

Annex X

**DIRECTIVE 2014/-/EAC
OF THE COUNCIL OF MINISTERS
Of**

(Date of Approval by Council of Ministers)

DIRECTIVE ON ALIGNMENT OF TAX PROCEDURES

Preamble

The Council of Ministers of the East African Community

Having regard to the Treaty establishing the East African Community and in particular Articles 14 (3) (d) and 83 (2) (e);

Having regard to the recommendations of the Sectoral Council on Finance and Economic Affairs of (SCFEA) 11th September 2013;

WHEREAS Article 32 of the Common Market Protocol provides that Partner States undertake to progressively harmonize their tax policies and laws to remove tax distortions in order to facilitate the free movement of goods, services and capital and to promote investment within the Community;

WHEREAS Article 47 of the Common Market Protocol provides that the Partner States shall undertake to approximate their national laws and to harmonize their policies and systems for purposes of implementing this Protocol and that the Council shall issue directives for the purposes of implementing this Article.

HAS ADOPTED THIS DIRECTIVE.

PART I INTERPRETATION AND APPLICATION

Article 1: Interpretation

In this Directive, except where the context otherwise requires –

“Audit” is an official systematic review or examination of records, documents and or reports of a company or enterprise to evaluate whether proper arrangements have been made for securing accurate, complete and timely return of the tax affairs. The word audit, in this Directive will only include; Comprehensive audits and Issue oriented audits and for avoidance of doubt shall exclude desk audit or investigative examinations;

"Community" means the East African Community established by Article 2 of the East African Community Treaty;

“Distress” means distraint levied pursuant to an order;

"Due date" means the date on which a return or tax is due and/or payable under the domestic laws of Partner States;

“Person” includes an individual, a partnership, company, trust, government, a listed institution and any public or local authority;

“Tax” for purposes of this directive means taxes under the VAT, Income Tax and Excise duty Laws of each Partner States;

“Tax Administration” means;

- Office Burundais des Recettes
- Kenya Revenue Authority
- Rwanda Revenue Authority
- Tanzania Revenue Authority and
- Uganda Revenue Authority

“Taxpayer” means any person, who derives an amount subject to Tax;

“Tax period” means the calendar month;

“Tax Return” includes a tax declaration furnished by a taxpayer, based on a self-assessment, as prescribed under domestic tax laws of Partner States;

“Tax Appeals Tribunal” means;

- In Burundi, the Ordinary Administrative Court¹

¹ There is no Tax Appeal Tribunal in Burundi and tax cases are handled under the ordinary Administrative Courts (*Ministère des Finances*, 2006, Art.80).

- In Kenya, the Value Added Tax, Income tax and Customs tribunals²
- In Rwanda, the Commercial Courts
- In Tanzania, the Tax Revenue Appeals Board and
- In Uganda, the Tax Appeals Tribunal.

“Year of income” is the period of time prescribed under the Domestic laws of the Partner States;

“Zero rated supplies” are provided for in the Partner States’ VAT Laws.

Article 2: Objective

The Objective of this Directive is to facilitate operationalization of a Common Market through streamlining and harmonizing Tax processes and procedures that effectively facilitate free movement of goods, labor and services and ensure low taxpayer compliance costs for entities operating in the Community.

Article 3: Scope

This Directive shall apply to the administrative Tax processes and procedures in the Partner States.

PART II REGISTRATION

Article 4: Application for registration

1. A Person required to register for Taxes shall apply to the Tax Administration in the form prescribed by the Partner States Laws.

² Kenya has a Tax Appeals Tribunal Bill 2013 before the National Assembly. The Bill proposes to replace the current tax appeals system in Kenya.

2. The form prescribed shall be similar for all Partner States for all types of taxes, with parts relevant to different taxpayer types and country specifics.
3. The prescribed form shall contain all information which, according to the particular nature of the taxpayer and country specifics, will enable registration.

Article 5: Number of days to register for tax

A Person required to register for tax purposes shall do so with the Tax Administration within the following prescribed periods-

- a) For income tax purposes, in a period of fifteen (15) days from the date of establishment or commencement of business;
- b) Subject to the Partner States VAT domestic laws for VAT purposes,
 - i. Within fifteen (15) days of the end of any period of three calendar months if during that period the person made taxable supplies, the value of which exclusive of any tax exceeded one- quarter of the annual registration threshold set out in the Domestic laws of the Partner states or
 - ii. At the beginning of any period of three calendar months where there are reasonable grounds to expect that the total value exclusive of any tax of taxable supplies to be made by the person during that period will exceed one-quarter of the annual registration threshold set out in the Domestic laws of the Partner states;
- c) For Excise duty purposes, a period of fifteen (15) days from the date of establishment of a business.

Article 6: Tax Identification number

For purposes of identification of a taxpayer, each Tax Administration shall issue a single tax identifier to cover all eligible tax types.

Article 7: Compulsory registration

1. Registration for tax purposes shall be compulsory where-

- a. A Taxpayer becomes eligible for tax, as required under Article 7;
 - b. A Tax Administration discovers an eligible taxpayer, who has not registered for tax.
2. Any Person who fails to comply with the provisions of article 9 (a) and 9 (b) shall be liable to a default penalty as provided for in the domestic laws of the Partner States.
3. Registration for tax purposes may be voluntary to the extent provided for under the domestic taxes of the Partner States.

Article 8: Deliberate and intentional omissions at registration

Any person, who at registration, deliberately or intentionally provides inaccurate information or omits to provide the necessary information, resulting in the evasion, avoidance, non-payment or payment of less tax, shall be liable to a default penalty as provided for in the domestic laws of the Partner States.

PART III RETURN FILING

Article 9: Similar dates for tax return filing

Every Person liable to file a return under the domestic tax laws of the Partner States shall furnish to the Tax Administration a tax return, at the stipulated due date.

The return shall be a declaration by a taxpayer or his representative that it is a complete, accurate and reliable statement.

A. Income Tax

1. Every Person shall furnish a tax return for each year of income within six (6) months after the end of the year of income. Income Tax, in this context excludes taxes on employment Income and withholding tax which is a final tax.

2. A return of the estimated **annual chargeable** income shall be made once a year and shall be due in the first quarter of the year of income.
3. Taxpayers operating under the presumptive or turnover or profit margin tax regimes shall make quarterly payment of the tax due.

B. Excise Duty

Every Excise duty registered taxpayer shall furnish an excise duty return within fifteen (15) days after the end of each month.

Article 10: Extension of time to file returns

1. A taxpayer required to file a return may apply in writing to the Tax Administration for an extension of the due date within which to file returns.
2. The application for extension of time shall be made by the due date and shall indicate reasonable grounds for failure to file returns.
3. Where the Tax Administration is satisfied that the taxpayer has reasonable grounds not to make a return by the due date, may grant the tax payer an extension of time for a period not exceeding 90 days for income tax or 60 days for VAT or Excise duty within which to file a return. The extension shall not alter the due date to pay any taxes due.

Article 11: Amendments to tax returns

1. Amendments to tax returns may be made through voluntary disclosures.
2. The amendment shall only be permitted before a notice of intention to commence an audit is issued to a taxpayer. A notice of intention to commence an audit shall terminate the right to amend a tax return.
3. A tax payer who voluntarily discloses and amends his or her returns resulting into additional tax may be considered for a reduced penalty

of 10% of the additional tax paid and a simple interest rate charged at 1.5 % per month.

PART IV AUDIT PROCEDURE

Article 12: Notice on commencement of audit

1. The Tax Administration may, provide the taxpayer with a written notice of intention to commence an audit.
2. A notice of intention to commence an audit may include but not limited to the following:
 - a) the intended date of audit commencement;
 - b) a minimum list of the documents, records and reports required for review by the Tax Administration during the audit;
 - c) the tax period to which the audit relates; and
 - d) the tax types to be covered.

Article 13: Statement of audit conclusion

Where an audit has been concluded, both the tax payer and representatives of the Tax Administration may sign a statement of audit conclusion reflecting the process and conclusions reached during the audit.

Article 14: Keeping records of books of accounts

Any books of accounts or records required to be maintained for tax purposes shall be kept for a period of a maximum of five (5) years after the end of the Tax Period or Year of Income to which the tax relates.

Article 15: Notice to obtain Information

1. The Tax Administration may, by notice in writing, require any Person, whether or not liable to tax, to furnish within the time specified in the notice, any information that may be required by the notice.
2. A person, who foresees failure to comply with the requirements of the notice in article 17 (1) above, shall inform the Tax Administration of the failure with sufficient proof of difficulties faced in preparing and providing the required information.
3. Where the Tax Administration, finds that there was no good cause for such failure to comply with the notice issued under this section, the person is liable to a penalty as stipulated in the Domestic Tax laws of the Partner States.

Article 16: Amended and Additional Assessment

1. The Tax Administration may make an additional assessment amending a previous assessment in a period of (5) five years.
2. The Tax Administration may make an additional assessment for that Year of Income or return period at any time where any of the following circumstances arise:
 - a) fraud or any gross or wilful neglect by, or on behalf of the taxpayer,
 - b) discovery of new information.

Article 17: Taxpayer leaving the country, facing liquidation, bankruptcy, insolvency or winding up proceedings

Where the Tax Administration has reasonable grounds to believe that a tax payer may leave the country for an indefinite period or is facing liquidation, bankruptcy, insolvency or winding up proceedings, the Tax Administration may make an assessment of the chargeable income of the taxpayer thereon even where the return or tax is not yet due.

PART V ENFORCEMENT AND RECOVERY

Article 18: Tax payment after notice of assessment

Subject to Article 19, Taxes charged in any assessment, other than self assessment, shall be payable within thirty (30) days from the date of service of the notice of assessment.

Article 19: Immediate Recovery

Where the Tax Administration has reasonable grounds to believe that a tax payer may leave the country for an indefinite period or is insolvent or bankrupt, all tax due shall be payable immediately.

Article 20: Collection of Tax by Tax Distraint

1. The Tax Administration may recover any unpaid tax by distress against the movable or immovable property of a person liable to pay tax, by issuing an order in writing specifying the person against whose property the distress is authorised, the location of the property, and the tax liability to which the distress relates.
2. For the purpose of executing distress under (1) above, the Tax Administration may, at any time, enter any house or premises described in the order authorising the distress.
3. If the person from whom tax is recoverable by distress does not pay the tax together with the costs of the distress within the period prescribed, the moveable and immovable property distrained upon shall be sold by public auction for payment of the tax due and any remainder of those proceeds shall be restored to the owner of the property distrained.

PART VI

TAX DISPUTE SETTLEMENT

Article 21: Objections and Appeals to an assessment

1. A taxpayer who is dissatisfied with an assessment or a Tax Administration decision may lodge an objection to the assessment or decision, with the Tax Administration, within thirty (30) days after service of the notice of assessment or decision.

2. An objection to an assessment shall be in writing and state precisely the grounds upon which it is made.
3. A taxpayer shall before lodging an objection with the Tax Administration pay thirty percent of the amount in dispute or that part of tax assessed not in dispute, whichever is greater.
4. The taxpayer based on reasonable grounds, may apply to the Tax Administration for a waiver from paying **the thirty percent or part of the tax thereof**. The Tax Administration if satisfied with the grounds of the application may grant the waiver and grant permission to pay a lesser amount on objection.

Article 22: Objection and Appeal Decision

1. The Tax Administration may, within sixty (60) days of receipt of an objection, make a decision to allow or disallow the objection in whole or in part and amend the assessment accordingly.
2. The decision in Article 22 (1) above shall be communicated to the person objecting in writing.
3. Where the Tax Administration has not made a decision within sixty days of lodging the objection, the taxpayer may by notice in writing to the Tax Administration, elect to treat the Tax Administration as having made the decision to allow the objection.
4. Where the taxpayer makes an election under Article 24 (3), the taxpayer is treated as having been served with a notice of the objection decision on the date the taxpayer's election was lodged with the Tax Administration.

Article 23: Extension of time for Objection and Appeal

The Tax Administration may, upon application in writing by the taxpayer, extend the time for lodging an objection, where the Tax Administration is

satisfied that the delay in lodging the objection was due to the taxpayer's absence from the country, sickness or other reasonable cause.

Article 24: Appeal to a Tax Appeals Tribunal

A taxpayer dissatisfied with an objection decision may, appeal to a Tax Appeals Tribunal for a review of an objection decision within thirty (30) days from the receipt of the decision.

If, at the commencement of this Directive, a Tax Appeals Tribunal is yet to be established by a Partner State, appeals against the decisions of the Tax Administration shall lie to the relevant Court of that Partner State.

PART VII TAX REFUND PROCESS

A. VAT REFUND

Article 25: Entitlement for Refund

1. A taxpayer may apply to the Tax Administration using a prescribed form for a refund.
2. Subject to the Domestic laws of the Partner States, a tax payer shall be entitled to claim for a tax refund where-
 - a) the Input tax credit exceeds output tax;
 - b) taxes were paid in error;
 - c) he or she enjoys full or limited immunity, rights or privileges whether diplomatic or otherwise under the law;
 - d) bad debts refund, whereby a taxable person has supplied goods or services for a consideration in money and has;
 - i. paid the full tax on the supply to the Tax Administration, but has not within two years of the supply received payment, in whole or in part from the person to whom the goods or services are supplied and,
 - ii. taken all reasonable steps to the satisfaction of the Tax Administration, to pursue payment and he or she reasonably believes that he or she will not be paid,

That person may seek a refund of that portion of the tax paid for which he or she has not received payment; or

e) he or she is dealing in zero rated supplies.

Article 26: Time limit for input tax credit and refund claims

Claims for input tax credit and refund of excess output tax shall be made within one year from the due date of the return, the input tax credit or what the refund claims relates to.

Article 27: Tax Administration time limit to pay VAT refunds

Where the Tax Administration is satisfied that a tax payer is entitled to a tax refund, the Tax Administration shall refund the tax payer within a period not exceeding ninety (90) days from the date of application for a refund.

Article 28: Offset for established tax liabilities with tax credit

The Tax Administration shall before paying the tax refund, offset it against any established tax liabilities or at the election of a taxpayer for future tax liability.

B. INCOME TAX REFUND

Article 29: Entitlement for Refund

A taxpayer may apply to the Tax Administration for a refund, in respect of any year of income, of any tax paid in excess of the amount payable or due by the taxpayer for that year of income.

Article 30: Time limit for claim of income Tax refund

An application for a refund shall be made to the Tax Administration in a prescribed form within five (5) years after the due date of filing the tax return to which the refund relates.

Article 31: Tax Administration time limit to pay refund on Income Tax

Where the Tax Administration is satisfied that a tax payer is entitled to a tax refund, the Tax Administration shall refund the tax payer within a

period not exceeding ninety (90) days from the date of application for a refund.

Article 32: Offset for established tax liabilities with tax credit

The Tax Administration shall before paying the tax refund, offset it against any established tax liabilities or at the election of a taxpayer, for future tax liability.

C. EXCISE DUTY REFUND

Article 33: Entitlement for Excise duty refund

1. A Taxpayer may apply to the Tax Administration in writing for Excise duty refund.
2. A Taxpayer shall be entitled to a claim for Excise duty refund where:
 - a) Excise duty paid in error;
 - b) Remissions made to diplomats and exempt persons.

Article 34: Time limit for a claim of Excise duty refund

The application for Excise duty refund shall be made to the Tax Administration in writing within one (1) year from the due date of filing the Excise duty return.

Article 35: Tax Administration Time Limit to Pay Excise duty refund

Where the Tax Administration is satisfied that a taxpayer is entitled to Excise duty refund, the Tax Administration shall refund the taxpayer within a period not exceeding ninety (90) days from the date of application for a refund.

Article 36: Offset for established Excise duty liabilities with tax credit

The Tax Administration shall before paying the Excise duty refund, offset it as established tax arrears or at the election of a taxpayer, for future tax liability.

**PART VIII
FINAL PROVISIONS**

Article 37: Amendment

1. This Directive may be amended by the Council of Ministers.
2. Any proposals for amendment may be submitted in writing by the Partner States to the Secretary General. The Secretary General shall process the request for amendments in line with the EAC procedures.

Article 38: Transposition

Partner States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within a period one (1) year from the date of the Council of Ministers' approval. They shall forthwith inform the Council of Ministers thereof.

Article 39: Entry Into Force

This Directive shall enter into force upon approval by the Council of Ministers.

Include Signatories page

FOR THE REPUBLIC OF KENYA

FOR THE UNITED REPUBLIC OF TANZANIA

FOR THE REPUBLIC OF BURUNDI

FOR THE REPUBLIC OF RWANDA

FOR THE REPUBLIC OF UGANDA

