

# REPUBLIC OF VANUATU

## BILL FOR THE TAX ADMINISTRATION ACT NO. OF 2017

### Explanatory Note

The Bill strengthens the Government's collection and administration of taxes.

It provides for uniform procedural rules applicable to taxes administered by the Department of Customs and Inland Revenue (DCIR). It supports the Government's initiative to help modernise the DCIR's operations and improve taxpayer compliance.

The media, and public at large have continually raised concerns that the Government is not doing enough to collect the expected revenue that is due to the state. There are evidence of tax avoidance and lack of commitment from various taxpayers when it comes to paying taxes. These evidence indicate the need to change the way we do business and bring back the confidence that the Government and Tax payers deserve.

The Bill does not have the effect of imposing income tax and is not intended to impose any new forms of fees or charges as part of its implementation. It instead, intends to bring together all the laws relating to the administration of the taxes and aims to achieve consistency and efficiency in how all these laws are administered.

The taxes covered by the Bill are the Value Added Tax and the Rent tax. The Bill also applies to certain purposes relating to customs duty, excise tax, and business licences. It will also apply to any future legislation that provides for any new taxes to be administered by the DCIR.

The Bill clearly sets out the responsibilities of those involved in the administration of the tax system, including policy development and operational matters. It ensures that taxpayer information is kept confidential, with penalties applying to a breach of confidentiality. There are improved governance, transparency, and reporting measures to foster community support and confidence in the tax system.

The key features of the Bill include the following:

- (1) It provides for the issue to, and use by, taxpayers of a taxpayer identification number ("TIN"). A TIN is a single identifier that can be used for the purposes of all taxes. The issuing of a TIN is the general basis for taxpayer registration, although a taxpayer may still be required to apply for registration for the purposes of a specific tax, such as VAT or excise tax. The intention, though, is that procedures relating to TINs provide the opportunity for a "one-stop-shop" approach to taxpayer registration, which will reduce compliance costs. Over time, TINs may be used as an identifier for other Government purposes and the Bill provides the legal framework for this.
- (2) It sets out uniform procedural rules for the core functions of tax administration, namely keeping records, filing returns, and payment of tax. This will ensure consistency in tax

administration and limit inadvertent errors on the part of taxpayers that can arise when different procedural rules apply for different taxes.

- (3) It includes important tax transparency measures, including the requirement for DCIR to provide taxpayers with a statement of findings and reasons for decisions made by DCIR. This means that taxpayers will be fully informed of the reasons for decisions, particularly when applications made to DCIR are refused.
- (4) It includes modern tax appeal provisions applicable for disputes relating to all taxes. It provides for the establishment of a Revenue Tribunal as an independent administrative body with a Supreme Court Judge as the Chair of the Tribunal. The Tribunal has responsibility to hear taxpayer applications for review of tax decisions, particularly taxation assessments. This is intended as a cost-efficient way of resolving taxation disputes without the need to go to Court.
- (5) It sets out the legal framework for the self-assessment of tax liabilities. This will lead to more efficient tax administration. To ensure the quality of self-assessments, the Bill provides for the issuing of public rulings by DCIR on issues of legal uncertainty and also for the registration of tax agents. Public rulings are binding on DCIR, which means that taxpayers can rely on them for the purposes of making their self-assessments. However, as a public ruling is not law, they are not binding on taxpayers. Taxpayers are free to self-assess their tax liabilities as they so decide with any resultant disputes resolved through the objection and appeal procedure. Tax agent registration will ensure that those advisers assisting taxpayers in the preparation of their self-assessments are sufficiently qualified for the purpose.
- (6) While most taxpayers voluntarily comply with their obligations under the tax laws, particularly in relation to the filing of tax returns and payment of tax, there are some taxpayers who chose not to do so. The Bill strengthens powers available to the DCIR to deal with non-complying taxpayers, including for the recovery of unpaid tax and the imposition of administrative penalties.
- (7) The “e-tax” system is the future of tax administration in Vanuatu as it is in other countries. The Bill provides the legal framework for DCIR to introduce e-filing and e-payments by taxpayers. This will give rise to significant efficiency benefits for DCIR and allow taxpayers to meet their obligations under the tax laws at a time that is convenient for them.
- (8) It provides for DCIR to act as collection agent for non-tax fees and charges imposed by other Government agencies and departments. This allows the collection “infrastructure” in place under the Bill for taxes to be used to collect these other fees and charges. This should improve the collection of these fees and charges and lead to efficiency gains within Government as it avoids the need for multiple collection regimes across Government.
- (9) Finally, it provides for a tax clearance procedure to apply for certain purposes of Government, such as Government tenders. This will ensure, for example, that those lodging tenders for Government funded projects have a good tax compliance history.

**Minister of Finance and Economic Management**



## REPUBLIC OF VANUATU

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# REPUBLIC OF VANUATU

## BILL FOR THE TAX ADMINISTRATION ACT NO. OF 2018

An Act to provide for harmonised procedural and administrative rules applicable to the tax laws.

Be it enacted by the President and Parliament as follows-

### PART 1 PRELIMINARY

#### 1 Purpose of this Act

- (1) The purpose of this Act is to provide similar procedures for:
  - (a) consistency and efficiency in the administration of tax laws; and
  - (b) facilitation of tax compliance by taxpayers; and
  - (c) effective and efficient collection of tax.
- (2) The procedures provided for under this Act apply to the administration of a tax under a tax law unless the tax law provides for a procedure that is unique to the application of the tax.

#### 2 Interpretation

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

**advance assessment** means an advance assessment made under section 15;

**agency tax** means a tax, duty, fee, or charge specified as an agency tax in the Regulations;

**amended assessment** means an amended assessment made under section 16;

**appointed person** means a person who is an appointed person under section 36;

**approved form** means:



- (a) for a tax return, application, notice, statement, or other document to be filed with the Director - the form specified and published on the website of the Department for the particular tax return, application, notice, statement, or other document; or
- (b) for an application, notice, or other document to be filed with the Revenue Tribunal - the form specified and published on the website of the Tribunal for the particular application, notice, or other document;
- (c) if no form is specified and published on the website of the Department or Tribunal - a document that contains the information required under the tax law and by the Director or Chairperson for the particular form;

**Chairperson** means the Chairperson of the Revenue Tribunal;

**company** means:

- (a) a body corporate, statutory corporation, foundation, limited partnership, or unincorporated association or body of persons, whether formed in Vanuatu or elsewhere; or
- (b) an entity established under foreign law that has legal characteristics fundamentally similar to that of a body corporate;

**controlling member**, in relation to a company, means a member who beneficially holds, either alone or together with an associate or associates:

- (a) more than 50 per cent of the voting rights attaching to membership interests in the company; or
- (b) more than 50 per cent of the rights to a distribution of profits or entitlements to income attaching to membership interests in the company; or
- (c) more than 50 per cent of the rights to capital attaching to membership interests in the company;

**Customs decision** means a decision by the Director under the Customs legislation on any of the following:

- (a) the liability of goods to customs duty;
- (b) the amount or rate of customs duty on any goods;

- (c) the issue, suspension, or revocation of any licence issued under the Customs legislation;
- (d) an assessment of customs duty;
- (e) the deferment of any customs duty payable;
- (f) the imposition of administrative penalties under the Customs legislation;

**Customs legislation** means:

- (a) Customs Act No. 7 of 2013; and
- (b) Excise Act [CAP 290], but only to the extent that it relates to the importation of excisable goods;

**Customs officer** has the meaning in section 1 of the Customs Act No.7 of 2013;

**data storage device** means a computer, mobile electronic device, portable information storage media, or any other electronic device for the storage of information;

**default assessment** means a default assessment under section 14;

**Department** means the Department of Customs and Inland Revenue;

**Director** means the Director of the Department of Customs and Inland Revenue;

**director**, in relation to a company, means:

- (a) for a body corporate:
  - (i) an individual or body corporate that is a director of the body under the Companies Act No.25 of 2012, International Companies Act [CAP 222]; International Banking Act [CAP 280], or other similar legislation in Vanuatu or elsewhere; or
  - (ii) an alternative director, a person to whom the powers of a director have been delegated, or any person acting or purporting to act as a director of the body; or
- (b) for a foundation:

- (i) an individual or body corporate that is a councillor of the foundation under the Foundation Act No. 38 of 2009 or similar legislation elsewhere; or
  - (ii) any person acting or purporting to act as a councillor or an agent of a councillor; or
- (c) for any other company, an individual who is involved in the management of the company;

**Director-General** means the Director-General responsible for finance;

**electronic data storage facility** means a data storage device or any other facility, including an electronic facility, for the electronic storage of information;

**entity** means a company, partnership, or trust;

**financial year** means a period of 12 months ending with the 31<sup>st</sup> day of December;

**international agreement** means an agreement between the Government of Vanuatu and a foreign government or governments;

**international organisation** means an organisation, the members of which are sovereign powers or governments of sovereign powers;

**late payment interest** means interest imposed under section 33;

**late payment penalty** means late payment penalty imposed under section 87;

**member**, in relation to a company, means a shareholder, a beneficiary under a foundation, a partner in a limited partnership, or any other person with a membership interest in a company;

**membership interest**, in relation to a company, means a share, an interest in a foundation or limited partnership, or any other ownership interest in a company;

**Minister** means the Minister responsible for finance;

**mutual administrative assistance agreement** means a tax information exchange agreement or other international agreement for mutual administrative assistance in relation to taxation matters;

**objection decision** means a decision made by the Director under subsection 21(1) or deemed to have been made under subsection 21(8);

**partnership** does not include a limited partnership;

**penalty** means penalty imposed under a tax law;

**person** means an individual, partnership, trust, company, the Government, public authority, foreign government, political subdivision of a foreign government, or international organisation;

**public authority** means:

- (a) a body, authority, or instrumentality (corporate or unincorporated) established by law or administrative act for public or official purposes, other than a Ministerial Department or a body in which the Government has an interest; and
- (b) a Municipal Council or a Provincial Government Council ; and
- (c) any other company prescribed in the Regulations as a public authority;

**records** include:

- (a) a book of account, document, paper, register, bank statement, receipt, invoice, voucher, contract or agreement, or Customs entry; or
- (b) any information or data stored on or in an electronic data storage facility;

**registered tax agent** means a person registered as a tax agent under Division 3 of Part 14;

**relative**, in relation to an individual, means:

- (a) that individual's spouse; or
- (b) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent, or adopted child of that individual, or of that individual's spouse; or
- (c) the spouse of a person referred to in paragraph (b);

**representative**, in relation to a person, means a representative of the person under section 7;

**revenue decision** means:

- (a) a taxation assessment, other than a self-assessment; or
- (b) the determination of the amount of a secondary liability or tax recovery costs owing by a person; or
- (c) a customs decision;
- (d) any other decision of the Director made under a tax law on any matter that is left to the discretion, consent, approval, or determination of the Director, but not including the following:
  - (i) any decision of the Director forming part of the process of making, or leading up to the making of, a taxation assessment, and such decision is deemed to be part of the taxation assessment;
  - (ii) a reviewable decision;
  - (iii) a decision made under section 35, 37, 40, 41, 42, 43, 48, or 49;

**Revenue Tribunal** means the Revenue Tribunal established under section 69;

**reviewable decision** means:

- (a) a decision made, or deemed to have been made, by the Director on an application for an amendment to a self-assessment under section 17; or
- (b) an objection decision; or
- (c) a decision by the Director under section 51, 77, 78, or 81;

**secondary liability** means a liability of a person that another person is personally liable for under subsection 7(4), 35(11), 36(5), 38(1), 39(2), or 43(5);

**self-assessment** means an assessment deemed to have been made by a self-assessment taxpayer under section 13;

**self-assessment return** means a return listed in Schedule 1;

**self-assessment taxpayer** means a taxpayer required to file a self-assessment return;

**spouse**, in relation to an individual, means an individual who:

- (a) is or has been married to the first-mentioned individual; or
- (b) although not married to the first-mentioned individual, is living with that individual in a de facto relationship or has lived with the individual in a de facto relationship; or
- (c) is a biological parent of a child with the first-mentioned individual (whether or not they are or have been married or are living or have lived together);

**tax** means a tax, penalty, or late payment interest imposed under a tax law;

**tax avoidance provision** means section 55 of the Value Added Tax Act [CAP 247];

**tax law** means a law listed in Schedule 2;

**tax period**, in relation to a tax, means the period for which the tax is reported to the Director;

**tax recovery costs** means the following:

- (a) the costs of recovering unpaid tax referred to in subsection 27(2);
- (b) the costs of action under section 40 for the seizure of goods;
- (c) the costs of administrative distress proceedings under section 41;

**tax return** means a return (including attachments and reconciliations) required to be filed under a tax law;

**taxation assessment** means a self-assessment, default assessment, advance assessment, amended assessment, an assessment of penalty, or any other assessment made under a tax law;

**taxation officer** means:

- (a) the Director;
- (b) an individual appointed as an officer of the Department under the Public Service Act [CAP 246] for the purposes of the tax laws;
- (c) a police officer to the extent of any delegation made under subsection 66(3);

- (d) any other individual who has taken the prescribed oath or affirmation of office under subsection 65(3) for the purposes of the tax laws;

**taxpayer** means a person who is liable for tax and includes:

- (a) for the VAT - a registered person; or  
(b) for the excise tax - a licensed producer;

**taxpayer identification number** or **TIN** means a taxpayer identification number issued to a person under section 4;

**trust** includes:

- (a) any relationship where property is under the control or management of a trustee; and  
(b) the estate of a deceased individual; and  
(c) an entity, other than a partnership or company, created outside Vanuatu that has legal characteristics substantially similar to those of a trust settled or created in Vanuatu;

**trustee** means a person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law, and includes:

- (a) an executor of a deceased estate; and  
(b) a person who owes a fiduciary responsibility to an entity treated as a trust under paragraph (c) of the definition of “trust”;

**unpaid tax** means tax that has not been paid on or before the due date or, if the Director has extended the due date under section 29, on or before the extended due date;

**Vanuatu competent authority**, in relation to a mutual administrative assistance agreement, means the person designated under the treaty or agreement as the competent authority for Vanuatu or their delegate.

- (2) Subject to subsection (3), 2 persons are **associates** if:

- (a) the relationship between them is such that one person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other; or
  - (b) both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.
- (3) 2 persons are not associates solely by reason of the fact that one person is an employee or client of the other or both persons are employees or clients of a third person.
- (4) Without limiting the generality of subsection (2), the following persons are deemed to be **associates**:
- (a) an individual and a relative of that individual, except when neither person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other;
  - (b) a partner in a partnership and the partnership, if the partner, either alone or together with an associate or associates under another application of subsections (2) – (5), controls 50% or more of the rights to income or capital of the partnership;
  - (c) a trust and a person who benefits, or may benefit, under the trust through the exercise of a power of appointment or otherwise;
  - (d) a member of a company and the company, if the member, either alone or together with an associate or associates under another application of subsections (2) – (5), controls either directly or through one or more interposed entities:
    - (i) 50% or more of the voting power in the company; or
    - (ii) 50% or more of the rights to a distribution of profits; or
    - (iii) 50% or more of the rights to capital;
  - (e) 2 companies, if a person, either alone or together with an associate or associates under another application of subsections (2) – (5), controls either directly or through one or more interposed entities:



- (i) 50% or more of the voting power in both companies; or
  - (ii) 50% or more of the rights to a distribution of profits in both companies; or
  - (iii) 50% or more of the rights to capital in both companies.
- (5) In applying paragraph (4)(b), (d), or (e), holdings that are attributed to a person from an associate are not reattributed to another associate of the person.
- (6) Unless the Act provides otherwise, a reference in this Act to a period of days is a reference to a consecutive period of days.
- (7) A reference in Parts 7, 8, 9, and 10, sections 7 and 87 and paragraphs 44(1)(b) and 45(5)(b) to:
  - (a) “tax” includes a secondary liability and tax recovery costs; and
  - (b) “unpaid tax” includes an amount specified in paragraph (a) that is not paid on or before the due date; and
  - (c) “taxpayer” includes a person liable for an amount specified in paragraph (a).
- (8) A reference in Part 8 and sections 7 and 87 to:
  - (a) “tax” includes an agency tax; and
  - (b) “unpaid tax” includes an amount of an agency tax that is not paid on or before the due date; and
  - (c) “taxpayer” includes a person liable for an agency tax; and
  - (d) “tax law” includes the law under which an agency tax is imposed.
- (9) If this Act applies for the purposes of a tax law, any term not defined in this Act has the meaning as defined in that tax law.

## **PART 2 TAXPAYERS**

### **Division 1 Taxpayer Identification Numbers**

#### **3 Application for a TIN**

- (1) Subject to subsection (2), a person:
  - (a) specified in Part 1 of Schedule 3 must apply to the Director for a taxpayer identification number unless the person has already been issued with a TIN; or
  - (b) specified in Part 2 of Schedule 3 may apply to the Director for a TIN.
- (2) An employer may apply for a TIN for a new employee.
- (3) An application for a TIN must be:
  - (a) made in the approved form; and
  - (b) accompanied by documentary evidence of the person's identity, including prescribed biometric information.
- (4) If a person is required to make an application for a TIN under paragraph (1)(a) because paragraph 1 of Part 1 of Schedule 3 applies, the application must be made within 21 days of first becoming subject to the tax law or within such further period as the Director may allow.
- (5) In the case of an application made under subsection (2) by an employer for an employee, the biometric information required under paragraph (3)(b) must be provided by the employee.

#### **4 Issue of a TIN**

- (1) If the Director is satisfied that an applicant under section 3 is required or permitted to apply for a TIN and that the applicant's identity has been established, the Director must issue a TIN by serving the applicant with written notice of the TIN.
- (2) If an application for a TIN has been made by an employer for an employee, the Director must issue the TIN to the employee.
- (3) Each TIN issued by the Director must be unique.
- (4) The Director must refuse an application under section 3 if:

- (a) the Director is not satisfied as to the applicant's true identity; or
  - (b) the applicant has already been issued with a TIN that is still in force.
- (5) The Director must serve an applicant under section 3 with written notice of a decision to refuse the application within 14 days of receiving the application.
- (6) The Director may, on his or her own motion, issue a TIN to a person required to apply for a TIN under paragraph 3(1)(a) because paragraph 1 of Part 1 of Schedule 3 applies but who has failed to do so within the time permitted under subsection 3(4).
- (7) A person can have only one TIN at any time.
- (8) A person who has been issued with a TIN must notify the Director, in writing, of a change in any of the following within 21 days of the change occurring:
- (a) the person's physical or postal address;
  - (b) the person's banking details used for transactions with the Department;
  - (c) the person's electronic address used for communications with the Department;
  - (d) such other details as may be prescribed.

**5 Use of a TIN**

- (1) A person:
- (a) must state the person's TIN on any tax return, notice, or other document filed with the Director; and
  - (b) may provide the person's TIN to a licensed financial institution in relation to an account held by the person with the institution; and
  - (c) must provide the person's TIN to a Government department or public authority as prescribed.
- (2) A TIN is personal to the person to whom it has been issued and, subject to subsection (3), cannot be used by another person.

- (3) A person's TIN may be used by the person's agent or registered tax agent in accordance with this Act if the person has given written permission to the agent to use the TIN.

## **6 Cancellation of a TIN**

- (1) The Director must cancel a person's TIN, by notice in writing, if:
- (a) the person is an individual who has died; or
  - (b) the person is a company, partnership or trust that has been liquidated or has otherwise ceased to exist; or
  - (c) the person is an individual who is leaving Vanuatu permanently unless the individual continues or is reasonably likely to continue, to require the TIN under subsection 3(1); or
  - (d) the TIN has been issued to the person under an identity that is not the person's true identity; or
  - (e) the person has been previously issued with a TIN that is still in force.
- (2) The representative of a person referred to in paragraph (1)(a) or (b) must notify the Director, in writing, when the administration of the estate of the deceased individual is complete, or the entity has been liquidated or ceased to exist.
- (3) The Director may, at any time, by notice in writing, cancel the TIN issued to a person and issue the person with a new TIN.
- (4) The cancellation of a person's TIN under this section does not affect any obligation of the person arising under a tax law before cancellation of the TIN.

## **Division 2 Representatives**

### **7 Liabilities and obligations of representatives**

- (1) Every representative of a taxpayer is responsible for performing any duties or obligations imposed by a tax law on the taxpayer, including the filing of tax returns and payment of tax.
- (2) Any act done in accordance with subsection (1) by a representative of a taxpayer on behalf of the taxpayer, is deemed to have been done by the taxpayer.

- (3) Subject to subsection (4), any tax owing by a taxpayer that, by virtue of subsection (1), is payable by a representative of the taxpayer is recoverable from the representative only to the extent of any assets of the taxpayer that are in the possession or under the control of the representative.
- (4) Subject to subsection (5), every representative is 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 monies received or accrued in respect of which the tax is payable; or
  - (b) disposes of, or parts with, any monies, funds, or assets belonging to the taxpayer that are in the possession of the representative or which come to the representative after the tax is payable, if the tax could legally have been paid from, or out of, such moneys or funds, or the funds arising from the disposal of the assets.
- (5) Subsection (4) does not apply to the payment of any debt by a representative on behalf of a taxpayer that the representative has established has a priority, in law or equity, over the tax liability of the taxpayer.
- (6) Nothing in this section relieves any taxpayer from performing any duties or obligations imposed on the taxpayer under a tax law that the representative of the taxpayer has failed to perform.
- (7) If a taxpayer has two or more representatives, each representative is jointly and severally liable for the duties or obligations referred to in this section, but the duties and obligations may be discharged by any of them.
- (8) For the purposes of the tax laws, a partner in a partnership or member of an unincorporated body does not cease to be a representative of the partnership or body until the date of the change of membership has been notified, in writing, to the Director.
- (9) In this section and subject to subsection (10), **representative** means, in relation to a person, an individual responsible for accounting for the receipt or payment of moneys or funds in Vanuatu on behalf of the person, or who has control of the assets of the person in Vanuatu, and includes the following:
- (a) for a partnership - a partner in the partnership; or
  - (b) for a limited partnership-a general partner in the partnership; or

- (c) for a trust – a trustee of the trust; or
  - (d) for an unincorporated body - a member of the body; or
  - (e) for a foundation - a member of the board of councillors; or
  - (f) for a body corporate - the chief executive officer, a director, or company secretary; or
  - (g) for a person outside Vanuatu - an individual who acts or purports to act in Vanuatu for the person, or who controls the person's affairs in Vanuatu, including a manager of the business of the person in Vanuatu; or
  - (h) for a taxpayer referred to in section 36 - the appointed person in relation to the taxpayer under that section; or
  - (i) for any person - an individual that the Director has, by notice in writing to the individual, declared to be a representative of the person for the purposes of the tax laws.
- (10) If a councillor of a foundation or director of a body corporate is a body corporate, any individual who is a representative of the councillor or director under another application of subsection (9) is deemed to be a representative of the foundation or first-mentioned body corporate.

## **PART 3 RECORDS**

### **8 Record-keeping**

- (1) Subject to subsection (2), and in addition to records that may be required for the purposes of a tax law or any other Act, a person carrying on a business or investing in property must maintain records that correctly explain all transactions entered into by that person.
- (2) The records under subsection (1) must:
  - (a) be maintained in English, French, or Bislama; and
  - (b) enable the financial position of the person to be determined with reasonable accuracy at any time; and
  - (c) allow financial statements to be prepared; and
  - (d) be maintained in a manner so as to enable the person's tax liability under the tax law to be readily ascertained; and
  - (e) be retained for 5 years (or such other time as may be prescribed) after the end of tax period to which they relate.
- (3) If, at the end of the period referred to in paragraph (2)(e), the person has records that:
  - (a) relate to a tax assessment for which the time to make an amendment under section 16 has not expired, the person must retain the records until the end of the amendment period; or
  - (b) are necessary for a tax audit by the Director, or a proceeding before the Revenue Tribunal or a Court, commenced before the end of the period referred to in paragraph (2)(e), the person must retain the records until the audit and all proceedings have been completed.
- (4) If a person maintains records outside Vanuatu, the Director may, by notice in writing, require the persons to make the records available in Vanuatu for inspection by the Director and within the time specified in the notice.
- (5) If records referred to subsection (1) are not in English, French, or Bislama, the Director may, by notice in writing, require the person to provide, at the taxpayer's expense, a translation into English by a translator approved by the Director on or before the date specified in the notice.

- (6) To avoid doubt, a reference to records includes all source and underlying documents relating to transactions entered into by the person, including, invoices, purchase orders, delivery dockets, receipts, contracts, and Customs documentation.
- (7) The Regulations may provide for the use of cash register machines and point of sale machines, and any other device or technology (including software) used to record sales and purchases and other business transactions.
- (8) For the purposes of paragraph (2)(e) if an entity ceases to exist, all directors, partners, trustees, and controlling members of the entity as the case may be must ensure that the records of the entity are retained for the required period.
- (9) For the purposes of this section:

**business** means any of the following activities:

- (a) any industrial, commercial or professional activity conducted for profit, whether conducted continuously or short term; or
- (b) the activity of developing or renting out real property; or
- (c) the activity of investing in property; or
- (d) any activity of an entity.

**investing in property** means any activity undertaken to earn property income,

**property income** mean: the profits or income earned by virtue of owning property including the following:

- (a) a dividend, interest, royalty, annuity, or other amount arising from the provision, use, or exploitation of property; or
- (b) a gain on disposal of real property.



## **PART 4 TAX RETURNS**

### **9 Filing of tax returns**

- (1) A taxpayer who is required to file a tax return under a tax law must file the return in the approved form.
- (2) The approved form may combine the tax return for two or more taxes on a single form.
- (3) If a taxpayer has failed to file a tax return as required under a tax law, the Director may, by notice in writing, require the taxpayer to file the return on or before the due date set out in the notice.
- (4) Subject to subsection (5), if the Director is not satisfied with a tax return filed by a taxpayer, the Director may, by notice in writing, require the taxpayer to:
  - (a) file a further or more detailed return on or before the due date set out in the notice; or
  - (b) provide any further information as specified in the notice on or before the due date set out in the notice.
- (5) Paragraph (4)(a) does not apply if the tax return already filed is a self-assessment return filed by the taxpayer in the approved form.
- (6) A notice served on a taxpayer under subsection (3) or (4) does not change the date for payment of any tax due (referred to as the “original due date”) under the tax return as specified in the tax law under which the return is required to be filed and late payment interest and late payment penalty remain payable from the original due date.
- (7) The Regulations may provide for the signing and certification of returns by taxpayers, representatives, and registered tax agents.

### **10 Advance returns**

- (1) This section applies if, during a tax period, a taxpayer or the taxpayer’s representative:
  - (a) has died; or
  - (b) has become bankrupt, gone into liquidation, or otherwise ceased to exist; or

- (c) is about to leave Vanuatu permanently; or
  - (d) has ceased, or is about to cease, carrying on business in Vanuatu; or
  - (e) on a reasonable belief of the Director, will not file a tax return for the period on or before the due date.
- (2) If this section applies in relation to a tax period, the Director may, by notice in writing and at any time during the tax period require a taxpayer or the taxpayer's representative:
- (a) to file a tax return for the tax period on or before the date specified in the notice being a date that may be before the date that the return for the tax period would otherwise be due; and
  - (b) to pay any tax due under the return by the due date for filing the return under paragraph (a).
- (3) If a taxpayer is subject to more than one tax, a notice under subsection (2) may apply to each tax.

#### **11 Extension of time to file a tax return**

- (1) A taxpayer may apply, in writing, to the Director for an extension of time to file a tax return.
- (2) An application under subsection (1) must be made before the due date for filing the tax return.
- (3) Subject to subsection (4), the Director may, upon satisfaction that there is reasonable cause, grant an application under this section and must serve notice of the decision on the taxpayer.
- (4) The due date for a taxpayer to file a tax return can be extended under subsection (3) only once.
- (5) An extension of time under this section must not exceed 30 days unless there are exceptional circumstances that justify the Director granting an extension of time for more than 30 days.
- (6) An extension of time granted under this section does not change the date for payment of any tax due (referred to as the "original due date") under the tax return as specified in the tax law under which the return is required

to be filed and late payment interest and, subject to section 29, late payment penalty remains payable from the original due date.

- (7) The Director may, on his or her own motion, grant all taxpayers, or a class of taxpayers, an extension of time to file a tax return and the extended due date applies for all purposes of the Act, including the payment of tax.

**12 Tax return duly filed**

A tax return purporting to be filed by or on behalf of any taxpayer is deemed to have been filed by that taxpayer or with the taxpayer's authority unless the contrary is proved.

## **PART 5 TAXATION ASSESSMENTS**

### **13 Self-assessment**

- (1) A self-assessment taxpayer who has filed a self-assessment return in the approved form for a tax period is deemed, for all purposes of this Act, to have made an assessment of the amount of tax payable (including a nil amount) for the tax period to which the return relates being that amount as set out in the return.
- (2) If a registered person has filed a tax return in the approved form for a taxable period and the person has a negative amount for the period as referred to in paragraph 19(10)(b) of the Value Added Tax Act [CAP 247], the person is deemed, for all purposes of this Act, to have made an assessment of the negative amount for the period being that amount as set out in the return.
- (3) A tax return in the approved form completed and filed electronically by a taxpayer is a self-assessment return despite either or both the following applying:
  - (a) the form included pre-filled information provided by the Director;
  - (b) the calculation of the tax payable or any other amount is made electronically as information is inserted into the form.

### **14 Default assessment**

- (1) If a taxpayer has failed to file a tax return for a tax period on or before the due date, the Director may, at any time and based on such evidence as may be available and to the best of his or her judgement, make an assessment (referred to as a “default assessment”) of:
  - (a) in the case of a negative amount under paragraph 19(10)(b) of the Value Added Tax Act [CAP 247] - the negative amount for the period; or
  - (b) in any other case - the tax (including a nil amount) payable by the taxpayer for the period.
- (2) The Director must serve a taxpayer assessed under subsection (1) with notice, in writing, of the default assessment specifying the matters required by the Regulations.
- (3) The service of a notice of a default assessment under this section does not change the due date (referred to as the “original due date”) for payment of

the tax payable under the assessment as determined under the tax law imposing the tax, and late payment penalty and late payment interest remain payable from the original due date.

- (4) Nothing in this section relieves a taxpayer from being required to file the tax return to which the default assessment served under this section relates.
- (5) A tax return filed by a taxpayer for a tax period after a notice of a default assessment has been served on the taxpayer for the period is not a self-assessment return.

**15 Advance assessment**

- (1) Subject to subsection (2), the Director may, based on such evidence as may be available and to the best of his or her judgement, make an assessment (referred to as an “advance assessment”) of the tax payable by a taxpayer specified in section 10 for the tax period in which an event specified in subsection 10(1) occurred.
- (2) Subsection (1) applies only if the taxpayer has not filed a tax return, including an advance return, in the approved form for the tax period.
- (3) The Director:
  - (a) may make an advance assessment before the date on which the taxpayer’s tax return for the period is due; and
  - (b) must make an advance assessment in accordance with the law in force at the date the advance assessment was made.
- (4) The Director must serve a taxpayer assessed under subsection (1) with notice, in writing, of the advance assessment specifying the due date for payment and any other matters required by the Regulations.
- (5) An advance assessment may be amended under section 16 so that the taxpayer is assessed in respect of the whole of the tax period to which the advance assessment relates.
- (6) Nothing in this section relieves a taxpayer from the requirement to file the tax return to which the advance assessment served under this section relates.
- (7) A tax return filed by a taxpayer for a tax period after a notice of an advance assessment has been served on the taxpayer for the period is not a self-assessment return.

**16 Amended assessment**

- (1) Subject to this section, the Director may amend a taxation assessment (referred to in this section as the “original assessment”) by making such alterations or additions, based on such evidence as may be available and to the best of his or her judgement, to the original assessment of a taxpayer for a tax period to ensure that:
  - (a) in the case of a negative amount under paragraph 19(10)(b) of the Value Added Tax Act [CAP 247] - the taxpayer is assessed in respect of the correct amount of the negative amount for the tax period; or
  - (b) in any other case - the taxpayer is assessed in respect of the correct amount of tax payable (including a nil amount) for the tax period.
- (2) Subject to subsection (3), the Director may amend a taxation assessment under subsection (1):
  - (a) in the case of fraud or wilful neglect by, or on behalf of, the taxpayer - at any time; or
  - (b) in any other case and subject to a tax law providing otherwise - within 5 years from:
    - (i) for a self-assessment - the date that the self-assessment taxpayer filed the self-assessment return to which the self-assessment relates; or
    - (ii) for any other taxation assessment - the date the Director served notice of the assessment on the taxpayer.
- (3) Subject to subsection (4), if the Director has served a notice of an amended assessment on a taxpayer under subsection (1), the Director may further amend the original assessment to which the amended assessment relates within the later of:
  - (a) the period specified in paragraph (2)(b); or
  - (b) one year after the Director served notice of the amended assessment on the taxpayer.
- (4) If paragraph (3)(b) applies, the Director is limited to amending the alterations or additions made in the amended assessment to the original assessment.

- (5) The Director must serve a taxpayer with notice, in writing, of an amended assessment made under subsection (1) or (3) specifying the matters required by the Regulations.
- (6) If a taxpayer's assessed liability is reduced under an amended assessment resulting in a refund being due to the taxpayer, the Director must apply the amount of the refund as specified in subsection 45(5).
- (7) The service of a notice of an amended assessment under this section does not change the due date (referred to as the "original due date") for payment of the tax payable under the original assessment as determined under the tax law imposing the tax, and late payment penalty and late payment interest remain payable from the original due date.
- (8) For the purposes of this section, a reference to a **taxation assessment** includes a reference to an assessment of customs duty in paragraph (d) of the definition of Customs decision in subsection 2(1) and a reference to tax includes a reference to customs duty.

**17 Application for an amendment to a self-assessment**

- (1) A taxpayer who has filed a self-assessment return may apply to the Director for an amendment to be made to the self-assessment.
- (2) An application under subsection (1) must:
  - (a) state the amendments that the taxpayer believes are required to correct the self-assessment and the reasons for the amendments; and
  - (b) be filed with the Director within the period specified in subparagraph 16(2)(b)(i) or such other period specified under a tax law.
- (3) If an application has been made under subsection (1), the Director may make a decision to amend the self-assessment or refuse the application.
- (4) If the Director makes a decision to amend the self-assessment:
  - (a) the amended assessment must be made in accordance with subsection 16(1); and
  - (b) notice of the amended assessment must be served on the taxpayer in accordance with subsection 16(5).



- (5) If the Director makes a decision to refuse an application under subsection (1), the Director must serve the taxpayer with written notice of the decision.
- (6) A taxpayer may elect, by notice in writing to the Director, to treat the Director as having made a decision to refuse an application made by the taxpayer under subsection (1) if the Director has failed to notify the taxpayer of a decision on the application within 60 days of the application being filed with the Director.
- (7) For the purposes of paragraph 71(2)(b), the period for filing an application for review of a decision deemed to have been made under subsection (6) commences on the date that the taxpayer files the notice of election under subsection (6).

## **PART 6 DECISIONS OF THE DIRECTOR**

### **18 Statement of findings and reasons**

- (1) If the Director has refused an application made by a person under a tax law, the notice of refusal must include a statement of findings on the material facts relating to the refusal and the reasons for the refusal.
- (2) If the Director has failed to provide a person with a statement of findings and reasons as required under subsection (1), the person may, by notice in writing to the Director within 14 days of being served with the notice of refusal, request the Director to provide a statement of findings and reasons.
- (3) If a person has filed a notice of request with the Director under subsection (2), the time for challenging the decision to which the request relates does not commence until the date that the Director serves the person with the statement of findings and reasons.

### **19 Finality of revenue and reviewable decisions**

- (1) Except in proceedings under Part 7:
  - (a) a revenue decision is final and conclusive, and cannot be disputed in the Revenue Tribunal or a Court, or in any other proceedings on any ground whatsoever; and
  - (b) the production of a notice of a taxation assessment or a document under the hand of the Director certified as a copy of a notice of a taxation assessment is conclusive evidence of the due making of the assessment and that the amount and particulars of the assessment are correct; and
  - (c) in the case of a self-assessment, the production of the original self-assessment return or a document under the hand of the Director certified as a copy of the return is conclusive evidence of the contents of the return.
- (2) If the Director serves a notice of a taxation assessment on a taxpayer electronically, the reference in paragraph (1)(b) to a copy of the notice of assessment includes a document certified by the Director identifying the assessment and specifying the details of the electronic transmission of the assessment.
- (3) If a taxpayer has filed a self-assessment return electronically, the reference in paragraph (1)(c) to a copy of the return includes a document certified by

the Director identifying the return and specifying the details of the electronic transmission of the return.

- (4) A reviewable decision is final and conclusive, and can be disputed only by applying, under section 71, to the Revenue Tribunal for review of the decision.

## **PART 7 OBJECTIONS AND APPEALS**

### **20 Notice of objection to a revenue decision**

- (1) A person dissatisfied with a revenue decision may file a notice of objection to the decision with the Director:
  - (a) for a Customs decision - within 21 days of service of the notice of the decision; or
  - (b) for any other revenue decision - within 28 days of service of the notice of the decision.
- (2) A taxpayer's right to object to an amended assessment is limited to the alterations or additions made in the amended assessment to the original assessment.
- (3) A notice of objection to a revenue decision is validly filed only if the following conditions are satisfied:
  - (a) the notice of objection states precisely the grounds of the person's objection to the revenue decision, the amendments that the person considers are required to correct the decision, and the reasons for making those amendments; and
  - (b) if the notice of objection relates to a taxation assessment, the taxpayer, at or before filing the notice of objection, has:
    - (i) paid, or made a payment arrangement that has been accepted by the Director for payment of, any tax due under the taxation assessment that is not disputed by the taxpayer in the notice of objection; and
    - (ii) either:
      - (A) paid 50% of the tax due that is disputed by the taxpayer in the notice of objection or such lesser amount as may be agreed in writing with the Director; or
      - (B) provided security under section 32 for the amount of the disputed tax; and
    - (iii) filed the tax return to which the taxation assessment relates; and

- (c) if the notice of objection relates to a Customs assessment, the person has paid all or part of the customs duty liability under the assessment as required under the Customs legislation.
- (4) If a person's notice of objection has not been validly filed, the Director must immediately serve written notice on the person stating the following:
  - (a) the reasons why the objection has not been validly filed; and
  - (b) that the objection will lapse unless the person files a valid objection on or before the later of:
    - (i) 28 days from the date of service of the notice of the revenue decision to which the objection relates; or
    - (ii) 14 days from the date of service of the notice under this subsection.
- (5) The Director must serve written notice on the person objecting if that person's notice of objection has lapsed.
- (6) A person may apply, in writing, to the Director for an extension of time to file a notice of objection.
- (7) An application under subsection (6) must be filed within 28 days of service of the notice of the revenue decision.
- (8) The Director may, if satisfied that there is reasonable cause, grant an application under subsection (6) and must serve notice of the decision on the person applying for the extension.
- (9) An extension of time under this section must not exceed 14 days unless there are exceptional circumstances that justify the Director granting an extension of time for more than 14 days.
- (10) In this section and section 21, **Customs assessment** means an assessment referred to in paragraph (d) of the definition of "Customs decision" in section 2.

## **21 Making an objection decision**

- (1) The Director must consider a notice of objection that is validly filed under section 20 and make a decision to allow the objection in whole or in part or disallow the objection.

- (2) If a notice of objection relates to a taxation assessment and the Director has allowed the objection in part and amended the amount of the assessment, the amended assessment is deemed to be the taxation assessment for the purposes of any subsequent review or appeal relating to the assessment.
- (3) The Director must serve notice, in writing, of the objection decision on the person objecting and take all steps necessary to give effect to the decision, including, in the case of an objection to a taxation assessment, the making of an amended assessment.
- (4) Subsections (2) and (3) apply to a Customs assessment with the necessary changes made.

**Query: Please confirm whether subsection (3) or (5) will apply here**

- (5) A notice of an objection decision must include a statement of the Director's findings on the material facts and the reasons for the decision.
- (6) If the Director has failed to provide a person objecting with a statement of findings and reasons as required under subsection (5), the person may, by notice in writing to the Director within 14 days of being served with the notice of the objection decision, request the Director to provide a statement of findings and reasons.
- (7) If a person has filed a notice of request with the Director under subsection (6):
  - (a) the Director must provide the person with a statement of findings and reasons within 7 days after the person filed the notice of request; and
  - (b) the date for filing an application for review of the objection decision with the Revenue Tribunal under paragraph 71(2)(b) does not commence until the date that the Director serves the person with the statement of findings and reasons.
- (8) A person may elect, by notice in writing to the Director to treat the Director as having made a decision to disallow an objection made by the person if the Director fails to serve the person with a notice of an objection decision within 60 days of the notice of objection being filed.
- (9) If subsection (8) applies, then, for the purposes of paragraph 71(2)(b), the period for filing an application for review of the objection decision commences on the date that the person filed the notice under subsection (8) with the Director.

**22 Review of objection decision by the Revenue Tribunal**

A person dissatisfied with an objection decision may apply to the Revenue Tribunal for review of the decision in accordance with section 71.

**23 Appeal to Supreme Court**

A party to a proceeding before the Revenue Tribunal may only appeal the decision of the Tribunal on a question of law to the Supreme Court within 28 days after being notified of the decision of the Tribunal.

**24 Appeal to Court of Appeal**

A party to a proceeding before the Supreme Court relating to a reviewable decision may appeal the decision of the Supreme Court to the Court of Appeal within 28 days after being notified of the decision of the Supreme Court, but only with leave of the Court of Appeal.

**25 Implementation of decision**

- (1) The Director must take such action, including amending any taxation assessment, as is necessary to give effect to a decision of the Revenue Tribunal or Court within 45 days after:
  - (a) a final decision of the Revenue Tribunal; or
  - (b) a final decision of the Supreme Court; or
  - (c) being notified of a decision of the Court of Appeal.
- (2) The decision of the Revenue Tribunal becomes final if no notice of appeal is filed with the Registrar of the Supreme Court within the time specified under section 23 or such further time as the Supreme Court may allow.
- (3) The decision of the Supreme Court becomes final if no notice of appeal is filed with the Registrar of the Court of Appeal within the time specified under section 24 or such further time as the Court of Appeal may allow.
- (4) The time limit in paragraph 16(2)(b) for amending a taxation assessment does not apply to an amendment to give effect to a decision of the Revenue Tribunal or a Court.

**26 General provisions relating to objections and appeals**

- (1) In a proceeding under this Act in relation to a revenue or reviewable decision, the burden is on the person challenging the decision to prove that the decision is incorrect.

- (2) In an application to the Revenue Tribunal, or an appeal to the Supreme Court or Court of Appeal in relation to an objection decision, the taxpayer is limited to the grounds stated in the taxpayer's notice of objection to which the objection decision relates unless the Tribunal or Court grants the taxpayer leave to add new grounds.



## **PART 8 COLLECTION AND RECOVERY OF TAX**

### **Division 1 Payment of Tax**

#### **27 Tax as a debt due to the State**

- (1) Tax is a debt due to the State and the Director may recover any tax due in Court in the name of the State.
- (2) If a taxpayer fails to pay tax on or before the due date, the taxpayer is liable for any costs incurred by the Director in taking action to recover the unpaid tax.
- (3) If the Director has reasonable grounds to believe that a taxpayer may leave Vanuatu before the due date for payment of tax, the tax is due on such date as specified by the Director by notice in writing to the taxpayer.

#### **28 Secondary liabilities and tax recovery costs**

- (1) The Director must determine the amount of a secondary liability or tax recovery costs that a person is liable for and serve the person with notice of the amount payable and the due date for payment.
- (2) An amount of a secondary liability paid by a person is credited against the primary tax liability to which the secondary liability relates.
- (3) A person who has paid a secondary liability out of their own funds may recover the amount paid from the taxpayer as a debt in court.

#### **29 Extension of time to pay tax**

- (1) A taxpayer may apply, in writing, to the Director for an extension of time to pay any tax due and the application must be made on or before the original date on which the tax was due for payment.
- (2) If an application has been made under subsection (1), the Director may, having regard to the circumstances of the case:
  - (a) grant the taxpayer an extension of time for payment of the tax due;  
or
  - (b) require the taxpayer to pay any tax due in such instalments as the Director may determine.
- (3) The Director must serve the taxpayer with a written notice of the decision under subsection (2).

- (4) If 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, becomes immediately payable unless the Director enters into another instalment payment arrangement with the taxpayer.
- (5) A taxpayer granted an extension of time or permission to pay tax due by instalments is still liable for late payment interest from the original date that the tax was due for payment.
- (6) The Director may, on his or her own motion, grant taxpayers generally, or a class of taxpayers, an extension of time to pay tax and the extended due date applies for all purposes of the Act.

### **30 Priority of tax**

- (1) This section applies to the following amounts:
  - (a) value added tax;
  - (b) excise tax;
  - (c) an amount that a payer is required to pay under a section 35 notice.
- (2) A person owing, holding or receiving an amount to which this section applies:
  - (a) holds the amount in trust for the State; and
  - (b) the amount cannot be subject to attachment in respect of any debt or liability of the person.
- (3) In the event of the liquidation or bankruptcy of a person owing, holding or receiving an amount to which this section applies, the amount:
  - (a) does not form part of the person's estate in liquidation or bankruptcy; and
  - (b) must be paid to the Director before any distribution of property is made.

### **31 Indemnity**

- (1) This section applies to the following:

- (a) a representative who has paid an amount to the Director pursuant to subsection 7(1);
  - (b) a person who has paid an amount to the Director pursuant to a section 35 notice;
  - (c) an appointed person who has paid an amount to the Director pursuant to section 36;
  - (d) a financial institution that has complied with a notice under section 43.
- (2) A person to whom this section applies is indemnified against any claim by the taxpayer relating to the amount paid by the person to the Director or to compliance with section 43.

### **32 Security**

- (1) The Director may, for the purposes of securing payment of any tax that is or may become due by a taxpayer under a tax law, require the taxpayer to provide security in such amount and on such conditions as the Director determines.
- (2) The Director may require security to be provided:
- (a) by a bond; or
  - (b) by an unconditional bank guarantee; or
  - (c) in any other form as the Director determines, including by way of a mortgage over the taxpayer's property but subject to any pre-existing mortgage over the property.
- (3) A taxpayer is liable to provide security only if the Director serves the taxpayer with a notice, in writing, setting out the following:
- (a) the amount of the security required;
  - (b) the manner in which the security is to be provided;
  - (c) the due date for providing the security.
- (4) If a taxpayer fails to comply with a notice under subsection (3), the Director may recover the amount of the security under Division 3 of this Part on the basis that the unpaid security is unpaid tax.

## **Division 2 Late Payment Interest**

### **33 Imposition of late payment interest**

- (1) Subject to subsection (7), a taxpayer who fails to pay tax on or before the due date for payment is liable for late payment interest at the prescribed rate on the amount unpaid calculated for the period commencing from the date the payment was due to the date the payment is made.
- (2) Any interest paid by a taxpayer under subsection (1) must be applied in accordance with subsection 45(5) to the extent that the amount to which the interest relates is found not to have been payable.
- (3) Late payment interest payable in respect of a secondary liability is borne personally by the person who is liable for the secondary liability and is not recoverable from the taxpayer.
- (4) Interest payable under this section is computed as simple interest and calculated on a daily basis.
- (5) The Director must serve a taxpayer who is liable for late payment interest with notice of the amount of late payment interest payable by the taxpayer and the due date for payment.
- (6) A notice of the amount of late payment interest payable by a taxpayer may be included in any other notice, including a notice of a taxation assessment, served by the Director on the taxpayer.
- (7) If:
  - (a) the Director notifies a taxpayer in writing of the taxpayer's outstanding tax liability under a tax law (including in a taxation assessment); and
  - (b) the taxpayer pays the balance notified in full within the time specified in the notification (including late payment interest payable up to the date of the notification),the late payment interest does not accrue for the period between the date of notification and the date of payment.
- (8) Interest payable under this section is in addition to any late payment penalty imposed in respect of the late payment of tax.

- (9) The total amount of late payment interest payable by a taxpayer in respect of an unpaid tax liability is limited to the amount of the liability.
- (10) In this section, **tax** does not include late payment interest.

### **Division 3 Recovery of Unpaid Tax**

#### **34 Judgment debt procedure for recovery of unpaid tax**

- (1) The Director may recover unpaid tax by filing with the clerk of a court of competent jurisdiction a statement certified by the Director setting out:
  - (a) the name and address of the taxpayer liable for the unpaid tax; and
  - (b) the amount of the unpaid tax payable by the taxpayer.
- (2) A statement filed in accordance with subsection (1) is deemed to be sufficient proof of debt for the court to give judgment in favour of the Director.
- (3) In any action in a Court of competent jurisdiction for the recovery of unpaid tax, if the defendant is absent from Vanuatu or cannot after reasonable inquiry be found, service of the summons may with the leave of a Judge be effected by posting a duplicate or sealed copy thereof in a letter addressed to the defendant at the defendant's present or last known place of business or residence, whether in Vanuatu or elsewhere.

#### **35 Recovery of unpaid tax from a payer**

- (1) This section applies if a taxpayer is, or will become liable to pay tax and:
  - (a) the taxpayer has not paid the tax on or before the due date for payment; or
  - (b) the Director has reasonable grounds to believe that the taxpayer will not pay the tax on or before the due date for payment.
- (2) The Director may, by notice in writing, require a payer in relation to a taxpayer referred to in subsection (1) to pay the amount specified in the notice to the Director on or before the date stated in the notice.
- (3) The following apply to a notice referred to in subsection (2):
  - (a) the amount specified in the notice as payable by the payer must not exceed the amount of the unpaid tax or the amount of tax that the

Director believes will not be paid by the taxpayer on or before the due date;

- (b) subject to subsection (4), a payer is not liable to pay an amount in excess of the amount that the payer owes or may owe to, or holds or may hold for, the taxpayer;
  - (c) the date for payment by the payer specified in the notice must not be before the date that the amount owed by the payer to the taxpayer becomes due to the taxpayer or held on the taxpayer's behalf;
  - (d) the notice remains in force until the payer pays the amount specified in the notice or the Director revokes the notice;
  - (e) the notice may specify amounts of tax owing or that may become owing by the taxpayer under more than one tax law.
- (4) The amount that a notice under subsection (2) requires to be paid from salary or wages payable to the taxpayer must not exceed 20 per cent of the amount of each payment of salary or wages.
- (5) The Director must, by notice in writing to the payer, revoke or amend a notice under subsection (2) if the taxpayer has paid the whole or part of the tax due or has made an arrangement satisfactory to the Director for payment of the tax.
- (6) A payer who claims to be unable to comply, in whole or part, with a notice under subsection (2) may notify the Director, in writing and within 7 days of service of the notice, setting out the reasons for the payer's inability to comply with the notice.
- (7) The Director can accept a notice filed under subsection (6) by a financial institution in relation to a joint account of the taxpayer only if:
- (a) all the holders of the joint account do not have unpaid tax liabilities; or
  - (b) the taxpayer cannot withdraw funds from the account without the signature or authorisation of the other account holders; or
  - (c) the account is a partnership account.
- (8) If a notice is filed with the Director under subsection (6), the Director must, by notice in writing to the payer:

- (a) accept the notification and revoke or amend the notice under subsection (2); or
  - (b) reject the notification providing the payer with reasons for the rejection.
- (9) A payer who has filed a notice with the Director under subsection (6) must not deal with any monies owed to, or held on behalf of, the taxpayer before being served with a notice of the decision under subsection (8).
- (10) The Director must serve the taxpayer with a copy of a notice served on a payer under this section.
- (11) A payer who, without reasonable cause, fails to comply with a notice under this section is personally liable for any part of the amount specified in the notice that is unpaid.
- (12) The Director must credit an amount paid by a payer under this section against the tax liability of the taxpayer.
- (13) In this section, **payer**, in relation to a taxpayer referred to in subsection (1), means a person who owes or may subsequently owe money to, or who holds or may subsequently hold money for, the taxpayer.

### **36 Appointed person**

- (1) This section applies to the following persons referred to as an “appointed person”:
- (a) an administrator, executor, receiver, or liquidator appointed to manage, administer, liquidate, or wind up the affairs of a taxpayer, including a deceased taxpayer;
  - (b) a mortgagee that has taken possession of mortgaged property in Vanuatu belonging to a taxpayer.
- (2) An appointed person must notify the Director, in writing, of:
- (a) the appointment referred to in paragraph (1)(a) within 14 days of the date of the appointment; or
  - (b) the taking possession of the property referred to in paragraph (1)(b) within 14 days of the date of taking possession.

- (3) The Director must notify the appointed person, in writing, of the amount of any tax that is or will become payable by the taxpayer whose assets are in the possession or under the control of the appointed person and such notice must be served on the appointed person within 28 days of the Director receiving the notice under subsection (2).
- (4) An appointed person must not, without leave of the Director, part with any asset held in the capacity as an appointed person until both the following conditions are satisfied:
  - (a) the appointed person has filed all outstanding tax returns of the taxpayer, including an advance return if required by the Director under section 10;
  - (b) the appointed person has been served with a notice under subsection (3) or the 28 day period has expired without such a notice being served on the appointed person.
- (5) Subject to subsections (6) and (7), an appointed person:
  - (a) must set aside out of the proceeds of sale of any asset of the taxpayer the amount notified by the Director under subsection (3) or such other amount as is subsequently specified in a notice of assessment served on the appointed person by the Director; and
  - (b) is personally liable for the amount required to be set aside.
- (6) Subject to subsection (7), if the proceeds of sale of an asset are less than the amount notified by the Director under this section, the appointed person must set aside the entire proceeds of sale to meet the amount notified under this section.
- (7) Subject to section 30, nothing in subsection (4) or (5) prevents an appointed person from paying the following amounts in priority to the tax notified under subsection (3):
  - (a) a debt that has priority, in law or equity, over the tax notified under subsection (3);
  - (b) the expenses properly incurred by the appointed person in the capacity as such, including the appointed person's remuneration.
- (8) Where two or more persons are appointed persons in respect of a taxpayer, the obligations and liabilities under this section apply jointly and severally to the appointed persons.



- (9) For the purposes of this section and the definition of representative in section 7, a person ceases to be an appointed person in relation to a taxpayer:
- (a) if paragraph (1)(a) applies - on the date that the person ceases to hold the position mentioned in paragraph (1)(a); or
  - (b) if paragraph (1)(b) applies - on the date that the person ceases to have possession of the property referred to in paragraph (1)(b).
- (10) In this section, the reference to a **taxpayer** includes a deceased taxpayer.

**37 Temporary closure of business premises**

- (1) This section applies to a taxpayer if the following conditions are satisfied:
- (a) the taxpayer has failed to:
    - (i) file a tax return under section 16 of the Value Added Tax Act [CAP 247] on or before the due date; or
    - (ii) pay value added tax on or before the due date; and
  - (b) there has been at least 3 such failures by the taxpayer in the last 12 months or 6 such failures by the taxpayer in the last 24 months.
- (2) If this section applies, the Director may notify the taxpayer, in writing, of the intention to close down part or the whole of the taxpayer's business premises for a temporary period not exceeding 14 days, unless within a period of 7 days after the date of service of the notice, the taxpayer:
- (a) files all outstanding value added tax returns; and
  - (b) pays all outstanding value added tax due, and any penalty and late payment interest payable in respect of the unpaid tax.
- (3) If a taxpayer fails to comply with a notice under subsection (2), the Director may issue a notice (referred to as a "closure notice") to close down part or the whole of the business premises of the taxpayer for a period not exceeding 14 days.
- (4) The Director may, at any time, enter any premises described in a closure notice for the purposes of executing the notice and may require a police officer to be present while the notice is being executed.

- (5) If a closure notice has been issued under subsection (3), the Director:
- (a) must seal the business premises and affix in a conspicuous place on the front of the business premises closed down a notice specifying the matters required by the Regulations; and
  - (b) may make the closure public in any manner that the Director considers appropriate.
- (6) The Director must immediately arrange for removal of the notice referred to in subsection (5) if, during the period of closure:
- (a) the taxpayer files all outstanding value added tax returns; and
  - (b) the taxpayer pays all outstanding value added tax due, and any penalty and late payment interest payable in respect of the unpaid tax.
- (7) The Director, or a taxation officer or police officer with delegated authority to exercise powers under this section, is not liable for any damage resulting from an exercise of power under this section provided the Director, a taxation officer, or police officer has acted in good faith and in accordance with this section.

**38 Liability for tax payable by a company**

- (1) Subject to subsection (2), if an arrangement has been entered into with the purpose, or purposes that include the purpose, or the effect, of rendering a company unable to satisfy a current or future tax liability under a tax law, every person who was a director or controlling member of the company when the arrangement was entered into is jointly and severally liable for the tax liability of the company.
- (2) A director of a company is not liable under this section for the tax liability of the company if the director can establish that they have received no direct or indirect financial or other benefit from the arrangement and:
- (a) the director has, on becoming aware of the arrangement, formally recorded with the company the director's dissent and notified the Director in writing of the arrangement; or
  - (b) both the following conditions are satisfied:
    - (i) the director was not involved in the executive management of the company; and

- (ii) at no time did the director have any knowledge, and could not reasonably have been expected to know, of the arrangement.
- (3) Subject to subsection 16(2), to give effect to this section after a company has been liquidated or otherwise ceased to exist, the Director may make or amend an assessment of the tax liability of the company as if the company had not been liquidated or ceased to exist and serve notice of the assessment on any person to whom subsection (1) applies.
- (4) If a director of a company to which subsection (1) applies is a corporate director:
  - (a) for a corporate director that has only individuals as directors - the reference in subsection (1) to the directors of the company includes those individuals; or
  - (b) for corporate director that has a corporate director - the reference in subsection (1) to the directors of the company includes any individuals who are directors of the first-mentioned and second-mentioned corporate directors, and so on tracing through corporate directors until there is a corporate director that has only individuals as directors.
- (5) Nothing in section 7 limits the liability of a director under this section.
- (6) In this section:

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

**corporate director** means a body corporate that is a director of a company.

### **39 Transferred tax liabilities**

- (1) This section applies if all the following conditions are satisfied:
  - (a) a taxpayer (referred to as the “transferor”) has a tax liability in relation to a business carried on by the transferor;
  - (b) the transferor has transferred all or some of the assets of the business to an associate (referred to as the “transferee”);

- (c) the transfer was entered into with the purpose, or purposes that include the purpose, or the effect, of rendering the transferor unable to satisfy the tax liability.
- (2) If this section applies, the transferee is personally liable for the unpaid tax liability (referred to as the “transferred liability”) of the transferor in relation to the business but only to the extent of the value of the assets transferred.
- (3) Subsection (2) does not preclude the Director from recovering the whole or part of the transferred tax liability from the transferor.

**40 Seizure and forfeiture of goods**

- (1) The Director may enter any premises or place and seize any goods in respect of which the Director has reasonable grounds to believe that the value added tax or excise tax that is, or will become, payable in respect of the supply or removal of the goods has not been, or will not be, paid.
- (2) The Director may request a police officer to be present while the seizure of the goods is being executed.
- (3) Goods that have been seized under this section must be stored in a secure location approved by the Director for the storage of seized goods.
- (4) If goods have been seized under subsection (1), the Director must, within 2 working days after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before seizure, a notice in writing:
  - (a) identifying the goods; and
  - (b) stating that the goods have been seized under this section and the reason for seizure; and
  - (c) setting out the terms for release of the goods; and
  - (d) stating that the goods will be forfeited if not claimed within the detention period specified in the notice.
- (5) For the purposes of paragraph (4)(d), the detention period is:
  - (a) for perishable goods - such period as the Director considers reasonable having regard to the condition of the goods; or

- (b) for any other goods - a period of not less than 21 days after the seizure of the goods.
- (6) The Director is not required to serve a notice under subsection (4) if, after making reasonable enquiries, the Director does not have sufficient information to identify the person on whom the notice should be served.
- (7) If subsection (6) applies, the Director may serve a notice under subsection (4) on any person claiming the goods, provided the person has given the Director sufficient information to enable such a notice to be served.
- (8) A person that has been served with a notice under subsection (4) claims goods that have been seized under subsection (1) by paying, or making an arrangement that is accepted by the Director for payment of, the value added tax or excise tax payable, or that may become payable, in respect of the supply or removal of the goods.
- (9) The Director may authorise the delivery of goods seized under subsection (1) to a person who has claimed the goods in accordance with subsection (8).
- (10) Seized goods that have not been claimed within the detention period specified in subsection (5) are deemed to have been forfeited to the Director at the end of the detention period.
- (11) The Director may sell the goods by public auction or in such other manner as the Director may determine and apply the proceeds of sale in the following order:
  - (a) towards the cost of taking, keeping, and selling the forfeited goods as determined by the Director;
  - (b) in payment of the value added tax or excise tax, and any penalty, and late payment interest, that is, or will become, payable in respect of the supply or removal of the goods.
- (12) The remainder of the proceeds, if any, are to be retained by the Director.
- (13) Nothing in this section precludes the Director from proceeding under this Division with respect to any balance owed if the proceeds of disposal are not sufficient to meet the amounts referred to in paragraphs (11)(a) and (b).

- (14) The Director, or a taxation officer, or police officer with delegated authority to exercise powers under this section, is not liable for any damage resulting from an exercise of power under this section provided the Director, taxation officer, or police officer has acted in good faith and in accordance with the terms of the section.

**41 Administrative distress proceedings**

- (1) Subject to subsection (2), the Director may recover unpaid tax owing by a taxpayer by distress proceedings against the personal property of the taxpayer by issuing a notice, in writing, to the taxpayer specifying the following:
- (a) the name of the taxpayer; and
  - (b) the location of the property; and
  - (c) the tax liability to which the distress proceedings relate.
- (2) Subject to section 30, subsection (1) does not apply to personal property if there is a prior secured interest over the property that has priority, in law or equity, over the tax notified under subsection (1);
- (3) For the purposes of executing distress, the Director may:
- (a) at any time, enter any house or premises described in the notice authorising the distress proceedings; and
  - (b) request a police officer to be present while the distress is being executed.
- (4) The property distrained must be detained for the period specified in subsection 40(5) either at the premises where the distress was executed or at such other secure location approved by the Director, at the cost of the taxpayer.
- (5) The property distrained may be sold by public auction or in such other manner as the Director may direct if the taxpayer does not pay the tax due, together with the costs of the distress, within the detention period under subsection (4).
- (6) The Director must apply the proceeds of a disposal under subsection (5) in the following order:

- (a) towards the cost of taking, keeping, and selling the property distrained upon; and
  - (b) towards the unpaid tax liability of the taxpayer as specified in the distress notice; and
  - (c) towards any other unpaid tax liability of the taxpayer.
- (7) The remainder of the proceeds, if any, must be paid to the taxpayer.
- (8) Nothing in this section precludes the Director from proceeding under this Division with respect to any balance owed if the proceeds of the distress are not sufficient to meet the amounts referred to in subsection (6).
- (9) The Director, or a taxation officer or police officer with delegated authority to exercise powers under this section, is not liable for any damage resulting from an exercise of power under this section provided the Director, taxation officer, or police officer has acted in good faith and in accordance with the terms of the section.
- (10) In this section, **personal property** includes money.

#### **42 Departure prohibition**

- (1) This section applies if the Director has reasonable grounds to believe that an individual may leave Vanuatu and at the expected time of departure:
- (a) tax that is or will become payable by the individual is unpaid; or
  - (b) tax that is or will become payable by a company in which the individual is a controlling member is unpaid.
- (2) If this section applies, the Director may issue a notice (referred to as a “departure prohibition notice”) prohibiting the individual from leaving Vanuatu until:
- (a) the tax payable or that will become payable by the individual or by the company in which the individual is a controlling member is paid in full; or
  - (b) an arrangement is made satisfactory to the Director for payment of the tax referred to in paragraph (a).
- (3) A departure prohibition notice must specify the following:

- (a) the name and last known address of the individual to whom the notice applies;
  - (b) the amount of tax that is or will become payable by the individual or by the company in which the individual is a controlling member.
- (4) The Director must serve a copy of a departure prohibition notice on the individual named in the notice, but the non-receipt of a copy of the notice does not invalidate the notice.
- (5) If a departure prohibition notice has been issued, immigration officers must take such measures as may be necessary to enforce the notice including the seizure and retention of the individual's passport, certificate of identification, or any other document authorising the individual to leave Vanuatu.
- (6) If the tax specified in a departure prohibition notice is paid or a satisfactory arrangement for payment of the tax is made, the Director must issue the individual named in the notice with a departure certificate and production of the certificate to an immigration officer is sufficient authority for the officer to allow the individual to leave Vanuatu subject to other immigration requirements being satisfied.
- (7) No proceedings, criminal or civil, may be instituted or maintained against the State, or a taxation, customs, immigration, police, or other officer for anything lawfully done under this section.

#### **43 Preservation of assets**

- (1) This section applies if the Director has reasonable cause to believe that:
- (a) a taxpayer will not pay the full amount of tax owing by the due date; and
  - (b) the taxpayer has taken, or will take, steps to frustrate the recovery of the tax, including the dissipation of the taxpayer's assets.
- (2) If this section applies, the Director may serve a notice on a financial institution to require the financial institution to:
- (a) block the accounts of the taxpayer; and
  - (b) freeze access to any cash, valuables, precious metals, or other assets of the taxpayer in a safe deposit box held by the financial institution; and



- (c) provide information relating to the accounts or contents of the safe deposit box.
- (3) A notice served on a financial institution under subsection (2):
  - (a) must specify the name and last known address of the taxpayer to which the notice applies; and
  - (b) is valid for a period not exceeding 14 days as set out in the notice.
- (4) If a notice has been served under subsection (2), the Director may make an assessment, including an advance assessment, of the tax payable by the taxpayer for the current and any prior tax period.
- (5) A financial institution that fails to comply with a notice without reasonable cause, is liable for the tax liability of the taxpayer to the extent of the accounts and assets held by the financial institution.

## **PART 9 REFUNDS**

### **44 Credit for tax payments**

- (1) If the total amount of refundable tax credits allowed to a taxpayer for a tax period exceeds the tax liability of the taxpayer to which the credits relate for the period, the Director must apply the excess in the following order:
  - (a) pay any unpaid tax owing by the taxpayer under any tax law;
  - (b) subject to subsections (2), (3), and (4), refund the remainder, if any, to the taxpayer within 45 days of the date that the taxpayer filed the tax return for the tax period to which the tax credits relate.
- (2) With the written agreement of the taxpayer, an amount referred to in paragraph (1)(b) may be carried forward for the payment of any future tax liability of the taxpayer under any tax law.
- (3) If, at the time that an amount is to be refunded to a taxpayer under paragraph (1)(b) and the taxpayer has failed to file a tax return for a tax period, the Director may withhold payment of the refund until the taxpayer has filed all outstanding tax returns.
- (4) If a refund is due to an agency of the State, the Director must transfer the amount of the refund to the consolidated account.
- (5) In this section, **refundable tax credit** means a tax credit allowed under subsections 28(2) and 35(12).

### **45 Refund of overpaid tax**

- (1) If a taxpayer believes that he or she has overpaid tax under a tax law, the taxpayer may apply, in the approved form, to the Director for a refund of the overpaid tax.
- (2) This section applies only if a refund of overpaid tax does not require the Director to make an amended assessment.
- (3) An application for a refund under subsection (1) must be filed within 5 years after the date the tax was paid.
- (4) The Director must serve the taxpayer with notice, in writing, of the decision on the application for a refund.

- (5) If the Director is satisfied that a taxpayer that has applied under subsection (1) has overpaid tax under a tax law, the Director must in the following order:
  - (a) apply the amount of the refund to pay any other unpaid tax owing by the taxpayer under the tax law; and
  - (b) pay any unpaid tax owing by the taxpayer under any other tax law; and
  - (c) subject to subsections (6), (7), and (8), refund the remainder, if any, to the taxpayer within 45 days of the taxpayer being served with the notice under subsection (4).
- (6) With the written agreement of the taxpayer, an amount referred to in paragraph (5)(c) may be carried forward for the payment of any future tax liability of the taxpayer under any tax law.
- (7) If, at the time that an amount is to be refunded to a taxpayer under paragraph (5)(c) a taxpayer has failed to file a tax return for a tax period, the Director may withhold payment of the refund until the taxpayer has filed all outstanding tax returns.
- (8) If a refund is due to an agency of the State, the Director must transfer the amount of the refund to the consolidated account.
- (9) This section does not apply if section 44 of this Act or subsection 41(1) of the Value Added Tax Act [CAP 247] applies.

**46 Recovery of erroneously paid refunds**

- (1) If a refund has been erroneously paid to a taxpayer under a tax law, the taxpayer is liable to repay the amount of the erroneous refund by the date specified in a notice of demand served on the taxpayer by the Director.
- (2) If a refund has been erroneously paid due to an error made by the taxpayer in claiming the refund, the taxpayer is liable to pay late payment interest calculated for the period commencing on the date that the refund was erroneously paid and ending on the date that the refund was repaid.
- (3) An amount owing by a taxpayer under subsection (1) that is not paid on or before the due date specified in the notice of demand is deemed to be unpaid tax for the purposes of Part 8 and section 87.

## **PART 10 INFORMATION COLLECTION**

### **47 Confirmation of information**

- (1) The Director may serve a notice on a person requiring the person to confirm the correctness of any information specified in the notice by the date specified in the notice.
- (2) A person who is served with a notice under subsection (1) may, by notice in writing to the Director:
  - (a) confirm the correctness of the information; or
  - (b) correct or clarify the information; or
  - (c) deny the correctness of the information in full.
- (3) The response of a person under subsection (2) to a notice served under subsection (1) is deemed for all purposes under the tax laws to be information provided to the Director by the person.
- (4) If a person served with a notice under subsection (1) fails to respond to the notice within the time specified in the notice or such further time as the Director may allow, the information specified in the notice is deemed for all purposes of the tax laws to be information provided to the Director by the person.
- (5) If subsection (4) applies, the person may correct the information within 2 years from the date of the notice and the corrected information is deemed for all purposes under the tax laws to be information provided to the Director by the person.

### **48 Power to enter and search**

- (1) For the purposes of the administration of any tax law, the Director:
  - (a) must have, at all times and without notice, full and free access to any premises, place, property, records, or electronic data storage facility; and
  - (b) may make an extract or copy of any records to which access is obtained under paragraph (a); and
  - (c) may seize any records that, in the opinion of the Director, affords evidence that may be material in determining the tax liability of any taxpayer; and

- (d) may retain any records seized under paragraph (c) for as long as they may be required for determining a taxpayer's tax liability or for any proceeding under a tax law; and
  - (e) may, if a hard copy or copy on a data storage media of information stored on a data storage device is not provided, seize and retain the data storage device for as long as is necessary to copy the information required.
- (2) A taxation officer is not 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 Director's written authorisation permitting the officer to exercise powers under subsection (1).
- (3) The Director 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 must provide all reasonable facilities and assistance to the Director, including the following:
- (a) answering questions relating to the investigation to which the exercise of power relates either orally or in writing;
  - (b) providing access to information stored on, or in, an electronic information storage facility, including the entering of a password or other basis of authentication for access to the facility;
  - (c) providing access to decryption information necessary to decrypt data to which access is sought under this section;
  - (d) providing light, power, and reasonable office facilities.
- (5) A person whose records or data storage device have been seized under subsection (1) may examine them and make copies, at the person's expense, during normal office hours and on such terms and conditions as the Director may specify.
- (6) The Director must sign for all records and data storage devices removed and retained under this section and:
- (a) for records - must return the original records to the owner within 14 days after the conclusion of the investigation and any related proceedings; and

- (b) for a data storage device - must return the device to the owner immediately after the data on the device has been copied in accordance with paragraph (1)(e).
- (7) The Director is not liable for any cost or fee applicable to the production of records or access to premises under this section.
- (8) The Director, or a taxation officer or police officer with delegated authority to exercise powers under this section is not liable for any damage to any premises or property suffered in the course of the exercise of that power provided that any force used by the Director, taxation officer, or police officer was reasonably necessary to gain access to the premises or property.
- (9) This section has effect despite:
  - (a) any law relating to privilege or the public interest with respect to access to premises or places, or the production of any property or records; or
  - (b) any fiduciary, contractual or other duty of confidentiality.

**49 Administrative summons**

- (1) The Director may, for the purposes of administering any tax 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 concerning the tax affairs of that person or any other person; or
  - (b) attend at the time and place specified in the notice to be examined by the Director, concerning the tax affairs of that person or any other person; or
  - (c) produce, within the time and at the place specified in the notice, any records or data storage devices under the control of the person concerning the tax affairs of that person or any other person.
- (2) Unless the Director provides otherwise by notice in writing, any records required to be produced under paragraph (1)(c) must be produced in electronic format.
- (3) A notice issued under this section must be served personally upon the person to whom it is directed or left at the person's last known place of

business or residence and the certificate of service signed by the person serving the notice is evidence of the facts stated in the certificate.

- (4) The Director may require the information or evidence provided on examination referred to in subsection (1) to be:
- (a) given on oath or affirmation and, for that purpose, the Director may administer the oath or affirmation; or
  - (b) verified by statutory declaration or otherwise.
- (5) The Director is not liable for any cost or fee applicable to the production of records under this section.
- (6) This section has effect despite:
- (a) any law relating to privilege or the public interest with respect to access to premises or places, or the production of any property or records; or
  - (b) any fiduciary, contractual or other duty of confidentiality.

**50 Implementation of mutual administrative assistance agreements**

- (1) If a mutual administrative assistance agreement having legal effect in Vanuatu provides for exchange of information, or reciprocal assistance in the recovery of tax, service of process, or other administrative obligation, the Director must use the powers under this Act or any other Act to meet Vanuatu's obligations under the agreement on the basis that a reference in this Act or other Act:
- (a) to "tax" includes a foreign tax to which the exchange of information or reciprocal assistance relates; and
  - (b) to "unpaid tax" includes an amount specified in paragraph (a) that has not been paid on or before the due date; and
  - (c) to "taxpayer" includes a person liable for an amount specified in paragraph (a); and
  - (d) to "tax law" includes the law under which a foreign tax specified in paragraph (a) is imposed.
- (2) If the person holding the office of the Vanuatu competent authority under a mutual administrative assistance agreement is not the Director or other



taxation officer, the person has all the powers of the Director under this Act for the purposes of meeting the person's obligations under the agreement.

## **PART 11 TAX CLEARANCE**

### **51 Tax clearance certificate**

- (1) A person is required to produce a tax clearance certificate to a relevant authority in the circumstances prescribed in the Regulations.
- (2) A person to whom subsection (1) applies must apply, in the approved form, to the Director for the issue of a tax clearance certificate.
- (3) The Director must issue a tax clearance certificate to an applicant under subsection (2) if satisfied that:
  - (a) the applicant has no outstanding tax liabilities; or
  - (b) if the applicant does have an outstanding tax liability, the applicant:
    - (i) has entered into an arrangement satisfactory to the Director for the payment of the liability; and
    - (ii) is substantially compliant with the obligation under the tax laws to file tax returns.
- (4) The Director must issue the applicant with a tax clearance certificate or a notice refusing to issue a tax clearance certificate, as the case may be, within 14 days of the application being filed with the Director.
- (5) Subject to subsection (6), a tax clearance certificate issued by the Director is valid for a period of 12 months from the date of issue.
- (6) The Director must revoke a tax clearance certificate issued to a person if, after issue of the certificate and before expiry under subsection (5), the person fails to satisfy subsection (3).

## **PART 12 RULINGS**

### **52 Binding public rulings**

- (1) The Director, in consultation with the Director-General, may make a public ruling setting out how a tax law is to be applied.
- (2) The Director must publish a public ruling in accordance with section 53 and the ruling is binding on the Director until withdrawn under section 54.
- (3) A public ruling is not binding on a taxpayer.
- (4) A public ruling sets out the Director's opinion on the application of a tax law in the circumstances specified in the ruling and is not a decision of the Director for the purposes of this Act or any other law.

### **53 Application of a public ruling**

- (1) The Director must publish a public ruling on the Department's website and may also publish the ruling in any weekly newspaper in circulation in Vanuatu.
- (2) A public ruling must state that it is a public ruling and must have a number and subject heading by which it can be identified.
- (3) Subject to subsection (4), a public ruling applies from the date specified in the ruling or, if no date is specified, from the date of publication on the Department's website and remains in force for the period specified in the ruling or until withdrawn under section 54.
- (4) A public ruling does not apply before the date of publication unless it is for the benefit of taxpayers.

### **54 Withdrawal of a public ruling**

- (1) The Director, in consultation with the Director-General, may withdraw a public ruling, in whole or part.
- (2) The Director must publish a notice of the withdrawal of a public ruling on the Department's website and may also publish the notice in any weekly newspaper in circulation in Vanuatu.
- (3) If legislation is passed, or the Director publishes a later public ruling on the Department's website, that is inconsistent with an existing public ruling, the existing public ruling is deemed to be withdrawn to the extent of the inconsistency.

- (4) The withdrawal of a public ruling, in whole or part, has effect from:
- (a) if subsection (1) applies and subject to subsection (3) - the date specified in the notice of withdrawal or, if no date is specified, the date that the notice of withdrawal of the ruling is published on the Department's website; or
  - (b) if subsection (3) applies - the date of application of the inconsistent legislation or public ruling.
- (5) A public ruling cannot be withdrawn under subsection (1) before the date of publication of the notice of withdrawal unless the withdrawal of the ruling is for the benefit of taxpayers.

**55 Other advice provided by the Department**

- (1) No guidelines, publication, or other advice (oral or in writing) provided by the Department is binding on the Director except a public ruling binding under section 52.
- (2) A taxpayer who relies on guidelines, a publication, or other advice provided by the Department is not subject to penalty or late payment interest if the guidelines, publication, or other advice is subsequently found to be inaccurate.

## **PART 13 COMMUNICATIONS, FORMS, AND NOTICES**

### **56 Official languages**

- (1) English, French, and Bislama are the official languages of the tax laws and the Director may refuse to recognise any communication or document that is not in an official language.
- (2) Any price tag, brochure, or signage on or in the business premises of a person must contain information concerning pricing in one of the official languages of the tax laws.
- (3) Nothing in subsection (2) prevents the pricing information from being specified in any other language.

### **57 Forms and notices, authentication of documents**

- (1) The Director must make approved forms and other documents required for the purposes of the tax laws available to the public at offices of the Department or by other means, including making them available for downloading from the Department's website.
- (2) A notice or other document issued or served by the Director under a tax law is authenticated by the inclusion of the signature of the Director or taxation officer, including in electronic format, and a Departmental stamp is not required to authenticate the notice or document.

### **58 Filing documents in the approved form**

- (1) A document is filed by a person in the approved form under the tax laws if the document:
  - (a) is in the approved form; and
  - (b) contains the information as required by the form; and
  - (c) includes any attached documents required by the form; and
  - (d) is signed as required by the form.
- (2) Subject to subsection (3), the Director or Chairperson, as the case may be, must immediately notify a taxpayer, in writing, if a document filed by the taxpayer does not satisfy subsection (1).
- (3) The Director or Chairperson, as the case may be, may decide to accept a document that is not filed in the approved form if the document has been

filed in a form that contains substantially the information required by the approved form for the document.

**59 Manner of filing documents**

- (1) A person required to file a tax return or other document under a tax law must file the return or document in the prescribed manner.
- (2) If a person has failed to file a document as required under a tax law, the Director may, by notice in writing, require the person to file the return or other document within 21 days of the date of service of the notice or such later date as the Director may specify in the notice.
- (3) Subject to subsection (4), a person may apply, in writing, to the Director for an extension of time to file a document required under a tax law.
- (4) Subsection (3) applies only in relation to a document for which there is no specific provision for an application for an extension of time under this Act or the tax law requiring the filing of the document.
- (5) The Director may, upon satisfaction that there is reasonable cause, grant an application under subsection (3) and must serve notice of the decision on the applicant.

**60 Service of notices**

- (1) Subject to this Act, a notice or other document required to be served by the Director on a person for the purposes of a tax law is deemed to be properly served on the person if:
  - (a) personally served on the person; or
  - (b) left at the person's last known place of business or address as stated in any communication by the person with the Director; or
  - (c) sent by post to the person's last known place of business or address as stated in any communication by the person with the Director; or
  - (d) transmitted electronically to the person in accordance with subsection 61(3) to the person's last known electronic contact information as stated in any communication by the person with the Director.
- (2) The validity of the service of a notice or other document under a tax law cannot be challenged after the notice has been wholly or partly complied with.

- (3) In this section, **person** includes the person's representative and registered tax agent.

**61 Application of electronic tax system**

- (1) Despite the other provisions of this Act and for the purposes of a tax law, the Director may authorise any or all of the following to be done electronically through a computer system or mobile electronic device:
- (a) the filing of an application for a TIN or registration;
  - (b) the filing of a tax return or other document;
  - (c) the payment of tax;
  - (d) the payment of a refund of tax;
  - (e) the service of any document by the Director;
  - (f) the doing of any other act or thing that is required or permitted to be done under a tax law.
- (2) Subject to subsection (4), the Director may direct a person to do anything referred to in subsection (1) electronically through the use of a computer system or mobile electronic device.
- (3) Subject to subsection (4), the Director may do anything referred to in subsection (1) electronically through the use of a computer system or mobile electronic device.
- (4) Subsections (2) and (3) do not apply to a taxpayer if the Director is satisfied that the taxpayer does not have the capacity to receive or make communications or payments electronically.
- (5) For the avoidance of doubt, an electronic communication made by, or to, the Director pursuant to subsection (2) or (3) is deemed to be a notice in writing.
- (6) A taxpayer who files a tax return and pays tax electronically under this section must continue to file tax returns and pay tax in that manner unless otherwise authorised by the Director to use some other method of filing or payment.
- (7) A taxpayer who fails to file a tax return or pay tax electronically as required under subsection (6) is liable to pay a manual processing fee as

prescribed in the Regulations unless the taxpayer provides the Director with adequate reasons for the failure.

- (8) Part 8, sections 7 and 87 and paragraphs 44(1)(a) and 45(5)(b) apply to a manual processing fee payable by a taxpayer under subsection (7) on the basis that the fee is “tax” payable by the taxpayer.

**62 Defect does not affect validity**

The validity of a revenue or reviewable decision, a notice of a revenue or reviewable decision, or any other document purporting to be made, issued, or executed under a tax law by the Director cannot 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 contained in it,

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

**63 Rectification of mistakes**

If a notice of a taxation assessment or other document served by the Director under a tax law contains a mistake that is apparent on the face of the record and the 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 taxation assessment or other document any time before the expiry of 5 years from the date of service of the notice of the taxation assessment or other document.



## **PART 14 ADMINISTRATION**

### **Division 1 Administration of Tax Laws**

#### **64 Responsibilities of Minister and Director**

- (1) The Minister has the responsibility to:
  - (a) develop and ensure the overall effective application of the fiscal policies of Vanuatu; and
  - (b) ensure the effective coordination of the policies for the collection and preservation of tax under the tax laws.
- (2) The Minister may delegate any duty, power, or function under this Act to the Director General:
- (3) The Director General has the responsibility to:
  - (a) implement the Minister's responsibilities under subsection (1) in accordance with the Minister's delegation or in accordance with this Act or any other law; and
  - (b) perform any duties, powers, or functions as required under this Act.
- (4) The Director has the responsibility for the daily operation and administration of the tax laws.

#### **65 Taxation officers**

- (1) All taxation officers must be appointed according to law.
- (2) Every taxation officer referred to in paragraph (b) of the definition of taxation officer in section 2 must take the prescribed oath or affirmation of office before performing any duties under the tax laws, and a Magistrate, notary public, or the Director may administer the oath or affirmation.
- (3) The Director may require any other person, including an adviser or consultant to the Department, to take the prescribed oath or affirmation of office.
- (4) All actions taken by a taxation officer referred to in paragraph (b) of the definition of taxation officer in section 2 that are within authority are valid despite the officer having not taken the prescribed oath or affirmation under subsection (2).

- (5) No action or proceedings taken by the Director under a tax law is affected by reason of a vacancy or change in the office of Director and every such action or proceeding will continue in the ordinary course as if the office of Director were a corporation sole.
- (6) A taxation officer must not exercise a power, or perform a duty or function, under a tax law that:
  - (a) relates to a person in respect of which the taxation officer has or had a personal, family, business, professional, employment, or financial relationship; or
  - (b) otherwise involves a conflict of interest.
- (7) A taxation officer must not:
  - (a) prepare a tax return on behalf of a taxpayer or provide tax advice to a taxpayer; or
  - (b) act as a tax accountant or consultant; or
  - (c) accept employment from any person preparing tax returns or giving tax advice.
- (8) The Regulations may provide for key performance indicators and other performance related matters applicable to the Department in the administration of the tax laws.

**66 Delegation**

- (1) Subject to subsections (2) and (5), the Director may, by written instrument, delegate any duty, power, or function conferred on the Director under a tax law to a taxation officer.
- (2) A taxation officer shall exercise the powers of the Director in sections 37, 40, 41, 42, 43 and 48 only if the Director has specifically delegated the officer with authority to exercise the power.
- (3) Subject to subsection (5), the Director may, by written instrument, delegate any function or power conferred on the Director under a tax law to a police officer.
- (4) The terms of the delegation must be set out in a memorandum of understanding entered between the Director and the Police Commissioner.

- (5) The Director cannot delegate the power of delegation in this section.
- (6) The Director may, at any time, revoke an instrument of delegation made under this section.
- (7) A delegation made under this section does not prevent the Director from performing or exercising a delegated duty, power, or function.
- (8) A delegation made under this section continues in force despite any vacancy or change in the office of the Director, but nothing prevents the revocation or variation of the delegation at any time by a subsequent holder of the office of Director.

**67 Confidentiality of tax information**

- (1) A taxation officer must keep confidential all documents and information that are, or have been, in the officer's possession or knowledge in connection with the performance of duties under any tax law.
- (2) Nothing in subsection (1) prevents a taxation officer from disclosing a document or information to the following persons:
  - (a) another taxation officer for the purposes of the other officer carrying out official duties;
  - (b) a Customs officer for the purposes of carrying out any duty, power, or function under the Customs legislation;
  - (c) the Revenue Tribunal or a Court in relation to proceedings under a tax law;
  - (d) a person in the service of the Government, if such disclosure is necessary for the performance of the person's official duties;
  - (e) the person identified in a mutual administrative assistance agreement as the Vanuatu competent authority for the purposes of the agreement;
  - (f) the competent authority of the government of a foreign country with which Vanuatu has entered into an agreement providing for the exchange of information, to the extent permitted under that agreement;
  - (g) any other person with the written consent of the person to whom the document or information relates.

- (3) A taxation officer is permitted to disclose a document or information under subsection (2) only to the minimum extent necessary to achieve the object for which the disclosure is permitted.
- (4) Subsection (1) applies to a person receiving a document or information under subsection (2) as if the person were a taxation officer.
- (5) Despite subsection (2) and any other law, and subject to subsection (6), any information that is required to be treated as confidential under a mutual administrative assistance agreement may be disclosed only to the extent permitted under the agreement.
- (6) Subsection (5) applies only to the extent that the information has not been provided to the Vanuatu competent authority or the Director by the taxpayer or some other person.
- (7) In this section, **taxation officer** includes:
  - (a) the Minister or a former Minister responsible for finance; or
  - (b) the Director General or a former Director General; or
  - (c) a person employed or engaged by the Department in any capacity;  
or
  - (d) a former taxation officer, employee, or contractor of the Department; or
  - (e) a police officer in performing functions or powers under this Act.

### **68 Annual Report of Department**

- (1) The Director must prepare an Annual Report of the Department's activities for each financial year and submit a copy of the Annual Report to the Minister within 3 months after the end of the financial year.
- (2) The Annual Report required under subsection (1) must contain such information as prescribed.
- (3) The Minister must cause a copy of the Annual Report of the Department to be laid before Parliament within 2 months after the Minister receives the Report.

## **Division 2 Revenue Tribunal**

### **69 Revenue Tribunal established**

The Revenue Tribunal is established to hear applications for review of reviewable decisions.

### **70 Appointment of members**

- (1) The Revenue Tribunal consists of the following members:
  - (a) a Judge of the Supreme Court as the Chairperson of the Tribunal;  
and
  - (b) such other members appointed by the Minister who satisfy any of the following:
    - (i) a legal practitioner under the Legal Practitioners Act [CAP 119] who has significant experience in tax, customs, or commercial law;
    - (ii) a qualified accountant who has significant experience in tax matters;
    - (iii) subject to paragraph (3)(a), a person previously engaged as a taxation or Customs officer with significant technical and administrative experience in tax or customs matters;
    - (iv) an individual, including an individual outside Vanuatu, who has special knowledge, experience, or skills relevant to the functions of the Revenue Tribunal.
- (2) The Chairperson is appointed by the Chief Justice and holds office until he or she:
  - (a) ceases to hold the office of Judge of the Supreme Court; or
  - (b) resigns from the office of Chairperson by notice in writing to the Chief Justice.
- (3) The following persons cannot be appointed as a member of the Revenue Tribunal:
  - (a) a currently serving taxation or customs officer or a person who has ceased to be a taxation or customs officer for less than 2 years;

- (b) a person who has been:
  - (i) liable for a penalty under paragraph 85(1)(a), 88(2)(a), 89(2)(a) or section 90, or a similar penalty under the Value Added Tax Act [CAP 247] or Customs legislation; or
  - (ii) convicted of offence under a tax law or the customs legislation; or
  - (iii) convicted of the offence of bribery;
- (c) a person who is an undischarged bankrupt.
- (4) Subject to subsection (5), a member is appointed to the Revenue Tribunal for a term of 5 years and is eligible for re-appointment.
- (5) Subject to subsection (6), the Minister must by notice in writing, remove a member of the Revenue Tribunal (other than the Chairperson) who:
  - (a) becomes employed or engaged as a taxation or customs officer; or
  - (b) is liable for penalty under paragraph 85(1)(a), 88(2)(a), 89(2)(a) or section 90, or a similar penalty under the Customs legislation; or
  - (c) is convicted of:
    - (i) an offence under a tax law or the Customs legislation; or
    - (ii) the offence of bribery; or
  - (d) becomes an undischarged bankrupt; or
  - (e) is unable to perform the duties of office; or
  - (f) engages in proven misconduct, including failing to disclose a conflict of interest as required under subsection 72(3).
- (6) The removal of a member of the Revenue Tribunal under paragraph (5)(e) or (f) requires the consent of the Council of Ministers.
- (7) A member appointed to the Revenue Tribunal is not liable to any action or other proceeding for damages for, or in respect of, any act done or omitted to be done by the member in good faith in the exercise or performance, or

purported exercise or performance, of a power, function or duty conferred on him or her under this Division.

**71 Review of reviewable decision**

- (1) Any person who is dissatisfied with a reviewable decision may apply to the Revenue Tribunal for review of the decision.
- (2) An application under subsection (1) must be:
  - (a) filed in the approved form; and
  - (b) filed with the Tribunal within 28 days after the person making the application has been served with notice of the reviewable decision; and
  - (c) accompanied by the prescribed fee.
- (3) The Revenue 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 Revenue Tribunal must serve a copy of the application on the Director within 7 days of filing the application with the Tribunal.
- (5) In reviewing a reviewable decision, the Revenue Tribunal may exercise all the powers of the Director under the tax law under which the decision was made.
- (6) For the purposes of paragraph (2)(b), the period for filing an application for review of a decision deemed to have been made under subsection 75B(6) of the Customs Act No. 7 of 2013, commences on the date that the applicant files the notice of election under that subsection.

**72 Hearings of the Revenue Tribunal**

- (1) The Chairperson may make rules for the conduct of hearings before the Revenue Tribunal.
- (2) A proceeding before the Revenue Tribunal is to be conducted with as little formality and technicality as possible and the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.
- (3) A member of the Tribunal who has a material, pecuniary, or other interest in any proceeding that could conflict with the proper performance of the

member's functions must disclose the interest to the Chairperson who must record the interest, and such member must not take part in that proceeding.

**73 Decision of Revenue Tribunal**

- (1) Subject to subsection (2), the Revenue Tribunal must hear and determine an application under section 72 for review of a reviewable decision and make a decision on the application as set out in this section.
- (2) The Revenue Tribunal may, at any time, dismiss an application for review of a reviewable decision if the application is frivolous or vexatious.
- (3) Subject to subsection (4), if an application for review relates to an objection decision concerning a taxation assessment, the Revenue Tribunal may make an order to:
  - (a) affirm, reduce, or otherwise modify the taxation assessment to which the objection decision relates; or
  - (b) remit the taxation assessment to the Director for reconsideration in accordance with the directions of the Tribunal.
- (4) If, in considering an application for review of a taxation assessment, the Revenue Tribunal is of the view that the amount of tax assessed should be increased, the Revenue Tribunal must remit the taxation assessment to the Director in accordance with paragraph (3)(b).
- (5) If an application for review relates to any other reviewable decision, the Revenue Tribunal may make an order to affirm, vary, or set aside the decision.
- (6) The Revenue Tribunal must:
  - (a) make a written decision on an application for review as soon as practicable after the hearing has been completed; and
  - (b) serve a copy of its decision on each party to the proceeding within 7 days of making the decision.
- (7) The written decision of the Revenue Tribunal must include the 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.



- (8) A decision of the Revenue Tribunal comes into operation on the giving of the decision or such later date as may be specified by the Tax Tribunal in the notice of decision.
- (9) If the decision of the Revenue Tribunal is in favour of the applicant, the Director must take such steps as are necessary to implement the decision, including serving a notice of an amended assessment, within 45 days of being served with notice of the decision.
- (10) Subject to subsection (11), all decisions of the Revenue Tribunal are public records.
- (11) In releasing information or allowing access to information under subsection (10), the Revenue Tribunal must:
  - (a) take reasonable steps to conceal the identity and affairs of the applicant and any other person concerned with the application; and
  - (b) ensure that trade secrets or other confidential information are not disclosed.

#### **74 Administration of the Revenue Tribunal**

- (1) The Chairperson is responsible for managing the administrative affairs of the Revenue Tribunal.
- (2) The Revenue Tribunal has a Registrar appointed by the Chairperson and such other staff as the Chairperson determines and appoints.
- (3) The Registrar is to carry out secretariat functions of the Revenue Tribunal.
- (4) The Registrar has power to do all things necessary or convenient to be done for the purpose of assisting the Chairperson under subsection (1) and may act on behalf of the Chairperson in relation to the administrative affairs of the Revenue Tribunal.
- (5) The Regulations may provide for administrative matters relating to the Revenue Tribunal's operations, including the service of documents, place of hearings, conduct of hearings, and costs.

#### **75 Finances and reporting**

- (1) The State must provide the budget for the Revenue Tribunal.
- (2) The Revenue Tribunal must keep complete and accurate books of account.

- (3) The books of account and other financial documents of the Revenue Tribunal must be audited by the Auditor-General or by an auditor designated by the Auditor-General.
- (4) The Chairperson must prepare a report of the affairs of the Revenue Tribunal for each financial year.
- (5) The Chairperson must submit the report prepared under subsection (4) for a financial year to the Minister within 3 months after the end of the year.
- (6) The Minister must cause a copy of the annual report of the Revenue Tribunal to be laid before Parliament within 2 months after the Minister receives the report.

### **Division 3 Registration of Tax Agents**

#### **76 Application for tax agent registration**

- (1) An individual, partnership, or company wanting to provide tax agent services, may apply to the Director for registration as a tax agent.
- (2) An application under subsection (1) must be in the approved form and accompanied by the prescribed fee.
- (3) In this Division:

**company** means a body corporate; and

**tax agent services** means the following:

- (a) the preparation of tax returns on behalf of taxpayers;
- (b) the preparation of notices of objection on behalf of taxpayers in relation to the tax laws;
- (c) the provision of advice to taxpayers on the application of the tax laws;
- (d) representing taxpayers in their dealings with the Department in relation to the tax laws;
- (e) the transaction of any other tax-related business on behalf of taxpayers with the Department in relation to the tax laws.

**77 Registration of tax agents**

- (1) If an applicant under section 76 is an individual, the Director must register the applicant if satisfied that the applicant is a fit and proper person to provide tax agent services.
- (2) If an applicant under section 76 is a partnership, the Director must register the applicant if satisfied that:
  - (a) each partner in, or employee of, the partnership nominated by the partnership to provide tax agent services is a fit and proper person to provide such services; and
  - (b) every partner in the partnership is of good character.
- (3) If an applicant under section 76 is a company, the Director must register the applicant if satisfied that:
  - (a) each employee of the company nominated by the company to provide tax agent services is a fit and proper person to provide such services; and
  - (b) every director, manager, or other executive officer of the company is of good character.
- (4) It is a condition of registration under this section, that a tax agent must have an office in Vanuatu unless the Director permits the tax agent, by notice in writing, to provide tax agent services in Vanuatu through an office located outside Vanuatu.
- (5) The Regulations may provide for the following matters:
  - (a) criteria for determining if a person is a fit and proper person to provide tax agent services; and
  - (b) criteria for determining if a person is of good character; and
  - (c) the nomination by partnerships and companies of partners and employees, as the case may be, to provide tax agent services.
- (6) The initial registration of a person as a tax agent is valid for the period commencing on the date of registration and ending on the next following 31st December and can be renewed under section 78.

- (7) The Director must serve an applicant under section 76 with notice, in writing, of the decision on the application within 28 days of the application being filed with the Director or within such other time as prescribed.

**78 Renewal of tax agent registration**

- (1) A tax agent may apply to the Director for the renewal of the tax agent's registration.
- (2) An application under subsection (1) must be filed with the Director:
- (a) in the approved form and accompanied by the prescribed fee; and
  - (b) by the 7th of December of each year or such later date as the Director may allow.
- (3) The Director must 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 77.
- (4) The renewal of a tax agent's registration is valid until the next following 31st December and can be renewed in accordance with this section.
- (5) The Director must serve an applicant under subsection (1) with notice, in writing, of the decision on the application within 28 days of the application being filed with the Director or within such other time as prescribed.
- (6) Subject to section 81, the registration of a tax agent who does not apply for renewal of registration within the time specified in paragraph (2)(b) expires at the end of the term of registration.

**79 Communications by registered tax agent with Director**

- (1) If a registered tax agent files a tax return or other document, with the Director on behalf of a taxpayer, or otherwise communicates with the Director on behalf of a taxpayer, the taxpayer is deemed to have filed the tax return or other document, or made the communication.
- (2) Despite subsection (1), if a tax return or other document has been filed, or a communication made, by a registered tax agent with the Director that is false or misleading in a material particular and it is proven that the fault was that of the registered tax agent, the tax return or other document, or communication, is deemed to have been filed or made by the registered tax agent.

**80 Limitation on providing tax agent services**

- (1) Subject to subsection (2), no person other than a registered tax agent can demand or receive any fee for providing tax agent services.
- (2) Subsection (1) does not apply to:
  - (a) a legal practitioner under the Legal Practitioners Act [CAP 119] providing tax agent services in the course of undertaking legal work, other than services specified in paragraph (a) of the definition of tax agent services in section 76; or
  - (b) an employee of a taxpayer or registered tax agent acting in the ordinary course of employment.

**81 Cancellation of tax agent registration**

- (1) A registered tax agent must notify the Director, in writing, within 7 days of ceasing to satisfy the conditions for registration in section 77.
- (2) If a notification under subsection (1) is made by a registered tax agent that is a partnership or company that no longer satisfied paragraph 77(2)(a) or (3)(a), as the case may be, the registration of the tax agent must be cancelled after 30 days of the notification under subsection (1) if, by that time the partnership or company cannot satisfy paragraph 77(2)(a) or (3)(a), as the case may be.
- (3) A registered tax agent must notify the Director, in writing, if the agent no longer wishes to be a registered tax agent.
- (4) The Director must cancel the registration of a tax agent if:
  - (a) a tax return prepared and filed by the tax agent is false in any material particular, unless the tax agent establishes to the satisfaction of the Director that this was not due to any deliberate or negligent conduct of the tax agent; or
  - (b) the tax agent ceases to satisfy the conditions for registration in section 77; or
  - (c) the tax agent has ceased to carry on business as a tax agent including, in the case of a company or partnership, if the company or partnership ceases to exist; or
  - (d) the tax agent has notified the Director under subsection (3).

- (5) The Director must serve notice, in writing, of a decision to cancel the registration of a tax agent.
- (6) A notice of cancellation served on a registered tax agent under subsection (5) must include the reason for the decision to cancel the tax agent's registration.
- (7) Subject to subsection (8), the cancellation of the registration of a tax agent takes effect:
  - (a) on the date on which the tax agent ceases to carry on business as a tax agent; or
  - (b) 60 days after the date that the tax agent has been served with notice of the cancellation.
- (8) If a tax agent served with notice of the cancellation of the tax agent's registration applies to the Revenue Tribunal for review of the decision, the cancellation takes effect in accordance with subsection (7) only if confirmed by the Revenue Tribunal.

**Query:** *Please confirm if this should be reference to the Revenue Tribunal.*

#### **Division 4 Licensed book-keepers**

##### **82 Licensing of book-keepers**

Despite Division 3, the Minister may prescribe procedures for licensing, standards of conduct, fees, and penalties as may be necessary for the good management of any person who provides book-keeping, accounting, or other services directly or indirectly related to compliance with a tax law.

## **PART 15 ADMINISTRATIVE PENALTIES AND TAX OFFENCES**

### **Division 1 Application of Part 15**

#### **83 General provisions relating to administrative penalties and tax offences**

- (1) A person cannot be subject to both the imposition of a penalty and prosecution of an offence for the same act or omission.
- (2) If a person has committed an act or omission for which the person may be liable to both the imposition of penalty and the prosecution of an offence, the Director may decide whether to serve the person with a notice of assessment of the penalty or whether the person is to be prosecuted for an offence.
- (3) If a penalty has been paid by a person in respect of an act or omission and subsequently the person is prosecuted for an offence in respect of the same act or omission:
  - (a) if the person is convicted of the offence - the Director must apply the penalty in accordance with subsection (4); or
  - (b) if the person is not convicted of the offence - the Director must apply the penalty in accordance with section 45(5).
- (4) If paragraph (3)(a) applies, the Director must, if the amount of the penalty:
  - (a) paid by the person exceeds the amount of the fine imposed by the Court - pay to the Court so much of the penalty as is equal to the amount of the fine and apply the balance of the penalty in accordance with subsection 45(5); or
  - (b) is equal to, or less, than, the amount of the fine - pay the amount of the penalty to the Court.
- (5) If the Director pays the amount of a penalty to the Court in accordance with subsection (4), the Court must apply the penalty against the fine owing by the convicted person.
- (6) A convicted person is not liable to pay a fine to the Court to the extent of the penalty to be paid to the Court by the Director in accordance with subsection (4).

- (7) If the amount of the penalty is less than the fine imposed by the Court, the convicted person must pay the balance of the fine owing to the Court.
- (8) A person who is assessed for penalty or convicted of an offence under this Part is not relieved from the liability to pay the tax to which the penalty or conviction relates.

## **Division 2 Administrative Penalties**

### **84 Penalties relating to TINs**

- (1) A person who, without reasonable cause, fails to apply for a TIN as required under this Act is liable for a penalty equal to VT10,000 for each month or part of a month for the period:
  - (a) commencing from the month the person was first required to apply for a TIN; and
  - (b) ending on the month immediately preceding:
    - (i) the month the person files an application for a TIN; or
    - (ii) the month the Director issues the person with a TIN on his or her own motion.
- (2) A person is liable for a penalty equal to VT10,000 if the person:
  - (a) fails to notify a change in circumstances as required under subsection 4(8); or
  - (b) contravenes subsection 5(1).
- (3) Except if subsection 5(3) applies, a person is liable for a penalty equal to VT100,000 if the person:
  - (a) provides their TIN for use by another person; or
  - (b) uses the TIN of another person.

### **85 Penalty for failing to maintain records**

- (1) Subject to this section, a taxpayer who, without reasonable cause, fails to maintain or retain records as required under a tax law is liable:



- (a) for a failure that was made deliberately or recklessly - for a penalty equal to 75% of the amount of tax payable by the taxpayer under the tax law for the tax period to which the failure relates; or
  - (b) in any other case - for a penalty equal to 20% of the amount of tax payable by the taxpayer under the tax law for the tax period to which the failure relates.
- (2) If no tax is payable by the taxpayer for the tax period to which the failure referred to in subsection (1) relates, the penalty is:
- (a) for an individual - VT30,000; or
  - (b) for a entity - VT50,000.
- (3) A taxpayer who fails to comply with section 8(3) is liable for a penalty equal to VT1,000,000.
- (4) In addition to liability for a penalty under subsection (3), the Director may require a taxpayer who fails to comply with subsection 8(3) to maintain records in Vanuatu.
- (5) A taxpayer who fails to comply with a notice served on the taxpayer under subsection 8(4) is liable for a penalty equal to VT50,000.
- (6) In addition to the penalty imposed under subsection (5), the untranslated records cannot be accepted as evidence in challenging a taxation assessment for the tax period to which the records relate.

**86 Late filing penalty**

- (1) A person who fails to file a tax return or other document on or before the due date, or within such further time as the Director may allow under section 11 or 59, is liable for a late filing penalty equal to:
- (a) for an individual - VT30,000; or
  - (b) for a entity - VT50,000.
- (2) In addition to the penalty imposed under subsection (1), a person who fails to file a tax return on or before the due date or extended due date is liable for a penalty for each day or part day that the return remains unfiled after the expiration of 7 days from the due date or extended due date.
- (3) The amount of the daily penalty under subsection (2) is:

- (a) for an individual - VT3,000; or
  - (b) for a entity - VT5,000.
- (4) For the purposes of this section, a failure to comply with a notice served under subsection 59(2) is not subject to a penalty separate from the late filing penalty applicable to the failure to file the tax return or other document to which the notice under subsection 59(2) relates.
- (5) A person who fails to provide the Director with further information as specified in a notice served on the person under paragraph 9(4)(b) is liable for a penalty equal to:
- (a) for an individual – VT 30,000; or
  - (b) for a entity – VT50,000.

**87 Late payment penalty**

- (1) A taxpayer who fails to pay any tax on or before the due date or, if the Director has extended the due date under section 29, on or before the extended due date, is liable for a late payment penalty equal to 5 per cent of the amount of unpaid tax.
- (2) A penalty paid by a taxpayer under this section is applied in accordance with subsection 45(5) to the extent that the tax to which the penalty relates is found not to have been payable.
- (3) A penalty imposed under this section is in addition to late payment interest payable under section 33.
- (4) Late payment penalty payable in respect of a secondary liability is borne personally by the person liable for the secondary liability and is not recoverable from the taxpayer.
- (5) In this section, **tax** does not include penalty or late payment interest.

**88 Tax shortfall penalty**

- (1) This section applies to a person:
- (a) who makes a statement to a taxation officer that is false or misleading in a material particular or omits from a statement made to a taxation officer any matter or thing without which the statement is false or misleading in a material particular; and

- (b) whose tax liability or that of any other person, calculated on the basis of the statement is less than it would have been had the statement not been false or misleading (the difference being referred to as the “tax shortfall”).
- (2) Subject to subsections (3) and (4), a person to whom this section applies is liable for a tax shortfall penalty equal to:
  - (a) if the statement or omission was made deliberately or recklessly - 75% of the tax shortfall; or
  - (b) in any other case - 20% of the tax shortfall.
- (3) The percentage rate of a tax shortfall penalty imposed under subsection (2) on a person is increased by:
  - (a) 10 percentage points if it is the second application of this section to the person; or
  - (b) 25 percentage points if it is the third or a subsequent application of this section to the person.
- (4) The percentage rate of a tax shortfall penalty imposed under subsection (2) on a person is reduced by 10 percentage points if the person voluntarily discloses to the Director the statement or omission to which the section applies prior to:
  - (a) the Director informing the person who made the statement or, if different, the person to whom the statement relates of the discovery of the tax shortfall; or
  - (b) the commencement of an audit of the tax affairs of the person to whom the statement relates.
- (5) No tax shortfall penalty is payable under subsection (2) if:
  - (a) the person who made the statement establishes that they did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular; or
  - (b) subject to subsection (6), the tax shortfall arose as a result of a taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer’s circumstances in filing a self-assessment return; or

- (c) the failure was due to a clerical or similar error, other than a repeated clerical or similar error.
- (6) A position taken by a taxpayer in making a self-assessment that is contrary to a public ruling in force under section 53 is not regarded as a reasonably arguable position for the purposes of paragraph (5)(b) unless the ruling is held to be incorrect.
- (7) Nothing in subsection (5) prevents the imposition of late payment interest in respect of a tax shortfall, if the tax is not paid on or before the due date for payment.
- (8) In this section, a statement made to a taxation officer includes a statement made, in writing or orally, in any of the following circumstances:
  - (a) in an application, certificate, declaration, notification, tax return, notice of objection, or other document filed under a tax law, or a Customs entry filed under the Customs legislation;
  - (b) in information provided under a tax law;
  - (c) in a document provided to a taxation officer otherwise than pursuant to a tax law;
  - (d) in an answer to a question asked of a person by a taxation officer;
  - (e) in a statement to another person with the knowledge or reasonable expectation that the statement would be passed on to a taxation officer.

**89 False or misleading statement penalty**

- (1) This section applies to a person who makes a statement to a taxation officer that is false or misleading as specified in section 88(1)(a) but which does not result in a tax shortfall.
- (2) Subject to subsection (3), a person to whom this section applies is liable for a false or misleading statement penalty equal to:
  - (a) if the statement or omission was made deliberately or recklessly - VT50,000; or
  - (b) in any other case - VT30,000.

- (3) No false or misleading statement penalty applies in the circumstances specified in subsection 88(5).
- (4) Subsection 88(8) applies in determining whether a person has made a statement to a taxation officer.

**90 Tax avoidance penalty**

If the Director has applied a tax avoidance provision in assessing a taxpayer, the taxpayer is liable for a tax avoidance penalty not exceeding VT5,000,000.

**91 VAT penalties**

- (1) A person who fails to apply for registration as required by section 12 of the Value Added Tax Act [CAP 247] is liable for a penalty equal to the higher of:
  - (a) 75% of the amount of VAT payable (if any) during the period commencing on the day on which the person was required to apply for registration until either the person files an application for registration or the person is registered on the Director's own motion; or
  - (b) VT100,000.
- (2) A registered person is liable for a penalty equal to VT50,000 if the person:
  - (a) fails to notify the Director of the details of a supply received as required under subsection 12(8) of the Value Added Tax Act [CAP 247]; or
  - (b) fails to comply with section 12A of the Value Added Tax Act [CAP 247]; or
  - (c) fails to apply for cancellation of registration as required under section 13 of the Value Added Tax Act [CAP 247]; or
  - (d) fails to notify the Director of a change in circumstances as required under section 14 of the Value Added Tax Act [CAP 247]; or
  - (e) fails to provide a tax invoice, credit note, or debit note as required under section 21 or 22 of the Value Added Tax Act [CAP 247]; or
  - (f) issues multiple tax invoices, credit notes, or debit notes contrary to section 21 or 22 of the Value Added Tax Act [CAP 247]; or

- (g) fails to display prices as inclusive of VAT as required under section 60 of the Value Added Tax Act [CAP 247].
- (3) A person who is not a registered person who issues a tax invoice, credit note, or debit note is liable for a penalty equal to VT100,000.

**92 Miscellaneous penalties**

- (1) A person who fails to comply with subsection 6(2) is liable for a penalty equal to VT10,000.
- (2) A person who fails to provide security as required by the Director under section 32 is liable for a penalty equal to VT30,000.
- (3) An appointed person who fails to comply with section 36 is liable for a penalty equal to VT30,000.
- (4) A person who fails to comply with subsection 57(2) is liable for a penalty equal to VT10,000.

**93 General provisions relating to administrative penalties**

- (1) A person cannot be subject to more than one penalty in respect of the same act or omission.
- (2) Liability for a penalty is calculated separately with respect to each section in this Division.
- (3) A person is liable for a penalty only if the Director:
  - (a) makes an assessment of the amount of penalty payable by the person under this Division; and
  - (b) serves notice of the assessment on the person setting out the amount of penalty payable and the due date for payment.
- (4) A person liable to pay penalty under this Division may apply, in writing, to the Director for remission of the penalty payable.
- (5) The Director may, upon application under subsection (4) or his or her own motion, remit, in whole or in part, any penalty payable by a person other than a penalty imposed under section 88.

### **Division 3 Tax Offences**

#### **94 Failure to maintain proper records**

A taxpayer who, without reasonable cause, fails to maintain or retain records as required under a tax law commits an offence.

#### **95 Failure to file tax return or other document**

- (1) A person who fails to file a tax return or other document on or before the due date, or within such further time as the Director may allow under section 11 or 59, commits an offence.
- (2) If a taxpayer who is convicted of an offence under subsection (1) has not filed the tax return by the time of the conviction, the Court must order the taxpayer to file the return by the date specified in the order being a date that is not more than 28 days from the date of the conviction.
- (3) A taxpayer who fails to comply with an order under subsection (2) commits an offence.
- (4) A person who fails to comply with a notice served on the person under subsection 59(2) commits an offence.

#### **96 Offences relating to recovery of unpaid tax**

A person commits an offence if the person, without reasonable cause:

- (a) fails to comply with a notice served on the person under section 35; or
- (b) enters premises that are the subject of a closure notice issued under section 37 without permission of the Director; or
- (c) rescues or attempts to rescue property seized under section 40 or subject to distress proceedings under section 41; or
- (d) before, at, or after the execution of any seizure or distress proceedings under section 40 or 41, pierces, breaks, or destroys the property subject to the proceedings or destroys documents relating to such property to prevent:
  - (i) the securing of the property; or
  - (ii) the discovery of proof of an offence; or
- (e) departs or attempts to depart Vanuatu in contravention of a departure prohibition notice issued under section 42; or

- (f) fails to comply with an asset preservation notice served on the person under section 43.

**97 Offences relating to investigation powers**

A person commits an offence if the person, without reasonable cause:

- (a) fails to provide facilities and assistance as required by subsection 48(4); or
- (b) fails to comply with a notice under section 49.

**98 Offences relating to TINs**

- (1) A person who deliberately and fraudulently uses a false TIN on a tax return or other document filed with the Director for the purposes of a tax law commits an offence.
- (2) A person who uses the TIN of another person is deemed to have used a false TIN, except if subsection 5(3) applies.

**99 Fraudulent records, statements and documents**

- (1) A person commits an offence if the person:
  - (a) maintains fraudulent records;
  - (b) deliberately or recklessly makes a statement referred to in paragraph 88(1)(a); or
  - (c) files a fraudulent document with the Director.
- (2) Subsection 88(8) applies in determining whether a person has made a statement referred to in paragraph 88(1)(a).

**100 Obstruction**

- (1) A person who deliberately obstructs a taxation officer in the performance of duties under a tax law commits an offence.
- (2) In this section, **taxation officer** includes a person employed or engaged by the Department in any capacity.

**101 Offences relating to taxation officers and staff of the Department**

- (1) A taxation officer commits an offence if the officer:
  - (a) directly or indirectly asks for, or takes in connection with any of the officer's duties, any payment or reward, whether financial or



otherwise, or promise or security for any such payment or reward, not being a payment or reward that the officer was lawfully entitled to receive;

- (b) enters into or acquiesces in any arrangement under which the State is or may be defrauded of revenue, or that is contrary to a provision of a tax law, or to the proper execution of the officer's duties;
  - (c) acts or omits to act so as to give an undue advantage or favour to the officer personally or another person;
  - (d) fails to prevent or report to the Department or any other relevant authority, the commission of an offence under a tax law; or
  - (e) contravenes subsection 65(6) or (7), or section 67.
- (2) A person commits an offence if the person:
- (a) directly or indirectly offers or gives to a taxation officer any payment or reward, whether financial or otherwise, or any promise or security for any payment or reward, not being a payment or reward that the officer was lawfully entitled to receive;
  - (b) proposes or enters into any arrangement with a taxation officer under which the State is or may be defrauded of revenue, or that is contrary to a provision of a tax law, or to the proper execution of the officer's duties;
  - (c) impersonates a taxation officer;
  - (d) contravenes subsection 67(4).
- (3) A person commits an offence if the person threatens, intimidates, or harasses a taxation officer in the performance of duties under a tax law.
- (4) A person commits an offence if the person knowingly seeks to influence a taxation officer to apply a tax law contrary to the terms of the law.
- (5) The prosecution of a taxation officer for an offence under this section does not preclude any disciplinary action being taken against the officer by the Disciplinary Board under section 37 of the Public Service Act [CAP 246].
- (6) In this section:

**payment or reward** includes a payment or reward for the benefit of a taxation officer or another person;

**taxation officer** includes:

- (a) a person employed or engaged by the Department in any capacity;  
or
- (b) a former taxation officer, employee, or contractor of the Department.

**102 Offences relating to the Revenue Tribunal**

- (1) A person commits an offence if the person:
  - (a) uses threatening or insulting language to the Tribunal or to a member of the Tribunal whilst sitting, or to a member at any other time or place in relation to a hearing before the Tribunal;
  - (b) without reasonable cause, interrupts a hearing of the Tribunal;
  - (c) creates a disturbance or participates in creating a disturbance at the place where the Tribunal is sitting; or
  - (d) does any other act or thing that would, if the Tribunal were a Court, constitute contempt of the Court.
- (2) A person commits an offence if the person, without reasonable cause:
  - (a) refuses or fails to comply with a summons to appear before the Tribunal;
  - (b) refuses or fails to take an oath or affirmation before the Tribunal;
  - (c) refuses or fails to answer any question asked of the person during a hearing of the Tribunal; or
  - (d) refuses or fails to produce any book, record, or document to the Tribunal that the person was required to produce by a summons served on the person.
- (3) A person commits an offence if the person gives false or misleading evidence to the Tribunal.

- (4) A member of the Revenue Tribunal commits an offence if the member fails to disclose a conflict of interest as required under subsection 72(3).

**103 VAT offences**

- (1) A person commits an offence if the person fails to apply for registration as required by section 12 of the Value Added Tax Act [CAP 247].
- (2) A registered person commits an offence if the person:
- (a) fails to comply with section 12A of the Value Added Tax Act [CAP 247]; or
  - (b) fails to apply for cancellation of registration as required by section 13 of the Value Added Tax Act [CAP 247]; or
  - (c) fails to provide a tax invoice, credit note, or debit note as required under section 21 or 22 of the Value Added Tax Act [CAP 247]; or
  - (d) issues multiple tax invoices, credit notes, or debit notes contrary to section 21 or 22 of the Value Added Tax Act [CAP 247].
- (3) A person who is not a registered person commits an offence if the person issues a tax invoice, credit note, or debit note.
- (4) A person commits an offence if the person receives, or deals with goods or services, that the person knows, or has reason to believe, that the VAT payable on the supply of the goods or services has been or will be evaded.

**104 Offences relating to tax agents**

- (1) A person commits an offence if the person contravenes section 80.
- (2) A registered tax agent who fails to notify the Director as required under subsection 81(1) commits an offence.

**105 Aiding and abetting a tax offence**

A person who aids, abets, assists, incites, or induces another person to commit an offence (referred to as the “principal offence”) under a tax law commits an offence and is liable upon conviction to the same sanction as the principal offender.

**106 Offences by companies**

- (1) Subject to subsection (3), if a company or partnership has committed an offence under a tax law, the offence is deemed to have been committed by any individual who, at the time the offence was committed, was:

- (a) the chief executive officer, a director, principal officer, general manager, managing partner, secretary, or other similar officer of the company or partnership; or
  - (b) acting or purporting to act in that capacity.
- (2) Subsection (1) does not apply to a person if the person has established that:
- (a) the offence was committed without that person's consent or knowledge; and
  - (b) having regard to the nature of the person's functions and all the circumstances, the person has exercised reasonable diligence to prevent the commission of the offence.
- (3) Subsection 38(4) applies for the purposes of determining who is a director of a company for the purposes of subsection (1).

**107 Sanctions for offences**

- (1) The sanctions for offences committed under this Division are set out in Schedule 4.
- (2) If a person is convicted of an offence under section 94 or 99 and the Court is satisfied that the person has a tax shortfall in relation to the offence, the Court may, in addition to the sanction imposed under Schedule 4 for the offence, order the convicted person to pay to the Director an amount not exceeding:
- (a) if the person has previously been convicted of an offence under section 94 or 99 - 300% of the tax shortfall; or
  - (b) in any other case - 200% of the tax shortfall.
- (3) A person convicted of an offence under section 94 or 99 has a tax shortfall if the tax liability of the person, or another person, based on the records actually kept or false statement made is less than the tax liability that would have arisen if correct records had been maintained or the false statement not made, and the difference is the amount of the tax shortfall.

## **PART 16 MISCELLANEOUS**

### **108 Power of Director in respect of small amounts**

Despite anything in this Act, the Director may refrain from serving a notice of assessment, or collecting or refunding an amount of tax if the amount of tax owing or to be refunded does not exceed VT500.

### **109 Regulations**

- (1) The Minister may make regulations for any or all of the following matters:
  - (a) matters prescribed to be made by regulation under this Act;
  - (b) the administration of the Revenue Tribunal;
  - (c) the issuing and use of tax clearance certificates;
  - (d) the amendment of the Schedules, other than Schedule 4;
  - (e) proper and efficient administration of this Act.
- (2) The Regulations may prescribe penalties not exceeding VT1,000,000 or a term of imprisonment of not more than 1 year, or both, for offences against the Regulations.

### **110 Repeal of International Tax Cooperation Act**

- (1) The International Tax Cooperation Act No. 7 of 2016 is repealed.
- (2) Subject to subsections (3) and (4), this Act applies to any act or omission occurring, or any taxation or reviewable decision made, before this Act came into force, including under the repealed law.
- (3) Any appeal or prosecution commenced before this Act came into force, including under the repealed law, can be continued and disposed of as if this Act had not come into force.
- (4) When the period for any application, appeal, or prosecution had expired before this Act came into force, including under the repealed law, nothing in this Act is to 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) For the purposes of this section, **repealed law** means the International Tax Cooperation Act No. 7 of 2016.

**111 Transitional provisions**

- (1) All appointments made and subsisting on the commencement date are deemed to be appointments made under this Act for the term of the original appointment.
- (2) A person who is reasonably likely to be subject to a tax law on the commencement date must apply for a TIN under subsection 3(1) within 28 days of the date specified in subsection 112(2) or within such further time as the Director may allow.
- (3) An employer may apply for a TIN for an employee from the date specified in subsection 112(2).
- (4) The Director may, on his or her own motion, issue a TIN to a person from the date specified in subsection 112(2) if satisfied of the person's identity established from information from any source available to the Director.
- (5) Subject to subsections (6), (7), and (8), this Act applies to any act or omission occurring, or any revenue or reviewable decision made, before the commencement date.
- (6) Any appeal or prosecution commenced before the commencement date can be continued and disposed of as if this Act had not come into force.
- (7) If the period for any application, appeal, or prosecution had expired before the commencement date, nothing in this Act is to 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.
- (8) Any tax liability that arose before the commencement date may be recovered under this Act, but without prejudice to any action already taken for the recovery of the tax.
- (9) If the Revenue Tribunal has not been established at the time that a person is served with a notice of a reviewable decision under this Act, the person may appeal the decision to the Supreme Court within 28 days after being served notice of the reviewable decision or within such further time as the Supreme Court may allow.
- (10) An appeal under subsection (9) can be on a question of law or fact.
- (11) The Registrar of the Supreme Court must act as the Registrar of the Revenue Tribunal until such time as a person is appointed to the position of Registrar of the Revenue Tribunal.

- (12) In this section, **commencement date** means the date specified in subsection 112(1).

**112 Commencement**

- (1) Subject to subsections (2), this Act commences on 1 April 2019.
- (2) Section 8 and Division 1 of Part 2 commence on the day on which this Act is published on the Gazette.

## **SCHEDULE 1**

### **SELF-ASSESSMENT RETURNS**

The following tax returns are self-assessment returns:

- 1 A tax return under section 16 of the Value Added Tax Act [CAP 247]
- 2 An advance return under section 10 of this Act
- 3 A return that is specified as a self-assessment return under a tax law
- 4 An assessment under section 11 of the Rent Taxation Act



## SCHEDULE 2

### TAX LAWS

The following Acts, and any Regulations made under the Acts, are tax laws:

1. Tax Administration Act No. of 2017
2. Value Added Tax Act [CAP 247]
3. Customs legislation, but only for the purposes of section 18, Part 7, Division 2 of Part 14, section 51, section 57, section 58, section 67, section 101 and section 106 of the Act
4. Excise Act [CAP 290], but only to the extent that the Excise Act [CAP 290] applies to licensed producers
5. Business Licence Act [CAP 249], but only for the purposes of Division 2 of Part 2, and Parts 6, 7, 13, 14, and 15
6. Rent Taxation Act [CAP 196]

## **SCHEDULE 3**

### **APPLICANTS FOR A TIN**

#### **PART 1 PERSONS REQUIRED TO APPLY FOR A TIN**

The following persons are required to apply for a TIN:

- 1 A person who becomes subject to a tax law other than a person belonging to a class of persons as prescribed by the Minister.
- 2 A person required to apply for a business licence under the Business Licence Act [CAP 249].

SCHEDULE 3  
APPLICANTS FOR A TIN

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**PART 2**  
**PERSONS WHO MAY APPLY FOR A TIN**

- 1 A person applying for a motor vehicle driver's licence.
- 2 A person who may reasonably be expected in the foreseeable future to be required to apply for a TIN under Part I of this Schedule.

## SCHEDULE 4

### SANCTIONS FOR OFFENCES

(section 109)

A person who commits an offence under this Act is punishable on conviction in accordance with the following table.

<b>Offence</b>	<b>Sanction for first Conviction</b>	<b>Sanction for second and Subsequent Conviction</b>
Subsection 95(1) Section 97 Section 103 Section 104	Fine not exceeding VT100,000 or by a term of imprisonment not exceeding 3 months, or both	Fine not exceeding VT500,000 or by a term of imprisonment not exceeding 12 months, or both
Section 94 Subsection 95(3) Subsection 95(4) Subsection 102(1) Subsection 102(2))	Fine not exceeding VT 250,000 or by a term of imprisonment not exceeding 3 months.	Fine not exceeding VT 1,000,000 or by a term of imprisonment not exceeding 12 months, or both.
Section 96 Section 98 Section 99 Section 100 Section 101 Subsection 102(3) Subsection 102(4)	Fine not exceeding VT1,000,000 or by a term of imprisonment not exceeding 12 months, or both	Fine not exceeding VT2,000,000 or by a term of imprisonment not exceeding 24 months, or both