

REPUBLIC OF KIRIBATI

(No. 16 of 2013)



I assent

Ando Tung
Beretitenti

30 Dec, 2013

REVENUE ADMINISTRATION ACT, 2013

to harmonise, simplify, modernise, and amend the law relating to the administration of taxes

Commencement

2013

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

**PART I
PRELIMINARY**

Short Title and Commencement

1. (1) This Act may be cited as the Revenue Administration Act, 2013.
- (2) This Act comes into force on the date notified in the Gazette.

Interpretation

2. (1) In this Act, unless the context otherwise requires –

“advance assessment” means an advance assessment made under section 20;



“amended assessment” means an amended assessment made under section 21, 25, or 28;

“approved form” has the meaning in section 56;

“authorised officer”, in relation to a power or duty of the Board, means a public officer authorised under the Internal Revenue Board Act to exercise the power or perform the duty;

“Board” means the Internal Revenue Board established by the Internal Revenue Board Act;

“commencement date” means the date specified in section 1(2);

“company” means a body or association of persons corporate or unincorporated, but does not include a partnership;

“Customs Act” means the Customs Act, 2005;

“default assessment” means a default assessment made by the Board under section 19;

“document” includes –

- (a) a book, account, record, paper, register, or bank statement; or
- (b) any information or data stored on a mechanical or electronic data storage device;

“Excise Tax Act” means the Excise Tax Act, 2013;

“file”, in relation to a return or other document, includes make or lodge;

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

“Income Tax Act” means the Income Tax Act, 1990;

“Internal Revenue Board Act” means the Internal Revenue Board Act, 1990;

“international organisation” means an organisation to which the International Financial Organisation Act, 1985 applies or any other organisation the members of which are sovereign powers or governments of sovereign powers;

“late payment interest” means late payment interest imposed under section 34;

“person” means a natural person, partnership, trust, company, government, political subdivision of a government, or an international organisation;

“penalty” means a penalty imposed under a tax law;

“prescribed” means prescribed in Regulations;

“public officer” means a public officer to whom the Board has delegated a function or functions under the Internal Revenue Board Act or another tax law;

“removal” means the removal of excisable goods from Customs control by a registered manufacturer under in the Excise Tax Act;

“representative”, in relation to a taxpayer, has the meaning in section 10;

“registered tax agent” means a person registered as a tax agent under Part X;

“self-assessment” means an assessment treated as having been by a taxpayer made under section 18;

“self-assessment return” means –

- (a) a VAT return required to be filed under section 38 of the Value Added Tax Act;
- (b) an excise tax return required to be filed under section 18 of the Excise tax Act; or
- (c) a return specified as a self-assessment return under a tax law;

“self-assessment taxpayer” means a taxpayer required to file a self-assessment return;

“supply” has the meaning in the Value Added Tax Act;

“tax” means –

- (a) a tax or penalty imposed under a tax law; or
- (b) withholding tax;

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

“tax law” means –

- (a) this Act;
- (b) the Internal Revenue Board Act, Income Tax Act, Value Added Tax Act, and Excise Tax Act; and

- (c) any regulations or other subsidiary legislation made under an Act referred to in paragraphs (a)-(c);

“tax period” means –

- (a) for the income tax, the tax year;
- (b) for withholding tax, the period to which the withholding relates;
- (c) for VAT, the VAT period;
- (d) for excise tax –
 - (i) in the case of an import of excisable goods, the time of entry of the goods; or
 - (ii) in the case of the removal of excisable goods by a registered manufacturer, the calendar month; or
- (e) for any other tax imposed under a tax law, the period for which the tax is reported;

“tax return” means a return required to be filed under a tax law and includes –

- (a) accounts required to be filed under the Income Tax Act; or
- (b) a withholding tax statement;

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

- (a) for the income tax, includes –
 - (i) a person who has zero chargeable income or a loss for a tax year; or
 - (ii) a person who has chargeable income for a tax year but who has no income tax liability in respect of the chargeable income;
- (b) for the VAT, includes a registered person whose total input tax credits for a VAT period are equal to or exceed the person’s total output tax for the period; or
- (c) in the case of withholding tax, means the person liable to withhold tax from a payment;

“taxpayer identification number” or “TIN” means a taxpayer identification number issued under section 6;

"Tribunal" means the Tax Tribunal established by section 103 of the Income Tax Act;

"trust" includes the estate of a deceased person;

"unpaid tax" means any tax that has not been paid by the due date or, if the Board has extended the due date under section 31, the extended due date;

"trustee" includes the executor of a deceased estate;

"VAT" means value added tax imposed under the Value Added Tax Act;

"Value Added Tax Act" means the Value Added Tax Act, 2013;

"withholding tax" means tax withheld from a payment under Part XVII of the Income Tax Act; and

"withholding tax statement" means a statement required to be filed under section 115(8), 116(8), 117(9), or 118(8) of the Income Tax Act.

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

Application and Administration of Act

3. (1) This Act binds the Government.
- (2) The Board must carry out the functions assigned to it under this Act.
- (3) The delegation of any function under this Act by the Board must be made in accordance with Part III of the Internal Revenue Board Act.
- (4) The provisions relating to secrecy in the Internal Revenue Board Act apply to this Act.

PART II – TAXPAYERS

Division I – Taxpayer Identification Number

Taxpayer Identification Number

4. For the purposes of identification and cross-checking, the Board may issue a number to be known as a taxpayer identification number ("TIN") to a taxpayer in accordance with this Division and a taxpayer must use a TIN as required under this Division.

Application for Taxpayer Identification Number

5. (1) Subject to subsection (2), a taxpayer must, if required by the Board, apply for a TIN within 15 days of becoming a taxpayer.

- (2) A person who has been issued with a TIN that is still in force must not apply for another TIN unless required to do so by the Board.
- (3) An application for a TIN must be –
 - (a) in the approved form;
 - (b) accompanied by documentary evidence of the taxpayer's identity as prescribed; and
 - (c) lodged in the prescribed manner.

Issue of Taxpayer Identification Number

- 6. (1) The Board must issue a TIN to a person who has applied for a TIN as required under section 5 unless the person has been previously issued with a TIN that is still in force.
- (2) The Board may, without an application being made, issue a TIN to a taxpayer.
- (3) A TIN is issued when the Board serves the taxpayer with written notice of the TIN.
- (4) If the Board refuses an application for a TIN, the Board must serve the applicant with written notice of the refusal within 14 days of making the decision to refuse the application.
- (5) A TIN is issued for the purposes of all tax laws and a taxpayer can have only one TIN at any time.
- (6) Subject to subsection (7), a TIN is personal to the taxpayer to whom it has been issued and must not be used by another person.
- (7) The TIN of a taxpayer may be used by a registered tax agent of the taxpayer if –
 - (a) the taxpayer has given written permission to the registered tax agent to use the TIN; and
 - (b) the registered tax agent uses the TIN only in respect of the tax affairs of the taxpayer.

Use of Taxpayer Identification Number

- 7. (1) A taxpayer must state the taxpayer's TIN on any tax return, notice, or other document filed, lodged, or used for the purposes of a tax law.
- (2) A taxpayer may be required to state the taxpayer's TIN on a document required for the purposes of another law as specified in the Regulations.

Cancellation of Taxpayer Identification Number

8. (1) A person who has ceased to be a taxpayer must apply to the Board, in the approved form, for cancellation of the person's TIN within 7 days after the date on which the person ceased to be a taxpayer.
- (2) The Board must, by notice in writing, cancel the TIN of a person if satisfied that –
 - (a) the person is not a taxpayer, including a person who has ceased to be a taxpayer;
 - (b) a TIN has been issued to the person under an identity that is not the person's true identity; or
 - (c) the person had been previously issued with a TIN that is still in force.
- (3) The Board may, at any time, by notice in writing, cancel the TIN issued to a person and issue the person with a new TIN.
- (4) The Board must re-issue a TIN cancelled under this section if the taxpayer has not discharged all the taxpayer's tax liabilities at the time that the TIN was cancelled.

Division II – Representatives of a Taxpayer

Power to Declare a Person to be the Agent of a Taxpayer

9. The Board may, in any case when it considers it necessary to do so, by notice in writing to any person, declare such person to be the agent of a taxpayer, and the person so declared to be an agent is deemed to be the agent of the taxpayer for the purposes of the tax laws.

Taxpayer's Representative

10. (1) The following persons are treated as the representative of a taxpayer for the purposes of the tax laws –
 - (a) for an individual under a legal disability, the guardian or other legal representative who receives or is entitled to receive income on behalf, or for the benefit, of the individual;
 - (b) for a company, the chief executive officer, managing director, company secretary, treasurer, or a resident director;
 - (c) for an unincorporated association of persons, an individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the association;

- (d) for a partnership, a partner in the partnership;
- (e) for a trust, a trustee of the trust;
- (f) for the Government or a local authority in Kiribati, an individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the Government or local authority;
- (g) for a foreign government, political subdivision of a foreign government, or international organisation, an individual responsible for accounting for the receipt or payment of moneys or funds in Kiribati on behalf of the foreign government, political subdivision of the foreign government, or international organisation;
- (h) for a non-resident, the person controlling the non-resident's affairs in Kiribati, including a manager of any business of the non-resident in Kiribati;
- (i) for a taxpayer to whom section 37 applies, the person treated as trustee of the taxpayer under that section;
- (j) for any taxpayer (including a taxpayer referred to in paragraphs (a) to (i)), a person declared by the Board to be the agent of the taxpayer under section 9.

- (2) In this section, "non-resident" has the meaning in the Income Tax Act.

Liabilities and Obligations of a Taxpayer's Representative

- 11. (1) A representative of a taxpayer is responsible for performing any duty or obligation imposed by a tax law on the taxpayer, including the filing of tax returns and payment of tax.
- (2) If there are two or more representatives of a taxpayer, the obligations referred to in this section apply jointly and severally to the representatives but may be discharged by any of them.
- (3) A representative making a payment of tax on behalf of a taxpayer is treated as acting under the authority of the taxpayer and is indemnified in respect of the payment.
- (4) Subject to subsection (5), any tax that, by virtue of subsection (1), is payable by the representative of a taxpayer is recoverable from the representative only to the extent of the assets of the taxpayer that are in the possession or under the control of the representative.

- (5) Subject to subsection (6), a representative is personally liable for the payment of any tax due by the representative in that capacity if, while the amount remains unpaid, the representative –
- (a) alienates, charges, or disposes of any moneys received or accrued in respect of which the tax is payable; or
 - (b) disposes of or parts with any moneys or funds belonging to the taxpayer that are in the possession of the representative or which come to the representative after the tax is payable, if such tax could legally have been paid from or out of such moneys or funds.
- (6) A representative is not personally liable for tax under subsection (5) if-
- (a) the monies were paid by the representative on behalf of a taxpayer and the amount paid has priority, in law or equity, over the tax payable by the taxpayer; or
 - (b) at the time the monies were paid, the representative had no knowledge, and could not reasonably be expected to know, of the taxpayer's tax liability.
- (7) The amount that a representative is personally liable for under subsection (5) is treated as unpaid tax for the purposes of Divisions II and III of Part VII.
- (8) Nothing in this section relieves a taxpayer from performing any obligation imposed on the taxpayer under a tax law that the representative of the taxpayer has failed to perform.

Liability for Tax Payable by a Company in Financial Difficulties

12. (1) Subject to subsection (2), if an arrangement has been entered into with the intention or effect of rendering a company unable to satisfy a current or future tax liability under a tax law, every person who was a director or controlling member of the company when the arrangement was entered into is jointly and severally liable for the tax liability of the company.
- (2) A director of a company is not liable under subsection (1) for the tax liability of the company if the director derived no financial or other benefit from the arrangement and -
- (a) the director has, on becoming aware of the arrangement, formally recorded with the company his or her dissent and notified the Board, in writing, of the arrangement; or
 - (b) at the time the arrangement was entered into, the director was not involved in the executive management of the company and had no

knowledge of, and could not reasonably have been expected to know of the arrangement.

- (3) The amount that a director or controlling member is personally liable for under subsection (1) is treated as unpaid tax for the purposes of Divisions II and III of Part VII.

- (4) In this section –

“arrangement” means any contract, agreement, plan, or understanding whether express or implied and whether or not enforceable in legal proceedings;

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

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

- (a) 50% or more of the voting rights attaching to membership interests in the company;
- (b) 50% or more of the rights to dividends attaching to membership interests in the company; or
- (c) 50% or more of the rights to capital attaching to membership interests in the company;

“member”, in relation to a company, means a shareholder or any other person with a membership interest in the company; and

“membership interest”, in relation to a company, means a share or other ownership interest in the company.

PART III – RECORDS

Maintenance of Records

13. (1) A taxpayer must maintain in Kiribati, in the English language, such documents (including in electronic format) as may be required under a tax law.
- (2) Documents required to be maintained under a tax law must be retained for 7 years after the end of the tax period to which they relate or such shorter period as specified in the tax law.

PART IV – RETURNS

Filing of Tax Returns

14. (1) A taxpayer required to file a tax return under a tax law must file the return in the approved form and in the prescribed manner.
- (2) The Board is not bound by any return or information provided by or on behalf of a taxpayer and the Board can determine a taxpayer's tax liability based on any sources of information available to the Board.

Extension of Time to File a Tax Return

15. (1) A taxpayer required to file a tax return under a tax law may, before the due date for filing the return, apply in writing to the Board for an extension of time to file the return.
- (2) The Board may, upon satisfaction that there is reasonable cause, grant an application under subsection (1) and must serve notice of the decision on the taxpayer.
- (3) An extension of time granted under this section does not change the date for payment of the tax due (referred to as the "original due date") as specified in the tax law under which the return has been made and late payment interest remains payable from the original due date.

Board May Require Taxpayer to File a Tax Return

16. (1) This section applies if, during a tax period –
- (a) a taxpayer has died;
 - (b) a taxpayer has been declared bankrupt, or has gone into winding up or liquidation;
 - (c) the Board has reason to believe that a taxpayer is about to leave Kiribati permanently; or
 - (d) a taxpayer has ceased, or the Board has reason to believe that a taxpayer will cease, carrying on any business in Kiribati.
- (2) If this section applies, the Board may, by notice in writing and at any time during a tax period, require –
- (a) the taxpayer or the taxpayer's representative to file a tax return for the tax period by the date specified in the notice being a date that may be before the date that the return for the tax period would otherwise be due; and

- (b) pay any tax due under the return.
- (3) If a taxpayer is subject to more than one tax, this section applies separately for each tax.

Tax Return Duly Filed

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

PART V – TAX ASSESSMENTS

Self-assessments

18. A self-assessment taxpayer who has filed a self-assessment return is treated as having made an assessment of the amount of tax payable for the tax period to which the return relates being that amount as set out in the return.

Default Assessments

19. (1) If a taxpayer has failed to file a tax return as required under a tax law, the Board may, according to best judgment, make a default assessment of the tax payable by the taxpayer.
- (2) The Board must serve a taxpayer assessed under subsection (1) with notice, in writing, of the default assessment.
- (3) The service of a notice of a default assessment under this section does not change the date for payment of the tax due (referred to as the "original due date") as specified in the tax law under which the tax is payable and late payment interest remains payable from the original due date.

Advance Assessments

20. (1) The Board may make an advance assessment of the tax payable by a taxpayer specified in section 16 for a tax period and the tax is payable on the date set out in the notice of assessment served on the taxpayer or the taxpayer's representative.
- (2) An advance assessment made under subsection (1) –
- (a) may be made before the date on which the taxpayer's return for the period is due; and
 - (b) must be made in accordance with the law in force at the date the assessment was made.

- (3) An advance assessment made under subsection (1) may be amended under section 21 so that the taxpayer is assessed in respect of the whole of the tax period to which the advance assessment relates.
- (4) Nothing in this section relieves a taxpayer from being required to file the return to which the advance assessment made under this section relates.

Amendment of Tax Assessments

- 21.
- (1) Subject to this section, the Board may amend a tax assessment by making such alterations or additions to the assessment as the Board considers necessary to ensure that a taxpayer is liable for the correct amount of tax payable in respect of the tax period to which the assessment relates.
 - (2) A self-assessment taxpayer can apply to the Board within the time specified in subsection (3)(c) for the Board to make an amendment in accordance with subsection (1) to a self-assessment and the Board must serve the taxpayer with notice of the decision on the application.
 - (3) The amendment of a tax assessment under subsection (1) may be made -
 - (a) in the case of fraud or wilful neglect by or on behalf of a taxpayer, at any time;
 - (b) in the case of a tax assessment of a deceased taxpayer, within the lesser of -
 - (i) 3 years after the tax year in which the taxpayer died; or
 - (ii) the period specified in paragraph (c); or
 - (c) in any other case -
 - (i) for a self-assessment, within 6 years after the taxpayer has filed the self-assessment return to which the self-assessment relates; or
 - (ii) for any other assessment, within 6 years after the date the Board served notice of the assessment on the taxpayer.
 - (4) As soon as practicable after making an amended assessment under this section, the Board must serve the taxpayer with notice of the amended assessment.
 - (5) Subject to subsection (6), if a notice of assessment (referred to as the "original assessment") has been amended under subsection (1), the Board may further amend the original assessment within the later of -

- (a) 6 years after the Board served notice of the original assessment on the taxpayer; or
- (b) one year after the Board served notice of the amended assessment on the taxpayer.
- (6) If subsection (5)(b) applies, the Board is limited to amending the alterations and additions made in the amended assessment to the original assessment.
- (7) The making of an amended assessment does not preclude a liability for late payment interest or penalty arising from the date that the tax was originally due.

Validity of Tax Assessment and Other Documents

22. (1) Except in a proceeding under Part VI, a tax assessment is not invalidated or called into question by reason of -
- (a) any variance between the assessment and the duly served notice of the assessment; or
 - (b) a mistake in the assessment as to -
 - (i) the name of the person assessed;
 - (ii) the description of any income, supply, or removal; or
 - (iii) the amount of tax charged.
 - (2) If a tax assessment, warrant, or any other document purporting to be made, issued, or executed under a tax law is, in substance and effect, in conformity with the law under which it has been made and the person assessed, intended to be assessed, or affected by the document is designated in it according to common understanding, the validity of the tax assessment or other document -
 - (a) must not be quashed or deemed to be void or voidable for want of form; and
 - (b) is not affected by reason of any mistake, defect, or omission therein.

Conclusiveness of Tax Assessments

23. Except in proceedings under Part VI -
- (a) a tax assessment cannot be disputed in the Tribunal, in any Court, or in any proceedings on any ground whatsoever;

- (b) the production of a notice of an assessment or a certified copy of a notice of an assessment is conclusive evidence of the due making of the assessment and that the amount and particulars of the assessment are correct; and
- (c) in the case of a self-assessment, the production of the original self-assessment return or a certified copy of such return is conclusive evidence of the contents of the return.

Assessment List

24. (1) As soon as is reasonably practicable after the expiry of the time allowed under a tax law for the filing of tax returns for a tax period, the Board must prepare a list of taxpayers assessed to tax under the law for that period, in this section referred to as an "assessment list", and the list must contain in relation to each taxpayer assessed (including under a self-assessment) -
- (a) the taxpayer's name and address;
 - (b) in the case of the income tax, the amount of chargeable income upon which the assessment has been made; and
 - (c) the amount of tax payable.
- (2) If, for any tax period, complete copies of all notices of tax assessments made under a tax law have been placed on file in the office of the Board, such notices constitute the assessment list for the purposes of this section.
- (3) For the purposes of this section, in the case of a self-assessment, the reference to a notice of assessment means the self-assessment return.

PART VI – APPEALS

Notice of Appeal

25. (1) A person dissatisfied with a tax assessment may, by notice in writing to the Board, appeal against the assessment.
- (2) A notice of appeal must -
- (a) state fully and in detail the grounds of the appeal; and
 - (b) be lodged with the Board within 60 days of service of the notice of assessment.
- (3) If the Board is satisfied that the person objecting to the assessment was prevented by any reasonable cause from lodging a notice of appeal within the period specified in subsection (2), the Board may accept the notice after the

expiry of the period, and if it does so, the notice is deemed to be a valid notice of appeal.

- (4) If a person has given a valid notice of appeal to an assessment and subsequently agrees in writing with the Board on the manner in which, and the extent to which, the assessment is to be amended, the Board must –
 - (a) amend the assessment accordingly; and
 - (b) serve the person with notice of the amended assessment and of the tax payable thereunder.
- (5) No appeal lies from an amended assessment issued under subsection (4).
- (6) Subject to subsection (7), if a taxpayer is appealing against an amended assessment, the notice of appeal may relate only to particulars in respect of which the original assessment was amended.
- (7) If an amended assessment has reduced the tax payable, particulars in respect of which the reduction has occurred are not subject to any right of appeal.

Appeal to Tribunal

26. (1) If a taxpayer has lodged a valid notice of appeal to an assessment and the taxpayer does not agree with the Board as to the amendment of the assessment within 30 days of the lodging of the notice of appeal, the taxpayer may lodge the notice of appeal with the Tribunal within 90 days of service of the notice of assessment to which the notice of appeal relates for determination of the appeal by the Tribunal.
- (2) If a taxpayer has lodged a notice of appeal that the Board does not accept as a valid notice of appeal, the taxpayer may lodge the notice of appeal with the Tribunal within 90 days of service of the notice of assessment to which the notice of appeal relates for determination of the appeal by the Tribunal.
- (3) The Tribunal may, on an application in writing, extend the time for lodging a notice of appeal with the Tribunal under subsection (1) or (2).
- (4) An applicant to the Tribunal must serve a copy of the application on the Board within 7 days of lodging the application with the Tribunal.
- (5) The Tribunal must hear and determine a notice of appeal properly lodged with the Tribunal and make an order to –
 - (a) confirm, reduce, increase, or otherwise vary the assessment; or
 - (b) remit the assessment to the Board for reconsideration in accordance with the directions of the Tribunal.

Appeal to the High Court from the Tax Tribunal

27. (1) A party to a proceeding before the Tribunal who is dissatisfied with a decision of the Tribunal may, within 60 days after the date of service of notification of the decision, lodge a notice of appeal to the High Court with the Chief Registrar of the High Court and must, within 7 days, serve a copy of the notice on the other party to the proceeding before the Tribunal.
- (2) An appeal to the High Court lies on a question of law only and the notice of appeal must state the question of law that will be raised on the appeal.
- (3) Every appeal must be heard in chambers on such terms as to costs or otherwise as the High Court may direct.
- (4) In deciding any appeal under this Act, the High Court may -
- (a) confirm, reduce, increase or otherwise vary a tax assessment; or
 - (b) make such other order as it may think fit.
- (5) The Board must make such adjustment to a tax assessment as may be necessary to give effect to a decision of the High Court.
- (6) Despite any provision of this section, a taxpayer may appeal to the High Court if -
- (a) the Tribunal has not offered the taxpayer a hearing within 90 days of the lodging of the taxpayer's appeal with the Tribunal; or
 - (b) the Tribunal has not given a decision within 60 days of the hearing of the appeal by the Tribunal.

Powers of the Board after Appeal

28. (1) Subject to subsection (2), nothing in this Part prevents the Board from amending a tax assessment for a tax year if the amendment does not involve a re-opening of any matter that has been determined on appeal.
- (2) If fraud, or gross or wilful neglect has been committed by or on behalf of a person in relation to a tax assessment for any tax year, the Board may make an amended assessment on that person for such tax year even if it involves a re-opening of a matter that has been determined on appeal, but only if the fraud or gross or wilful neglect came to the notice of the Board after the determination of the appeal.

General Provisions Relating to Appeals

29. (1) In an appeal against a tax assessment, the burden is on the taxpayer to prove that the assessment is incorrect.
- (2) In an appeal against a tax assessment, the taxpayer is bound by the grounds of the notice of appeal, unless the Board, the Tribunal or the High Court grants the taxpayer leave to amend the notice when the matter is under consideration by the Board, the Tribunal or the Court, as the case may be.

PART VII – COLLECTION AND RECOVERY OF TAX, AND REFUNDS

Division I – Payment of Tax

Tax as a Debt Due to the Republic

30. (1) Any tax or late payment interest assessed or imposed upon a person under a tax law -
- (a) is, when it becomes due, recoverable as a debt owing to the Republic;
 - (b) is payable to the Board in the manner and at the place prescribed; and
 - (c) may be sued for and recovered in a court of competent jurisdiction by the Republic with full costs of the suit payable by the person.
- (2) If a notice of appeal against a tax assessment has been lodged under Part VI or lodged with the Court of Appeal -
- (a) the amount of tax payable under the assessment remains due and payable notwithstanding the appeal; and
 - (b) the tax due under the assessment may be recovered as if no appeal were pending.
- (3) Subject to section 32, the following amounts are held in trust for the Republic by the person collecting or deducting the amount -
- (a) VAT collected by a registered person under the Value Added Tax Act (net of any input tax credit allowed);
 - (b) withholding tax;
 - (c) an amount deducted from a payment by a payer pursuant to a notice served on a payer under section 36.

Extension of Time to Pay Tax

31. (1) A taxpayer may apply, in writing, to the Board for an extension of time to pay tax due under a tax law.
- (2) If an application has been made under subsection (1), the Board may, upon satisfaction that there is reasonable cause –
- (a) grant the taxpayer an extension of time for payment of the tax; or
- (b) require the taxpayer to pay the tax in such instalments as the Board may determine.
- (3) The Board must serve the taxpayer with written notice of the decision on an application under subsection (1).
- (4) If a taxpayer permitted to pay tax by instalments under subsection (2) defaults in the payment of an instalment, the whole balance of the tax outstanding at the time of default is immediately payable.
- (5) The grant of an extension of time or permission to pay tax due by instalments does not exclude the liability for late payment interest arising from the original date the tax was due for payment.

Liability for and Priority of Withholding Tax

32. (1) If a withholding agent fails to withhold tax or, having withheld tax, fails to pay the tax to the Board as required under a tax law, the withholding agent is personally liable to pay the amount of tax to the Board and the amount is treated as unpaid tax for the purposes of Divisions II and III of this Part.
- (2) A withholding agent personally liable for an amount of tax under subsection (1) as a result of failing to withhold the tax is entitled to recover the tax from the recipient of the payment.
- (3) If a withholding agent fails to withhold tax as required under a tax law, the Board may recover the tax from the recipient of the payment provided the total amount recovered does not exceed the tax that should have been withheld.
- (4) Despite the recovery of any tax under subsection (3), the withholding agent continues to be liable for –
- (a) any other legal action in relation to the failure; and
- (b) the imposition of late payment interest or penalty in respect of the failure.
- (5) Despite any other enactment, withholding tax is –

- (a) held on behalf of the Government;
 - (b) is not subject to attachment in respect of any debt or liability of the withholding agent;
 - (c) is a first charge on the payment from which the tax is withheld; and
 - (d) is withheld or deducted prior to any other deduction that the withholding agent may be required to make under an order of any court or any other law.
- (6) In the event of the liquidation or bankruptcy of the withholding agent, withholding tax does not form part of the estate in liquidation or bankruptcy and must be paid to the Board before any distribution of property is made.
 - (7) A withholding agent who has withheld tax from a payment under a tax law and remitted the tax to the Board is indemnified against any claim by the recipient of the payment for the withheld amount.
 - (8) In this section, "withholding agent" means a person liable for withholding tax.

Order of Payment

- 33. (1) When a taxpayer is liable for penalty and late payment interest in relation to a tax liability and the taxpayer makes a payment that is less than the total amount of tax, late payment interest, and penalty due, the amount paid is applied in the following order –
 - (a) firstly in payment of the tax liability;
 - (b) then in payment of penalty;
 - (c) then the balance remaining is applied against late payment interest.
- (2) If a taxpayer has more than one tax liability at the time a payment is made, subsection (1) applies to the earliest tax liability first.

Division II – Late Payment Interest

Liability for Late Payment Interest

- 34. (1) A person who fails to pay tax on or before the due date for payment is liable for late payment interest, being the greater of \$10 or interest at the rate of 15% per annum, or such other rate as may be prescribed, on the unpaid tax calculated from the date the payment is due until the date the payment is made.

- (2) Late payment interest paid by a person under subsection (1) must be refunded to the person to the extent that the principal amount to which the interest relates is found not to have been payable.
- (3) Late payment interest payable by a person –
- (a) in respect of withholding tax payable by the person; or
 - (b) in respect of an amount referred to in section 11(7), 12(3), 36(10), or 37(8) payable by the person,
- is borne personally by the person and is not recoverable from any other person.
- (4) Late payment interest payable under this section is calculated as simple interest.
- (5) Late payment interest payable under this section is in addition to any penalty imposed under Division I of Part XII or any sanction imposed under Division II of Part XII in respect of the same act or omission.
- (6) Late payment interest is payable to the Board and the Board may collect late payment interest under Division III of this Part as if it were unpaid tax.

Division III – Recovery of Unpaid Tax

Recovery of Unpaid Tax by Suit

35. (1) Unpaid tax is recoverable as a debt by the Board suing on behalf of the Government in any Court of competent jurisdiction.
- (2) In any suit under subsection (1), the production of a certificate signed by an authorised officer stating –
- (a) the name and address of the person who is the defendant in the suit; and
 - (b) the amount of tax and late payment interest (if any) due by the person,
- is conclusive evidence that that amount is due from the person.

Collection of Tax from Third Party

36. (1) This section applies if a taxpayer is, or will become liable to pay tax and –
- (a) the tax is unpaid tax; or

- (b) the Board has reasonable grounds to believe that the taxpayer will not pay the tax by the due date for payment.
- (2) If this section applies to a taxpayer, the Board may, in respect of the taxpayer and by notice in writing, require a person (referred to as the "payer") who –
- (a) owes or may subsequently owe money to the taxpayer;
 - (b) holds or may subsequently hold money, for or on account of, the taxpayer;
 - (c) holds money on account of some other person for payment to the taxpayer; or
 - (d) has authority from some other person to pay money to the taxpayer,
- to pay the amount specified in the notice to the Board, being an amount that must not exceed the amount of the unpaid tax or the amount that the Board believes will not be paid by the taxpayer by the due date.
- (3) A payer must pay the amount specified in a notice under subsection (2) by the date specified in the notice, being a date that is not before the date that the amount owed by the payer to the taxpayer becomes due to the taxpayer or held on the taxpayer's behalf.
- (4) If a notice served under subsection (2) requires a payer to deduct amounts from a pension, salary, wages, or other similar remuneration payable at fixed intervals to the taxpayer, the amount required to be deducted by the payer from each payment must not exceed 20 per cent (20%) of the amount of each payment of a pension, salary, wages, or other remuneration.
- (5) If a payer served with a notice under subsection (2) is unable to comply with the notice, the payer must notify the Board, in writing within 14 days after receipt of the notice, setting out the reasons for the payer's inability to comply.
- (6) If a notice is served on the Board under subsection (5), the Board must, by notice in writing –
- (a) accept the notification and cancel or amend the notice issued under subsection (2); or
 - (b) reject the notification.
- (7) The Board must, by notice in writing to the payer, revoke or amend a notice served under subsection (2) if the taxpayer has paid the whole or part of the tax due or has made an arrangement satisfactory to the Board for payment of the tax.

- (8) A copy of a notice served on a payer under this section must be served on the taxpayer.
- (9) A payer making a payment under this section is treated as acting under the authority of the taxpayer and of all other persons concerned and is hereby indemnified in respect of the payment.
- (10) A payer who, without reasonable cause, fails to comply with a notice under this section is personally liable for the amount specified in the notice and the amount is treated as unpaid tax for the purposes of Division II of this Part and this Division.

Duties of Trustees, Liquidators, and Executors

37. (1) In this section -

“taxpayer”, in relation to a trustee, means the person whose assets are in the possession or control of the trustee, including if the trustee is an executor, the estate of a deceased person; and

“trustee” means -

- (a) a liquidator of a company;
 - (b) a receiver appointed out of court or by a court;
 - (c) a trustee for a bankrupt;
 - (d) a mortgagee in possession; or
 - (e) an executor of a deceased estate.
- (2) A person must give written notice to the Board of -
- (a) being appointed as trustee in respect of a taxpayer; or
 - (b) assuming the control of assets of a taxpayer in the capacity as trustee.
- (3) A person must lodge a notice under subsection (2) with the Board within 14 days of being appointed as trustee or assuming the control of assets, as the case may be.
- (4) Within one month after receipt of a notice under subsection (2), the Board must notify the trustee, in writing, of the amount of any tax that is payable by the taxpayer.
- (5) Subject to subsection (6), a trustee -

- (a) must not, without the leave of the Board, dispose of any asset of the taxpayer until a notice has been served on the trustee under subsection (4) or the one month period referred to in subsection (4) has passed without a notice being served on the trustee under that subsection;
 - (b) must set aside, out of the assets available for the payment of tax due by the taxpayer, assets to the value of the amount notified under subsection (4), or the whole of the assets if their value is less than the amount notified;
 - (c) is, to the extent of the value of the assets required to be set aside under paragraph (b), liable for the tax due by the taxpayer.
- (6) A trustee may pay the following amounts in priority to the amount notified under subsection (4) –
- (a) the expenses properly incurred by the trustee in the capacity as such, including the trustee's remuneration; or
 - (b) a debt that has priority, in law or equity, over the tax payable by the taxpayer.
- (7) If two or more persons are trustees in respect of a taxpayer, the obligations and liabilities under this section apply jointly and severally to the trustees but may be discharged by any of them.
- (8) The amount that a trustee is liable for under subsection (5)(c) is treated as unpaid tax for the purposes of Division II of this Part and this Division.

Security

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

Seizure of Goods

39. (1) The Board may seize any goods in respect of which the Board has reasonable grounds to believe that the VAT or excise tax that is, or will become, payable in respect of the supply, removal, or import of such goods has not been, or will not be, paid.
- (2) Any goods seized under this section must be stored in a place approved by the Board for the storage of seized goods.
- (3) If goods have been seized under subsection (1), the Board must, as soon as is practicable after the seizure, serve on the owner of the goods or the person

who had custody or control of the goods immediately before the seizure, a notice in writing –

- (a) identifying the goods;
 - (b) stating that the goods have been seized under this section and the reason for seizure; and
 - (c) setting out the terms of subsections (6), (7), and (8).
- (4) The Board is not required to serve a notice under subsection (3) if, after making reasonable enquiries, the Board does not have sufficient information to identify the person on whom the notice should be served.
- (5) If subsection (4) applies, the Board may serve a notice under subsection (3) on any person claiming the goods, provided the person has given the Board sufficient information to enable the notice to be served.
- (6) The Board may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (3) has been served if that person has paid, or makes an arrangement satisfactory to the Board for payment of the VAT or excise tax that is, or will become, payable in respect of the supply, removal, or import of the goods.
- (7) Except when subsection (6) applies, the Board can detain the goods seized under subsection (1) –
- (a) in the case of perishable goods, for such period as the Board considers reasonable having regard to the condition of the goods; or
 - (b) in any other case, until the later of –
 - (i) ten days after seizure of the goods; or
 - (ii) ten days after the due date for payment of the VAT or excise tax in respect of the supply, removal, or import of the goods.
- (8) If the detention period in subsection (7) has expired, the Board may sell the goods by public auction or, in the case of perishable goods, may sell the goods in such manner as the Board determines, and apply the proceeds of sale as follows –
- (a) first towards the cost of taking, keeping, and selling the goods seized;
 - (b) then towards payment of any VAT or excise tax that is, or will become, payable in respect of the supply, removal, or import of the goods;

- (c) then towards payment of any other tax due by the person whose goods have been seized; and
 - (d) then the remainder of the proceeds, if any, must be paid to the person whose goods have been seized.
- (9) If the proceeds of disposal are less than the VAT or excise tax due in respect of the goods, the Board may proceed under this Part to recover the shortfall.

Departure Prohibition

40. (1) Despite any other provision of this Act, the Board may, on the ground of a person's imminent departure from Kiribati, demand the immediate payment of any tax that is or will become payable by the person and the tax is due and payable accordingly.
- (2) If any person to whom a demand is made under subsection (1) fails to pay the tax, the Principal Immigration Officer must prevent the person from leaving Kiribati until the person -
- (a) makes payment in full; or
 - (b) makes an arrangement satisfactory to the Board for the payment of the tax.
- (3) A letter from the Board to the Principal Immigration Officer that tax is due and payable by a person assessed to tax under subsection (1) is sufficient authority for the Principal Immigration Officer to act in pursuance of subsection (2).

Temporary Closure of Business

41. (1) If a taxpayer has failed to file a tax return by the due date and the taxpayer has previously failed to file tax returns by the due date, the Board may notify the taxpayer, in writing, of the intention to close down part or the whole of the business of the taxpayer for a temporary period not exceeding 14 days, unless the taxpayer files the return within a period of 7 days of the date of service of the notice.
- (2) If a taxpayer fails to comply with a notice issued under subsection (1), the Board may make an order to close down part or the whole of the business of the taxpayer for a period not exceeding 14 days.
- (3) An authorised officer may, at any time, enter any premises described in an order issued under subsection (2) for the purposes of executing the order and may require a police officer to be present while the order is being executed.

- (4) An authorised officer executing an order under subsection (2) must affix in a conspicuous place on the front of the premises of the business or part of the business that has been closed, a notice in the words "CLOSED TEMPORARILY FOR NOT COMPLYING WITH TAX OBLIGATIONS".
- (5) If the return is filed within the period of closure, the Board must immediately arrange for removal of the notice referred to in subsection (4).
- (6) In this section, "authorised officer" means a public officer authorised by the Board exercise powers under this section.

Division IV – Repayment of Overpaid Tax, and Remission of Tax

Refund or Repayment of Overpaid Tax

42. (1) If it is proved to the satisfaction of the Board that any person has, for any tax period, paid tax by withholding or otherwise in excess of the amount that ought to have been paid for that period, the person is entitled to a refund or a repayment of the amount so paid in excess.
- (2) Every claim for a refund or a repayment under this section must be made within 3 years of the end of the tax period to which it relates.

Interest Payable on Overpaid Tax

43. (1) If a taxpayer has appealed against a tax assessment but has paid the tax in dispute, the taxpayer is entitled to interest on any amount of tax paid that is found on appeal not to have been payable by the taxpayer.
- (2) Interest under this section is to be paid at the rate payable by any commercial bank in Kiribati on any demand deposit, but not exceeding 10% per annum or such other rate as may be prescribed, calculated from the date of the taxpayer's notice of appeal until the date the tax is repaid to the taxpayer.

Remission of Tax

44. (1) The Minister, acting in accordance with the advice of the Cabinet, may remit, in whole or part, the tax payable by any person -
 - (a) on the ground of poverty; or
 - (b) on the ground that the expense likely to be incurred in collecting or recovering such tax would be greater than the amount of tax payable or unpaid.
- (2) The Minister, acting in accordance with the advice of the Cabinet, on being satisfied that it is just, equitable and in the public interest to do so -

- (a) may remit in whole or in part any tax payable by a person; or
- (b) may refund in whole or in part any tax already paid by a person.

PART VIII – TAX INVESTIGATIONS

Access to Books and Records

45. (1) The Board may at any reasonable time and without any prior notice have such full and free access to any building, place, property, documents, or data storage device as is reasonable for the purposes of administering any tax law.
- (2) The Board may –
- (a) make an extract or copy of any documents or information stored on a data storage device to which access is obtained under subsection (1);
 - (b) seize any documents that, in the opinion of the Board, afford evidence that may be material in determining the tax liability of a taxpayer and retain such documents for as long as they may be required for determining a taxpayer's tax liability or for any proceeding under a tax law; or
 - (c) if a hard or electronic copy of information stored on a data storage device is not provided, seize and retain the device for as long as is necessary to copy the information required.
- (3) A public officer who exercises any power under subsections (1) and (2) on behalf of the Board is not entitled to enter or remain in any building or place if, upon being requested by the occupier of the building or place, the officer does not produce an authority in writing from the Board to the effect that the officer is authorised to exercise that power.
- (4) The lawful occupier of any building or place entered or proposed to be entered under this section must provide all reasonable facilities and assistance for the effective exercise of any power under this section.
- (5) The Board must sign for all documents or data storage devices seized under this section and, subject to subsection (2)(c), return them to the owner within 14 days after the conclusion of the investigation to which they relate and all related proceedings.
- (6) A person whose documents have been seized under subsection (1) may examine them and make copies, at the person's expense, during office hours.

(7) A person whose data storage device has been seized under subsection (1) may have access to the device during office hours on such terms and conditions as the Board may specify.

(8) This section has effect despite –

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

Notice to Obtain Information or Evidence

46. (1) The Board may, for the purposes of administering any tax law, by notice in writing, require any person, whether or not liable for tax under a tax law –

- (a) to furnish, within the time specified in the notice, any information that may be required by the notice; or
- (b) to attend at the time and place designated in the notice for the purpose of being examined on oath by an authorised officer, concerning the tax affairs of that person or any other person and, for that purpose, the Board may require the person examined to produce any documents, including in electronic format, in the control of the person.

(2) If the notice requires the production of documents, including in electronic format, it is sufficient if such documents are described with reasonable certainty.

(3) This section has effect despite –

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

PART IX – RULINGS

Binding Public Rulings

47. (1) The Board may make a public ruling in accordance with section 48 setting out the Board's interpretation on the application of a tax law.
- (2) A public ruling made in accordance with section 48 is binding on the Board until withdrawn.

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

Making a Public Ruling

48. (1) The Board makes a public ruling by publishing a notice of the ruling in the Gazette.
- (2) A public ruling must state that it is a public ruling and have a number and subject heading by which it can be identified.
- (3) A public ruling applies from the date specified in the ruling and if no date is specified, from the date of publication in the Gazette.
- (4) A public ruling may be challenged only by appealing a tax assessment made in reliance on the ruling under Part VI.

Withdrawal of a Public Ruling

49. (1) The Board may withdraw a public ruling, in whole or part, by publishing notice of the withdrawal in the Gazette.
- (2) If legislation is passed, or the Board makes a public ruling, that is inconsistent with an existing public ruling, the existing ruling is treated as withdrawn to the extent of the inconsistency.
- (3) The withdrawal of a public ruling, in whole or part, has effect –
- (a) if subsection (1) applies, from the date specified in the notice of withdrawal and if no date is specified, from the date notice of the withdrawal is published in the Gazette; or
- (b) if subsection (2) applies, from the date of application of the inconsistent legislation or public ruling.
- (4) A public ruling that has been withdrawn in whole or in part –
- (a) continues to apply to a transaction commenced before the public ruling was withdrawn; and
- (b) does not apply to a transaction commenced after the ruling was withdrawn to the extent that the ruling is withdrawn.

Other Advice Provided by the Board

50. No guidelines, publication, or other advice (oral or in writing) provided by the Board is binding on the Board except a public ruling binding under section 47.

PART X – TAX AGENT REGISTRATION

Application for Tax Agent Registration

51. (1) An individual, partnership, or company may apply to the Board for registration as a tax agent.
- (2) An application for registration as a tax agent under subsection (1) must be in the approved form and accompanied by the prescribed fee.

Registration of Tax Agents

52. (1) The Board must register an applicant under section 51 who is an individual if satisfied that the individual is a fit and proper person to prepare tax returns, notices of appeal, and otherwise transact business with the Board under the tax laws on behalf of taxpayers.
- (2) The Board must register an applicant under section 51 that is a partnership or company if satisfied that -
- (a) a partner in the partnership, or an employee of the company, is a fit and proper person to prepare tax returns, notices of appeal, and otherwise transact business with the Board under the tax laws on behalf of taxpayers; and
 - (b) every partner in the partnership or every director, manager, and other executive officer of the company, are of good character and integrity.
- (3) Registration of a tax agent remains in force for 12 months from the date of registration.
- (4) The Board must provide an applicant under section 51 with notice, in writing, of the decision on the application.

Renewal of Tax Agent Registration

53. (1) A registered tax agent may apply to the Board for renewal of the tax agent's registration.
- (2) An application under subsection (1) must be -
- (a) in the approved form and accompanied by the prescribed fee; and
 - (b) lodged with the Board within 21 days prior to the date of expiry of the tax agent's registration or such later date as the Board may allow.

- (3) The Board must renew the registration of a tax agent who has applied under subsection (1) if the tax agent continues to satisfy the conditions for registration in section 52.
- (4) The renewal of a tax agent's registration remains in force for 12 months from the date the existing registration expires.
- (5) The Board must provide an applicant under subsection (1) with notice, in writing, of the decision on the application.

Cancellation of Tax Agent Registration

54. (1) A registered tax agent that ceases to carry on business as a tax agent must notify the Board, in writing, within 7 days prior to ceasing to carry on business as tax agent.
- (2) A registered tax agent may apply to the Board, in the approved form, for cancellation of the agent's registration if the agent no longer wishes to be registered.
- (3) The Board must cancel the registration of a tax agent if any of the following applies -
- (a) a tax return prepared and filed by the tax agent is false in any material particular, unless the tax agent establishes to the satisfaction of the Board that this was not due to any wilful or negligent conduct of the tax agent;
 - (b) the tax agent ceases to satisfy the conditions for registration in section 52;
 - (c) the tax agent has ceased to carry on business as a tax agent;
 - (d) the tax agent has applied for cancellation of the agent's registration under subsection (2).
- (4) The Board must give notice, in writing, of a decision to cancel the registration of a tax agent.
- (5) The cancellation of the registration of a tax agent takes effect on the earlier of
- (a) the date the tax agent ceases to carry on business as a tax agent; or
 - (b) 60 days after the tax agent has been served with notice of the cancellation.

Limitation on the Performance of Tax Services for Taxpayers

55. (1) Subject to subsection (3), a person, other than a registered tax agent, must not demand or receive any fee for or in relation to -
- (a) the preparation of a tax return or a notice of appeal; or
 - (b) the transaction of any business with the Board on behalf of any person in respect of that other person's rights or obligations under a tax law.
- (2) Subject to subsection (3), a person, other than a registered tax agent, must not -
- (a) represent another person as that other person's tax agent; or
 - (b) indicate that, for reward, the person will offer assistance to another person in respect of that other person's rights or obligations under a tax law.
- (3) Subsections (1) and (2)(b) do not apply to a legal practitioner acting in the ordinary course of the person's profession.

PART XI – FORMS AND NOTICES

Approved Form

56. A tax return, notice, or other document required to be filed under a tax law is in the approved form if -
- (a) it is in the form approved in writing by the Board for that type of tax return, notice, or document; and
 - (b) it contains the information (including any attached documents required) and is signed as required by the form.

Forms and Notices; and Authentication of Documents

57. (1) Subject to the Regulations, a form, notice, tax return, statement, table, or other document approved or published by the Board for the purposes of any tax law may be in such form as the Board determines for the efficient administration of the tax laws.
- (2) The Board must make the documents referred to in subsection (1) available to the public at the offices of the Board and at such other locations, or by mail or such other means, as the Board may determine.

- (3) A notice or other document issued, served, or given by the Board under a tax law is sufficiently authenticated if the name or title of the Board is printed, stamped, or written on the document.

Manner of Lodging Documents

58. Subject to this Act and except as otherwise provided in a tax law, an application, notice, or other document to be lodged with the Board under a tax law must be delivered by personal delivery or normal post to an office of the Board.

Service of Notices

59. (1) A taxpayer must state in each tax return filed by the taxpayer an address in Kiribati for service of notices and such address applies for the purposes of all tax laws.
- (2) Subject to this Act and except as otherwise provided in a tax law or regulations made under this Act, a notice or other document required to be served by the Board on a person for the purposes of a tax law is treated as properly served on the person –
- (a) when the notice or other document is served personally on the person;
 - (b) if an address for service is provided as specified in subsection (1), when the notice or other document is left at, or sent by registered or normal post to, the address for service stated in the most recently filed tax return of the person including an address for service; or
 - (c) if no address for service is provided in a tax return, when the notice or other document is left at, or sent by registered or normal post to, the person's usual or last known address in Kiribati.
- (3) If a notice or other document is served by normal post, service is, in the absence of proof to the contrary, effected at the time at which the notice or other document would be delivered in the ordinary course of the post, and in proving such service it is sufficient to prove that the envelope containing the notice or other document was properly addressed and was posted.
- (4) If the person to whom a notice or other document has been sent by registered post is informed of the fact that there is a registered letter awaiting the person at a Post Office, and the person refuses or fails to take delivery of the letter, and the letter consists of the notice or other document, service of the notice or other document is effected.
- (5) The validity of service of a notice cannot be challenged after the notice has been wholly or partly complied with.
- (6) In this section, "person" includes the person's representative.

Electronic Notices and Payments

60. The Board may establish and operate a procedure for electronic filing of tax returns or other documents to the Board and electronic service of notices and other documents by the Board as prescribed in Regulations.

Due Date for Documents and Tax Payments

61. If the due date under a tax law for filing a document, paying tax, or taking any other action under the law is a Saturday, Sunday, or public holiday, the due date is the next business day.

Rectification of Mistakes

62. If a notice of assessment served, or other document issued, by the Board under a tax law contains a mistake which is apparent from the record and the mistake does not involve a dispute as to the interpretation of the law or facts of the case, the Board may, for the purposes of rectifying the mistake, amend the assessment or document any time before the expiry of three years from the date of serving the notice of assessment or issuing the document.

PART XII PENALTIES AND OFFENCES

Division I – Penalties

Late Filing Penalty

63. A person who fails to file a tax return or other document as required under a tax law by the due date is liable for a late filing penalty equal to \$30 for each month or part of a month the return or other document is not filed up to a maximum of \$500 for each failure.

Late Payment Penalty

64. (1) A taxpayer who fails to pay tax by the due date or, if the Board has extended the due date under section 31, the extended due date, is liable for a late payment penalty equal to 15% of the amount of unpaid tax.
- (2) Late payment penalty paid by a taxpayer under subsection (1) must be refunded to the taxpayer to the extent that the tax to which the penalty relates is found not to have been payable.
- (3) In this section, "tax" does not include penalty.

Penalty for Failing to Keep Records

65. (1) Subject to subsection (2), a taxpayer who fails to keep, retain, or maintain any document as required under a tax law is liable for a penalty equal to -
- (a) if the failure was made knowingly or recklessly, 75% of the amount of tax payable by the taxpayer under the tax law for the tax period to which the failure relates; or
 - (b) in any other case, 20% of the amount of tax payable by the taxpayer under the tax law for the tax period to which the failure relates.
- (2) If no tax is payable by the taxpayer for the tax period to which the failure referred to in subsection (1) relates, the penalty is equal to AUD\$100.

Tax Shortfall Penalty

66. (1) This section applies to a person -
- (a) who makes a statement to a public officer that is false or misleading in a material particular or omits from a statement made to a public officer any matter or thing without which the statement is false or misleading in a material particular; and
 - (b) the tax liability of the person or of another person computed on the basis of the statement is less than it would have been if the statement had not been false or misleading (the difference being referred to as the "tax shortfall").
- (2) Subject to subsections (3) and (4), a person to whom this section applies is liable for a tax shortfall penalty equal to -
- (a) if the statement or omission was made knowingly or recklessly, 75% of the tax shortfall; or
 - (b) in any other case, 20% of the tax shortfall.
- (3) The amount of a tax shortfall penalty imposed under subsection (2) on a person is increased by -
- (a) 10 percentage points if this is the second application of this section to the person; or
 - (b) 25 percentage points if this is the third or a subsequent application of this section to the person.

- (4) The amount of a tax shortfall penalty imposed under subsection (2) on a person is reduced by 10 percentage points if the person voluntarily discloses the statement or omission to which the section applies prior to the earlier of –
- (a) discovery by the Board of the tax shortfall; or
 - (b) the commencement of an audit of the tax affairs of the person to whom the statement relates.
- (5) No tax shortfall penalty is payable under subsection (2) if –
- (a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular;
 - (b) the tax shortfall arose as a result of a taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in submitting a self-assessment return; or
 - (c) the failure was due to a clerical or similar error.
- (6) A position taken by a taxpayer in making a self assessment that is contrary to a public ruling issued by the Board under Part IX and in force at the time the statement was made is not a reasonably arguable position for the purposes of subsection (5)(b).
- (7) Nothing in subsection (5) prevents the imposition of late payment interest in respect of a tax shortfall if the tax is not paid by the due date for payment.
- (8) For the purposes of this section, a statement made to a public officer includes a statement made, in writing or orally, in any of the following circumstances –
- (a) in any application, certificate, declaration, notification, return, objection, or other document submitted or lodged under a tax law;
 - (b) in any information required to be provided under a tax law;
 - (c) in any document provided to a public officer;
 - (d) in answer to a question asked of a person by a public officer;
 - (e) to another person with the knowledge or reasonable expectation that the statement would be passed on to a public officer.

Tax Avoidance Penalty

67. (1) If the Board has applied a tax avoidance provision in assessing a taxpayer, the Board may assess the taxpayer to a tax avoidance penalty of double the

amount of the tax that would have been avoided but for the application of the tax avoidance provision.

- (2) If a taxpayer is challenging an assessment of a tax avoidance penalty, the taxpayer's notice of appeal may challenge both the application of the tax avoidance penalty and the imposition of the penalty.
- (3) In this section, "tax avoidance provision" means -
 - (a) section 89 of the Income Tax Act;
 - (b) a provision in Part XIII of the Income Tax Act;
 - (c) section 47 of the Value Added Tax Act; or
 - (d) section 24 of the Excise tax Act.

General Provisions Relating to Penalty

68. (1) A liability for penalty is calculated separately with respect to each section in this Division.
- (2) A person is not liable for penalty if the person has been convicted of an offence for the same act or omission.
- (3) If a penalty has been paid by a person under this Division and the Board commences a prosecution under Division II of this Part in respect of the same act or omission, the penalty must be refunded to the person, and no penalty is payable unless the prosecution is withdrawn.
- (4) A person is liable for penalty only if the Board -
 - (a) makes an assessment of the penalty imposed under this Division; and
 - (b) serves notice of the assessment on the person subject to the penalty stating the amount of penalty payable and the due date for payment.
- (5) Subsection (4) applies also to a penalty imposed under a tax law (other than this Act).
- (6) Penalty payable by a person is due on the date specified in the notice served under subsection (4)(b).
- (7) A person liable for a penalty may apply in writing to the Board for remission of the penalty payable and such application must include the reasons for the remission.

- (8) The Board may, upon application under subsection (7) or on his or her own motion and with the approval of the Minister, remit, in whole or in part, any penalty payable by a person except a penalty imposed under section 66.
- (9) Nothing in this Division precludes the imposition of penalty under a tax law (other than this Act), although the same act or omission cannot be subject to –
 - (a) the imposition of penalty under more than one provision; or
 - (b) both the imposition of penalty and prosecution for an offence.

Division II - Offences

Failure to File Tax Return

- 69. (1) A taxpayer who, without reasonable excuse, fails to file a tax return by the due date, or within such further time as the Board may allow under section 15, commits an offence.
- (2) For the purposes of subsection (1), a failure to comply with a notice served under section 16 does not constitute an offence separate from the offence constituted by the failure to file the return to which the section 16 notice relates.

Failure to Withhold Tax

- 70. A person who fails to withhold tax or, having withheld tax, fails to pay the tax to the Board as required under a tax law commits an offence.

Failure to Maintain Records

- 71. A taxpayer who knowingly or recklessly fails to keep, retain, or maintain documents as required under a tax law commits an offence.

False or Misleading Statements

- 72. (1) A person commits an offence if the person knowingly or recklessly –
 - (a) makes a statement to a public officer that is false or misleading in a material particular; or
 - (b) omits from a statement made to a public officer any matter or thing without which the statement is false or misleading in a material particular.
- (2) Section 66(8) applies in determining whether a person has made a statement to a public officer.

Obstruction of Public Officer

73. A person who hinders or obstructs a public officer in the performance of duties under a tax law commits an offence.

Offences Relating to Taxpayer Identification Number

74. (1) A person who uses a false TIN on a tax return or document prescribed or used for the purposes of a tax law commits an offence.
- (2) A person who uses the TIN of another person is treated as having used a false TIN, unless the TIN has been used in the circumstances specified in section 6(7).
- (3) A person commits an offence if the person fails to –
- (a) apply for a TIN as required under section 5; or
 - (b) apply for cancellation of the person's TIN as required under section 8.
- (4) A person who obtains a TIN using a false or forged document commits an offence.

Offences by Tax Advisers

75. A person commits an offence if the person –
- (a) fails to notify the Board as required under section 54(1); or
 - (b) contravenes section 55.

Offences Relating to Recovery of Unpaid Tax

76. (1) A person commits an offence if the person –
- (a) subject to subsection (2), fails to comply with a notice served on the person under section 36;
 - (b) contravenes section 37;
 - (c) fails to provide security as required by the Board under section 38;
 - (d) rescues or attempts to rescue goods seized under section 39;
 - (e) before, at, or after any seizure of goods under section 39, staves, breaks, or destroys the goods, or destroys documents relating to goods to prevent –

- (i) the securing of the goods; or
- (ii) the existence of proof of an offence;
- (f) departs or attempts to depart Kiribati without paying tax or making an arrangement satisfactory to the Board for payment of tax the subject of a demand under section 40(1); or
- (g) enters premises that are the subject of an order issued under section 41 without permission of the Board.
- (2) A person who notifies the Board in writing under section 36(5) is in compliance with a notice served on the person under section 36(2) until the Board serves the person with a notice section 36(6) amending the notice served under section 36(2) or rejecting the person's notice under section 36(5).

Offences Relating to Investigations

77. (1) A person commits an offence if the person, without reasonable excuse, fails to provide reasonable facilities and assistance as required by section 45(4).
- (2) A person commits an offence if the person, without reasonable excuse -
- (a) fails to provide information as required by the Board under section 46(1)(a);
 - (b) fails to appear before the Board as required under section 46(1)(b); or
 - (c) fails to answer any question put to the person or produce any document as required by the Board under section 46(1)(b).

Aiding or Abetting an Offence

78. A person who aids, abets, assists, incites, or induces another person to commit an offence under a tax law (referred to as the "principal offence") commits an offence and is liable for the same sanction as imposed for the principal offence.

Offences Relating to Public Officers

79. (1) A public officer who directly or indirectly asks for, or takes in connection with any of the officer's duties, any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment or reward, not being a payment or reward that the officer was lawfully entitled to receive commits an offence.
- (2) A public officer who enters into or acquiesces in any agreement to -
- (a) do any act or thing;

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

whereby the Government is or may be defrauded of revenue, or that is contrary to the provisions of a tax law or to the proper execution of the officer's duty commits an offence.

- (3) A person who directly or indirectly offers or gives to a public officer any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any payment or reward, not being a payment or reward that the officer was lawfully entitled to receive commits an offence.
- (4) A person who proposes or enters into any agreement with a public officer in order to induce the officer to –
 - (a) do any act or thing;
 - (b) abstain from doing any act or thing;
 - (c) permit or connive in the doing of any act or thing; or
 - (d) conceal any act or thing,

whereby the Government is or may be defrauded of revenue, or that is contrary to the provisions of a tax law or to the proper execution of the officer's duty commits an offence.

- (5) A person who impersonates a public officer commits an offence.
- (6) In this section, "public officer" includes a person employed or engaged by the Board in any capacity, and a director or former director of the Board, and a former officer or employee of the Board.

Offences by Corporate Bodies

- 80. (1) If an offence under a tax law is committed by a company, the offence is treated as having been committed by every person who, at the time of the commission of the offence, was –
 - (a) the chief executive officer, general manager, treasurer, secretary, a director or other similar officer of the company; or
 - (b) acting or purporting to act in any such capacity.

- (2) It is a defence to a prosecution under subsection (1) that -
- (a) the offence was committed without such person's consent or knowledge; and
 - (b) the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of such person's functions and all the circumstances.
- (3) This section applies to an officer of any statutory corporation.

Sanctions for Offences

81. (1) A person convicted of an offence under sections 69 through 77 is liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years, or to both such fine and imprisonment.
- (2) A person convicted of an offence under section 79 is liable for a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or to both a fine and imprisonment.

Compounding of Offences

82. (1) The Board may, with the written consent of the Attorney General, compound an offence committed by a person under a tax law (other than section 79 of this Act) if the person agrees to pay to the Board -
- (a) any unpaid tax; and
 - (b) an amount not exceeding the maximum fine imposed by the tax law for the offence.
- (2) An agreement under subsection (1) -
- (a) must be in writing and signed by an authorised officer of the Board and the taxpayer;
 - (b) must specify the name of the taxpayer, the offence committed, the sum of money ordered to be paid, and the date on which payment is to be made;
 - (c) must be served on the taxpayer;
 - (d) is final and is not subject to appeal;
 - (e) may be enforced in the same manner as an order of a court for payment of the amount stated in the order; and

- (f) on production to any court, is treated as proof of the conviction of the offender for the offence specified in the agreement.
- (3) If the Board compounds an offence under this section, the offender is not liable for prosecution or penalty in respect of same act or omission the subject of the compounded offence.
- (4) The amount that a person is liable to pay under an agreement under subsection (1) is payable to the Board and may be collected by the Board under Division III of Part VII as if it were unpaid tax.

Prosecution of an Offence

83. The prosecution of an offence under this Division may be instituted at any time within 6 years after the end of the tax period in respect of which the offence was committed.

Tax Payable Despite Prosecution

84. The institution of a prosecution against a person for an offence under a tax law, or the punishment of such person consequent upon any such prosecution, does not relieve that person from liability for the payment of any tax for which the person is or may be liable.

PART XIII – CONSEQUENTIAL AMENDMENTS

Amendments to Income Tax Act

85. The Income Tax Act is amended –
- (a) in section 3, by inserting the following definition in correct alphabetical order –

““Revenue Administration Act” means the Revenue Administration Act, 2013;”;
 - (b) in section 98, by deleting subsection (11);
 - (c) in section 99, by deleting subsection (3);
 - (d) in section 100, by deleting subsections (5), and (7) through (11);
 - (e) in section 107, by deleting subsections (2) through (6);
 - (f) in section 115 –
 - (i) by deleting subsection (4); and

- (ii) by amending subsection (6), by inserting "and in accordance with the Revenue Administration Act" after "Board";
- (g) in section 116 -
 - (i) by deleting subsection (4); and
 - (ii) by amending subsection (6), by inserting "and in accordance with the Revenue Administration Act" after "Board";
- (h) in section 117 -
 - (i) by deleting subsection (6); and
 - (ii) by amending subsection (7), by inserting "and in accordance with the Revenue Administration Act" after "Board";
- (i) in section 118 -
 - (i) by deleting subsection (4); and
 - (ii) by amending subsection (8), by inserting "and in accordance with the Revenue Administration Act" after "Board" where second mentioned;
- (j) by deleting sections 101, 102, 105, 106, 108 through 112, 114, 119, 122 through 126, 128 through 132; and
- (k) effective on or after 1 April 2014, in the First Schedule –
 - (i) by deleting "\$4,000" wherever mentioned and substituting "\$5,000"; and
 - (ii) by deleting "\$4,001" and substituting "\$5,001".

PART XIV - FINAL PROVISIONS

Regulations

86. (1) The Beretitenti, acting in accordance with the advice of Cabinet, may make regulations –
- (a) prescribing all matters that are by this Act to be prescribed or convenient to be prescribed to give effect to this Act; and
 - (b) providing for the proper and efficient administration of this Act.

- (2) Without limiting the general effect of subsection (1), the regulations made under that subsection may –
 - (a) contain provisions of a saving or transitional nature consequent on the making of this Act; or
 - (b) prescribe penalties for the contravention of the regulations.
- (3) Regulations of a transitional nature made under this section within six months after the day this Act receives certification may have effect retrospectively from that day.

Transitional and Savings

87. (1) Subject to this section, this Act applies to any act or omission occurring, or any tax assessment made, before the commencement date.
- (2) Any appeal or prosecution commenced before the commencement date may be continued and disposed of as if this Act had not come into force.
- (3) If the period for any application, appeal, or prosecution had expired before the commencement date, nothing in this Act is treated as enabling the application, appeal, or prosecution to be made under this Act by reason only of the fact that a longer period is specified in this Act;
- (4) Any tax liability that arose before the commencement date may be recovered under this Act, but without prejudice to any action already taken for the recovery of the tax.

REVENUE ADMINISTRATION ACT, 2013

EXPLANATORY MEMORANDUM

INTRODUCTION

The Revenue Administration Act 2013 (referred to as "the Act") provides for uniform procedural and administrative rules applicable to all taxes that are under the general administration of the Internal Revenue Board (referred to as "the Board"). In particular, it will apply for the purposes of the income tax, value added tax ("VAT") and excise tax.

PART I – PRELIMINARY

Section 1 provides for the short title and commencement of the Act. The Act comes into force on the date notified in the *Gazette*.

Section 2 provides definitions of commonly used terms in the Act. The definitions in section 2 apply unless the context requires otherwise.

Section 3 provides that the Act binds the Government. It also provides that the Board has responsibility for administration of the Act. '

PART II – TAXPAYERS

Division I – Taxpayer Identification Number

Section 4 empowers the Board to issue taxpayer identification numbers ("TIN") to taxpayers. A TIN is a unique identifier applicable for the purposes of the tax laws under the responsibility of the Board.

Section 5 obliges a person to apply for a TIN if required to do so by the Board. An application for a TIN must be in the approved form, accompanied by documentary proof of identity and lodged in the manner prescribed in Regulations.

Section 6 obliges the Board to issue a TIN to a person who is required to apply for a TIN under section 5. The Board may also issue a TIN to a person who is a taxpayer on the Board's own motion. A TIN is personal to the taxpayer and, with one exception, it cannot be used by another person. The exception is that a taxpayer's TIN can be used by the taxpayer's registered tax agent but only if the taxpayer has given permission in writing for the tax agent to use the taxpayer's TIN.

Section 7 obliges a taxpayer to use their TIN on any tax return, notice or other document filed with the Board for the purposes of a tax law. The Regulations may require a taxpayer to use their TIN on any document required for the purposes of another law (i.e. a law that is not a tax law).

Section 8 provides for the cancellation of a TIN.

Division II – Representatives of a Taxpayer

Section 9 empowers the Board to declare a person to be an agent of a taxpayer for the purposes of the tax laws under the administration of the Board.

Section 10 specifies persons who are treated as a representative of a taxpayer. This includes a person declared to be an agent of a taxpayer under section 9.

Section 11 provides that a person who is a representative of a taxpayer has the responsibility to meet the tax obligations of the taxpayer including the filing of tax returns and payment of tax. This is in addition to the primary obligation on the taxpayer.

Section 12 provides a mechanism for the collection of tax owing by a company from the directors and controlling shareholders of the company when an arrangement has been entered into with the effect that the company is unable to pay a tax liability under a tax law.

PART III – RECORDS

Section 13 provides rules in relation documents required to be kept by a taxpayer under a tax law. Documents must be kept in Kiribati in the English language and retained for seven years from the end of the tax period to which they relate. A person who fails to comply with these requirements may be liable for an administrative penalty (section 65) or convicted of an offence (section 71).

PART IV – RETURNS

Section 14 provides general rules relating to the filing of tax returns, particularly that a tax return must be in the approved form and filed in the manner prescribed under Regulations.

Section 15 empowers the Board to grant an extension of time to file a tax return.

Section 16 empowers the Board to require a taxpayer to file a tax return in advance of the normal due date for the return in cases when there may be a risk that the return will not be filed if it were necessary to wait until the normal due date for the return.

Section 17 provides that a tax return that is purported to be filed by or on behalf of a taxpayer is treated as having been filed by the taxpayer or with the taxpayer's authority unless the contrary is proved.

PART V – TAX ASSESSMENTS

Section 18 provides for the making of self-assessments. A self-assessment taxpayer who has filed a self-assessment return (such as VAT or excise tax return) is treated as having made an assessment of the amount of tax due for the tax period to which the return relates being the amount of tax as set out in the return. This means that a self-assessment return properly filed is treated as a tax assessment.

Section 19 empowers the Board to make an assessment of the tax owing by a taxpayer who has failed to file a tax return by the due date. This is referred to as a "default assessment".

Section 20 empowers the Board to make an advance assessment of tax payable in the circumstances specified in section 16. It is expected that the Board would rely on this section rather than section 16 if there is a need for the Board to take immediate action to protect the revenue.

Section 21 provides for the amendment of tax assessments. It applies to both self-assessments and assessments made by the Board (such as default assessment). For a self-assessment, the normal amendment period is six years from the date the taxpayer filed the self-assessment return. For other assessments, the amendment period is six years from the date the taxpayer was served with notice of the assessment. An unlimited amendment period applies in the case of fraud or wilful neglect by or on behalf of a taxpayer.

Section 22 provides for the validity of tax assessments and other documents.

Section 23 provides for the finality of tax assessments. The effect of the section is that a taxpayer who is dissatisfied with a tax assessment may challenge the assessment only under Part VI (i.e. notice of appeal procedure).

Section 24 obliges the Board to prepare an assessment list for each tax in respect of each tax period.

PARTVI – APPEALS

Section 25 provides for the first step in the procedure for the review of tax-assessments, namely the lodgement of a notice of appeal with the Board (ie. internal review of the decision by the Board). This is a prerequisite for external review of a tax assessment. Failure to lodge a notice of appeal within the time specified or within such further time as the Board may allow precludes the person affected by the decision from subsequently appealing to the Tax Tribunal or High Court.

Section 26 provides that a taxpayer may lodge a notice of appeal with the Tax Tribunal in two situations: (i) when the taxpayer does not agree with the decision of the Board on the notice of appeal; or (ii) the Board does not accept the notice of appeal as a valid notice of appeal. The Tribunal is an independent administrative body established under section 103 of the Income Tax Act with the power to hear a notice of appeal of a taxpayer in the circumstances specified above. The Tribunal is empowered to undertake a full merits review of the taxpayer's appeal.

Section 27 provides for an appeal to the High Court from a decision of the Tax Tribunal in relation to a notice of appeal.

Section 28 provides that nothing in Part VI (appeals) prevents the Board from amending an assessment as long as it does not involve re-opening a matter that has been determined on appeal. An exception applies in the case of fraud, or gross or wilful neglect when the Board

can re-open a matter determined on appeal provided notice of the fraud, or gross or wilful neglect came to light after determination of the appeal.

Section 29 provides for two rules of general application to appeals. First, the burden of proof is on the taxpayer challenging a tax assessment. Secondly, it is provided that, in an appeal to the Tax Tribunal or High Court, the taxpayer is limited to the grounds set out in their notice of appeal, although the Tax Tribunal or High Court has discretion to grant the taxpayer leave to add new grounds.

PART VII – COLLECTION AND RECOVERY OF TAX, AND REFUNDS

Division I – Payment of Tax

Section 30 provides that the tax payable under a tax law by a person is a debt due to the State and is payable to the Board in the manner and at the place prescribed in the Regulations. Unpaid tax may be sued for by the State in a court of competent jurisdiction with full costs of the suit payable by the person in default.

Section 31 empowers the Board to grant an extension of time for the payment of tax due.

Section 32 provides for general provisions relating to withholding tax (Le. tax required to be withheld from a payment under the Income Tax Act). The section: (i) creates a personal liability in the person required to withhold tax (referred as a "withholding agent") if they fail to withhold or fail to pay the withheld tax to the Board; (ii) makes it clear that the Board can recover from the recipient of a payment any tax the withholding agent failed to withhold; (iii) provides for a legislative priority for withholding tax; and (iv) provides for a legislative indemnity in favour of the withholding agent.

Section 33 applies when, in addition to the primary tax liability, a taxpayer owes late payment interest and penalty, and the taxpayer does not pay the full amount owing. In this case, the amount paid is applied in the following order: (i) first against the late payment interest; (ii) then against penalty; and (iii) finally against the primary tax liability.

Division II – Late Payment Interest

Section 34 provides for the imposition of interest on the late payment of tax. As penalty is included in the definition of "tax" in section 2, interest applies also to the late payment of penalty. Interest applies also the late payment of other amounts treated as unpaid tax for the purposes of Division II of Part VII. It is expressly provided that late payment interest is calculated as simple interest so there is no compounding of interest.

Division III -Recovery of Unpaid Tax

Section 35 provides for the recovery of unpaid tax by suit.

Section 36 empowers the Board to collect unpaid tax from a third party owing money to, or holding money for, a taxpayer through the issue of a garnishee-type order.

Section 37 sets out the obligations of a person appointed or assuming the position of a trustee in relation to the unpaid tax of a taxpayer in financial difficulties, or a deceased taxpayer.

Section 38 empowers the Board to require a person to give security for any tax that may become payable by the person if the Board has reason to believe that the tax will not be paid.

Section 39 provides the Board with the power to seize goods in respect of which VAT or excise tax has not been paid or the Board has reasonable grounds to believe will not be paid.

Section 40 empowers the Board to demand immediate payment of any tax that is or will become payable by a person about to depart Kiribati. The section obliges the Principal Immigration Officer to prevent a person subject to such a demand from leaving Kiribati unless the tax due has been paid or arrangements satisfactory to the Board have been made for payment of the tax.

Section 41 provides a procedure for the temporary closure of a business of a taxpayer when the taxpayer has regularly failed to file tax returns.

Division IV – Repayment of Overpaid Tax, and Remission of tax

Section 42 provides for the refund of overpaid tax.

Section 43 provides that, if a taxpayer successfully challenges an assessment, the Board is liable to pay the taxpayer interest on any refunded tax.

Section 44 empowers the Minister of Finance, acting on the advice of Cabinet, to provide relief from tax in cases of hardship or public interest.

PART VIII – TAX INVESTIGATIONS

Section 45 provides the Board with a statutory right of access to premises, property and documents for the purposes of administering a tax law.

Section 46 provides the Board with an administrative summons power.

PART IX – RULINGS

Section 47 provides for the issuing of public rulings by the Board. A public ruling is binding on the Board until revoked. As a public ruling is not law, it is not binding on taxpayers.

Section 48 provides for the making of public ruling by publishing notice of the ruling in the *Gazette*. It is expressly provided that the making of a public ruling can be challenged only by appealing a tax assessment made in reliance on the ruling under Part VI.

Section 49 provides for the withdrawal of a public ruling.

Section 50 makes it clear that guidelines, publications, or other advice (oral or in writing) provided by the Board are not binding on the Board. The only binding advice is a public ruling that is binding on the Board under section 47.

PART X – TAX AGENT REGISTRATION

Section 51 provides for applications by persons to be registered as a tax agent.

Section 52 provides for the initial registration as a tax agent of persons who have applied under section 51.

Section 53 provides for the renewal of the registration of a person as a tax agent.

Section 54 provides for the cancellation of the registration of a tax agent.

Section 55 provides that only a registered tax agent can accept fees for doing, or advertise to do, tax work. A person who is in breach of the section commits an offence under section 75.

PART XI – FORMS AND NOTICES

Section 56 sets out the requirements that must be satisfied for a document to be filed in the approved form.

Section 57 provides for forms and notices required under a tax law.

Section 58 provides for the lodging of documents with the Board as required under a tax law.

Section 59 provides for the service of notices and other documents by the Board for the purposes of a tax law.

Section 60 empowers the Board to establish a procedure for the electronic filing of tax returns and other documents with the Board and the electronic service of notices and other documents by the Board.

Section 61 provides a general rule applicable to the due date for filing or "lodging of documents with the Commissioner, the payment of tax, or the taking of any other action under a tax law. If the due date is a weekend or public holiday in Kiribati, the due date is the next following business day.

Section 62 empowers the Board to rectify mistakes in notices of tax assessments or other documents issued by the Board under a tax law that are obvious on the face of the record, and, in relation to which, there is no dispute as to the law or facts of the case.

PART XII – OFFENCES AND PENALTIES

Division I – Penalties

Section 63 imposes a late filing penalty on a person who fails to file a tax return or other document required to be filed under a tax law by the due date or, if the taxpayer has been granted an extension of time to file a return or other document, the taxpayer fails to file by the extended due date.

Section 64 imposes a late payment penalty on a taxpayer who fails to pay tax by the due date or, if the taxpayer has been granted an extension of time to pay tax, the taxpayer fails to pay by the extended due date.

Section 65 imposes a penalty on a taxpayer who fails to maintain records as required under a tax law. The amount of the penalty differs depending on the degree of culpability on the part of the taxpayer in relation to the failure to maintain records.

Section 66 imposes a tax shortfall penalty on a person who has made a false or misleading statement to a public officer (including in a tax return) resulting in a tax shortfall. The amount of the penalty differs depending on the degree of culpability on the part of the taxpayer in relation to the making of the false or misleading statement. The penalty is increased in the case of repeat applications of the section. The penalty is reduced in the case of voluntary disclosures.

Section 67 imposes a tax avoidance penalty on a person who has been the subject of the application of a tax avoidance provision in a tax law.

Section 68 provides for general matters relating to the imposition of a penalty, including the assessment and remission of a penalty.

Division II – Offences

Section 69 provides for an offence for failing to file a tax return. The prosecution of an offence under this section is an alternative to the imposition of a late filing penalty under section 63.

Section 70 provides for an offence if a person fails to withhold tax or, having withheld tax, fails to pay the tax to the Board as required under a tax law (particularly the Income Tax Act).

Section 71 provides an offence for knowingly or recklessly failing to keep proper records. Prosecution of an offence is an alternative to the imposition of a penalty under section 65.

Section 72 provides an offence for knowingly or recklessly making a false or misleading statement to a public officer, including in a tax return. The prosecution of an offence is an alternative to the imposition of a tax shortfall penalty under section 66.

Section 73 provides an offence for obstructing a public officer in the performance of his or her duties under a tax law.

Section 74 provides for offences in relation to taxpayer identification numbers.

Section 75 provides for offences relating to tax advisers.

Section 76 provides for offences relating to the application of provisions in Division III of Part VII concerning the recovery of unpaid tax.

Section 77 provides for offences relating to investigations.

Section 78 provides an offence for aiding or abetting the commission of a tax offence.

Section 79 provides for offences relating to public officers.

Section 80 provides for the treatment of offences committed by companies.

Section 81 sets out the sanctions for offences.

Section 82 provides for the compounding of offences by the Board. For transparency reasons, there is no compounding of an offence committed by a public officer under section 79.

Section 83 provides for six-year time limit in the prosecution of offences.

Section 84 provides that the prosecution of a taxpayer for an offence does not relieve the taxpayer from the payment of any tax due.

PART XIII – CONSEQUENTIAL AMENDMENTS

Section 85 provides for amendments to the Income Tax Act consequent upon the enactment of the Revenue Administration Act. The generic procedural and administrative rules in the Income Tax Act are relocated in the Revenue Administration Act applicable to all taxes (particularly income tax, VAT and excise tax).

PART XIV – FINAL PROVISIONS

Section 86 empowers the Beretiteni acting on the advice of Cabinet to make regulations for the purposes of the Act. Section 87 provides for transitional and savings matters.

Titabu Tabane
Attorney General
March 2013

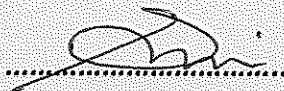
CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 16th December 2013 and is found by me to be a true and correctly printed copy of the said Bill.



Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this 30 day of December 2013.



Eni Tekanene
Clerk of the Maneaba ni Maungatabu