

NO. 29 OF 2015

THE TAX PROCEDURES ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

	<i>Page</i>
1. The Tax Procedures (Tax Agents) Regulations.....	3
2. The Tax Procedures (Unassembled Motor Vehicles and Trailers) Regulations.....	9
3. The Tax Procedures (Tax Agents) Regulations.....	25
4. The Tax Procedures (Unassembled Motorcycles) Regulations.....	31
5. The Tax Procedures (Settlement of Tax Disputes Out of Court or Tribunal) Regulations.....	39
6. The Tax Procedures (Common Reporting Standards) Regulations.....	45
7. Tax Procedures (Electronic Tax Invoice) Regulations, 2023.....	79

THE TAX PROCEDURES (TAX AGENTS) REGULATIONS

ARRANGEMENT OF SECTIONS

1. Citation
 2. Interpretation
 3. Registration of tax agent
 4. Functions of tax agents
 5. Register for tax agents
 6. Conduct of tax agent
 7. Establishment of the Tax Agents Committee
 8. Vacancy
 9. Investigation of allegations of misconduct
 10. Offences
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THE TAX PROCEDURES (TAX AGENTS) REGULATIONS

[Legal Notice 138 of 2018]

1. Citation

These Regulations may be cited as the Tax Procedures (Tax Agents) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Committee" means the Tax Agent Committee established under regulation 7;

"misconduct" includes making false tax declarations, aiding and abetting tax evasion and any conduct prohibited by any law relating to the collection of tax;

"practicing certificate" means a certificate issued to a person by a recognized professional association which permits that person to practice that profession;

"registration certificate" means the certificate issued by the Commissioner under regulation 3; and

"tax agent" means a person registered by the Commissioner as a tax agent under regulation 3.

3. Registration of tax agent

(1) A person who wishes to act as a tax agent shall apply in writing to the Commissioner for registration.

(2) An application made under subregulation (1) shall be accompanied by a non-refundable fee of twenty thousand shillings.

(3) The Commissioner may register a person as a tax agent if that person is tax compliant and—

- (a) is a member of the Institute of Certified Public Accountants of Kenya;
- (b) is an advocate of the High Court of Kenya and holds a current practicing certificate;
- (c) is a former tax administrator with at least ten years' experience in tax administration; or
- (d) is a holder of any other relevant qualifications and experience recognized by the Commissioner as sufficient for a tax agent.

(4) Where the Commissioner is satisfied that a person is qualified for registration as a tax agent, the Commissioner shall issue a certificate of registration in the prescribed form.

(5) These Regulations shall not apply to a non-resident who is temporarily in Kenya for the sole purpose of representing a client on tax matters.

4. Functions of tax agents

The functions of a tax agent shall be to—

- (a) prepare and submit tax returns on behalf of a taxpayer;
- (b) liaise with the Kenya Revenue Authority on behalf of a taxpayer on matters relating to tax;
- (c) advise and represent a taxpayer in matters relating to tax before the Commissioner or the Tribunal established under the Tax Appeals Tribunal Act, 2013 (No. 40 of 2013); and
- (d) deal with any other matters that relate to tax on behalf of a taxpayer.

5. Register for tax agents

(1) The Commissioner shall maintain a register of tax agents which shall contain—

[Subsidiary]

- (a) the names of all tax agents;
- (b) the qualifications of the tax agents;
- (c) the address of the principal places of business of the tax agents and any other place where the tax agents may operate from; and
- (d) such other information as the Commissioner may consider necessary.

(2) A tax agent shall notify the Commissioner of any change in the information in the register within fourteen days of such change.

6. Conduct of tax agent

(1) A tax agent shall act in a professional manner in providing service to his or her clients to enable them to comply with the requirements of any tax law.

(2) Without prejudice to the foregoing, a tax agent shall—

- (a) comply with any notice served on the tax agent by the Commissioner within the period specified in the notice;
- (b) maintain a register containing the following details—
 - (i) the names of all the clients;
 - (ii) the date of engagement by each client;
 - (iii) the physical addresses, postal addresses and any other contact details of each client; and
 - (iv) information relating to the nature of the business that each client is engaged in; and
- (c) maintain proper records indicating—
 - (i) the date when the last income tax return or specified notice was submitted to the Commissioner;
 - (ii) the tax payable or paid; and
 - (iii) such other particulars as the Commissioner may from time to time direct.

7. Establishment of the Tax Agents Committee

(1) The Cabinet Secretary shall, for the purpose of these Regulations, appoint by notice in the Gazette, a Tax Agent Committee which shall consider applications for registration of tax agents and investigate any allegations of misconduct made against tax agents.

(2) The Committee shall comprise of—

- (a) a chairperson who shall be from the private sector with at least ten years' relevant experience and holds a degree in taxation, finance, accounting, economics or law from a university recognized in Kenya;
- (b) a representative of the Institute of Certified Public Accountants of Kenya;
- (c) a representative of the Law Society of Kenya;
- (d) three other persons who have at least five years' relevant experience and hold a degree in taxation, finance, accounting, economics or law from a university recognized in Kenya; and
- (e) a representative of the Commissioner, who shall be the secretary to the Committee.

(3) The members of the Committee shall serve for a term not exceeding three years and shall be eligible for re-appointment for one further term not exceeding three years.

(4) The quorum for a meeting of the Committee shall be the chairperson and two other members.

(5) The Chairperson shall preside at every meeting of the Committee at which the chairperson is present and in the absence of the Chairperson, the members present shall appoint one of their number to preside over the meeting.

(6) The members of the Committee shall be paid such remuneration as the Cabinet Secretary may determine from time to time.

8. Vacancy

The office of the chairperson or a member of the Committee shall become vacant if the holder—

- (a) resigns by notice in writing to the Cabinet Secretary;
- (b) is convicted of any offence;
- (c) is declared bankrupt by a court of competent jurisdiction;
- (d) fails to meet his or her tax obligations; or
- (e) fails to attend three consecutive meetings without notice to the chairperson or in case of the chairperson to the Commissioner.

9. Investigation of allegations of misconduct

(1) The Commissioner shall, upon receiving any allegation of misconduct against a tax agent, refer the matter to the Committee to investigate the allegation.

(2) Where the complaint is against a member of a recognized professional association, the Committee may refer the matter to the association for investigation and determination in accordance with the code of conduct of that association.

(3) The Committee may recommend such disciplinary or similar action as it may consider necessary be taken against the tax agent in addition to the action taken by the association.

(4) Where the complaint is against a person who is not a member of a recognized professional association, the Committee shall give the tax agent an opportunity to be heard and permit the tax agent to inspect any relevant documents related to the allegation at least seven days before the date of the hearing.

(5) The Committee may, in the course of the investigations, hear such witnesses and receive such documentary evidence as may, in its opinion, assist in the investigation.

(6) The Committee shall, expeditiously, but not later than seven days after the conclusion of the investigation, submit a report to the Commissioner recommending that the Commissioner—

- (a) clears the tax agent of the allegations;
- (b) cautions, warns or reprimands the tax agent;
- (c) suspends the registration of the tax agent;
- (d) deregisters the tax agent; or
- (e) takes such other action that the Commissioner may consider appropriate.

(7) The Commissioner shall, within fourteen days of receiving the report of the Committee, take such action as may be appropriate.

10. Offences

Any person who—

- (a) fraudulently makes, or causes or permits to be made, any false or incorrect entry into the register maintained for the purposes of these Regulations, or any copy thereof;
- (b) fraudulently procures or attempts to procure, registration as a tax agent;
- (c) knowingly and willfully makes any statement which is false or which is misleading, with a view to gaining any advantage, concession or privilege under these Regulations; or
- (d) operates as a tax agent without being registered,

[Subsidiary]

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

**THE TAX PROCEDURES (UNASSEMBLED MOTOR
VEHICLES AND TRAILERS) REGULATIONS**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
3. Importation of unassembled motor vehicles or trailers
4. Application for approval of importation
5. Conditions for approval as an importer
6. Assembling of motor vehicles or trailers
7. Transfers between bonded warehouse facilities
8. Knocked down kits for motor vehicles
9. Knocked down kits for trailers
10. Parts to be excluded
11. Annual reports
12. Transition
13. Offences
14. *[Spent]*

SCHEDULES

KNOCKED DOWN KITS FOR MOTOR VEHICLES

SPECIFIC BREAK DOWN OF COMPLETELY KNOCKED DOWN KITS

PARTS EXCLUDING FROM COMPLETELY KNOCKED DOWN KITS

COMPLETELY KNOCKED DOWN KITS FOR TRAILERS

THE TAX PROCEDURES (UNASSEMBLED MOTOR VEHICLES AND TRAILERS) REGULATIONS

[Legal Notice 84 of 2019, Legal Notice 139 of 2020]

1. Citation

These Regulations may be cited as the Tax Procedures (Unassembled Motor Vehicles and Trailers) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"authorized assembler" means a person approved by the Cabinet Secretary to assemble motor vehicles or trailers in a bonded warehouse facility;

"assembly plant" means a bonded warehouse facility with plant and equipment for the assembly of motor vehicles or trailers by an authorized assembler;

"authorized importer" means a person approved by Cabinet Secretary to import completely knocked down kits for the assembly of motor vehicles or trailers in an assembly plant;

"automotive glass" means front and rear windscreens, and front and rear passenger glass;

"bonded warehouse facility" means a place or premises approved by the Commissioner where completely knocked down kits of unassembled motor vehicles or trailers are stored and used in the assembly of motor vehicles or trailers as the case may be;

"commercial vehicle" means a motor vehicle, other than a motorcar or a F.W.D. vehicle, with four or more wheels which is used primarily on roads;

"Commissioner" has the meaning assigned to it under section 2 (1) of the East African Community Customs Management Act, 2004 (No. 1 of 2005);

"completely knocked down kit" means a motor vehicle or trailer kit comprising parts and sub-assemblies used for the assembly of a motor vehicle or trailer;

"F.W.D. vehicle" means a motor vehicle, other than a motorcar, with power transmittable to at least two front and two rear wheels which has a load capacity of not more than two tonnes;

"fasteners" means bolting or clipping;

"interior trim" means seats, floor mats, door panels or roof lining;

"light commercial vehicle" means any commercial vehicle having a load capacity of less than three tonnes;

"localization" means the development, manufacture or production of local motor vehicle or trailers parts, components, subassemblies and systems for use in the assembly of motor vehicles or trailers and after-sales support;

"medium or heavy commercial vehicle" means commercial vehicle having a load capacity of three tonnes or more;

"monocoque body" or "mono-construction body" means a vehicle body in which the body frame is integrated or combined with the chassis as a single unit;

"motorcar" means a saloon or a station-wagon or a motorcar type and size;

"original equipment manufacturer" means a manufacturer of parts and sub-assemblies where the manufacturer owns the intellectual property rights in the parts or sub-assemblies;

[Subsidiary]

"part" means an individual component shaped, fashioned or otherwise manufactured from one piece of metal or any other material and not joined or connected in any way to another component or material;

"sub-assembly" means a component consisting of any two or more parts joined together by any means;

"trailer" means any unpowered vehicle designed to be drawn by a tractor;

"tractor" means a vehicle constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not the vehicle contains subsidiary provision for the transport, in connection with the main use of tractor, of tools, seeds, fertilisers or other goods;

"system" means a set of items working together as parts of a motor vehicle or trailer mechanism; and

"unassembled" means a completely knocked down kit consisting of parts and sub-assemblies used for the assembly of motor vehicles or trailers.

3. Importation of unassembled motor vehicles or trailers

(1) A person who intends to import unassembled motor vehicles or trailers shall comply with the conditions specified in these Regulations.

(2) The importation of kits shall be classified as unassembled only if the kits are imported in accordance with these Regulations.

(3) Parts or sub-assemblies may be imported from different countries of origin and the importer shall ensure that all import documentation complies with these Regulations.

4. Application for approval of importation

(1) A person shall not import unassembled motor vehicles or trailers unless that person is an authorized importer.

(2) A person who intends to import unassembled motor vehicles or trailers shall apply to the Cabinet Secretary for authorization.

(3) An application under sub-regulation (2) shall provide the details of models of motor vehicles or trailers to be imported.

(4) The Cabinet Secretary shall review an application under sub-regulation (2) and approve or decline the application.

(5) Upon approval, the applicant shall apply to the Commissioner for a license to operate a bonded warehouse facility.

(6) Despite sub-regulation (5), upon approval, an importer of unassembled motor vehicle or trailers may import knocked down kits if the importer satisfies the Commissioner that the importer has access to, or use of, a bonded warehouse facility.

5. Conditions for approval as an importer

A person applying for approval as an authorized importer of unassembled motor vehicles or trailers shall—

- (a) be incorporated in Kenya;
- (b) have an assembly plant or a contract with an assembly plant licensed by the Commissioner as a bonded warehouse facility; and
- (c) be tax compliant.

6. Assembling of motor vehicles or trailers

(1) The assembling of motor vehicles or trailers shall be undertaken in a bonded warehouse facility licensed by the Commissioner.

(2) The Commissioner may allow in bonded warehouse facilities the receiving of locally purchased parts and sub-assemblies as components for the assembly of motor vehicles or trailers.

7. Transfers between bonded warehouse facilities

(1) The Commissioner may permit the transfer of unassembled or assembled motor vehicles or trailers from one bonded warehouse facility to another.

(2) Notwithstanding sub-regulation (1), the Commissioner may impose such conditions as may be necessary for the transfer of unassembled or assembled motor vehicles or trailers from one bonded warehouse facility to another.

8. Knocked down kits for motor vehicles

Knocked down kits for motor vehicles shall be imported as individual parts or sub-assemblies as specified in the First and Second Schedules to these Regulations.

9. Knocked down kits for trailers

Knocked down kits for trailers shall be imported as individual parts or sub-assemblies as specified in the Fourth Schedule to these Regulations.

10. Parts to be excluded

(1) Parts or sub-assemblies imported as part of completely knocked down kits shall not include any of the parts that are specified in the Third Schedule to these Regulations.

(2) The excluded parts sub-assemblies when imported with the rest of the completely knocked down kits shall be declared separately and relevant duties paid by the importer.

(3) The parts and sub-assemblies that are specified in the Third Schedule or Fourth Schedule to these Regulations shall be reviewed after every two years or such other time as may be necessary, by the Cabinet Secretary, in consultation with the Cabinet Secretary responsible for matters relating to industry.

11. Annual reports

An authorised assembler or importer shall submit to the Cabinet Secretary an annual report on the number and type of assembled or imported vehicles or trailers as the case may be.

12. Transition

Despite the provisions of these Regulations in respect of levels 1 and 2, the timelines specified in the agreements between the Government and the assemblers entered into before the commencement of these Regulations shall continue to apply.

13. Offences

A person who contravenes any of the provisions of these Regulations commits an offence and shall be liable, on conviction, to the relevant penalties specified under the Act.

14.

[Spent]

FIRST SCHEDULE

[r. 8]

KNOCKED DOWN KITS FOR MOTOR VEHICLES**1. General Provisions**

- (1) Except where otherwise specified in these Regulations, each individual part or sub-assembly shall be imported un-attached to other parts or sub assemblies.
- (2) Brackets, anchors or clinch nuts, clips and similar fasteners may be attached to parts or sub-assemblies in accordance with the provisions of paragraph (1).
- (3) Parts or sub-assemblies which have undergone any of the following manufacturing processes may be permitted—

[Subsidiary]

- (a) the covering of metal with rubber or plastic material;
 - (b) the bonding of rubber or plastic material to metal or glass;
 - (c) bright metal plating; or
 - (d) imitation wood graining.
- (4) Parts or sub-assemblies shall be permitted if joined or attached by any of the following processes—
- (a) automatic arc-welding;
 - (b) flash butt-welding;
 - (c) projection welding;
 - (d) hydraulic pressure-welding;
 - (e) high amp spot-welding;
 - (f) di-electrical welding;
 - (g) thermal bonding process; or
 - (h) automatic or multi-spot welding.
- (5) Parts or sub-assemblies not specifically mentioned in this Schedule may be imported in the condition supplied:

Provided that the parts or sub-assemblies shall not be attached or joined to any other parts or sub-assemblies.

2. Chassis frames

- (1) Where the chassis frame whether of box channel, tubular or other construction is in a form consisting of side, cross, cruciform or other members, each part of such member shall be imported adrift, except where each part of such member is welded or riveted together by the original equipment manufacturer.
- (2) Welded chassis frames shall be broken down into major subassemblies for welding in plant and all cross members and outriggers shall be shipped loose.
- (3) Riveted chassis frames shall be broken down into major subassemblies for riveting in plant.
- (4) Bolted chassis frames shall be broken down into major subassemblies for bolting in plant.
- (5) Where the conventional chassis frame is replaced by welded floor components such as seat risers, floor pans, wheel houses and toe boards instead of side, cross, cruciform or other members, such floor components shall, except where welded or riveted together, be adrift.

3. Body or chassis panels, stamping and pressing

- (1) Cowls, scuttles, bulkheads or firewalls may be assembled, but shall not be surface treated in any way except with a coat of primer or other anti-rust preparation or substance.
- (2) The cabs shall be broken down to the extent that the following major items shall be imported as sub-assemblies—
 - (a) doors;
 - (b) floor assemblies;
 - (c) roof panels;
 - (d) bonnets;
 - (e) cab back panels;
 - (f) wheel larches;
 - (g) radiator grilles;
 - (h) grille surround panels;
 - (i) dash assemblies;
 - (j) bulk-head assemblies;
 - (k) door pillars;

- (l) door surrounds;
 - (m) windscreen surrounds; and
 - (n) bumper valances.
- (3) Instrument or dashboard panels, glove boxes and doors may be in the condition supplied by the manufacturer, but shall be devoid of all instruments and controls.
 - (4) Windscreen frames may be imported with reinforcements or other attachments but shall be without glass.
 - (5) Toe and running boards may be imported with reinforcements attached but shall not be surface treated in any way except with a coat of primer or other anti-rust preparation or substance.
 - (6) Doors may be assembled with all internal fittings in position and may include deadeners or anti-drum materials but shall be devoid of—
 - (a) door locks;
 - (b) window winding mechanisms;
 - (c) glass;
 - (d) trim; or
 - (e) upholstery material,

and shall not be surface-treated in any way except with a coat of primer or anti-rust preparation or substance.

- (7) Door pillars may be assembled with metal fittings in position.
- (8) Mudguards or fenders may be imported with holes made therein and reinforcements added but shall not be surface-treated in any way except with a coat of primer or other anti-rust preparation or substance.
- (9) Trunks, boot lids, bonnets or engine covers may be assembled with fitting and deadeners or anti-drum materials attached but shall not be surface treated in any way except with a coat of primer or other antirust preparation or substance.
- (10) Chassis and body panels, pressing and stampings not elsewhere provided for may be imported with holes made therein and reinforcements added and deadeners or anti-drum material attached but shall not be surface-treated in any way except with a coat of primer or other anti rust preparation or substance.
- (11) Roof panels, pressings or stamping that comply with these regulations may have drip moulding attached.

4. Engines

- (1) Engines shall be unattached to any supporting sub-frames or chassis members but may be complete with—
 - (a) electrical equipment;
 - (b) manifolds;
 - (c) pumps; or
 - (d) final drive units where such units are incorporated within the engine housings.
- (2) Primary differential drive shafts and flanges may be fitted to differentials, where applicable.
- (3) Radiators, including radiator shells and mounting frames may be assembled.
- (4) Exhaust pipes and mufflers may be assembled, but not fitted together unless permanently attached.
- (5) Fuel tanks complete with filter housings and covers may be imported in the condition supplied by the original equipment manufacturer.

5. Controls

- (1) Steering boxes may have the shaft columns attached, but the steering wheels, gear linkages, if any, and electrical equipment shall be adrift.

[Subsidiary]

(2) Pedals and linkages may be assembled.

6. Axles, brakes and suspension systems

- (1) Rigid or beam type of front suspensions shall have the following parts or sub-assemblies adrift—
- (a) front axle beams complete with stub-axles, steering arms and braking equipment;
 - (b) shock absorbers;
 - (c) radius rods and other steering linkages;
 - (d) brake pipes and hoses; and
 - (e) tie rods and other steering linkages.
- (2) In the case of multi-drive vehicles, driving front axles may be complete with differential, half-shafts, constant velocity joints and braking equipment.
- (3) In the case of brake shoes contained within a single brake drum being operated by twin slave cylinders, the bridging pipe connecting the cylinders may be left in position.

7. Front and rear suspensions

- (1) The independent type of front suspension shall have the following parts or sub-assemblies adrift—
- (a) suspension frames;
 - (b) stub axles complete with wishbones, constant velocity joints, steering arms and braking equipment;
 - (c) radius rods, anti-roll bars and other suspension linkages;
 - (d) brake pipes and hoses;
 - (e) shock absorbers; and
 - (f) springs excluding leaf springs.
- (2) In the case of McPherson type front suspension, the stub axle may be complete with integral shock absorber and springs.
- (3) In the case of brake shoes contained within a single brake drum being operated by twin slave cylinders, the bridging pipe connecting the cylinders may be left in position.
- (4) The rigid or beam type of rear suspension shall have the following parts or sub-assemblies adrift—
- (a) rear axle completes with differential half-shafts and braking equipment;
 - (b) springs excluding leaf springs;
 - (c) shock absorbers;
 - (d) radius rods and other similar suspension linkages; and
 - (e) brake pipes and hoses.
- (5) The independent type of rear suspension shall have the following parts or sub-assemblies adrift—
- (a) suspension frame;
 - (b) stub axles complete with bearing housings and brake equipment;
 - (c) differential housings complete with differential and primary differential drive shafts;
 - (d) radius rods and other similar suspension linkages;
 - (e) brake cables, linkages, pipes and hoses;
 - (f) propeller shafts;
 - (g) shock absorbers; and
 - (h) springs (excluding leaf springs).
- (6) Single pivot and double pivot swing type rear axles, where the half-shafts are enclosed in pivoted axle tubes may be assembled.

8. Instruments

Instruments including the cables may be clustered but may not be mounted in the instrument panel.

9. Miscellaneous materials, parts and accessories for motor vehicles

- (1) Miscellaneous materials, parts and accessories for motor vehicles shall comply with the following conditions—
- (a) anti-squeak and anti-drum materials may be cut to size;
 - (b) weather strips may be in the piece;
 - (c) glass shall be devoid of any attachments;
 - (d) seat frames may be assembled but not upholstered;
 - (e) upholstery or cushion springs may be loose or in cages; and
 - (f) carpeting, upholstery, headlining, convertible tops and vinyl roof coverings may be in the condition supplied by the original equipment manufacturer.
- (2) The following fittings and accessories may be imported in the condition supplied—
- (a) bonnet catch sub-assemblies;
 - (b) bonnet ornaments;
 - (c) radiator grilles;
 - (d) window and door handles;
 - (e) window winding mechanisms;
 - (f) window support frames;
 - (g) window fasteners;
 - (h) window glass channels;
 - (i) window sash weather strip metal and felt;
 - (j) door arm-rests;
 - (k) door check straps, metal or other material;
 - (l) door pulls and assist cords;
 - (m) arm-rest sub-assemblies including hinges and support or brackets thereof but excluding upholstery;
 - (n) direction indicators;
 - (o) electrical sockets and fittings;
 - (p) cigar and cigarette lighters;
 - (q) clocks;
 - (r) windscreen wipers;
 - (s) horns or hooters;
 - (t) ash trays;
 - (u) robe rails;
 - (v) parcel nets;
 - (w) guiding and lifting adjustable seals;
 - (x) guiding and lifting adjustable seat level slides and locking devices;
 - (y) safety belts including fittings and anchorages;
 - (z) upholstery wire stiffeners;
 - (aa) ventilator window frames and operating mechanism including coal ventilator sub-assemblies;
 - (bb) step plates (running boards);
 - (cc) rubber engine mountings;
 - (dd) stone guards and dust shields;
 - (ee) ornamental mouldings and monograms including window reveals or garnish moulding to imitate wood;

[Subsidiary]

- (ff) bolts, nails, nuts, rivets, tacks and washers, excluding U-bolt nuts and U-bolts as catered for under the exclusions;
- (gg) hinges and locks including hinger arm sub-assemblies;
- (hh) chains and hooks;
- (ii) metal brackets, braces, supports, reinforcements;
- (jj) forgings, castings, anchor plates or nuts;
- (kk) nailing strips with nails inserted;
- (ll) tacking or trim strips; and
- (mm) boot cardboard panels.

SECOND SCHEDULE

[r. 8]

SPECIFIC BREAK DOWN OF COMPLETELY KNOCKED DOWN KITS

**PART A - SPECIFIC BREAK DOWN OF COMPLETELY
KNOCKED DOWN KITS FOR TRUCKS AND BUSES**

1. Provisions for completely knocked down kits under level 3-trucks and buses

The requirements for completely knocked down kits under level 3 for trucks and buses shall be in accordance with the First Schedule to these Regulations.

2. Provisions for completely knocked down kits under level 2- trucks and buses

The special breakdown level 2 of completely knocked down kits for trucks and buses shall be in accordance with the First Schedule to these Regulations save for the following—

- (a) the cab may be imported as a sub-assembly with the doors adrift, in the welded condition as supplied by the original equipment manufacturer but not dressed;
- (b) the cab may be surface treated with paint, primer or other anti-rust preparation or substance;
- (c) a monocoque body, chassis, cab or other metal or plastic assemblies which are welded or glued together may be surface treated with paint, primer or other anti-rust preparation or substance; and
- (d) vehicles with monocoque bodies shall be supplied not trimmed and the following parts shall be supplied adrift; the wheels, tyres, the suspension system, doors, windscreen, bonnet assembly, boot assembly, drive shafts, brake shoe assembly, exhaust system, front and rear bumper assembly, engine, transmission and body trims in the condition supplied by the original equipment manufacturer.

**PART B - SPECIFIC BREAK DOWN OF
COMPLETELY KNOCKED DOWN KITS FOR PICK-UP**

1. Provisions for completely knocked down kits under level 3-pickups

The requirements for completely knocked down kits under level 3 for pickups shall be in accordance with the First Schedule to these Regulations save for the following—

- (a) The panel components for the pick-up body and the rear bodywork shall be shipped loose, provided that the following may be shipped as sub-assemblies—
 - (i) doors;
 - (ii) bulk-heads;
 - (iii) scuttles; and
 - (iv) dash assemblies;

- (b) where stiffeners and brackets are required to be welded to panels to prevent damage during transit these sub-assemblies may be imported in this condition; and
- (c) the chassis longitudinal members shall be supplied in a welded condition but with the cross members and out-riggers supplied loose.

2. Provisions for completely knocked down kits under level 2 - pickups

(1) The special breakdown level 2 of completely knocked down kits for pickups shall be in accordance with the First Schedule to these Regulations, save for the following—

- (a) the cab may be imported as a sub-assembly with the doors adrift, in the welded condition as supplied by the manufacturer but not dressed;
- (b) the cab may be surface treated with paint, primer or other anti-rust preparation or substance; and
- (c) all chassis cross members and outriggers may be imported as riveted or welded together by the original equipment manufacturer. The chassis parts may also be imported treated with paint, primer or other anti-rust preparation or substance.

(2) The authorized assembler assembling completely knocked down kits at this level shall work with local content suppliers to ensure localization of parts and components.

(3) The authorized assembler shall facilitate technology transfer to local parts and components manufacturers to ensure quality of parts and components to be locally produced.

PART C - SPECIFIC BREAK DOWN OF COMPLETELY KNOCKED DOWN KITS FOR PASSENGER VEHICLES AND STATION WAGONS

1. Provisions for completely knocked down kits under level 3 - passenger cars including station wagons

The requirements for completely knocked down kits under level 3 for passenger cars including station wagons shall be in accordance with the First Schedule of these Regulations save for the following—

(1) Body and Chassis

Vehicles with monocoque type bodies or chassis shall be supplied in sub-assemblies for arc or spot welding in plant.

(2) The following sub-assemblies shall be imported complete—

- (a) doors;
- (b) floor assemblies;
- (c) roof panels;
- (d) bonnets and boots;
- (e) cab back panels;
- (f) wheel arches;
- (g) radiator grilles;
- (h) grille surround panels;
- (i) dash assemblies;
- (j) bulk-head assemblies;
- (k) door pillars;
- (l) door surrounds;
- (m) windscreen surrounds; and
- (n) bumper valances.

(3) Where stiffeners and brackets are required to be welded to panels to prevent panel damage during shipment, these sub-assemblies may be imported in this condition.

[Subsidiary]

2. Provisions for completely knocked down kits under level 2 - passenger cars including station wagons

(1) The special breakdown level 2 of completely knocked down kits for passenger cars including station wagons shall be in accordance with the First Schedule and the provisions under level 3 for passenger vehicles and station wagons in these Regulations, save for the following—

- (a) a monocoque body, chassis cab or other metal or plastic assemblies which are welded or glued together shall be surface treated with paint, primer or other anti-rust preparation or substance;
- (b) vehicles with monocoque bodies shall be supplied not trimmed and the following parts shall be supplied adrift; the wheels, tyres, the suspension system, doors, windscreen, bonnet assembly, boot assembly, drive shafts, brake shoe assembly, exhaust system, front and rear bumper assembly, engine, transmission and body trims in the condition supplied by the original equipment manufacturer;
- (c) vehicles with chassis frame shall be supplied with the side members and cross members assembled together except the following which shall be supplied adrift; wheels, tyres, the suspension system, drive shafts, brake shoe assembly, engine, transmission, propeller shafts, front and rear axle assembly in the condition supplied by the original equipment manufacturer;
- (d) chassis parts may be imported treated with paint, primer or other anti-rust preparation or substance; and
- (e) cab bodies for vehicles with chassis frame shall be supplied not trimmed and the following parts shall be supplied adrift; the suspension system, doors, windscreen, bonnet assembly, boot assembly, drive shafts, brake shoe assembly, exhaust system, front and rear bumper assembly, engine, transmission and body trims in the condition supplied by the original equipment manufacturer.

(2) The authorized assembler shall work with local content suppliers to ensure localization of parts and components.

(3) Vehicles having a welded chassis frame shall have the chassis frame broken down into major sub-assemblies with all cross members and outriggers shipped loose for welding in plant.

(4) Authorized assembly using knock down kits level 2 for passenger cars including station wagons shall only be allowed for a maximum of two years per vehicle model.

(5) The authorized assembler shall facilitate technology transfer to local parts and components manufacturers to ensure quality of parts and components to be locally produced.

3. Provisions for completely knocked down kits under level 1 - passenger cars including station wagons

(1) The special breakdown provisions for level 1 completely knocked down kits for passenger cars including station wagons shall be as follows—

- (a) a monocoque body, chassis, cab or other metal or plastic assemblies which are welded or glued together shall come fully painted with the final paint coat;
- (b) vehicles with monocoque bodies shall be supplied fully trimmed except the following parts which shall be supplied adrift; the wheels, tyres, the suspension system, doors fitted with glass, bonnet assembly, boot assembly, drive shafts, brake shoe assembly, propeller shafts, front and rear axle assembly exhaust system, front and rear bumper assembly, and the engine attached to the transmission, shall all come adrift in the condition supplied by the original equipment manufacturer; and
- (c) vehicles with chassis frame shall be supplied with the side members and cross members assembled together except the following which shall be supplied

adrift; wheels, tyres, the suspension system, doors fitted with glass, bonnet assembly, boot assembly, drive shafts, brake shoe assembly, the engine attached to the transmission, propeller shafts, front and rear axle assembly, front and rear bumper assembly, in the condition supplied by the original equipment manufacturer.

(2) Components that have staining, bonding, lacquering, wood graining and riveting, are all allowed as supplied by the original equipment manufacturer.

(3) Items that do not meet the categories stated herein above shall be delivered in the supply condition as provided for by the original equipment manufacturer.

(4) The authorized assembly using knock down kits level 1 for passenger cars including station wagons shall only be allowed for a maximum of 2 years per vehicle model.

THIRD SCHEDULE

[r. 10]

PARTS EXCLUDING FROM COMPLETELY KNOCKED DOWN KITS

PART I

The following items shall not be allowed as constituting parts or sub-assemblies of the unassembled motor vehicles specified in the First Schedule and Second Schedule—

- (a) batteries;
- (b) battery cables;
- (c) engine air filters;
- (d) exhaust pipes and silencers;
- (e) leaf springs assembly and leaf springs;
- (f) U-Bolts, U-bolt nuts and central bolts;
- (g) wiring harnesses;
- (h) in vehicle literature;
- (i) vehicle VIN plates and decals;
- (j) radio, USB, compact disc or DVD players;
- (k) automotive paints and painting preparation chemicals;
- (l) speed governors and accessories;
- (m) seat frames;
- (n) seat foam pads (polyurethane foam);
- (o) seat upholstery;
- (p) soft interior trim;
- (q) canvas;
- (r) spare-wheel carrier;
- (s) shackle pins for leaf springs;
- (t) windscreen, side and rear glass; and
- (u) radiators.

[Subsidiary]

Part II

The following items shall not be allowed as constituting parts or sub-assemblies of unassembled motor vehicles specified in the First and Second Schedule—

- (a) oils;
- (b) greases;
- (c) fuels;
- (d) hydraulic fluid;
- (e) sealers;
- (f) adhesives;
- (g) paint;
- (h) toughened flat glass;
- (i) canvas hoods, covers and screens;
- (j) soft trim upholstery;
- (k) sound deadening material;
- (l) pre-mixed metal pre-treatment chemicals;
- (m) hydraulic jacks;
- (n) scissor jacks; and
- (o) tool kits.

FOURTH SCHEDULE

[r. 9]

COMPLETELY KNOCKED DOWN KITS FOR TRAILERS

[L.N. 139/2020, r. 2]

(1) The following parts or sub-assemblies shall constitute the complete knocked down kits for trailers—

- (a) axles;
- (b) suspensions;
- (c) air braking kits;
- (d) rims;
- (e) landing gears;
- (f) turntables;
- (g) king pin;
- (h) hydraulic tipping jack kits; and
- (i) manhole assembly, valves and pump kits for tankers or bulkers.

(2) The axle and suspension in paragraph 1 of this Schedule shall consist of the following parts and sub-assemblies—

- (a) brackets;
- (b) casting blocks;
- (c) equalizers;
- (d) fixed and adjusters arms;
- (e) shock absorbers;

- (f) springs (parabolic, air and helical);
 - (g) air chambers;
 - (h) axle lift kits;
 - (i) axle beams complete with stubs, studs, hubs, drums and braking equipment;
and
 - (j) steeling axles complete with stubs, hubs, suds, steering arms and linkages.
-

THE TAX PROCEDURES (TAX AGENTS) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
 2. Interpretation
 3. Registration of tax agents
 4. Determination whether a person is fit and proper
 5. Licensing of tax agents
 6. Functions of tax agents
 7. Register of tax agents
 8. Register of clients
 9. Tax Agents' Committee
 10. Tenure of members of Committee
 11. Conduct of business
 12. Functions of the Committee
 13. Investigation of allegations of misconduct
 14. Offences
 15. Transitional provisions
-

THE TAX PROCEDURES (TAX AGENTS) REGULATIONS

[Legal Notice 111 of 2020]

1. Citation

These Regulations may be cited as the Tax Procedures (Tax Agents) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Committee" means the Tax Agents Committee established under regulation 7;

"misconduct" includes making false tax declarations, aiding and abetting tax evasion, and any conduct that is prohibited by any tax law;

"person" includes an individual and a partnership;

"practicing certificate" means a certificate issued to a person by a recognised professional association which permits that person to practice that profession;

"registration certificate" means the certificate issued by the Commissioner under regulation 5;

"tax agent" means a person registered by the Commissioner as a tax agent under regulation 5; and

"Tribunal" means the Tax Appeals Tribunal established under the Tax Appeals Tribunal Act (Cap. 469A).

3. Registration of tax agents

(1) A person who wishes to act as a tax agent shall apply in writing to the Commissioner for registration.

(2) An application under paragraph (1) shall be accompanied by a non-refundable fee of twenty thousand shillings.

(3) The Commissioner may register a person as a tax agent if that person is fit and proper and—

- (a) is a member of the Institute of Certified Public Accountants of Kenya and with at least three years' experience;
- (b) is an advocate of the High Court of Kenya, holds a current practicing certificate and with at least three years' experience;
- (c) is a former tax administrator with at least ten years' experience in tax administration; or
- (d) holds any other relevant qualifications and possesses experience recognised by the Commissioner as sufficient for a tax agent.

(4) This regulation shall not apply to a non-resident person who is temporarily in Kenya for the sole purpose of representing a client on tax matters.

4. Determination whether a person is fit and proper

In determining whether a person is fit and proper to be registered as a tax agent under regulation 3, the Tax Agents Committee shall consider—

- (a) whether the person is tax compliant;
- (b) the person's probity, competence and soundness of judgment in fulfilling the responsibilities of a tax agent;
- (c) whether the person has ever been involved in financial irregularities including misappropriation of funds or manipulation of tax transactions;
- (d) whether the person has ever been convicted of an offence involving fraud; or

[Subsidiary]

- (e) whether the person has been convicted of any tax offence under a tax law or an anti-corruption law.

5. Licensing of tax agents

(1) Where an applicant has satisfied the requirements of regulations 3 and 4, the Commissioner shall issue the applicant with a registration certificate.

(2) The registration certificate issued under paragraph (1) shall be deemed to be the tax agent's licence for purposes of section 20.

(3) Where an application for registration as a tax agent is rejected, the Commissioner shall specify the reasons for the rejection in writing.

6. Functions of tax agents

(1) The functions of a tax agent shall be to—

- (a) prepare and submit tax returns on behalf of a taxpayer;
- (b) liaise with the Commissioner on behalf of a taxpayer on matters relating to tax; or
- (c) advise and represent a taxpayer in tax matters before the Tribunal.

(2) An advocate of the High Court of Kenya acting in the ordinary course of the advocate's profession shall not be required to register as a tax agent to perform the functions under paragraph (1)(b) and (c).

7. Register of tax agents

(1) The Commissioner shall maintain a register of licensed tax agents.

(2) The register shall contain—

- (a) the names of tax agents;
- (b) the qualifications of the tax agents;
- (c) the principal address of business of the tax agents and any other place where the tax agents may operate from; and
- (d) such other information as the Commissioner may specify.

(3) A tax agent shall notify the Commissioner of any change of particulars in the register within fourteen days of such change.

8. Register of clients

A tax agent shall maintain a register containing the following details—

- (a) the names of the tax agent's clients;
- (b) the date of engagement as a tax agent by each client;
- (c) the physical addresses, postal addresses and any other contact information of each client;
- (d) information relating to the nature of the business that each client is engaged in; and
- (e) such other particulars as the Commissioner may specify.

9. Tax Agents' Committee

(1) The Cabinet Secretary shall, by notice in the *Gazette*, appoint a Tax Agents' Committee.

(2) The Committee shall comprise of—

- (a) a chairperson who shall be from the private sector, have at least fifteen years' relevant experience, and hold a degree in taxation, finance, accounting, economics or law from a university recognised in Kenya;
- (b) a representative of the Institute of Certified Public Accountants of Kenya;
- (c) a representative of the Law Society of Kenya; and

- (d) four other persons who have at least ten years' relevant experience and hold a degree in taxation, finance, accounting, economics or law from a recognized university.

(3) The Commissioner shall appoint a secretary to the Committee from the staff of the Authority.

10. Tenure of members of Committee

(1) The chairperson or a member of the Committee shall hold office—

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

(2) The office of the chairperson or a member of the Committee shall become vacant if the holder—

- (a) resigns by notice in writing to the Cabinet Secretary;
- (b) is convicted of a criminal offence;
- (c) is declared bankrupt by a court of competent jurisdiction;
- (d) fails to attend three consecutive meetings without notice to the chairperson or, in case of the chairperson, to the Commissioner;
- (e) is unable to perform the functions of the office by reason of prolonged illness; or
- (f) is otherwise unable or unfit to discharge the functions of the office.

11. Conduct of business

(1) The Chairperson shall preside at every meeting of the Committee and in the absence of the Chairperson, the members present shall appoint one of them to preside over the meeting.

(2) The quorum for a meeting of the Committee shall be five members.

(3) The members of the Committee shall be paid such remuneration as the Cabinet Secretary may, in consultation with Salaries and Remuneration Commission, determine.

12. Functions of the Committee

The Tax Agents Committee shall—

- (a) consider applications for registration of tax agents and recommend to the Commissioner whether or not an application should be granted or rejected; and
- (b) where any allegation of misconduct is made against a tax agent, carry out investigations and make recommendations to the Commissioner regarding the action to be taken with respect to the allegation.

13. Investigation of allegations of misconduct

(1) A complaint of misconduct against a tax agent shall be referred by the Commissioner to the Committee for investigation.

(2) The Committee may, in the course of its investigations under paragraph (1), hear any witnesses and receive any documents that will assist it in the investigation.

(3) Before the Committee makes a decision on an allegation against a tax agent, it shall grant the tax agent an opportunity to be heard, call witnesses and present evidence before the Committee.

(4) The Committee shall not, later than seven days after the conclusion of the investigation, submit a report to the Commissioner recommending that the Commissioner—

- (a) clears the tax agent of the allegations;
- (b) cautions, warns or reprimands the tax agent;

[Subsidiary]

- (c) suspends the registration of the tax agent;
- (d) deregisters the tax agent; or
- (e) take such other action that may be appropriate in the circumstances.

(5) The Commissioner shall, within fourteen days of receiving the report of the Committee, take action as recommended under paragraph (4).

(6) Where the Commissioner takes action under paragraph (4) (c) or (d) against a tax agent who is a member of a recognised professional association, the Commissioner shall notify the association of the allegations against the tax agent and the action taken thereof.

14. Offences

(1) A person commits an offence if that person—

- (a) fraudulently makes, or causes or permits to be made, any false or incorrect entry into a register maintained for the purposes of these Regulations;
- (b) fraudulently procures or attempts to procure registration as a tax agent;
- (c) fraudulently makes any statement which is false or misleading with a view to gaining any advantage, concession or privilege under these Regulations;
- (d) purports to operate as a tax agent without being registered; or
- (e) contravenes any provision of these Regulations.

(2) Where a person commits an offence under these Regulations, the relevant sanctions under the Act shall apply.

15. Transitional provisions

Any person who was registered as a tax agent by the Commissioner before the coming to force of these Regulations shall be deemed to have been registered as a tax agent under these Regulations.

**THE TAX PROCEDURES (UNASSEMBLED
MOTORCYCLES) REGULATIONS**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation

PART II – APPROVAL FOR ASSEMBLING OF MOTORCYCLES

3. Restriction on importation of unassembled motorcycles
4. Application for approval
5. Conditions for approval
6. Duty Remission Committee to ensure compliance
7. Assembling of motorcycles
8. Assembly plant
9. Approval to transfer
10. Notification on cessation
11. Submission of report
12. Offences

PART III – MOTORCYCLE COMPLETELY KNOCKED DOWN KITS

13. Breakdown of completely knocked down kits
 14. Parts to be sourced locally
 15. Transition
-

THE TAX PROCEDURES (UNASSEMBLED MOTORCYCLES) REGULATIONS

[Legal Notice 112 of 2020, Legal Notice 192 of 2021, Legal Notice 223 of 2021]

1. Citation

These Regulations may be cited as the Tax Procedures (Unassembled Motorcycle) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires –

"assembly" means the manufacturing process which utilises precision jigs, fixtures, and specialised facilities and equipment;

"assembly plant" means a bonded warehouse facility with plant and equipment for the assembling of motorcycles operated by an authorised assembler;

"assembly line" means an arrangement of machines, tools and persons in which a motorcycle is assembled by having each machine, tool or person perform a specific successive or progressive operation on an incomplete unit as it passes by in a series of stages organised in a direct line;

"authorised assembler" means a person approved by the Cabinet Secretary to assemble motorcycles in a bonded warehouse facility;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to finance;

"chassis frame" means a motorcycle's core structure that supports the engine, provides the hinge points for both front and rear suspension and supports the rider;

"Commissioner" has the meaning assigned to it under the East African Community Customs Management Act, 2004;

"component" means a uniquely identifiable input, part, piece, system or subsystem which is intended to be included as a part of a motorcycle;

"completely knocked down kit" means a motorcycle kit comprising parts used for the assembling of a motorcycle;

"Council" means the Council of Ministers of the East African Community established by Article 9 of the Treaty for the Establishment of the East African Community;

"duty remission" means the reduction of import duty on goods that is granted by the Council under section 140 of the East African Community Customs Management Act, 2004;

"duty remission committee" means the committee established under Regulation 4 of the East African Community Customs Management (Duty Remission) Regulations, 2008;

"engine" means a machine with moving parts that converts power into motion;

"motorcycle" means a vehicle having a seat or a saddle for the use of the rider and designed to travel on two wheels or three wheels in contact with the ground that is powered by a motor;

"part" means an individual component shaped, fashioned or otherwise manufactured from one piece of metal or any other material and not joined or connected in any way to another component or material; and

"unassembled" means a completely knocked down kit consisting of parts used for the assembling of a motorcycle.

[Subsidiary]

PART II – APPROVAL FOR ASSEMBLING OF MOTORCYCLES

3. Restriction on importation of unassembled motorcycles

(1) A person who intends to import unassembled motorcycles under duty remission shall comply with the conditions specified in these Regulations.

(2) Motorcycles shall be classified as unassembled if imported in the conditions specified in these Regulations.

(3) A person shall not import unassembled motorcycles under duty remission if that person is not an authorised assembler.

(4) A person shall not be granted duty remission if that person does not source locally available parts as follows—

- (a) in the case of parts specified in regulation 14 (1), three months from the coming into force of these Regulations; and
- (b) in the case of parts specified in regulation 14 (2), twelve months from the coming into force of these Regulations.

4. Application for approval

(1) A person shall not be permitted to import unassembled motorcycles under duty remission unless that person is approved as an assembler in accordance with these Regulations.

(2) A person seeking approval as an assembler shall apply to the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for matters relating to industrialisation.

(3) The application for approval shall provide details of the types and models of motorcycles the applicant intends to assemble.

(4) The Cabinet Secretary shall, on receipt of an application under paragraph (2), approve or decline the application.

(5) A decision under paragraph (4) shall be communicated to the applicant in writing and if the application is declined, the communication shall include the reasons thereof.

5. Conditions for approval

A person applying for approval as an authorised assembler shall—

- (a) be incorporated in Kenya;
- (b) have an assembly plant;
- (c) be tax compliant;
- (d) be required to provide a time-bound localisation plan for sourcing locally manufactured motorcycle parts within the East Africa Community;
- (e) provide a plan for the transfer of technology, knowledge and skills through training, mentoring and participation of Kenyan citizens; and
- (f) provide any other information or documents as may be required by the Cabinet Secretary.

6. Duty Remission Committee to ensure compliance

The Duty Remission Committee shall be responsible for ensuring that authorised assemblers have complied with the provisions of the East African Community Customs Management (Duty Remission) Regulations, 2008, and these Regulations.

7. Assembling of motorcycles

(1) The assembling of motorcycles shall be undertaken in an assembly plant which shall be a bonded warehouse facility licensed by the Commissioner for the assembling of motorcycles.

(2) The Commissioner may allow the entry of locally manufactured parts into a bonded warehouse facility for the assembly of the motorcycles.

8. Assembly plant

(1) An authorised assembler shall be required to assemble motorcycles at an assembly plant licenced by the Commissioner.

(2) The assembly plant shall have an assembly line which shall—

- (a) have quality control procedures;
- (b) have been approved by the National Environment Management Authority;
- (c) comply with health and safety Regulations; and
- (d) meet any other requirement as may be specified by the Commissioner.

(3) The process of an assembly line shall be clearly defined in a process flow chart and positioned visibly within the assembly plant.

9. Approval to transfer

(1) An authorised assembler shall not transfer completely knocked down kits to another assembler without the approval of the Commissioner.

(2) The Commissioner may impose such conditions as may be necessary to an approval granted under paragraph (1).

10. Notification on cessation

(1) An authorised assembler who ceases or intends to cease the assembling of motorcycles shall notify the Commissioner and the Cabinet Secretary within one month of the intended date of cessation.

(2) A person who ceases the assembly of motorcycles shall comply with the provisions of the East Africa Community Customs Management Act, 2004, after the cancellation of the bonded warehouse licence.

11. Submission of report

An authorised assembler shall, at least once in each year, submit a report to the Cabinet Secretary responsible for industrialisation and a copy thereof to the Cabinet Secretary with respect to the implementation of the localisation plan.

12. Offences

A person who contravenes any of the provisions of these Regulations commits an offence and shall be liable, on conviction, to the relevant penalties specified under the Act.

PART III – MOTORCYCLE COMPLETELY KNOCKED DOWN KITS

13. Breakdown of completely knocked down kits

(1) A completely knocked down kit shall be imported with the engine and chassis frame unattached to other parts.

(2) Despite paragraph (1), the following parts shall be imported unattached to each other

- (a) the engine box kit;
- (b) the chassis frame;
- (c) fuel or petrol tank;
- (d) silencer or muffler;
- (e) seat;
- (f) frame fittings;
- (g) engine mountings;
- (h) swing arm;
- (i) shock absorbers;

[Subsidiary]

- (j) rider and pillion footrests;
- (k) gear changers or levers;
- (l) front and rear mudguards or fenders;
- (m) tyres;
- (n) tubes;
- (o) rim wheels;
- (p) front and rear hubs;
- (q) front and rear brake panels;
- (r) lever;
- (s) transmission mechanism;
- (t) fork suspension;
- (u) fuel cap;
- (v) fuel gauge;
- (w) speed meter gauge;
- (x) control cable;
- (y) drive and transmission sprocket;
- (z) drive chain;
- (aa) head lamp;
- (bb) fairing;
- (cc) tail lamp;
- (dd) indicator light;
- (ee) horn;
- (ff) wiring harness;
- (gg) switches;
- (hh) flashers;
- (ii) starter relay;
- (jj) fuse;
- (kk) lock set;
- (ll) cables;
- (mm) handle bar;
- (nn) mirrors; and
- (oo) rubber hoses.

14. Parts to be sourced locally

(1) The following parts shall be excluded from the completely knocked down kits for motorcycles within six months after the publication of these Regulations—

- (a) centre or main stands;
- (b) crash guards;
- (c) pillion handle bar or pillion or grip set;
- (d) right third rider footrest or pillion set;
- (e) left third rider footrest or pillion rest;
- (f) side stand, kick stand or prop stand; and
- (g) battery liquid, acid or fluid.

(2) The following parts shall be excluded from the completely knocked down kits for motorcycles on or before 30th June, 2022—

- (a) air cleaner filter;

- (b) wire harness;
- (c) seat;
- (d) battery;
- (e) brakes rod or stopper;
- (f) headlight stay; and
- (g) main stay or bar-step.

[L.N. 192/2021, r. 2, L.N. 223/2021, r. 2.]

15. Transition

A person who was an assembler of motorcycles before the commencement of these Regulations shall apply for approval as an authorised assembler in accordance with these Regulations within a period of three months from the coming into force of these Regulations.

**THE TAX PROCEDURES (SETTLEMENT OF TAX
DISPUTES OUT OF COURT OR TRIBUNAL) REGULATIONS**

ARRANGEMENT OF SECTIONS

1. Citation
 2. Interpretation
 3. Settlement of tax disputes out of court or tribunal
 4. Tax disputes that may be settled out of court or tribunal
 5. Facilitators
 6. Settlement process
 7. Termination of Proceedings
 8. Settlement agreements
 9. Filing of settlement agreements
 10. Enforcement of settlement agreements
 11. Costs
 12. Savings and transitional provisions
-

THE TAX PROCEDURES (SETTLEMENT OF TAX DISPUTES OUT OF COURT OR TRIBUNAL) REGULATIONS

[Legal Notice 123 of 2020]

1. Citation

These Regulations may be cited as the Tax Procedures (Settlement of Tax Disputes Out of Court or Tribunal) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"appointed representative" means a person appointed in writing by a party in a tax dispute to represent that party to a tax dispute settlement process and whose appointment has been communicated to the facilitator and the other party;

"Authority" means the Kenya Revenue Authority established under section 3 of the Kenya Revenue Authority Act (Cap. 469);

"facilitator" means a person who mediates in a dispute settlement process between parties to a tax dispute;

"parties in a tax dispute" means the Commissioner and a taxpayer with whom a tax dispute exists;

"settlement agreement" means an agreement between parties in a tax dispute specifying the terms of settlement of the dispute which is witnessed by the facilitator;

"tax dispute resolution consent" means a settlement agreement between parties to a tax dispute that is recorded in Court or Tribunal specifying the terms of the settlement agreement between the parties; and

"Tribunal" means the Tax Appeals Tribunal established under the Tax Appeals Tribunal Act (Cap. 469A).

3. Settlement of tax disputes out of court or tribunal

(1) Where a tax dispute has been permitted to be settled out of court or tribunal in accordance to section 55 of the Act or section 28 of the Tax Appeals Tribunal Act (Cap. 469A) the settlement shall be done in accordance with these Regulations.

(2) A party to a tax dispute may apply to the court or tribunal to settle the tax dispute out of court or tribunal as the case may be.

(3) Where the parties to a tax dispute agree to settle the dispute out of court or tribunal—

- (a) the agreement to settle the dispute out of court or tribunal shall be entered into voluntarily;
- (b) the party seeking to settle the dispute out of court or tribunal shall obtain the consent of the other party before applying to the court or tribunal under paragraph (2); and
- (c) the parties shall be committed to the settlement process.

(4) The parties to a tax dispute shall conclude the settlement process within ninety days from the date the court or tribunal grants permission to settle the dispute out of court or tribunal.

(5) A tax dispute shall be referred back to the court or tribunal where the parties fail to reach a settlement agreement within ninety days under paragraph (4).

4. Tax disputes that may be settled out of court or tribunal

A tax dispute shall not be settled out of court or tribunal if—

[Subsidiary]

- (a) the settlement of the dispute would be contrary to the Constitution, the tax law or any other written law;
- (b) the tax dispute involves the interpretation of the law;
- (c) there is evidence that the taxpayer has committed fraud in relation to tax; or
- (d) the parties to the tax dispute have previously failed to settle the dispute out of court or tribunal.

5. Facilitators

(1) Where the court or tribunal has permitted the parties to a tax dispute to settle the dispute out of court or tribunal, a facilitator may be nominated, with the consent of the other party to the dispute—

- (a) by the Commissioner from amongst the staff of the Authority; or
- (b) by the taxpayer from a list of mediators accredited by an institution recognized in Kenya.

(2) The nomination of a facilitator under paragraph (1) shall be done within fourteen days after the court or tribunal has granted the parties to a tax dispute permission to settle the dispute out of court or tribunal.

(3) A facilitator nominated under paragraph (1)(a) shall not have been involved in any way in the matter which is the subject to the tax dispute.

(4) A facilitator nominated under paragraph (1)(b) shall not—

- (a) be a practicing tax agent;
- (b) represent or have represented the taxpayer in any matter; or
- (c) have any interest in the tax dispute.

(5) The facilitator nominated under paragraph (1) shall be notified in writing of the nomination by the Commissioner.

(6) The facilitator shall, for the purposes of resolving the tax dispute—

- (a) hold such number of meetings as may be appropriate;
- (b) guide the parties to the tax dispute in the settlement of the dispute;
- (c) promote and protect the integrity, confidentiality, fairness and efficiency of the process;
- (d) act independently and avoid circumstances that may result in a conflict of interest; and
- (e) employ procedures that shall lead to the expeditious resolution of the dispute.

(7) The facilitator shall disclose in writing to the parties to the tax dispute any conflict of interest which may arise before the commencement of the proceedings for the settlement of the tax dispute or which may arise during the proceedings.

(8) Upon the disclosure of a conflict of interest by a facilitator under paragraph (7), the facilitator shall immediately recuse himself or herself from dealing with the tax dispute and another facilitator shall be nominated in accordance with paragraph (1).

(9) A facilitator who has been nominated under paragraph (7) shall take over the settlement process from the point at which the previous facilitator had recused himself or herself.

6. Settlement process

(1) Subject to paragraph (1), the facilitator shall convene the first meeting between the parties to the tax dispute within fourteen days of being notified under regulation 5 (5) of his or her nomination, where the parties shall—

- (a) identify the issues for settlement;
- (b) agree on a schedule of meetings;
- (c) decide on the service of documentary material relevant to the tax dispute;

- (d) agree on the conduct of the meetings; and
- (e) agree on any other issues necessary to facilitate the settlement of the tax dispute.

(2) Upon commencement of the settlement meetings, the parties to the tax dispute or the parties' appointed representatives shall not communicate with the facilitator in the absence of the other party and any communication with the facilitator shall only be in relation to the tax dispute.

(3) During meetings convened by the facilitator, the parties or their appointed representatives shall —

- (a) maintain confidentiality and uphold decorum;
- (b) uphold integrity and fairness;
- (c) make full disclosure of material facts and documents relevant to the tax dispute; and
- (d) strictly adhere to the agreed timelines.

(4) Where a party to a tax dispute is unable to meet any timelines agreed upon at a meeting convened by the facilitator, that party shall notify the facilitator and the other party in writing of the inability and specify the reasons for the inability.

(5) Where a party to a tax dispute or that party's appointed representative fails, without justifiable cause, to attend a meeting convened by the facilitator, the facilitator may appoint another date for the meeting or terminate the process in accordance with regulation 7 (1)(c).

(6) Where, in the course of resolving a tax dispute, a party requires an expert, that party may, with the consent of the other party—

- (a) invite the expert to attend the meetings convened by the facilitator to provide expert testimony at the meeting; or
- (b) provide the expert's testimony in writing.

(7) The parties may enter into a settlement agreement based on the evidence submitted during the meetings convened by the facilitator.

7. Termination of Proceedings

(1) Settlement proceedings may be terminated for the following reasons—

- (a) where a party to the tax dispute opts to terminate the proceedings and notifies the other party, the court or tribunal in writing of the intention to terminate the proceedings;
- (b) where both parties to the tax dispute mutually agree to terminate the proceedings and notify the court or tribunal in writing of the intention to terminate the proceedings;
- (c) where a party fails to attend three consecutive meetings convened by the facilitator without any justifiable cause; or
- (d) where the ninety days timeline required to resolve the dispute has lapsed and an extension of time by the court or the tribunal has not been granted.

(2) Upon the termination of settlement proceedings, the facilitator shall send a notice of termination in writing to the parties and the matter shall be referred back to the court or the tribunal.

8. Settlement agreements

(1) Where the parties to a tax dispute have settled the dispute out of court or tribunal, the parties shall set down in writing the settlement agreement.

(2) The settlement agreement shall specify—

- (a) the background of the dispute and the issues in contention;
- (b) the processes and specific exercises undertaken during the proceedings;
- (c) the agreed issues and disputed issues;

[Subsidiary]

- (d) the taxes payable, where applicable, and justifications thereof; and
- (e) the conditions of the settlement.

(3) The settlement agreement shall constitute the decision between the parties and shall

-
- (a) be dated and signed by the parties or their appointed representatives and witnessed by the facilitator;
 - (b) form the basis for preparation of tax a dispute resolution consent for filing before the court or tribunal, as the case may be;
 - (c) be binding to both parties;
 - (d) be a full and final settlement of the dispute save where the parties have expressly specified otherwise in the Agreement;
 - (e) be confidential and entered into on a "without prejudice" basis; and
 - (f) not be the basis for judicial precedent.

(4) Where the parties fail to reach a settlement agreement, the tax dispute shall be referred back to the court or tribunal, as the case may be, for determination.

9. Filing of settlement agreements

(1) Where a tax dispute is settled wholly or partially a consent agreement between the parties to a tax dispute setting down the terms of the settlement agreement shall be filed with the court or tribunal, as the case may be.

(2) A consent agreement between parties to a tax dispute shall be recorded by the court or tribunal as an order of the court or tribunal.

10. Enforcement of settlement agreements

Where a party to a tax dispute violates the terms of a settlement agreement between the parties, the other party may apply to the court or the tribunal for enforcement of the agreement.

11. Costs

(1) Each party shall bear its own costs for the settlement of the tax dispute out of court or the tribunal.

(2) Where a party invites an expert in accordance with regulation (6), that party shall bear the costs of such expert.

(3) Where a taxpayer has nominated a facilitator in accordance with regulation 5(1)(b), the taxpayer shall bear any cost that may be payable to the facilitator.

(4) The Commissioner shall provide a venue for the meetings and where the other party prefers a different venue, that party shall bear the costs of that different venue.

12. Savings and transitional provisions

Any process for the settlement of a tax dispute out of court or tribunal that commenced before the coming into force of these Regulations shall be dealt with in accordance with the framework under which the process commenced.

**THE TAX PROCEDURES (COMMON
REPORTING STANDARDS) REGULATIONS****ARRANGEMENT OF SECTIONS****PART I – PRELIMINARY**

1. Citation and commencement
2. Interpretation
3. Application of the Regulations

PART II – REPORTING AND RECORD-KEEPING OBLIGATIONS

4. Reporting obligations
5. Record-keeping obligations
6. Self-certification

**PART III – GENERAL REPORTING AND
DUE DILIGENCE REQUIREMENTS**

7. General reporting requirements
8. Exception to requirements to be reported
9. Information required for reporting of amounts

PART IV – GENERAL DUE DILIGENCE REQUIREMENTS

10. General due diligence requirements

PART V – DUE DILIGENCE FOR PRE-EXISTING INDIVIDUAL ACCOUNTS

11. Accounts not required to be reviewed, identified, or reported
12. Lower Value Accounts
13. Enhanced review procedures for High Value Accounts
14. Exception to the extent databases contain sufficient information
15. Relationship manager inquiry for actual knowledge
16. Effect of finding or not finding indicia
17. Timeline for review

PART VI – DUE DILIGENCE FOR NEW INDIVIDUAL ACCOUNTS

18. Applicable procedures in respect of New Individual Accounts

PART VII – DUE DILIGENCE FOR PRE-EXISTING ENTITY ACCOUNTS

19. Entity Accounts not required to be reviewed, identified or reported
20. Entity Accounts subject to review
21. Entity Accounts with respect to which reporting is required
22. Review procedures for identifying entity accounts with respect to which reporting is required
23. Timing of review and additional procedures applicable to Pre-existing Entity Accounts

PART VIII – DUE DILIGENCE FOR NEW ENTITY ACCOUNTS

24. Applicable procedures for New Entry Accounts

PART IX – SPECIAL DUE DILIGENCE RULES

25. Reliance on Self-Certifications and Documentary Evidence
26. Alternative Procedures for Financial Accounts held by Individual Beneficiaries
27. Aggregation of Individual Accounts
28. Aggregation of Entity Accounts
29. Special Aggregation Rule to apply to Relationship Managers

[Subsidiary]

- 30. Amounts read to include equivalent in other currencies
- 31. Accounts with negative balance

PART X – COMPLEMENTARY REPORTING AND DUE
DILIGENCE RULES FOR FINANCIAL ACCOUNT INFORMATION

- 32. Current residence address
- 33. When current residence address is based on documentary evidence
- 34. Absence of documentary evidence
- 35. Change in circumstances
- 36. Residence of a Financial Institution
- 37. Maintaining of account
- 38. Address of entity's principal office
- 39. Amendment of Schedules

SCHEDULES

THE TAX PROCEDURES (COMMON REPORTING STANDARDS) REGULATIONS

[Legal Notice 8 of 2023]

PART I – PRELIMINARY

1. Citation and commencement

These Regulations may be cited as the Tax Procedures (Common Reporting Standards) Regulations, 2023, and shall be deemed to have come into operation on the 1st of January, 2023.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Account Holder" means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account:

Provided that—

- (a) a person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of these Regulations, and such other person is treated as holding the account;
- (b) in the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract;
- (c) if no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract; and
- (d) upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder;

"Active NFE" means any NFE that meets any of the following criteria—

- (a) less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- (b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- (c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- (d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

[Subsidiary]

- (e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution:

Provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;

- (f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution; and
- (g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity:

Provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;

- (h) where the NFE is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare, the NFE shall meet all the following requirements—
- (i) NFE is exempt from income tax in its jurisdiction of residence;
- (ii) NFE has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- (iii) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
- (iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof;

"Anti-Money Laundering/Know Your Customer (AML/KYC) Procedures" means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject;

"Annuity Contract" means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals, including a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years;

"Broad Participation Retirement Fund" means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered:

Provided that the fund—

- (a) does not have a single beneficiary with a right to more than 5% of the fund's assets;
- (b) is subject to government regulation and provides information reporting to the tax authorities; and
- (c) satisfies at least one of the following requirements—
 - (i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
 - (ii) the fund receives at least 50% of its total contributions, other than transfers of assets from other plans described under the Narrow Participation Retirement Fund, Pension Fund of a Governmental Entity, International Organisation or Central Bank or from retirement and pension accounts or another Broad Participation Retirement Fund described under these Regulations from the sponsoring employers;
 - (iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death, except rollover distributions to other retirement funds described in the Narrow Participation Retirement Fund, Pension Fund of a Governmental Entity, International Organisation or Central Bank or from retirement and pension accounts or another Broad Participation Retirement Fund or penalties that applied to distributions or withdrawals made before such specified events; or
 - (iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed USD 50 000 annually, applying the rules provided for under Regulations 27, 28, 29, 30 and 31 to these Regulations;

"Cash Value" means the greater of—

- (a) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan);

and

- (b) the amount the policyholder can borrow under or with regard to the contract, Provided that the term "Cash Value" does not include an amount payable under an Insurance Contract—
 - (i) solely by reason of the death of an individual insured under a life insurance contract;
 - (ii) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
 - (iii) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
 - (iv) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph (ii); or

[Subsidiary]

- (v) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract;

"Cash Value Insurance Contract" means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value;

"Central Bank" means an institution that is by law or government sanction the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency and such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction;

"Controlling Persons" means the natural persons who exercise control over an Entity:

Provided that Controlling Persons shall be interpreted in a manner consistent with the Financial Action Task Force (FATF) Recommendations (as adopted in February 2012) and shall apply as follows—

- (a) for an Entity that is a legal person, the words "Controlling Persons" means—
 - (i) the natural person(s) who exercises control over the Entity and "Control" over an Entity is exercised by the natural person(s) who owns more than 10%;
 - (ii) where no natural person(s) exercises control through ownership interests, the natural person(s) who exercises control of the Entity through other means;
 - (iii) where no natural person(s) is identified as exercising control of the Entity, the natural person(s) who holds the position of senior managing official;
- (b) in the case of a trust, the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, including any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership);
- (c) in the case of a legal arrangement other than a trust, persons in equivalent or similar positions as those that are Controlling Persons of a trust; and
- (d) in relation to legal persons, those that are functionally similar to trusts, including foundations, persons identified by Reporting Financial Institutions through similar customer due diligence procedures as those required for trusts;

Note: Where a Reporting Financial Institution relies on information collected and maintained pursuant to AML/KYC

Procedures for purposes of determining the Controlling Persons of an Account Holder of a New Entity Account, such AML/KYC Procedures must be consistent with Recommendations 10 and 25 of the Financial Action Task Force (FATF) Recommendations (as adopted in February 2012), including always treating the settlor(s) of a trust as a Controlling Person of the trust and the founder(s) of a foundation as a Controlling Person of the foundation and for purposes of determining the Controlling Persons of an Account Holder of a Pre-existing Entity Account, a Reporting Financial Institution may rely on information collected and maintained pursuant to the Reporting Financial Institution's AML/KYC Procedures.

"Custodial Account" means an account (other than an Insurance Contract or Annuity Contract) which holds one or more Financial Assets for the benefit of another person;

"Custodial Institution" means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of—

- (a) the three-year period that ends on the 31st December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made;

or

- (b) the period during which the Entity has been in existence;

"Depository Account" includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business and includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon;

"Depository Institution" means any Entity that accepts deposits in the ordinary course of a banking or similar business;

"Documentary Evidence" includes any of the following—

- (a) a certificate of residence issued by an authorised government body of the jurisdiction in which the payee claims to be a resident;
- (b) with respect to an individual, any valid identification issued by an authorised government body that includes the individual's name and is typically used for identification purposes;
- (c) with respect to an Entity, any official documentation issued by an authorised government body that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised; or
- (d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report;

"Entity" means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation and an Entity is a "related Entity" of another Entity if either Entity controls the other Entity, or the two Entities are under common control and control includes direct or indirect ownership of more than 50% of the vote and value in an Entity;

"Equity Interest" means—

- (a) in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership; or
- (b) in the case of a trust that is a Financial Institution, an Equity Interest considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust;

Note: A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust. For these purposes, a beneficiary who may receive a discretionary distribution from the trust will only be treated as a beneficiary of a trust if such person receives a distribution in the calendar year or other appropriate reporting period (i.e. either

[Subsidiary]

the distribution has been paid or made payable). The same is applicable with respect to the treatment of a Reportable Person as a beneficiary of a legal arrangement that is equivalent or similar to a trust, or foundation.

"Excluded Account" means any of the following accounts—

(a) a retirement or pension account that satisfies the following requirements

- (i) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
- (ii) the account is tax-favoured (i.e contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- (iii) information reporting is required to the tax authorities with respect to the account;
- (iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events;

and

- (v) either annual contributions are limited to USD 50 000 or less; or there is a maximum lifetime contribution limit to the account of USD 1 000 000 or less, in each case applying the rules set forth in Regulations 27, 28, 29, 30 and 31 to these Regulations;

Note: A Financial Account that otherwise satisfies the requirement of subparagraph (v) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of paragraphs (a) or (b) or from one or more retirement or pension funds that meet the requirements under paragraph (c)(i) through (iv) in the definition of "Broad Participation Retirement Fund",

"Narrow Participation Retirement Fund" and "Pension Fund of a Governmental Entity, International Organisation or Central Bank";

(b) an account that satisfies the following requirements—

- (i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;
- (ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- (iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
- (iv) annual contributions are limited to USD 50 000 or less, applying the rules set forth in Regulations 27, 28, 29,30 and 31 of these Regulations;

Note: A Financial Account that otherwise satisfies the requirement of paragraph (b) (iv) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that

meet the requirements of paragraph (a) or (b) or from one or more retirement or pension funds that meet the requirements of any of paragraph (c)(ii) and (iii) in the definition of "Broad Participation Retirement Fund,"

"Narrow Participation Retirement Fund" and "Pension Fund of a Governmental Entity, International Organisation or Central Bank".

- (c) a life insurance contract with a coverage period that will end before the insured individual attains age 90:

Provided that the contract satisfies the following requirements—

- (i) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
 - (ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
 - (iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
 - (iv) the contract is not held by a transferee for value;
- (d) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate;
- (e) an account established in connection with any of the following—
- (i) a court order or judgment;
 - (ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements—
 - (aa) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
 - (bb) the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
 - (cc) the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
 - (dd) the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset, and
 - (ee) the account is not associated with an account described in paragraph (f);
 - (iii) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;
- and
- (iv) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time;

[Subsidiary]

- (f) a Depository Account that satisfies the following requirements—
- (i) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
 - (ii) beginning on or before the 1st January, 2023, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in Regulations 27, 28, 29,30 and 31 of these Regulations:

Provided that for this purpose, a customer overpayment shall not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;

- (g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in paragraphs (a), (b), (c), (d), (e) and (f) and is included in the list of Excluded Accounts (published by the Commissioner):

Provided that the status of such account as an Excluded Account does not frustrate the purposes of these Regulations.

"Exempt Collective Investment Vehicle" means an Investment Entity that is regulated as a collective investment vehicle:

Provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons;

"Financial Account" means an account maintained by a Financial Institution, and includes a Depository Account and a Custodial Account, but does not include Excluded Account;

Notes: When defining "Financial Account", the following shall be noted:

- (a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution shall be taken into consideration. Notwithstanding the foregoing, the term "Financial Account" does not include any equity or debt interest in an Entity that is an Investment Entity solely because it—
 - (i) renders investment advice to, and acts on behalf of;
 - or
 - (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;
- (b) in the case of a Financial Institution not described in paragraph (a), any equity or debt interest in the Financial Institution, if the class of interests was established with the purpose of avoiding reporting; and
- (c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

"Financial Institution" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company;

"Financial Asset" includes a security (including shares of stock in a corporation, partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust, note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (including interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract and does not include a non-debt, direct interest in real property;

"Governmental Entity" means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing;

Notes:

This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction, and for this purpose—

- (a) an "integral part" of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity;
- (b) a "controlled entity" means an entity which is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity:

Provided that—

- (i) the entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
- (ii) the entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
- (iii) the entity's assets vest in one or more Governmental Entities upon dissolution;
- (c) income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a Governmental Entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons;

"High Value Account" means a Pre-existing Individual Account with an aggregate balance or value that exceeds USD 1 000 000 as of the 31st December, 2022 or 31st December of any subsequent year;

"Information Return" means a report, setting out certain information as specified by these Regulations, which a Reporting Financial Institution is required to file with the Commissioner;

"Insurance Contract" means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk;

[Subsidiary]

"Investment Entity" means any Entity —

- (a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer—
 - (i) trading in money market instruments (including cheques, bills, certificates of deposit, derivatives), foreign exchange, exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 - (ii) individual and collective portfolio management; or
 - (iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
- (b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in paragraph (a);

Notes:

For the purposes of the definition of "Investment Entity"—

- (a) an Entity is "managed by" another Entity if the managing Entity performs, either directly or through another service provider, any of the activities or operations described in paragraph (a) in the definition of "Investment Entity" on behalf of the managed Entity. However, an Entity does not manage another Entity if it does not have discretionary authority to manage the Entity's assets (in whole or part). Where an Entity is managed by a mix of Financial Institutions, NFEs or individuals, the Entity is considered to be managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in paragraph (a) in definition of "Investment Entity", if any of the managing Entities is such another Entity.
- (b) an Entity is treated as primarily conducting as a business one or more of the activities described in paragraph (a) in the definition of "Investment Entity" or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for the purposes of paragraph (b) in the definition of "Investment Entity", if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of—
 - (i) the three-year period ending on the 31st December of the year (or the final day of a non-calendar year accounting period) preceding the year in which the determination is made; or
 - (ii) the period during which the Entity has been in existence.

Note: The term "Investment Entity" does not include an Entity that is an Active NFE because that Entity meets any of the criteria in paragraphs (d), (e), (f) and (g) in the definition of "Active NFE".

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force Recommendations.

"International Organisation" means any international organisation or wholly owned agency or instrumentality thereof and this category includes any intergovernmental organisation (including a supranational organisation)—

- (a) that is comprised primarily of governments;
- (b) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and
- (c) the income of which does not inure to the benefit of private persons.

"Kenyan Financial Institution" has the meaning assigned in the "Lower Value Account" means a Pre-existing Individual Account with an aggregate balance or value as of the 31st December, 2022 or 31st December of any subsequent year that does not exceed USD 1 000 000;

"New Account" means a financial account maintained by a Reporting Financial Institution opened on or after the 1st January, 2023;

"NFE" means Non- Financial Entity;

"Non-Reporting Financial Institution" means any Financial Institution that is—

- (a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
- (b) a Broad Participation Retirement Fund, a Narrow Participation Retirement Fund, a Pension Fund of a Governmental Entity, International Organisation or Central Bank, or a Qualified Credit Card Issuer;
- (c) any other Entity that presents a low risk of being used to evade tax and has substantially similar characteristics to any of the Entities described in subparagraphs (a) and (b) above and is included in the list of Non-Reporting Financial Institutions:

Provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of these Regulations;

- (d) an Exempt Collective Investment Vehicle; or
- (e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported with respect to all Reportable Accounts of the trust;

"Participating jurisdiction" means a jurisdiction which is specified in the Schedule of these Regulations;

"Passive Income" includes the portion of gross income that consists of—

- (a) dividends;
- (b) interest;
- (c) income equivalent to interest;
- (d) rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFE;
- (e) annuities;
- (f) the excess of gains over losses from the sale or exchange of Financial Assets from which income described in paragraphs (a) to (e) may be derived;
- (g) the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any Financial Assets;
- (h) the excess of foreign currency gains over foreign currency losses;
- (i) net income from swaps; or
- (j) amounts received under Cash Value Insurance Contracts;

Note: Notwithstanding the foregoing, Passive Income will not include, in the case of a NFE, that regularly acts as a dealer in Financial Assets, any income from any transaction entered into in the ordinary course of such dealer's business as such a dealer.

"Passive NFE" means any NFE that is not an Active NFE or an Investment Entity described in subparagraph (b) of the definition of "Investment Entity" that is not a Participating Jurisdiction Financial Institution;

[Subsidiary]

"Pension Fund of a Governmental Entity, International Organisation or Central Bank" means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants who are current or former employees (or persons designated by such employees), or who are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank;

"Pre-existing Account" means a Financial Account maintained by a Reporting Financial Institution as of the 31st December, 2022;

"Pre-existing Entity Account" means a Pre-existing Account held by one or more Entities;

"Pre-existing Individual Account" means a Pre-existing Account held by one or more individuals;

"Qualified Credit Card Issuer" means a Financial Institution satisfying the following requirements—

- (a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
- (b) beginning on or before the 1st January, 2023, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in Regulations 27, 28,29,30, and 31 of these Regulations and for this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;

"Reportable Account" means a Financial Account that is maintained by a Reporting Financial Institution and is held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person and identified as such pursuant to the due diligence procedures described in these Regulations;

"Reportable Jurisdiction" means—

- (a) for the purposes of applying the due diligence procedures described in these Regulations, a jurisdiction other than the United States of America or Kenya; and
- (b) for the purposes of applying reporting requirements, a jurisdiction which is published by the Commissioner as such under these Regulations;

"Reportable Jurisdiction Person" means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction;

Note: For this purpose, an Entity such as a partnership, limited liability partnership or similar legal person or arrangement, which has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated. A legal person or a legal arrangement (other than a trust that is a Passive NFE) is considered "similar" to a partnership and a limited liability partnership where it is not treated as a taxable unit in a Reportable Jurisdiction under the tax laws of such jurisdiction;

"Reportable Person" means a Reportable Jurisdiction Person other than—

- (a) a corporation the stock of which is regularly traded on one or more established securities markets;

- (b) any corporation that is a Related Entity of a corporation described in paragraph (a);
- (c) a Governmental Entity;
- (d) an International Organisation;
- (e) a Central Bank; or
- (f) a Financial Institution;

"Specified Insurance Company" means any entity that is an insurance company (or the holding company of an insurance company) which issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract;

"TIN" means Tax Identification Number, such as the Personal Identification Number, (or functional equivalent in the absence of a Tax Identification Number).

3. Application of the Regulations

These Regulations shall be applied and interpreted in accordance with the Common Reporting Standard, including the Commentaries, approved by the Organisation for Economic Co-operation and Development (OECD) on the 15th July, 2014, and as amended from time to time.

PART II – REPORTING AND RECORD-KEEPING OBLIGATIONS

4. Reporting obligations

(1) Reporting Financial Institutions shall comply with the due diligence procedures set out in these Regulations.

(2) Reporting Financial Institutions shall file with the Commissioner, for each calendar year and each subsequent calendar year, a declaration setting out the information to be reported in accordance with these Regulations, in respect of each Financial Account identified as a Reportable Account that they maintain during a calendar year.

(3) Reporting Financial Institutions shall transmit to the Commissioner the Information Return containing the information to be reported not later than 31st May of the year following the year in respect of which the declaration is filed.

(4) The return to be filed shall be submitted electronically using technology approved or provided by the Commissioner and in the format required by the Commissioner.

(5) If, after applying the due diligence set out in these Regulations, a Reporting Financial Institution does not identify any accounts to be reported for a year, it shall file a return marked "nil".

5. Record-keeping obligations

Reporting Financial Institutions shall—

- (a) establish, maintain and document the Due Diligence procedures set out in these Regulations;
- (b) keep records that the institution obtains or creates for the purpose of complying with these Regulations, including self-certifications, the steps taken in identifying the Reportable Accounts and records of Documentary Evidence maintained either in electronic form or paper based; and
- (c) retain those records for a period of at least five years after the end of the period within which the institution must report the information required to be reported under these Regulations.

6. Self-certification

As from the 1st January, 2023, and in the circumstances where the Due Diligence procedures described in these Regulations require a self-certification to be obtained by a Financial Institution, the Account Holder shall provide a self-certification to establish their

[Subsidiary]

tax residence and, where applicable, the Account Holder or Controlling Person shall provide such self-certification in respect of the Controlling Person.

PART III – GENERAL REPORTING AND DUE DILIGENCE REQUIREMENTS

7. General reporting requirements

(1) Subject to regulation 8, each Reporting Financial Institution must report to the Commissioner the following information with respect to each Reportable Account of such Reporting Financial Institution—

- (a) the name, address, jurisdiction(s), residence, Tax Identification Number (TIN(s)) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account;
- (b) in the case of any entity that is an Account Holder and that, after application of the due diligence procedures consistent with these Regulations, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s), residence and TIN(s) of the entity and the name, address, jurisdiction(s), residence, TIN(s) Number and date and place of birth of each Reportable Person;
- (c) the account number (or functional equivalent in the absence of an account number);
- (d) the name and identifying number (if any) of the Reporting Financial Institution;
- (e) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
- (f) in the case of any Custodial Account—
 - (i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period;
 - and
 - (ii) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- (g) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period ;
- and
- (h) in the case of any account not described in paragraphs (f) or (g), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

(2) Each Reporting Financial Institution must file an Information Return with the Commissioner containing the information described in sub-regulation (1) on or before the 31st May of the year following the calendar year to which the return relates.

(3) If a Reporting Financial Institution applies the due diligence procedures described in these Regulations for a calendar year and no Financial Account is identified as a Reportable Account, the Reporting Financial Institution shall file an Information Return, which provides

that the Reporting Financial Institution maintains no such Reportable Accounts in respect of that year, with the Commissioner on or before the 31st May of the year following the calendar year to which the information relates.

8. Exception to requirements to be reported

Notwithstanding the provisions of regulation 7(1)(a)—

- (a) with respect to each Reportable Account that is a Pre-existing Account or with respect to each Financial Account that is opened prior to becoming a Reportable Account, the TIN or date of birth is not required to be reported if such TIN or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under any law, but a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN and date of birth with respect to Pre-existing Accounts by the end of the second calendar year following the year in which Pre-existing Accounts were identified as Reportable Accounts;
- (b) the TIN is not required to be reported if not issued by the Reportable jurisdiction or the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Reportable Jurisdiction;
- (c) the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it and it is available in the electronically searchable data maintained by the Reporting Financial Institution.

9. Information required for reporting of amounts

(1) For reporting of amounts—

- (a) the information reported must identify the currency in which each amount is denominated; and
- (b) in the case of an account denominated in more than one currency, the information may be reported in a currency in which the account is denominated:

Provided that any currency translation under this paragraph shall be by reference to the spot rate of exchange as of the last day of the calendar year or other appropriate reporting period for which the account is being reported.

PART IV – GENERAL DUE DILIGENCE REQUIREMENTS

10. General due diligence requirements

(1) A Reporting Financial Institution must establish, maintain and document the due diligence procedures set out in these Regulations that are designed to identify Reportable Accounts maintained by the institution.

(2) An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in these Regulations and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.

(3) The balance or value of an account shall be determined as of the last day of the calendar year or other appropriate reporting period.

(4) Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.

(5) A Reporting Financial Institution may use a service provider to fulfil the reporting and due diligence obligations imposed on such institution, but these obligations shall remain the responsibility of the Reporting Financial Institution.

(6) A Reporting Financial Institution may apply—

 [Subsidiary]

- (a) the Due Diligence procedures for New Accounts to all Pre-existing Accounts or with respect to any clearly identified group of Pre-existing Accounts, and the rules otherwise applicable to Pre-existing Accounts shall continue to apply; and
- (b) the Due Diligence Procedures for High Value Accounts to Lower Value Accounts.

PART V – DUE DILIGENCE FOR PRE-EXISTING INDIVIDUAL ACCOUNTS

11. Accounts not required to be reviewed, identified, or reported

A Pre-existing Individual Account that is a Cash Value Insurance Contract or an Annuity Contract is not required to be reviewed, identified or reported:

Provided that the Reporting Financial Institution is effectively prevented by law from selling such Contracts to residents of a Reportable Jurisdiction.

12. Lower Value Accounts

(1) The following procedures shall apply with respect to Lower Value Accounts—

- (a) in case of residence address, if the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person;
- (b) if the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in paragraph (a), the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply sub-regulations (2), (3), (4) and (5)—
 - (i) identification of the Account Holder as a resident of a Reportable Jurisdiction;
 - (ii) current mailing or residence address (including a post office box) in a Reportable Jurisdiction;
 - (iii) one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution;
 - (iv) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction;
 - (v) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or
 - (vi) a "hold mail" instruction or "in-care-of" address in a Reportable Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder.

(2) If none of the indicia listed in sub-regulation (1)(b)(i)-(iv)) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.

(3) If any of the indicia listed in sub-regulation (1)(b)(i)-(v)) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply the provision of sub-regulation (5) and one of the exceptions in that sub-regulation in respect to the account.

(4) If a "hold mail" instruction or "in-care-of" address is discovered in the electronic search and no other address and none of the other indicia listed in sub-regulation (1)(b) ((i)-(v)) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in regulation 13(1)(b) and (c), or seek to obtain, from the Account Holder, a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder and if the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account as an undocumented account to the Commissioner.

(5) Notwithstanding a finding of indicia under sub-regulation (1)(b), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Reportable Jurisdiction if—

- (a) the Account Holder information contains a current mailing or residence address of the Reportable Jurisdiction, one or more telephone numbers of the Reportable Jurisdiction (and no telephone number of the Reporting Financial Institution) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in the Reportable Jurisdiction, and the Reporting Financial Institution obtains, or has previously reviewed and maintains, a record of—
 - (i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction;
 - and
 - (ii) Documentary Evidence establishing the Account Holder's jurisdiction(s) of residence for tax purposes other than such Reportable Jurisdiction;
- (b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the Reportable Jurisdiction, and the Reporting Financial Institution obtains, or has previously reviewed and maintains, a record of—
 - (i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction; or
 - (ii) Documentary Evidence establishing the Account Holder's Jurisdiction(s) of residence for tax purposes other than such Reportable Jurisdiction.

13. Enhanced review procedures for High Value Accounts

(1) The following procedures shall apply with respect to High Value Accounts—

- (a) the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in regulation 12(1)(b);
- (b) if the Reporting Financial Institution's electronically searchable databases include fields for, and capture all of the information described in Regulation 14, then a further paper record search is not required;
- (c) if the electronic databases do not capture all of the information envisaged under paragraph (b), then with respect to a High Value Account, the Reporting Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia described in Regulation 12(1)(b)—
 - (i) the most recent Documentary Evidence collected with respect to the account;

[Subsidiary]

- (ii) the most recent account opening contract or documentation;
- (iii) the most recent documentation obtained by the Reporting Financial Institution pursuant to Anti- Money Laundering/Know Your Customer (AML/KYC) procedures or for other regulatory purposes;
- (iv) any power of attorney or signature authority forms currently in effect; and
- (v) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.

14. Exception to the extent databases contain sufficient information

A Reporting Financial Institution is not required to perform the paper record search described in regulation 13(1)(b) and (c) to the extent the Reporting Financial Institution's electronically searchable information includes the following—

- (a) the Account Holder's residence status;
- (b) the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
- (c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
- (d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);
- (e) whether there is a current "in-care-of" address or "hold mail" instruction for the Account Holder; and
- (f) whether there is any power of attorney or signatory authority for the account.

15. Relationship manager inquiry for actual knowledge

In addition to the electronic and paper record searches described in regulation 13, a Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the account is held by a resident for tax purposes in a Reportable Jurisdiction.

16. Effect of finding or not finding indicia

(1) If none of the indicia listed in regulation 12 are discovered in the enhanced review of High Value Accounts described in regulation 13, and the account is not identified as held by a resident for tax purposes in a Reportable Jurisdiction in regulation (15), then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.

(2) If any of the indicia listed in regulation 12(1)(b)(i-v) are discovered in the enhanced review of High Value Accounts described in regulation 13 or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified unless it elects to apply regulation 12(5) and one of the exceptions in that regulation applies with respect to that account.

(3) If a "hold mail" instruction or "in-care-of" address is discovered in the enhanced review of High Value Accounts described in regulation 13, and no other address and none of the other indicia listed in regulation 12(1)(b)(i)-(v) are identified for the Account Holder, the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder and if the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account as an undocumented account to the Commissioner.

(4) If a Pre-existing Individual Account is not a High Value Account as of the 31st December, 2022, but becomes a High Value Account as of the 31st December, 2023 or the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in Regulations 13, 14, 15 and 16 with respect to such account within the calendar year following the year in which the account becomes a High Value Account and if based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.

(5) Once a Reporting Financial Institution applies the enhanced review procedures described in regulation 13, 14, 15 and 16 to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in regulation 15, to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should re-apply them annually until such account ceases to be undocumented.

(6) If there is a change in circumstances with respect to a High Value Account that results in one or more indicia described in regulation 12(1)(b) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply regulation 12(5) and one of the exceptions in that sub-regulation applies with respect to that account.

(7) A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account, including a change in the mailing address.

(8) Any Pre-existing Individual Account that has been identified as a Reportable Account under this Part must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

17. Timeline for review

Review of Pre-existing High Value Individual Accounts must be completed by the 31st December, 2022, and review of Pre-existing Lower Value Individual Accounts must be completed by the 31st December 2023.

PART VI – DUE DILIGENCE FOR NEW INDIVIDUAL ACCOUNTS

18. Applicable procedures in respect of New Individual Accounts

(1) With respect to New Individual Accounts, and upon account opening, the Reporting Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to Anti-Money Laundering/Know Your Customer (AML/KYC) Procedures.

(2) If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to regulation 8(b)) and date of birth.

(3) If there is a change in circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution must not rely on the original self-certification and must obtain either —

- (a) a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder; or

 [Subsidiary]

- (b) a reasonable explanation and documentation (as appropriate) supporting the validity of the original self- certification (and retain a copy or a notation of such explanation and documentation).

PART VII – DUE DILIGENCE FOR PRE-EXISTING ENTITY ACCOUNTS

19. Entity Accounts not required to be reviewed, identified or reported

Unless the Reporting Financial Institution elects otherwise, either with respect to all Pre-existing Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Pre- existing Entity Account with an aggregate account balance or value that does not exceed USD 250 000 as of the 31st December, 2022, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds that amount as of the 31st December, 2023, or the last day of any subsequent calendar year.

20. Entity Accounts subject to review

A Pre-existing Entity Account that has an aggregate account balance or value that exceeds USD 250 000 as of the 31st December, 2022, and a Pre-existing Entity Account that does not exceed USD 250 000 as of the 31st December, 2022, but the aggregate account balance or value of which exceeds USD 250 000 as of the 31st December, 2023, or the last day of any subsequent calendar year, must be reviewed in accordance with the procedures specified in regulation 22.

21. Entity Accounts with respect to which reporting is required

With respect to Pre-existing Entity Accounts described in regulation 20, only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts.

22. Review procedures for identifying entity accounts with respect to which reporting is required

(1) For Pre-existing Entity Accounts described in regulation 20, a Reporting Financial Institution must apply the following review procedures—

- (a) when determining the residence of the Entity, the Reporting Financial Institution—
 - (i) must review information maintained for regulatory or customer relationship purposes (including information collected pursuant to Anti-Money Laundering/Know Your Customer (AML/KYC) procedures) to determine the Account Holder's residence and for this purpose, information indicating that the Account Holder's residence includes a place of incorporation or organisation, or an address in a Reportable Jurisdiction; and
 - (ii) if the information indicates that the Account Holder is a Reportable Person, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person;
- (b) when determining the residence of the controlling persons of a passive NFE—
 - (i) with respect to an account holder of a pre-existing Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons and determine the residence of such Controlling Persons;
 - (ii) if any of the controlling person of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account,

Provided that in making these determinations the Reporting Financial Institution must follow the guidance in regulation 22 (1) ((a)(d)) in the order most appropriate under the circumstances.

- (c) when determining whether the Account Holder is a Passive Non-Financial Entity (NFE), the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity that is not a Participating Jurisdiction Financial Institution;
- (d) when determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to Anti- Money Laundering/Know Your Customer Procedures;
- (e) when determining the residence of a Controlling Person of a Passive NFE, a Reporting Financial Institution may rely on —
 - (i) information collected and maintained pursuant to Anti-Money Laundering/Know Your Customer Procedures in the case of a Pre-existing Entity Account held by one or more NFEs with an aggregate account balance or value that does not exceed USD 1 000 000; or
 - (ii) a self-certification from the Account Holder or such Controlling Person of the jurisdiction(s) in which the controlling person is resident for tax purposes.

(2) If a self-certification is required to be collected and is not obtained with respect to a Controlling Person of a Passive NFE, the Reporting Financial Institution must search for any of the indicia described in regulation 12(1)(b) in its records for such Controlling Person and if any of such indicia are discovered, or if there is a change in circumstances that results in one or more indicia being associated with the Controlling Person, it must treat the Controlling Person as resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified.

(3) With respect to a Pre-existing Entity Account, Reporting Financial Institutions may use as Documentary Evidence any classification in the Reporting Financial Institution's records with respect to the Account Holder that was determined based on a standardised industry coding system recorded by the Reporting Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes) implemented by the Reporting Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account:

Provided that the Reporting Financial Institution does not know or does not have reason to know that such classification is incorrect or unreliable.

(4) For the purposes of sub-regulation (3), "standardised industry coding system" means a coding system used to classify establishments by business type for purposes other than tax purposes.

23. Timing of review and additional procedures applicable to Pre-existing Entity Accounts

(1) Review of Pre-existing Entity Accounts—

- (a) with an aggregate account balance or value that exceeds USD 250 000 as of the 31st December, 2022, must be completed by the 31st December, 2023;
- (b) with an aggregate account balance or value that does not exceed USD 250 000 as of the 31st December, 2022, but exceeds USD 250 000 as of the 31st December, 2023, or the last day of any subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds USD 250 000.

(2) If there is a change in circumstances with respect to a Pre-existing Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-

[Subsidiary]

certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the following procedures by the later of the last day of the relevant calendar year, or 90 calendar days following the notice or discovery of the change in circumstances—

- (a) with respect to the determination whether the Account Holder is a Reportable Person, a Reporting Financial Institution must obtain either—
 - (i) a self-certification; or
 - (ii) a reasonable explanation and documentation (as appropriate) supporting the reasonableness of the original self-certification or documentation (and retain a copy or a notation of such explanation and documentation):

Provided that if the Reporting Financial Institution fails to either obtain a self-certification or confirm the reasonableness of the original self-certification or documentation, it must treat the Account Holder as a Reportable Person with respect to both jurisdictions;

- (b) with respect to the determination whether the Account Holder is a Financial Institution, Active NFE or Passive NFE, a Reporting Financial Institution must obtain additional documentation or a self-certification (as appropriate) to establish the status of the Account Holder as an Active NFE or Financial Institution and if the Reporting Financial Institution fails to do so, it must treat the Account Holder as a Passive NFE;
- (c) with respect to the determination whether the Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution must obtain either—
 - (i) a self-certification; or
 - (ii) a reasonable explanation and documentation (as appropriate) supporting the reasonableness of a previously collected self-certification or documentation (and retain a copy or a notation of such explanation and documentation):

Provided that if the Reporting Financial Institution fails to either obtain a self-certification or confirm the reasonableness of the previously collected self-certification or documentation, it must rely on the indicia described in regulation 13(1)(b) it has in its records for such Controlling Person to determine whether it is a Reportable Person.

(3) For purposes of this regulation, the provisions of regulation 25 applicable to Documentary Evidence shall apply to any other documentation relied upon pursuant to the procedures set forth in regulation 22.

PART VIII – DUE DILIGENCE FOR NEW ENTITY ACCOUNTS

24. Applicable procedures for New Entry Accounts

(1) For New Entity Accounts, a Reporting Financial Institution must apply the following review procedures—

- (a) when determining the residence of the Entity, a Reporting Financial Institution—
 - (i) must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures:

Provided that if the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address

of the principal office of the Entity to determine the residence of the Account Holder;

- (ii) must, where the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, treat the account as a Reportable Account, unless it reasonably determines based on information in its possession or that is publicly available that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction;
- (b) when determining the residence of the Controlling Persons of a Passive NFE with respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons and if any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account:

Provided that in making these determinations the Reporting Financial Institution must follow the guidance provided for under these Regulations in the order most appropriate under the circumstances;

- (c) when determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity that is not a Participating Jurisdiction Financial Institution;
- (d) when determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC procedures; and
- (e) when determining the residence of a Controlling Person of a Passive NFE, a Reporting Financial Institution may only rely on a self-certification from the Account Holder or such Controlling Person.

(2) If there is a change in circumstances with respect to a New Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures specified in regulation 23(2).

PART IX – SPECIAL DUE DILIGENCE RULES

25. Reliance on Self-Certifications and Documentary Evidence

A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

26. Alternative Procedures for Financial Accounts held by Individual Beneficiaries

(1) A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person.

(2) A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described regulation 12(1)(b) and if a Reporting Financial Institution has actual

[Subsidiary]

knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in regulation 12(1)(b).

(3) A Reporting Financial Institution may treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee or certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements —

- (a) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees or certificate holders;
- (b) the employee or certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- (c) the aggregate amount payable to any employee or certificate holder or beneficiary does not exceed USD 1 000 000.

(4) For the purposes of this regulation—

- (a) "Group Cash Value Insurance Contract" means a Cash Value Insurance Contract that—
 - (i) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and
 - (ii) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group; and
- (b) "Group Annuity Contract" means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

27. Aggregation of Individual Accounts

(1) For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution shall aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity.

(2) Sub-regulation (1) shall only apply to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated and each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account.

28. Aggregation of Entity Accounts

(1) For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution shall take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a related Entity.

(2) Sub-regulation (1) shall only apply to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated and each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account.

29. Special Aggregation Rule to apply to Relationship Managers

For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a financial account is a High Value Account, a Reporting Financial Institution shall, in the case of any Financial Accounts that a relationship manager

knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, aggregate all such accounts.

30. Amounts read to include equivalent in other currencies

(1) All dollar amounts are in US dollars and shall be read to include equivalent amounts in other currencies.

(2) If the balance or value of a Financial Account or other amount is denominated in a currency other than US dollars, for the purposes of the thresholds or limits described in these Regulations, a Reporting Financial Institution shall translate such balance, value or amount into the equivalent amount in US dollars by reference to the spot rate of exchange on the date for which the Reporting Financial Institution must determine the equivalent amounts in US dollars.

31. Accounts with negative balance

An account with a balance or value that is negative shall be deemed to have a balance or value equal to nil.

PART X – COMPLEMENTARY REPORTING AND DUE DILIGENCE RULES FOR FINANCIAL ACCOUNT INFORMATION

32. Current residence address

(1) For the purposes of the residence address test in regulation 12(1)(a) a residence address is considered to be "current" where it is the most recent residence address that was recorded by a Reporting Financial Institution with respect to the individual Account Holder, but a residence address is not considered to be "current" if it has been used for mailing purposes and mail has been returned undeliverable-as-addressed (other than due to an error).

(2) Notwithstanding the provisions of sub-regulation (1), a residence address associated with an account that is a dormant account is considered to be "current" during the dormancy period.

(3) For the purposes of sub-regulation (2), an account (other than an Annuity Contract) is a "dormant account" if—

- (a) the Account Holder has not initiated a transaction with regard to the account or any other account held by the Account Holder with the Reporting Financial Institution in the past three years;
- (b) the Account Holder has not communicated with the Reporting Financial Institution that maintains such account regarding the account or any other account held by the Account Holder with the Reporting Financial Institution in the past six years; and
- (c) in the case of a Cash Value Insurance Contract, the Reporting Financial Institution has not communicated with the Account Holder that holds such account regarding the account or any other account held by the Account Holder with the Reporting Financial Institution in the past six years.

(4) An account ceases to be a dormant account when —

- (a) the Account Holder initiates a transaction with regard to the account or any other account held by the Account Holder with the Reporting Financial Institution; or
- (b) the Account Holder communicates with the Reporting Financial Institution that maintains such account regarding the account or any other account held by the Account Holder with the Reporting Financial Institution.

33. When current residence address is based on documentary evidence

(1) A current residence address in the Reporting Financial Institution's records is based on Documentary Evidence if the Reporting Financial Institution's policies and procedures ensure that—

[Subsidiary]

- (a) it is the same address, or in the same jurisdiction, as that on the Documentary Evidence;
- (b) where it has government-issued Documentary Evidence but such Documentary Evidence does not contain a recent residence address or does not contain an address at all, the current residence address in the Reporting Financial Institution's records is the same address, or in the same jurisdiction, as that on recent documentation issued by an authorised government body or a utility company, or on a declaration of the individual Account Holder under penalty of perjury; or
- (c) the jurisdiction in the residence address corresponds to the jurisdiction of issuance of government-issued Documentary Evidence.

(2) For the purposes of sub-regulation (1)(b), acceptable documentation issued by an authorised government body includes, formal notifications or assessments by a tax administration and acceptable documentation issued by utility companies relating to supplies linked to a particular property such as a bill for water, electricity, landline telephone, gas, or oil.

(3) A declaration of an individual Account Holder under penalty of perjury in sub-regulation (1)(b) is acceptable only if—

- (a) the Reporting Financial Institution has been required to collect it under domestic law for a number of years;
- (b) it contains the Account Holder's residence address; and
- (c) it is dated and signed by the individual Account Holder under penalty of perjury.

34. Absence of documentary evidence

(1) Where the Reporting Financial Institution does not hold Documentary Evidence in relation to an account and applicable AML/KYC Procedures do not require Documentary Evidence to be obtained at the time of opening the account, or at any time since, a current residence address in the Reporting Financial Institution's records shall be treated as based on Documentary Evidence—

- (a) if the Reporting Financial Institution's policies and procedures ensure that the current residence address in its records is the same jurisdiction as —
 - (i) that of the address on the most recent documentation collected by such Reporting Financial Institution such as a utility bill, real property lease, or declaration by the individual Account Holder under penalty of perjury; and
 - (ii) that reported by the Reporting Financial Institution with respect to the individual Account Holder under any other applicable tax reporting requirements (if any); or
- (b) in the case of a Cash Value Insurance Contract, until any of the following events occur—
 - (i) a change in circumstances that causes the Reporting Financial Institution to know or have reason to know that the current residence address a Reporting Financial Institution has in its records is incorrect or unreliable;
 - (ii) a pay-out (full or partial); or
 - (iii) the Cash Value Insurance Contract matures.

(2) The standards of knowledge specified in regulation 25 to Documentary Evidence shall also apply to the other documentation relied upon by the Reporting Financial Institution under this regulation.

35. Change in circumstances

(1) If a Reporting Financial Institution has relied on the residence address test described in regulation 32 and there is a change in circumstances that causes the Reporting Financial Institution to know or have reason to know that the original Documentary Evidence or other documentation is incorrect or unreliable, the Reporting Financial Institution must, by the later of the last day of the relevant calendar year (or other appropriate reporting period), or 90 calendar days following the notice or discovery of such change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder and if the Reporting Financial Institution cannot obtain the self-certification and new Documentary Evidence by such date, the Reporting Financial Institution must apply the electronic record search procedure described in regulation 12(1)(b).

(2) For the purposes of this regulation, a "change in circumstances" includes—

- (a) any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status;
- (b) any change or addition of information to the Account Holder's account (including the addition or substitution); or
- (c) other change of an Account Holder or any change or addition of information to any account associated with such account applying the account aggregation rules described in regulations 27, 28 and 29 if such change or addition of information affects the status of the Account Holder.

36. Residence of a Financial Institution

(1) A Financial Institution is "resident" in a Participating Jurisdiction if it is subject to the jurisdiction of such Participating Jurisdiction in that the Participating Jurisdiction is able to enforce reporting by the Financial Institution.

(2) In the case of a trust that is a Financial Institution (irrespective of whether it is resident for tax purposes in a Participating Jurisdiction), the trust is considered to be subject to the jurisdiction of a Participating Jurisdiction if one or more of its trustees are resident in such jurisdiction except if the trust reports all the information required to be reported under these Regulations with respect to Reportable Accounts maintained by the trust to another Participating Jurisdiction being a resident for tax purposes in such other jurisdiction.

(3) Where a Financial Institution (other than a trust) does not have a residence for tax purposes, it is considered to be subject to the jurisdiction of a Participating Jurisdiction and it is, therefore, a Participating Jurisdiction Financial Institution, if—

- (a) it is incorporated under the laws of the Participating Jurisdiction;
- (b) it has its place of management (including effective management) in the Participating Jurisdiction; or
- (c) it is subject to financial supervision in the Participating Jurisdiction.

(4) Where a Financial Institution (other than a trust) is resident in two or more Participating Jurisdictions, such Financial Institution shall be subject to the reporting and due diligence obligations of the Participating Jurisdiction in which it maintains the Financial Account(s).

37. Maintaining of account

In general, an account shall be considered to be maintained by a Financial Institution, if—

- (a) in the case of a Custodial Account, the Financial Institution holds custody over the assets in the account (including a Financial Institution that holds assets in street name for an Account Holder in such institution);
- (b) in the case of a Depository Account, the Financial Institution is obligated to make payments with respect to the account (excluding an agent of a Financial Institution regardless of whether such agent is a Financial Institution);

[Subsidiary]

- (c) in the case of any equity or debt interest in a Financial Institution constitutes a Financial Account, by such Financial Institution;
- (d) in the case of a Cash Value Insurance Contract or an Annuity Contract, the Financial Institution is obligated to make payments with respect to the contract.

38. Address of entity's principal office

(1) The address of the Entity's principal office shall be generally the place in which its place of effective management is situated.

(2) The address of a Financial Institution with which the Entity maintains an account, a post office box, or an address used solely for mailing purposes shall not be the address of the Entity's principal office unless such address is the only address used by the Entity and appears as the Entity's registered address in the Entity's organisational documents.

(3) An address that is provided subject to instructions to hold all mail to that address shall not be the address of the Entity's principal office.

39. Amendment of Schedules

The Cabinet Secretary may amend Schedules to these Regulations, from time to time.

Schedule (r. 2 in the definition of "Participating Jurisdictions")

PARTICIPATING JURISDICTIONS

For the purposes of these Regulations, the following are Participating Jurisdictions:

Andorra
Anguilla
Antigua
Argentina
Aruba
Australia
Austria
Azerbaijan
The Bahamas
Bahrain
Barbados
Barbuda
Belgium
Belize
Bermuda
Brazil
British Virgin Islands
Brunei Darussalam
Bulgaria
Canada

Cayman Islands
Chile
China
Colombia
Cook Islands
Costa Rica
Croatia
Curacao
Cyprus
Czech Republic
Denmark
Dominica
Estonia
Faroe Islands
Finland
France
Germany
Ghana
Gibraltar
Greece
Greenland
Grenada
Guernsey
Hong Kong (China)
Hungary
Iceland
India
Indonesia
Ireland
Isle of Man
Israel
Italy
Japan
Jersey
Korea
Kuwait
Latvia
Lebanon

[Subsidiary]

Liechtenstein
Lithuania
Luxembourg
Macau (China)
Malaysia
Marshall Islands
Mauritius
Monaco
Malta
Mexico
Montserrat
Nauru
New Zealand
Nigeria
Niue
Netherlands
Norway
Oman
Pakistan
Panama
Peru
Poland
Portugal
Qatar
Romania
Russia
Samoa
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Saudi Arabia
Singapore
Saint Maarten
Switzerland
San Marino
Seychelles
Slovak Republic
Slovenia

South Africa
Spain
Sweden
Trinidad and Tobago
Turkey
Turks and Caicos Islands
United Arab Emirates
United Kingdom
Uruguay
Vanuatu

TAX PROCEDURES (ELECTRONIC TAX INVOICE) REGULATIONS, 2023

ARRANGEMENT OF SECTIONS

1. Citation.
 2. Interpretation.
 3. Application
 4. Use of a system.
 5. Availability of a system.
 6. Obligations of the user of a system.
 7. Tax invoices, credit notes and debit notes.
 8. System specifications.
 9. Transmission of invoice data and security.
 10. Electronic tax invoicing exclusions.
 11. Electronic tax invoicing exemption.
 12. Offences and penalties.
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TAX PROCEDURES (ELECTRONIC TAX INVOICE) REGULATIONS, 2023

[Legal Notice 225 of 2023]

1. Citation.

These Regulations may be cited as the Tax Procedures (Electronic Tax Invoice) Regulations, 2023.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“**Authority’s system**” means a system prescribed by the Commissioner;

“**emoluments**” means income subject to tax under section 5 of the Income Tax Act (Cap. 470);

“**foreign country**” means any country other than Kenya;

“**imports**” means goods imported from a foreign country in accordance with the East Africa Community Customs Management Act, 2004, or services imported from a foreign country;

“**input tax**” has the meaning assigned to it under section 2(1) of the Value Added Tax Act (Cap. 476);

“**system**” means an electronic tax invoicing or receipting system that is maintained and used in accordance with these Regulations; and

“**user of a system**” means a person who carries on business.

3. Application

These Regulations shall apply to any person carrying on business unless the person is exempted in accordance with section 23A of the Act.

4. Use of a system.

- (1) Each user of a system shall use the system in accordance with these Regulations.
- (2) Despite the generality of sub-regulation (1), each user of a system shall ensure that—
 - (a) each sale is recorded in the system;
 - (b) an invoice is generated in respect of each sale through the system; and
 - (c) each invoice generated through the system for a sale shall contain the information specified in regulation 7.
- (3) The user of a system shall—
 - (a) transmit the invoice generated with respect to the sale to the buyer;
 - (b) transmit the invoice details to the Commissioner in accordance with regulation 8; and
 - (c) maintain the stock in and stock out records in the system as follows—
 - (i) record each local purchase and import;
 - (ii) notify the Commissioner in writing within thirty days before closure of business indicating records of current stock;
 - (iii) in case there is transfer of stock upon closure of business, the person shall notify the Commissioner in writing of the current stock quantity or levels; and
 - (iv) upon closure of the business, the person shall account for all relevant taxes under the applicable tax laws.
- (4) A system shall be exclusively used by the registered user of that system.

[Subsidiary]

(5) The Commissioner may require the following persons to use an electronic tax invoicing system that does not maintain a record of stocks—

- (a) persons providing services;
- (b) persons who are not registered under the Value Added Tax Act (Cap. 476), and with an annual turnover below twenty-five million shillings using a simplified system prescribed by the Commissioner; and
- (c) any other person using a system that is prescribed by the Commissioner.

5. Availability of a system.

(1) The user of a system shall ensure continuity of operations of the system at all times.

(2) Where a user of a system cannot use the system for any reason, the user shall—

- (a) notify the Commissioner in writing within twenty-four hours of the user's inability to use the system; and
- (b) record sales using any other means as may be specified by the Commissioner.

(3) Where the user of a system regains the use of the system, the user shall enter into the system the sales recorded under paragraph (2)(b).

6. Obligations of the user of a system.

(1) Each user of the system shall—

- (a) ensure the availability of the system at the point of sale;
- (b) facilitate inspection of the system by an authorised officer;
- (c) ensure the system is regularly updated to maintain the system's proper functioning at all times;
- (d) keep and maintain a system ledger in which a record of the maintenance and update of the system's software is entered and which shall contain—
 - (i) the name and address of the person maintaining the system; and
 - (ii) an entry for each time maintenance is undertaken on the system, describing the maintenance and the name of the person performing the service; and
- (e) comply with such other requirements as may be specified by the Commissioner.

(2) Where a user of a system intends to discontinue the use of a system due to—

- (a) change of business model;
- (b) closure of business; or
- (c) any other reason,

the user of the system shall notify the Commissioner, in writing, of the intended discontinuation within thirty days prior to the discontinuation:

Provided that where the intended discontinuance is due to the closure of the business and the closure was unplanned, the user of the system shall notify the Commissioner within seven days after the closure of the business.

(3) Where a notification is made under sub-regulation (2), the Commissioner may, by notice in writing, and within thirty days after receipt of the notification, retire the system.

7. Tax invoices, credit notes and debit notes.

(1) Each electronic tax invoice generated from a system shall contain—

- (a) the Personal Identification Number of the registered user of the system;
- (b) the time and date of issuance of the invoice;
- (c) the serial number of the invoice;

- (d) where the buyer intends to claim the expense or the input tax, the buyer's Personal Identification Number;
- (e) the total gross amount;
- (f) the total tax amount where applicable;
- (g) the item code of supplies as provided by the Commissioner;
- (h) a brief description of the goods and services;
- (i) the quantity of supply;
- (j) the unit of measure;
- (k) the applicable tax rate;
- (l) the unique system identifier;
- (m) the unique invoice identifier;
- (n) a quick response code; and
- (o) any other information as may be specified by the Commissioner.

(2) Where a user of a system issues a credit note or a debit note, the credit note or debit note shall make reference to the original invoice number to which the supply relates.

8. System specifications.

Each system shall—

- (a) be capable of interconnectivity with other information technology networks including the Authority's systems;
- (b) have sufficient data storage capacity to maintain records;
- (c) clearly display messages in English or Kiswahili;
- (d) be secure and tamper-proof; and
- (e) be capable of—
 - (i) integrating with the Authority's systems;
 - (ii) transmitting data to the Authority's systems;
 - (iii) having adjustments made to it so that it may to with any changes to the tax laws; and
 - (iv) recording and storing information required under these Regulations.

9. Transmission of invoice data and security.

Each system shall be capable of—

- (a) transmitting to the Authority's system electronic tax invoice data in the manner specified by the Commissioner;
- (b) printing or providing stored data;
- (c) maintaining the integrity of data;
- (d) securing authentication for authorized users;
- (e) recording and storing a log of all activities on the system; and
- (f) assigning a unique identifier to each invoice.

10. Electronic tax invoicing exclusions.

The following transactions shall be excluded from the requirement of an electronic tax invoice—

- (a) emoluments;
- (b) imports;
- (c) investment allowances including internal accounting adjustments;
- (d) airline passenger ticketing;
- (e) interest;

[Subsidiary]

- (f) fees charged by financial institutions;
- (g) expenses subject to withholding tax that is a final tax;
- (h) supplies by a resident person whose annual turnover is less than five million shillings;
- (i) services provided by a non-resident person without a permanent establishment in Kenya; and
- (j) any other exclusion as may be provided under section 23A of the Act.

11. Electronic tax invoicing exemption.

(1) The Commissioner may, by notice in the *Gazette*, exempt a person from the requirements of the use of an Electronic Tax Invoice.

(2) The Commissioner may, by notice in the *Gazette* for reasons to be specified in the notice, revoke an exemption granted under subregulation (1).

(3) The Commissioner may exempt a person from the requirement of issuing electronic tax invoice where—

- (a) the business income in relation to a transaction is received through a payment platform recommended by the Commissioner; and
- (b) the information is transmitted to the Authority's system.

(4) A person who is required to issue an electronic tax invoice may, with reasons, apply to the Commissioner in writing to be exempted from the requirements of these Regulations where—

- (a) an alternative automated method for recording, storing and transmitting the data relating to the transactions to the Commissioner is available and upon recommendation by the relevant authority; or
- (b) the person's transactions are not under the mandate of a Ministry or any other regulatory authority.

12. Offences and penalties.

(1) A person commits an offence if the person—

- (a) fails to comply with any provisions of these Regulations; or
- (b) tampers with, manipulates or interferes with the proper functioning of the system including uninstallation and change of the device without notifying the Commissioner.

(2) A person who commits an offence under these regulations shall be liable to the penalty specified under section 86 of the Act.
