

## **LAW N° 25/2005 OF 04/12/2005 ON TAX PROCEDURES**

**We, KAGAME Paul,  
President of the Republic;**

**THE PARLIAMENT HAS ADOPTED AND WE SANCTION, PROMULGATE THE FOLLOWING  
LAW AND ORDER IT BE PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF  
RWANDA**

### **THE PARLIAMENT:**

The Chamber of Deputies in its session of May 10, 2005;

Given the Constitution of the Republic of Rwanda of June 4, 2003 as amended to date, especially in its Articles 62, 81, 92, 93, 108, 118 and 201;

Given the law n° 15/97 of November 8, 1997 establishing the Rwanda Revenue Authority, as modified and complemented to date, especially in its Article 20;

Given the Decree-Law of December 28, 1973 relating to Personal Tax, as modified and complemented to date, especially in its Articles 54 to 89;

Given the law n° 06/2001 of January 20, 2001 on the Code of Value Added Tax, as modified and complemented to date, especially in its Articles 50, 52 to 78 and 82;

Given the law n° 9/97 of June 26, 1997 on the Code of Fiscal Procedures, as modified and complemented to date;

### **ADOPTS:**

#### **CHAPTER ONE: GENERAL PROVISIONS**

##### **Article one: Scope of this Law**

This law prescribes the tax procedure for:

- 1° personal income tax;
- 2° corporate income tax;
- 3° withholding taxes;
- 4° value added tax "VAT";
- 5° property tax on vehicles and boats.

##### **Article 2: Definitions**

For the purpose of this Law, the definitions of terms defined in other laws of Rwanda apply unless a different meaning is expressly provided in this law.

The following definitions apply for the purpose of this Law:

- 1° **“Taxpayer”** means any person who is subject to tax according to the tax laws of Rwanda;
- 2° **“a person”** means any individual, legal entity or an association of individuals;
- 3° **“Minister”** means the Minister having Finance in his or her attributions in Rwanda;
- 4° **“Tax Administration”** means the Rwanda Revenue Authority;
- 5° **“Commissioner General”** means the Commissioner General of the Rwanda Revenue Authority;
- 6° **“Authorized officer”** means an officer of the Rwanda Revenue Authority who has been given powers by the Commissioner General to conduct audit, investigations, negotiate with the taxpayer, make adjustments in files of declaration, prepares and issues invoices, drafts affidavits and does anything else necessary to ensure the enforcement of the laws on tax procedure and collection of tax and he or she has been issued with means of identification to possess such powers;
- 7° **“Tax period”** means the period of time at the end of which the tax liability accrues.
- 8° **“Large taxpayer”** means any taxpayer who has been notified by Rwanda Revenue Authority that he or she is registered among large taxpayers following the directives of the Commissioner General.

### **Article 3: Powers and Principal functions of Tax Administration**

The Tax Administration is responsible for the implementation of this Law and for levying and collecting the taxes as mentioned in article one of this law.

The Tax Administration shall deposit to the account opened by the Minister in the National Bank of Rwanda, sufficient funds in accordance with a percentage agreed upon with the Minister, in order to pay extra taxes received that shall be refunded. The National Bank of Rwanda transmits to the Tax Administration and the State Treasurer, a daily schedule of financial situation showing the amount of money and financial instruments deposited on such an account.

With exception of provisions of paragraph 2 of this article, the tax collected by the Tax Administration is credited to the account of the Public Treasury.

### **Article 4: Address of the taxpayer or any other person**

The Tax Administration sends letters, information or any other communication to the taxpayer or any other person at his or her official seat or known residence.

In case a taxpayer or any other person changes his or her address, he or she is obliged to notify the Tax Administration.

At any time a person has not notified the Tax Administration of his or her change of address, all his or her information is delivered to his or her last known address.

When a taxpayer or any other person has no known address, the Tax Administration delivers all his or her relevant information through a nationwide newspaper .

### **Article 5: Methods of communication**

Any information between the Minister, the Tax Administration, the Commissioner General or the Appeals Commission and the taxpayer or any other person is delivered through any of the following means:

- 1° a registered letter;
- 2° a written act or communication delivered to the taxpayer, or any other person or at the head office of the Tax Administration with acknowledgement of receipt;
- 3° an official notification by the bailiff to the Tax Administration; or
- 4° an official notification by a court bailiff.

When the taxpayer or any other person rejects a registered letter or an official notification by the court bailiff of the Tax Administration, the letter or the notification are considered to have been delivered.

The post office or the court bailiff will make an official statement to show the rejection of the communication by the concerned and send a copy to the Tax Administration.

#### **Article 6: Ultimate date**

When the tax law sets a time in which certain act, confirmation or communication has to be made or given, the time is calculated from one day after the date shown by one of the following:

- 1° the post office stamp on the letter mentioned under point 1° of paragraph one of article 5 of this law;
- 2° the day of receipt of the letter or communication mentioned under point 2° of paragraph one of article 5 of this law;
- 3° the date of the court bailiff notification mentioned under point 3° and 4° of paragraph one of article 5 of this law;

When the tax law sets time in which certain act, confirmation or communication has to be made or given, the exact date of compliance with the requirements is shown by one of the following:

- 1° the post office stamp on the letter mentioned under point 1° of article one of article 5 of this law;
- 2° the day of receipt of the letter or communication mentioned under point 2° of paragraph one of article 5 of this law; or
- 3° the day of notification mentioned under point 3° and 4° of paragraph one of article 5 of this law.

If the last day to respect provisions of the tax law is a holiday, the provisions of the law shall be respected on the following working day.

#### **Article 7: Taxpayers' representatives**

Any person allowed by law to represent a taxpayer, shall file the tax declarations , pay taxes and comply with all the obligations required by the taxpayer under this law.

The persons referred to in this article are:

- 1° the guardian or any other person responsible for custody of a minor or any other incapacitated;
- 2° a legal or judicial administrator of an estate or of a will or the heirs of such an estate;
- 3° the owner of an enterprise;
- 4° the partners in a partnership which have unlimited liability
- 5° the president, the accountant, the director appointed or any other representative of a company or any other legal person;
- 6° the curator or the representative of a company or any other legal person in liquidation;
- 7° any other person given mandate to represent the taxpayer.

Any person mentioned under points 1°, 2°, 5°, 6° or point 7° of paragraph one of this article is required to communicate the new capacity or appointment to the tax administration within a period of seven (7) days after obtaining the capacity or the appointment.

### **Article 8: Publication and hierarchy of tax legislations**

The following tax legislations are published in the Official Gazette of the Republic of Rwanda:

- 1° laws;
- 2° decrees laws;
- 3° ministerial orders; and
- 4° Commissioner General's rules.

The following guidelines and any other information concerning the tax laws are published in a nationwide newspaper and made available to the taxpayers in a public place or at the offices of the Tax Administration:

- 1° special administrative instructions;
- 2° public rulings issued by the Commissioner General.

### **Article 9: Communication Language**

All the information between the Minister, the Tax Administration, the Commissioner General or the Appeals Commission and the taxpayer or any other person is transmitted in one of the official languages of the Republic of Rwanda.

Books, records, information and documents required by articles 12, 13, 14 and 15 of this law are written in one of the official languages of the Republic of Rwanda.

Any other information requested by the Tax Administration that is not in one of the official languages is translated by the taxpayer, if the Tax Administration so requests. An authorized translator certifies such a translation.

When the taxpayer rejects to provide the Tax Administration with documents in one of the official languages of Rwanda, the Tax Administration may, at the expense of the taxpayer, order such a translation with a receipt of payment.

## **CHAPTER II: REGISTRATION REQUIREMENTS**

### **Article 10: Registration**

Any person who sets up a business or other activities that may be taxable is obliged to register with the Tax Administration within a period of seven (7) days from the beginning of the business or activity or the establishment of the company.

Any person who carries out taxable activities exceeding twenty million Rwanda Francs (20,000,000 RWF) of in the previous fiscal year, or five million Rwanda Francs (5,000,000 RWF) in the preceding calendar quarter is required to register for VAT with the tax administration within a period of seven (7) days from the end of the year or from the end of the quarter mentioned above.

Any person who is not required to register for VAT according to provisions of paragraph 2 of this article may voluntarily register with the tax administration for VAT.

Any changes, whether related to the taxpayer or his or her activities shall be notified in writing to the tax administration within seven (7) days from the day of the notice of the change.

The Commissioner General issues instructions regarding the registration and cancellation of registration on persons who no longer carry out business activities.

#### **Article 11: Taxpayer identification number**

The tax administration assigns a taxpayer identification number to persons mentioned in article 10 of this law, to be used for all taxes. The procedure for issuance of a taxpayer identification number is determined by the instructions of the Commissioner General.

Any taxpayer is obliged to keep a taxpayer identification number on tax declaration documents and on other correspondence mentioned by this law and on other commercial documents or other proofs he or she files with the tax administration.

### **CHAPTER III: ACCOUNTS, BOOKS KEEPING AND TAX DECLARATION**

#### **Section one: Accounts and Record keeping**

#### **Article 12: Persons required to keep account books and records**

Persons required to keep account books and records are:

- 1° all companies operating in Rwanda established in accordance with domestic or foreign law;
- 2° all persons engaged in a business activities, professional or vocational occupation, except when such taxpayers have an annual turnover not exceeding one million two hundred thousand (1.200.000 RWF).

#### **Article 13: Books and records to be kept**

Any person who is required to keep books and records under the provisions of article 12 of this law is obliged to prepare, establish and keep all books and records of transactions which show:

- 1° tax liability;
- 2° the obligation to withhold tax;
- 3° the obligation to file a declaration of a tax withheld.

With exceptions of provisions of paragraph one of this article, any person who has an annual turnover exceeding twenty million Rwandan Francs (20,000,000 RWF) is obliged to keep the following additional documents:

- 1° a record showing business assets and liabilities;
- 2° records showing daily income and expenses related to the business activity he or she operates;
- 3° records showing purchases and sales of goods and services related to the business he or she operates;
- 4° records showing trading stock at the end of the tax period.

Books and records mentioned under paragraph one and two of this article, are preserved for any time they may be required by the tax administration at least in a period of ten (10) years starting from January 1<sup>st</sup> following the tax year in which it was carried out.

Books and records are required to be kept in the premises of the taxpayer or any other place located within Rwanda.

#### **Article 14: Value Added Tax invoice**

A Value Added Tax invoice is an accounting document prepared in the form determined by the Tax Administration and which shows the following information:

- 1° names of the taxpayer and the client, and the taxpayer's trade name, if different from the personal name;
- 2° taxpayer identification number and the purchaser's if necessary;
- 3° number and date of the value added tax registration certificate;
- 4° description of goods sold or services rendered;
  
- 5° value of taxable goods or services;
- 6° sum of Value Added Tax due on the given taxable transaction;
- 7° date on which the Value Added Tax invoice was issued;
- 8° serial number of the Value Added Tax invoice.

In case the sale of goods or services is carried out at retail to clients who are not value added tax registered taxpayers, a simplified cash receipt determined by the Tax Administration may be issued instead of a value added tax invoice.

#### **Article 15: Supplementary requirements for companies**

With exception of the requirements of articles 12 and 13 of this law, all companies are obliged to follow a double entry book keeping system as rules and procedures of accounting in Rwanda determine.

Companies also, are obliged to indicate annual tax declaration accompanied by a balance sheet and full accounts, established on the day of closure of the tax period.

### **Section 2: Postponement of tax declaration**

#### **Article 16: Filing extension**

The taxpayer may apply to the Commissioner General for an extension of the deadline for filing the tax declaration if sufficient proof of the reasons and difficulties faced in filing the tax declaration on time is given. The taxpayer makes a written request to the Commissioner General before the original filing date expires.

The Commissioner General may provide the taxpayer in writing with an extension of the deadline for filing the tax declaration.

Extension of a deadline for tax declaration neither affects the deadline for the tax payment nor suspends the accrual of interest.

### **Section 3: Withholding declarations and payments**

#### **Article 17: Records to be kept by withholding agents**

A withholding agent maintains and makes available for inspection by the Tax Administration, records showing, in relation to each tax period:

- 1° payments made to a payee;
- 2° tax withheld from those payments.

The withholding agent sends a copy of records mentioned in paragraph one of this article in a manner, form and the intervals prescribed by the Commissioner General and pays in the Tax Administration the tax withheld within fifteen (15) days following the end of the month in which he or she received the payments.

## **CHAPTER IV: ISSUANCE OF A NOTICE OF ASSESSMENT**

### **Article 18: Cases of issuance of a notice of assessment**

A notice of assessment is issued when:

- 1° the taxpayer files the tax declaration and pays the tax due on time;
- 2° the taxpayer files the tax declaration on time but has not paid the tax on time;
- 3° the Tax Administration applies to the taxpayer after investigations and audit;
- 4° there are serious indications that the possibilities for effective tax collection are in jeopardy, due to the financial position of the taxpayer or due to the taxpayer's intentions to evade taxation.

The Tax Administration sends a copy of the notice of assessment to the taxpayer.

The taxpayer pays the tax due within seven (7) days from the receipt of notice of assessment, unless the tax was already paid.

The notice of assessment constitutes full legal basis for the recovery of tax, interest, penalties and all costs incurred collection.

### **Article 19: Content of the notice of assessment**

The notice of assessment mentions:

- 1° the taxpayer's name, taxpayer identification number and address;
- 2° the modalities of calculation of the tax and the amount of tax to be paid;
- 3° the tax declaration or its rectification note, the assessment notice on which the declaration is based;
- 4° the date of issuance of the notice of assessment;
- 5° the address of the Commissioner General to which an appeal has to be sent;
- 6° the conditions to be fulfilled in order to lodge an appeal.

## **CHAPTER V: AUDIT AND INVESTIGATIONS**

### **Section one: General provisions**

#### **Article 20: Conditions in auditing and investigation**

In case of audit, the Tax Administration is required to inform in writing, the taxpayer the following:

- 1° that he or she will be audited at least seven (7) days before the audit is conducted;
- 2° the place where the audit is to be conducted and the possible duration of the audit;
- 3° any specific document the tax administration wants to see or any specific information it requires.

In case of audit, the taxpayer is required to work effectively with the tax audit team and to do the following:

- 1° to provide the team with suitable premises;
- 2° to give the team books and records referred to in Articles 12, 13 and 15 of this Law.

#### **Article 21: New audit**

The Tax Administration shall audit a taxpayer only once in respect of a certain tax or in a certain taxable period. A new audit may be necessary if there are concrete reasons as set out by rules issued by the Commissioner General.

## **Section 2: Obligations to provide information**

### **Article 22: Access to books and records**

Upon request by an authorized officer, the taxpayer is obliged to give access to books and records kept according to this Law, as well as all related documents.

### **Article 23: Information given by the taxpayer**

Information demanded in writing by the Tax Administration shall be provided within a period of seven (7) working days, from the time the taxpayer was informed unless the taxpayer gives sufficient proof of difficulties faced in preparing and delivering the requested information.

Upon written request by the Tax Administration, a copy of or any part of the books of accounts kept or any other related document, including lists of clients and lists of suppliers has to be provided to the Tax Administration within seven (7) days, unless the taxpayer gives sufficient proof of difficulties in writing faced in preparing and delivering the requested information. The taxpayer has the right to request for a confirmation of receipt of the information.

### **Article 24: Information from third parties**

On written request by the Tax Administration, all administrative services, including the Prosecution service, the registries of tribunals and courts, the subordinate authorities as well as all the public institutions in which the State holds shares or has governance over, are obliged to provide the tax officer with all the information required and to show all the original registers and other documents of certification of such institutions in their possession without transferring them outside their premises.

Notwithstanding provisions of paragraph one of this article, no information or document concerning or related to a judicial procedure, may be given or shown to the Tax Administration prior to presentation of written permission issued by the Prosecutor of a province or City of Kigali.

The Tax Administration has the right to obtain information from other persons in case there is need to know the structure and use of the property of the taxpayer. It can send written questions which have to be answered within a period of fifteen (15) days.

Notwithstanding provisions of paragraph 3 of this article, a person bound by professional secrecy can not give any information to the tax officer unless written permission is given by the Prosecutor of a province or City of Kigali. In applying for such permission, the Tax Administration shall provide the Prosecutor with the following:

- 1° the name, address and activity of the taxpayer;
- 2° the name, address and activity of the person bound by professional secrecy;
- 3° the serious indications of fraud the Tax Administration holds against the taxpayer;
- 4° the reasons why the Tax Administration wants the permission to search;

The Provincial or City of Kigali prosecutor verifies the request of the Tax Administration and provides a response, item by item, within seven (7) working days starting from the time of delivery of the letter of request to the prosecution. If the prosecution provides permission to request for explanation from the person bound for professional secrecy, the copy of the warrant is annexed to the document requesting for the explanations. At that time, and due to this reason, such person is not bound for professional secrecy and not liable to be prosecuted for revealing professional secrecy.

#### **Article 25: Entrance to premises**

An authorized officer may visit and enter into public premises of the taxpayer or of any other person between 7:00 am to 6:00 pm, without issuing any written notification. He or she may also request to enter private buildings which are assumed to be business related.

In case the authorized officer wants access to private buildings or premises and when no access was given, the Prosecution may give a search warrant to the Tax Administration. In applying for a search warrant, the Tax Administration provides to the prosecution the following:

- 1° the name, address and activity of the taxpayer;
- 2° the location of the premises or buildings the Tax Administration wants to visit;
- 3° the serious indications of fraud the Tax Administration holds against the taxpayer;
- 4° the reasons why the Tax Administration wants a search warrant;

The prosecution verifies and takes decisions on the request of the Tax Administration, item by item, in the shortest period possible.

If the prosecution gives the search warrant, its copy shall be given to the taxpayer during the search.

In case the tax administration has the permission to conduct search which is mentioned in paragraph 2 of this article, it may seek the assistance of the governor of the province or City of Kigali, the commander of Police or the Mayor of the District or Town in order for the search to be conducted.

## **CHAPTER VI: ASSESSMENT BY THE TAX ADMINISTRATION**

### **Section one: Contradictory procedure**

#### **Article 26: General Provisions**

When the Tax Administration discovers a miscalculation, an omission, a misrepresentation, an understatement of income or any other error in the tax declaration or an assessment, it has the right to issue an adjusted assessment.

#### **Article 27: Rectification note**

In case the tax declaration form is rectified, the Tax Administration sends a rectification note to the taxpayer. The note contains a draft of the adjusted assessment and all the elements leading to the adjusted assessment. The rectification note contains fines determined by the Tax Administration in case of non-compliance with the tax laws.

The taxpayer has the right to give his or her written opinion on the rectification note within thirty (30) days. The taxpayer may also transmit additional evidence or information to indicate that the adjusted assessment is incorrect. The taxpayer has the right to a hearing on condition that he or she requested for it in his or her reply.

The rectification note may be issued in a period of three (3) years, starting from the day of the filing of the tax declaration. A rectification note has to be issued at least on the last day of the three year period. The prescription mentioned in this paragraph is interrupted if the taxpayer has been informed to be audited by the Tax Administration, when there has been an affidavit thereof or by other deeds of acknowledgement by the taxpayer concerning the tax liabilities and all other provisions provided in the other laws.

A rectification note is definitive after:

1° a period of thirty (30) days, in case the taxpayer has not replied to the rectification note;  
2° the Tax Administration has sent a notification to the taxpayer declaring that none or a part of the observations or remarks of the taxpayer are upheld;

3° the hearing of the taxpayer as mentioned under paragraph 2, followed by a written notification by the Tax Administration to the taxpayer declaring that none or just part of the observations or remarks of the taxpayer are upheld.

Any rectification note which does not respect provisions of this article is void.

## **Section 2: Assessment procedure without notice**

### **Article 28: General Provisions**

The Tax Administration is entitled to the right of starting assessment procedure without notice when:

- 1° no tax declaration has been made;
- 2° a tax declaration was filed after the day mentioned in the Law on Taxes and there was no proof given of “force majeure” justifying the delay in filing;
- 3° the tax declaration was not signed by a competent person;
- 4° the tax declaration was not accompanied by all necessary documents;
- 5° the taxpayer was unwilling to cooperate with a tax audit officers or did not provide the information requested;
- 6° books and records were not kept as provided by law; or
- 7° there are serious indications of tax fraud.

### **Article 29: Description of the assessment procedure without notice**

In the event of the assessment procedure without procedure, the Tax Administration sends a note of an assessment procedure without notice to the taxpayer. The note contains all reasons why the assessment procedure without notice was conducted. It may also contain fines in case of non-compliance with the tax law. All proofs available to the Tax Administration can be used to carry out an assessment procedure without notice.

The taxpayer has the right to give written observations and remarks to the note of an assessment without notice in a period of thirty (30) days. He or she may also transmit additional evidence to the Tax Administration to prove that the assessment procedure without notice was not effectively conducted. The taxpayer has the right to a hearing if he or she requested for it in his or her reply.

The assessment procedure without notice may be conducted in a period of five (5) years, starting from January 1<sup>st</sup>, following the tax period. A notice of assessment procedure without notice has to be issued at least on the last day of five (5) year period.

If there are serious indications of tax fraud, the Tax Administration can issue an immediate assessment without notice, disregarding provisions of paragraph one and two.

An assessment without notice is definitive:

- 1° after thirty (30) days, if the taxpayer does not reply the assessment procedure without notice;
- 2° after the Tax Administration has sent a notification to the taxpayer declaring that none or part of the observations or remarks of the taxpayer are upheld;
- 3° after written or verbal explanations of the taxpayer mentioned under paragraph two (2) of this article of which the tax administration notified the taxpayer that none or part of the observations or remarks of the taxpayer are upheld;
- 4° after the conduct of an immediate assessment without notice as described in paragraph four of this article.

An assessment procedure without notice which does not respect provisions of this article is void.

## **CHAPTER VII : SETTLEMENT OF DISPUTES**

### **Section one: Administrative appeal**

#### **Subsection one: Appeal to the Commissioner General**

##### **Article 30: General Provisions**

The taxpayer who is not satisfied with the contents of the tax assessment notice may appeal to the Commissioner General within thirty (30) days after receipt of the assessment notice.

##### **Article 31: Form of the appeal**

The appeal has to fulfill the following conditions:

- 1° be in writing;
- 2° identify the taxpayer and the taxpayer identification number;
- 3° identify the tax period;
- 4° mention the assessment and the object and the grounds for the appeal;
- 5° be signed by the taxpayer, the taxpayer's legal representative or the representative holding a mandate;
- 6° contain all the proofs, and legal arguments against the assessment.

The appeal does not suspend the obligation to pay tax, interest and penalties. Upon written request by the taxpayer, the Commissioner General may suspend payment of the disputed amount of tax for the duration of the appeal.

##### **Article 32: Decision**

The Commissioner General makes a decision on the appeal within a period of thirty (30) days and sends it to the taxpayer. The Commissioner General may extend this period once for another thirty (30) days and informs the taxpayer. When no decision is taken within this period, the appeal is assumed to have a basis.

When the appeal is fully or partially accepted, the Commissioner General will discharge the taxpayer from the respective tax liability, interest and penalties. The Commissioner General will notify the Tax Administration of the decision in writing.

#### **Subsection 2: Appeal to the Appeals Commission**

##### **Article 33: Establishment of the Appeals Commission**

The Prime Minister's order shall establish the appeals commission and determine its functioning as well as the procedure of appointing its members.

**Article 34: Lodging an appeal**

The taxpayer who is not satisfied with the decision of the Commissioner General may appeal to the Appeals Commission within thirty (30) days after receipt of the decision of the Commissioner General.

**Article 35: Form of the appeal**

The appeal has to fulfill the following conditions:

- 1° be in writing;
- 2° identify the taxpayer and the taxpayer identification number;
- 3° identify the tax period;
- 4° mention the decision of the Commissioner General,
- 5° be signed by the taxpayer, the taxpayer's legal representative or the representative holding a mandate;
- 6° contain all the proofs and legal arguments against the decision of the Commissioner General.

**Article 36: Appeal procedure**

The Appeals Commission gives a receipt of confirmation of the appeals to the taxpayer. The Appeals Commission may require additional oral or written information from the taxpayer.

The taxpayer has the right to give additional written observations, remarks and legal arguments to the Appeals Commission even after the period mentioned in Article 34 of this law. The taxpayer has the right to a hearing on condition the request for such hearing is mentioned in the appeal.

**Article 37: Decision**

The Appeals Commission makes a decision on the appeal within a period of sixty (60) days and sends the decision to the taxpayer in writing. When no decision is taken within this period, the appeal is assumed to have a basis.

When the appeal has been fully or partially accepted, the Appeal Commission will discharge the taxpayer from the respective tax liability, penalties and interest accordingly. The Appeals Commission will notify the Tax Administration of the decision in writing.

**Section 2: Judicial appeal**

**Article 38: Appeal with the tribunal**

The taxpayer who is not satisfied with the decision of the Appeals Commission can make a judicial appeal. The appeal is brought before the tribunal of competent authority within thirty (30) days after the receipt of the decision of the Appeals Commission.

**Section 3: Interest paid by the Tax Administration**

**Article 39: Interest paid**

In the event the taxpayer is discharged from tax, interest and penalties by an administrative or judicial decision,

or when no refund of excess taxes paid is done in the time prescribed by this Law, the Tax Administration has to pay interest on the due refund.

The interest rate is calculated in accordance with the inter bank offered rate of the National Bank of Rwanda and will be set for the current fiscal year starting from January, 1<sup>st</sup>. Interest is calculated on a daily basis, non-compounding, counting from the day of payment until the day of refund, which is included.

## **CHAPTER VIII: PROOF, TYPES OF PROOF AND BURDEN OF PROOF**

### **Section one: Affidavits**

#### **Article 40: General Provisions**

An authorized officer, responsible for carrying out audits and investigations, has the power to make affidavits. An affidavit is drawn up in the exercise of the authorized officer's duties. It contains facts and evidence the authorized officer has personally established. It has to indicate clearly the name of the authorized officer, the name, address and activity of the taxpayer and the date on which it has been made. It is jointly signed by the authorized officer and the suspect. A copy of the affidavit has to be sent to the taxpayer.

#### **Article 41: Legal character of the affidavit**

An affidavit constitutes sufficient proof of the facts and evidence the authorized officer has established. It may be used by the Tax Administration for issuing an assessment without notice and it may be used as testimony. The contents of the affidavit can only be disregarded if it is proved that the authorized officer committed fraud or made a serious mistake.

### **Section 2: Methods of proof**

#### **Subsection one: General Provisions**

#### **Article 42: Admissible types of proof**

All types of proof used are allowed to the Tax Administration except the oath.

However, the Minister, through a Ministerial Order, determines the types and the use of electronic evidence.

## **Subsection 2: Signs and indications of prosperity**

### **Article 43: General Provisions**

When the Tax Administration establishes that a taxpayer shows signs and indications of prosperity in a certain fiscal year, and the taxpayer cannot give an explanation for this apparent prosperity, the Tax Administration may add the value of these signs and indications to the taxable income of the taxpayer and use this as a method of proof.

When using this method of proof, the Tax Administration gives to the taxpayer all proof it uses to indicate the signs and indications of prosperity, as well as the methods of valuation of the cost or value.

## **Section 3: Burden of proof**

### **Article 44: Burden of proof lies with the Tax Administration**

The burden of proof lies with the Tax Administration when:

- 1° rectifying tax declaration of the taxpayer;
- 2° indicating the method of proof based on signs and indications of prosperity;
- 3° it applies for permission from provincial or City of Kigali Prosecutor to ask questions from a person bound by professional secrecy as described in paragraph 4 of article 4 of this law;
- 4° applying to the Provincial or City of Kigali Prosecutor for search warrant as described in paragraph 2 of article 25 of this law.

### **Article 45: Burden of proof lies with the taxpayer**

The burden of proof lies with the taxpayer when:

- 1° the Tax Administration conducts a tax assessment without notice;
- 2° the taxpayer starts an appeal procedure to correct an unintentional error in tax declaration;
- 3° the taxpayer wants to disprove the content of an affidavit.

## **CHAPTER IX: RECOVERY**

### **Section one: General Provisions**

#### **Article 46: Warning**

If a tax is not paid on time according to paragraph 2, article 18 of this law, the Tax Administration sends a warning letter to the taxpayer, indicating the amount of tax, interest and penalties to be paid and the legal action that will follow if the tax, interest and penalties are not paid within fifteen (15) days from the delivery of the warning letter. The 15-day period may be disregarded in case the possibilities for effective tax collection are in jeopardy.

When taxes were not paid within a period of ten (10) years counting from the time it was due, the tax can not be paid.

Such a period can be stopped through procedures determined by the Civil code and by the arrangement of payment the debtor has made with the Tax Administration and after. If the period for taxation is postponed, after 10-year period following the latest postponement notice of taxation period prescription, another 10-year period

of stopping may also be postponed in the same manner, if in that period the case of the disputed tax was not filed in the court.

### **Article 47: Payment in Installments**

The taxpayer may apply to the Commissioner General for paying in installments. The Commissioner General has the competence to set out the rules and conditions to apply for such an installment payment. Payment in installments cannot exceed one year. Failure of the taxpayer to pay under the conditions of the installment plan results in an immediate obligation to pay the remaining amount due.

## **Section 2: Seizure**

### **Article 48: Attachment of the taxpayer's property**

When tax is not paid within fifteen (15) days as mentioned in article 46 of this law, the Tax Administration may attach any movable or immovable property of the taxpayer, whether held by the taxpayer or any other person. The seized property is sold under a public auction after eight (8) days the taxpayer is notified of the affidavit.

If the Tax Administration has serious indications that a supplier is selling taxable goods and such goods have previously not been charged with value added tax, the Tax Administration can seize those goods. If the supplier cannot provide evidence of compliance with the provisions of the value added tax law within fifteen (15) days, the Tax Administration can sell these goods at a public auction.

The seizure and selling of the attached goods takes place according to the law on civil and commercial procedures. In the field of taxation, the bailiffs of the Tax Administration have the same competence as Private court bailiffs.

### **Article 49: Third parties**

If a tax is not paid within fifteen (15) days as mentioned in article 46, the Tax Administration may require any person who is a debtor of the taxpayer to pay to the Tax Administration the amount due to the taxpayer against the taxpayer's tax liability.

In case the Tax Administration assumes that a person is a debtor of a taxpayer, it is required to:

- 1° send a notification to that person;
- 2° ask the debtor to give a clear explanation of the debt due to the taxpayer;
- 3° inform the debtor that he or she is required to pay to the tax administration in accordance with the terms and conditions of the contract with the taxpayer or with respect to obligations of the taxpayer;
- 4° send copies of all the letters to the taxpayer he or she sent to the debtor.

The debtor has the obligation within a period of fifteen (15) days from the time of receipt of the note from the tax administration to:

- 1° give written explanations to the Tax Administration of the amount due or;
- 2° notify the Tax Administration in writing that he or she owed no debt to the taxpayer by the time when the Tax Administration notified him or her;
- 3° pay the debt which is equivalent to the tax in accordance with the contract with the taxpayer or with respect to obligations to the taxpayer.

If the debtor does not comply with the conditions mentioned in paragraph 3 of this article, he or she is assumed as liable to debt of the Tax Administration the amount equal to tax liability.

If the debtor complies with the conditions mentioned in paragraph 3 of this article, he or she is discharged of the debt liability to the taxpayer for the amount paid to the Tax Administration.

### **Section 3: Guarantees of the Public Treasury**

#### **Article 50: Priority right**

Where a taxpayer has been declared insolvent, any tax, penalty or interest he or she is obliged to pay in accordance with this Law, and in respect of the law governing companies, and other laws relating to civil and commercial matters, have priority over other debts he or she owes other parties.

#### **Subsection one: Liens and legal mortgage**

##### **Article 51: Special Lien**

For the recovery of tax, interest, fines and other costs used in collection, the Tax Administration holds a lien on the income and all movable property of the taxpayer, wherever it may be located.

The lien affects income and movable property of persons mentioned under article 7 of this law when they share any responsibility, to the extent that the tax, interest, fines and expenses incurred can be executed on the property mentioned under paragraph one of this article.

The lien can be executed in a period of two (2) years, starting from the date the tax should have been paid. In case of administrative or judicial appeal, the lien is extended for two (2) years after the date of the final administrative or judicial decision was taken.

The seizure of income or property before the expiration of the lien preserves the lien until the movable property is sold.

##### **Article 52: Legal mortgage**

For the recovery of tax, interest, fines and costs used in collection, the Tax Administration holds a legal mortgage on the immovable property of the taxpayer, wherever it may be located.

The legal mortgage affects immovable property of the persons mentioned in article 7 of this law when they share any responsibility, to the extent the recovery of tax, interest, fines and expenses incurred can be executed on the goods mentioned under paragraph one of this article.

The legal mortgage may be registered for a period of two (2) years, starting from the date the tax should have been paid. In case of administrative or judicial appeal, the period for registering the legal mortgage is extended to two (2) years after the date of the final administrative or judicial decision was taken.

The Commissioner General requests for registration of the legal mortgage which takes effect on the day of the request. He also requests for the cancellation of the mortgage.

#### **Subsection 2: Non-residents and subcontractors**

**Article 53: Liability of representatives of non-residents with a permanent establishment**

Representatives acting in Rwanda on behalf of foreign companies or foreign individuals with a permanent establishment in Rwanda are liable together with the company or the individual on behalf of which they are acting for all obligations provided for by this Law. For the fulfillment of procedure and other formalities required by this law, they are considered as their agents, substitutes or their employees or those who replace them.

**Article 54: Persons without agents or representatives**

Any non-resident person who wants to exercise taxable activities in Rwanda without an agent or representative is obliged to present to the Commissioner General guarantees that he or she will comply with tax laws, pay tax, interest and fines. The Commissioner General, if satisfied with the guarantees given, provides a certificate indicating that the non-resident is allowed to exercise taxable activities in Rwanda.

**Article 55: Liability for subcontractors**

A taxpayer, who subcontracts another person other than a regular employee in whatever capacity, is required to inform the Commissioner General in writing within seven (7) days from the time the subcontract is signed. Such information shall be accompanied by a copy of the subcontract made between the two parties. If the subcontractor fails to do so, he or she is liable to pay all taxes due from the sub-contractor and to observe all the obligations provided for by this Law. The Commissioner General sets out rules for the fulfillment of the obligations mentioned in this article.

**Article 56: Failure to withhold tax**

In case a withholding agent has not withheld tax because the law does not oblige him to do so, the employee or recipient of the payment is obliged to file a declaration in the manner, and the intervals prescribed by the Commissioner General and to pay the tax not withheld within fifteen (15) days following the end of the month in which the payment was made at the account of the Tax Administration.

**CHAPTER X: RIGHTS OF THE TAXPAYER**

**Article 57: Confidentiality**

Any person participating in whatever capacity or stage of the tax proceeding is prohibited to disclose any information about the structure and the use of the property of a taxpayer to any other person, except if done as provided in paragraph 2 of this article.

There is no duty of confidentiality if:

1° the authorized officer provides information gained in the course of a tax proceeding to tax administration or law enforcement officers for use in tax matters or in criminal prosecution for tax offence;

2° the Minister receives and uses information derived from tax proceedings in a form that does not identify specific taxpayers for use in compiling statistics or for other analytical purposes;

3° the taxpayer releases other participants in a tax proceeding from the duty of confidentiality; such release has to be in writing and may be limited to specific information or due to specific purpose to a specific person.

**Article 58: Counsel and representation**

The taxpayer has the right to be represented by a qualified professional during any communication with the Tax Administration, provided that this person holds a mandate with a signature of the taxpayer and the date on which it was given to representative. This provision does not apply to solicitors. The Commissioner General determines the conditions and functioning of qualified professionals who represent taxpayers.

A qualified professional referred to in paragraph one, except a solicitor, may be suspended by the Commissioner General for a period of three (3) years, due to misbehavior or loss of trust. The qualified professional can appeal against this suspension to the Minister in a period not exceeding fifteen (15) days from the day of receipt of suspension letter. The Minister takes a decision on such an appeal in a period of sixty (60) days.

During defense or before the tribunal or court, the taxpayer can be represented by a solicitor.

## **CHAPTER XI: INTEREST AND FINES**

### **Section one: Interest**

#### **Article 59: Interest**

In the event the taxpayer fails to pay tax within the period set forth by this Law, he or she is required to pay interest on the amount of tax.

The interest rate is fixed at the inter bank offered rate of the National Bank of Rwanda increased by two (2) percent and which is set every year on January 1<sup>st</sup>. Interest is calculated on a monthly basis, non-compounding, counting from the first day after the tax should have been paid until the day of payment, which is included. Every month started will count for a complete month.

Interest shall always be payable, even when the taxpayer has started an administrative appeal or a judicial appeal against the assessment.

Interest accrues can not exceed one hundred percent (100%) of the amount of tax.

When the taxpayer pays, the payment is used in paying taxes by deducting interest, penalties and tax liability.

### **Section 2: Fines**

#### **Article 60: Fixed amount fines**

A taxpayer or any person is subject to a fine if he or she fails to:

- 1° file a tax declaration on time;
- 2° file a withholding declaration on time;
- 3° withhold tax;
- 4° provide proofs required by the Tax Administration;
- 5° cooperate with a tax audit;
- 6° communicate on time the capacity or appointment he or she has been given as described by article 7 paragraph 2;
- 7° register as described by article 10;
- 8° comply with articles 12, 13 and 15 of this Law; or
- 9° pay on time the profit tax advance.

Fines related to violations of provisions of paragraph one of this article are set as follows:

- 1° one hundred thousand (100,000) Rwanda francs if the taxpayer's annual turnover is equal to or less than twenty million (20,000,000) RWF; or
- 2° three hundred thousand (300,000) Rwanda francs if the taxpayer's annual turnover exceeds twenty million

(20,000,000) Rwanda francs; or

3° five hundred thousand (500,000) Rwanda francs if the taxpayer was informed by the Tax Administration that he or she is in a large taxpayer category.

In case the same violation is committed twice within five (5) years, the fine is twice the original fine. In case the same violation is committed again within such five (5) years, the fine is four times the original fine.

**Article 61: Late payment fine**

If the amount of tax shown on a tax declaration or the amount of tax which is the result of an adjusted assessment by the Tax Administration is not paid in time, the taxpayer is subject to a fine of ten percent (10%) of the tax payable.

The taxpayer is not subject to this fine if the Commissioner General provided an extension for filing the tax declaration according to article sixteen (16) of this law.

The late payment fine does not apply to interest or administrative fines referred to in articles 60, 62, 63, 64 and 65 of this law.

**Article 62: Understatement of tax fine**

*(As modified and completed by article one of the law n° 55/2006 of 31/12/2006 complementing law n° 25/2005 of 04/12/2005 on tax procedures*

If the amount of tax shown on a tax declaration understates the amount of tax required to be shown as a consequence of an audit or investigation by the Tax Administration, the taxpayer is subject to the following fine:

1° ten percent (10%) of the amount of the understatement if the understatement is equal to or more than five percent (5%) but less than twenty percent (20 %) of the tax liability he or she ought to have paid;

2° fifty percent (50%) of the amount of the understatement if the understatement is twenty percent (20%) or more but less than fifty percent (50%) of the tax liability he or she ought to have paid;

3° one hundred percent (100%) of the amount of the understatement if the understatement is fifty percent (50%) or more of the tax liability he or she ought to have paid;

The taxpayer who rectifies his or her tax declaration before he or she is notified of imminent control of his or her declaration, shall not be subject to the fine mentioned in paragraph one of this article.

**Article 63: Value Added Tax violations**

The following administrative fines are imposed to persons who do not comply with provisions of Value Added Tax:

1° in the event of operation without VAT registration where VAT registration is required, fifty percent (50%) of the amount of VAT payable for the entire period of operation without VAT registration;

2° in the event of the incorrect issuance of a VAT invoice resulting in a decrease in the amount of VAT payable or in an increase of the VAT input credit or in the event of the failure to issue a VAT invoice, one hundred percent (100%) of the amount of VAT for the invoice or on the transaction;

3° for issuing of a VAT invoice by a person who is not registered for VAT is assessed a penalty of one hundred fifty percent (150%) of the VAT which is indicated in that VAT invoice and is due to pay the VAT as indicated on that VAT invoice.

#### **Article 64: Tax fraud**

A taxpayer who commits fraud is subject to an administrative fine of two hundred percent (200%) of the evaded tax. With exception to that penalty, the Tax Administration refers the case to the Prosecution service if the taxpayer voluntarily evaded such tax, like use of false accounts, falsified documents or any other act punishable by law. In case of conviction, the taxpayer can be imprisoned for a period between six (6) months and two (2) years.

The Minister's order determines an award given to any person who denounces a taxpayer who engages in tax fraud.

#### **Article 65: Failure to pay tax withheld**

In case a person intentionally fails to deliver the tax withheld to the Tax Administration, he or she is subject to a fine of two hundred percent (200%) of the unpaid tax. In addition, the Tax Administration refers the case to the Prosecution service. In case of conviction, the taxpayer can be imprisoned for a period between three (3) months and two (2) years.

#### **Article 66: Obstructing, aiding and abetting**

A person who obstructs or attempts to obstruct the activities or duties of the Tax Administration in the exercise of its powers under this Law, who aids, abets or conspires with another person to commit a violation against this Law, is subject to penalties as those provided to the taxpayer.

#### **Article 67: Additional Penalties**

With exception to penalties in the preceding articles, any person who commits offences provided for by this law may be subject to the following additional sanctions:

- 1° closure of business activities for a period of thirty (30) days;
- 2° being barred from bidding for public tenders;
- 3° withdrawal of a business register;
- 4° being published in nationwide newspapers,

Except the sanction provided for in paragraph 1° and 4° pronounced by the Commissioner General, other sanctions mentioned in this article are pronounced by a tribunal/court in accordance with the gravity of the offence committed.

#### **Article 68: Affidavit**

When the Tax Administration notices that a taxpayer or another person has committed an offence mentioned in this Law, it makes an affidavit. The affidavit is followed by an assessment as the law provides in Chapter VI, of this law. A copy of the affidavit is attached to the notification of assessment.

### **Section 3: Hardships in payments**

#### **Article 69: Waive of tax liability, interest on late payments and penalties**

The taxpayer can apply in writing for a waiver of tax liability, interest on late payments and administrative fines in case of substantial hardships indicating no ability to clear the tax liability. A waiver cannot be granted to persons proved to commit offences of understating or evading taxes.

The waiver is applied for in the note sent to the Commissioner General. If the tax administration finds that the request of the taxpayer is founded, it makes a report to the Minister. The report is transmitted to the Cabinet in order to make decisions.

The Minister, through an order, determines the modalities and conditions for applying for the waiver.

## **CHAPTER XII: TRANSITIONAL AND FINAL PROVISIONS**

### **Article 70: Transitional provision**

The Commissioner General and the Appeals Commission have three (3) months to make a decision on all pending cases as from the day this Law becomes effective. After this period, the taxpayer may consider the appeal to be rejected and lodge an appeal to a higher instance.

### **Article 71: Repeal of Contradictory provisions**

Without prejudice to the provisions of article 70 of this Law, all legal provisions contrary to this Law are hereby repealed.

### **Article 72: Entry into force**

This Law comes into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on 04/12/2005