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The Tax Procedures Bill 2015 Analysis

Diving deep

Preamble

Introduction of the Tax Procedures Bill, 2015

The measure

The Bill has been introduced with a view to harmonize and consolidate the procedural rules that govern the administration of tax laws in Kenya. The Bill is expected to simplify tax compliance and collection of tax by the Kenya Revenue Authority (KRA). The Bill also seeks to enhance tax compliance by imposing heavy penalties for various offences set out in tax laws.

The Bill has collated legal provisions from the Income Tax Act, the Value Added Tax Act, 2013, the Kenya Revenue Authority Act, 1995 and Excise Duty legislation relating to administration of tax laws. The key provisions set out in the Bill are summarized in this document.

Who will be affected

Taxpayers, persons working with taxpayers, KRA.

When

Upon enactment of the Tax Procedures Bill and gazettement of commencement date.

Our view

This is a welcome initiative as the Bill introduces uniform procedures which will streamline and simplify administration of tax laws in Kenya. Currently, different tax laws provide for different treatment of similar actions or offences and this has been complicating the process of tax compliance as well as collection of tax revenues. As with all new legislation in the area of tax law, there are provisions that are perhaps draconian and may put taxpayers at greater risk. Care will be needed by taxpayers in dealing with their tax affairs.

Taxpayer registration

The measure

The Bill has introduced a measure that requires persons to be registered by applying to the Commissioner within 30 days of becoming liable for a particular tax. A person who ceases to be meet the registration requirements for the purposes of a tax law shall also be required to apply for deregistration within a similar period (30 days).

The Bill has also introduced a penalty of KES 100,000 per month or part thereof subject to a cap of KES 1 million for failure to register or de-register where expected to do so.

Who will be affected

Taxpayers.

When

To be gazetted.

Our view

The measure will create certainty on when a person is required to be registered for tax purposes. Currently, a time frame is only set out for VAT and excise licensing purposes. However, we are of the view that the penalties are too steep especially for start-ups or small enterprises. It may be more appropriate to link penalties to tax loss rather than mere registration or deregistration.

Tax representatives

The measure

The Bill provides for a person to be a tax representative of another person for the purposes of the new Bill or another tax law. The Bill states that a person can be a tax representative for an individual who is unable to comply with the requirements of a tax law such a minor; accounting officer for a company, an association of persons, partnership, a trust, national government or county government or judiciary or parliamentary service commission, foreign government; non-resident person; and any other person appointed by the Commissioner.

According to the Bill, a tax representative of a taxpayer shall be responsible for performing any duty or obligation imposed by a tax law on the taxpayer including the submission of returns and the payment of tax.

The Bill further states that a tax representative shall be personally liable for the payment of any tax due by the tax representative in that capacity, unless the tax representative pays all monies received or accrued in respect of which the tax is payable or the tax representative did not know or could not be reasonably be expected to know of the tax liability.
The appointment of tax representatives does not relieve a taxpayer from performing any obligation imposed on the taxpayer under a tax law that the tax representative of the taxpayer has failed to perform.

Who will be affected

Tax representatives.

When

To be gazetted.

Our view

The proposal for the appointment of tax representatives is a good measure to facilitate compliance with tax laws, especially for those who may not have a physical presence in-country. Currently, it is only the VAT Act that provides for tax representatives. However, the obligation placed on the representative to bear liability for tax due may discourage many persons from taking up this role. It is hoped that the Commissioner will pursue the taxpayers who are not complying with the law without imposing undue burden on the tax representatives.

Tax agents

The measure

The Bill provides that an individual or a partnership may apply to the Commissioner for a license as a tax agent. An individual or a partnership aspiring to operate as a tax agent is required to apply to the Commissioner and pay the prescribed fee. The Commissioner shall notify the applicant in writing of his decision and may from time to time publish a list of persons issued with licenses to act or operate as tax agents.

A person who is not a tax agent shall not provide tax agency services or offer tax services for a fee. However, practising lawyers are allowed to provide tax services for a fee.

A tax agent may apply in writing to the Commissioner to cancel the license or the Commissioner may cancel a license by a notice in writing where there are sound reasons to do so.

Who will be affected

Tax agents/ consultants, especially accountants and lawyers.

When

To be gazetted.

Our view

This is a measure aimed at providing more clarity in the licensing, requirements, duties and limitations of a tax agent. While the intention may be noble, i.e. to streamlining operations of tax agents in the country, it is questionable whether tax agents should be subject to the control of the revenue authority. One would argue that a more independent body should regulate the activities of tax agents or an industry/ self-regulator mechanism should be set up as is the practice with other professions.

Stripping company assets

The measure

The Bill states that where an arrangement has been entered into by any director or other senior officer or controlling member of the company with the intention of disabling the company from settling current or future tax liability, these senior members of the company shall be jointly and severally liable for the tax liability of the company. However, if a company officer can prove he or she did not benefit from the transaction; opposed the transaction; did not know of the transaction or notified KRA of the same, the company officer shall not be held responsible.

Who will be affected

Taxpayers.

When

To be gazetted.

Our view

This is a measure aimed at protecting tax revenues but we hope the Commissioner will be objective in exercising his wide powers to hold company officers accountable where he is of the view that an arrangement has been put in place to disable a company from settling its tax liabilities.

Record-keeping

The measure

The Bill proposes the retention period of records for tax purposes to be 5 years from the end of the reporting period to which it relates to unless a shorter period is specified in a tax law. However, the period may be extended where filed returns are amended by the taxpayer or Commissioner; or where there are proceedings that commenced before the end of the 5 year period.

The prescribed unit of currency in books of accounts, records, tax returns or tax invoices is the Kenya Shilling.

The Bill permits Regulations to be published that may provide for a simplified system of record-keeping for small business enterprises.

Who will be affected

Taxpayers.

When

To be gazetted.

Our view

This is a welcome proposal as it seeks to harmonize the retention period of documents for tax purposes and free taxpayers from the need retain documents for long and inordinate periods of time with a view to enhance compliance.

For instance, the current retention period set out in the Income Tax Act is 7 years while the VAT Act and Customs & Excise Act require documents to be retained for 5 years. This can be confusing and thus hinder tax compliance.

However, the proposal to have records including tax invoices to be in Kenya Shilling is expected to have a significant impact on business operations because there are vast transactions with foreigners during a financial period. This measure may force business enterprises to stick to the Kenya Shilling or have another set of records in local currency where they need to have foreign currency records.

Tax returns

The measure

The Bill includes a provision for extension of time to submit tax returns. The application for extension should be done before the original due date of the return and the Commissioner shall respond in writing. The Commissioner has to be satisfied with the reasons for the delay in order to grant the application for extension.

However, the extension of time to submit a tax return does not extend to payment of tax associated with the return.

The Bill empowers the Commissioner, by notice, to require a taxpayer to submit a tax return at any time during a reporting period.

Who will be affected

Taxpayers with tax return-filing obligations.

When

To be gazetted.

Our view

This is a welcome measure that does not exist in the current tax laws apart from the VAT legislation. This will allow taxpayers the flexibility to extend a tax return filing deadline where there are justifiable reasons to do so.

However, considering no time limit is set for the Commissioner to respond, we hope that the Commissioner shall process applications for extension promptly and not withhold his approval unreasonably as delays or difficulties in obtaining approval may affect the effectiveness of this measure.

It is our opinion that the Commissioner shall be limited to require tax returns to be submitted at any time only when there is a special reason to do so to avoid unnecessary disruption to business operations. The Bill has already set out the probable circumstances such as during bankruptcy, liquidation, or when a taxpayer is leaving Kenya permanently.

Tax assessments

The measure

The Bill seeks to limit the period open for tax assessment by the KRA to 5 years from end of the reporting period to which it relates to. However, there is no time limit for assessment in case of gross or willful neglect, evasion or fraud by a taxpayer.

Taxpayers shall also be required to apply for amendment of a return in case of some error or mistake within a similar period (5 years).

Who will be affected

Taxpayers with tax return-filing obligations.

When

To be gazetted.

Our view

This is also a positive measure that intends to streamline the period open for audits by the KRA and the period within which taxpayers can make amendments to returns already filed.

The move will impact the current time limit set out in the Income Tax Act of 7 years to assess tax by the Commissioner or to amend returns by taxpayers.

This ensures that tax matters are not left open for long and there is increased certainty once the assessment or amendment window is closed.

Collection and recovery of tax

The measure

The Bill has introduced several measures to aid in collection and recovery of tax. The key ones include:

- Allowing taxpayers to apply in writing to the Commissioner for an extension of time to pay a tax due under a tax law. If satisfied, the Commissioner shall notify the taxpayer of his decision to grant extension or require the taxpayer to pay in instalments.
- Reduction of interest chargeable upon late payment of tax from 2% to 1% per month. The late payment interest shall be computed as simple interest.
- Where a taxpayer has a tax liability in relation to a business carried on by the taxpayer and the taxpayer has transferred all or some of the assets of the business to a related person, the transferee shall be liable for the tax liability (transferred liability) of the transferor.
- Late payment interest payable by a person in respect of withholding tax, PAYE, among other agency taxes shall be borne personally by the person and shall not be recoverable from any other person.

Who will be affected

All taxpayers.

When

To be gazetted.

Our view

The proposal to enable taxpayers apply for extension of time to settle tax is welcome because the current tax laws are quite rigid and do not afford taxpayers leeway to extend the period within which to pay amounts of tax assessed by the Commissioner. Currently, taxpayers negotiate with KRA to pay tax in instalments but this is not anchored in the law. If the Commissioner grants tax payment extensions objectively, the move is expected to ease cash-flow pressure on taxpayers and enable them to pay tax without significant disruption to their businesses.

It is also a welcome measure to reduce interest chargeable on late payment of tax and calculate the same as simple interest. Currently, interest calculated on late VAT payments is compounded which is quite punitive.

However, it should be noted that whereas the Bill proposes to reduce interest rate on late payment, it takes away the option to apply for waiver of accrued interest. This will have a major impact on taxpayers who would otherwise have good grounds for seeking a waiver. One may argue that this move is not totally unexpected since it has become increasingly difficult to get substantial waivers in recent years.

The KRA also appears to be the big winner with respect to the concept of transferred liability introduced in the Bill. Currently, where assets are transferred to another person, the KRA has limited options to pursue the transferee for any transferor tax liabilities. This measure will allow the KRA to pursue both the transferor and transferee, where the two are related, for any outstanding tax liabilities associated with the transferor.

The KRA seems to have stepped in to stop the practice by some persons to transfer agency tax penalties to other persons by recovering from them. This appears to be done with a view to inflict pain on the person who is not compliant as part of enforcing compliance.

Refund of tax

The measure

The Bill stipulates that when a taxpayer has overpaid a tax under a tax law, the taxpayer may apply to the Commissioner for a refund within 1 year of the date the tax was paid. However, the Commissioner may, for the purposes of ascertaining the validity of the refund, subject the refund claim to an audit.

The Bill has also granted the Commissioner power to apply a tax overpayment to settle any tax liability owed to the KRA under any tax law before the taxpayer is refunded any money.

Who will be affected

All taxpayers.

When

To be gazetted.

Our view

The Bill is seeking to harmonize the period within which to apply for a refund of overpaid tax across all tax laws to 1 year from the date on which the tax was paid. However, the discretion to audit claims is expected to continue delaying tax refunds. This has been a problem in the past and it appears a concrete solution has not been found yet.

On the face of it, the Commissioner's power to settle any tax liability owed to him under any tax law before processing a refund to a taxpayer, may seem a fair measure. However given the common challenges with accuracy of KRA records, it is not unusual for KRA to delay processing of tax refunds on account of tax demands that are not factual or that are subject of disputes. Therefore, there is a concern that this measure may contribute to further delays in settling of refunds.

Tax decisions, objections and appeals

The measure

The Bill introduces several changes to hasten and ease the process of dispute resolution pitting taxpayers and the KRA. The changes include the following:

- Taxpayers aggrieved by a Commissioner's tax decision shall now be required first to lodge an objection under the Tax Procedures Act, within 30 days, before proceeding under any other written law.
- Service of assessments on taxpayers electronically will be allowed and taxpayers will also be allowed to submit returns of self-assessment electronically without the need for filing or delivery of any equivalent document or counterpart in paper form.
- The Bill expressly permits a taxpayer to apply in writing to the Commissioner for an extension of time to lodge a notice of objection. The Commissioner may allow for an extension if he is satisfied with reasons set out in the application. Under the current tax legislation, the Commissioner may allow a late objection where a certain amount of tax and interest is deposited with him.
- The Bill also intends to harmonize the period within which the Commissioner should provide his decision on an objection filed by a taxpayer. The Bill provides that where the Commissioner has not made an objection decision within 60 days from the date the objection was lodged by a taxpayer, the objection shall be allowed.
- The Bill provides for settlement of disputes out of Court or the Tribunal within a period of 90 days otherwise the dispute is referred back to the Court or Tribunal.

Who will be affected

Taxpayers who are aggrieved by tax decisions taken by the KRA.

When

To be gazetted.

Our view

These are positive steps aimed at hastening the process of tax dispute resolution and encouraging alternative dispute resolution. In particular, it is equitable that the KRA, just like the taxpayers, will now be required to respond to objections within a defined time period. The proposal that all disputes should be referred to the tax appeals tribunal, in the first instance, would appear to curtail taxpayers' options as it seems intended to prevent taxpayers from rushing to court before going through the tax tribunal.

Enforcement

The measure

The Bill expounds more on the powers of the Commissioner or authorized officer in carrying out inspections of a building, place, property, documents or data storage devices. The Bill further provides that any seized items shall not be retained for a period of longer than 6 months, unless required for the purposes of proceeding under the Bill.

The production and inspection procedure of documents for a financial institution has been expressly provided for in the Bill. The Bill states that documents shall not be removed from the financial institution or other premises at which they are produced for inspection. However, copies can be made which should be handled with confidentiality.

Who will be affected

All taxpayers.

When

To be gazetted.

Our view

The Bill has provided more clarity on the enforcement procedure and therefore this is expected to reduce inconveniences associated with actions of the Commissioner in line with the broad powers provided to him to inspect, search and seize.

Tax rulings

The measure

The Bill provides that the Commissioner may make a public ruling setting out his interpretation of a tax law and such ruling will be binding on him until he withdraws it by publishing a notice. Binding public rulings may be issued or withdrawn by publishing a notice in at least 2 national newspapers.

The Bill proposes to allow taxpayers to apply for binding private rulings to the Commissioner in respect of all taxes. Currently, it is only the VAT Act (2013) that allows for application for private rulings. If satisfied with details regarding a transaction, the Commissioner shall be required to issue a private ruling to an applicant within 45 days of receiving an application for a private ruling. The Commissioner shall publish a private ruling in at least 2 newspapers with national circulation but conceal the identity of the applicant.

The Bill also sets out conditions for refusing an application for private ruling, withdrawal of a private ruling and publication of private rulings.

Who will be affected

Taxpayers wishing to apply for rulings.

When

To be gazetted.

Our view

Currently, except for the VAT Act, there is no provision is the tax law for tax rulings. Therefore, this is a progressive measure in line with international best practice to allow a mechanism for tax rulings that help in minimising exposure especially when dealing with complex or grey areas of tax law.

It is also a step in the right direction that the Commissioner has been given a timeframe to issue private rulings. Unfortunately, it is not clear what steps a taxpayer should take if the Commissioner does not respond within the period stipulated by the law.

Where taxpayers seek the Commissioner's opinion, it is left to his discretion and it can take a long time to obtain an opinion that spells out his interpretation of a tax law, which is not binding, and therefore does not offer the much needed certainty.

We hope that the Commissioner will provide elaborate rulings because there is the tendency to simply restate the provisions of a tax law. We also hope that the Commissioner shall not use details set out in the applications for rulings to conduct witch-hunt on taxpayers.

Electronic returns, documents and communications

The measure

The Bill provides that the Commissioner may demand that a certain tax return, application, document, payment of tax or act be done through electronic or mobile communication. The Bill further provides that a statement contained in a document in electronic form shall be admissible as evidence of any fact stated in that document.

The Bill has introduced a new measure that allows taxpayers to submit returns electronically and pay tax electronically on any day even where the due date falls on a weekend or public holiday in Kenya provided the deadline stipulated in a tax law is met. The current tax legislation requires filing of tax returns and payment of tax to be done on the previous working day if the due date falls on a weekend or public holiday in Kenya.

Who will be affected

All taxpayers.

When

To be gazetted.

Our view

These are reasonable measures intended to simply and ease communication between the KRA and taxpayers by embracing technology and providing more communication options. The move to allow taxpayers to file tax returns and pay tax online even during public holidays and over the weekends is welcome and a good indicator that the KRA is stepping up the use of technology to enhance tax compliance.

Administrative penalties and offences

The measure

The Bill has introduced raft of harmonized but stiffer penalties and / or imprisonment terms for failure to comply with various tax laws in the country. The tough penalties are included in the table below.

Once the Bill is passed into law, a taxpayer shall be eligible to apply for a waiver in respect of penalties only. However, a penalty imposed for tax avoidance shall not be considered for waiver. Interest associated with late payment of any tax shall no longer be eligible for waiver.

Who will be affected

All taxpayers in case of non-compliance.

When

To be gazetted.

Our view

It is evident from the proposed significant penalties and severe imprisonment terms that the KRA is keen to contain tax revenue leakage by demanding high levels of tax compliance.

This is certainly bad news for taxpayers who may find themselves on the wrong side of the law but there is a concern that good taxpayers may not be spared the heavy hand of the law if the Commissioner does not use his powers diligently to determine whether an offence has been committed or not.

There is a major concern that the law seeks to penalise tax avoidance and that the Commissioner may wield his immense powers when it comes to determining what constitutes a tax avoidance scheme to the detriment of taxpayers. This is because, unlike tax evasion, tax avoidance involves operating within the confines of legislation to minimize tax exposure. It is therefore questionable whether this should be penalised, and even more worrying that the bill proposes heavier penalties for tax avoidance than actual non-compliance with the tax law. Additionally, there are fears that the Commissioner may reign on tax compliant persons and deem certain transactions to be part of a tax avoidance scheme with a view to impose more severe penalties.

Whereas it is understood that aggressive tax avoidance should be discouraged, international best practice points towards other measure of control rather than penalties. Many jurisdictions, for instance, provide for a reporting requirement which then gives the Commissioner the understanding of the legal gaps and the opportunity to close such loopholes through legislative changes.

It is our hope that the Commissioner will be objective in determining and communicating offences and attendant penalties to taxpayers.

Some of the fines have been greatly increased and may cripple small businesses. For example the penalty for failure to register or deregister appears too steep and should probably be tied to the tax loss, if any, rather than just the time lapse.

Electronic returns, documents and communications

The measure

The Bill provides that the Commissioner may demand that a certain tax return, application, document, payment of tax or act be done through electronic or mobile communication. The Bill further provides that a statement contained in a document in electronic form shall be admissible as evidence of any fact stated in that document.

The Bill has introduced a new measure that allows taxpayers to submit returns electronically and pay tax electronically on any day even where the due date falls on a weekend or public holiday in Kenya provided the deadline stipulated in a tax law is met. The current tax legislation requires filing of tax returns and payment of tax to be done on the previous working day if the due date falls on a weekend or public holiday in Kenya.

Who will be affected

All taxpayers.

When

To be gazetted.

Our view

These are reasonable measures intended to simply and ease communication between the KRA and taxpayers by embracing technology and providing more communication options. The move to allow taxpayers to file tax returns and pay tax online even during public holidays and over the weekends is welcome and a good indicator that the KRA is stepping up the use of technology to enhance tax compliance.

Offense	Provision of current tax laws	Provisions in the Bill
Failure to register or de-register for tax purposes where required to do so by a tax law	• VAT – KES 200,000 or imprisonment for a term not exceeding 2 years or both • Excise license – KES 500,000 • Income Tax – No specific penalty	Penalty of KES 100,000 per month or part thereof subject to a cap of KES 1 million
Failure to keep, retain or maintain proper documents as required by a tax legislation	No specific penalty or imprisonment term provided in the current tax laws apart from the general penalty	Penalty equal to 10% of the amount of tax payable subject to a minimum of KES 100,000
Late submission of PAYE returns	KES 10,000 per return filed late	Penalty equal to 25% of the tax due or KES 10,000; which is higher
Late filing of any other tax return	• Corporate entity - 5% of the tax due subject to a minimum of or KES 10,000 • Individual - 5% of the tax due subject to a minimum of or KES 1,000	Penalty of 5% of the amount of tax payable under the return subject to a minimum of KES 20,000 This penalty applies equally to both corporate entities and individuals
Failure to file any other document, other than a tax return	No specific penalty or imprisonment term provided in the current tax laws apart from the general penalty	Penalty of KES 1,000 per day subject to a maximum penalty of KES 50,000
Penalty for failure to submit a tax return online or pay a tax electronically when required to do so	No specific penalty or imprisonment term provided in the current tax laws apart from the general penalty	Penalty of KES 100,000
Tax shortfall attributable to deliberate provision of false or misleading statement or omission	• VAT – Penalty of KES 1 million or imprisonment for a term of 3 years or both • Income Tax – penalty of 200% of tax amount involved	Penalty of 75% on tax shortfall attributable to fraudulent tax filing 20% penalty applicable on tax shortfall not attributable to fraud Penalty on tax shortfall increased by up to 25% for repeat offenders (i.e. up to 100% on tax shortfall) Penalty reduced by 10% when a person discloses tax shortfall voluntarily to the KRA

Tax avoidance	No specific penalty or imprisonment term provided in the current tax law. However, the Commissioner has powers to reverse a transaction he adjudges to constitute tax avoidance scheme and impose penalties under various tax laws	Penalty equal to 200% of the amount avoided by a taxpayer This penalty is not eligible for waiver by the Commissioner or the Cabinet Secretary
Fraudulent claim for a refund of tax	VAT – provides for a penalty of 200% the amount of the claim	Penalty of 200% the amount of the claim under all tax laws
Offenses committed by KRA officers or persons required to act on Commissioner instructions	VAT - Fine not exceeding KES 1.5 million or imprisonment for a term not exceeding 3 years or both Income Tax – No specific penalty however, a fine not exceeding KES 100,000 or imprisonment for a term not exceeding 6 months or both may be applicable as a general penalty.	Fine not exceeding KES 2 million and to imprisonment for a term not exceeding 5 years or to both
Fraudulent act of omission or commission in relation to a tax period	VAT – General penalty of a fine not exceeding KES 1 million or imprisonment for a term not exceeding 3 years or both Income Tax – Fine not exceeding KES 10,000 or 200% of tax involved whichever is higher or imprisonment for a term not exceeding 2 years or to both	Fine not exceeding KES 10 million or 200% of the amount of tax evaded whichever is higher or to imprisonment for a term not exceeding 10 years or to both
Offenses committed by tax agents such as participating in creation of tax avoidance or evasion schemes; acting as a tax agent illegally	VAT – General penalty of a fine not exceeding KES 1 million or imprisonment for a term not exceeding 3 years or both Income Tax – Fine not exceeding KES 250,000 with respect to each return, statement, or other document subject to additional tax.	Fine equal to 200% of the amount of tax evaded or a fine of KES 5 million whichever is higher or to imprisonment for a term not exceeding 5 years, or to both

Transactions for which a PIN is required

The measure

The Bill seeks to include the following transactions in the existing list of transactions for which a PIN is required:

- Approval of development plans
- Opening accounts with financial institutions and investment banks

However, the Bill proposes to remove the following transactions from the list of transactions that require a PIN:

- Payment of services falling under County Finance Act
- Applying for VAT registration.

Who will be affected

Taxpayers and persons carrying out listed transactions.

When

To be gazetted.

Our view

We believe this is a move aimed at bringing more persons into the tax bracket by casting the tax net wide and in a targeted manner. It is a targeted approach because the measure appears aimed at bringing certain taxpayers into the tax net, i.e. landlords and property developers in the case applying for approval of development plans.

It is not clear why payments of services falling under County Finance Act have been removed but possibly it is because most transactions would be covered by other items on the list.

The requirement of a PIN when applying for VAT registration has been removed because the tax registration system has since changed and the PIN registration does incorporate VAT registration.

We highlight below other provisions in the existing tax laws that have been retained under the Tax Procedures Bill with limited changes

Part of the bill	Provision
Administration of tax law	• Functions and powers of the Commissioner have been set out with regard to control and collection of taxes; accounting for taxes; and general administration of tax laws. He shall, through authorized personnel, enforce, and ensure due compliance with, the provisions of the tax law, and shall make due inquiries in relation to tax matters. • The Commissioner or an authorized person shall protect the confidentiality of documents or information obtained in course of administering the tax law. • Officers of the revenue authority shall have all the powers, rights, privileges and protection of a police officer in the performance of their authorised duties. This means, for example, that authorized officers may arrest persons breaking a tax law.
PART III: Taxpayer particulars	• Taxpayers shall be required provide the Commissioner with information pertaining to change in particulars of a business within 30 days. These particulars include place of business, trading name, registered address, shareholders and transfer of business. • Where a private company has not paid any tax liability, every person who was a director or controlling member of the company at the time the tax was due shall be jointly and severally liable for the tax liability of the company.
PART IV: Record Keeping	• Documents required under a tax law shall be maintained in either of the official languages in Kenya i.e. English or Kiswahili. If any document is maintained in a different language, the Commissioner shall translate to English or Kiswahili at the person's expense.
PART V: Tax Return	• A tax return submitted by someone else on behalf of the taxpayer shall be treated as having been submitted by the taxpayer or with the taxpayer's authority unless proved otherwise.
PART VI: Assessments	• The Commissioner shall make default assessment where a taxpayer fails to submit a tax return for a given period and demand any tax assessed, in writing, including applicable penalties and interest. Default assessments shall be made within a period of 5 years where no fraud or gross negligence is involved. • The Commissioner may, based on the available information and to the best of his judgement, make an advance assessment prior to liquidation of a company; a taxpayer leaving the country permanently or when a person is likely to stop business operations. Advance assessments shall be notified to a person in writing.

Part of the bill	Provision
PART VII: Collection and Recovery of tax and Refunds	• The Bill empowers the Commissioner, for the purposes of securing the payment of any tax due or which shall become due, to require a person to furnish a security as may be prescribed. • Late payment interest shall not accrue for the period between the date the Commissioner notifies a person of outstanding tax liability and the date of payment provided the outstanding tax is paid in full (including late payment interest payable up to date of notification) as required by the Commissioner. • The Commissioner may attach land or a building of a taxpayer who fails to pay tax by directing the Land Registrar in writing as appropriate. The taxpayer shall also be notified by the Commissioner within 7 days of writing to the Land Registrar. • The Commissioner or an authorized officer may issue an order, in writing, for the recovery of an unpaid tax by distress and sale of the moveable property of a taxpayer. The taxpayer shall be required to pay all tax and costs associated with these recovery efforts. • The Bill gives the Commissioner power to require a person, who owes or may substantially owe money to taxpayer, to pay the Commissioner specified amounts in writing to cover for a person's tax liabilities (commonly referred to as agency notices). • The Commissioner may by notice in writing, require a person to preserve money held for a taxpayer and that person shall not transfer, withdraw, dispose or otherwise deal with that money except as instructed by the Commissioner or High Court. This notice may be issued where tax has not been accounted for by a taxpayer or the taxpayer is likely to frustrate the recovery of the tax. • The Commissioner may seize goods where he has reasonable grounds to believe that VAT or excise duty has not been paid or will not be paid with a view to settling tax liabilities associated with the goods. • The Commissioner has the power to issue a departure prohibition order in writing to the Director of Immigration where he has reasonable grounds to believe that a person may leave Kenya without settling tax liabilities associated with that person. • Tax refunded under a tax law in error shall be refunded together with late payment interest accruing from the date that the refund was erroneously paid to the person.
PART VIII: Tax decisions, objections and appeals	• Taxpayers not satisfied by the Commissioner's decision upon objection may appeal the decision to the Tribunal provided the taxpayer has paid tax not in dispute or entered into a payment plan with the Commissioner. • Taxpayers not satisfied with the Tribunal's decision may appeal to the High Court within 30 days of being notified of the Tribunal's decision. However, the Bill does not seem to allow late appeals unlike in the current tax laws. • Taxpayers dissatisfied with the decision of the High Court may appeal to the Court of Appeal within 30 days of being notified of the High Court decision or within such further period as the Court of Appeal may allow.

Part of the bill	Provision
PART IX: Enforcement	• The Commissioner or authorized officer may inquire into the affairs of a person under any tax law and shall at all times have full and free access to all lands, buildings, places to inspect all goods, equipment, devices and records. • The Commissioner or an authorized officer shall, with a warrant, have full and free access to any building, place, property, documents, or data storage device with a view to search and seize as part of administration of a tax law. • Where the Commissioner is satisfied that a person has committed an offense under a tax law, the Commissioner may, by notice in writing, require the person to appear before him.
PART XI: Communications, forms and notices	• The official languages of Kenya, i.e. English and Kiswahili, shall be the official languages of the tax laws and the Commissioner may refuse to recognize any communication or document that is not in the official language. • The Commissioner may issue a Tax Compliance Certificate valid for a specified period and may revoke it where a person fails to honour a tax demand or has violated provisions of a tax law. • A person who is required to submit or lodge a tax return, application, notice, statement, or other document in electronic form shall submit or lodge the same by personal delivery or normal post. • Where a notice of assessment or any other document is issued under a tax law and is, in substance and effect, in conformity with, or is consistent with the intent and meaning of the tax law, it shall be treated as valid. It shall not be affected by reason of any mistake, defect or omission it may contain. • The Commissioner may amend a notice of an assessment or other document served by him within a period of 5 years where there is a mistake.

PART XII: Administrative penalties and offences	• If a person has committed an act or omission that may be liable under a tax law to both the imposition of penalty and the prosecution of an offense, the Commissioner shall decide whether to make a demand for the penalty or to prosecute the offense. • A person commits an offense if that person uses a false PIN on a tax return or other document. A person also commits an offense if the person obtains a PIN through fraud, misrepresentation or deceit. • A tax agent commits an offense when he fails to notify the Commissioner when he ceases to carry on the business of being a tax agent; assists a taxpayer to create a tax avoidance or evasion scheme or contravenes provisions of the Tax Procedures Bill. • A person commits an offense if the person fails to keep proper records; submit returns or other required documents; pay tax due; makes false or misleading statements; commits fraud; refuses to comply with instructions of the Commissioner; obstructs authorized officer; aids or abets an offense and fails to comply with provisions of the tax laws in general. • An officer and staff of the KRA commits an offense fails to comply with tax laws; instructions of the Commissioner; interferes with implementation of the law in general. • If a person acting as an employee or an agent commits an offense under a tax law that person's employer or principal shall be treated as having also committed the offense. • A person charged with the commission of an offense under a tax law may be prosecuted in any place in Kenya. An offense under the Tax Procedures Bill may be tried in the Court designated to try offenses of corruption or economic crimes. • The amount of any tax or late payment interest due and payable under a tax law shall not be abated by the prosecution of a taxpayer for an offense under a tax law. • The Commissioner has powers to compound offenses by a person under a tax law provided the person admits in writing that he or she has committed the offense and requests the Commissioner to compound the offense.
Part XIII: Miscellaneous Provisions	• The Cabinet Secretary may make Regulations for the better carrying into effect the provisions of this Act. • This Act shall apply to any act or omission that occurred or is occurring for which no prosecution has been commenced, or any assessment made against which no appeal has been made, before the commencement date. • Any appeal or prosecution commenced before the commencement date may be continued and disposed of as if this Act had not come into force. • Any tax liability that arose before the commencement date may be recovered under this Act despite any action already taken for the recovery of the tax.

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