



Tonga

**REVENUE SERVICES ADMINISTRATION
ACT 2021**

Act 3 of 2021



REVENUE SERVICES ADMINISTRATION ACT 2021

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REVENUE SERVICES ADMINISTRATION ACT 2021

Act 3 of 2021

AN ACT TO CONSOLIDATE AND MODERNISE THE LAW FOR THE ADMINISTRATION OF REVENUE SERVICES

I assent,
TUPOU VI,
29th July 2021.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART I – PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the Revenue Services Administration Act 2021.
- (2) This Act shall come into force on a date specified by the Minister by notice in the Gazette as follows-
 - (a) Parts 1,2,3,4,5,6,7,8,9,10,11,12,13 and 15 shall come into force immediately following enactment of this Act; and
 - (b) Part 14 of this Act shall come into force on a date specified by the Minister in the Gazette.

2 Interpretation

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

“accredited sale register device” means a point of sale invoicing device into which a taxpayer enters data relating to supplies of goods or services made by the taxpayer and the device:

- (a) issues a fiscal invoice for the supply;
- (b) if required by the Minister, transmits data relating to the supply to the Ministry; and
- (c) is accredited under the prescribed Regulations;

“accredited sales register device software” means the software necessary for the operation of a sales register device that is accredited under the prescribed Regulations;

“additional profits tax” means mining additional profits tax or petroleum additional profits tax imposed under the Income Tax Act 2007;

“approved form” in relation to a tax return, application, notice, statement, or other document to be lodged under a revenue law, means –

- (a) if the form for the particular return, application, notice, statement, or other document is included in the Regulations to a revenue law, that form; or
- (b) in any other case, the form specified and published by the Minister on the Ministry’s website or printed by the Ministry for the public for the particular return, application, notice, statement, or other document;

“authorised officer” in relation to the exercise of a particular power under this Act, means a taxation officer specifically authorised, in writing, by the Minister to exercise the power;

“CEO” means the Chief Executive Officer responsible for revenue and customs;

“company” has the same meaning as under the Income Tax Act 2007;

“consumption tax” means consumption tax imposed by the Consumption Tax Act 2003;

“Customs law” means the Customs Act 2007, Excise Tax Act 2007, and Customs and Excise Management Act 2007, and any successor legislation dealing with Customs or Excise;

“instalment of income tax” means an instalment of income tax payable under Division 5 of Part 8 of the Income Tax Act 2007;

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

“late payment interest” means interest imposed under section 33;

“late payment penalty” means late payment penalty imposed under section 83;

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

“**Minister**” means the Minister responsible for revenue and customs;

“**Ministry**” means the Ministry responsible for revenue and customs;

“**objection decision**” means a decision made by the Minister under section 21(1) or deemed to have been made under section 21(6);

“**penalty**” means penalty imposed under a revenue law;

“**person**” means an individual, trust, company, government, or public international organisation;

“**records**” includes –

- (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 information storage facility as defined in section 45;

“**registered tax agent**” means a person registered as a tax agent under Division 3 of Part 13;

“**representative**” in relation to a person, means an individual responsible for accounting for the receipt or payment of money or fund in Tonga on behalf of the person and includes the following –

- (a) for a partnership, a partner in the partnership;
- (b) for a trust including any estate of a deceased person, a trustee of the trust and any executor or administrator of that estate;
- (c) for a company, the chief executive officer, a director, or company secretary;
- (d) for a person outside Tonga, any person in Tonga controlling the person’s affairs in Tonga, including a manager of the business of the person in Tonga;
- (e) for a taxpayer referred to in section 36, the liquidator in relation to the taxpayer under that section;
- (f) for a person in respect of whom there is an agent for the purposes of the Income Tax Act 2007, the agent; or
- (g) for any person, an individual:
 - (i) that the Minister has, by notice in writing to the individual, declared to be a representative of the person for the purposes of the revenue laws; or
 - (ii) that is treated as a representative of the person under a revenue law;

“**revenue law**” means –

- (a) this Act, the Income Tax Act 2007, and Consumption Tax Act 2003;

- (b) in Part 7, section 33, and Division 1 of Part 13, the Customs laws;
- (c) any regulations or other subsidiary legislation made under the Acts referred in paragraphs (a) and (b).

“reviewable decision” means –

- (a) a decision or deemed decision by the Minister on an application for an amendment to a self-assessment under section 17;
- (b) an objection decision; or
- (c) a decision by the Minister under section 74, 75, or 78;

“sales register device” means any electronic device for recording sales and related data;

“secondary liability” means a liability of a person (referred to as the “primary liability”) that another person is personally liable for under section 7, 35(11), 36(4), 38(1), 39(1), or 40(10);

“self-assessment” means an assessment treated as having been made by a self-assessment taxpayer under section 13;

“self-assessment return” means –

- (a) a seabed mining royalty return under section 67C or a petroleum royalty return under section 67O of the Income Tax Act 2007;
- (b) a mining additional profits tax return under section 67L or a petroleum additional profits tax return under section 67X of the Income Tax Act 2007;
- (c) an income tax or small business tax return under section 68 of the Income Tax Act 2007;
- (d) a return under section 74 of the Income Tax Act 2007;
- (e) a consumption tax return under section 21 of the Consumption Tax Act 2003;
- (f) an advance return under section 10; or
- (g) any other return specified as a self-assessment return under a revenue law;

“self-assessment taxpayer” means a taxpayer required to lodge a self-assessment return;

“small business tax” means small business tax imposed by section 8 of the Income Tax Act 2007;

“tax” means a tax, penalty, or late payment interest imposed under a revenue law, and includes the following –

- (a) seabed mining or petroleum royalties imposed under the Income Tax Act 2007;
- (b) withholding tax; or
- (c) instalments of income tax;

“tax avoidance provision” means –

- (a) sections 66 and 67 of the Income Tax Act 2007; and
- (b) section 34A of the Consumption Tax Act 2003;

“tax period” in relation to a tax, means the period for which the tax is reported to the Minister and –

- (a) for withholding tax, the period to which the withholding relates;
- (b) for instalments of income tax, the period to which the instalment relates;

“tax recovery costs” means the following –

- (a) the costs of recovering unpaid tax referred to in section 27(3);
- (b) the costs of action under section 41 for the seizure of goods;
- (c) the costs of distress proceedings under section 42;

“tax return” means a return (including attachments and reconciliations) required to be lodged under a revenue law and includes a withholding tax statement required to be lodged under section 85 of the Income Tax Act 2007;

“Tax Tribunal” means the Tax Tribunal established under section 68;

“taxation assessment” means –

- (a) a self-assessment, default assessment, advance assessment, amended assessment, an assessment of penalty, or any other assessment made under a revenue law; or
- (b) the determination by the Minister of the amount owing by a non-resident ship owner or charterer under section 73(1)(b) of the Income Tax Act 2007;

“taxation decision” means –

- (a) a taxation assessment, other than a self-assessment;
- (b) any other decision of the Minister made under a revenue law on any matter that is left to the discretion, consent, approval, or determination of the Minister, but not including the following –
 - (i) any decision of the Minister forming part of the process of making, or leading up to the making of, a taxation assessment, and such decision shall be treated as part of the taxation assessment;
 - (ii) a reviewable decision;
 - (iii) a decision made under section 37, 40, 41, 42, 43 or 45; or
- (c) a decision made by the Minister under the Customs laws;

“taxation officer” means the Minister, CEO, Deputy CEO and any officer of the Ministry appointed under this Act;

“taxpayer” means a person who is –

- (a) a taxpayer for the purposes of the Income Tax Act 2007;
- (b) a withholding agent;

- (c) a taxable person for the purposes of the Consumption Tax Act 2003; or
- (d) a person liable for penalty or late payment interest;

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

“unpaid tax” means tax that has not been paid by the due date or, if the Minister has extended the due date under section 29, by the extended due date;

“withholding agent” means a person required to withhold tax from a payment under Division 4 of Part 8 of the Income Tax Act 2007; and

“withholding tax” means tax that is required to be withheld from a payment under Division 4 of Part 8 of the Income Tax Act 2007.

- (2) Subject to subsection (3), two persons are **“associates”** for the purposes of this Act if the relationship between the persons is such that one person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other person, or both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.
- (3) Two persons are not associates solely by reason of the fact that one person is the 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), two persons are associates when –
 - (a) one person is a spouse or relative of the other person within the ordinary meaning in Tonga, except when the Minister is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other;
 - (b) one person participates, directly or indirectly, in the management, control, or capital of the other person;
 - (c) the same person participates, directly or indirectly, in the management, control, or capital of both persons; or
 - (d) one person is a trust and the other person benefits under the trust through the exercise of a power of appointment or otherwise.
- (5) For the purposes of subsection (4), a person participates, directly or indirectly, in the management, control, or capital of the other person when –
 - (a) the first-mentioned person either alone or together with an associate or associates under another application of subsection (2) controls either directly or through one or more interposed persons –
 - (i) 50 per cent or more of the voting power in the second-mentioned person;
 - (ii) 50 per cent or more of the right to dividends or income entitlements payable by the second-mentioned person; or

- (iii) 50 per cent or more of the right to capital in the second-mentioned person; or
 - (b) the first-mentioned person has the practical ability to control the business decisions of the second-mentioned person.
- (6) When this Act applies for the purposes of a revenue law, any term not defined in this Act has the meaning that it has for the purposes of that revenue law.

PART 2 – TAXPAYERS

DIVISION 1 – TAXPAYER IDENTIFICATION NUMBERS

3 Application for a TIN

- (1) Subject to subsection (2), the following persons shall apply to the Minister for a taxpayer identification number (“TIN”) unless the person has already been issued with a TIN –
 - (a) a person who has applied for a business licence; or
 - (b) any other person who becomes liable for tax under a revenue law.
- (2) Subsection (1) shall not apply to a non-resident person if the only Tongan-source income derived by the person is subject to income tax under section 6 of the Income Tax Act 2007.
- (3) An employer shall apply for a TIN for an employee within 14 consecutive days of the employee entering into employment with the employer unless the employee has already been issued with a TIN, and an application under this subsection meets the employee’s obligation under subsection (1).
- (4) Nothing in subsection (3) shall relieve an employee from the obligation to apply for a TIN if the employer of the employee fails to comply with subsection (3).
- (5) An application for a TIN shall be –
 - (a) made in the approved form;
 - (b) accompanied by documentary evidence of the person’s identity, including biometric information, as prescribed; and
 - (c) made –
 - (i) when subsection (1)(a) applies, at the same time as the application for a business licence has been lodged; or
 - (ii) when subsection (1)(b) applies, within 21 consecutive days of becoming liable for tax under a revenue law or within such further period as the Minister may allow.
- (6) In the case of an application made under subsection (3) by an employer for an employee, the biometric information required under subsection (5)(b) shall be provided by the employee.

4 Issue of a TIN

- (1) When the Minister is satisfied that an applicant under section 3 is required to apply for a TIN and that the applicant's identity has been established, the Minister shall issue a TIN by serving the applicant with written notice of the TIN.
- (2) The Minister shall refuse an application under section 3 if –
 - (a) the Minister 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.
- (3) The Minister shall serve an applicant under section 3 with written notice of the decision refusing an application within 14 consecutive days of receiving the application.
- (4) The Minister may, on his or her own motion, issue a TIN to a person required to apply for a TIN under section 3 but who has failed to do so within the time permitted under section 3(5)(c).
- (5) A TIN shall be issued for the purposes of all revenue laws and a person can have only one TIN at any time.
- (6) A taxpayer shall notify the Minister, in writing, of a change in any of the following within 21 consecutive days of the change occurring –
 - (a) the person's physical or postal address;
 - (b) the person's banking details used for transactions with the Ministry;
 - (c) the person's electronic address used for communication with the Ministry;
 - (d) such other details as the Minister may require by public notice.

5 Use of a TIN

- (1) A person shall state the person's TIN on any tax return, notice, or other document lodged or used for the purposes of a revenue law, or as otherwise required under a revenue law.
- (2) A TIN is personal to the person to whom it has been issued and, subject to subsection (3), shall not be used by another person.
- (3) The TIN of a person may be used by a registered tax agent when –
 - (a) the person has given written permission to the tax agent to use the TIN; and
 - (b) the tax agent uses the TIN only in respect of the tax affairs of the person.

6 Cancellation of a TIN

- (1) A person who ceases to be liable for tax under all the revenue laws shall apply to the Minister for cancellation of the person's TIN.

- (2) An application for cancellation of a TIN under subsection (1) shall be made –
 - (a) in the approved form; and
 - (b) within 21 consecutive days of ceasing to be liable for tax under all the revenue laws or within such further time as the Minister may allow.
- (3) The Minister shall, by notice in writing, cancel the TIN of a person who has applied under subsection (1) if the Minister is satisfied that the person is no longer liable for tax under the revenue laws.
- (4) The Minister may, on his or her own motion and by notice in writing to a person or the person's representative, cancel the TIN of a person when –
 - (a) the person has failed to apply for cancellation of the TIN as required under subsection (1), including when the person is a natural person who has died, a company that has been liquidated, or any other person that has ceased to exist;
 - (b) the TIN has been issued to the person under an identity that is not the person's true identity; or
 - (c) the person has been previously issued with a TIN that is still in force.
- (5) The Minister may, at any time, by notice in writing, cancel the TIN issued to a person and issue the person with a new TIN.
- (6) The cancellation of a person's TIN under this section shall not affect any obligation of the person arising under a revenue law before cancellation of the TIN.

DIVISION 2 – REPRESENTATIVES

7 Liabilities and obligations of representatives

- (1) Every representative of a taxpayer shall be responsible for performing any duties or obligations imposed by a revenue law on that taxpayer, including the lodging of tax returns and payment of tax.
- (2) Any act done by a representative of a taxpayer on behalf of the taxpayer in accordance with subsection (1) shall be treated as having been done by the taxpayer.
- (3) Subject to subsection (4), any tax that, by virtue of subsection (1), is payable by a representative of a 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 shall be personally liable for the payment of any tax due by the representative in that capacity if, while the amount remains unpaid, the representative –
 - (a) alienates, charges, or disposes of any moneys received or accrued in respect of which the tax is payable; or

- (b) disposes of or parts with any moneys or funds belonging to the taxpayer that are in the possession of the representative or which come to the representative after the tax is payable, if such tax could legally have been paid from or out of such moneys or funds.
- (5) Subsection (4) shall not apply to the payment of any debt by a representative on behalf of a taxpayer that 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 revenue law that the representative of the taxpayer has failed to perform.
- (7) Where there are two or more representatives of a taxpayer, the duties or obligations referred to in this section shall apply jointly and severally to the representatives but may be discharged by any of them.

PART 3 – RECORDS

8 Record-keeping

- (1) A taxpayer shall, for the purposes of a revenue law, maintain such records as may be required under the revenue law and the records shall be maintained –
 - (a) in the English or Tongan language; and
 - (b) in a manner so as to enable the taxpayer’s tax liability under the revenue law to be readily ascertained.
- (2) Subject to subsection (3), records referred to in subsection (1) shall be retained –
 - (a) for a taxpayer liable for small business tax, for 3 years after the end of tax period to which they relate; or
 - (b) in any other case, for 5 years after the end of tax period to which they relate.
- (3) When, at the end of the period referred to in subsection (2), the taxpayer has records that –
 - (a) relate to an amended assessment, the taxpayer shall retain the records until the end of the period specified in section 16(4)(b);
 - (b) relate to a business loss, negative cash balance, or excess input tax credit for a tax period that has not been fully offset, the taxpayer shall retain the records until the end of the tax period in which the loss, negative cash balance, or excess input tax credit has been fully offset or the carry forward period for the loss, negative cash balance, or excess input tax credit expires; or
 - (c) are necessary for a tax audit by the Minister, or a proceeding before the Tax Tribunal or a Court, commenced before the end of the period

referred to in subsection (2), the taxpayer shall retain the records until the audit and all proceedings have been completed.

- (4) When required by the Minister, by notice in writing, a taxpayer who maintains records outside Tonga shall make the records available for inspection by the Minister in accordance with the requirements specified in the notice.
- (5) When records referred to subsection (1) are not in the English or Tongan language, the Minister may, by notice in writing, require the taxpayer to provide, at the taxpayer's expense, a translation into English or Tongan by a translator approved by the Minister by the date specified in the notice.
- (6) The Regulations may provide for the following:
 - (a) the obligatory use by taxpayers or classes of taxpayers of sales register device;
 - (b) the conditions for the use of sales register device; and
 - (c) the information required to be included on receipts produced by sales register device.

PART 4 – TAX RETURNS

9 Lodgement of tax returns

- (1) A taxpayer required to lodge a tax return under a revenue law shall lodge the return in the approved form and in the prescribed manner.
- (2) The Minister may, by notice in writing, when a taxpayer has failed to lodge a tax return as required under a revenue law require the taxpayer to lodge the return by the due date set out in the notice.
- (3) Subject to subsection (4), if the Minister is not satisfied with a tax return lodged by a taxpayer, the Minister may, by notice in writing, require the taxpayer to lodge by the due date set out in the notice –
 - (a) a further or more detailed return; or
 - (b) any further information as specified in the notice.
- (4) Subsection (3)(a) shall not apply when the tax return already lodged is a self-assessment return lodged by the taxpayer in the approved form.
- (5) A notice served on a taxpayer under subsection (2) or (3) shall 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 revenue law under which the return is required to be lodged and late payment interest and late payment penalty remain payable from the original due date.
- (6) The Regulations may provide for the signing and certification of returns by taxpayers, representatives, and registered tax agent.

10 Appeal to Court of Appeal

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

11 Extension of time to lodge tax return

- (1) A taxpayer may apply, in writing, to the Minister for an extension of time to lodge a tax return.
- (2) An application under subsection (1) shall be made before the due date for lodging the tax return.
- (3) Subject to subsection (4), the Minister may, upon satisfaction that there is reasonable cause, grant an application under this section and shall serve notice of the decision on the taxpayer.
- (4) The due date for lodging a tax return can be extended only once.
- (5) An extension of time under this section shall not exceed 30 consecutive days provided that the Minister may grant an extension beyond 30 consecutive days in exceptional circumstances.
- (6) An extension of time granted under this section shall 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 revenue law under which the return is required to be lodged and late payment interest remains payable from the original due date.
- (7) The Regulations may provide for a lodgement program for registered tax agents for the lodging of the tax returns of their clients.

12 Tax return duly lodged

A tax return purporting to be lodged by or on behalf of any taxpayer shall be treated as having been lodged 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 lodged a self-assessment return in the approved form for a tax period shall be treated, for all purposes of this Act, as having 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) When a self-assessment taxpayer has lodged an income tax return in the approved form for a fiscal year and the taxpayer has a business loss for the year,

the taxpayer shall be treated, for all purposes of this Act, as having made an assessment of the amount of the loss being that amount as set out in the return.

- (3) When a self-assessment taxpayer has lodged a mining or petroleum additional profits tax return in the approved form for a fiscal year and the taxpayer has a negative cash balance for the year, the taxpayer shall be treated, for all purposes of this Act, as having made an assessment of the amount of the negative cash balance being that amount as set in the return.
- (4) When a self-assessment taxpayer has lodged a consumption tax return in the approved form for a consumption tax period and the taxpayer's total input tax for the period exceeds the taxpayer's total output tax for the period, the taxpayer shall be treated, for all purposes of this Act, as having made an assessment of the amount of the excess input tax for the period being that amount as set out in the return.
- (5) A tax return in the approved form completed and lodged electronically by a taxpayer shall be a self-assessment return despite the following –
 - (a) the form included pre-filled information provided by the Minister;
 - (b) the tax payable is computed electronically as information is inserted into the form.

14 Default assessment

- (1) When a taxpayer has failed to lodge a tax return for a tax period by the due date, the Minister may, at any time and based on such evidence as may be available and to the best of his judgement, make an assessment (referred to as a “default assessment”) of the tax (including a nil amount) payable by the taxpayer for the period.
- (2) The Minister shall serve a taxpayer assessed under subsection (1) with notice, in writing, of a default assessment specifying the matters required by the Regulations.
- (3) The service of a notice of a default assessment under this section shall 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 revenue law imposing the tax, and late payment penalty and late payment interest shall remain payable based on the original due date.
- (4) Nothing in this section shall relieve a taxpayer from being required to lodge the tax return to which the default assessment served under this section relates.
- (5) A tax return lodged 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 Minister may, based on such evidence as may be available and to the best of his judgement, make an assessment (referred to as an “advance assessment”) of the tax payable by a taxpayer specified in section 10 for a tax period.
- (2) Subsection (1) shall apply only when the taxpayer has not lodged a tax return for the tax period.
- (3) An advance assessment –
 - (a) may be made before the date on which the taxpayer’s tax return for the period is due; and
 - (b) shall be made in accordance with the law in force at the date the advance assessment was made.
- (4) The Minister shall serve a taxpayer assessed under subsection (1) with notice, in writing, of the advance assessment specifying the 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 shall relieve a taxpayer from the requirement to lodge the tax return to which the advance assessment served under this section relates.
- (7) A tax return lodged by a taxpayer for a tax period after 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 Minister 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 judgement, to the original assessment of a taxpayer for a tax period to ensure that –
 - (a) in the case of a business loss or negative cash balance carried forward under the Income Tax Act 2007, the taxpayer is assessed in respect of the correct amount of the loss or negative cash balance;
 - (b) in the case of an excess amount of input tax under the Consumption Tax Act 2003, the taxpayer is assessed in respect of the correct amount of the excess input tax carried forward for the tax period; or
 - (c) in any other case, the taxpayer is liable for the correct amount of tax payable (including a nil amount) in respect of the tax period to which the original assessment relates.
- (2) Subject to subsections (3) and (4), the Minister 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, within 5 years of –
 - (i) for a self-assessment, the date that the self-assessment taxpayer lodged the self-assessment return to which the self-assessment relates; or
 - (ii) for any other assessment, the date the Minister served notice of the assessment on the taxpayer.
- (3) Subsection (2)(b) applies to a small business taxation assessment on the basis that the reference to “5 years” is treated as a reference to “3 years”.
- (4) Subject to subsection (5), when the Minister has served a notice of an amended assessment on a taxpayer under subsection (1), the Minister may further amend the original assessment to which the amended assessment relates within the later of –
 - (a) the period specified in subsection (2)(b) or (3), as the case may be; or
 - (b) one year after the Minister served notice of the amended assessment on the taxpayer.
- (5) When subsection (4)(b) applies, the Minister shall be limited to amending the alterations or additions made in the amended assessment to the original assessment.
- (6) The Minister shall serve a taxpayer with notice, in writing, of an amended assessment under subsection (1) or (4) specifying the matters required by the Regulations.
- (7) The service of a notice of an amended assessment under this section shall 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 revenue law imposing the tax, and late payment penalty and late payment interest shall remain payable based on the original due date.

17 Application for an amendment to a self-assessment

- (1) A taxpayer who has lodged a self-assessment return may apply to the Minister for an amendment to be made to the self-assessment.
- (2) An application under subsection (1) shall –
 - (a) state the amendments that the taxpayer believes are required to correct the self-assessment and the reasons for the amendments; and
 - (b) be lodged with the Minister within the period specified in section 16(2)(b)(i) or (3), as the case may be.
- (3) When an application has been made under subsection (1), the Minister may make a decision to amend the self-assessment or refuse the application.

- (4) If the Minister makes a decision to amend the self-assessment –
 - (a) the amended assessment shall be made in accordance with section 16(1); and
 - (b) notice of the amended assessment shall be served on the taxpayer in accordance with section 16(6).
- (5) If the Minister makes a decision to refuse an application under subsection (1), the Minister shall serve the taxpayer with written notice of the decision.
- (6) If the Minister has not made a decision on an application made under subsection (1) within 60 consecutive days of the application being lodged, the Minister shall be deemed to have –
 - (a) made a decision to disallow the application; and
 - (b) served the taxpayer with notice of the decision on the sixtieth day after the application was lodged.

PART 6 – TAXATION DECISIONS

18 Statement of reasons

- (1) When the Minister has refused an application made by a person under a revenue law, the notice of refusal shall include a statement of reasons for the refusal.
- (2) If the Minister has failed to provide a person with a statement of reasons as required under subsection (1), the person may, by notice in writing to the Minister within 7 consecutive days of being served with the notice of refusal, request the Minister to provide a statement of reasons.
- (3) If a person has filed a notice of request with the Minister under subsection (2), the time for challenging the decision to which the request relates shall not commence until the date that the Minister serves the person with the statement of reasons.

19 Finality of taxation decisions

- (1) Except in proceedings under Part 7 –
 - (a) a taxation decision shall be final and conclusive, and cannot be disputed in the Tax Tribunal or a Court, or in any other proceedings on any ground whatsoever;
 - (b) the production of a notice of a taxation assessment or a document under the hand of the Minister purporting to be a copy of a notice of a taxation assessment shall be 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 Minister purporting to be a copy of such return shall be conclusive evidence of the contents of the return.
- (2) When the Minister serves a notice of a taxation assessment on a taxpayer electronically, the reference in subsection (1)(b) to a copy of the notice of assessment includes a document certified by the Minister identifying the assessment and specifying the details of the electronic transmission of the assessment.
- (3) When a taxpayer has lodged a self-assessment return electronically, the reference in subsection (1)(c) to a copy of the return includes a document certified by the Minister identifying the return and specifying the details of the electronic transmission of the return.

PART 7 – OBJECTIONS AND APPEALS

20 Notice of objection to a taxation decision

- (1) A person dissatisfied with a taxation decision may lodge a notice of objection to the decision with the Minister within thirty consecutive days of service of the notice of the decision.
- (2) A taxpayer's right to object to an amended assessment shall be limited to the alterations or additions made in the amended assessment to the original assessment.
- (3) A notice of objection to a taxation decision shall be treated as validly lodged only when the following conditions are satisfied –
 - (a) the notice of objection states precisely the grounds of the person's objection to the taxation decision, the amendments that the person considers are required to correct the decision, and the reasons for making those amendments; or
 - (b) when the notice of objection relates to a taxation assessment, the taxpayer has paid any tax due under the taxation assessment that is not disputed by the taxpayer in the objection.
- (4) When the Minister considers that a person's notice of objection has not been validly lodged, the Minister shall immediately serve written notice on the person stating the following –
 - (a) the reasons why the objection has not been validly lodged; and
 - (b) that the objection will lapse unless the person lodges a valid objection by the later of –
 - (i) 30 consecutive days from the date of service of the notice of the taxation decision to which the objection relates; or

- (ii) 10 consecutive days from the date of service of the notice under this subsection.
- (5) The Minister shall serve written notice on the person objecting when an objection is treated as lapsed under subsection (4).
- (6) A person may apply, in writing, to the Minister for an extension of time to lodge a notice of objection and such an application shall be made within 30 consecutive days of service of the notice of the decision.
- (7) The Minister may, if satisfied there is reasonable cause, grant an application under subsection (6) and shall serve notice of the decision on the person applying for the extension.
- (8) An extension of time granted under subsection (7) shall not exceed 15 consecutive days provided that the Minister may grant an extension beyond 15 consecutive days in exceptional circumstances.

21 Making an objection decision

- (1) The Minister shall, after consideration of the notice of objection, allow the objection in whole or in part or disallow the objection and the Minister's decision shall be referred to as an "objection decision".
- (2) The Minister shall 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 in accordance with section 16.
- (3) A notice of an objection decision shall include a statement of the Minister's findings on the material facts and the reasons for the decision.
- (4) If the Minister has failed to provide a person objecting with a statement of findings and reasons as required under subsection (3), the person may, by notice in writing to the Minister within 7 consecutive days of being served with the notice of the objection decision, request the Minister to provide a statement of findings and reasons.
- (5) If a person has lodged a notice of request with the Minister under subsection (4), the Minister shall provide the person with a statement of findings and reasons within 7 consecutive days after the person lodged the notice of request.
- (6) A person may elect, by notice in writing to the Minister to treat the Minister as having made a decision to disallow an objection made by a person if the Minister fails to serve the person with –
 - (a) a statement of findings and reasons within the time specified in subsection (5); or
 - (b) notice of an objection decision within 60 consecutive days of the notice of objection being lodged.

- (7) When a person has made an election under subsection (6), the person shall be treated as having been served with notice of the objection decision on the date that the person lodged the notice under subsection (6) with the Minister.

22 Review of objection decision by Tax Tribunal

- (1) A person dissatisfied with an objection decision may apply to the Tax Tribunal for review of the decision in accordance with section 70.
- (2) When an application for review under subsection (1) relates to a taxation assessment, the application shall be treated as validly lodged only if the taxpayer has paid to the Minister –
 - (a) any tax due under the taxation assessment that is not disputed by the taxpayer in the objection; and
 - (b) 30 per cent of the disputed tax or such lesser amount as may be agreed by the Minister by notice in writing.
- (3) When an application for review relates to an objection decision concerning a taxation assessment, the Tax Tribunal may make an order to –
 - (a) affirm, reduce, or increase the taxation assessment to which the objection decision relates; or
 - (b) remit the taxation assessment to the Minister for reconsideration in accordance with the directions of the Tribunal.
- (4) When an application for review relates to any other objection decision, the Tax Tribunal may make an order to affirm, vary, or set aside the decision.

23 Appeal to Supreme Court

- (1) A party to a proceeding before the Tax Tribunal has a right of appeal on a question of law to the Supreme Court within 30 consecutive days after being notified of the decision of the Tribunal.
- (2) If a notice of appeal against a decision of the Tax Tribunal has been lodged with the Supreme Court in accordance with subsection (1) and the decision of the Tribunal was given by the Tribunal constituted by the President who is a Judge of the Supreme Court, or by a panel including the President who is a Judge of the Supreme Court, the Chief Justice shall refer the appeal to the Court of Appeal.

24 Appeal to Court of Appeal

A party to a proceeding before the Supreme Court has a right of appeal on a question of law to the Court of Appeal within 42 consecutive days after being notified of the decision of the Supreme Court

25 Implementation of decision

- (1) The Minister shall within 45 consecutive days after –
 - (a) a final decision of the Tax Tribunal;
 - (b) a final decision of the Supreme Court; or
 - (c) being notified of a decision of the Court of Appeal,take such action, including the making of an amended assessment in accordance with section 16, as is necessary to give effect to the decision.
- (2) The decision of the Tax Tribunal shall become final if no notice of appeal is lodged with the Registrar of the Supreme Court within the time specified under section 23 or such further time as the Supreme Court may allow.
- (3) The decision of the Supreme Court shall become final if no notice of appeal is lodged 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 section 16(2)(b) for amending a taxation assessment shall not apply to an amendment to give effect to a decision of the Tax Tribunal or Court.

26 General provisions relating to objections and appeals

- (1) In a proceeding under this Part, the burden shall be on the taxpayer to prove that the taxation decision was incorrect.
- (2) In an application to the Tax Tribunal, or appeal to the Supreme Court or Court of Appeal in relation to an objection decision, the taxpayer shall be limited to the grounds stated in the 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 to the Government**

- (1) Tax is a debt to the Government and the Minister may recover any tax due in Court in the name of the Government.
- (2) A taxpayer required to pay tax electronically by the Minister under section 61 shall continue do so unless authorised by the Minister, by notice in writing, to use another method of payment.
- (3) If a taxpayer fails to pay tax by the due date, the taxpayer shall be liable for any costs incurred by the Minister in taking action to recover the unpaid tax.

- (4) When the Minister has reasonable grounds to believe that a taxpayer may leave Tonga before the due date for payment of tax, the tax shall be due on such date as specified by the Minister by notice in writing to the taxpayer.
- (5) Despite section 16 of the Supreme Court Act, any tax that has not been paid by a taxpayer within 5 years after the due date for payment, and any late payment interest and late payment penalty payable in respect of the unpaid tax, remains payable if –
 - (a) the taxpayer has failed to lodge a tax return for the tax period to which the unpaid tax relates;
 - (b) the Minister has, within the 5-year period, required payment of the tax by notice in writing to the taxpayer; or
 - (c) the failure was due to fraud, or gross or wilful neglect by, or on behalf of the taxpayer.

28 Secondary liabilities and tax recovery costs

- (1) The Minister may serve a person liable for a secondary liability or tax recovery costs with notice of the amount of the liability payable by the person and the due date for payment.
- (2) An amount of a secondary liability paid by a person shall be credited against the primary tax liability to which the secondary liability relates.
- (3) A reference in Parts 7, 8, 9, and 10, and section 7 and 83 to –
 - (a) “tax” includes a secondary liability and tax recovery costs;
 - (b) “unpaid tax” includes an amount specified in paragraph (a) that is not paid by the due date; and
 - (c) “taxpayer” includes a person liable for an amount specified in paragraph (a).
- (4) A person who has paid a secondary liability out of his 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 Minister for an extension of time to pay any tax due and the application shall be made by the original date on which the tax was due for payment or by such later date as the Minister may permit.
- (2) When an application has been made under subsection (1), the Minister 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 Minister may determine.

- (3) The Minister shall serve the taxpayer with a written notice of the decision under subsection (2).
- (4) When a taxpayer is permitted to pay tax by instalments and the taxpayer defaults in payment of any instalment, the whole balance of the tax outstanding, at the time of the default, shall become immediately payable unless the Minister 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 shall still be liable for late payment interest arising from the original date that the tax was due for payment.

30 Priority of tax

- (1) This section shall apply to the following amounts –
 - (a) withholding tax and Consumption Tax;
 - (b) an amount that a payer is required to pay under a section 35 notice.
- (2) A person owing, holding, receiving, or withholding an amount to which this section applies –
 - (a) shall hold the amount in trust for the Government; and
 - (b) the amount shall not 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, receiving, or withholding an amount to which this section applies, the amount –
 - (a) shall not form part of the person's estate in liquidation or bankruptcy; and
 - (b) shall be paid to the Minister before any distribution of property is made.
- (4) Despite any other enactment, withholding tax withheld by a person shall be –
 - (a) a first charge on the payment from which the tax is withheld; and
 - (b) withheld prior to any other deduction that the person may be required to make from the payment under an order of any court or any law.

31 Indemnity

- (1) This section shall apply to –
 - (a) a withholding agent who has withheld tax from a payment under the Income Tax Act 2007 and paid the tax to the Minister;
 - (b) a representative who has paid an amount to the Minister pursuant to section 7(1);
 - (c) a person who has paid an amount to the Minister pursuant to a section 35 notice; or

- (d) a liquidator who has paid an amount to the Minister pursuant to section 36.
- (2) A person to whom this section applies is indemnified against any claim for payment of the amount that the person has paid to the Minister.

32 Security

- (1) The Minister may, for the purposes of securing payment of any tax that is or may become due by a taxpayer under a revenue law, require the taxpayer to provide security in such amount and on such conditions as the Minister determines.
- (2) The Minister may require security to be provided –
 - (a) by a bond;
 - (b) by an unconditional bank guarantee; or
 - (c) in any other form as the Minister 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 shall be liable to provide security only if the Minister 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 Minister 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 Late payment interest

- (1) Subject to subsection (7), a taxpayer who fails to pay tax on or before the due date for payment shall be 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) shall be refunded to the taxpayer to the extent that the amount to which the interest relates is found not to have been payable.
- (3) Late payment interest payable by a taxpayer in respect of withholding tax or a secondary liability shall be borne personally by the taxpayer and shall not be recoverable from any other person.

- (4) Interest payable under this section shall be computed as simple interest and shall be calculated on a daily basis.
- (5) The Minister may serve a taxpayer 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 Minister on the taxpayer.
- (7) When –
 - (a) the Minister 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),late payment interest shall not accrue for the period between the date of notification and the date of payment.
- (8) Interest payable under this section shall be in addition to any penalty imposed under Division 2 of Part 14 or any fine imposed under Division 3 of Part 14 in respect of the same act or omission.
- (9) The total amount of late payment interest payable by a taxpayer in respect of an unpaid tax liability shall not exceed the amount of the liability.
- (10) In this section, “**tax**” includes customs duty and excise tax imposed under the Customs laws, but does not include late payment interest.

DIVISION 3 – RECOVERY OF UNPAID TAX

34 Judgment debt procedure for recovery of unpaid tax

- (1) The Minister may recover unpaid tax by filing with the clerk of a court of competent jurisdiction a statement certified by the Minister 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) shall be treated for all purposes as a civil judgment lawfully given in that court in favour of the Minister for the amount of the unpaid tax stated in the statement.

35 Recovery of unpaid tax from third parties

- (1) This section shall apply when a taxpayer is, or will become liable to pay tax and –
 - (a) the taxpayer has not paid the tax by the due date for payment; or

- (b) the Minister has reasonable grounds to believe that the taxpayer will not pay the tax by the due date for payment.
- (2) When this section applies and subject to subsections (3) and (4), the Minister may, by notice in writing, require a payer in respect of the taxpayer to pay the amount specified in the notice to the Minister, being an amount that does not exceed the amount of the unpaid tax or the amount of tax that the Minister believes will not be paid by the taxpayer by the due date.
- (3) The amount that a notice under subsection (2) requires to be deducted from a payment of salary or wages to the taxpayer shall be –
 - (a) an amount that does not exceed the lesser of –
 - (i) an amount equal to one-twentieth of the amount of unpaid tax or the amount of tax that the Minister believes will not be paid by the due date; or
 - (ii) 20 per cent of the amount of each payment of salary or wages (after the payment of income tax); or
 - (b) an amount as agreed between the Minister and taxpayer being an amount that is not less than the amount determined under paragraph (a).
- (4) A notice under subsection (2) shall be served on a payer in relation to an amount in a joint account only when –
 - (a) all the holders of the joint account have unpaid tax liabilities; or
 - (b) the taxpayer can withdraw funds from the account (other than a partnership account) without the signature or authorisation of the other account holders.
- (5) A payer shall pay the amount specified in a notice under subsection (2) to the Minister by the date specified in the notice, being a date that is not 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.
- (6) The Minister shall, 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 Minister for payment of the tax.
- (7) A payer who claims to be unable to comply with a notice under subsection (2) may notify the Minister, in writing and within 7 consecutive days of receiving the notice, setting out the reasons for the payer's inability to comply with the notice.
- (8) A payer who has lodged a notice with the Minister under subsection (7) shall not deal with any monies to which the notice under subsection (2) relates before being served with a notice of decision under subsection (9).
- (9) When a notice is served on the Minister under subsection (7), the CEO shall, by notice in writing to the payer –
 - (a) accept the notification and cancel or amend the notice under subsection (2); or

- (b) reject the notification.
- (10) The Minister shall 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 shall be personally liable for any part of the amount specified in the notice that is unpaid and any late payment interest payable in respect of the unpaid amount in accordance with section 33(3).
- (12) The Minister shall credit an amount paid by a payer under this section in relation to a taxpayer against the tax liability of the taxpayer.
- (13) In this section, “**payer**”, in respect of a taxpayer, means a person who –
 - (a) owes or may subsequently owe money to the taxpayer;
 - (b) holds or may subsequently hold money, for or on account of, the taxpayer;
 - (c) holds or may subsequently hold money on account of some other person for payment to the taxpayer; or
 - (d) has authority from some other person to pay money to the taxpayer.

36 Liquidators

- (1) A liquidator shall give the Minister notice in writing within 14 consecutive days of their appointment as liquidator.
- (2) The Minister shall notify the liquidator, 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 liquidator and such notice shall be served on the liquidator within 1 month of the Minister being served with a notice under subsection (1).
- (3) A liquidator shall not, without leave of the Minister, part with any asset held as liquidator until the liquidator has been served with a notice under subsection (2) or the 1-month period has expired without such a notice being served on the liquidator.
- (4) Subject to subsection (5), a liquidator shall –
 - (a) set aside out of the proceeds of sale of any asset of the taxpayer the amount notified by the Minister under subsection (2) or such lesser amount as subsequently agreed with the Minister; and
 - (b) be personally liable for the amount required to be set aside and any late payment interest payable in respect of the amount in accordance with section 33(3).
- (5) Subject to section 30, nothing in subsection (3) shall prevent a liquidator from paying the following in priority to the amount notified under subsection (2) –

- (a) a debt that has priority, in law or equity, over the tax referred to in the notice served under subsection (2);
 - (b) the expenses properly incurred by the liquidator in the capacity as such, including the liquidator's remuneration.
- (6) Subject to subsection (5), when the proceeds of sale of any asset are less than the amount notified by the Minister under this section, the liquidator shall set aside the entire proceeds of sale to meet the amount notified under this section.
- (7) Where two or more persons are liquidators in respect of a taxpayer, the obligations and liabilities under this section shall apply jointly and severally to the liquidators.
- (8) In this section, the reference to a "taxpayer" includes a deceased taxpayer.

37 Temporary closure of business premises

- (1) This section applies when a taxpayer fails to –
 - (a) maintain records as required under a revenue law;
 - (b) lodge a withholding tax statement under section 85 of the Income Tax Act 2007 or a consumption tax return under section 21 of the Consumption Tax Act 2003 by the due date; or
 - (c) pay withholding tax under section 76 of the Income Tax Act 2007 or consumption tax by the due date.
- (2) When this section applies, the Minister 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 consecutive days, unless within a period of 7 consecutive days from service of the notice –
 - (a) the Minister is satisfied that the taxpayer has put into place sufficient measures to ensure that records are properly maintained in the future;
 - (b) the taxpayer lodges the withholding tax statement or consumption tax return; or
 - (c) pays the withholding tax or consumption 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 Minister 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 consecutive days.
- (4) The Minister 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) When a closure notice has been issued under subsection (3), the Minister shall seal the premises and affix in a conspicuous place on the front of the business premises closed down, a notice in the following words "CLOSED

TEMPORARILY FOR NOT COMPLYING WITH TAXATION OBLIGATIONS”.

- (6) A person shall not enter premises or remove goods from any premises that are the subject of a closure notice issued under subsection (3) without permission of the Minister.
- (7) The Minister shall immediately arrange for removal of the notice referred to in subsection (5) if, during the period of closure –
 - (a) the Minister is satisfied that the taxpayer has put into place sufficient measures to ensure that records are properly maintained in the future;
 - (b) the taxpayer lodges the withholding tax statement or consumption tax return; or
 - (c) the taxpayer pays the withholding tax or consumption tax due, and any penalty and late payment interest payable in respect of the unpaid tax.
- (8) Only the Minister or an authorised officer shall exercise the powers in this section.
- (9) The Minister, an authorised officer, or a police officer shall not be liable for any damage resulting from an exercise of power under this section provided the Minister, authorised officer, or police officer acted in accordance with the terms of the section and has used reasonable force.

38 Liability for tax payable by a company

- (1) Subject to subsection (2), when an arrangement has been entered into with the intention or effect of rendering a company unable to satisfy a current or future tax liability under a revenue law, every person who was a director or controlling shareholder of the company when the arrangement was entered into shall be jointly and severally liable for the tax liability of the company.
- (2) A director of a company shall not be liable under this section for the tax liability of the company when the Minister is satisfied that the director derived no financial or other benefit from the arrangement and –
 - (a) the director has, on becoming aware of the arrangement, formally recorded with the company his dissent and notified the Minister in writing of the arrangement; or
 - (b) the director satisfies the Minister that –
 - (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) In this section –

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

“**companies legislation**” means the Companies Act 1995 and any successor legislation to that Act providing for the formation and regulation of companies;

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

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

“**director**”, in relation to a company, means any person occupying, or purporting to occupy, the position of director of the company, and includes any person treated as a director of a company for the purposes of the Companies legislation; and

“**shareholder**” has the meaning under the Companies legislation.

39 Transferred tax liabilities

- (1) When a taxpayer (referred to as the “transferor”) has a tax liability in relation to a business carried on by the transferor and the transferor has transferred all or some of the assets of the business to an associate (referred to as the “transferee”), the transferee shall be personally liable for the unpaid tax liability (referred to as the “transferred liability”) of the transferor in relation to the business.
- (2) Subsection (1) shall not preclude the Minister from recovering the whole or part of the transferred liability from the transferor.

40 Preservation of assets

- (1) This section shall apply when the Minister has reasonable cause to believe that –
 - (a) a taxpayer will not pay the full amount of tax owing when due; 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 Minister may make an *ex-parte* application to the Supreme Court for an order (referred to as an “asset preservation order”) for the preservation of the assets of the taxpayer and prohibiting any person holding, controlling, or managing assets belonging to the taxpayer from transferring, withdrawing, disposing, or otherwise dealing with the assets.

- (3) The Minister may take such steps as necessary to secure the assets of the taxpayer, including seizure of the assets, pending making an application for an order under subsection (2), which application shall be made within 24 hours from taking steps to secure the taxpayer's assets.
- (4) The Supreme Court shall issue an asset preservation order when satisfied that the requirements in subsection (1) are satisfied and the order shall be served on the taxpayer and any person having custody, control, or management of the taxpayer's assets.
- (5) An asset preservation order shall be valid for 30 consecutive days and may be extended by the Supreme Court on application by the Minister.
- (6) A taxpayer whose assets are the subject of an asset preservation order may, within 15 consecutive days of being served with the order, apply to the Supreme Court to discharge or vary the order.
- (7) When the Supreme Court has issued an asset preservation order, the Minister shall, within 30 consecutive days of service of notice of the order, determine the tax due by the taxpayer to whom the order relates and serve a notice of a taxation assessment on the taxpayer and commence recovery of the tax assessed in accordance with the provisions of this Division.
- (8) An asset preservation order shall automatically expire upon service of a notice of a taxation assessment under subsection (7) unless the Supreme Court extends the order upon application by the CEO under subsection (5).
- (9) A person who preserves assets pursuant to an asset preservation order shall, for all purposes, be deemed to have acted within the authority thereof and such person and all other persons concerned are indemnified in respect of the actions taken in connection with the order, against all proceedings, civil or criminal, and all process, judicial or extrajudicial, despite any provisions to the contrary in any written law, contract, or agreement.
- (10) A person who, without reasonable cause, fails to comply with an asset preservation order served on the person shall be personally liable for the amount specified in the order.
- (11) Only the Minister or an authorised officer shall exercise the power to secure assets under subsection (3).

41 Seizure and forfeiture of goods

- (1) The Minister may enter any premises or place and seize any goods in respect of which the Minister has reasonable grounds to believe that the Consumption Tax that is, or will become, payable in respect of the supply or import of the goods has not been, or will not be, paid.
- (2) Goods that have been seized under this section shall be stored in a place approved by the Minister for the storage of seized goods.

- (3) If goods have been seized under subsection (1), the Minister shall, 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;
 - (b) stating that the goods have been seized under this section and the reason for seizure;
 - (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.
- (4) For the purposes of subsection (3)(d), the detention period shall be –
 - (a) for perishable goods, such period as the Minister considers reasonable having regard to the condition of the goods; or
 - (b) for any other goods, not less than 21 consecutive days after the seizure of the goods.
- (5) The Minister shall not be required to serve a notice under subsection (3) if, after making reasonable enquiries, the Minister does not have sufficient information to identify the person on whom the notice should be served.
- (6) If subsection (5) applies, the Minister may serve a notice under subsection (3) on any person claiming the goods, provided the person has given the Minister sufficient information to enable such a notice to be served.
- (7) The Minister may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (3) has been served if that person has paid, or makes an arrangement to the satisfaction of the Minister for payment of the Consumption Tax payable or that may become payable in respect of the supply or import of the goods.
- (8) Seized goods that have not been claimed within the detention period specified in subsection (4) shall be treated as forfeited to the Minister at the end of the detention period and the Minister may sell the goods by public auction or in such other manner as the Minister may determine and apply the proceeds of sale in the following order –
 - (a) first towards the cost of taking, keeping, and selling the forfeited goods as determined by the Minister;
 - (b) then in payment of the consumption tax, penalty, and late payment interest that is, or will become, payable in respect of the supply or import of the goods; and
 - (c) the remainder of the proceeds, if any, are retained by the Minister.
- (9) Nothing in this section precludes the Minister 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 subsection (8)(a) and (b).

- (10) The Minister may request a police officer to be present while the seizure of goods is being executed under this section.
- (11) Only the Minister or an authorised officer shall exercise the powers in this section.
- (12) The Minister, an authorised officer, or a police officer shall not be liable for any damage resulting from an exercise of power under this section provided the Minister, authorised officer, or police officer acted in accordance with the terms of the section and has used reasonable force.

42 Distress proceedings

- (1) The Minister may recover unpaid tax owing by a taxpayer by distress proceedings against the movable property of the taxpayer by issuing a notice, in writing, to the taxpayer specifying the following –
 - (a) the name of the taxpayer;
 - (b) the location of the property; and
 - (c) the tax liability to which the distress proceedings relate.
- (2) For the purposes of executing distress, the Minister 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.
- (3) The property distrained shall be detained for the period specified in section 41(4) either at the premises where the distress was executed or at such other place as the Minister may consider appropriate, at the cost of the taxpayer.
- (4) The property distrained may be sold by public auction or in such other manner as the Minister may direct when the taxpayer does not pay the tax due, together with the costs of the distress, within the detention period under subsection (3).
- (5) The Minister shall apply the proceeds of a disposal under subsection (4) as follows –
 - (a) first towards the cost of taking, keeping, and selling the property distrained upon;
 - (b) then towards the unpaid tax liability of the taxpayer as specified in the distress notice;
 - (c) then towards any other unpaid tax liability of the taxpayer;
 - (d) then the remainder of the proceeds, if any, shall be paid to the taxpayer.
- (6) Nothing in this section precludes the Minister 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 (5)(a), (b), and (c).
- (7) Only the Minister or an authorised officer shall exercise the powers in this section.

- (8) The Minister, an authorised officer, or a police officer shall not be liable for any damage resulting from an exercise of power under this section provided the Minister, authorised officer, or police officer acted in accordance with the terms of the section and has used reasonable force.

43 Departure prohibition

- (1) This section shall apply when the Minister has reasonable grounds to believe that a person may leave Tonga –
- (a) without paying tax that is or will become payable by the person; or
 - (b) when tax that is or will become payable by a company in which the person is a controlling shareholder is unpaid.
- (2) When this section applies, the Minister may issue a notice (referred to as a “departure prohibition notice”) to the Principal Immigration Officer prohibiting the person from leaving Tonga until –
- (a) the tax payable or that will become payable by the person or by the company in which the person is a controlling shareholder is paid in full; or
 - (b) an arrangement is made satisfactory to the Minister for payment of the tax referred to in paragraph (a).
- (3) A departure prohibition notice shall specify the following –
- (a) the name, address, and TIN of the person to whom the notice applies;
 - (b) the amount of tax that is or will become payable by the person or by the company in which the person is a controlling shareholder.
- (4) The Minister shall serve a copy of a departure prohibition notice on the person named in the notice, but the non-receipt of a copy of the notice shall not invalidate any proceedings under this section.
- (5) On receipt of a departure prohibition notice in relation to a person, the Principal Immigration Officer shall take such measures as may be necessary to comply with the notice including the seizure and retention of the person’s passport, certificate of identification, or any other document authorising the person to leave Tonga.
- (6) If the tax specified in the departure prohibition notice is paid or a satisfactory arrangement for payment of the tax is made, the Minister shall issue the person named in the notice with a departure certificate and production of the certificate to an immigration officer shall be sufficient authority for the officer to allow the person to leave Tonga subject to other immigration requirements being satisfied.

- (7) No proceedings, criminal or civil, may be instituted or maintained against the Government, or a taxation, customs, immigration, police, or other officer for anything lawfully done under this section.
- (8) Only the Minister or an authorised officer shall exercise the powers in this section.
- (9) In this section, “controlling shareholder” has the same meaning as in section 38.

PART 9 – REFUNDS

44 Refunds

- (1) A taxpayer who has paid tax in excess of the amount for which the taxpayer is properly chargeable under a revenue law may apply, in the approved form, to the Minister for a refund of the excess.
- (2) An application for a refund under subsection (1) shall be lodged –
 - (a) in relation to the small business tax, within 3 years after the date on which the tax was paid; or
 - (b) in relation to any other tax, within 5 years after the date the tax was paid.
- (3) If the Minister is satisfied that a taxpayer has overpaid tax under a revenue law, the Minister shall –
 - (a) first apply the amount of the refund in payment of any other tax owing by the taxpayer under the revenue law;
 - (b) second, in payment of tax owing by the taxpayer under any other revenue law; and
 - (c) subject to subsection (4), refund the remainder, if any, to the taxpayer.
- (4) With the written agreement of the taxpayer an amount referred to in subsection (3)(c) may be carried forward for the payment of any future tax liability of the taxpayer under any revenue law.
- (5) The Minister shall serve the taxpayer with notice, in writing, of the decision on the application for a refund within 45 consecutive days of the application being lodged with the Minister.
- (6) This section shall not apply when section 24(1), (2) and (3) of the Consumption Tax Act 2003 applies.
- (7) When a refund has been erroneously paid to a taxpayer under a revenue law, the taxpayer shall be liable to repay the amount of the erroneous refund by the date specified in a notice of demand served on the taxpayer by the Minister.
- (8) If a refund has been erroneously paid due to an error made by the taxpayer in claiming the refund, the taxpayer may be liable to pay late payment interest

computed for the period commencing on the date that the refund was erroneously paid and ending on the date that the refund was repaid.

- (9) An amount owing under subsection (7) that is not paid by the due date shall be treated as unpaid tax for the purposes of Part 8 and section 83 of this Act.

PART 10 – INVESTIGATIONS AND TAX CLEARANCE

45 Power to enter and search

- (1) For the purposes of the administration of any revenue law, the Minister –
- (a) shall have, at all times and without notice, full and free access to any premises, place, property, records, or electronic information storage facility;
 - (b) may make an extract or copy of any records to which access is obtained under paragraph (a);
 - (c) may seize any records that, in the opinion of the Minister, affords evidence that may be material in determining the tax liability of any taxpayer;
 - (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 revenue law; and
 - (e) may, if a hard copy or copy 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 shall not be entitled to enter or remain on any premises or place if, upon request by the owner or lawful occupier, the officer is unable to produce the Minister's written authorisation permitting the officer to exercise powers under subsection (1).
- (3) The Minister may require a police officer to be present for the purposes of exercising powers under this section.
- (4) The owner or lawful occupier of the premises or place to which an exercise of power under subsection (1) relates shall provide all reasonable facilities and assistance to the Minister, including –
- (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; or
 - (c) providing access to decryption information necessary to decrypt data to which access is sought under this section.

- (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 Minister may specify.
- (6) The Minister shall sign for all records or data storage devices removed and retained under this section and shall:
 - (a) for records, return the records to the owner within 14 consecutive days of the conclusion after the investigation and any related proceedings; or
 - (b) for a data storage device, return the device to the owner within 14 days after the data on the device has been copied in accordance with subsection (1)(e).
- (7) This section shall have 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 contractual duty of confidentiality.
- (8) Only the Minister or an officer authorised by the Minister shall exercise the powers in this section.
- (9) The Minister, an authorised officer, or a police officer shall not be liable for any damage resulting from an exercise of power under this section provided the Minister, authorised officer, or police officer acted in accordance with the terms of the section and has used reasonable force.
- (10) In this section and section 46 –

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

“electronic information storage facility” means a data storage device or any other facility, including an electronic facility, for the electronic storage of information.

46 Information required

- (1) The Minister may, for the purposes of administering any revenue law, by notice in writing, require any person to –
 - (a) furnish, within the time specified in the notice, any information that may be required by the notice concerning the tax affairs of that person or any other person;
 - (b) attend at the time and place designated in the notice to be examined on oath by the Minister 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 device under the control of the person concerning the tax affairs of that person or any other person.
- (2) A notice issued under this section shall be served personally upon the person to whom it is directed or left at the person's last known usual place of business or abode and the certificate of service signed by the person serving the notice shall be evidence of the facts stated in the certificate.
- (3) This section shall have 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 contractual duty of confidentiality.

47 Implementation of mutual administrative assistance agreements

- (1) If a tax treaty or mutual administrative assistance agreement having legal effect in Tonga provides for exchange of information, or reciprocal assistance in the recovery of tax or service of process, the Minister shall use the powers available under this Act or any other law to meet Tonga's obligations under the treaty or agreement on the basis that a reference in this Act or other law –
 - (a) to “tax” includes a foreign tax to which the exchange of information or reciprocal assistance relates;
 - (b) to “unpaid tax” includes an amount specified in paragraph (a) that has not been paid by the due date;
 - (c) to “taxpayer” includes a person liable for an amount specified in paragraph (a); and
 - (d) to “revenue law” includes the law under which a foreign tax specified in paragraph (a) is imposed.
- (2) Despite section 67, any information obtained by the Minister from the competent authority of a country with which Tonga has entered into a tax treaty or mutual administrative assistance agreement may be disclosed only to the extent permitted under the treaty or agreement.
- (3) In this section –
 - “**international agreement**” means an agreement between the Government of Tonga and a foreign government or governments;
 - “**mutual administrative assistance agreement**” means a tax information exchange agreement or other international agreement for mutual administrative assistance in relation to taxation matters; and
 - “**tax treaty**” means an international agreement relating to the avoidance of double taxation and the prevention of fiscal evasion.

48 Tax Clearance Certificate

- (1) A person shall be required to produce a tax clearance certificate to the relevant authority in the circumstances prescribed in the Regulations.
- (2) A person to whom subsection (1) applies shall apply, in the approved form, to the Minister for the issue of a tax clearance certificate.
- (3) The Minister shall issue a tax clearance certificate to an applicant under subsection (2) when satisfied that –
 - (a) the applicant has no outstanding tax liabilities or the applicant was not a taxpayer for the previous year or years; or
 - (b) if the applicant does have an outstanding tax liability, the applicant has entered into an arrangement satisfactory to the Minister for the payment of the liability.
- (4) The Minister shall issue the applicant with a tax clearance certificate or a notice refusing to issue tax clearance certificate, as the case may be, within 7 consecutive days of the application being lodged with the Minister.

PART 11 – RULINGS**DIVISION 1 – PUBLIC RULINGS****49 Binding public rulings**

- (1) The Minister may make a public ruling setting out his or her interpretation on the application of a revenue law.
- (2) A public ruling shall be made in accordance with section 50 and shall be binding on the Minister until withdrawn.
- (3) A public ruling shall not be binding on a taxpayer.
- (4) A public ruling sets out the Minister’s opinion on the application of a revenue law in the circumstances specified in the ruling and shall not be treated as a decision of the Minister for the purposes of this Act or any other law.

50 Making a public ruling

- (1) The Minister shall make a public ruling by publishing a notice of the ruling on the Ministry’s website or in any weekly newspaper in circulation in Tonga.
- (2) A public ruling shall state that it is a public ruling and shall have a number and subject heading by which it can be identified.
- (3) A public ruling shall apply from the date specified in the ruling or, if no date is specified, from the date of publication.

51 Withdrawal of a public ruling

- (1) The Minister may withdraw a public ruling, in whole or part, by publishing notice of the withdrawal on the Ministry's website or in any weekly newspaper in circulation in Tonga.
- (2) When legislation is passed, or the Minister makes another public ruling that is inconsistent with an existing public ruling, the existing public ruling shall be treated as withdrawn to the extent of the inconsistency.
- (3) The withdrawal of a public ruling, in whole or part, shall have effect from –
 - (a) when subsection (1) applies, 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; or
 - (b) when subsection (2) applies, the date of application of the inconsistent legislation or public ruling.
- (4) Despite subsection (3)(a), a public ruling shall not 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.
- (5) A public ruling that has been withdrawn, in whole or part shall –
 - (a) continue to apply to a transaction commenced before the public ruling was withdrawn; and
 - (b) not apply to a transaction commenced after the public ruling was withdrawn to the extent that the ruling is withdrawn.

DIVISION 2 – PRIVATE RULINGS**52 Binding private rulings**

- (1) The Minister may, upon application by a taxpayer in the approved form and in accordance with this Division, issue to the taxpayer a private ruling setting out the Minister's position regarding the application of a revenue law to a transaction entered into, or proposed to be entered into, by the taxpayer.
- (2) An application under subsection (1) shall –
 - (a) include full details of the transaction to which the application relates together with all documents relevant to the transaction;
 - (b) specify precisely the question on which the ruling is required; and
 - (c) give a full statement setting out the opinion of the taxpayer as to the application of the relevant revenue law to the transaction.
- (3) A private ruling shall be binding on the Minister if –
 - (a) the taxpayer has made a full and true disclosure of all aspects of the transaction relevant to the making of the private ruling; and
 - (b) the transaction has proceeded in all material respects as described in the taxpayer's application for the private ruling.

- (4) A private ruling shall not be binding on a taxpayer.
- (5) When a private ruling is inconsistent with a public ruling that is in force at the time that the private ruling is made, the private ruling has priority to the extent of the inconsistency.
- (6) A private ruling sets out the Minister's opinion on the question raised in the ruling application and is not a decision of the Minister for the purposes of the Act or any other law.

53 Refusing an application for a private ruling

- (1) The Minister may refuse an application for a private ruling if –
 - (a) the Minister has already decided the question that is the subject of the application in any of the following –
 - (i) a notice of a taxation assessment served on the applicant;
 - (ii) a public ruling made under section 50 that is in force;
 - (iii) a ruling published under section 56 that is in force;
 - (b) the application relates to a question that is the subject of a tax audit in relation to the applicant or an objection lodged by the applicant;
 - (c) the application is frivolous or vexatious;
 - (d) the transaction to which the application relates has not been carried out and there are reasonable grounds to believe that the transaction will not be carried out;
 - (e) the applicant has not provided the Minister with sufficient information to make the private ruling requested;
 - (f) the correctness of the ruling depends on the making of assumptions about a future event or some other matter;
 - (g) the making of the ruling involves the application of a tax avoidance provision; or
 - (h) in the opinion of the Minister, it would be unreasonable to comply with the application, having regard to the resources needed to comply and any other matters the Minister considers relevant.
- (2) The Minister shall serve the applicant with a written notice of a decision to refuse to make a private ruling.

54 Making a private ruling

- (1) The Minister shall agree to an application for a private ruling unless the Minister decides to refuse to make the ruling in accordance with section 53.
- (2) The Minister shall make a private ruling by serving written notice of the ruling on the applicant.

- (3) The Minister may make a private ruling on the basis of assumptions about a future event or any other matter as the Minister considers appropriate.
- (4) A private ruling shall state that it is a private ruling, set out the question ruled on, and identify the following –
 - (a) the taxpayer;
 - (b) the revenue law relevant to the ruling;
 - (c) the tax period for which the ruling shall be effective;
 - (d) the transaction to which the ruling relates;
 - (e) any assumptions on which the ruling is based.
- (5) A private ruling shall be made when the applicant is served with written notice of the ruling and the ruling remains in force for the period specified in the ruling unless withdrawn earlier under section 55.

55 Withdrawal of a private ruling

- (1) The Minister may, for reasonable cause, withdraw a private ruling, in whole or part, by written notice served on the applicant.
- (2) When legislation is passed, or the Minister makes a public ruling that is inconsistent with an existing private ruling, the private ruling shall be treated as withdrawn to the extent of the inconsistency.
- (3) The withdrawal of a private ruling, in whole or part, shall have effect –
 - (a) when subsection (1) applies, from the date specified in the notice of withdrawal; or
 - (b) when subsection (2) applies, from the date of application of the inconsistent legislation or public ruling.
- (4) Despite subsection (3)(a), a private ruling shall not be withdrawn under subsection (1) before the date of service of the notice of withdrawal unless the withdrawal of the ruling is for the benefit of the person to whom the ruling has been issued.
- (5) A private ruling that has been withdrawn shall –
 - (a) continue to apply to a transaction of the applicant commenced before the ruling was withdrawn; and
 - (b) not apply to a transaction of the applicant commenced after the ruling was withdrawn to the extent the ruling is withdrawn.

56 Publication of private rulings

- (1) The Minister shall publish a notice of a private ruling on the Ministry's website or in any weekly newspaper in circulation in Tonga except that the identity of the applicant to whom the ruling relates shall not be revealed in the publication.

- (2) Subject to subsection (3), any person may rely upon a ruling published under subsection (1) as a statement binding on the Minister with respect to the application of the relevant revenue law to the facts set out in the ruling and for the tax period covered by the ruling.
- (3) When a private ruling has been withdrawn in accordance with section 55, the Minister shall immediately publish a notice of withdrawal on the Ministry's website or in any weekly newspaper in circulation in Tonga stating that the ruling ceases to be binding with effect from the date determined under section 55(3).

PART 12 - COMMUNICATIONS, FORMS, AND NOTICES

57 Official languages

English and Tongan are the official languages of the revenue laws and the Minister may refuse to recognise any communication or document that is not in an official language.

58 Forms and notices, authentication of documents

- (1) The Minister shall make approved forms and other documents required for the purposes of the revenue laws available to the public at offices of the Ministry, or by mail or such other means (including making them available for downloading from the Ministry's website) as the Minister determines.
- (2) A notice or other document issued or served by the Minister under a revenue law shall be authenticated by the inclusion of the seal of the Ministry and the signature of the Minister or authorised officer, including the seal and signature in electronic format.

59 Lodging documents in the approved form

- (1) A document lodged by a taxpayer is lodged in the approved form when the document –
 - (a) is in the approved form for the particular type of document;
 - (b) contains the information (including any attached documents) as required by the form; and
 - (c) is signed as required by the form.
- (2) Subject to subsection (3), the Minister shall immediately notify a taxpayer, in writing, when a document lodged by the taxpayer does not satisfy subsection (1).

- (3) The Minister may decide to accept a document that is not lodged in the approved form if the document has been lodged in a form that contains substantially the information required by the approved form for the document.

60 Service of notices

- (1) Subject to this Act, a notice or other document required to be served on a person for the purposes of a revenue law shall be treated as properly served on the person if –
 - (a) personally served on the person;
 - (b) left at the person’s place of business or last known address as stated in any communication by the person with the Minister;
 - (c) sent by registered post to the person’s place of business, or last known address as stated in any communication by the person with the Minister; or
 - (d) transmitted electronically to the person in accordance with section 61(3) to the last known electronic contact information as stated in any communication by the person with the Minister.
- (2) Service of any notice or other document required to be served on an individual that is served on the town officer for the area in which the individual lives in accordance with this section shall be treated as properly served on the individual on the earlier of –
 - (a) receipt by the Minister of written confirmation from the town officer that the officer has served the notice or other document on the individual; or
 - (b) 30 consecutive days after the notice or other document was served on the town officer.
- (3) The validity of the service of a notice or other document under a revenue law shall not be challenged after the notice has been wholly or partly complied with.
- (4) In this section, “person” includes the person’s representative or registered tax agent.

61 Application of electronic tax system

- (1) Despite the other provisions of this Act and for the purposes of a revenue law, the Minister may authorise the following to be done electronically through a computer system or mobile electronic device –
 - (a) the lodging of an application for a TIN or registration;
 - (b) the lodging 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 Minister;

- (f) the doing of any other act or thing that is required or permitted to be done under a revenue law.
- (2) Subject to subsection (4), the Minister may direct that a person shall 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 Minister 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) shall not apply to a taxpayer if the Minister 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 Minister pursuant to subsection (2) or (3) shall be treated as a notice in writing.
- (6) A person who lodges a tax return and pays tax electronically under this section shall continue to lodge tax returns and pay tax in that manner unless otherwise authorised by the Minister to use some other method of lodgement or payment.

62 Defect does not affect validity

The validity of a taxation or reviewable decision, a notice of a taxation or reviewable decision, or any other document purporting to be made, or executed under any revenue law by the Minister shall not be –

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

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

63 Rectification of mistakes

When a notice of a taxation assessment or other document served by the Minister under a revenue law contains a mistake that is apparent from the record and the mistake does not involve a dispute as to the interpretation of the law or facts of the case, the Minister may, for the purposes of rectifying the mistake, amend the assessment or other document any time before the expiry of –

- (a) for a small business taxpayer, 3 years from the date of service of the notice of the taxation assessment or other document; or
- (b) for any other case, 5 years from the date of service of the notice of the taxation assessment or other document.

PART 13 – ADMINISTRATION

DIVISION 1 – MINISTRY OF REVENUE AND CUSTOMS

64 Ministry of Revenue and Customs

- (1) There shall be established a Ministry of Revenue and Customs under the direction and control of the Minister.
- (2) The Minister shall have responsibility to –
 - (a) develop and ensure the overall effective application of the fiscal policies of the Government of Tonga; and
 - (b) ensure the effective coordination of the policies for the collection and preservation of tax under the revenue laws.
- (3) The daily operation of the revenue laws shall be the responsibility of the CEO, with the assistance of the Deputy CEOs.

65 Taxation officers

- (1) All taxation officers shall be appointed according to law and shall wear an official uniform and identification card as prescribed by the Minister at all times while on duty.
- (2) Every taxation officer shall take the prescribed oath of office before performing any duties under the revenue laws, and a Magistrate may administer the oath.
- (3) Any person that the Minister requires to take the prescribed oath of office shall be treated as a taxation officer.
- (4) A taxation officer shall not exercise a power, or perform a duty or function, under a revenue 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.
- (5) A taxation officer shall not –
 - (a) prepare a tax return on behalf of a taxpayer or provide tax advice to a taxpayer;
 - (b) act as a tax accountant or consultant; or
 - (c) accept employment from any person preparing tax returns or giving tax advice.

66 Delegation

- (1) The Minister may delegate, in writing, any duty, power, or function conferred on the Minister under a revenue law to a taxation officer, other than this power of delegation and the power to cancel an existing TIN and issue a new TIN under section 6(5).
- (2) The Minister may, at any time, revoke in writing any delegation made under this section.
- (3) A delegation made under this section shall not prevent the Minister from performing or exercising a delegated duty, power, or function.

67 Confidentiality

- (1) A taxation officer shall 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 revenue law.
- (2) Nothing in subsection (1) shall prevent a taxation officer disclosing a document or information to the following persons –
 - (a) another taxation officer for the purposes of carrying out official duties;
 - (b) a Customs officer for the purposes of carrying out any duty, power, or function under the Customs laws;
 - (c) the Tax Tribunal or a Court in relation to proceedings under a revenue law;
 - (d) any person in the service of the Government in a revenue or statistical department when such disclosure is necessary for the performance of the person's official duties and provided the disclosure does not identify a specific person;
 - (e) the Auditor General or any person authorised by the Auditor General when such disclosure is necessary for the performance of official duties;
 - (f) the Anti-Corruption Commissioner or any person authorised by the Commissioner when such disclosure is necessary for the purposes of an investigation of alleged or suspected corrupt conduct;
 - (g) a Commissioner appointed under Royal Commissions Act or a person authorised by the Commissioner when such disclosure is necessary for the purposes of an inquiry initiated under that Act;
 - (h) the competent authority of the government of a foreign country with which Tonga has entered into an agreement providing for the exchange of information, to the extent permitted under that agreement;
 - (i) the Attorney-General or any person authorised by the Attorney-General when such disclosure is necessary for the performance of official duties;

- (j) any person in the service of the Government or National Reserve Bank of Tonga when such disclosure is necessary for the performance of official duties; or
 - (k) any other person with the written consent of the person to whom the document or information relates.
- (3) A taxation officer shall be 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) shall apply to a person receiving a document or information under subsection (2) as if the person were a taxation officer.
- (5) In this section, “taxation officer” includes –
- (a) the Minister or a former Minister;
 - (b) a person employed or engaged by the Ministry in any capacity;
 - (c) a former taxation officer, employee, or contractor of the Ministry; or
 - (d) a police officer when performing duties under this Act.

DIVISION 2 – TAX TRIBUNAL

68 Establishment of Tribunal

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

69 Constitution of Tax Tribunal

- (1) The Tax Tribunal consists of the following members –
- (a) President to be nominated and appointed from a Supreme Court Judge by the Lord Chief Justice of Tonga;
 - (b) a law practitioner, of Senior Counsel status, to be nominated and appointed by the Tonga Law Society; or
 - (c) a senior chartered accountant, to be nominated and appointed by the Chartered Accountants of Tonga.
- (2) The members of the Tribunal shall hold Office as –
- (a) the President of the Tax Tribunal as long as he remains a Judge of the Supreme Court; and
 - (b) as a member of the Tax Tribunal for a term of 3 years and shall be eligible for reappointment for one further term only.
- (3) The following persons shall not be appointed as a member of the Tax Tribunal –
- (a) an un-discharged bankrupt;
 - (b) a person who under revenue law has been convicted of an offence, has been liable to a penalty or is subject to a compounding notice;

- (c) a person who has been convicted of an indictable offence; or
- (d) is an existing public servant or Minister.

70 Procedures at Tax Tribunal

- (1) The Tax Tribunal shall determine the procedures to be used at Tax Tribunal meetings.
- (2) The Tax Tribunal shall keep a record of its meetings.

71 Decision of Tax Tribunal

- (1) The Tax Tribunal shall –
 - (a) in the case of a review of an objection decision, make an order as set out in section 22; or
 - (b) in the case of any other reviewable decision, make an order to affirm, vary, or set aside the decision.
- (2) The Tax Tribunal shall –
 - (a) make a written decision on an application for review as soon as practicable after the hearing has been completed; and
 - (b) cause a copy of its decision to be served on each party to the proceeding within 7 consecutive days of making the decision.
- (3) A decision referred to in subsection (2) shall include the Tax Tribunal's reasons for the decision and its findings on material questions of fact and reference to the evidence or other material on which those findings were based.
- (4) Subject to subsection (6), all decisions of the Tax Tribunal shall be public records.
- (5) An authenticated copy of the decision shall be received in court proceedings in accordance with section 49 of the Evidence Act.
- (6) In releasing information or allowing access to information under subsection (4), the Tax Tribunal and the Ministry shall ensure that –
 - (a) the identity and affairs of the applicant and any other person concerned shall be concealed; and
 - (b) trade secrets or other confidential information are not disclosed.

72 Administration of the Tax Tribunal

- (1) The President shall be responsible for managing the administrative affairs of the Tax Tribunal.
- (2) The Ministry shall carry out secretariat functions of the Tribunal.

- (3) The Regulations may provide for administrative matters relating to the Tribunal's operations, including the service of documents, place of hearings, and costs.

DIVISION 3 – REGISTRATION OF TAX AGENTS

73 Application for tax agent registration

- (1) An individual, partnership, or company wishing to provide tax agent services may apply to the Minister for registration as a tax agent.
- (2) An application under subsection (1) shall be in the approved form and accompanied by the prescribed fee.
- (3) In this Division, “tax agent services” means –
 - (a) the preparation of tax returns on behalf of taxpayers;
 - (b) the preparation of notices of objection on behalf of taxpayers;
 - (c) the provision of advice to taxpayers on the application of the revenue laws;
 - (d) representing taxpayers in their dealings with the Ministry; or
 - (e) the transaction of any other tax-related business on behalf of taxpayers with the Ministry.

74 Registration of tax agents

- (1) If an applicant under section 73 is an individual person, the Minister shall 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 73 is a partnership, the Minister shall register the applicant if satisfied that –
 - (a) a partner in, or employee of, the partnership is a fit and proper person to provide tax agent services; and
 - (b) every partner in the partnership is of good fame, integrity, and character.
- (3) If an applicant under section 73 is a company, the Minister shall register the applicant if satisfied that –
 - (a) an employee of the company is a fit and proper person to provide tax agent services; and
 - (b) every director, manager, or other executive officer of the company is of good fame, integrity, and character.
- (4) It shall be a condition of registration under this section, that a tax agent shall have an office in Tonga unless the Minister permits the tax agent, by notice in writing, to provide tax agent services in Tonga through an office located outside Tonga.

- (5) The Regulations may provide guidelines for determining when a person is fit and proper to provide tax agent services and for the nomination by partnerships and companies of employees to provide tax agent services.
- (6) The initial registration of a person as a tax agent shall be valid for the period commencing on the date of registration and ending on the next following 30th June and can be renewed under section 75.
- (7) The Minister shall provide an applicant under section 73 with notice, in writing, of the decision on the application.

75 Renewal of registration

- (1) A tax agent may apply to the Minister for the renewal of the tax agent's registration.
- (2) An application under subsection (1) shall be –
 - (a) in the approved form and accompanied by the prescribed fee; and
 - (b) lodged with the Minister by the 7th of June each year or such later date as the Minister may allow.
- (3) The Minister shall renew the registration of a tax agent who has applied under subsection (1) if the tax agent continues to satisfy the conditions for registration in section 74.
- (4) The renewal of a tax agent's registration shall be valid until the next following 30th June and can be renewed in accordance with this section.
- (5) The Minister shall provide an applicant under subsection (1) with notice, in writing, of the decision on the application.

76 Communications with Minister by registered tax agents

- (1) When a registered tax agent lodges a tax return or other document with the Minister on behalf of a taxpayer, the taxpayer shall be treated as having lodged the return or other document.
- (2) Despite subsection (1), when a tax return or other document has been lodged by a registered tax agent with the Minister 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 shall be treated as having been lodged by the registered tax agent.

77 Limitation on providing tax agent services

- (1) Subject to subsection (2), a person, other than a registered tax agent, shall not –
 - (a) represent another person as that other person's tax agent; or

- (b) provide tax agent services to another person in return for a fee or other benefit.
- (2) Subsection (1) shall not apply to –
 - (a) a law practitioner 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 73; or
 - (b) an employee of a taxpayer or registered tax agent acting in the ordinary course of employment.
- (3) In this section, “law practitioner” has the meaning in the Law Practitioners Act 1989.

78 Cancellation of tax agent registration

- (1) A registered tax agent shall notify the Minister, in writing, within 7 consecutive days of ceasing to satisfy the conditions for registration in section 74.
- (2) A registered tax agent may apply to the Minister, in writing, for cancellation of the agent’s registration when the agent no longer wishes to be a registered tax agent.
- (3) The Minister shall cancel the registration of a tax agent if –
 - (a) a tax return prepared and lodged by the tax agent is false in any material particular, unless the tax agent establishes to the satisfaction of the Minister that this was not due to any wilful or negligent conduct of the tax agent;
 - (b) the tax agent ceases to satisfy the conditions for registration in section 74;
 - (c) the registration of the tax agent has expired and the agent has not lodged an application for renewal of the registration under section 75;
 - (d) the tax agent has ceased to carry on business as a tax agent including, in the case of a company or partnership, when the company or partnership ceases to exist; or
 - (e) the tax agent has applied for cancellation of registration under subsection (2).
- (4) The Minister shall give notice, in writing, of a decision to cancel the registration of a tax agent.
- (5) Subject to subsection (6), the cancellation of the registration of a tax agent shall take effect on the earlier of –
 - (a) the date the tax agent ceases to carry on business as a tax agent; or
 - (b) 60 consecutive days after the date that the tax agent has been served with notice of the cancellation.

- (6) If a tax agent served with notice of a decision to the cancel the tax agent's registration applies to the Tax Tribunal for review of the decision, the Tribunal may determine that the cancellation shall take effect only if the Minister's decision to cancel the tax agent's registration is confirmed by the Tribunal.

PART 14 – ADMINISTRATIVE PENALTIES AND TAX OFFENCES

DIVISION 1 – APPLICATION OF PART 14

79 General provisions relating to administrative penalties and tax offences

- (1) A person shall not be subject to both the imposition of a penalty and prosecution of an offence under a revenue law for the same act or omission.
- (2) When a person has committed an act or omission for which the person may be liable, under a revenue law, to both the imposition of penalty and the prosecution of an offence, the Minister may decide whether to serve a notice of assessment of the penalty or prosecute the offence.
- (3) When a penalty has been paid by a person under a revenue law and, in respect of the same act or omission, the Minister commences a prosecution for an offence under a revenue law, the Minister shall either refund the penalty to the person in accordance with section 44(3) and (4) or withdraw the prosecution.
- (4) The issuing of a compounding notice under section 106 shall apply only to an offence under a revenue law and not to a penalty imposed under a revenue law, although the Minister may remit the penalty, in whole or part, in accordance with section 91.

DIVISION 2 – ADMINISTRATIVE PENALTIES

80 Penalties relating to TINs

- (1) A person who, without reasonable cause, fails to apply for a TIN as required under this Act shall be liable for a penalty 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 including an application by an employer for a TIN for a new employee; and
 - (b) ending on the earlier of the month immediately preceding –
 - (i) the month the person lodges an application for a TIN; or
 - (ii) the month the Minister issues the person or the person's employee with a TIN on the Minister's own motion.
- (2) The amount of the penalty under subsection (1) shall be –

- (a) for an employee, \$10 for each month or part of a month in the period determined under subsection (1);
 - (b) for an employer required under section 3(3) to apply for a TIN for an employee –
 - (i) for an employer subject to small business tax, \$30 for each month or part of a month in the period determined under subsection (1) applicable to employer applications for employee TINs; or
 - (ii) for any other employer, \$50 for each month or part of a month in the period determined under subsection (1) applicable to employer applications for employee TINs; or
 - (c) for a person subject to small business tax, \$30 for each month or part of a month in the period determined under subsection (1); or
 - (d) any other person, \$50 for each month or part of a month in the period determined under subsection (1).
- (3) A person who, without reasonable cause, fails to apply for cancellation of a TIN as required under this Act shall be liable for a penalty for each month or part of a month for the period –
- (a) commencing from the month the person was first required to apply for cancellation of a TIN; and
 - (b) ending on the earlier of the month immediately preceding –
 - (i) the month the person lodges an application for cancellation of a TIN; or
 - (ii) the month the person has their TIN cancelled on the Minister's own motion.
- (4) The amount of the penalty under subsection (3) shall be –
- (a) for an employee, \$10 for each month of part of a month in the period determined under subsection (3);
 - (b) for any other person, \$50 for each month of part of a month in the period determined under subsection (1).
- (5) A person who fails to notify a change in circumstances as required under section 4(6) shall be liable for a penalty equal to –
- (a) for a person liable for small business tax, \$30 for each failure; or
 - (b) for any other person, \$50 for each failure.
- (6) A person who contravenes section 5(1) shall be liable for a penalty of \$300 for each contravention.
- (7) A person who contravenes section 5(2) shall be liable for a penalty of \$300 for each contravention.
- (8) Except when section 5(3) applies, a person shall be liable for a penalty of \$500 if the person provides their TIN for use by another person.

- (9) Except when section 5(3) applies, a person who uses the TIN of another person shall be liable for a penalty of \$500 for each use of the TIN.

81 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 revenue law shall be liable –
- (a) for a failure that was made deliberately or recklessly, for a penalty of 77 per cent of the amount of tax payable by the taxpayer under the revenue law for the tax period to which the failure relates; or
 - (b) in any other case, for a penalty of 5 per cent of the amount of tax payable by the taxpayer under the revenue 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 shall be –
- (a) for a person liable for small business tax, \$100; or
 - (b) for any other person, \$500.
- (3) A taxpayer who fails to keep records as required under Regulation 10 of the Income Tax (Transfer Pricing) Regulations shall be liable for a penalty of \$500,000.
- (4) A taxpayer who fails to comply with section 8(4) of this Act shall be liable for a penalty of \$5,000.
- (5) A taxpayer who fails to comply with the requirements in Regulations made under section 8(3) for the use of sales register devices shall be liable for a penalty of \$5,000 for each failure at each place of business where the taxpayer operates.

82 Late lodgement penalty

A person who fails to lodge a tax return or other document as required under a revenue law shall be liable for a penalty equal to –

- (a) for a person liable for small business tax, \$100 for each month or part of a month the return remains outstanding; or
- (c) for any other person, \$300 for each month or part of a month the return remains outstanding.

83 Late payment penalty

- (1) A taxpayer who fails to pay any tax by the due date shall be liable for a penalty equal to 2 per cent of the amount of unpaid tax after the due date and on the 28th day of each month following the due date that the tax remains unpaid.

- (2) A penalty paid by a taxpayer under this section shall be refunded to the taxpayer to the extent that the tax to which the penalty relates is found not to have been payable.
- (3) Penalty imposed under this section shall be in addition to interest payable under section 33.
- (4) Penalty payable by a person in respect of the late payment of a secondary liability or withholding tax shall be borne personally by the person and shall not be recoverable from any other person.
- (5) In this section, “tax” shall not include penalty.

84 Tax shortfall penalty

- (1) This section shall apply 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) the tax liability of the person, or any other person, computed 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 shall be liable for a tax shortfall penalty equal to –
 - (a) when the statement or omission was made deliberately or recklessly, 75 per cent of the tax shortfall; or
 - (b) in any other case, 20 per cent of the tax shortfall.
- (3) The amount of a tax shortfall penalty imposed under subsection (2) on a person shall be increased by –
 - (a) 10 per centage points when this is the second application of this section to the person; or
 - (b) 25 per centage points when this is the third or a subsequent application of this section to the person.
- (4) The amount of a tax shortfall penalty imposed under subsection (2) on a person shall be reduced by 10 per centage points when the person voluntarily discloses to the Minister the statement or omission to which the section applies prior to the earlier of –
 - (a) discovery by the Minister 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 shall be payable under subsection (2) when –

- (a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular;
 - (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 revenue law to the taxpayer's circumstances in lodging 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 49 or a private ruling issued to the taxpayer under section 54 shall not be regarded as a reasonably arguable position for the purposes of subsection (5)(b) unless the ruling is held to be incorrect.
- (7) Nothing in subsection (5) shall prevent the imposition of late payment interest in respect of a tax shortfall when the tax is not paid by the due date for payment.
- (8) For the purposes of 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, objection, or other document lodged under a revenue law, or a Customs entry lodged under the Customs laws;
 - (b) in information furnished under a revenue law;
 - (c) in a document provided to a taxation officer otherwise than pursuant to a revenue 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.

85 False or misleading statement penalty

- (1) This section shall apply to a person who makes a statement to a taxation officer that is false or misleading as specified in section 84(1)(a) but which does not result in a tax shortfall.
- (2) Subject to subsection (3), a person to whom this section applies shall be liable for a false or misleading statement penalty equal to –
 - (a) when the statement or omission was made deliberately or recklessly, \$500; or
 - (b) in any other case, \$300.
- (3) No false or misleading statement penalty shall apply in the circumstances specified in section 84(5).
- (4) Section 84(8) shall apply in determining whether a person has made a statement to a taxation officer.

86 Dishonoured cheque penalty

- (1) Subject to subsection (2), a person who presents a cheque to the Ministry in payment of an amount owing under a revenue law that is not honoured by the bank shall be liable for a penalty equal to the lesser of 100 per cent of the amount stated on the cheque or \$2,000.
- (2) Subsection (1) shall not apply if the bank has been in error in failing to honour the cheque.

87 Tax avoidance penalty

If the Ministry has applied a tax avoidance provision in assessing a taxpayer, the taxpayer shall be liable for a tax avoidance penalty of \$50,000.

88 Penalty for failing to comply with electronic tax system

- (1) When a taxpayer required by the Minister under section 61(2) to lodge a tax return or pay tax electronically fails to do so, the Minister shall serve the taxpayer with notice in writing seeking reasons for the failure.
- (2) A taxpayer who fails to provide adequate reasons to the satisfaction of the Minister for the failure to lodge a tax return or pay tax electronically within 14 consecutive days of the date of service of the notice under subsection (1) shall be liable for a penalty of \$500.

89 Consumption tax penalties

- (1) A person who fails to apply for registration as required by section 6(1), (2A), or (3) of the Consumption Tax Act 2003 shall be liable to a penalty equal to the higher of –
 - (a) double the amount of consumption tax payable (if any) during the period commencing on the day on which the person was required to apply for registration until either the person lodges an application for registration or the person is registered by the Minister on his or her own motion; or
 - (b) \$1,000.
- (2) A taxable person shall be liable to a penalty of \$300 –
 - (a) for each failure to display the original of the person's consumption tax registration certificate at the person's main place of business and any official copies of the certificate at every other place of business as required under section 7(6) of the Consumption Tax Act 2003;
 - (b) for each failure to notify a change in circumstances as required by section 7(7) of the Consumption Tax Act 2003;
 - (c) for failing to apply for cancellation of registration as required by section 8(1) of the Consumption Tax Act 2003;

- (d) for applying for cancellation of registration when still required to be registered; or
 - (e) for failing to comply with section 8(10)(a) or (c) of the Consumption Tax Act 2003.
- (3) A taxable person who fails to provide a consumption tax invoice, consumption tax receipt, consumption tax credit note, or consumption tax debit note as required in Part VI of the Consumption Tax Act 2003 shall be liable to a penalty of \$500.
- (4) A person shall be liable to a penalty of \$500 for each time the person issues a consumption tax invoice, consumption tax receipt, consumption tax credit note, or consumption tax debit note otherwise than as provided for in Part VI of the Consumption Tax Act 2003.
- (5) A person who charges another person consumption tax otherwise than as required by the Consumption Tax Act 2003 shall be liable to –
- (a) subject to subsection (6), pay to the CEO the amount charged within the time specified in a notice of demand served on the person by the Minister; and
 - (b) a penalty equal to –
 - (i) where the charging of consumption tax was deliberately or recklessly done, 75 per cent of the consumption tax charged; or
 - (ii) for any other case, 25 per cent of the consumption tax charged.
- (6) Section (5)(a) shall not apply to the extent that the wrongly charged consumption tax has been refunded to the customer.
- (7) A person who fails to charge another person consumption tax as required by the Consumption Tax Act 2003 shall be liable to –
- (a) pay to the Minister the amount of consumption tax that should have been charged calculated in accordance with section 11(6) by the due date for payment as determined under the Consumption Tax Act 2003; and
 - (b) a penalty equal to –
 - (i) where the failure was deliberate or reckless, 75 per cent of the consumption tax that should have been charged; or
 - (ii) for any other failure, 25 per cent of the consumption tax that should have been charged.

90 Miscellaneous penalties

- (1) A person who fails to provide security as required by the Minister under section 32 shall be liable for a penalty of \$300.

- (2) A liquidator who fails to comply with section 36 shall be liable to a penalty of \$300.
- (3) A person liable to pay instalments of tax under section 91 of the Income Tax Act shall be liable for a penalty if the actual tax payable by the person for a fiscal year exceeds the amount of tax estimated by the person to be payable for the year by more than 20 per cent of the actual tax payable by the person for the year.
- (4) The penalty payable under subsection (3) shall be 10 per cent of the amount by which the actual tax payable exceeds the estimated tax payable.
- (5) A person who fails to produce a tax clearance certificate as required under Regulations made under section 48(1) shall be liable for a penalty of \$1,000.

91 General provisions relating to administrative penalties

- (1) Liability for a penalty shall be calculated separately with respect to each section in this Division.
- (2) The Minister shall –
 - (a) make an assessment of the amount of penalty payable by a person under this Division; and
 - (b) serve notice of the assessment on the person setting out the amount of penalty payable and the due date for payment.
- (3) A person liable to pay penalty under this Division may apply, in writing, to the Minister for remission of the penalty payable.
- (4) The Minister may, upon application under subsection (3) or on his own motion, remit, in whole or in part, any penalty payable by a person.

DIVISION 3 – TAX OFFENCES

92 Failure to maintain proper records

- (1) A taxpayer who, without reasonable cause, fails to maintain or retain records as required under a revenue law commits an offence.
- (2) A person commits an offence if the person offers a sales register device for sale where –
 - (a) the person is not an accredited supplier under the prescribed Regulations; or
 - (b) the sales register device is not an accredited sales register device, or sales register device software is not an accredited sales register device software, under the prescribed Regulations.
- (3) A person commits an offence if the person –
 - (a) enters false data into a sales register device;

- (b) tampers with, or, without permission of the Ministry, alters a sales register device or sales register device software;
- (c) causes a sales register device or sales register device software to malfunction, cease to operate, or fail to record all fiscal data for all transactions; or
- (d) causes a sales register device or sales register device software to transmit incorrect or false fiscal data to the Minister.

93 Failure to lodge tax return

A taxpayer who, without reasonable cause, fails to lodge a tax return by the due date, or within such further time as the Minister may allow under section 11, commits an offence.

94 Offences relating to recovery of unpaid tax

A person commits an offence when the person, without reasonable cause –

- (a) fails to comply with a notice served on the person under section 35 or fails to comply with section 35(8);
- (b) contravenes section 37(6);
- (c) fails to comply with an asset preservation order served on the person under section 40;
- (d) rescues or attempts to rescue property seized under section 41 or subject to distress proceedings under section 42;
- (e) before, at, or after the execution of any seizure or distress proceedings under section 41 or 42, staves, 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
- (f) departs or attempts to depart Tonga in contravention of a departure prohibition notice issued under section 43.

95 Offences relating to investigation powers

A person commits an offence when the person, without reasonable cause –

- (a) fails to provide facilities and assistance as required by section 45(4); or
- (b) fails to comply with a notice under section 46.

96 Offences relating to TINs

- (1) A person who applies for cancellation of a TIN when still liable for tax commits an offence.
- (2) A person who deliberately and fraudulently uses a false TIN on a tax return or other document prescribed or used for the purposes of a revenue law commits an offence.
- (3) A person who uses the TIN of another person shall be treated as having used a false TIN, except when section 5(3) applies.

97 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 section 84(1)(a); or
 - (c) lodges a fraudulent document with the Minister.
- (2) Section 84(8) shall apply in determining whether a person has made a statement referred to in section 84(1)(a).

98 Obstruction

- (1) A person who wilfully obstructs a taxation officer in the performance of duties under a revenue law commits an offence.
- (2) In this section, “taxation officer” includes a person employed or engaged by the Ministry in any capacity.

99 Offences relating to taxation officers and staff of the Ministry

- (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 Government is or may be defrauded of revenue, or that is contrary to a provision of a revenue 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 another person;
 - (d) fails to prevent or report to the Ministry or any other relevant authority, the commission of an offence under a revenue law; or

- (e) contravenes section 65(4) or (5), or 67.
- (2) A person commits an offence when 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 Government is or may be defrauded of revenue, or that is contrary to a provision of a revenue law, or to the proper execution of the officer's duties;
 - (c) impersonates a taxation officer;
 - (d) contravenes section 67(4).
- (3) The prosecution of a taxation officer for an offence under this section shall not preclude any action being taken against the officer under the Public Service (Disciplinary Procedures) Regulations 2003.
- (4) In this section, “taxation officer” includes –
 - (a) the Minister; or
 - (b) a person employed or engaged by the Ministry in any capacity.

100 Offences relating to the Tax 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 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 Tribunal commits an offence if he fails to disclose a conflict of interest as required under the Regulations.

101 Consumption tax offences

- (1) A person commits an offence –
 - (a) for failing to apply for registration as required by section 6(1), (2A) or (3) of the Consumption Tax Act 2003;
 - (b) for each failure to display the original of the person's consumption tax registration certificate at the person's main place of business and any official copies of the certificate at every other place of business as required under section 7(6) of the Consumption Tax Act 2003;
 - (c) for each failure to notify a change in circumstances as required by section 7(7) of the Consumption Tax Act 2003;
 - (d) for failing to apply for cancellation of registration as required by section 8(1) of the Consumption Tax Act 2003;
 - (e) for applying for cancellation of registration when still required to be registered;
 - (f) for failing to comply with section 8(10)(a) or (c) of the Consumption Tax Act 2003;
 - (g) for charging another person consumption tax otherwise than in the circumstances specified in Consumption Tax Act; or
 - (h) for failing to charge consumption tax as required under the Consumption Tax Act 2003.
- (2) A person convicted of an offence under subsection (1)(g) shall be liable to pay to the Minister the amount charged within the time specified in a notice of demand served on the person by the Minister except to the extent that the person has refunded the amount to the customer.
- (3) A person convicted of an offence under subsection (1)(h) remains liable to pay to the Minister the amount of consumption tax that should have been charged calculated in accordance with section 11(6) of the Consumption Tax Act 2003 by the due date for payment as determined under the Consumption Tax Act 2003.
- (4) A taxable person who fails to provide a consumption tax invoice, consumption tax receipt, consumption tax credit note, or consumption tax debit note as required in Part VI of the Consumption Tax Act 2003 commits an offence.
- (5) A person commits an offence each time the person issues a consumption tax invoice, consumption tax receipt, consumption tax credit note, or consumption

tax debit note otherwise than as provided for in Part VI of the Consumption Tax Act 2003.

102 Offences relating to tax agents

- (1) A person who contravenes section 77 commits an offence.
- (2) A registered tax agent who fails to notify the Minister as required under section 78(1) commits an offence.
- (3) A registered tax agent who fails to provide a certificate, statement, or declaration as required in Regulations made under section 9(6) commits an offence.

103 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 revenue law commits an offence and shall be liable upon conviction to the same sanction as the principal offender.

104 Offences by companies

- (1) When a company has committed an offence under a revenue law, the offence shall be treated as having been committed by any individual who, at the time the offence was committed, was –
 - (a) the chief executive officer, or a director, principal officer, general manager, secretary, or other similar officer of the company; or
 - (b) acting or purporting to act in that capacity.
- (2) Subsection (1) shall not apply to a person when –
 - (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.

105 Sanctions for offences

- (1) Except when subsection (2) applies, a person convicted of an offence under this Division shall be liable for a fine not exceeding \$5,000.
- (2) A person convicted of any of the following offences shall be liable for a fine not exceeding \$10,000 or imprisonment to a term not exceeding 3 years, or both –

- (a) an offence under sections 92(1), and 101(1)(g) or (h), when the offence has been committed deliberately or recklessly;
- (b) an offence under section 92(2) or (3), 94, 96(2), 97, 98, 99 or 100(3).

106 Compounding of offences

- (1) Subject to subsection (2), the Minister may, by notice in writing, (referred to as a “compounding notice”) compound an offence committed by a person (referred to as the “offender”) under this Division if the offender has –
 - (a) admitted, in writing, to having committed the offence; and
 - (b) agreed to pay an amount not exceeding the maximum fine specified for the offence.
- (2) Subsection (1) shall not apply to an offence committed under section 97 or 99.
- (3) A compounding notice shall –
 - (a) specify the offence committed, the sum of money agreed to be paid by the offender, and the date on which payment is due;
 - (b) be signed by the Minister and the offender, and witnessed by a taxation officer;
 - (c) have a copy of the written admission attached;
 - (d) be served on the offender; and
 - (e) be final and not be subject to appeal.
- (4) When the Minister compounds an offence under this section, the offender shall not be liable for prosecution or an administrative penalty in respect of the act or omission that constituted the offence.
- (5) An amount owing under this section shall be payable to the Minister and a reference in Part 8, and sections 7 and 83 to –
 - (a) “tax” includes an amount payable under a compounding notice;
 - (b) “unpaid tax” includes an amount specified in paragraph (a) that is not paid by the due date; and
 - (c) “taxpayer” includes an offender liable for an amount payable under a compounding notice.

PART 15 – MISCELLANEOUS

107 Regulations

- (1) The Minister, with the consent of Cabinet, may make regulations for –
 - (a) matters prescribed to be made by regulation under this Act;
 - (b) for the administration of the Tax Tribunal;

- (c) for the issuing and use of tax clearance certificates; and
 - (d) the proper and efficient administration of this Act.
- (2) Without limiting the general effect of subsection (1), regulations made under that subsection may –
- (a) contain provisions of a saving or transitional nature consequent upon the making of this Act; or
 - (b) prescribe the appropriate penalties for the contravention of the regulations.
- (3) Transitional regulations made within 6 months after the commencement of this Act may provide that they take effect from the date on which the Act comes into force but only if this is to the benefit of taxpayers.

108 Repeal and saving

- (1) The Revenue Services Administration Act 2002 is hereby repealed.
- (2) Despite subsection (1) and subject to section 109, the Revenue Services Administration Act 2002 shall continue to apply for tax periods ending before the commencement of this Act under section 1.

109 Transitional

- (1) Subject to subsection (2), all appointments made under the Revenue Services Administration Act 2002 and subsisting on the date this Act comes into force shall be treated as appointments made under this Act for the term of the original appointment.
- (2) Subsection (1) shall not apply to the office of Registrar of Tax Agents appointed under section 61A of the Revenue Services Administration Act 2002.
- (3) A person who is registered as a tax agent under the Revenue Services Administration Act 2002 at the time that this Act comes into force shall continue to be registered only until the following 30th of June and the person may apply for renewal of registration in accordance with section 75.
- (4) Subject to subsections (5), (6), and (7), this Act shall apply to any act or omission occurring, or any taxation or reviewable decision made, before this Act came into force.
- (5) Any appeal or prosecution commenced before this Act came into force shall be continued and disposed of as if this Act had not come into force.
- (6) When the period for any application, appeal, or prosecution had expired before this Act came into force, nothing in this Act shall be construed as enabling the application, appeal, or prosecution to be made under this Act by reason only of the fact that a longer period is specified in this Act.

- (7) Any tax liability that arose before this Act came into force may be recovered under this Act, but without prejudice to any action already taken for the recovery of the tax.
- (8) Section 90(3) and (4) shall apply only after Regulations made by the Minister under section 91(5) of the Income Tax Act 2007 providing for the collection of income tax by instalments come into force.

Passed by the Legislative Assembly this **1st** day of **July** 2021.