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This version has been updated for amendments contained in the Finance Act 2016.

Viva Africa Consulting

January 2017

NO. 40 OF 2013**TAX APPEALS TRIBUNAL****ARRANGEMENT OF SECTIONS****PART I – PRELIMINARY***Section*

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SCHEDULE—OATH/AFFIRMATION OF OFFICE BY MEMBERS OF THE
TRIBUNAL

THE TAX PROCEDURES ACT, 2015*Date of Assent: 27 November 2015**Date of Commencement: 1st April 2015***AN ACT of Parliament to make provision for the establishment of a Tribunal; for the management and administration of tax appeals, and for connected purposes**

[Act No. 40 of 2013, L.N. 32/2015, Act No. 14 of 2015.]

PART I — PRELIMINARY

1. This Act may be cited as the Tax Appeals Tribunal Act, 2013. Short title.

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

“appeal” means an appeal to the Tribunal against a decision of the Commissioner under any of the tax laws;

“Chairperson” means the Chairperson of the Tribunal appointed under section 4;

“Commissioner” means the Commissioner appointed under Kenya Revenue Authority Act;

“member” means a member of the Tribunal appointed under section 4;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance;

“Secretary” means the Secretary of the Tribunal appointed under section 7;

“tax” includes duty, tax or any imposition levied under any tax law;

“tax agent” means a person acting on behalf of another person on matters relating to tax and is registered as such by the Commissioner;

“tax law” means—

- (a) the Income Tax Act; Cap 470.
- (b) the Customs and Excise Act; or Cap 472.
- (c) the Value Added Tax; Cap 476.

- (d) the East African Community Customs Management Act, 2004;
- (e) any other tax legislation administered by the Commissioner;

“**Tribunal**” means the Tax Appeals Tribunal established under section 3.

PART II — ESTABLISHMENT OF TAX APPEALS TRIBUNAL

Establishment of
the Tribunal.

3. There is established a Tribunal to be known as the Tax Appeals Tribunal to hear appeals filed against any tax decision made by the Commissioner.

Membership of
the Tribunal.

4.(1) The Tribunal shall consist of a Chairperson and not less than fifteen but not more than twenty other members, who shall, subject to this Act, be appointed by the Cabinet Secretary upon such terms and conditions of service as the Cabinet Secretary may determine.

(2) Not more than five members of the Tribunal appointed under subsection (1) shall be advocates of the High Court of Kenya.

(3) A person shall not be appointed a Chairperson or a member of the Tribunal under this section unless that person—

- (a) in case of the Chairperson, is qualified to be appointed as a Judge of the High Court; and
- (b) in case of a member—
 - (i). is of high moral character and integrity in accordance with Chapter six of the Constitution;
 - (ii). hold a degree in law, business, finance, public finance, economics, insurance or related discipline from a university recognised in Kenya or any other relevant qualification from an institution recognised in Kenya;
 - (iii). has at least ten years’ experience in matters relating to the discipline referred to in paragraph (b);

- (iv). is not a public officer or an employee of Kenya Revenue Authority or a tax agent;
- (v). has met his tax obligations;
- (vi). has not been convicted of an offence under any law; and
- (vii). has not been adjudged bankrupt by a court of competent jurisdiction.

5.(1) The Chairperson or a member of the Tribunal shall hold office— Tenure of office.

- (a) in case of the Chairperson, for a term not exceeding five years but shall not be eligible for re-appointment; and
- (b) in case of a member, for a term not exceeding three years but shall be eligible for re-appointment for one further term of three years.

(2) A person appointed under this Act shall cease to hold office if that person—

- (a) resigns from office by notice in writing addressed to the Cabinet Secretary;
- (b) becomes a public servant or an employee of the Kenya Revenue Authority, or a tax agent;
- (c) is absent from three consecutive meetings of the Tribunal without the permission of the Chairperson;
- (d) is adjudged bankrupt by a Court of competent jurisdiction;
- (e) is convicted of an offence under any tax law or of a criminal offence;
- (f) is unable to perform the functions of the office arising by reason of infirmity of body or mind; or
- (g) is otherwise unable or unfit to discharge the functions of the office.

(3) If the Cabinet Secretary is of the opinion that a member of the Tribunal should be removed in accordance with

subsection 2(f) and (g), the Cabinet Secretary shall appoint a committee consisting of three persons of reputable character, one of whom shall be an advocate of the High Court, to inquire into the matter or conduct of the member in question and recommend to the Cabinet Secretary.

(4) Where a question of the removal of a member of the Tribunal is referred to a committee under this section, the Cabinet Secretary shall, subject to subsection

(5) The Cabinet Secretary shall remove a member of the Tribunal if the committee appointed under subsection (2) recommends that the member ought to be removed from office.

(6) A suspension under subsection (3) shall cease to have effect if the committee advises the Cabinet Secretary that the member suspended should not be removed from office. 6), suspend the member from the Tribunal.

Oath of office.

6. A person appointed as the Chairperson or a member of the Tribunal shall, before assuming office, take or subscribe to the oath or affirmation set out in the Schedule before the Chief Registrar of the Judiciary

Secretary to the Tribunal.

7.(1) The Cabinet Secretary shall provide such staff, including the Secretary, as may be necessary for the proper discharge of the functions of the Tribunal under this Act.

Finance Act 2016.

(2) *The Secretary referred to under subsection (1) shall—*

(a) *be knowledgeable in procedures of a tribunal; and*

(b) *have a minimum of five years' experience in finance, economics or legal practice.*

Expenses and payment of allowances.

8.(1) The members of the Tribunal shall be paid such allowances for expenses as the Cabinet Secretary may determine.

(2) The expenses of the Tribunal, including the allowances for expenses of the members of the Tribunal, shall be made out of funds provided by Parliament through the National Treasury

Arrangement of business.

9.(1) The Chairperson shall be responsible for ensuring the orderly and expeditious discharge of the mandate of the Tribunal.

(2) Without limiting the generality of subsection (1), the Chairperson shall—

- (a) constitute a panel to hear any matter before the Tribunal;
- (b) determine the place at which a panel may sit; and
- (c) determine the procedure for the conduct of the business of the Tribunal.

(3) The Tribunal shall submit an annual report to the Cabinet Secretary on its performance in the preceding year.

10.(1) A panel constituted for any proceedings shall have at least three members, at least one of whom shall be an advocate of the High Court.

Constitution of a panel.

(2) At a hearing of a matter before the panel—

- (a) if the chairperson is a member of the panel as constituted, the Chairperson shall preside; or
- (b) in any other case, the Chairperson shall designate one of the members of the panel who being an advocate of the High Court or a member of the Institute of Certified Public Accountants of Kenya, to preside over the proceedings.

(3) Where a member of the panel ceases to be such member, or is not available for the proceedings, the proceedings shall be adjourned, and the Chairperson of the Tribunal shall assign another member to the panel and the proceedings shall continue.

11.(1) There shall be a clerk of each panel **appointed by the Tribunal**, and who shall be the secretary to the panel.

Clerk of the panel.

Finance Act 2016.

(2) A person shall be qualified to be appointed as a clerk unless that person is qualified to serve as a court clerk.

PART III — APPEALS TO THE TRIBUNAL

12. A person who disputes the decision of the Commissioner on any matter arising under the provisions of any tax law may, subject to the provisions of the relevant tax law, upon giving notice in writing to the Commissioner, appeal to the Tribunal,

Appeals to the Tribunal.

Provided that such person shall before appealing, pay a non-refundable fee of twenty thousand shillings.

Procedure for appeal.

13.(1) A notice of appeal to the Tribunal shall—

- (a) be in writing;
- (b) be submitted to the Tribunal within thirty days upon receipt of the decision of the Commissioner.

Finance Act 2016.

(2) The appellant shall, within fourteen days from the date of filing the notice of appeal, submit enough copies, as may be advised by the **Tribunal**, of—

- (a) a memorandum of appeal;
- (b) statements of facts; and
- (c) the tax decision.

Finance Act 2016.

(3) The Tribunal may, upon application in writing, extend the **time for filing the notice of appeal and** for submitting the documents referred to in subsection (2).

Finance Act 2016.

(4) An extension under subsection (3) may be granted owing to absence from Kenya, or sickness, or other reasonable cause that may have prevented the applicant from **filing the notice of appeal or submitting the documents** within the specified period.

(5) An appellant shall serve a copy of the appeal on the Commissioner within two days after giving notice of appeal to the Tribunal.

(6) The appellant shall, unless the Tribunal orders otherwise, be limited to the grounds stated in the appeal to which the decision relates.

(7) The Tribunal shall hear and determine an appeal within ninety days from the date the appeal is filed with the Tribunal.

Provided that during the period of one year from the date of its first sitting, the Tribunal may extend the period for the hearing an appeal for a period of up to sixty days if there are sufficient grounds to do so.

Exemption from the provisions of Cap. 21.

14. The provisions of the Civil Procedure Act shall not apply to the proceedings of the Tribunal.

Submission of material documents to the Tribunal by the Commissioner. Finance Act 2016

15.(1) The Commissioner shall, within thirty days after being served with a copy of an appeal to the Tribunal, submit to the Tribunal enough copies as may be advised by the **Tribunal**, of—

- (a) a statement of facts including the reasons for the tax decision; and
- (b) any other document which may be necessary for review of the decision by the Tribunal.

(2) The Tribunal may require the Commissioner to submit to the Tribunal additional documents that, in the opinion of the Tribunal, may be in the Commissioner's possession or control.

Finance Act 2016.

(3) *The Commissioner shall serve the appellant with a copy of the statement of facts and other documents required under this section within two working days from the date of submission to the Tribunal.*

(4) *The Tribunal may, upon application in writing by the Commissioner, extend the time for submitting and serving the statement of facts and the documents referred to in this section, where it is proved to the satisfaction of the Tribunal, that the delay is not inordinate or other reasonable cause that may have prevented the Commissioner from submitting and serving the statement of facts and the documents within the specified period.*

Hearing.

16.(1) The Secretary to the Tribunal shall advise all parties in writing of the time and place of the hearing at least fourteen days before the commencement of hearing.

(2) The Secretary to the Tribunal shall advise all parties in writing of the time and place of the hearing at least fourteen days before the commencement of hearing.

(3) If it is proved to the satisfaction of the Tribunal that owing to absence of the appellant from Kenya or due to sickness or any other reasonable cause, the appellant is prevented from attending or the hearing of the appeal on the date and the time fixed for hearing, the Tribunal may adjourn the hearing of the appeal for such reasonable time as it may think appropriate.

17. The Tribunal may call any person to attend at a hearing and give evidence including production of any document

Witnesses.

if the Tribunal believes such evidence shall assist in its deliberations.

18. Where an appeal against a tax decision has been filed under this Act, the Tribunal may make an order staying or otherwise affecting the operation or implementation of the decision under review as it considers appropriate for the purposes of securing the effectiveness of the proceeding and determination of the appeal.

Order to stay or affect the implementation of the decision under review.

19.(1) A member of the Tribunal shall disclose any interest on the matter which is the subject of proceedings that could conflict with the proper performance of the member's functions.

Conflict of interest.

(2) Except with the consent of all the parties, any member who has declared interest under this section shall not take part in the proceedings.

(3) A member who takes part in the proceeding of the Tribunal in contravention of this section commits an offence.

20.(1) For the purpose of proceedings before the Tribunal, the Tribunal may—

Powers of the Tribunal during a proceeding

- (a) take evidence on oath;
- (b) proceed in the absence of a party who has reasonable notice of the proceedings; and
- (c) adjourn the hearing of the proceedings.

(2) For the purpose of hearing proceedings before the Tribunal, the Tribunal shall have powers of a subordinate Court to summon a person to appear before it—

- (a) to give evidence; or
- (b) to produce books, documents or things mentioned in the summons.

(3) Where the Tribunal considers it desirable for the purposes of avoiding expenses or delay, or for any other special reason, it may receive evidence by affidavit and administer interrogations and require the persons to whom interrogations are administered to make a full and true reply to the interrogations.

(4) The Tribunal shall have power to request for examination of witnesses abroad.

Contempt of Tribunal.

- 21.** A person who—
- (a) insults a member or an employee of the Tribunal in relation to the exercise of powers and functions under this Act; or
 - (b) interrupts the proceedings of the Tribunal; or
 - (c) creates a disturbance, or takes part in creating a disturbance in or near a place where the Tribunal is sitting; or
 - (d) does any other act or thing that would, if the Tribunal were a court of law, constitute a contempt of that court,

commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

Disobedience of summons to give evidence, etc.

22. Any person summoned by the Tribunal to attend and give evidence or to produce any records, books of account, statements, or other documents, whether in electronic form or otherwise, or who is required to answer interrogatories, and who without sufficient cause—

- (a) refuses or fails to attend at the time and place mentioned in the summons served on him; or
- (b) refuses or fails to answer, or to answer fully and satisfactorily, to the best of his knowledge and belief, all questions lawfully put to him by or with the concurrence of the Tribunal;
- (c) refuses or fails to produce any records, books of account, statements or other documents, whether in electronic form or otherwise, which are in his possession or under his control, mentioned or referred to in any summons served on him,

commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

Expert evidence.

23.(1) The Tribunal shall have powers to engage the service of an independent expert in any proceedings as may be

appropriate upon such terms and conditions as the Chairperson may determine.

(2) The Tribunal may use the views of the expert referred to in subsection (1) in making decision on an appeal.

24.(1) The proceedings of the Tribunal shall be of a judicial nature.

Procedure of the Tribunal.

(2) The Chief Justice shall prescribe rules to guide proceedings of the Tribunal.

(3) The Tribunal shall have such assistance in carrying out its lawful writs, processes, orders, rules, decrees or commands as is available to a Court in Kenya.

25.(1) For the hearing of proceedings before the Tribunal, the appellant may appear in person or be represented by a tax agent **or by an advocate**.

Representation before the Tribunal.

Finance Act 2016.

(2) If it is proved to the satisfaction of the Tribunal that owing to absence of the appellant from Kenya or due to sickness or any other reasonable cause, the appellant is prevented from attending, at the hearing of the appeal on the date and the time fixed for hearing, the Tribunal may adjourn the hearing of the appeal for such reasonable time as it may consider appropriate.

26. The Tribunal shall ensure that every party to proceedings is given a reasonable opportunity to—

Opportunity to make submissions concerning evidence.

- (a) present his case; and
- (b) inspect any documents in relation to the proceedings and make submissions.

27.(1) An appellant may, by notice in writing, withdraw the appeal.

Discontinuance, dismissal or reinstatement of an appeal.

(2) If an appellant fails, without reasonable cause, to appear for the hearing of the proceedings, the Tribunal may dismiss the appeal.

(3) If an appellant fails without reasonable cause to proceed with the appeal or comply with a direction by the Tribunal, the Tribunal may dismiss the appeal.

(4) Where the respondent without reasonable cause fails to appear for the hearing of the proceedings, the Tribunal may uphold the appeal.

(5) Where the Tribunal dismisses an appeal under subsection (2) or (3), or upholds an appeal under subsection (4), the appellant or respondent may, within thirty days from the date of receipt of the notice of the decision, apply to the Tribunal for reinstatement of the appeal, and the Tribunal may, if it considers it appropriate to do so, reinstate the appeal and give such directions as may be appropriate.

Power of the Tribunal where the parties reach agreement.

28.(1) The parties may, at any stage during proceedings, apply to the Tribunal to be allowed to settle the matter out of the Tribunal, and the Tribunal shall grant the request under such conditions as it may impose.

(2) The parties to the appeal shall report to the Tribunal the outcome of settlement of the matter outside the Tribunal.

Decisions of the Tribunal.

29.(1) The decision of the Tribunal shall be by majority vote of the members present, and in the case of equality of votes, the Chairperson shall have a casting vote in addition to his deliberative vote.

- (3) The Tribunal shall make a decision in writing—
- (a) affirming the decision under review;
 - (b) varying the decision under review; or
 - (c) setting aside the decision under review and either—
 - (i). making a decision in substitution for the decision so set aside; or
 - (ii). referring the matter to the Commissioner for reconsideration in accordance with any directions or recommendations of the Tribunal.

(4) The Tribunal shall give reasons in writing for its decision, including its findings on material questions of fact and reference to the evidence or other material on which those findings were based.

(5) The Tribunal shall cause a copy of its decision, including the reasons for the decision, to be served on each party to the proceeding.

(6) Subject to subsection (5), a decision of a Tribunal

shall come into operation on date the notice of the decision is given or on such other date as may be specified by the Tribunal in the notice.

(7) A decision of the Tribunal shall have effect as and be enforceable as if it were a decision of a court.

(8) Subject to subsection (10), all decisions of the Tribunal and all evidence received by it, including a transcript of the report of the hearings, are public records open to inspection of the public.

(9) Subject to subsection (10), a Tribunal shall provide for the publication of its decisions, including reasons, in such form and manner as may be adapted or public information and use, and such authorized publication is evidence of the decisions of the Tribunal in all courts of Kenya without any further proof of authentication.

(10) The Tribunal shall ensure that in releasing, or allowing access to, information under subsection (8) or (9) measures are taken to prevent the disclosure of trade secrets or other confidential information.

30. In a proceeding before the Tribunal, the appellant has the burden of proving—

Burden of proof.

- (a) where an appeal relates to an assessment, that the assessment is excessive; or
- (b) in any other case, that the tax decision should not have been made or should have been made differently.

31.(1) Where the Tribunal awards costs in any appeal, it shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of costs.

Enforcement of orders for costs.

(2) Every certificate issued under subsection (1) may be filed in the High Court by the person in whose favour the costs are awarded and, upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such:

Provided that an order for the costs against the Government shall not be enforced save in the manner provided for by the Government Proceedings Act

Cap. 40.

Appeals to the High Court on

32.(1) A party to proceedings before the Tribunal may, within thirty days after being notified of the decision or within

decisions of the Tribunal.

such further period as the High Court may allow, appeal to the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party.

(2) The High Court shall hear appeals made under this section in accordance with rules set out by the Chief Justice.

PART IV— OFFENCES AND EVIDENCE

Offences.

33.(1) A person who

- (a) knowingly makes any false statement, false claim for a refund, produces any false document or information, or makes any false return concerning any material particular relating to any matter under this Act;
- (b) not being a registered person or being a person who has ceased to be a registered person, holds himself out as a registered person;
- (c) fails to keep, retain, or maintain accounts, documents, or records as required under this Act; or
- (d) is knowingly concerned in or involved in the taking of steps with a view to the fraudulent evasion of tax by him or by any other person,

Commits an offence and shall be liable on conviction to a fine not exceeding four hundred thousand shillings or double the tax evaded, whichever is the higher, or to imprisonment for a period not exceeding three years, or to both.

(2) Where a person is convicted of an offence under this section, the court may, in addition to any penalty which may be imposed, order the forfeiture of any taxable supplies which have passed in connection with the commission of the offence or, if the taxable supplies cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the taxable supplies.

Liability of employers and officers of corporate bodies.

34.(1) Where any offence under this Act is committed by an employee or agent, the person by whom that employee or agent is employed shall also be guilty of the offence unless he proves to the satisfaction of the court that he did not know, and could not reasonably be expected to know, that the act or omission constituting the offence was taking place, or that he took all reasonable steps to ensure that the offence was not committed.

(2) Where an offence under this Act is committed by a body corporate, every person who, at the time of the commission of the offence, was a director, general manager, secretary, or other similar officer of the body corporate, or was acting or purporting to act in that capacity, shall also be guilty of the offence, unless he proves that the offence was committed without his consent or knowledge or that he exercised all the diligence to prevent the commission of the offence that he ought to have exercised, having regard to the nature of his functions in that capacity and in all circumstances.

(3) When a taxpayer applies for an extension the Commissioner may, if the Commissioner is satisfied that there is reasonable cause—

- (a) grant the taxpayer an extension of time for payment of the tax; or
- (b) require the taxpayer to pay the tax in such instalments as the Commissioner may determine.
- (4) The Commissioner shall notify the taxpayer in writing of the decision regarding the application for extension of time ***within 30 days of receiving the application for extension of time.***
- (5) Where a taxpayer who has been permitted to pay a tax by instalments under subsection (2) defaults in the payment of an instalment, the whole balance of the tax outstanding at the time of default shall become immediately payable
- (6) Despite being granted an extension of time to pay a tax or permission to pay a tax due by instalments by the Commissioner, a taxpayer shall be liable for any late payment interest arising from the original date the tax was due for payment.

Finance Act 2016.

35. No officer shall be personally liable for any act or omission done or omitted to be done in the performance of his functions under this Act unless, having regard to the circumstances of the case, such act or omission is found to be—

Protection of officers.

- (a) done or omitted to be done wilfully or dishonestly by such officer;
- (b) attributable to the negligence of such officer; or

- (a) done or omitted to be done by such officer in contravention of any provision of this Act or the Regulations.

36.(1) Any person employed in the performance of any function under this Act who, by virtue of the performance of that function, becomes possessed of any information and who directly or indirectly communicates that information to any person otherwise than—

Security for payment of tax.

- (a) in the normal performance of his functions under this Act; or
- (b) in the course of any proceedings in a court or the Tribunal; or
- (c) with the express permission of the Commissioner,

commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

(2) Notwithstanding any other provision of this Act, the Commissioner may disclose information to a person in the services of the Government in a revenue or statistical department where the information is needed for the purposes of the official duties of that person solely for revenue or statistical purposes.

37. A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

General penalty.

38. In any proceedings, whether criminal or civil, under this Act—

Evidence.

- (a) other than upon an appeal, a certificate from the Commissioner stating that any amount is due from any person by way of tax, or other liability under this Act, shall be conclusive evidence that the amount is due and payable from that person; respect of withholding tax payable by the person; or
- (b) the burden of proving that any tax has been paid or that any goods or services are exempt from payment of tax shall lie on the person liable to pay the tax or claiming that the tax has been paid or

that the goods or services are exempt from payment of tax; and

- (c) a statement by the Commissioner that a person is registered or is not registered under this Act, shall be conclusive evidence of the fact unless that person proves the contrary.

Power of sentence.

Cap. 75

39. Where any person is convicted of an offence under this Act by a court of competent jurisdiction presided over by a resident magistrate, the court may, notwithstanding the provisions of section 7 of the Criminal Procedure Code, impose the maximum sentence prescribed by this Act for the offence.

Power of officers to prosecute.

40. An authorised officer may with the approval of the Director of Public Prosecution appear and prosecute in a prosecution before a subordinate court for an offence under this Act.

PART V— CONSEQUENTIAL AMENDMENTS AND SAVINGS

Repeal of section 127E of Cap. 472.

41. The Customs and Excise Act is amended by repealing section 127E.

Repeal of sections 82 and 83 of Cap. 470

42. The Income Tax Act is amended as follows—

- (a) by repealing section 82 and any notice made thereunder; and
- (b) by repealing section 83.

Finance Act 2016.

43. *Repealed*

Saving provisions.

44.(1) Despite the provisions of sections 41, 42 and 43, any Tribunal or appeal committee established by any tax law or regulations made thereunder before the coming into effect of this Act shall continue to hear and conclude any appeals filed by a taxpayer for a period of ninety days after the commencement of this Act.

(2) Any appeals referred to in subsection (1) which are not concluded within the period specified, shall be taken over by the Tribunal.

(3) The Tribunal shall hear and determine appeals relating to tax decision made before its first sitting (if it was not

concluded by the appeal mechanism that existed before the establishment of the Tribunal) within a period of one year from the date of first sitting.

SCHEDULE

(s 6)

OATH/AFFIRMATION OF OFFICE BY MEMBERS OF THE TRIBUNAL

I,having been appointed the Chairperson/ a member of the Tax Appeals Tribunal, do swear/affirm that I will be true and faithful to the best of my ability and power in the execution of the trust committed to my charge and inspection in the services of the Appeals Tribunal, and that I shall not acquire, take or receive any fee, perquisite, gratuity or reward whether pecuniary or of any sort or description whatsoever, either directly or indirectly, for any service, act, duty, matter or thing done or performed, or to be done or performed, in the execution or discharge of any of the duties of my office or employment on any account whatsoever, over than my salary and what is, or may be, allowed me by law or by the Cabinet Secretary in writing.

Name:..... Date.....

Signature:.....

Witness:

Name:..... Date.....

Signature:

LEGAL NOTICES

20th March, 2015

LEGAL NOTICE No. 32

THE TAX APPEALS TRIBUNAL ACT

COMMENCEMENT

IN EXERCISE of the powers conferred by section 1 of the Tax Appeals Tribunal

Act, 2013, the Cabinet Secretary for the National Treasury appoints the 1st April, 2015 as the date on which the Act shall come into operation.

Dated the 10th March, 2015

HENRY ROTICH,
Cabinet Secretary for the National Treasury

23rd October, 2015

Legal Notice No. 227

THE TAX APPEALS TRIBUNAL ACT
(No.40 of 2013)

IN EXERCISE of the powers conferred by section 24(2) of the Tax Appeals Tribunal Act, 2013, the Chief Justice makes the following Rules: -

THE TAX APPEALS TRIBUNAL (PROCEDURE) RULES, 2015

Citation.

1. These Rules may be cited as the Tax Appeals Tribunals (Procedure) Rules, 2015.

Interpretation.

2. In these Rules, unless the context otherwise requires-

"Act" means the Tax Appeals Tribunals Act, 2013, No. 40 of 2013;

"appeal" has the meaning assigned to it under section 2 of the Act:

"appellant" means a person who has made an application to the Tribunal for review of a taxation decision under section 12, an extension of time under section 13 (3) or reinstatement of an application under section 27 (5):

"Chairperson" has the meaning assigned to it under section 2 of the Act;

"clerk" means a person designated as such under section 11 of the Act;

"commissioner's representative" means a person in charge of a Kenya Revenue Authority station where the tax dispute arose or the officer who communicated the tax decision;

"officer in charge of registry" means a person appointed by the Secretary to be in charge of tax appeals registry;

"respondent" means a party against whom an appeal or an application is filed;

"Secretary" has the meaning assigned to it under section 2 of the Act;

"tax decision" means-

- (a) an assessment;
- (b) a determination of the amount of tax payable or that will become payable by a taxpayer;
- (c) a determination of the amount that a tax representative, appointed person, director or controlling member is liable for;
- (d) a decision on an application by a self-assessment taxpayer;
- (e) a refund decision;
- (f) a decision requiring repayment of a refund; or
- (g) a demand for a penalty;

3.(1) A notice of appeal to the Tribunal shall be-

- (a) in Form TAT-1 set out in the Schedule; and
- (b) submitted to the clerk of the Tribunal within thirty days upon receipt of the decision by the Commissioner.

Form and Filing of
appeal

- (2) The appellant shall, within fourteen days from the date of filing the notice of appeal, submit enough copies, as may be advised by the clerk, of-
- (a) a memorandum of appeal;
 - (b) statement of facts; and
 - (c) the tax decision.
- Memorandum of appeal. shall-
- 4.(1)** A memorandum of appeal referred in rule 3(2)
- (a) be signed by the appellant;
 - (b) set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative;
 - (c) contain an index of all documents in the appeal with number of pages at which they appear; and
 - (d) be accompanied by a copy of the-
 - (i). tax decision; and
 - (ii). notice of appeal.
- Statement of facts of appellant.
- 5.(1)** Statement of fact signed by the appellant shall set out precisely all the facts on which the appeal is based and shall refer specifically to documentary evidence or other evidence which it is proposed to adduce at the hearing of the appeal.
- (2) The documentary evidence referred to in paragraph (1) shall be annexed to the statement of fact.
- Principal registry.
- 6.** The principal registry of the Tribunal shall be at Nairobi, and the Chairperson may by notice in the Gazette designate other registries.
- Titling of appeal.
- 7.** An appeal shall be titled as an "Appeal in the Tax Appeals Tribunal at the Registry", stating the name of the registry in which it has been filed.
- Status of appeal
- 8.** The officer in charge of a registry shall within seven working days after receiving the appeal notify the Secretary of the particulars of that appeal.

9. Upon receipt of an appeal, the clerk or officer in charge of a registry shall – Receipt of appeal

- (a) stamp, date and sign all the copies of the appeal;
- (b) retain sufficient copies for the Tribunal; and
- (c) return one copy to be served on the Commissioner in accordance with rule 12 of these Rules.

10.(1) Where the documents referred to in rule 3(2) are not filed within the time specified therein, the Tribunal may, upon application in writing, extend the time for submitting the documents Extension of time for submitting documents.

(2) An application for extension of time referred to in rule 10(1) shall be-

- (a) supported by an affidavit stating reasons why the applicant was unable to submit the documents in time.
- (b) served on the respondent by the applicant within two days of filing with the clerk.

(3) The Tribunal may grant the extension of time if it is satisfied that the applicant was unable to submit the documents in time for the following reasons –

- (a) absence from Kenya;
- (b) sickness; or
- (c) any other reasonable cause.

(4) The respondent may respond to the application by filing an affidavit within fourteen days from the date of service of the application.

(5) The Tribunal shall set down the hearing date for the application.

11.(1) An appellant shall within two days of filing an appeal with the Tribunal serve a copy on the Commissioner or the Commissioner's representative. Service on Commissioner

(2) Service on the Commissioner under paragraph (1) shall be by delivering or tendering to him or his representative a copy of the appeal.

(3) An acknowledgement of service on the appeal shall be signed by the Commissioner or his representative, which shall be returned to the clerk as proof of service.

12. Commissioner shall, within thirty days after being served with an appeal under rule 11 file enough copies as may be advised by the clerk, of –

Lodging of material documents.

- (a) a statement of facts;
- (b) a statement giving reasons for the tax decision; and
- (c) all documents which are necessary to enable the Tribunal to review the decision.

13. The appeal may be bound with a cover and pages numbered consecutively maintenance of registers and files.

Requirements as to binding of records and numbering of pages.

14.(1) The officer in charge of a registry shall maintain –

Maintenance of registers and files.

- (a) a register of all applications and appeals in every year, according to the order in which they are filed and shall contain-
 - (i). the serial number;
 - (ii). the date;
 - (iii). the name and address of the appellant or applicant;
 - (iv). nature of the tax dispute or application;
 - (v). the date of the hearing;
 - (vi). the decision or order of the Tribunal and the date on which it was made; and
- (b) a file for each appeal containing –
 - (i). a copy of the memorandum of the appeal and statements of facts of the appellant and the respondent;

- (ii). a list of all material documents including those requested for by the Tribunal;
- (iii). the record of the proceedings and the evidence given by the parties and their witnesses;
- (iv). summons and notices issued by the Tribunal;
- (v). the submissions of the parties;
- (vi). notices of the decision: and
- (vii). the decision of the Tribunal.

Notice to parties to appear.

15.(1) The Clerk shall upon consultation with the Chairperson give all parties to an appeal not less than fourteen days' notice of the date fixed for the first hearing of the appeal in Form TAT-2 in the Schedule to these Rules.

(2) Dates for subsequent hearings may be fixed by the Tribunal.

Summon for witnesses.

16.(1) The Clerk shall, before the date of the hearing of an appeal, serve summons in Form TAT-3 in the Schedule to a witness, requiring him to attend the hearing of an appeal at a date, time and place specified in the summons.

(2) A person summoned as a witness before the Tribunal, excluding the Kenya Revenue Authority officers, is entitled to be paid allowances paid to the witnesses in High Court.

Mode of service of summons.

17.(1) Summons shall be served personally on the person named in the summons by delivering or tendering to him the original summons.

(2) A person upon whom a summon or notice is served shall sign or mark in acknowledgement of receipt of the summons or notice at the back of the duplicate of the summons or notice, which shall then be returned to the Tribunal.

(3) Where a person refuses to acknowledge receipt of summons or notice under paragraph (2), the person who is serving the summons or notice shall record in writing the refusal on the back of the notice or summons.

(4) Where it is not possible to effect personal service of a summon or notice in the manner provided in this rule, service of the summon or notice may be made by –

- (a) leaving the duplicate of the summons or notice with any adult person residing with him, an adult member of the family, his employer or employee; or
- (b) affixing the duplicate to a conspicuous place in the house or homestead in which the person named in the summons or notice ordinarily resides or by affixing the duplicate in a conspicuous place in his office or place of work or posted to the last known address and also to a conspicuous place in the Tribunal offices; or
- (c) publishing the particulars of the summons or notice in a newspaper circulating in the area or any other media.

(5) Every summons or notice issued under these Rules and requiring service shall be served by an officer of the Tribunal, a court process server, or any other person authorized to do so by the Tribunal including a police officer.

(6) Any notice or summons served on an advocate, representative, or tax agent, of a party, by registered post or by leaving it at the chambers or office and whether it is for the personal appearance of the party or not, shall be presumed to be duly communicated and, unless the Tribunal otherwise directs, shall be effectual for all purposes as if it had been served on the party in person.

(7) A summon, warrant, order, notice or other formal document issued by the Tribunal shall be signed by the Clerk, and shall be stamped with the stamp of the Tribunal.

18.(1) When neither party attends on the day fixed for hearing, if satisfied that the notice of hearing was duly served to the parties, the Tribunal may dismiss the appeal or give such orders that it may deem appropriate.

Consequences of non-attendance.

(2) Where only the appellant attends and if the Tribunal is satisfied that the notice of hearing was –

- (a) duly served, it may proceed ex parte
- (b) not duly served, it shall direct a second notice to be served; or

(c) not served in sufficient time or for other reasonable cause, the respondent was unable to attend, it shall postpone the hearing.

(3) Where only the respondent attends and if the Tribunal is satisfied that notice of hearing was -

(a) duly served, it may dismiss the appeal;

(b) not duly served, it shall direct a second notice to be served; or

(c) not served in sufficient time or for other reasonable cause, the appellant was unable to attend, it shall postpone the hearing.

Setting aside, varying or reviewing of decisions or dismissal.

Setting aside,
varying or
reviewing of
decisions or
dismissal.

19. Upon an application by the applicant, the Tribunal, stating the reasons, may set aside, vary or review a decision made under these Rules.

Order of
addresses.

20.(1) The Tribunal shall at the hearing of an appeal, hear the appellant and his witnesses first and the respondent shall be given an opportunity to cross examine the witness, if any.

(2) Before the case is concluded, the evidence of the respondent shall be heard, and the appellant shall be given the opportunity to cross examine each witness followed by re-examination by the respondent after which the parties may make oral or written submissions.

(3) The Tribunal may, at any time, put questions to either party or to any witness, and may, at its discretion, call additional evidence as it may be necessary for further clarification of the issues raised at the hearing of the appeal.

(4) The Tribunal may, for sufficient reason, at any time after beginning the hearing of the appeal, adjourn the hearing; and in every such situation, the Tribunal shall fix another convenient day for further hearing.

Amendment of
pleadings.

21. A party may at any time before the closure of the case, orally apply to amend its pleadings and the Tribunal may, at its discretion, allow such application on such terms and conditions including granting leave to the other party to amend its pleadings provided the amendments do not raise new issues.

22.(1) The evidence of the parties and that of a witness shall be recorded by the members of the Tribunal, or by a person authorized to do so, in a form to be decided upon by the members and when completed shall be signed by the members of the Tribunal at that proceeding.

Recording of evidence.

(2) Notwithstanding paragraph (1), the evidence given at the hearing of an appeal may be recorded in short hand or by mechanical means, and the transcript of anything recorded shall, if certified by members of the Tribunal at that proceeding to be correct, be deemed to be a true record of the evidence for the purposes of the proceeding.

23.(1) After concluding the hearing of the evidence and submissions of the parties, the Tribunal shall, as soon as practicable, make a written decision which shall, on notice to both parties, be read in their presence or of their advocates or representatives and shall cause a copy, duly signed by the members of the Tribunal which heard the appeal, to be served to each party to the proceeding.

Decision to be made in presence of parties.

(2) The decision of the Tribunal shall be determined by a majority of the members present and voting at the meeting, and in the case of an equality of votes the chairperson shall have a casting vote in addition to his deliberative vote.

24. The written decision of the Tribunal shall contain

Contents of decision.

- (a) the nature of the appeal;
- (b) summary of the facts of the case;
- (c) the issues for determination citing the relevant tax law;
- (d) the arguments by the appellant and the respondent on the issues;
- (e) a summary of the relevant evidence produced before the Tribunal and the findings on each issue;
- (f) the relief or remedy, if any, to which the appellant or respondent is entitled; and
- (g) an order for costs or other relief.

25.(1) Where the Tribunal requires evidence to be received by means of affidavits or interrogatories, the affidavits or interrogatories and the answers shall be by such means and in such form as the Tribunal may direct.

Evidence by affidavit and interrogatories

(2) In any proceeding where the evidence of a witness who resides outside Kenya is necessary, the Tribunal may issue a commission or letter of request to examine that witness abroad.

(3) A party may present its evidence to the Tribunal either orally, by affidavit, statement on oath or by combination of any of these methods.

26. The Secretary of the Tribunal shall within seven days from the date of making the decision, submit a copy of that decision to the Kenya Law Reports for publication.

Publication of decisions.

27. The Tribunal may determine an appropriate procedure where there are no applicable procedures under these Rules or the Act.

Tribunal to determine own procedure in certain matters.

28.(1) The following Rules are revoked –

Revocation and saving.

- (a) the Income Tax (Local Committee) Rules, 1974, LN No. 7/1974;
 - (b) the Income Tax (Tribunal Rules) Rules 1974, LN No. 5/1974;
 - (c) the Customs and Excise (Appeals) Rules, 2000, LN 67/2000; and
 - (d) the Value Added Tax (Appeals) Rules, 1990, LN. 229/1990
- (2) Notwithstanding the provisions of paragraph (1) –
- (a) all things lawfully done under the repealed rules which are in force and effect immediately before the commencement of these rules including decisions or directions given under the repealed rules shall so far as consistent with these Rules and anything done under them continue to be in force and effect after the commencement: and

- (b)** where any proceedings in respect of an appeal have been commenced before the date of commencement of these Rules, any step in the proceedings taken in accordance with the repealed Rules shall be deemed to have been validly taken for purposes of these Rules.

SCHEDULE
FORM TAT-1 (rr. 3(1), 11(3))

REPUBLIC OF KENYA

IN TAX APPEALS TRIBUNAL
ATREGISTRY

APPEAL/APPLICATION NO.....OF
IN THE MATTER OF

.....APPELLANT
AND

.....RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE that.....,
being dissatisfied with the decision of the Commissioner given
at..... on theday of..... intends to
appeal to the Tribunal against the whole/part of the said decision.
The address for service of the Appellant is

APPELLANT

TO: -

The Clerk of the Tribunal at.....Registry

LODGED in the.....Registry, this..... day of

.....
CLERK

FORM TAT-2

(r.15 (1))

REPUBLIC OF KENYA
IN TAX APPEALS TRIBUNAL
ATREGISTRY
APPEAL/APPLTCATTON NO.....OF

IN THE MATTER OF.....APPELLANT
AND
.....RESPONDENT

HEARING NOTICE

TO:

TAKE NOTICE that the above appeal/application dated..... will be heard onday ofato clock in the forenoon/afternoon or so soon thereafter at.....

FURTHER TAKE NOTICE that in default of your attendance on the said dates and time, the Tribunal will proceed with the hearing of the said matter and such orders may be made as the Tribunal may find just and expedient.

DATED at.....this day of
.....

CLERK

ACKNOWLEDGEMENT OF SERVICE

Full name

Address/Official stamp

Date and time

FORM TAT-

(r.16 (1))

REPUBLIC OF KENYA
IN TAX APPEALS TRIBUNAL
ATREGISTRY
APPEAL/APPLICATION NO.....OF.....

IN THE MATTER OF
.....APPELLANT
AND
.....RESPONDENT

WITNESS SUMMONS

In the Tax Appeals Tribunal at Registry
Appeal/application No..... year.....
In the matter of
.....APPLICANT
AND
.....RESPONDENT
TO:

Whereas your attendance is required as a witness on behalf of the
.....during the hearing of the above
Application/appeal, you are by this summons required to appear before this Tribunal on
the day of year..... at..... o'clock in the forenoon/ afternoon and to
bring with you or send the following books, documents or thing to the Tribunal-

Failure to respond or obey this summons renders you liable to penalties under the Act.

Given under my hand and seal of the Tribunal this.....

day of..... Year.....

Clerk
Acknowledgement of service of summons

Full Name.....
Address
Date and Time.....

Dated the 11th June, 2015.

WLLY MUTUNGA,
Chief Justice.

23rd October, 2015

LEGAL NOTICE No. 226

THE TAX APPEALS TRIBUNAL ACT
(No.40 of 2013)

IN EXERCISE of the powers conferred by section 32 (2) of the Tax Appeals Tribunal Act, 2013, the Chief Justice makes the following Rules –

THE TAX APPEALS TRIBUNAL (APPEALS TO THE HIGH COURT)
RULES, 2015.

- | | |
|--|--|
| <p>1. These Rules may be cited as the Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015.</p> | Citation. |
| <p>2. In these Rules, unless the context otherwise requires –</p> <p style="padding-left: 40px;">"address for service" means a place of residence or a place of business or last known address;</p> <p style="padding-left: 40px;">"appeal" means an appeal to the High Court under section 32 of the Act;</p> <p style="padding-left: 40px;">"Registrar" means the Registrar of the High Court;</p> | Interpretation. |
| <p>3. The appellant shall, within thirty days, after the date of service of a notice of appeal under section 32(1), file a memorandum of appeal with the Registrar and serve a copy on the respondent.</p> | Time for filing of memorandum of appeal. |
| <p>4. The Court may extend the time specified in rule 3 if the Court is satisfied that, owing to absence from Kenya, sickness, or other reasonable cause, the appellant was unable to file the memorandum of appeal within that period and that there has been no unreasonable delay on the part of the appellant.</p> | Extension of time for filing memorandum of appeal. |
| <p>5. A memorandum of appeal shall –</p> <p style="padding-left: 20px;">(a) be signed by the appellant;</p> <p style="padding-left: 20px;">(b) contain an address of service of the appellant;</p> <p style="padding-left: 20px;">(c) set out concisely under consecutively numbered distinct heads, the grounds of appeal without any arguments or narrative;</p> <p style="padding-left: 20px;">(d) contain an index of all documents supporting the appeal with number of pages at which they appear; and</p> | Memorandum of appeal. |

- (e) accompanied by a copy of the decision of the Tribunal and the notice of appeal.

Filing of memorandum of appeal and other documents.

6.(1) After the memorandum of appeal and the supporting documents have been filed, the Registrar shall stamp the memorandum of appeal and the documents filed, and number and enter the Appeal, as a Tax Appeal, in the register of tax appeals.

(2) Upon entry of an appeal in the register of tax appeals, the Registrar shall ensure that, in respect of all documents relating to the appeal, the words "Tax Appeal" and the number of that appeal are included in the title of the appeal wherever the title occurs.

(3) The Registrar shall establish and maintain a register for tax appeals

Abatement of appeal.

7.(1) An appeal shall abate in any case where any filing fees due have not been paid in full within fourteen days from the date of notifying the appellant of the total amount of the fees payable by him.

(2) Where an appellant is notified by post, the appellant shall be deemed, until the contrary is proved, to have received the notification at the time at which the letter would be delivered in the ordinary course of post.

Filing of statement of facts

8. The respondent shall file a statement of facts with the Registrar within thirty days of service upon him of the copy of memorandum of appeal by the appellant, during office hours.

Response and extension of time.

9.(1) The statement of facts filed under rule 8 shall –

- (a) be signed by the respondent;
- (b) giving an address for service of the respondent;
- (c) set out precisely the respondent's response to the memorandum of appeal and refer specifically to documentary evidence or other evidence which the respondent proposes to adduce at the hearing of the appeal.

(2) The documentary evidence referred to in paragraph (1) (c) shall be annexed to the response.

(3) The Court may extend the period specified in rule 8 if it is satisfied that, owing to any reasonable cause, the respondent was unable to file the statement of facts and documentary evidence within that period and there was unreasonable delay on the respondent's part.

Notice to parties to appear for hearing.

10.(1) Unless the parties otherwise agree, the Registrar shall give fifteen days' notice, in writing, to the parties of the date and place fixed for the hearing of the appeal.

(3) The Court shall at the hearing of the appeal, hear the appellant and his witnesses first and the respondent shall be given an opportunity to cross examine the witness, if any.

(4) At the close of the case of the appellant, the evidence of the respondent shall be heard, and the appellant shall be given the opportunity to cross examine each witnesses followed by re-examination by the respondent after which the parties may make oral or written submissions.

11.(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called out for hearing, the Court may dismiss the appeal.

Reasons for dismissing appeal.

(2) Where it is proved to the satisfaction of the Court, that owing to absence of the appellant from Kenya, sickness, or other reasonable cause, the appellant was unable to attend the hearing of the appeal on the day and at the time fixed for that purpose, the Court may postpone the hearing for such reasonable time as it considers necessary.

(3) Where the appellant appears and the respondent does not appear, the Court may proceed to hear the appeal ex parte.

12. Where an appeal is dismissed under rule 11(1), the appellant may apply to the Court for the reinstatement of the appeal, and the Court shall, where it is proved that the appellant was unable to appear for the hearing of the appeal due to any reasonable cause, readmit the appeal on such terms as it considers fit.

Reinstatement of appeal.

13. Where an appeal is heard ex parte, the respondent may apply to the Court for the rehearing of the appeal and the Court shall, where satisfied that the respondent was unable to appear for the hearing of the appeal due to any reasonable cause, rehear the appeal on such terms as it considers fit.

Rehearing of appeal.

14. The appellant shall not, except by leave of the Court and upon such terms as the Court may determine, rely on a ground other than a ground stated in the memorandum of appeal.

Limitations on grounds to rely on.

15. The Court may, at the time of hearing of an appeal, admit other documentary or oral evidence not contained in the statement of facts of the appellant or respondent should it consider it necessary for determination of the appeal.

Admission of other evidence.

16. Save where the Court in a particular case otherwise directs copies of documents shall be admissible in evidence, but the Court may at any time direct that the original be produced notwithstanding that a copy has already been admitted in evidence.

Admissibility of evidence.

17.(1) Ancillary applications to the Court, if not made at the time of hearing, shall be made by notice of motion and titled in the matter of the tax appeal, supported by affidavit.

Ancillary applications.

(2) If no appeal has been filed, the motion shall be titled in the matter of the intended tax appeal.

Where a court decrees does not specify tax payable.

18. Where a decree following the decision of the Court does not specify the amount of tax payable under the assessment as determined the Court, the Commissioner shall for the purpose of the execution of that decree –

- (a) where the decision of the Court results in an amendment to the assessment filed with the Registrar, certify an amended assessment and serve it on the person assessed; or
- (b) where the decision does not result in an amendment to the assessment, file with the Registrar a statement signed by himself setting out the amount of tax payable under the notice of assessment served or the amended notice, as the case may be,

and the decree shall have effect as if it were a decree for the payment of the amount of tax set out in the notice or statement, as the case may be.

Fees.

19. The scale of fees for the time being in force in civil matters in the Court shall apply in respect of filing fees and to all subsequent acts, applications or proceedings, in relation to the appeal.

Civil procedures to apply.

20. The rules determining procedure in civil suits before the Court, to the extent to which those rules are not inconsistent with the Act or these Rules, shall apply to the tax appeal as if it were a civil suit.

Appeal to the Court of appeal.

21. A person aggrieved by the decision of the Court may appeal to the Court of Appeal within fourteen days.

WILLY MUTUNGA,
Chief Justice.