

**REPUBLIC OF SOMALILAND**



**NOTE: THIS IS AN UNOFFICIAL TRANSLATION OF THE SOMALILAND  
REVENUE ACT 2016 PREPARED FOR THE BENEFIT OF ENGLISH-  
SPEAKING TAXPAYERS AND MOF OFFICIALS. WHILE ALL CARE HAS  
BEEN TAKEN IN ITS PREPARATION, THE OFFICIAL VERSION OF THE  
LAW REMAINS THE SOMALI VERSION**

**SOMALILAND REVENUE ACT, NO.72/2016**

**AN ACT TO REPEAL THE BODY OF LAWS ON DIRECT TAXATION NO. 89/96, SALES TAX  
LAW NO. 84/96 AND ALL THE LAWS AMENDATORY THERETO AND TO ENACT THE  
REVENUE ACT OF SOMALILAND (No.72/2016) AND LEGISLATE FOR INCIDENTAL MATTERS**

# CHAPTER 1 GENERAL PROVISIONS

## PART 1 Applications and Interpretation

### 1. Application of the Act

This Act that governs taxation in the Republic of Somaliland shall be referred to as the Revenue Act, Law No. 72/2016.

### 2. Interpretation

In this Act, unless the context otherwise requires: -

**“Amateur sporting association”** means an association whose sole or main object is to foster or control any athletic sport or game and whose members consist only of amateur sports persons or affiliated associations, the members of which consist only of amateur sports persons.

**“Approved”** means approved by the Minister under regulations made under Section 51.

**“Assessed loss”** has the meaning in Section 89.

**“Assessment”** means:-

- I. The ascertainment of the chargeable income of, and the amount of tax payable on it, by a taxpayer for a year of income under this Act, including a deemed assessment under Section 137;
- II. The ascertainment of the rental income of, and the amount of tax payable on it by an individual for a year of income under this Act;
- III. The ascertainment of the amount of penal tax payable by a person under this Act; or
- IV. Any decision of the Director which, under this Act, is subject to objection and appeal.

**“Associate”** includes:-

- I. Any person who, not being an employee, acts in accordance with the directions, requests, suggestions, or wishes of another person whether or not they are in a business relationship and whether those directions, requests, suggestions, or wishes are communicated to the first-mentioned person, in which case, both persons are treated as associates of each other.
- II. Without limiting the generality of paragraph (I), the following are treated as an associate of a person:
  - (a) A relative of a person, unless the Director is satisfied that neither person acts in accordance with the directions, requests, suggestions, or wishes of the other person;

- (b) A partner of the person, unless the Director is satisfied that neither person acts in accordance with the directions, requests, suggestions, or wishes of the other person;
- (c) A partnership in which the person is a partner where the person, either alone or together with an associate or associates under another application of this Section, controls fifty percent or more of the rights to income or capital of the partnership;
- (d) The trustee of a trust under which the person, or an associate under another application of this Section, benefits or may benefit;
- (e) A company in which the person, either alone or together with an associate or associates under another application of this Section, controls fifty percent or more of the voting power in the company either directly or through one or more interposed companies, partnerships, or trusts;
- (f) Where the person is a partnership, a partner in the partnership who, either alone or together with an associate or associates under another application of this Section, controls fifty percent or more of the rights to income or capital of the partnership;
- (g) Where the person is the trustee of a trust, any other person who benefits or may benefit under the trust; or
- (h) Where the person is a company –
  - (i) a person who, either alone or together with an associate or associates under another application of this Section, controls fifty percent or more of the voting power in the company, either directly or through one or more interposed companies, partnerships, or trusts; or
  - (ii) another company in which the person referred to in sub-paragraph (i), either alone or together with an associate or associates under another application of this Section, controls fifty percent or more of the voting power in that other company, either directly or through one or more interposed companies, partnerships, or trusts.

**“Authority”** means the Somaliland Revenue Authority established by Section 190.

**“Branch”** means a place where a person carries on business, and includes –

- (i) a place where a person is carrying on business through an agent, other than a general agent of independent status acting in the ordinary course of business as such;
- (ii) a place where a person has, is using, or is installing substantial equipment or substantial machinery; or

- (iii) a place where a person is engaged in a construction, assembly, or installation project for ninety days or more, including a place where a person is conducting supervisory activities in relation to such a project.

**“Business”** includes any trade, profession, vocation, or adventure in the nature of trade, but does not include employment.

**“Business asset”** means an asset which is used or held ready for use in a business, and includes any asset held for sale in a business and any asset of a partnership or company.

**“Business debt”** means:-

- (a) In the case of a debtor –
  - (I) a debt obligation, the proceeds of which are used to acquire a business asset or to incur an expense of a business; or
  - (II) a debt obligation arising, as a result of being given time to pay, on the acquisition of a business asset or the incurring of an expense of a business; or
  - (III) any debt obligation of a partnership or company; or
- (b) in the case of a creditor, any debt obligation owed to the creditor that was entered into or arose in the course of the creditor’s business.

**“Business income”** has the meaning in Section 69.

**“Chargeable income”** has the meaning in Section 66.

**“Chargeable trust income”**, in relation to a year of income, means –

- (a) The gross income of the trust for that year calculated as if the trust is a resident taxpayer; less<sup>1</sup>
- (b) The total amount of deductions allowed under this Act for expenditures or losses incurred by the trust in deriving that income.

**“Director”** means the Director-General appointed under Chapter 5 of this Act.

**“Company”** means 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 a partnership.

**“Cost base”**, in relation to an asset, has the meaning in Section 102.

**“Court”** means a court of competent jurisdiction.

**“Currency point”** represents the amount in Somaliland Shillings prescribed in the First Schedule to this Act.

**“Debenture”** includes any debenture stock, mortgage, mortgage stock, loan, loan stock, or any similar instrument acknowledging indebtedness, whether secured or unsecured.

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<sup>1</sup> The word “less” was incorrectly omitted in the Somali version. This will be corrected at a later date

**“Debt obligation”** means an obligation to make a repayment of money to another person, including accounts payable and the obligations arising under promissory notes, bills of exchange, and bonds.

**“Dependant”**, in relation to a member of a retirement fund, means a spouse of the member, any child, including an adopted child of the member who is under the age of eighteen years, or any other relative of the member who the Director is satisfied relies on the member for support.

**“Depreciable asset”** means any plant or machinery, or any implement, utensil, or similar article, which is wholly or partly used, or held ready for use, by a person in the production of income included in gross income and which is likely to lose value because of wear and tear, or obsolescence.

**“Disposal”** has the meaning in Section 101.

**“Dividend”** includes –

- (a) where a company issues debentures or redeemable preference shares to a shareholder –
  - (I) in respect of which the shareholder gave no consideration, an amount equal to the greater of the nominal or redeemable value of the debentures or shares; or
  - (II) in respect of which the shareholder gave consideration which is less than the greater of the nominal or redeemable value, an amount equal to the excess;
- (b) any distribution upon redemption or cancellation of a share, or made in the course of liquidation, in excess of the nominal value of the share redeemed, cancelled, or subject to liquidation;
- (c) in the case of a partial return of capital, any payment made in excess of the amount by which the nominal value of the shares was reduced;
- (d) in the case of a reconstruction of a company, any payment made in respect of the shares in the company in excess of the nominal value of the shares before the reconstruction; or
- (e) the amount of any loan, the amount of any payment for an asset or services, the value of any asset or services provided, or the amount of any debt obligation released, by a company to, or in favour of, a shareholder of the company or an associate of a shareholder to the extent to which the transaction is, in substance, a distribution of profits.

**“Employee”** means an individual engaged in employment.

**“Employer”** means a person who employs or remunerates an employee.

**“Employment”** means –

- (I) The position of an individual in the employment of another person;
- (II) A directorship of a company;

- (III) A position entitling the holder to a fixed or ascertainable remuneration;  
or
- (IV) The holding or acting in any public office.

**“Employment income”** has the meaning in Section 70.

**“Exempt organisation”** means any company, institution, or irrevocable trust –

- (a) Which is –
  - (I) An amateur sporting association;
  - (II) A religious, charitable, or educational institution of a public character;  
or
  - (III) A trade union, employees’ association, an association of employers registered under any law of Somaliland, or an association established for the purpose of promoting farming, mining, tourism, manufacturing, or commerce and industry in Somaliland; and
- (b) Which has been issued with a written ruling by the Director currently in force stating that it is an exempt organisation; and
- (c) None of the income or assets of which confers, or may confer, a private benefit on any person.

**“Farming”** means pastoral, agricultural, plantation, horticultural, or other similar operations.

**“Financial institution”** means any person carrying on the business of receiving funds from the public or from members through the acceptance of money deposits repayable upon demand, after a fixed period, or after notice, or any similar operation through the sale or placement of bonds, certificates, notes, or other securities, and the use of such funds either in whole or part for loans, investments, or any other operation authorised either by law or by customary banking practices, for the account and at the risk of the person doing such business.

**“Foreign-source income”** means any income which is not derived from sources in Somaliland.

**“Gross income”** has the meaning in Section 68.

**“Gross turnover”**, in relation to a resident taxpayer for a year of income, means

- (a) the amount shown in the recognised accounts of the taxpayer as the gross proceeds derived in carrying on a business or businesses during the year of income, including the gross proceeds arising from the disposal of trading stock, without deduction for expenditures or losses incurred in deriving that amount; and
- (b) the amount, if any, shown in the recognised accounts of the taxpayer as the amount by which the sum of the gains derived by the taxpayer during the year of income from the disposal of business assets, other than trading stock, exceeds the losses incurred by the taxpayer during the year in respect of the disposal of such assets.

**“Incapacitated person”** means a resident individual adjudged under a law in Somaliland to be in a state of unsoundness of mind.

**“Incapacitated person’s trust”** means a trust established for the benefit of an incapacitated person.

**“Industrial building”** means any building which is wholly or partly used, or held ready for use by a person in –

- (a) Manufacturing operations;
- (b) Research and development into improved or new methods of manufacture;
- (c) Mining operations;
- (d) An approved hotel business;
- (e) An approved hospital; or
- (f) Approved commercial buildings.

**“International agreement”** means -

- (a) an agreement with a foreign government providing for the relief of international double taxation and the prevention of fiscal evasion; or
- (b) an agreement with a foreign government providing for reciprocal administrative assistance in the enforcement of tax liabilities.

**“Life insurance building”** has the meaning in 67(3).

**“Listed institution”** means an institution listed in the Second Schedule to this Act.

**“Local authority”** means any public body established under a law of Somaliland and having control over the expenditure of revenue derived from rates or taxes imposed by law upon the residents of the areas for which that body is established.

**“Management charge”** means any payment made to any person, other than a payment of employment income, as a consideration for any managerial services, however calculated.

**“Manufacturing”** means the substantial transformation of tangible movable property, including power generation and water supply.

**“Minister”** means the Minister responsible for Finance.

**“Mining operations”** includes every method or process by which any mineral is won from the soil or from any substance or constituent of the soil.

**“Natural resource payment”** means –

- (i) A payment, including a premium or like payment, made as consideration for the right to take minerals or a living or non-living resource from the land; or
- (ii) A payment calculated in whole or in part by reference to the quantity or value of minerals or a living or non-living resource taken from the land.

**“Nominal value”** in relation to a share or debenture, means the paid-up amount of the share or face value of the debenture, including any premium paid in respect of the share or debenture.

**“Non-resident person”** has the meaning in Section 65.

**“Partnership”** means an association of persons carrying on business for joint profit.

**“Payment”** includes any amount paid or payable in cash or kind, and any other means of conferring value or benefit on a person.

**“Person”** includes an individual, a partnership, a trust, a company, a retirement fund, a government, a political subdivision of government, and a listed institution.

**“Property income”** has the meaning in Section 71.

**“Provisional taxpayer”** means a person liable for provisional tax under Section 139.

**“Qualified beneficiary”** means a person referred to in the definition of qualified beneficiary trust.

**“Qualified beneficiary trust”** means –

- (a) A trust in relation to which a person, other than a settler, has a power solely exercisable by that person to vest the corpus or income of the trust in that person; or
- (b) A trust whose sole beneficiary is an individual or an individual's estate or appointees, but does not include a trust whose beneficiary is an incapacitated person.

**“Relative”**, in relation to an individual, means –

- (I) An ancestor, a descendant of any of the grandparents, or an adopted child, of the individual, or of a spouse of the individual; or
- (II) A spouse of the individual or of any person specified in subparagraph (I) of this paragraph.

**“Rent”** means any payment, including a premium or like amount, made as consideration for use or occupation of, or the right to use or occupy, land or buildings.

**“Rental income”**, in relation to an individual for a year of income, means the total amount of rent derived by the individual for the year of income from the lease of immovable property in Somaliland by the individual with the deduction of any expenditures and losses incurred by the individual in respect of the property.

**“Repealed legislation”** means the Body of Laws on Direct Taxation No. 89/96, Sales Tax Law No. 84/96, all laws amendatory thereto and all regulations made thereunder.

**“Resident company”** has the meaning in Section 61.

**“Resident individual”** has the meaning in Section 60.

**“Resident partnership”** has the meaning in Section 63.

**“Resident person”** means a resident individual, resident company, resident partnership, resident trust, resident retirement fund, the Government of Somaliland, or a political subdivision of the Government of Somaliland.

**“Resident retirement fund”** has the meaning in Section 64.

**“Resident taxpayer”** means a taxpayer who is a resident person.

**“Resident trust”** has the meaning in Section 62.



**“Retirement fund”** means a pension or provident fund established as a permanent fund maintained solely for either or both of the following purposes –

- (I) The provision of benefits for members of the fund in the event of retirement;  
or
- (II) The provision of benefits for dependants of members in the event of the death of the member.

**“Revenue”** means taxes, duties, fees, fines or other monies imposed by or collected under this Act and specified provisions of the laws set out in the Seventh Schedule.

**“Royalty”<sup>2</sup>** means –

- (i) Any payment, including a premium or like amount, made as consideration for–
  - (a) The use of, or the right to use, any patent, design, trademark, or copyright, or any model, pattern, plan, formula, or process, or any property or right of a similar nature;
  - (b) The use of, or right to use –
    - (I) Any motion picture film;
    - (II) Any video or audio material, whether stored on film, tape, disc, or other medium, for use in connection with television or radio broadcasting; or
    - (III) Any sound recording or advertising matter connected with material referred to in subparagraph (i)(b)(I) or (II);
  - (c) The use of, or the right to use, or the receipt of, or right to receive, any video  
or audio material transmitted by satellite, cable, optic fiber, or similar technology for use in connection with television or radio broadcasting;
  - (d) The imparting of, or undertaking to impart, any scientific, technical, industrial, or commercial knowledge or information;
  - (e) The use of, or the right to use, any tangible movable property;
  - (f) The rendering of, or the undertaking to render, assistance ancillary to a matter referred to in sub-paragraph (i)(a) to (e) of this paragraph; or
  - (g) A total or partial forbearance with respect to a matter referred to in sub-paragraphs (i)(a) to (f); or
- (ii) Any gain on the disposal of any right or property referred to in subparagraph (i) of this paragraph.

**“Settlor”** means a person who has transferred property to, or conferred a benefit on, a trust for no consideration or for a consideration which is less than the

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<sup>2</sup> The formatting of this definition was confused in the Somali version. This will be corrected at a later date

market value of the property transferred or benefit conferred at the date of the transfer or conferral.

**“Settlor trust”** means a trust in relation to a whole or part of which, the settlor has –

- (i) The power to revoke or alter the trust so as to acquire a beneficial entitlement in the corpus or income of the trust; or
- (ii) A reversionary interest in the corpus or income of the trust.

**“Short-term resident”** means a resident individual, other than a citizen of Somaliland, present in Somaliland for a period or periods not exceeding two years.

**“Substituted year of income”** has the meaning in Section 90.

**“Tax”** means any tax imposed under this Act.

**“Tax avoidance scheme”** includes any transaction, one of the main purposes of which is the avoidance or reduction of liability to tax.

**“Tax-exempt employer”** means an employer whose income is exempt from tax.

**“Taxpayer”** means any person who derives an amount subject to tax under this Act and includes –

- (I) Any person who incurs an assessed loss for a year of income; or
- (II) For the purposes of any provision relating to a return, any person required by this Act to furnish such return.

**“Technical assistance agreement”** means a grant agreement between the government of Somaliland and a foreign government or a listed institution for the provision of technical assistance to Somaliland.

**“Trading stock”** includes anything produced, manufactured, purchased, or otherwise acquired for manufacture, sale, or exchange, as well as consumable stores.

**“Transitional year of income”** has the meaning in Section 90.

**“Trust”** means any arrangement affecting property in relation to which there is a trustee.

**“Trustee”** includes –

- (I) Any person appointed or constituted as such by act of parties, by will, by order or declaration of any court, or by operation of the law;
- (II) An executor, administrator, tutor, or curator;
- (III) A liquidator or judicial manager;
- (IV) Any person having the administration or control of property subject to a trust;
- (V) Any person acting in a fiduciary capacity;
- (VI) Any person having, either in a private or official capacity, the possession, direction, control, or management of any property of a person under a legal disability;
- (VII) Any person who manages assets under a private foundation or other similar arrangement.

**“Underlying ownership”**, in relation to a person other than an individual, means an interest held in, or over, the person directly or indirectly through interposed companies, partnerships, or trusts by an individual or by a person not ultimately owned by individuals.

**“Withholding agent”** means a person obliged to withhold tax under this Act.

**“Year of income”** means the period of twelve months ending on 31 December, and includes a substituted year of income and a transitional year of income.

### **3. Purposes of the Act**

- (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.

### **4. Legal Basis for Taxation**

- (1) Every person is obliged to pay the taxes for which the person is liable.
- (2) No one may be required to pay taxes that are not provided for by this Act.

### **5. Persons Regulated by this Act**

The following persons are subject to this Act:

- (a) Natural and legal persons considered taxpayers in accordance with this Act;
- (b) All persons considered tax agents in accordance with this Act;
- (c) Tax offices, agencies, and their employees, including offices, agencies, and employees of the Somaliland Revenue Authority;
- (d) Customs offices, agencies, and their employees (in cases where responsibility for the collection of tax or tariff under this Act devolves upon the Director of Customs);
- (e) The Ministry of Finance, finance agencies (in cases where tax receipt, collection, or withholding responsibility is assigned by this Act to finance agencies);
- (f) Other agencies and officials responsible for tax collection, receipt, or enforcement;
- (g) Members of the Tax Appeals Tribunal; and
- (h) Any other persons whose rights and authority are determined by this Act.

## **6. Exempt Persons**

- (1) The Government of the Republic of Somaliland, Government agencies, and charitable or not-for-profit private organizations that are approved by and registered with the Somaliland Revenue Authority are referred to as “exempt persons” and are exempt from tax to the extent provided by this Act.
- (2) Foreign governments, foreign diplomatic representatives, foreign consular officials, international organizations and officials of international organizations that are exempt from taxation under international agreements are exempt from tax to the extent required by those agreements and also enjoy those exemptions provided to them by this Act.

## **PART 2 Collection and Recovery of Tax**

### **7. Due Date for Payment of Tax**

- (1) Subject to this Act, tax charged in any assessment shall be payable –
  - (a) In the case of a taxpayer subject to Section 137, on the due date for furnishing the return of income to which the assessment relates; or
  - (b) In any other case, within thirty (30) days from the date of service of the notice of assessment.
- (2) Subject to Sub-section (3), where a taxpayer has lodged a notice of objection to an assessment, the amount of tax payable by the taxpayer pending final resolution of the objection is thirty (30) percent of the tax assessed or that part of the tax not in dispute, whichever is greater.
- (3) The Director may waive the amount or accept a lesser amount than is required to be paid under Sub-section (2) in a case where an objection has reasonably been made to an assessment.
- (4) Upon written application by the taxpayer, the Director may, where good cause is shown, allow for the payment of tax in installments of equal or varying amounts as the Director may determine having regard to the circumstances of the case.
- (5) Where tax is permitted to be paid by installments and there is default in payment of any installment, the whole balance of the tax outstanding shall become immediately payable.
- (6) Permission under Sub-section (5) to pay tax due by installments does not preclude a liability for late payment fees arising under Section 16 on the unpaid balance of the tax due.

## **8. Tax as a Debt due to the Government of Somaliland**

- (1) Tax, when it becomes due and payable is a debt to the Government of Somaliland and is payable to the Director in the manner and at the place prescribed.
- (2) Tax that has not been paid when it is due and payable may be sued for and recovered in any court of competent jurisdiction by the Director acting in the Director's official name, subject to the general directions of the Solicitor General.
- (3) In any suit under this Section, the production of a certificate signed by the Director stating the name and address of the person liable and the amount of tax due and payable by the person shall be sufficient evidence of the amount of tax due and payable by such person.

## **9. Tax Clearance Certificate (Certificate of Tax Non-payment)**

Without having a tax clearance certificate which the taxpayer uses as evidence that he/she has paid all taxes payable:

- A. The department of immigration shall not permit non-resident taxpayers to leave Somaliland.
- B. Government agencies and non-state actors are not permitted to obtain a tax clearance certificate.
- C. Notaries shall not issue property transfer of ownership documents.
- D. Neither business licenses nor their renewals shall be granted.
- E. Cannot be allowed to bid for contract or tender.

## **10. Recovery of Tax from Person owing Money to the Taxpayer**

- (1) Where a taxpayer fails to pay income tax on the date on which it becomes due and payable, and the tax payable is not the subject of a dispute the Director may, by notice in writing, require any person—
  - (a) Owing or who may owe money to the taxpayer;
  - (b) Holding or who may subsequently hold money for, or on account of, the taxpayer;
  - (c) Holding or who may subsequently hold money on account of some other person for payment to the taxpayer; or
  - (d) Having authority from some other person to pay money to the taxpayer, to pay the money to the Director on the date set out in the notice, up to the amount of tax due.
- (2) The date specified in the notice under Sub-section (1) must not be a date before the money becomes due to the taxpayer, or is held on behalf of the taxpayer.
- (3) At the same time that notice is served under Sub-section (1), the Director shall also serve a copy of the notice on the taxpayer.

- (4) Where a person served with a notice under Sub-section (1) is unable to comply with the notice by reason of lack of moneys owing to, or held for, the taxpayer, the person shall, as soon as is practicable and in any event before the payment date specified in the notice, notify the Director accordingly in writing setting out the reasons for the inability to comply.
- (5) Where a notice is served on the Director under Sub-section (4), the Director may, by notice in writing –
  - (a) Accept the notification and cancel or amend the notice issued under Sub-section (1); or
  - (b) Reject the notification.
- (6) A person dissatisfied with a decision under Sub-section (5) may only challenge the decision under the objection and appeal procedure in this Part.
- (7) A person making a payment pursuant to a notice under Sub-section (1) is deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is hereby 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.
- (8) An amount due under this Section is treated for all purposes of this Act as if it were tax due.

## **11. Collection of Tax by Distraint**

- (1) The Director may recover any unpaid taxes by distress proceedings against the movable property of a person liable to pay tax, in this Section referred to as the “person liable”, by using an order in writing specifying the person against whose property the proceedings are authorised, the location of the property, and the tax liability to which the proceedings relate; and may require a police officer to be present while distress is being executed.
- (2) For the purposes of executing distress under Sub-section (1), the Director may, at any time,
  - enter any house or premises described in the order authorising the distress proceeding.
- (3) The property upon which distress is levied under this Section, other than perishable goods, shall be kept for ten (10) days either at the premises where the distress was levied or at any other place that the Director may consider appropriate, at the cost of the person liable.
- (4) Where the person liable does not pay the tax due, together with the costs of the distress

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- (a) In the case of perishable goods, within a period that the Director considers reasonable having regard to the condition of the goods; or
  - (b) In any other case, within ten (10) days after the distress is levied, the property distrained may be sold by public auction or in such other manner as the Director may direct.
- (5) The proceeds of a disposal under Sub-section (4) shall be applied by the auctioneer or seller towards the cost of taking, keeping, and selling the property distrained upon, then towards the tax due and payable, and the remainder of the proceeds, if any, shall be given to the person liable.
- (6) Nothing in this Section shall preclude the Director from proceeding under Section 8<sup>3</sup> with respect to the balance owed if the proceeds of the distress are not sufficient to meet the costs of the distress and the tax due.
- (7) All costs incurred by the Director in respect of any distress may be recovered by the Director from the person liable and the provisions of this Act relating to the collection and recovery of tax shall apply as if the costs were tax due under this Act.
- (8) The Minister may, with the approval of House Representative by statutory instrument, within three (3) months after the coming into force of this Act, make rules regarding the disposal of properties distrained under this Section.

## **12. Recovery from Agent of Non-Resident**

- (1) The Director may, by notice in writing, require any person who is in possession of an asset, including money, belonging to a non-resident taxpayer to pay tax on behalf of the non-resident, up to the market value of the asset but not exceeding the amount of tax due.
- (2) 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.
- (3) The tax payable in respect of an amount included in the gross income of a non-resident partner under Section 116 is assessable in the name of the partnership or of any resident partner of the partnership and may be recovered out of the assets of the partnership or from the resident partner personally.
- (4) The tax payable in respect of an amount included in the gross income of a non-resident beneficiary as a result of the operation of Section 121 or 122<sup>4</sup> is assessable in the name of the trustee and may be recovered out of the assets of the trust or from the trustee personally.

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<sup>3</sup> The Somali version incorrectly showed this reference as being to Sub-section (4). This will be corrected at a future date

<sup>4</sup> The references here should be to Sections 120 or 121. This will be corrected at a future date.

- (5) A person making a payment pursuant to a notice under Sub-section (1), (3) or (4) is deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is hereby indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract, or agreement.
- (6) An amount due under this Section is treated for the purposes of the Act as if it were tax due.

### **13. Duties of Receivers**

- (1) A receiver shall, in writing, notify the Director within fourteen (14) days of being appointed to the position of receiver or of taking possession of an asset in Somaliland, whichever comes first.
- (2) The Director may, in writing, notify a receiver of the amount which appears to the Director to be sufficient to provide for any tax which is or will become payable by the person whose assets are in the possession of the receiver.
- (3) A receiver shall not part with any asset in Somaliland, which is held by the receiver in the capacity as receiver, without the prior written permission of the Director.
- (4) A receiver –
  - (a) shall set aside, out of the proceeds of sale of an asset, the amount notified by the Director under Sub-section (2), or such lesser amount as is subsequently agreed on by the Director; and
  - (b) is liable to the extent of the amount set aside for the tax of the person who owned the asset; and
  - (c) May pay any debt that has priority over the tax referred to in this Section notwithstanding any provision of this Section.
- (5) A receiver is personally liable to the extent of any amount required to be set aside under Sub-section (4) for the tax referred to in Sub-section (2) if, and to the extent that, the receiver fails to comply with the requirements of this Section notwithstanding any provision of this Section.
- (6) In this Section, “receiver” includes any person who, in respect to an asset in Somaliland, is–
  - (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.



## **14. Security on Property for Unpaid Tax**

- (1) Where any person who is the owner of land or buildings situated in Somaliland fails to pay tax when due, the Director may, by notice in writing, notify the person of the intention to attach land or buildings as security for tax as specified in the notice.
- (2) If any person on whom a notice has been served under this Section fails to make payment of the whole of the amount of the tax specified in the notice within thirty (30) days of the date of service of the notice under Sub-section (1), the Director may, without fee, register a lien or charge on such land or buildings and thereupon such registration shall, subject to any prior mortgage over or charge on such land or building to secure the amount of the unpaid tax.
- (3) Upon receipt of the whole of the amount of tax secured under Sub-section (2), the Director shall, without fee, cancel the lien or charge.

## **15. Bad Tax Debts**

- (1) Bad debts owed for taxes, penalties, and late payment fees shall be written off by the Director, if the following circumstances occur:
  - (a) Expiration of the statute of limitations for collection of tax;
  - (b) Cessation of the tax obligation on grounds established by this Act or other acts of tax legislation.
- (2) In other cases, the Director shall write off bad tax debts, according to procedures established by regulations.

## **PART 3 Offences and Penalties**

### **16. Late Payment Fees on Unpaid Tax**

- (1) A person who fails –
  - (a) to pay any tax, including provisional tax;
  - (b) to pay any penal tax; or
  - (c) to pay to the Director any tax withheld or required to be withheld by the person from a payment to another person, on or before the due date for payment is liable for late payment fees equal to two (2) percent per month on the amount unpaid calculated from the date on which the payment was due until the date on which payment is made.
- (2) Late payment fees paid by a person under Sub-section (1) shall be refunded to the person to the extent that the tax to which the late payment fees relate is found not to have been due and payable.
- (3) Where good cause is shown, in writing, by the person liable for payment of late payment

fees, the Minister may, on the advice of the Director, remit, in whole or in part, any late payment fees charged under this Section.

- (4) Late payment fees charged in respect of failure to comply with Section 148 are borne personally by the withholding agent and no part of the fees are recoverable from the person who received the payment from which tax was or should have been withheld under Part 11<sup>5</sup> of Chapter 2 of this Act, which deals with withholding tax.
- (5) The provisions of this Act relating to the collection and recovery of tax apply to any late payment fees charged under this Section as if the fees were tax due.

## **17. Failure to Furnish a Return**

- (1) A person who fails to furnish a return or any other document within fifteen (15) days of being so required under this Act commits an offence and is liable on conviction to a fine not exceeding fifteen (15) currency points.
- (2) If a person convicted of an offence under Sub-section (1) fails to furnish the return or document to which the offence relates within the period specified by the Court, that person commits an offence and is liable on conviction to a fine not exceeding twenty (20) currency points.

## **18. Failure to comply with Recovery Provision**

- (1) Any person who fails to comply with –
  - (a) any notice issued under Section 10; or
  - (b) the requirements of Section 13, commits an offence and is liable on conviction to a fine not exceeding twenty-five (25) currency points.
- (2) Where a person is convicted of an offence under Sub-section (1)(a), the court shall, in addition to imposing a penalty, order the convicted person to pay to the Director the amount to which the failure relates.
- (3) A person who notifies the Director in writing under Section 10(4) is considered to be in compliance with any notice served on the person under Section 10(1) until the Director serves the person with a notice under Section 10(5) amending the notice served under Section 10(1) or rejecting the person's notice under Section 10(4).

## **19. Failure to maintain Proper Records**

A person who fails to maintain proper records under this Act commits an offence and is liable on conviction to –

- (a) where the failure was deliberate, a fine of not less than fifteen (15) currency points or to imprisonment for a term not exceeding one year; or

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<sup>5</sup> The Somali version incorrectly showed this reference as being to Section 10 of Chapter 2. This will be corrected at a future date

(b) in any other case, a fine not exceeding twenty-five (25) currency points.

## **20. Improper use of Tax Identification Number**

A person who knowingly or recklessly uses a false tax identification number, including the tax identification number of another person, on a return or document prescribed or used for purposes of this Act, commits an offence and is liable on conviction to a fine of not less than twenty (20) currency points or to imprisonment for a term not exceeding one year, or both.

## **21. Making False or Misleading Statements**

(1) A person who –

- (a) Makes a statement to an officer of the Somaliland Revenue Authority that is false or misleading in a material particular; or
- (b) Omits from a statement made to an officer of the Somaliland Revenue Authority any matter or thing without which the statement is misleading in a material particular;

commits an offence and is liable on conviction to –

- (i) where the statement or omission was made knowingly or recklessly, a fine of not less than twenty-five (25) currency points or to imprisonment for a term not exceeding one (1) year, or both; or
- (ii) in any other case, a fine not exceeding twenty-five (25) currency points.

(2) It is a defence for the accused person to prove that he or she did not know and could not reasonably be expected to have known that the statement to which the prosecution relates was false or misleading.

(3) A reference in this Section to a statement made to an officer of the Somaliland Revenue Authority is a reference to a statement made in writing to that officer acting in the performance of his or her duties under this Act, and includes a statement made –

- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, or furnished under this Act;
- (b) in information required to be furnished under this Act;
- (c) in a document furnished to an officer of the Somaliland Revenue Authority otherwise than pursuant to this Act;
- (d) in answer to a question asked of a person by an officer of the Somaliland Revenue Authority; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to an officer of the Somaliland Revenue Authority.

## **22. Obstructing an Officer of the Authority**

A person who obstructs an officer of the Somaliland Revenue Authority in the performance of his duties under this Act commits an offence and is liable on conviction to a fine not exceeding twenty-five (25) currency points.

## **23. Aiding or Abetting**

Any person who aids and abets another person to commit an offence, under this Act, or counsels or induces another person to commit such an offence, commits an offence and is liable on conviction to a fine not exceeding twenty-five (25) currency points or to imprisonment for a term not exceeding one year, or both.

## **24. Offences by and relating to Officers and Persons employed to carry out this Act and Penalties**

(1) Any officer of the Somaliland Revenue Authority or any person employed in carrying out the provisions of this Act who –

- (a) directly or indirectly asks for, or takes in connection with any of the officer's duties, any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment or reward, not being a payment or reward which the officer was lawfully entitled to receive; or
- (b) enters into or acquiesces in any agreement to do or to abstain from doing, permit, conceal, or connive at any act or thing whereby the tax revenue is or may be defrauded or which is contrary to the provisions of this Act or to the proper execution of the officer's duty,

commits an offence and is liable on conviction to a fine not less than twenty-five (25) currency points or to imprisonment for a term not less than three (3) months.

(2) Any person who -

- (a) directly or indirectly offers or gives to any officer payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which the officer was lawfully entitled to receive; or
- (b) proposes or enters into any agreement with any officer in order to induce the officer to do or to abstain from doing, permit, conceal, or connive at any act or thing whereby tax revenue is or may be defrauded or which is contrary to the provisions of this Act or to the proper execution of the officer's duty,

commits an offence and is liable on conviction to a fine of not less than forty-five (45) currency points or to imprisonment for a term of not less than three (3) months.

(3) Notwithstanding Sub-section (1), an officer or person employed in carrying out the provisions of this Act who commits an act specified in Sub-section (1)(a) or (b), and who volunteers information to the Director relating to that act shall –

- (a) be exonerated from prosecution; and
  - (b) receive twenty (20) percent of the fine that would be imposed on a person convicted of an offence under Sub-section (1).
- (4) Notwithstanding Sub-section (2), a person who commits an act specified in Sub-section (2)(a) or (b), and who volunteers information to the Director relating to that act shall -
  - (a) be exonerated from prosecution; and
  - (b) be liable to tax only to the extent agreed upon with the officer to whom the offence relates.
- (5) An officer convicted of an offence under Sub-section (1) is, in addition to any penalty imposed under that Section, liable to pay the difference in tax between the tax due and the tax payable by a person under Sub-section (4)(b); and the amount due under this Section shall be deemed to be tax due from the officer under Section 8.

## **25. Offences by Companies**

- (1) Where an offence is committed by a company, every person who, at the time of the offence was committed –
  - (a) was a nominated officer, director, general manager, secretary, or other similar officer of the company; or
  - (b) was acting or purporting to act in that capacity,is, without prejudice to the liability of the company, deemed to have committed the offence.
- (2) Sub-section (1) does not apply where –
  - (a) the offence was committed without that person's consent or knowledge; and
  - (b) the person has exercised all diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and all the circumstances.

## **26. Officer may appear on Behalf of Director**

Notwithstanding anything contained in any written law, any officer duly authorised in writing by the Director may appear in any court on behalf of the Director in any proceedings in which the Director is a party and, subject to the directions of the Attorney-General, that officer may conduct any prosecution for an offence under this Act and, for that purpose, shall have all the powers of a public prosecutor appointed under the laws of Somaliland.

## **27. Compounding Offences**

- (1) Where any person commits an offence under this Act other than an offence under Section 24, the Director may, at any time prior to the commencement of court proceedings,

compound the offence and order the person to pay a sum of money specified by the Director, not exceeding the amount of the fine prescribed for the offence.

- (2) The Director shall only compound an offence under this Section if the person concerned admits in writing that the person has committed the offence.
- (3) Where the Director compounds an offence under this Section, the order referred to in Sub-section (1) –
  - (a) shall be in writing and specify the offence committed, the sum of money to be paid, and the due date for payment, and shall have attached to it the written admission referred to in Sub-section (2);
  - (b) shall be served on the person who committed the offence;
  - (c) shall be final and not subject to any appeal; and
  - (d) may be enforced in the same manner as a decree of any court for the payment of the amount stated in the order.
- (4) Where the Director compounds an offence under this Section, the person concerned shall not be liable for prosecution in respect of that offence or for penal tax.

## **28. Place of Trial**

- (1) Any person charged with committing an offence under this Act may be proceeded against, tried, and punished in any place in Somaliland in which the person may be in custody for the offence as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential upon the prosecution, trial, or punishment of the offence, be deemed to have been committed in that place.
- (2) Nothing in Sub-section (1) shall preclude the prosecution, trial, and punishment of a person in any place in which, but for this Section, the person might have been prosecuted, tried, and punished.

## **29. Tax charged to be paid notwithstanding Prosecution**

The amount of any tax or late payment fees due and payable under this Act shall not be abated by reason only of the conviction or punishment of the person liable for payment thereof for an offence under this Act or for the compounding of such offence under Section 27.

## **PART 4 Penal Tax**

### **30. Penal Tax for Failure to Furnish a Return**

A person who fails to furnish a return within the time required under this Act is liable to pay penal tax equal to two (2) percent of the tax payable for that year or one (1) currency point per month, whichever is the greater, for the period the return is outstanding.

### **31. Penal Tax in relation to Records**

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

### **32. Penal Tax in relation to False or Misleading Statements**

- (1) Where a person knowingly or recklessly –
  - (a) makes a statement to an officer of the Somaliland Revenue Authority that is false or misleading in a material particular<sup>6</sup>
- (2) Section 21(3) applies in determining whether a person has made a statement to an officer of the Somaliland Revenue Authority.

### **33. Penal Tax for understating Provisional Tax Estimates**

- (1) A provisional taxpayer whose estimate or revised estimate of chargeable income for a year of income under Section 140 is less than ninety (90) percent of the taxpayer's actual chargeable income assessed for that year, is liable for penal tax equal to twenty (20) percent of the difference between the tax calculated in respect of the taxpayer's estimate, as revised, of chargeable income and the tax calculated in respect of ninety (90) percent of the taxpayer's actual chargeable income for the year of income.
- (2) A provisional taxpayer whose estimate or revised estimate of gross turnover for a year of income under Section 140 is less than ninety (90) percent of the taxpayer's actual gross turnover for that year is liable for penal tax equal to twenty (20) percent of the difference between the tax calculated in respect of the taxpayer's estimate, as revised, of gross turnover and the tax calculated in respect of ninety (90) percent of the taxpayer's actual gross turnover for the year of income.
- (3) This Section does not apply to a taxpayer who is in the business of agricultural, plantation, or horticultural farming.

### **34. Recovery of Penal Tax**

- (1) Liability for penal tax is calculated separately with respect to each Section dealing with penal tax.
- (2) Subject to Sub-section (3), the imposition of penal tax is in addition to any late payment fees imposed under Section 16 and any penalty imposed as a result of conviction of an offence.

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<sup>6</sup> As the section heading indicates, this section intended to impose penal tax on persons who make false or misleading statements. The section is however incomplete and no rate of penal tax is specified. This will be corrected at a future date

- (3) No penal tax is imposed on a person under Sections 31 or 32 where the person has been convicted of an offence under Sections 19 or 21, respectively, for the same act or omission.
- (4) If penal tax under Sections 31 or 32 has been paid and the Director institutes a prosecution proceeding under Sections 19 or 21, respectively, in respect of the same act or omission, the Director shall refund the amount of penal tax paid; and that penal tax is not payable unless the prosecution is withdrawn.
- (5) Penal tax as assessed by the Director under Sections 30, 31, 32, and 33 shall be treated for all purposes as an assessment under this Act.
- (6) Where good cause is shown, in writing, by the person liable to pay penal tax, the Minister may, on the advice of the Director, remit, in whole or in part, any penal tax payable.

## **PART 5 Administration**

### **35. Tax Identification Number**

- (1) For purposes of identification of taxpayers, the Director may issue a number, to be known as a Tax Identification Number, to every taxpayer.
- (2) The Director may require a taxpayer to show the Tax Identification Number in any return, notice, or other document used for purposes of this Act.

### **36. Delegation**

The Director may delegate to any officer of the Somaliland Revenue Authority any duty, power, or function conferred or imposed on the Director under this Act, other than the power to compound offences under Section 27 and the power to delegate conferred by this Section.

### **37. Confidentiality of Tax Return Information**

- (1) A taxpayer's tax return, the information contained therein, and any other information obtained from the taxpayer or about the taxpayer in the course of the tax collection, audit, investigation, or enforcement process is confidential. No officer, agent, or employee of the tax administration is allowed to share any confidential information that has been obtained through official means.
- (2) Information concerning a taxpayer may be disclosed to another person with the taxpayer's written consent. Without the taxpayer's written consent, an officer, agent, or employee of the Somaliland Revenue Authority (or former officer, agent, or employee) may disclose confidential information only 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) The customs authorities, for purposes of administering the customs legislation, and also to authorities that have the right to administer taxes according to this Act, for purposes of administering those taxes.
- (3) Persons who receive information under Sub-section (2) shall maintain secrecy regarding that information, except to the minimum extent necessary to achieve the object for which disclosure is permitted.
- (4) Except for information received under the exceptions listed in Sub-section (2), a person who receives information the disclosure of which is regulated by this Section may not disclose the information and must return documents reflecting the information to the Director.
- (5) Any person who discloses confidential information in violation of this Section is guilty of a criminal offense and, if convicted, is subject to a penalty of up to fifty (50) currency points, a term of imprisonment of up to one (1) year, or both.

### **38. Accounts and Records**

- (1) Unless otherwise authorised by the Director, a taxpayer shall maintain in Somaliland such records as may be necessary to explain the information provided in a return or in any other document furnished under this Act or to enable an accurate determination of the tax payable by the taxpayer.
- (2) The Director may disallow a claim for a deduction if the taxpayer is unable without reasonable excuse to produce a receipt or other record of the transaction, or to produce evidence relating to the circumstances giving rise to the claim for the deduction.
- (3) The record or evidence referred to in this Section shall be retained for five (5) years after the end of the year of income to which the record or evidence relates.

### **39. Access to Books, Records, and Computers**

- (1) In order to enforce a provision of this Act, the Director, or any officer authorised in writing by the Director –
- (a) shall have at all times and without prior notice full and free access to any premises, place, book, record, or computer;

- (b) may make an extract or copy from any book, record, or computer-stored information to which access is obtained under paragraph (a) of this Sub-section;
  - (c) may seize any book or record that, in the opinion of the Director or authorised officer, affords evidence which may be material in determining the liability of any person to tax, late payment fees, penal tax, or penalty under this Act;
  - (d) may retain any such book or record for as long as it may be required for determining a person's tax liability or for any proceedings under this Act; and
  - (e) may, where a hard copy or computer disk of information stored on a computer is not provided, seize and retain the computer for as long as is necessary to copy the information required.
- (2) No officer shall exercise the powers under Sub-section (1) without authorisation in writing from the Director and the officer shall produce the authorisation to the occupier of the premises or place to which the exercise of powers relates.
- (3) The occupier of the premises or place to which an exercise of power under Sub-section (1) relates shall provide all reasonable facilities and assistance for the effective exercise of the power.
- (4) A person whose books, records, or computer have been removed and retained under Sub-section (1) may examine them and make copies or extracts from them during regular office hours under such supervision as the Director may determine
- (5) All records, books, or computers removed and retained under Sub-section (1) shall be signed for by the Director or an authorised officer and the Director shall return them to the owner.
- (6) Where the records, books, or computers referred to in Sub-section (1) are lost or destroyed in the possession of the Director, the Director shall appropriately compensate the taxpayer for the loss or destruction.
- (7) This Section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of, or access to documents.
- (8) In this Section, "occupier" in relation to premises or a place means the owner, manager, or any other responsible person on the premises or place.

#### **40. Notice to obtain Information or Evidence**

- (1) The Director may, by notice in writing, require any person, whether or not liable for tax under this Act –
- (a) to furnish, within the time specified in the notice, any information that may be required by the notice; or
  - (b) to attend at the time and place designated in the notice for the purpose of being examined on oath by the Director or by an officer authorised by the Director, concerning the tax affairs of that person or any other person and, for that purpose,

the Director or an authorised officer may require the person examined to produce any book, record, or computer stored information in the control of the person.

- (2) Where the notice requires the production of a book, record, or computer-stored information, it is sufficient if such book, record, or computer-stored information is described with reasonable certainty.
- (3) A notice issued under this Section shall be served by, or at the direction of the Director by a signed copy delivered by hand to the person to whom it is directed or left at the person's last and usual place of business or abode, and the certificate of service signed by the person serving the notice shall be evidence of the facts stated therein.
- (4) Where the notice is not served personally on the person to whom it is directed, a member of the committee of the local district council shall witness the service.
- (5) This Section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of, or access to documents.

#### **41. Books and Records not in Somali Language**

Where any book, record, or computer-stored information referred to in Sections 38, 39, or 40 is not in Somali, the Director may, by notice in writing, require the person keeping the book, record, or computer-stored information to provide, at the person's expense, a translation into Somali by a translator approved by the Director.

### **PART 6 Forms, Notices and Rules**

#### **42. Forms, Notices and Authentication of Documents**

- (1) Forms, notices, returns, statements, tables, and other documents required under this Act may be in such form as the Director may determine for the efficient administration of this Act and publication of such documents in the Official Publication of the Government of Somaliland shall not be required.
- (2) The Director shall make the documents referred to in Sub-section (1) available to the public at the Somaliland Revenue Authority and at such other locations, or by mail, as the Director may determine.
- (3) A notice or other document issued, served, or given by the Director under this Act is sufficiently authenticated if the name or title of the Director, or authorised officer, is printed, stamped, or written on the notice or document.

#### **43. Service of Notices and other Documents**

Unless otherwise provided in this Act, a notice or other document required or authorised by this Act to be served –

- (a) on a person being a resident individual other than in a representative capacity, is considered sufficiently served if –
  - i) personally served on the person;
  - ii) 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 district council; or
  - iii) 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; or
- (b) on any other person, is considered sufficiently served if –
  - i) personally served on the nominated officer of the person;
  - ii) left at the registered office of the person or the person's address for service on 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.

#### **44. Practice Notes**

To achieve consistency in the administration of this Act and to provide guidance to taxpayers and officers of the Somaliland Revenue Authority, the Director may issue Practice Notes setting out the implementation of the purpose of this Act.

#### **45. Private Rulings**

- (1) The Director may, upon application in writing by a taxpayer, issue to the taxpayer a private ruling setting out the Director's position regarding the application of this Act to a transaction proposed or entered into by the taxpayer.
- (2) Where the taxpayer has made a full and true disclosure of the nature of all aspects of the transaction relevant to the ruling and the transaction has proceeded in all material respects as described in the taxpayer's application for the ruling, the ruling shall be binding on the Director with respect to the application to the transaction of the law as it stood at the time the ruling was issued.
- (3) Where there is any inconsistency between a Practice Note and a private ruling, priority is given to the terms of the private ruling.

### **PART 7 Remission of Tax and Avoidance**

#### **46. Remission of Tax**

- (1) Where the Director is of the opinion that the whole or any part of the tax due under this Act by a taxpayer cannot be effectively recovered by reason of –
  - (a) considerations of hardship; or
  - (b) impossibility, undue difficulty, or the excessive cost of recovery,

the Director may refer the taxpayer's case to the Minister.

- (2) Where a taxpayer's case has been referred to the Minister and the Minister is satisfied that the tax due cannot be effectively recovered, the Minister may remit in whole or part the tax due by the taxpayer.

#### **47. Transactions between Associates**

- (1) In any transaction between taxpayers who are associates or who are in an employment relationship, the Director may distribute, apportion, or allocate income, deductions, or credits between the taxpayers as is necessary to reflect the chargeable income the taxpayers would have realised in an arm's length transaction.
- (2) The Director may adjust the income arising in respect of any transfer or licence of intangible property between associates so that it is commensurate with the income attributable to the property.
- (3) In making any adjustment under Sub-sections (1) or (2), the Director may determine the source of income and the nature of any payment or loss as revenue, capital, or otherwise.

#### **48. Recharacterisation of Income and Deductions**

For the purposes of determining liability to tax under this Act, the Director may –

- (a) recharacterise a transaction or an element of a transaction that was entered into as part of a tax avoidance scheme;
- (b) recharacterise a transaction the form of which does not reflect the substance.

### **PART 8 Miscellaneous**

#### **49. Amounts Stated in Somaliland Shillings**

- (1) Shilling amounts stated in this Act are in Somaliland Shillings, and taxation books of account are to be kept in Somaliland Shillings and are to be assessed in Somaliland Shillings, but may be paid in either Somaliland Shillings or other currencies such as U.S. dollars.
- (2) If payment is made in U.S. dollars, the amount due in Somaliland Shillings is to be exchanged into U.S. dollars at the market rate of exchange published by the Central Bank in effect on the day payment is made.

#### **50. Consolidated Fund**

Unless expressly provided otherwise by law, all tax revenues shall be considered general revenues of the Republic of Somaliland, and shall be paid into the Consolidated Fund and available for appropriation by the Legislature for the general purposes of the Government.

## **51. Regulations**

- (1) The Minister may, by statutory instrument, make regulations for the better carrying into effect of the purposes of this Act.
- (2) Without prejudice to the general effect of Sub-section (1), regulations made under that Sub-section may –
  - (a) contain provisions of a saving or transitional nature consequent on the making of this Act; or
  - (b) prescribe penalties for the contravention of the regulations not exceeding a fine of twenty-five (25) currency points or imprisonment not exceeding six (6) months or both, and may prescribe, in the case of continuing offences, an additional fine not exceeding five (5) currency points in respect of each day on which the offence continues.

## **52. Amendment of Monetary Amounts and Schedules**

The Minister may, with the approval of Parliament, by statutory instrument, amend –

- (a) any monetary amount set out in this Act; or
- (b) the Schedules.

## **53. Transitional**

- (1) The repealed legislation continues to apply to years of income prior to the year of income in which this Act comes into force.
- (2) All appointments made under the repealed legislation and subsisting at the date of commencement of this Act are deemed to be appointments made under this Act.
- (3) Any arrangement between the Government of Somaliland and the Government of a foreign country with a view to affording relief from double taxation made under the repealed legislation or its predecessor and which is still in force of the date of commencement of this Act continues to have effect under this Act.
- (4) All forms and documents used in relation to the repealed legislation may continue to be used under this Act, and all references in those forms and documents to provisions of, and expressions appropriate to, the repealed legislation are taken to refer to the corresponding provisions and expressions of this Act.
- (5) A reference in this Act to a previous year of income includes, where the context requires, a reference to a year of income under the repealed legislation.
- (6) Section 78(4)(b) of this Act shall apply to depreciable assets acquired by a taxpayer before the date of commencement of this Act and held by the taxpayer at that date on the basis that the cost base of the asset is the cost of the asset less any depreciation deductions allowed under the repealed legislation in respect of the cost.

(7) The amount of a deduction allowed under Sections 80 and 81<sup>7</sup> in respect of start-up costs incurred or intangible assets acquired before this Act comes into force shall be calculated on the assumption that those Sections had always applied.

(8) A reference in Section 112 to a previously deducted expenditure, loss or bad debt includes a

reference to an expenditure, loss or bad debt deducted under the repealed legislation.

## **54. Repealed Legislation**

The laws referenced in Section 2 of this Act that are hereby repealed are the Body of Laws on Direct Taxation No. 89/96, Sales Tax Law No. 84/96, all laws amendatory thereto and all regulations made thereunder.

# **CHAPTER 2 INCOME TAXES**

## **PART 1 Imposition of Tax and Rates**

## **55. Income Tax imposed**

(1) Subject to, and in accordance with this Act, a tax to be known as income tax shall be charged for each year of income and is hereby imposed on every person who has chargeable income for the year of income.

(2) Subject to Sub-sections (4) and (5), the income tax payable by a taxpayer for a year of

income is calculated by applying the relevant rates of tax determined under this Act to the chargeable income of the taxpayer for the year of income and from the resulting amount are subtracted any tax credits allowed to the taxpayer for the year of income.

(3) Where a taxpayer is allowed more than one (1) tax credit for a year of income, the credits shall be applied in the following order –

(a) the foreign tax credit allowed under Section 127; then

(b) the tax credit allowed under Section 139(8); then

(c) the tax credit allowed under Section 151(5).

(4) Where the gross income of a taxpayer for a year of income consists exclusively of employment income derived from a single employer from which tax has been withheld as required under Section 143 the income tax payable by the taxpayer for the year of income is the amount equal to the sum of the amounts required to be withheld from such income under Section 143.

(5) Subject to Sub-section (7), where the gross turnover of a resident taxpayer for a year of income derived from carrying on a business or businesses is less than fifty (50)

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<sup>7</sup> The references here should be to Sections 81 and 82. This will be corrected at a future date

million shillings, the income tax payable by the taxpayer for the year of income shall be determined in accordance with the Third Schedule to this Act, unless the taxpayer elects by notice in writing to the Director for Sub-section (2) to apply; and –

- (a) the tax shall be a final tax on the business income of the taxpayer;
- (b) no deduction shall be allowed under this Act for expenditures or losses incurred in the production of the business income; and
- (c) no tax credits allowed under this Act shall be used to reduce the tax payable on the business income of the taxpayer, except as provided in the Third Schedule to this Act.

- (6) An election must be lodged with the Director by the due date for the taxpayer's return for the year of income to which it relates.
- (7) Sub-section (5) does not apply to a resident taxpayer who is in the business of providing medical, dental, architectural, engineering, accounting, legal, or other professional services, public entertainment services, public utility services, or construction services.

## **56. Rental Tax imposed**

- (1) Subject to, and in accordance with this Act, a tax shall be charged for each year of income and is hereby imposed on every individual who has rental income for the year of income.
- (2) The tax payable by an individual under this Section for a year of income is calculated by applying the relevant rates of tax determined under Section 57(2) to the rental income derived by the individual for the year.
- (3) The tax imposed under this Section on an individual is separate from the tax imposed under

Section 55  
and –

- (a) the rent derived by an individual shall not be included in the gross income subject to tax under this Act of the individual for any year of income;
- (b) expenditures and losses incurred by the individual in the production of the rent shall be allowed as a deduction under this Act for any year of income only as provided in Section 73(1)(b);
- (c) the tax payable by a resident individual under this Section shall not be reduced by any tax credits allowed to the individual under this Act.

- (4) In this Section, "year of income" means the period of twelve (12) months ending on 31 December.



## **57. Rates of Tax for Individuals**

- (1) The chargeable income (other than employment income) of an individual for a year of income is charged to tax at the rate of ten (10) percent.
- (2) The rental income of an individual for a year of income is charged to rental tax at the rate of ten (10) percent.

## **58. Rate of Income Tax for Companies**

The chargeable income of a company for a year of income is charged to income tax at the rate of 10 percent.

## **59. Rate of Income Tax for Trustees and Retirement Funds**

- (1) Subject to Sub-sections (2) and (3), a trustee of a trust is charged to tax at the rate of ten (10) percent on the chargeable trust income of the trust for a year of income.
- (2) A trustee of a trust being the estate of a deceased taxpayer who, at the date of death, was a resident individual, is charged to tax on the chargeable trust income of the trust at the rate of ten (10) percent for –
  - (a) the year of income in which death occurred; and
  - (b) the following year of income.
- (3) A trustee of an incapacitated person's trust is charged to tax at the rate of ten (10) percent on the chargeable trust income of the trust for a year of income.
- (4) The chargeable income of a retirement fund for a year of income is charged to tax at the rate of ten (10) percent.

## **PART 2 Residents and Non-residents**

### **60. Resident Individual**

- (1) Subject to Sub-sections (2) and (3), an individual is a resident individual for a year of income if that individual –
  - (a) has a permanent home in Somaliland;
  - (b) is present in Somaliland –
    - (I) for a period of, or periods amounting in aggregate to, 183 days or more in any 12-month period that commences or ends during the year of income;
    - (II) during the year of income and in each of the two (2) preceding years of income for periods averaging more than 122 days in each such year of income;
- or

(c) is an employee or official of the Government of Somaliland posted abroad during the year of income.

- (2) An individual who is a resident individual under Sub-section (1) for a year of income, in this Section referred to as the “current year of income”, but who was not a resident individual for the preceding year of income is treated as a resident individual in the current year of income only for the period commencing on the day on which the individual was first present in Somaliland.
- (3) An individual who is a resident individual for the current year of income but who is not a resident individual for the following year of income is treated as a resident individual in the current year of income only for the period ending on the last day on which the individual was present in Somaliland.

## **61. Resident Company**

A company is a resident company for a year of income if it –

- (a) is incorporated or formed under the laws of Somaliland;
- (b) has its management and control exercised in Somaliland at any time during the year of income; or
- (c) undertakes the majority of its operations in Somaliland during the year of income.

## **62. Resident Trust**

A trust is a resident trust for a year of income if –

- (a) the trust was established in Somaliland;
- (b) at any time during the year of income, a trustee of the trust was a resident person; or
- (c) the trust has its management and control exercised in Somaliland at any time during the year of income.

## **63. Resident Partnership**

A partnership is a resident partnership for a year of income if, at any time during that year, a partner in the partnership was a resident

## **64. Resident Retirement Fund**

A retirement fund is a resident retirement fund for a year of income if it-

- (a) is organised under the laws of Somaliland;
- (b) is operated for the principal purpose of providing retirement benefits to resident individuals; or
- (c) has its management and control exercised in Somaliland at any time during the year of income.

## 65. Non-Resident Person

- (1) Subject to Sub-section (2), a person is a non-resident person for a year of income if the person is not a resident person for that year.
- (2) Where Section 70 (2) or (3)<sup>8</sup> applies, an individual is a non-resident person for that part of the year of income in which the individual is not a resident individual.

## PART 3 Chargeable Income

## 66. Chargeable Income

Subject to Section 67 & 68 the chargeable income of a person for a year of income is the gross income of the person for the year less total deductions allowed under this Act for the year.

## 67. Chargeable Income arising from Insurance Business

- (1) The chargeable income of a person for a year of income arising from the carrying on of a short-term insurance business is determined in accordance with the Fourth Schedule to this Act.
- (2) Where a person to whom Sub-section (1) applies derives income charged to tax other than income arising from the carrying on of a short-term insurance business for a year of income, the chargeable income determined under Sub-section (1) is added to that other income for the purposes of determining the person's total chargeable income for the year of income.
- (3) In this Section,
  - (a) **"insurance business"** means the business of, or in relation to the issue of, or the undertaking of liability under, life policies, or to make good or indemnify the insured against any loss or damage, including liability to pay damages or compensation contingent upon the happening of a specified event;
  - (b) **"life insurance business"** means business of any of the following classes –
    - (i) effecting, carrying out, and issuing policies on human life or contracts to pay annuities on human life;
    - (ii) effecting, carrying out, and issuing contracts of insurance against the risk of the person insured sustaining injury or dying as the result of an accident or an accident of a specific class, or becoming incapacitated in consequence of disease or of diseases of specified classes, being contracts that are expressed to be in effect for a period of not less than five (5) years or without limit of time and either are not expressed to be terminable by the insurer before the expiry of five (5) years from taking effect or are expressed

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<sup>8</sup> The references here should be to Sections 60 (2) or (3). This will be corrected at a future date

to be so terminable before the expiry of such period only in special circumstances specified in the contract; or

- (iii) effecting, carrying out, and issuing of insurance whether effected by the issue of policies, bonds, endowment certificates, or otherwise, whereby, in return for one or more premiums paid to the insurer, an amount or series of amounts is to become payable to the insurer in the future, not being such contracts as fall within subparagraph (i) or (ii) of this paragraph; and

(c) **“short-term insurance business”** means any insurance business which is not a life insurance business.

## 68. Gross Income

(1) Subject to this Act, the gross income of a person for a year of income is the total amount of –

- (a) business income;
- (b) employment income; and
- (c) property income,

derived during the year by a person, other than income exempt from tax.

(2) For the purposes of Sub-section (1) –

- (a) the gross income of a resident person includes income derived from all geographical sources; and
- (b) the gross income of a non-resident person includes only income derived from sources in Somaliland.

(3) Unless this Act provides otherwise, Part 5 of this Chapter, which deals with tax accounting principles, applies in determining when an amount is derived for the purposes of this Act.

## 69. Business Income

(1) Business income means any income derived by a person in carrying on a business and includes the following amounts, whether of a revenue or capital nature –

- (a) the amount of any gain, as determined under Part 6 of this Chapter which deals with gains and losses on disposal of assets, derived by a person on the disposal of a business asset, or on the satisfaction or cancellation of a business debt, whether or not the asset or debt was on revenue or capital account;
- (b) any amount derived by a person as consideration for accepting a restriction on the person’s capacity to carry on business;
- (c) the gross proceeds derived by a person from the disposal of trading stock;
- (d) any amount included in the business income of the person under any other Section of this Act;
- (e) the value of any gifts derived by a person in the course of, or by virtue of, a past, present, or prospective business relationship;

- (f) fees and commissions derived by a person in respect of trade receivables or by a person engaged in the business of banking or money lending; and
  - (g) rent derived by a person whose business is wholly or mainly the holding or letting of property.
- (2) An amount included in business income under Sub-section (1)(g) retains its character as rent for the purposes of any Section of this Act referring to such income.
- (3) Where, as a result of any concession granted by, or a compromise made with, a taxpayer's creditors in the course of an insolvency, the taxpayer derives a gain on the cancellation of a business debt, Section 89(3) applies in lieu of including the gain in the business income of the taxpayer under Sub-section (1).
- (4) In this Section, "business asset" does not include trading stock or a depreciable asset.

## **70. Employment Income**

- (1) Subject to this Section, employment income means any income derived by an employee from any employment and includes the following amounts, whether of a revenue or capital nature –
- (a) any wages, salary, leave pay, payment in lieu of leave, overtime pay, fees, commission, gratuity, bonus, or the amount of any travelling, entertainment, utilities, cost of living, housing, medical, or other allowance;
  - (b) the value of any benefit granted;
  - (c) the amount of any discharge or reimbursement by an employer of expenditure incurred by an employee, other than expenditure incurred by an employee on behalf of the employer which serves the proper business purposes of the employer;
  - (d) any amount derived as compensation for the termination of any contract of employment, whether or not provision is made in the contract for the payment of such compensation, or any amount derived which is in commutation of amounts due under any contract of employment;
  - (e) any amount paid by a tax-exempt employer as a premium for insurance on the life of the employee and which insurance is for the benefit of the employee or any of his or her dependants;
  - (f) any amount derived as consideration for the employee's agreement to any conditions of employment or to any changes in his or her conditions of employment;
  - (g) the amount by which the value of shares issued to an employee under an employee share acquisition scheme at the date of issue exceeds the consideration, if any, given by the employee for the shares including any amount given as consideration for the grant of a right or option to acquire the shares;
  - (h) the amount of any gain derived by an employee on disposal of a right or option to acquire shares under an employee share acquisition scheme.

- (2) Notwithstanding Sub-section (1), the employment income of an employee does not include –
- (a) the cost incurred by the employer of any passage to and from Somaliland in respect of the employee's appointment or termination of employment where the employee –
    - (I) was recruited or engaged outside Somaliland;
    - (II) is in Somaliland solely for the purpose of serving the employer; and
    - (III) is not a citizen of Somaliland; or
  - (b) any reimbursement or discharge of the employee's medical expenses;
  - (c) except where Sub-section (1)(e) applies, any amount paid as a premium for insurance on the life of the employee and which insurance is for the benefit of the employee or any of his or her dependants;
  - (d) any allowance given for, and which does not exceed the cost actually or likely to be incurred, or a reimbursement or discharge of expenditure incurred by the employee on –
    - (I) accommodation and travel expenses; or
    - (II) meals and refreshment while undertaking travel, in the course of performing duties of employment;
  - (e) the value of any meal or refreshment provided by the employer to the employee in premises operated by, or on behalf of the employer solely for the benefit of employees and which is available to all full-time employees on equal terms;
  - (f) any benefit granted by the employer to the employee during a month, where the total value of the benefits provided by the employer to the employee for the month is less than ten (10) thousand shillings; or
  - (g) any contribution or similar payment by the employer made to a retirement fund for the benefit of the employee or any of his or her dependents.
- (3) For the purposes of this Section, the value of any benefit is determined in accordance with the Sixth Schedule to this Act.
- (4) Where the amount to which Sub-section (1)(d) applies is paid by an employer for ten years or more, the amount included in employment income is calculated according to the following formula – **A x 75 percent** – where **A** is the total amount derived by the employee to which Sub-section (1)(d) applies.
- (5) For the purposes of Sub-section (2), a director of a company is only a full-time employee of the company if the director –
- (a) is required to devote substantially the whole of his or her time to the service of the company in a managerial or technical capacity; and
  - (b) does not have an interest of more than five (5) percent in the underlying ownership of the company.

- (6) For the purposes of this Section, an amount or benefit is derived in respect of employment if it –
- (a) is provided by an employer or by a third party under an arrangement with the employer or an associate of the employer;
  - (b) is provided to an employee or to an associate of an employee; and
  - (c) is provided in respect of past, present, or prospective employment.
- (7) An amount excluded from the employment income of an employee under Sub-section (2) or (4) is exempt income of the employee.
- (8) In this Section –
- (a) **“employee share acquisition scheme”** means an agreement or arrangement under which –
    - (i) a company is required to issue shares in the company to employees of the company or of an associated company; or
    - (ii) a company is required to issue shares to a trustee of a trust and under the trust deed the trustee is required to transfer the shares to employees of the company or of an associated company; and
  - (b) **“medical expenses”** includes a premium or other amount paid for medical insurance.

## **71. Property Income**

- (1) Property income means –
- (a) any dividends, annuity, natural resource payments, rents, royalties, and any other payment derived by a person from the provision, use, or exploitation of property;
  - (b) the value of any gifts derived by a person in connection with the provision, use, or exploitation of property;
  - (c) the total amount of any contributions made to a retirement fund during a year of income by a tax exempt employer; and
  - (d) any other income derived by a person,
- but does not include any amount which is business, employment, or exempt income.
- (2) An amount included in property income under Sub-section (1)(a) retains its character as dividends, annuity, natural resource payment, rent, or royalties for the purposes of any Section of the Act referring to such income.

## **PART 4 Exempt Income and Deductions**

### **72. Exempt Income**

The following amounts are exempt from tax –

- (a) the income of a listed institution;

- (b) the income of any organisation or person entitled to privileges under the Somaliland law on diplomatic privileges to the extent provided in the regulations and orders made thereunder;
- (c) the official employment income derived by a person in the public service of the government of a foreign country provided –
  - (i) the person is either a non-resident person or is a resident individual solely by reason of performing such service;
  - (ii) the income is payable from the public funds of that country; and
  - (iii) the income is subject to tax in that country;
- (d) any allowance payable outside Somaliland to a person working in a Somaliland foreign mission;
- (e) the income of any local authority;
- (f) the income of an exempt organisation, other than –
  - (i) property income, except rent received by an exempt organisation in respect of immovable property and the rent is used by the lessor exclusively for the activities of the organisation specified in the definition of “exempt organization” in Section 2; or
  - (ii) business income that is not related to the function constituting the basis for the organisation’s existence;
- (g) any education grant which the Director is satisfied has been made bona fide to enable or assist the recipient to study at a recognised educational or research institution;
- (h) any amount derived by way of alimony or allowance under any judicial order or written agreement of separation;
- (i) the value of any property acquired by gift, bequest, devise, or inheritance that is not included in business, employment, or property income;
- (j) any capital gain that is not included in business income;
- (k) employment income derived by an individual to the extent provided for in a technical assistance agreement where –
  - (i) the individual is a non-resident or a resident solely for the purpose of performing duties under the agreement; and
  - (ii) the Minister has concurred in writing with the tax provisions in the agreement;
- (l) foreign-source income derived by –
  - (i) a short-term resident of Somaliland;
  - (ii) a person to whom paragraph (c) or (k) applies; or
  - (iii) a member of the immediate family of a person referred to in sub-paragraph (i) or (ii);
- (m) a pension;
- (n) a lump sum payment made by a resident retirement fund to a member of the fund or a dependant of a member of the fund;



- (o) the proceeds of a life insurance policy paid by a person carrying on a life insurance business;
- (p) the official employment income of a person employed in the armed forces of Somaliland, the Somaliland Police Force, or the Somaliland Prisons Service, other than a person employed in a civil capacity;
- (q) the income of the Government of the Republic of Somaliland and the Government of any other country;
- (r) the income of the Central Bank of Somaliland;
- (s) income of a collective investment scheme to the extent of which the income is distributed to participants in the collective investment scheme.

### **73. Expenses of deriving Income**

- (1) Subject to this Act, for the purposes of ascertaining the chargeable income of a person for a year of income, there shall be allowed as a deduction –
  - (a) all the expenditures and losses incurred by the person during the year of income to the extent to which the expenditures or losses were incurred in the production of income included in gross income;
  - (b) the amount of any loss as determined under Part 6<sup>9</sup>, which deals with gains and losses on the disposal of assets, incurred by the person on the disposal of a business asset during the year of income, whether or not the asset was on revenue or capital account.
- (2) Except as otherwise provided in this Act, no deduction is allowed for –
  - (a) any expenditure or loss incurred by a person to the extent to which it is of a domestic or private nature;
  - (b) subject to Sub-section (1), any expenditure or loss of a capital nature, or any amount included in the cost base of an asset;
  - (c) any expenditure or loss which is recoverable under any insurance, contract, or indemnity;
  - (d) income tax payable in Somaliland or a foreign country;
  - (e) any income carried to a reserve fund or capitalised in any way;
  - (f) the cost of a gift made directly or indirectly to an individual where the gift is not included in the individual's gross income;
  - (g) any allowance given to, or a reimbursement or discharge of expenditure incurred by, an employee, in respect of the employee's housing, and any expenditures incurred in respect of housing provided to an employee;
  - (h) any fine or similar penalty paid to any government or a political subdivision of a government for breach of any law or subsidiary legislation;
  - (i) a contribution or similar payment made to a retirement fund by the employee either for the benefit of the employee or for the benefit of any other person;

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<sup>9</sup> Incorrectly shown as Part 5 in Somali version which will be corrected in due course

- (j) a premium or similar payment made to a person carrying on a life insurance business on the life of the person making the premium or on the life of some other person;
- (k) the amount of a pension paid to any person; or
- (l) any alimony or allowance paid under any judicial order or written agreement of separation.

(3) In this Section, expenditure of a domestic or private nature incurred by a person includes

—

- (a) the cost incurred in the maintenance of the person and the person's family or residence;
  - (b) the cost of commuting between the person's residence and work;
  - (c) the cost of clothing worn to work, except clothing which is not suitable for wearing outside of work; and
  - (d) the cost of education of the person not directly relevant to the person's employment or business, and the cost of education leading to a degree, whether or not it is directly relevant to the person's employment or business.
- (4) Unless this Act provides otherwise, Part 5, which deals with tax accounting principles, applies for the purposes of determining when an expenditure or loss is incurred for the purposes of this Act.
- (5) In this Section, "business asset" does not include trading stock or a depreciable asset.

#### **74. Meals, Refreshment, and Entertainment Expenditure**

A deduction is allowed for expenditure incurred by a person in providing meals, refreshment, or entertainment in the production of income included in gross income, but only where —

- (a) the value of the meals, refreshment, or entertainment is included in the employment income of an employee under Section 70(1)(b) or is excluded from employment income by Section 70(2)(d) or (e); or
- (b) the person's business includes the provision of meals, refreshment, or entertainment and the persons to whom the meals, refreshment, or entertainment have been provided have paid an arm's length consideration for them.

#### **75. Bad Debts**

(1) Subject to Sub-section (2), a person, is allowed a deduction for the amount of a bad debt written off in the person's accounts during the year of income.

(2) A deduction for a bad debt is only allowed —

- (a) if the amount of the debt claim was included in the person's gross income in any year of income; or
- (b) if the amount of the debt claim was in respect of money lent in the ordinary course of a business carried on by a financial institution in the production of income included in gross income.

(3) In this Section,

(a) “**bad debt**” means –

- (i) a debt claim in respect of which the person has taken all reasonable steps to pursue payment and which the person reasonably believes will not be satisfied;
- (ii) in relation to a financial institution, a debt in respect of which a loss reserve held against presently identified losses or potential losses, and which is therefore not available to meet losses which subsequently materialise, has been made.

(b) “**debt claim**” means a right to receive a repayment of money from another person, including deposits with financial institutions, accounts receivable, promissory notes, bills of exchange, and bonds.

## **76. Expenses Related to Debt Obligations**

Subject to this Act, a person is allowed a deduction for payments (other than repayment of the principal) made to a holder of a debt obligation, including service fees, commissions, prepayment and late payment penalties, during the year of income in connection with a debt obligation to the extent that the debt obligation has been incurred by the person in the production of income included in gross income.

## **77. Repairs and Minor Capital Equipment**

- (1) A person is allowed a deduction for expenditure incurred during the year of income for the repair of property occupied or used by the person in the production of income included in gross income.
- (2) A person is allowed a deduction for expenditure incurred during the year of income in acquiring a depreciable asset with a cost base of less than fifty (50) currency points.
- (3) Sub-section (2) only applies to a depreciable asset if the asset normally functions in its own right and is not an individual item that forms part of a set.

## **78. Depreciable Assets**

- (1) A person is allowed a deduction for the depreciation of the person’s depreciable assets, other than an asset to which Section 77(2) applies, during the year of income as calculated in accordance with this Section.
- (2) Depreciable assets are classified into four classes as set out in Part I of the Fifth Schedule to this Act with depreciation rates applicable for each class as specified in that Part.
- (3) A person’s depreciable assets shall be placed into separate pools for each class of asset, and the depreciation deduction for each pool is calculated according to the following formula - **A x B** where –

- A** – is the written down value of the pool at the end of the year of income;  
and  
**B** – is the depreciation rate applicable to the pool.

- (4) The written down value of a pool at the end of a year of income is the total of –
- (a) the written down value of the pool at the end of the preceding year of income after allowing for the deduction under Sub-section (3) for that year; and
  - (b) the cost base of assets added to the pool during the year of income reduced, but not below zero, by the consideration received from the disposal of assets in the pool during the year of income.
- (5) Where the amount of consideration received by a person from the disposal during a year of income of any asset or assets in a pool exceeds the written-down value of the pool at the end of the year of income disregarding that amount, the excess is included in the business income of the person for that year.
- (6) If the written down value of a pool at the end of the year of income, after allowing for the deduction under Sub-section (3), is less than five currency points, a deduction shall be allowed for the amount of that written down value.
- (7) Where all the assets in a pool are disposed of before the end of a year of income, a deduction is allowed for the amount of the written down value of the pool as at the end of that year.
- (8) Where a person has incurred non-deductible expenditures in more than one year of income in respect of a depreciable asset, this Section applies as if the expenditures incurred in different years of income were incurred for the acquisition of separate assets of the same class.
- (9) The cost base of a depreciable asset is added to a pool in the year of income in which the asset is placed in service.
- (10) Where a depreciable asset is only partly used during a year of income in the production of income included in gross income, the depreciation deduction allowed under this Section in relation to the asset shall be proportionately reduced.
- (11) For the purposes of Sub-section (4)(b), the cost base of a road vehicle, other than a commercial vehicle, is not to exceed the amount set out in Part II of the Fifth Schedule.
- (12) Where the cost base of a road vehicle for the purposes of Sub-section (4)(b) is limited under Sub-section (11), the person is treated as having acquired two assets –
- (a) a depreciable asset being a road vehicle with a cost base equal to the amount set out in Part II to the Fifth Schedule to this Act; and
  - (b) a business asset that is not a depreciable asset with a cost base equal to the difference between the cost base of the asset not taking into account Sub-section (11) in this Section, referred to as the “actual cost base”, and the amount set out in Part II of the Fifth Schedule to this Act.

- (13) Where a road vehicle to which Sub-section (12) applies is disposed of, the person is treated as having disposed of each of the assets specified under that Sub-section and the consideration received on disposal is apportioned between the two assets based on the ratio of the cost base of each asset as determined under that Sub-section to the actual cost base of the asset.
- (14) In calculating the amount of any gain or loss arising on disposal of an asset specified in Sub-section (12)(b), the cost base of the asset as determined under that paragraph is reduced by the depreciation deductions which would have been allowed to the person if the asset –
- (a) was a depreciable asset being a road vehicle;
  - (b) the asset was the only asset in the pool.
- (15) In this Section, “commercial vehicle” means –
- (a) a road vehicle designed to carry loads of more than half a tonne or more than thirteen (13) passengers;
  - (b) a vehicle used in a transportation or vehicle rental business.

## **79. Initial Allowance**

- (1) A person who places an item of eligible property into service for the first time during the year of income is allowed a deduction for that year of an amount equal to –
- (a) where the asset is placed in service outside the area prescribed in Part IV of the Fifth Schedule to this Act, seventy-five (75) percent of the cost base of the property at the time it is placed in service; or
  - (b) in any other case, fifty (50) percent of the cost base of the property at the time it is placed in service.
- (2) The cost base of an asset to which Sub-section (1) applies is reduced by the amount of the deduction allowed under that Sub-section for the purposes of Section 78(4)(b).
- (3) In this Section, “item of eligible property” means plant and machinery wholly used in the production of income included in gross income but does not include –
- (a) goods and passenger transport vehicles;
  - (b) appliances of a kind ordinarily used for household purposes; or
  - (c) office or household furniture, fixtures and fittings.
- (4) A person who places a new industrial building in service for the first time during the year of income is allowed a deduction for that year of an amount equal to twenty (20) percent of the cost base of the building at the time it was placed in service.
- (5) The cost base of an industrial building to which Sub-section (4) applies is reduced by the amount of deduction allowed under that Sub-section for the purposes of Section 80.

- (6) Where a person has incurred capital expenditure on the extension of an existing industrial building, this Section applies as if the expenditure was capital expenditure incurred on the construction of a separate industrial building.
- (7) For the purposes of Sub-sections (4) and (6), a new industrial building or extension of an existing industrial building means a building on which construction was commenced on or after current year of income.
- (8) In this Section, “industrial building” does not include an approved commercial building.

## **80. Industrial Buildings**

- (1) Subject to this Section, where a person has incurred capital expenditure in any year of income on the construction of an industrial building and the building is used by the person during the year of income in the production of income included in gross income, the person is allowed a deduction for the depreciation of the building during the year of income as calculated according to the formula –

**A x B x C/D** where –

**A** - is the depreciation rate applicable to the building as determined under Part III of the Fifth Schedule to this Act;

**B** - is the capital expenditure incurred in the construction of the building;

**C** - is the number of days in the year of income during which the asset was used or was available for use in the production of income included in gross income; and

**D** - is the number of days in the year of income.

- (2) Subject to Sub-section (3), where an industrial building is only partly used by a person during a year of income for prescribed uses, the amount of the depreciation deduction allowed under Sub-section (1) shall be proportionately reduced.
- (3) Where an industrial building is only partly used by a person during a year of income for prescribed uses and the capital expenditure incurred in the construction of that part of the building used for other uses is not more than ten (10) percent of the total capital expenditure incurred on the construction of the building, the building is treated as wholly used for prescribed uses.
- (4) Where a person has incurred expenditure in making a capital improvement to an industrial building in a year of income, this Section applies as if the expenditure was capital expenditure incurred in that year in the construction of a separate industrial building.
- (5) Where an industrial building is purchased by a person, the person is deemed to have incurred the capital expenditure incurred by the person who constructed the building.

- (6) The amount of the deduction allowed under this Section is not to exceed the amount that apart from making the deduction would be the residue of expenditure at the end of the year of income.
- (7) Where an industrial building has been disposed of by a person during a year of income, the cost base of the building for the purposes of this Act is reduced by any deductions allowed to the person under this Section in respect of the building.
- (8) Where an industrial building is bought and sold together with land, the value of the land shall be the difference between the total consideration and the value of the industrial building as defined in Sub-section (7).
- (9) Where Sub-section (4) applies, the consideration received on disposal of an industrial building shall be reasonably apportioned among the separate industrial buildings identified under that Sub-section.
- (10) In this Section,
- (a) "capital expenditure" does not include
    - (i) expenditure incurred in the acquisition of a depreciable asset installed in an industrial building;
    - (ii) expenditure incurred in the acquisition of, or of any rights in or over, any land;
  - (b) "prescribed uses" means the uses specified in the definition of "industrial building" in Section 2; and
  - (c) "residue of expenditure" means the capital expenditure incurred on the construction of an industrial building less any deductions allowed under this Section to any person and any amounts which would have been allowed as deductions if the building was solely used for prescribed uses at all times since construction was completed.

## **81. Start-Up Costs**

A person who has incurred expenditure in starting up a business to produce income included in gross income or in the initial public offering at the stock market shall be allowed a deduction of an amount equal to twenty-five (25) percent of the amount of the expenditure in the year of income in which the expenditure was incurred and in the following three (3) years of income in which the business is carried on by the person.

## **82. Costs of Intangible Assets**

- (1) A person who has incurred expenditure in acquiring an intangible asset having an ascertainable useful life is allowed a deduction in each year of income during the useful life of the asset in which the person wholly uses the asset in the production of income included in gross income of an amount calculated according to the following formula –

**A/B** where –

- A** - is the amount of expenditure incurred;  
**B** - is the useful life of the asset in whole years.

- (2) Where an intangible asset has been disposed of by a person during the year of income, the cost base of the asset is reduced by any deductions allowed under this Section to the person in respect of the asset.

### **83. Scientific Research Expenditure**

- (1) A person is allowed a deduction for scientific research expenditure incurred during the year of income in the course of carrying on a business, the income from which is included in gross income.
- (2) In this Section -
- (a) "scientific research" means any activities in the fields of natural or applied science for the development of human knowledge;
  - (b) "scientific research expenditure", in relation to a person carrying on a business, means the cost of scientific research undertaken for the purposes of developing the person's business, including any contribution to a scientific research institution which is used by the institution in undertaking research for the purposes of developing the person's business, but does not include –
    - (i) expenditure incurred for the acquisition of a depreciable or intangible asset;
    - (ii) expenditure incurred for the acquisition of land or buildings;
    - (iii) expenditure incurred for the purpose of ascertaining the existence, location, extent, or quality of a natural deposit;
  - (c) "scientific research institution" means an association, institute, college, or university which undertakes scientific research.

### **84. Training Expenditure**

- (1) An employer is allowed a deduction for expenditure incurred during the year of income for the training or tertiary education, not exceeding in the aggregate five (5) years, of a citizen or permanent resident of Somaliland, other than an associate of the employer, who is employed by the employer in a business, the income from which is included in gross income.
- (2) In this Section, "permanent resident" means a resident individual who has been present in Somaliland for a period or periods in total of two (2) years or more.

### **85. Charitable Donations**

- (1) A person is allowed a deduction for a gift made during a year of income to an organisation within the definition of "exempt organisation".
- (2) For the purposes of Sub-section (1), the value of a gift of property is the lesser of –
- (a) the value of the property at the time of the making of the gift;



- (b) the consideration paid by the person for the property.
- (3) The amount of a deduction allowed under Sub-section (1) for a year of income shall not exceed five (5) percent of the person's chargeable income, calculated before taking into account the deduction under this Section.

## **86. Farming**

- (1) Expenditure incurred by a person in acquiring farm works is included in the person's pool for class 4 assets under Section 78 in the year of income in which the expenditure is incurred and is depreciated accordingly.
- (2) Subject to Sub-section (3), a person carrying on a business of horticulture in Somaliland to produce income included in gross income, who has incurred expenditure of a capital nature on –
  - (a) the acquisition or establishment of a horticultural plant;
  - (b) the construction of a greenhouse,

shall be allowed a deduction of an amount equal to twenty (20) percent of the amount of the expenditure in the year of income in which the expenditure was incurred and in the following four (4) years of income in which the plant or greenhouse is used in the business of horticulture carried on by the person.

- (3) Expenditure of a capital nature incurred on the establishment of a horticultural plant shall include expenditure incurred in draining or clearing land.
- (4) In this Section,
  - (a) "farm works" means any labour quarters and other immovable buildings necessary for the proper operation of a farm, fences, daps, drains, water and electricity supply works, windbreaks, and other works necessary for farming operations carried on to produce income included in gross income, but does not include-
    - (I) farm houses;
    - (II) depreciable assets;
  - (b) "horticulture" includes –
    - (I) propagation or cultivation of seeds, bulbs, spores, or similar things;
    - (II) propagation or cultivation of fungi; or
    - (III)<sup>10</sup> propagation or cultivation in environments other than soil, whether natural or artificial.

## **87. Mineral Exploration Expenditures**

A person carrying on mining operations to produce income included in gross income is allowed a deduction for any expenditure of a capital nature incurred in searching for, discovering and testing, or winning access to deposits of minerals in Somaliland.

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<sup>10</sup> Incorrectly shown as Sub-section (5) in the Somali version. This will be corrected at a future date

## **88. Apportionment of Deductions**

- (1) A deduction relating to the production of more than one class of income shall be reasonably apportioned among the classes of income to which it relates.
- (2) Where a person derives more than one class of income, the deduction allowed under Section 86 shall be allocated rateably to each class of income.

## **89. Carry Forward Losses**

- (1) Subject to this Section, where, for any year of income, the total amount of income included in the gross income of a taxpayer is exceeded by the total amount of deductions allowed to the taxpayer, the amount of the excess, in this Act referred to as an “assessed loss”, shall be carried forward and allowed as a deduction in determining the taxpayer’s chargeable income in the following year of income.
- (2) Where, for any year of income, the total farming income derived by a taxpayer who is an individual is exceeded by the total deductions allowed to the taxpayer relating to the production of that income, the amount of the excess, in this Act referred to as an “assessed farming loss”, may not be deducted against any other income of the taxpayer for the year of income, but shall be carried forward and allowed as a deduction in determining the chargeable farming income of the taxpayer in the following year of income.
- (3) The amount of any assessed loss carried forward under this Section for a taxpayer shall be reduced by the amount or value of any benefit to the taxpayer from a concession granted by, or a compromise made with, the taxpayer’s creditors in the course of an insolvency where the taxpayer’s liabilities to those creditors have been extinguished or reduced, provided such liabilities were incurred in the production of income included in gross income.
- (4) Where a taxpayer has more than one class of loss, the reduction in Sub-section (3) shall be applied rateably to each class of loss.
- (5) Sub-section (1) shall apply separately to income derived from sources in Somaliland and to foreign-source income.
- (6) In this Section -
  - (a) “chargeable farming income” means the total farming income of a taxpayer for a year of income reduced by any deductions allowed under this Act for that year which relate to the production of such income; and
  - (b) “farming income” means the business income derived from the carrying on of farming operations.

## **PART 5 Tax Accounting Principles**

### **90. Substituted Year of Income**

- (1) A taxpayer may apply, in writing, to use as the taxpayer's year of income a substituted year of income being a 12-month period other than the normal year of income and the Director may, subject to Sub-section (3), by notice in writing, approve the application.
- (2) A taxpayer granted permission under Sub-section (1) to use a substituted year of income may apply, in writing, to change the taxpayer's year of income to the normal year of income or to another substituted year of income and the Director, subject to Sub-section (3), may, by notice in writing, approve the application.
- (3) The Director may only approve an application under Sub-section (1) and (2) if the taxpayer has shown a compelling need to use a substituted year of income or to change the taxpayer's year of income and any approval is subject to such conditions as the Director may prescribe.
- (4) The Director may, by notice in writing to a taxpayer, withdraw the permission to use a substituted year of income granted under Sub-section (1) or (2).
- (5) A notice served by the Director under Sub-section (1) takes effect on the date specified in the notice and a notice under Sub-section (2) or (4) takes effect at the end of the substituted year of income of the taxpayer in which the notice was served.
- (6) Where the year of income of a taxpayer changes as a result of Sub-sections (1), (2), or (4), the period between the last full year of income prior to the change and the date on which the changed year of income commences is treated as a separate year of income, to be known as the "transitional year of income".
- (7) In this Act, a reference to a particular normal year of income includes a substituted year of income or a transitional year of income commencing during the normal year of income.
- (8) A taxpayer dissatisfied with a decision of the Director under Sub-sections (1), (2), or (4) may only challenge the decision under the objections and appeal procedure in this Act.
- (9) In this Section, "normal year of income" means the period of twelve months ending on 31 December.

### **91. Method of accounting**

- (1) A taxpayer's method of accounting shall conform to generally accepted accounting principles.
- (2) Subject to Sub-section (1) and unless the Director prescribes otherwise in a particular case, a taxpayer may account for tax purposes on a cash or accrual basis.

- (3) A taxpayer may apply, in writing, for a change in the taxpayer's method of accounting and the Director may, by notice in writing, approve such an application but only if satisfied that the change is necessary to clearly reflect the taxpayer's income.
- (4) A taxpayer dissatisfied with a decision under this Section may only challenge the decision under the objection and appeal procedure in this Act.
- (5) If the taxpayer's method of accounting is changed, adjustments to items of income, deduction, or credit or to other items shall be made in the year of income following the change, so that no item is omitted and no item is taken into account more than once.

## **92. Cash-Basis Taxpayer**

A taxpayer who is accounting for tax purposes on a cash basis derives income when it is received or made available and incurs expenditure when it is paid.

## **93. Accrual-Basis Taxpayer**

- (1) A taxpayer who is accounting for tax purposes on an accrual basis-
  - (a) derives income when it is receivable by the taxpayer; and
  - (b) incurs expenditure when it is payable by the taxpayer.
- (2) Subject to this Act, an amount is receivable by a taxpayer when the taxpayer becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is payable by instalments.
- (3) Subject to this Act, an amount is treated as payable by the taxpayer when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance with respect to the amount occurs.
- (4) For the purposes of Sub-section (3), economic performance occurs –
  - (a) with respect to the acquisition of services or property, at the time the services or property are provided;
  - (b) with respect to the use of property, at the time the property is used; or
  - (c) in any other case, at the time the taxpayer makes payment in full satisfaction of the liability.

## **94. Pre-payments**

Where a deduction is allowed for expenditure incurred on a service or other benefit that extends beyond thirteen (13) months, the deduction is allowed proportionately over the years of income to which the service or other benefit relates.

## **95. Claim of Right**

- (1) A taxpayer who is accounting for tax purposes on a cash basis shall include an amount in gross income when received or claim a deduction for an amount when paid, notwithstanding that the taxpayer is not legally entitled to receive the amount or liable to make the payment, if the taxpayer claims to be legally entitled to receive, or legally obliged to pay the amount.
- (2) Where Sub-section (1) applies, the calculation of the chargeable income of the taxpayer shall be adjusted for the year of income in which the taxpayer refunds the amount received or recovers the amount paid.
- (3) A taxpayer who is accounting for tax purposes on an accrual basis shall include an amount in gross income when receivable or claim a deduction for an amount when payable notwithstanding that the taxpayer is not legally entitled to receive the amount or liable to make the payment, if the taxpayer claims to be legally entitled to receive, or to be legally obliged to pay the amount.
- (4) Where Sub-section (3) applies, the calculation of the chargeable income of the taxpayer shall be adjusted for the year of income in which the taxpayer ceases to claim the right to receive the amount or ceases to claim an obligation to pay the amount.

## **96. Long-Term Contracts**

- (1) In the case of an accrual-basis taxpayer, income and deductions relating to a long-term contract are taken into account on the basis of the percentage of the contract completed during the year of income.
- (2) The percentage of completion is determined by comparing the total costs allocated to the contract and incurred before the end of the year of income with the estimated total contract costs as determined at the time of commencement of the contract.
- (3) Where, in the year of income in which the long-term contract is completed, it is determined that the contract has made a final year loss, the Director may allow the loss to be carried back to the preceding years of income and applied against the amount included in gross income over the period of the contract under Sub-section (1) for those years starting with the year immediately preceding the year in which the contract was completed.
- (4) In this Section,
  - (a) “final year loss”, in relation to a long-term contract, occurs where both the following conditions are satisfied -
    - (i) the profit estimated to be made under the contract for the purposes of Sub-section (1) exceeds the actual profit, including a loss, made under the contract; and

- (ii) the difference between the estimated profit and the actual profit exceeds the amount included in income under Sub-section (1) for the year of income in which the contract is completed, and the amount of the excess referred to in Sub-section (4)(a)(ii) is the amount of the final year loss; and
- (b) “long-term contract” means a contract for manufacture, installation, or construction, or, in relation to each, the performance of related services, which is not completed within the year of income in which work under the contract commenced, other than a contract estimated to be completed within six (6) months of the date on which work under the contract commenced.

## 97. Trading Stock

- (1) A taxpayer is allowed a deduction for the cost of trading stock disposed of during a year of income.
- (2) The cost of trading stock disposed of during a year of income is determined by adding to the opening value of trading stock for the year, the cost of trading stock acquired during the year, and subtracting the closing value of trading stock for the year.
- (3) The opening value of trading stock for a year of income is –
  - (a) the closing value of trading stock at the end of the previous year of income;
  - (b) where the taxpayer commenced business during the year of income, the market value, at the time of commencement of the business, of trading stock acquired prior to the commencement of the business.
- (4) The closing value of trading stock is the lower of cost or market value of trading stock on hand at the end of the year of income.
- (5) A taxpayer who is accounting for tax purposes on a cash basis may calculate the cost of trading stock on the prime-cost method or absorption-cost method; and a taxpayer who is accounting for tax purposes on an accrual basis shall calculate the cost of trading stock on the absorption-cost method.
- (6) Where particular items of trading stock are not readily identifiable, a taxpayer may account for that trading stock on the first-in-first-out method or the average cost method but, once chosen, a stock valuation method may be changed only with the written permission of the Director.
- (7) In this Section,
  - (a) “**absorption-cost method**” means the generally accepted accounting principle under which the cost of trading stock is the sum of direct material costs, direct labour costs, and factory overhead costs;
  - (b) “**average-cost method**” means the generally accepted accounting principle under which trading stock valuation is based on a weighted average cost of units on hand;

- (c) **“direct labour costs”** means labour costs directly related to the production of trading stock;
- (d) **“direct material costs”** means the cost of materials that become an integral part of the trading stock produced;
- (e) **“factory overhead costs”** means the total costs of manufacturing except direct labour and direct material costs;
- (f) **“first-in-first-out method”** means the generally accepted accounting principle under which trading stock valuation is based on the assumption that trading stock is sold in the order of its receipt;
- (g) **“prime-cost method”** means the generally accepted accounting principle under which the cost of trading stock is the sum of direct material costs, direct labour costs, and variable factory overhead costs; and
- (h) **“variable factory overhead costs”** means those factory overhead costs which vary directly with changes in volume.

## 98. Foreign Currency Debt Gains and Losses

- (1) Foreign currency debt gains are included in gross income and foreign debt losses are deductible only under this Section.
- (2) A foreign currency debt gain derived by a taxpayer during the year of income is included in the business income of the taxpayer for that year.
- (3) Subject to Sub-section (4) and (6), a foreign currency debt loss incurred by a taxpayer during a year of income is allowed as a deduction to the taxpayer in that year.
- (4) A deduction is not allowed to a taxpayer for a foreign currency debt loss incurred by the taxpayer unless the taxpayer has notified the Director in writing of the existence of the debt which gave rise to the loss by the due date for furnishing of the taxpayer's return of income for the year of income in which the debt arose or by such later date as the Director may allow.
- (5) Sub-section (4) does not apply to a financial institution.
- (6) Where –
  - (a) a taxpayer has incurred a foreign currency debt loss under a transaction;
  - (b) the taxpayer or another person has derived a foreign currency debt gain under another transaction; and
  - (c) either –
    - (i) the transaction giving rise to the loss would not have been entered into, or might reasonably be expected not to have been entered into, if the transaction giving rise to the gain had not been entered into; or
    - (ii) the transaction giving rise to the gain would not have been entered into, or might reasonably be expected not to have been entered into, if the transaction giving rise to the loss had not been entered into,

no deduction is allowed to the taxpayer to the extent that the amount of the loss exceeds that part of the gain included in gross income.

(7) Subject to Sub-section (9), a taxpayer derives a foreign currency debt gain if –

- (a) where the taxpayer is a debtor, the amount in Somaliland Shillings of the foreign currency debt incurred by the taxpayer is greater than the amount in Somaliland Shillings required to settle the debt; or
- (b) where the taxpayer is a creditor, the amount in Somaliland Shillings of the foreign currency debt owed to the taxpayer is less than the amount in Somaliland Shillings paid to the taxpayer in settlement of the debt.

(8) Subject to Sub-section (9), a taxpayer incurs a foreign currency debt loss if –

- (a) where the taxpayer is a debtor, the amount in Somaliland Shillings of the foreign currency debt incurred by the taxpayer is less than the amount in Somaliland Shillings required to settle the debt; or
- (b) where the taxpayer is a creditor, the amount in Somaliland Shillings of the foreign currency debt owed to the taxpayer is greater than the amount in Somaliland shillings paid to the taxpayer in settlement of the debt.

(9) In determining whether a taxpayer has derived a foreign currency debt gain or incurred a foreign currency debt loss, account shall be taken of the taxpayer's position under any hedging contract entered into by the taxpayer in respect of the debt.

(10) A foreign currency debt gain is derived or a foreign currency debt loss is incurred by a taxpayer in the year of income in which the debt is satisfied.

(11) In this Section,

- (a) **“foreign currency debt”** means a business debt denominated in foreign currency;
- (b) **“hedging contract”** means a contract entered into by the taxpayer for the purpose of eliminating or reducing the risk of adverse financial consequences which might result for the taxpayer under another contract from currency exchange rate fluctuation.

## **PART 6 Gains and Losses on Disposal of Assets**

### **99. Application of Part 6**

This Part 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 this Act.



## **100. Gains and Losses on Disposal of Assets**

- (1) The amount of any gain arising from the disposal of an asset is the excess of the consideration received for the disposal over the cost base of the asset at the time of the disposal.
- (2) The amount of any loss arising from the disposal of an asset is the excess of the cost base of the asset at the time of the disposal over the consideration received for the disposal.

## **101. Disposals**

- (1) A taxpayer is treated as having disposed of an asset when the asset has been –
  - (a) sold, exchanged, redeemed, or distributed by the taxpayer;
  - (b) transferred by the taxpayer by way of gift;
  - (c) destroyed or lost.
- (2) A disposal of an asset includes a disposal of a part of the asset.
- (3) Where the Director is satisfied that a taxpayer –
  - (a) has converted an asset from a taxable use to non-taxable use;
  - (b) has converted an asset from a non-taxable use to a taxable use,the taxpayer is deemed to have disposed of the asset at the time of the conversion for an amount equal to the market value of the asset at that time and to have immediately re-acquired the asset for a cost base equal to that same value.
- (4) A non-resident person who becomes a resident person is deemed to have acquired all assets, other than taxable assets, owned by the person at the time of becoming a resident for their market value at that time.
- (5) A resident person who becomes a non-resident person is deemed to have disposed of all assets, other than taxable assets, owned by the person at the time of becoming a non-resident for their market value at that time.
- (6) Where a person to whom Sub-section (5) would otherwise apply –
  - (a) intends, in the future, to re-acquire status as a resident person;
  - (b) provides the Director with sufficient security to satisfy any tax liability which would otherwise arise under Sub-section (5),the Director may, by notice in writing, exempt the person from the application of Sub-section (5).
- (7) In this Section, “taxable asset” means an asset the disposal of which would give rise to a gain included in the gross income of, or a loss allowed as a deduction to, a resident or non-resident taxpayer.

## **102. Cost Base**

- (1) Subject to this Act, this Section establishes the cost base of an asset for the purpose of this Act.
- (2) The cost base of an asset purchased, produced, or constructed by the taxpayer is the amount paid or incurred by the taxpayer in respect of the asset, including incidental expenditures of a capital nature incurred in acquiring the asset, and includes the market value at the date of acquisition of any consideration in kind given for the asset.
- (3) Subject to Sub-section (4), the cost base of an asset acquired in a non-arm's length transaction is the market value of the asset at the date of acquisition.
- (4) The cost base of an asset acquired in a transaction described in Section 103(2) is the amount of the consideration deemed by that Sub-section to have been received by the person disposing of the asset.
- (5) Where a part of an asset is disposed of, the cost base of the asset shall be apportioned between the part of the asset retained and the part disposed of in accordance with their respective market values at the time of acquisition of the asset.
- (6) Unless otherwise provided in this Act, 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.
- (7) Where the acquisition of an asset by a taxpayer represents the derivation of an amount included in gross income, the cost base of the asset is the amount included in gross income plus any amount paid by the taxpayer for the asset.
- (8) Where the receipt of an asset represents the derivation of an amount which is exempt from tax, the cost base of the asset is the amount exempt from tax plus any amount paid by the taxpayer for the asset.

## **103. Special Rules for Consideration Received**

- (1) The consideration received on disposal of an asset includes the market value at the date of the disposal of any consideration received in kind.
- (2) Where an asset is disposed of to an associate or in a non-arm's length transaction other than by way of transmission of the asset to a trustee or beneficiary on the death of a taxpayer, the person disposing of the asset, in this Section referred to as the "disposer", is treated as having received consideration equal to the greater of –
  - (a) the cost base of the asset to the disposer at the time of disposal;
  - (b) the fair market value of the asset at the date of disposal.
- (3) Where two or more assets are disposed of in a single transaction and the consideration paid for each asset is not specified, the total consideration received is apportioned among

the assets disposed of in proportion to their respective market values at the time of the transaction.

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

#### **104. Non-Recognition of Gain or Loss**

- (1) No gain or loss is taken into account in determining chargeable income in relation to—
- (a) a transfer of an asset between spouses;
  - (b) a transfer of an asset between former spouses as part of a divorce settlement or bona fide separation agreement;
  - (c) an involuntary disposal of an asset to the extent to which the proceeds are reinvested in an asset of a like kind within one year of the disposal;
  - (d) the transmission of an asset to a trustee or beneficiary on the death of a taxpayer.
- (2) Where no gain or loss is taken into account as a result of Sub-section (1)(a), (b), or (d), the transferred or transmitted asset is deemed to have been acquired by the transferee, or trustee or beneficiary as an asset of the same character for a consideration equal to the cost base of the asset to the transferor or deceased taxpayer at the time of the disposal.
- (3) The cost base of a replacement asset described in Sub-section (1)(c)<sup>11</sup> is the cost base of the replaced asset plus the amount by which any consideration given by the taxpayer for the replaced asset exceeds the amount of proceeds received on the involuntary disposal.

### **PART 7 Miscellaneous Rules for Determining Chargeable Income**

#### **105. Income of Joint Owners**

- (1) Income or deductions relating to jointly owned property are apportioned among the joint owners in proportion to their interests in the property.
- (2) Where the interest of the joint owners in jointly-owned property cannot be ascertained, the interest of such joint owners in the property shall be deemed to be equal.

#### **106. Valuation**

- (1) For the purposes of this Act and 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.

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<sup>11</sup> The Somali version incorrectly showed this reference as being to Sub-section (c). This will be corrected at a future date

- (2) The fair market value of a benefit is determined without regard to any restriction on transfer or to the fact that it is not otherwise convertible to cash.

### **107. Currency Conversion**

- (1) Chargeable income under this Act shall be calculated in Somaliland Shillings.
- (2) Where an amount taken into account under this Act is in a currency other than the Somaliland Shilling, the amount shall be converted to the Somaliland Shilling at the Central Bank of Somaliland mid-exchange rate applying between the currency and the Somaliland Shilling on the date that the amount is derived, incurred, or otherwise taken into account for tax purposes.
- (3) With the prior written permission of the Director, a taxpayer may use the average rate of exchange during the year of income, or may keep books of account in a currency other than the Somaliland Shilling.

### **108. Indirect Payments and Benefits**

The income of a person includes –

- (a) payment that directly benefits the person; and
- (b) payment dealt with as the person directs which would have been income of the person if the payment had been made directly to the person.

### **109. Finance Leases**

- (1) Where a lessor leases property to a lessee under a finance lease, for the purposes of this Act –
- (a) the lessee is treated as the owner of the property;
  - (b) the lessor is treated as having made a loan to the lessee, in respect of which payments of fees, commissions, charges and principal are made to the lessor equal in amount to the rental payable by the lessee.
- (2) Payments other than a return of the principal are treated as deductible expenses incurred by the lessee and income derived by the lessor.
- (3) A lease of property is a finance lease if –
- (a) the lease term exceeds seventy-five (75) percent of the effective life of the leased property;
  - (b) the lessee has an option to purchase the property for a fixed or determinable price at the expiration of the lease;
  - (c) the estimated residual value of the property to the lessor at the expiration of the lease term is less than twenty-five (25) percent of its fair market value at the commencement of the lease.

- (4) For the purposes of Sub-section (3), the lease term includes any additional period of the lease under an option to renew.

### **110. Exclusion of Doctrine of Mutuality**

- (1) A company, which carries on a member's club, a trade association, or a mutual insurance company, is treated for the purposes of this Act as carrying on a business subject to tax.
- (2) The business income of a company to which Sub-section (1) applies includes entrance fees and subscriptions paid by members.
- (3) Where a company referred to in Sub-section (1) is operated primarily to furnish goods or services to members, deductions attributable to the furnishing of goods or services to members are allowed only to the extent of the total income derived from the members, with any excess carried forward and allowed as a deduction in the following year of income.
- (4) In this Section, "member's club" means a club or similar institution, all the assets of which are owned by or are held in trust for the members of the club or institution.

### **111. Compensation Receipts**

A compensation payment derived by a person takes the character of the item that is compensated.

### **112. Recouped Expenditure**

- (1) Where a previously deducted expenditure, loss, or bad debt is recovered by the taxpayer, the amount recovered is deemed to be income derived by the taxpayer in the year of income in which it is recovered and takes the character of the income to which the deduction related.
- (2) For the purposes of Sub-section (1), a deduction is considered recovered upon the occurrence of an event that is inconsistent with the basis for the deduction

## **PART 8 Persons Assessable**

### **113. Taxation of Individuals**

- (1) The chargeable income of each taxpayer who is an individual is determined separately.
- (2) Where a taxpayer attempts to split income with another person, the Director may adjust the chargeable income of the taxpayer and the other person to prevent any reduction in tax payable as a result of the splitting of income.
- (3) A taxpayer is treated as having attempted to split income where-
- (a) the taxpayer transfers income, directly or indirectly, to an associate; or

- (b) the taxpayer transfers property, including money, directly or indirectly, to an associate with the result that the associate receives or enjoys the income from that property, and the reason or one of the reasons for the transfer is to lower the tax payable upon the income of the transferor and the transferee.
- (4) In determining whether the taxpayer is seeking to split income, the Director shall consider the value, if any, given by the associate for the transfer.

#### **114. Principles of Taxation for Partnerships**

- (1) The income and losses arising from activities conducted by a partnership is taxed in accordance with this Act.
- (2) The presence or absence of a written partnership agreement is not decisive in determining whether a partnership relationship exists between persons.
- (3) A partnership shall be liable to furnish a partnership return in accordance with Section 135, but shall not be liable to pay tax on that income.
- (4) Any election, notice, or statement required to be filed in relation to a partnership's activities shall be filed by the partnership.
- (5) Unless the context otherwise requires, partnership assets are treated as owned by the partnership and not the partners.

#### **115. Calculation of Partnership Income or Loss**

- (1) The partnership income for a year of income is –
  - (a) the gross income of the partnership for that year calculated as if the partnership were a resident taxpayer; less
  - (b) the total amount of deductions allowed under this Act for expenditures and losses incurred by the partnership in deriving that income, other than the deduction allowed under Section 89.
- (2) A partnership loss occurs for a year of income where the amount in Sub-section (1)(b) exceeds the amount in Sub-section (1)(a) for that year; and the amount of the excess is the amount of the loss.
- (3) Where the partnership is a non-resident partnership for a year of income, Section 129 applies in calculating partnership income or partnership loss of the partnership for that year.

#### **116. Taxation of Partners**

- (1) The gross income of a resident partner for a year of income includes the partner's share of partnership income for that year.

- (2) The gross income of a non-resident partner for a year of income includes the partner's share of partnership income attributable to sources in Somaliland.
- (3) A resident partner is allowed a deduction for a year of income for the partner's share of a partnership loss for that year.
- (4) A non-resident partner is allowed a deduction for a year of income for the partner's share of a partnership loss, but only to the extent that the activity giving rise to the loss would have given rise to the partnership income attributable to sources in Somaliland if a loss had not been incurred.
- (5) Income derived, or expenditure or losses incurred, by a partnership retain their character as to geographic source and type of income, expenditure, or loss in the hands of the partners, and are deemed to have been passed through the partnership on a pro rata basis unless the Director permits otherwise.
- (6) Subject to Sub-section (7), a partner's share of partnership income or loss is equal to the partner's percentage interest in the income of the partnership as set out in the partnership agreement.
- (7) Where the allocation of income in the partnership agreement does not reflect the contribution of the partners to the partnership's operations, a partner's share of partnership income or loss shall be equal to the partner's percentage interest in the capital of the partnership.

### **117. Formation, Reconstitution, or Dissolution of a Partnership**

- (1) A contribution to a partnership by a partner of an asset owned by the partner is treated as a disposal of the asset by the partner to the partnership for a consideration equal to –
  - (a) the cost base of the asset to the partner at the date on which the contribution was made where all the following conditions are satisfied-
    - (I) the asset was a business asset of the partner immediately before its contribution to the partnership;
    - (II) the partner and partnership are residents at the time of contribution;
    - (III) the partner's interest in the capital of the partnership after the contribution is twenty five percent or more;
    - (IV) an election for this paragraph to apply has been made by the partners jointly;
    - (V) 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; or
  - (b) in any other case, the market value of the asset at the date the contribution was made.
- (2) Where Sub-section (1)(a) applies, the asset retains the same character in the hands of the partnership as it did in the hands of the partner.

- (3) Where there is a change in the constitution of a partnership or a partnership is dissolved, the former partnership is treated as having disposed of all the assets of the partnership to the reconstituted partnership or to the partners in the case of dissolution for a consideration equal to –
- (a) the cost base of the asset to the former partnership at the date of the change in constitution where all the following conditions are satisfied-
    - (I) the former partnership and the reconstituted partnership are resident partnerships at the time of the change;
    - (II) twenty-five percent or more of the interests in the capital of the reconstituted partnership are held for twelve months after the change by persons who were partners in the former partnership immediately before the change;
    - (III) an election for this paragraph to apply has been made by the partners of the reconstituted partnership jointly; or
  - (b) in any other case, the market value of the asset at the date of the change in constitution or dissolution, as the case may be.
- (4) Where Sub-section (3)(a) applies, the asset retains the same character in the hands of the reconstituted partnership as it did in the hands of the former partnership.
- (5) An election under this Section shall be made in the partnership return of income for the year of income in which the contribution was made or the constitution of the partnership changed.

### **118. Cost Base of Partner's Interest**

- (1) A partner's interest in a partnership is treated as a business asset of the partner for all purposes of this Act.
- (2) Subject to Sub-section (3) and (4), the cost base of a partner's interest in a partnership is -
- (a) in the case of an interest acquired by contribution of property (including money) to the partnership, the amount of any such money contributed plus –
    - (I) the cost base of an asset contributed to the partnership by the partner where Section 117(1)(a) applies; or
    - (II) the market value of any asset contributed to the partnership by the partner where Section 117(1)(b) applies; or
  - (b) in any other case, the price paid for the interest.
- (3) The cost base of a partner's interest in a partnership determined under Sub-section (2) is increased by the sum of the partner's share for the year of income and prior years of income of –
- (a) partnership income; and
  - (b) income of the partnership exempt from tax under this Act.
- (4) The cost base of a partner's interest in a partnership determined under Sub-section (2) is reduced, but not below zero, by distributions by the partnership and by the sum



of the partner's share for the year of income and prior years of income of partnership losses and expenditures of the partnership not deductible in computing its chargeable income and not properly chargeable to capital account.

## **119. Principles of Taxation for Trusts**

- (1) Subject to Sub-section (5), the income of a trust is taxed either to the trustee or to the beneficiaries of the trust, as provided in this Act.
- (2) Separate calculations of chargeable trust income shall be made for separate trusts regardless of whether they have the same trustee.
- (3) Income derived, or expenditure or losses incurred by a trust retain their character as to geographic source and type of income, expenditure, or loss in the hands of the beneficiary.
- (4) A trust is required to furnish a trust return of income in accordance with Section 135.
- (5) A settlor trust or a qualified beneficiary trust -
  - (a) is not treated as an entity separate from the settlor or qualified beneficiary, respectively;
  - (b) the income of such a trust is taxed to the settlor or qualified beneficiary and the property owned by the trust is deemed to be owned by the settlor or qualified beneficiary, as the case may be.
- (6) The trustee of an incapacitated person's trust is liable for tax on the chargeable trust income of the trust.
- (7) Trustees are jointly and severally liable for a tax liability arising in respect of chargeable trust income that is not satisfied out of the assets of the trust.
- (8) Where a trustee has paid tax on the chargeable trust income of the trust under Sections 120 or 121, that income shall not be taxed again in the hands of the beneficiary.

## **120. Taxation of Trustees and Beneficiaries**

- (1) Any amount derived by a trustee for the immediate or future benefit of any ascertained beneficiary, other than an incapacitated person, with a vested right to such amount is treated as having been derived by the beneficiary for the purposes of this Act.
- (2) Where a beneficiary has acquired a vested right to any amount referred to in Sub-section (1) as a result of the exercise by the trustee of a discretion vested in the trustee under a deed of trust, an arrangement, or a will of a deceased person, such amount is deemed to have been derived by the trustee for the immediate benefit of the beneficiary.
- (3) For Sub-section (2) to apply to a beneficiary for a year of income, a trustee must have exercised the discretion by the end of the second month after the end of the year of income.

- (4) Where Sub-section (1) or (2) applies, the beneficiary is treated as having derived the amount at the time the amount was derived by the trustee.
- (5) Where any amount to which Sub-section (1) applies is included in the gross income of the beneficiary for a year of income, the beneficiary shall be allowed a deduction in accordance with this Act for any expenditure or losses incurred in that year by the trustee in deriving that income.
- (6) A trustee of a trust that is a resident trust for a year of income is liable for tax on the chargeable trust income of the trust for that year.
- (7) A trustee of a trust that is a non-resident trust for a year of income is liable for tax on so much of the chargeable trust income of the trust for that year as is attributable to sources in Somaliland.
- (8) This Section is subject to Section 121.

## **121. Taxation of Estates of Deceased Persons**

- (1) Any amount derived by a trustee as executor of the estate of a deceased person shall, to the extent that the Director is satisfied that such amount has been derived for the immediate or future benefit of any ascertained heir or legatee of the deceased, be treated as having been derived by such heir or legatee for the purposes of this Act
- (2) Where any amount to which Sub-section (1) applies is included in the gross income of the heir or legatee for a year of income, the heir or legatee shall be allowed a deduction in accordance with this Act for any expenditure or losses incurred in that year by the trustee in deriving that income.
- (3) The trustee of an estate of a deceased person that is a resident trust for a year of income is liable for tax on the chargeable trust income of the estate for that year.
- (4) The trustee of an estate of a deceased person that is a non- resident trust for a year of income is liable for tax on so much of the chargeable trust income of that year attributable to sources in Somaliland.
- (5) The trustee of an estate of a deceased person is responsible for the tax liability of the deceased taxpayer arising for any year of income prior to the year of income in which the taxpayer died.

## **122. Principles of Taxation for Companies**

- (1) A company is liable to tax separately from its shareholders.
- (2) Subject to Sub-section (3), a dividend paid to a resident company, other than an exempt organisation, by another resident company is exempt from tax where the company receiving the dividend controls, directly or indirectly, twenty-five (25) percent or more of the voting power in the company paying the dividend.

- (3) Sub-section (2) does not apply to a dividend paid to a financial institution by virtue of its ownership of redeemable shares in the company paying the dividend.

### **123. Change in Control of Companies**

Where, during a year of income, there has been a change of fifty (50) percent or more in the underlying ownership of a company, as compared with its ownership one year previously, the company is not permitted to deduct an assessed loss in the year of income or in subsequent years, unless the company, for a period of two years after the change or until the assessed loss has been exhausted if that occurs within two years after the change –

- (a) continues to carry on the same business after the change as it carried on before the change;
- (b) does not engage in any new business or investment after the change where the primary purpose of the company or the beneficial owners of the company is to utilise the assessed loss so as to reduce the tax payable on the income arising from the new business or investment.

### **124. Roll-Over Relief**

- (1) Where a resident person, in this Sub-section referred to as the “transferor”, transfers a business asset, with or without any liability not in excess of the cost base of the asset, to a resident company other than an exempt organisation, in this Sub-section referred to as the “transferee”, in exchange for a share in the transferee and the transferor has a fifty (50) percent or greater interest in the voting power of the transferee immediately after the transfer –

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

- (2) Where, as part of the liquidation of a resident company, in this Sub-section referred to as the “liquidated company”, a business asset is transferred to a shareholder being a resident company other than an exempt organisation, in this Sub-section referred to as the “transferee company”, and, immediately prior to the transfer, the transferee company held a fifty (50) percent or greater interest in the voting power of the liquidated company –

- (a) the transfer is not treated as a disposal of the asset by the liquidated company, but is treated as the acquisition of a business asset by the transferee company;

- (b) the transferee's cost base for the asset is equal to the liquidated company's cost base for the asset at the time of transfer;
  - (c) the transfer of the asset is not a dividend; and
  - (d) no gain or loss is taken into account on the cancellation of the transferee's shares in the liquidated company.
- (3) Where a resident company or a group of resident companies is reorganised without any significant change in the underlying ownership or control of the company or group, the Director may –
- (a) permit any resident company involved in the reorganisation to treat the reorganisation as not giving rise to the disposal of any business asset or the realisation of any business debt, as the case may be; and
  - (b) determine the cost base of any business asset held, or business debt undertaken, by the resident company after the reorganisation in order to reflect the fact that no disposal or realisation is treated as having occurred.

## **PART 9 International Taxation**

### **125. Source of Income**

Income 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;
  - (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 111<sup>12</sup>, where the deduction was allowed for an expenditure, loss, or bad debt incurred in the production of income sourced in Somaliland;
- (j)<sup>13</sup> 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;
- (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;
  - (iii) the borrowing relates to a business carried on in Somaliland;
- (q) a dividend or director's fee paid by a resident company;

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<sup>12</sup> The reference here should be to Section 112. This will be corrected at a future date

<sup>13</sup> This paragraph was incorrectly split over paragraphs (j) to (o) in the Somali version. This will be corrected at a future date. Subsequent paragraphs follow the lettering in the Somali version

- (r) a pension or annuity where –
  - (i) the pension or annuity is paid by the Government of Somaliland or by a resident person;
  - (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)<sup>14</sup> 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.

## **126. Foreign Employment Income**

- (1) Foreign-source employment income derived by a resident individual is exempt from tax if the individual has paid foreign income tax in respect of the income.
- (2) A resident individual is treated as having paid foreign income tax on foreign-source employment income if tax has been withheld and paid to the revenue authority of the foreign country by the employer of the individual.

## **127. Foreign Tax Credit**

- (1) A resident taxpayer is entitled to a credit, in this Section referred to as 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.
- (2) The amount of the foreign tax credit of a taxpayer for a year of income 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.
- (3) 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.
- (4) Foreign income tax paid by –
  - (a) a partnership is treated as paid by the partners;

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<sup>14</sup> This paragraph was incorrectly split over paragraphs (v) to (x) in the Somali version. This will be corrected at a future date

- (b) 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;
  - (c) 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.
- (5) For the purposes of this Section,
- (a) “average rate of Somaliland income tax”, in relation to a taxpayer for a year of income, means 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;
  - (b) “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;
  - (c) “net foreign-source income” means the total foreign-source income included in the gross income of the taxpayer, less any deductions allowed to the taxpayer under this Act that—
    - (I) relate exclusively to the derivation of the foreign-source income;
    - (II) in the opinion of the Director, may appropriately be related to the foreign-source income.

## **128. Taxation of Branch Profits**

- (1) A tax shall be charged for each year of income and is hereby imposed on every non-resident company carrying on a business in Somaliland through a branch that has repatriated income for the year of income.
- (2) The rate of tax applicable to a non-resident company is ten (10) percent of the chargeable income.
- (3) The repatriated income of a branch for a year of income is calculated according to the following formula -

$$\mathbf{A + (B - C) - D}$$

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;

**D** - is the total cost base of assets, net of liabilities, of the branch at the end of the year of income.

- (4) 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.
- (5) 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 55<sup>15</sup>, but is otherwise treated for all purposes of this Act as a tax on chargeable income.

## **129. Tax on International Payments**

- (1) Subject to this Act, a tax is hereby imposed on every non-resident person who derives any dividend, royalty, rent, natural resource payment, management charge or non-principal payments on a debt obligation from sources in Somaliland.
- (2) The applicable tax rate on payments received by a non-resident person shall be ten (10) percent of the gross amount of the dividend, royalty, rent, natural resource payment, management charge or non-principal payments on a debt obligation derived by the non-resident person.
- (3) Notwithstanding Section 125(1), a dividend derived by a non-resident person is only treated as income derived from sources in Somaliland for the purposes of this Section to the extent to which the dividend is paid out of profits sourced in Somaliland.
- (4) For the purposes of Sub-section (3), where a resident company has profits sourced both within and outside Somaliland, the company is treated as having paid a dividend out of the profits sourced in Somaliland first.
- (5) Sub-section (1) does not apply to an amount attributable to the activities of a branch of the non-resident in Somaliland and such amount is subject to the operation of Section 68.

## **130. Tax on payments to Non-Resident Public Entertainers or Sports Persons**

- (1) Subject to this Act, a tax is imposed on every non-resident entertainer, sports person, or theatrical, musical, or other group of non-resident entertainers or sports persons who derive income from any performance in Somaliland.
- (2) The tax payable by a non-resident person under this Section is ten (10) percent of the gross amount of –
  - (a) remuneration derived by a non-resident public entertainer or sports person; or
  - (b) receipts derived by any theatrical, musical, or other group of non-resident public entertainers or sports persons<sup>16</sup>.

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<sup>15</sup> Incorrectly shown as Section 56 in Somali version which will be corrected in due course

<sup>16</sup> Both of these paragraphs were incorrectly shown in a combined paragraph (a) in the Somali version. This will be corrected at a future date



- (3) Tax is imposed under this Section on any group regardless of whether or not the performance is conducted for the joint account of all or some members of the group.
- (4) Every member of a group shall be jointly and severally liable for payment of the tax imposed under this Section and, subject to Section 133(c), shall remit to the Director the tax due before leaving Somaliland.

### **131. Tax on Payments to Non-Resident Contractors or Professionals**

- (1) Subject to this Act, a tax is imposed on every non-resident person deriving income under a Somaliland-source services contract.
- (2) The tax payable by a non-resident person under this Section is ten (10) percent of the gross amount of any payment to a non-resident under a Somaliland- source services contract.
- (3) Sub-section (1) does not apply to a royalty or management charge charged to tax under Section 129.
- (4) In this Section, “Somaliland-source services contract” means a contract, other than an employment contract, under which –
  - (a) the principal purpose of the contract is the performance of services which gives rise to income sourced in Somaliland; and
  - (b) any goods supplied are only incidental to that purpose.

### **132. Taxation of Non-Residents providing Shipping, Air Transport or Telecommunications Services**

- (1) Subject to this Act, a tax is imposed 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.
- (2) The tax payable by a non-resident person under Sub-section (1) is ten (10) percent of the gross amount derived by the person from the carriage and is treated for all purposes of the Act as a tax on chargeable income.
- (3) Sub-section (1) does not apply to any income derived from the carriage of passengers who embarked, or cargo or mail that is embarked, solely as a result of trans-shipment.
- (4) Where a non-resident person carries on the business of transmitting messages by cable, radio, optical fibre, or satellite communication, the chargeable income of the person derived from the transmission of messages by apparatus established in Somaliland, whether or not such messages originated in Somaliland, shall be five (5) percent of the gross amount derived by the person in respect of the transmission.

### **133. General Provisions relating to Taxes imposed**

The tax imposed on a non-resident person under Sections 129, 130, 131, and 132(1)<sup>17</sup> is a final tax on the income on which the tax has been imposed and –

- (a) such income is not included in the gross income of the non-resident person who has derived the income;
- (b) no deduction is allowed for any expenditure or losses incurred by the non-resident person in deriving the income; and
- (c) the liability of the non-resident person is satisfied if the tax payable has been withheld by a withholding agent and paid to the Director under Section 148.

### **134. International Agreements**

- (1) An international agreement entered into between the Government of Somaliland and the government of a foreign country or foreign countries shall have effect as if the agreement was contained in this Act.
- (2) To the extent that the terms of an international agreement to which Somaliland is a party are inconsistent with the provisions of this Act, apart from Sub-section (5) of this Section and Sections 47 and 48 of this Act, which deal with tax avoidance, the terms of the international agreement prevail over the provisions of this Act.
- (3) Where an international agreement provides for reciprocal assistance in the collection of taxes and the Director has received a request from the competent authority of another country pursuant to that agreement for the collection from any person in Somaliland of an amount due by that person under the income tax laws of that country, the Director may, by notice in writing, require the person to pay the amount to the Director by the date specified in the notice for transmission to the competent authority of that other country.
- (4) If a person fails to comply with a notice under Sub-section (3), the amount in question may be recovered for transmission to the competent authority of that other country as if it were tax payable by the person under this Act.
- (5) Where an international agreement provides that income derived from sources in Somaliland is exempt from Somaliland tax or is subject to a reduction in the rate of Somaliland tax, the benefit of that exemption or reduction is not available to any person who, for the purposes of the agreement, is a resident of the other contracting state where fifty (50) percent or more of the underlying ownership of that person is held by an individual or individuals who are not residents of that other Contracting state for the purposes of the agreement.

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<sup>17</sup> The Somali version incorrectly showed this reference as being to Section 132. This will be corrected at a future date

## **PART 10 Procedure Relating to Income Tax**

### **135. Filing of Returns**

- (1) Subject to this Section, every taxpayer shall furnish a return of income for each year of income of the taxpayer not later than four months after the end of that year.
- (2) A return of income shall be in the form prescribed by the Director, shall state the information required, and shall be furnished in the manner prescribed by the Director.
- (3) Subject to Sub-section (4), a return of income shall be signed by the taxpayer and include a declaration that the return is complete and accurate.
- (4) Where a taxpayer is legally incapacitated, the taxpayer's return of income shall be signed, and contain a declaration as to the completeness and accuracy, by the taxpayer's legal representative.
- (5) A taxpayer carrying on business shall furnish with the taxpayer's return of income a statement of income and expenditure and a statement of assets and liabilities.
- (6) A person, other than an employee of the taxpayer, who, for remuneration, prepares or assists in the preparation of a return of income, or a balance sheet, statement of income and expenditure, or any other document submitted in support of a return, shall sign the return certifying that the person has examined the books of account and other relevant documentation of the taxpayer, and that, to the best of the person's knowledge, the return or document correctly reflects the data and transactions to which it relates.
- (7) Where a person refuses to sign a certificate referred to in Sub-section (6), the person shall furnish the taxpayer with a statement in writing of the reasons for such refusal and the taxpayer shall include that statement with the return of income to which the refusal relates.
- (8) Where, during a year of income -
  - (a) a taxpayer has died;
  - (b) a taxpayer has become bankrupt, wound-up, or gone into liquidation;
  - (c) a taxpayer is about to leave Somaliland indefinitely;
  - (d) the Director otherwise considers it appropriate,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 (12) months.
- (9) Where any person fails to furnish a return of income as required by this Section, the Director may, by notice in writing, appoint a person to prepare and furnish the return, and the return so furnished is deemed, for all purposes of this Act, to be the return of the person originally required to furnish the return.

- (10) Where the Director is not satisfied with a return of income, the Director may, by notice in writing, require the person who has furnished the return to provide a fuller or further return of income.
- (11) Unless requested by the Director by notice in writing, no return of income shall be furnished under this Act for a year of income –
- (a) by a non-resident person where Section 55 (4) or Section 133(c) or both apply to all the income derived from sources in Somaliland by the person during the year of income;
  - (b) by a resident individual to whom Section 55(4) or (5) applies.
- (12) A taxpayer required to furnish a return of income under this Section may apply in writing to the Director for an extension of time to furnish the return.
- (13) An application under Sub-section (12) shall be made by the due date for furnishing of the return to which it relates.
- (14) Where an application has been made under Sub-section (12) and the Director is satisfied that the taxpayer is unable to furnish the return by the due date because of absence from Somaliland, sickness, or other reasonable cause, the Director may, by notice in writing, grant the taxpayer an extension of time for furnishing the return of a period not exceeding ninety (90) days.
- (15) A person dissatisfied with a decision under Sub-section (14) may only challenge the decision under the objection and appeal procedure in this Act.
- (16) The granting of an extension of time under this Section does not alter the due date for payment of tax under Section 7.

### **136. Business Information Returns**

- (1) 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 shall furnish a return of such payments, in this Section referred to as a “business information return”, to the Director within sixty (60) days after the end of the year of income in which the payment was made.
- (2) A business information return shall be in the form specified by the Director and shall state the information required.
- (3) Sub-section (1) does not apply to the payment of any income subject to withholding tax at source under Part 11 of this Chapter.

### **137. Assessments**

- (1) Subject to Section 138, the Director shall, based on the taxpayer’s return of income and on any other information available, 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.

- (2) The Director may, according to the Director's best judgement, make an assessment of the chargeable income of the taxpayer and the tax payable thereon for that year where -
  - (a) a taxpayer defaults in furnishing a return of income for a year of income; or
  - (b) the Director is not satisfied with a return of income for a year of income furnished by a taxpayer.
- (3) Where the Director has made an assessment under Sub-section (2)(b), the Director shall include with the assessment a statement of reasons as to why the Director was not satisfied with the return.
- (4) In the circumstances specified in Section 135(8), in lieu of requiring a return of income, the Director may, according to the Director's best judgement, make an assessment of the chargeable income of the taxpayer and the tax payable thereon for the year of income.
- (5) The Director shall not assess for a year of income any person who, as a result of the operation of Section 135 (11), is not required to furnish a return of income for that year.
- (6) Where an assessment has been made under this Section, the Director shall serve a notice of the assessment on the taxpayer stating –
  - (a) the amount of chargeable income of the taxpayer;
  - (b) the amount of tax payable;
  - (c) the amount of tax paid, if any;
  - (d) the time, place, and manner of objecting to the assessment.
- (7) 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.
- (8) Where Sub-section (7) applies, the taxpayer's return of income is treated as a notice of an assessment served on the taxpayer by the Director on the due date for furnishing of the return or on the actual date the return was furnished, whichever is the later.
- (9) Notwithstanding Sub-section (7), the Director may make an assessment under this Section on a taxpayer in any case in which the Director considers necessary.
- (10) Where the Director raises an assessment in accordance with Sub-section (9), the Director shall include with the assessment a statement of reasons as to why the Director considered it necessary to make such an assessment.

- (11) This Section 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.
- (12) Subject to Sub-section (13) and (14), the Director may, within three (3) years after service of a notice of assessment, make an additional assessment amending an assessment previously made.
- (13) Where the need to make an additional assessment arises by reason of fraud or any gross or wilful neglect by, or on behalf of, the taxpayer or the discovery of new information in relation to the tax payable for any year of income, the Director may make an additional assessment for that year any time.
- (14) The Director shall not make an additional assessment amending an assessment in respect of an amount, if any previous assessment for the year of income in question has, in respect of that amount, been amended or reduced pursuant to an order of a court of record unless such order was obtained by fraud or any gross or wilful neglect.
- (15) An additional assessment shall be treated in all respects as an assessment under this Act.
- (16) As soon as is reasonably practicable after the expiry of the time allowed under the Act for the furnishing of returns of income for a year of income, the Director shall cause to be prepared a list of taxpayers assessed to tax in respect of that year, in this Section referred to as an “assessment list”, and the list shall contain in relation to each taxpayer assessed –
- (a) taxpayer’s name and address;
  - (b) amount of chargeable income upon which the assessment has been made; and
  - (c) amount of tax payable.
- (17) In any proceedings, whether civil or criminal, under this Act, a document purporting to be an extract from an assessment list and certified by the Director to be a true copy of the relevant entry in the list, shall be prima facie evidence of the matters stated therein.
- (18) No notice of assessment, warrant, or other document purporting to be made, issued, or executed under this Act –
- (a) shall be quashed or deemed to be void or voidable for want of form;
  - (b) shall be affected by reason of mistake, defect, or omission therein
- if it is, in substance and effect, in conformity with this Act and the person assessed or intended to be assessed or affected by the document, is designated in it according to common intent and understanding.
- (19) Where the Director is satisfied that an order made or document issued by the Director contains a mistake which is apparent from the records and that such mistake does not involve a dispute as to the interpretation of the law or facts of the case, the Director may, for the purposes of rectifying the mistake, amend the order or

document any time before the expiry of two years from the date of making or issuing the order or document.

### **138. Objections and Appeals**

- (1) A taxpayer who is dissatisfied with an assessment may lodge an objection to the assessment with the Director within thirty (30) days after service of the notice of assessment.
- (2) An objection to an assessment shall be in writing and state precisely the grounds upon which it is made.
- (3) The Director may, upon application in writing by the taxpayer, extend the time for lodging an objection where the Director is satisfied that the delay in lodging the objection was due to the taxpayer's absence from Somaliland, sickness, or other reasonable cause.
- (4) Where the Director refuses to grant an extension of time under Sub-section (3), the taxpayer may apply to the Tribunal established under Chapter 6 of this Act for review of the decision within forty-five (45) days after service of notice of decision.
- (5) After consideration of the objection, the Director may allow the objection in whole or in part and amend the assessment accordingly, or disallow the objection; and the Director's decision is referred to as an "objection decision".
- (6) As soon as is practicable after making an objection decision, the Director shall serve the taxpayer with notice of the decision.
- (7) Where an objection decision has not been made by the Director within ninety (90) days after the taxpayer lodged the objection with the Director, the taxpayer may, by notice in writing to the Director, elect to treat the Director as having made a decision to allow the objection.
- (8) Where a taxpayer makes an election under Sub-section (7), the taxpayer is treated as having been served with a notice of the objection decision on the date the taxpayer's election was lodged with the Director.
- (9) A taxpayer dissatisfied with an objection decision may apply for review of the decision to a tax tribunal established under Chapter 6 of this Act.
- (10) A taxpayer dissatisfied with a decision of the tax tribunal may appeal to the Regional Court by lodging a notice of appeal with the Regional Court within thirty days (30) after service of notice of the objection decision.
- (11) A person who has lodged a notice of appeal with the Regional Court shall, within five working days of doing so, serve a copy of the notice of appeal on the Director.
- (12) An appeal to the Regional Court under Sub-section (10) may be made on questions of law only and the notice of appeal shall state the question or questions of law that will be raised on the appeal.

- (13) A party to a proceeding before the Regional Court who is dissatisfied with the decision of the Regional Court may, with leave of the Supreme Court, appeal the decision to the Supreme Court.
- (14) In any objection to an assessment, any appeal of an objection decision to the Regional Court, any review of an objection decision by a tax tribunal, or any appeal from the decision of the Regional Court or a tax tribunal in relation to an objection decision, the onus is on the taxpayer to prove, on the balance of probabilities, the extent to which the assessment made by the Director is excessive or erroneous.

### **139. Payment of Provisional Tax**

- (1) 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 6<sup>18</sup> is liable to pay provisional tax under this Section.
- (2) A provisional taxpayer, other than an individual, is liable to pay two instalments of provisional tax, on or before the last day of the sixth and twelfth months of the year of income, in respect of the taxpayer's liability for income tax for that year.
- (3) For the purposes of Sub-section (2), the amount of each instalment of provisional tax for a year of income is calculated according to the formula –

$$(50\% \times A) - B$$

where –

**A** - is the estimated tax payable by the provisional taxpayer for the year of income;

**B** - is the amount of any tax withheld under this Act, prior to the due date for payment of the instalment, from any amounts derived by the taxpayer during the year of income, which will be included in the gross income of the taxpayer for that year.

- (4) A provisional taxpayer who is an individual is liable to pay four (4) instalments of provisional tax, on or before the last day of the third, sixth, ninth, and twelfth months of the year of income, in respect of the taxpayer's liability for income tax for that year
- (5) For the purposes of Sub-section (4), the amount of each instalment of provisional tax for a year of income is calculated according to the following formula -

$$(25\% \times A) - B$$

where –

**A** - is the estimated tax payable by the provisional taxpayer for the year of income;

**B** - is the amount of any tax withheld under this Act, prior to the due date for payment of the instalment, from any amounts derived by the taxpayer during the year of income, which will be included in the gross income of the taxpayer for that year.

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<sup>18</sup> The Somali version incorrectly showed this reference as being to Sub-section (5). This will be corrected at a future date



- (6) Upon written application by the taxpayer, the Director may, where good cause is shown, extend the due date for payment of an instalment of provisional tax or allow for payment of such an instalment in equal or varying amounts.
- (7) An instalment of provisional tax, when it becomes due and payable, is a debt due to the Government and the provisions of this Act shall apply for the purposes of the collection and recovery of provisional tax by the Director.
- (8) Each instalment of provisional tax shall be credited against the income tax assessed to the provisional taxpayer for the year of income to which the instalment relates.
- (9) Where the total of the instalments credited under Sub-section (8) exceeds the taxpayer's income tax assessed for that year, the excess shall be dealt with by the Director in accordance with Section 141(3).
- (10) No instalment of provisional tax paid by a provisional taxpayer shall be refunded to the taxpayer other than in accordance with Sub-section (9).
- (11) In this Section, "estimated tax payable" has the meaning in Section 140.

#### **140. Estimated Tax Payable**

- (1) A provisional taxpayer's estimated tax payable for a year of income is –
  - (a) in the case of a taxpayer to whom Section 55(5) applies, the amount determined under the Third Schedule to this Act for that year as the tax payable on the gross turnover of the taxpayer estimated for that year under Sub-section (2);
  - (b) in any other case, the amount calculated by applying the rates of tax in force for that year against the amount estimated under Sub-section (3) by the taxpayer as the chargeable income of the taxpayer for that year.
- (2) Every provisional taxpayer to whom Section 55(5) applies shall furnish an estimate of the gross turnover of the taxpayer for each year of income and shall include with the estimate for a year of income, a statement of the actual gross turnover of the taxpayer for the previous year of income.
- (3) Every provisional taxpayer, other than a taxpayer to whom Section 55(5) applies, shall furnish an estimate of the chargeable income to be derived by the taxpayer for a year of income in respect of which provisional tax is or may be payable by the taxpayer.
- (4) A provisional taxpayer's estimate under Sub-section (2) or (3) shall be in the form prescribed by the Director and shall be furnished to the Director by the due date for payment of the first instalment of provisional tax for the year of income.
- (5) A provisional taxpayer's estimate under Sub-section (2) or (3) shall remain in force for the whole of the year of income unless the taxpayer furnishes a revised estimate to the Director which revised estimate shall only apply to the calculation of the provisional tax payable by the taxpayer after the date the revised estimate was furnished to the Director.

- (6) Where a provisional taxpayer fails to furnish an estimate of gross turnover or chargeable income as required by Sub-section (2) or (3), the estimated gross turnover or chargeable income of the taxpayer for the year of income shall be such amount as estimated by the Director.

## **141. Refunds**

- (1) A taxpayer may apply to the Director for a refund, in respect of any year of income, of any tax paid by withholding, instalments, or otherwise in excess of the tax liability assessed to or due by the taxpayer for that year.
- (2) An application for a refund under this Section shall be made to the Director in writing within five years of the later of –
- (a) the date on which the Director has served the notice of assessment for the year of income to which the refund application relates;
  - (b) the date on which the tax was paid.
- (3) Where the Director is satisfied that tax has been over paid, the Director shall –
- (a) apply the excess in reduction of any other tax due from the taxpayer;
  - (b) apply the balance of the excess, if any, in reduction of 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
  - (c) refund the remainder, if any, to the taxpayer.
- (4) Where the Director is required to refund an amount of tax to a person as a result of –
- (a) an application made to him under this Act; or
  - (b) a decision by the tax tribunal or court of record under Section 138;
- the Director shall pay a late refund fee equal 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.
- (5) The Director shall, within thirty (30) days of making a decision on a refund application under Sub-section (1), serve on the person applying for the refund a notice in writing of the decision.
- (6) A person dissatisfied with a decision referred to in Sub-section (4)(a) of this Section may only challenge the decision under the objection and appeal procedure set forth in Section 138.

## **142. Rental Tax Return**

- (1) An individual charged to tax under Section 56<sup>19</sup> shall furnish a return of rental income for each year of income not later than four months after the end of that year.

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<sup>19</sup> Incorrectly shown as Section 5 in the Somali version of the law. Will be corrected in due course

- (2) Sections 135-141 apply, with the necessary changes made, to the tax imposed under Section 56.
- (3) For the avoidance of doubt, the Director shall prescribe the form for return of rental income under this Section.

## **PART 11 Withholding Tax at Source**

### **143. Withholding of Tax by Employers**

- (1) Every employer shall withhold tax from a payment of employment income to an employee as prescribed by regulations made under Section 51.
- (2) The obligation of an employer to withhold tax under Sub-section (1) is not reduced or extinguished because the employer has a right, or is otherwise under an obligation, to deduct and withhold any amount from such payments.
- (3) The obligation of an employer to withhold tax under Sub-section (1) applies notwithstanding any other law which provides that the employment income of an employee shall not be reduced or subject to attachment.

### **144. Payment of Dividends to Resident Shareholders**

- (1) A resident company that pays a dividend to a resident shareholder shall withhold tax on the gross amount of the payment at the rate of ten (10) percent of the gross amount.
- (2) This Section does not apply where the dividend income is exempt from tax in the hands of the shareholder.

### **145. Payment for Goods and Services**

- (1) Where 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, in this section referred to as the “payer”, pays an amount or amounts in aggregate exceeding one million Somaliland shillings to any person in Somaliland –

- (a) for a supply of goods or materials of any kind;
  - (b) for a supply of any services,

the payer shall withhold tax on the gross amount of the payment at a rate of 6% and the payer shall issue a receipt to the payee. Tax withheld under this section is subject to the provisions of section 151.

- (2) Where -
  - (a) there are separate supplies of goods or materials, or of services and each supply is made for an amount that is one million Somaliland shillings or less; and

- (b) 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 Somaliland shillings,

Sub-section (1) applies to each supply<sup>20</sup>.

(3) This section does not apply to -

- (a) a supply of plant and machinery;
- (b) a supply of human or animal drugs;
- (c) a supply of scholastic materials;
- (d) a supplier –
  - (I) who is exempt from tax under this Act; or
  - (II) who the Director is satisfied has regularly complied with the obligations imposed on the supplier under this Act.

## **146. International Payments**

(1) Any person making a payment of the kind referred to in Section 129 or 130<sup>21</sup> shall withhold from the payment the tax levied under the relevant Section.

(2) Any promoter, agent, or similar person -

- (a) paying remuneration to a non-resident entertainer or sportsperson; or
- (b) 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.

(3) This Section does not apply where the payment is exempt from tax.

## **147. Withholding as a Final Tax**

Where tax has been withheld under Section 144 on a payment of dividends to a resident individual

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

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<sup>20</sup> The words "Sub-section (1) applies to each supply" were incorrectly omitted from the Somali version. This will be corrected at a future date

<sup>21</sup> The references here should be to Sections 129 and 131. This will be corrected at a future date

#### **148. Payment of Tax Withheld**

- (1) 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.
- (2) The provisions of this Act relating to the collection and recovery of tax apply to any amount withheld under this Part as if it were tax.

#### **149. Failure to Withhold Tax**

- (1) A withholding agent who fails to withhold tax in accordance with this Act is personally liable to pay to the Director the amount of tax, which has not been withheld, but the withholding agent is entitled to recover this amount from the payee.
- (2) The provisions of this Act relating to the collection and recovery of tax apply to the liability imposed by Sub-section (1) as if it were tax.

#### **150. Record of Payments and Tax Withheld**

- (1) A withholding agent shall maintain, and keep available for inspection by the Director, records showing, in relation to each year of income –
  - (a) payments made to a payee;
  - (b) tax withheld from those payments.
- (2) The records referred to in Sub-section (1) shall be kept by the withholding agent for five (5) years of income after the end of the year of income to which the records relate.
- (3) A withholding agent shall deliver to the payee a tax credit certificate setting out the amount of payments made and tax withheld during a year of income.
- (4) A payee who is required to furnish a return of income shall attach to the return the tax credit certificate or certificates supplied to the payee for the year of income for which the return is filed.
- (5) The Director may call upon a withholding agent to allow an auditor to examine the agent's records to verify their accuracy against the agent's tax credit certificates.

#### **151. Treatment and Priority of Tax Withheld**

- (1) Tax withheld by a withholding agent under this Act –
  - (a) is held by the withholding agent in trust for the Government of Somaliland;
  - (b) is not subject to attachment in respect of a debt or liability of the withholding agent, and in the event of the liquidation or bankruptcy of the withholding agent, an amount withheld under this Act does not form a part of the estate in liquidation, assignment, or bankruptcy and the Director shall have a first claim before any distribution of property is made.

- (2) Every amount which a withholding agent is required under this Act to withhold from a payment is –
  - (a) a first charge on that payment;
  - (b) 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.
- (3) The amount of tax withheld under this Part is treated as income derived by the payee at the time it is withheld.
- (4) A withholding agent who has withheld tax under this Part and 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.
- (5) Tax withheld from a payment under this Part 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 TAXES**

### **PART 1 Goods Tax**

#### **152. Goods Tax Imposed**

- (1) A tax is hereby imposed on:
  - (a) every taxable supply of goods, as defined in Section 153, by a registered manufacturer, and
  - (b) every taxable import of goods, as defined in Section 154.
- (2) The rate of tax on a taxable supply of goods is five (5) percent of the amount of the taxable supply, unless the taxable supply is an export of goods, in which case the rate is zero (0) percent.
- (3) The rate of tax on a taxable import of goods is 5 percent of the taxable amount of the import.
- (4) The tax payable on a taxable supply is to be accounted for to the Director by the registered manufacturer making the supply, or to be paid by the importer, unless the importer is a registered manufacturer and the import is used to produce the registered person's manufactured goods.
- (5) The tax payable by a registered manufacturer in respect of taxable supplies made during a tax period is due on the date that the goods tax return for that period is due.
- (6) The goods tax payable by an importer in respect of a taxable import is due on 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.

- (7) The term “export of goods” means 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.

### **153. Taxable Supply**

- (1) The term “taxable supply” means any supply (other than an exempt supply) of goods by the manufacturer thereof where the manufacture of goods is in Somaliland and the supply is made in connection with the carrying on of a business.

- (2) The term “supply of goods” means –

- (a) any sale, exchange, or other transfer of the right to dispose of the goods owner, or
- (b) an application of goods to own use where the goods were acquired pursuant to an exempt supply, or
- (c) the grant of the use or right to use any goods under a lease, hire-purchase agreement, or finance lease.

- (3) A supply of services incidental to a supply of goods is part of the supply of the goods.

- (4) Subject to Sub-section (3), where a supply is a supply of goods and services, the Director shall determine on any reasonable basis the extent to which the supply is to be treated as a supply of goods, and if taxable by reason of this Section is not taxable under Section 165.

- (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.

- (6) A supply is 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.

- (7) Exempt supplies are the following: —

- (a) a supply of foodstuffs for human consumption (but not when served as a meal or as cooked or prepared food), for the general use of educational, and philanthropic institutions certified as such by the Director excluding goods for the personal use of the members and employees of such institutions and organisations.
- (b) a supply of computers, computer accessories and software.
- (c) a 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.

- (d) a supply of a pharmaceutical or medicinal preparation shall be specified by regulation to be issued by the Minister.
  - (e) a supply of a medical aids or appliances specifically designed for persons with an illness or disability shall be specified by regulation by the Minister.
  - (f) a supply of textbooks or other instructional materials designed for use in schools or adult education programs, including items specified in regulations.
  - (g) subject to Sub-section (8), a supply to a registered manufacturer, or to a person in the business of mining or forestry, of—
    - (I) raw materials or other inputs for use directly in manufacturing, or
    - (II) capital goods; and
    - (III) a supply of goods as part of the transfer of a manufacturing business as a going concern by a registered manufacturer to another registered manufacturer.
- (8) Where a registered manufacturer makes both taxable and exempt supplies, a supply to the manufacturer of raw materials or other inputs, or of capital goods is only exempt under Sub-section (7)(f)<sup>22</sup> to the extent that the raw materials or other inputs, or capital goods are used by the manufacturer in making taxable supplies.
- (9) In this Section, unless the context otherwise requires—
- (a) The term “application to own use” means:
    - (I) applying goods to a non-business use, including use by a related person, or
    - (II) the transfer by a registered manufacturer of that person’s manufactured products for no consideration.
  - (b) The term “goods” means any tangible movable property.
  - (c) The term “manufacture” means 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.
  - (d) The term “manufacturer” means any person who manufactures goods.
  - (e) The term “capital goods” means any plant or equipment (including spare parts therefore, but not including motor vehicles) for use exclusively and directly in manufacturing.
- (10) Where a business has been transferred from one registered manufacturer to another pursuant to Sub-section (7)(f)<sup>23</sup>, the transferee will be considered the manufacturer of any goods transferred that were manufactured by the transferor.

## **154. Taxable Import**

- (1) The term “taxable import” means every import of goods that is not an exempt import.
- (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.

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<sup>22</sup> The reference here should be to Sub-section (7)(g)(III). This will be corrected at a future date

<sup>23</sup> The reference here should be to Sub-section (7)(g)(III). This will be corrected at a future date



- (3) The term “import of goods” means the bringing of goods into Somaliland.
- (4) A supply of services incidental to an import of goods is part of the import of the goods. This includes the services giving rise to commission, packaging, transportation, insurance, and warranty costs payable on, or by reason of the import.
- (5) An import of goods occurs –
  - (a) 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
  - (b) in any other case, on the date on which the goods are brought into Somaliland.

## **155. Time of Supply**

- (1) A supply of goods occurs on the earlier of –
  - (a) the date on which the goods tax invoice for the supply is issued, or
  - (b) the date on which the goods tax invoice is required to be issued under Section 160<sup>24</sup>.
- (2) A supply of goods by way of the application of the goods to own use occurs on the date the goods are first applied to own or exempt use.
- (3) A supply of goods under a hire purchase agreement or finance lease occurs on the commencement date of the agreement or lease.

## **156. Taxable Amount**

- (1) Except as otherwise provided in this Subchapter, the taxable amount of a taxable supply is the consideration payable for that supply.
- (2) The taxable amount of the following taxable supplies is the fair market value of the supply –
  - (a) a taxable supply under a hire-purchase lease agreement, or finance lease,
  - (b) an application of goods to own use, and
  - (c) a taxable supply between related persons for no consideration or for a consideration that is less than the fair market value of the supply.
- (3) Except as provided in Sub-section (2), if a taxable supply is made for no consideration the taxable amount of the supply is zero.
- (4) The taxable amount of a taxable import is the sum of the following amounts –
  - (a) the CIF Somaliland Port or Customs entry value, whichever is applicable;
  - (b) if not included in the CIF Somaliland Port or Customs entry value, the value of incidental services as defined in Section 153(4)<sup>25</sup>; and
  - (c) the customs duty (if any) levied on the import.

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<sup>24</sup> The reference here should be to Section 159. This will be corrected at a future date

<sup>25</sup> The reference here should be to Section 154(4). This will be corrected at a future date

- (5) The term “consideration” in relation to a supply 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 tax imposed under this Part) 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.

## **157. Post-Sale Adjustments**

- (1) This Section applies where—
- (a) a taxable supply by a registered manufacturer is cancelled,
  - (b) the nature of a taxable supply by a registered manufacturer has been fundamentally varied or altered,
  - (c) the consideration for a taxable supply by a registered manufacturer is altered,
  - (d) the goods (or part thereof) that are the subject of a taxable supply by a registered manufacturer are returned to the manufacturer, or
  - (e) 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).
- (2) Where this Section applies and the goods tax properly chargeable in respect of the supply exceeds the goods tax actually accounted for by the registered manufacturer making the supply, the amount of the excess shall be treated as goods tax payable by the registered manufacturer in respect of a taxable supply made by the manufacturer in the tax period in which the event referred to in Sub-section (1) occurred, and such excess may be recovered by the manufacturer from the recipient of the supply.
- (3) Subject to Sub-section (4), where this Section applies and the goods tax actually accounted for by the registered manufacturer making the supply exceeds the goods tax properly chargeable in respect of the supply, the registered manufacturer shall be allowed a credit for the amount of the excess in the tax period in which the event referred to in Sub-section (1) occurred.
- (4) No credit is allowed under Sub-section (3) until the registered manufacturer has repaid the excess goods tax to the customer who was the recipient of the supply. Repayment may be in cash or, if the customer has a payable outstanding on which goods tax is to be collected, by a credit against the goods tax due on the payable amount; except that, if the manufacturer’s repayment of excess tax is by a credit against goods tax owing on the customer’s payable, the manufacturer’s payment is not deemed to occur until the customer has paid the payable and received the benefit of the credit. No cash tax refund is allowable to a registered manufacturer. Entitlement to the credit permitted under Sub-section (3) is allowed only upon submission of proof of the manufacturer’s overpayment and the manufacturer’s repayment of the excess to the customer

## 158. Registration of Manufacturers

- (1) Subject to this Part, every person who carries on any business of manufacture has an obligation to register –
  - (a) at the end of any period of twelve months where during the period the person made taxable supplies the total taxable amount of which equalled or exceeded five (5) million Somaliland Shillings;
  - (b) at the beginning of any period of twelve months where there are reasonable grounds to expect that the total taxable amount of taxable supplies to be made by the person during that period will equal or exceed five (5) million Somaliland Shillings.
- (2) In determining whether a person has an obligation to register under Sub-section (1), the Director may include in the person's taxable supplies the taxable supplies made by another person who is a related person.
- (3) In determining whether a person has, an obligation to register under Sub-section (1) the Director may include in the person's taxable supplies of goods any taxable supplies of services provided by the person. A person registered by reason of this Section is considered registered for purposes of Section 170<sup>26</sup>.
- (4) Every person who has an obligation to register under Sub-section (1) shall apply to the Director for registration within twenty-one (21) days of becoming so required
- (5) Any person not required to register under Sub-section (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, subject to conditions set out in Sub-section (7).
- (6) The Director shall register any person who has applied for registration within 21 days from receipt of the application, unless the Director is satisfied that the person does not have a registration obligation.
- (7) The Director is not required to register any person in the case of an application for voluntary registration under Sub-section (5) if either of the following circumstances applies:
  - (a) The person has no fixed place of abode or business in Somaliland, or the Director has reasonable grounds to believe that the person—
    - (I) does not have a bank account;
    - (II) will not keep proper records;
    - (III) will not submit regular and reliable goods tax returns.
  - (b) At the time of the application for voluntary registration, the Director has announced a temporary suspension of voluntary registrations for administrative feasibility reason, as to be elaborated in regulations.

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<sup>26</sup> The reference here should be to Section 169. This will be corrected at a future date

(8) Registration takes effect –

- (a) In the case of an application under Sub-section (1), from the beginning of the tax period immediately following the time at which the person was required to be registered.
- (b) In the case of an application under Sub-section (5), from the beginning of the tax period immediately following the period in which the person applied for registration.

(9) Any person who fails to make an application as required under Sub-section (1) 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.

(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.

(11) A registered manufacturer –

- (a) shall apply in writing to the Director for cancellation of the person's registration if the person has ceased to make taxable supplies, or
- (b) may apply in writing to the Director for cancellation of the person's registration if the value of the person's taxable supplies during the most recent 12-month period does not exceed the amount specified in Sub-section (1). An application under this paragraph may be made only after the expiration of 2 years from the date the registration took effect.

(12) Subject to Sub-section (14), where the Director is satisfied that a registered manufacturer who has properly made an application under Sub-section (11) ceases to be required to be registered, the Director shall 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.

(13) Subject to Sub-section (14), where the Director is satisfied that a registered manufacturer has ceased to make taxable supplies, the Director shall cancel the 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 the Director may determine.

(14) The Director shall not cancel the registration of a person where the Director has reasonable grounds to believe that, at any time in the next twelve (12) months, the person will make taxable supplies in excess of the amount specified in Sub-section (1).

(15) If a person's registration is cancelled under this Section –

- (a) 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,

- (b) the taxable supply is treated as having been made immediately before cancellation of the person's registration, and
  - (c) the taxable supply is treated as having been made for a value equal to the fair market value of the goods.
- (16) The obligations and liabilities of a person under this Chapter (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.

## **159. Goods Tax Invoices, Credit Notes, and Debit Notes**

- (1) Every registered manufacturer making a taxable supply shall provide the recipient with a goods tax invoice for the supply. The invoice shall be provided at the earlier of—
- (a) the time of payment or partial payment;
  - (b) on the delivery date; or
  - (c) on the shipment date.
- (2) A goods tax invoice shall contain the following particulars —
- (a) the words “goods tax invoice” in a prominent place,
  - (b) the name, address, and taxpayer identification number of the registered manufacturer making the supply,
  - (c) the individualised serial number and the date on which the goods tax invoice is issued,
  - (d) the description of the goods supplied (including quantity or volume) and the date on which the goods were delivered, and
  - (e) the consideration for the supply and the amount of goods tax charged.
- (3) Where Section 160<sup>27</sup> applies, the registered manufacturer making the supply shall provide the recipient with a debit note in relation to the supply.
- (4) A debit note shall contain the following particulars —
- (a) the words “debit note” in a prominent place,
  - (b) the name, address, and taxpayer identification number of the registered manufacturer making the supply,
  - (c) the individualised serial number and the date on which the debit note is issued,
  - (d) a brief description of the circumstances giving rise to the issuing of the debit note, including information sufficient to identify the taxable supply to which the debit note relates, and
  - (e) 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 the amount of goods tax that relates to the difference.

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<sup>27</sup> The reference here should be to Section 161. This will be corrected at a future date

- (5) Where Section 161 applies, the registered manufacturer making the supply shall provide the recipient with a credit note in relation to the supply.
- (6) A credit note shall contain the following particulars –
- (a) the words “credit note” in a prominent place,
  - (b) the name, address, and taxpayer identification number of the registered manufacturer making the supply,
  - (c) the individualised serial number and the date on which the credit note is issued,
  - (d) a brief description of the circumstances giving rise to the issuing of the credit note, including information sufficient to identify the taxable supply to which the credit note relates, and
  - (e) 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 the amount of goods tax that relates to the difference.

## **160. Goods Tax Returns**

Every registered manufacturer shall file 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, except that no additional return need be made 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.

## **161. Seizure and Forfeiture of Goods**

- (1) The Director may seize and sell any goods in respect of which the Director has reasonable grounds to believe that goods tax that is, or will become payable in respect of a taxable supply or taxable import of those goods has not been or will not be paid.
- (2) The Director may seize and sell any vehicle used in the removal or transportation of goods liable to be seized under Sub-section (1) unless it is 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.
- (3) Seizure and sale under this Chapter are subject to the requirements of Section 14 of this Act.

## **162. Coordination of Customs and Domestic Tax Administrations**

- (1) The Director, while carrying out his responsibilities under the customs law, shall collect at the time of import and any goods tax due on an import of goods, under the same conditions as applies to customs duties.
- (2) Except where the contrary intention appears, the provisions of the customs law relating to the import, transit, coastwise carriage, clearance of goods, and payment and recovery of external tariffs shall, with such exceptions, modifications, and adaptations as

the Minister may by regulation prescribe, apply to the goods tax payable on the import of goods.

## **PART 2 Services Tax**

### **163. Definition of Services Provider**

In this Part, the term “**registered services provider**” means any person who is registered or required to be registered under this Part.

### **164. Services Tax Imposed**

- (1) A tax (to be known as the “**services tax**”) is hereby imposed on every supply of taxable services in Somaliland by a registered services provider.
- (2) The amount of the services tax is 5 percent of the taxable amount of the supply.
- (3) The services tax on a supply of taxable services is to be accounted for to the Director by the registered services provider making the supply.
- (4) Notwithstanding anything contained in any law, the services tax payable by a registered services provider under Sub-section (3) is recoverable by the provider from the recipient of the supply, except a recipient that is exempt by international conventions and agreement to which Somaliland is a Party.
- (5) 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.

### **165. Taxable Services**

- (1) The term “**taxable services**” means any supply (other than an exempt supply) in connection with the carrying on of a business by a person of –
  - (a) electricity services;
  - (b) telecommunications services;
  - (c) the provision of water for a fee;
  - (d) 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;
  - (e) sale of tickets by international transport services (air, sea, and land);
  - (f) services of a travel agency or travel arranger, including the issuing of tickets; and
  - (g) sporting services or game arranger, including the issuing of tickets.
- (2) The term “supply of services” means the performance of services for another person.

- (3) A supply of goods incidental to a supply of taxable services is part of the supply of the taxable services, and taxable by reason of this Section is not also taxable under Section 152.
- (4) Subject to Sub-section (3), where a supply is a supply of taxable services and goods, the Director shall determine on any reasonable basis the extent to which the supply is to be treated as a supply of taxable services.

### **166. Place of Supply**

- (1) Subject to Sub-section (2), a supply of taxable services occurs at the place of business from which the services are provided.
- (2) A supply of electricity or telecommunications services occurs at the location where the services are received.

### **167. Time of Supply**

- (1) A supply of taxable services occurs on the earlier of –
  - (a) the date on which the services tax invoice for the supply is issued, or
  - (b) the date on which the services tax invoice for the supply is required to be issued under Section 171.
- (2) 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 date on which the payment or partial payment is due or received, whichever is earlier.

### **168. Taxable Amount**

- (1) Except as otherwise provided in this Part, the taxable amount of a supply of taxable services is the consideration payable for that supply.
- (2) The taxable amount of a supply of taxable services between related persons for no consideration or for a consideration that is less than the fair market value of the supply is the fair market value of the supply.
- (3) Except as provided in Sub-section (2), if a supply of taxable services is made for no consideration the taxable amount of the supply is zero.
- (4) The term “consideration” in relation to a supply 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 tax imposed under this Part) 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.
- (5) Any consideration in kind is valued at fair market value at the time of the supply.



## **169. Registration of Services Providers**

- (1) Subject to this Part, every person who carries on any business of providing taxable services is required to register –
  - (a) at the end of any period of twelve months where during the period the person made supplies of taxable services the total taxable amount of which equalled or exceeded Five Million Somaliland Shillings.
  - (b) at the beginning of any period of twelve months where there are reasonable grounds to expect that the total taxable amount of supplies of taxable services to be made by the person during that period will equal or exceed Five Million Somaliland Shillings
- (2) In determining whether a person is required to be registered under Sub-section (1), the Director may include in the person's taxable supplies of services the taxable supplies of services made by another person who is a related person.
- (3) In determining whether a person has an obligation to register under Sub-section (1), the Director may include in the person's taxable supplies of services any taxable supplies of goods provided by the person. A person registered by reason of this Section is considered registered for purposes of Section 158.
- (4) Every person required to be registered by Sub-section (1) shall apply to the Director for registration within 21 days of becoming so required.
- (5) The Director shall register any person who has applied for registration within 21 days from receipt of the application, unless the Director is satisfied that the person is not required to be registered.
- (6) Registration takes effect from the beginning of the tax period immediately following the time at which the person was required to be registered.
- (7) Any person who fails to make an application as required under Sub-section (a)<sup>28</sup> 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.
- (8) Every registered services provider 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 twenty-one (21) days of the change occurring.
- (9) A registered services provider shall apply in writing to the Director for cancellation of the person's registration if the person ceases to be required to be registered under Sub-section (1).
- (10) Subject to Sub-section (12), where the Director is satisfied that a registered services provider who has properly made an application under Sub-section (9) ceases to be

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<sup>28</sup> The reference here should be to Sub-section (1)(a). This will be corrected at a future date

required to be registered, the Director shall 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.

- (11) Subject to Sub-section (12), where the Director is satisfied that a registered services provider has ceased to make supplies of taxable services, the Director shall cancel the person's registration with effect from the last day of the tax period in which the person ceased to make such supplies or such other date as the Director may determine.
- (12) The Director shall not cancel the registration of a registered services provider where the Director 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 amount specified in Sub-section (1).
- (13) The obligations and liabilities of a person under this Chapter (including the filing of services 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.

## **170. Port Service Tax**

- (1) A tax of US\$25.00 or its equivalent in Somaliland Shillings is imposed on air, land (by commercial automobile), and sea passengers leaving Somaliland.
- (2) The tax imposed by this Section is payable to the Director on passing through Customs when exiting Somaliland and is to be collected by an Authorized Revenue Agent.

## **171. Services Tax Invoices**

- (1) Every registered services provider making a supply of taxable services shall 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 to which Section 167(2) applies, the services provider shall issue the invoice at least five (5) days before the due date of payment or partial payment.
- (2) Unless the Director provides otherwise, a services tax invoice shall contain the following particulars –
  - (a) the words "services tax invoice" in a prominent place,
  - (b) the name, address, and registration number of the registered services provider making the supply,
  - (c) the individualized serial number and the date on which the services tax invoice is issued,
  - (d) the description of the services supplied and the date on which the services were provided, and
  - (e) the consideration for the supply and the amount of services tax charged.

## **172. Services Tax Returns**

Every registered services provider shall file a services tax return for each tax period within 21 days after the end of the period, whether or not any services tax is due for such period.

## **PART 3 General Provisions**

### **173. Amounts in Trust**

- (1) Any registered manufacturer or registered services provider required under this Chapter to collect goods or services tax and to make payments of that tax to the government is considered to hold collected amounts in trust for the Government of Somaliland.
- (2) A person who is an exempt person within Section 6 is not thereby relieved of the duty to collect or pay tax under this Chapter.

### **174. Recovery of Tax from Recipient of a Supply**

- (1) Where a registered manufacturer or registered services provider has, in consequence of a fraudulent action or misrepresentation by the recipient of a supply, incorrectly treated the supply as an exempt supply, the Director may raise an assessment on the recipient of the supply for the amount of tax payable together with any late payment fee that is payable in respect of the supply.
- (2) Sub-section (1) does not preclude the Director from recovering the tax and late payment fees payable in respect of the supply from the registered person making the supply (referred to as “**supplier**”) and –
  - (a) any amount recovered from the recipient of the supply is to be credited against the liability of the supplier in respect of the supply, and
  - (b) any amount recovered from the supplier is to be credited against the liability of the recipient of the supply.
- (3) Any supplier who pays sales tax or late payment fees referred to in this Section may recover the amount from the recipient of the supply.

### **175. Offenses and Penalties**

- (1) Any person who fails to do one of the following –
  - (a) to apply for registration as required under this Chapter,
  - (b) to notify the Director of a change in circumstances as required in Section 158 or 169,
  - (c) to notify the Director that the person ceases to make taxable supplies or supplies of taxable services as required in Section 158 or 169,

is guilty of a civil offense and is liable to pay a fine not exceeding five (5) currency points. If the failure is deliberate, or due to willful or gross neglect, then that person is

guilty of a criminal offense and on conviction is liable to pay a fine not exceeding twenty (20) currency points or to imprisonment for a term not exceeding five (5) years, or both.

- (2) Any person who fails to furnish any return as required under this Chapter is subject to the penalties provided in Section 17.
- (3) Where a registered manufacturer or registered services provider commits two or more offenses under this Section, the Director may 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, subject to the procedure for taxpayer objection under Section 176.

### **176. Procedure for Taxpayer Protest and Appeal**

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 decisions or determination, appeal to the Tax Appeals Tribunal established under Chapter 6 of this Act.

### **177. Determination of Fair Market Value**

- (1) For the purposes of this Chapter, the fair market value of a supply is the amount in money that a similar supply would fetch if supplied at the same time, if freely offered and made between persons who are not related persons.
- (2) Where the fair market value of a supply cannot be determined under Sub-section (1) of this Section, the fair market value of the supply is the amount that, as determined by the Director having regard to all the circumstances of the supply, is the fair market value of the supply.
- (3) The term "similar supply", in relation to a supply, means a supply that is identical to, or closely or substantially resembles, the first-mentioned supply having regard to the characteristics, quality, quantity supplied, functional components, materials, and reputation of the goods or services that are the subject of that supply.

### **178. Tax Period**

For purposes of this Part, the tax period is the calendar month.

### **179. Definitions**

For purposes of this Chapter:

- (a) The term "registered manufacturer" means any person who is registered or required to be registered under this Subchapter.
- (b) The term "importer" means any person who, at the time of an import –

- (i) owns the goods imported,
- (ii) carries the risk of loss of the goods imported,
- (iii) represents that, or acts as if, the person is the importer or owner of the goods imported,
- (iv) actually brings the goods into Somaliland,
- (v) has a beneficial interest in the goods at the time of import, or
- (vi) acts on behalf of any person referred to in subparagraphs (i)-(v).

## **CHAPTER 4 EXCISE TAXES**

### **180. Earths and Stone and Asbestos Products**

Excise tax, at a rate of ten (10) percent of value [Ad Valorem – (CIF)], shall be levied on any asbestos product imported to or produced in Somaliland, or Earth and Stone imported into Somaliland.

### **181. Tobacco and Tobacco Products**

Excise tax, at a rate of fifty (50) percent, shall be levied on tobacco and on any product containing tobacco, including cigarettes, cigars, snuff and chewing tobacco whether imported to or manufactured in Somaliland.

### **182. Cosmetic Aids and Non-Alcoholic Beverages**

- (1) Excise tax, at the rate of fifteen (15) percent, shall be levied 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.
- (2) Notwithstanding the tax imposed by Sub-section (1), the following goods are exempt from excise:
  - (a) soap;
  - (b) toothpaste;
  - (c) toilet tissue; and
  - (d) disinfectants.

### **183. Luxury Goods**

- (1) Excise tax, at the rate of ten (10) percent, shall be charged on all luxury goods imported to or manufactured in Somaliland, including:
  - (a) luxury automobiles;
  - (b) jewellery;
  - (c) precious stones; and
  - (d) precious metals.

- (2) For the purpose of this Chapter, the term “luxury automobile” means 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 US\$20,000 or its Somali Shillings equivalent.

#### **184. Telecommunications**

Excise tax, at the rate of five (5) percent, shall be charged on the following:

- (a) total value of airtime sold by companies for use in cell phones;
- (b) fees on the use of landlines;
- (c) fees for handling incoming calls.

#### **185. Payment of Excise Tax**

- (1) Except as otherwise allowed under the law, the excise tax leviable on any excisable goods shall be paid by the manufacturer or importer thereof and such tax shall be due and payable when the goods are ex-factory in the case of manufactured goods or when the goods are imported in the case of imported goods.
- (2) In the case of finished excisable goods, “ex-factory” means at the time goods leave the licensed premises on which they have been manufactured.
- (3) In the case of imported goods, “import” means on arrival at the port of entry at which the goods are being imported.

#### **186. Amount Payable**

- (1) The amount of excise tax levied under the provisions of this Chapter shall be calculated on the duty-paid value of imported goods, or the manufacturer’s cost price value of goods manufactured in Somaliland, multiplied by the tax rate expressed as a percentage. Value is determined using the normal price charged customers.
- (2) The normal price charged customers shall be determined under the following assumptions:
- (a) that the excise tax chargeable is excluded from the normal price;
  - (b) that the seller bears 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 tax;
  - (c) that the normal price is based on the duty-paid value under the Tariff Law at the port of entry;
  - (d) 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.
- (3) The term “duty-paid value” used in this Section refers to the value defined customs law.

- (4) For the purpose of ensuring compliance with any of the provisions of this Chapter, 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 import or manufacturing operations, materials used, goods produced or imported, and sales and prices of goods.

### **187. Excise Tax Returns**

- (1) Every person required to pay excise tax under this Chapter shall file an excise tax return for each tax period within 21 days after the end of the period, whether or not any excise tax is due for the period, except that no additional return need be made for excisable imported goods listed on a consumption entry form for purposes of the customs law and for which the excise tax was paid at the time of entry.
- (2) For purposes of this Chapter, tax period means a calendar month.

### **188. Amounts Collected in Trust**

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.

### **189. Seizure of Goods and Protest of Seizure**

- (1) In the event that a manufacturer or importer does not pay the required excise tax on goods, the goods may be seized and held for sale. The procedure for seizure and sale of goods for nonpayment of excise tax is the procedure provided in Section 161 for seizure and forfeiture of goods under Chapter 3, The Goods and Services Tax. The procedure for taxpayer protest and appeal is the same as that provided in Section 176 of Chapter 3.
- (2) The Director may seize and sell any goods in respect of which the Director has reasonable grounds to believe that excise tax that is, or will become payable in respect of excisable goods has not been, or will not be paid.
- (3) The Director may seize and sell any vehicle used in the removal or transportation of excisable goods liable to be seized under Sub-section (1) unless it is 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.
- (4) Seizure and sale of goods are subject to the requirements of Section 14 of this Act.

## **CHAPTER 5 SOMALILAND REVENUE AUTHORITY**

### **PART 1 Establishment, Powers, and Functions of the Authority**

#### **190. Establishment of the Authority**

- (1) There is established an authority to be known as the Somaliland Revenue Authority.
- (2) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and, subject to this Act, may borrow money, acquire and dispose of property and do all such other things as a body corporate may lawfully do.
- (3) The Authority shall be an agency of the Government and shall be under the general supervision of the Minister.
- (4) The seal of the Authority shall be authenticated by the signatures of the Director-General and the Secretary to the Board.
- (5) In the absence of the Director-General, a Director designated by him or her for the purpose may sign a document in the Director-General's place; and in the absence of the Secretary to the Board, a person performing the functions of the secretary may sign a document in his or her place.
- (6) Every document purporting to be an instrument issued by the Authority and to be sealed with the seal of the Authority authenticated in the manner provided by Sub-section (4) or (5) shall be deemed to be such an instrument and shall be received in evidence without further proof.

#### **191. Functions of the Authority**

The functions of the Authority are to —

- (a) administer and give effect to the laws or the specified provisions of the laws set out in the Seventh Schedule to this Act, and for this purpose to assess, collect and account for all revenue to which those laws apply;
- (b) advise the government and local authorities on revenue implications, tax administration and aspects of policy changes relating to all taxes referred to in the Seventh Schedule;
- (c) exercise judicial police powers to investigate taxation offences as set out by the rules in place;
- (d) perform such other functions in relation to revenue as the Minister may direct.



## **PART 2 The Board of Directors and its Functions**

### **192. Board of Directors**

- (1) The President of the Republic of the Somaliland shall appoint a Board of Directors as the governing body of the authority, which shall consist of the following members—
  - (a) a chairperson, who shall be appointed upon recommendation of the Minister;
  - (b) one representative of the Ministry responsible for finance;
  - (c) one representative of the Ministry responsible for trade and industry;
  - (d) one representative of Somaliland private sector/chamber of commerce; and
  - (e) the Director-General of the Authority.
- (2) Upon recommendation of the Minister, the President of the Republic of Somaliland may appoint two other persons who are not public officers as additional members of the Board because of their special knowledge and experience in taxation matters, provided that the persons being appointed have no part-time or full-time activity or interest which conflicts with or impairs fulfilment of their duties as board members.
- (3) The Board shall be responsible for monitoring overall performance of the Authority and shall determine policies relating to staffing and procurement of the Authority and to all organisational matters.
- (4) The Minister may give directions to the Board regarding the performance of its functions, and the Board shall comply with those directions.

### **193. Qualifications for appointment**

The members of the Board, other than the ex officio members, shall be appointed from among persons who qualify for appointment by virtue of their professional knowledge and experience in taxation, commerce, economics, law or other relevant matters of revenue.

### **194. Tenure of office**

A member of the Board other than an ex officio member shall—

- (a) hold office on such terms and conditions as are specified in the instrument of appointment for a three-year period;
- (b) be eligible for reappointment only for a subsequent period not exceeding another three (3) years.

### **195. Suspension / termination**

The President of the Republic of Somaliland may terminate or suspend the appointment of a member-

- (a) for the member's inability to perform the functions of his or her office;
- (b) for misconduct that compromises the image of the Authority;
- (c) if the member is declared or becomes bankrupt or insolvent;

- (d) if the member is convicted of a criminal offence in respect of which a maximum penalty exceeding six months imprisonment may be imposed;
- (e) if the member, without prior permission of the chairperson or without reasonable cause to the satisfaction of the Minister, is absent from six meetings of the Board in any financial year;
- (f) if the member, in any particular case, fails to comply with the provisions of paragraph 4 of the Eighth Schedule to this Act relating to the disclosure of interest; or
- (g) for any other sufficient cause.

## **196. Meetings of the Board**

- (1) The Eighth Schedule to this Act shall apply to the meetings of the Board and other matters provided for in that Schedule and the Minister may, by statutory instrument, amend the Schedule.
- (2) The Board shall meet at least once every three months.
- (3) The Board may co-opt any person to participate in its deliberations, but a person so co-opted shall have no right to vote.

## **PART 3 Director-General, Officers, and Staff**

### **197. Director-General**

- (1) The President of the Republic Somaliland shall appoint a Director-General and Deputy Director-General of the Authority on the recommendation of the Minister and the Board and on the terms and conditions to be specified in the instrument of appointment.
- (2) The Director-General shall be the chief executive of the Authority and shall be responsible for the day-to-day operations of the Authority, the management of funds, property and business of the Authority and for the administration, organisation and control of the other officers and staff of the Authority.
- (3) The Director-General shall devote his or her full time to the duties of his or her office and shall not engage in any business, profession, occupation or paid employment elsewhere.
- (4) The President of the Republic of Somaliland may, after consultation with the Minister and the Board, terminate the appointment of the Director-General for—
  - (a) for misconduct that compromises the image of the Authority ;
  - (b) the Director-General's inability to perform the functions of his or her office;
  - (c) any other sufficient cause.

### **198. Secretary to the Board**

- (1) The Board shall appoint a Secretary to the Board.

- (2) The Secretary shall be responsible for arranging the business of the Board's meetings, keeping a record of the proceedings of the Board and for such other duties as the Board may direct.

### **199. Other officers and staff**

- (1) Subject to Section 198, the Board shall appoint officers at the level of principal revenue officers or higher, on such terms and conditions as the Board may determine.
- (2) The Board shall approve the terms and conditions of all officers and staff as may be required for the performance of the functions of the Authority.
- (3) The Board shall be responsible for the discipline and control of the officers and staff.

### **200. Exemption from personal liability**

An employee of the Authority shall not, in his or her personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of his or her functions under this Act.

## **PART 4 Financial Provisions**

### **201. Revenue to accrue to the Consolidated Fund**

All revenue collected by, or due and payable to, the Authority under this Act shall be credited or be due and payable to the Consolidated Fund; except that the Minister may, from time to time, authorise the Authority in writing to retain a percentage of revenue collected by the Authority as may be determined by the Minister in order to enable the Authority to meet its expenditure without interruption, but the total sum so authorised shall not, in any financial year, exceed the amount appropriated by Parliament for the Authority for that year and shall be set off against the amount so appropriated.

### **202. Funds of the Authority**

- (1) The funds of the Authority shall consist of—
- (a) Money appropriated by House of Representatives for the purposes of the Authority;
  - (b) Loans or grants received by the Authority with the approval of the Minister; and
  - (c) Any other monies as may, with approval of the Minister, be received by or made available to the Authority for the purpose of performing its functions.
- (2) The expenditure of the Authority shall be a charge on the Consolidated Fund.

### **203. Estimates of income and expenditure of the Authority**

- (1) The Director-General shall, not later than three months before the end of each financial year, prepare and submit to the Board for its approval, estimates of its income

and expenditure for the next ensuing year and may at any time before the end of a financial year prepare and submit to the Board for approval any estimates supplementary to the estimates of a current financial year.

- (2) No expenditure shall be made out of the funds of the Authority unless that expenditure is part of the expenditure approved by the Board under the estimates for the financial year in which the expenditure is to be incurred or in the supplementary estimates for that year.

## **204. Accounts, audit, and annual reports**

- (1) The Authority shall keep accounts and records of its transactions and affairs and shall ensure that all monies received are properly brought to account, all payments out of its monies are correctly made and properly authorised and that adequate control is maintained over its property and over the incurring of liabilities by the Authority.
- (2) The annual accounts of the Authority shall be audited by the Auditor-General.
- (3) The Director-General shall, within three months after the end of each financial year, submit—
  - (a) to the President of the Republic of Somaliland, the Minister and the Board an annual report in respect of that year, containing—
    - (I) financial statements;
    - (II) performance indicators and any other related information;
    - (III) a report on the operations of the Authority; and
    - (IV) such other information as the Board may<sup>29</sup>, before or after the completion of the annual report;
  - (b) to the Auditor-General—
    - (I) the accounts of the authority for the financial year; and
    - (II) the annual report referred to in paragraph (a).
- (4) The Auditor-General shall audit the accounts within two (2) months after he or she has received them and submit his or her opinion to the President of the Republic of Somaliland, the Minister and to the Board.
- (5) The Minister shall cause copies of each annual report together with a copy of the opinion of the Auditor-General to be laid before the House of Representatives within two (2) months or at the next meeting of the House of Representatives after he or she has received them.

## **205. Internal audit and periodic audit reports**

- (1) In addition to any other functions assigned to him or her by the Board or the Director-General, the head of internal audit shall be responsible for the internal audit of the

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<sup>29</sup> The word “require” has been incorrectly omitted from after “may”. This will be corrected at a future date

Authority's accounts and shall submit to the Director-General a report in respect of every three months of a financial year.

- (2) The Director-General shall submit every report referred to in Sub-section (1) to the Board for its consideration at the next meeting of the Board after he or she has received it and shall also provide a copy of the report to—
- (a) the Minister; and
  - (b) the Auditor-General.

## **PART 5 Miscellaneous Provisions**

### **206. Vesting of assets and liabilities, subsisting contracts and pending proceedings**

- (1) All property, except any such property as the Minister may determine, which immediately before the commencement of this Act was vested in the Government for the use of the Departments of Customs, Income Tax and Inland Revenue for the purpose of giving effect to the laws set out in the Seventh Schedule to this Act shall, on the date of commencement of this Act, and without further assurance, vest in the Authority subject to all interests, liabilities, charges, obligations and trusts affecting that property.
- (2) Except as otherwise provided in Sub-section (1) in relation to property, all contracts, debts, engagements and liabilities of the Government attributable to the Departments of Customs, Income Tax and Inland Revenue shall remain vested in the Government and may be enforced by or against the Government.
- (3) All legal proceedings and claims pending in respect of revenue to which the laws set out in the Seventh Schedule apply shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced if this Act had not been enacted.

### **207. Construction and modification of other laws**

- (1) On and after the coming into force of this Act all references to the Director of Customs, and the Director of Inland Revenue in any law or any specified provisions of that law set out in the Seventh Schedule to this Act shall be construed as references to the Director-General of the Authority.
- (2) The Minister may, with the approval signified by resolution of the House of Representatives and by statutory instrument, amend any written law other than the Constitution, for the purpose of bringing that law into conformity with this Act.

### **208. Regulations**

The Minister may after consultation with the Authority, make regulations for carrying into effect this Act.

## **CHAPTER 6 TAX APPEALS TRIBUNAL**

### **PART 1 Establishment of Taxation Appeals Tribunal**

#### **209. Establishment of tribunal (tax complaints committee)**

There is established a Taxation Appeals Tribunal (Taxation Complaints Committee) and the tribunal shall consist of a chairperson and four other tribunal members nominated in accordance with this Act.

#### **210. Appointment of the chairperson of a tribunal**

- (1) The Minister, in consultation with the chairperson of the Justice Committee, shall appoint the chairperson of a tribunal.
- (2) A person is not qualified to be appointed chairperson of a tribunal unless he or she is qualified to be appointed a judge of the Regional Court.

#### **211. Appointment of the other members of a tribunal**

The other members of the tribunal shall be nominated by the Minister and the members nominated by the Minister shall not be permanent staff.

#### **212. Qualifications for appointment**

- (1) A person may only be appointed as a member of a tribunal if the person —
  - (a) is of high moral character and proven integrity;
  - (b) has not been convicted of any offence involving moral turpitude.
- (2) A member of a tribunal shall be a person qualified in taxation, finance, accounting or law.
- (3) No member of a tribunal may be an officer of the Somaliland Revenue Authority or a civil servant.

#### **213. Term of appointment**

- (1) The chairperson shall hold office for a term of three (3) years and is eligible for reappointment.
- (2) Subject to this Act, a member of a tribunal shall hold office for a term of three (3) years and is eligible for reappointment.

#### **214. Conditions of appointment**

- (1) Subject to this Act, a member of a tribunal holds office on such terms and conditions as are prescribed, including terms and conditions relating to remuneration and allowances.
- (2) The appointment of a judge as chairperson shall not affect his or her tenure of office as a judge, or his or her rank, title, status, precedence, salary and allowances, or other

rights or privileges as the holder of the office of judge of the courts of judicature and, for all purposes, his or her service as chairperson shall be taken to have been service as holder of the office of such a judge.

## **215. Oath of office**

A person who is appointed as a member of a tribunal shall, before assuming the duties of his or her office, take and subscribe the oath of allegiance and the judicial oath prescribed by the laws of Somaliland.

## **216. Termination of appointment**

- (1) A member of a tribunal may resign his or her office by notice in writing delivered to the Minister.
- (2) A member may be removed from office only for—
  - (a) inability to perform the functions of his or her office arising from infirmity of body or mind;
  - (b) misbehaviour or misconduct;
  - (c) incompetence;
  - (d) being an undischarged bankrupt.
- (3) The Minister shall remove a member of a tribunal if the question of his or her removal has been referred to a committee appointed under Sub-section (5) and the committee has recommended to the Minister that the member ought to be removed from office on any ground described in Sub-section (3)<sup>30</sup>.
- (4) If the Minister is of the opinion that a member of a tribunal should be removed, the Minister  
  
shall appoint a committee consisting of three persons who are or who have held offices as judges of a court having unlimited jurisdiction in civil and criminal matters or a court having jurisdiction in appeals from such a court, or who are advocates of at least ten (10) years' standing.
- (5) The committee appointed under Sub-section (5)<sup>31</sup> shall inquire into the matter and report to the Minister recommending whether or not the member ought to be removed under this Section.
- (6) Where the question of the removal of a member of the tribunal is referred to a committee under this Section, the Minister shall suspend the member from performing the functions of his or her office.

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<sup>30</sup> The references in this subsection should be to subsections (4) and (2) respectively. This will be corrected at a future date

<sup>31</sup> The reference here should be to subsection (4). This will be corrected at a future date

- (7) A suspension under Sub-section (7)<sup>32</sup> shall cease to have effect if the committee advises the Minister that the member suspended should not be removed from office.

## **217. Disclosure of interest**

Where a member is, or is to be, a member of the tribunal as constituted for the purposes of a proceeding and the member has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions, the member shall disclose the interest to the parties to the proceeding and, except with the consent of all the parties to the proceeding, the member shall not take part in the proceeding or exercise any powers in relation to the review by a tribunal of the taxation decision to which the proceeding relates.

## **PART 2 Organisation of the Tribunals**

### **218. Official seal**

- (1) A tribunal shall have a seal that shall be judicially noticed.
- (2) The seal of a tribunal shall be affixed by or with the authority of the tribunal to such documents as are required by a direction of the chairperson to be sealed with the seal of the tribunal.

### **219. Arrangement of business**

- (1) Subject to this Act, the chairperson is responsible for ensuring the orderly and expeditious discharge of the business of the tribunal.
- (2) Without limiting the operation of Sub-section (1), the chairperson shall give directions as to—
- (a) the arrangement of the business of the tribunal;
  - (b) the places at which the tribunal may sit;
  - (c) the procedure of the tribunal generally; and
  - (d) the procedure of the tribunal at a particular place.
- (3) The times and places of the hearings of a tribunal shall be determined by the chairperson with a view to securing a reasonable opportunity for applicants to appear before the tribunal with as little inconvenience and expense as is practicable.

### **220. Constitution of a tribunal for exercise of powers**

- (1) A tribunal shall be constituted for a proceeding by three members.
- (2) At a hearing of a proceeding before the tribunal at which the tribunal is constituted by three members—

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<sup>32</sup> The reference here should be to subsection (6). This will be corrected at a future date



- (a) if the chairperson is a member of the tribunal as constituted, he or she shall preside;  
or
  - (b) in any other case a member elected by the members present from among their number shall preside.
- (3) Where, in the case of a proceeding constituted by three (3) members, one (1) of those members ceases to be a member, or ceases to be available for the purposes of the proceeding, before the matter to which the proceeding relates is determined—
  - (a) if the parties to the proceeding agree, then the proceeding shall be completed by the tribunal constituted by the remaining members of the tribunal; or
  - (b) if the parties do not agree, the proceedings shall be adjourned, another member shall replace the member who ceased to be a member for the purposes of the proceeding and the proceeding shall be reheard.
- (4) Where, as a result of Sub-section (3)(a), the tribunal is constituted by two (2) members and the members do not agree on the decision to be made, the chairperson shall assign another member to the tribunal for the purposes of the proceeding, and the proceeding shall be reheard.
- (5) Where a proceeding is reheard by the tribunal, the tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the tribunal as previously constituted, including a record of any evidence taken in that proceeding.

### **PART 3 Review by the Tribunals of Taxation Decisions**

#### **221. Tribunal to review taxation decisions**

- (1) Any person who is aggrieved by a decision made under a taxing Act by the Somaliland Revenue Authority may apply to the tribunal for a review of the decision.
- (2) The tribunal has power to review any taxation decision in respect of which an application is properly made.
- (3) A tribunal shall in the discharge of its functions be independent and shall not be subject to the direction or control of any person or authority.

#### **222. Deposit of portion of tax pending determination of objection**

- (1) A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay thirty (30) percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater.
- (2) Subject to Sub-section (1), in the case of goods which are perishable, the goods shall be released to the taxpayer immediately after payment of the amount of tax prescribed in that Sub-section; but the Somaliland Revenue Authority shall be given surety equivalent to the amount of tax assessed.

## **223. Application for review of a taxation decision**

- (1) An application to a tribunal for review of a taxation decision shall—
  - (a) be in writing in the prescribed form;
  - (b) include a statement of the reasons for the application; and
  - (c) be lodged with the tribunal within thirty (30) days after the person making the application has been served with notice of the decision.
- (2) A tribunal may, upon application in writing, extend the time for the making of an application to the tribunal for a review of a taxation decision.
- (3) An applicant to a tribunal shall serve a copy of the application on the decision maker within five (5) days after lodging the application with the tribunal.
- (4) Where an application for review relates to a taxation decision that is an objection decision, the applicant is, unless the tribunal orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates.
- (5) An application to a tribunal for review of a taxation decision is not taken to have been made unless the prescribed non-refundable fee, if any, in respect of the application has been paid.
- (6) An application for review of a taxation decision shall be made within six months after the date of the taxation decision.

## **224. Lodging of material documents with the tribunal**

- (1) Subject to this Section, not later than thirty days after being served with a copy of an application to a tribunal to review a taxation decision, the decision-maker shall lodge with the tribunal two (2) copies of—
  - (a) the notice of the decision;
  - (b) a statement giving the reasons for the decision; and
  - (c) every other document in the decision-maker's possession or under his or her control which is necessary to the tribunal's review of the decision.
- (2) Where the tribunal is of the opinion that there may be—
  - (a) particular other documents; or
  - (b) other documents included in a class of documents, which may be relevant to the review of a decision by the tribunal, the tribunal may, by notice in writing, require the decision maker to lodge with the tribunal the documents specified in the notice to the extent that those documents are in the person's possession or under his or her control.
- (3) This Section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of documents.

## **225. Burden of proof**

In a proceeding before a tribunal for review of a taxation decision, the applicant has the burden of proving that—

- (a) where the taxation decision is an objection decision in relation to an assessment, the assessment is excessive; or
- (b) in any other case, the taxation decision should not have been made or should have been made differently.

## **226. Review by the tribunal**

- (1) For the purpose of reviewing a taxation decision, a tribunal may exercise all the powers and discretions that are conferred by the relevant taxing act on the decision-maker and shall make a decision in writing—
  - (a) affirming the decision under review;
  - (b) varying the decision under review; or
  - (c) setting aside the decision under review and either—
    - (I) making a decision in substitution for the decision so set aside; or
    - (II) remitting the matter to the decision maker for reconsideration in accordance with any directions or recommendations of the tribunal.
- (2) The tribunal shall give reasons in writing for its decision, including its findings on material questions of fact and reference to the evidence or other material on which those findings were based.
- (3) A decision on an application for review shall be made as soon as is practicable after the hearing has been completed; and the tribunal shall cause a copy of its decision, including the reasons for the decision, to be served on each party to the proceeding.
- (4) Subject to Sub-section (5), a decision of a tribunal comes into operation upon the giving of the decision or on such other date as may be specified by the tribunal in the decision.
- (5) A taxation decision varied by a tribunal or a decision made by the tribunal in substitution for a taxation decision under review shall, for all purposes other than for the purpose of making an application to the tribunal for review or the lodging of an appeal against the decision, be deemed to be a decision of the decision maker and, unless the tribunal orders otherwise, has effect on and from the day on which the decision under review had effect.
- (6) A decision of a tribunal shall have effect as and be enforceable as if it were a decision of a court.
- (7) Subject to Sub-section (9), all decisions of a tribunal and all evidence received by it, including a transcript of the report of the hearings, are public records open to the inspection of the public.

- (8) Subject to Sub-section (9), a tribunal shall provide for the publication of its decisions, including reasons, in such form and manner as may be adapted for public information and use, and such authorised publication is evidence of the decisions of the tribunal in all courts of Somaliland without any further proof of authentication.
- (9) A tribunal shall ensure that in releasing, or allowing access to, information under Sub-section (7) or (8) measures are taken to prevent the disclosure of trade secrets or other confidential information.

## **227. Hearings**

Subject to the this act, hearings before the tribunal shall be open to the public unless the tribunal, on the request of either party, directs that the hearing should be closed to the public.

## **228. Powers of the tribunal**

- (1) For the purpose of a proceeding before a tribunal, the tribunal may—
- (a) take evidence on oath;
  - (b) proceed in the absence of a party who has had reasonable notice of the proceeding;
  - and
  - (c) adjourn the hearing of the proceeding from time to time.
- (2) For the purpose of the hearing of a proceeding before a tribunal, the tribunal shall have powers of the Regional Court to summon a person to appear before it—
- (a) to give evidence; or
  - (b) to produce books, documents or things in the possession, custody or control of the person named in the summons that are mentioned in the summons.
- (3) Where a tribunal considers it desirable for the purposes of avoiding expenses or delay, or for any other special reason, it may receive evidence by affidavit and administer interrogations and require the persons to whom interrogations are administered to make a full and true reply to the interrogations.
- (4) A tribunal shall have power to issue a commission or request to examine witnesses abroad.
- (5) A tribunal may make an order as to costs against any party, and the order shall be enforceable in like manner to an order of the Regional Court.

## **229. Procedure**

- (1) In any proceeding before a tribunal, the procedure of the tribunal is, subject to this Act, within the discretion of the tribunal.
- (2) A proceeding before a tribunal shall be conducted with as little formality and technicality as possible, and the tribunal shall not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

- (3) The proceedings of a tribunal shall be conducted in accordance with such rules of practice and procedure as the tribunal may specify, and the tribunal may direct the application of the rules of practice and procedure of any court subject to such modifications as the tribunal may direct.
- (4) The tribunal shall have such assistance in carrying out its lawful writs, processes, orders, rules, decrees or commands as is available to a court in Somaliland.

### **230. Representation before the tribunal**

At the hearing of a proceeding before a tribunal, the applicant may appear in person or may be represented.

### **231. Opportunity to make submissions concerning evidence**

A tribunal shall ensure that every party to a proceeding before the tribunal is given a reasonable opportunity to present his or her case and, in particular, to inspect any documents to which the tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.

### **232. Discontinuance, dismissal or reinstatement of an application**

- (1) An applicant may, by notice in writing lodged with a tribunal, at any time, notify the tribunal that the application is discontinued or withdrawn, and the tribunal shall dismiss the application without proceeding to review the decision.
- (2) If an applicant fails, without reasonable excuse, to appear at the hearing of the proceeding, a tribunal may dismiss the application without proceeding to review the decision.
- (3) If an applicant fails within a reasonable time to proceed with the application or comply with a direction by a tribunal in relation to the application, the tribunal may dismiss the application.
- (4) Where the tribunal has dismissed an application under Sub-section (2) or (3), the applicant may, within thirty (30) days after receiving notification that the application has been dismissed, apply to the tribunal for reinstatement of the application, and the tribunal may, if it considers it appropriate to do so, reinstate the application and give such directions as appear to be appropriate in the circumstances.

### **233. Power of the tribunal if the parties reach agreement**

If, at any stage during a proceeding, the parties to the proceeding agree in writing as to the terms of a decision of the tribunal in the proceeding or in relation to a part of the proceeding or a matter arising out of a proceeding and the tribunal is satisfied that a decision in those terms is within the powers of the tribunal, the tribunal, may

- (a) where the agreement reached is as to the terms of a decision of the tribunal in the proceeding, make a decision in accordance with those terms without holding a hearing or, if the hearing has commenced, without completing the hearing; or
- (b) where the agreement reached relates to a part of a proceeding or a matter arising out of a proceeding, in its decision in the proceeding, give effect to the terms of the agreement without dealing at the hearing with that part of the proceeding or the matter arising out of the proceeding to which the agreement relates.

#### **234. Appeals to the Regional Court from decisions of a Tribunal**

- (1) A party to a proceeding before a 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 tribunal.
- (2) An appeal to the Regional Court may be made on questions of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal.
- (3) 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.

#### **235. Operation and implementation of a decision subject to review or appeal**

- (1) Where an application for review of a taxation decision has been lodged with a tribunal or an appeal against a decision of a tribunal has been lodged with the Regional Court, the reviewing body may make an order staying or otherwise affecting the operation or implementation of the decision under review or appeal, or a part of the decision, as the reviewing body considers appropriate for the purposes of securing the effectiveness of the proceeding and determination of the application or appeal.
- (2) In this Section, “reviewing body” means—
  - (a) in the case of an application for review to a tribunal, the tribunal; or
  - (b) in the case of an appeal to the Regional Court, the Supreme Court.

### **PART 4 Management of the Tribunals**

#### **236. Management of the administrative affairs of the tribunal**

- (1) The chairperson is responsible for managing the administrative affairs of the tribunal.
- (2) In the management of the administrative affairs of the tribunal, the chairperson shall be assisted by the registrar of the tribunal and such officers and employees as may be necessary for the efficient discharge of the tribunal’s functions.

- (3) The registrar and other officers and employees of the tribunal shall be appointed by the tribunal.

### **237. Registrar of the tribunal**

- (1) There shall be a registrar of each tribunal who shall perform the registry functions of the tribunal.
- (2) A person shall not be qualified to be appointed registrar unless he or she is qualified to be appointed as a registrar of the Regional Court.
- (3) A registrar has power to do all things necessary or convenient to be done for the purpose of assisting the chairperson under Section 30.
- (4) The chairperson may give the registrar directions regarding the exercise of his or her powers under this Part.

## **PART 5 Offences and Penalties**

### **238. Failure to comply with a summons**

Any person who has been served with a summons issued by the registrar—

- (a) to appear as a witness before a tribunal; or
- (b) to produce a book, document or thing, and who, without reasonable excuse, fails to comply with the summons, commits an offence and will be referred to the Criminal Procedure Law.

### **239. Failure to answer questions**

Any person who appears as a witness before a tribunal and who, without reasonable excuse, refuses or fails to answer a question that he or she is required to answer by the presiding member at the proceeding commits an offence and will be referred to the Criminal Procedure Law.

### **240. False or misleading evidence**

Any person who appearing as a witness before a tribunal gives evidence that, to his or her knowledge, is false or misleading commits an offence and will be referred to the Criminal Procedure Law.

### **241. Contempt of a tribunal**

Any person who—

- (a) insults a member in, or in relation to, the exercise of his or her

- (b) powers or functions as a member;<sup>33</sup>
- (c) interrupts the proceedings of a tribunal;
- (d) creates a disturbance, or takes part in creating a disturbance in or near a place where a tribunal is sitting; or
- (e) does any other act or thing that would, if a tribunal were a court of record, constitute a contempt of that court, commits an offence and will be referred to the Criminal Procedure Law.

## **PART 6 Financial Provisions**

### **242. Funds, accounts and audit**

- (1) A tribunal shall annually present a budget to the Minister for his or her approval.
- (2) The funds of a tribunal shall consist of—
  - (a) money appropriated by House of Representatives for the purposes of the tribunal;
  - (b) grants received by the tribunal with the approval of the Minister;
  - (c) fees and fines levied by the tribunal to be retained as appropriation in aid;
  - (d) any other money as may, with the approval of the Minister, be received by or made available to the tribunal for the purpose of performing its functions.
- (3) A tribunal shall keep proper books of account, which shall be subject to annual audit by the Auditor-General.

## **PART 7 Miscellaneous**

### **243. Immunity from suit**

No action, suit, prosecution or any other proceeding may be brought or instituted personally against a person who is or was a member of the tribunal in respect of any act done or omitted to be done in good faith in the discharge of any function under this Act.

### **244. Delegation**

- (1) The chairperson may, by an instrument in writing, delegate to a member all or any of his or her functions under this Act, other than the power of delegation.
- (2) A power delegated under this Section when exercised by the delegate shall, for all purposes of this Act, be deemed to have been exercised by the chairperson.
- (3) A delegation may be made to a member under this Section notwithstanding that a delegation to another member is, or delegations to other members are, in force under this Act.

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<sup>33</sup> The wording of paragraph (a) has been incorrectly split over paragraphs (a) and (b). They need to be recombined and the remaining paragraphs re-lettered from (b) to (d). This will be corrected at a future date



- (4) A delegation under this Section does not prevent the exercise of a power by the chairperson.

#### **245. Service of notices and other documents**

The rules for service of notices and other documents in the taxing Act under which the taxation decision under review is made shall apply for the purpose of serving any notice or document required or authorised by this Act.

#### **246. Regulations**

The Minister may, by statutory instrument; make regulations for better carrying into effect the provisions and purposes of this Act.

#### **247. Transitional**

This Act applies to taxation decisions made before the coming into operation of this Act.

#### **248. Somali Text to Prevail**

- (1) As it is necessary to ensure consistent application and interpretation of this law which includes widely used specialist financial terminology, it is hereby confirmed, in line with Article 6 of the Constitution, that the Somali and English language versions of this Law shall both be the official versions of this law.
- (2) In the event of any inconsistency or conflict between the Somali and the English language versions of this Law, the Somali language version shall prevail.

#### **249. Implementation**

This law shall come into force when the President signs it and it is published in the Official Gazette. The law was published in the Gazette on 6 August 2016.

### **SCHEDULES**

#### **First Schedule – Currency Point**

One currency point is equivalent to one hundred (100) United States dollars or its equivalent in Somaliland shillings.

#### **Second Schedule – Listed Institutions**

##### **Sec. 72**

African Development Bank  
African Development Fund

European Development Fund  
 European Investment Bank  
 European Union  
 Food and Agriculture Organisation  
 International Bank for Reconstruction and Development  
 International Civil Aviation Organisation  
 International Development Association  
 International Finance Corporation  
 International Labour Organisation  
 International Monetary Fund  
 International Telecommunications Union  
 United Nations related Agencies and specialised Agencies

### **Third Schedule – Small Business Taxpayers Tax Rates**

#### **Sec. 55(5)**

1. The amount of tax payable for the purposes of Section 55(5) by a taxpayer is-

<b>Gross Turnover</b>	<b>Tax</b>
Where the gross turnover of the taxpayer exceeds Shs. 5 million but does not exceed Shs. 50 million per annum	US\$1,000 or its equivalent in Somaliland shillings or 1% of the gross turnover, whichever is lower.

2. The tax payable by a taxpayer under Section 55(5) is reduced by –
- (a) any credit allowed under Section 151(5) for withholding tax paid in respect of amounts included in the gross turnover of the taxpayer; or
  - (b) any credit allowed under Section 139(8) for provisional tax paid in respect of amounts included in the gross turnover of the taxpayer.

### **Fourth Schedule – Chargeable Income Arising from Short-term Insurance Business**

#### **Sec. 67**

1. The chargeable income of a resident person for a year of income arising from the carrying on of a short-term insurance business is determined according to the following formula –

$$\mathbf{A - B}$$

where –

**A** - is the total income derived by the resident person for the year of income in carrying on a short-term insurance business as determined under paragraph 2; and

**B** - is the total deduction allowed for the year of income in the production of income referred to in A as determined under paragraph 3.

2. The total income derived by a resident person for a year of income in carrying on a short-term insurance business is the sum of

(a) the amount of the gross premiums, including premiums on reinsurance, derived by the person during the year of income in carrying on such a business in respect of the insurance of any risk, other than premiums returned to the insured;

(b) the amount of any other income derived by the person during the year of income in carrying on such a business, including any commission or expense allowance derived from reinsurers, any income derived from investments held in connection with such a business and any gains derived on disposal of assets of the business; and

(c) the amount of any reserve deducted in the previous year of income under paragraph 3(d).

3. The total deduction allowed for a year of income in the production of income from the carrying on of a short-term insurance business is the sum of –

(a) the amount of the claims admitted during the year of income in the carrying on of such a business, less any amount recovered or recoverable under any contract of reinsurance, guarantee, security or indemnity;

(b) the amount of agency expenses incurred during the year of income in the carrying on of such a business;

(c) the amount of expenditures and losses incurred by the person during the year of income in carrying on that business which are allowable as a deduction under this Act, other than expenditures or losses referred to in paragraphs (a) and (b); and

(d) the amount of a reserve for unexpired risks referable to such a business at the percentage adopted by the company at the end of the year of income.

4. Where, for any year of total income, the total deduction allowed to a person under paragraph 3 exceeds the income derived by the person as determined under paragraph 2, the excess may not be deducted against any other income of the person for the year of income, but shall be carried forward and deducted in determining the chargeable income of the person arising from the carrying on of a short-term insurance business in the next year of income.

5. The chargeable income of a non-resident person for a year of income arising from the carrying on of a short-term insurance business in Somaliland is determined according to the following formula –

**A - B**

where –

**A** - is the total income derived by the person for the year of income in carrying on a short-term insurance business as determined under paragraph 6; and

**B** - is the total deduction allowed for the year of income in the production of income referred to in A as determined under paragraph 7.

6. The total income derived by a non-resident person for a year of income in carrying on a short-term insurance business in Somaliland is the sum of –
  - (a) the amount of the gross premiums, including premiums on reinsurance, derived by the person during the year of income in carrying on such a business in respect of the insurance of any risk in Somaliland, other than premiums returned to the insured;
  - (b) the amount of any other income derived by the person during the year of income in carrying on such a business in Somaliland including-
    - (i) any commission or expense allowance derived from reinsurance of risks accepted in Somaliland;
    - (ii) any income derived from investment of the reserves referable to such business carried on in Somaliland; and
    - (iii) any gains derived on disposal of assets of the business; and
  - (c) the amount of any reserve deducted in the previous year of income under paragraph 7(d).
7. The total deduction allowed for a year of income in the production of income from the carrying on of a short-term insurance business in Somaliland by a non-resident person is the sum of –
  - (a) the amount of the claims admitted during the year of income in the carrying on of such a business, less any amount recovered or recoverable under any contract of reinsurance, guarantee, security or indemnity;
  - (b) the amount of agency expenses incurred during the year of income in the carrying on of such a business;
  - (c) the amount of expenditures and losses incurred by the person during the year of income in carrying on that business which are allowable as a deduction under this Act, other than expenditures or losses referred to in paragraphs (a) and (b); and
  - (d) the amount of a reserve for unexpired risks in Somaliland referable to such a business at the percentage adopted by the company at the end of the year of income.
8. Where, for any year of total income, the total deduction allowed to a person under paragraph 7 exceeds the income derived by the person as determined under paragraph 6, the excess may not be deducted against any other income of the person for the year of income, but shall be carried forward and deducted in determining the chargeable

income of the person arising from the carrying on of a short-term insurance business in Somaliland in the next year of income.

## **Fifth Schedule – Depreciation Rates and Vehicle Depreciation Ceiling**

### **Sec. 78, 79, 80**

#### **Part I - Declining Balance Depreciation Rates for Depreciable Assets**

<b>Class</b>	<b>Assets Included</b>	<b>Rate</b>
1	Computers and data handling equipment	40%
2	Automobiles; buses and mini-buses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than 7 tonnes; construction and earth moving equipment.	35%
3	Buses with a seating capacity of 30 or more passengers; goods vehicles designed to carry or pull loads of 7 tonnes or more; specialised trucks; tractors; trailers and trailer-mounted containers; plant and machinery used in farming, manufacturing or mining operations.	30%
4	Rail cars, locomotives and equipment; vessels, barges, tugs and similar water transportation equipment; aircraft; specialised public utility plant, equipment and machinery; office furniture, fixtures and equipment; any depreciable asset not included in another class.	20%

#### **Part II - Vehicle Depreciation Ceiling**

The amount for the purposes of Section 78 (11) is shs. 60,000,000.

#### **Part III - Straight-line Depreciation Rate for Industrial Buildings**

The depreciation rate for the purposes of Section 80 is 5%.

#### **Part IV - Prescribed Area**

The prescribed area for the purposes of Section 79: Hargeisa

## **Sixth Schedule – Valuation of Benefits**

### **Sec. 70(3)**

1. The valuation of benefits for the purposes of Section 70(3) of this Act shall be determined in accordance with this schedule.
2. For the purposes of this Schedule, a benefit provided by an employer to an employee means a benefit that –

- (a) is provided by an employer, or by a third party under an arrangement with the employer or an associate of the employer;
- (b) is provided to an employee or to an associate of an employee; and
- (c) is provided in respect of past, present or prospective employment.

3. Where a benefit provided by an employer consists of the use, or availability for use, of a motor vehicle wholly or partly for the private purposes of the employee, the value of the benefit is calculated according to the following formula –

$$(20\% \times A \times B/C) - D$$

where –

- A** - is the market value of the motor vehicle at the time when it was first provided for the private use of the employee;
  - B** - is the number of days in the year of income during which the motor vehicle was used or available for use for private purposes by the employee for all or a part of the day;
  - C** - is the number of days in the year of income; and
  - D** - is any payment made by the employee for the benefit.
4. Where a benefit provided by an employer to an employee consists of the provision of a housekeeper, chauffeur, gardener or other domestic assistant, the value of the benefit is the total employment income paid to the domestic assistant in respect of services rendered to the employee, reduced by any payment made by the employee for the benefit.
5. Where a benefit provided by an employer to an employee consists of the provision of any meal, refreshment or entertainment, the value of the benefit is the cost to the employer of providing the meal, refreshment or entertainment, reduced by any consideration paid by the employee for the meal, refreshment or entertainment.
6. Where a benefit provided by an employer to an employee consists of the provision of utilities in respect of the employee's place of residence, the value of the benefit is the cost to the employer of providing the utilities reduced by any consideration paid by the employee for the utilities.
7. Where a benefit provided by an employer to an employee consists of a waiver by an employer of an obligation of the employee to pay or repay an amount owing to the employer or to any other person, the value of the benefit is the amount waived.
8. Where a benefit provided by an employer to an employee consists of the transfer or use of property or the provision of services, the value of the benefit is the market value of the property or services at the time the benefit is provided, reduced by any payment made by the employee for the benefit.

9. Where a benefit provided by an employer to an employee<sup>1</sup> consists of the provision of accommodation or housing, other than where Section 70(1)(a) or (c) applies, the value of the benefit is the lesser of –
  - (a) the market rent of the accommodation or housing reduced by any payment made by the employee<sup>2</sup> for the benefit; or
  - (b) 15% of the employment income, including the amount referred to in paragraph (a), paid by the employer to the employee for the year of income in which the accommodation or housing was provided.
10. The value of any benefit provided by an employer to an employee which is not covered by the above clauses is the market value of the benefits, at the time the benefit is reduced by any payment made by the employee for the benefit.
11. Paragraph 10 does not apply to any benefit expressly covered by Section 70(1)(a) or (c) to (h).

**Seventh Schedule – Taxes to be administered by the Somaliland Revenue Authority**  
**Sec. 191**

1. Revenue law (Income Tax , Excise tax , Goods and services tax)
2. Customs Law
3. Stamp Duty Law
4. Traffic and Road Safety Law
5. Registration Fees
6. All other taxes and non-tax revenue as the Treasury may prescribe.

**Eighth Schedule – Meetings of the Board**  
**Sec. 196**

**1. Meetings of the board**

- (1) The board shall meet at least once every month at such places and at such times as may be decided upon by the board.
- (2) The chairperson shall preside at every meeting of the board and in his or her absence the members present may appoint a member from among themselves to preside at that meeting.
- (3) The chairperson or, in his or her absence, a member appointed by the board to act in his or her place may at any time call a special meeting upon a written request by a majority of the members.

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<sup>1</sup> The reference to an “employee” was incorrectly shown as a reference to an “employer” in the Somali version. This will be corrected at a future date

<sup>2</sup> As for previous footnote

- (4) Notice of a board meeting shall be given in writing to each member at least five days before the day of the meeting, but an urgent meeting may be called at less than five days' notice at the request of two or more members.

## **2. Quorum**

Subject to paragraph 4(4)(b) of this Schedule, a majority of the members shall form a quorum for a meeting of the board.

## **3. Decisions of the board**

- (1) All questions proposed at a meeting of the board shall be decided by a majority of the votes of the members present; and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his or her deliberative vote.
- (2) A decision may be made by the board without a meeting by circulation of the relevant papers among the members of the board and by the expression of the views of the majority of the members in writing, but any member shall be entitled to require that the decision be deferred and the matter on which a decision is sought be considered at a meeting of the board.

## **4. Disclosure of interest**

- (1) A member of the board who has a direct or indirect personal interest in a matter being considered or about to be considered by the board shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest to the board.
- (2) A disclosure of interest under subparagraph (1) shall be recorded in the minutes of the meeting of the board, and the member making the disclosure shall not, unless the board otherwise determines in respect of that matter—
- (a) be present during any deliberation on the matter by the board;
  - (b) take part in the decision of the board.
- (3) For the purpose of the making of a decision by the board under subparagraph (2) in relation to a member who has made the disclosure under subparagraph (1), the member who has made the disclosure shall not—
- (a) be present during the deliberations of the board for the making of that determination; or
  - (b) influence any other member or participate in the making by the board of the determination.
- (4) When there is no quorum for the continuation of a meeting only because of the exclusion of a member from the deliberations on a matter in which he or she has disclosed a personal interest, the other members present may—



- (a) postpone the consideration of that matter until a quorum, without that member, is realised; or
- (b) proceed to consider and decide the matter as if there were a quorum.

## **5. Minutes of proceedings**

- (1) The board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the board at the next meeting and signed by the chairperson of the meeting.
- (2) The chairperson of the board shall submit to the Minister a copy of the minutes of each meeting of the board as soon as the minutes have been confirmed.

## **6. Residual power of board to regulate its proceedings**

Subject to this Schedule, the board may regulate its own proceedings.