



SAMOA

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2012, No. 20

AN ACT to simplify, modernise, and amend the law relating to tax administration, and to repeal the Income Tax Administration Act 1974 and for related purposes.

[Assent date: 25th June 2012]

[Commencement date: 1 January 2013]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement-(1) This Act may be cited as the Tax Administration Act 2012.

(2) This Act commences on 1 January 2013.

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

“Act” includes Ordinance;

“advance assessment” has the meaning in section 36;

“amended assessment” means an assessment amended under section 37;

“approved form” has the meaning in section 21;

“associate” has the meaning in the Income Tax Act;

“Commissioner” means the Commissioner of Inland Revenue referred to in section 5;

“company” has the meaning in the Income Tax Act;

“controlling member”, in relation to a company, means a member who beneficially holds, either alone or together with an associate or associates:

(a) fifty per cent or more of the voting rights attaching to membership interests in the company; or

(b) fifty per cent or more of the rights to dividends attaching to membership interests in the company; or

(c) fifty per cent or more of the rights to capital attaching to membership interests in the company;

“default assessment” has the meaning in section 35;

“document” includes books, accounts, records, rolls, registers, and papers;

“excluded person” means the Minister, an officer of the Ministry (including a tax officer), or a member or officer of the National Revenue Board;

“Government” means the Government of Samoa;

“income tax” means the tax imposed under the Income Tax Act;

“Income Tax Act” means the Income Tax Act 2012;

“IRS” means Inland Revenue Services;

- “late payment interest” means late payment interest imposed under section 47;
- “member” has the meaning in the Income Tax Act;
- “membership interest” has the meaning in the Income Tax Act;
- “Minister” means the Minister responsible for Revenue;
- “Ministry” means the Ministry responsible for Revenue;
- “National Revenue Board” means the National Revenue Board established under the National Revenue Board Act 1990 and continued by the Public Finance Management Act 2001;
- “oath” includes affirmation;
- “objection decision” means a decision referred to in section 43(5);
- “penalty” means a penalty or penal tax imposed under a tax law;
- “person” has the meaning in the Income Tax Act;
- “personal representative”, in relation to a deceased person, has the meaning in the Trusts Act 2014;
- “prescribed” means prescribed in Regulations made under section 101;
- “provisional tax” means provisional tax imposed under section 85 of the Income Tax Act;
- “receiver” means any of the following:
- (a) a liquidator of a company;
 - (b) a receiver appointed out of court or by any court;
 - (c) a trustee for a bankrupt;
 - (d) a mortgagee in possession;
 - (e) a personal representative of a deceased person;
 - (f) a person responsible for the affairs of a person under a legal disability;
- “repealed legislation” means the legislation repealed under section 102;
- “representative” has the meaning in section 41;
- “self-assessment” means an assessment treated as having been made under section 34(a);
- “self-assessment return” means:
- (a) are turn required to be filed under section 80, 83, 84, or 89 of the Income Tax Act; and
 - (b) a VAGST return required to be filed under section 17 of the Value Added Goods and Services Tax Act;
- “self-assessment taxpayer” means a taxpayer required to file a self-assessment return;
- “tax” means a tax imposed under a tax law, and includes withholding tax, provisional tax, and penalty;

“tax assessment” means an assessment of tax made under a tax law, a self-assessment, default assessment, amended assessment, advance assessment, and an assessment of penalty;

“tax decision” means:

- (a) a tax assessment; or
- (b) for this Act, the Income Tax Act, or Value Added Goods and Services Tax Act, a decision on any matter left to the discretion, judgement, direction, opinion, approval, consent, satisfaction, or determination of the Commissioner, other than such decision made in relation to the making of a tax assessment;

“tax law” means any of the following:

- (a) this Act;
- (b) the Income Tax Act 2012,
- (c) the Value Added Goods and Services Tax Act 1993;
- (d) the Tax Information Exchange Act 2012;
- (e) any other Act under which a tax is imposed if responsibility for the general administration of the tax is on the Commissioner;
- (f) any regulations or other subsidiary legislation made under an Act referred to in paragraphs (a) to (d);

“tax officer” means the Commissioner or any officer appointed under section 7;

“tax period” means:

- (a) for income tax -
 - (i) for the purposes of withholding tax, the period to which the withholding relates; or
 - (ii) for the purposes of an instalment of provisional tax, the period to which the instalment relates; or
 - (iii) for the purposes of the non-resident international transportation income tax payable in respect of a ship, the period that the ship was in Samoa; or
 - (iv) for the purposes of the non-resident international transportation income tax payable in respect of an aircraft, the quarter; or
 - (v) for the salary and wage income tax, the fortnight; or
 - (vi) in any other case, the tax year;
- (b) for VAGST, the taxable period; or
- (c) for any other tax, the period for which the tax is reported.

“tax return” means:

- (a) a return required to be filed under a tax law; or
- (b) an annual withholding tax statement required to be filed under section 102 of the Income Tax Act.

“Tax Tribunal” or “Tribunal” means the Tax Tribunal established under section 91;

“taxpayer” means a person liable for tax under a tax law and:

- (a) for income tax, includes -
 - (i) a person who has taxable income for a tax year but who has no income tax liability in respect of the taxable income; or
 - (ii) a person who has zero taxable income or a net loss for a tax year; or
- (b) for VAGST, includes a person whose total input tax credits for a taxable period are equal to or exceed the person’s total output tax for the period.

“tax payer identification number” or “TIN” means a taxpayer identification number issued under section 12;

“VAGST” means Valued Added Goods and Services Tax imposed under the Value Added Goods and Services Tax Act;

“Value Added Goods and Services Tax Act” means the Value Added Goods and Services Tax Act 1993;

“withholding tax” means an amount required to be withheld by a person from a payment under Division 4 of Part 7 of the Income Tax Act.

(2) When this Act applies in respect of a tax law, any term not defined in this Act has the meaning that it has for the purposes of the tax law.

3. Act binds Government -This Act binds the Government.

PART 2 INLAND REVENUE SERVICES

4. Inland Revenue Services -The Inland Revenue Services established under section 3 of the repealed Income Tax Administration Act 1974 continues under this section as a division of the Ministry as if it were established by this section.

5. Commissioner of Inland Revenue-(1)The person who is appointed under the Public Service Act 2004 as the Chief Executive

Officer for the Ministry shall also be the Commissioner of Inland Revenue for the purposes of tax laws.

(2) The Commissioner of Inland Revenue is responsible for the administration of tax laws, subject to the control and directions of the Minister.

6. Absence or vacancy in the office of Commissioner-(1)

Subject to subsection (2), if the Commissioner takes leave of absence from office for any reason, the Commissioner may appoint another senior tax officer to carry out the functions, duties and powers of the Commissioner under the tax laws during the leave of absence.

(2) If the office of the Commissioner becomes vacant (whether by reason of death, resignation, or otherwise), the Minister may appoint another senior tax officer to carry out the functions, duties and powers of the Commissioner under the tax laws during the vacancy.

(3) The fact that a tax officer appointed under subsection (3) carries out any function, duty or power of the Commissioner is conclusive evidence of the officer's authority to do so.

7. Appointment of tax officers and other staff -Other tax officers and employees may be appointed as is necessary for the purposes of carrying out the tax laws.

8. Delegation - (1) The Commissioner may, in writing, delegate either generally or specifically to a tax officer any duty, power or function of the Commissioner under a tax law, other than this power of delegation and the power to compound offences under section 80.

(2) A reference in a tax law to the Commissioner includes, in respect of the exercise of a power or performance of a duty or function delegated to a tax officer under this section, a reference to the delegate.

(3) Subject to any general or specific conditions the Commissioner may impose, a delegate may carry out the functions, duties and powers in the same manner and with the same effect as if they had been conferred on the delegate directly by this section and not by the delegation.

(4) A tax officer purporting to act pursuant to a delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

(5) If the Commissioner ceases to hold office, any delegation made by the Commissioner before ceasing to hold office continues to have effect until revoked.

(6) A delegation under this section is revocable at will by the Commissioner and does not prevent the carrying out of the function, duty or power by the Commissioner.

9. Official secrecy - (1) A tax officer must maintain the secrecy of all information and documents received in the performance of duties as a tax officer and must not communicate the information or documents to any other person except to the extent necessary for the purpose of carrying into effect any provision of the tax laws or of any other enactment imposing a tax or duty payable to the Government.

(2) A tax officer must, before beginning to perform any official duty under a tax law, take and subscribe an oath of fidelity and to maintain secrecy in conformity with this section.

(3) A tax officer cannot be required to produce any document or communicate any information in the Tax Tribunal or a Court that has come into the tax officer's possession or knowledge in connection with the performance of duties under a tax law except to the extent necessary for the purpose of carrying the provisions of a tax law into effect.

(4) Nothing in this section prevents the disclosure:

(a) to a taxpayer or, with the written consent of the taxpayer, to any other person of the following -

(i) a document filed or lodged with the Commissioner by or on behalf of the taxpayer;

(ii) an assessment of the tax payable by the taxpayer;

(iii) the amount of tax paid or payable by the taxpayer; or

(b) of information to an officer of the Department of Statistics if -

(i) the information is required for the purposes of the Statistics Act 1971; and

(ii) in the opinion of the Commissioner, the disclosure will not unduly impede the administration of the tax laws; or

(c) of information to the competent authority of the government of another country with which Samoa has entered into an agreement for the avoidance of double

taxation or for the exchange of information, to the extent permitted under that agreement; or

(d) of information to the National Revenue Board.

(5) A person receiving any document or information under subsection (3) or (4) is required to keep it secret in accordance with subsection (1), except to the minimum extent necessary to achieve the purpose for which the disclosure is necessary.

(6) In this section, “tax officer” includes a person employed or engaged by the Ministry in any capacity or a former tax officer, or person employed or engaged by the Ministry.

9A. Information required for court proceedings by the Government - (1) If a document is required in any proceedings, the Attorney General may request the Commissioner to release the document to the Attorney General.

(2) When deciding the request under subsection (1), the Commissioner must take into account the following:

(a) for criminal proceedings -

(i) that the offence is serious offence; and

(ii) that there is a clear connection between the document requested and the elements of the serious offence to be proved; and

(iii) whether there is a need for the taxpayer to whom the document relates to be notified or to give consent before the documents are released; and

(iv) any other matter that the Commissioner thinks fit for the purpose of the request;

(b) for civil proceedings -

(i) that the proceedings relate to a claim involving the State; and

(ii) that the document is relevant to the claim or issue of quantum of the damages or compensation; and

(iii) whether there is a need for the taxpayer to whom the document relates to be notified or to give consent before the documents are released; and

(iv) any other matter that the Commissioner thinks fit for the purpose of the request.

(3) A document released under this section is required to be kept secret except for the purpose of the proceedings or as agreed by the Commissioner and the Attorney General.

(4) This section is an exception to section 9.

(5) In this section:

“document” means any information or document about a taxpayer received and kept under this Act or any other tax law;

“proceedings” means criminal proceedings for a serious offence or civil proceedings for or against the Government;

“serious offence” means an offence which carries a fine of at least 50 penalty units or an imprisonment term of at least 5 years.

10. Seal and authentication of documents-(1) There must be an official seal of the IRS to be in the custody of the Commissioner.

(2) A certificate, notice, or other document bearing the written, stamped, or printed signature of the Commissioner is treated as having been duly signed by the Commissioner unless the contrary is proven.

(3) The Tax Tribunal or any court must take notice of the signature of the Commissioner and of the fact that the person whose signature it purports to be holds or has held the office of Commissioner.

11. Annual report-(1) The Commissioner must, as soon as practicable after 31 December in each year, provide to the Minister a report on the administration of the tax laws for the year ending on that date.

(2) A copy of the report must be presented to the Legislative Assembly within 28 days after the Minister receives it.

PART 3 TAXPAYER IDENTIFICATION NUMBER

12. Issue of TIN - (1) The Commissioner may, for the purposes of identification and cross-checking, require a taxpayer to apply for a taxpayer identification number.

(2) An application for a TIN must be:

(a) in the approved form; and

(b) accompanied by documentary evidence of the person’s identity as prescribed; and

(c) lodged in the prescribed manner.

(3) If the Commissioner is satisfied that an applicant under subsection (2) is a taxpayer and that their identity has been established, the Commissioner must issue a TIN to the applicant by written notice.

(4) The Commissioner must refuse an application under this section:

- (a) if the Commissioner is not satisfied as to the applicant's true identity; or
- (b) if the applicant has already been issued with a TIN that is still in force; or
- (c) for any other reason the Commissioner deems fit.

(5) The Commissioner must serve the applicant with written notice of the decision to refuse an application under this section within 14 days after making the decision.

(6) The Commissioner may, without an application being made, issue a TIN to any person liable for tax.

13. Cancellation of TIN-(1) A person who has ceased to be a taxpayer must apply to the Commissioner, in the approved form, for cancellation of the person's TIN within seven (7) days after the date on which the person ceased to be a taxpayer.

(2) The Commissioner must, by notice in writing, cancel a TIN of a person:

- (a) if satisfied that the person is no longer a taxpayer; or
- (b) if satisfied that a TIN has been issued to the person under an identity that is not the person's true identity; or
- (c) if satisfied that the person had been previously issued with a TIN that is still in force; or
- (d) for any other reason the Commissioner deems fit.

(3) The Commissioner may, at any time, by notice in writing, cancel the TIN issued to a person and issue the person with a new TIN.

(4) The Commissioner must re-issue a TIN cancelled under this section if the taxpayer had not discharged all the taxpayer's tax liabilities at the time that the TIN was cancelled.

14. Quotation of TIN - The Commissioner may require a taxpayer to state his or her TIN in any tax return, notice, or other document filed, lodged, or used for the purposes of a tax law.

PART 4 TAX AGENTS REGISTRATION

15. Application for registration of tax agents-(1) A natural person, partnership, or company may apply to the Commissioner for registration as a tax agent.

(2) An application for registration as a tax agent under subsection (1) must be in the approved form and accompanied by the prescribed fee.

16. Registration of tax agents-(1) If an applicant under section 15 is a natural person, the Commissioner must register the applicant if satisfied that:

- (a) the applicant is a fit and proper person to prepare tax returns and transact business under the tax laws on behalf of taxpayers; and
- (b) the applicant is not an undischarged bankrupt.

(2) If an applicant under section 15 is a partnership, the Commissioner must register the applicant if satisfied that:

- (a) the partner specified in the application as the nominee of the partnership is a fit and proper person to prepare tax returns and transact business under the tax laws on behalf of taxpayers; and
- (b) the partners in the partnership are of good fame, integrity, and character or, if a partner is a company, every director, manager, or other executive officer of the company is of good fame, integrity, and character; and
- (c) no partner is an undischarged bankrupt.

(3) If an applicant under section 15 is a company, the Commissioner must register the applicant if satisfied that:

- (a) the employee of the company specified in the application as the nominee of the company is a fit and proper person to prepare tax returns and transact business under the tax laws on behalf of taxpayers; and
- (b) the directors, managers, and other executive officers of the company are of good fame, integrity, and character; and
- (c) no director, manager, or other executive officer is an undischarged bankrupt.

(4) The registration of a tax agent remains in force for 12 months from the date of registration.

(5) If a partnership or company is registered as a tax agent, the partner or employee referred to in subsection (2)(a) or (3)(a), respectively, must be registered by the Commissioner as a nominee of the tax agent from the date of registration of the partnership or company as a tax agent.

(6) The registration of a nominee of a tax agent under subsection (5) remains in force until the registration is cancelled under section 18.

(7) An individual who is an excluded person cannot be registered as a tax agent or a nominee of a tax agent.

(8) The Commissioner must provide an applicant under section 15 with notice, in writing, of the decision on the application.

17. Renewal of tax agent registration-(1) A tax agent may apply to the Commissioner for the renewal of the tax agent's registration.

(2) An application under subsection (1) must be:

(a) in the prescribed form and accompanied by the prescribed fee; and

(b) lodged with the Commissioner within 21 days of the date of expiry of the tax agent's registration or such later date as the Commissioner may allow.

(3) The Commissioner must renew the registration of a tax agent who has applied under subsection (1) if the tax agent continues to satisfy the conditions for registration in section 16.

(4) The renewal of a tax agent's registration remains in force:

(a) for a tax agent that the Commissioner reasonably regards as having a good compliance record, for three (3) years from the date the existing registration expires; or

(b) in any other case, for 12 months from the date the existing registration expires.

(5) The Commissioner must provide an applicant under subsection (1) with notice, in writing, of the decision on the application.

18. Tax agents that are partnerships or companies-(1) A partnership or company registered as a tax agent may, by application in the approved form accompanied by the prescribed fee, request the Commissioner to register a partner of the partnership or an employee of the company as an additional or substituted nominee for the purposes of this Part and the Commissioner must register the person if satisfied that the person is a fit and proper person to prepare tax returns and transact business under the tax laws on behalf of taxpayers and is not an undischarged bankrupt.

(2) The Commissioner must provide an applicant under subsection (1) with notice, in writing, of the decision on the application.

(3) The Commissioner must cancel the registration of a partner in a partnership or employee of a company as a nominee of the partnership or company registered as a tax agent if any of the following applies:

- (a) the Commissioner is satisfied that the partner or employee is no longer a fit and proper person to prepare tax returns and transact business under the tax laws on behalf of taxpayers;
- (b) the partner or employee becomes an undischarged bankrupt or an excluded person;
- (c) for a tax agent that is a partnership, the partner ceases to be a partner in the partnership or the partnership, by notice in writing to the Commissioner, applies for cancellation of the registration of the partner;
- (d) for a tax agent that is a company, the employee ceases to be employed by the company or the company, by notice in writing to the Commissioner, applies for cancellation of the registration of the employee;
- (e) the partnership or company ceases to be registered as a tax agent.

(4) The Commissioner must give notice, in writing, to a partnership or company of a decision to cancel the registration of a nominee of the partnership or company and, if the registration is cancelled, the cancellation takes effect from the date specified in the notice.

(5) A partnership that is a tax agent must notify the Commissioner, in writing, if any of the following applies:

- (a) a partner who is a registered nominee of the partnership ceases to be a partner in the partnership;
- (b) there is a change in the composition of the partnership;
- (c) a partner becomes an undischarged bankrupt;
- (d) the partnership is going to be dissolved.

(6) A notification:

- (a) under subsection (5)(a), (b) or (c), must be made within 7 days after the partner ceased to be a partner, the change in composition occurred, or the partner became an undischarged bankrupt; or
- (b) under subsection (5)(d), must be made within seven 7 days before the dissolution of the partnership.

(7) A company that is a tax agent must notify the Commissioner, in writing, if any of the following applies:

- (a) a registered nominee ceases to be an employee of the company;

- (b) a person becomes a director, manager, or other executive officer of the company;
 - (c) a director, manager, or other executive officer of the company becomes an undischarged bankrupt;
 - (d) the company is going into liquidation.
- (8) A notification:
- (a) under subsection (7)(a), (b), or (c), must be made within 7 days after the employee ceased to be employed, the person became a director, manager or other executive officer, or the director, manager or other executive officer became an undischarged bankrupt; or
 - (b) under subsection (7)(d), must be made within 7 days before the company goes into liquidation.

19. Cancellation of tax agent registration-(1) A tax agent that ceases to carry on business as a tax agent must notify the Commissioner, in writing, within 7 days before ceasing to carry on business as tax agent.

(2) A tax agent may apply to the Commissioner, in the approved form, for cancellation of the agent's registration if the agent no longer wishes to be registered.

(3) The Commissioner must cancel the registration of a tax agent if any of the following applies:

- (a) a tax return prepared and delivered by the tax agent is false in any material particular, unless the tax agent establishes to the satisfaction of the Commissioner that this was not due to any wilful or negligent conduct of the tax agent;
- (b) the tax agent ceases to satisfy the conditions for registration in section 16;
- (c) the registration of the tax agent expires and the agent has not lodged an application for renewal of the registration under section 17;
- (d) the tax agent has ceased to carry on business as a tax agent;
- (e) the tax agent has applied for cancellation of the agent's registration under subsection (2);
- (f) for a partnership or company -
 - (i) the partnership or company ceases to have a nominee registered under section 16 or 18; or
 - (ii) the partnership or company ceases to exist.

(4) The Commissioner must give notice, in writing, of a decision to cancel the registration of a tax agent.

(5) Subject to subsection (6), the cancellation of the registration of a tax agent takes effect on the earlier of:

- (a) the date the tax agent ceases to carry on business as tax agent; or
- (b) 60 days after the tax agent has been served with notice of the cancellation.

(6) If a tax agent served with notice of the cancellation of the tax agent's registration lodges an objection to the decision, the cancellation takes effect in accordance with subsection (5) only if confirmed by the Minister.

20. Only tax agents to accept fees and advertise as tax agent-

(1) Subject to subsection (3), a person, other than a tax agent, must not demand or receive any fee for or in relation to:

- (a) the preparation of a tax return or an objection to a tax decision; or
- (b) the transaction of any business on behalf of any person in respect of the person's rights or obligations under a tax law.

(2) Subject to subsection (3), a person, other than a registered tax agent, must not:

- (a) represent another person as that other person's tax agent; or
- (b) indicate that, for reward, the person will offer assistance to another person in respect of that other person's rights or obligations under a tax law.

(3) Subsections (1) and (2)(b) do not apply to a barrister or solicitor performing legal work in relation to a tax law.

**PART 5
FORMS AND NOTICES**

21. Approved form-(1) A tax return, notice, or other document required to be filed under a tax law (other than Part 17) is in the approved form if:

- (a) it is in the form approved in writing by the Commissioner for that type of tax return, notice, or document; and
- (b) it contains the information (including any attached documents required) and is signed as required by the form.

(2) A document required to be filed under Part 17 is in the approved form if:

- (a) it is in the form approved by the Chairperson of the Tax Tribunal; and
- (b) it contains the information (including any attached documents required) and is signed as required by the form.

22. Forms and notices-(1) Subject to the Regulations, a form, notice, tax return, statement, table, or other document approved or published by the Commissioner for the purposes of any tax law may be in such form as the Commissioner determines for the efficient administration of the tax laws.

(2) The Commissioner must make the documents referred to in subsection (1) available to the public at the offices of the IRS and at such other locations, or by mail or such other means, as the Commissioner may determine.

23. Manner of lodging documents -Subject to this Act and except as otherwise provided in a tax law, an application, tax return, notice, or other document to be filed or lodged with the Commissioner under a tax law must be filed or lodged by personal delivery or normal post to an office of the IRS.

24. Service of notices by Commissioner-(1) A taxpayer must state in each tax return filed by the taxpayer an address in Samoa for service of notices and other documents, and such address applies for the purposes of all tax laws.

(2) Subject to this Act and except as otherwise provided in a tax law, a notice or other document required to be served by the Commissioner on a person for the purposes of a tax law is treated as properly served on the person:

- (a) when the notice or other document is served personally on the person or the person's representative; or
- (b) when the notice or other document is left at, or sent by registered or normal post to, the address for service stated in the most recently filed tax return of the person including an address for service; or
- (c) if no address for service is provided in a tax return, when the notice or other document is left at, or sent by registered or normal post to, the usual or last known address in Samoa of the person or the person's representative.

(3) If a notice or other document is served by normal post, service is, in the absence of proof to the contrary, taken to have been effected:

- (a) if sent to an address, including a post office, in Samoa, by the earlier of -
 - (i) 14 days after the date of posting; or
 - (ii) the day when the notice or other document is actually received; or
- (b) if sent to an address, including a post office, outside Samoa, by the earlier of -
 - (i) 21 days after the date of posting; or
 - (ii) the day when the notice or other document is actually received.

(4) In proving service under subsection (3), it is sufficient for the Commissioner to prove that the envelope containing the notice or other document was properly addressed and posted.

(5) If the person to whom a notice or other document has been sent by registered post is informed of the fact that there is a registered letter awaiting the person at a Post Office, and the person refuses or fails to take delivery of the letter, and the letter consists of the notice or other document, service of the notice or other document is taken to have been effected.

(6) The validity of service of a notice or other document cannot be challenged after the notice has been wholly or partly complied with.

25. Electronic returns and notices-(1) The Commissioner may establish and operate a procedure (referred to as the “electronic notice system”) for the electronic filing of tax returns or other documents to the Commissioner and the electronic service of notices and other documents by the Commissioner and, for this purpose, the Commissioner may provide written conditions for the following:

- (a) the registration of taxpayers to participate in the electronic notice system (referred to as “registered users”);
- (b) the issuing and cancellation of authentication codes to registered users;
- (c) the tax returns and other documents that may be transmitted through the electronic notice system, including the format and manner in which the returns or other documents are to be transmitted;
- (d) the correction of errors in or amendments to electronic returns or other documents;

- (e) the use of the electronic notice system, including the procedure applicable if there is a breakdown or interruption in the system;
- (f) the use in any electronic transmission of symbols, codes, abbreviations, or other notations to represent any particulars or information required under a tax law;
- (g) any other matters for the better provision of the electronic notice system.

(2) A registered user may, in accordance with the conditions set by the Commissioner under subsection (1), file a tax return or other document to the computer account of the Commissioner.

(3) The Commissioner may, in accordance with the conditions set by the Commissioner under subsection (1), serve a notice or other document to the computer account of a registered user.

(4) If a tax return or other document of a registered user has been transmitted to the computer account of the Commissioner using the valid authentication code assigned to the registered user, the return or other document is, for the purposes of the tax law under which it has been filed, presumed to be filed by the registered user unless the registered user proves to the contrary.

(5) For the purposes of a tax law, an electronic tax return, notice, or other document, or a copy thereof, must not be ruled inadmissible in evidence merely on the basis that it was filed or served without the filing or delivery of any equivalent document or counterpart in paper form.

(6) If an electronic tax return, notice, or other document is admissible under subsection (5), it is presumed that, until the contrary is proved, the contents of the electronic return, notice, or other document have been accurately transmitted.

(7) Section 39 applies to:

- (a) an electronic tax return filed by a registered user on the basis that the reference in section 39(2)(a) to a copy of a tax return includes a certificate under the hand of the Commissioner identifying the tax return, and stating the authentication code of the registered user and the device (if known) involved in the production and transmission of the electronic tax return; and
- (b) an electronic tax assessment served by the Commissioner on the basis that the reference in section 39(2)(b) to a copy of a notice of a tax assessment includes a certificate under the hand of the Commissioner identifying the tax assessment, and stating the authentication code of the registered user and the

device involved in the production and transmission of the electronic tax assessment.

(8) A person filing an electronic tax return or other document on behalf of another person must not divulge or disclose the contents of the return or document, or a copy thereof, without the prior written consent of the Commissioner.

26. Due date for documents and tax payments -If the due date for:

(a) filing a tax return, application, notice, or other document;
or

(b) the payment of tax; or

(c) taking any other action under a tax law,

is a Saturday, Sunday, or public holiday in Samoa, the due date is the next following business day.

PART 6 TAX INVESTIGATIONS

27. Power to enter and search-(1) For the purposes of administering any tax law, the Commissioner or a tax officer authorised by the Commissioner, in writing, for the purposes of this section:

(a) must have, at all times and without notice, full and free access to -

(i) any premises, place, or property; and

(ii) any document, including in electronic format; and

(iii) any data storage device; and

(b) may make an extract or copy of any document, including in electronic format, to which access is obtained under paragraph (a); and

(c) may seize any document that, in the opinion of the Commissioner or authorised officer, affords evidence that may be material in determining the tax liability of a taxpayer; and

(d) may retain any document seized under paragraph (c) for as long as the document may be required for determining a taxpayer's tax liability or for any proceeding under a tax law; and

(e) may, if a hard copy or copy on a data storage media of information stored on a data storage device is not

provided, seize and retain the device for as long as is necessary to copy the information required.

(2) A tax officer must not enter or remain on any premises or place if, upon request by the owner or lawful occupier, the officer is unable to produce the Commissioner's written authorisation permitting the officer to exercise powers under subsection (1).

(3) The owner or lawful occupier of the premises or place to which an exercise of power under subsection (1) relates must provide all reasonable facilities and assistance to the Commissioner or authorised officer including answering questions relating to the investigation to which the exercise of power relates either orally or in writing.

(4) A person whose document or data storage device has been seized under subsection (1) may examine it and make copies, at the person's expense, during normal office hours and on such terms and conditions as the Commissioner or authorised officer may specify.

(5) The Commissioner or authorised officer must sign for any document or data storage device removed and retained under this section.

(6) If the document or a data storage device removed and retained under subsection (1) is lost or destroyed while in the possession of the Commissioner due to the negligence or other wrongdoing of a tax officer or IRS employee, the Commissioner must compensate the owner for the loss or destruction on any reasonable basis.

(7) This section has effect notwithstanding:

- (a) any law relating to privilege (including legal professional privilege) or the public interest with respect to access to premises or places, or the production of any property or document (including in electronic format); or
- (b) any contractual duty of confidentiality.

28. Administrative summons-(1) The Commissioner may, for the purposes of administering any tax law, by notice in writing, require any person:

- (a) to provide such information as the Commissioner may require; or
- (b) to attend and give evidence concerning the person's or any other person's tax affairs; or
- (c) to produce any document (including in electronic format) in the person's custody or under the person's control

relating to the person's or any other person's tax affairs.

(2) A notice issued under this section must be served personally upon the person to whom it is directed or left at the person's last known usual place of business or abode and the certificate of service signed by the person serving the notice is evidence of the facts stated in the certificate.

(3) The Commissioner may require the information or evidence referred to in subsection (1) to be:

(a) given on oath, verbally or in writing, and, for that purpose, the Commissioner may administer the oath; or

(b) verified by statutory declaration or otherwise.

(4) This section has effect notwithstanding:

(a) any law relating to privilege (including legal professional privilege) or the public interest with respect to the giving of information or the production of any property or document (including in electronic format); or

(b) any contractual duty of confidentiality.

(5) Regulations made under section 101 may prescribe scales of expenses to be allowed to persons required to attend and give evidence under this section.

PART 7 RECORDS

29. Records-(1) Subject to subsection (2), for the purposes of a tax law, a taxpayer must:

(a) maintain, in the English or Samoan language, any document (including in electronic format) as may be required under the tax law; and

(b) maintain the document so as to enable the taxpayer's liability under the tax law to be readily ascertained; and

(c) retain the document for 7 years after the end of the tax period to which it relates or such shorter period as specified in the tax law.

(2) This section does not require the retention of documents:

(a) that the Commissioner has notified the taxpayer, in writing, that retention is not required; or

(b) of a company that has been wound up and fully dissolved.

(3) Subject to subsection (4), a person carrying on a business must issue a serially numbered written receipt for any amount received in respect of goods sold or services performed in connection with that business and must retain a duplicate of the receipt.

(4) If a machine is used for recording sales, the Commissioner may authorise a person to carry on business without issuing a receipt under subsection (3) if the Commissioner is satisfied that:

- (a) the machine automatically records all sales made; and
- (b) the total of all sales made in each day is transferred at the end of the day to a record of sales.

PART 8 RETURNS

30. Filing of tax returns-A taxpayer required to file a tax return under a tax law must file the return in the approved form and in the prescribed manner.

31. Extension of time to file a tax return-(1) A taxpayer required to file a tax return under a tax law may apply in writing to the Commissioner for an extension of time to file the return.

(2) Subject to subsections (3) and (4), the Commissioner:

- (a) may, upon satisfaction that there is reasonable cause, grant an application under subsection (1); and
- (b) must serve the taxpayer with notice of the decision on the application.

(3) An extension of time under subsection (2) must not exceed 12 months after the original due date for filing the return.

(4) The Commissioner cannot extend the time for filing a tax return required under the Income Tax Act if the taxpayer has not fully paid provisional tax as required under that Act in respect of the tax year to which the application for an extension of time relates.

(5) An extension of time granted under this section does not change the date for payment of tax due as specified in the tax law under which the return is required to be filed.

(6) The Commissioner must provide an applicant under subsection (1) with notice, in writing, of the decision on the application.

(7) The Regulations may provide for an extension of time for a tax agent to file the tax returns of their clients.

32. Commissioner may require taxpayer to file a tax return-

(1) The Commissioner may, by notice in writing and during a tax

period, require the taxpayer or the taxpayer's representative, as the case may be, to file a tax return for the tax period by the date specified in the notice being a date that may be before the date that the return for the tax period would otherwise be due, if, during the tax period any of the following has occurred:

- (a) the taxpayer has been declared bankrupt, or has gone into winding up or liquidation;
- (b) the Commissioner has reason to believe that a taxpayer is about to leave Samoa and is unlikely to return;
- (c) the taxpayer has ceased, or the Commissioner has reason to believe that a taxpayer will cease, carrying on business in Samoa;
- (d) the taxpayer is a non-resident trader that has carried on business in Samoa;
- (e) the taxpayer has died.

(2) In this section "non-resident trader" means a tax payer that is a non-resident person within the meaning in the Income Tax Act.

33. Presumption as to authority-A tax return that is purported to be filed by or on behalf of a taxpayer is treated as having been filed by the taxpayer or with the taxpayer's authority unless the contrary is proved.

PART 9 TAX DECISIONS

34. Self-assessments-For the purposes of this Act:

- (a) a self-assessment taxpayer who has filed a self-assessment return is treated as having made an assessment of the amount of tax payable for the tax period to which the return relates being that amount as set out in the return; and
- (b) a self-assessment return filed by a self-assessment taxpayer is treated as a notice of the assessment served by the Commissioner on the taxpayer on the date that the return was filed.

35. Default assessments-(1) Subject to subsection (4), if a taxpayer has failed to file a tax return as required under a tax law, the Commissioner may make an assessment of the tax payable (including penalty if applicable) by the taxpayer.

(2) The Commissioner must serve a taxpayer assessed under subsection (1) with notice, in writing, of the assessment.

(3) The service of a notice of an assessment under this section does not extend the time for payment of the tax due as determined under the tax law imposing the tax.

(4) This section does not apply to a tax return referred to in paragraph (b) of the definition of “tax return” in section 2.

(5) Nothing in this section relieves a taxpayer from being required to file the tax return to which the assessment served under this section relates.

36. Advance assessments - (1) The Commissioner may make an assessment of the tax payable by a taxpayer specified in section 32(1) for a tax period and the tax assessed is payable on the date set out in the notice of assessment served on the taxpayer.

(2) An assessment made under subsection (1):

(a) may be made before the date on which the taxpayer’s return for the period is due; and

(b) must be made in accordance with the law in force at the date the assessment was made.

(3) An assessment made under subsection (1) may be amended under section 37 so that the taxpayer is assessed in respect of the whole of the tax period to which the subsection (1) assessment relates.

(4) Nothing in this section relieves a taxpayer from being required to file the tax return to which the assessment served under this section relates.

37. Amendment of tax assessments-(1) Subject to this section, the Commissioner may amend a tax assessment by making such alterations or additions to the assessment as the Commissioner considers necessary to ensure that a taxpayer is liable for the correct amount of tax payable in respect of the tax period to which the assessment relates.

(2) A self-assessment taxpayer can apply to the Commissioner within the time specified in subsection (3)(b) for the Commissioner to make an amendment in accordance with subsection (1) to a self-assessment and the Commissioner must serve the taxpayer with notice of the decision on the application.

(3) The amendment of a tax assessment of a taxpayer under subsection (1) may be made:

(a) for fraud or wilful neglect by or on behalf of the taxpayer, at any time; or

(b) in any other case, within four (4) years after the date the Commissioner served or is treated as having served notice of the assessment on the taxpayer.

(4) As soon as practicable after making an amended assessment under this section, the Commissioner must serve the taxpayer with notice of the amended assessment.

(5) Subject to subsection (6), if a notice of assessment (referred to as the “original assessment”) has been amended under subsection (1), the Commissioner may further amend the original assessment within the later of:

(a) four years after the Commissioner served notice of the original assessment on the taxpayer; or

(b) one year after the Commissioner served notice of the amended assessment on the taxpayer.

(6) If subsection (5)(b) applies, the Commissioner is limited to amending the alterations and additions made in the amended assessment to the original assessment.

(7) The making of an amended assessment does not preclude a liability for late payment interest and penalty arising from the date that tax was originally due.

38. Validity of tax assessment or document-(1) Subject to subsection (2), if a notice of a tax assessment or any other document purporting to be made under a tax law is, in substance and effect, in conformity with the law under which it has been made and the person assessed, intended to be assessed, or affected by the document is designated in it according to common understanding:

(a) the validity of the notice of the tax assessment or other document is not affected by reason that any of the provisions of the tax law under which it has been made have not been complied with; and

(b) the notice of the tax assessment or other document cannot be quashed or taken to be void or voidable for want of form; and

(c) the notice of the tax assessment or other document is not affected by reason of any mistake, defect, or omission in the notice.

(2) Subsection (1) does not apply if the failure, error of form, mistake, defect, or omission is likely to deceive or mislead the person assessed or affected by the document.

39. Finality of tax decisions-(1) A taxpayer dissatisfied with a tax decision may challenge the decision only under Part 11.

(2) Except in proceedings under Part 11:

(a) for a self-assessment, the production of the original self-assessment return or a document signed by the Commissioner purporting to be a certified copy of the return is conclusive evidence of the contents of the return; and

(b) for any other tax assessment, the production of the original notice of the tax assessment or a document signed by the Commissioner purporting to be a certified copy of a notice of the assessment is conclusive evidence of the making of the assessment and that the amount and particulars of the assessment are correct.

(3) The production of a document signed by the Commissioner purporting to be a copy of or extract from a tax return or tax assessment is, in the Tax Tribunal and any court, sufficient evidence of the original, and the production of the original is not required.

40. Rectification of mistakes-If a notice of a tax assessment served, or document issued, by the Commissioner under a tax law contains a mistake that is apparent from the record and the mistake does not involve a dispute as to the interpretation of the law or facts of the case, the Commissioner may, for the purposes of rectifying the mistake, amend the assessment or document any time before the expiry of four (4) years after service of the notice of assessment or issuing the document.

PART 10 REPRESENTATIVES

41. Liabilities and obligations of representatives - (1) The following are treated as the representative of a person for the purposes of this Act:

(a) for an individual under a legal disability, the guardian or other legal representative who receives or is entitled to receive income on behalf, or for the benefit, of the individual;

(b) for a company (other than an unincorporated body or association of persons), the chief executive officer, managing director, company secretary, treasurer, a resident director, or a controlling member;

(c) for a company that is an unincorporated body or association of persons, the individual responsible for

- accounting for the receipt or payment of moneys or funds on behalf of the association or body;
- (d) for a partnership, a partner in the partnership;
 - (e) for a trust, a trustee of the trust;
 - (f) for the Government or a local or public authority, the individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the Government or local or public authority;
 - (g) for a foreign government, political subdivision of a foreign government, or international organisation, the individual responsible for accounting for the receipt or payment of moneys or funds in Samoa on behalf of the foreign government, political subdivision of the foreign government, or international organisation;
 - (h) for a non-resident person, the person controlling the non-resident person's affairs in Samoa, including a manager of any business of the non-resident person in Samoa;
 - (i) for a person to whom section 64 applies, the receiver of the person under that section;
 - (j) for any person (including a person referred to in paragraphs (a) to (i)), the agent or representative of the person as provided for under a tax law or specified by the Commissioner, by notice in writing, to the person.

(2) A representative of a taxpayer is responsible for performing any duty imposed by a tax law on the taxpayer, including the payment of tax.

(3) A representative making a payment of tax on behalf of a taxpayer is treated as acting under the authority of the taxpayer and is indemnified in respect of the payment.

(4) Subject to subsection (5), any tax that, by virtue of subsection (2), is payable by the representative of a taxpayer is recoverable from the representative only to the extent of the assets of the taxpayer that are in the possession or under the control of the representative.

(5) Subject to subsection (6), a representative is personally liable for the payment of any tax due by the representative in that capacity if, while the amount remains unpaid, the representative:

- (a) alienates, charges, or disposes of any moneys received or accrued in respect of which the tax is payable; or
- (b) disposes of or parts with any moneys or funds belonging to the taxpayer that are in the possession of the

representative or which come to the representative after the tax is payable, if such tax could legally have been paid from or out of such moneys or funds.

(6) A representative is not personally liable for tax under subsection (5) if:

- (a) the monies were paid by the representative on behalf of a taxpayer and the amount paid has priority, in law or equity, over the tax payable by the taxpayer; or
- (b) at the time the monies were paid by the representative he or she had no knowledge, and could not reasonably be expected to know, of the taxpayer's tax liability.

(7) If there are two (2) or more representatives of a taxpayer, the duties referred to in this section apply jointly and severally to the representatives but may be discharged by any of them.

(8) The amount that a representative is personally liable for under subsection (5) is treated as if the amount were tax payable by the representative as a taxpayer for the purposes of Part 13.

(9) Nothing in this section relieves a taxpayer from performing any duty imposed on the taxpayer under a tax law that the representative of the taxpayer has failed to perform.

(10) A reference in subsections (2)-(6) to "tax" includes any late payment interest and penalty payable in respect of the tax liability.

(11) In this section, "international organisation", "local authority", "public authority" or "non-resident person" has the meaning in the Income Tax Act.

42. Liability for tax payable by a company in financial difficulties-(1) Subject to subsection (2), if an arrangement has been entered into with the intention or effect of rendering a company unable to satisfy a current or future tax liability under a tax law, a person who was a director or controlling member of the company when the arrangement was entered into is jointly and severally liable for the tax liability of the company (including late payment interest and penalty in respect of the liability).

(2) The director of a company is not liable under subsection (1) for the tax liability of the company if the director derived no financial or other benefit from the arrangement and:

- (a) the director has, on becoming aware of the arrangement, formally recorded with the company his or her dissent and notified the Commissioner, in writing, of the arrangement; or

(b) at the time the arrangement was entered into, the director was not involved in the executive management of the company and had no knowledge of, and could not reasonably have been expected to know of the arrangement.

(3) The amount that a director or controlling member is personally liable for under subsection (1) is treated as if the amount were tax payable by the director or controlling shareholder as a taxpayer for the purposes of Part 13.

(4) In this section, “arrangement” means any contract, agreement, plan, or understanding whether express or implied and whether or not enforceable in legal proceedings.

PART 11 OBJECTIONS AND APPEALS

43. Objection to tax decision-(1) A person dissatisfied with a tax decision may lodge an objection to the decision with the Commissioner within 1 month after service of the notice of the decision.

(2) If the tax decision to which an objection relates is an amended tax assessment, a taxpayer’s right to object to the amended tax assessment is limited to the alterations and additions made in it to the original assessment.

(3) An objection must be in the approved form and state fully and in detail the grounds upon which the person objecting relies to support the objection.

(4) A person may apply, in writing, to the Commissioner for an extension of time to lodge an objection and the Commissioner may, if satisfied there is reasonable cause, grant an application under this section and must serve notice of the decision on the applicant.

(5) Subject to subsection (6), the Commissioner must consider the objection and either allow the objection in whole or part, or disallow it, and the Commissioner’s decision is referred to as an “objection decision”.

(6) The Commissioner must serve notice of the objection decision on the person objecting as soon as is practicable after making the decision.

44. Review of objection decision by the Tax Tribunal-(1) A person dissatisfied with an objection decision may make an application to the Tax Tribunal in accordance with section 93 for

review of the decision within 1 month after the applicant has been served with notice of the objection decision.

(2) The Tax Tribunal may, in reviewing an objection decision, exercise all the powers and discretions of the Commissioner under the tax law under which the original decision was made.

(3) The Tax Tribunal must hear and determine the application for review in accordance with Part 17 and make a determination as set out in subsection (4) or (5).

(4) If an application for review relates to a tax assessment, the Tax Tribunal may make an order to:

- (a) affirm, or reduce, increase, or otherwise vary the assessment to which the objection decision relates; or
- (b) remit the assessment to the Commissioner for reconsideration in accordance with the directions of the Tribunal.

(5) If an application for review relates to a tax decision other than a tax assessment, the Tax Tribunal may make an order to affirm, vary, or set aside the decision.

45. Appeal to Supreme Court-(1) A party to a proceeding before the Tax Tribunal dissatisfied with the decision of the Tribunal may, within 2 months after being notified of the decision of the Tribunal or within such further time as the Supreme Court may allow on an application in writing, lodge a notice of appeal to the decision in the approved form with the Registrar of the Supreme Court.

(2) The party appealing to the Supreme Court must serve a copy of the notice of appeal on the other party to the proceeding before the Tax Tribunal within 7 days of lodging the notice of appeal with the Registrar of the Supreme Court.

(3) An appeal to the Supreme Court can be made on a question of law only, and the notice of appeal must state the question of law that will be raised on the appeal.

(4) The Supreme Court:

- (a) must hear and determine the appeal; and
- (b) may make the following orders -
 - (i) affirm or set aside the objection decision;
 - (ii) remit the case to the Tax Tribunal or Commissioner for reconsideration in accordance with the direction of the Court;
 - (iii) dismiss the appeal;
 - (iv) make any other order it thinks appropriate by reason of its decision.

46. General provisions relating to objections and appeals-(1)

In any proceeding under this Part:

- (a) for a tax assessment, the burden is on the taxpayer to prove that the assessment is excessive; or
- (b) for any other tax decision, the burden is on the person objecting to the decision to prove that the decision should not have been made or should have been made differently.

(2) In an application to the Tax Tribunal or appeal to the Supreme Court in relation to an objection decision, the person seeking review of the decision is limited to the grounds stated in the objection to which the objection decision relates unless the Tribunal or Court grants the person leave to add new grounds.

(3) Subject to subsection (4), the tax due under a tax assessment is payable even if an objection, application for review to the Tax Tribunal, or appeal to the Supreme Court has been lodged by the taxpayer in respect of the assessment.

(4) The Commissioner may, upon application in writing by a taxpayer, agree to stay recovery of the tax in dispute under a tax assessment up to a maximum of 50% of the disputed tax, but only if the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute.

PART 12**INTEREST AND ADMINISTRATIVE PENALTIES***Division 1**Late Payment Interest*

47. Late payment interest-(1) A person who fails to pay tax on or before the due date for payment is liable for late payment interest at prescribed rate on the amount unpaid calculated from the date the payment was due to the date the payment is made.

(2) Late payment interest paid by a person under subsection (1) is to be refunded to the person to the extent that the principal amount to which the interest relates is found not to have been payable.

(3) Late payment interest payable by a person in respect of withholding tax or an amount referred to in section 41(5) or 61(11) payable by the person is borne personally by the person and is not recoverable from any other person.

(4) Late payment interest payable under this section is simple interest.

(5) Late payment interest payable under this section is in addition to any late payment penalty imposed under Division 2 of this Part or any sanction imposed under Division 1 of Part 15 in respect of the same act or omission.

(6) The Commissioner may recover late payment interest payable under this section as if it were tax due by a taxpayer.

(7) If the Commissioner notifies a person in writing of the person's outstanding tax liability under a tax law and the person pays the balance notified in full (including late payment interest payable up to the date of the notification) within 30 days of the date of the notification, the Commissioner must cancel any late payment interest accruing between the date of notification and the date of payment.

Division 2
Administrative Penalties

48. Late filing penalty-(1) If a tax return required to be filed by a person under a tax law remains unfiled at the expiration of 1 month after the due date for filing the return, the person is liable:

- (a) for a company, to a penalty of \$300; or
- (b) for any other case, to a penalty of \$100.

(2) A person who fails to file or lodge any document, other than a tax return, as required under a tax law is liable to a penalty of \$10 for each day or part of the day up to a maximum of \$500 for failing to file or lodge the document.

(3) For the purposes of subsection (2), a person ceases to be in default when the document is received by the Commissioner.

49. Late payment penalty-(1) If any tax payable by a taxpayer remains unpaid at the expiration of 1 month after the due date or, if the Commissioner has extended the due date under section 31, the extended due date, the taxpayer is liable for a late payment penalty equal to 10% of the amount of unpaid tax.

(2) A penalty paid by a taxpayer under this section is to be dealt with under section 66 to the extent that the tax to which the penalty relates is found not to have been payable.

(3) In this section, "tax" does not include penalty.

50. Failure to maintain records penalty-(1) Subject to subsection (2), a taxpayer who fails to keep, retain, or maintain any document as required under a tax law is liable:

- (a) if the failure is knowingly or recklessly made, for a failure to maintain records penalty equal to 75% of the

- amount of tax payable by the taxpayer under the tax law for the tax period to which the failure relates; or
- (b) in any other case, for a failure to maintain records penalty equal to 20% of the amount of tax payable by the taxpayer under the tax law for the tax period to which the failure relates.

(2) If no tax is payable by the taxpayer for the period to which the failure referred to in subsection (1) relates, the failure to maintain records penalty is:

- (a) for a company, \$300; or
 (b) for any other case, \$100.

51. Tax short fall penalty-(1) This section applies to a person:

- (a) who makes a statement to a tax officer that is false or misleading in a material particular or omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular; and
- (b) the tax liability of the person or of another person computed on the basis of the statement is less than it would have been if the statement had not been false or misleading (the difference being referred to as the “tax shortfall”).

(2) Subject to subsection (3), a person to whom this section applies is liable:

- (a) if the statement or omission was made knowingly or recklessly, for a tax shortfall penalty equal to 50% of the tax shortfall; or
- (b) in any other case, for a tax shortfall penalty equal to 20% of the tax shortfall.

(3) The amount of a tax shortfall penalty imposed under subsection (2) on a person is increased by:

- (a) 10 percentage points if this is the second application of this section to the person; or
- (b) 25 percentage points if this is the third or a subsequent application of this section to the person.

(4) The amount of a tax shortfall penalty imposed under subsection (2) on a person is reduced by 10 percentage points if the person voluntarily discloses the statement or omission to which the section applies prior to the earlier of:

- (a) discovery by the Commissioner of the tax shortfall; or
- (b) the commencement of an audit of the tax affairs of the person to whom the statement relates.

- (5) No tax shortfall penalty is payable under subsection (2) if:
- (a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular; or
 - (b) the tax shortfall arose as a result of a taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in filing a self-assessment return.
- (6) For the purposes of this section, a statement made to a tax officer includes a statement made, in writing or orally:
- (a) in any application, certificate, declaration, notification, tax return, objection, or other document filed or lodged under a tax law; or
 - (b) in any information required to be provided under a tax law; or
 - (c) in any document provided to a tax officer; or
 - (d) in answer to a question asked of a person by a tax officer; or
 - (e) to another person with the knowledge or reasonable expectation that the statement would be passed on to a tax officer.

52. General provisions relating to penalty-(1) A liability for penalty is calculated separately with respect to each section in this Division.

(2) A person is not liable for penalty if the person has been convicted of an offence for the same act or omission.

(3) If a penalty has been paid under this Division and the Commissioner commences a prosecution under Division 1 of Part 15 in respect of the same act or omission, the penalty must be dealt with by the Commissioner in accordance with section 66, and no penalty is payable unless the prosecution is withdrawn.

(4) A person is liable for penalty only if the Commissioner:

- (a) makes an assessment of the penalty imposed under this Division; and
- (b) serves notice of the assessment on the person subject to the penalty stating the amount of penalty payable and the due date for payment.

(5) Subsection (4) applies also to penalty imposed under a tax law (other than this Act).

(6) A person liable to pay a penalty may apply in writing to the Commissioner for remission of the penalty payable and such application must include the reasons for the remission.

(7) The Commissioner may, upon application under subsection (6) or on his or her own motion, remit, in whole or in part, any penalty payable by a person except a penalty imposed under section 51.

(8) Nothing in this Division prevents the imposition of penalty under a tax law (other than this Act), although the same act or omission cannot be subject to:

- (a) the imposition of penalty under more than one(1) provision; or
- (b) both the imposition of penalty and prosecution for an offence.

PART 13 COLLECTION AND RECOVERY OF TAX

53. Tax is a debt due to the Government -Tax payable under a tax law by a person is a debt due to the Government and is payable to the Commissioner in the manner and at the place prescribed.

54. Extension of time to pay tax-(1) A taxpayer may apply, in writing, to the Commissioner for an extension of time to pay tax due under a tax law.

(2) If an application has been made under this section, the Commissioner may, upon satisfaction that there is reasonable cause:

- (a) grant the taxpayer an extension of time for payment of the tax due; or
- (b) require the taxpayer to pay the tax due in such instalments as the Commissioner may determine.

(3) The Commissioner must serve the taxpayer with written notice of the decision on an application under subsection (1).

(4) If a taxpayer permitted to pay tax by instalments defaults in the payment of an instalment, the whole balance of the tax outstanding, at the time of default, is immediately payable.

(5) The grant of an extension of time or permission to pay tax due by instalments does not exclude the liability for late payment interest arising from the original date the tax was due for payment.

55. Recovery of unpaid tax-(1) Unpaid tax is recoverable as a debt by the Commissioner suing in his or her official name on behalf of the Government:

(a) if the amount of unpaid tax is \$10,000 or less, in the District Court; or

(b) in any other case, in the Supreme Court.

(2) In any suit under subsection (1), the production of a certificate signed by the Commissioner stating the name and address of the taxpayer and the amount of tax payable is sufficient evidence of the debt for the Court to give judgment for such amount with full costs of suit against the taxpayer.

(3) The Limitation Act 1975 does not prevent or affect any action or remedy for the recovery of tax.

(4) In any proceedings in the District Court or Supreme Court for recovery of tax, the Commissioner may appear by an officer or employee of the Public Service, and a certificate, in writing, issued by the Commissioner stating that a person appearing is such an officer or employee and that the person appears for the Commissioner is sufficient evidence of the facts stated and the person's authority to appear on behalf of the Commissioner.

(5) If, in any proceedings in the District Court or Supreme Court for recovery of tax, the taxpayer is absent from Samoa or after reasonable enquiry cannot be found, service of a summons may, with leave of a judge, be effected by posting a duplicate or sealed copy thereof in a letter addressed to the taxpayer at his or her present or last known place of abode or business whether in Samoa or elsewhere.

(6) In any proceedings for recovery of tax, costs may be awarded to or against the Commissioner in the same manner as in other cases, but any costs awarded against the Commissioner must be payable out of money appropriated by the Government and not otherwise.

56. Proceedings not affected by vacancy or change in office of Commissioner - No action instituted by the Commissioner for the recovery of tax, and no proceedings on an objection to a tax assessment can be abated by reason of any vacancy in the office of the Commissioner, or treated defectively constituted by reason of any change in the holder of that office, and the action or proceeding can be continued in the ordinary course as if the Commissioner and his or her successors in office were a corporation sole.

57. Government Proceedings Act 1974 not affected - This Act does not limit or affect the operation of the Government Proceedings Act 1974, and all rights and remedies conferred upon the Government by that Act and by this Act co-exist and may be

exercised independently of one another, and tax may be recovered accordingly.

58. Recovery of tax paid by a person on behalf of another -A person who in pursuance of a tax law pays withholding tax is entitled to recover the amount so paid from the person receiving the income to which the withholding relates as a debt, or to retain or deduct that amount out of or from any money which is or becomes payable by the person to that other person, and if the withholding tax has been paid by a mortgagee, then, until repaid, it is taken to form part of the money secured by the mortgage, and bears interest at the same rate accordingly.

59. Security-The Commissioner may, if there is reason to believe that a taxpayer will not pay tax when it becomes payable, require a taxpayer, by notice in writing, to give security by bond, deposit, or otherwise, in such amount as the Commissioner thinks fit.

60. Seizure of goods-(1) The Commissioner may seize any goods in respect of which the Commissioner has reasonable grounds to believe that VAGST that is, or will become, payable in respect of the supply of such goods has not been, or will not be, paid.

(2) Any goods seized under this section must be stored in a place approved by the Commissioner for the storage of seized goods.

(3) If goods have been seized under subsection (1), the Commissioner must, as soon as is practicable after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before the seizure, a notice in writing:

- (a) identifying the goods; and
- (b) stating that the goods have been seized under this section and the reason for seizure; and
- (c) setting out the terms of subsections (6), (7), and (8).

(4) The Commissioner is not required to serve a notice under subsection (3) if, after making reasonable enquiries, the Commissioner does not have sufficient information to identify the person on whom the notice should be served.

(5) If subsection (4) applies, the Commissioner may serve a notice under subsection (3) on any person claiming the goods, provided the person has given the Commissioner sufficient information to enable the notice to be served.

(6) The Commissioner may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (3) has been served if that person has paid, or makes an

arrangement satisfactory to the Commissioner for payment of the VAGST that is, or will become, payable in respect of the supply of the goods.

(7) Except when subsection (6) applies, the Commissioner must detain the goods seized under subsection (1):

- (a) for perishable goods, for such period as the Commissioner considers reasonable having regard to the condition of the goods; or
- (b) in any other case, until the later of -
 - (i) ten days after seizure of the goods; or
 - (ii) ten days after the due date for payment of the VAGST in respect of the supply of the goods.

(8) If the detention period in subsection (7) has expired, the Commissioner may sell the goods by public auction or, in the case of perishable goods, may sell the goods in such manner as the Commissioner determines, and apply the proceeds of sale towards the cost of taking, keeping, and selling the goods seized with any balance to be dealt with under section 66.

(9) If the proceeds of disposal are less than sum of the cost of taking, keeping, and selling the goods seized and VAGST due in respect of the goods, the Commissioner may proceed under this Part to recover the shortfall as if it were tax due.

61. Collection of tax from third party-(1) This section applies if a taxpayer is, or will become liable to pay tax and:

- (a) the tax has not been paid by the due date for payment; or
- (b) the Commissioner has reasonable grounds to believe that the tax will not be paid by the due date for payment.

(2) If this section applies to a taxpayer, the Commissioner may, by service of a notice in writing, require a person (referred to as the “payer”) who:

- (a) owes or may subsequently owe money to the taxpayer; or
- (b) holds or may subsequently hold money, for or on account of, the taxpayer; or
- (c) holds money on account of some other person for payment to the taxpayer; or
- (d) has authority from some other person to pay money to the taxpayer,

to pay the amount specified in the notice to the Commissioner, being an amount that does not exceed the amount of the unpaid tax or the amount that the Commissioner believes will not be paid by the taxpayer by the due date.

(3) A notice issued under subsection (2) must specify the due date for payment of the amount owing under the notice, being a date that is not before the date that the amount owed by the payer becomes due to the taxpayer or held on the taxpayer's behalf, and the payer must pay the amount specified in a notice by the due date.

(4) If a notice served under subsection (2) requires a payer to deduct amounts from a pension, salary, wages, or other remuneration payable at fixed intervals to the taxpayer, the amount required to be deducted by the payer from each payment must not exceed 20% of the amount of each payment of a pension, salary, wages, or other remuneration.

(5) This section applies to a joint account if:

- (a) all the holders of the joint account have unpaid tax liabilities; or
- (b) the taxpayer can withdraw funds from the account (other than a partnership account) without the signature or authorisation of the other account holders.

(6) If a payer served with a notice under subsection (2) is unable to comply with the notice, the payer must notify the Commissioner, in writing, within 14 days after receipt of the notice, setting out the reasons for the payer's inability to comply.

(7) If a payer has notified the Commissioner under subsection (6), the Commissioner must, after considering the payer's reasons for non-compliance and by notice in writing, cancel, amend, or affirm the notice issued under subsection (2).

(8) The Commissioner must, by notice in writing to the payer, revoke or amend a notice served under subsection (2) or amended notice served under subsection (6) if the taxpayer has paid the whole or part of the tax due or has made an arrangement satisfactory to the Commissioner for payment of the tax.

(9) A copy of a notice served on a payer under this section must be served on the taxpayer.

(10) A payer making a payment under this section is treated as acting under the authority of the taxpayer and of all other persons concerned and is indemnified in respect of the payment.

(11) A payer who, without reasonable cause, fails to comply with a notice under this section is personally liable for the amount specified in the notice.

(12) The amount that a person is personally liable for under subsection (11) is treated as if it were tax payable by the person as a taxpayer for the purposes of this Part, and sections 47 and 49.

62. Tax a charge on property-(1) Tax that has not been paid by the taxpayer by the due date is a charge upon the real or personal property of the taxpayer except for customary land as may be prohibited by Article 102 of the Constitution.

(2) A charge created by this section is subject to all mortgages, charges, or encumbrances existing when the charge was created but, subject to the provisions of this section, has priority over all other mortgages, charges, or encumbrances.

(3) Despite anything to the contrary in any other Act, if any property subject to the charge created by this section is also subject to a charge created by another Act, the charges rank equally with each other unless by virtue of that other Act the charge created by it would be deferred to the charge created by this section.

(4) The Commissioner may register a charge on any property created by this section under any registration Act to which the property is subject by depositing with the appropriate Registrar a certificate signed by the Commissioner setting out the description of the property charged and the amount payable and, in such case, the Registrar must, without payment of any fee, register the certificate as if it were an instrument registrable under the registration Act.

(5) The registration of a subsection (4) certificate under a registration Act is treated to be actual notice to all persons of the existence and amount of the charge, and the charge has operation and priority accordingly in relation to the property that is subject to the charge and to the registration Act.

(6) If a mortgage registered in respect of the property before the registration of the charge secures any money that is advanced after written notice of the charge or of the registration of the charge has been given to the mortgagee, or to the solicitor for the mortgagee in respect of the mortgage, the charge has priority over the mortgage to the extent of that advance.

(7) When any registered charge has been satisfied, the Commissioner must lodge with the appropriate Registrar a release of the charge and the Registrar must, without payment of any fee, register the release as if it were an instrument registrable under the registration Act.

(8) A charge created by this section that is registered against any property operates to secure any tax secured by any prior unregistered charge and unpaid at the time of registration of the charge, and also to secure any tax secured by any charge coming into existence after the registration of the charge, to the extent that the registered charge operates to secure the total of all amounts for the time being owing by the person under all charges created by this section.

(9) If an amount constitutes by virtue of this section a charge of any property, despite anything to the contrary in any other enactment, the District Court may make such order as it thinks fit, either for the sale of that property or any part of it, or for the appointment of a receiver of the rents, profits, or income of the property, and for the payment of the amount of the charge and the costs of the Commissioner out of the proceeds of the sale or out of the rents, profits, or income.

(10) If property has been sold under an order under subsection (9), despite anything to the contrary in any other enactment, the District Court may, on the application of the purchaser or the Commissioner, make an order vesting the property in the purchaser.

(11) A vesting order under subsection (10) has the same effect as if any person entitled to the property had been free from any disability and had duly executed the proper conveyances, transfers, and assignments of the property for such estate or interest as is specified in the order, and the order is subject to stamp duty accordingly.

(12) The proceeds of disposal or the rents, profits, or income referred to in subsection (9) must be applied by the Commissioner towards the costs of selling or renting the property with any balance to be dealt with under section 66.

(13) If the proceeds of disposal under subsection (9) are less than the sum of the costs of the sale and the tax payable, the Commissioner may proceed under this Part to recover the shortfall.

63. Collection of tax by distraint-(1) The Commissioner or a tax officer authorised in writing by the Commissioner for the purposes of this section may issue an order, in writing, for the recovery of unpaid tax by distress and sale of the personal property of the taxpayer.

(2) An order issued under subsection (1) must state the following:

- (a) the taxpayer against whose property the order is issued;
- (b) the amount of the unpaid tax liability;
- (c) the property against which the distress proceedings are to be executed and the location of the property.

(3) For the purposes of executing distress under subsection (1), the Commissioner or authorised officer:

- (a) may, at any time, enter any house or premises described in the order authorising the distress proceedings to secure the property that is subject to the proceedings; and

- (b) may require a police officer to be present while the distress is being executed.
- (4) The property upon which distress is levied must be:
 - (a) identified by the attaching of a notice stating “*Property Impounded for not Complying with Tax Obligations by Order of the Commissioner of Inland Revenue under Section 63 of the Tax Administration Act*”; and
 - (b) kept at the premises where the distress is executed or at any other place that the Commissioner or authorised officer may consider appropriate, at the cost of the taxpayer.
- (5) If the taxpayer does not pay the tax liability described in the order, together with the costs of the distress:
 - (a) for perishable goods, within the period that the Commissioner or authorised officer notifies the taxpayer in writing as reasonable having regard to the condition of the goods; or
 - (b) for other personal property, within 10 days after the property has been secured by the Commissioner or authorised officer under subsection (3),
 the property distrained may be sold by public auction or in such other manner as the Commissioner or authorised officer may direct.
- (6) The proceeds of a disposal under subsection (5) must be applied by the Commissioner or authorised officer towards the cost of taking, keeping, and selling the property distrained with any balance to be dealt with under section 66.
- (7) If the proceeds of disposal under subsection (5) are less than the total costs of taking, keeping, and selling the property and the tax payable, the Commissioner may proceed under this Part to recover the shortfall as if it were tax due.

64. Duties of receivers - (1) A receiver must notify the Commissioner, in writing, within 14 days of the earlier of being appointed to the position of receiver or taking possession of an asset in Samoa in the capacity as receiver.

(2) The Commissioner must notify a receiver, in writing, of the amount of tax that is or will become payable by the person whose assets are in the possession or under the control of the receiver and the notice must be served on the receiver within 2 months of the Commissioner being served with a notice under subsection (1).

(3) Subject to subsection (4), a receiver:

- (a) must not, without prior approval of the Commissioner, dispose of an asset of the person whose assets are in

the possession or under the control of the receiver until a notice has been served on the receiver under subsection (2) or the 2-month period specified in subsection (2) has expired without a notice being served on the receiver under that subsection; and

(b) must set aside, out of the proceeds of sale of an asset, the amount notified by the Commissioner under subsection (2), or a lesser amount as is subsequently agreed to by the Commissioner; and

(c) is personally liable to the extent of the amount set aside for the tax of the person who owned the asset.

(4) Nothing in subsection (4) prevents a receiver from paying the following in priority to the amount notified under subsection (2):

(a) a debt that has priority over the tax referred to in this section despite any provision of this section;

(b) the expenses properly incurred by the receiver in the capacity as such, including the receiver's remuneration.

(5) If 2 or more persons are receivers in respect of a person whose assets are in the possession or control of the receivers, the duties and liabilities under this section apply jointly and severally to the receivers but may be discharged by any of them.

(6) The amount that a receiver is liable to under subsection (3)(c) is treated as if it were tax payable by the receiver as a taxpayer for the purposes of this Part.

65. Temporary closure of business-(1) If a taxpayer fails:

(a) to file a return under section 17 of the Value Added Goods and Services Tax Act, or a monthly summary of tax withheld from salary and wage income under the Income Tax Regulations; or

(b) to pay VAGST or tax withheld from salary and wage income,

on or before the due date, the Commissioner or tax officer authorised by the Commissioner in writing for the purposes of this section may notify the taxpayer in writing of the intention to close down part or the whole of the taxpayer's business unless the taxpayer delivers the return or summary, or pays the tax due within a period of 7 days of the date of the notice.

(2) If a taxpayer fails to comply with a notice under subsection (1), the Commissioner or authorised officer may issue an order to close down the business or part of the business of that person for a period not exceeding 14 days.

(3) The Commissioner or authorised officer may, at any time, enter any premises described in an order issued under subsection (2) for the purposes of executing the order and may require a police officer to be present while the order is being executed.

(4) The Commissioner or authorised officer must affix, in a conspicuous place on the front of the premises of the business or part of the business which has been closed under an order issued under subsection (2), a notice stating: “*Closed Temporarily for not Complying with Tax Obligations by Order of the Commissioner of Inland Revenue under Section 65 of the Tax Administration Act*”.

(5) If the return or summary is delivered or tax due is paid within the period of closure, the Commissioner must immediately arrange for removal of the notice referred to in subsection (4).

PART 14 REFUNDS AND RELIEF FROM TAX

66. Refund of tax-(1) Subject to subsection (2), if the tax paid by a taxpayer under a tax law for a tax period exceeds the tax payable by the taxpayer under the tax law for the period, the Commissioner must apply the excess as follows:

- (a) firstly in payment of any other tax owing by the taxpayer under the tax law;
- (b) secondly, in payment of tax owing under any other tax law;
- (c) lastly, any remainder must be refunded to the taxpayer.

(2) A taxpayer may request, by notice in writing to the Commissioner that the whole or a part of the amount specified in subsection (1)(c) is applied against a future tax liability of the taxpayer.

(3) A taxpayer may apply to the Commissioner, in the approved form, for a refund of overpaid tax under a tax law being tax that is not the subject of a dispute as to liability within four (4) years after the date on which the tax was paid.

(4) If, in relation to an application under subsection (3), the Commissioner is satisfied that tax has been overpaid by a taxpayer under a tax law, the Commissioner must apply the overpayment in accordance with subsection (1).

67. Power of Commissioner in respect of small amounts – Despite anything in any tax law, the Commissioner may refrain from issuing a notice of a tax assessment, or collecting or refunding tax or late payment interest if the balance payable (including after

allowance of a tax credit for provisional or withholding tax paid under the Income Tax Act, or an input tax credit under the Value Added Goods and Services Tax Act) does not exceed \$5.

68. Relief in cases of serious hardship-(1) If the Commissioner is satisfied that:

- (a) the payment of the full amount of tax owing by a taxpayer will cause serious hardship to the taxpayer; or
- (b) owing to the death of a taxpayer, the payment of the full amount of tax owing by the deceased will cause serious hardship to the dependents of the deceased,

the Commissioner may release the taxpayer or the personal representative of a deceased taxpayer wholly or in part from payment of the tax due.

(2) If the Commissioner makes a decision under subsection (1) to release a person or personal representative of a deceased person from tax and the tax has been paid, the Commissioner must refund the amount of tax released under subsection (1).

(3) No amount of tax in excess of \$10,000 can be remitted or refunded under this section except with the approval of the Minister.

(4) If a decision of the Commissioner under subsection (1) to release a taxpayer or personal representative of a deceased taxpayer from tax is based on fraudulent or misleading information, the tax liability released is reinstated.

69. Appropriation of refunds - A refund of tax under a tax law is to be charged on the Treasury Fund as a statutory expenditure without further appropriation than this section.

PART 15 OFFENCES AND PUBLICITY

Division 1 Taxation Offences

70. Offence for failure to file a tax return-(1) A taxpayer who, without reasonable excuse, fails to file a tax return by the due date, or within such further time as the Commissioner may allow under section 31 commits an offence and is liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding one (1) year, or both.

(2) A taxpayer who, without reasonable excuse, fails to file a provisional tax estimate by the due date as required under section 86

of the Income Tax Act commits an offence and is liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding one (1) year, or both.

(3) A certificate signed by the Commissioner certifying that a tax return or provisional tax estimate has not been received from a taxpayer at the place where, or by the person to whom, the return or estimate should have been filed is, in absence of proof to the contrary, sufficient evidence that the person has failed to file the return or estimate.

71. Offence for failure to withhold tax - A person who:

- (a) fails to withhold tax as required under a tax law; or
- (b) withholds tax but fails to pay the withheld tax to the Commissioner as required under a tax law,

Commits an offence and is liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding one (1) year, or both.

72. Offence for failure to comply with obligations under this Act-(1) A person who contravenes section 9 commits an offence and is liable on conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 1 year, or both.

(2) A person who:

- (a) contravenes section 25(8); or
- (b) without reasonable cause fails to -
 - (i) provide reasonable facilities and assistance as required by section 27(3); or
 - (ii) comply with a notice served on the person under section 61; or
- (c) knowingly sells, leases, or otherwise disposes of any real or personal property that is the subject of a charge under section 62; or
- (d) enters any premises that is subject of an order issued under section 65(2) without the permission of the Commissioner or contravenes the order,

commits an offence and is liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 1 year, or both.

(3) A person who notifies the Commissioner in writing under section 61(6) is considered to be in compliance with a notice served on the person under section 61(2) until the Commissioner serves the person with a notice under section 61(7) cancelling, amending, or confirming the order served under section 61(2).

(4) A person who:

- (a) refuses or wilfully neglects to appear before the Commissioner or authorised officer as required under section 28; or
- (b) refuses to take an oath as witness as required under section 28; or
- (c) having been sworn as a witness for the purposes of section 28, refuses to answer any question put to the person or produce any document as required by the Commissioner or authorised officer under section 28,

Commits an offence and is liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding one (1) year, or both.

(5) A person who wilfully gives false evidence at an enquiry under section 28(1)(b) commits perjury within the meaning of the Crimes Ordinance 1961.

(6) A person who:

- (a) fails to notify the Commissioner as required under section 18(5) or (7), 19, or 64(1); or
- (b) contravenes section 20 or 64(3),

commits an offence and is liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding one (1) year, or both.

73. Offence for failure to maintain records - A taxpayer who knowingly or recklessly fails to keep, retain, and maintain documents as required under a tax law commits an offence and is liable on conviction to a fine not exceeding 30 penalty units or to imprisonment for a term not exceeding 1 year, or both.

74. Offence for improper use of taxpayer identification number-(1) A person who uses a false TIN on a tax return or document prescribed or used for the purposes of a tax law commits an offence and is liable on conviction to a fine not exceeding 30 penalty units or to imprisonment for a term not exceeding 1 year, or both.

(2) A person who uses the TIN of another person is treated as having used a false TIN, unless the TIN has been used with the permission of that other person on a document relating to the tax affairs of that other person.

(3) A person who fails to apply for cancellation of the person's TIN as required under section 13 commits an offence and is liable on

conviction to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 1 year, or both.

(4) A person who obtains a TIN using false or forged documents commits an offence and is liable on conviction to a fine not exceeding 30 penalty units or to imprisonment for a term not exceeding 1 year, or both.

75. Offence for making false or misleading statement-(1) A person who knowingly or recklessly:

(a) makes a statement to a tax officer that is false or misleading in a material particular; or

(b) omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular,

Commits an offence and is liable on conviction to a fine not exceeding 30 penalty units or imprisonment for a term not exceeding 1 year, or both.

(2) Section 51(6) applies in determining whether a person has made a statement to a tax officer.

76. Offence for obstruction of tax officer - A person who hinders or obstructs a tax officer in the performance of duties under a tax law commits an offence and is liable on conviction to a fine not exceeding 30 penalty units or to imprisonment for a term not exceeding 1 year, or both.

77. Offence for rescuing seized goods - A person who:

(a) rescues any goods that have been seized under section 60 or are the subject of an order under section 63; or

(b) before, at, or after any seizure of goods under section 60 or 63, staves, breaks, or destroys any goods, or document relating to any goods, to prevent -

(i) the seizure or the securing of the goods; or

(ii) the proof of an offence,

commits an offence and is liable on conviction to a fine not exceeding 30 penalty units or imprisonment for a term not exceeding 1 year, or both.

78. Offences in relation to tax officers-(1) A tax officer who directly or indirectly asks for, or takes in connection with any of the officer's duties, any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment

or reward, not being a payment or reward that the officer was lawfully entitled to receive commits an offence and is liable on conviction to a fine not exceeding 30 penalty units or to imprisonment for a term not exceeding 5 years, or both.

(2) A tax officer who enters into or acquiesces in any agreement to:

- (a) do any act or thing; or
- (b) abstain from doing any act or thing; or
- (c) permit or connive in the doing of any act or thing; or
- (d) conceal any act or thing,

whereby the Government is or may be defrauded of revenue, or that is contrary to a provision of a tax law or to the proper execution of the officer's duty commits an offence and is liable on conviction to a fine not exceeding 30 penalty units or to imprisonment for a term not exceeding 5 years, or both.

(3) A person who directly or indirectly offers or gives to a tax officer any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any payment or reward, not being a payment or reward that the officer was lawfully entitled to receive, commits an offence and is liable on conviction to a fine not exceeding 30 penalty units or to imprisonment for a term not exceeding 5 years, or both.

(4) A person who proposes or enters into any agreement with a tax officer in order to induce the officer to:

- (a) do any act or thing; or
- (b) abstain from doing any act or thing; or
- (c) permit or connive in the doing of any act or thing; or
- (d) conceal any act or thing,

whereby the Government is or may be defrauded of revenue, or that is contrary to a provision of a tax law or to the proper execution of the officer's duty commits an offence and is liable on conviction to a fine not exceeding 30 penalty units or to imprisonment for a term not exceeding 5 years, or both.

(5) A person who impersonates a tax officer commits an offence and is liable on conviction to a fine not exceeding 30 penalty units or to imprisonment for a term not exceeding five (5) years, or both.

(6) In this section, "tax officer" includes any person employed or engaged by the Ministry in any capacity, and includes a former officer or employee of the Ministry.

79. Offences by companies-(1) If an offence under a tax law is committed by a company, the offence is treated as having been

committed by a person who, at the time the offence was committed, was:

- (a) the chief executive officer, managing director, a director, company secretary, treasurer, or other similar officer of the company; or
 - (b) acting or purporting to act in that capacity.
- (2) Subsection (1) does not apply to a person if:
- (a) the offence was committed without the person's consent or knowledge; and
 - (b) the person, having regard to the nature of the person's functions and all the circumstances, has exercised reasonable diligence to prevent the commission of the offence.

80. Compounding of offences-(1) If a person ("offender") has committed an offence against a tax law, other than an offence under section 72(1)(a), 78, or 100, the Commissioner may, at any time prior to the commencement of the hearing by a court of a charge in relation to the offence, compound the offence and order, by notice in writing, the offender to pay such sum of money, not exceeding the amount of the fine that the offender would have been liable if convicted of the offence, as the Commissioner thinks fit.

(2) The Commissioner may compound an offence under this section only if the offender, in writing, admits committing the offence and requests the Commissioner to deal with the offence under this section.

(3) If the Commissioner compounds an offence under this section, the Commissioner's order under subsection (1):

- (a) must specify the name of the offender, the offence committed, the sum of money ordered to be paid, and the date on which payment is to be made; and
- (b) must have a copy of the written admission referred to in subsection (2) attached; and
- (c) must be served on the offender; and
- (d) is final and is not to be subject to appeal; and
- (e) may be enforced in the same manner as an order of a court for payment of the amount stated in the order; and
- (f) on production to any court, is treated as proof of the conviction of the offender for the offence specified.

(4) If the Commissioner compounds an offence under this section, the offender is not liable for prosecution or penalty in respect of same act or omission the subject of the compounded offence.

81. Proceedings for offences-(1) Any proceedings for offences under a tax law must be taken by way of prosecution and only upon the information of the Commissioner or a person authorised in writing by the Commissioner for this purpose.

(2) The signature of the Commissioner on a warrant of authority under this section must be judicially noted.

82. Information may be laid within 10 years- Despite anything in any other Act, any information in respect of an offence under a tax law may be laid at any time within 10 years after the end of the year in which the offence was committed.

Division 2
Publicity

83. Publication of names of tax offenders-(1) The Commissioner may publish in the *Savali*, a newspaper, or other media forum, or on the IRS website a list of persons who have been assessed with a liability for penalty under a tax law.

(2) The Commissioner may omit from a list published under this section a reference to a person to whom subsection (1) applies if the Commissioner is satisfied that, before the commencement of the investigation or inquiry that resulted in the imposition of penalty, the taxpayer voluntarily disclosed to the Commissioner or to any officer authorised by the Commissioner in that behalf complete information and full particulars of the act or omission in respect of which penalty was imposed.

(3) A list published under this section must specify the following:

- (a) the name, address, and occupation or description of the taxpayer;
- (b) the particulars of the act or omission in respect of which penalty was imposed as the Commissioner thinks fit;
- (c) the year in which the act or omission occurred;
- (d) the amount or estimated amount of the income not disclosed or of the tax not paid as a result of the act or omission in respect of which penalty was imposed;
- (e) any amount of the penalty imposed.

PART 16
RULINGS

Division 1
Public Rulings

84. Binding public rulings-(1) The Commissioner may make a public ruling in accordance with section 85 setting out the Commissioner's interpretation on the application of a tax law.

(2) A public ruling made in accordance with section 85 is binding on the Commissioner until withdrawn.

(3) A public ruling is not binding on a taxpayer.

85. Making a public ruling-(1) The Commissioner makes a public ruling by publishing a notice of the ruling in the *Savali*.

(2) A public ruling must state that it is a public ruling and have a number and subject heading by which it can be identified.

(3) A public ruling applies from the date specified in the ruling or, if no date is specified, from the date of publication in the *Savali*.

(4) The making of a public ruling is not a tax decision for the purposes of this Act.

86. Withdrawal of a public ruling-(1) The Commissioner may withdraw a public ruling, in whole or part, by publishing notice of the withdrawal in the *Savali*.

(2) If legislation is passed, or the Commissioner makes a public ruling, that is inconsistent with an existing public ruling, the existing ruling is treated as withdrawn to the extent of the inconsistency.

(3) The withdrawal of a public ruling, in whole or part, has effect:

(a) if subsection (1) applies, from the date specified in the notice of withdrawal or, if no date is specified, from the date notice of the withdrawal is published in the *Savali*; or

(b) if subsection (2) applies, from the date of application of the inconsistent legislation or public ruling.

(4) A public ruling that has been withdrawn in whole or in part:

(a) continues to apply to a transaction commenced before the public ruling was withdrawn; and

(b) does not apply to a transaction commenced after the ruling was withdrawn to the extent that the ruling is withdrawn.

Division 2
Private Rulings

87. Binding private rulings-(1) Subject to section 88, the Commissioner must, upon application in writing by a taxpayer, issue to the taxpayer a private ruling setting out the Commissioner's position regarding the application of a tax law to a transaction entered into, or proposed to be entered into, by the taxpayer.

(2) If the taxpayer has made a full and true disclosure of all aspects of the transaction relevant to the making of a private ruling and the transaction has proceeded in all material respects as described in the taxpayer's application for the ruling, the ruling is binding on the Commissioner in relation to the taxpayer to whom the ruling has been issued.

(3) A private ruling is not binding on the taxpayer to whom it is issued.

(4) If a private ruling is inconsistent with an existing public ruling, the private ruling has priority to the extent of the inconsistency.

88. Refusing an application for a private ruling-(1) The Commissioner may refuse an application for a private ruling if any of the following applies:

- (a) the Commissioner has already decided the matter that is the subject of the application in a tax assessment;
- (b) the Commissioner is of the opinion that an existing public ruling adequately covers the matter that is the subject of the application;
- (c) the application relates to a matter that is the subject of a tax audit or an objection;
- (d) the application is frivolous or vexatious;
- (e) the arrangement to which the application relates has not been carried out and there are reasonable grounds to believe that the arrangement will not be carried out;
- (f) the applicant has not provided the Commissioner with sufficient information to make a private ruling;
- (g) in the opinion of the Commissioner, it would be unreasonable to comply with the application having regard to the resources needed to comply and any other matters the Commissioner considers relevant.

(2) The Commissioner must serve the applicant with a written notice of a decision to refuse to make a private ruling.

89. Making a private ruling-(1) The Commissioner makes a private ruling by serving written notice of the ruling on the applicant.

(2) The Commissioner may make a private ruling on the basis of assumptions about a future event or other matter as considered appropriate.

(3) A private ruling must set out the matter ruled on and identify the following:

- (a) the taxpayer;
- (b) the tax law relevant to the ruling;
- (c) the tax period to which the ruling applies;
- (d) the arrangement to which the ruling relates;
- (e) any assumptions on which the ruling is based.

(4) A private ruling is made when the applicant is served with notice of the ruling and remains in force for the period specified in the ruling.

(5) The issuing of a private ruling is not a tax decision for the purposes of this Act and the contents of a private ruling may be challenged only by challenging a tax assessment or amended tax assessment based on the ruling.

90. Withdrawal of a private ruling-(1) The Commissioner may, for reasonable cause, withdraw a private ruling, in whole or part, by written notice served on the applicant.

(2) If legislation is passed, or the Commissioner publishes a public ruling, that is inconsistent with a private ruling, the private ruling is treated as withdrawn to the extent of the inconsistency.

(3) The withdrawal of a private ruling, in whole or part, has effect:

- (a) if subsection (1) applies, from the date specified in the notice of withdrawal; or
- (b) if subsection (2) applies, from the date of application of the inconsistent legislation or public ruling.

(4) A private ruling that has been withdrawn:

- (a) continues to apply to a transaction commenced before the ruling was withdrawn; and
- (b) does not apply to a transaction commenced after the ruling was withdrawn to the extent that the ruling is withdrawn.

PART 17
TAX TRIBUNAL

91. Establishment of Tax Tribunal-(1) This section establishes the Tax Tribunal to hear applications for review of objection decisions.

(2) An objection decision can be challenged only under this Part.

92. Appointment of members of the Tribunal-(1) The Tax Tribunal consists of the following members:

(a) a Judge of the Supreme Court appointed by the Chief Justice, as the Chairperson; and

(b) such other members as the Minister considers necessary having regard to the needs of the Tribunal, appointed by the Minister.

(2) The Chairperson holds office until the earlier of:

(a) ceasing to hold the office of Judge of the Supreme Court; or

(b) resigning from the office of Chairperson by notice in writing to the Chief Justice.

(3) Subject to subsection (4), a person may be appointed as a member under subsection (1)(b) if the person satisfies any one of the following:

(a) the person is a barrister or solicitor of the Supreme Court and has significant experience in tax matters;

(b) the person is a member of the Samoa Institute of Accountants and has significant experience in tax matters;

(c) the person has previously been engaged as a tax officer with significant technical and administrative experience in tax matters;

(d) the person has special knowledge, experience, or skills relevant to the functions of the Tax Tribunal.

(4) The following persons cannot be appointed as a member under subsection (3):

(a) an excluded person;

(b) a person who has been -

(i) liable for penalty or convicted of an offence under a tax law (including under the repealed legislation); or

(ii) has been the subject of an order under section 80; or

- (iii) convicted of the offence of official corruption under the Crimes Ordinance 1961 or any other Act;
- (c) a person who is an undischarged bankrupt.
- (5) A member appointed under subsection (1)(b):
 - (a) may be appointed as either a full-time or part-time member; and
 - (b) is appointed for a term of 3 years and is eligible for re-appointment; and
 - (c) holds office on such terms and conditions, including in relation to remuneration, as the Minister determines.
- (6) The appointment of a member under subsection (1)(b) terminates if the member:
 - (a) becomes an undischarged bankrupt; or
 - (b) becomes an excluded person; or
 - (c) is liable for penalty, convicted of an offence under a tax law, is subject to an order under section 80, or is convicted of the offence of official corruption under the Crimes Ordinance 1961 or any other Act; or
 - (d) resigns by notice in writing to the Minister; or
 - (e) is removed by the Minister, by notice in writing, for inability to perform the duties of office or for proven misconduct.
- (7) No member of the Tribunal is liable to any action or suit for any act done or omitted to be done in the proper execution of the member's duties under this Part.

93. Application for review of objection decision-(1) An application for review of an objection decision must:

- (a) be in the approved form; and
- (b) include a statement of the reasons for the application; and
- (c) be lodged with the Tribunal within the time specified in section 44; and
- (d) be accompanied by the prescribed fee.

(2) The Tribunal may, on an application in writing, extend the time for making an application to the Tribunal for a review of an objection decision.

(3) An applicant to the Tribunal must serve a copy of the application on the Commissioner within 7 days of lodging the application with the Tribunal.

94. Commissioner required to lodge documents with the Tax Tribunal-(1) The Commissioner must, within 28 days of being

served with a copy of an application to the Tribunal or within such further time as the Tribunal may allow, lodge with the Tribunal:

- (a) the notice of the tax decision to which the application relates; and
- (b) a statement setting out the reasons for the decision if these are not set out in the notice referred to in paragraph (a); and
- (c) any other document relevant to the Tribunal's review of the decision.

(2) If the Tribunal is not satisfied with a statement lodged under subsection (1)(b), the Tribunal may, by written notice, require the Commissioner to lodge, within the time specified in the notice, a further statement of reasons.

(3) If the Tribunal is of the opinion that other documents may be relevant to the Tribunal's review of an objection decision, the Tribunal may, by written notice, require the Commissioner to lodge with the Tribunal, within the time specified in the notice, the documents specified in the notice.

(4) The Commissioner must give the applicant a copy of any statement or document lodged with the Tribunal under this section.

95. Proceedings of the Tax Tribunal-(1) The Chairperson of the Tax Tribunal may make rules for the conduct of hearings before the Tribunal.

(2) A proceeding before the Tribunal is to be conducted with as little formality and technicality as possible and the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

(3) The Tribunal may:

- (a) take evidence on oath; or
- (b) proceed in the absence of a party who has had reasonable notice of the proceeding; or
- (c) adjourn the proceeding.

(4) The Chairperson may summon a person to appear before the Tribunal at a hearing to give evidence.

(5) If the members constituting the Tribunal for a proceeding are divided in opinion as to the decision to be made on any question, the question is decided according to the opinion of the majority but if there is a tie, the Chairperson has the casting vote.

(6) A member of the Tribunal who has a material, pecuniary, or other interest in any proceeding that could conflict with the proper performance of the member's functions must disclose the interest to

the Chairperson who must record the interest, and such member must not take part in that proceeding.

96. Discontinuance, dismissal, or reinstatement of application to the Tax Tribunal-(1) An applicant to the Tribunal may discontinue or withdraw the application at any time by filing a written notice of withdrawal with the Tribunal and the Tribunal must dismiss the application.

(2) If an applicant fails to appear in person or be represented at a hearing of the Tribunal, the Tribunal may dismiss the application.

(3) If an applicant fails to proceed with an application or comply with a direction of the Tribunal in relation to an application within a reasonable time, the Chairperson may, on behalf of the Tribunal, dismiss the application.

(4) If an application has been dismissed under subsection (2) or (3), the applicant may, within 1 month after receiving notification that the application has been dismissed, apply to the Tribunal for reinstatement of the application.

(5) If an application has been made under subsection (4), the Tribunal may reinstate the application with directions.

97. Agreement between the parties to a proceeding before the Tax Tribunal-(1) This section applies if, at any stage in a proceeding, the parties agree in writing as to the terms of a decision of the Tribunal in the proceeding, or in a part of the proceeding or on a matter arising out of a proceeding.

(2) If subsection (1) applies and the agreement reached is as to the terms of a decision of the Tribunal in the proceeding, the Tribunal may make a decision in accordance with those terms.

(3) If subsection (1) applies and the agreement reached relates to a part of a proceeding or a matter arising out of a proceeding, the Tribunal may, in its decision in the proceeding, give effect to the terms of the agreement.

98. Tax Tribunal may remit the matter to the Commissioner-(1) At any stage in a proceeding for review of an objection decision, the Tribunal may remit the decision to the Commissioner for reconsideration and the Commissioner may:

- (a) affirm the decision; or
- (b) vary the decision; or
- (c) set aside the decision and make a new decision.

(2) If the Commissioner varies or sets aside a decision under subsection (1), the decision as varied or set-aside is an objection decision for the purposes of this Part.

99. Decision of Tax Tribunal-(1)The Tribunal must make an order as set out in section 44(4)or (5) on an application for review of an objection decision as soon as practicable after the hearing has been completed and cause a copy of the order to be served on each party to the proceeding within seven (7) days of the making of the order.

(2) An order referred to in subsection (1) must include the Tribunal's reasons for the decision and its findings on material questions of fact and reference to the evidence or other material on which those findings were based.

(3) An order of the Tribunal comes into operation upon the giving of the order or on such other date as may be specified by the Tribunal in the order.

(4) Subject to subsection (5), the Tribunal must provide for the publication of its decisions in such form and manner as may be adapted for public information and use, and such authorised publication is evidence of the decisions of the Tribunal in all courts of Samoa without any further proof or authentication.

(5) In publishing its decisions, the Tribunal must ensure that:

- (a) the identity and affairs of the applicant and any other person concerned are concealed; and
- (b) trade secrets or other confidential information are not disclosed.

100. Offences relating to the Tax Tribunal-(1) A person who:

- (a) insults a member of the Tribunal in, or in relation to, the exercise of his or her powers or functions as member; or
- (b) interrupts a proceeding of the Tribunal; or
- (c) creates a disturbance, or takes part in creating a disturbance, in or near a place where the Tribunal is sitting; or
- (d) does any other act or thing that would, if the Tribunal were a Court, constitute contempt of that Court,

Commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding six (6) months, or both.

(2) A person who:

- (a) without reasonable excuse, refuses or fails to comply with a summons to appear before the Tribunal; or

- (b) without reasonable excuse, refuses or fails to take an oath before the Tribunal; or
- (c) without reasonable excuse, refuses or fails to answer any question asked of the person during a proceeding before the Tribunal; or
- (d) without reasonable excuse, refuses or fails to produce any book, record, or document to the Tribunal that the person was required to produce by a summons served on the person; or
- (e) knowingly gives false or misleading evidence to the Tribunal,

commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding six (6) months, or both.

PART 18 MISCELLANEOUS

101. Regulations-(1) The Head of State, acting on the advice of Cabinet, may make regulations for the purposes of or to give effect to the provisions of this Act, and in particular may make regulations for the following:

- (a) prescribing the functions, duties and powers of officers and employees of the IRS;
- (b) prescribe penalties not exceeding 100 penalty units for the contravention of the regulations;
- (c) providing for the administration of the Tax Tribunal;
- (d) providing for the proper and efficient administration of this Act;
- (e) prescribing matters as required to be prescribed under this Act.

(2) Regulations may be made within six (6) months after the commencement of this Act under subsection (1) to provide for saving or transitional matters relating to this Act, and the regulations may apply retrospectively from the commencement of this Act.

PART 19 CONSEQUENTIAL AMENDMENTS, SAVINGS AND TRANSITIONAL

102. Repeal of Income Tax Administration Act 1974 - The Income Tax Administration Act 1974 and subsidiary legislation made under it are repealed.

103. Value Added Goods and Services Tax Act amended- The Value Added Goods and Services Tax Act is amended:

- (a) in section 2 -
 - (i) by repealing the definition of “additional tax”; and
 - (ii) in the definition of “Commissioner”, by deleting “Income Tax Administration Act 1974; and includes a Deputy Commissioner of Inland Revenue as defined in that Act” and substituting “Tax Administration Act 2012”; and
 - (iii) in the definition of “due date”, by deleting “or section 24(2) or section 27(6)”; and
- (b) in section 24 -
 - (i) by repealing subsections (2) and (4); and
 - (ii) in subsection (3), by deleting “Part IV and V of this Act” and substituting “the Tax Administration Act 2012”; and
- (c) by repealing Parts IV, V, and VI; and
- (d) by repealing sections 44, 45, 46, 53, 54, 56, 58, 59, 60, 61, 64, 65, 66, 67, 68, and 69; and
- (e) in section 57 -
 - (i) in subsection (1), by repealing paragraphs (c), (d), (e), (i), (j) and (q); and
 - (ii) in subsection (3), by deleting “paragraph (c) or”; and
 - (iii) by repealing subsection (5).

104. Transitional and savings-(1) Subject to this section, this Act applies to an act or omission occurring, or a tax decision made, before the commencement of this Act.

(2) A person who on the commencement of this Act has been appointed:

- (a) to the office of Commissioner of Inland Revenue;
- (b) as an officer or employee of the IRS,

under the repealed legislation is treated as if the person were appointed under this Act.

(3) An appeal or prosecution commenced before the commencement of this Act continues and is disposed of as if this Act had not come into force.

(4) If the period for any application, appeal, or prosecution had expired before the commencement of this Act, nothing in this Act can be construed as enabling the application, appeal, or prosecution

to be made under this Act by reason only of the fact that a longer period is specified in this Act.

(5) A tax liability that arose before the commencement of this Act may be recovered under this Act, but without prejudice to any action already taken for the recovery of the tax.

(6) Subject to subsection (7), a taxpayer is:

(a) absolved from paying tax due for a tax period ending before 1 January 2006, and late payment interest and penalty payable in respect of such tax, if the tax, interest, and penalty has not been paid before the commencement of this Act; and

(b) not subject to prosecution for an offence in relation to any tax, late payment interest, or penalty covered by paragraph (a).

(7) Subsection (6) does not apply to tax, late payment interest, or penalty that is the subject of court proceedings for recovery of the tax, late payment interest, or penalty, a criminal investigation, or tax audit that commenced before the commencement of this Act.

REVISION NOTES 2013 - 2014

This is the official version of this Act as at 31 December 2014.

This Act has been revised by the Legislative Drafting Division in 2013 and 2014 under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Insertion of the commencement date
- (b) References to the “Trustee Act 1975” changed to “Trusts Act 2014”
- (c) Re-paragraphed definition for “tax laws” and inserted Tax Information Exchange Act 2012 (TIEA) in the definition as per section 16 of that TIEA

The following amendment was made to this Act by the *Tax Administration Amendment Act 2014, No. 22*:

- New section 9A inserted



Aumua Ming Leung Wai
Attorney General of Samoa

This Act is administered by the Ministry for Revenue.
