: Chargeable Income

Chargeable income is defined as the gross income for the year of income, less the deductions allowed under the Act for the year of income.

Section 67: Chargeable income arising from insurance business

This section sets out special rules for ascertaining the chargeable income arising from carrying on short-term insurance business. The rules for ascertaining the chargeable income are set out in the Fourth Schedule. Definitions of the terms “insurance business”, “life insurance business” and “short-term insurance business” are set out in the section. If there is a source of income in addition to the income from the insurance business, the chargeable income is the total of the income from the various sources.

Section 68: Gross Income

Section 68 sets out the first concept for determining chargeable income, namely gross income. Gross income is simply defined as the total income from three distinct sources, namely business income (see section 69), employment income (see section 70) and property income (see section 71).

The source of income is dependent on the residency of the taxpayer. If the taxpayer is resident in Somaliland for tax purposes, income derived from all geographical sources is included in gross income. However, if the taxpayer is non-resident in Somaliland, the income included in gross income is limited to income that is derived from sources in Somaliland.

The rules for determining whether an amount is derived are set out in Part 5 of Chapter 2 (which deals with tax accounting principles).

Section 69: Business Income

Section 69 sets out the first of the three types of income that are included in gross income. Business income is defined to be any income derived by a person from carrying on a business. This requires the application of the general test of what is meant by carrying on a business. This usually is summarised as being the carrying out of an activity for the purpose of deriving profit or gain.

In addition to the general statement of the concept, specific types of income are included as business income. These are set out in the seven paragraphs, and cover –

- (a) any gain as determined under Part 6 of Chapter 2 in relation to disposals of business assets, including disposal for the cancellation of debt, regardless of whether the asset was on revenue or capital account;
- (b) any amount received as consideration for accepting a restriction on the person’s capacity to carry on business (such as a “will not compete” clause in a partnership dissolution agreement);
- (c) gross proceeds from the disposal of trading stock;
- (d) any amount included as business income under any other section of the Act;
- (e) the value of any gifts derived in the course of, or by virtue of, a past, present, or prospective business relationship;
- (f) fees and commissions derived in respect of trade receivables or from the business of banking or money lending;

- (g) rent derived from a business that is wholly or mainly the holding or letting of property.

Where rent is included as part of business income under paragraph (1)(g), it retains its character as rent in relation to any other section of the Act that deals with rent.

In addition to the above, in the event of insolvency and where a gain results from the cancellation of a business debt, that cancellation is not treated as business income directly, and instead section 89(3) applies. Section 89(3) deals with the treatment of carried forward losses.

Section 70: Employment Income

Section 70 sets out the second of the 3 classes of income included in gross income, namely employment income. The general characteristic of employment income is that it means any amount derived by reason of the employment, whether this is an amount received directly by the employee from the employer or is an amount, or an equivalent value, expended by the employer for the employee's benefit. For the avoidance of doubt, subsection (1) lists specific benefits that are to be included in employment income. Subsection (2) specifically excludes certain amounts, if paid or incurred by an employer, which would not be included in the employee's employment income. These relate to the hiring of foreign persons to work in Somaliland, medical expenses, life insurance premiums, reimbursement of accommodation, travel and living expenses whilst discharging employment activities, certain meals, a *de minimis* exemption of low value benefits, and retirement fund contributions.

Subsection (3) provides for the valuation of additional benefits in accordance with the Sixth Schedule. This schedule provides detailed definitions of valuation benefits, and the relevant valuation rules in respect of motor vehicles, housekeeper and other domestic services; meals and refreshments; domestic utilities, waivers of amounts to be paid; uncosted use of property of services; accommodation and housing. In the event of other benefits not covered by specific rules, the general rule is that the market value of the benefit is the value for employment income purposes.

Subsection (4) sets out an additional valuation rule where benefits are provided for a period of at least 10 years. In this case, the valuation of the benefit is reduced by 25% and only 75% of the value, using the standard valuation rules, is included in the employee's employment income.

Subsection (5) defines the employment status of a director of a company, who is only a full-time employee if twin tests of time spent and company ownership are satisfied.

Subsection (6) is an anti-avoidance provision to deal with situations where a third party of an associate of the employee appears to receive the benefit.

Subsection (7) specifically excludes from income amounts that are covered in subsections (2) and (4).

Finally, subsection (8) defines "employee share acquisition scheme" and "medical expenses" for the purposes of amounts that may be included as employment income.

Section 71: Property Income

Section 71 sets out the third of the three classes of income that make up gross income, namely property income. Although entitled “property income” the concept is broader than a narrow definition of property. Property income is classified in four ways –

- Income derived from the provision, use or exploitation of property, including dividends, annuities, natural resource payments, rents and royalties
- The value of gifts derived in connection with the provision, use or exploitation of property
- Amounts contributed to a retirement fund by a tax-exempt employer
- Any other income

However, property income specifically does not include business income, employment income or exempt income.

Any amount included as property income in the first bullet point retains its characteristics for the application of the Act.

Part 4: Exempt Income and Deductions

Part 4 (sections 72 to 89) sets out provisions that exempt certain types of income or income received by certain types of taxpayer. It also sets out the deductions that can be claimed against gross income for the purpose of calculating chargeable income under Section 66: Section 72 lists exempt incomes and institutions. Sections 73 to 89 provide for rules for deductions of specific types of expenditure or loss.

Section 72: Exempt Income

Section 72 sets out a long list of exempt incomes and exempt institutions. These include –

- (a) Income of listed institutions (see section 2 and the Second Schedule)
- (b) Income of organisations and persons with diplomatic status
- (c) Income of certain individuals employed by foreign governments
- (d) Allowances paid to Somaliland foreign mission employees
- (e) Income of local authorities
- (f) Income of exempt organisations (see section 2) excluding rental income and certain business income
- (g) Higher education grants
- (h) Alimony or similar allowances
- (i) Gifts, inheritances and similar that are not otherwise included as income
- (j) Capital gains that are not income
- (k) Employment income derived under a technical assistance agreement (see section 2)
- (l) Certain foreign sources of income derived by short-term residents
- (m) Pensions
- (n) Lump sums made by a resident retirement fund
- (o) Proceeds of a life insurance policy
- (p) Income from the Armed Forces of Somaliland, police force and prison service (other than in a civil capacity)
- (q) Income of the Government of Somaliland and the government of any other country
- (r) The income of the Central Bank of Somaliland
- (s) Income of collective investment schemes.

Section 73: Expenses of deriving income

Section 73 sets out the allowability of deductions for the purposes of determining chargeable income. Essentially, expenditure and losses are allowed to the extent that they are incurred in the production of income included in gross income. In addition, losses determined under Part 5 of Chapter 2 in relation to the disposal of assets, are allowable deductions.

Subsection (2) goes on to prohibit certain expenses as deductions.

Subsection (3) defines expenditure of a domestic or private nature, which is excluded under subsection (2)(a).

Subsection (4) applies Part 5 of Chapter 2, Tax Accounting Principles, for determining the timing of when expenditure or loss is incurred.

Subsection (5) excludes trading stock or depreciable assets from the definition of business asset.

Section 74: Meals, refreshment and Entertainment Expenditure

Section 74 allows for meals, refreshments and entertainment expenditure to be deductible by an employer but only to the extent that the meals refreshments and entertainment were included in an employee's employment income or were otherwise exempt from employment income (see section 70). In addition, meals refreshments or entertainment that have been provided at arm's-length consideration are deductible.

Section 75: Bad debts

Bad debts may be allowed as a deduction if they satisfy the test set out in section 75. A bad debt may be claimed as a deduction only if the amount claimed as a bad debt was included in gross income or, in the case of financial institutions, was an amount lent in the ordinary course of business. Subsection (3) defines bad debt and requires all reasonable steps to pursue payment to have been taken and for there to be a reasonable belief that the debt will not be satisfied. In addition, there is a specific definition for bad debts incurred by financial institutions. Finally, subsection (3) also defines debt claim.

Section 76: Expenses related to debt obligations

Section 76 allows for deduction of additional or ancillary amounts related to repayment of a debt obligation including service fees, commissions, prepayment and late payment penalties if the debt obligation was incurred for the production of income included in gross income.

Section 77: Repairs and minor capital expenditure

A deduction is allowed for expenditure incurred for the repair of property occupied and used by the taxpayer in the production of gross income. In addition, the cost of acquisition of minor assets, defined as less than 50 currency points, is a deduction in the year that the acquisition was made. The allowance can only be claimed in respect of freestanding assets and not assets that are subsidiary or form part of a set.

Section 78: Depreciable assets

Section 78 sets out detailed rules for deductions in respect of depreciation of capital assets. Note that minor capital assets may be expensed entirely in the year of acquisition (see section 77). In addition, a detailed classification of four types of assets for depreciation purposes is set out in the Fifth Schedule with corresponding depreciation rates.

Section 79: Initial Allowance

Section 79 sets out the deductibility of an initial allowance in respect of the acquisition of capital assets in the year of acquisition or placement into service. The initial allowance is either 75% of the cost base of all assets prescribed in Part 4 of the Fifth Schedule; otherwise the initial allowance is 50% of the cost base. The amount of the cost base is affected by deductions allowed under section 78(4)(b).

Subsection (3) excludes certain assets from eligibility for an initial allowance, including goods and passenger transport vehicles, household appliances and office or household furniture fixtures and fittings.

Subsections (4) and (5) provide an initial allowance for newly constructed buildings of 20% of the cost base of the building, reduced by any deduction allowed under section 80.

Subsection (6) expands the scope of the initial allowance for buildings to include extensions to buildings.

Subsections (7) and (8) define and restrict the meaning of buildings for the purpose of the initial allowance. The definition of “industrial building” is found in section 2.

Section 80: Industrial Buildings

Section 80 sets out the rules for depreciation allowable as a deduction in respect of capital expenditure on construction of industrial buildings.

Section 81: Start-up costs

Section 81 provides for a deduction for expenses incurred in respect of initial public offerings to a stock market.

Section 82: Costs of intangible assets

Section 82 provides for a deduction in respect of the cost of acquisition of intangible assets. This section does not define intangible asset and therefore that term takes its ordinary meaning. The section provides for a formula based on the useful life of the asset in whole years. Therefore, the useful life, in whole years, for each intangible asset must be determined. Similarly, where an intangible asset is disposed of, the cost base of the asset is reduced by deductions allowed under this section.

Section 83: Scientific Research expenditure

Section 83 provides for the deduction for scientific research expenditure incurred in the course of carrying on business. The section defines scientific research and associated expenditure.

Section 84: Training expenditure

Section 84 provides for a deduction for expenditure incurred by the employer for up to 5 years of training or tertiary education of an employee who is a permanent resident or citizen of Somaliland (other than an associate of the employer).

Section 85: Charitable donations

Donations made as a gift to an organisation that is an exempt organisation under section 2 are an allowable deduction. Subsection (2) sets out a valuation rule. Subsection (3) limits deductions to a maximum of 5% of total income, before deductions under this section, in any year.

Section 86: Farming

Expenditure in farming is dealt with in section 86. The term “farming” is defined in section 2. First, expenditure on farm works is to be deducted as depreciation as a class 4 asset (see Fifth Schedule). Second, depreciation of capital expenditure in relation to horticulture in Somaliland is provided in subsection (2) and (3). Subsection (4) provides for definitions of the terms used in this section.

Section 87: Mineral Exploration Expenditures

A deduction is allowed to a taxpayer carrying on mining operations in respect of capital expenditure incurred in searching for, discovering and testing, and winning access to mineral deposits in Somaliland.

Section 88: Apportionment

Where expenditure is incurred in respect of more than one class of income, the expenditure shall be apportioned, on a reasonable basis, to the respective classes of income. In addition, deductions under section 86 (Farming) are to be allocated rateably to each class of income.

Section 89: Carry Forward Losses

This section deals with the tax treatment of losses incurred. A loss may be carried forward and allowed as a deduction in determining chargeable income in the following year of income. However, a loss incurred in respect of farming can only be carried forward and deducted against farm income in the next year of income and not against any other classes of income.

Where a loss is reduced as a result of insolvency proceedings or other compromise with creditors, then the amount of loss carried forward must be correspondingly adjusted.

Losses incurred in respect of Somaliland and outside Somaliland are to be applied separately to the respective classes of income.

Part 5: Tax Accounting Principles

Part 5 (sections 90 to 98) sets out accounting principles, covering year of income, accounting methods, pre-payments and treatment of specific items under long-term contracts and foreign currency contracts.

Section 90: Substituted year of income

The year of income for the Revenue Act is the calendar year, 1st January to 31st December (see section 2). However, a taxpayer may apply for an alternative year of income to be substituted. This is subject to the Director's approval. It takes effect from the date specified by the Director in the notice.

The taxpayer may apply to return the substituted year of income back to the standard year of income. Also, the Director may withdraw permission for use of the substituted year of income. These changes are effective from the end of the year in which the changes are made.

In either case, the Director may only approve an application if there is a compelling need and may be subject to any conditions imposed by the Director.

Whenever there is a reference to "year of income" in the Act, this includes a reference to a substituted year of income.

A taxpayer, if dissatisfied with the Director's decision, may object and appeal the Director's decision.

Section 91: Method of Accounting

Section 91 requires that the method of accounting used by taxpayers is to conform to generally accepted accounting principles (GAAP). However, unless the Director otherwise directs, accounting may be on a cash basis or an accrual basis. A taxpayer may apply to change the basis of accounting for tax purposes, but only with the prior approval in writing of the Director, and with justification that the changes are necessary to clearly reflect the taxpayer's income. The Director's decision may be objected to. Where the method of accounting has changed, consequential changes are to be reflected in the following year of income to ensure that no item is either omitted or taken into account more than once.

Section 92: Cash-Basis Taxpayer

Smaller taxpayers with less sophisticated businesses, who account for tax purposes on a cash basis, are deemed to derive income when income is received or made available and expenditure is incurred when it is paid.

Section 93: Accruals-basis Taxpayer

Alternatively, where a taxpayer accounts on an accruals basis, income is derived when it is receivable by the taxpayer and expenditure is incurred when it becomes payable by the taxpayer.

The term "receivable" means when there is an entitlement to receive an amount even if the payment of the entitlement is postponed or is payable by instalments.

In respect of expenditure by the taxpayer, an amount is treated as payable by the taxpayer when all the events that determine liability have taken place and the amount of liability can be determined accurately. However, an amount is not treated as payable before economic performance occurs.

The section defines economic performance as occurring in three ways –

- At the time when services or property is provided
- At the time property is used; or
- In any other case, at the time the taxpayer makes payment in satisfaction of the liability

Section 94: Pre-payments

Where a taxpayer is allowed a deduction for expenditure that extends beyond 13 months, the deduction is to be applied proportionately across the relevant years of income to which the expenditure relates.

Section 95: Claim of Right

Section 95 makes provision for accounting for amounts that the taxpayer claims to be legally entitled to receive, or legally obliged to pay. The chargeable income of the taxpayer must be adjusted for the year of income in which the taxpayer refunds the amount received or recovers the amount paid. This requires retrospective adjustment of accounts, in light of subsequent activities, for example where the taxpayer seeks to recover an amount from a third party, or where the taxpayer is obliged to pay a third-party in respect of a business transaction.

Where a taxpayer accounts on an accrual basis in accordance with section 93, the taxpayer must include in gross income an amount which is receivable or claim a deduction for an amount payable. It does not matter that the amount is not yet legally receivable or the amount is not yet legally payable.

Section 96: Long-Term Contracts

Section 96 provides for the treatment of income and deductions in relation to long-term contracts for taxpayers who account on an accrual basis. Accounting is undertaken on the basis of the percentage of contract completed during the year of income.

To determine the percentage of the contract completed, subsection (2) provides that the total costs allocated to the contract, as determined at the beginning of the contract, are to be compared with the total costs incurred up to the end of the year of income.

If, in the final year of a long-term contract, a loss is incurred (a “final year loss”), the loss may be carried back and applied against income in previous years of income, subject to the Director’s approval.

Subsection (4) defines “final year loss” and “long-term contract”.

Section 97: Trading Stock

Section 97 provides for the tax treatment of trading stock. First, the cost of trading stock disposed of during a year of income may be allowed as a deduction.

Second, to determine the cost of trading stock disposed of during a year of income, the opening value of the trading stock at the beginning of the year is added to the cost of trading stock acquired during the year and from that total the closing value of the trading stock at the end of the year is subtracted.

Subsection (3) defines the opening value trading stock at the beginning of year.

Subsection (4) defines the closing value of trading stock as the lower of cost or market value of trading stock on hand.

Subsection (5) provides that cash-basis taxpayers may calculate the cost of trading stock on the prime cost method or absorption cost method. Accruals basis taxpayers must use the absorption cost method.

However, if items of trading stock are not readily identifiable, the taxpayer may use either the first in first out method or the average cost method for accounting for those items of trading stock. However, once the method is chosen, the stock valuation method may only be changed with the written permission of the Director.

Subsection (7) defines absorption cost method, average cost method and direct labour costs which are terms used in the section.

Section 98: Foreign Currency Debt Gains and Losses

Section 98 makes provision for foreign currency debt gains and losses. A foreign currency debt means a business debt denominated in foreign currency.

Foreign currency debt gains derived during a year of income are included in the business income of the taxpayer for that year. Similarly, foreign currency debt losses incurred in a year of income are allowed as a deduction in the year.

However, a deduction is not allowed unless the taxpayer has given advice to the Director in writing of the existence of the debt giving rise to the loss before the date for filing the return of income for that year of income. The Director may allow a later date for notification. This provision does not apply to financial institutions.

Subsection (6) prohibits deductions to taxpayers in respect of certain foreign currency debt losses where the amount of the loss exceeds the part of the gain that is included in gross income. This provision ensures that the amounts brought to account for a foreign currency gain are not exceeded by the foreign currency loss.

Subsection (7) defines how a foreign currency gain is derived, in respect of the amounts of Somaliland shillings required to settle the debt.

Subsection (8) defines how a foreign currency debt loss is incurred, in respect of the amounts of Somaliland shilling required to settle the debt.

Subsection (9) requires that account must be taken of the taxpayer's position under any hedging contract entered into by the taxpayer in respect of the debt before determining whether a foreign currency debt gain or loss has been incurred.

A gain or loss is incurred in the year of income in which the foreign currency debt is satisfied.

Part 6: Gains and Losses on Disposal of Assets

Part 6 (sections 99 to 104) sets out rules for the treatment of amounts received, or losses incurred, in respect of the disposal of assets used in the production of income.

Section 99: Application of Part 6

Section 99 sets out how Part 6 of Chapter 2 is applied. It applies for the purposes of determining the amount of any gain or loss arising on the disposal of an asset, where the gain is included in gross income or the loss is allowed as a deduction under the Act.

Section 100: Carry Forward Losses

The gain arising from the disposal of an asset is defined as the excess of the consideration received for the disposal over the cost base of asset at the time of the disposal.

The loss arising from the disposal of an asset is the excess of the cost base of the asset at the time of disposal over the consideration received for the disposal.

Cost base is defined in section 2 by reference to section 102.

Section 101: Disposals

Section 101 deals with disposal of assets. First, a disposal of an asset is defined as –

- When an asset is sold, exchanged, redeemed or distributed by the taxpayer
- Transferred by the taxpayer by way of gift
- Destroyed or lost.

A disposal includes the disposal of part of an asset.

Where an asset has been converted from taxable use to non-taxable use, or from non-taxable use to taxable use, the value for disposal or acquisition is deemed to be the market value of asset at the time.

When a non-resident person becomes a resident person, the non-resident is deemed to have acquired all assets other than taxable assets in their ownership at the market value at that time. Similarly, when a resident person becomes a non-resident person, that person is deemed to have disposed of all assets other than taxable assets at the market value at that time.

However, if a person becomes non-resident and intends to become resident again, the person may apply for exemption from the provisions of this section, subject to providing sufficient security to satisfy any tax liability which would otherwise arise.

A taxable asset is defined as an asset which, if disposed of, will give rise to a gain included in the gross income, or to a loss allowed as a deduction, to a resident or non-resident taxpayer.

Section 102: Cost Base

Section 102 establishes the cost base of an asset for the purposes of the Act. The cost base of an asset purchased, produced or constructed by the taxpayer is the amount paid or incurred by the taxpayer for the asset. This amount includes incidental expenditure of a capital nature incurred in acquiring assets. It also includes the market value at the date of acquisition of any consideration in kind given for the asset.

If an asset is acquired in a non-arm's-length transaction, the cost base is the market value of the asset at the date of acquisition.

An asset acquired under the special rules set out in section 103(2) has a cost base of the amount of consideration deemed under that subsection to have been received by the person disposing of assets.

Where part of an asset has been disposed of, the cost base of the asset is apportioned between the part of it that is retained and the part of it that is disposed of, in accordance with their respective market values at the time of acquisition of the asset.

Generally, expenditures incurred to alter or improve an asset which have not been allowed as a deduction are added to the cost base of the asset unless specifically provided elsewhere in the Act.

If the acquisition of an asset represents the derivation of an amount of income to be included in the gross income of the taxpayer, the cost base of the asset is the amount included in gross income plus any amounts paid by the taxpayer for the asset. However, where the receipt of an asset represents the derivation of an amount of exempt income, the cost base of the asset is the amount exempt from tax plus any amounts paid for the asset.

Section 103: Special rules for Consideration received

Section 103 deals with the determination of consideration received on disposal of an asset. Where part of the consideration is received in kind, the consideration is deemed to include the market value of the consideration received in kind at the date of disposal.

Where an asset is disposed of to an associate or otherwise in a non-arm's-length transaction (excluding the transmission of an asset to a trustee or beneficiary and the death of taxpayer), the disposer of the asset is treated as having received consideration which is the greater of either the cost base of asset at the time of disposal or the fair market value of the asset at the date of disposal.

Where two or more assets are disposed of in a single transaction and the consideration for each asset is not specified, the consideration must be apportioned among the assets in proportion to their respective market values at the time of the transaction.

Where part of an asset is disposed of, the consideration received is apportioned between the part of the asset disposed and the part retained, in accordance with their respective market values at the time of acquisition of the asset.

Section 104: Non-recognition of Gain or Loss

Section 104 provides that certain transfers of assets are not to be taken into account in determining chargeable income. The four categories of transfers which are excluded are –

- Transfers of assets between spouses
- Transfers of assets between former spouses as part of divorce settlements or bona fide separation agreements
- Involuntary disposals of assets to the extent that proceeds are reinvested in an asset of a like kind within one year
- Transmissions of assets to a trustee or beneficiary on the death of the taxpayer.

Where the first, second or fourth categories apply, the transferee or trustee or beneficiary is deemed to have acquired the asset for consideration equal to the cost base of the asset at the time of the disposal.

Where the third category applies, the cost base of the replacement asset is the cost base of the assets which have been replaced plus the amount of any consideration paid by the taxpayer for the asset that exceeds the amount received from the involuntary disposal.

Part 7: Miscellaneous rules for Determining Chargeable Income

Part 7 (sections 105 to 112) identifies which persons are liable in respect of chargeable income and provides for their amount of chargeable income.

Section 105: Income of Joint Owners

Section 105 provides that income or deductions relating to jointly owned property are to be apportioned among the joint owners in proportion to their respective interests in the jointly owned property. However, if the interests cannot be ascertained, the interests are deemed to be equal interests.

Section 106: Valuation

Section 106 provides that for the purposes of the Act, subject to section 70(1)(b), the value of a benefit in kind is the fair market value of the benefit on the date the benefit is taken into account for tax purposes. The fair market value of the benefit is determined without regard to any restriction on transfer or that it is not otherwise convertible to cash.

Section 107: Currency Conversion

Section 107 provides that total income must be calculated in Somaliland shillings. However, when an amount is taken into account for the purposes of the Act in a currency other than the Somaliland shilling, the amount is to be converted to the Somaliland shilling at the Central Bank of Somaliland mid-exchange rate applying to the foreign currency on the day that it is derived, incurred or otherwise taken into account for tax purposes.

However, a taxpayer may apply to the Director for permission to use an average rate of exchange during the year of income. In addition, a taxpayer may apply to the Director for permission to keep books of account in a currency other than the Somaliland shilling.

Section 108: Indirect Payments and Benefits

Section 108 provides that income includes payments that directly benefit a person and payments that, if not directly received, benefit the person.

Section 109: Financial Leases

Section 109 provides for the tax treatment of finance leases. A lease of property is a finance lease if –

- The lease term exceeds 75% of the effective life of the leased property or
- The lessee has an option to purchase the property for a fixed or determinable price at the expiry of the lease or
- The estimated residual value of the property at the expiry of the lease term is less than 25% of its fair market value at the commencement of the lease.

This lease term includes any additional period under an option to renew or extend.

Where there is a finance lease, as defined, the lessee is treated as the owner of the property and the lessor is treated as having made a loan to the lessee of the property. The rental payable by the lessee to the lessor is deemed to be payment of fees, commissions, charges and principal.

Other than principal, the other elements are treated as deductible expenses incurred by the lessee and are treated as income derived by the lessor.

Section 110: Exclusion of Doctrine of Mutuality

Section 110 applies to companies which carry on as a members' club, or trade association or a mutual insurance company. In these cases, the company is treated as carrying on a business subject to tax.

A company which charges entrance fees and subscriptions paid by members is deemed to have business income.

Subsection (3) provides for the treatment of deductions in respect of furnishing of goods or services to members where that is the primary function of the company.

Members club is defined as a club or similar institution where the assets are owned or held on trust for the members of the club or institution.

Section 111: Compensation receipts

Section 111 provides that where compensation is received by a person, the compensation takes the same character as the item for which the compensation is made.

Section 112: Recouped Expenditure

Section 112 makes provision for where expenditure, loss or bad debt, having previously been deducted, is subsequently recovered. In this case, the amount recovered is deemed to be income derived in the year of income in which it is recovered and takes the same character as income to which the deduction relates.

Part 8: Persons Assessable

Part 8 (sections 113 to 124) sets out rules for determining which persons are assessable in respect of individuals, partnerships, trusts, estates of deceased persons, and companies.

Section 113: Taxation of Individuals

Section 113 provides that the chargeable income of individual taxpayers is to be determined separately. Where a taxpayer attempts to split income with another person, the Director is entitled to adjust the chargeable income of the taxpayer and the other person in order to ensure that the correct amount of tax is paid. The section defines the circumstances in which there is an attempt to split income. The Director must, in determining whether taxpayer is seeking to split income, take into account the value if any given by the associate for the transfer.

Section 114: Principles for the taxation of Partnerships

Section 114 sets out the principles for the taxation of partnerships which must be read in conjunction with section 115, section 116, section 117 and section 118. The presence or absence of a written partnership is deemed not to be definitive on whether a partnership relationship exists between persons. This allows the Director to examine all the circumstances, including any agreements, or lack of agreements, in determining whether there is a partnership relationship, and partnership income.

Where a partnership exists, it is liable to furnish a return of income. However, the partnership does not pay tax on income. Instead, the partnership income will be attributed to the relevant partners and taxed as their individual income. Any notice etc. under the Act relating to the partnership must be filed by the partnership. Finally, partnership assets, unless the context otherwise requires, are treated as owned by the partnership, and not the individual partners.

Section 115: Calculation of Partnership Income or Loss

Section 115 sets out the rules for determining a resident partnership's income or loss in a year of income, and a different method in respect of a non-resident partnership. Note that a resident partnership is defined in section 63.

A resident partnership's income for a year is the total of –

- Gross income of the partnership for the year, calculated as if the partnership were a resident taxpayer, less
- Total deductions and losses allowable in that year under the Act for deriving that income, other than the deduction under section 89 (which deals with carry forward losses).

A partnership loss is the amount by which the total deductions and losses allowable exceed the gross income.

However, where a partnership is a non-resident partnership, the partnership income or loss is calculated in accordance with section 129.

Section 116: Taxation of Partners

Having determined the method for determining partnership income, for resident and non-resident partnerships, section 116 sets out the principles for the taxation of individual partners. For a resident partner, gross income includes the partner's share of partnership income for that year (i.e. income from all sources, in and outside Somaliland). For a non-resident partner, gross income includes the partner's share of income attributable to sources in Somaliland.

A resident partner may claim as a deduction the partner's share of any partnership loss in that year of income. A non-resident partner's entitlement to a deduction for a loss is limited to the extent that that the activity giving rise to the loss would have given rise to partnership income attributable to sources in Somaliland if the loss had not been incurred. This means that the share of the loss is allowable only if it has the same characteristics that would give rise to income derived from Somaliland.

In the process of attributing partners' shares of income, expenditure and losses, the character, in terms of geographical source and type of income, expenditure or loss, is retained.

The basic rule about determining the share of partnership income (or loss) is that it is equal to the partner's percentage interest in the income of the partnership as set out in the partnership agreement. However, this is subject to a further test. Where the allocation of income in the partnership agreement does not reflect the partners' contributions to the partnership's operations, the partner's share in the income (or loss) is equal to the partner's percentage interest in the capital of the partnership.

Section 117: Formation, Reconstitution, or Dissolution of a Partnership

Having examined the calculation of income (or loss) and the basis of taxation of partners, section 117 deals with various scenarios that may arise with partnerships, namely their initial formation, their reconstitution and their dissolution.

When a person, as owner of an asset, contributes the asset to a partnership, the transfer is treated as a disposal of the asset to the partner for consideration equal to either the cost base of the asset (on the day when the contribution is made), subject to five conditions being met; otherwise, the value is the market value of the asset on that date.

The conditions to be met, for the cost base to be the value, are –

- the asset was a business asset of the partner immediately before the transfer
- the partner and partnership are both residents at the time of the transfer
- the partner's interest in the capital is at least 25%
- the partners have jointly elected for this valuation to apply
- the interest in the partnership received by the partner in return for the contribution equals the market value of the asset contributed at the time of the contribution.

Where the cost base valuation applies, the asset retains its character in the hands of the partnership as it did in the hands of the partner.

Where there is a change in the constitution in a partnership (for example a partner is added, or a partner retires) or the partnership is dissolved, the former partnership is treated as having disposed of all the assets of the partnership to, in the first case, the reconstituted partnership or, in the second case, the partners of the dissolved partnership, equal to either the cost base (on the day of the change in the partnership constitution), if three criteria are met, or the market value of the asset at the date of the change in the partnership constitution.

The three criteria to be met for the use of the cost base value are –

- The former partnership and the reconstituted partnership are both residents at the time of the change;
- 25% or more of the capital interest of the reconstituted partnership are held for 12 months after the change by the persons who were partners in the former partnership (before the change);
- the partners of the reconstituted partnership make a joint election for this valuation.

Similarly, the character of the asset in the hands of the former partnership is retained in the hands of the reconstituted partnership.

An election must be made in either the year of income when the contribution was made, or the year of income when the constitution of the partnership changed.

Section 118: Cost Base of Partner's Interest

The previous sections have referred to a valuation method of an asset as the cost base. Section 118 sets out the rules for the cost base of partnership assets.

First, a partner's interest in a partnership is treated as a business asset for all purposes of the Act.

Second, the cost base of a partnership, subject to some conditions, for an interest acquired by contribution of property (including money) to the partnership, the amount of the money contributed plus –

- where section 117(1)(a) applies - the cost base of the asset contributed to the partnership by the partner
- where section 117(1)(b) applies - the market value of the asset contributed to the partnership by the partner

and in all other cases, the price paid for the interest.

A cost base value is increased by a factor, based on the partner's share of income. The factor is calculated as the sum of the partner's share for the year of income and prior years of (a) partnership income and (b) income of the partnership exempt from tax.

A cost base value of a partner's interest in a partnership may be reduced (but not below zero) by distributions of the partnership and by the partner's share for the year of income, and prior years of income, of partnership losses and expenditures (that are not deductible in determining its chargeable income and not properly chargeable to capital account).

Section 119: Principles of Taxation of Trusts

This section sets out general principles for the taxation of trusts. It should be read in conjunction with the next section.

Section 119 provides that –

- the income of a trust will be taxed in the hands of the trustee or the beneficiaries of the trust. The Act specifies when.
- Each trust must have a separate calculation of income, regardless of whether they have the same trustee
- The character and source of income, expenditure or loss in the hands of a trust is retained in the hands of the beneficiary
- Each trust must file a return of income (see section 135)
- In the case of a settlor trust or a qualified beneficiary trust –
 - The trust is not treated as a separate legal entity from the settlor or qualified beneficiary
 - The income of the trust is taxed in the hands of the settlor or qualified beneficiary
- The trustee of an incapacitated person's trust is liable for the tax on that trust's chargeable income

- Trustees are jointly and severally liable for a tax liability in respect of trust income that is not satisfied out of the trust's assets
- If tax is paid on trust income under s.120 or s.121, the income is not charged again to tax in the hands of the beneficiary.

Section 120: Principles of Taxation of Trustees and beneficiaries

This section, in light of the principles in s.119, sets out the rules for taxation of trustees and beneficiaries.

First, any amount derived by a trustee for the immediate or future benefit of an ascertained beneficiary (other than an incapacitated person), with a vested right to that amount, is treated as being derived by the beneficiary.

Second, where a beneficiary acquires a vested right to such an amount as the result of the exercise of a discretion by the trustee (under a deed of trust, arrangement or will of a deceased person) the amount is deemed to be derived by the trustee for the immediate benefit of the beneficiary. However, for the amount to be included in a year of income, the discretion must have been exercised by the end of the second month of that year.

Third, in either of the foregoing cases, the beneficiary is treated as having derived the amount at the time it was derived by the trustee.

Fourth, if such an amount is included in a beneficiary's gross income for a year of income, the beneficiary is entitled to a deduction for relevant expenditure or losses incurred by the trustee in that year in deriving the income.

Fifth, the trustee of a resident trust for a year of income is liable for the tax on the chargeable income of the trust for that year – and see s.62 for the definition of resident trust.

Sixth, correspondingly, the trustee of a non-resident trust is liable for the tax on the chargeable income of the non-resident trust for the year of income in respect of sources attributable to Somaliland.

Seventh, the rules in this section are subject, in the case of trustees in respect of deceased person, to the rules in s.121.

Section 121: Taxation of Estates of Deceased Persons

This section sets out specific rules in respect of trusts involving the estates of deceased persons.

First, any amount derived by a trustee (as executor of the estate of a deceased person) is treated as having been derived by the heir or legatee, if the Director is satisfied that amount has been derived for the immediate or future benefit of the heir or legatee.

Second, where such an amount is included in gross income of the heir or legatee, the heir or legatee is entitled to a corresponding deduction for expenditure or loss incurred by the trustee in that year in deriving that income.

Third, the trustee of a resident trust of a deceased person is liable for the tax on the trust's chargeable income for that year.

Fourth, correspondingly, in the case of a non-resident trust, the trustee is liable for tax on the chargeable income that is attributable to sources in Somaliland.

Fifth, the trustee of an estate of a deceased person is responsible for the payment of any tax liability of the deceased person arising in any year of income prior to the death of the deceased.

Section 122: Principles of Taxation for Companies

This section sets out some fundamental tax treatment rules for companies.

First, a company is liable to tax separately from its shareholders.

Second, the payment of a dividend by a resident company to another resident company (other than an exempt organisation) is exempt from tax if the receiving company controls (directly or indirectly) at least 25% of the voting power in the paying company.

Third, the exemption above does not apply to dividends payable by financial institutions by reason of ownership of redeemable shares in the paying company.

Section 123: Change in control of companies

This section limits the right to deduct as expenditure losses in companies where there is a lack of continuous control for a given period of time.

Where there has been a change of at least 50% of the underlying ownership of a company, in a period of 12 months, losses may not be deducted. However, the prohibition does not apply if the company, for a period of two years after the change in underlying ownership –

- Continues to carry on the same business as before the change, and
- Does not engage in new business or investment after the change where the primary purpose of that new business or investment is to utilise the loss that would otherwise be carried forward

Note that “underlying ownership” is defined in section 2.

Section 124: Roll-Over relief

This section sets out a series of complex rules in respect of –

- the transfer of business assets in exchange for a share, or increased share, in the voting power of a company,
- transfers of business assets in the event of liquidation of a company
- reorganisation of ownership of assets within a group of companies

First, where a resident person transfers an asset (transferor) with or without any liability, in excess of the cost base of the asset to a resident company (other than an exempt organisation) (transferee) in exchange for at least 50% interest in the voting power of the transferee immediately after the transfer –

- the transfer is treated not as a disposal of the asset by the transferor but is treated as an acquisition of a business asset by the transferee
- the transferee’s cost base for the asset is equal to the transferor’s cost base for the asset at the time of the transfer,
- the cost base for a share transferred by the transferor in exchange for the asset is equal to the cost of the transferred asset (less any liability assumed by the transferor for the asset).

Second, in the event of a liquidation of a company, a business asset is transferred to a shareholder that is a resident company (other than an exempt organisation) (transferee

company) and immediately before the transfer the transferee held at least 50% interest in the voting power of the liquidated company –

- the transfer is treated not as a disposal of the asset by the liquidated company but is treated as an acquisition of a business asset by the transferee company
- the transferee's cost base for the asset is equal to the liquidated company's cost base for the asset at the time of the transfer,
- the transfer of the asset is not a dividend,
- no gain or loss is taken into account on the cancellation of the transferee's shares in the liquidated company

Third, where a resident company, or group of resident companies is reorganised without any significant change in underlying ownership, the Director may allow that –

- the reorganisation be treated as not giving rise to the disposal of any business asset or realisation of any business debt, and
- the cost base of the business asset or business debt reflects the fact that no disposal or realisation has taken place.

Note that there are no criteria for the Director to apply, other than being satisfied as to underlying ownership – see s.2.

Part 9: International Taxation

Part 9 (sections 125 to 134) sets out rules for determining the geographic source of income, and specific rules for income that is derived from outside Somaliland.

Section 125: Source of Income

This section sets out detailed rules for determining the source of various classes of income. The rules are set out below. Key words are underlined to indicate the principal area covered by each paragraph (though, of course, the paragraph has to be read in full, as often the underlined term is qualified or limited in some way)

Income (highlighted below) is derived from sources in Somaliland to the extent to which it is

- (a) derived from the sale of goods –
- (i) in the case of goods manufactured, grown, or mined by the seller, the goods were manufactured, grown, or mined in Somaliland; or
 - (ii) in the case of goods purchased by the seller, the agreement for sale was made in Somaliland, wherever such goods are to be delivered.
- (b) derived by a resident person in carrying on a business as owner or charterer of a vehicle, ship, or aircraft, wherever such vehicle, ship, or aircraft may be operated;
- (c) derived from any employment exercised or services rendered in Somaliland;
- (d) derived in respect of any employment exercised or services rendered under a contract with the Government of Somaliland, wherever the employment is exercised or services are rendered;
- (e) derived by a resident individual from any employment exercised or services rendered as a driver of a vehicle, or an officer or member of a crew of any vehicle, ship, or aircraft, wherever the vehicle, ship, or aircraft may be operated;
- (f) derived from the rental of immovable property located in Somaliland;

- (g) derived from the disposal of an interest in immovable property located in Somaliland or from the disposal of a share in a company the property of which consists directly or indirectly principally of an interest or interests in such immovable property, where the interest or share is a business asset;
- (h) derived from the disposal of movable property, other than goods, under an agreement made in Somaliland for the sale of the property, wherever the property is to be delivered;
- (i) an amount –
 - (i) included in the business income of a taxpayer under section 78(5) in respect of the disposal of a depreciable asset used in Somaliland;
 - (ii) treated as income under section 112, where the deduction was allowed for an expenditure, loss, or bad debt incurred in the production of income sourced in Somaliland;
- (j) a royalty –
 - (i) arising from the use of, or right to use, in Somaliland -
 - (A) any patent, design, trade mark, or copyright, or any model, pattern, plan, formula, or process, or any property or right of a similar nature;
 - (B) any motion picture film;
 - (C) any video or audio material, whether stored on film, tape, disc, or other medium, for use in connection with television or radio broadcasting;
 - (D) any sound recording or advertising matter connected with material referred to in sub-paragraphs (i)(B) and (C) of this paragraph; or
 - (E) any tangible movable property;
 - (ii) arising from the import of, or undertaking to import, any scientific, technical, industrial, or commercial knowledge or information for use in Somaliland;
 - (iii) arising from the use of, or the right to use, or the receipt of, or right to receive, in Somaliland any video or audio material transmitted by satellite, cable, or optic fibre, or similar technology for use in connection with television or radio broadcasting;
 - (iv) arising from the rendering of, or the undertaking to render assistance ancillary to a matter referred to in sub-paragraphs (i), (ii), or (iii) of this paragraph;
 - (v) arising from the total or partial forbearance in Somaliland with respect to a matter referred to in sub-paragraphs (i), (ii), (iii), or (iv) of this paragraph; or
 - (vi) arising from the disposal of industrial or intellectual property used in Somaliland;

(note the Somali version of the Act incorrectly labelled several of the subparagraphs within paragraph (j) as separate paragraphs up to (o). The remaining paragraphs thus commence from (p))

- (p) fees, commissions or similar charges in relation to a debt obligation where –
 - (i) the debt obligation is secured by immovable property located, or movable property used, in Somaliland;
 - (ii) the payer is a resident person; or

- (iii) the borrowing relates to a business carried on in Somaliland;
- (q) a dividend or director's fee paid by a resident company;
- (r) a pension or annuity where –
 - (i) the pension or annuity is paid by the Government of Somaliland or by a resident person; or
 - (ii) the pension or annuity is paid in respect of an employment exercised or services rendered in Somaliland;
- (s) a natural resource payment in respect of a natural resource taken from Somaliland;
- (t) a foreign currency debt gain derived in relation to a business debt which has arisen in the course of carrying on a business in Somaliland;
- (u) a contribution to a retirement fund made by a tax-exempt employer in respect of an employee whose employment is exercised in Somaliland;
- (v) a management charge paid by a resident person taxable in Somaliland under an international agreement or attributable to any activity which occurs in Somaliland, including an activity conducted through a branch in Somaliland.

Section 126: Foreign Employment Income

This section exempts from tax foreign-sourced employment income derived by a resident individual if the individual has paid foreign income tax on that income. The individual is treated as having paid tax on foreign sourced employment income if it has been withheld and paid to the revenue authority of the foreign country by the employer of the individual.

Section 127: Foreign Tax Credit

This section provides for a credit, against Somaliland tax, of tax paid in another country on income that is liable to tax in Somaliland.

The basic principle is that a resident taxpayer is entitled to a credit – a foreign tax credit – for any foreign income tax paid by the taxpayer in respect of foreign-source income included in the gross income of the taxpayer. “Foreign income tax” includes a foreign withholding tax, but does not include a foreign tax designed to raise the level of the tax on the income so that the taxation by the country of residence is reduced.

The amount of the foreign tax credit of a taxpayer for a year of income is limited. It shall not exceed the Somaliland income tax payable on the taxpayer's foreign-source income for that year, calculated by applying the average rate of Somaliland income tax of the taxpayer for that year to the taxpayer's net foreign-source income for that year.

For calculating the foreign tax credit –

- The term “average rate of Somaliland income tax” is defined as meaning, in relation to a taxpayer for a year of income, the percentage that the Somaliland income tax, before the foreign tax credit, is of the chargeable income of the taxpayer for the year and, in the case of a taxpayer with both foreign source business income and other income derived from foreign sources, the average rate of tax is to be calculated separately for both classes of income, and
- “Net foreign-source income” is defined to mean the total foreign-source income included in the gross income of the taxpayer, less any deductions allowed to the taxpayer under this Act that –

- relate exclusively to the derivation of the foreign-source income; and
- in the opinion of the Director, may appropriately be related to the foreign-source income.

The calculation of the foreign tax credit of a taxpayer for a year of income is made separately for foreign-source business income and other income derived from foreign sources by the taxpayer during the year.

Foreign income tax is treated as being paid in the following circumstances –

- in the case of a partnership – by the partners;
- a trustee is treated as paid by the beneficiary where the income on which foreign income tax has been paid is included in the gross income of the beneficiary under this Act.
- a beneficiary is treated as paid by the trustee where the income on which foreign income tax has been paid is taxed to the trustee under this Act.

Section 128: Taxation of Branch Profits

This section imposes tax on non-resident companies carrying on business in Somaliland through a branch, where income has been repatriated in a year of income.

The rate of tax on repatriated income is 10% of chargeable income, being repatriated income.

Repatriated income is calculated according to the formula –

$$A + (B - C) - D$$

where –

- A** - is the total cost base of assets, net of liabilities, of the branch at the commencement of the year of income;
- B** - is the net profit of the branch for the year of income calculated in accordance with generally accepted accounting principles;
- C** - is the Somaliland tax payable on the chargeable income of the branch for the year of income; and
- D** - is the total cost base of assets, net of liabilities, of the branch at the end of the year of income.

In calculating the repatriated income of a branch, the total cost base of assets at the end of a year of income is the total cost base of assets at the commencement of the next year of income.

The tax imposed under this section is in addition to any tax imposed by this Act on the chargeable income of the branch under section 56, but is otherwise treated for all purposes of this Act as a tax on chargeable income.

Section 129: Tax on International Payments

International payments are taxed under section 129 of the Act. The specific payments covered by this provision are payments to every non-resident person of any dividend, royalty, rent, natural resource payment, management charge or non-principal payments on a debt obligation derived from sources in Somaliland. Tax is charged at a rate of 10% of the gross amount.

Dividends are only treated as derived from sources in Somaliland to the extent that the dividend is paid out of profits derived in Somaliland. Where the profits are derived from sources in and outside Somaliland, the dividend is treated as having been paid first from the profits derived from Somaliland.

However, tax is not charged on amounts attributable to the activities of a branch of a non-resident in Somaliland if such amount is subject to section 68.

Section 130: Tax on payments to Non-resident Public Entertainers or Sports Persons

This section imposes tax on any promoter, agent, or similar person paying remuneration to a non-resident entertainer or sportsperson; or on any person who is responsible for collecting the gross receipts from a performance in Somaliland by a theatrical, musical, or other group of non-resident entertainers or sportspersons.

Tax is imposed at a rate of 10% of the gross amount of –

- Remuneration received by the non-resident public entertainer or sportsperson, or
- Receipts derived by a theatrical, musical, or other group of non-resident entertainers or sportspersons.

Tax is imposed on a group regardless of whether or not the performance is conducted for the joint account of all or some of the members of the group.

Each member of the group is jointly and severally liable for the payment of tax under this section. The tax must be remitted to the Director before leaving Somaliland, subject to section 133(c).

Section 131: Tax on Payments to Non-Resident Contractors or Professionals

This section imposes tax on payments to non-resident contractors or professional persons on income derived under a Somaliland-source services contract.

This refers to a contract, other than an employment contract, under which the principal purpose of the contract is the performance of services which gives rise to income sourced in Somaliland; and any goods supplied are only incidental to that purpose.

The rate of tax imposed is 10%.

The tax does not apply to the payment of a royalty or a management charge that is subject to tax under section 129.

Section 132: Taxation of Non-Residents providing Shipping, Air Transport or Telecommunications Services

This section imposes tax on every non-resident person carrying on the business of ship operator, charterer, or air transport operator who derives income from the carriage of passengers who embark, or cargo or mail which is embarked in Somaliland and on a road transport operator who derives income from the carriage of cargo or mail which is embarked in Somaliland.

The rate of tax is 10% of the gross amount derived by the non-resident person from the carriage, and is deemed a tax on chargeable income.

The tax does not apply to income derived from the carriage of passengers who embarked, or cargo or mail that is embarked, solely as a result of trans-shipment.

In addition, the section imposes a tax, at the rate of 5% of the gross amount derived by non-residents from the business of transmitting messages by cable, radio, optical fibre, or satellite communication from apparatus established in Somaliland, whether or not such message originated in Somaliland.

Section 133: General Provisions relating to Taxes imposed

Any tax imposed under sections 129 to 132(1) is deemed to be a final tax. Accordingly, the income is not to be included in the gross income of the non-resident person, and no deduction is allowed for expenditure or loss incurred by the non-resident person in deriving the income.

No further liability arises if the income has been subject to withholding tax by a withholding agent, and paid to the Director, in accordance with section 148.

Section 134: International Agreements

This section empowers the application of the provisions of certain international agreements relating to tax.

First, an international agreement is defined in section 2 as an agreement with a foreign government providing for the relief of international double taxation and the prevention of fiscal evasion, or for reciprocal administrative assistance in the enforcement of tax liabilities.

Second, an international agreement has effect as if it were contained in the Act.

Third, to the extent that the provisions of an international agreement and the Act differ (other than subsection (5) and sections 47 and 48), the terms of the international agreement prevail over the Act.

Fourth, where the Director receives a request from a foreign tax administration, he/she may by written notice demand payment from a person, named in the request, for payment to the Director and onward transmission to the foreign tax administration.

Fifth, if a person fails to comply with such a notice, the Director may seek to recover that amount as if it were tax under the Act.

Sixth, set out in subsection (5) – see above – where an international agreement provides that income derived from sources in Somaliland is exempt from Somaliland tax, or is taxed at a reduced rate, the benefit of that exemption or reduction is not available to a person who, under the international agreement is resident in the foreign country or where 50% or more of the underlying ownership of that person is held by individuals who are not resident of that foreign country.

Part 10: Procedure relating to Income Tax

Part 10 (Sections 135 to 142) set out fundamental provisions relating to –

- Filing of returns
- Business information returns
- Assessments
- Objections and appeals
- Payment of provisional tax
- Estimated tax payable
- Refunds
- Rental tax returns

Section 135: Filing of Returns

A return of income is a prescribed and pre-printed form that is presented as a statement that contains a declaration of a given taxpayer's income and attendant tax liability. The Act in section 135(2) states that a return of income shall be in the form prescribed by the Director, stating the information required, and be furnished in the manner prescribed by the Director.

The Act in section 135(1) obliges every taxpayer to furnish a return of income for each year of income of the taxpayer not later than four months after the end of that year.

A year of income is defined in section 2 to mean "the period of twelve months ending on 31 December, and includes a substituted year of income and a transitional year of income". A substituted year of income is defined in section 90(1) as a 12-month period other than the normal year of income. A transitional year of income as defined in section 90(6) occurs when a taxpayer wants to change an accounting year/year of income (from say a normal year to a substituted year of income); it is the period between the last full year of income prior to the change and the date on which the changed year of income commences which is treated as a separate year of income.

The following issues are important in respect of a return of income:

- The taxpayer is obliged by section 135(3) to sign the return of income and should include a declaration that the return he/she is submitting to the Director is complete and accurate i.e. including all the information that is necessary to correctly and fairly determine the tax liability. If the taxpayer is legally incapacitated, then section 135(4) authorises the incapacitated person's legal representative to sign the return of income. He/she (the legal representative) is also obliged to include the declaration as to the completeness and accuracy of the return. Section 2 defines an "incapacitated person" to mean a resident individual adjudged under a law in Somaliland to be in a state of unsoundness of mind;
- A person who is carrying out a business is required by section 135(5) to attach the following two statements to the return of income:
 - a statement of income and expenditure, which is also referred to as the income statement or the profit and loss account;
 - a statement of assets and liabilities, which is also referred to as a balance sheet.

In practice, the business person is expected to attach a full set of accounts for the year of income.

Where the taxpayer hires a [professional] person for remuneration, other than an employee, to prepare the statements referred to above or any other documents in support the return of income, then such person is obliged by section 135(6) to sign the return certifying that he/she has examined the books of account and other relevant documentation of the taxpayer, and that, to the best of his/her knowledge, the return or documents so attached, correctly reflect the data and transactions to which it relates. If this person is not comfortable with the taxpayer's return of income, and he/she refuses to sign the return of income, then section 135(7) requires him/her to attach a statement in writing explaining the reasons for his/her refusal to sign the return of income and attach it thereto.

Circumstances when a Taxpayer may be required to submit a Return of Income

Whereas a taxpayer would normally submit a return of income for a twelve-month period or at the end of a year of income, there are situations as detailed in section 135(8) when the

Director is obliged not to wait for the expiry of the year of income or time schedules as defined in section 135(1).

Section 135(8) provides that the Director may, by notice in writing, require the taxpayer or the taxpayer's trustee, as the case may be, to furnish, by the date specified in the notice, a return of income for the taxpayer for a period of less than twelve months if the following circumstances happened during a year of income -

- a taxpayer has died;
- a taxpayer has become bankrupt, wound-up, or gone into liquidation;
- a taxpayer is about to leave Somaliland indefinitely;
- the Director otherwise considers it appropriate.

Requiring another Person to Submit of a Return of Income

The Director is authorised by section 135(9) to appoint in writing a [professional] person to prepare and furnish him/her with a return of income for a taxpayer who has failed to furnish him/her with a return of income as required by the Act (in section 135).

The Act treats the return of income submitted under section 135(9) as if it were furnished by the taxpayer (person originally required to submit the return). The implication of this provision is that the information contained in the return, including tax obligations so defined therein, are binding on the taxpayer as he/she had done them and submitted them to the Director.

If the Director is not satisfied with the return of income submitted under section 135(9), the Act in section 135(10) empowers the Director by notice in writing, to require the person who furnished the original return to provide a fuller or further return of income.

Situations when the Return of Income Required

Section 135(11) indicates that the following persons would ordinarily not be required to submit a return of income for a year of income:

- A non-resident person whose gross income for the year of income is exclusively derived from employment income in Somaliland and any accruing tax is withheld. (See section 55(4) and section 133(c))
- A non-resident person whose gross income is derived from the following sources in Somaliland:
 - International payments such as any dividend, royalty, rent, natural resource payment, management charge or non-principal payments on a debt obligation from sources in Somaliland (section 129)
 - Payments to public entertainers or sports persons - non-resident entertainers, sports persons, or theatrical, musical, or other groups of non-resident entertainers or sports persons who derive income from any performance in Somaliland (section 130)
 - A Somaliland-source services contract - payments to non-resident contractors or professionals (section 131)
 - Payments to non-resident persons for carrying on the business of ship operator, charterer, or air transport operator who derive income from the carriage of passengers who embark, or cargo or mail which is embarked in Somaliland and on a road transport operator who derives income from the carriage of cargo or mail which is embarked in Somaliland (section 132).

and the accruing tax is withheld by a withholding agent and remitted to the Director under section 148. Section 133(c) provides that if the funds are received by the Director, then the non-resident person is deemed to have settled their tax liability.

- A resident person will not be required to submit a return of income if his/her gross income for the year of income exclusively consists of employment income and all the due tax is withheld under section 143.
- A resident person who is assessed under the presumptive tax system as defined in section 55(4) and (5) of the Act.

It should however be noted that there are circumstances when a person who is not a taxpayer or ordinarily not required to submit a return of income or pay tax may be required to submit a return or some other specified information.

Extending Time for Submission of Returns of Income

Section 135(12)-(16) provides for management of the extension of the period within which to submit a return of income.

If a taxpayer obliged to furnish a return of income finds himself/herself unable to do so by the due date, then section 135(12) obliges such a taxpayer to apply in writing to the Director to be allowed an additional time or extension of time within which to file the return of income.

The application to the Director should explain why the taxpayer will not be able to comply with the statutorily defined due date of four months. Depending on the strengths of the taxpayer's application, say due to absence from Somaliland or some other reasonable or justifiable cause, section 135(14) provides that the Director may, by a written notice, grant the taxpayer an extension of time for furnishing the return of a period not exceeding ninety (90) days. Section 135(16) provides that the granted extension of time within which to furnish the return of income does not however, alter the due date for payment of tax under section 7 of the Act.

If a taxpayer is not satisfied with Director's decision over the extension of the time within which to furnish a return of income under section 135(14), then he/she may only challenge the decision under the objection and appeal procedure in the Act. This is accordingly treated as an 'assessment' under the Act.

Section 136: Business Information Returns

Section 136 is necessary for the Director to collect some information that would support determination of tax payable for a number of taxpayers and pre-empt misstating of income sources in returns of income.

Section 136(1) obliges every person carrying on business in Somaliland who makes a payment of income sourced in Somaliland, being services income, other than employment income, royalties, management fees, or other income specified by the Director to furnish a return of such payments to the Director within sixty days after the end of the year of income in which the payment was made. The return is referred to as the "Business Information Return".

The Director is required by section 136(2) to specify the Business Information Return form and state the information to be included in the form.

Section 136(3) provides that this return form does not apply to the payment of any income subject to [withholding] tax at source under Part 11 of Chapter 2. This is because under the withholding tax administrative framework, the withholding agent would provide such information to the Director (see section 150).

Section 137: Assessments

Introduction

Assessment is a core activity in the tax administration process; it would ordinarily entail determining the tax liability. In practice it involves establishing the following elements:

- Identifying the taxpayer and this is the person obliged to and responsible for payment of the tax. In the case of the incapacitated persons or in matters of receivership, this could actually be a legal representative and not the owner of the business or income.
- Identifying and defining the tax base; this is a very involving process which stretches from identifying the sources of income, and through a computational process determines the chargeable income.
- Subsequently an appropriate tax rate is identified and applied on the chargeable income to arrive at the tax liability, which is the obligation that the taxpayer would settle at specified times.

The Act in section 2 defines the term “Assessment”. There are four distinct definitions of the term which we need to consider:

- The first paragraph refers to the ascertainment of the chargeable income of a taxpayer for a given a year of income, and the amount of tax payable thereon under section 137. This definition also includes a deemed assessment where self-assessment applies.
- The second part of the definition is relevant to section 56 of the Act, and indicates the ascertainment of the chargeable rental income of a given individual for a year of income, and the amount of tax payable on it.
- The third paragraph considers the ascertainment of the amount of penal tax payable by a person under the Act; and
- The fourth paragraph deems any decision of the Director which, under this Act, is subject to objection and appeal to be an assessment for the purposes of the Act. This is purely a mechanical provision which is intended to ensure that such decisions are brought under the ambit of section 138 that deals with objections to assessments.

Types of Assessments

Section 137 of the Act provides for the managing of assessments in the Act. The term “assessment” is used in this respect to refer to assessments based on the end-of-year returns of income. There are principally four types of assessments:

Traditional assessment

This assessment is issued by the Director based on the taxpayer’s return of income and on any other information available. Section 137(1) obliges the Director to make an assessment of the chargeable income of a taxpayer and the tax payable thereon for a year of income within five (5) years from the date the return was furnished.

Self-assessment

Section 137(7)-(11) of the Act provides for administering the self-assessment system. Under this system, the taxpayers calculate their chargeable income and the tax payable thereon for a year of income, and pay the tax due on submitting their return of income for that year.

Section 137(7) provides that where a taxpayer has furnished a return of income for a year of income, the Director is deemed to have made an assessment of the chargeable income of

the taxpayer and the tax payable on that chargeable income for that year, being those respective amounts shown in the return. The return of income filed by the taxpayer is accordingly treated as the notice of assessment served by the Director with the due date being either the due date for furnishing of the return or on the actual date the return was furnished, whichever is the later (see section 137(8)).

Section 137(11) affirms that the self-assessment system only applies to those taxpayers specified in a notice published by the Director in the Official Publication of the Government of Somaliland as taxpayers to which this section is to apply for a year of income.

Estimated or 'Best of Judgment' Assessment

The tax administration system relies on voluntary compliance. This would, for example, in relation to assessments imply that taxpayers would submit complete and accurate returns of income to enable the Director to determine the correct tax payable by a taxpayer. In instances where the taxpayer fails to submit a return of income or submits an incomplete and/or inaccurate return of income, the spirit on which tax assessment system is based becomes unsustainable.

Section 137(2) defines the circumstances under which estimated or best of judgment assessments may be issued:

- When a taxpayer fails to furnish a return of income for a year of income;
- When the Director is not satisfied with a return of income for a year of income submitted by a taxpayer;
- When the taxpayer failed to submit a return of income and the Director had appointed a person to prepare and furnish the return under section 135(8).

Section 137(9) also provides that a taxpayer may submit a return of income under the self-assessment system, but the Director may opt to make an assessment either as a traditional assessment or as an estimated assessment.

In cases where the Director is not satisfied with a return of income and he/she opts to issue an assessment under section 137(2)(b) or 137(9), then section 137(3) & (10) obliges the Director to give the reasons why he/she was not satisfied with the return of income or found it necessary and appropriate to issue the assessment.

Additional assessment

Section 137(12) empowers the Director to make an additional assessment to amend an assessment previously made, including a deemed [self] assessment, within 3 years after the service of the notice of assessment. This will arise due to discovery of some information that was not available at the time of making the original assessment. An additional assessment will vary the original assessment by either increasing or decreasing the taxpayer's tax liability.

If, however, the Director establishes that the additional assessment has been occasioned by the taxpayer being involved in fraud, or in any wilful or gross neglect, committed by the taxpayer or on his/her behalf, then section 137(13) dispenses with the ceiling of 3 years. The additional assessment can then be issued any time that this information comes to the attention of the Director.

Section 137(14) however places some caveats on the Director's powers: He/she cannot make an additional assessment amending a previous assessment that had been amended or reduced pursuant to an order of a court. If it is established that the order was obtained by fraud or any gross or wilful neglect, then the Director will have the power to disregard the court order and issue an additional assessment if necessary.

Section 137(15) confirms that the additional assessment shall be treated in all respects as an assessment under this Act. This will, for example, imply that the Director will manage this assessment, including aspects like issuance and delivery of notice of assessment, like he/she does for other assessments.

Cases where Assessment is not applicable

The taxpayers who are not required to submit a return of income for a year of income under section 137(11) shall not be assessed to tax by the Director.

General/Administrative Provisions on Assessments

After completion of the assessment, section 137(6) obliges the Director to serve a notice of the assessment on the taxpayer which will state –

- the amount of chargeable income of the taxpayer;
- the amount of tax payable;
- the amount of tax paid, if any; and
- the time, place, and manner of objecting to the assessment.

Definition of service of the assessment is important because there is a number of subsequent actions that depend on this; and these include challenge of the assessment, collection and recovery of the tax and time for issuing an additional assessment.

Section 137(16) provides for the preparation of an “assessment list” by the Director. An extract from the list can be used in court proceedings as long as it is certified by the Director.

Section 137(18) is meant to protect the notice of assessment against frivolous challenges based on some mistakes that do not in any way affect the substance and spirit of the assessment. However, if there are some mistakes which are not a subject of dispute, then section 137(19) allows the Director to amend the concerned document.

Section 138: Objections and Appeals

Introduction

When serving a notice of assessment on an assessed taxpayer, section 137(6) obliges the Director, among other things, to advise the taxpayer of his/her right to object to the assessment if he/she is not satisfied with the assessment. The Director will accordingly include in the notice of assessment the time, place, and manner of objecting to the assessment.

Section 138 provides for the procedures challenging the assessment through lodging a notice of objection to the assessment with the Director, and subsequently (if not satisfied) appealing to the Tax Appeals Tribunal and Courts of Law. It is important to note that the action of lodging a notice of objection is a pre-requisite for seeking an external review of the assessment.

Objection Management

Lodging a Notice of Objection

Section 138(1) provides that a taxpayer who is dissatisfied with a notice of assessment may lodge a notice of objection to the Director within 30 days after service of the notice of assessment. The Director is, however, empowered under section 138(3) to grant the taxpayer an extended time within which to lodge the notice of objection. This will only be done if the taxpayer has made a formal application and there are meriting considerations

that may justify the delay like the taxpayer's absence from Somaliland, sickness or any other reasonable cause. The Director's powers are permissive. The fact that the taxpayer was absent from Somaliland or sick will not automatically entitle the taxpayer to being granted the extension. The matter will depend on the merits of the case. Section 138(4) gives the taxpayer an option to appeal to the Tax Appeals Tribunal if the Director has refused to grant to the taxpayer the extension of time. The appeal should be done within forty-five days after service of the notice of decision. The Tax Appeals Tribunal is established under Chapter 6 of the Act.

Section 138(2) provides that the notice of objection must be in writing and state precisely the grounds upon which it is made. The statement of the grounds of objection must be sufficiently detailed and explicit as to alert the Director to the particular aspects of the assessment which the taxpayer considers erroneous and the reasons for the taxpayer to hold such a view. Stating the grounds using vague phrases such as "the assessment is excessive" or "arbitrary" is not sufficient for the notice to amount to a valid objection.

Objection Decision

Section 138(5) obliges the Director to consider the notice of objection lodged by the dissatisfied taxpayer, and make a decision. The Director's decision is called an "Objection Decision". The Director has principally two options:

- To allow the notice of objection in whole or in part, and amend the assessment accordingly; or,
- To disallow or reject the notice of objection in its entirety, and confirm the assessment.

The Director is obliged by section 138(6) to serve the taxpayer with notice of the decision. This must be done as soon as is practicable after making the decision.

Though no time limit is placed on the Director within which to make an objection decision, section 138(7) gives the taxpayer the option to elect by a notice in writing to deem the Director to have made the objection decision, if none has been made within 90 days. The intention is not so much for the taxpayer to take benefit of the Director but rather to allow the taxpayer to take the objection to an external review to say the Tax Appeals Tribunal. Section 138(8) deems a taxpayer who made election under section 138(7) as having been served with a notice of the objection decision on the date the taxpayer's election was lodged with the Director. This starts the time running for making an application to the Tax Appeals Tribunal or to the Court.

Appeal to the Tax Appeals Tribunal

Section 138(9) provides for the first step in an external review of an assessment raised by the Director. A taxpayer dissatisfied with an objection decision made by the Director may apply for review of the decision to a Tax Appeals Tribunal established under Chapter 6 of the Act.

The Tax Appeals Tribunal is an independent administrative body established under Chapter 6 of the Revenue Act for the purpose of hearing appeals on Objection Decisions from taxpayers. Its status is underlined by section 221(3) which explicitly states that in the discharge of its functions, the Tax Appeals Tribunal shall be independent and shall not be subject to the direction or control of any person or authority.

The Tribunal is empowered under section 221(2) to review any taxation decision in respect of which an application is properly made. The Tribunal therefore undertakes full-merit reviews of taxpayers' objections to assessments. The role of the Tribunal is to satisfy itself as

to whether the objection decision of the Director is correct. This implies that the Tribunal reviews the merits rather than the legality of the decision, and for this purpose the Tribunal has all the powers of the Director. The Tribunal may, for example, find it appropriate to review the exercise of the discretionary powers granted to the Director relevant to the assessment under appeal.

Appeal to the Regional Court

Section 138(10) allows a taxpayer to appeal to the Regional Court and within five working days of doing so, serve a copy of the notice of appeal on the Director.

Section 234 (under Chapter 6 of the Act) provides that a party to a proceeding before a Tax Appeal Tribunal may, within thirty (30) days after being notified of the decision or within such further time as the Regional Court may allow, lodge a notice of appeal with the Regional Court, and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the Tax Appeals Tribunal.

The Act only gives the taxpayer (and the Director) the option to appeal to the Regional Court if the matter of dispute is on a question of law only. The taxpayer is obliged to ensure that the notice of appeal includes a statement of the question or questions of law that will be raised in the appeal. While the distinction between a question of fact, and a question of law may at times be blurred, there are agreed principles to indicate this, and these are:

- The question of what actually happened is a question of fact.
- Interpretation of a particular section in the Act is regarded a question of law.
- A question of whether particular facts ascertained fall within a particular section of the Act is also regarded as a question of law.

Issues regarded as questions of law can appropriately be included in a notice of appeal to the Regional Court.

Section 234(3) provides that the Regional Court shall hear and determine the appeal and shall make such order as it thinks appropriate by reason of its decision, including an order affirming or setting aside the decision of the Tribunal or an order remitting the case to the Tribunal for reconsideration.

An appeal to the Regional Court will only be successful if it can be proven that the Director made an error of law which resulted in a decision different to what would have been made if the error had not been made. Admittedly, the Regional Court will make its decision based on the findings of fact, and inferences drawn from those facts, by the Director.

Section 139: Payment of Provisional Tax

Section 139(1) provides that a person who derives or expects to derive any income during a year of income that is not or will not be subject to [withholding of] tax at source under section 143, or subject to tax under section 5 is liable to pay provisional tax. This person is defined in section 2 as a provisional taxpayer.

For a provisional taxpayer, other than an individual, (i.e. company, retirement funds and trustees), section 139(2) provides that such taxpayer would pay provisional tax in two equal instalments. The first instalment must be paid by the last day of the sixth month of the year of income, and the second instalment must be paid by the last day of the twelfth month of the year of income. Section 139(3) shows the formula to be used to determine the instalments payable.

For individual taxpayers, section 139(4) provides that provisional tax is payable in four instalments. The payment schedule is as follows:

- The first instalment must be paid by the last day of the third month of the year of income.
- The second instalment must be paid by the last day of the sixth month of the year of income.
- The third instalment must be paid by the last day of the ninth month of the year of income.
- The fourth and last instalment must be paid by the last day of the twelfth month of the year of income.

Section 139(6) empowers the Director to allow a taxpayer who submits a written application depending on the merits of the case, to grant the taxpayer an extension within which to pay the instalment of provisional tax. The Director's discretionary powers are extended to permitting the instalment of tax to be paid in instalments of equal or varying amounts.

Section 139(7) affirms that an instalment of provisional tax, when it becomes due and payable, is a debt due to the Government of Somaliland. The rules for collection and recovery of outstanding tax debt under the Act apply equally to unpaid provisional tax.

Section 139(8) provides that each instalment of provisional tax is credited against the income tax assessed to the provisional taxpayer for the year of income. Section 139(9) provides that where the total of the instalments credited under section 139(8) exceeds the taxpayer's income tax assessed for that year, then section 141(3) applies to the excess.

Section 139(10) debars refunding any instalment of provisional tax other than in accordance with section 141(3).

Section 140: Estimated Tax Payable

In practice, the provisional return of income is deemed a provisional assessment and the Director would just accept it.

Section 140 provides for the computation and determination of the estimated tax payable for the purpose of determining the provisional tax payable by the taxpayer. In the ordinary case, a taxpayer's estimated tax payable for a year of income is computed by applying the rates of tax for the year of income against the taxpayer's estimated chargeable income for the year of income.

For small business taxpayers, an estimate of turnover must be furnished with a statement of the actual gross turnover for the previous year of income.

Other taxpayers, those that are not within the small business category, must furnish an estimate of chargeable income for the year of income for which the provisional tax is being paid.

The estimates of turnover or income must be in the prescribed form, and must be furnished by the date of the first instalment.

A taxpayer's estimate remains in force unless the taxpayer furnishes a revised estimate to the Director. In this case, the revised estimate only applies to the calculation of future payments (it is not applied retrospectively).

If a taxpayer fails to furnish an estimate of turnover or of income, the Director may make an estimate in its place.

Section 141: Refunds

The provision on refunds relates to income tax and is defined in section 141 of the Revenue Act. The salient provisions are as follows:

- The Act allows a taxpayer to apply for a refund to the Director, in respect of any year of income, for any tax paid which is in excess of the assessed tax liability or any other tax due by the taxpayer for that year of income. The excess may have been paid by withholding, instalments, or any other method.
- Section 141(2) places some conditions on the application for the refund:
 - The application shall be made to the Director;
 - The application shall be made in writing;
 - The application shall be made within five years of the later of:
 - the date on which the Director has served the notice of assessment for the year of income to which the refund application relates; or
 - the date on which the tax was paid.
- The establishment of the excess tax does not however entitle the taxpayer to automatic refund. Section 141(3) provides that where the Director is satisfied that tax has been overpaid, he/she would apply the following to the use of the excess tax:
 - Firstly, the excess tax would be applied to reduce any other tax due from the taxpayer;
 - Secondly, the balance of the excess, if any, would be applied to reduce any outstanding liability of the taxpayer to pay other taxes not in dispute or to make provisional tax payments during the year of income in which the refund is to be made; and
 - If there is a remainder, this amount will be refunded to the taxpayer.
- Section 141(4) obliges the Director to pay a late refund fee equivalent to two (2) percent per month for the period commencing on the date the person made the application for refund and ending on the last day of the month in which the refund is made in respect to the following two instances:
 - Where a person made an application to the Director under the Act;
 - Where the refund is made as a result of the decision by the Tax Appeals Tribunal or court of record under section 138 of the Act.
- Section 141(5) obliges the Director to inform the taxpayer who applied for a refund by a notice in writing within 30 days after making the decision on a refund application under section 141(1).
- Where a person is dissatisfied with the Director's decision referred to in section 141(4)(a), he/she may only challenge the decision under the objection and appeal procedure set forth in section 138. This implies that the decision becomes an assessment.

Section 142: Rental Tax Return

Rental Tax is imposed under section 56 of the Act. The Act in section 142(1) requires a rental taxpayer to submit a return of rental income for each year of income not later than four

months after the end of that year. The provisions for the return of income, assessments, objections and appeals, provisional tax and refunds as detailed in section 135-141 with necessary adjustments are applicable to rental tax. The Director is however obliged under section 141(3) to prescribe a specific form for return of rental income.

Part 11: Withholding Tax at Source

The withholding tax system is an arrangement under which income tax is collected at source by the person making the payment, who is referred to as the withholding agent, and remitting the money to the Director. The payee receives the payment net of the deducted tax. It is a convenient and cost-effective method of collecting tax, especially from a multitude of small taxpayers receiving payment from one person. The taxpayer who receives the payment after deduction of tax may never feel the same (psychological) burden as the person who has to get the money out of his/her pocket to pay the tax.

The statutory provisions on Withholding Tax are contained in sections 143 to 151. Withholding tax is imposed on the following items:

- Employment income;
- Dividends to resident shareholders;
- Supply of goods and services to Government or other designated persons;
- International payments.

Section 143: Withholding Tax on Employment Income

The operation of Withholding Tax on Employment income is a very popular and time-tested vehicle through which to collect tax from employers. It is provided for under section 143.

Section 143(1) obliges every employer to withhold tax from a payment of employment income to an employee following regulations made under section 51. The regulations supplement the Act.

Section 143(2) provides that the deduction of the withholding tax from employment income is mandatory. An employer cannot give any reason[s] as a basis for not withholding the tax. The Act states that the employer's obligation to withhold tax cannot be reduced or extinguished because the employer has a right, or is otherwise under an obligation, to deduct and withhold any amount from such payments.

This is further strengthened and buttressed by a corollary provision in section 143(3) that makes the deduction of tax from employment income to take priority over any other law. No deduction or charge or attachment can take precedence of the withholding of tax from employment income. The Act states that the employer's obligation to withhold tax applies, regardless of any other law which provides that the employment income of an employee shall not be reduced or subject to attachment. More often an employee can submit that certain labour laws protect their emoluments from any deduction without their consent. This line of argument should be dismissed outright.

Section 144: Withholding Tax on Dividends for Resident Shareholders

Section 144 provides that all dividends due to resident shareholders (so long as the dividends are not tax exempt in the hands of the shareholder) will attract a 10% withholding tax at the source.

Section 145: Withholding Tax on Supply of Goods and Services

Section 145 provides for the deduction of withholding tax at the rate of 6% of the gross amount or amounts of payments exceeding one million shillings payable to any person in Somaliland in respect to a supply of goods or materials of any kind and/or a supply of services to the Government of Somaliland, a Government institution, a local authority, any company controlled by the Government of Somaliland, or any person designated in a notice issued by the Minister. The person making the payment is referred to as the “payer”.

The following issues are important to note:

- The person receiving the payment would be in Somaliland.
- The payer would be the Government of Somaliland, any of its political sub-divisions, a Government institution (say a parastatal), or any other person designated by the Minister.
- The payer is obliged to give to the payee a receipt that would, among other things, indicate tax withheld.
- The payment may be made once or there could be several payments which are consolidated to exceed one million shillings. This is strengthened by section 145(2) which provides that in instances where there are separate supplies of goods or materials, or of services and each supply is made for an amount that is one million shillings or less; but it would reasonably be expected that the goods or materials, or services would ordinarily be supplied in a single supply for an amount exceeding one million shillings, then section 145(1) would apply as if the supply was made as a single transaction.
- Section 151 that provides for administrative issues on the treatment and definition of priority in deducting withholding tax applies to the withholding tax on supply of goods and services.

Section 145(3) indicates some supplies to which the section is not applicable. These items are accordingly exempt from withholding tax:

- a supply of plant and machinery;
- a supply of human or animal drugs;
- a supply of scholastic materials;
- a supplier who is exempt from tax under the Act; or
- a supplier who the Director is satisfied has regularly complied with the obligations imposed on him/her under the Act.

Section 146: Withholding Tax on International Payments

Selected international payments are subject to withholding tax under section 146 of the Act. The specific payments covered by this provision, so long as they are not excluded as payments that are tax exempt by virtue of section 146(3), are:

- Payments to every non-resident person of any dividend, royalty, rent, natural resource payment, management charge or non-principal payments on a debt obligation derived from sources in Somaliland. Tax is withheld at a rate of 10%, provided that the payment is not tax exempt. These payments are provided for under section 129.

- Payments to non-resident contractors or professional persons on income derived under a Somaliland-source services contract. (This refers to a contract, other than an employment contract, under which the principal purpose of the contract is the performance of services which gives rise to income sourced in Somaliland; and any goods supplied are only incidental to that purpose). These payments are provided for under section 131.
- Payments from any promoter, agent, or similar person paying remuneration to a non-resident entertainer or sportsperson, or who is responsible for collecting the gross receipts from a performance in Somaliland by a theatrical, musical, or other group of non-resident entertainers or sportspersons, shall withhold from the remuneration or receipts the tax levied under section 130.

Section 147: Withholding Tax as a Final Tax

Withholding tax may be deemed as a final tax under the Act. Section 147 provides that tax withheld on a payment of dividends to a resident individual under section 144 is a final tax. The Act then defines the conditions to be satisfied for withholding tax to be deemed a final tax:

- no further tax liability is imposed upon the taxpayer in respect of the income to which the tax relates;
- that income is not aggregated with the other income of the taxpayer for the purposes of ascertaining chargeable income;
- no deduction is allowed for any expenditure or losses incurred in deriving the income; and
- no refund of tax shall be made in respect of the income.

Administrative Procedures on Withholding Tax

Section 148: Payment of Withholding Tax

Section 148(1) provides that the withholding agent shall pay to the Director any tax that has been withheld or that should have been withheld under this Part within fifteen (15) days after the end of the month in which the payment, subject to withholding tax, was made by the withholding agent. The provisions of the Act relating to the collection and recovery of tax apply to any amount withheld as if it were tax.

Section 149: Failure to Pay Withheld Tax

Section 149(1) provides that where a withholding agent fails to withhold tax in accordance with the Act, the agent shall be held personally liable to pay to the Director the amount of tax, which has not been withheld. The Act however allows the withholding agent to recover the amount from the payee. A withholding agent shall pay to the Director any tax that has been withheld or that should have been withheld under this Part within fifteen (15) days after the end of the month in which the payment, subject to withholding tax, was made by the withholding agent.

Section 150: Record of Payments and Tax Withheld

Section 150 makes provision that would ease accounting for tax withheld by both the withholding agent and the payee. The salient provisions made are:

- The withholding agent is obliged in section 150(1) to maintain and keep records that show payments made to the payee[s] and the relevant tax withheld from the payments in relation to a specified year of income. The records should be available as and when required by the Director for inspection. The inspection is an assurance exercise for the Director to satisfy himself/herself that the withholding agent fully complies with the Act. Section 150(2) provides that the withholding agent is obliged to keep these records for a period of five years of income after the end of the year of income to which the records relate.
- In order to ease the process of the payee to account for, and provide proof of tax withheld, section 150(3) requires the withholding agent to deliver to the payee a tax credit certificate that sets out the amount of payments made and tax withheld during a year of income. Section 150(4) provides that a payee who is required to submit a return of income is obliged to attach to the return of income the tax credit certificate or certificates supplied to the payee by withholding agents for the year of income for which the return of income is filed.
- In addition to the inspection carried out by the Director under section 150(1), the Act authorises the Director to call upon a withholding agent to allow an auditor to examine the withholding agent's records to verify their accuracy against the issued tax credit certificates.

Section 151: Treatment and Priority of Tax Withheld

The provisions in section 151(1) and (2) are aimed at ensuring safety and priority of the tax withheld. There is a lag from the date of withholding the tax and the date of remitting it to the Director, and it is necessary to institute measures to ensure that the tax revenue does not fall prey to other inimical forces. It is equally important that the withholding agent is not misled by other provisions such as court orders or debt claimants that they have priority over withholding tax. The Act accordingly provides as follows:

- That the funds that are deducted by the withholding agent are held in trust for the Government of Somaliland and are not subject to attachment in respect of any debt or liability of the withholding agent. Additionally, in the event of the liquidation or bankruptcy of the withholding agent, the amount deducted as withholding tax under the Act does not form a part of the estate in liquidation, assignment, or bankruptcy. The Director shall therefore have a first claim before any distribution of property is made.
- Secondly, every amount which a withholding agent is required under the Act to withhold from a payment is a first charge on that payment; and is withheld prior to any other deduction which the withholding agent may be required to make by virtue of an order of any court or any other law.

Section 151(3) confirms that although the payee does not receive the amount of tax withheld, it is treated as part of the payee's income derived at the time it is withheld and would accordingly (subject to the Act) be included in the gross income for the year of income.

Section 151(4) provides that a withholding agent who has withheld tax under the Act and has remitted the amount withheld to the Director is treated as having paid the withheld amount to the payee for the purposes of any claim by that person for payment of the amount withheld.

Finally, section 151(5) provides that tax withheld from a payment under the Act is deemed to have been paid by the payee and, except in the case of a tax that is a final tax under this

Act, is credited against the tax assessed on the payee for the year of income in which the payment is made.

Chapter 3: Goods and Services Tax

Chapter 3 sets out the provisions relating to Goods Tax and Services Tax, as follows –

- Part 1 – Goods Tax (ss.152-162)
- Part 2 – Services Tax (ss.163-172)
- Part 3 – General provisions (ss.173-179)

Part 1: Goods Tax

Introduction

Goods Tax and Services Tax are primarily taxes on consumer expenditure. They are imposed on either supply of manufactured or imported goods; and on supply of selected services. They are taxes paid by business people to SLRA and then recovered through their sale of the relevant goods or services to consumers.

The Act distinguishes between two distinct taxes:

- The Goods Tax, and
- The Services Tax.

The provisions of this Part must be read in conjunction with the Regulations that supplement the Act.

The Goods Tax (sections 152-162)

Section 152: Goods Tax Imposed

The Goods Tax is imposed by section 152(1) on:

- every taxable supply of goods by a registered manufacturer, and
- every taxable import of goods.

The Act in section 153(9) defines:

- “Goods” to mean any tangible movable property.
- “Manufacturer” to mean any person who manufactures goods.
- “Manufacture” to mean the subjection of any physical matter to any process which materially changes it or its packaging in substance, character, or appearance, and includes the assembly of parts.

Rates of Tax (Section 152(2) & (3))

The Goods Tax rates are defined as:

- The rate of tax on a taxable supply of goods is five (5) percent of the amount of the taxable supply (Section 152(2));
- The rate of taxable supply of an export of goods is zero (0) percent. (section 152(2)). An “export of goods” is defined in section 152(7) to mean the delivery of goods to, or the making available of the goods at, an address outside Somaliland for use or consumption outside Somaliland as evidenced by documentary proof acceptable to the Director.

- The rate of tax on a taxable import of goods is 5 percent of the taxable amount of the import (section 152(3)).

Responsibility for Accounting for the Tax (Section 152(4))

The general principle is that the responsibility for paying and accounting for the due Goods Tax to the Director lies with the person making the taxable supply.

It is accordingly the duty of the registered manufacturer making the supply or the person making the taxable import to account for the tax payable on a taxable supply to the Director.

An importer of a taxable import who is also a registered manufacturer and uses the import to produce manufactured goods is exempted from this obligation. This is principally because such an import is exempted from Goods Tax under section 153(7)(g)(II).

Due Date for Payment of Goods Tax (152(5)-(6))

The due date for payment of the Goods Tax is defined as hereunder:

- Section 152(5) states that the due date for the goods tax on supply of taxable goods by a registered manufacturer made during a tax period is due on the date that the goods tax return for that period is due.
- Section 152(6) provides that due date for goods tax on supply of a taxable import is the date of arrival of the import at the port of entry, and is collected at the same time and subject to the same conditions as collection of customs duties under customs legislation in force in Somaliland.

Section 153: Definition of Taxable Supply

A 'taxable supply' is defined in section 153(1) to refer to any supply (other than an exempt supply) of goods by the manufacturer where:

- the manufacture of goods is in Somaliland, and,
- the supply is made in connection with the carrying on of a business.

Supply of Goods

'Supply of Goods' is defined in section 153(2)-(3) and it includes:

- any sale, exchange, or other transfer of the right to dispose of the goods of the owner;
- an application of goods to own use, where the goods were acquired pursuant to an exempt supply;

(The Act in section 153(9) defines 'Application to own use' to mean applying goods to a non-business use, including use by a related person, or transfer by a registered manufacturer of that person's manufactured products for no consideration).

- the grant of the use or the right to use any goods under a lease, hire purchase agreement or finance lease.

A supply of services incidental to a supply of goods is part of the supply of goods e.g., installation, technical assistance.

Section 153(6) highlights an important necessary requirement for a supply. The supply must be made in connection with the carrying on of a business of a person where the supply is made as part of, or incidental to, any independent economic activity of the person, whatever the purposes or results of that activity.

Simultaneous Supply of Goods and Services (Section 153(4))

Where a supply is a supply of (both) goods and services (other than a supply of services incidental to a supply of goods), then the Director shall determine on any reasonable basis the extent to which the supply is to be treated as a supply of goods.

If the supply is taxable under Goods Tax, then it will not be taxable under 164 (under Services Tax).

Place of Supply of Goods (Section 153(5))

A supply of goods occurs:

- at the place where the goods are delivered or made available by the supplier or,
- if the delivery or making available involves transportation, the place where the goods are when the transportation commences.

Section 154: Taxable Import

A taxable import is defined in section 154(1) to mean every import of goods that is not an exempt import. The supply of services incidental to the import of goods, such as commission, freight, insurance and warranty costs is part of the import of goods.

Time of Supply of Import of Goods

The date of import of goods occurs –

- where the goods are entered under the External Tariff Law for home consumption in Somaliland, on the same date and at the same time as they are so entered, or
- in any other case, on the date on which the goods are brought into Somaliland.

Section 155: Time of Supply of Goods

Section 155 defines the time of supply of goods to occur as follows:

- A supply of goods occurs on the earlier of the date on which the goods tax invoice for the supply is issued or the date on which the goods tax invoice is required to be issued under section 159.
- A supply of goods by way of application to own use occurs on the date the goods are first applied to own use.
- A supply of goods under a hire purchase agreement or finance lease occurs on the commencement date of the agreement or lease.

Exempt Supplies (Section 153(7))

The following goods are exempt from Goods Tax:

- A supply of foodstuffs for human consumption (but not as a meal, cooked or prepared food), for the general use of educational and philanthropic institutions, excluding goods for the personal use of the members and employees of such institutions and organisations.
- A supply of computers, computer accessories and software.
- Supply of goods for the relief of distressed persons in the case of natural disasters or other humanitarian emergencies, to the extent the Minister shall specify by notice at the time of the disaster or emergency.
- Supply of pharmaceutical or medicinal preparation, as specified by regulation to be issued by the Minister.

- Supply of medical aids or appliances specifically designed for persons with an illness or disability.
- Supply of textbooks or other instructional materials for use in school or adult educational programs.
- Supply to a registered manufacturer or to a person in the business of mining or forestry, of raw materials or other inputs for use directly in manufacturing or capital goods. Section 153(9) defines “capital goods” to mean any plant or equipment (including spare parts therefore, but not including motor vehicles) for use exclusively and directly in manufacturing.
- A supply as part of a transfer of a manufacturing business as a going concern by a registered manufacturer to another registered manufacturer.

Note that the Regulations define additional exempt supplies in relation to the supplies listed above.

Exempt Import (Section 154(2))

An import of goods is an exempt import where the import would be an exempt supply if it were a supply of goods in Somaliland.

Supply of Goods as part of a transfer of a Manufacturing Business as a Going Concern

Section 153(10) provides that where a business has been transferred as a going concern from one registered manufacturer to another registered manufacturer, the transferee will be considered the manufacturer of any goods transferred that were manufactured by the transferor.

Section 153(7)(g)(III) provides that the Supply of Goods as part of a transfer of a Manufacturing Business as a Going Concern is given effect when the following conditions are satisfied:

- The goods must be sold as part of the transfer of a ‘manufacturing business’ as a ‘going concern’;
- The assets are to be used by the purchaser with the intention of carrying on the same kind of ‘business’ as the seller (but not necessarily identical);
- Where the seller is a registered manufacturer, the purchaser must be a registered manufacturer already or become one as the result of the transfer; and
- Where only part of the ‘business’ is sold it must be capable of operating separately.

Supplying Taxable and Exempt Supplies

Where a registered manufacturer makes supplies of both taxable and exempt supplies, a supply to the manufacturer of raw materials or other inputs, or of capital goods is only exempt under section 153(7)(g)(I) or (II) to the extent that the raw materials or other inputs, or capital goods are used by the manufacturer in making taxable supplies.

Section 156: Taxable Amount

Taxable Amount of a Taxable Supply

The general rule for defining a taxable amount of a taxable supply is stated in section 156(1). The taxable amount of a taxable supply is the consideration payable for that supply.

A “consideration” is defined in section 156(5) and in relation to a supply, it means the total amount in money or kind paid or payable for the supply by any person, directly or indirectly,

including any duties, levies, fees, and charges (other than any Goods Tax imposed under the Act) paid or payable on, or by reason of, the supply, reduced by any price discounts or rebates allowed and accounted for at the time of the supply. Any consideration in kind is valued at fair market value at the time of the supply.

The term 'fair market value' is defined in section 177 to refer to the amount in money that a similar supply would fetch if supplied at the same time. A similar supply is a supply that is identical to, or closely or substantially resembles the supply under consideration. Where it is not possible to determine the value of the supply, the Act empowers the Director to determine such value, having regard to all the circumstances of the supply.

There are two exceptions to the general rule mentioned in section 156(2) & (3), and these are:

- Section 156(2) sets out the rule that the taxable amount of the following taxable supplies is the fair market value of the supply –
 - A taxable supply under a hire purchase lease agreement, or finance lease;
 - An application of goods to own use; and
 - A taxable supply between related persons for no consideration or for a consideration that is less than the fair market of the supply.
- Section 156(3) states that the taxable amount of a taxable supply made for no consideration, other than an application to own use or a supply to a related person, is zero.

Taxable amount of an Import (Section 156(4))

The taxable amount of a taxable import is the sum of the following amounts –

- CIF Somaliland Port or Customs entry value, whichever is applicable;
- The value of incidental services, if not already included in the CIF Port or Customs entry value; and
- The customs duty (if any) levied on the import.

Section 157: Post-Sale Adjustments

Circumstances when a Post-Sale Adjustment Occurs (Section 157(1))

A post-sale adjustment occurs when:

- a taxable supply by a registered manufacturer is cancelled,
- the nature of a taxable supply by a registered manufacturer has been fundamentally varied or altered,
- the consideration for a taxable supply by a registered manufacturer is altered,
- the goods (or part thereof) that are the subject of a taxable supply by a registered manufacturer are returned to the manufacturer, or
- a demonstrable mathematical or clerical error is made that causes an error in the amount of goods tax paid (for example, the misplacement of a decimal point).

Consequences of a Post-sale adjustment (Section 157(2)-(4))

If an error or post-sale adjustment results in an underpayment of goods tax, the registered manufacturer is required to pay the balance. The registered manufacturer is entitled to recover the balance from the recipient of the supply (s. 157(2)).

If there is any overpayment of goods tax due to error or post-sale adjustment, the registered manufacturer is allowed a credit for the overpayment, but only after the registered manufacturer has repaid the excess goods tax to the customer (s. 157(3)-(4)).

No cash tax refunds are allowed to the registered manufacturer. The credit for overpaid goods tax is allowed to the manufacturer for the tax period in which the event that led to the overpayment occurred (s. 157(4)).

Section 158: Registration of Manufacturers

Person Qualifying to Register (Section 158 (1)-(3))

Every person who carries on any business of manufacture has an obligation to register either at the end or beginning of any twelve months period where the person has made or expects to make taxable supplies with a total taxable amount equal to or in excess of five (5) million Somaliland Shillings (section 158(1)).

(Note the Revenue Act Regulations 2017, particularly Regulation 22(2)(c), indicate a higher taxable supplies threshold before registration is required of 250 million Somaliland shillings. This assumed that a statutory instrument that proposed such an increased threshold would be signed by the Minister of Finance and approved by Parliament in accordance with section 52 of the Act. This action has however not happened and accordingly the current lower registration threshold continues to apply).

The term ‘manufacture’ is defined in section 153(9).

Defining Amount of Taxable Supplies for Purpose of Registration

The amount of ‘taxable supplies’ is the turnover of the taxable supplies of an enterprise (i.e. gross sales exclusive of any tax for 12 consecutive calendar months). In defining the taxable supplies for the purpose of determining the registration threshold, the Director may include the following:

- The taxable supplies made by another person who is a related person (section 158(2)). A related person is defined in section 2 under “associate”.
- Any taxable supplies of services provided by the person (section 158(3)). It is notable that a person registered here will be considered registered for purposes of section 169 for Services Tax.

Taxable supplies exclude exempt supplies.

Application and Registration

Every person who has an obligation to register for Goods Tax must apply to the Director within 21 days of becoming so required (section 158(4)).

The Director is obliged to register any person who has applied for registration within 21 days from receipt of application, unless the Director is satisfied that the person does not have a registration obligation (section 158(6)).

See also the Regulations for the detailed processes.

Failure to Apply for Registration

A person who is obliged to apply for registration for Goods Tax and fails to make the application shall be treated as registered from the beginning of the tax period immediately following the time at which the person was required to be registered or such later date as the Director may determine.

Voluntary Registration (Section 158(5) & (7))

A person who is not required to register under section 158(1) may apply to the Director for registration if the person makes or intends to make taxable supplies in the course of carrying on a business of manufacture.

Section 158(7) affirms that the Director will not consider the application for voluntary registration if:

- The person has no fixed place of abode or business in Somaliland,
- The Director has reasonable grounds to believe that the person—
 - does not have a bank account;
 - will not keep proper records; or
 - will not submit regular and reliable goods tax returns, or
- At the time of the application for voluntary registration, the Director has announced a temporary suspension of voluntary registrations for administrative feasibility reasons.

When Does the Registration Take Effect

For mandatory registration under section 158(8), registration takes effect from the beginning of the tax period immediately following the time at which the person was required to be registered, whether or not an application for registration has been made.

For voluntary registration under section 158(9), registration takes effect from the beginning of the tax period immediately following the period in which the person applied for registration.

Change of Personal Particulars (Section 158(10))

Every registered manufacturer shall notify the Director in writing of any change in the name (including business name), address, place of business, or nature of the business of the person within 21 days of the change occurring.

Cancellation of Registration

Application for Cancellation of Registration

The registered manufacturer may apply for cancellation of registration if:

- He/she has ceased to make taxable supplies (s. 158(11)(a));
- The value of his/her taxable supplies during the most recent 12-month period does not exceed five (5) million Somaliland Shillings (s. 158(11)(b)). This application for cancellation may be made only after the expiration of 2 years from the date the registration took effect.

The Decision to Cancel Registration

The Director is empowered under section 158(12) to cancel the registration of a person who has properly made an application and this will take effect from the last day of the tax period in which the person ceased to be required to be registered or such other date as the Director may determine.

Secondly, where the Director is satisfied that a registered manufacturer has ceased to make taxable supplies, he/she shall cancel such person's registration with effect from the last day

of the tax period in which the person ceased to make taxable supplies or such other date as he/she may determine (section 158(13)).

The Director shall not, however, cancel the registration of a person where there is reasonable grounds to believe that, at any time in the next twelve (12) months, such person will make taxable supplies in excess of the amount specified as the registration threshold in the Act (section 158(14)).

Effect of Cancellation of Registration

Section 158(15) lists the implications of cancellation as follows:

- The person is treated as having made a taxable supply of any goods (including raw materials) on hand at the time registration is cancelled which have been acquired by the person in a transaction exempt from tax;
- The taxable supply is treated as having been made immediately before cancellation of the person's registration; and
- The taxable supply is treated as having been made for a value equal to the fair market value of the goods.

The obligations and liabilities of a person under this Chapter of the Revenue Act on Goods and Services Tax (including the filing of goods tax returns) in respect of anything done or omitted to be done while the person was registered are not affected by cancellation of the person's registration (section 158(16)).

Section 159: Goods Tax Invoices and Notices

Goods Tax Invoices

A registered manufacturer making a taxable supply must provide the recipient with a goods tax invoice for the supply. Section 159(1) obliges the registered manufacturer to provide the goods tax invoice at the earlier of:

- the time of payment or partial payment; or
- on the delivery date; or
- on the shipment date.

The goods tax invoice must contain the following particulars:

- the words "goods tax invoice" in a prominent place,
- the name, address, and taxpayer identification number of the registered manufacturer making the supply,
- the individualised serial number and the date on which the goods tax invoice is issued,
- the description of the goods supplied (including quantity or volume) and the date on which the goods were delivered, and
- the consideration for the supply and the amount of goods tax charged.

Goods Tax Debit Notes

This is provided for under section 159(3)-(4). A debit note is issued by a supplier when the price is increased after a tax invoice was issued. A debit note can also be issued if a post-sale adjustment has been made under section 161 of the Act.

A debit note shall contain the following particulars:

- The words 'debit note' in a prominent place;

- The name, address, and taxpayer identification number of the registered manufacturer making the supply;
- The individualised serial number and the date on which the debit note is issued;
- A brief description of the circumstances giving rise to the issuance of the debit note, including information sufficient to identify the taxable supply to which the debit note relates; and
- The consideration for the supply shown on the goods tax invoice for the supply, the correct amount of the consideration, the difference between these two amounts and amount of goods tax that relates to the difference.

The debit note is accounted for in the period the debit was received. The rate is the one that applied to the original supply.

Goods Tax Credit Notes

This is provided for under Section 159(5)-(6).

Credit notes are issued by a supplier when the price is decreased after a tax invoice was issued, for example when faulty goods are returned. A credit note can also be issued if a post-sale adjustment has been made under section 161 of the Act.

A credit note shall contain the following particulars:

- The words 'credit note' in a prominent place;
- The name, address, and taxpayer identification number of the registered manufacturer making the supply;
- The individualised serial number and the date on which the credit note is issued;
- A brief description of the circumstances giving rise to the issuance of the credit note, including information sufficient to identify the taxable supply to which the credit note relates; and
- The consideration for the supply shown on the goods tax invoice for the supply, the correct amount of the consideration, the difference between these two amounts and amount of goods tax that relates to the difference.

The credit note is accounted for in the period the credit was received. The rate is the one that applied to the original supply.

Section 160: Goods Tax Return

A registered manufacturer must submit a goods tax return for each tax period within 21 days after the end of the period, whether or not any goods tax is due for the period.

The Act however provides that no additional return will be required for taxable imports listed on a consumption entry form for purposes of the customs law and for which the goods tax was paid at the time of entry.

The tax period is defined in section 178 for the purpose of Chapter 3 of the Act to be one calendar month.

Section 161: Seizure and Forfeiture of Goods

If the Director has reasonable grounds to believe that goods tax accruing from a taxable supply or taxable import of goods is or will become payable, has not been or will not be paid, then section 161(1) empowers him/her to sell the goods and recover the due tax.

The Director may seize and sell any vehicle used in the removal or transportation of the goods unless it is shown that the vehicle was used without the consent or knowledge of the owner of the vehicle or other person lawfully in possession or charge of the vehicle.

Section 162: Coordination of Customs and Domestic Tax Administration

Section 162 requires the Director to collect Goods Tax, on imported goods, in the same way and at the same time, as the collection of customs duty on those imported goods.

In addition, unless otherwise required, and with necessary modifications, the customs law relating to import, transit, coastwise carriage, clearance of goods, and payment and recovery of external tariffs, applies to goods tax payable on the import of goods.

Part 2: Services Tax

Part 2 consists of sections 163 to 172 which sets out provisions, similar to Part 1, in respect of service providers and the taxation of certain supplies of services by them.

Section 163: Definition of Services Provider

A ‘registered services provider’ is defined in section 163 to mean any person who is registered or required to be registered for services tax under this Part.

Section 164: Services Tax Imposed

Section 164(1) provides for the imposition of a tax, to be known as the “Services Tax”, on every supply of taxable services in Somaliland by a registered services provider.

Rate of Tax

Under section 164(2), the rate of the services tax is 5 percent of the taxable amount of the supply.

Accounting for Services Tax

Section 164(3) obliges the registered services provider making the supply to account for the services tax on a supply of taxable services to the Director.

The Services Tax payable by a registered services provider is recoverable by the provider from the recipient of the supply, except in the case where a recipient is exempt by international conventions and agreement to which Somaliland is a party. This position cannot be negated by any law in Somaliland (section 164(4)).

Due Date of Services Tax

The services tax payable by a registered services provider in respect of supplies of taxable services made during a tax period is due on the date that the services tax return for that period is due (section 164(5)).

Section 165: Taxable services

Section 165(3) defines a ‘supply of services’ to mean the performance of services for another person.

The term “taxable services” is defined in section 165(1) to mean any supply (other than an exempt supply) in connection with the carrying on of a business by a person of –

- electricity services;
- telecommunications services;
- the provision of water for a fee;
- board, lodging, and incidental services supplied in carrying on the business of a hotel or similar facility, or of meals or beverages in carrying on the business of a restaurant;
- sale of tickets by international transport services (air, sea, and land);
- services of a travel agency or travel arranger, including the issuing of tickets;
- sporting services or game arranger, including the issuing of tickets.

Section 165(3) provides that the supply of goods incidental to a supply of taxable services is part of the supply of the taxable services; it would accordingly not attract goods tax under section 152.

Where, however, there is a supply of taxable services and goods, section 165(4) empowers the Director to determine on any reasonable basis the extent to which the supply is to be treated as a supply of taxable services.

Section 166: Place of Supply

The general rule for determining the place of supply as defined in section 166(1) is that a supply of taxable services occurs at the place of business from which the services are provided. The exception is in respect to the supply of electricity or telecommunications services where the place of supply occurs at the location where the services are received.

Section 167: Time of Supply

Section 167(1) defines the time of supply of taxable services to occur on the earlier of the date on which the services tax invoice for the supply is issued, or the date on which the services tax invoice for the supply is required to be issued under section 171, that is, the date for submission of the services tax return.

Section 167(2) considers service contracts that involve a multiplicity of periodic payments. Where taxable services are supplied under an agreement or law that provides for periodic payments, the services are treated as successively supplied for successive parts of the period of the agreement or as determined by such law, and each successive supply occurs on the earlier of the date on which the payment or partial payment is due or received.

Section 168: Taxable Amount

The taxable amount of a supply of taxable services is stated in section 168(1) to be the consideration payable for that supply.

Section 168(4) defines the term “consideration” in relation to a supply to mean the total amount in money or kind paid or payable for the supply by any person, directly or indirectly, including any duties, levies, fees, and charges (excluding services tax imposed under the Act) paid or payable on, or by reason of, the supply, reduced by any price discounts or rebates allowed and accounted for at the time of the supply. Any consideration in kind is valued at fair market value at the time of the supply.

Where the supply of taxable services between related persons involves no consideration or is for a consideration that is less than the fair market value of the supply, then section 168(2) provides that the taxable amount of the supply will be the fair market value of the supply.

In case of an arms' length transaction, however, section 168(3) provides that where the supply of taxable services is made for no consideration, the taxable amount of the supply is zero.

Section 169: Registration of Services Provider

The processes of registration and cancellation of registration by a services provider are defined in section 169.

Qualifying Criteria for Registration

Section 169(1) lays out the primary criteria for registration of services providers. Every person carrying on any business of providing taxable services is required to register at the end or beginning of any period of twelve months where during the period the person made or expects to make supplies of taxable services the total taxable amount of which is equal to or is in excess of five (5) million Somaliland Shillings.

(Note the Revenue Act Regulations 2017, particularly Regulation 22(2)(d), indicate a higher taxable services threshold before registration is required of 250 million Somaliland shillings. This assumed that a statutory instrument that proposed such an increased threshold would be signed by the Minister of Finance and approved by Parliament in accordance with section 52 of the Act. This action has however not happened and accordingly the current lower registration threshold continues to apply).

The following supplies may be included in a person's taxable supplies of services in determining whether a person is required to be registered:

- The taxable supplies of services made by a related person.
- Any taxable supplies of goods provided by the person. A person registered by reason of this section is deemed registered for the purpose of Goods Tax under section 158.

Registration Process

A person who qualifies to be registered as a services provider must apply to the Director for registration within 21 days of becoming so required.

If the Director is satisfied that the applicant meets the criteria for registration under section 169(1), then he/she is obliged to register the person within 21 days from receipt of the application.

Section 169(5) authorises the Director to register the person who has failed to comply with the Act on this matter. The section provides that any person who fails to make an application as required by the Act shall be treated as registered from the beginning of the tax period immediately following the time at which the person was required to be registered or such later date as the Director may determine.

The registration is deemed to take effect from the beginning of the tax period immediately following the time at which the person was required to be registered.

See also the Regulations for the detailed processes.

Cancellation of Registration

If a registered services provider finds himself/herself no longer complying with the requirement for registration under section 169(1), then section 169(9) authorises him/her to apply for cancellation of registration to the Director.

If satisfied with the application, then section 169(10) empowers the Director to cancel the person's registration with effect from the last day of the tax period in which the person

ceased to be required to be registered or such other date as the Director may determine. The Director also has discretionary powers under section 169(11) to cancel registration if he/she is satisfied that the person ceased to make supplies of taxable services.

The Director will however not cancel the registration of a registered services provider if he/she for example believes that there is simply a brief lull in business. Section 169(12) provides that the Director shall not cancel the registration where he/she has reasonable grounds to believe that, at any time in the next 12 months, the person will make supplies of taxable services in excess of the threshold amount specified for registration in the Act.

The cancellation of the person's registration does not extinguish the obligations and liabilities of a person under Chapter 3 of the Act (including the filing of services tax returns) in respect of anything done or omitted to be done while the person was registered for Services Tax.

Section 170: Port Service Tax

Section 170 imposes a tax on air, land (by commercial automobile), and sea passengers leaving Somaliland.

The tax is collected at a flat rate of US\$25.00 dollars or its equivalent in Somaliland shillings.

The tax is payable to the Director on passing through Customs when exiting Somaliland and is to be collected by an Authorized Revenue Agent.

Section 171: Services Tax Invoices

Section 171 provides that a registered services provider making a supply of taxable services must provide the recipient with a services tax invoice for the supply within ten (10) days of performing the service. In the case of a supply made periodically under an agreement spread over time (Section 167(2)), the services provider shall issue the invoice at least five (5) days before the due date of payment or partial payment.

A services tax invoice shall contain the following particulars –

- the words “services tax invoice” in a prominent place,
- the name, address, and registration number of the registered services provider making the supply,
- the individualised serial number and the date on which the services tax invoice is issued,
- the description of the services supplied and the date on which the services were provided, and
- the consideration for the supply and the amount of services tax charged.

Section 172: Services Tax returns

Every registered services provider must file a services tax return for each tax period (calendar month) within 21 days of the end of the tax period, regardless of whether or not any services tax is due for the period.

Part 3: General Provisions

Part 3 (sections 173 to 179) sets out general provisions relating to tax under Parts 1 and 2.

Section 173: Tax Collected Held in Trust

This provision in section 173 emphasises that the registered manufacturer or registered services provider has the obligation to collect goods and services tax and remit it to the Director as a representative of the Government of Somaliland. It accordingly provides that any registered manufacturer or registered services provider required under this Part to pay the tax is considered to hold collected amounts in trust for the Government of Somaliland.

The obligation to collect and remit money under this Chapter also extends to persons who are exempted from payment of the tax.

Section 174: Recovery of Tax from Recipient of a Supply

The Director is authorised to make an assessment and recover tax from a recipient of a supply who has incorrectly treated the supply as an exempt supply as a result of a fraudulent action or misrepresentation. The Director has discretionary powers under section 174(2) to recover the tax from the registered manufacturer or registered services provider and use it to defray the tax liability of either the registered person or recipient of the supply in relation to the supply. The registered person is in turn authorised by section 174(3) to recover the amount from the recipient of the supply.

Section 175: Offences and Penalties

The following infringements are defined in section 175 as offences attracting penal tax:

- Failure to apply for registration for Goods and Services Tax as required under Chapter 3 of the Act
- Failure to notify the Director of a change in circumstances as required in section 158 or 169
- Failure to notify the Director that the person has ceased to make taxable supplies or supplies of taxable services as required in section 158 or 169
- Failure to furnish any return as required under Chapter 3 of the Act.

Where a registered manufacturer or registered services provider commits any two or more offences as highlighted above, the Director has the option to lock and seal the person's place of business relating to the making of taxable supplies or supplies of taxable services, as the case may be, and to keep it closed for not more than seven (7) days for the purposes of examination of taxpayer records, audit, and provision of advice to the taxpayer concerning compliance with tax obligations. The Director's decision is subject to the procedure for taxpayer objection under section 176.

Section 176: Procedure for Taxpayer Protest and Appeal

A taxpayer dissatisfied with the Director's decision or any other determination under Chapter 3, has the right, within thirty (30) days of receipt of the Director's decisions or determination, to appeal to the Tax Appeals Tribunal established under Chapter 6.

Section 177: Determination of Fair Market Value

The term 'fair market value' is defined in section 177 to refer to the amount in money that a similar supply would fetch if supplied at the same time. A similar supply is a supply that is identical to, or closely or substantially resembles the supply under consideration. Where it is not possible to determine the value of the supply, the Act empowers the Director to determine such value, having regard to all the circumstances of the supply.

Section 178: Taxable Period

The term “tax period” for Goods and Services Tax is defined as the calendar month.

Section 179: Definitions

This section defines “registered manufacturer” and ‘importer” for the purposes of this Chapter.

Chapter 4: Excise Taxes

Introduction

Excise Tax is provided for under Chapter 4 (sections 180-189) of the Act.

Excise tax is categorised as an indirect tax. The person (i.e. a producer or seller) who pays the tax to the government would ordinarily recover the tax by loading it on the selling price so that the buyer of his/her product actually meets it. This is referred to as to shift or pass on the tax. The extent to which the producer or seller can shift the tax to the buyer depends on the price elasticity of the product sold.

Typically, excise tax is imposed in addition to another indirect tax such as Sales tax, Goods and Services Tax or Value Added Tax.

Note that excise tax can either be *specific* i.e. so much per unit of measure like for so many cents per gallon/litre; or *ad valorem*, i.e. proportional to value, say, a percentage of the price or value.

Scope of the Excise Taxes

Sections 180-184 define the scope of excise taxes by indicating the goods and services on which the taxes may be imposed.

Section 180: Earths and Stone and Asbestos Products

Section 180 imposes excise tax on any products of earths, stone and asbestos, whether produced or imported in Somaliland. The rate of excise tax is at 10% of the value of the product. The tax base for this purpose is the CIF Value, and is based on Ad valorem.

Section 181: Tobacco and Tobacco Products

Section 181 imposes excise tax on tobacco and on any product containing tobacco, including cigarettes, cigars, snuff and chewing tobacco whether imported to or manufactured in Somaliland.

The rate of excise tax is at 50% of the value of the product.

Section 182: Cosmetic Aids and Non-Alcoholic Beverages

Section 182(1) imposes excise tax on any cosmetics or cosmetic aids imported or produced in Somaliland, including perfumes, toilet preparations, hair products, and nail-care products; and non-alcoholic beverages. Section 182(2) however exempts soap, toothpaste, toilet tissue and disinfectants.

The rate of excise tax is at 15% of the value of the product.

Section 183: Luxury Goods

Section 183(1) imposes excise tax on all luxury goods imported to or manufactured in Somaliland, including: luxury automobiles; jewellery; precious stones and precious metals.

The term “luxury goods” is not defined and should therefore be taken to have its ordinary dictionary meaning. The following definition is however given in respect to motor vehicles for the purpose of excise tax: the term “luxury automobile” is defined to refer to an automobile that is in the class of private passenger automobiles and that has an engine capacity of 4,000 cc or more, or an automobile with a CIF value of at least US\$20,000 or its Somaliland Shillings equivalent.

The rate of tax on excise duty for all luxury goods is 10% of the value.

Section 184: Telecommunications

Section 184 imposes excise tax on the following telecommunication products:

- The total value of airtime sold by companies for use in cell phones;
- The fees on the use of landlines;
- The fees for handling incoming calls.

The rate of excise tax on the defined telecommunication services is 5% of the value.

In this case, the responsibility to collect and remit the due excise tax lies with the companies providing the telecommunications services.

Exemption from Excise Tax

Section 182(2) exempts some items that would ordinarily fall under the category of Cosmetic Aids and Non-Alcoholic Beverages to be exempt from tax. These are items used for basic health and sanitary purposes, and all governments would encourage their citizenry to use them. The exempt goods are: soap; toothpaste; toilet tissue; and disinfectants.

Section 185: Payment of Excise Tax

Excise tax is due and payable by the importer or manufacturer in the following circumstances:

- In the case of manufactured goods, when the goods are ex-factory. Section 185(2) defines “ex-factory” to mean the time that the goods leave the licensed premises on which they have been manufactured.
- In the case of imported goods, when the goods are imported. Section 185(3) defines ‘import’ to mean on arrival at the port of entry at which the goods are being imported.

Section 186: Amount Payable

Section 186 provides for the computation and determining the excise tax payable.

Section 186(1) provides the following bases to determine the tax payable:

- In the case of imported goods, the tax base is the duty-paid value of the imported goods. Section 186(3) affirms that the “duty-paid” value will be as defined in the Customs law.
- In the case of goods manufactured in Somaliland, the tax base will be the manufacturer’s cost price of manufactured goods.

The value is determined using the normal price charged to customers, which as it were, is the market price of the goods. To fully understand term “normal price charged to customers”, one would need to appreciate the assumptions that underlie it as postulated in section 186(2) as follows:

- That the excise tax chargeable is not included in the normal price.
- That the computation is based on the assumption that the seller meets all costs, charges and expenses incidental to the manufacture or importation and sale of the goods up to the point when they are delivered from the licensed premises in which they have been allowed to be kept without payment of the excise taxes.
- That the normal price is based on the duty-paid value under the Tariff Law at the port of entry. This implies conformity with the Customs Law in respect to imports.
- That where the goods to be valued are manufactured or imported in accordance with any patented invention or registered design or under trademark, the normal price covers the right to use that patent, design or trademark.

The amount determined as the tax base, which is the duty-paid value or normal price value, will then be multiplied by the appropriate excise tax rate (which is expressed as a percentage) to arrive at the excise duty payable.

Information

It is important that the Director gets all the necessary information to determine and monitor the excise tax. Section 186(4) accordingly provides that this information is required to ensure that the taxpayer fully complies with the requirements of Chapter 4 of the Revenue Act.

The Act provides that a manufacturer of any goods produced in Somaliland, or an importer of goods into Somaliland, shall furnish the Director on demand with information relating to his/her import or manufacturing operations, materials used, goods produced or imported, and sales and prices of goods.

Section 187: Excise Returns

Section 187(1) provides for the submission of Excise Tax returns. Every person required to pay excise tax is obliged to submit excise tax returns within 21 (calendar) days after the end of the tax period. This obligation is not affected by the fact that some or all of the excise tax may not be due for the tax period. This provision is important for ensuring that the Director monitors the operations of excise taxpayers.

There is an exception to section 187(1): The obligation is not extended for a person who imported goods and all the required information has been submitted and the excise tax paid at the Customs point of entry.

The tax period for excise tax is defined in section 187(2) to be one calendar month.

Section 188: Amounts Collected in Trust

This provision in section 188 emphasises that the excise tax payer has the obligation to collect the excise tax and remit it to the Director. It accordingly provides that any manufacturer or importer required to pay excise tax is considered to hold collected amounts in trust for the Government of Somaliland.

Section 189: Seizure of Goods and Protest of Seizure

Section 189(1) provides that where a manufacturer or an importer fails to pay the due excise tax on goods, the goods may be seized and sold to recover the due tax. This is done in line with section 161. The Director is authorised to seize and sell the goods if the tax has not been paid or he/she has reasonable grounds to believe that it will not be paid.

Section 189(3) widens this provision to include the vehicle used in the removal or transportation of excisable goods liable to be seized under section 189(1). If it can, however, be shown that such vehicle was so used without the consent or knowledge of the owner of the vehicle or other person lawfully in possession or charge of the vehicle, then the Director would not be empowered to seize the vehicle. Seizure and sale of goods are subject to the requirements of section 14 of the Act.

The taxpayer has a right of protest and appeal against the Director's decision on this matter. Section 176 provides that if a taxpayer objects to the Director's decision or any other determination under this Chapter, the taxpayer may, within thirty (30) days of receipt of the Director's decision or determination, appeal to the Tax Appeals Tribunal established under Chapter 6 of this Act.

Chapter 5 (sections 190-208) contains provisions related to the establishment and operation of the Somaliland Revenue Authority and **Chapter 6 (sections 209-248)** contains provisions relating to the establishment and operation of Tax Appeals Tribunals. As these are predominantly administrative provisions which are self-explanatory they are not detailed in this Commentary.

Schedules to the Revenue Act

First Schedule: Currency Point

The First Schedule specifies a currency point (see section 2)) as having a value of US\$100. This is used for calculation of certain penalties, fines and penal tax. By referencing currency point, each provision can be adjusted for inflation and other changes in value of the Somaliland Shilling, by the single amendment of the value of the currency point.

Second Schedule: Listed Institutions

The Second Schedule sets out the institutions that are "listed institutions" for the purposes of s.72, as defined in s.2, and whose income is otherwise exempt from income tax.

Third Schedule: Small Business Taxpayer Tax Rates

The Third Schedule sets out the alternative basis of taxation and rates of tax on business income that apply to small businesses that qualify under s.55(5). In accordance with the Act, small business taxpayers are those with income between Shs. 5 million and Shs. 50 million.

Fourth Schedule: Chargeable Income Arising from Short-Term Insurance Business

The Fourth Schedule sets out special rules for determining the chargeable income of businesses arising from short-term insurance business, for the purposes of s.67.

Fifth Schedule: Depreciation rates and Vehicle Depreciation ceiling

The Fifth Schedule sets out, for the purposes of ss.78-80, the depreciation rates and vehicle depreciation ceiling.

The Schedule consists of four parts, dealing with:

- Part I - Declining Balance Depreciation rates for Depreciable Assets
- Part II - Vehicle Depreciation ceiling
- Part III - Straight-line Depreciation Rate for Industrial Buildings
- Part IV - Prescribed Area

Sixth Schedule: Valuation of Benefits

The Sixth Schedule sets out the valuation of employment related benefits for the purposes of s.70(3) of the Act.

Seventh Schedule: Taxes to be administered by Somaliland Revenue Authority

The Seventh Schedule sets out the taxes that are to be administered by the SLRA pursuant to section 191 of the Act.

Eighth Schedule: Meetings of the Board

The Eighth Schedule sets out, for the purposes of s.196, rules governing the meetings of the Board of the SLRA.