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**REVENUE SERVICES
ADMINISTRATION ACT**

2007 Revised Edition

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REVENUE SERVICES ADMINISTRATION ACT

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REVENUE SERVICES ADMINISTRATION ACT

AN ACT TO MAKE PROVISION FOR THE ADMINISTRATION OF REVENUE SERVICES¹

Commencement [1st June, 2004²]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Revenue Services Administration Act.

2 Interpretation

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

“**Chief Commissioner of Revenue**” means the Minister responsible for revenue services;³

“**Commissioner**” means the Commissioner of Revenue;⁴

“**consumption tax**” means consumption tax imposed under the Consumption Tax Act;⁵

“**financial year**” means the period of 12 months ending with the 30th day of June in any year;

“**income tax**” means income tax imposed by the Income Tax Act 2007;⁶

“**liquidator**” means a person appointed or assuming the position of liquidator, receiver, trustee in bankruptcy or mortgagee in possession, or in the case of a deceased's estate the executor or administrator;

“**Registrar**” means the Registrar of Tax Agents appointed under this Act;⁷

“**representative**” means in the case of —

- (a) an individual under a legal disability, the guardian or manager who receives or is entitled to receive income on behalf, or for the benefit, of the individual;
- (b) a company, the chief executive officer;
- (c) a partnership, any partner in the partnership;
- (d) a trust including an estate of a deceased person, any trustee of the trust and any executor or administrator of that estate;
- (e) a body of persons other than a partnership or company, any individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the body;
- (f) the Government, any individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the Government;
- (g) a local authority in Tonga, any individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the local authority;
- (h) a foreign government or political subdivision of a foreign government, any individual responsible for accounting for the receipt or payment of moneys or funds in Tonga on behalf of the government or political subdivision of the government;
- (i) a non-resident person, any person controlling the person's affairs in Tonga, including any manager of any business of such person in Tonga;
- (j) a person in respect of whom there is a liquidator, the liquidator;⁸ or
- (k) a person in respect of whom there is an agent for the purposes of the Income Tax Act, the agent;⁹

and includes any person declared to be a representative under section 27;¹⁰

“**revenue law**” means —

- (a) the Income Tax Act, the Consumption Tax Act¹¹ and this Act;¹² and
- (b) in Part XII, Division I, “**revenue law**” shall also mean the Customs and Excise Act, the Customs and Excise Management Act,¹³ the Customs Act,¹⁴ the Excise Tax Act,¹⁵ Stamp Duties Act¹⁶, and Postal Services Act¹⁷;

“**reviewable decision**” means —

- (a) an objection decision as defined in section 8(6);
- (b) a declaration referred to in section 246 of the Customs and Excise Act as to the amount of duty payable; or
- (c) a decision by the Registrar referred to in section 61C(7), 61D(5), 61E(2), 61E(4), or 61F(2);¹⁸

“**tax**” means —

- (a) income tax, including an instalment of income tax under section 91 of the Income Tax Act;¹⁹
- (b) an amount of tax withheld from a payment under Division 4 of Part 8 of the Income Tax Act;²⁰
- (c) consumption tax;²¹ and
- (d) includes any penalty imposed under any revenue law;²²

“**taxation assessment**” means —

- (a) any assessment of income tax, consumption tax or penalty;²³ or
- (b) a determination of the amount owing by a non-resident ship owner or charterer under section 73(1)(b) of the Income Tax Act;²⁴

“**taxation decision**” means —

- (a) a taxation assessment;
- (b) a decision by the Chief Commissioner of Revenue under section 4(2);
- (c) a decision by the Chief Commissioner of Revenue under section 8(4);
- (d) a decision by the Chief Commissioner of Revenue under section 13(2) or 13(6);
- (e) a decision by the Chief Commissioner of Revenue to issue a notice under section 15(3) or 16(3);

- (f) a determination by the Chief Commissioner of Revenue under section 18(2) or 18(3);
- (g) a decision by the Chief Commissioner of Revenue under section 24(3) or section 25(1);
- (h) a decision by the Chief Commissioner of Revenue under section 27 to declare an individual to be a representative of person;
- (i) a decision by the Chief Commissioner of Revenue under section 35(5) on an application for remission, in whole or part, of any penalty payable by a person;
- (j) a decision of the Chief Commissioner under the Consumption Tax Act refusing to register a person for consumption tax;²⁵
- (k) a decision by the Chief Commissioner under the Consumption Tax Act refusing an application for cancellation of consumption tax registration;
- (l) a decision by the Chief Commissioner under the Consumption Tax Act cancelling a person's consumption tax registration; or
- (m) a decision by the Chief Commissioner under the Consumption Tax Act refusing an application for an input tax credit for overpaid consumption tax;
- (n) a decision by the Chief Commissioner under the Income Tax Act to refuse to certify an institution, body, or trust as conducting activities exclusively for charitable purposes;²⁶
- (o) a decision of the Chief Commissioner under the Income Tax Act to require a person to give security for the payment of tax;²⁷ or
- (p) a decision by the Chief Commissioner under the Income Tax Act on an application for a refund;²⁸

“taxation officer” means the Chief Commissioner of Revenue, the Commissioner, and any officer of the Ministry of Revenue appointed under this Act;²⁹

“taxpayer” means a person or his representative who is —

- (a) a taxpayer for the purposes of the Income Tax Act;³⁰
- (b) a person required to withhold tax from a payment under Division 4 of Part 8 of the Income Tax Act;³¹
- (c) a registered person for the purposes of the Consumption Tax Act;³² or

(d) a person liable for penalty under any revenue law.³³

“**tax period**”, in relation to a taxpayer means³⁴ —

- (a) in the case of income tax —
 - (i) for the purposes of income tax imposed under section 5 of the Income Tax Act³⁵;
 - (ii) for the purposes of income tax imposed under section 6 of the Income Tax Act, the period to which the tax relates;
 - (iii) for the purposes of instalments of income tax under section 91 of the Income Tax Act, the period to which the instalment relates;
- (b) in the case of tax withheld under Division 4 of Part 8 of the Income Tax Act 2007, the period to which the withholding relates; or
- (c) in the case of consumption tax, the consumption tax period of the taxpayer;

“**tax return**” means³⁶ —

- (a) an income tax return under section 68 of the Income Tax Act³⁷;
- (b) a return required to be lodged by a master of a ship under section 73(1)(a) of the Income Tax Act;
- (c) a return required to be lodged by the owner or charterer of an aircraft under section 74(1) of the Income Tax Act;
- (d) a withholding tax statement under section 86 of the Income Tax Act;
- (e) a consumption tax return under the Consumption Tax Act³⁸;

“**Tax Tribunal**” means the Tax Tribunal established under section 58 of this Act.

- (2) Where this Act applies in any revenue law, any terms that are not defined in this Act but defined in that law shall have the same meaning.

PART II - TAX RETURNS

3 Delivery of tax returns

- (1) The Chief Commissioner of Revenue may, by notice in writing, where a taxpayer has failed to deliver a tax return as required under a revenue law

require the taxpayer to deliver the return by the due date set out in the notice.

- (2) The Chief Commissioner of Revenue may, by notice in writing, where he is not satisfied with a tax return delivered by a taxpayer, require the taxpayer to deliver —
 - (a) a further or fuller return; or
 - (b) any further information as specified in the notice,by the due date set out in the notice.

4 Extension of time to deliver tax return

- (1) A taxpayer required to deliver a tax return may apply, in writing, to the Chief Commissioner of Revenue for an extension of time and such an application shall be made by the original due date for delivering the tax return to which the application relates.
- (2) The Chief Commissioner of Revenue may, upon satisfaction that there is reasonable cause, grant an application under this section and shall serve notice of the decision on the application.
- (3) An extension of time under this section shall not exceed 30 days provided that the Chief Commissioner of Revenue may grant an extension beyond 30 days in exceptional circumstances.
- (4) An extension of time granted under this section shall not change the date for payment of any tax due in respect of the return.

5 Tax return duly made

A tax return purporting to be made by or on behalf of any taxpayer shall be treated as having been made by that taxpayer or with the taxpayer's authority unless the contrary is proved.

PART III - TAXATION DECISIONS

6 Taxation decisions

Except in proceedings under part IV of this Act —

- (a) no taxation decision shall be disputed in the Tax Tribunal, in any Court, or in any other proceedings on any ground whatsoever; and

- (b) the amount and particulars of every taxation assessment shall be treated as correct and the liability of the taxpayer shall be determined accordingly.

7 Defect does not affect validity

The validity of a taxation decision or a notice of a taxation decision or any other document purporting to be made, or executed under any revenue law shall not be —

- (a) quashed or deemed to be void or voidable for want of form; or
- (b) affected by reason of any mistake, defect, or omission therein,

if it is, in substance and effect, in conformity with the revenue law under which it has been made, issued, or executed and the person assessed, or intended to be assessed or affected by the decision or document, is designated in it according to common understanding.

PART IV - TAXATION OBJECTIONS AND APPEALS

8 Objection

- (1) A taxpayer dissatisfied with a taxation decision may lodge an objection to the decision with the Chief Commissioner of Revenue within thirty days of service of the notice of the decision.
- (2) An objection to a taxation decision shall be in the prescribed form.
- (3) A taxpayer dissatisfied with a taxation decision may apply, in writing, to the Chief Commissioner of Revenue for an extension of time and such an application shall be made within thirty days of service of the notice of the decision.
- (4) The Chief Commissioner of Revenue may if satisfied there is reasonable cause, grant an application under this section and shall serve notice of the decision on the applicant.
- (5) An extension of time under this section shall not exceed fifteen days provided that the Chief Commissioner of Revenue may grant an extension beyond fifteen days in exceptional circumstances.
- (6) The Chief Commissioner of Revenue shall after consideration of the objection, allow the objection in whole or in part or disallow the objection and his decision shall be referred to as an “objection decision”.

- (7) The Chief Commissioner of Revenue shall serve notice of the objection decision on the taxpayer within thirty days.
- (8) Where the Chief Commissioner of Revenue has not made an objection decision within 60 days of the objection being lodged, the taxpayer may elect, by notice in writing to the Chief Commissioner of Revenue, to treat the Chief Commissioner of Revenue as having made a decision to disallow the objection.³⁹
- (9) Where a taxpayer has made an election under subsection (8), the taxpayer shall be treated as having been served with notice of the objection decision on the day his notice was lodged.

9 Review of objection decision

- (1) A taxpayer dissatisfied with an objection decision may apply to the Tax Tribunal for review of the decision in accordance with section 60.
- (2) The Tax Tribunal may in reviewing an objection decision exercise all the powers of the Chief Commissioner of Revenue under the revenue law relating to that objection.
- (3) Where an application for review relates to a taxation assessment, the Tax Tribunal may make an order to —
 - (a) affirm, reduce or increase the taxation assessment to which the objection decision relates; or
 - (b) remit the taxation assessment to the Chief Commissioner of Revenue for reconsideration in accordance with the directions of the Tribunal.
- (4) Where an application for review relates to a taxation decision other than a taxation assessment, the Tax Tribunal may make an order to affirm, vary, or set aside the decision.

10 Appeal to Supreme Court

Any party to a proceeding before the Tax Tribunal has a right of appeal on a question of law to the Supreme Court, within 30 days after being notified of the decision.

11 Implementation of decision

- (1) The Chief Commissioner of Revenue shall within 45 days after —
 - (a) a final decision of the Tax Tribunal; or
 - (b) being notified of a decision of the Supreme Court,

take such action, including amending any taxation assessment, as is necessary to give effect to the decision.

- (2) The decision of the Tax Tribunal shall become final if no notice of appeal is lodged with the Registrar of the Supreme Court under this Act.

12 General provisions

- (1) In any proceeding under this Part, the burden shall be on the taxpayer to prove —
 - (a) in the case of taxation assessment, that the assessment is excessive;
or
 - (b) in the case of any other taxation decision, that the decision should not have been made or should have been made differently.
- (2) The tax due under a taxation assessment shall be payable notwithstanding that an objection, application for review or notice of appeal has been lodged in respect of the assessment.
- (3) The taxpayer shall be limited in an application to the Tax Tribunal or appeal to the Supreme Court, to the grounds stated in the objection to which the objection decision relates unless the Tribunal or Court grants the taxpayer leave to add new grounds.

PART V - RECOVERY OF TAX

13 Payment of tax

- (1) A taxpayer may apply, in writing, to the Chief Commissioner of Revenue for an extension of time to pay any tax due and such application shall be made by the original date on which it was due for payment.
- (2) Where an application has been made under this section, the Chief Commissioner of Revenue may, having regard to the circumstances of the case —
 - (a) grant the taxpayer an extension of time for payment of tax due; or
 - (b) require the taxpayer to pay any tax due in instalments as he may determine.
- (3) The Chief Commissioner of Revenue shall serve the taxpayer with a written notice of his decision.

- (4) Where a taxpayer is permitted to pay tax by instalments and the taxpayer defaults in payment of any instalment, the whole balance of the tax outstanding, at the time of the default, shall become immediately payable.
- (5) The grant of an extension of time or the grant of permission to pay tax due by instalments shall not preclude any liability for interest arising under section 30 from the original date the tax was due for payment.
- (6) Where the Chief Commissioner of Revenue has reasonable grounds to believe that a taxpayer may leave Tonga before the due date for payment of tax, the tax shall be due on such date as specified by the Chief Commissioner of Revenue by notice in writing to the taxpayer.

14 Tax debt to Crown

- (1) Tax is a debt to the Crown and the Chief Commissioner of Revenue may recover in court any tax due in the name of the Crown.
- (2) Subject to Part IV of this Act, a statement certified from the Chief Commissioner of Revenue specifying the amount of the tax owed shall be treated in any court as sufficient proof of the tax owed.

15 Recovery of tax

- (1) For the purposes of sections 15, 16 and 17, “payer” means a person who owes or may subsequently owe money to the taxpayer, or who holds or may subsequently hold money for, or on account of, the taxpayer or who holds money on account of some other person for payment to the taxpayer, or who has authority from some other person to pay money to the taxpayer, and includes the Crown.
- (2) This section shall apply where a taxpayer is liable to pay an amount of tax and —
 - (a) the tax has not been paid by the taxpayer by the due date for payment; or
 - (b) the Chief Commissioner of Revenue has reasonable grounds to believe that the taxpayer will not pay the tax by the due date for payment.
- (3) Where this section applies, the Chief Commissioner of Revenue may, by notice in writing, require any person who owes money to the taxpayer to pay the amount specified in the notice to the Chief Commissioner of Revenue. The amount to be specified in a notice under this subsection shall not exceed the amount of tax that has not been paid or the amount that the Chief Commissioner of Revenue believes will not be paid by the due date.

- (4) Subject to subsection (5), a payer shall pay the amount specified in a notice under subsection (3) by the date specified in the notice. The date for payment specified in the notice shall not be a date before the date that the amount owed to the taxpayer becomes due to the taxpayer or held on the taxpayer's behalf.
- (5) A payer shall not pay an amount under this section in excess of the amount owed to the taxpayer.
- (6) A copy of the notice served on the payer shall be served on the taxpayer.

16 Variation of recovery notice

- (1) The Chief Commissioner of Revenue shall, by notice in writing to the payer, revoke or amend a notice served under section 15 where the taxpayer has paid the whole or part of the tax due or has made an arrangement satisfactory to the Chief Commissioner of Revenue for payment of the tax.
- (2) A payer served with a notice under this section or section 15 may apply, in writing, to the Chief Commissioner of Revenue for —
 - (a) an amendment of the amount due under the notice; or
 - (b) an extension of time for payment of the amount due under the notice.
- (3) The Chief Commissioner of Revenue shall serve a written notice of his decision on the applicant and the taxpayer.
- (4) Where a notice served under section 15 requires the deduction of amounts from payments of salary or wages to a taxpayer, the amount required to be deducted by the payer from each payment shall not exceed the lesser of —
 - (a) an amount equal to one-twentieth of the amount of tax that has not been paid or the Chief Commissioner of Revenue believes will not be paid by the due date; or
 - (b) 20 per cent of the amount of each payment of salary or wages.⁴⁰

17 Compliance with notice

- (1) A payer who has paid an amount in compliance with a notice served under section 15 —
 - (a) shall give the taxpayer written notice of the payment that has been made;
 - (b) shall be treated as having paid such amount under the authority of the taxpayer; and

- (c) the receipt of the Chief Commissioner of Revenue shall constitute a good and sufficient discharge of the liability of the payer to the taxpayer.
- (2) The Chief Commissioner of Revenue shall apply any amount paid by a payer under this section to the tax owing by the taxpayer.
- (3) A payer who, without reasonable explanation, fails to comply with a notice under this section shall be personally liable for the amount specified in the notice, which may be recovered by the Chief Commissioner of Revenue.

18 Liquidators

- (1) A person shall give the Chief Commissioner of Revenue notice in writing within 14 days of his appointment as liquidator.
- (2) The Chief Commissioner of Revenue shall notify the liquidator, in writing, of the amount of any tax that is or will become payable by the taxpayer or deceased whose assets are in the possession or control of the liquidator and such notice shall be served on the liquidator within 2 months of the Chief Commissioner of Revenue being served with a notice under subsection (1).
- (3) A liquidator shall not, without leave of the Chief Commissioner of Revenue, part with any asset held as liquidator until the liquidator has been served with a notice under subsection (2).
- (4) Subject to subsection (5), a liquidator shall set aside out of the proceeds of sale of any asset of the taxpayer or deceased the amount notified by the Chief Commissioner of Revenue under subsection (2) and shall be personally liable to the extent of the amount set aside for the tax due by the person who owned the asset.
- (5) Nothing in subsection (4) shall prevent the liquidator from paying any debt that has priority over the tax referred to in that subsection.
- (6) Subject to subsection (5), where the proceeds of sale of any asset are less than the amount notified by the Chief Commissioner of Revenue under this section, the liquidator shall set aside the entire proceeds of sale to meet the amount notified under this section.
- (7) Where two or more persons are liquidators in respect of a taxpayer or deceased, the obligations and liabilities under this section shall apply jointly and severally to the liquidators but may be discharged by any of them.

19 Temporary closure of business

- (1) Where a taxpayer —
 - (a) fails to deliver a tax return referred to in section 2(1)(d) (in relation to withholding from employment income only) or (f) of the definition of “tax return”,⁴¹ or
 - (b) fails to pay consumption tax or tax withheld from a payment of employment income under section 76 of the Income Tax Act,⁴²

on or before the due date, the Chief Commissioner of Revenue may notify the taxpayer in writing of the intention to close down part or the whole of the taxpayer's business for a temporary period not exceeding fourteen days, unless the taxpayer delivers the return or pays the tax due, as the case may be, within a period of 7 days of the date of the notice.⁴³

- (2) Where a taxpayer fails to comply with a notice under subsection (1), the Chief Commissioner of Revenue may issue an order to close down part or the whole of the business of that person for a period not exceeding 14 days.
- (3) The Chief Commissioner of Revenue may, at any time, enter any premises described in an order issued under subsection (2) for the purposes of executing the order and may require a police officer to be present while the order is being executed.
- (4) The Chief Commissioner of Revenue shall affix in a conspicuous place on the front of the premises of the business or part of the business which has been closed under an order issued under subsection (2), a notice in the following words “CLOSED TEMPORARILY FOR NOT COMPLYING WITH TAX OBLIGATIONS”.
- (5) Where the tax return is delivered or tax due is paid, as the case may be, within the period of closure, the Chief Commissioner of Revenue shall immediately arrange for removal of the notice referred to in subsection (4).

PART VI - RECORD-KEEPING AND INFORMATION COLLECTION

20 Maintenance of accounts and records

Every taxpayer shall maintain in Tonga such accounts, documents, and records as may be prescribed under any revenue law and such accounts, documents, and records shall be maintained by the taxpayer for 5 years after the end of the tax period to which they relate.

21 Power to enter and search

- (1) When the Chief Commissioner of Revenue has reasonable grounds to suspect a breach of any revenue law, he or any taxation officer authorised in writing by him —
 - (a) shall have, at all times and without notice full and free access to any premises, place, property, book, record or computer;
 - (b) may make an extract or copy of any book, record or computer-stored information to which access is obtained under paragraph (a);
 - (c) may seize any book, record, or other document that, in the opinion of the Chief Commissioner of Revenue or authorised taxation officer, affords evidence that may be material in determining the tax liability of any taxpayer;
 - (d) may retain any book, record, or document seized under paragraph (c) for as long as it may be required for determining a taxpayer's tax liability or for any proceeding under a revenue law; 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,
for the purposes of investigating a suspected breach.
- (2) A taxation officer shall not be entitled to enter or remain on any premises or place if, upon request by the owner or lawful occupier, the officer is unable to produce the Chief Commissioner of Revenue's written authorisation permitting the officer to exercise powers under subsection (1).
- (3) The Chief Commissioner of Revenue may require a police officer to be present for the purposes of exercising powers under this section.
- (4) The owner or lawful occupier of the premises or place to which an exercise of power under subsection (1) relates shall provide all reasonable facilities and assistance to the Chief Commissioner of Revenue or authorised officer.
- (5) A person whose books, records, or computer have been seized under subsection (1) may examine them and make copies, at his expense, during office hours.
- (6) The Chief Commissioner of Revenue or authorised officer shall sign for all records, books, or computers removed and retained under this section and he shall return them to the owner within 14 days of the conclusion of investigation and any related proceedings.
- (7) This section has effect notwithstanding —

- (a) any Act relating to privilege or the public interest with respect to access to premises or places, or the production of any property, book, record, or computer-stored information; or
- (b) any contractual duty of confidentiality.

22 Information required⁴⁴

- (1) The Chief Commissioner of Revenue may, for the purposes of administering any revenue law, by notice in writing, require any person to —
 - (a) furnish, within the time specified in the notice, any information that may be required by the notice; or
 - (b) attend at the time and place designated in the notice to be examined on oath by the Chief Commissioner of Revenue, concerning the tax affairs of that person or any other person and, for that purpose, the Chief Commissioner of Revenue may require the person examined to produce any book, record, or computer-stored information under the control of the person.
- (2) A notice issued under this section shall be personally served upon the person to whom it is directed or left at his last known 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.
- (3) This section has effect notwithstanding —
 - (a) any Act relating to privilege or the public interest with respect to the giving of information or the production of books, records, or computer-stored information; or
 - (b) any contractual duty of confidentiality.

23 Translation of records

Where any book, record, or computer-stored information referred to in this Act is not in English or Tongan, the Chief Commissioner of Revenue 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 English or Tongan by a translator approved by the Chief Commissioner of Revenue.

PART VII - TAXPAYER IDENTIFICATION NUMBER

24 Taxpayer Identification number

- (1) The Chief Commissioner of Revenue may for the purposes of identification and cross-checking, require every person liable for consumption tax to apply in the prescribed form for a Taxpayer Identification Number.⁴⁵
- (2) Where the Chief Commissioner of Revenue is satisfied that the applicant's identity has been established, he shall issue a Taxpayer Identification Number to the applicant by written notice.
- (3) The Chief Commissioner of Revenue shall refuse an application under this section if —
 - (a) he is not satisfied as to the applicant's true identity; or
 - (b) the applicant has already been issued with a Taxpayer Identification Number that is still in force.
- (4) The Chief Commissioner of Revenue shall serve the applicant with written notice of the decision refusing an application under this section within 14 days.

25 Cancellation of identification number

- (1) The Chief Commissioner of Revenue shall, by notice in writing, cancel the Taxpayer Identification Number where he is satisfied that a Taxpayer Identification Number has been issued to —
 - (a) a person under an identity that is not the person's true identity; or
 - (b) a person who has already been issued with a Taxpayer Identification Number that is still in force.
- (2) The Chief Commissioner of Revenue may, at any time, by written notice to a person who has been issued with a Taxpayer Identification Number withdraw the number and issue the person with a new Taxpayer Identification Number.

26 Quotation of Taxpayer Identification Number

The Chief Commissioner of Revenue may require a taxpayer to state the taxpayer's Taxpayer Identification Number in any tax return, notice, or other document used for the purposes of any revenue law.

PART VIII - REPRESENTATIVES

27 Representatives

The Chief Commissioner of Revenue may, by notice in writing, declare an individual to be a representative of a person for the purposes of this Act.

28 Liabilities and obligations of representatives

- (1) Every representative of a person is responsible for performing any duties or obligations imposed by a revenue law on that person, including the payment of tax.
- (2) Subject to subsection (3), any tax that, by virtue of subsection (1), is payable by a representative of a person is recoverable from the representative only to the extent of any assets of the person that are in the possession or under the control of the representative.⁴⁶
- (3) Every representative shall be personally liable for the payment of any tax due by the representative in that capacity if, while the amount remains unpaid, the representative —
 - (a) alienates, charges or disposes of any moneys received or accrued in respect of which the tax is payable; or
 - (b) disposes of or parts with any moneys or funds belonging to the person that are in the possession of the representative or which come to the representative after the tax is payable, if such tax could legally have been paid from or out of such moneys or funds.
- (4) Nothing in this section relieves any person from performing any duties or obligations imposed on the person by this Act that the representative of the person has failed to perform.
- (5) Where there are two or more representatives of a person, the duties or obligations referred to in this section shall apply jointly and severally to the representatives but may be discharged by any of them.

29 Liability for tax payable by a company left with insufficient assets

- (1) This section shall apply where an arrangement has been entered into with the intention or effect of rendering a company unable to satisfy a current or future tax liability under any revenue law.
- (2) In this section —

“**arrangement**” means any contract, agreement, plan, or understanding whether express or implied and whether or not enforceable in legal proceedings;

“**associate**”, in relation to a person, means any other person who acts or is likely to act in accordance with the wishes of the person as a result of any connection between the persons or common ownership or control;

“**controlling shareholder**”, in relation to a company, means any person who beneficially holds, either alone or together with an associate or associates —

- (a) more than 50 per cent of the voting rights in the company;
- (b) more than 50 per cent of the rights to dividends; or
- (c) more than 50 per cent of the rights to capital;⁴⁷ and

“**director**”, in relation to a company, means any person occupying the position of director of the company.

- (3) Subject to subsection (4), where this section applies, every person who was a director or controlling shareholder of the company at the time the arrangement was entered into shall be jointly and severally liable for the tax liability of the company.
- (4) A director of a company shall not be liable under this section for the tax liability of the company where the Chief Commissioner of Revenue is satisfied that the director derived no financial or other benefit from the arrangement and —
 - (a) the director has on becoming aware of the arrangement, formally recorded with the company his dissent and notified the Chief Commissioner of Revenue in writing; or
 - (b) the director satisfies the Chief Commissioner of Revenue that, at the time the arrangement was entered into —
 - (i) the director was not involved in the executive management of the company; and
 - (ii) the director had no knowledge of, and could not reasonably have been expected to know of the arrangement.

PART IX - INTEREST, PENALTIES, AND OFFENCES

DIVISION I - INTEREST ON LATE PAYMENT

30 Interest on late payment

- (1) Any person who fails to pay —
 - (a) any tax; or
 - (b) any amount specified in a notice served on the person under section 15,
on or before the due date for payment shall be liable for interest at the prescribed rate on the amount unpaid calculated from the date the payment was due to the date the payment is made.
- (2) Any interest paid by a person under subsection (1) shall be refunded to the person to the extent that the amount to which the interest relates is found not to have been payable.
- (3) Interest payable by a person —
 - (a) in respect of tax withheld from a payment under Division 4 of Part 8 of the Income Tax Act;⁴⁸ or
 - (b) in respect of any amount referred to in paragraph (b) of subsection (1),
shall be borne personally by the person and shall not be recoverable from any other person.
- (4) Interest payable under this section shall be simple interest.
- (5) The Chief Commissioner of Revenue may recover interest on tax due from a person under Part V as if it were tax payable by the person.
- (6) Interest payable under this section shall be in addition to any penalty imposed under Division II or any fine imposed under Division III in respect of the same act or omission.

DIVISION II ADMINISTRATIVE PENALTIES

31 Failure to submit a tax document

- (1) Any person who fails to submit a tax return or other document as required under any revenue law shall be liable to a penalty of \$100 and an additional \$10 for each day of default.

- (2) For the purposes of subsection (1), a person ceases to be in default —
 - (a) in the case of a failure to submit a tax return, at the time the Chief Commissioner of Revenue receives the return or raises a default assessment for the period covered by the return; or
 - (b) in any other case, at the time the document is received by the Chief Commissioner of Revenue.

32 Non-payment of tax

- (1) Any taxpayer who fails to pay any tax by the due date shall be liable to a penalty of 3 per cent of the amount of unpaid tax, plus an additional amount of 5 per cent of the tax that remains unpaid on the fifteenth day of each month following the due date.
- (2) Any penalty paid by a taxpayer under this section shall be refunded to the taxpayer to the extent that the tax to which the penalty relates is found not to have been payable.
- (3) Any penalty imposed under this section is in addition to interest payable under section 30.
- (4) Any penalty payable by a person in respect of tax withheld from a payment under Division 4 of Part 8 of the Income Tax Act shall be borne personally by that person and shall not be recoverable from any other person.⁴⁹

33 Failure to maintain records

Any taxpayer who fails to maintain proper accounts, documents, or records in accordance with the requirements of any revenue law shall be liable to a penalty equal to 25 per cent of the amount of tax payable by the taxpayer for the tax period to which the failure relates.

34 False or misleading statements

- (1) Any person who makes a false or misleading statement or omits from such statement any material particular which lessens his tax liability shall be liable to a penalty of 25 per cent of the tax shortfall.
- (2) No penalty shall be imposed under this section if the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular.⁵⁰
- (3) Nothing in this section prevents the imposition of interest under section 30 in respect of a tax shortfall if the tax is not paid by the due date.

- (4) In this section a statement may be made in writing or orally to a taxation officer under any revenue law, and shall include a statement made –
 - (a) in any application, certificate, declaration, notification, tax return, objection, or other document made, prepared, given, submitted, or lodged under any revenue law;
 - (b) in any information furnished under any revenue law;
 - (c) in any document furnished otherwise than pursuant to any revenue law;
 - (d) in answer to a question asked; or
 - (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.

35 Miscellaneous

- (1) Liability to a penalty shall be calculated separately with respect to each section in this Division.
- (2) Where a penalty has been paid under this Division and the Chief Commissioner of Revenue institutes a prosecution under Division III of this Part in respect of the same act or omission, the Chief Commissioner of Revenue shall refund the amount of penalty paid, and the penalty shall not be payable unless the prosecution is withdrawn.
- (3) The Chief Commissioner of Revenue shall —
 - (a) make an assessment of any penalty imposed under this Division; and
 - (b) serve a notice of the assessment on the person subject to the penalty, which notice shall state the amount of penalty payable and the due date for payment.
- (4) A person liable to pay penalty may apply, in writing, to the Chief Commissioner of Revenue for remission of the penalty payable.
- (5) The Chief Commissioner of Revenue may, upon application under subsection (4) or of his own motion, remit, in whole or in part, any penalty payable by a person.

DIVISION III - OFFENCES AND PENALTIES

36 Failure to deliver tax return

Any taxpayer who without reasonable cause fails to deliver a tax return by the due date, or within such further time as the Chief Commissioner of Revenue

may allow under section 4, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

37 Failure to comply with notice

Any person who, without reasonable excuse, fails to comply with a notice served on the person under section 15 commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

38 Failure to comply with section 18

Any liquidator who fails to comply with section 18 commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

39 Failure to comply with section 19

Any person who fails to comply with an order under section 19(2) or a notice under section 19(4) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

40 Failure to maintain proper records

Any taxpayer who fails to maintain proper accounts, documents, or records in accordance with the requirements of any revenue law commits an offence and shall be liable upon conviction —

- (a) where the taxpayer knowingly failed to maintain proper accounts, documents, or records, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or both; or
- (b) in any other case, to a fine not exceeding \$5,000.

41 Failure to provide assistance

Any person who fails to provide facilities and assistance as required by section 21(4) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

42 Failure to comply with a section 22 notice

Any person who, without reasonable explanation, fails to comply with a notice under section 22 commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

43 False identification number

- (1) Any person who knowingly and fraudulently uses a false Taxpayer Identification Number on any return or document prescribed or used for the purposes of any revenue law commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or both.
- (2) A person who uses the Taxpayer Identification Number of another person shall be treated as having used a false Taxpayer Identification Number, except where the person has used the Taxpayer Identification Number of another person with permission of that other person on a document relating to the tax affairs of that other person.

44 False statements⁵¹

- (1) Any person who knowingly makes a false or misleading statement or omits from such statement any material particular commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 3 years, or both.
- (2) Section 34(4) shall apply in determining whether a person has made a statement to a taxation officer.

45 Obstruction

Any person who wilfully obstructs a taxation officer in the performance of duties under any revenue law commits an offence and shall be liable upon conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding one year, or both.

46 Abetting

Any person who aids, abets, assists, incites, or induces another person to commit an offence under any revenue law commits an offence and shall be liable upon conviction to the same penalty as the principal offender.

47 Offences by companies

- (1) Where an offence under any revenue law is committed by a company, every person who, at the time the offence was committed was —
 - (a) a director, principal officer, general manager, secretary, or other similar officer of the company; or

- (b) acting or purporting to act in that capacity, shall be treated as having committed the offence.
- (2) Subsection (1) shall not apply to a person where —
- (a) the offence was committed without that person's consent or knowledge; and
 - (b) the person having regard to the nature of the person's functions and all the circumstances has exercised reasonable diligence to prevent the commission of the offence.

48 Compound offences

- (1) The Chief Commissioner of Revenue may, where any person has committed an offence under this Division except under sections 36, 40 or 44, before or after the institution of proceedings, compound such offence and order the person, by notice in writing, to pay the amount specified in the notice and such amount shall not exceed the amount of the maximum fine prescribed for the offence.
- (2) The Chief Commissioner of Revenue shall compound an offence under this section only if the offender admits in writing that he committed the offence.
- (3) Where the Chief Commissioner of Revenue compounds an offence under this section, the notice shall —
- (a) specify the offence committed, the sum of money to be paid, and the due date for payment;
 - (b) have a copy of the written admission attached;
 - (c) be served on the offender;
 - (d) be final and not subject to any appeal.
- (4) Where the Chief Commissioner of Revenue compounds an offence under this section, the offender shall not be liable for prosecution or penalty in respect of that offence.

49 Limitation of action

The prosecution of an offence under this Division may be instituted at any time within 5 years after the commission of the offence.

PART X - RULINGS

50 Orders and rulings

- (1) The Chief Commissioner of Revenue may publish orders and rulings of his application of the revenue law.
- (2) An order or ruling published under this section is binding on the Chief Commissioner of Revenue until revoked.

51 Written Rulings

- (1) The Chief Commissioner of Revenue may, upon application in writing by a taxpayer, issue to the taxpayer a written ruling setting out the Chief Commissioner of Revenue's position regarding the application of a revenue law to a transaction entered into, or proposed to be entered into, by the taxpayer.
- (2) Where —
 - (a) the taxpayer has made a full and true disclosure of all aspects of the transaction relevant to the ruling; and
 - (b) 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 Chief Commissioner of Revenue.

PART XI - FORMS AND NOTICES

52 Forms and notices, authentication of documents

- (1) The Chief Commissioner of Revenue shall make documents prescribed by Regulations available.
- (2) A notice or other document issued or served by the Chief Commissioner of Revenue under any revenue law shall be authenticated by bearing the official stamp of the Ministry of Revenue.⁵²

53 Service of notices

- (1) Subject to this Act, any notice or other document required to be served on a person for the purposes of any revenue law shall be treated as properly served on the person if —

- (a) personally served on the person or his representative;⁵³
 - (b) left at the person's usual or last known place of abode or business in Tonga; or
 - (c) sent by registered post to his last known address.
- (2) Service of any notice or document required to be served on an individual on the town officer for the area in which the individual lives in accordance with this section shall be treated as properly served on the person on receipt of written confirmation of such officer within 30 days that he has served it on the person.⁵⁴
- (3) The validity of service of any notice under a revenue law shall not be challenged after the notice has been wholly or partly complied with.

PART XII - ADMINISTRATION

DIVISION I - MINISTRY OF REVENUE

54 Ministry of Revenue⁵⁵

- (1) There shall be established a Ministry of Revenue under the direction and control of the Chief Commissioner of Revenue.
- (2) The daily operation and administration of the Ministry of Revenue shall be the responsibility of the Commissioner of Revenue, with the assistance of Deputy Commissioners.

55 Taxation Officers

- (1) The Chief Commissioner of Revenue shall be responsible for the administration of revenue law.
- (2) The Commissioner shall act in accordance with any directions given by the Chief Commissioner of Revenue.
- (3) All taxation officers shall be appointed according to law and shall wear an official Ministry of Revenue identification card while conducting official business.⁵⁶

56 Delegation

- (1) The Chief Commissioner of Revenue may delegate in writing any duty, power, or function conferred under this Act.

- (2) The Chief Commissioner of Revenue may, at any time, revoke in writing any delegation under this section.

57 Confidentiality

- (1) All documents and information coming into a taxation officer's possession or knowledge in connection with the performance of duties under any revenue law shall be confidential.
- (2) Nothing in subsection (1) shall prevent the disclosure of any document or information to —
 - (a) the Tax Tribunal or Supreme Court in relation to proceedings under this Act;
 - (b) any person in the service of Government in a revenue or statistical department where such disclosure is necessary for the performance of the person's official duties;
 - (c) the Auditor General or any person authorised by the Auditor General where such disclosure is necessary for the performance of official duties; or
 - (d) to the government of another country with which Tonga has an agreement, to the extent permitted under that agreement.
- (3) All documents or information received by a person under subsection (2) shall be confidential.
- (4) Any person who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or both.
- (5) In this section, “taxation officer” means any person employed by the Ministry of Revenue in any capacity.⁵⁷

DIVISION II - TAX TRIBUNAL

58 Tax Tribunal

There shall be a Tax Tribunal, to hear applications for review of reviewable decisions.

59 Appointment of members

- (1) The Tax Tribunal shall consist of a President and 5 other members of whom 3 shall constitute a quorum.

- (2)
 - (a) The Chief Justice shall appoint a Judge of the Supreme Court as President of the Tax Tribunal.
 - (b) The President shall hold that office as long as he remains a Judge of the Supreme Court, or until he resigns as President by notice in writing to the Chief Justice.
- (3) The Chief Commissioner of Revenue shall, with the consent of Cabinet, appoint the members of the Tax Tribunal.
- (4) Subject to subsection (5), a person may be appointed as a member if he —
 - (a) is enrolled as a law practitioner of the Supreme Court;
 - (b) is a member of the Institute of Chartered Accountants of Tonga;
 - (c) was previously engaged as a taxation officer; or
 - (d) has special knowledge, experience, or skills relevant to the functions of the Tax Tribunal.
- (5) The following persons shall not be appointed as a member —
 - (a) a person who has under any revenue law, been convicted of an offence, or has been liable to a penalty; or
 - (b) an undischarged bankrupt.
- (6) A member shall be appointed for a term of five years and shall be eligible for re-appointment.
- (7) The Chief Commissioner of Revenue shall remove, with the consent of Cabinet, by notice in writing any member who —
 - (a) is an undischarged bankrupt;
 - (b) is unable to perform the duties of office or for misconduct; or
 - (c) gives written notice of his resignation.

60 Review of Reviewable decision

- (1) Any person who is dissatisfied with a reviewable decision may apply to the Tax Tribunal for review of the decision.
- (2) An application under subsection (1) —
 - (a) shall be in writing in the prescribed form;
 - (b) shall be lodged with the Tribunal within 30 days after the person making the application has been served with notice of the reviewable decision; and
 - (c) shall be accompanied by the prescribed fee.

- (3) The Tax Tribunal may, upon application in writing, extend the time for making an application to the Tribunal for a review of a reviewable decision.
- (4) An applicant to the Tax Tribunal shall serve a copy of the application on the Chief Commissioner of Revenue within 5 days of lodging the application with the Tribunal.
- (5) The President may make rules for the conduct of hearings before the Tax Tribunal.

61 Decision of Tax Tribunal

- (1) Where —
 - (a) the application relates to an objection decision, the Tax Tribunal shall make an order as set out in section 9; or
 - (b) the application relates to any other reviewable decision, the Tribunal may make an order to affirm, vary, or set aside the decision.
- (2) The Tax Tribunal shall —
 - (a) make a written decision on an application for review as soon as practicable after the hearing has been completed; and
 - (b) cause a copy of its decision to be served on each party to the proceeding within 7 days of the decision.
- (3) A decision referred to in subsection (2) shall include the Tax Tribunal's reasons for the decision and its findings on material questions of fact and reference to the evidence or other material on which those findings were based.
- (4) Subject to subsection (6), all decisions of the Tax Tribunal shall be public records.
- (5) An authenticated copy of the decision shall be received in court proceedings in accordance with section 49 of the Evidence Act.⁵⁸
- (6) In releasing information or allowing access to information under subsection (4), the Tax Tribunal shall ensure that —
 - (a) the identity and affairs of the applicant and any other person concerned shall be concealed; and
 - (b) trade secrets or other confidential information are not disclosed.

DIVISION III

61A Registrar of Tax Agents⁵⁹

- (1) There shall be appointed a Registrar of Tax Agents.
- (2) Subject to subsection (3), the Registrar shall be a person with significant tax knowledge and experience appointed by the Chief Commissioner.
- (3) The following persons shall not be appointed as the Registrar —
 - (a) a taxation officer;
 - (b) a person who has, under any revenue law, been convicted of an offence or has been liable for a penalty; or
 - (c) a person who is an undischarged bankrupt.
- (4) The Registrar shall hold office for five years and is eligible for reappointment.
- (5) The Chief Commissioner shall terminate, by notice in writing, the appointment of a person as Registrar if the person —
 - (a) becomes engaged as a taxation officer;
 - (b) becomes an undischarged bankrupt;
 - (c) is unable to perform the duties of office or engages in misconduct; or
 - (d) resigns by notice, in writing, to the Chief Commissioner.
- (6) No action or suit shall be brought or maintained against a person who is or has been the Registrar for any non-feasance or misfeasance in connection with the Registrar's duties of office.

61B Application for registration of tax agents⁶⁰

- (1) A person or partnership may apply to the Registrar for registration as a tax agent.
- (2) An application for registration as a tax agent under subsection (1) shall be in the prescribed form and accompanied by the prescribed fee.

61C Registration of tax agents⁶¹

- (1) If an applicant under section 61B is a natural person, the Registrar shall register the applicant if satisfied that —
 - (a) the applicant is a fit and proper person to prepare tax returns and objections to taxation decisions, and transact business with the

- Chief Commissioner under the revenue laws on behalf of taxpayers; and
- (b) the applicant is not an undischarged bankrupt.
- (2) If an applicant under section 61B is a partnership, the Registrar shall register the applicant if satisfied that —
- (a) the partner specified in the application as the nominee of the partnership is a fit and proper person to prepare tax returns and objections to taxation decisions, and transact business with the Chief Commissioner under the revenue laws on behalf of taxpayers;
 - (b) every partner in the partnership is of good fame, integrity, and character or, if a partner is a company, every director, manager, or other executive officer of the company is of good fame, integrity, and character; and
 - (c) no partner is an undischarged bankrupt.
- (3) If an applicant under section 61B is a company, the Registrar shall register the applicant if satisfied that —
- (a) the employee of the company specified in the application as the nominee of the company is a fit and proper person to prepare tax returns and objections to taxation decisions, and transact business with the Chief Commissioner under the revenue laws on behalf of taxpayers;
 - (b) every director, manager, or other executive officer of the company is of good fame, integrity, and character; and
 - (c) no director, manager, or other executive officer is an undischarged bankrupt.
- (4) The registration of a tax agent shall remain in force for 12 months from the date of registration.
- (5) If a partnership or company is registered as a tax agent, the partner or employee referred to in subsection (2)(a) or (3)(a) shall be registered by the Registrar as a nominee of the tax agent from the date of registration of the partnership or company as tax agent.
- (6) The registration of a nominee of a tax agent under subsection (5) shall remain in force until the registration is cancelled under section 61E(3).
- (7) The Registrar shall provide an applicant under section 61B with notice, in writing, of the decision on the application.

61D Renewal of Registration⁶²

- (1) A tax agent may apply to the Registrar for the renewal of the tax agent's registration.
- (2) An application under subsection (1) shall be —
 - (a) in the prescribed form and accompanied by the prescribed fee; and
 - (b) delivered to the Registrar within 21 days of the date of expiry of the tax agent's registration or such later date as the Registrar may allow.
- (3) The Registrar shall renew the registration of a tax agent who has applied under subsection (1) if the tax agent continues to satisfy the conditions for registration in section 61C.
- (4) The renewal of a tax agent's registration shall remain in force for 12 months from the date the existing registration expires.
- (5) The Registrar shall provide an applicant under subsection (1) with notice, in writing, of the decision on the application.

61E Tax agents that are partnerships and companies⁶³

- (1) A partnership or company registered as a tax agent may, by application the prescribed form accompanied by the prescribed fee, request the Registrar to register a partner of the partnership or an employee of the company as an additional or substituted nominee for the purposes of this Division and the Registrar shall so register the person if satisfied that the person is a fit and proper person to prepare income tax returns and objections to taxation decisions, and transact business with the Chief Commissioner under the revenue laws on behalf of taxpayers and is not an undischarged bankrupt.
- (2) The Registrar shall provide an applicant under subsection (1) with notice, in writing, of the decision on the application.
- (3) The Registrar shall cancel the registration of a partner in a partnership employee of a company as a nominee of a partnership or company registered as a tax agent if —
 - (a) the Registrar is satisfied that the partner or employee is no longer a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers;
 - (b) the partner or employee becomes an undischarged bankrupt;
 - (c) in the case of a tax agent that is a partnership, the partner ceases to be a partner in the partnership or the partnership, by notice in

- writing to the Registrar, applies for cancellation of the registration of the partner; or
- (d) in the case of a tax agent that is a company, the employee ceases to be employed by the company or the company, by notice in writing to the Registrar, applies for cancellation of the registration of the employee.
- (4) The Registrar shall give notice, in writing, to a partnership or company of a decision to cancel the registration of a nominee of the partnership or company and, if the registration is cancelled, the cancellation shall take effect from the date specified in the notice.
- (5) A partnership that is a tax agent shall notify the Registrar, in writing, if —
- (a) there is a change in the composition of the partnership;
- (b) a partner becomes an undischarged bankrupt; or
- (c) the partnership is going to be dissolved.
- (6) Notification —
- (a) under subsection (5)(a) or (b), shall be made within seven days after the change in composition or the partner becoming an undischarged bankrupt; or
- (b) under subsection (5)(c), shall be made within seven days before the dissolution of the partnership.
- (7) A company that is a tax agent shall notify the Registrar, in writing, if —
- (a) a registered nominee ceases to be an employee of the company;
- (b) a person becomes a director, manager, or other executive officer of the company;
- (c) a director, manager, or other executive officer of the company becomes an undischarged bankrupt; or
- (d) the company is going into liquidation.
- (8) Notification —
- (a) under subsection (7)(a), (b), or (c), shall be made within seven days after the employee ceased to be employed, the person become a director, manager or other executive officer, or the director, manager or other executive officer become an undischarged bankrupt; or
- (b) under subsection (7)(d), shall be made within seven days before the company goes into liquidation.
- (9) A partnership that fails to give notice under subsection (5) or a company that fails to give notice under subsection (7) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

61F Cancellation of Registration⁶⁴

- (1) The Registrar shall cancel the registration of a tax agent if —
 - (a) a tax return prepared and delivered by the tax agent is false in any material particular, unless the tax agent establishes to the satisfaction of the Registrar that this was not due to any wilful or negligent conduct of the tax agent;
 - (b) the tax agent ceases to satisfy the conditions for registration in section 61C;
 - (c) the registration of the tax agent expires and the agent has not delivered an application for renewal of the registration under section 61D;
 - (d) the tax agent has ceased to carry on business as a tax agent; or
 - (e) in the case of a partnership or company —
 - (i) the company or partnership ceases to have a nominee registered under section 61E; or
 - (ii) the company or partnership ceases to exist.
- (2) The Registrar shall give notice, in writing, of a decision to cancel the registration of a tax agent.
- (3) Subject to subsection (4), the cancellation of a registration takes effect 60 days after the tax agent has been served with notice of the cancellation.
- (4) If a tax agent served with notice of the cancellation of the tax agent's registration applies to the Tax Tribunal for review of the decision, the cancellation takes effect in accordance with subsection (3) only if confirmed by the Chief Commissioner.

61G Only Tax Agents to Accept Fees and Advertise as Tax Agent⁶⁵

- (1) Subject to subsection (2), no person other than a tax agent can demand or receive any fee for or in relation to, or represent that for a fee the person will assist in —
 - (a) the preparation of a tax return or an objection to a taxation decision;
 - (b) the transaction of any business with the Chief Commissioner on behalf of any person in respect of the person's rights or obligations under a revenue law.
- (2) Subsection (1) shall not apply to —
 - (a) a law practitioner performing legal work in relation to a revenue law; or

- (b) an employee of a taxpayer or tax agent acting in the ordinary course of employment.
- (3) A person who contravenes this section is guilty of an offence and shall be liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or both.

PART XIII - MISCELLANEOUS

62 Regulations

The Chief Commissioner of Revenue may, with the consent of Cabinet, make regulations —

- (a) prescribing forms and fees required under this Act;
- (b) for the administration of the Tax Tribunal; and
- (c) for the proper and efficient administration of this Act.

63 Transitional

- (1) All appointments made under the Revenue Administration Act 2000 and subsisting on the date this Act comes into force shall be treated as appointments made under this Act.
- (2) Subject to subsections (3), (4), and (5), this Act shall apply to any act or omission occurring, or any taxation assessment made, before this Act came into force.
- (3) Any appeal or prosecution commenced before this Act came into force shall be continued and disposed of as if this Act had not come into force.
- (4) Where the period for any application, appeal, or prosecution had expired before this Act came into force, nothing in this Act shall be construed as enabling the application, appeal, or prosecution to be made under this Act by reason only of the fact that a longer period is specified in this Act.
- (5) Any tax liability that arose before this Act came into force may be recovered under this Act, but without prejudice to any action already taken for the recovery of the tax.

ENDNOTES

¹ Act 28 of 2002

Amended by Act 27 of 2003, commencement 1 April 2005 vide GS 4A/2005

Amended by Act 28 of 2003, commencement 1 April 2005 vide GS 3A/2005

Amended by Act 9 of 2007, commencement 1 February 2008 (G. 4/2008)

Act 9 of 2007 provided, in section 9 —

“Notwithstanding anything in this Act, the Principal Act shall continue to apply as if this Act were not enacted —

(a) for the purposes of the Income Tax Act (Cap. 68), to any fiscal year to which that Act applies; and

(b) for the purposes of the Sales Tax Act (Cap. 69), to any sales made before the Consumption Tax Act 2003 came into force.”

² vide GS 8C/2004

³ Amended by Act 7 of 2010

⁴ Amended by Act 7 of 2010

⁵ Cap. 26.02

Inserted by Act 27 of 2003

⁶ Cap. 26.08; Amended by Act 9 of 2007

⁷ Inserted by Act 9 of 2007

⁸ Substituted by Act 27 of 2003

⁹ Substituted by Act 27 of 2003

¹⁰ Amended by Act 9 of 2007

¹¹ Cap. 26.02

¹² Amended by Acts 27 of 2003 and 28 of 2003

¹³ Cap. 26.04

¹⁴ Cap. 26.03

¹⁵ Cap. 26.07

¹⁶ Cap. 26.16

¹⁷ Cap. 32.07

¹⁸ Inserted by Act 9 of 2007

¹⁹ Cap. 26.08

Amended by Acts 9 of 2007 and 4 of 2008

²⁰ Amended by Act 9 of 2007

- ²¹ Inserted by Act 27 of 2003
- ²² Amended by Act 27 of 2003
- ²³ Amended by Acts 27 of 2003 and 9 of 2007
- ²⁴ Inserted by Act 9 of 2007
- ²⁵ Clauses (j) to (m) inserted by Act 27 of 2003
- ²⁶ Inserted by Act 9 of 2007
- ²⁷ Inserted by Act 9 of 2007
- ²⁸ Inserted by Act 9 of 2007
- ²⁹ Amended by Act 7 of 2010
- ³⁰ Cap. 26.08
 Inserted by Act 9 of 2007
- ³¹ Inserted by Act 9 of 2007
- ³² Inserted by Act 27 of 2003
- ³³ Amended by Act 27 of 2003
- ³⁴ Amended by Acts 9 of 2007 and 4 of 2008
- ³⁵ Cap. 26.08
- ³⁶ Amended by Acts 9 of 2007 and 4 of 2008
- ³⁷ Cap. 26.08
- ³⁸ Cap. 26.02
- ³⁹ Original printing error corrected to accord with Tongan language version, under the powers granted by the Tonga Law Commission Act, Cap. 1.25
- ⁴⁰ Amended by Act 27 of 2003
- ⁴¹ Amended by Act 9 of 2007
- ⁴² Cap. 26.08
 Amended by Act 9 of 2007
- ⁴³ Amended by Act 27 of 2003
- ⁴⁴ Amended by Act 9 of 2007
- ⁴⁵ Amended by Act 4 of 2008
- ⁴⁶ Amended by Act 27 of 2003
- ⁴⁷ Amended by Act 27 of 2003
- ⁴⁸ Amended by Act 9 of 2007
- ⁴⁹ Amended by Act 9 of 2007
- ⁵⁰ Substituted by Act 27 of 2003
- ⁵¹ Amended by Act 27 of 2003

- ⁵² Amended by Act 7 of 2010
- ⁵³ Amended by Act 27 of 2003
- ⁵⁴ Amended by Act 27 of 2003
- ⁵⁵ Substituted by Act 7 of 2010
- ⁵⁶ Amended by Act 7 of 2010
- ⁵⁷ Amended by Act 7 of 2010
- ⁵⁸ Cap. 07.21
- ⁵⁹ Inserted by Act 9 of 2007
- ⁶⁰ Inserted by Act 9 of 2007
- ⁶¹ Inserted by Act 9 of 2007
- ⁶² Inserted by Act 9 of 2007
- ⁶³ Inserted by Act 9 of 2007
- ⁶⁴ Inserted by Act 9 of 2007
- ⁶⁵ Inserted by Act 9 of 2007