

An analysis of the Tax Procedures Code Act 2014

August 2016



The Tax Procedures Code Act was enacted in 2014 and came into force on 1 July 2016.

This bulletin summarises its main provisions

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1. Application of the Act

Regulation governed by the TPCA

The Tax Procedures Code Act (“TPCA”) is a code that regulates the procedures for the administration of the following tax laws:

- The TPCA;
- The Income Tax Act (“ITA”);
- The Value Added Tax Act (“VAT Act”);
- The Excise Duty Act;
- The Gaming Pool Betting (Control and Taxation) Act;
- And any other Act imposing a tax as the Minister may by statutory instrument declare in accordance with section 76(2) of the TPCA.

Purpose of the TPCA

The purpose of the TPCA is threefold:

- To provide for a code to regulate the procedures for the administration of specified tax laws in Uganda;
- To harmonise and consolidate the tax procedures under the existing tax laws; and
- To provide for related matters.

2. Summary of provisions

New requirements under the TPCA

Some of the new requirements introduced by the TPCA include:

- Registration of tax agents;
- Tax representatives;
- Advance assessments;
- Tax Agents Registration Committee;
- Charge over movable property as a mode of collection of tax;
- Revocation of private rulings;
- Various forms and fees;
- Appeals to TAT before High Court; and
- Wider powers of the Commissioner General to delegate their authority

Amendments under the tax laws

The Act also makes various changes to certain provisions of the existing tax laws.

The substantive tax provisions are now contained in the respective tax laws while the administrative procedures are contained in the TPCA.



3. Registration for taxes

Use of TINs

The TPCA introduces a requirement for a TIN issued by the Commissioner General (“Commissioner”) to be used for all tax purposes and stated on all returns, notices, communications or documents furnished, lodged or used for purposes of any of the tax laws.

Written permission for tax agent to use TIN

The TPCA also introduces a requirement for written permission from a taxpayer in order for a registered tax agent to use the taxpayer’s TIN. The tax agent should only use the TIN in respect of the affairs of the taxpayer.

A tax agent who uses a TIN of a taxpayer without permission is treated as having used a false TIN and is liable on conviction to a fine not exceeding UGX 480,000 or imprisonment not exceeding one year or both.

Going forward, taxpayers will be required to provide written permission for use of the TIN to their tax agents. The law is not clear on the form of written permission required but we understand that it will be possible to do this via the URA web portal.

Cancellation of TIN

The Act gives power to the Commissioner to cancel a TIN if the taxpayer is deregistered, the TIN is issued under a false identity or the person to whom the TIN is issued already has a TIN that is still in force.

Deregistration of taxpayers

The Commissioner has power to deregister a taxpayer:

- who has applied for deregistration and who the Commissioner is satisfied is no longer required to be registered; or
- who has not applied for deregistration but who the Commissioner is satisfied is eligible for deregistration.

4. Tax agents

Meaning of tax agent

The TPCA introduces the concept of a tax agent, defined as a person who is engaged in:

- the preparation, certification, and filing of tax returns, information returns, or other statements or reports required by the URA;
- the preparation of requests for rulings, petitions for re-investigation, protests, objections, requests for refund or tax certificates, compromise settlements and or abatement of tax liabilities and other official papers and correspondences with the URA; and
- meetings and hearings on behalf of the taxpayer in all matters relating to a taxpayer’s rights, privileges or liabilities under the laws or regulations administered by the URA.

In summary, a tax agent is a person who provides tax representation and compliance services to a taxpayer and this will include accounting/tax firms

With effect from 1 July 2016, it is implied that all tax agents will be required to apply for registration in order to act for taxpayers. However, other than in relation to the use of a taxpayer’s TIN, the compulsion for a tax agent to register is not clearly stated.

Registration of tax agents

An application for registration as a tax agent may be made by an individual, partnership or a company to the Tax Agents Registration Committee (“TARC”), a new body to be established under the TPCA.

The requirement to register does not apply to an advocate acting as such for a taxpayer.

The mandate of the TARC is to handle registration of tax agents, renewal of registrations and cancellation of registration. The TARC will comprise of the following:

- the Commissioner or a representative to act as the chairperson;
- a representative from the accounting profession nominated by ICPAU;
- a representative from the legal profession nominated by the Uganda Law Society;
- two members from the private sector with expertise or relevant experience in economics, finance or taxation, to be appointed by the Board of the URA.

An application for registration is to be in the prescribed form and accompanied by a prescribed fee. The TARC is to make rules to govern its own procedure.

At the date of writing, the TARC is yet to be appointed and the prescribed application form and fees have not been issued.

As the TPCA came into force on 1 July 2016, the requirement to register as a tax agent is now in force but in practice this is not yet possible.

Requirements for registration as a tax agent

Natural persons

For natural persons, the TARC must be satisfied that the applicant is a fit and proper person to prepare tax returns and transact business with the URA under the tax laws on behalf of a taxpayer.

It is not clear what criteria will be applied in determining whether an applicant is a “fit and proper” person.

Partnership or a company

For a partnership or a company, the TARC must be satisfied that:

- the partner or employee specified in the application as the nominee of the partnership or company is a fit and proper person to prepare tax returns and transact business with the Commissioner; and
- a partner in the partnership or a director, manager or other executive officer of the company is of high integrity and good character.

Again, the criteria for determining whether a person is of high integrity and good character is not clear.

This will require the TARC to have objective criteria and sources of information on the applicant’s background.

Qualification requirements

An individual applying for registration as a tax agent or a nominee of a partnership or company applying as a tax agent is required to have any one of the following qualifications:

- a degree or postgraduate award from an approved tertiary institution in the discipline that is relevant for the provision of tax agent services; or
- successfully completed a course in taxation that is recognised by the TARC; or
- have been engaged in full time tax practice for an equivalent of 24 months in the proceeding five years.

It is not yet clear whether the TARC will issue a list of approved tertiary institutions or whether they will rely on the tertiary institutions approved by the National Council for High Education.

Further, it is not clear whether the TARC will publish a list of the courses in taxation that are recognised for purposes of registering as a tax agent.

Validity and renewal of registration

The registration of a tax agent is valid for twelve months from the date of registration.

A tax agent is required to apply to the TARC for renewal of registration within 21 days before the date of expiry of the registration or a later date as allowed by the Committee.

The TARC will renew the registration if the tax agent still meets the requirements for registration.

Registration of additional or substituted tax agents

A partnership or company registered as a tax agent may apply to register a partner of the partnership or an employee of the company as an additional or substituted tax agent.

The partner or employee is required to have the above qualifications and fulfil the above requirements for registration of a nominee.

Notification of change in registered particulars of tax agents

A partnership registered as a tax agent is required to notify the TARC in writing:

- a) within seven days after a change in the composition of the partnership; or
- b) seven days before dissolution of the partnership

A company registered as a tax agent is required to notify the TARC in writing:

- a) within seven days after the registered nominee who is an employee ceases to be employed or a person becomes a director, manager or other executive officer of the company; or
- b) within seven days before the company goes into liquidation.



Cancellation of tax agent registration

The Act provides for a tax agent who ceases to carry on business as a tax agent or who no longer wishes to be registered as a tax agent to apply to the TARC for their registration to be cancelled.

The TARC may cancel a tax agent's registration if satisfied that:

- in the case of an individual, the person is no longer fit and proper to prepare tax returns and transact business with the URA on behalf of a taxpayer;
- in the case of a partnership, the additional or nominated partner has ceased to be a partner in the partnership or the partnership has applied to the TARC to cancel the registration of the partner;
- in the case of a company, the nominee has ceased to be employed by the company or the company has applied to the TARC to cancel the registration of the employee;
- a tax return prepared and delivered by the tax agent is false in any material particular, unless the tax agent establishes to the satisfaction of the TARC that it was not due to any wilful or negligent conduct of the tax agent;
- the tax agent has ceased to meet the requirements for registration as a tax agent; or
- the tax agent has ceased to carry on business as a tax agent.

5. Tax representatives

Meaning of tax representative

The Act introduces the concept of a tax representative as a person responsible for performing any duty or obligation imposed by tax law on the taxpayer including submission of tax returns and payment of tax.

The following are tax representatives:

- for an individual under a legal disability, the guardian or manager who receives or is entitled to receive income on behalf of or for the benefit of that natural person;
- for a company, the chief executive officer, managing director or any director;
- for a partnership, a partner in the partnership;
- in the case of a trust, a trustee of the trust;
- in the case of the Government or local Government, the individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the Government or Local Government;
- In the case of a foreign government, political subdivision of a foreign government or a listed institution, any natural person responsible for accounting for the receipt or payment of moneys or funds in Uganda on behalf of the body;
- In case of a non-resident person, the individual controlling the person's affairs in Uganda, including a manager of a business of that person or any representative appointed by the person in Uganda

A taxpayer may have two or more tax representatives. In such case, the obligations apply jointly and severally but may be discharged by any one of them.

Authority of a tax representative

A tax representative making a payment of tax on behalf of the taxpayer is treated as acting under the authority of the taxpayer.

Liability of a tax representative

The Commissioner may recover any tax payable from a tax representative to the extent of the assets of the taxpayer that are in the possession or under the control of the representative.

Further, a tax representative is personally liable for payment of any unpaid tax due by the representative in that capacity if, while the amount remains unpaid, the representative:

- alienates, charges or disposes of any moneys received or accrued in respect of which the tax is payable; or
- disposes of or parts with any moneys or funds belonging to the taxpayer that are in the possession of the tax representative or which come to the tax representative after the tax is payable which moneys could legally have been used to pay the taxes.

A tax representative is not personally liable for tax if any monies which have priority in law or equity over the tax payable by the taxpayer are paid by the representative on behalf of the taxpayer or if at the time the monies were paid, the tax representative had no knowledge and could not reasonably be expected to know of the taxpayers tax or duty liability.

6. Records and returns

Accounts and records

The TPCA requires a taxpayer to keep records as may be required to determine the taxpayers tax liability and to enable the taxpayers liability under the tax law to be readily ascertained.

The records to be kept must be in the English language including in electronic format and must be kept for a period of five years after the end of the tax period to which the records relate or any other period as specified in the tax law.

Previously, records were to be maintained for at least six years for VAT purposes and five years for income tax purposes. The retention period has now been harmonised at five years for all relevant taxes.

A taxpayer may be required to retain records for a longer period where the record is necessary for a proceeding that was commenced before the end of the five year period. In such a case, the records are to be retained until all such proceedings have been completed.

Records may be kept in any mode, including electronically.

However, the mode of keeping the records should contain sufficient transaction information and, in case of a record in electronic form, the record should be capable of being retrieved and converted to a standard record format equivalent to that contained in an acceptable paper record.

7. Tax returns

Records in other language or currency

A taxpayer may apply to the Commissioner to keep records in a language other than English or in a currency other than the Uganda Shilling.

The taxpayer is required to clearly state the reasons for keeping records in a different language or currency.

A taxpayer granted permission to keep records in a language other than the English language is still required to file a tax return or provide other correspondence to the URA in English.



Definition

A tax return includes the following:

- return of income;
- return of rental income;
- provisional tax estimate;
- business information return;
- VAT return;
- excise duty return;
- any other return to be furnished under a tax law;
- any form required to be furnished under a tax law containing information relating to an assessment of tax.

Commissioner's power to appoint person to file a return

The TPCA empowers the Commissioner to appoint any other person by notice in writing to prepare and file a return on behalf of a taxpayer who does not furnish a return as required under the law.

The taxpayer is responsible for covering the costs incurred in filing the return and the return is treated as the return of the taxpayer.

Commissioner's power to require further return

Where the Commissioner is not satisfied with a tax return filed by a taxpayer, other than a self assessment return (see below), the Commissioner may by notice in writing require the person who has furnished the return to provide a fuller or further tax return.

Return to be accompanied by audited accounts

A taxpayer with an annual turnover of UGX 500 million or more is required to furnish audited financial statements prepared by an accountant registered by ICPAU along with the return of income.

Certification of returns by tax agents

The Act requires a tax agent who prepares or assists in the preparation of a tax return to provide a signed certificate in a prescribed form stating the sources of information available to the tax agent for preparing the tax return and certifying that the agent has examined the documents of the taxpayer and, to the best of their knowledge, the return and supporting documents reflect the correct data and transactions to which it relates.

Where a tax agent does not provide such a certificate, they are required to provide a written statement specifying the reasons for not providing the certificate.

A tax agent is required to keep copies of certificates or statements provided to taxpayers for five years from the date the return to which the certificate or statement relates is furnished.

The tax agent shall, when required to do so by notice in writing, provide a copy of the certificate or statement to the Commissioner.

Declaration in tax return

A tax agent who assists in the preparation of a tax return of a taxpayer is required to make a declaration in the taxpayer's return stating whether the certificate or statement has been provided to the taxpayer.

Extension of time to file a return

A taxpayer can apply in writing for an extension of time in which to file a return. Normally the application must be made on or before the deadline.

The extension can be granted by the URA for a maximum of 90 days.

A taxpayer who fails to make an application for extension before the due date, may now apply for extension after the due date if they can prove that they were prevented from applying for the extension by exceptional circumstances. The Act does not define what will constitute exceptional circumstances.

Previously, an application for extension of the return due date could only be made by the original due date.

8. Assessments

Self assessment returns

The following are self assessment returns for purposes of the TPCA:

- return of income;
- return of rental income,
- VAT return;
- excise duty return; and
- a return specified as a self assessment return under a tax law.

Default assessment

The Act empowers the Commissioner to issue a default assessment to a taxpayer who fails to furnish a self assessment return.

This is in addition to the Commissioner's power to appoint a person to file a return on behalf of a defaulting taxpayer.

Advance assessment

The Act empowers the Commissioner to issue an advance assessment to a taxpayer where the taxpayer has not filed a return as required and the Commissioner is satisfied that there is a risk that a taxpayer may delay, obstruct, prevent or render ineffective payment or collection of tax that has not yet become due.

An advance assessment can only be issued in circumstances where a taxpayer has died, become bankrupt, wound up or gone into liquidation, is about to leave Uganda permanently or where the Commissioner otherwise considers it appropriate.

The assessment may be made before the date on which the taxpayer's tax return is due.

Additional assessments

The Commissioner may issue an additional assessment amending a prior tax assessment for a tax period.

An additional assessment may be issued:

- at any time in case of fraud, gross or wilful neglect or on the discovery of new information in relation to the tax payable for the period;
- for purposes of amending a prior additional assessment, within three years from the date of service of the original additional assessment;
- in all other cases, within three years after the date the taxpayer furnished the self assessment return to which the original assessment relates or the Commissioner served notice of the original assessment on the taxpayer.

Taxpayer-initiated additional assessment

Where a taxpayer who has filed a self assessment return discovers an error in the return within twelve months of filing, the taxpayer may apply to the Commissioner for leave to make an additional assessment.

The Commissioner is required to make a decision on the taxpayer application and notify the taxpayer within thirty days after receiving the application.

A taxpayer whose tax return is under investigation is not eligible to apply for leave to make an additional assessment.

It is not clear if this provision prevents a taxpayer from filing an amended return after the twelve month period has elapsed.

Notice of additional assessment

Where the Commissioner has made an additional assessment, the Commissioner is required to serve the taxpayer with a notice of the additional assessment.

The requirement to serve the notice of additional assessment does not apply where the circumstances leading to the additional assessment are occasioned by an error on the part of the Commissioner.

9. Objections and appeals

Objection to tax decision

A person dissatisfied with a tax decision may lodge an objection with the Commissioner within 45 days after receiving the notice of the tax decision.

A tax decision is defined to mean a) a tax assessment, or b) a decision on any matter left to the discretion, judgment, direction, opinion, approval, satisfaction or determination of the Commissioner, other than a decision made in relation to a tax assessment.

Preconditions for consideration of objection

For default or advance assessments, the Commissioner may consider an objection where the taxpayer has:

- filed the return to which the assessment relates; and
- paid the tax due under the return together with any interest or penalty due.

There are no criteria stated under which the Commissioner may consider objections to other types of assessments, so it appears no special rules apply.

Previously, for income tax purposes, a taxpayer who lodged a notice of objection to an assessment was required to pay the lower of 30% of the tax assessed or the tax not in dispute, pending final resolution of the objection. Where

an objection was reasonably made to the assessment, the Commissioner had powers to waive the amount of tax or accept payment of a lesser amount.

Section 103 of the ITA allowing for the 30% payment has now been repealed but it is expected that the Commissioner will continue to follow this practice as an administrative discretion. Under the Tax Appeals Tribunal Act, the 30% payment is still required in order to lodge an appeal with the Tribunal.

Objection decision and election

The Commissioner is required to make an objection decision within 90 days from the date of receipt of the objection.

Where the Commissioner does not serve an objection decision within 90 days, the taxpayer may by notice in writing elect to treat the Commissioner as having made a decision to allow the objection.

Previously, the Commissioner was required to make an objection decision for VAT purposes within 30 days, but this has now been harmonised at 90 days for all relevant taxes.

However the 90 day period is waived where the settlement of the objection necessitates a review of the taxpayer's records and the URA notifies the taxpayer of this fact within the 90 days.

Appeal of objection decision

Application to TAT

A taxpayer dissatisfied with an objection decision may lodge an application to the Tax Appeals Tribunal (“TAT”) for review of the objection decision within 30 days after receiving the objection decision.

Further, a taxpayer aggrieved by a decision made under a taxing act by the URA or the TARC may also apply to TAT for review of the decision.

Appeal to the High Court

A taxpayer dissatisfied with a decision of the TAT may lodge an application to the High Court for review of the decision within 30 days after receiving the decision.

Previously, a taxpayer dissatisfied with an objection decision of the URA could choose between appealing the decision to the High Court or the TAT.

Whereas the TPCA gives the High Court appellate jurisdiction in tax matters, the High Court has unlimited original jurisdiction in all matters in accordance with Article 139 of the Constitution and section 14 of the Judicature Act.

Therefore, a taxpayer may still apply for a review of an objection decision directly to the High Court rather than having to first appeal to the TAT.

Previously an appeal direct to the High Court could be made on questions of law only (as opposed to questions of fact). The TAT Act retains this restriction for appeals to the TAT, but it now appears that direct appeals to the High Court can be made on questions of both law and fact.

10. Payment of tax

Extension of time to pay tax and payment of tax in instalments

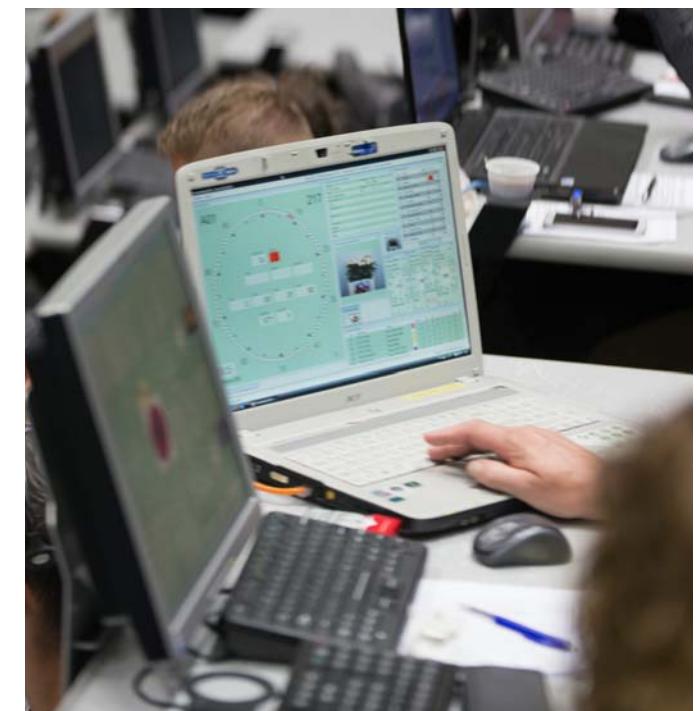
The Act allows a taxpayer to apply to the Commissioner for an extension of time within which to pay any tax that is due. The application should be made by the due date for payment of the tax.

The Commissioner may grant the taxpayer an extension of time for payment of the tax due or require the taxpayer to pay the tax in instalments.

Where a taxpayer who is permitted to pay tax in instalments defaults to pay any instalment, the whole balance of the outstanding tax becomes payable immediately.

In cases where a taxpayer is permitted to pay tax in instalments, the liability for interest arises from the original payment due date.

Previously, the URA could grant an extension to a taxpayer to pay VAT or allow payment in instalments for income tax, but these options are now available for all relevant taxes.



11. Enforced tax collection

Agency notices

The TPCA empowers the Commissioner to issue an agency notice where:

- a) a person is or will become liable to pay tax and the tax is unpaid; or
- b) the Commissioner has reasonable grounds to believe that the taxpayer will not pay the tax by the due date.

The agency notice can be issued for the amount of the unpaid tax or the amount that the Commissioner believes will not be paid by the due date.

This means that the Commissioner now has discretionary powers to issue an agency notice in advance of tax actually being due.

Where an agency notice requires a person to deduct amounts from salary, wages or other similar remuneration payable at fixed intervals to the taxpayer, the amount to be deducted from each payment is not to exceed 20% of the total payment.

The Commissioner is required to credit any amount paid under an agency notice against the tax owing by the taxpayer.

Where a taxpayer has paid the whole or part of the tax payable or has made an arrangement satisfactory to the Commissioner for payment of the tax due, the Commissioner is required to revoke or amend the agency notice

A person who does not comply with an agency notice is personally liable for the amount specified in the notice, which can then be treated as unpaid tax collectable from that person.

In our view, this will also apply to a person who is unable to comply with an agency notice by reason of lack of monies owing to or held for the taxpayer but who fails to notify the Commissioner accordingly.

Temporary closure of business

The Act introduces a new collection measure whereby the Commissioner may close down a part or the whole of the business premises of a taxpayer for failure to pay tax for a period not exceeding 14 days. This measure was already in use for recovery of unpaid VAT

The closure of the business is to be preceded by a notice in writing allowing 7 days to pay the outstanding tax.

Where the taxpayer does not pay the tax due, the Commissioner or an authorised officer may enter the premises to execute the order by affixing a notice in a conspicuous place at any entrance to the premises.

Where the tax due is paid, the Commissioner is required to immediately remove the notice.

Charge over immovable property

The Act allows the Commissioner to issue a notice to the Registrar of Titles directing the Registrar that land or buildings belonging to a taxpayer who has not paid tax by the due date are the subject of a security for unpaid tax.

A copy of the notice to the Registrar of Titles is to be served on the taxpayer.

Previously, the Commissioner would first notify the taxpayer of the intention to apply to the Chief Registrar of Titles. If the taxpayer failed to make payment of the whole amount of the tax within 30 days of the service of the notice, the Commissioner would then issue the notice of direction to the Chief Registrar of Titles.

Under the new law, the Commissioner is not required to notify the taxpayer beforehand.

Where the taxpayer does not pay the tax due within 12 months after receiving a copy of the notice, the Commissioner may commence distress proceedings against the land or building.

The Commissioner is also empowered to register a caveat on the land or building as an interim measure to prevent it being transferred.



Seizure of goods

The TPCA allows the Commissioner to seize any goods in respect of which there are reasonable grounds to believe that tax payable in respect of the supply, removal or import of the goods has not been paid.

The goods will be released where the tax has been paid or the person responsible has given security for the payment of the tax assessed as payable or that will become payable.

The Commissioner is authorised to retain the seized goods, in the case of perishable goods for a reasonable period having regard to the condition of the goods and in any other case until the later of 10 days after the seizure or 10 days after the date on which payment of the tax is due.

Upon expiry of the retention period, the Commissioner has authority to sell the goods by public auction or in such other manner as may be directed. The proceeds of the sale shall be applied towards the cost of keeping and selling the goods, payment of any tax, penalty or interest owing by the taxpayer and any remainder paid to the taxpayer.

Previously, this measure of enforced tax collection was only available to recover unpaid VAT.

Security for unpaid tax

The Commissioner may require a taxpayer to give security by bond deposit or other means satisfactory to the Commissioner for the payment of tax that may become payable if there is a reason to believe that:

- a taxpayer establishing business in Uganda intends to carry on business for a limited time only; or
- the taxpayer may not pay tax when it becomes due.

Previously, the requirement for a security only applied to VAT and in circumstances where the Commissioner determined that it was necessary for purposes of protecting revenue.

Order of recovery of tax

Where a taxpayer who is liable for penal tax and interest in relation to a tax liability makes a partial payment, the payment is applied in the following order:

- Principal tax liability;
- Penal tax; and
- Interest due.

Where the taxpayer has more than one tax liability, the payment will be applied to the earliest liability first.



12. General provisions

Tax clearance certificates

The TPCA requires the following to obtain tax clearance certificates as proof of compliance with tax obligations:

- Taxpayers providing passenger transport services or freight transport services with a goods vehicle with a capacity of 2 tonnes or more, if required by the transport licensing board;
- Taxpayers providing warehousing or clearing and forwarding services;
- Taxpayers supplying goods and services to the Government

Previously, taxpayers transferring funds in excess of UGX 50 million outside Uganda were also required to obtain a tax clearance certificate but this requirement has been removed.

Practice notes

The Commissioner retains the ability to issue practice notes setting out interpretation of a provision of the tax law, via publication in the Gazette. This now applies across all relevant tax types.

A practice note becomes effective from the date specified in the notice and if there is no date specified, from the date of publication in the Gazette.

A practice note is binding on the Commissioner until it is revoked. The Commissioner may revoke a practice note in

whole or in part by publishing a notice of the revocation in the Gazette or in any widely circulated newspaper.

A practice note that has been revoked in whole or in part shall continue to apply to a transaction commenced before the revocation.

Private rulings

The Act provides for the Commissioner to issue a private ruling setting out the application of a provision of tax law to a transaction entered into or proposed to be entered into by a taxpayer, upon application.

The Act gives powers to the Commissioner to reject an application for a private ruling by notifying the taxpayer in writing, where:

- a) the Commissioner has already decided the matter that is the subject of the application in a tax assessment;
- b) the Commissioner is of the opinion that an existing practice note adequately covers the matter;
- c) the application relates to a matter that is the subject of a tax audit or objection;
- d) the application is frivolous or vexatious;
- e) the transaction to which the application relates has not been carried out and there are reasonable grounds to believe that it will not be carried out;
- f) the applicant has not provided sufficient information to make a ruling; or

- g) in the opinion of the Commissioner, it would be unreasonable to comply with the application having regard to the resources needed to comply.

Where the taxpayer has made a full and true disclosure of the nature of all aspects of the transaction relevant to the ruling and the transaction is carried out in all material respects as disclosed in the taxpayers application, the ruling is binding on the Commissioner in relation to the taxpayer to whom it is issued. The ruling is not binding on the taxpayer.

A private ruling is issued by way of a written notice served on the applicant setting out the matter ruled on, identifying the taxpayer, the tax law relevant to the ruling, the tax period to which the ruling applies, the transaction to which the ruling relates and the assumptions on which the ruling is based.

In case of inconsistency between a private ruling and a practice note, the private ruling has priority to the extent of the inconsistency.

The Commissioner has power to revoke a private ruling in whole or in part by a written notice served on the taxpayer. The Act does not provide specific grounds for such revocation.

For the purposes of the TPCA, a tax ruling is not a tax decision and therefore the taxpayer has no right of objection against it.

Power of the Commissioner to delegate

The Commissioner may delegate any duty, power, or function conferred or imposed on the Commissioner under tax law to a tax officer, an accounting officer of a local authority or Kampala Capital City Authority by written instrument.

However, the Commissioner cannot delegate the power to compound offences and the power to delegate.

Delegation by the Commissioner is revocable at will and does not prevent the exercise of a power or performance of a function by the Commissioner.

Powers of tax officers

Tax officers duly authorised by the Commissioner may also exercise the following powers:

- Appear in any court on behalf of the Commissioner in any civil proceedings in which the Commissioner is party;
- Conduct any prosecution for an offence under the TPCA and for that purpose have all the powers of a public prosecutor appointed under the Magistrates Courts Act subject to the powers of the Director of Public Prosecutions under article 120 of the Constitution.

Use of police officers

The Act provides for the Commissioner to require the presence of police officers while executing the following proceedings:

- executing distress orders;
- executing an order of temporary closure
- accessing premises, records and data storage devices.

Confidentiality

The prior income tax requirement for tax officers to regard information and documents received in performance of their duties as secret and confidential has been extended to information relating to all relevant taxes.

The obligation of confidentiality also applies to a former tax officer or person formerly appointed or employed under a tax law.

Validity of tax decision

The validity of a tax decision is not:

- affected by the fact that any provision of the tax law under which it is made has not been complied with;
- quashed or deemed to be void or voidable for want of form; or
- affected by reason of any mistake, defect, omission or commission in it.

Rectification of a mistake

The Commissioner may, for purposes of rectifying an error, amend an order, decision, document or notice issued by the Commissioner at any time before the expiry of three years from the date of making or issuing the order, decision, document or notice.

The power of the Commissioner to rectify the mistake can only be exercised where the error is apparent from the record and it does not involve a dispute as to the interpretation of the law or facts of the case.

Approved or prescribed form

A tax return, notice or other document to be furnished or lodged under a tax law is approved or prescribed if it is in the form prescribed by the Commissioner for that type of return, notice or document, if it contains the information including the required attached documents and is signed as required.

The Commissioner is required to publish the prescribed forms in the Gazette and a newspaper of wide circulation.

The prescribed forms under the TPCA have not yet been published in the Gazette and therefore the current forms continue to apply.

Service of notices and other documents

Service to the URA

A return, application, notice or other document required to be furnished by a taxpayer under a tax law is considered furnished if it is personally delivered to an office of the URA or sent by registered post to an office of the URA.

The return, application, notice or other document will be treated as received by the Commissioner when acknowledged by stamping or other prescribed method, electronic or otherwise.

Service to taxpayers

A notice required to be served by the Commissioner on a person for the purposes of a tax law is treated as sufficiently served on the person if it is:

- a) personally served on the person;
- b) left at the person's registered office, place of business or last known address as stated in any communication with the Commissioner;
- c) sent by registered post to the person's registered office, place of business or last known address as stated in any communication with the Commissioner;
- d) an electronic data message transmitted to the person's known or registered electronic account.

Where a notice or other document is served by registered post, the notice or document is, in the absence of any proof to the contrary, treated as having been sufficiently served on the 14th day after the date of postage.

In establishing service of the notice or other document, it is sufficient to prove that the envelope containing the notice or other document was properly addressed and was posted.

Electronic returns

The Act provides for the Commissioner to establish and operate an electronic notice system for electronic furnishing of tax returns or other documents to the Commissioner, and electronic service of notices and other documents by the Commissioner.

The Commissioner may prescribe conditions for use of the electronic notice system.

13. Penal Tax and Offences

Penalties

The TPCA provides for the imposition of penal tax in instances where a taxpayer defaults in fulfilling obligations under the tax laws.

Previously, these penalties were provided for under the various tax laws. The rates and amounts of the penalties have now been harmonised for all relevant taxes.

Offences

The TPCA also provides for a range of offences by taxpayers or tax officers, with prescribed fines and/or penalties imposed upon conviction.

Again, such offences were previously provided for under the different tax laws but these have now been harmonised and consolidated in the TPCA.

Let's talk

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