

# The Taxation Act, 2009

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# LAWS OF SOUTHERN SUDAN

## The Taxation Act, 2009

In accordance with the provisions of Article 59(2) (b) read together with Article 85(2)(b) of the Interim Constitution of Southern Sudan, 2005 the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan, hereby enacts the following:

### Chapter I Preliminary Provisions

#### Section 1. Title and Commencement

This Act may be cited as "The Taxation Act, 2009" and shall come into force on the date of its signature by the President.

#### Section 2. Repeals and Savings

1. The Personal Income Act, 2007, is hereby repealed or cease to operate in Southern Sudan, *provided that*, all proceedings taken or orders and regulations issued or made under existing legislation, except to the extent they are repealed or cancelled by or are otherwise inconsistent with the provisions of this Act, shall remain in full force or effect, until they are repealed or amended in accordance with the provisions of this Act.
2. Any provisions of existing legislation, which are governed by this Act, are hereby repealed or cease to operate in Southern Sudan, *provided that*, all proceedings taken or orders and regulations issued or made under existing legislation, except to the extent they are repealed or cancelled by or are otherwise inconsistent with the provisions of this Act, shall remain in full force or effect, until they are repealed or amended in accordance with the provisions of this Act.

#### Section 3. Purpose

The purpose of the Act is to define the tax system of Southern Sudan, establish the general principles for the assessment and collection of taxes and other charges, the rights and obligations of taxpayers, and other issues related thereto.

## Section 4. Authority and Application

- (1) This law is drafted in accordance with the provisions of Article 184(1) of the Interim Constitution of Southern Sudan 2005 (“ICSS”), which grants the Government of Southern Sudan authority to legislate for raising revenue or collecting taxes from certain sources.
- (2) The provisions of this Act shall apply throughout Southern Sudan in all matters related to taxation.

## Section 5. Interpretations

- (1) In this Act, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them respectively:

“**Appeals Board**” means the Board established under section 49 of this Act to hear tax appeals from taxpayers and tax withholders;

“**Arm’s length price**” means the price expected to be received in conjunction with asset transactions or contract obligations between parties that deal in a fair market, and shall be determined as set forth in section 81(3) of this Act.

“**Assembly**” means the Southern Sudan Legislative Assembly;

“**Assessment**” means the entering into the records of the Directorate of Taxation the amount of a taxpayer’s liability for tax for a specific taxation period, and includes an amended assessment;

“**Bad debt**” means a debt that is uncollectible and that may be deductible for tax purposes, as more specifically defined by regulations;

“**Bank**” means the Bank of Southern Sudan and hereby abbreviated as “BoSS”;

“**Certificate of registration**” means the official certificate issued by the Directorate of Taxation, which indicates a person registered under this Act;

“**Constitution**” means the Interim Constitution of Southern Sudan, 2005 abbreviated (ICSS);

“**Director General of Taxation**” means the chief administrator of the Directorate of Taxation.

“**Employee**” means an individual, who performs works for wages under the control or supervision of an employer, or a professional receiving payment for personal services performed, including but not limited to government officials, members of the Assembly and the Judiciary, regardless of whether the work is performed under a written or unwritten contract or some other commercial

agreement, on a full or part-time basis, or whether or not the person is a resident in Southern Sudan;

**“Employer”** means any person who pays wages, either directly or through another person, to an employee for services rendered in respect of employment in Southern Sudan, and includes:

- (a) any Government of Southern Sudan Institution;
- (b) any State Institution;
- (c) any business organization;
- (d) any permanent establishment of a non-resident;
- (e) any non-governmental organization;
- (f) international organizations, liaison offices and diplomatic missions of foreign governments; and,
- (g) any individual who pays wages in the course of carrying on business in Southern Sudan.

**“Fair market value”** means the price that a seller is willing to accept and a buyer is willing to pay on the open market in an arm’s length transaction;

**“Government of Southern Sudan Institutions”** includes all of the following:

- (a) The Government of Southern Sudan, or any Government of Southern Sudan Ministry, the Bank of Southern Sudan, or any Directorate of Taxation, institution or undertaking thereof;
- (b) any authority, board, commission, committee or other body, whether paid or unpaid, which is vested with or is performing, whether permanently or temporarily, functions of public nature;

**“Government”** means the Government of Southern Sudan and hereby abbreviated as “Government of Southern Sudan”;

**“Information return”** means a tax document by which withholders, employers, and persons who pay wages, dividends, interest, or any other form of payment are required to file a report of such transactions to the Directorate of Taxation.

**“Intangible property”** means patents, copyrights, licenses, franchises, and other property that consists of rights only, but has no physical form;

**“Minister”** means the Minister of Finance and Economic Planning;

**“Ministry”** means the Ministry of Finance and Economic Planning;

**“Non-resident”** means any person who is not resident in Southern Sudan.

**“Order”** means any notice of assessment, determination, notice of seizure, or other written communication directing a person to take action, issued by the Directorate of Taxation;

**“Organization”** means any government or agency, branch, or sub-division of a government and any religious, charitable, or other for profit or non-profit organization;

**“Sudanese Pound”** means the legal currency of Sudan;

**“Person”** means any individual or legal entity i.e. firm, cooperative, corporation, company, association, partnership, organization, joint venture, trust, or estate etc.

**“Property”** means both movable and immovable property and includes rights to property;

**“Related persons”** means persons that have a special relationship that may materially influence the economic results of any transaction between them. Special relationships exist between:

- (a) persons who are officers or directors of other person’s businesses.
- (b) persons who are partners in business;
- (c) persons who are in an employer-employee relationship;
- (d) persons where one holds or controls fifty-percent (50%) or more of the shares or voting rights in the other legal person;
- (e) persons where one directly or indirectly controls the other person;
- (f) persons who are directly or indirectly controlled by a third person; and,
- (g) persons who are members of the same extended family, including but not limited to a spouse, ancestor or descendant, sister or brother, nephew or niece, spouse of a sister or brother, and an uncle or aunt;

**“Representation costs”** means all costs related to the promotion of the business or its products and includes but not limited to costs for publicity, advertising, entertainment, and representation.

**“Resident”** means:

- (a) an individual who is domicile in Southern Sudan or is physically present in Southern Sudan for 183 days or more in any tax period; or
- (b) a company, a partnership or other entity which is established in Southern Sudan or has its place of effective management in Southern Sudan.

**“Taxation officer”** means an employee of the Directorate of Taxation;

**“Tax”** means any compulsory amount of money payable to **Government of Southern Sudan** under this Act or any other law;

**“Tax advisor”** means a person who provides tax advice to a taxpayer;

**“Taxpayer”** means any person who is required to make an application for a taxpayer identification number under this

Act and may be defined in and for individual Chapters of this Act without prejudice to this definition;

**“Taxpayer identification number”** means the number assigned to a person under section 17 of this Act;

**“Tax period”** means the calendar year;

**“Tax withholder”** means any person who is required to withhold tax;

**“UnderSecretary”** means the UnderSecretary of the Ministry of Finance and Economic Planning;

**“Wages”** means any amount paid by any person, in cash or in kind, as compensation for personal services rendered, whether or not under a written contract of employment or services and includes salary, remuneration, bonus, commission, allowances or any other form of payment relating to employment.

- (2) Unless specified in subsection (1) above or otherwise, technical words and phrases in this Act having a peculiar and appropriate meaning shall be construed and understood according to their technical meanings.



## **Chapter II The Directorate of Taxation**

### **Section 6. Responsible Authority**

1. The Director General of the Directorate of Taxation shall have an exclusive responsibility and authority for the operation and administration of all aspects of the tax system in the Government of Southern Sudan including, but not limited to the implementation of this Act unless otherwise specified.
2. The Director General of the Directorate of Taxation shall be responsible for providing procedural and other guidance necessary for the collection and remittance of all revenues within Southern Sudan.

### **Section 7. Directorate of Taxation Functions and Duties**

- (1) The Directorate of Taxation shall have the following functions and duties:
  - (a) establish offices, as necessary in places that are convenient for taxpayers;
  - (b) establishment of a registration system in which each taxpayer will have his or her own unique identifying number;
  - (c) investigate possible violations of this law and tax offences;
  - (d) make assessments of tax, penalties and other charges, and provide the taxpayer with notice of such assessment;
  - (e) pursue collection and enforcement of tax payment and assessments;
  - (f) establish an appeals board consistent with the provisions of Chapter X of this Act to hear appeals by taxpayers and tax withholders;
  - (g) such other functions and duties as may be necessary to fulfil its obligations under this Act or any other law.
- (2) The Directorate of Taxation may engage in such other functions and duties and exercise such other powers as may be conferred upon it by the ICSS, the President, the Minister, the UnderSecretary, the provisions of this Act and any other law.

### **Section 8. Guiding Principles and Values**

The Directorate of Taxation shall observe the following guiding principles and values when exercising its functions and duties:

- (a) ensure transparency in operations so that the level of government entitled to the revenue proceeds has complete information on revenue collections and can validate the calculations of its share;
- (b) clearly enlighten the citizens on their rights and duties under this Act in a manner that is educating and permits the self-assessment of taxes;
- (c) make easily understood forms and instructions freely available to the public;
- (d) ensure that the law is applied uniformly to all taxpayers by publicizing explanations on how the Directorate of Taxation will apply the law where such application may affect a number of taxpayers;
- (e) through the selection, training, and promotion of revenue officers, encourage them to be honest, courteous, and fair and to apply the law, regulations and rulings to each case on the basis of the objective facts;
- (f) apply sanctions and penalties that are clearly understood and are swiftly applied in a uniform manner;
- (g) make educational visits to taxpayers to ensure that they understand their rights and duties; and,
- (h) to reduce Directorate of Taxation's reliance on sanctions that punish taxpayers for violations, develop programs and practices that encourage taxpayers to comply with the law.

## **Section 9. Administration of the Directorate of Taxation**

The Directorate of Taxation shall consist of the Director General of Taxation, Directors and such other taxation officers as are necessary for the effective implementation of this Act.

## **Section 10. Functions and Duties of the Director General of Taxation**

- (1) Management of the Directorate of Taxation shall be the direct responsibility and duty of the Director General of Taxation.
- (2) The Director General of Taxation shall be the highest authority in the Directorate of Taxation who, subject to the control of the UnderSecretary, shall be responsible for the operationalization and administration of this Act and the control, management, collection and accounting for all taxes levied thereunder and of all matters incidental thereto.

- (3) Without prejudice to the generality of subsection (1), above, the Director General of Taxation shall have administrative, financial and technical powers required for the performance of the work of the Directorate of Taxation.

### **Section 11. Organizational Plan**

- (1) Subject to the provisions of the Public Service law, rules and regulations, the Director General of Taxation shall, within 90 days of the enactment of this Act, submit to the Minister through the UnderSecretary the initial plan for organizing the Directorate of Taxation.
- (2) Upon adoption by the Minister, and subject to necessary approvals in the provisions of the Public Service law, rules and regulations, the initial plan shall be effective and shall be made available to the public.

### **Section 12. Directors**

- (1) There shall be one or more Directors assisting the Director General of Taxation.
- (2) A Director shall be subject to appointment and removal on the recommendation of the Director General of Taxation, and under existing Public Service law, rules, regulations and procedures.

### **Section 13. Identification Cards**

- (1) A taxation officer shall be issued an identification card that indicates the powers that he or she may exercise in the performance of his or her functions and duties.
- (3) When exercising any powers under this Act, a revenue officer shall produce his or her identification on the request of any person.

### **Section 14. Power to Investigate**

- (1) The Director General of Taxation shall have the authority to investigate any person:
  - (a) if there is reason to believe that such person is required to be registered under this Act and has not made an application for registration;
  - (b) to verify a tax return;
  - (c) to make an assessment;

- (d) to verify a claim for refund of tax;
- (2) In exercising his or her authority under subsection (1), above, the Director General of Taxation may:
  - (a) inspect all goods, premises, documents, books, and records relating to the taxpayer's liability for tax;
  - (b) search any establishment where there is reasonable grounds for suspecting that evidence of any offence under this law is contained therein;
  - (c) require any person to answer questions relating to any record, book, account, other document, or entry therein.;
  - (d) take possession of and remove any documents, books and records from any establishment; and,
  - (g) perform audits at the taxpayer's place of business, at a revenue office, or at any other appropriate place.
- (3) The Director General of Taxation may provide written notice to any person, including a bank or financial institution, requiring that person to give access to all documents in that person's possession concerning a particular taxpayer.
- (4) Where a record or other document is removed from any premises, the Director General of Taxation, may make a copy of the record or other item and shall return the original in the shortest time practicable, but in no event not exceeding seven (7) days from the date of removal.
- (5) This section does not authorize access to diplomatic or consular premises, or those of other representatives of foreign countries, as well as other organisations that have immunity under international law, without official consent.

### **Section 15. Taxation Officers**

- (1) Subject to the provisions of the Public Service law, rules and regulations and in consultation with the Minister of Labour, Public Service and Human Resource Development, the Director General of Taxation shall establish procedures (including competitive examinations) under which the employees of the Directorate of Taxation will be selected solely on the basis of merit and ability to perform the required work.
- (2) Appointment of heads of taxation offices at the state level shall require a written "no objection" statement from the State Governor.

- (3) Subject to the provisions of the Public Service law, rules and regulations and in consultation with the Minister of Labour, Public Service and Human Resource Development, the Director General of Taxation shall establish procedures pursuant to which employees shall be promoted solely on the basis of merit and ability to perform the work of the position to which they are being promoted.
- (4) Subject to the provisions of the Public Service law, rules and regulations and in consultation with the Minister of Labour, Public Service and Human Resource Development, the Director General of Taxation shall establish procedures under which employees who misrepresent qualifications, or who are found to be accepting bribes, or who are found to be in gross violation of other operating procedures may be disciplined and or dismissed from the Directorate of Taxation.
- (5) The Directorate of Taxation employees are employed subject to terms and conditions of services determined by the provisions of the Public Service law, rules and regulations and in addition shall be subject to a Code of Conduct for Directorate of Taxation employees and the procedures for sanctioning and recommending dismissal of employees who violate the Code of Conduct.
- (6) The Directorate of Taxation shall provide for appropriate internal training of its employees.

## **Section 16. Delegation of Authority**

- (1) The Director General of Taxation may, subject to such limitations as he or she may deem appropriate, delegate to any Director, taxation officer or class of taxation officers any of the powers conferred by this Act upon him or her. Such delegation shall be:
  - (a) in writing; and
  - (b) signed by the Director General of Taxation.
- (2) Where there is any vacancy in the office of Director General of Taxation or where the Director General of Taxation is incapacitated by illness, absence or other cause from performing the functions and duties of the office, a Director appointed in accordance with the provisions of section 12 of this Act, shall have and may exercise or perform all or any of the powers, functions and duties of the Director General- Taxation.

- (3) In the absence of one or more standing delegations in relation to the circumstances set forth in subsection (2) above, the Minister shall select the Director to exercise or perform all or part of the powers, functions and duties of the Director General of Taxation in the circumstances set forth under subsection (2) above.

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## **Chapter III Taxpayer and Tax Withholder Registration**

### **Section 17. Taxpayer and Tax Withholder Registration**

- (1) Every person liable to make a payment or file a tax return under this Act, or responsible for withholding tax under Chapter XIV of this Act, shall submit an application for registration, on the prescribed form, to the Directorate of Taxation, before commencing business or in any other case before the first payment under this Act becomes due.
- (2) Any person responsible for withholding tax under Chapter XIV of this Act or any other person including a business, entrepreneur, partnership, individual, estate, or trust, who makes reportable transactions exceeding SDG 3600 during the calendar year must file information returns by the end of February of the following year to report these transactions to the Directorate of Taxation.
- (3) No fee shall be charged by the Directorate of Taxation for the prescribed form of application or filing of an application of registration.
- (4) Multiple owners or persons who wish to carry on a business in partnership or as a joint venture shall file a joint application for registration and in such a case the business shall be issued a unique tax identification number.
- (5) In the case of registration of multiple owners or persons who want to carry on a business jointly, the owners of such business may appoint one owner to handle all matters of the business under this Act, however all owners shall be collectively and individually liable for actions related to the joint business.
- (6) Where an application for registration has been made by a person, unless the Director General– Taxation rejects such application, the registration shall be made by the Director General– Taxation.
- (7) The Director General of Taxation may reject an application for registration under the same circumstances as he or she may cancel a registration under section 18 below.

### **Section 18. Cancellation of Registration**

The Director General of Taxation may cancel a registration under the following circumstances:

- (a) an incorporated entity closes down, ceases to exist, sells or transfers a business;
- (b) in the case of a sole proprietorship, if the individual dies;
- (c) in the case of a partnership, if it is dissolved, or change of a partner;
- (d) the legal status of the registered person changes;
- (e) if a person is registered in error; or,
- (f) in any other case as may be provided by law or regulations.

### **Section 19. Change of Information**

- (1) Every registered taxpayer shall provide the Director General of Taxation with notice of any changes in the information pertaining to the application for registration within 15 days of such change, on the prescribed form.
- (2) Until the date that the Director General of Taxation receives notice of such change, all information in the application for registration shall be deemed to be correct for the purposes of this Act and, in particular, for the purpose of any liability for tax, penalty, additional charge or interest due under this Act.

### **Section 20. Tax Identification Number and Certificate of Registration**

- (1) Any person who submits an application for registration or who is otherwise registered under section 17 of this Act, shall be issued a unique tax identification number and a certificate of registration.
- (2) A person's tax identification number shall be:
  - (a) reflected on all returns, transactions and other documents required under this Act; and,
  - (b) provided to any other person who is making payment to, or otherwise required to give tax information with respect to, the person being identified;
- (3) The registered taxpayer shall display the certificate of registration in a conspicuous place at the place of business. If the taxpayer has more than one place of business, a copy of the certificate of registration, as attested by the Director General of Taxation shall be displayed in a conspicuous place at each place of business.



## **Chapter IV Taxpayer Rights and Duties**

### **Section 21. Filing Returns and Extension of Time**

- (1) Except as otherwise provided in this Act, every taxpayer shall file, on the prescribed form, a tax return with Directorate of Taxation, on or before the date specified by regulations.
- (2) If any filing date is not a business day in Southern Sudan, the filing date shall be the first business day thereafter.
- (3) If a taxpayer applies before the filing date for an extension of time to file a return and pays with the application the amount of tax estimated to be due, the deadline for filing the return shall be automatically extended for two months.
- (4) An extension of the deadline granted under subsection (3) above does not alter the deadline for payment of the tax and does not suspend the accrual of interest.

### **Section 22. Payment of Tax and Other Amounts**

- (1) When a tax return or any other filing is required under this Act, the person required to make such return or filing shall pay at the time and place fixed for filing the return except as may be otherwise prescribed by regulations.
- (2) If a taxpayer applies for an extension of time to pay, the Director General of Taxation may at his or her discretion, extend the deadline for payment but in no event shall the extension be granted for a period exceeding six (6) months.
- (3) An extension of the deadline does not suspend the accrual of interest.

### **Section 23. Status of the Return**

The filing of a return by a taxpayer showing liability for tax is a self assessment of tax and shall be treated as:

1. an assessment of such tax;
2. notice and demand that such tax be paid with the return; and,
3. a debt owed to the Government of Southern Sudan, which may be collected pursuant to the provisions of this Act or any other law.

### **Section 24. Books and Records**

- (1) Each taxpayer shall keep accounts of all transactions and these accounts shall be made available in Southern Sudan for inspection by a revenue officer.
- (2) No expense or deduction shall be allowed under this Act unless the taxpayer maintains documentation in the required manner and form.
- (3) Each taxpayer shall preserve his or her accounts and documents substantiating them for a period of six (6) years.

### **Section 25. Transactions in Foreign Currency**

Any transaction which is recorded in or effected in a foreign currency shall be converted into Sudanese Pounds (SDG) at the prevailing market rate.

### **Section 26. Communications with Taxpayers**

- (1) Any notice or other document issued by the Directorate of Taxation, which requires a taxpayer to take action, shall be formally served if it is in writing, signed by the Director General of Taxation or his or her delegate, officially stamped, and sent to or served upon the taxpayer.
- (2) Such documents shall be considered formally served if they are delivered to the last known address of the taxpayer or are personally served upon the taxpayer or his or her representative.

### **Section 27. Written Rulings**

- (1) The Director General of Taxation may issue to a taxpayer a ruling setting out the application of tax legislation to a transaction by the taxpayer. Such a ruling is an "other decision" under section 49(3) of this Act, and the taxpayer to whom it is issued may appeal to the Appeals Board convened under Chapter X of this Act for reconsideration of the ruling.
- (2) If 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 proceeds in all material respects as described in the taxpayer's application for the ruling, ruling under subsection (1) above shall be binding on Directorate of Taxation and the taxpayer with respect to the application of the law as it stood at the time of the ruling.

## **Section 28. Taxpayer Advisor**

- (1) Taxpayers are entitled to represent themselves or have someone else represent them in relation to any tax matter that materially affects them before Directorate of Taxation or an Appeals Board convened under Chapter X of this Act.
- (3) Every person who for a consideration assists another person in preparing a required return shall also sign the return. This subsection shall not apply to an employee of the person required to make the return.

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## Chapter V Tax Assessment and Notice

### Section 29. Assessment of Tax

- (1) The Director General of Taxation shall investigate and make assessments of all taxes, due to one or more of the following reasons; if-
  - (a) a return is not filed in accordance with the provisions of this Act;
  - (b) a return is filed, but is otherwise incomplete, erroneous or fraudulent;
  - (c) the revenue officer has reason to believe that the amount of tax is understated or otherwise incorrect;
  - (e) goods entered into the territory of Southern Sudan are not accounted for at the time of entry; or,
  - (f) in any other case as may be prescribed by regulations.
- (2) An assessment may be based on one or more of the following:
  - (a) evidence that supports or disputes the transaction;
  - (b) an investigation report prepared by a revenue officer relating to the transactions;
  - (c) tax paid on similar transactions by other persons, and,
  - (d) as may be prescribed by regulations.
- (3) The taxpayer shall be given a reasonable opportunity to submit his or her facts and documentation, if any, in the course of determining an assessment.

### Section 30. Assessment of an Individual

Where an individual has declared an amount of income insufficient to support expenses incurred for personal consumption, including acquisition of property, the Director General of Taxation may determine the income for purposes of taxation on the basis of expenses incurred by the individual, taking into account income of previous periods or any other relevant information in accordance with the provisions set forth in the regulations.

### Section 31. Inaccurate or Destroyed Records

Where a taxpayer:

- (a) fails to maintain accurate accounts of transactions,

- (b) fails to keep accounts and records in the required form and manner,
  - (c) if accounting documents or records are lost or destroyed; or,
  - (d) any similar event which affects the accuracy or existence of the documents,
- the Director General of Taxation may determine the tax payable, in accordance with the rules set forth in the regulations.

### **Section 32. Notice of Assessment and Demand**

- (1) Other than on self-assessment under section 23 of this Act, an assessment shall not be binding on a taxpayer unless he or she is given a written notice of an assessment and demand of tax liability on the prescribed form, and formally served in accordance with the provisions of section 26 of this Act.
- (2) The notice of tax assessment and demand shall contain the following information:
  - (a) the full name of the taxpayer as recorded at the time of registration, or any amendment thereto;
  - (b) the taxpayer identification number;
  - (c) the date of the notice;
  - (d) the matter and tax period to which the notice relates;
  - (e) the amount of assessment, including tax, interest, and penalties, if any;
  - (f) the reason for the assessment;
  - (g) a demand for payment of the total amount assessed and date specific for payment;
  - (h) the place and manner of payment;
  - (i) the appeal rights of the taxpayer, and
  - (j) any other information as may be prescribed by regulations.

### **Section 33. Payment on Notice and Demand**

- (1) On notice and demand from the Directorate of Taxation, the taxpayer shall pay, at the place and time, the amount of tax, including any interest and additional charges stated in the notice and demand as set forth in section 32 above.
- (2) Failure to pay in accordance with the provisions of subsection (1) above, may result in the taxpayer being subjected to the collection practices provided in Chapter IX of this Act.

### **Section 34. Penalty for Understatement**

- (1) In a case where a tax return was filed, but the amount of tax stated on the return understates the amount of tax actually required to be paid by less than twenty five percent (25%) the taxpayer shall be liable for a penalty in the amount of ten percent (10%) of the understatement.
- (2) If the amount of understatement exceeds twenty five percent (25%) of the tax required to be shown on the return, the taxpayer shall be liable for a penalty in the amount of fifty percent (50%) of the understatement.
- (4) If the amount of understatement exceeds twice times the tax required to be shown on the return, the taxpayer shall be liable for a penalty in the amount of the understatement but not less than two hundred percent (200%) of the understatement.
- (5) Notwithstanding the provisions of subsections (1), (2) and (3) above, where a taxpayer voluntarily notifies the Director General- Taxation that the amount of tax stated on the return understates the amount of tax actually paid, the taxpayer shall be liable for a penalty in the amount of five percent (5%) of the understatement.

## Chapter VI Time Limits for Assessments and Collections

### Section 35. Time Limit for Assessments and Collections

- (1) Any assessment shall be made within three (3) years from the date the tax return was filed or the date the tax return was due, or the claim to any tax or other charges shall be forfeited.
- (2) Notwithstanding the provisions of subsection (1) above, an assessment may be made at any time where a person with the intent of evading the payment of tax:
  - (a) fails to file a return;
  - (b) files a return which is determined to be incorrect; or,
  - (c) commits fraud by or on behalf of a person in relation to the tax liability.
- (3) Where the assessment of any tax has been made within the applicable period of limitation, such tax shall be collected:
  - (a) within six (6) years after the date of the notice of assessment and demand of the tax, or
  - (b) before the expiration of any period for collection agreed upon in writing by the designated officer and the taxpayer, and in lieu of that, the claim to any tax or other charges shall be forfeited by the GOVERNMENT OF SOUTHERN SUDAN.
- (4) If a proceeding for the collection of tax is filed with any court, the normal period for collection of the tax liability shall be suspended during the time the tax matter is before the court, until the tax matter is finally adjudicated. Additionally, the time period from the filing of the petition before the court until final adjudication of the tax matter shall be added to the normal collection period.
- (6) A tax which has not been collected within six (6) years from the date the tax was assessed shall be segregated and the tax shall be declared uncollectible.
- (7) The Director General of Taxation is not restricted from declaring a taxpayer's account uncollectible within the six (6) year period set forth in subsection (5) above, if in the opinion of the Director General of Taxation, the taxpayer is dead, insolvent, out of business, or cannot be located.

- (8) The Director General may reopen the taxpayer's account within the six (6) year period if the taxpayer's circumstances changes, or if, in the case of a dead taxpayer, the Director General of Taxation can recover assets from the taxpayer's estate.

## **Chapter VII Interest, Penalties, and Other Charges**

### **Section 36. Interest**

- (1) If the amount of tax due or any portion thereof is not paid on or before the last day for payment, interest on the amount due shall accrue at the rate established under subsection (2), below, for the period from such last date to the date paid. This interest may be waived only where it is proved that the taxpayer is not liable for the tax assessment.
- (2) A rate of interest for underpayments shall be published at least annually. Such rate for each period shall be one hundred and twenty percent (120%) of the prime commercial rate for such a period.
- (3) For purposes of subsection (2) above, the term "prime commercial rate" means the average rate commercial banks in Southern Sudan charge other banks and financial institutions.

### **Section 37. Penalties**

- (1) If the amount of tax due or any portion thereof is not paid on or before the last day for payment, a penalty of five percent (5%) shall accrue without the need for any further action by the Directorate of Taxation.
- (2) Accrual shall commence on the day after payment of tax was due, and shall be calculated at the beginning of each successive month that passes until the obligation is fulfilled.
- (3) The penalty imposed under this section may be waived due to verifiable reasons beyond the control of the taxpayer, in accordance with the conditions prescribed by the regulations.

### **Section 38. Additional Charges**



- (1) If any taxpayer fails to file a return in accordance with the provisions of this Act, there shall be added to such taxpayer's tax liability an additional charge of five percent (5%) of the tax reportable on the return for each month the return is late, up to a maximum of twenty five percent (25%) of the tax reportable.
- (2) If any person is required to file an information return with respect to any payment of a dividend, interest, or sale proceeds, or with respect to any other transaction, such person shall be assessed and shall pay a charge equal to 20% of the assessed amount if that person fails to file it on time.
- (3) The additional charges which may be assessed under this section may be waived due to verifiable matters beyond the control of the taxpayer, in accordance with the conditions prescribed by the regulations.

### **Section 39. Failure to Withhold Tax**

A person who fails to withhold tax from payment as required under Chapter XIV of this Act shall be:

- (a) liable to pay the tax not withheld, as well as the respective penalties and interest; and
- (b) no deduction shall be allowed for the payment which would have otherwise been allowed as a deduction under the provisions of sections 59 and 70 of this Act.

### **Section 40. Penalties and Interest Treated as Tax**

- (1) Any interest, penalty, or charge that becomes due and payable under this Act shall be treated as a tax that has become due and payable.
- (2) When an amount paid is insufficient to retire the total amount due and payable, the payment shall be applied in the following order: first to interest, then penalties, then taxes, then all other amounts that may be due.

## **Chapter VIII Credit and Refunds**

### **Section 41. Credit or Refund of Amount Paid**

- (1) In case of overpayment of a tax or other payments imposed under this Act, a credit in the amount of such overpayment may be applied against any liability in respect of any other amount imposed by this Act on the part of the taxpayer who made the overpayment, and any excess balance may be refunded to such taxpayer.
- (2) Any amount to be paid to a taxpayer under the provisions of this Act shall be paid in form of a non-cash negotiable instrument, or into the taxpayer's designated bank account located in Southern Sudan.
- (3) The taxpayer shall file a claim for credit or refund of an overpayment of any tax within two (2) years from the date the tax was paid except for the case of tax on imported goods where the claim shall be filed within 90 days.

## **Chapter IX Collection of Unpaid Tax**

### **Section 42. Methods of Collection**

- (1) If any taxpayer neglects or refuses to pay his or her assessed tax in accordance with a notice of assessment and demand, the amount including any interest, penalty or additional charge, together with any costs that may accrue shall be satisfied in accordance with the provisions of this Chapter.
- (2) The Director General of Taxation may use any or all of the following methods to collect tax which is due:
  - (a) offsetting the tax due to the taxpayer from any amount that may be refundable under this Act;
  - (b) seizing property of the taxpayer;
  - (c) auctioning all or part of the taxpayer's property in accordance with the applicable law;
  - (d) demanding funds of the taxpayer on deposit at a financial institution;
  - (e) seizing amounts due and owing to the taxpayer by any Government of Southern Sudan Institution;
  - (f) seizing amounts owed the taxpayer by any third party, subject to such safeguards protecting the rights of third parties as may be provided for by applicable law; or,
  - (g) suspending the Customs clearance of the imports, exports, and other international transactions of the taxpayer.

### **Section 43. Seizure of Property**

- (1) Pursuant to the provisions of section 42 above, a taxpayer's right of ownership and use of his or her property, whether movable or immovable, may be restricted by a lien and subject to seizure.
- (2) The Director General of Taxation shall give written notice to a taxpayer whose property is subject to a lien and shall give notice that the taxpayer shall have 15 days to satisfy his or her assessed tax or the property shall be subject to attachment and or seizure.
- (3) If a taxpayer fails to pay the assessed tax within fifteen (15) days, the Director General of Taxation may give written notice, in the prescribed form, to the taxpayer that the Director General of Taxation intends to seize the taxpayer's property subject to the lien and specified in the

notice, and that continuing failure to pay the assessed tax may result in the seized property being sold for the purposes of satisfying the tax debt.

- (4) Only that property necessary and sufficient to satisfy the unpaid tax may be subject to attachment and or seizure under this Act.
- (5) The following shall not be liable to such attachment or sale:
  - (a) necessary wearing apparel, cooking utensils, beds, bedding, medicines prescribed for the taxpayer or members of the taxpayer's family, food necessary for feeding the taxpayer, the taxpayer's spouse and children and his or her relatives whether by blood or marriage who are legally dependent on and resident with the taxpayer;
  - (b) such tools, implements and stock of the taxpayer's trade or calling which, in the opinion of the Director General of Taxation are necessary to enable him or her to earn his or her livelihood;
- (6) The regulations shall prescribe the form and manner required to file and execute a lien and seize the assets of a taxpayer.

#### **Section 44. Enforcement of Seizure**

- (1) If a taxpayer continues to fail to pay the assessed tax fifteen (15) days after the issuance of the written notice under section 43(3) above, the Director General of Taxation may, by written notice in the prescribed form, require a party in possession of the property subject to seizure proceedings, regardless of whether such person is the taxpayer or a third person to surrender the property to the Director General of Taxation.
- (2) The Director General of Taxation may:
  - (a) store the seized property or deliver it on contractual basis for safekeeping to a third party; or
  - (b) leave it in the safekeeping of the taxpayer, who shall be responsible for maintaining the property.
- (3) Any costs incurred by the Director General of Taxation in the seizure and storage of goods under this Act shall be payable by the taxpayer and may be recovered from him or her.
- (4) A person who fails to comply with a demand made pursuant to the provisions of subsection (1) herein, shall be

liable in the amount of the value of the property held, based on fair market value, plus a penalty in the amount of 25% of the fair market value.

- (5) A person complying with the requirements of this section shall be discharged from any obligation, to the Directorate of Taxation, or to any other person to the extent of the value of property surrendered, as determined by public auction, and shall therefore not be liable for any loss or damage incurred as a consequence of compliance.
- (6) The Director General of Taxation may make an application through the Ministry of Legal Affairs and Constitutional Development to obtain a court order to seize property under this section, conditions under which such application is made shall be in accordance with the regulations.

#### **Section 45. Sale of Seized Property**

- (1) Any property of a taxpayer seized shall be sold at a public auction conducted in accordance with procedures and conditions set forth in the regulations. Special provisions shall be made in the case of perishable goods for their immediate sale.
- (2) The sale proceeds shall be applied first against the expenses of the sale and any costs of storage incurred under section 44 above. Any proceeds in excess of the taxpayer's liabilities shall be returned to the taxpayer within ten (10) banking days.

#### **Section 46. Seizure from Banks**

- (1) Pursuant to the procedures for seizure and after expiration of the fifteen (15) days period, there may be issued a demand notice to third parties including the taxpayer's bank or any other financial-credit institution ordering direct payment of any amount owed by a third party to the taxpayer within ten (10) days of the receipt of the notice.
- (2) If the amounts due are not paid within the time specified, the Director General of Taxation may make an application through the Ministry of Legal Affairs and Constitutional Development to obtain a court order for collection of these amounts from any third party.
- (3) Where the Director General of Taxation determines that any officer or director of a business participated in the sale of a substantial portion of the assets of the business, knowing that at such time the business was in arrears in

paying tax, such officer or director shall be personally liable for any portion of such arrears remaining unpaid. Any such determination shall be made not later than two (2) years after the date of the sale.

- (4) If an officer or an employee of a bank or financial institution knowingly authorises or effects a transaction on an account after such officer or employee received a notice issued under subsection (1) of this section which results in there being no sufficient funds in the specified account to wholly satisfy the amount of tax set out in the notice, the officer or employee commits an offence and shall on conviction be liable, to imprisonment for a term not exceeding one year or to a fine not exceeding three thousand (SDG3000) Sudanese Pounds, or with both.

#### **Section 47. Jeopardy Assessment**

- (1) Notwithstanding any provision of this Act, if the Director General of Taxation is of the opinion that the collection of the tax is in jeopardy because any person is about to leave Southern Sudan, or to remove or conceal assets, or in any manner dispose of assets, the Director General of Taxation shall:
  - (a) proceed to the immediate assessment and collection from the taxpayer of tax due, or about to become due; and
  - (b) file, in coordination with the Ministry of Legal Affairs and Constitutional Development, for an urgent order or injunction in court binding, inter alia, all Government of Southern Sudan officials including all members of the Government of Southern Sudan Police Service and all the officials working or involved with Customs or Immigration, prohibiting that persons departure from Southern Sudan until full payment is received.
- (2) If the Director General of Taxation believes that a taxpayer transferred assets to any beneficiary for the purpose of evading payment of a tax liability, after the accrual of such liability, he or she shall in coordination with the Ministry of Legal Affairs and Constitutional Development seek an order from the court to transfer the tax liability along with any resulting interest and penalty to the beneficiary of the taxpayer's assets;
- (3) A beneficiary under subsection (2) above shall be:
  - (a) assessed the tax liability as prescribed under section 29 of this Act, not to exceed the value of the assets received; and

- (b) issued a notice of tax assessment and demand in accordance with the provisions of section 32 of this Act, and
- (c) subjected to all collection activities authorised under this Chapter.

#### **Section 48. Taxpayer Safeguards**

No Government of Southern Sudan or State Institution other than the Directorate of Taxation shall rely on the provisions of this Act to seize or to hold any property.

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## **Chapter X Appeals Board and Judicial Review**

### **Section 49. Appeals**

- (1) The Minister shall convene an Appeals Board to review a tax assessment or a ruling made by the Directorate of Taxation.
- (2) The membership of the Appeals Board shall consist of:
  - (a) Undersecretary – Chairperson
  - (b) The President of the Southern Sudan Society of Accountants - member.
  - (c) Director General of Taxation –Secretary (Ex-officio)
  - (d) An Adhoc member appointed by the Minister.
- (3) A taxpayer who disputes a tax assessment or other decision of the Director General of Taxation or Directorate of Taxation may appeal to the Appeals Board for reconsideration. The appeal shall indicate the reasons and include the documents, if any, on which the taxpayer bases the request. The appeal shall be filed within 30 days after the action that gave rise to the appeal.
- (4) The person submitting the appeal shall have the burden of proving that the decision, assessment or determination against which he or she is appealing was incorrect.
- (5) The Appeals Board may issue summons, take statements and evidence and direct appellant to submit documents in the same manner as a court.
- (6) Subject to the provisions of this Act, the procedures and conduct of business of the Appeals Board shall be determined by it.

### **Section 50. Decisions of Appeals Board**

- (1) The Appeals Board shall make a written decision on any matter before it not later than 60 days after the receipt of the petition, or the day on which the taxpayer submits such documents as are required by the Appeals Board.
- (2) Where the Appeals Board does not make a decision on the matter before it within the time specified, a decision shall be deemed to have been made in favour of the taxpayer.



- (3) The Director General of Taxation shall immediately take the necessary action as may be required by a decision made under this section.
- (4) In appealing to the Appeals Board under this Chapter a taxpayer may be legally represented, may cross-examine witnesses and shall be entitled to the same rules of privilege as in a court of law.
- (5) The Appeals Board shall give reasons for its decisions.

### **Section 51. Judicial Review**

- (1) Decisions of the Appeals Board may be appealed to the High Court; *provided that*, the appeal is initiated within 15 days of receiving notice of the decision of the Appeals Board.
- (2) The High Court may only permit an appeal under subsection (1) when it is based on:
  - (a) a question of jurisdiction;
  - (b) a question of interpretation of law; or
  - (c) a question of evidence.

### **Section 52. Suspension of Tax Collection**

An appeal for review by the Appeals Board or an appeal to the High Court shall suspend collection of the tax, subject of appeal, but only with respect to the amounts in dispute.

## Chapter XI Personal Income Tax

### Section 53. Interpretations for Chapter XI

Unless the subject or context otherwise requires, in this Chapter, the following words and expressions shall have the meanings assigned to them respectively:

“*Capital assets*” means tangible property with a service life of one year or more;

“*Entrepreneurial activities*” means any economic activity entered into by an individual for profit including, but not limited to: retail operations, manufacturing, trade, entertainment, transport, agricultural, vocational, professional or other services;

“*Foreign source income*” means gross income that is not Southern Sudan source income;

“*Representation costs*” means all costs related to promotion of the business or its products and includes costs for publicity, advertising, entertainment, and representation;

“*Southern Sudan source income*” means gross income that arises due to work done within the territory of Southern Sudan, which includes, but not limited to:

- (a) wages;
- (b) income from entrepreneurial activity;
- (c) income from the use of movable or immovable property; and,
- (d) income from the use of intangible property;

“*Taxable income*” means the difference between gross income earned or received during the tax period and the sum of deductions allowable with respect to such gross income.

### Section 54. Object of Personal Income Tax

- (1) The object of the income tax for a resident individual taxpayer shall be all taxable income from Southern Sudan source income and foreign source income.
- (2) The object of the tax for a non-resident individual taxpayer shall be taxable income from Southern Sudan source income.

### Section 55. Taxpayers

- (1) For the purposes of this Chapter, taxpayers shall include resident and non-resident individuals who have earned or

received gross income, as defined in section 57 of this Act, during the tax period.

- (2) Individuals who are taxed at a zero rate as set forth in Schedule II of this Act shall not be taxpayers for the purposes of this Chapter.

### **Section 56. Taxable rate**

The rate of tax shall be as set forth in Schedule II of this Act.

### **Section 57. Gross Income**

- (1) For the purposes of this Chapter gross income shall be all income earned by the taxpayer, or otherwise accrued, from all sources which are not exempted under this Act including:
  - (a) wages;
  - (b) entrepreneurial activities;
  - (c) rents from land, buildings, machinery, equipment and vehicles;
  - (d) the use of intangible property;
  - (e) interest;
  - (f) dividends;
  - (g) capital gains;
  - (h) lottery and other gambling winnings;
  - (i) any other source that increases the taxpayer's net worth.
- (2) The following income shall be exempted from the calculation of gross income:
  - (a) wages received by foreign diplomatic and consular representatives and foreign personnel of Liaison Offices in Southern Sudan;
  - (b) wages received by foreign representatives, foreign officials and foreign employees of international governmental organizations and international non-governmental organizations;
  - (c) where provided by an agreement with Government of Southern Sudan wages received by foreign representatives, foreign officials and foreign employees of donor agencies or their contractors or grantees carrying out humanitarian aid, reconstruction work, civil administration or technical assistance;
  - (d) compensation for the damage or destruction of property, harm to an individual, and the proceeds of life insurance policies;
  - (e) interest and dividends where tax is withheld under Chapter XIV of this Act; and

- (f) pension income of a retired Government of Southern Sudan employee paid by GOVERNMENT OF SOUTHERN SUDAN;

## **Section 58. Gross Income from Wages Defined**

- (1) Gross income from wages includes, but not limited to:
  - (a) salaries paid by or on behalf of an employer;
  - (b) bonuses, commissions, allowances, and other forms of compensation in cash or in kind that an employer pays to employees in addition to salary;
  - (c) income earned under contracts for temporary work;
  - (d) pensions income;
  - (e) insurance premiums and any other in-kind benefit that an employer pays for or to an employee, that exceeds a de minimus amount as provided in the regulations;
  - (f) forgiveness of an employee's debt or obligation to the employer; and,
  - (g) payment of an employee's personal expenses.
- (2) Gross income from wages shall not include:
  - (a) contributions by the employer to funded pension schemes authorized by the Government of Southern Sudan;
  - (b) reimbursement of actual business travel expenses as provided in the regulations;
  - (c) reimbursement or compensation for work accidents or medical treatment and expenses, including hospitalisation and medication, other than wages paid during the period of absence from work due to sickness or injury.
- (3) There shall be allowed as a deduction from gross income contributions in an amount up to eight percent (8%) of gross wages paid by employees to funded pension schemes approved by the Government of Southern Sudan.

## **Section 59. Income from Entrepreneurial Activities**

- (1) Gross income from entrepreneurial activities means gross receipts including barter transactions generated from such activities.
- (2) There shall be allowed as a deduction from gross income from entrepreneurial activities:
  - (a) expenses incurred during the tax period wholly and exclusively in connection with such activities;

- (b) representation costs up to a maximum amount of two percent (2%) of total income from entrepreneurial activity;
  - (c) bad debts, provided that the amount corresponds to the debt that has previously been included in the income;
  - (d) expenses for travel, meals, lodging, and moving expenses under the circumstances provided in administrative rules; and,
  - (e) contributions in an amount up to fifteen percent (15%) of gross income paid to funded pension schemes approved by the Government of Southern Sudan.
- (3) Amounts paid to a related person shall be deductible in an amount equal to the fair market value of the goods or service.
- (4) Interest, rent, and other expenses paid to a related person shall be deductible in an amount equal to the fair market value.
- (5) Expenditures on capital assets shall be recovered over time through depreciation deductions under the straight-line method at the following rates:

| <b>Asset</b>                             | <b>Rate</b> |
|--|-------------|
| Building and other structures            | 10 percent  |
| Vehicles, office equipment and computers | 33 percent  |
| All other property                       | 25 percent  |

- (6) Amounts expended to repair, maintain, or improve capital assets are allowed as a deduction up to a maximum of five percent (5%) of the capital account. To the extent that the amount expended exceeds five percent (5%), such excess shall be added to the capital account.
- (7) Except for the five percent (5%) allowed under subsection (6) above, no additional deduction shall be allowed from income earned through entrepreneurial activities for:
- (a) cost of acquisition and/or improvement of land;
  - (b) cost of acquisition, improvement, renewal and reconstruction of assets that are depreciated or amortized;
  - (c) fines and penalties;
  - (d) income tax and value added tax for which the taxpayer claims a rebate or credit;
  - (e) personal, living, or family expenses; or,
  - (f) any loss from the sale or exchange of property directly or indirectly between related persons.

- (8) Contributions made to organisations for humanitarian, health, education, religious, scientific, cultural, and environmental protection shall be deductible provided those organisations are registered with the appropriate government entity as set forth in section 78 of this Act.

### **Section 60. Additional Records Required by Entrepreneurs**

All taxpayers who earn or receive income from entrepreneurial activities subject to tax under this Chapter shall keep the following additional books and records:

- (a) a sales book that includes the date of the sale of goods or the provision of service, the quantity of goods sold or services rendered, a description of the goods or services, and the total gross receipts;
- (b) a purchase book that includes the date of the purchase of goods or services, the quantity of goods or services, a description of the goods or services, the amount of the purchase, the seller's name, and the sellers' taxpayer identification number;
- (c) an expense book that includes a list of all expenditures not recorded in the purchase book such as wages, interest, and rent;
- (d) a capital account, if applicable, that includes the opening balance, additions to capital, expenses to be capitalized, depreciation rate, amount of depreciation, dispositions, closing balance; and,
- (e) any other book or record as may be prescribed by regulation.

### **Section 61. Advance Payment of Estimated Tax**

Each person engaged in any entrepreneurial activity or receiving income from rent shall remit an advance payment of estimated tax for the tax period in an amount prescribed by regulation on or before the following dates:

| <b>Filing date</b> | <b>Tax period</b>        |
|--------------------|--------------------------|
| 15 April           | 1 January to 31 March    |
| 15 July            | 1 April to 30 June       |
| 15 October         | 1 July to 30 September   |
| 15 January         | 1 October to 31 December |

### **Section 62. Credit for Amounts Paid**

Taxpayers may credit against the amount of tax owed under section 63 below, for the taxable year the following amounts:

- (a) amounts withheld as tax during the same tax period under Chapter XIV of this Act;
- (b) advance payments of tax under section 61 above;
- (c) advance payments of tax under Chapter XIII of this Act;
- (d) a foreign tax credit for tax paid to a foreign country on all or part of the foreign source income liable to tax in Southern Sudan where that foreign country provides a similar tax credit on Southern Sudan source income.
- (e) for the purposes of subsection (d) above, a foreign tax credit is the average rate of foreign tax or the average rate of Southern Sudan tax applied to that part of the foreign source income liable to tax in Southern Sudan, whichever is less.

### **Section 63. Tax Return and Payment**

- (1) Each taxpayer shall submit a tax return on or before 1 April of the year following the tax period, which sets forth the taxable income and amount of tax paid during the tax period, in accordance with the form and manner prescribed by regulations.
- (2) Unless a taxpayer has paid advance tax under Chapter XIII of this Act a taxpayer shall not be required to but is entitled to submit a tax return under subsection (1) above, if the entire tax due has been withheld pursuant to the provisions of Chapter XIV of this Act.
- (3) Any taxpayer required to submit a tax return under subsection (1) above, shall perform a final settlement of tax and pay the final amount due on or before 1<sup>st</sup> April of the year following the tax period.

## Chapter XII Business Profits Tax

### Section 64. Interpretations

In this Chapter, unless the subject or context otherwise requires, the following words and expressions shall have the meanings assigned to them respectively:

“**Business organization**” means any small or medium organization that is required to be registered pursuant to the provisions of this Act except an insurance company, an individual or organisation of individuals liable for tax under Chapter XI of this Act;

“**Dividend**” means a distribution by a company to a shareholder:

- (a) of cash or stock with respect to the shareholder’s equity interest in the company; or,
- (b) of property other than cash or stock, other than as a result of liquidation;

“**Financial statement**” means a financial statement prepared in accordance with the Law or regulations;

“**Foreign source income**” means gross income that is not Southern Sudan source income;

“**Gross income**” means all income earned or accrued, including, but not limited to, income from production, trade, financial investment, professional or other economic activities within the tax period;

“**Permanent establishment**” means any workplace through which a non-resident does business in Southern Sudan. This includes, but not limited to: plants, branch offices, representative offices, factories, workshops and construction sites;

“**Representation costs**” means all costs related to promotion of the business or its products and includes, but not limited to, costs for publicity, advertising, entertainment and representation;

“**Southern Sudan source income**” means gross income that arises in Southern Sudan, which includes, but not limited to:

- (a) interest on debt obligations issued by a resident company or by a Government of Southern Sudan Institution;
- (b) dividends from a resident company;
- (c) income from labour and services performed in Southern Sudan;
- (d) income from the use of movable or immovable property located in Southern Sudan;
- (e) income from the use of intangible property in Southern Sudan;



- (f) gain from the sale of an interest in immovable property located in Southern Sudan; and,
- (g) gain from the sale of movable property other than inventory where the seller is a resident of Southern Sudan.

### **Section 65. Object of Business Profits Tax**

- (1) A business profit tax shall be charged on the taxable profit of taxpayers.
- (2) Taxpayers under this Chapter shall not be liable for the Personal Income Tax under Chapter XI of this Act, though the employees of taxpayers under this Chapter shall be liable individually for personal income tax and taxpayers under this Chapter shall be responsible for withholding personal income tax payments from employee wage payments.

### **Section 66. Taxpayer**

Taxpayers for the purpose of this Chapter shall be business organizations.

### **Section 67. Rate of Tax**

A business profit rate of tax shall be as set forth in Schedule II of this Act.

### **Section 68. Taxable Profit**

- (1) Taxable profit for the purposes of this Chapter shall mean the difference between gross income earned or received during the tax period and any deductions allowable under this Chapter.
- (2) Taxable profit for a resident taxpayer shall be the taxable profit from Southern Sudan and foreign source incomes.
- (3) Taxable profit for a non-resident taxpayer shall be only the taxable business profit from Southern Sudan source income.

### **Section 69. Exemption**

- (1) The following income shall be exempted from business profit tax:

- (a) income of organizations registered with the appropriate government entity as non-governmental organizations with public benefit status to the extent that the income is used exclusively for their public benefit purposes;
  - (b) income of the Bank of Southern Sudan;
  - (c) dividends and interest where tax is withheld under Chapter XIV of this Act; and,
  - (d) where provided by an agreement with Government of Southern Sudan, income from a foreign contractor generated from contracts for the supply of goods and services to the United Nations, the UN Specialized Agencies, or other international governmental donors to the Government of Southern Sudan.
- (2) The Directorate of Taxation shall coordinate regularly with the government entity responsible for registering non-governmental organizations to exchange information and establish and maintain joint and harmonized procedures and criteria for non-governmental organizations.

## **Section 70. Deductions**

- (1) A taxpayer shall be allowed as a deduction from gross income, expenses incurred during the tax period wholly and exclusively in connection with its economic activities.
- (2) Notwithstanding the provisions of subsection (1) above, the following expenses shall not be deductible in the calculation of taxable profit:
  - (a) cost of acquisition and/or improvement of land;
  - (b) cost of acquisition, improvement, renewal and reconstruction of assets that are depreciated or amortized under the provisions of the regulations;
  - (c) fines and penalties;
  - (d) income tax, profit tax; and,
  - (e) value added tax for which the taxpayer claims a rebate or credit for input tax on Value Added Tax (VAT) in Southern Sudan.
- (3) Contributions made to organisations for humanitarian, health, educational, religious, scientific, cultural, and environmental protection activities, shall be deductible provided that those organisations are registered with the appropriate government entity as set forth in section 69 above.
- (4) Representation costs are allowed as expenses up to a maximum of two percent (2%) of income.

### **Section 71. Bad Debts**

- (1) Bad debts shall be considered an expense; *provided that*, the following conditions are met:
  - (a) the amount of the debt that has previously been included in the income;
  - (b) the debts are written off in the taxpayer's books as worthless; and,
  - (c) there is adequate evidence of unsuccessful attempts to collect the debt.
- (2) Bad debts that are deducted as expenses and then collected later shall be included as income at the time of collection.

### **Section 72. Reserve Funds of Banks**

- (1) The provisions of this section shall be subject to the rules and regulations set by the Bank of Southern Sudan from time to time.
- (2) Except as otherwise provided in this section, contribution to the reserve fund of a bank, shall not be an expense.
- (3) Banks are entitled to a deduction for the creation of a special reserve fund for the bank's doubtful assets, in an amount not exceeding the maximum amount allowable by the Bank of Southern Sudan.
- (4) Subsequent to the creation of the reserve fund under subsection (2) above, any amount withdrawn from the fund shall be included in income and any amount placed back into the fund, to replenish it, shall be allowed as a deduction.

### **Section 73. Related Person**

Where a person is entitled to claim a deduction under the provisions of this Act for a payment made to a related person, the deduction shall only be allowed up to an amount that is equal to the fair market value of the goods or services to which the payment relates.

### **Section 74. Depreciation on Tangible Property**

- (1) Expenditures on tangible property owned by the taxpayer and used for the taxpayer's economic activity, shall be

recovered over time by depreciation in the manner prescribed by regulations.

- (2) Any tangible property of the taxpayer which is subject to depreciation shall be placed in one of the following categories:

|            |   |
|------------|---|
| Category 1 | Buildings and other structures.           |
| Category 2 | Vehicles, office equipment and computers. |
| Category 3 | Any other property.                       |

- (3) The amount allowed as a depreciation deduction for the tax period shall be determined by applying the following percentages to the capital account for such category at the close of the tax period:

| Category   | Rate                        |
|------------|-----------------------------|
| Category 1 | Ten percent (10%);          |
| Category 2 | Thirty Three percent (33%); |
| Category 3 | Twenty Five percent (25%);  |

- (4) An asset shall initially be taken into account for the purpose of this section when the asset is first placed into service.
- (5) The initial addition to the capital account for any asset acquired during the tax period shall be its cost plus insurance and freight.
- (6) The initial addition to capital account for any buildings and other structures shall include the taxes, duties, and interest attributable to such property for the periods before the property is placed into service.
- (7) The initial addition to the capital account for assets held prior to 1<sup>st</sup> January 2008 shall be the book value of the assets on 1<sup>st</sup> January 2008.
- (8) Expenditure on an asset belonging to Category 2 and Category 3 that is less than SDG1000 shall be allowed as a current expense.
- (9) Amounts expended to repair, maintain, or improve capital assets in all categories, are allowed as a deduction up to a maximum of five percent (5%).

## Section 75. Intangible Property

Expenditures on intangible property that has a limited useful life, including patents, copyrights, licenses for drawings and models, contracts and franchises, are deductible in the form of amortization charges based on the useful life of the asset as determined by regulation.

### **Section 76. Exploration and Development Costs**

- (1) All exploration and development costs in respect to natural resources shall be added to a capital account and amortized.
- (2) The amount allowed as an amortization deduction with respect to exploration and development costs for the tax period shall be determined by multiplying the balance of the capital account by the following fractions:
  - (a) the numerator of which the units are extracted from the natural deposit during the year; and,
  - (b) the denominator of which the estimated total units to be extracted from the natural deposit over the life of the asset.

### **Section 77. Asset Sales**

- (1) In this section the depreciated cost of an asset means the original cost price less any amount that has been allowed as a depreciation deduction under section 59(5) or Category 1 of section 74(3) of this Act.
- (2) The cost of the asset is the amount that the taxpayer paid for the asset at the time of acquisition, as increased by the cost of improvements, and as reduced by depreciation and other expenditures either chargeable to the financial statement or allowable as prescribed by regulations.
- (3) Capital gain means income that a taxpayer realizes through the sale or other disposition of assets including, but not limited to, interests in immovable property and securities.
- (4) The amount of capital gain means:
  - (a) In the case of assets included in Categories 2 and 3 of section 74(2) of this Act, the amount of the sales price, or
  - (b) In the case of other assets, the positive difference between the sales price of the asset and the cost or depreciated cost of the asset, whichever of the cost or depreciated cost is lesser.

- (5) Capital loss means a loss that a taxpayer realizes through the sale or other disposition of assets including, but not limited to, interests in immovable property and securities.
- (6) The amount of capital loss is the negative difference between the sales price of the asset and the cost or depreciated cost of the asset, whichever of the cost or depreciated cost is higher.
- (7) Capital gains shall be recognized as business incomes and capital losses shall be recognized as business losses.

**Section 78. Business Loss**

- (1) A business loss is the negative difference between the taxpayer's income and expenses arising from economic activity.
- (2) A business loss shall be carried forward for up to five (5) successive tax periods and shall be available as a deduction against any income in those years.

**Section 79. Asset Distribution**

- (1) A business organization that distributes property, other than stock, to a shareholder with respect to the shareholder's interest shall recognize gain or loss as if such property had been sold to such shareholder at its fair market value.
- (2) In the case of liquidation of a business organization, the business organization shall take into account, gain or loss as if it had sold the property distributed in the liquidation at its fair market value.
- (3) Except as otherwise prescribed by regulations, the recipients of property distributed in a liquidation shall be treated as if they exchanged their equity interest in the liquidated company for an amount equal to the fair market value of such property.

**Section 80. Business Reorganization**

Transfers of property according to a written plan for reorganization of a taxpayers business, whether due to bankruptcy, merger, acquisition or otherwise, which is approved by the Director General of Taxation shall not be taxed.

**Section 81. Transfer Pricing**

- (1) The price used in conjunction with asset transactions or contract obligations between related persons shall be the transfer price.
- (2) The arm's length price shall be determined under the comparable uncontrolled price method and, when this is not possible, the resale price method or the cost-plus method shall be used.
- (3) The difference between the arm's length price and the transfer price shall be included in taxable profit

### **Section 82. Double Taxation**

- (1) A resident taxpayer who makes profit from business activities outside Southern Sudan through a permanent establishment outside Southern Sudan, and who pays tax on that profit to any other country shall be allowed a foreign tax credit calculated in the manner prescribed in section 62(d) and (e) of this Act provided that the other country allows similar treatment for tax paid in Southern Sudan.
- (2) Any applicable bilateral agreement on avoidance of double taxation made by the Government of Southern Sudan with any country shall supersede the provisions of this Act.

### **Section 83. Advance Payment of Tax**

Taxpayers shall remit an advance payment of tax in an amount prescribed by regulation on or before the following dates:

| <b>Filing Date</b> | <b>Tax Period</b>        |
|--------------------|--------------------------|
| 15 April           | 1 January to 31 March    |
| 15 July            | 1 April to 30 June       |
| 15 October         | 1 July to 30 September   |
| 15 November        | 1 October to 31 December |

### **Section 84. Tax Return and Payment**

- (1) Each taxpayer shall submit a tax return on or before 1<sup>st</sup> April of the year following the tax period, which sets forth the taxable income and amount of tax paid during the tax period, in accordance with the form and manner prescribed by regulations.

- (2) Taxpayers may credit against the amount of tax owed under this Chapter, advance payment of tax paid pursuant to Chapter XIII of this Act.
- (3) Any taxpayer who is required to submit a tax return under subsection (1), above, shall perform a final settlement of tax and pay the final amount due on or before 1<sup>st</sup> April of the year following the tax period. The amount due for the final settlement shall be the difference between the amount of tax owed and the amount of tax paid through withholding or advance payment of tax.

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## **Chapter XIII Advance Payment of Income Tax on Imported Goods**

### **Section 85. Object of Tax**

All goods brought in or entered into Southern Sudan shall be subject to an advance payment of personal income tax or business profit tax as appropriate.

### **Section 86. Taxpayer**

- (1) Any person who imports goods into Southern Sudan is a taxpayer under this Chapter, and shall pay advance payment of income tax for imported goods, as well as any other applicable tax.
- (2) Any person in possession of goods entered into Southern Sudan, on which tax has not been paid, is a taxpayer under this Chapter.

### **Section 87. Rate of Tax**

Tax shall be applied to all goods entered into Southern Sudan at the following rates:

|                   |                             |
|-------------------|-----------------------------|
| Two percent (2%)  | On all processed food items |
| Four percent (4%) | On all other goods          |
| Six percent (6%)  | On vehicles of all kinds    |

### **Section 88. Exemption from Tax**

There shall be an exemption from the advance payment of tax for:

- (a) all food items that are considered to be basic necessities and unprocessed foods as may be determined by regulations;
- (b) humanitarian aid when imported by a bona fide organization as prescribed by regulations;
- (c) goods imported by a contractor, other than a local contractor, in the performance of a contract with the United Nations, the UN Specialized Agencies, or other international or governmental donors to the Government of Southern Sudan;
- (d) goods imported by the United Nations, the UN Specialized Agencies, or other international or

- governmental donors to the Government of Southern Sudan;
- (e) personal goods accompanying a traveller; and,
  - (f) used household effects of any person intending to take up permanent residence in Southern Sudan.

**Section 89. Payment of Tax**

Tax shall be paid at the time the goods enter into the Southern Sudan.

**Section. 90. Value for Tax**

Any tax assessed under this Chapter shall be based on the customs value of the goods as determined by the laws of Southern Sudan.

**Section 91. Credit for Tax Paid**

- (1) A taxpayer required to file a tax return under Chapter XI or XII of this Act, and who have made an advance payment on imported goods may obtain credit against the amount of tax owed for the taxable year.
- (2) In all other cases the tax paid shall be deemed to be a final payment of tax liability and shall not be subject to a refund.

## **Chapter XIV Withholding on Wages, Interest, Dividends, and Royalties**

### **Section 92. Tax Withholder**

The following persons shall withhold tax determined under this Chapter at the time of payment:

- (a) every person who is an employer paying wages to an employee;
- (b) legal entities that pay dividends;
- (c) persons who pay interest, except in cases of the payment of interest on a loan or other debt; and,
- (d) persons who pay royalties to individuals and legal entities.

### **Section 93. Registration**

All persons required to withhold tax under section 92 above, shall register under section 17 of this Act.

### **Section 94. Withholding Rate**

- (1) An employer shall withhold tax from an employee's wages for the appropriate payroll period in accordance with the provisions of Schedule II of this Act.
- (2) Any person who pays dividends, interest, or royalties shall withhold tax at the rate of ten percent (10%) of the amount of the payment at the time of payment, regardless of whether the beneficiary of the payment is a resident or not.
- (3) An employee may be exempted from tax under subsection (1) above in accordance with the provisions of exemption from Personal Income Tax set forth in Schedule II of this Act.

### **Section 95. Payment of Tax Withheld**

- (1) Each tax withholder shall submit a statement of tax withholding and remit the correct amount of tax withheld to the Director General–Taxation within fifteen (15) days after the last day of each calendar month in which the tax was withheld, except when the withholding amount exceeds SDG300, 000 in a particular payroll or payment period. Where the amount of withheld taxes exceeds SDG300, 000 in a particular payroll or payment period, the withholder shall remit such withholding within five business days of withholding. All the withholdings shall

be remitted on the prescribed form, and withholding reporting shall be in accordance with the regulations.

- (2) Third parties who directly finance another's payrolls shall withhold taxes from employee's wages as set forth in Schedule II of this Act in proportion to the percentage of the payroll they finance. Third parties who fail to withhold taxes as prescribed shall be liable for the full amount of taxes required to be withheld but not paid over to the Director General of Taxation. However, employers shall not be relieved of their responsibility to file required returns and related documents.
- (3) The employer shall provide by 31<sup>st</sup> January of the year following at the request of an employee, a statement of withholding during the previous year. The statement of withholding shall be in the prescribed form.
- (4) The employer shall submit an annual tax reconciliation statement to the Director General of Taxation within sixty (60) days of the end of the year with information relating to wages paid and tax withheld and remitted in respect of each employee as may be prescribed.

#### **Section 96. Final Tax**

Tax withheld on dividends and interest shall be deemed to be a final payment of tax and not subject to a credit or refund under this Act.

## Chapter XV Excise Tax

### Section 97. Interpretations

In this Chapter, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them respectively:

“*Air transport service*” means airplanes or other modes of airborne equipment which carries passengers or cargo for a fee.

“*Alcohol product*” means any article covered by Harmonized System numbers 2203, 2204, 2205, 2206, 2207.10.30, or 2208;

“*Excisable goods*” means any goods or services subject to this Chapter, and includes: air transport services; alcohol products; insurance services; fuel; telecommunication services; and tobacco products.

“*Excise tax*” means an indirect tax that is included in the selling price of excisable goods;

“*Harmonized system number*” means a number assigned to a commodity for the classification of goods in the administration of taxes as developed by the World Customs Organization;

“*Insurance service*” means any service that covers, indemnifies, or assures persons, property, or other objects, tangible or otherwise;

“*fuel*” means any article covered by Harmonized system numbers 2710.00.10, 2710.00.15, or 2710.00.18;

“*Telecommunication Service*” means a service provided to transmit voices, pictures, printed and written materials, symbols, or sounds by telephone, telegraph, wire, wireless, satellite, or any other similar means;

“*Tobacco product*” means any article covered by Harmonized System Number 2402 or 2403.

### Section 98. Object of Tax

Excise tax, as defined by Schedule III of this Act, shall apply to:

- (a) the production of excisable goods in Southern Sudan;
- (b) the importation of excisable goods into Southern Sudan; and,
- (c) the provision of excisable services in Southern Sudan

### Section 99. Taxpayers

Taxpayers under this Chapter are:

- (a) persons engaged in the production of excisable goods in Southern Sudan;

- (b) persons who are importers of excisable goods; and, persons engaged in providing telecommunication services, insurance services, and or air transportation services.

### **Section 100. Value for Tax**

The value, on which tax is assessed, shall be the greater of the selling price or fair market value or, in the case of imported goods, the customs value.

### **Section 101. Calculation of Tax**

The tax rate, as set forth in Schedule III of this Act may be:

- (a) expressed as a percentage of the value and shall be calculated by multiplying the value of the excisable goods by the rate; or
- (b) expressed as a fixed amount per unit of measure of the goods and calculated by multiplying the excise tax rate by the appropriate number of units of excisable goods.

### **Section 102. Time of Tax**

Tax shall be applied as follows:

- (a) in the case of excisable goods produced in Southern Sudan, at the time goods are released outside the production premises;
- (b) in the case of excisable goods entering Southern Sudan, at the time the importation is completed pursuant to the provisions of the National Customs Law; and,
- (c) in any other case at the time the excisable goods are in the possession of a person or excisable service provided in Southern Sudan as may be prescribed by regulations.

### **Section 103. Aviation Fuel**

Aviation fuel shall be exempted from excise tax in accordance with the system of registration and exemption certificates set forth in the regulations

### **Section 104. Air Transportation**

- (1) Every person operating an aircraft designed or adapted to carry persons in addition to the flight crew shall be liable for excise tax.
- (2) The Excise Tax shall be chargeable for every paying passenger boarding a flight to any destination within or outside Southern Sudan.

- (3) The Excise Tax shall be due when the aircraft first takes off on the passenger's flight, but shall be collected by the airline or travel agent, as the case may be, at the time the ticket is sold.

### **Section 105. Tax Return and Payment of Tax**

Each taxpayer shall submit a tax return and pay the tax reported on that return not later than the 15<sup>th</sup> day of the month following the action which gave cause for the tax liability. Such filing and payment shall be in the manner and form prescribed by regulations.

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## **Chapter XVI Government of Southern Sudan Institution Taxes, Fees and Charges**

### **Section 106. List of Taxes, Fees and Other Charges**

- (1) On annual basis, and as part of the budget process, each Government of Southern Sudan Institution shall submit to the UnderSecretary a detailed list of fees and licences which the Government of Southern Sudan Institution intends to assess during the following calendar year.
- (2) The UnderSecretary shall publish the full list of taxes and fees not later than 15<sup>th</sup> November each year. The payment of fees and taxes shall take effect from 1<sup>st</sup> January of the following year. The list of agreed upon taxes and fees shall be updated throughout the calendar year as necessary.
- (3) No Government of Southern Sudan Institution shall collect any taxes, fees or other charges which are not provided for in the relevant legislation of Government of Southern Sudan. Any person who collects or attempts to collect taxes, fees, or other charges not provided for commits an offence punishable in accordance with the provisions of sections 113 and 116 of this Act.

### **Section 107. Limitation on Payments**

No person shall be required to pay any licence, fee, or charge that is not included on the list issued by the Under-Secretary.

### **Section 108. Exchange of Information with Local Government**

Subject to the provisions of The Centre for Census, Statistics and Evaluation law the Director General–Taxation may enter into an exchange of information program with local government authorities to verify if persons are doing business in Southern Sudan, or to identify persons who should be regulated as taxpayers under this Act.



## **Chapter XVII Coordination of Tax Collection Administration and Tax Rates with the National and State Governments**

### **Section 109. Counterparts**

For the purposes of this Chapter, counterparts shall include the closest organisation equivalent to the Directorate of Taxation with respect to vested duties, functions and powers in the Government of Southern Sudan, within the States and the National Government.

### **Section 110 Guiding Principles for Coordination**

The Ministry shall observe and promote the following guiding principles when exercising its functions, duties and powers set forth in this Chapter:

- (a) enable each level of government to discharge its legal and constitutional responsibilities and duties and ensure that the quality of life and dignity of all the people of Southern Sudan is promoted without discrimination on grounds of gender, religion, political affiliation, ethnicity, language or locality;
- (b) reflect a commitment to devolution of powers and decentralisation of decision-making in regard to development, service delivery and governance;
- (c) ensure coordination, fairness, equity, transparency and avoid excessive tax burden on the citizens, private sector and investors
- (d) achieve efficiency and effectiveness of tax collection mechanisms.

### **Section 111. Coordination of Tax Collection Administration with the National and State Governments**

- (1) The Directorate of Taxation shall from time to time at the direction of the UnderSecretary coordinate, separately or jointly, with the governments of States within Southern Sudan and, jointly, with the National Government on matters pertaining to tax collection administration that may impact on compliance with the principles set out in section 110 above.
- (2) In exercising its functions and duties under subsection (1) above, the Directorate of Taxation shall at the direction of the UnderSecretary meet, separately or jointly, with the State governments within Southern Sudan and, jointly,

with the National Government, on bases to be mutually agreed, to carry out the following:

- (a) to table, hear, consider, agree, make recommendations to the UnderSecretary or take other actions in relation to proposals for operational delivery mechanisms to coordinate tax collection administration. These proposals may include, but not limited to:
  - i. the Ministry through its respective directorates opting to use elements of counterparts' collection administrations to raise its own revenue or counterparts opting to use Government of Southern Sudan's collection administration to raise their revenue;
  - ii. information exchange, consistent with the privacy provisions of the ICSS and The Centre for Census, Statistics and Evaluation law;
  - iii. assignment of officers of the Ministry to work in counterpart tax collection administrations, assignment of officers of counterpart tax collection administrations to work in the Ministry, and provision of suitable facilities for officers assigned;
  - iv. Government of Southern Sudan audit of counterpart's collection performance and other assurance mechanisms where the Directorate of Taxation has opted to use elements of that counterparts' collection administration;
- (b) to table, hear, consider, agree, and make recommendations to the UnderSecretary as required, or take other actions on the appropriate legal framework to enable enforcement of the proposals agreed under subsection (a) above, whether by way of Memorandum of Understanding, regulations or otherwise;
- (c) receive reports on coordinated activities agreed under subsections (a) and (b) above;
- (d) resolve any concerns on coordinated activities agreed under subsections (a) and (b) above;
- (e) refine and update the matters agreed under subsections (a) and (b) above.

## **Section 112. Rate Harmonisation with the National and State Governments**

- (1) The UnderSecretary shall from time to time coordinate, separately or jointly, with the governments of the States and, jointly, with the National Government on matters pertaining to harmonisation of rates, taxes, fees, licenses and other charges by Government of

Southern Sudan and counterpart institutions that may impact on compliance with the principles set out in section 110 of this Act.

- (2) In exercising his or her functions and duties set forth in subsection (1) above, the UnderSecretary shall meet, separately or jointly, with the governments of the States and jointly, with the National Government, on bases to be mutually agreed, to carry out the following:
- (a) to table, hear, consider, agree, make recommendations to the Minister, or to the Assembly through the Minister and Council of Ministers as required, or take other actions in relation to proposals for harmonisation of rates of taxes, fees, licenses and other charges by Government of Southern Sudan and counterpart institutions, between Government of Southern Sudan and the same counterparts. These proposals may cover but not limited to:
    - i. taxes that are payable by virtue of concurrent taxing powers under Schedule D of the ICSS or
    - ii. taxes fees, licenses and other charges payable under a Southern Sudan law and/or a state law and/or a National law, but under the laws of at least two levels of government, that may disproportionately affect particular groups or individuals;
    - iii. taxes fees, licenses and other charges payable under a Southern Sudan law and/or a state law and/or a National law, but under the laws of at least two levels of government, on the same object or activity at different points throughout the life of that object or activity;
  - (b) to table, hear, consider, agree, and make recommendations to the Minister or to the Assembly through the Minister and Council of Ministers as required, or take other actions on the appropriate legal framework to enable enforcement of the proposals agreed under subsection (a) above, whether by way of Memorandum of Understanding, regulations or otherwise;
  - (c) receive reports on coordinated matters agreed under subsections (a) and (b) above;
  - (d) resolve any concerns on coordinated matters agreed under subsections (a) and (b) above;
  - (e) refine and update the matters agreed upon under subsections (a) and (b) herein.

## **Chapter XVIII Fraud, Failure to Register and Other Tax Crimes**

### **Section 113. Offences under the Penal Code Act, 2008**

This Chapter is subject to the provisions of the Penal Code Act, 2008, in particular Chapters VIII, IX and X. Employees of Directorate of Taxation, officers of Directorate of Taxation and taxpayers are also subject to the provisions of the same.

### **Section 114. Failure to Register**

Any person who:

- (a) is required to apply for registration, but fails to do so within one month after becoming liable to apply;
- (b) contravenes any term or condition of his or her registration; shall on conviction be sentenced to imprisonment for a term not exceeding five years or a fine not exceeding fifty thousand Sudanese Pounds (SDG 50,000) or with both.

### **Section 115. Offences Involving the Taxpayer**

Any person, who, with respect to any tax or other charge imposed by this Act:

- (a) attempts to evade or defeat such tax;
- (b) wilfully fails to collect such tax;

commits an offence, and shall on conviction, be sentenced to imprisonment for a term not exceeding two (2) years or a fine not exceeding twenty five thousand (SDG 25,000) Sudanese Pounds, or with both.

### **Section 116. Other Offences**

1. Any person who wilfully violates any provision of this Act or the regulations thereunder for which a penalty is not provided under section 114 or 115 above, shall, on conviction, be sentenced to imprisonment for a term not exceeding one year or a fine not exceeding fifteen thousand (SDG 15,000) Sudanese Pounds or with both.
2. The provisions of this section shall not in any way prejudice the imposition of other penalties under this Act or any other Law.

### **Section 117. Competent Court**

The High Court shall be the competent Court to consider the cases in this Chapter.

## **Chapter XIX Miscellaneous Provisions**

### **Section 118. Collaboration and Coordination with the Ministry of Legal Affairs and Constitutional Development**

- (1) The Directorate of Taxation shall collaborate and coordinate with the Ministry of Legal Affairs and Constitutional Development in the enforcement of the provisions of this Act.
- (2) The Directorate of Taxation shall coordinate with the Ministry of Legal Affairs and Constitutional Development to facilitate the issuance of citation, effect arrests or take any other appropriate measures.

### **Section 119. Rules and Regulations**

- (1) The Minister shall make such rules and regulations as may be necessary for the effective and efficient implementation of the provisions of this Act.
- (2) The Director General of Taxation may prescribe forms, notices, returns, and other necessary documents for the efficient and effective implementation of the provisions of this Act, as well as the achievement of a higher level of performance by the Directorate of Taxation.
- (3) The Director General of Taxation shall make the documents referred to in subsections (1) and (2) above available to the public without charges.

### **Section 120. International Agreements**

- (1) If the terms of a treaty or international agreement entered into by the Government of Southern Sudan and another country are inconsistent with the provisions of this Act, the terms of treaty or international agreement shall prevail.

### **Section 121. Rewards for Information**

- (1) If an informant submits evidence that successfully establishes that a taxpayer has evaded, or is attempting to evade any or all of his or her tax liabilities, the informant shall be granted a reward equal to thirty (30%) percent of the amount of tax collected on the basis of such information.

- (2) If tax is collected on the basis of information of more than one informant, the Director General of Taxation shall determine the manner in which the reward provided in subsection (1) above, shall be divided among the informants.

### **Section 122. Confidentiality**

Documents or other information received from any person relating to the tax affairs of any person shall not be disclosed or published except:

- (a) to any other taxation officer for the purpose of protecting the revenue, or
- (b) as evidence in a Court dealing with the taxpayer's liability under this Act; or
- (c) for matters that are part of the public record in proceedings before the Appeals Board or the High Court, or
- (d) as otherwise provided for under this Act or regulations.

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## SCHEDULE I

The fine shall be in Sudanese Pounds or its equivalent as determined by the Bank of Southern Sudan from time to time

## SCHEDULE II

### Personal Income Tax and Business Rates

1. An individual's taxable income shall be subject to the income tax at the following rates:

| No. | Amount of Taxable Income (monthly average) | Tax Rate                              |
|-----|--|---------------------------------------|
| 1.  | SDG 300                                    | Not subject to income tax (zero rate) |
| 2.  | SDG 301- SDG 5,000                         | Ten percent (10%)                     |
| 3   | SDG 5,001 and above                        | Fifteen percent (15%)                 |

- a) For purposes of taxation, both the amount of taxable income and the amount of deductions shall be calculated on a cumulative basis from the beginning of the year.
- b) The minimum monthly wage shall be three hundred Sudanese Pounds (SDG 300).

2. **Business Profit Tax Rates shall be as follow**

| No | Types of Business           | Tax rate              |
|----|-----------------------------|-----------------------|
| 1  | Small Business/Enterprises  | Ten percent (10%)     |
| 2  | Medium Business/Enterprises | Fifteen percent (15%) |

## SCHEDULE III

### Excise Goods

| Harmonized System Number              | Article Description   | Percentage | Specific Rate |
|---------------------------------------|---|------------|---------------|
| 2203                                  | Beer made from malt   | 15%        |               |
| 2204                                  | Wine of fresh grapes , including fortified wines; grape (other than unfermented grape)  | 15%        |               |
| 2205                                  | Vermouth and other wines of fresh grapes flavoured with plants or aromatic substances   | 15%        |               |
| 2206                                  | Other fermented beverages (including cider, prune wine, rice wine, or sake, sherry, and mead)   | 15%        |               |
| 2207.10.30                            | Indentured ethyl alcohol of an alcoholic strength by volume of 80 percent volume or higher for beverage purposes  | 20%        |               |
| 2208                                  | Indentured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used in the manufacture of beverage | 20%        |               |
| 2402                                  | Cigars, cheroots, cigarillos and cigarettes, of tobacco or tobacco substitutes  | 15%        |               |
| 2403                                  | Other manufactured tobacco and manufactured tobacco substitutes; “homogenized” or “reconstituted” tobacco; tobacco extracts and essences  | 15%        |               |
| 2710.00.10, 2710.00.15, or 2710.00.18 | fuel  | 05%        | Per Litre     |
| 8703                                  | Motor cars and other vehicles principally designed for the transport of persons (other than buses), including station wagons and racing cars  | 15%        |               |
| 8702                                  | Buses   | 10%        |               |
| 8704                                  | Motor vehicles for the transport of goods   | 10%        |               |

Rate of tax for the air transportation of passengers

Tax at the rate of ten percent (10%) shall apply on the charge made by the air carrier for the transport of a passenger or passengers up to a maximum of SDG 400 per passenger.

Telecommunication service

Tax at the rate of ten percent (10%) shall apply on the charge or charges made by the provider of a telecommunication service and on the importation



of scratch cards for the purchase of “pay-as-you-go” airtime.

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## **Assent of the President of the Government of Southern Sudan**

In Accordance with the provision of Article 85 (1) of the Interim Constitution of Southern Sudan, 2005, I, Gen. Salva Kiir Mayardit, President of the Government of Southern Sudan, hereby Assent to the Taxation Act, 2009 and sign it into law

Signed in Juba this -----day of the month of -----in  
the year 2009.

**H.E. Gen. Salva Kiir Mayardit,  
President of the Government of Southern Sudan  
Government of Southern Sudan/ Juba.**

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