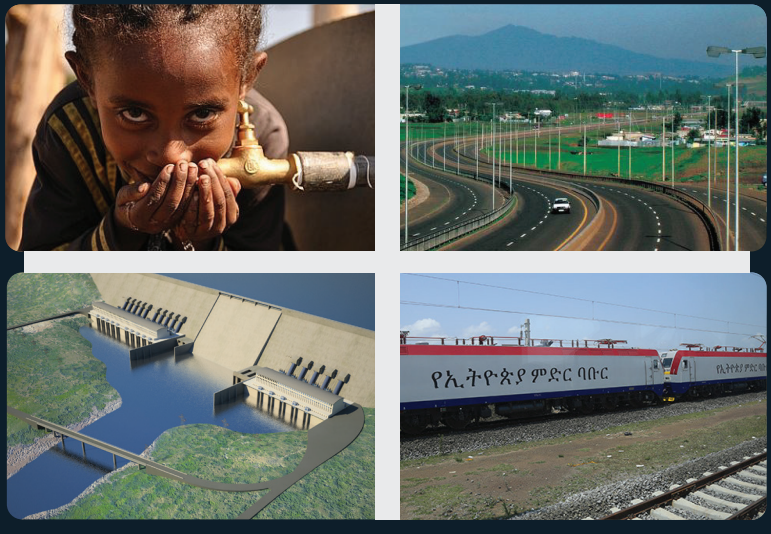
Federal Democratic Republic of Ethiopia

Federal Tax Administration Proclamation No. 983/2016

Technical Notes



Ministry of Finance and Economic Cooperation

February 2018

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Acknowledgements

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Disclaimer

The organizations, ERCA, MoFEC and the WBG, using their best efforts in the time available, have endeavored to provide high-quality services hereunder and have relied on information provided to them by different resources.

Although the information presented in these explanatory notes has been carefully prepared, it is not a legally binding document. Therefore, users of these notes are required to refer to the Income Tax Proclamation and other income tax related laws and regulations for obtaining legally binding information.

TABLE OF CONTENTS

List of Abbreviations

CEO	Chief Executive Officer
DPO	Departure Prohibition Order
ERCA	Ethiopian Revenue and Customs Authority
FDRE	Federal Democratic Republic of Ethiopia
IFRS	International Financial Reporting Standards
ITP	Income Tax Proclamation
LIFO	Last In First Out
MoFEC	Ministry of Finance and Economic Cooperation
PLC	Private Limited Company
TAP	Tax Administration Proclamation
TIN	Tax Identification Number
UN	United Nations
VAT	Value Added Tax

Federal Tax Administration Proclamation No. 983/2016 Explanatory Notes

This memorandum provides an Article-by-Article explanation of the Tax Administration Proclamation ("TAP"). TAP provides for harmonised administrative and procedural rules applicable to all tax laws (other than the Customs legislation). In particular, TAP applies for the purposes of the Income Tax Proclamation ("ITP"), Value Added Tax Proclamation, Excise Tax Proclamation, Turnover Tax Proclamation, and Stamp Duty Proclamation.

The Article references in these notes are to Articles in TAP unless otherwise stated.

1. Short Title

This Article provides that the proclamation may be cited as the "Federal Tax Administration Proclamation No. 983/2016".

2. Definitions

This Article defines terms used in the tax laws. The policy is that definitions of terms common to the tax laws will be specified only in TAP with a cross-reference in the primary tax law (this is expressed by the introductory words of Article "In the tax laws (including this Proclamation)". This is intended to achieve consistency in interpretation across the tax laws. It also facilitates ease of amendment of definitions and avoids the uncertainties that can arise when a term that is used in several tax laws is amended for the purposes of one tax law but not the others.

The Article applies to all laws listed as "tax laws" in the definition in this Article (see below).

Appealable decision

This term is primarily relevant to Part Nine, which provides for appeals from appealable decisions. In particular, Article 56

provides that a person dissatisfied with an appealable decision" can appeal the decision to the Tax Appeal Commission (the "Commission").

TAP divides decisions made by the Authority into two categories: tax decisions and appealable decisions. A tax decision is subject to the objection and appeal process under Part Nine and an "appealable decision" can be appealed to the Commission.

In broad terms, a "tax decision" is a decision of the Authority relating to the determination of a liability for tax, including the determination of the amount of a secondary liability, tax recovery costs, or refund. A person dissatisfied with a tax decision can challenge the decision only by filing a notice of objection to the decision with the Authority under Article 54 (see Article 54(1)). The Authority's decision on an objection is referred to as an "objection decision" (see Article 55(4)).

The definition of "appealable decision" has two inclusions. First, sub-article (2)(a) treats an objection decision as an appealable decision. An objection decision is a decision made by the Authority under Article 55(4) on a notice of objection filed by a taxpayer to a tax decision.

Second, sub-article (2)(b) treats any other decision made by the Authority under a tax law as an appealable decision. An example of an appealable decision under sub-article (2)(b) is the Authority's decision on an application under Article 54(7) for an extension of time to file a notice of objection.

Sub-article (2)(b) is subject to two exceptions. The first exception is a tax decision, which is excluded from being an appealable decision because there is a separate process for challenging tax decisions under Articles 54 and 55.

The second exception is a decision made in the course of making a tax decision. This is excluded because the decision is effectively treated as part of the tax decision and, therefore, is challenged

through the process of challenging the tax decision. An example of a decision made in the course of making a tax decision is a decision to allow a deduction under Schedule 'C' of the ITP for an item of expenditure incurred by a taxpayer. Such a decision is treated as part of the assessment of the income tax payable by the taxpayer and can be challenged only by filing a notice of objection to the assessment under Article 54.

In broad terms, therefore, an appealable decision is an objection decision and any other decision of the Authority that is not directly related to the determination of the amount of tax, secondary liability, or tax recovery costs payable (including the determination of the amount of a refund) by a taxpayer.

Body

This term is relevant to many provisions in the tax laws. It is particularly relevant to the definition of "person", which is a key term in the tax laws and is defined to include a body.

"Body" is defined to mean a company, partnership, public enterprise or public financial agency, or other body of persons whether formed in Ethiopia or elsewhere. "Company" and "partnership" are separately defined in Article 2.

In broad terms, a body is any entity whether formed in Ethiopia or a foreign country.

Company

This term is primarily relevant to the definitions of "body", "member" and "membership interest" in TAP (Article 2), and the following under the ITP: the categories of business taxpayers (Article 3 of the ITP), the residence rules (Article 5), and the tax-free reorganisation rule (Article 35).

"Company" is defined to mean a commercial business organisation established in accordance with the Commercial Code and having legal personality. Article 212 of the Commercial

Code recognises six forms of business organisations: (i) an ordinary partnership; (ii) joint venture; (iii) general partnership; (iv) limited partnership; (v) share company; and (vi) private limited company. Article 213(1) of the Commercial Code provides that any business organisation, other than an ordinary partnership, may be a commercial business organisation within the meaning of Article 10 of the Commercial Code. A business organisation is a commercial business organisation under Article 10(1) of the Commercial Code if the objects of the organisation under its memorandum of association, or the actual activities of the organisation, are those specified as a trade under Article 5 of the Commercial Code. Article 10(2) provides that share companies and private limited companies are commercial business organisations regardless of the objects of the company.

While a joint venture (defined in Article 271 of the Commercial Code) is a business organisation and commercial business organisation, Articles 210(2) and 272(3) provide that a joint venture does not have legal personality and, therefore, is not a company for the purposes of the ITP.

Based on the commercial code, the following are commercial business organisations with legal personality and, therefore, companies for the purposes of the ITP:

(1) General and limited partnerships provided the partnership conducts a trade within the meaning in Article 5 of the Commercial Code.

(2) Share company (see Title VI of the Commercial Code).

(3) Private limited company (see Title VII of the Commercial Code).

The definition of company includes any equivalent entity incorporated or formed under a foreign law. This includes a foreign incorporated body (public or private) and a foreign partnership (particularly a limited partnership) provided it has legal personality.

Controlling member

This term is relevant to Article 44(a departure prohibition order may be issued to a controlling member of a company in relation to an outstanding debt of the company).

"Controlling member" is defined in relation to a company (defined in Article 2(7)). "Controlling member" is defined to mean a member of a company who has a direct or indirect beneficial interest in 50% or more of the voting, dividend, or return of capital rights attached to membership interests in the company. In computing the 50% threshold, the membership interests of related persons are aggregated. "Related person" is defined in Article 4. The reference is to a "member" of, and "membership interest" in, a company rather than a "shareholder" or "shares" so as to apply to those entities within the Article 2(7) definition of a company that do not have a shareholding. However, the main example of a "member" is a shareholder and the main example of a "membership interest" is shares. See the Article 2(20) definition of "member" and Article 2(21) definition of "membership interest".

Whether a member is a controlling member of a company is determined by reference to the beneficial ownership of membership interests. The beneficial owner of a membership interest is the person who actually benefits from the ownership of the membership interest. A person who holds the legal title to the interest as nominee, agent or custodian is not the beneficial owner of the interest. In this case, the interest is treated as belonging to the person who actually benefits from the interest.

Document

This term is relevant to many Articles in TAP, particularly those relating to record keeping.

The term "document" is used in TAP as a generic term intended to cover all forms of records and documentation relevant to the operation of the tax laws.

"Document" is defined inclusively so otherwise has its ordinary meaning, namely a written, printed, or electronic item that provides information or evidence, or that serves as an official record.

The definition has three express inclusions. Paragraph (a) includes a book of account, record, register, bank statement, receipt, invoice, voucher, contract or agreement, or Customs entry (relevant to VAT on imports).

Paragraph (b) includes a certificate provided by a licensed tax agent under Article 22(1) and a statement provided by a licensed tax agent under Article 22(2). This ensures that the recording-keeping period in Article 17(2)(b) applies to such certificates and statements.

Paragraph (c) includes any information or data stored on an electronic data storage device. The reference to "electronic data storage device" is intended to be interpreted broadly and includes all devices that can be used for the electronic storage of information, such as computers, mobile phones, digital cameras, mp3 players, iPods, iPads and Blackberrys.

Fiscal year

This term is primarily relevant to the ITP, particularly Article 28(6) (which applies to a taxpayer using an accounting period that differs from the fiscal year) and Article 84(4) (which specifies the time for a Category 'C' taxpayer to pay tax for a fiscal year.

"Fiscal year" is defined to mean the budget year of the Ethiopian Government (i.e. the period 1st Hamle to 30th Sene). In the ordinary case, the tax year of an individual for the purposes of the ITP is the fiscal year.

International agreement

This term is relevant to the definition of "tax treaty" in Article 67(4)(c). It is also relevant to Article 48(5)(b)and Article 65(1)(f) of the ITP.

The following are treated as an "international agreement":

(1) An agreement between the Government of Ethiopia and a foreign government (i.e. a bilateral agreement). An example is a bilateral tax treaty for the avoidance of double taxation and prevention of fiscal evasion.

(2) An agreement between the Government of Ethiopia and foreign governments (i.e. a multilateral agreement). An example is the United Nations Convention on the Privileges and Immunities of the Specialised Agencies.

(3) An agreement between the Government of Ethiopia and an international organisation (separately defined in Article 2(15)). This includes the membership of agreement of international organisations, such as the African Development Bank.

International organisation

This term is relevant to the definition of "international agreement" in Article 2(14) and the definition of "person" in Article 2(26). It is also relevant to the obligation of certain employees to self-withholding from employment income under Article 93 of the ITP.

"International organisation" is defined to mean an organisation the members of which are sovereign States or the governments of sovereign states. Examples of an international organisation are the African Development Bank and the United Nations and its Specialised Agencies such as the International Monetary Fund and World Bank.

Licensing authority

This term is relevant to Article 14(2) (which obliges a taxpayer applying for a business or occupation licence to provide the licensing authority with the taxpayer's TIN), Article 14(4) (which prohibits a licensing authority from issuing a licence to taxpayer

unless the taxpayer has provided the authority with its TIN), Article 48(2)(b) (which requires the Authority to report certain conduct of a certified auditor, certified public accountant, or public auditor to the relevant licensing authority), and Article 102(4) (which requires the authority to report a taxpayer who has failed to keep proper records for more than two years to the business licensing authority). It is also relevant to reinvestment concession in Article 42 of the ITP.

"Licensing authority" is defined to mean an authority authorised under any law to issue a licence, permit, certificate, concession, or other authorisation, such as an authority issuing a business licence.

Manager

This Article is relevant to many provisions referring to the manager of a body or of a particular type of body, such as a partnership.

"Manager" is defined separately for partnerships, companies, and other bodies:

(1) The manager of a partnership is a partner or general manager of the partnership, or a person acting or purporting to act in that capacity.

(2) The manager of a company is the chief executive officer, a director, general manager, or other similar officer of the company, or a person acting or purporting to act in that capacity.

(3) The manager of any other body is the general manager or other similar officer of the body, or a person acting or purporting to act in that capacity.

Member and membership interest

These terms are relevant to the definition of "controlling member" in Article 2(8). The terms are also relevant to the ITP, particularly

the definition of "dividend" (Article 2(6) of the ITP), the source rule for indirect transfers of immovable property (Article 6(4)(c) of the ITP), the limitation on the carry forward of losses by a body on a change in ownership of the body (Article 34 of the ITP), and the thin capitalisation rule (Article 47 of the ITP).

"Member" is defined by reference to the term "body" (which is separately defined in Article 2(5)). A member is any person with a membership interest in a body. The definition expressly includes a shareholder in a company and a partner in a partnership. Member will also include any person who has an ownership interest in an unincorporated body of persons.

"Membership interest" is also defined by reference to a "body". A membership interest in a body is an ownership interest in the body. The definition expressly includes a share in a company and an interest in a partnership. Membership interest will also include any ownership interest in an unincorporated body of persons.

Partnership

This term is relevant to the Article 2 definitions of "body", "member", and "membership interest". It is also relevant Article 2(6)of the ITP (definition of"dividends") and the non-deductibility of expenditure under Article 27(1)(b) of the ITP.

"Partnership" is defined to mean a partnership formed under the Commercial Code. Article 212 of the Commercial Code recognises three forms of partnership: (i) an ordinary partnership; (ii) general partnership; or (iii) limited partnership. However, to align the definitions of "company" and "partnership", the definition of "partnership" expressly excludes a "company". The Article 2(7) definition of "company" includes all commercial business organisations having legal personality under the Commercial Code. This means that general and limited partnerships that conduct a trade within the meaning in Article 5 of the Commercial

Code are treated as companies for the purposes of the ITP and, therefore, excluded from the definition of "partnership". Thus, partnership includes an ordinary partnership, and a general or limited partnership provided the partnership does not conduct a trade as defined in Article 5 of the Commercial Code.

The definition also includes an equivalent entity formed under a foreign law. In broad terms, a partnership is two or more persons carrying on business for joint profit.

Person

This term is central to the operation of the tax laws. In particular, the definition is relevant to the charging provisions in Schedules 'B', 'C', and 'D' of the ITP under which tax is imposed on a "person".

"Person" is defined to mean an individual, body, government, political subdivision of a government, or international organisation.

The definition includes an individual. An individual is a natural person.

The definition includes a body, which is separately defined in Article 2(5) to mean a company, partnership, public enterprise or public financial agency, or other body of persons whether formed in Ethiopia or elsewhere. "Company" and "partnership" are separately defined in Article 2.

The definition includes a government and a political subdivision of a government. The reference to "government" includes both the Government of Ethiopia and a foreign government. The reference to a "political subdivision" of a government is a reference to tiers of government below the national government, such as regional states and local authorities.

The definition includes an international organisation, which is separately defined in Article 2(15) to mean an organisation the members of which are sovereign states or the Governments of

sovereign states. Examples include the African Development Bank and the United Nations and its specialised agencies (such as the IMF and World Bank).

The definition of "person" is broad and includes entities that may not otherwise be a legal person under general law (such as an ordinary partnership). The definition of "person" is broad because the word is used in many different contexts in the tax laws. However, while "person" is defined broadly, it will take its meaning from the context. For example, only persons conducting a business are liable for business income tax under Schedule 'C' of the ITP.

Importantly, the broad definition ensures that any obligation (such as a liability for tax) imposed under the ITP in relation to an entity that is a person applies to the entity collectively. Once the obligation is imposed on the entity, Article 16 provides that the individual or individuals constituting the "tax representative" of the entity must comply with the obligation on behalf of the entity.

Secondary liability

This term is mainly relevant to the Article 2(34)(d) definition of "tax decision" (which includes a determination of a secondary liability), Article 31(1) (which provides that the Authority can serve a person liable for a secondary liability with notice of a demand for payment), Article 31(2) (which provides that Parts Seven, Eight, Nine, and Ten, and Article 105 apply to a secondary liability), and Article 31(3) (which provides that a secondary liability paid by a person is credited against the primary tax liability to which the secondary liability relates).

In broad terms, a secondary liability is a liability of a person (referred to as the "primary liability") that another person is personally liable for under the TAP. The following are secondary liabilities:

(1) The amount that a tax representative of a taxpayer is personally liable for under Article 16(4). A tax representative is personally liable for the payment of any tax due by a taxpayer if the tax representative disposes of, or parts with, any funds belonging to the taxpayer that are in the possession or under the control of the tax representative when the tax due could legally have been paid from or out of those moneys or funds.

(2) The amount of tax owing by a taxpayer that a receiver is personally liable for under Article 40(3)(c). This is the amount that a receiver is required to set aside out of the proceeds of sale of an asset as specified under Article 40(2).

(3) The amount that a person who fails to comply with a seizure order under Article 41 is personally liable for under Article 41(12).

(4) The amount that a financial institution is personally liable for under Article 42(8). A financial institution that, without reasonable cause, fails to comply with preservation order served on the financial institution under Article 42(2) is personally liable for the amount specified in the order.

(5) The amount that a payer is personally liable for under Article 43(10). A payer who, without reasonable cause, fails to comply with a garnishee order is personally liable for the amount specified in the order.

(6) The amount that a transferor is personally liable for under Article 46(1). Article 46 applies when a taxpayer (referred to as the "transferor") has a tax liability in relation to a business carried on by the taxpayer and the taxpayer has transferred all or some of the assets of the business to a related person (referred to as the "transferee"). In this situation, the transferee is personally liable for the tax liability (referred to as the "transferred liability") of the transferor.

(7) The amount of the tax liability of a body that a manager of a body is personally liable for under Article 47(1).

(8) The amount of a tax shortfall or evaded tax that a certified auditor, certified public accountant, or public auditor is jointly and severally liable for under Article 48(1).

The Authority is empowered under Article 31(1) to serve a notice of demand on a person liable for a secondary liability specifying the amount payable and the due date for payment. As the determination of the secondary liability is treated as a tax decision, a person can challenge a liability notice served under Article 31(1) only by filing a notice of objection to the determination of the liability under Article 54 (see Article 54(1)).

Thus, secondary liabilities relate to taxes that a taxpayer has the "primary" liability to pay, but, through the tax representative rule and the recovery provisions in TAP, another person also has a personal liability to pay the amount (hence the reference to "secondary" liability).

Self-assessment, self-assessment declaration, and self-assessment taxpayer

These terms are primarily relevant to Part 6 of TAP, which provides rules relating to tax assessments, including self-assessments.

A self-assessed tax is one in relation to which the taxpayer determines their own tax liability rather than the Authority determining the liability. For self-assessed taxes, the taxpayer's filed tax declaration is treated as a tax assessment and the taxpayer is obliged to pay the amount of tax stated in the tax declaration with the filing of their tax declaration (i.e. their self-assessment).

"Self-assessment" is defined in Article 2(28) to mean an assessment treated as having been made by a self-assessment taxpayer under Article 25. A self-assessment taxpayer who has filed a self-assessment declaration is treated under Article 25(1) as having made an assessment of the tax payable for the tax period as set out in the tax declaration. Similarly, Article 25(2)

applies to the self-assessment of losses and Article 25(3) applies to the self-assessment of an excess input tax credit under the Value Added Tax Proclamation.

The deeming in Article25 applies to a self-assessment taxpayer who has filed a self-assessment declaration. "Self-assessment taxpayer" is defined in Article 2(30) to mean a taxpayer who is required to file a self-assessment declaration. Consequently, "self-assessment declaration" is the central definition in relation to self-assessments. "Self-assessment tax declaration" is defined in Article 2(29) to mean the following:

(1) A tax declaration under the ITP.

(2) A VAT return under the Value Added Tax Proclamation.

(3) A Customs entry to the extent that the entry specifies the value added tax or excise tax payable in respect of an import of goods.

(4) An excise tax declaration under the Excise Tax Proclamation.

(5) A turnover tax return under the Turnover Tax Declaration.

(6) An advance tax declaration under Article 23 of TAP.

(7) A tax declaration specified as a self-assessment declaration under a tax law.

"Self-assessment taxpayer" means a person required to file a self-assessment declaration. This means that the following persons are self-assessment taxpayers:

(1) A taxpayer filing a tax declaration under the ITP.

(2) A VAT registered person filing a VAT return under the Value Added Tax Proclamation.

(3) An importer lodging a Customs entry to the extent that the entry specifies the value added tax or excise tax payable in respect of an import of goods.

(4) A taxpayer filing an excise tax declaration under the Excise

Tax Proclamation.

(5) A taxpayer filing a turnover tax return under the Turnover Tax Proclamation.

(6) A taxpayer filing an advance tax declaration under Article 23 of TAP.

(7) A taxpayer filing a tax declaration that is specified as a self-assessment declaration under a tax law.

Tax

This term is relevant to many Articles in TAP that refer to "tax". As TAP applies in respect of taxes, this term is central to the operation of TAP.

"Tax" is defined to mean a tax imposed under a tax law. The definition of "tax law" in Article 2(36) lists the laws treated as tax laws. Thus, the taxes imposed under the ITP, VAT Proclamation, Excise Tax Proclamation, Stamp Duty Proclamation, and Turnover Tax Proclamation are taxes for the purposes of TAP. In the case of the ITP, this means that the employment income tax, rental income tax, business income tax, and the taxes imposed under Schedule 'D' of the ITP are taxes for the purposes of TAP.

The definition expressly includes withholding tax, which is defined in Article 2(44) to mean tax that is required to be withheld from a payment under Part Ten of the ITP. It includes also advance payments of income tax under Article 85 of the ITP, instalments of income tax under Article 86 of the ITP, penalty imposed under Chapter Two of Part Fifteen of TAP or another tax law, and late payment interest imposed under Article 37.

There are other amounts that are payable to the Authority under the TAP, particularly secondary liabilities and tax recovery costs. While these amounts are not treated as a "tax" generally for the purposes of TAP, Article 31 (2)(a) treats the amounts as "tax" for the purposes of Parts Seven (collection and recovery of tax), Eight

(credit, refund, and release from tax liability),Nine (objections and appeals), and Ten (investigations), and Article105 (late payment penalty).

Tax assessment

This term is mainly relevant to Article 28 (which provides for the amendment of tax assessments), Article 53 (which limits a taxpayer's right to challenge a tax assessment to the appeal procedures in Part Nine of TAP), Articles54 and 55 (which provide for objections to tax assessments), Article 84 (which provides for the validity of tax assessments) and Article85 (which provides for the rectification of mistakes in a notice of a tax assessment).

"Tax assessment" is defined to mean a self-assessment (Article25), estimated assessment (Article 26), jeopardy assessment (Article 27), and amended assessment (Article 28), or penalty assessment (Article 115(1)).

The definition also includes any other assessment made under a tax law.

Tax avoidance provision

This term is relevant to Article 72(1)(g) (Ministry may refuse to make a private ruling in relation to the application of a tax avoidance provision) and Article110 (which provides for a penalty when the Authority applies a tax avoidance provision).

"Tax avoidance provision" is defined to mean the tax avoidance provisions in the ITP and Valued Added Tax Proclamation. The following are examples of a tax avoidance provision:

(1) Article78 of the ITP (income splitting)

(2) Article79 of the ITP (transfer pricing)

(3) Article 80 of the ITP (general anti-avoidance rule for income tax)

(4) A provision in the Value Added Tax Proclamation providing for a general anti-avoidance rule.

Tax decision

This term is mainly relevant to the Article 2(2) definition of "appealable decision" (which excludes a tax decision and a decision made in the course of making a tax decision), Article 53 (which provides that tax decisions can be challenged only under the procedures in Part Nine), Articles 54 and 55 (which provide for objections to tax decisions), and Article 59 (which provides that the burden of proving that a tax decision is incorrect is on the person objecting to the decision).

The definition sets out the following exhaustive list of decisions treated as a "tax decision" for the purposes of TAP:

(1) A tax assessment, other than a self-assessment. "Tax assessment" is defined in Article 2(32). Self-assessments are excluded because a self-assessment is made by the taxpayer and, therefore, is not a decision of the Authority. A taxpayer who wishes to amend a self-assessment must apply to the Authority under Article 29(1) for the Authority to make an amended assessment in relation to a self-assessment. The decision by the Authority on an application by a taxpayer for an amendment to their self-assessment is separately treated as a tax decision. Consequently, the following tax assessments are tax decisions: an estimated assessment, jeopardy assessment, amended assessment, penalty assessment, and any other tax assessment made under a tax law (other than a self-assessment).

(2) A decision made by the Authority on an application by a self-assessment taxpayer under Article 29(1) for the Authority to make an amendment to the self-assessment.

(3) A determination made by the Authority under Article 40(2) of the amount of unpaid tax or tax that will become payable by a taxpayer, being a liability that a receiver must pay on behalf of the taxpayer.

(4) A determination made by the Authority of the amount of a secondary liability payable by a person (see Article 31). In broad terms, a secondary liability is a liability of a person (referred to as the "primary liability") that another person is personally liable for under TAP. The following are secondary liabilities as defined in Article 2(27): (i) the amount that a tax representative of a taxpayer is personally liable for under Article 16(4); (ii) the amount of tax owing by a taxpayer that a receiver is personally liable for under Article 40(3)(c); (iii) the amount that a person who fails to or refuses to surrender any property that is subject to a seizure order is personally liable for under Article 41(12); (iv) the amount that a financial institution is personally liable for under Article 42(8); (v) the amount that a payer is personally liable for under Article 43(10); (vi) the amount that a transferor is personally liable for under Article 46(1); (vii) the amount of the tax liability of a body that a manager of a body is personally liable for under Article 47(1); and(viii) the amount of a tax shortfall or evaded tax that a certified auditor, certified public accountant, or public auditor is liable for under Article 48(1).

(5) A determination by the Authority of the amount of tax recovery costs payable by a taxpayer (see Article 31). The following are tax recovery costs (Article 2(39)): (i) the costs of the Authority incurred in recovering unpaid tax referred to in Article 30(3); and (ii) the costs of the Authority incurred in undertaking seizure proceedings under Article 41.

(6) A determination made by the Authority of the amount of late payment interest payable by a person under Article 37.

(7) A decision made by the Authority under Article 49 or 50to refuse an application by a taxpayer for a refund of an excess tax credit or overpaid tax.

(8) A determination made by the Authority of: (i) the amount of an excess credit under Article 49; (ii) the amount of a refund

under Article 50; or (iii) the amount of a refund required to be repaid under Article 50(6).

(9) A determination made by the Authority of the amount of unpaid withholding tax payable by a supplier or purchaser under Article 92(3) of the ITP.

In broad terms, therefore, a tax decision is a decision of the Authority relating to the determination of an amount payable by a person, and includes a decision relating to an application for a refund of tax.

Tax declaration

This definition is primarily relevant to Part Five, which provides for general provisions relating to tax declarations.

The definition sets out an exhaustive list of documents treated as a "tax declaration" for the purposes of TAP:

(1) A tax declaration required to be filed under the ITP.

(2) A withholding tax declaration required to be filed under the ITP.

(3) A VAT return required to be filed under the Value Added Tax Proclamation.

(4) A Customs entry to the extent that it specifies the value added tax or excise tax payable in respect of an import of goods.

(5) An excise tax declaration required to be filed under the Excise Tax Proclamation.

(6) A turnover tax return required to be filed under Article 10 of the Turnover Tax Declaration.

(7) A tax declaration required to be filed by a taxpayer under TAP (see Article 23).

Tax law

This term is relevant to many Articles in TAP that refer to "tax law". As TAP applies to a tax imposed under a tax law, the term "tax law" is central to the operation of TAP. In broad terms, a tax law imposes a tax (other than an international trade tax) that the Authority has responsibility to administer.

The definition sets out an exhaustive list of laws treated as a "tax law":

(1) Tax Administration Proclamation

(2) Income Tax Proclamation

(3) Value Added Tax Proclamation

(4) Excise Tax Proclamation

(5) Stamp Duty Proclamation

(6) Turnover tax Proclamation

(7) Any other legislation (other than legislation relating to Customs) under which a tax, duty, or levy is imposed if the Authority has responsibility for the administration of the tax, duty, or levy

(8) Any Regulations or Directives made under any of the above Proclamations

Tax officer

This term is relevant to a number of provisions in TAP that refer to a "tax officer".

The definition sets out an exhaustive list of persons treated as a "tax officer" for the purposes of TAP:

(1) The Director-General of the Authority appointed by the Prime Minister (Article 7 of the Ethiopian Revenue and Customs Authority Establishment Proclamation).

(2) The Deputy Generals of the Authority appointed by the Prime Minister (Article 7 of the Ethiopian Revenue and Customs Authority Establishment Proclamation).

(3) An officer or employee of the Authority appointed under the Ethiopian Revenue and Customs Authority Establishment Proclamation with responsibility for the administration and enforcement of the tax laws.

(4) A member of the Ethiopian Federal Police but only when performing functions on behalf of the Authority (see Articles 41(6) and 45(4)).

(5) An employee or official of the Ethiopian Postal Services but only when performing functions on behalf of the Authority (such as the collection of VAT in relation to goods imported by post).

(6) An employee or official of a Regional Tax Authority appointed as a tax officer, but only when performing functions on behalf of the Authority.

An extended definition of "tax officer" applies for the purposes of the secrecy obligation under Article 8(4).

Tax period

This term is relevant to a number of provisions in TAP dealing with taxes imposed under a tax law.

"Tax period" is defined by reference to a "tax". In broad terms, the tax period for a tax is the period for which the tax is reported to the Authority. For example, the tax period for the rental income tax and business income tax is the "tax year" as defined in Article 2(21) of the ITP and the tax period for the purposes of VAT.

Tax recovery costs

This term is relevant to Article 31 (which provides for the issuing of a notice of demand for the payment of tax recovery costs and rules facilitating the collection of such costs).

The following are specified as tax recovery costs:

(1) The costs of the Authority incurred in recovering unpaid tax referred to in Article30 (3).

(2) The costs of the Authority incurred in undertaking seizure proceedings under Article41.

Tax representative

This term is mainly relevant to Article 16 (which provides for the duties and obligations of a tax representative of a taxpayer), Article 21(6) (signing of tax declarations by a tax representative), Article 23(4) (a notice to file an advance tax declaration can be served on the tax representative of a taxpayer), Article 36 (which provides a tax representative with an indemnity when the representative pays tax on behalf of the taxpayer that they represent),and Article 81 (the service of notices by the Authority).

"Tax representative" is defined by reference to a taxpayer. The tax representative of a taxpayer is an individual who is responsible for accounting for the receipt or payment of monies or funds in Ethiopia on behalf of the taxpayer.

The definition expressly includes the following as tax representatives of a taxpayer:

(1) Each partner in a partnership, and each manager of a partnership, are a tax representative of the partnership.

(2) Each director of a company is a tax representative of the company.

(3) The legal representative of an incapable individual responsible for receiving income on behalf, or for the benefit, of the individual.

(4) The receiver of a taxpayer to whom Article 40 applies is a tax representative of the taxpayer.

(5) An individual that the Authority has, by notice in writing, declared to be a tax representative of a taxpayer for the

purposes of the tax laws. The notice must be served on the individual declared to be the tax representative.

If more than one individual is a tax representative of a taxpayer then Article 16(2) provides that each tax representative is jointly and severally liable to meet the obligations of the taxpayer but these obligations may be discharged by any of them.

Taxpayer

This term is relevant to many Articles in TAP that apply to a taxpayer. It is central to the operation of TAP.

"Taxpayer" is defined to mean a person liable for tax imposed under a tax law. "Person", "tax", and "tax law" are separately defined in Article 2. The definition of "tax" largely governs who is a taxpayer for the purposes of TAP (i.e. anyone liable for tax is a taxpayer). This covers the following persons:

(1) A person liable for employment income tax, rental income tax, business income tax, or a tax imposed under Schedule 'D' of the ITP.

(2) A person liable for advance payments of income tax under Article 85 of the ITP or instalments of income tax under Article 86 of the ITP.

(3) A person liable for withholding tax under the ITP.

(4) A VAT registered person or a person liable to register for VAT. This includes a VAT registered person who has a zero net VAT liability for an accounting period or whose input tax credits for an accounting period exceed their output tax for the period.

(5) A person liable for turnover tax.

(6) A person liable for excise tax.

(7) A person liable for stamp duty.

In the case of the income tax, a person who has zero taxable income or a loss for a tax year is treated as a taxpayer under paragraph (a) of the definition. A person will have zero taxable income for a tax year if the person's total deductions for the year equal the person's total income for the year and a person has a loss for a tax year if person's total deductions for the year exceed the person's totals income for the year. This is relevant to the rental income tax and business income tax. Paragraph (a) of the definition also includes a person who is entitled to the privilege of a tax holiday.

The additional inclusions in paragraphs (a) of the definition are intended to prevent any argument that a person normally liable for income tax but who does not actually have a liability to pay tax for a particularly tax year is not a taxpayer for that period.

There are other amounts that are payable to the Authority under TAP, particularly secondary liabilities and tax recovery costs. While a person liable for these amounts is not a "taxpayer" generally for the purposes of TAP (as the amounts are not taxes as defined in Article 2(31)), Article 31(2)(c) treats the person liable for these amounts as a taxpayer for the purposes of, *inter alia*, Part Seven of TAP (collection and recovery of tax).

Unpaid tax

This term is primarily relevant to Chapter Three of Part Seven, which provides for the recovery of unpaid tax.

"Unpaid tax" is defined to mean any tax that has not been paid by the due date or, if the Authority has extended the due date under Article32, the extended due date. Only an outstanding debt for tax can be unpaid tax. However, Article 31(2)(b) treats an unpaid amount of a secondary liability or tax recovery costs as "unpaid tax" for the purposes of Part Seven. This is particularly relevant for the application of Chapter Three of Part Seven, which specifies measures for the recovery of unpaid tax.

Withholding agent

This term is primarily relevant to Article 36 (which provides a withholding agent with an indemnity against liability for tax withheld from payments made by the withholding agent that are subject to withholding tax under the ITP).

"Withholding agent" is defined to mean a person liable to withhold tax from a payment made by the person under Part Ten of the ITP (i.e. withholding under Articles 88-93 of the ITP).

Withholding tax

This term is mainly relevant to the Article 2(31) definition of "tax" (which includes withholding tax), Article33 (priority rule for unpaid withholding tax), Article 37(9) (which provides that the person liable for withholding tax is personally liable for late payment interest payable in respect of the late payment of withholding tax), and Article 106 (which provides for penalties in relation to withholding tax).

"Withholding tax" is defined to mean tax that a person is required to withhold from a payment under Articles 88-93 of the ITP.

3. Fair Market Value

This Article defines "fair market value" for the purposes of the tax laws. In particular, the definition is relevant to the determination of the cost of an asset (Article 68 of the ITP), the determination of the consideration for the disposal of an asset (Article 70 of the ITP), and the valuation of amounts derived in-kind (Article 75 of the ITP).

Sub-article (1) sets out the basic rule. The fair market value of goods, an asset, service, or benefit provided at a particular time and place is the value that the goods, asset, service, or benefit would ordinarily fetch in the open market at that time and place. The fair market value is determined by reference to the market conditions prevailing at the time and place that the

market value is to be determined. The relevant market may differ depending on the nature of the transaction - it may be a retail market, a wholesale market, or some specialist market in which the supplier and recipient are operating.

The application of sub-article (1) is subject to the transfer pricing rules in Article 79 of the ITP applicable to cross-border transactions. Thus, the transfer pricing rules have priority over the fair market value rules in this Article.

If it is not possible to work out a fair market value of the actual goods, asset, service, or benefit ("actual transaction"), sub-article (2) provides that the fair market value in the actual transaction is the fair market value of similar goods, an asset, service, or benefit ("similar transaction"), adjusted to take account of the differences between the similar transaction and the actual transaction. Sub-article (3) provides that a transaction is similar to the actual transaction if it is the same as, or closely resembles, the actual transaction in character, quality, quantity, functionality, materials, or reputation.

Sub-article (4) empowers the Authority to determine the fair market value of goods, an asset, service or benefit when it is not possible to determine the amount of the fair market value under sub-articles (1) and (2). It is expressly provided that the valuation determined by the Authority must be consistent with generally accepted valuation principles.

An example of when sub-article (4) may apply in relation to goods or services is when there is no market for the particular goods or services other than as between the particular seller and purchaser. It is intended that the Authority will look at all the relevant circumstances to find the price at which particular goods, an asset, service, or benefit would have been sold for or provided in the open market had there been such a market for the goods, asset, service, or benefit. For example, the Authority may determine fair market value by looking at the cost of all

inputs to goods, an asset, or service and adding to this the probable rate of return a taxpayer might be expected to seek for an investment with similar costs in a similar market.

Sub-article (5) provides that the fair market value of goods, an asset, service, or benefit may be higher or lower than the actual price charged. While this follows from the rules in sub-articles (1), (2), and (4), it has been expressly provided for the avoidance of doubt.

Sub-article (6) empowers the Authority to issue a Directive for the purposes of determining the fair market value of goods, an asset, services or benefit.

4. Related Persons

This Article defines "related persons" for the purposes of the tax laws. For the ITP, the definition is relevant to the definition of "dividend" (Article 2(6) of the ITP), deductibility of losses on disposal of business assets (Article 27(1)(m) of the ITP), the taxation of recharged technical fees and lease rentals (Article 52 of the ITP), the recognition of losses on disposal of taxable assets (Article 59(4)(c) of the ITP), income splitting rules (Article 78 of the ITP), and the reporting of transactions with related persons (Article 79(5)). For TAP, the definition is relevant to the definition of "controlling member" (Article 2(8)) and transferred tax liabilities (Article 46).

The basic rule is set out in sub-article (1), which specifies the following bases upon which two persons are treated as related persons:

(1) Two persons are related persons when the relationship that exists between them is such that one person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other.

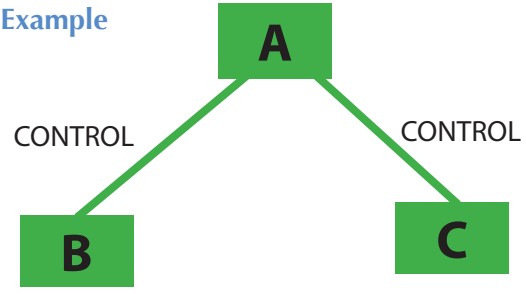
(2) Two persons are related persons when both persons

may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person.

Whether a person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of another is determined objectively having regard to all the circumstances.

The application of sub-article (1) is illustrated by the following example:

Example



It is established as a matter of fact that both B and C are reasonably expected to act in accordance with the directions, requests, suggestions, or wishes of A.

Sub-article (1) applies to treat A and B as related persons as A controls B, and A and C as related persons as A controls C.

Sub-article (1) also applies to treat B and C as related persons as both B and C are controlled by A.

Sub-article (2) states an exception to the basic rule in sub-article (1). Sub-article (2) provides that two persons are not related persons solely by reason of the fact that one person is an employee or client of the other, or both persons are employees or clients of a third person. In the absence of sub-article (2),

sub-article (1) may treat an employer and employee as related persons as the employee would ordinarily be expected to act in accordance with the directions, requests, suggestions, or wishes of his or her employer. Similarly, in the absence of sub-article (2), sub-article (1) may treat, for example, a lawyer and their client as related persons as the lawyer would ordinarily be expected to act in accordance with the directions (i.e. instructions) of its client.

The exception in sub-article (2) applies only if the employment or client relationship is the sole reason why one person may act in accordance with the directions, requests, suggestions, or wishes of the other. If there is another reason why this may occur (e.g. the employee and employer are relatives), the two persons may still be related persons.

Sub-article (3) deems certain relationships between persons to constitute the persons as related persons for the purposes of the tax laws. It is expressly provided that the relationships specified in sub-article (3) do not limit in any way the general principle in sub-article (1). Consequently, persons may be related persons under sub-article (1) even though their relationship is not covered by sub-article (3) and vice versa.

The following are treated as related persons under sub-article (3):

(1) An individual and a relative of the individual (sub-article (3)(a)). "Relative" is defined in sub-article (4). There is an exception when the Authority is satisfied that neither person may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other, such as when an individual and a relative are estranged.

(2) A body and a member of the body if the member controls 25% or more of the voting, dividend, or capital rights in the body (sub-article (3)(b)). "Body" is defined in Article 2(5). The

main examples of a body are companies and partnerships. "Member" is defined in Article 2(20) to mean a person who has a membership interest (Article 2(21) in a body, such as shareholder in a company or partner in a partnership.

The 25% threshold is tested by reference to the member's actual interest in the body and the interest of any person treated as a related person of the member (such as a relative) under another application of the Article.

Example

A, B, C, D, and E are equal shareholders in XYZ Company Ltd. As each shareholder has only a 20% interest in the company, the shareholders and the company are not related persons. However, A and B are father and son and, therefore, relatives. They are related persons under sub-article (3)(a). This means that, for the purposes of sub-article (3)(b), the shareholding of A and B in the company can be aggregated so that they are both treated as controlling 40% of the voting power, and dividend and capital rights in the company. Thus, both A and B, and the company are related persons.

There is no requirement that a member must have a 25% or more interest in the voting power, and the dividend and capital rights in a body. The member only needs to have a 25% or more interest in one of those rights for the body and member to qualify as related persons. Thus, if a person's membership interest carries different rights to vote, dividends, or return of capital, the effect of sub-article (3)(b) is that it is the highest percentage that counts. This is because voting rights, dividend rights, and capital rights are stated as alternatives. So, for example, if a person has zero voting rights in a body, but a 100% of the dividend and capital rights (i.e. the value rights), the person and the

company are related persons. This is intended to counter planning whereby a person may place the voting rights in a body with a "friendly" unrelated party but retain the value rights in the body.

Further, the determination of a member's interest in a body takes account of both direct and indirect interests in the body, including interests held through an interposed body (such as an interposed company or partnership). It is intended that indirect interests are calculated on a straight multiplication basis.

As sub-article (3) is not intended to limit the broad operation of sub-article (1), a body and a member of the body may be related persons under sub-article (1) even though the member has less than a 25% interest in the voting, dividend, or capital rights if, for example, it can be shown that the body may reasonable be expected to act in accordance with the wishes of the member. In fact, a person may have no interest in a body and yet still control the body because of the influence they may be able to exercise over the managers of the body.

(3) Two bodies if a person controls more than 25% of the voting, dividend, or capital rights in both companies (sub-article (3)(c)). The 25% threshold is tested by reference to the member's actual interest in the body and the interest of any person treated as a related person of the member (such as a relative) under another application of the Article.

Example

X has incorporated two companies, ABC Company Ltd and XYZ Company Ltd. X holds a 100% interest in both companies. X is a related person of both companies under sub-article (3)(b). As both companies have a common shareholder with a 25% or more interest in the company, the two companies are related persons under sub-article (3)(c).

5. Duty of the Authority

This Article provides that the Authority has the duty to implement and enforce the tax laws. This applies to all laws treated as tax laws under Article 2(36).

6. Obligations and Responsibilities of Tax Officers

This Article sets out the obligations and responsibilities of tax officers.

This Article applies to all persons who are a "tax officer under Article 2(37), namely: (i) the Director-General of the Authority; (ii) Deputy Generals of the Authority; and (iii) an officer or employee of the Authority appointed under the Ethiopian Revenue and Customs Authority Establishment Proclamation with responsibility for the administration and enforcement of the tax laws. The definition also treats a member of the Ethiopian Federal Police, an employee or official of the Ethiopian Postal Services, and an employee or official of a Regional Tax Authority as a tax officer, but only when performing functions on behalf of the Authority.

Sub-article (1) provides that a tax officer must exercise any power, or perform any duty or function, assigned to the officer for the purposes of the tax laws in accordance with the appointment of the officer under the Ethiopian Revenues and Customs Authority Establishment Proclamation and any delegation of powers or duties under Article 8(3) of the Ethiopian Revenues and Customs Authority Establishment Proclamation.

Sub-article (2) obliges a tax officer to be honest and fair in the exercise of any power, or performance of any duty or function, under a tax law, and must treat taxpayers with courtesy and respect.

Sub-article (3) obliges a tax officer to avoid conflicts of interest in the exercise of powers, or performance of duties or functions

under a tax law. A tax officer who fails to comply with sub-article (3) may be subject to disciplinary proceedings.

Sub-article (4) prohibits a tax officer from acting as a tax accountant or consultant, or from accepting employment from any person preparing tax declarations or giving tax advice. A tax officer who fails to comply with sub-article (4) may be subject to disciplinary proceedings.

7. Duty to Co-operate

This Article obliges all Federal and State government authorities and their agencies, bodies, local government administrations, associations, and non-government bodies to co-operate with the Authority in the enforcement of the tax laws.

8. Confidentiality of Tax Information

This Article provides for the secrecy of tax information.

Sub-article (1) obliges a tax officer to keep secret all documents and information (collectively referred to as "tax information") received in their official capacity as a tax officer.

The secrecy obligation applies to a person who is a tax officer for the purposes of TAP. Article 2(37) defines "tax officer" to mean: (i) the Director-General of the Authority; (ii) Deputy Generals of the Authority; and (iii) an officer or employee of the Authority appointed under the Ethiopian Revenue and Customs Authority Establishment Proclamation with responsibility for the administration and enforcement of the tax laws. The definition also includes a member of the Ethiopian Federal Police, an employee or official of the Ethiopian Postal Services, and an employee or official of a Regional Tax Authority but only when performing functions under a tax law on behalf of the Authority. Sub-article (4) extends the definition for the purposes of the Article to include:

(1) A member or former member of the Advisory Board of the Authority.

(2) A person employed or engaged by the Authority in any capacity. The reference to persons "engaged' is intended as a reference to persons engaged as independent contractors rather than employees. Thus, all employees (including in an administrative rather than operational capacity) and independent contractors are treated as tax officers for the purposes of the Article. For example, an administrative assistant of a tax officer may have access to taxpayer files and, therefore, it is intended that the secrecy obligation is to apply to such an employee.

(3) A former tax officer, employee or contractor of the Authority. This makes clear that secrecy obligation does not cease on termination of the employment or engagement of a person as a tax officer for the purposes of the Article.

Sub-article (1) is expressed to be subject to sub-article (2), which permits the following disclosures without breaching the secrecy obligation in sub-article (1):

(1) A tax officer may disclose tax information to another tax officer for the purposes of carrying out official duties.

(2) A tax officer may disclose tax information to a law enforcement agency for the purposes of the prosecution of a person for: (i) an offence under a tax law (see in particular Chapter Three of Part Fifteen); or (ii) the prosecution of a person for an offence relating to a tax law under any other law (such as the Criminal law).

(3) A tax officer may disclose tax information to the Tax Appeal Commission or a court for the purposes of any proceedings to establish a person's tax liability, or liability for penalty or late payment interest, or in a criminal case.

(4) A tax officer may disclose tax information to the competent authority of the government of a foreign country with

which Ethiopia has entered into an agreement providing for the exchange of information but only to the extent the disclosure is permitted under the agreement. The disclosure may be made under an exchange of information article in a tax treaty, a tax information exchange agreement, or an agreement for mutual administrative assistance. The disclosure may be made only when permitted by the relevant treaty or agreement and may be made only to the person who is the competent authority of a foreign country under the agreement.

(5) A tax officer may disclose tax information to the Auditor-General, but only when the disclosure is necessary for the performance of official duties by the Auditor-General.

(6) A tax officer may disclose tax information to the Attorney General, but only when the disclosure is necessary for the performance of official duties by the Attorney General.

(7) A tax officer may disclose tax information to a Regional Tax Authority, but only when the disclosure is necessary to the performance of official duties by the Regional Tax Authority.

(8) A tax officer may disclose tax information to a person in the service of the Government in a revenue or statistical department but only when such disclosure is necessary for the performance of official duties by the person and provided the disclosure does not identify a specific person.

(9) A tax officer may disclose tax information to any other person if the person to whom the disclosure relates has consented to the disclosure by notice in writing.

(10) A tax officer may disclose tax information to any organisation when the disclosure is authorised by law.

Sub-article (3) provides that the secrecy obligation in sub-article (1) applies to any person receiving a permitted disclosure made under sub-article (2). In other words, the person receiving the disclosure must keep the documents or information received secret as required under sub-article (1).

9. Registration of Taxpayers

This Article provides for the registration of taxpayers.

The Article provides for the basic tax registration of a person and, therefore, registration under the Article is the first registration of the person for the purposes of the tax laws. Registration under the Article is for the purposes of all the tax laws under which the person is liable for tax. In addition to this basic registration, a taxpayer may be required, or may elect, to be registered for a specific purpose under a tax law (such as VAT registration). This separate registration is provided for under the relevant tax law.

The intention is that, as far as possible, the information provided for the purposes of the basic registration of a person as a taxpayer under this Article should be used automatically for the purposes of other relevant registration requirements under a tax law without the person having to make multiple applications, or separately providing the same information, for that other registration. This reflects the principle that "data moves not persons". This principle is stated in sub-article (10).

Sub-article (1) provides that a person who becomes liable for tax under a tax law must apply to the Authority for registration unless the person is already registered. "Person", "tax" and "tax law" are defined in Article 2. In broad terms, a person liable for income tax, withholding tax, VAT, excise tax, or turnover tax is required to apply for registration unless the person is already registered. As stated above, the obligation to apply for registration under sub-article (1) is the first registration of the person. For example, if a person is registered as a taxpayer because they become liable for income tax, then the Article does not apply if the person subsequently becomes liable for VAT because the value of their taxable supplies has reached the registration threshold as specified in the VAT Proclamation. The person is separately required to apply for VAT registration under the VAT Proclamation, but this is a sub-category of registration

under the general registration requirement in sub-article (1). As far as possible, the Authority should use existing information to register the person for VAT.

Sub-article (1) is expressed to be subject to sub-article (2), which provides exceptions to the registration requirement in sub-article (1). Sub-article (2) provides that the following persons do not have to apply for registration:

(1) A non-resident whose only Ethiopian source income is subject to non-resident tax under Article 51 and 53 of the ITP. Article 51 of the ITP applies to dividends, interest, royalties, management fees, technical fees, and insurance premiums derived by a non-resident from sources in Ethiopia. Article 53 of the ITP applies to the income of a non-resident entertainer or group of entertainers derived from participation in a performance in Ethiopia. The source of income is determined under Article 6 of the ITP. The tax payable on income subject to tax under Article 51 and 53 is collected by withholding tax under Article 89 of the ITP. The withholding tax is a final tax on the income under Article 64(2) of the ITP.

(2) An individual whose only income is subject to Article 64(2) of the ITP. This applies to an individual whose only income is subject to tax under Schedule D of the ITP.

Sub-article (1) is also expressed to be subject to sub-article (3). Sub-article (1) obliges the person liable for tax to apply for registration. Sub-article (3) modifies this in the case of an employee by providing that an employer must apply for the registration of an employee entering into employment with the employer unless the employee is already registered. This is a rule of administrative convenience intended to facilitate the registration of employees as taxpayers. Sub-article (4) makes it clear that an employee is still required to apply for registration if the employer fails to comply with sub-article (3).

Sub-article (5) specifies the requirements for making a registration application:

(1) The application must be in the approved form, i.e. the form approved by the Authority for registration applications (see Article 79).

(2) The application must be accompanied by documentary evidence of the person's identity (including biometric identifiers) as may be specified in the Regulations. A biometric identifier is an objective measurement of a physical characteristic of an individual that can be used to verify the individual's identity. The main examples of biometric identifiers are fingerprints, facial recognition, and iris scans. A biometric identifier is to be provided by an applicant for registration only if required under the Regulations. Sub-article (6) provides that, in the case of employer registration of an employee under sub-article (3), the employee must provide the biometric identifier.

(3) The application must be made within twenty-one days of the person first becoming liable for tax under a tax law or within such further time as the Authority allows.

A person who fails to apply for registration as required under sub-article (1) is liable for an administrative penalty under Article101 (1) or (2). This penalty may apply also for the purposes of sub-categories of registration such as VAT registration.

Sub-article (7) makes it clear that the obligation to apply for registration under sub-article (1) (including an employer who fails to apply for registration for a new employee) is in addition to an obligation or option to apply for registration for the purposes of a particular tax as required under the tax law imposing the tax (such as compulsory or voluntary registration for VAT under the Value Added Tax Proclamation). However, this is subject to sub-article (10), which obliges the Authority to use the information provided in a registration application under sub-article (1) for

the purposes of any other registration of that person as required or permitted under a tax law without the person being required to file any additional registration forms. As stated above, this is intended to reflect the policy outlined above that data not persons should move.

Sub-article (10) is subject to sub-article (11), which permits the Authority to request a person to provide any further information necessary to complete any additional registration of the person under a tax law.

Sub-article (8) obliges the Authority to register a person who has applied for registration under sub-article (1) if the Authority is satisfied that the person is liable for tax under a tax law. The Authority must issue a registered person with a registration certificate in the approved form, i.e. the form approved by the Authority for such certificates (Article 79). If the Authority refuses to register a person who has applied for registration under sub-article (1), sub-article (9) obliges the Authority to serve that person with written notice of the refusal within fourteen days of making the decision. Further, Article 52 obliges the Authority to provide the applicant with a statement of reasons for the refusal. The decision of the Authority on an application for registration is an "appealable decision" as defined in Article2 (2). A person dissatisfied with the decision can appeal the decision to the Tax Appeal Commission under Article 56.

Sub-article (12) provides for the registration of a person as a taxpayer on the Authority's own motion when the person has failed to apply for registration as required under sub-article (1). The Authority must provide a person registered under this sub-article with a registration certificate in the approved form. The Authority's decision to register a person under sub-article (12) is an "appealable decision" as defined in Article2 (2). A person dissatisfied with the decision can appeal the decision to the Tax Appeal Commission under Article 56.

Consequently, there are two bases upon which a person may be registered for tax purposes under the Article: (i) on application of the person under sub-article (1); or (ii) on the Authority's own motion under sub-article (12).

Sub-article (13) provides that the registration of a person under the Article takes effect from the date specified in the person's registration certificate.

10. Notification of Changes

This Article obliges a registered person to notify the Authority of any change in personal details.

Sub-article (1) obliges a registered person to notify the Authority of any change occurring in relation to the following:

(1) The registered person's physical or postal address.

(2) The registered person's activities.

(3) If the registered person is a body, a change in the constitution of the body.

(4) The registered person's banking details used for transactions with the Authority.

(5) The registered person's electronic address used for communication with the Authority.

(6) Any other details that may be specified by the Authority in a Directive.

A registered person is obliged to notify the changes within thirty days of the change occurring. A registered person who fails to notify the Authority of the changes specified in sub-article (1) is liable for an administrative penalty under Article 114 (1).

Sub-article (2) provides that the notification of changes under sub-article (1) by a registered person is treated as satisfying any obligation to notify the same changes in relation to a registration

of the person for the purposes of a particular tax (such as VAT registration) under another tax law.

11. Cancellation of Registration

This Article provides for the cancellation of the registration of a person who is no longer required to be registered for the purposes of the tax laws. This Article applies only when a person ceases to be required to be registered for the purposes of all the tax laws.

Sub-article (1) obliges a person to apply to the Authority for cancellation of registration if the person ceases to be required to be registered for all tax laws.

Sub-article (2) specifies the requirements for making a cancellation of registration application:

(1) The application must be in the approved form. This is the form approved by the Authority for cancellation of registration applications (see Article 79).

(2) The application must be filed with the Authority within thirty days of the person first ceasing to be required to be registered under all the tax laws or within such further time as the Authority may allow.

Sub-article (3) provides that an application by a person under sub-article (1) is treated as satisfying any obligation of the person to apply for cancellation of the person's registration for the purposes of a particular tax under another tax law (such as cancellation of VAT registration under the VAT Proclamation). This means that a person who ceases to be liable for tax under all the tax laws does not have to make multiple applications for cancellation of registration for the purposes of specific taxes.

A person who, without reasonable excuse, fails to apply for cancellation of registration as required under sub-article (1) is liable for an administrative penalty under Article101 (4). This

penalty applies also to sub-categories of registration such as VAT registration.

Sub-article (4) obliges the Authority, by notice in writing, to cancel the registration of a person who has applied for cancellation under sub-article (1) if the Authority is satisfied that the person has ceased all operations and is no longer required to be registered for the purposes of all tax laws. The Authority's decision on a cancellation of registration application is an "appealable decision" as defined in Article 2(2). A person dissatisfied with the decision can appeal the decision to the Tax Appeal Commission under Article 56.

Sub-article (5) requires the Authority to serve a notice of cancellation of registration on the applicant within thirty days of receipt of the application. It is further provided that the Authority can conduct a final audit of the person's tax affairs within ninety days of service of the notice of cancellation of registration. While the Authority must cancel the registration of a taxpayer within thirty days of the application being received by the Authority, the Authority has, in effect, 120 days from receipt of the cancellation application to conduct a final audit of the taxpayer's tax affairs.

Sub-article (6) empowers the Authority on its own motion to cancel the registration of a person if satisfied that the person is no longer required to be registered for the purposes of all the tax laws. It is expressly provided that the Authority can cancel the registration of a person who has died or otherwise ceased to exist (such as a liquidated company). Cancellation of registration under sub-article (6) is by notice in writing to the person or the person's tax representative (see Article 2(40)). The Authority's decision to cancel the registration of a person under sub-article (6) is an "appealable decision" as defined in Article 2(2). A person dissatisfied with the decision can appeal the decision to the Tax Appeal Commission under Article56.

Sub-article (7) provides that the cancellation of a person's registration under sub-article (4) or (6) includes cancellation of

any registration of the person for the purposes of a particular tax (such as VAT) under another tax law.

Sub-article (8) provides that the cancellation of a person's registration takes effect from the date specified in the cancellation notice served on the person under sub-article (4) or (6).

Sub-article (9) applies when the cancellation of a person's registration involves the cancellation of the person's registration under another tax law (such as cancellation of VAT registration). Sub-article (9) obliges the person to comply with any requirements relating to cancellation of that registration as specified under the tax law.

12. Taxpayer Identification Number

This Article provides for the issuing and use of Taxpayer Identification Numbers ("TINs"). A TIN is a personal identification number issued to taxpayers.

The Article obliges the Authority to issue a person registered for the purposes of the tax laws with a TIN in accordance with Chapter Two of Part Three of TAP. The rules relating to the issuing of TINs are in Article13 and the rules relating to the use of TINs are in Article14.

Importantly, the issuing of a TIN is an automatic incident of registration under Article 9 (i.e. the issuing of a TIN is something that follows automatically from registration rather than being a separate process). Consequently, it is not necessary for a person registered under Article 9 to separately apply for a TIN.

13. Issue of a TIN

This Article provides for the issuing of TINs.

Sub-article (1) provides that the Authority must issue a TIN to a person registered in accordance with Article 9.

Sub-article (2) provides that a TIN is issued for the purposes of all the tax laws and a taxpayer can have only one TIN at any time.

Sub-article (3) provides that a TIN is issued to a person when the Authority serves the person with written notice of the TIN.

Article 117(1) (a) provides that a person commits an offence if the person obtains or attempts to obtain more than one TIN.

14. Use of a TIN

This Article provides for the use of a TIN.

Sub-article (1) provides that a taxpayer must state the person's TIN on any tax declaration, notice, or other document filed or used for the purposes of a tax law, or as otherwise required under a tax law. It is expressly provided that a taxpayer must supply the taxpayer's TIN to a withholding agent in respect of payments of withholding income made by the agent to the taxpayer. The requirement to provide a TIN to a withholding agent applies only to taxpayers who are registered and have been issued with a TIN (see Article 9(2) for a list of taxpayers who are not required to be registered). For example, a non-resident whose only Ethiopia source income is subject to tax under Article 51 of the ITP is not required to apply for registration under Article 9 and, therefore, will not be issued with a TIN.

Sub-article (2) provides that a taxpayer must provide their TIN to the relevant licensing authority when applying for a licence to carry on a business or an occupation (such as the occupation of a lawyer or medical practitioner). The reference to "licensing authority" is a reference to any authority, institution, or body that has the responsibility to issue licences for the carrying on of a business or occupation (Article 2(18)). Sub-article (3) provides that a taxpayer applying for renewal of a business or occupation licence must supply the taxpayer's TIN to the licensing authority but only if the TIN has changed since the original licence application was filed. Sub-article (4) provides that a licensing

authority must not issue a licence (including the renewal of a licence) to carry on business or occupation unless the applicant has supplied their TIN to the authority.

Sub-article (5) provides that a TIN is personal to the taxpayer to whom it has been issued and cannot be used by another person. Sub-article (5) is expressed to be subject to sub-article (6), which provides that a licensed tax agent may use the TIN of a taxpayer if the taxpayer has given written permission to the licensed tax agent to use the TIN and the licensed tax agent uses the TIN only in respect of the tax affairs of the taxpayer. A licensed tax agent is a person licensed as a tax agent under Article 96.

A taxpayer who fails to state their TIN on a tax invoice, tax debit or credit note, tax declaration, or any other document as required under a tax law is liable for an administrative penalty under Article 103(1). A taxpayer who provides their TIN to another person (other than a licensed tax agent in accordance with sub-article (6)) to use is liable for an administrative penalty under Article 103(2)(a). Similarly, a person (other than a licensed tax agent acting in accordance with sub-article (6)) who uses the TIN of another person is liable for an administrative penalty under Article 103(2)(b)). Article 117(1)(b) provides that a person commits an offence if the person allows their TIN to be used by another person (except by a licensed tax agent in accordance with sub-article (6)).

15. Cancellation of a TIN

This Article provides for the cancellation of a TIN.

Sub-article (1) specifies three circumstances when the Authority must cancel the TIN of a taxpayer:

(1) The person's registration for the purposes of all the tax laws is cancelled under Article11.

(2) A TIN has been issued to the taxpayer under an identity that is not the taxpayer's true identity.

(3) The taxpayer has been previously issued with a TIN that is still in force.

A TIN is cancelled under sub-article (1) when the Authority serves the taxpayer with written notice of cancellation of the TIN.

A decision by the Authority to cancel a TIN is an "appealable decision" as defined in Article 2(2). A taxpayer dissatisfied with the decision can appeal the decision to the Tax Appeal Commission under Article56.

Sub-article (2) empowers the Authority to cancel a TIN that has been issued to a taxpayer and issue the taxpayer with a new TIN. This may occur, for example, if the Authority adopts a new system of TINs.

16. Obligations of Tax Representatives

This Article sets out the obligations of an individual who is a tax representative of a taxpayer. "Tax representative" is defined in Article 2(40). In broad terms, a tax representative of a taxpayer is an individual with responsibility for the receipt and payment of money in Ethiopia on behalf of the taxpayer.

Sub-article (1) obliges a tax representative of a taxpayer to perform any obligations imposed by a tax law on the taxpayer. This expressly includes the filing of tax declarations and payment of tax. It would also include the filing of notices and other documents under a tax law. Sub-article (6) makes it clear that the taxpayer remains liable to perform any obligations under a tax law that are not performed by the taxpayer's tax representative.

It is intended that any act done by a tax representative of a taxpayer on behalf of the taxpayer in accordance with sub-article (1) is treated as having been done by the taxpayer. For example, if a tax representative files a tax declaration on behalf of the taxpayer, the return is treated as filed by the taxpayer. There can be no argument, therefore, that the taxpayer has failed to file the return.

Article36 provides that a tax representative making a payment of tax on behalf of a taxpayer is indemnified against liability in respect of the payment. Thus, provided the tax representative has properly paid the tax liability of the taxpayer, the taxpayer cannot seek to recover the tax paid from the tax representative.

When two or more persons are tax representatives of a taxpayer (such as partners in a partnership), sub-article (2) provides that the obligations imposed on a tax representative under the Article are imposed on the tax representatives collectively but may be discharged by any one of them.

Sub-article (3) limits a tax representative's liability for tax due on behalf of a taxpayer. If a taxpayer fails to pay tax due, the Authority can recover the amount due from the taxpayer's tax representative only to the extent that the tax representative holds or controls monies or assets of the taxpayer. For example, a tax representative of a company is liable for the tax liability of the company only to the extent of the assets of the company.

The limitation on a tax representative's liability in sub-article (3) is subject to sub-article (4), which provides that a tax representative is personally liable for the payment of tax due on behalf of the taxpayer if the tax representative disposes of or parts with any money of the taxpayer that could have been legally used to pay the tax. The effect of sub-article (4) is to create a secondary liability in the tax representative for the tax payable by the taxpayer to the extent of monies that the tax representative deals with that could have been used to pay the tax owing by the taxpayer. Thus, the taxpayer has the primary liability to pay the tax owing by the taxpayer and, in the circumstances specified in sub-article (4), the taxpayer's tax representative has a secondary liability in relation to the tax owing by the taxpayer.

The personal liability under sub-article (4) of a tax representative of a taxpayer for the tax payable by the taxpayer is included as a "secondary liability" under the definition in Article2(27).

Article 31(1) provides that the Authority may serve the tax representative with notice of the amount of the secondary liability payable by the tax representative and due date for payment (i.e. a notice of demand). While the secondary liability is not a tax liability (it is just a statutory debt owing by the tax representative to the Authority), Article31 (2)(a) provides that the amount is treated as "tax" for the purposes of Part Seven of TAP. Further, Article 31(2)(b) provides that an unpaid amount of a secondary liability treated as tax under Article 31(2)(a) is treated as unpaid tax for the purposes Part Seven of TAP. This means, for example, that the Authority can use the measures specified in Chapter Three of Part Seven to recover an unpaid amount owing by a tax representative under sub-article (4), and that late payment interest is payable under Article 37 in respect of the unpaid amount.

Sub-article (4) is expressed to be subject to sub-article (5). Sub-article (5)(a) permits a tax representative of a taxpayer to pay any liabilities of the taxpayer that have a legal priority over the tax payable by the taxpayer. Under sub-article (5)(b), a tax representative is not personally liable if, at the time the tax representative parted with monies of the taxpayer, the tax representative had no knowledge, and could not reasonably be expected to know, of the taxpayer's tax liability.

Article 31(3) provides that any tax owing by a taxpayer that is paid by the taxpayer's tax representative as a result of the operation of sub-article (4) is credited against the liability of the taxpayer.

17. Record-keeping Obligations

This Article specifies the record-keeping obligations of taxpayers.

The documents that must be kept for the purposes of a particular tax are specified in the tax law imposing the tax as these will differ depending on the tax (see, for example, Article 82 of the

ITP). The purpose of this Article is to specify harmonised rules in relation to the documents that a tax law requires a taxpayer to maintain. "Document" is defined broadly in Article 2(9).

Sub-articles (1) and (2) apply to a taxpayer required to maintain documents under a tax law. The following general rules apply in relation to the maintenance of documents:

(1) Documents may be kept either in hard copy or electronically.

(2) Documents must be maintained in Amharic or English (sub-article (1)(a)). Sub-article (4) specifies a procedure under which the Authority can require documents kept by a taxpayer in a language other than Amharic or English to be translated into Amharic or English. The Authority must approve the translator and the translation is made at the cost of the taxpayer.

(3) Documents must be maintained in Ethiopia (sub-article (1)(b)).

(4) Documents must be maintained in such manner so as to enable the taxpayer's tax liability under the relevant tax law to be readily ascertained (sub-article (1)(c)). For example, the documents cannot be kept in a "code" that makes it difficult or impossible for the Authority to interpret the documents in ascertaining the taxpayer's tax liability.

(5) Documents must be retained for the longer of: (i) the record-keeping period specified in the Commercial Code; or (ii) five years from the date the tax declaration for the tax period was filed (sub-article (2)). "Tax period" is defined in Article 2(38). Article 69 of the Commercial Code requires that all books and accounting documents are to be preserved for ten years from the date of the last entry in such books or from the date of such documents. The effect of sub-article (2), therefore, is to set a minimum record-keeping period of 5 years should the record-keeping period under the Commercial Code change in future to less than 5 years.

The 5-year period aligns with Global Forum requirements. The application of sub-article (2) is subject to a tax law providing otherwise and, therefore, the shorter record-keeping period for Category 'B' taxpayers under Article 33 of the ITP will apply.

For example, if the documents are required for the purposes of determining the income tax payable by a Category A taxpayer for a tax year under the ITP, the taxpayer must retain the documents for ten years from the end of the tax year to which they relate.

Sub-article (3) qualifies the application of sub-article (2) by extending the record-keeping period when the document is relevant to a proceeding under TAP (such as an appeal to the Tax Appeals Commission) commenced before the end of the period specified in sub-article (2). In this case, the documents must be retained until all proceedings (including appeals) have been completed. This relates to proceedings under TAP (such as under Part Nine or the prosecution of a tax offence) or proceedings under any other law (such as other relevant criminal proceedings).

The maintenance of proper records is vital for the effective administration of the tax laws, particularly in providing an audit trail for checking self-assessed tax liabilities. Consequently, substantial penalties are imposed on a taxpayer under Article 102 if the taxpayer fails to comply with the record-keeping obligations under sub-article (1) or (2). Further, a person who fails to maintain proper records but who wishes to challenge a tax assessment may not be able to satisfy the burden of proving that the tax assessment is incorrect as required by Article 59.

Sub-article (5) provides that the record-keeping obligations in the Article are subject to the Transfer Pricing Directive, which provides specific record-keeping obligations in relation to transfer pricing.

18. Inspection of Documents

This Article provides for the inspection of documents by the Authority.

The Article obliges a taxpayer required to maintain documents under a tax law to make the documents available for inspection by the Authority at all reasonable times during the period specified in Article 17(2). In the ordinary case, the record-keeping period is ten years as specified in Article 17(2)(a). However, a longer record-keeping period may apply under Article 17(3) when the documents are necessary for a tax proceeding (such as an appeal to the Tax Appeals Commission).

A person who fails to make the documents available for inspection as required under the Article commits an offence under Article 126(3)(a).

19. Receipts

This Article provides rules relating to receipts.

Sub-article (1) provides that a taxpayer that has an obligation to maintain books of account must register with the Authority the type and quantity of receipts before having such receipts printed.

Sub-article (2) provides that a person operating a printing press engaged by a taxpayer to print receipts must ensure that the type and quantity of receipts are registered with the Authority before printing the receipts.

Sub-article (3) obliges a taxpayer that has an obligation to maintain books of account to issue a receipt for any transaction entered into by the taxpayer.

Sub-article (4) empowers the Authority to issue a directive for the implementation of the Article.

20. Sales Register Receipts

This Article enables the making of Regulations in relation to sales register machines (as defined in sub-article (3).

Sub-article (2) provides that the Regulations may provide for:

(1) The obligatory use by taxpayers of sales register machines.

(2) The conditions for the use by taxpayers of sales register machines.

(3) The information required to be included on a receipt produced by a sales register machine.

(4) The required features of a sales register machine.

(5) The process for suppliers to apply for accreditation of sales register machines and the reporting obligations of such suppliers.

(6) The registration of a sales register machine sold to a taxpayer.

As a transitional measure, Article 137(4) provides that that the Obligatory Use of Sales Register Machines Council of Ministers Regulations No. 139/2007 continue to apply for the purposes of Article 20 until replaced by new Regulations issued by the Council of Ministers.

21. Filing of Tax Declarations

This Article provides for general rules relating to the filing of tax declarations. The obligation to file a tax declaration is specified in the tax law imposing the tax to which the declaration relates (see, for example, Article 83 of the ITP). This is because the rules requiring the filing of tax declarations (particularly in relation to the timing of filing) differ depending on the relevant tax.

Sub-article (1) provides that a taxpayer required to file a tax declaration under a tax law must file the declaration in the

approved form (i.e. the form approved by the Authority for the particular declaration (Article 79) and in the manner provided for in the Regulations. Sub-article (1) applies to every document treated as a "tax declaration" for the purposes of TAP, including a withholding tax declaration (see Article2(35)).

Sub-article (2)(a) empowers the Authority, by notice in writing, to require a taxpayer to file a fuller declaration in relation to a tax declaration already filed. Sub-article (3) makes it clear that sub-article (2)(a) does not apply to a self-assessment declaration. This is because a self-assessment declaration is, in effect, treated as a "tax assessment" under Article25. If the Authority is not satisfied with a self-assessment declaration, then the Authority must proceed to amend the self-assessment under Article28. An example of when sub-article (2)(a) may apply is when the Authority is not satisfied with a monthly or annual withholding tax declaration.

Sub-article (2)(b) empowers the Authority to require any person to file such other declaration as the Authority specifies in a notice served on the person. This may be, for example, a tax declaration requiring the disclosure of specified information. A tax declaration that a taxpayer is required to file under sub-article (2)(b) is treated as a "tax declaration" under Article 2(35)(g).

Sub-article (4) provides that the Authority is not bound by a tax declaration or information provided by, or on behalf of, a taxpayer and the Authority is permitted to determine a taxpayer's tax liability (including on assessment) based on any reliable and verifiable sources of information available to the Authority. This may include third party sources of information as well as information provided by the taxpayer.

Sub-article (5) obliges a taxpayer to sign a tax declaration filed by the taxpayer. Further, a tax declaration must include a representation by the taxpayer that the declaration, including

any attached material, is complete and accurate. Sub-article (5) is subject to sub-article (6), which specifies situations when a taxpayer's tax representative or licensed tax agent can sign a tax declaration on behalf of a taxpayer. Further, sub-article (5) is subject to the operation of the electronic tax system under Article 82.

Sub-article (6) provides that a taxpayer's tax representative (Article 2(40)) or licensed tax agent (Article 2(17)) can sign the taxpayer's tax declaration and make the representation referred to in sub-article (5) in the following cases:

(1) The taxpayer is not an individual (i.e. the taxpayer is a body or other legal person).

(2) The taxpayer is an incapable individual. The reference to an "incapable individual" is intended to cover both legally and judicially interdicted individuals.

(3) The taxpayer is an individual who is otherwise unable to sign the declaration provided the taxpayer has provided the representative or licensed tax agent with authority in writing to sign the declaration. This may apply, for example, when a taxpayer is outside Ethiopia at the time that a tax declaration is due to be filed.

Sub-article (7) applies when a taxpayer's tax representative or licensed tax agent signs a tax declaration under sub-article (6). In this case, the taxpayer is deemed to know the contents of the declaration and is treated as having made the representation as to completeness and accuracy referred to in sub-article (5). This is relevant if there is a false or misleading statement in the tax declaration. It means that the taxpayer may be liable for an administrative penalty under Article109 or prosecuted for an offence under Article118 in relation to the false or misleading statement.

22. Licensed Tax Agent Certification of Tax Declaration

This Article imposes an obligation on a licensed tax agent that has prepared or assisted in the preparation of a tax declaration to certify that the declaration correctly reflects the data and transactions to which it relates.

Sub-article (1) provides that a licensed tax agent who prepares or assists in the preparation of a taxpayer's tax declaration must provide the taxpayer with a signed certificate in the approved form (i.e. the form approved by the Authority for such certificates (see Article 79) stating that the licensed tax agent has examined the taxpayer's documents (as defined in Article2(9)) and that, to the best of the licensed tax agent's knowledge, the declaration and any accompanying documentation correctly reflects the data and transactions to which it relates.

The obligation in sub-article (1) is imposed on a licensed tax agent, which is a person licensed under Part Fourteen of TAP. A licensed tax agent must provide the certificate required under sub-article (1) regardless of whether the tax agent charges a fee for the preparation or assistance in preparation of the tax declaration. Thus, in any case when a licensed tax agent has prepared or assisted in preparing a tax declaration (whether for a fee or not), the tax agent must provide the taxpayer with a sub-article (1) certificate in relation to the declaration.

Sub-article (2) applies when a licensed tax agent refuses to provide a taxpayer with a sub-article (1) certificate in relation to the preparation of a tax declaration. In this case, the tax agent must provide the taxpayer with a written statement of reasons as to why the certificate could not be provided.

A licensed tax agent preparing or assisting in the preparation of a tax declaration who fails to provide either a certificate under sub-article (1) or a statement under sub-article (2) in relation

to the declaration is liable for an administrative penalty under Article 112(1).

Sub-article (3) requires a licensed tax agent to state on the taxpayer's tax declaration whether they have provided a certificate under sub-article (1) or statement under sub-article (2) to the taxpayer. This applies in relation to both paper and electronic declarations.

Sub-article (4) obliges a licensed tax agent to retain copies of sub-article (1) certificates and sub-article (2) statements provided to taxpayers for the period specified in Article17(2) applicable to the declaration. In the ordinary case, the record-keeping period is ten years as specified in Article 17(2)(a). However, a longer record-keeping period may apply under Article 17(3) when the tax declaration is necessary for a tax proceeding (such as an appeal to the Tax Appeals Commission).

Sub-article (1) certificates and sub-article (2) statements are documents for the purposes of the TAP (Article 2(9)(b)). A licensed tax agent who fails to retain certificates and statements as required under sub-article (4) may be liable for an administrative penalty under Article112(2).

Sub-article (4) also obliges a licensed tax agent to produce a copy of a sub-article (1) certificate or sub-article (2) statement that the tax agent has given to a taxpayer on request by the Authority.

This is an important Article relevant to self-assessment under which most tax declarations are accepted at face value. If a licensed tax agent has prepared or assisted in the preparation of a tax declaration, the acceptance of the tax declaration at face value is facilitated if the Authority is confident that the licensed tax agent has properly examined all relevant documents in preparing or assisting in the preparation of the declaration.

It is noted that, under Article139(3), the provisions relating to the licensing of tax agents commence on the date notified

by the Authority in a notice published in a newspaper of wide circulation. This allows the Authority to "activate" these provisions only when ready for their implementation.

23. Advance Tax Declaration

This Article provides for filing a tax declaration by a taxpayer in advance of the normal due date for filing the declaration in three situations: (i) when a taxpayer has ceased to carry on business or other activity giving rise to income subject to tax; (ii) when a taxpayer is about to leave Ethiopia (other than a temporary absence); and (iii) in any other case when the Authority has reason to believe that there is a risk that a taxpayer will not file a tax declaration by the due date. The tax declaration filed under this Article is referred to as an "advance tax declaration".

Sub-articles (1) and (2) apply to a taxpayer who has ceased to carry on a business or other activity giving rise to income subject to tax under a tax law. The reference in sub-article (1) to an activity that gives rise to income subject to tax ensures that the reporting obligation applies to a taxpayer required to file a tax declaration in relation to Schedule 'D' income under Article 83(7) of the ITP. Sub-article (6) makes it clear that sub-article (1) does not apply to the cessation of an activity that gives rise to income for which withholding tax is a final tax.

Sub-articles (1) and (2) specify the following obligations for a taxpayer who has ceased to carry on a business or other activity giving rise to income subject to tax under a tax law:

(1) The taxpayer must provide the Authority with written notice of the cessation within thirty days of the date that the taxpayer ceased to carry on the business or other activity (sub-article (1)).

(2) The taxpayer must file an advance tax declaration for the tax period in which the taxpayer ceased to carry on business

or other activity subject to tax and for any prior tax period for which the due date for filing has not arisen within sixty days of the date that the taxpayer ceased to carry on the business or other activity (sub-article (2)(a)).

(3) The taxpayer must pay the tax due under the advance tax declaration within sixty days of the date that the taxpayer ceased to carry on the business or other activity (sub-article (2)(b)).

Sub-article (3) applies when a taxpayer is about to leave Ethiopia during a tax period, other than a temporary absence (an example of a temporary absence is a taxpayer who is overseas on a business trip or a holiday). Sub-article (3) obliges the taxpayer to do the following before leaving Ethiopia:

(1) File an advance tax declaration for the tax period and for any prior tax period for which the due date for filing has not arisen by the time the taxpayer leaves.

(2) Pay the tax due under the advance tax declaration at the time of filing the declaration or make an arrangement satisfactory to the Authority for the payment of the tax due (which could include the giving of security for the payment of the tax while the taxpayer is outside Ethiopia).

Sub-article (4) applies when the Authority has reason to believe that a taxpayer will not file a tax declaration for a tax period by the due date. For example, a taxpayer may be taking steps to dissipate their assets. In this case, the Authority may, by notice in writing, require the taxpayer or the taxpayer's tax representative to:

(1) File an advance tax declaration for the tax period by the date specified in the notice being a date that may be before the date that the tax declaration for the tax period would otherwise be due.

(2) Pay any tax payable under the advance tax declaration by the due date specified in the notice.

An advance tax declaration required under this Article is a "tax declaration" for the purposes of TAP (Article2(35)(g)). Consequently, a taxpayer or taxpayer's tax representative may be liable for a late filing penalty under Article104 if the taxpayer or the taxpayer's tax representative fails to file the advance tax declaration by the due date.

As an alternative to serving a notice under this Article, the Authority may serve a notice of a jeopardy assessment under Article27. It would be expected that the Authority would proceed straight to Article27 when there is a need to act quickly to create a tax liability.

If a taxpayer to whom this Article applies is subject to more than one tax, sub-article (5) provides that the Article applies separately for the purposes of each tax.

24. Tax Declaration Duly Filed

This Article provides for a presumptive rule in relation to the filing of tax declarations (as defined in Article2(35)).

A tax declaration purported to be filed by, or on behalf of, a taxpayer is treated as having been filed by the taxpayer unless the taxpayer proves to the contrary. This means that, if a taxpayer wants to challenge the fact of the actual filing of a tax declaration, the burden is on the taxpayer to prove, on the balance of probabilities, that the taxpayer did not file or authorise the filing of the tax declaration by another person. This may be relevant, for example, if a tax declaration is made by a taxpayer's tax representative or licensed tax agent and there is a false statement in the declaration.

25. Self-assessments

This Article provides for the self-assessment of tax liabilities by taxpayers. Under self-assessment, the taxpayer's tax declaration is treated as a self-assessment of the taxpayer's tax liability and

the taxpayer pays tax due with the filing of the tax declaration. A taxpayer's tax declaration is treated as a self-assessment under TAP only when the tax declaration is filed in the approved form, i.e. the form approved by the Authority for the particular type of tax declaration being filed (see Article 79).

Sub-article (1) provides that a self-assessment taxpayer who has filed a self-assessment tax declaration in the approved form for a tax period is treated, for all purposes of TAP, as having made an assessment of the amount of tax payable for the tax period to which the tax declaration relates being that amount as set out in the tax declaration. It is expressly provided that a self-assessed amount includes a nil amount of tax payable. This occurs, for example, if a taxpayer under Schedule 'C' of the ITP has a zero amount of taxable income for a tax year, or the output tax of a VAT registered person for a tax period exactly equals the person's input tax for the tax period.

Sub-article (1) applies only to a self-assessment taxpayer filing a self-assessment declaration. "Self-assessment taxpayer" is defined in Article 2(30) to mean a taxpayer required to file a self-assessment declaration. The following are specified as a "self-assessment declaration" under the Article 2(29) definition: (i) a tax declaration under the ITP; (ii) a VAT return under the Value Added Tax Proclamation; (iii) a Customs entry to the extent that the entry specifies the value added tax or excise tax payable in respect of an import of goods; (iv) an excise tax declaration under the Excise Tax Proclamation; (v) a turnover tax declaration under the Turnover Tax Proclamation; (vi) an advance tax declaration under Article 23; and (vii) a tax declaration specified as a self-assessment declaration under a tax law.

The effect of sub-article (1), for example, in relation to VAT is that, if a registered person has filed a VAT return for a tax period, the person is treated as having made a self-assessment of the net VAT payable by the person for the period (i.e. output tax less input tax). The amount of the self-assessed liability is the amount of net VAT payable as set out in the VAT return.

Sub-article (2) applies when a self-assessment taxpayer liable for business income tax under Schedule 'C' of the ITP has filed a tax declaration under Article 83 of the ITP (i.e. a self-assessment declaration as defined in Article 2(29)(a)) in the approved form (Article 79) for a tax year and the taxpayer has a loss for the year. In this case, the taxpayer is treated, for all purposes of TAP, as having made an assessment of the amount of the loss for the year being that amount as set out in the tax declaration. A loss is an excess of deductions over business income for a tax year and is carried forward as a deduction in the next following tax year under Article 26 of the ITP.

Sub-article (2) applies also when a self-assessment taxpayer liable for rental income tax under Schedule 'B' of the ITP has filed a tax declaration under Article 83 of the ITP (i.e. a self-assessment declaration as defined in Article 2(29)(a)) in the approved form (see Article 79) for a tax year and the taxpayer has a rental loss for the year. In this case, the taxpayer is treated, for all purposes of TAP, as having made an assessment of the amount of the loss for the year being that amount as set out in the tax declaration. A rental loss is an excess of deductions over rental income derived for a tax year and is carried forward as a deduction in the next following tax year under the Income Tax Regulations. However, only a taxpayer keeping records can carry forward a rental loss for a tax year.

Sub-article (3) applies if a VAT registered person has filed a VAT return (i.e. a self-assessment declaration as defined in Article 2(29)(b)) in the approved form (Article 79) for a tax period and the registered person's total input tax for the period exceeds the person's total output tax for the period. In this case, the VAT registered person is treated, for all purposes of TAP, as having made an assessment of the amount of the excess input tax for the period being that amount as set out in the tax declaration. An excess input tax credit is carried forward to the next following for five tax period under the Value Added Tax Proclamation. This is

subject to the stipulation of the Value Added Tax Proclamation, which provides for an immediate refund of the excess when at least 25 percent of the value of a registered person's taxable transactions for the accounting period are taxed at a zero rate.

The effect of sub-articles (1), (2) and (3) is that a properly filed self-assessment declaration is treated as a self-assessment. If the Authority is not satisfied with a self-assessment declaration (i.e. a taxpayer's self-assessment), the Authority must proceed to amend the taxpayer's self-assessment under Article 28.

Sub-article (4) applies when a taxpayer prepares and files a self-assessment declaration electronically. Provided the tax declaration is in the approved form (Article 79), sub-article (4) makes it clear that the tax declaration is still a self-assessment declaration even though: (i) the tax declaration may include pre-filled information provided by the Authority; or (ii) the computation of the tax payable occurs automatically as information is inserted into the form. The effect of sub-article (4) is that, if a taxpayer prepares and files a self-assessment declaration electronically, the tax declaration is a still treated as a self-assessment declaration and, therefore, sub-articles (1)-(3) apply to the declaration.

A self-assessment declaration must be filed in the form approved by the Authority (Article 79). Importantly, the approved form will require that the amount of tax payable, loss, or excess input tax for the tax period to which the form relates is to be included on the form. This is central to self-assessment, namely that the form that a taxpayer files includes the amount of tax payable (or loss or excess input tax credit carried forward) as determined by the taxpayer.

A self-assessment is included as a tax assessment under the definition of "tax assessment" in Article 2(32). Thus, unless the context requires otherwise, every reference in TAP to a "tax assessment" includes a self-assessment. In particular, Article 28,

which provides for the amendment of tax assessments, applies to self-assessments.

26. Estimated Assessments

This Article empowers the Authority to raise a tax assessment when a taxpayer has failed to file a tax declaration for a tax period. The assessment is referred to as an "estimated assessment".

Sub-article (1) empowers the Authority to make an estimated assessment for a tax period when a taxpayer has failed to file a tax declaration for the period. An estimated assessment can be made of:

(1) The amount of a taxpayer's loss under Schedule 'B' or 'C' of the ITP for a tax period.

(2) The excess amount of input tax under the Value Added Tax Proclamation of a registered person for a tax period.

(3) The amount of tax payable (including a nil amount) by a taxpayer for a tax period.

Sub-article (1) applies to any person who is a "taxpayer" as defined in Article 2(41) and in respect of any document treated as a "tax declaration" as defined in Article 2(35). However, sub-article (4) provides that an estimated assessment can be made only for a tax that is collected by assessment under the tax law imposing the tax. This means, for example, that an estimated assessment cannot be raised for the recovery of unpaid withholding tax as such tax is not an assessed tax; rather, unpaid withholding tax is a debt collected by letter of demand for payment.

The Authority must determine the amount of the tax payable, or loss or excess input tax, under an estimated assessment based on the available evidence. Thus, provided the Authority has relied upon the available evidence and has exercised best judgement in making the estimated assessment, the assessment will be valid even if the amount of tax payable, or loss or excess

input tax, specified in the estimated assessment is subsequently found to be wrong. However, if the Authority simply "plucks a figure out of the air" as the amount of tax payable, or loss or excess input tax, without making a judgement based on the evidence available and the taxpayer's particular circumstances, the assessment will not be a valid assessment.

Sub-article (2) obliges the Authority to serve notice of an estimated assessment on the taxpayer assessed. The rules applicable to the service of notices in Article 81 apply for this purpose. An estimated assessment must specify the following:

(1) The amount of tax assessed, or loss or excess input tax credit carried forward (sub-article (2)(a)).

(2) The amount of penalty (if any) assessed in respect of the tax assessed (sub-article (2)(b)). The failure to file a tax declaration by the due date may result in two penalties – a late filing penalty (Article104) and a late payment penalty (Article105).

(3) The amount (if any) of late payment interest payable in respect of the tax assessed (sub-article (2)(c)). Late payment interest is not an assessed liability but rather is a debt collected by letter of demand for payment (Article 37(6)). Article 37(7) provides that a demand for the interest may be included with a notice of an assessment of tax and penalty.

(4) The tax period covered by the estimated assessment (sub-article (2)(d)).

(5) The due date for payment of the tax, penalty, and late payment interest being a date that is within thirty days from the date of service of the notice of the estimated assessment (sub-article (2)(e)). Sub-article (3) makes it clear that this does not change the original due date for payment of the tax. Thus, late payment penalty and late payment interest are computed based on the original due date for payment of the tax assessed. The purpose of sub-article (2)

(e) is to allow a taxpayer reasonable time to raise the funds necessary to pay the tax, penalty and interest due before the Authority takes action to recover the amount owing under an estimated assessment. However, the period is not to exceed 30 days.

(6) The manner of objecting to the estimated assessment, including the time limit for filing a notice of objection to the assessment (sub-article (2)(f)). An estimated assessment is a "tax decision" within the definition in Article 2(34). A taxpayer dissatisfied with an estimated assessment can challenge the assessment only by filing a notice of objection to the assessment under Article 54.

Sub-article (5) makes it clear that a taxpayer is still required to file a tax declaration for a tax period even though the taxpayer has been served with notice of an estimated assessment for the period. However, sub-article (6) provides that a tax declaration filed by a taxpayer for a tax period after a notice of an estimated assessment has been served on the taxpayer for the period is not a self-assessment tax declaration. This is because the Authority has already determined the taxpayer's liability for the relevant tax period through the making of the estimated assessment. The taxpayer's tax declaration, however, can be used by the Authority to make an amended assessment under Article 28 to ensure that a taxpayer is liable for the correct amount tax payable for the tax period.

Sub-article (7) provides that the Authority can make an estimated assessment at any time (i.e. there is no time limit applicable to making an estimated assessment). This is because the power to make an estimated assessment arises only when a taxpayer has failed to file a tax declaration.

Sub-article (8) empowers the Authority to issue a Directive for the purposes of implementing the Article.

An estimated assessment is included as a "tax assessment" as defined in Article 2(32). Thus, unless the context otherwise requires, every reference in TAP to a "tax assessment" includes an estimated assessment.

27. Jeopardy Assessments

This Article empowers the Authority to make an assessment of the tax payable by a taxpayer for a tax period in the circumstances specified in Article23 (advance tax declarations) or 42 (an assessment for the preservation of funds). As the assessment is made before the due date for filing the tax declaration for the tax period, it is referred to as a "jeopardy assessment".

In the context of Article 23, the jeopardy assessment procedure is an alternative to the taxpayer or the taxpayer's representative filing an advance tax declaration under Article 23. The facts relevant to the assessment of a taxpayer's tax liability are peculiarly in the knowledge of the taxpayer so that, ordinarily, the filing of an advance tax declaration disclosing that information would be the preferred option. However, it may be that the urgency of the case is such that the Authority will need to move straight to raising a jeopardy assessment under this Article.

Sub-article (1) provides that the Authority may make an assessment of tax payable by a taxpayer for a tax period in the circumstances specified in Article23 or 42. Thus, the jeopardy assessment procedure can be used if any of the following events occurs during a tax period:

(1) A taxpayer has ceased to carry on any business or other activity during the tax period.

(2) A taxpayer is about to leave Ethiopia for period that is unlikely to be temporary.

(3) The Authority has reason to believe that a taxpayer will not file a tax declaration by the due date.

(4) The Authority has served an administrative order under Article 42 on a financial institution blocking the accounts of a taxpayer.

Sub-article (2)(a) makes it clear that the Authority can make a jeopardy assessment only when the taxpayer has not filed the tax declaration for the relevant tax period. The main situation when this will be relevant is when a taxpayer is required to file an advance tax declaration under Article 23 but has failed to do so. If an advance tax declaration has been filed for the tax period (such as under Article 23(2)(a)), the advance tax declaration is treated as a self-assessment declaration under Article 2(29)(f). In this case, if the Authority is not satisfied with the advance tax declaration (self-assessment), the Authority can amend the taxpayer's self-assessment under Article 28.

Sub-article (2)(b) provides that an estimated assessment can be made only for a tax that is collected by assessment. This means, for example, that a jeopardy assessment cannot be raised for the recovery of withholding tax as such tax is not an assessed tax; rather, withholding tax is a debt collected by letter of demand for payment.

Sub-article (1) requires that the Authority must make a jeopardy assessment based on the available evidence. Thus, provided the Authority has relied upon the available evidence and exercised best judgement in making the jeopardy assessment, the assessment will be valid even if the amount of tax payable under the jeopardy assessment is subsequently found to be wrong. However, if the Authority simply "plucks a figure out of the air" as the amount of tax payable without making a judgement based on the information available and the taxpayer's particular circumstances, the assessment will not be a valid assessment.

Sub-article (3)(a) provides that a jeopardy assessment may be made before the date that the taxpayer's tax declaration for the tax period to which the assessment relates is due. Consequently,

the effect of a jeopardy assessment can be to advance the timing of the due date for payment of tax for the tax period to which it relates. This is consistent with the circumstances in which the Authority can require a taxpayer to file an advance tax declaration under Article 23. Sub-article (3)(b) provides that a jeopardy assessment must be based on the law applicable at the date of making the assessment. The reference to law includes all aspects of the law, particularly the tax rates. Sub-article (3)(b) is necessary because the assessment is being made before the end of the tax period and the relevant law may change during the tax period.

Sub-article (4) obliges the Authority to serve notice of a jeopardy assessment on the taxpayer assessed. The rules applicable to the service of notices in Article 81 apply for this purpose. A jeopardy assessment must specify the following:

(1) The amount of tax assessed (sub-article (4)(a)).

(2) The amount of penalty (if any) assessed in respect of the tax assessed (sub-article (4)(b)). As jeopardy assessment is being made before the end of the tax period to which it relates, penalty is likely to be limited to late filing penalty when the taxpayer has failed to file an advanced tax declaration as required under Article 23.

(3) The tax period covered by the jeopardy assessment (sub-article (4)(c)).

(4) The due date for payment of the tax and penalty (sub-article (4)(d)). Because of the nature of the situations covered by a jeopardy assessment (such as a taxpayer who is about to leave Ethiopia permanently (see Article 23(3)), there is no limitation on the setting of the due date. In an urgent case, the notice could state that the tax is due immediately (sub-article (5)).

(5) The manner of objecting to the jeopardy assessment, including the time limit for filing a notice of objection to

the assessment (sub-article (4)(e)). A jeopardy assessment is a "tax decision" within the definition in Article 2(32). A taxpayer dissatisfied with a jeopardy assessment can challenge the assessment only by filing a notice of objection to the assessment under Article 54 (see Article 53(1)).

Sub-article (6) provides that the fact that a jeopardy assessment has been raised in respect of a tax period does not relieve the taxpayer from being required to file the tax declaration for the tax period to which the jeopardy assessment relates. This is particularly important as the period covered by a jeopardy assessment is likely to be less than the whole of the tax period to which it relates. Sub-article (7) provides that an amended assessment can be raised under Article 28 in relation to a jeopardy assessment so that the taxpayer is assessed for the whole of the tax period. The filing of the tax declaration as required under sub-article (6) will provide important information for the Authority in making any amended assessment. An amended assessment must be made within the time limits specified in Article 28(2) (see below).

Importantly, sub-article (8) provides that a tax declaration filed by a taxpayer for a tax period after a jeopardy assessment has been served on the taxpayer for the period is not a self-assessment. This is because the Authority has already determined the taxpayer's liability for the tax period through the making of the jeopardy assessment.

28. Amended Assessments

This Article provides for the making of amendments to tax assessments (i.e. the making of an amended assessment).

Sub-article (1) provides that the Authority may amend a tax assessment (referred to as the "original assessment"). The original assessment may be a self-assessment, estimated assessment, jeopardy assessment, penalty assessment, or any

other assessment made under a tax law. There is a separate process for amending an amended assessment (see below). The Authority amends an original assessment by making such alterations, reductions, or additions to the original assessment so as to ensure that:

(1) If the original assessment relates to a loss for a tax year under Schedule 'B' or 'C' the ITP, the taxpayer is assessed in respect of the correct amount of the loss for the period. This is particularly relevant in determining the amount of a loss carried forward allowed as a deduction in the next tax year.

(2) If the original assessment relates to an excess amount of input tax for a tax period under the Value Added Tax Proclamation, the registered person is assessed in respect of the correct amount of the excess input tax for the period. Again, this is relevant in determining the amount of the excess credit carried forward to the next accounting period.

(3) In the case of any other original assessment, the taxpayer is liable for the correct amount of tax payable (including a nil amount) in respect of the tax period to which the original assessment relates.

The Authority must determine the amount of tax payable, loss, or excess input tax under an amended assessment based on the available evidence. Thus, provided the Authority has relied upon the available evidence and exercised best judgement in making the amended assessment, the assessment will be valid even if the amount of tax payable, loss, or excess input tax under the amended assessment is subsequently found to be wrong. However, if the Authority simply "plucks a figure out of the air" as the amount of tax payable, loss, or excess input tax without making a judgement based on the information available and the taxpayer's particular circumstances, the amended assessment will not be a valid assessment.

The power to make an amended assessment relates to both a self-assessment and an assessment raised by the Authority (such

as an estimated or jeopardy assessment). A self-assessment declaration filed by a self-assessment taxpayer for a tax period is a self-assessment of the taxpayer's tax liability, loss, or excess input tax for the period, as the case may be, being the relevant amount as set out in the self-assessment declaration (Article 25). As explained above, any assessment raised by the Authority in relation to a self-assessment declaration is, in fact, an amended assessment (i.e. an assessment amending the taxpayer's self-assessment).

Sub-article (1) is expressed to be subject to the rest of the Article. Importantly, in amending a tax assessment, the Authority must comply with the time limits in sub-article (2).

Sub-article (2) specifies the time limits for the making of amended assessments. The Authority may amend a tax assessment under sub-article (1) at any time in the case of fraud, or gross or wilful neglect, by or behalf of the taxpayer (sub-article (2)(a)). The terms "fraud", "gross neglect" and "wilful neglect" are intended to have their general law meanings. This would cover, for example, a deliberate understatement in an income tax declaration of the amount of income derived or a deliberate overstatement in an income tax declaration of deductions claimed. It would also cover a person who recklessly fails to check the accuracy of the amount of income declared or deductions claimed in an income tax declaration. The fraud, or gross or wilful neglect, may be committed by the taxpayer or by a person acting on the taxpayer's behalf (such as a licensed tax agent, accountant, or other adviser).

The time limit for amending assessments in all other cases is five years (sub-article (2)(b)). In the case of a self-assessment, the five-year period begins to run from the date the taxpayer filed the self-assessment declaration (sub-article (2)(b)(i)). In the case of any other assessment (mainly an estimated or jeopardy assessment), the five-year period begins to run from the date that the Authority served the taxpayer with notice of the assessment (sub-article (2)(b)(ii)).

Sub-article (3) empowers the Authority to further amend an original assessment. If the original assessment is a self-assessment, the self-assessment can be further amended within the later of: (i) five years from the date the original self-assessment declaration was filed; or (ii) one year after the Authority served notice on the taxpayer of the amended assessment to the self-assessment.

If the original assessment is any other form of tax assessment, the original assessment can be further amended within the later of: (i) five years from the date notice of the original assessment was served on the taxpayer; or (ii) one year after the Authority served notice on the taxpayer of the amended assessment to the original assessment. For example, if a notice of an amended assessment to an estimated assessment is served on a taxpayer two years after the date of service of the notice of the estimated assessment, the Authority can further amend the estimated assessment within three years from the date of service of notice of the estimated assessment. This ensures that the Authority has the full five-year amendment period in relation to the estimated assessment. However, if the notice of the amended assessment is served on the taxpayer four and a half years after service of notice of the estimated assessment, the Authority can further amend the estimated assessment within one year of serving notice of the first amended assessment. This applies even in the case of fraud, or gross or wilful neglect. While there is an unlimited period for making an initial amended assessment in the case of fraud, or gross or wilful neglect, once that power has been exercised there is only limited power to make a further amended assessment. This ensures that there is finality in the assessment process.

Importantly, sub-article (3) is structured so that the Authority does not amend an amended assessment; rather an amended assessment is made only in relation to an original assessment. However, the Authority can make multiple amended assessments in relation to an original assessment provided the

amended assessments are made within the time limit specified in sub-article (3).

Sub-article (4) provides a limit on the ability to make further amended assessments to an original assessment. It applies only when the period for making the further amended assessment is determined under sub-article (3)(b), i.e. the later period under sub-article (3) is one year after the taxpayer was served with notice of the amended assessment. In this case, the Authority can only make amendments to the alterations, reductions, or additions to the original assessment made in the first amended assessment, but cannot amend any other part of the original assessment. This ensures that the five-year time limit for making amended assessments is strictly observed.

Sub-article (5) obliges the Authority to serve notice of an amended assessment on the taxpayer assessed. The rules applicable to the service of notices in Article 81 apply for this purpose. An amended assessment must specify the following:

(1) The original assessment to which the amended assessment relates and the reason for making the amended assessment (sub-article (5)(a)).

(2) The amount assessed as tax due, or a loss or excess input tax carried forward (sub-article (5)(b)).

(3) The amount assessed as penalty (if any) payable in respect of any additional tax payable under the amended assessment (sub-article (5)(c)).Thus, the notice of an amended assessment served on a taxpayer under sub-article (5) can include an assessment of any penalty payable in respect of the assessed tax.

(4) The amount of late payment interest (if any) payable in respect of the amount of tax assessed (sub-article (5)(d)). Late payment interest is not an assessed liability but rather is collected by letter of demand (Article 37(6)). The notice of liability for late payment interest included in the amended

assessment is treated as a demand for the interest (Article 37(7)).

(5) The tax period covered by the amended assessment (sub-article (5)(e)).

(6) The due date for payment of the tax, penalty, and interest being a date that is not less than thirty days from the date of service of the notice of the amended assessment (sub-article (5)(f)). Sub-article (6) makes it clear that this does not change the original due date for payment of the tax so that late payment penalty and interest are payable from the original due date under the original assessment. The purpose of sub-article (5)(f) is to ensure that the taxpayer is given a reasonable time to raise the funds necessary to pay the tax, penalty, and interest due before the Authority takes action to recover the amount owing under an amended assessment.

(7) The manner of objecting to the amended assessment, including the time limit for filing a notice of objection to the assessment (sub-article (5)(g)). An amended assessment is a "tax decision" within the definition in Article 2(34). A taxpayer dissatisfied with an amended assessment can challenge the assessment only by first filing a notice of objection to the assessment under Article 54 (see Article 53(1)).

29. Application for Making an Amendment to a Self-assessment

This Article sets out a procedure under which a taxpayer can apply to the Authority for the making of an amended assessment in relation to a self-assessment made by the taxpayer.

Sub-article (1) provides that a taxpayer can apply to the Authority for the Authority to amend the taxpayer's self-assessment. While a self-assessment declaration is treated as a self-assessment, the

taxpayer cannot self-amend a self-assessment. Rather, only the Authority can amend a self-assessment.

Sub-article (2) provides that an application for the Authority to amend a self-assessment must: (i) state the amendments that the taxpayer believes are required to be made to correct the self-assessment and the reasons for those amendments; and (ii) be filed with the Authority within the time specified in Article 28(2)(b)(1), i.e. within five years from the date that the self-assessment declaration was filed by the taxpayer.

If a taxpayer has made an application under sub-article (1) for an amendment to be made to a self-assessment, sub-article (3) provides that the Authority may either: (i) amend the self-assessment; or (ii) refuse the application. The Authority's decision must be made within 120 days of receipt of the application and in accordance with a Directive issued by the Authority providing for such decisions.

Sub-article (4) provides that, if the Authority accepts an application under sub-article (1), the Authority must amend the self-assessment in accordance with Article 28(1). The Authority is obliged to serve the taxpayer with notice of the amended assessment in accordance with Article 28(5).

Sub-article (5) obliges the Authority to serve notice on the taxpayer of a decision to refuse an application for an amendment to a self-assessment. Article 52 obliges the Authority to provide the taxpayer with a statement of reasons for a decision to refuse the application. The decision of the Authority to refuse an application under sub-article (1) is a "tax decision" as defined in Article 2(34)(b). A taxpayer dissatisfied with the decision can challenge the decision only by filing a notice of objection to the decision with the Authority under Article 54 (see Article 53(1)).

30. Tax as a Debt Due to the Government

This Article provides for the creation of a debt in relation to tax imposed under a tax law.

The liability for tax and the due date for payment are set out in the relevant tax law imposing the tax. For example, Article 84(2) of the ITP provides that income tax payable by a Category 'A' taxpayer for a tax year is due on the date that the taxpayer's tax declaration for the year is due (i.e. by the last day of the fourth month following the end of the tax year (Article 83(4)(a) of the ITP)).

Sub-article (1) provides that tax that is due and payable by a taxpayer under a tax law is a debt due to the Government of Ethiopia. A taxpayer must pay tax due to the Authority.

Sub-article (2) relates to electronic payments of tax. A taxpayer obliged to pay tax electronically by the Authority under Article 82(2) must make the payment electronically unless the Authority has authorised the person to pay by another method. Article 111 applies to a person who fails to comply with sub-article (2). If the person is unable to provide adequate reasons for the failure, Article 111 provides that the person is liable for an administrative penalty for the failure.

Sub-article (3) provides that, if a taxpayer fails to pay tax by the due date, the taxpayer is liable for any costs incurred by the Authority in taking action to recover the unpaid tax. Such costs are referred to as "tax recovery costs" for the purposes of TAP (Article 2(39)(a)). Under Article 31(1), the Authority can serve a notice of demand for recovery of the costs referred to in sub-article (3). Article 31(2)(b) provides that any unpaid tax recovery costs are treated as unpaid tax for the purposes of Part Seven and, therefore, the Authority can use the measures in Chapter Three of Part Seven to collect unpaid tax recovery costs.

31. Secondary Liabilities and Tax Recovery Costs

This Article provides for the application of certain provisions in TAP to secondary liabilities and tax recovery costs.

Sub-article (1) applies to a person liable for: (i) a secondary liability; or (ii) tax recovery costs. "Secondary liability" is defined in Article 2(27). In broad terms, a secondary liability is a tax liability of a taxpayer (referred to as the "primary liability") that another person becomes personally liable to pay under the ITP. The following are secondary liabilities under TAP:

(1) The amount that a tax representative of a taxpayer is personally liable for under Article 16(4). A tax representative is personally liable for the payment of any tax due by a taxpayer if the tax representative disposes of, or parts with, any funds belonging to the taxpayer that are in the possession, or under the control, of the tax representative when the tax due could legally have been paid from or out of those moneys or funds.

(2) The amount of tax owing by a taxpayer that a receiver is personally liable for under Article 40(3)(c). This is the amount that a receiver is required to set aside out of the proceeds of sale of an asset as specified under Article 40(2).

(3) The amount that a person who fails to comply with a seizure order under Article 41 is personally liable for under Article 41(12).

(4) The amount that a financial institution is personally liable for under Article 42(8). A financial institution that, without reasonable cause, fails to comply with preservation order served on the financial institution under Article 42(2) is personally liable for the amount specified in the order.

(5) The amount that a payer is personally liable for under Article 43(10). A payer who, without reasonable cause, fails to comply with a garnishee order is personally liable for the amount specified in the order.

(6) The amount that a transferor is personally liable for under Article 46(1). Article 46 applies when a taxpayer (referred to as the "transferor") has a tax liability in relation to a business carried on by the taxpayer and the taxpayer has transferred all or some of the assets of the business to a relative (referred to as the "transferee"). In this situation, the transferee is personally liable for the tax liability (referred to as the "transferred liability") of the transferor.

(7) The amount of the tax liability of a body that a manager of the body is personally liable for under Article 47(1).

(8) The amount of a tax shortfall or evaded tax that a certified auditor, certified public accountant, or public auditor is jointly and severally liable for under Article 48(1).

"Tax recovery costs" is defined in Article 2(39) to mean:

(1) The costs of the Authority incurred in the recovery of unpaid tax referred to in Article 30(3).

(2) The costs of the Authority incurred in undertaking seizure proceedings under Article 41 (see Article 41(9)(a)).

Sub-article (1) provides that the Authority may serve a person liable for a secondary liability or tax recovery costs with notice of the amount of the relevant liability payable by the person and the due date for payment. The determination of a liability for these amounts is treated as "tax decision" as defined in Article 2(34)(d) and can be challenged only by filing a notice of objection to the determination under Article 54 (see Article 53(1)).

Sub-article (2) provides procedural rules relating to secondary liabilities and tax recovery costs.

(1) A reference to "tax" in Parts Seven (collection and recovery of tax), Eight (credit, refund, and release from tax liability), Nine (tax disputes) and Ten (investigations and enforcement), and Article 105 (late payment penalty) includes an amount that is a secondary liability or tax recovery costs (sub-article (2)(a)).

(2) A reference in Parts Seven, Eight, Nine and Ten, and Article 105 to "unpaid tax" includes an amount of a secondary liability or tax recovery costs that are not paid by the due date as specified in the notice of demand served on the person liable under sub-article (1) (sub-article (2)(b)). This is particularly relevant to Chapter Three of Part Eight, which provides measures for the recovery of unpaid tax.

(3) A reference in Parts Seven, Eight, Nine and Ten, and Article 105 to "taxpayer" includes a person liable for a secondary liability or tax recovery costs (sub-article (2)(c)).

The reference to Part Seven means, for example that: (i) an amount of a secondary liability or tax recovery costs is a debt due to the Government of Ethiopia and payable to the Authority (Article 30); (ii) interest is payable on the late payment of the amount (Article 37); and (iii) the Authority can use the measures in Chapter Three of Part Seven to collect any unpaid secondary liability or tax recovery costs. Further, the reference to Article 105 means that late payment penalty is imposed in respect of the late payment of a secondary liability or tax recovery costs.

The reference to Part Eight means that the refund and hardship rules (including repayments of erroneous refunds) apply to secondary liabilities and tax recovery costs.

The reference to Part Nine means that the objection and appeal procedure applies if a person wishes to challenge the amount of a secondary liability or a liability for tax recovery costs. The determination of the amount of a secondary liability or tax recovery costs is a "tax decision" as defined in Article 2(34)(d).

The reference to Part Ten means that the investigations powers can be relied upon in relation to a secondary liability or a liability for tax recovery costs.

Sub-article (3) provides that an amount of a secondary liability paid by a person is credited against the primary tax liability

to which the secondary liability relates. For example, if a tax representative is personally liable under Article 16(4) for the tax payable by the taxpayer they represent, the amount of tax paid by the tax representative is credited against the tax liability of the taxpayer.

32. Extension of Time to Pay Tax

This Article empowers the Authority to grant a taxpayer an extension of time for the payment of tax due.

Sub-article (1) provides that a taxpayer may apply, in writing, to the Authority for an extension of time to pay tax due under a tax law.

Sub-article (2) provides that, when an application for an extension of time to pay tax due has been made, the Authority may, if satisfied there is good cause, grant the extension or require the taxpayer to pay the tax due in instalments. In making a decision on the application, the Authority will have regard to all the circumstances of the taxpayer's case, including the financial position of the taxpayer or whether the taxpayer has suffered some personal hardship, such as serious illness. Further, sub-article (2) contemplates that the Authority will issue a Directive in relation to extension of time applications and that decisions on such applications must be made in accordance with the Directive. If the Authority believes that an extension of time is not justified, the application should be refused.

Sub-article (3) requires the Authority to serve the taxpayer with written notice of the decision on an extension of time application. If the Authority refuses the application, Article 52 requires the notice of refusal to include a statement of reasons for the refusal. The Authority's decision on an application for an extension of time is an "appealable decision" as defined in Article 2(2). A taxpayer dissatisfied with the decision can challenge the decision only by appealing the decision to the Tax Appeal Commission under Article 56 (see Article 53(1)).

Sub-article (4) provides that, if the Authority requires a taxpayer to pay tax due by instalments, the failure to pay an instalment by the due date empowers the Authority to immediately take action to recover the whole balance outstanding at the time of the taxpayer's default. Whether the Authority immediately seeks to recover the whole amount of tax outstanding is at the discretion of the Authority. In an appropriate case, the Authority may decide to grant the taxpayer a further extension of time to pay the tax due.

The grant of an extension of time to pay tax, or the entering into of an agreement to pay tax by instalments, protects the taxpayer from the imposition of late payment penalty under Article 105. Sub-article (5) makes it clear, though, that the taxpayer is still liable for late payment interest under Article 37 from the original due date for payment.

33. Priority of Tax and Garnishee Amounts

This Article provides a legislative priority to the Government for certain classes of tax and amounts payable under Article 43 order (referred to as a "garnishee order").

Sub-article (1) provides that the Article applies to the following amounts:

(1) Withholding tax, VAT, turnover tax, and excise tax. In broad terms, these are taxes collected by a person on behalf of the Government.

"Withholding tax" is defined in Article 2(44) to mean amounts that a person is required to withhold from a payment made by the person under Part Ten of the ITP. At the time of enactment, the following amounts are treated as withholding tax: (i) an amount that an employer is required to withhold from employment income (Article 88 of the ITP); (ii) an amount that a person is required to withhold from an Ethiopian source dividend, interest, royalty, management

fee, technical fee, or insurance premium paid to a non-resident (Article 89(1) of the ITP); (iii) an amount that a person is required to withhold from payment of income to a non-resident entertainer or group of entertainers in relation to a performance in Ethiopia (Article 89(2) of the ITP); (iv) an amount that a person is required to withhold from royalties, dividends, or interest paid to a resident person (Article 90 of the ITP);(v) an amount that a person is required to withhold from the payment of winnings from a game of chance (Article 91 of the ITP); (vi) an amount that a person is required to withhold from the supply of goods or services (Article 92 of the ITP); and (vii) an amount that a person is required to self-withholding (Article 93 of the ITP).

VAT is imposed under the Value Added Tax Proclamation.

Turnover tax is imposed under the Turnover Tax Proclamation.

Excise tax is imposed under the Excise Tax Proclamation.

(2) An amount that a payer owes to, or holds on behalf of, a taxpayer that is the subject of a garnishee order under Article 43.

Sub-article (2) provides that a person holds an amount specified in sub-article (1) in trust for the Government. As these amounts are held in trust for the Government, they do not form part of the assets of the person owing, holding, receiving, or withholding the amounts. Thus, in the event of the liquidation or bankruptcy of the person, the amount does not form part of the person's estate in liquidation or bankruptcy and the amount must be paid to the Authority before any distribution of property is made.

Sub-article (3) provides for the following additional rules in relation to withholding tax:

(1) Withholding tax is not subject to attachment in respect of any debt or liability of the person withholding the tax.

(2) Withholding tax is a first charge on the payment or amount from which the tax is withheld.

(3) Withholding tax is withheld prior to any other deduction that the person may be required to make from the payment or amount under an order of any court or other law.

34. Order of Payment

This Article provides for the order of payment when a person owes penalty and late payment interest in respect of a tax liability.

Sub-article (1) applies when a taxpayer owes tax, and penalty and late payment interest in respect of a tax liability, and the payment made by the taxpayer is less than the total amount due. In this case, the Authority must apply the payment in the following order:

(1) The amount paid is applied first against the primary tax liability.

(2) Any excess is then applied against any liability for late payment interest (Article 37).

(3) The balance remaining (if any) is applied against any penalty liability. While the main penalty liability will be late payment penalty, there may be other penalty liabilities related to unpaid tax, such as late filing penalty, tax shortfall penalty, or a penalty for failure to keep proper records.

The order of application reflects the fact that late payment interest and penalty are not compounding liabilities. If they were compounding liabilities, then the order of application would need to be reversed so late payment interest and penalty were paid before the primary tax liability. Further, the advantage for the Authority of this order of payment is that, in the financial accounts of the Authority, the primary tax liability is paid (or, at least, partially paid). If the order of payment were reversed, the

accounts of the Authority would show higher levels of unpaid tax, which may create the inaccurate appearance that the Authority is not properly doing its job.

Sub-article (2) provides that, if a taxpayer has more than one tax liability outstanding at the time a payment is made, the amount paid is applied in the order that the liabilities arose (i.e. the amount is applied against the earliest liability). If there is penalty and interest payable in respect of that liability, sub-article (1) applies in relation to that liability.

35. Security for Payment of Tax

This Article provides for the giving of security in relation to tax liabilities or the claiming of a refund.

Sub-article (1)(a) empowers the Authority to require a taxpayer to give security in relation to any tax liability, including a liability that will arise in the future. The Authority can require security for payment of any amount treated as tax (including withholding tax) for the purposes of TAP (see the Article 2(31) definition of "tax"). Sub-article (1)(b) empowers the Authority to require a person to give security in relation to a refund application made under a tax law (such as Article 50 of TAP).

In both cases, the power to require security can be exercised only when the Authority considers it necessary to do so for the protection of the revenue. An example of when the Authority may consider it necessary to require security is when a person establishes or carries on business in Ethiopia for a short time only. In this case, the business may cease before the completion of the tax period to which the tax relates. In other words, the activity may commence and cease before the obligation to file a tax declaration for the tax period arises. Another example of when the Authority may have good reason to require security is if a taxpayer has a poor compliance history. In the case of a refund, the Authority may require the taxpayer to give security if there is a concern that a refund may be over-claimed.

Sub-article (1) provides that the amount of the security and manner in which it is given is at the discretion of the Authority. The amount of the security is likely to be determined by reference to the amount of tax likely to be payable by the person or the amount of the refund claimed.

Sub-article (2) provides that the security may be given by a cash deposit or bank guarantee. In an appropriate case, the security may be a combination of a cash deposit and bank guarantee. Further, the giving of security may be subject to such conditions as the Authority may reasonably require.

Sub-articles (3) and (4) set out the mechanics for collecting security. Sub-article (3) provides that a person is required to give security only if the Authority has served the person with a notice specifying: (i) the amount of the security required to be provided; (ii) the manner in which the security is to be provided (cash deposit, bank guarantee, or both); and (iii) the due date for providing the security.

Sub-article (4) applies when a person fails to provide security by the due date as set out in the notice requiring the payment of security. If this occurs, the amount of security is treated as "unpaid tax" payable by a "taxpayer" for the purposes of Part Seven. This means, for example, that late payment interest is payable under Article 37 in respect of any security that is not paid by the due date specified in the notice served on the taxpayer under sub-article (3). Further, the Authority can use the measures for recovering unpaid tax in Chapter Three of Part Seven to recover security that a person has failed to provide.

36. Protection

This Article provides a person paying tax on behalf of a taxpayer with a statutory indemnity for the payment.

Sub-article (1) provides that the Article applies to the following persons:

(1) A withholding agent who has withheld tax from a payment under the ITP and who has paid the tax to the Authority. By virtue of the definition in Article 2(43), "withholding agent" means a person required to withhold tax from a payment under Part Ten of the ITP.

(2) A tax representative of a taxpayer who has paid tax owing by the taxpayer pursuant to Article 16(1). "Tax representative" is defined in Article 2(40). Article 16(1) obliges the tax representative of a taxpayer to pay the tax owing by the taxpayer that they represent.

(3) A receiver of a taxpayer who has paid tax owing by the taxpayer pursuant to Article40.

(4) A person who has paid an amount to the Authority pursuant to a garnishee order served of the person under 43. In broad terms, a garnishee order can be served on a person who owes money to, or holds money on account of, a taxpayer who has an unpaid tax liability.

Sub-article (2) provides that a person to whom the Article applies is indemnified against any claim for payment of the amount paid to the Authority on behalf of a taxpayer in accordance with any tax law.

In the case of withholding tax, the indemnity applies only when the tax has been both: (i) withheld from the relevant payment made by the withholding agent; and (ii) remitted to the Authority. There is no indemnity in relation to tax withheld but not remitted to the Authority. In effect, the Article treats a withholding agent as if they had provided the gross amount including tax to the recipient so that the recipient has no right to recover the tax withheld from the withholding agent.

37. Late Payment Interest

This Article provides for the imposition of interest (referred to as "late payment interest") on the late payment of tax.

Sub-article (1) imposes late payment interest on a taxpayer who fails to pay tax by the due date for payment. Late payment interest is computed for the period commencing on the due date for payment and ending on the date that the payment is made. Article 32(5) makes it clear that late payment interest runs from the original due date for payment even when an extension of time to pay is granted. The effect of an extension of time is to protect the taxpayer from a liability for late payment penalty (i.e. a culpability penalty) but not late payment interest.

Late payment interest is payable in respect of the late payment of any amount that is treated as "tax" for the purposes of TAP (see Article 2(31)). In addition to taxes imposed under a tax law, the definition of "tax" in Article 2(31) includes: (i) withholding tax; (ii) advance payments of tax and instalments of tax payable under Articles 85 and 86 of the ITP respectively; and (iii) administrative penalties payable under Chapter Two or Part Fifteen or under another tax law.

In the case of withholding tax, a withholding agent who fails to pay withholding tax by the due date as specified in Article 97(1) of the ITP is liable for late payment interest in respect of the unpaid withholding tax. As a penalty is "tax" as defined in Article 2(31), late payment interest is payable in respect of the late payment of penalty. The due date for payment of a penalty is specified in the notice of assessment of the penalty (see Article 115(1)) and this will be the date that late payment interest runs from if the penalty is not paid by the due date.

While late payment interest is treated as "tax" under the Article 2(31) definition, sub-article (11) provides that, for the purposes of the Article, "tax" does not include late payment interest. Thus, late payment interest is not payable on the late payment of late payment interest.

By virtue of Article 31(2)(a), late payment interest is payable also in respect of the late payment of a secondary liability and tax

recovery costs. The due date for payment of a secondary liability or tax recovery costs is set out in the notice served on the person liable under Article 31(1).

Late payment interest is imposed on the "taxpayer" liable for the unpaid tax. "Taxpayer" is defined in Article 2(41) to mean a person liable for tax. As withholding tax is treated as "tax", a withholding agent (i.e. a person liable to withhold tax from a payment under Articles 88-93 of the ITP) is a taxpayer. Similarly, as penalty is treated as "tax", a person liable for penalty is a taxpayer. By virtue of Article 31(2)(c), the reference to "taxpayer" in the Article includes a person liable for a secondary liability or tax recovery costs.

Sub-article (2) provides that the rate of late payment interest is the highest commercial lending interest rate that prevailed in Ethiopia during the quarter immediately before the commencement of the period specified in sub-article (1) increased by 15%. For example, if the highest commercial lending interest rate is 10%, then the late payment interest rate is 11.5%. The highest commercial lending interest rate is uplifted in determining the late payment interest rate to limit the possibility of the Authority being used by taxpayers as a "bank".

Sub-article (3) provides for a refund of late payment interest to the extent that the primary tax liability in respect of which the interest has been paid is subsequently found not to have been payable.

Sub-article (4) makes it clear that late payment interest is in addition to any late payment penalty (Article 105) imposed in respect of the late payment of tax. Late payment interest is based on market interest rates and is compensating the Government for being without the funds represented by the unpaid tax, while a penalty for late payment is punishing the taxpayer for the wrongdoing in making the late payment of tax.

Sub-article (5) provides that late payment interest is computed as simple interest (i.e. there is no compounding). This is confirmed by sub-article (11). While, as stated above, late payment interest is included as "tax" as defined in Article 2(31), sub-article (11) provides that, for the purposes of the Article, "tax" does not include late payment interest. As late payment interest is computed by reference to a per annum interest rate, sub-article (5) provides that late payment interest accrues on a daily basis.

Sub-article (6) provides that the Authority may serve a taxpayer liable for late payment interest with a notice of demand specifying the amount of interest payable by the taxpayer and the due date for payment. Sub-article (7) provides that a notice under sub-article (6) may be included in any other notice issued by the Authority to the taxpayer liable for late payment interest. For example, a notice of demand for late payment interest payable by a taxpayer may be included with a notice of an estimated assessment served on the taxpayer under Article 26. The determination of the amount of late payment interest payable by a taxpayer is a tax decision as defined in Article 2(34)(e). This means that, under Article 59, the burden is on the taxpayer to prove that the amount of late payment interest payable is incorrect.

Sub-article (1) is expressed to be subject to sub-article (8), which applies when the Authority notifies a taxpayer in writing of the taxpayer's outstanding tax liability under a tax law and the taxpayer pays the balance notified in full (including late payment interest payable up to the date of the notification) within the time specified in the notification. In this case, it is provided that late payment interest does not accrue for the period between the date of notification and the date of payment. As late payment interest accrues on a daily basis, the amount of late payment interest payable can be determined with certainty only up to the date of the notice. Thus, further late payment interest could accrue after a notice for payment is served on a taxpayer

even if the tax is paid within the time specified under the notice. Sub-article (8) avoids this outcome and is a rule of convenience preventing small amounts of late payment interest remaining as an outstanding debt after the relevant tax is paid.

Sub-article (9) applies when the late payment interest is imposed in respect of the late payment of withholding tax or a secondary liability. "Withholding tax" is defined in Article 2(44) to mean tax that a person is required to withhold from a payment under Part Ten of the ITP. "Secondary liability" is defined in Article 2(27). In broad terms, a secondary liability is a tax liability of a taxpayer (i.e. the primary liability) that, under TAP, another person is personally liable to pay. The due date for payment of a secondary liability is set out in the notice of the liability served on the person liable under Article 31(1).

Sub-article (9) provides that late payment interest payable by a person in respect of the late payment of withholding tax or a secondary liability is a personal liability of the person. The person cannot recover it from the payee (in the case of withholding tax) or the taxpayer liable for the primary liability (in the case of a secondary liability). This is because the late payment is due to the culpability of the withholding agent or the person liable for the secondary liability, and not the payee or taxpayer with the primary liability.

Sub-article (10) provides that the total amount of late payment interest payable by a taxpayer is not to exceed the amount of the taxpayer's unpaid tax liability. This puts a ceiling on the amount of late payment interest payable by a taxpayer equal to the amount of the taxpayer's unpaid tax liability to which the interest relates.

38. Enforcement of Tax Assessments

This Article provides for the enforcement of tax assessments.

Sub-article (1) provides that a tax assessment served by the Authority on a taxpayer becomes final at the end of the objection period allowed under Article 54 if the taxpayer has not filed an objection to the assessment within that period. This is the basic rule establishing the finality of tax assessments. It applies to tax assessments served on a taxpayer by the Authority, such as an estimated assessment, jeopardy assessment, amended assessment, or penalty assessment. The objection period under Article 54(1) is 21 days from the date that the taxpayer was served with notice of the tax assessment. This period may be extended by a further 10 days by the Authority on application by the taxpayer (Article 54(7)). An application for an extension of time must be filed with the Authority before the end of the 21-day period specified in Article 54(1).

Sub-article (1) is expressed to be subject to sub-article (2), which applies if the taxpayer has filed a notice of objection to a tax assessment. The timing of the finality of the tax assessment depends on how far through the appeal process the taxpayer appeals the tax assessment. It is provided in sub-article (2) that the tax assessment is final on the later of:

(1) If the taxpayer files a notice of objection to the tax assessment but has not appealed the tax assessment to the Tax Appeal Commission, the tax assessment becomes final at the end of the appeal period in Article 88 (i.e. 30 days after the taxpayer was served with notice of the objection decision).

(2) If the taxpayer has appealed the tax assessment to the Tax Appeal Commission but has not appealed the decision of the Commission in relation to the tax assessment to the Federal High Court, the tax assessment becomes final at the end of the appeal period to the Federal High Court in Article 57 (i.e. 30 days after being served with notice of the decision of the Commission).

(3) If the taxpayer has appealed the tax assessment to the Federal High Court but has not appealed the decision of the Federal High Court in relation to the tax assessment to the Federal Supreme Court, the tax assessment becomes final at the end of the appeal period to the Federal Supreme Court in Article 58 (i.e. 30 days after being served with notice of the decision of the Federal High Court).

(4) If the taxpayer has appealed the tax assessment to the Federal Supreme Court, the tax assessment becomes final when the Court renders its final decision.

Sub-article (3) provides that sub-article (2) does not prevent the payment of tax in dispute under Articles 56(2) (appeals to the Tax Appeal Commission) and 57(3) (appeals to the Federal High Court) as a condition of appealing to the Tax Appeal Commission or Courts, respectively.

Sub-article (4) provides that a taxpayer who does not pay the tax due under a final tax assessment as determined under sub-articles (1) and (2) is in default. The Authority may take action under Chapter Three of Part Seven to recover the unpaid tax.

39. Preferential Claim to Assets

This Article provides the Authority with a preferential claim over the assets of a defaulting taxpayer.

The preferential claim is specified in sub-article (1), which provides that, from the date on which tax becomes due and payable by a taxpayer under a tax law, and subject to any prior secured claims registered with the Registering Authority, the Authority has a preferential claim upon the assets of the taxpayer until the unpaid tax is paid. "Asset" is not defined and, therefore, has its ordinary meaning, namely any resource of a business from which future economic benefits are expected to flow. The main example of an asset is property (both movable and immovable), but the term "asset" includes also intangible

rights. The preferential claim applies to all amounts treated as a "tax" for the purposes of the TAP.

Sub-article (2) provides that the following are prior secured claims for the purposes of sub-article (1):

(1) The priority of banks in relation to secured claims. This is subject to sub-article (7), which provides that the priority of banks in relation to secured claims applies only when a bank confirms that a taxpayer has a tax clearance certificate from the Authority before lending to the taxpayer.

(2) The priority of employees in relation to salary and wages.

Sub-article (2) makes clear that a prior secured claim does not override the priority of the Authority under Article 33(1)(a) in relation to withholding tax, VAT, excise tax, or turnover tax. This is because the taxpayer is treated as collecting such taxes on behalf of the Government.

Sub-article (3) applies when a taxpayer is in default in paying tax. In this case, the Authority may, by notice in writing, inform the taxpayer of the Authority's intention to apply to the Registering Authority to register a security interest over any asset owned by the taxpayer to cover the unpaid tax together with any tax recovery costs.

Sub-article (4) provides that, if a taxpayer served with a notice under sub-article (3) fails to pay the tax specified in the notice within 30 days of service of the notice, the Authority may, by notice in writing, direct the Registering Authority that the asset or assets specified in the notice, to the extent of the taxpayer's interest therein, is the subject of security for the amount of the unpaid tax specified in the notice.

Sub-article (5) provides that, when served with a notice under sub-article (4), the Registering Authority must register the notice of security as if the notice were an instrument of mortgage over, or charge on, as the case may be, of the asset specified in the

notice. Registration must be made without any charge of a registration fee. While it subsists, registration under sub-article (5) operates as a legal mortgage over, or charge on, the asset to secure the unpaid tax. This is subject to any prior secured claim.

Sub-article (6) obliges the Authority to serve notice on the Registering Authority cancelling the direction made under sub-article (4) when the Authority has received the whole of the amount of tax secured under sub-article (5). Upon receipt of a notice under sub-article (6), the Registering Authority must, without fee, cancel the registration of the notice of security.

40. Duties of Receivers

This Article sets out the obligations and responsibilities of an individual who is a receiver in respect of a taxpayer.

The Article applies to a person treated as a "receiver". Sub-article (6) defines "receiver" by reference to an asset in Ethiopia of a taxpayer or deceased taxpayer. The following persons are a receiver for the purposes of the Article: (i) a liquidator of a company; (ii) a receiver (whether appointed by a court or out of court); (iii) a trustee for a bankrupt person; (iv) a mortgagee-in-possession; or (v) an executor of a deceased estate. The terms "liquidator", "receiver" "bankrupt person", "mortgagee-in-possession" and "executor" are not defined in TAP and, therefore, have their normal legal meaning. In broad terms, a receiver is a person who has control of the affairs or assets of a deceased taxpayer or a taxpayer in financial difficulties or who is deceased.

The purpose of this Article is to give a receiver advance notice of the amount of the tax due or that will become due by the person whose assets are in the possession or under the control of the receiver. The receiver is then obliged to set aside out of the proceeds of sale of those assets an amount that is sufficient to pay the tax liability. This Article applies in relation to all amounts treated as "tax" for the purposes of TAP. The definition of "tax" in

Article 2(31) includes withholding tax, penalty, and late payment interest, and, therefore, a receiver is liable for any penalty or late payment interest liability of the taxpayer.

Sub-article (1) obliges a receiver to notify the Authority, in writing, that they have been appointed to manage, administer, liquidate, or wind up the affairs, or has taken possession of the Ethiopian assets, of a taxpayer, including a deceased taxpayer. The reference to taking possession of assets is particularly relevant to a mortgagee-in-possession. The notice must be given to the Authority within 14 days of the date of the appointment or taking possession of the taxpayer's Ethiopian assets. A receiver who fails to provide a notice as required under sub-article (1) commits an offence under 124(1).

Having received a notice under sub-article (1), the Authority is obliged under sub-article (2) to determine: (i) the amount of unpaid tax (including penalty and late payment interest) payable by the taxpayer; and (ii) the amount of tax that will become payable by the taxpayer, and serve the receiver with written notice of the amount payable within thirty days after receiving the notice under sub-article (1). The Authority's determination of the amount of tax payable, or that will become payable, by a taxpayer is a "tax decision" as defined in Article 2(34)(c). The taxpayer or receiver can challenge the determination only by filing a notice of objection to the determination under Article 54 (see Article 53(1)).

Sub-article (3)(a) prohibits a receiver from disposing of any asset of the taxpayer prior to receiving a notification under sub-article (2). This is subject to two exceptions. First, the prohibition does not apply if the 30-day period in sub-article (2) has expired and the Authority has not served the receiver with notice under that sub-article. This is intended to prevent any undue delay in the administration of the assets that are in the possession or under the control of the receiver. Secondly, the prohibition does not

apply if the Authority gives permission for the disposal. Failure to comply with sub-article (3)(a) is an offence under Article 124(1).

Sub-article (3)(b) obliges the receiver to set aside out of the proceeds of sale of any asset the amount specified in the notice served under sub-article (2) or such lesser amount as subsequently agreed with the Authority. The amount set aside is intended to meet the tax liability of the taxpayer and the receiver must use the amount set aside for this purpose as and when the liability becomes due. This is subject to three qualifications. First, sub-article (4)(a) provides that the receiver can pay any debt that has a legal priority over the tax notified to the receiver under sub-article (2). Secondly, sub-article (4)(b) provides that the receiver may pay the normal expenses incurred in the person's capacity as a receiver (including the receiver's remuneration) in priority to the tax liability. Thirdly, if the proceeds of sale are less than the amount of tax to be set aside, the amount to be set aside out of the sale is limited to the proceeds of sale.

Sub-article (3)(c) provides that the receiver is personally liable for the amount required to be set aside under a sub-article (2) notice. The effect of sub-article (3)(c) is to create a secondary liability in the receiver for the tax payable by the taxpayer. Thus, the taxpayer has the primary liability to pay the tax owing by the taxpayer and, as a result, of sub-article (3)(c), the receiver has a secondary liability in relation to the tax owing by the taxpayer. This is justified on the basis that the receiver has control of the taxpayer's assets that could be sold to pay the tax due.

The personal liability of the receiver for the tax payable by a taxpayer under sub-article (3)(c) is included as a "secondary liability" under the definition in Article 2(27). Article 31(1) provides that the Authority may serve a receiver with notice of the amount of the secondary liability payable by the receiver and the due date for payment. While the secondary liability is not a tax liability (it is just a statutory debt owing by the receiver to the Authority), Article 31(2)(a) provides that the amount is

treated as "tax" for the purposes of Part Seven of TAP. This means, in particular, that the Authority can use the measures specified in Chapter Three of Part Seven to recover the amount owing by the receiver under sub-article (3)(c).

In addition to being personally liable under sub-article (3)(c) for the tax notified under sub-article (2), a receiver who fails to set aside the tax as required under sub-article (3)(b) out of the proceeds of sale commits an offence under Article 124(1).

Article 31(3) provides that the amount of tax paid by a receiver is credited against the tax liability of the relevant taxpayer.

Sub-article (5) provides that, if two or more persons are receivers in respect of a taxpayer, the obligations and liabilities under the Article are imposed on the receivers jointly but may be discharged by any of them.

41. Seizure of Property

This Article provides the Authority with the power to seize property of a taxpayer who has failed to pay tax by the due date.

Sub-article (1) applies when a taxpayer has failed to pay tax by the due date. If the Authority has granted a taxpayer an extension of time for the payment of tax under Article 32, the reference in sub-article (1) to "due date" is a reference to the extended due date. The reference to "tax" in sub-article (1) includes any amount treated as "tax" for the purposes of the TAP (see Article 2(31)), including withholding tax. By virtue of Article 31(2), the reference to "tax" in sub-article (1) includes a secondary liability (defined in Article 2(17)) and tax recovery costs (Article 2(39).

Sub-article (1) provides that the Authority may serve a notice on a taxpayer who has failed to pay tax by the due date stating the intention of the Authority to issue an order (referred to as a "seizure order") for the seizure of the property of the taxpayer if the unpaid tax is not paid with 30 days of service of the notice.

The 30-day notice period is intended to give the taxpayer sufficient time to arrange for the payment of their unpaid tax liability. However, sub-article (2) provides that the requirement to give a taxpayer 30days notice of the intention to issue a seizure order does not apply if the Authority makes a finding that the collection of the tax owing by a taxpayer is in jeopardy. In this case, sub-article (2) provides that the Authority may immediately issue a seizure order.

Sub-article (3) provides that a seizure order may be served on a taxpayer or on any person having possession of the taxpayer's property.

Given the nature of the seizure power, the reference to "property" is intended as a reference to movable property, such as trading stock. Sub-article (4) provides that a seizure order may be executed against any property of the taxpayer other than the following:

(1) Property that, at the time of execution of the order, is subject to a prior secured claim of creditors. Consequently, for example, a seizure order cannot be issued against property that is subject to a pre-existing mortgage.

(2) Property that, at the time of execution of the order, is subject to attachment or execution under any judicial process.

(3) Property that, at the time of execution of the order, cannot be subject to attachment under the law of Ethiopia.

Sub-article (5) applies when a seizure order has been issued, or is about to be issued, in relation to a taxpayer. In this case, the Authority may demand, by notice in writing that any person having custody or control of documents containing evidence or statements relating to the property of the taxpayer shows the documents to the Authority.

Sub-article (6) provides that the Authority may request a police officer to be present during the execution of a seizure order.

Further, it is provided the Authority store the property seized in such manner as to ensure the security of the property.

Sub-article (7) obliges the Authority to serve a notice on the taxpayer when it has seized property under this Article. The notice must: (i) specify the seized property and the unpaid tax liability of the taxpayer; and (ii) state that the Authority will dispose of the property if the taxpayer does not pay the unpaid tax within the detention period specified in the notice.

Sub-article (8) provides for the detention period for the purposes of sub-article (7)(b). For perishable goods, the detention period is such period that the Authority considers reasonable having regard to the condition of the goods. The reference to "perishable goods" is a reference to goods that are subject to decay or spoilage if not used or consumed within a short time, such as foodstuffs. For any other goods, the detention period is 10 days after the seizure of the goods. This is intended to give the taxpayer reasonable time to pay their unpaid tax liability before the goods are sold by the Authority in accordance with sub-article (9). It is intended that the 10-day period is the minimum detention period that must be allowed by the Authority.

If the taxpayer fails to pay the unpaid tax specified in the notice served under sub-article (7) by the end of the detention period specified in the notice, sub-article (9) empowers the Authority to sell the seized property by public auction. The proceeds of sale must be applied as follows:

(1) First towards the cost of taking, keeping, and selling the property as determined by the Authority (i.e. the tax recovery costs) (sub-article (9)(a)).

(2) Then in payment of the unpaid tax liability of the taxpayer as specified in the sub-article (7) notice (sub-article (9)(b)).

(3) Then in payment of any other unpaid tax liability of the taxpayer (sub-article (9)(c)). This can be a tax liability of the taxpayer under any tax law.

(4) The remainder of the proceeds, if any, must be paid to the taxpayer within 45 days of the sale of the property (sub-article (9)(d)). This is subject to sub-article (10), which provides that, with the written agreement of the taxpayer, the remainder of the proceeds may be carried forward for the payment of any future tax liability of the taxpayer under any tax law. This allows a taxpayer to avoid the cash flow hardship that can arise, for example, when the taxpayer is due an amount under sub-article (9)(d) but in the meantime a new tax liability arises for the taxpayer (such as a liability for an instalment of income tax under 86 of the ITP).

Sub-article (11) applies when the proceeds of sale of the property under sub-article (9) are less than the total of the taxpayer's unpaid tax liability and the tax recovery costs under sub-article (9)(a). In this case, sub-article (11) provides that the Authority may proceed under Part Seven to recover the shortfall, particularly the measures for the recovery of unpaid tax in Chapter Three of Part Seven. For this purpose, Article 31(2) treats tax recovery costs as "tax" for the purposes of Part 7. For example, the Authority could serve a garnishee order under Article 43 on a third party owing money to the taxpayer requiring the third party to pay the amount owing to the Authority.

Sub-article (12) applies when a person fails or refuses to surrender any property of a taxpayer that is the subject of a seizure order. In this case, sub-article (12) provides that the person is personally liable to the Government for an amount equal to the value of the property not surrendered. However, the amount of the liability under sub-article (12) is limited to the amount of the taxpayer's unpaid tax liability together with the tax recovery costs under sub-article (9)(a). This liability is treated as a secondary liability for the purposes of TAP (see Articles 2(27)) and 31)

Because of the serious nature of the seizure power under this Article, sub-article (13) provides that the power to issue a seizure order may be exercised only by the Director General or a tax

officer specifically authorised by the Director-General to issue seizure orders. This means that the general delegation power in Article 8(3) of the Ethiopian Revenue and Customs Establishment Proclamation does not apply for the purposes of this Article.

Sub-article (14) provides that any property seized under this Article is held and accounted for only by the Authority and the property must not be transferred to or given over to any other Government agency for any purpose whatsoever.

42. Preservation of Funds and Assets Deposited with Financial Institutions

This Article provides the Authority with power to prevent a financial institution dealing with funds or assets deposited with the financial institution by a defaulting taxpayer.

Sub-article (1) provides that the Article applies when the Authority has reasonable grounds to believe that the collection of tax owing by a taxpayer is in jeopardy and there is a need to take urgent steps to ensure collection of the tax. Importantly, for the Article to apply, it is not enough for a taxpayer to have an unpaid tax liability, there must also be reasonable grounds for the Authority to believe that the collection of the tax is in jeopardy. This requirement would be satisfied, for example, if there is evidence that the taxpayer is taking steps to dissipate their assets.

If the conditions in sub-article (1) are satisfied, sub-article (2) empowers the Authority to serve an administrative order (referred to as a "preservation order") on a financial institution requiring the financial institution to do the following:

(1) Block the accounts of the taxpayer.

(2) Freeze access to any cash, valuables, precious metals, or other assets of the taxpayer in a safe deposit box held by the financial institution.

(3) Provide information relating to the accounts or contents of the taxpayer's safe deposit box held by the financial institution.

Sub-article (3) provides that a preservation order served on a financial institution under sub-article (2) must specify the name, address, and TIN of the taxpayer to which the order applies.

If a preservation order has been served on a financial institution, the Authority may make an immediate jeopardy assessment of the tax payable by the taxpayer for the current and any prior tax year. A jeopardy assessment is made under Article 27. A jeopardy assessment for a tax year can be served on a taxpayer in advance of the normal due date for filing the tax declaration for the tax year to which the assessment relates (Article 27(3)(a)).

Sub-article (5) obliges the Authority to obtain a court authorisation for a preservation order served by the Authority under sub-article (2) within 10 days of service of the notice of the order on the financial institution. If there is no court authorisation of the order within 10 days of service of notice of the order, sub-article (6) provides that the order lapses at the end of the 10-day period. Consequently, the Authority is empowered to issue a preservation order under sub-article (2) on its own motion because of the urgency of the case and the Authority then has ten days to obtain a court authorisation for continuation of the order.

Sub-article (7) obliges a financial institution to comply with a preservation order from the date notice of the order is served on the financial institution until the date that the order expires according to its terms or lapses under sub-article (6). Sub-article (8) provides that a financial institution that, without reasonable cause, fails to comply with a preservation order is personally liable for the amount specified in the order. This is treated as a secondary liability for the purposes of TAP (see Articles 2(27)). Article 31(1) provides that the Authority can serve a

financial institution with a notice setting out the amount of the institution's liability under sub-article (7) and the due date for payment. The effect of the deeming rules in Article 31(2) is that the Authority can use the powers in Chapter Three of Part Seven to recover any amount payable by a financial institution under sub-article (8).

43. Recovery of Unpaid Tax from Third Parties

This Article empowers the Authority to collect unpaid tax owing by a taxpayer from a third party owing money to, or holding money for, the taxpayer without proceeding to execute a judgment debt. This is achieved by serving an order (referred to as a "garnishee order") on the third party requiring the third party to pay to the Authority any amount owing by the third party to the taxpayer.

Sub-article (1) applies when a taxpayer is liable for "unpaid tax". This is defined in Article 2(42) to mean tax that has not been paid by the taxpayer by the due date or extended due date under Article 32. A garnishee order can be served on a third party in relation to any amount treated as tax under Article 2(31) that has not been paid by the due date. By virtue of Article 31(2), the reference to "unpaid tax" includes unpaid secondary liabilities or unpaid tax recovery costs.

If a taxpayer is liable for unpaid tax, sub-article (1) provides that the Authority may serve an administrative order (referred to as a "garnishee order") on any person who is treated as a "payer" for the purposes of the Article in respect of the taxpayer requiring the payer to pay the amount specified in the garnishee order to the Authority. The amount specified in the garnishee order is not to exceed the amount of the unpaid tax. If a garnishee order has been validly served under sub-article (1), the Authority obtains a statutory right to payment that cannot be defeated by any subsequent dealing with, or action taken in respect of, the moneys referred to in the order.

A garnishee order may be served on any person who is a "payer" as defined in sub-article (12). "Payer" can be any "person" as defined in Article 2(26). The broad definition of "person" in Article 2(26) means, for example, that a garnishee order may be served on a Government department, agency, Court, or any other Government body or authority that is a payer in respect of a taxpayer. There are four categories of payers in relation to a taxpayer. First, a garnishee order may be served on a person who owes, or may owe, money to a taxpayer. This allows the Authority to recover tax owing by a taxpayer from the debtors of the taxpayer, including persons who may become debtors of the taxpayer in the future. For example, the Authority could use this Article to require a financial institution to pay to the Authority an amount standing to the credit of the taxpayer in an account with the financial institution. The notice, however, must not specify a date for payment to the Authority that is before the date the amount becomes due to the taxpayer (sub-article (4)). In the above example, if the account is a term deposit, a garnishee order cannot require the financial institution to pay the amount over to the Authority before the term deposit matures.

Second, a garnishee order may be served on a person who holds, or may hold, money on behalf of a taxpayer. This would include, for example, a lawyer or accountant who holds money on trust for the taxpayer as client. Again, the notice must not specify a date for payment to the Authority before the date that the money is held by the person for the taxpayer (sub-article (4)).

Third, a garnishee order may be served on a person who holds, or may hold, money on account of some other person for payment to the taxpayer. This would include, for example, a bank that has issued a letter of credit to a person when the taxpayer is the payee under the letter.

Fourth, a garnishee order may be served on a person having the authority of some other person to pay money to the taxpayer. This is intended to prevent the Article from being avoided by a

person owing money to, or on behalf of, the taxpayer directing another person to pay the amount to the taxpayer and then reimbursing that other person.

Sub-article (11) provides that a garnishee order cannot apply to any amount that, under the law of Ethiopia, cannot be subject to attachment. For example, a garnishee order cannot apply to a pension as pensions can be subject to attachment only under a Court order.

If a garnishee order requires a payer to deduct an amount from a payment of salary, wages, or other similar remuneration paid on a periodic basis, sub-article (2) provides that the amount of each deduction is not to exceed $^1/_3$ of the payment (after withholding of income tax from the payment under Article 88 of the ITP). This establishes a ceiling on the amount that can be deducted from salary, wages, and other similar remuneration to ensure that a taxpayer has a basic amount to meet living expenses. The $^1/_3$ ceiling aligns with a similar provision in the Code of Civil Procedure.

Sub-article (3) provides that a garnishee order can apply to an account in respect of which the taxpayer is a joint owner only when either: (i) all the holders of the account have unpaid tax liabilities; or (ii) the taxpayer can withdraw funds from the account without the signature or authorisation of the other account holders. If the joint account is a partnership account, sub-article (3) applies only when all the partners have unpaid tax liabilities (i.e. only sub-article (3)(a) can apply).

Sub-article (4) obliges a payer to pay the amount specified in a garnishee order to the Authority by the due date set out in the order. However, as stated above, that date must not be a date before the date that the amount of money to which the notice relates is due for payment to the taxpayer or held on the taxpayer's behalf.

Sub-articles (5) and (6) provide a procedure for a person to challenge a garnishee order if they are not a payer as defined, or do not, or will not, owe or hold the amount specified in the order. The Authority is obliged to make a decision in relation to the payer's challenge to the order. The Authority can accept the payer's challenge in whole or part and amend the garnishee order accordingly, or the Authority can refuse the challenge. If the Authority refuses the payer's challenge in whole or part, Article 52 requires the Authority to provide the payer with reasons for the refusal.

The Authority's decision on a sub-article (6) notice is an "appealable decision" as defined in Article 2(2). A person dissatisfied with the decision can challenge the decision only by filing a notice of appeal with the Tax Appeal Commission under Article56 (see Article 53(1)).

Sub-article (7) obliges the Authority to revoke or amend a garnishee order if the taxpayer has either paid the tax in whole or part, or made a satisfactory arrangement for payment of the tax, such as an agreement to pay by instalments.

Sub-article (8) obliges the Authority to serve the taxpayer with a copy of a garnishee order served on a payer of the taxpayer or a notice served on a payer of the taxpayer under sub-article (6) or (7).

Sub-article (9) requires the Authority to apply any amount paid by a payer under this Article as a credit against the tax owing by the taxpayer.

Sub-article (10) provides that a payer who, without reasonable cause, fails to comply with a garnishee order is personally liable for the amount specified in the order. The amount is treated as a "secondary liability" for the purposes of TAP (see Article 2(27)). Article 31(1) provides that the Authority can serve a payer with a notice setting out the amount that a payer is personally liable for under sub-article (10) and the due date for payment.

Article 31(2)(a) treats the amount that a payer is personally liable for under sub-article (10) as "tax" for the purposes of Part Seven. This means that the Authority can rely on the powers in Chapter Three of Part Seven to recover any amount that a payer is personally liable for under sub-article (10). In addition, the effect of Article 31(2)(a) is that a payer who fails to pay the amount payable under a garnishee order by the due date specified in the order may be liable for late payment interest under Article 37 and late payment penalty under Article 105. Further, a payer who fails to comply with a garnishee order commits an offence under Article 124(3).

Article 33(2) provides that a payer holds an amount specified in a garnishee order on behalf of the Government of Ethiopia. This means that the amount does not form part of the funds of the payer. Consequently, if the payer were to go bankrupt before paying the amount to the Authority, the amount specified in the garnishee order does not form part of the funds available to the payer's creditors. Instead, the amount must be paid to the Government of Ethiopia.

Article 36 provides that a payer complying with a garnishee order is treated as having acted under the authority of the taxpayer and is thereby protected from any liability to the taxpayer in respect of the payment (for example, for breach of contract).

44. Departure Prohibition Order

This Article empowers the Authority to issue a departure prohibition order (referred to as a "DPO") against an individual to prevent the person leaving Ethiopia without satisfying their tax liabilities or the tax liabilities of a body that they manage or control.

Sub-article (1) provides that the Article applies when the Authority has reasonable grounds to believe that an individual may leave Ethiopia without:

(1) Tax that is or will become payable by the individual being paid (i.e. the individual is the taxpayer).

(2) Tax that is or will become payable by a body in which the individual is a manager or a company in which the individual is a controlling member being paid (i.e. the body or company is the taxpayer).

"Body" is defined in Article 2(5) to include a company, partnership, and any other body of persons. For bodies, a DPO can be served on an individual who is a manager of the body. "Manager" is defined in Article 2(19). For a partnership, the partners and general manager of the partnership are treated as a manager of the partnership. For a company, the CEO, directors, the general manager, and any other similar officer are treated as a manager of the company. For any other body of persons, the general manager and any other similar officer holder is treated as a manager of the body.

In addition to a manager, a DPO can be served on a controlling member of a company (see Article 2(7) definition). "Controlling member" is defined in Article 2(8) to mean a member of the company (such as a shareholder) who has a direct or indirect beneficial interest in 50% or more of the voting, dividend, or capital rights attached to membership interests in the company. In computing the 50% threshold, the membership interests of related persons are aggregated. "Member" and "membership interest" are defined in Article 2(20) and (21), and "related person" is defined in Article 4.

A DPO can be issued in respect of all amounts treated as "tax" (see Article 2(31) definition), including withholding tax, late payment interest, and penalty. By virtue of Article 31(2), the Article applies

also in respect of secondary liabilities and tax recovery costs that are payable or will become payable by the individual, by a body that the individual manages, or a company that the individual controls.

If the conditions in sub-article (1) are satisfied, sub-article (2) provides that the Authority may issue a DPO prohibiting the individual from leaving Ethiopia until either: (i) the tax (including penalty and late payment interest) owing by the individual, or the body that the individual manages or the company they control, is paid in full; or (ii) an arrangement is made satisfactory to the Authority for payment of the tax.

Sub-article (3) provides that a DPO must contain the following details:

(1) The name, address, and TIN of the individual to whom the DPO applies.

(2) The amount of tax (including penalty and late payment interest) that is payable by the individual, or body that they manage or company they control, or that will become payable by the individual, body, or company.

Sub-article (4) provides that a DPO issued by the Authority under sub-article (2) expires after ten days from the date of issue unless a court of competent jurisdiction, on application by the Authority, extends the DPO for the period determined by the court. Thus, sub-article (2) permits the Authority to issue a DPO immediately to prevent a defaulting taxpayer from leaving Ethiopia. Once a DPO has been issued, the Authority must obtain court approval for the DPO to apply beyond the initial period of ten days. If the authorisation is not issued within the 10-day period, the DPO lapses and the individual is free to leave Ethiopia provided other immigration formalities are complied with.

Sub-article (5) obliges the Authority to serve a copy of a DPO on the individual named in the DPO. However, non-receipt of a

copy of a DPO does not invalidate the DPO or any proceedings under the Article.

Sub-article (6) obliges the Head, National Intelligence and Security Services to exercise the powers that the Head lawfully possesses to prevent an individual named in a DPO from departing Ethiopia. This could include, for example, the confiscation and retention of the individual's passport.

If a DPO has been issued in respect of an individual, sub-article (7) obliges the Authority to issue the individual with a departure certificate in the following circumstances:

(1) The relevant taxpayer makes payment in full of the tax liability specified in the DPO.

(2) The relevant taxpayer has entered into an arrangement that is satisfactory to the Authority for payment of the tax liability specified in the DPO. An arrangement may involve the giving of security under Article 35.

Production of a departure certificate to an immigration officer is sufficient authority for the officer to allow the taxpayer to leave Ethiopia provided all other immigration requirements are satisfied.

Sub-article (8) provides an indemnity against civil or criminal action to the Government (including the Authority), and a tax, customs, immigration, police, or other officer for anything lawfully done under the Article.

A person who departs, or attempts to depart, Ethiopia in contravention of a DPO commits an offence (Article 124(6)).

45. Temporary Closure of Business

This Article provides a procedure for the temporary closure of a taxpayer's business premises when the taxpayer regularly fails to keep documents or pay tax.

Sub-article (1) provides that the Article applies when a taxpayer regularly fails to: (i) maintain documents as required under a tax law; or (ii) pay tax by the due date. The Article applies in relation to all amounts treated as "tax" for the purposes of the TAP (see Article 2(31) definition). However, the Article is particularly relevant to the failure to regularly pay withholding tax, VAT, and excise tax as these are taxes collected by a taxpayer and held "on trust" for the Authority.

The Article applies only when a taxpayer "regularly" fails to maintain documents or pay tax. The power to temporarily close down a taxpayer's business premises is a serious power intended to be used only as a last resort to improve taxpayer compliance. Consequently, the Article does not apply to a one-off failure to maintain documents or pay tax, or even if the failure occurs a few times (unless it indicates the start of a pattern of failure). The failure to maintain documents or pay tax must be something that occurs frequently.

Sub-article (7) provides that the power to temporarily close down a taxpayer's business premises can be exercised only by the Director-General, in person, or by a tax officer specifically authorised to exercise the power under the Article. Because of the serious nature of the power given to the Director-General under the Article, a tax officer can exercise powers under this Article only if specifically authorised to do so. This means that the general delegation power in Article 8(3) of the Ethiopian Revenue and Customs Authority Establishment Proclamation does not apply for the purposes of the Article.

There are several steps involved in the exercise of the power to temporarily close a taxpayer's business premises. First, the Authority must serve the taxpayer with written notice of the intention to close down the whole or a part of the taxpayer's business (sub-article (2)). The notice must allow the taxpayer seven days to pay the tax due or put into place measures to ensure that documents will be properly maintained.

Second, if the taxpayer fails to comply with a notice under sub-article (2), sub-article (3) provides that the Authority may issue a closure order to the taxpayer for closure of the whole or part of the taxpayer's business premises for a period not exceeding fourteen days. Sub-article (4) empowers the Authority to enter the business premises for the purposes of executing the order. Entry of the premises can take place at any time (day or night). The Authority may require a police officer to be present while a closure order is being executed.

Third, sub-article (5) obliges the Authority to affix a notice to the premises in a conspicuous place, stating that the business premises are:

> "CLOSED TEMPORARILY FOR NOT COMPLYING WITH TAX OBLIGATIONS BY ORDER OF THE AUTHORITY UNDER ARTICLE 45 OF THE FEDERAL TAX ADMINISTRATION PROCLAMATION".

Finally, if the taxpayer puts into place measures to ensure that documents will be properly maintained or pays the tax owing within the period of closure, sub-article (6) obliges the Authority to immediately remove the closure notice from the premises and arrange for re-opening of the premises.

A person commits an offence if the person enters premises that are the subject of a closure order without permission of the Authority (Article 124(9)).

46. Transferred Tax Liabilities

This Article is intended to counter arrangements for the avoidance of tax liabilities through transferring business assets to a related person thereby rendering the transferor unable to pay their tax liability.

Sub-article (1) applies when the following conditions are satisfied:

(1) A taxpayer (referred to as the "transferor") has an unpaid tax liability in relation to a business conducted by the taxpayer. The Article applies to every person treated as a "taxpayer" for the purposes of TAP (see Article 2(41)), including a person liable for withholding tax. It applies only when a taxpayer has an unpaid tax liability in relation to a business conducted by the taxpayer. It does not apply to tax liabilities arising from other activities that may be undertaken by a taxpayer.

"Unpaid tax" is defined in Article 2(42) to mean tax that is not paid by the due date or extended due date, including unpaid penalty and late payment interest. The reference in sub-article (1) to "unpaid tax" also includes an unpaid secondary liability or unpaid tax recovery costs (Article 31(2)).

(2) The taxpayer has transferred all or some of the assets of the business to a related person (referred to as the "transferee"). "Related person" is defined in Article 4. In particular, an individual and a relative of the individual may be related persons for the purposes of TAP. The Article could apply, for example, if a parent has carried on a business and then transferred the business to one of his or her children thereby leaving the parent with no assets against which the parent's tax liability in relation to the business can be recovered.

If these conditions are satisfied, sub-article (1) provides that the transferee is personally liable for the tax liability of the transferor. In other words, the tax liability goes with the business and is referred to as a "transferred liability".

A transferred tax liability is treated as a "secondary liability" under the Article 2(27). Consequently, Article 31(1) provides that the Authority can serve a transferee with a notice setting out

the amount that a transferee is personally liable for under sub-article (1) and the due date for payment. The determination of the transferred liability of a person is a "tax decision" as defined in Article 2(34)(d) and, therefore, the burden is on the transferee to prove that the amount of the transferred liability stated on the notice is incorrect (Article 59). Further, a transferee who fails to pay the transferred liability by the due date in the notice under Article 31(1) may be liable for late payment interest under Article 37 and late payment penalty under Article 105.

Article 31(2) provides that an unpaid amount that a transferee is liable for under sub-article (1) is treated as "unpaid tax" of a "taxpayer" for the purposes of Part Seven. Thus, the Authority can rely on the powers in Chapter Three of Part Seven to recover the amount of the transferred liability from the transferee.

Article 31(3) provides that any amount paid by a transferee is credited against the tax liability of the transferor.

Sub-article (2) makes it clear that the operation of sub-article (1) does not preclude the Authority from recovering the whole or part of the transferred liability from the transferor.

47. Tax Payable by a Body

This Article provides a collection mechanism for unpaid tax of a body.

Sub-article (1) applies when a body fails to pay tax by the due date. "Body" is defined in Article 2(5) to mean a company, partnership, public enterprise, public financial agency, or other body of persons formed in Ethiopia or elsewhere. "Company" is defined in Article 2(7) to mean a commercial business organisation established in accordance with the Commercial Code and having legal personality. It is provided that "company" also includes any equivalent entity incorporated or formed under a foreign law. "Partnership" is defined in Article 2(23) to mean a partnership formed under the Commercial Code and

includes an equivalent entity formed under a foreign law.

When sub-article (1) applies, every person who was a manager of the body at the time of the failure to pay tax or who was a manager of the body within six months prior to the failure to pay tax is jointly and severally liable with the body for the unpaid tax. "Manager" is defined in broad terms in Article 2(19). For a partnership, the partners and general manager of the partnership are treated as a manager of the partnership. For a company, the CEO, directors, the general manager, and any other similar officer are treated as a manager of the company. For any other body of persons, the general manager and any other similar officer holder is treated as a manager of the body.

Joint and several liability means that each manager has a joint liability for the full amount of the tax payable by the body. However, the Authority can recover the tax owing by the body from any one of the managers of the body liable under sub-article (1).

Sub-article (2) provides that sub-article (1) does not apply to a manager if both the following conditions are satisfied:

(1) The failure by the body to pay tax occurred without the manager's consent or knowledge.

(2) Having regard to the nature of the manager's functions and all the circumstances, the manager has exercised reasonable diligence to prevent the body from failing to pay tax. "Reasonable diligence" is the level of diligence that would ordinarily be expected of a person in the manager's position.

The effect of sub-article (1) is to create a personal liability in the manager for the tax owing by the body. The amount is treated as a "secondary liability" for the purposes of TAP (see Article 2(27)). Article 31(1) provides that the Authority can serve a manager with a notice setting out the amount that the manager

is personally liable for under sub-article (1) and the due date for payment. The determination of the manager's liability is a tax decision as defined in Article 2(34)(d) and, therefore, the burden is on the manager to prove that the amount of the transferred liability stated on the notice is incorrect (Article 59). Further, a manager who fails to pay the liability under the Article by the due date in the notice under Article 31(1) may be liable for late payment interest under article 37 and late payment penalty under Article 105.

Article 31(2) provides that an unpaid amount that a manager is liable for under sub-article (1) is treated as "unpaid tax" of a "taxpayer" for the purposes of Part Seven. Thus, the Authority can rely on the powers in Chapter Three of Part Seven to recover the amount of the tax owing by the body from the manager.

Article 31(3) provides that any amount paid by a manager is credited against the tax liability of the manager.

48. Liability for Tax in the Case of Fraud or Evasion

This Article provides for the creation of a secondary liability in an auditor or accountant of a taxpayer when the taxpayer has committed fraud or evasion.

Sub-article (1) applies to the following persons:

(1) A certified auditor, certified public accountant, or public auditor who has aided, abetted, counselled, or procured a taxpayer to commit fraud resulting in a tax shortfall or to evade tax.

(2) A certified auditor, certified public accountant, or public auditor was in any way knowingly concerned in, or was a party to, fraud resulting in a tax shortfall or tax evasion committed by a taxpayer.

The terms "aid" and "abet" have their normal legal meaning, namely to assist a taxpayer in committing fraud through words

(such as advice) or conduct. "Counsel" means to deliberately encourage or actively induce a taxpayer to commit fraud resulting in a tax shortfall or the evasion of tax. "Procure" means to instigate, encourage, or persuade a person to commit fraud resulting in a tax shortfall or the evasion of tax.

Sub-article (1) applies only when there is fraud resulting in a tax shortfall or tax evasion occurs. "Fraud" also has its normal legal meaning, namely deliberate deception to secure unfair or unlawful gain. "Tax evasion" means deliberately under-declaring a tax liability. Sub-article (3) defines "tax shortfall" to have the same meaning as under Article 109, namely the difference between a taxpayer's declared tax liability (taking account of the fraud) and their actual tax liability.

If sub-article (1) applies to a certified auditor, certified public accountant, or public auditor, the auditor or accountant is jointly and severally liable with the taxpayer for the amount of the tax shortfall or evaded tax resulting from the fraud or evasion. Joint and several liability means that the auditor or public accountant, and the taxpayer, have a joint liability for the full amount of the tax payable by the taxpayer. However, the Authority can recover the tax owing by the taxpayer from the auditor or public accountant, or the taxpayer.

The liability of an auditor or accountant under sub-article (1) is a secondary liability as defined in Article 2(27). Article 31(1) provides that the Authority can serve an auditor or accountant with a notice setting out the amount that the auditor or accountant is personally liable for under sub-article (1) and the due date for payment. The determination of the liability of an auditor or accountant is a "tax decision" as defined in Article 2(34)(d) and, therefore, the burden is on the auditor or accountant to prove that the amount of the liability stated on the notice is incorrect (Article 59). Further, an auditor or accountant who fails to pay the liability under the Article by the due date in the notice under Article 31(1) may be liable for late payment interest under article 37 and late payment penalty under Article 105.

Sub-article (2) obliges the Authority to report the conduct of an auditor or accountant liable under sub-article (1) to:

(1) The Institute of Certified Public Accountants, the Accounting and Auditing Board of Ethiopia, or any other body having authority for the licensing of the person and request the Board to withdraw the person's licence to practice.

(2) The licensing authority responsible for issuing business licences.

49. Credit for Tax Payments

This Article provides for the treatment of excess tax credits.

Sub-article (1) applies when the total amount of tax credits allowed to a taxpayer for withholding tax or advance tax payments of the taxpayer for a tax year exceed the income tax liability of the taxpayer for the year. "Withholding tax" is defined in Article 2(44) to mean tax withheld from withholding income under Part Ten of the ITP. A tax credit is allowed for withholding tax under Article 98(1) of the ITP. A tax credit is allowed only when the withholding tax is not a final tax on the withholding income of the taxpayer.

The reference to "advance tax payments" is a reference to advance tax payments under Article 85 of the ITP in relation to imports and under Article 86 of the ITP in relation to instalments of income tax. A tax credit for an advance payment of business income tax made in respect of the import of goods is allowed under Article 85(2) of the ITP. A tax credit for an instalment of tax is allowed under Article 86(5) of the ITP.

Sub-article (1) requires the Authority to apply the excess in the following order:

(1) The excess is first applied in payment of any tax (other than withholding tax) owing by the taxpayer under the ITP (sub-article (1)(a)). Sub-article (1)(a) does not apply to withholding tax as this must be withheld from the payment

of the withholding income. The exclusion of withholding tax means that the excess can be applied only against a primary tax liability of the taxpayer.

(2) The balance (if any) is then applied in payment of tax owing by the taxpayer under any other tax law, such as under the Value Added Tax Proclamation (sub-article (1)(b)).

(3) The remainder (if any) is then refunded to the taxpayer within ninety days of the date that the taxpayer filed the tax declaration for the year to which the tax credits relate (sub-article (1)(c)). A refund of the remainder is made only on written application of the taxpayer. Sub-article (1)(c) is subject to sub-article (2), which provides that the amount of the refund can be carried forward for credit against any future tax liability of the taxpayer. A refund is carried forward under sub-article (2) only with the written agreement of the taxpayer. The carry forward of excess tax credits avoids the cash flow hardship that can arise for a taxpayer when, for example, a taxpayer is due a refund of an excess tax credit and, in the meantime, a new tax liability arises, such as for an instalment of income tax.

Sub-article (3) provides that, if the Authority fails to pay a refund to a taxpayer under sub-article (1)(c) within ninety days of the date that the taxpayer filed the tax declaration to which the tax credits relate, the taxpayer is entitled to interest for the period commencing from the end of the ninety period until the refund is paid. Sub-article (4) provides that the interest rate is the highest commercial lending interest rate prevailing in Ethiopia during the quarter immediately before the end of the ninety-day period. In contrast to Article 37(2), there is no uplift of the interest rate for the purposes of sub-article (3).

The Authority's determination of the excess credit of a taxpayer is a "tax decision" under Article 34(1)(g). This means that a taxpayer dissatisfied with the determination can challenge it only by filing a notice of objection to the determination under Article 54 (see Article 53(1)).

50. Refund of Overpaid Tax

This Article provides for refunds of overpaid tax.

Sub-article (1) provides that a taxpayer may apply for a refund of overpaid tax. The application must be in the approved form (i.e., the form approved by the Authority for refund applications (Article 79)) and filed within three years from the date on which the tax was paid.

Sub-article (1) applies to any amount treated as "tax" for the purposes of TAP, including penalty and interest (Article 2(31)). By virtue of Article 31(2)(a), it includes also a secondary liability and tax recovery costs. However, sub-article (1) does not apply to an overpayment of income tax that is the result of an excess credit as Article 49 applies in this case.

Sub-article (2) makes it clear that a taxpayer can apply under sub-article (1) for a refund of overpaid tax only when the refund does not require the making of an amended assessment. An example of when sub-article (1) applies is when a taxpayer has inadvertently overpaid an amount of tax due to a clerical error. If an amended assessment needs to be made to support the refund, then the taxpayer must rely on Article 29 (in the case of a self-assessment), or the objection procedure in Article 54 in relation to other assessments (the amended assessment being made as a result of a successful objection to the original assessment). Sub-article (2) ensures that the formal processes for amending assessments are not avoided through the refund procedure.

Sub-article (3) obliges the Authority to serve an applicant under sub-article (1) with notice of the Authority's decision on the application. If the Authority refuses the refund application, Article 52 obliges the Authority to provide the applicant with reasons for the refusal. The Authority's decision on a refund application is treated as a "tax decision" for the purposes of

TAP (see the Article 2(34)(g)) and, therefore, the applicant can challenge the decision only by filing a notice of objection to the decision under Article 54 (see Article 53(1)).

If a refund application has been made under sub-article (1) and the Authority is satisfied that a taxpayer has overpaid tax under a tax law, sub-article (4) requires the Authority to apply the overpayment as follows:

(1) The overpayment must be applied first against any other tax owing by the taxpayer under the same tax law (sub-article (4)(a)). For example, if there has been an overpayment of VAT payable in respect of a tax period and there is an unpaid amount of VAT for another tax period, the overpayment must be first applied against that other VAT liability. Sub-article (4)(a) does not apply to withholding tax as this must be withheld from the payment of the withholding income.

(2) The balance (if any) must then be applied against any tax owing under any other tax law (sub-article (4)(b)). For example, if there has been an overpayment of VAT and there is an unpaid amount of income tax, the overpayment must be next applied against that income tax liability.

(3) The remainder (if any) must then be refunded to the taxpayer within 45 days of the Authority determining that the taxpayer is entitled to a refund (sub-article (4)(c)). This is subject to sub-article (5), which provides that the amount of the refund can be carried forward for credit against any future tax liability of the taxpayer. A refund is carried forward under sub-article (5) only with the written agreement of the taxpayer. The carry forward of a refund amount avoids the cash flow hardship that can arise for a taxpayer when, for example, a taxpayer is due a refund and, in the meantime, a new tax liability arises, such as for an instalment of income tax.

Sub-articles (6)-(8) apply when tax has been refunded by the Authority in error. Sub-article (6) provides that, if the Authority has refunded tax to a taxpayer in error, the taxpayer must, on demand by the Authority, repay the amount erroneously refunded. The Authority's decision to require a repayment of a refund is treated as a "tax decision" for the purposes of TAP (see the Article 2(34)(g)) and, therefore, the applicant can challenge the decision only by filing a notice of objection to the decision under Article 54 (see Article 53(1)).

Sub-article (7) applies when the refund has been erroneously paid due to an error by the taxpayer in claiming the refund. In this case, the taxpayer is liable for late payment interest for the period commencing on the date that the refund was erroneously paid to the taxpayer and ending on the date that the refund is repaid to the Authority. The rate of late payment interest specified in Article 37(2) applies, namely the highest commercial lending interest rate prevailing in Ethiopia during the quarter immediately before the date on which the refund was erroneously repaid uplifted by 15%.

Sub-article (8) provides that the amount of an erroneous refund repayable under the Article is treated as tax payable by a taxpayer for the purposes of Part Seven. This means that the amount payable is a debt due to the Government of Ethiopia and payable to the Authority (Article 30), and the Authority can rely on the powers in Chapter Three of Part Seven to recover an unpaid amount of an erroneous refund.

A person who has made an erroneous claim for a refund is likely to have made a false or misleading statement to a tax officer and, therefore, may be liable for a tax understatement penalty under Article 109 or prosecuted for an offence under Article 118.

51. Relief in Cases of Serious Hardship

This Article provides for relief from the payment of tax in cases of serious hardship.

Sub-article (1) provides that the Article applies in two classes of case:

(1) The Minister of Finance and Economic Co-operation is satisfied that the payment of the full amount of tax owing by a taxpayer will cause serious hardship to a taxpayer due to natural cause, or supervening calamity or disaster, or in the case of personal hardship not attributable to the negligence or any failure on the part of the taxpayer.

The Authority must be satisfied that payment of the tax due will give rise to "serious hardship" to the taxpayer. This will depend on the facts and circumstances of the particular taxpayer but, generally, the circumstances of the hardship would be something outside the taxpayer's own making. For example, a taxpayer may be suffering serious illness and may not be able to afford medical treatment if he or she is not released from the payment of tax. Another example is a taxpayer whose home and business have been destroyed by an accidental fire or natural disaster. The Authority may consider these circumstances to amount to serious hardship. It would be unlikely, for example, that the power would be exercised in relation to circumstances resulting from poor business decision-making.

(2) Owing to the death of a taxpayer, the payment of the full amount of tax owing by the deceased taxpayer will cause serious hardship to the dependents of the deceased taxpayer. Again, what is "serious hardship" will depend on the facts and circumstances of the case

Sub-article (2) provides that, if the Article applies, the Minister of Finance and Economic Co-operation may release the taxpayer or the executor of the estate of a deceased taxpayer wholly or in part from payment of the tax due and any late payment interest in relation to tax due. The reference to "tax" includes every amount treated as "tax" for the purposes of TAP (including

penalty). By virtue of Article 31(2), it includes also a secondary liability and tax recovery costs.

Sub-article (2) is expressed to be subject to sub-article (3), which provides that any relief provided under sub-article (2) must be within the limits (if any) specified in the Regulations issued by the Council of Ministers.

Sub-article (4) provides that, if a decision of the Minister of Finance and Economic Co-operation under sub-article (2) to release a taxpayer or executor of the estate of a deceased taxpayer from tax is based on fraudulent or misleading information, the tax liability released is reinstated and TAP applies as if the taxpayer was never released from liability to pay the tax. This means, for example, that late payment interest runs from the original due date for the payment of the tax.

Sub-article (5) obliges the Minister of Finance and Economic Co-operation to maintain a public record of each tax liability released together with the reasons for the release. The Minister must report the record of tax liabilities released to the Auditor General on a semi-annual basis. This ensures transparency in the process for the releasing tax liabilities on the grounds of hardship.

52. Statement of Reasons

This Article applies in relation to a decision by the Authority to refuse an application made by a person under a tax law, such as an application for an extension of time to pay tax under Article 32.

The Article obliges the Authority to provide the applicant with a statement of reasons for the refusal of the application. This is intended to achieve greater efficiency in tax administration as it provides the applicant with the information necessary to make an informed decision as to whether they should appeal the decision to the Tax Appeal Commission under Article 56.

53. Finality of Tax and Appealable Decisions

This Article provides that tax and appealable decisions are final except for proceedings under Part Nine (objection and appeals).

Sub-article (1)(a) provides that, with the exception of objection and appeal proceedings under Part Nine, tax and appealable decisions are final and conclusive. "Tax decision" is defined in Article 2(34) and is, in broad terms, a decision of the Authority relating to the determination of an amount payable by a person, and includes a decision relating to an application for a refund of tax. The main category of tax decisions is a tax assessment made by the Authority under TAP (namely, an estimated, jeopardy, amended, or penalty assessment), or an assessment made by the Authority under any other tax law. A self-assessment is not a tax decision because the taxpayer makes a self-assessment and not the Authority.

"Appealable decision" is defined in Article 2(2) to mean: (i) an objection decision made under Article 52; or (ii) any other decision of the Authority made under a tax law, other than a tax decision, a decision made in the course of making a tax decision.

Sub-article (1)(b) provides that, with the exception of objection and appeal proceedings under Part Nine, the production of the original notice of a tax assessment or determination, or a certified copy of such notice, is conclusive evidence of the making of the tax assessment or determination, and that the amount and particulars of the assessment or determination are correct. Sub-article (4) provides that, for this purpose, "determination" means a decision or determination referred to in Article 2(34)(b)-(d), and (f)-(h). This means, for example, that sub-article (1)(b) applies to a notice of a secondary liability served on a person under Article 31.

Sub-article (2) applies when the Authority has served a notice of a tax assessment or determination electronically (see Article 82). In this case, a certificate certified by the Authority identifying the tax assessment or determination, and specifying the details of the electronic transmission of the tax assessment or determination, is treated as a copy of the notice of the tax assessment or determination for the purposes of sub-article (1)(b).

Sub-article (1)(c) applies to self-assessments. It provides that, with the exception of objection and appeal proceedings under Part Nine, the production of the original self-assessment declaration, or a certified copy of the declaration, is conclusive evidence of the contents of the declaration. In other words, it is conclusive evidence of the correctness of the amount and particulars of the self-assessment. Sub-article (3) applies when a taxpayer has filed a self-assessment declaration electronically. In this case, a certificate certified by the Authority identifying the self-assessment and specifying the details of the electronic transmission of the self-assessment declaration is treated as a copy of the declaration for the purposes of sub-article (1)(c).

The purpose of the Article is to ensure that tax and appealable decisions can be challenged only under the objection and appeal procedure in Part Nine. This means, for example, that a taxpayer cannot challenge the correctness of a tax assessment in debt recovery proceedings initiated by the Authority. Similarly, a taxpayer cannot rely on the usual remedies for judicial review of administrative action in challenging a tax or appealable decision. In other words, the objection and appeal procedure is the exclusive source of a taxpayer's right to challenge a tax or appealable decision and under that procedure strict time limits apply. This ensures that there is timely resolution of disputes relating to tax and appealable decisions.

54. Notice of Objection to a Tax Decision

This Article and Article 55 provide for the first step in the procedure for disputing tax decisions, namely the filing of a notice of objection to the decision. Article 55 provides for the making of a decision on the objection.

The filing of a notice of objection is a prerequisite for external review of a tax decision. Failure to file a notice of objection within the time specified may preclude the taxpayer from subsequently challenging the decision in the Tax Appeal Commission or the Courts.

Sub-article (1) provides that a taxpayer who wishes to dispute a tax decision must first file a notice objection to the decision with the Authority. The definition of "tax decision" in Article 2(34) sets out an exhaustive list of decisions of the Authority that are treated as a tax decision for the purposes of TAP. In broad terms, a tax decision is a decision of the Authority relating to the determination of an amount payable by a person, and includes a decision relating to an application for a refund of tax. The main category of tax decision is a tax assessment made by the Authority under TAP (namely, an estimated, jeopardy, amended, or penalty assessment), or an assessment made by the Authority under any other tax law. A self-assessment is not a tax decision as the taxpayer makes the self-assessment and, therefore, it is not a decision of the Authority. Other decisions made by the Authority that are tax decisions for the purposes of TAP are:

(1) A decision made by the Authority on an application by a self-assessment taxpayer under Article 29(1) for the Authority to make an amendment to a self-assessment.

(2) A determination made by the Authority under Article 40(2) of the amount of unpaid tax or tax that will become payable by a taxpayer, being a liability that a receiver must pay on behalf of the taxpayer.

(3) A determination by the Authority of the amount of a secondary liability (Article 2(27)) payable by a person.

(4) A determination by the Authority of the amount of tax recovery costs payable by a taxpayer. The following are tax recovery costs under Article 2(39): (i) the costs of the Authority incurred in recovering unpaid tax referred to in Article 30(3); and (ii) the costs of the Authority incurred in undertaking seizure proceedings under Article 41(9)(a).

(5) A determination made by the Authority of the amount of late payment interest payable by a person under Article 37.

(6) A decision by the Authority under Article 49 or 50 to refuse an application by a taxpayer for a refund of an excess tax credit or overpaid tax.

(7) A determination made by the Authority of: (i) the amount of an excess credit under Article 49; (ii) the amount of overpaid tax under Article 50; or (iii) the amount of a refund required to be repaid under Article 50(6).

(8) A determination made by the Authority of the amount of unpaid withholding tax payable by a supplier or purchaser under Article 92(3) of the ITP.

A notice of an objection must be in writing and filed with the Authority within 21 days of service of the notice of the tax decision.

Sub-article (2) provides for objections to amended assessments. In such case, the taxpayer is limited to objecting to the alterations, reductions, and additions made in the amended assessment to the original assessment. This ensures that the making of an amended assessment does not refresh the taxpayer's objection period to the original assessment. The effect of sub-article (2) is as follows:

(1) The taxpayer has 21 days from the date of service of the notice of the amended assessment to file a notice of an

objection to the alterations, reductions, and additions made to the original assessment by the amended assessment.

(2) The taxpayer has 21 days from the date of service of the notice of the original assessment to object to the parts of the original assessment not affected by the amended assessment.

Sub-article (3) sets out the following conditions for a notice of objection to be validly filed:

(1) The notice of objection must state the grounds of objection. The statement of the grounds of the objection must be precisely stated so as to make the Authority aware of the particular aspects of the tax decision that the taxpayer considers incorrect and the reasons for the taxpayer's view. A statement of vague grounds, such as, in the case of a tax assessment, that the amount of the assessment is "excessive", is not sufficient to amount to a valid objection.

(2) The notice of objection must state the amendments that the taxpayer considers are needed to correct the tax decision.

(3) The notice of objection must state the reasons for making those amendments.

(4) For an objection to a tax assessment, the taxpayer has paid the amount of tax due under the assessment that is not the subject of dispute in the objection.

If the conditions in sub-article (3) are not satisfied, the notice of objection is not regarded as validly filed. This is important because the time limit for filing a notice of objection under sub-article (1) is strict. If a notice of objection is not validly filed within the time specified in sub-article (1), the right to challenge the tax decision will be lost unless the Authority grants an extension of time to file the notice of objection under sub-article (7). For this reason, sub-articles (4) and (5) set out a procedure for the Authority to notify a taxpayer when an objection has not been validly filed.

Sub-article (4) obliges the Authority to immediately notify the taxpayer if the Authority considers that a notice of objection has not been validly filed. This is intended to allow the taxpayer to validly re-file the notice of objection within time. A notice under sub-article (4) must specify the reason why the Authority considers that the taxpayer's notice of objection has not been validly filed and warn the taxpayer that the objection will lapse if a valid objection is not filed by the later of: (i) 21 days from the date of service of the notice of the tax decision to which the objection relates: or (ii) 10 days from the date of service of the notice under sub-article (4). This gives the taxpayer extra time to file notice of a valid objection if the 21-day objection period has already lapsed. Sub-article (5) obliges the Authority to serve written notice on a taxpayer when an objection lapses under sub-article (4).

Sub-article (6) provides that a taxpayer may apply, in writing, to the Authority for an extension of time to file a notice of objection. Sub-article (7) empowers the Authority to grant an extension of time when the following conditions are satisfied:

(1) The taxpayer was prevented from filing the notice of objection within the period specified in sub-article (1) or (4) due to absence from Ethiopia, sickness, or other reasonable cause. The Authority may consider that a taxpayer has a reasonable cause for being unable to file a notice of objection on time if the taxpayer suffers from some misadventure (such as loss of records due to an accident (e.g. a fire at the taxpayer's business premises) or natural cause (e.g. an earthquake or flood)).

(2) There has been no unreasonable delay on the part of the taxpayer in filing the notice of objection. A taxpayer who fails to file a notice of objection within time due to absence from Ethiopia may not satisfy this condition if the taxpayer had sufficient notice of the travel and failed to take steps to ensure that the notice of objection was filed within time.

If the Authority refuses an application for an extension of time to file a notice of objection, Article 52 obliges the Authority to provide the applicant with a statement of reasons for the refusal.

The Authority's decision on an extension of time application is an "appealable decision" as defined in Article 2(2). An applicant dissatisfied with the decision can appeal the decision to the Tax Appeal Commission under Article 56.

55. Making Objection Decisions

This Article provides for the making of objection decisions by the Authority.

Sub-article (1) obliges the Authority to establish a review department as a permanent office within the Authority to undertake an independent review of notices of objections validly filed under Article 54 and make recommendations to the Authority as to the decision to be taken on an objection. The review department is an internal part of the Authority with responsibility to review notices of objections filed by taxpayer.

Sub-article (2) empowers the Authority to issue a Directive specifying the procedures for reviewing an objection (including providing the objecting taxpayer with a hearing) and the basis for making recommendations to the Authority on notices of objections filed with the Authority.

Sub-article (3) provides that, if, in considering an objection to a tax assessment, the review department is of the view that the amount of tax assessed should be increased, the review department must recommend to the Authority that the tax assessment be referred to the tax officer who made the original tax assessment for reconsideration.

Sub-article (4) provides that, after having regard to the recommendations of the review department, the Authority must make a decision on the objection. The decision may be to allow

the objection in whole or part, or disallow it, and the Authority's decision is referred to as an "objection decision".

Sub-article (5) obliges the Authority to serve notice, in writing, of an objection decision on the taxpayer and take all steps necessary to give effect to the decision, including, in the case of an objection to a tax assessment, the making of an amended assessment.

Sub-article (6) provides that a notice of an objection decision must include a statement of findings on the material facts and the reasons for the decision. This is intended to provide the taxpayer with sufficient information to determine whether to appeal the decision to the Tax Appeal Commission under Article 56.

An objection decision is an "appealable decision" as defined in Article 2(2). A taxpayer dissatisfied with an objection decision can appeal the decision to the Tax Appeal Commission under Article 56. Service of the notice of the objection decision starts the time running for filing an appeal with the Commission (Article 88(1)).

Sub-article (7) applies when the Authority has not made an objection decision within 180 days from the date that the taxpayer filed the notice of the objection with the Authority. In this case, sub-article (7) provides that the taxpayer may appeal to the Tax Appeal Commission within 30 days after the end of the 180-day period. This means that the Tax Appeal Commission can consider the taxpayer's objection. The 30-day appeal period aligns with the normal appeal period to the Commission under Article 88(1).

The effect of Article 53 is that the filing of a notice of objection to a tax decision with the Authority under Article 54 is the compulsory first step in a taxpayer challenging a tax decision made by the Authority. Thus, a taxpayer cannot have their

objection heard by the Tax Appeal Commission (external review) until the Authority makes an objection decision in relation to the taxpayer's objection. The purpose of sub-article (7) is to ensure that there is no undue delay in a taxpayer being able to seek external review of a tax decision through delay by the Authority in making an objection decision. The 180-day period is considered sufficiently long enough for the Authority to decide objections, including in more complex cases. If an objection decision has not been made within that time, then the taxpayer can take their objection to the Tax Appeal Commission.

56. Appeals to Tax Appeal Commission

This Article provides for appeals to the Tax Appeals Commission. The Tax Appeals Commission is an independent administrative body established under Article 86 with jurisdiction to hear appeals from appealable decisions.

Sub-article (1) provides that a taxpayer dissatisfied with an appealable decision may appeal the decision to the Tax Appeal Commission. "Appealable decision" is defined in Article 2(2). The following are appealable decisions:

(1) An objection decision made under Article 55.

(2) Any other decision of the Authority made under a tax law, other than: (i) a tax decision (defined in Article 2(34)); or (ii) a decision made in the course of making a tax decision. A "tax decision" is a not an appealable decision as a taxpayer dissatisfied with a tax decision must first file a notice of objection to the decision under Article 54.

A notice of appeal must be filed with the Tax Appeals Commission in accordance with Article 88. This means that:

(1) The notice of appeal must be filed with the Tax Appeals Commission within thirty days of service of notice of the appealable decision (Article 88(1)). Article 88(3) empowers the Commission to grant an extension of time for filing a

notice of appeal. Sub-article (4) provides that the Authority may issue a Directive setting out a procedure for dealing with extension of time applications.

(2) The notice of appeal must be filed in the approved form. This is the form approved by the President of the Commission for notices of appeal (Article 88(5)).

(3) The notice of appeal must include a statement of reasons for the appeal.

In addition, sub-article (2) provides that, if a notice of appeal to the Tax Appeal Commission relates to an objection to a tax assessment, the notice of appeal is considered validly filed only when the taxpayer has paid to the Authority 50%of the tax in dispute under the tax assessment. Sub-article (3) makes clear that the reference to "tax in dispute" means only the primary tax liability in dispute and does not include any penalty and late payment interest payable in respect of the primary tax in dispute.

Article 91 sets out the decisions that the Tax Appeal Commission may make on an appeal against an appealable decision. If the appealable decision relates to a tax assessment, the Tax Appeal Commission can affirm, reduce, or otherwise vary the assessment, or remit the tax assessment to the Authority for reconsideration by the Authority in accordance with the directions of the Tax Appeal Commission (Article 91(5)). If the Commission is of the view that a tax assessment should be increased, Article 91(6) provides that the Commission must remit the tax assessment back to the Authority for reconsideration in accordance with the Commission's directions. This means that the Commission does not have power to increase a tax assessment on its own motion. Only the Authority can increase a tax assessment. In the case of any other appealable decision, the Tax Appeal Commission may affirm, vary or set aside the decision (Article 91(7).

57. Appeal to Federal High Court

This Article provides for an appeal from the decision of the Tax Appeal Commission to the Federal High Court.

Sub-article (1) provides that a party to a proceeding before the Tax Appeal Commission who is dissatisfied with the decision of the Commission may appeal the decision to the Federal High Court. The party appealing must file the notice of appeal with the Federal High Court within thirty days of being served with notice of the Commission's decision under Article 91(8). Sub-article (2) empowers the Federal High Court to grant an extension of time to file a notice of appeal.

Sub-article (3) provides that a notice of appeal to the Federal High Court by a taxpayer in relation to an objection to a tax assessment is treated as validly filed only if the taxpayer has paid to the Authority 75% of the tax in dispute under the tax assessment. Sub-article (6) makes clear that the reference to "tax in dispute" means only the primary tax liability in dispute and does not include any penalty and late payment interest payable in respect of the primary tax in dispute.

Sub-article (4) provides that an appeal to the Federal High Court may be made on a question of law only, and the notice of appeal must clearly state the question of law to be raised by the appeal. While the distinction between questions of law and questions of fact may not always be easy to make in a particular case, some broad principles may be stated. First, the question of what actually happened is a question of fact. For example, the question of whether a taxpayer has actually incurred a particular expenditure for business income tax purposes is a question of fact. Only the Authority (as the original decision-maker) and the Tax Appeal Commission (as reviewer of the merits of the Authority's decision) can decide this question. The decision of the Commission on this issue cannot be appealed to the Federal High Court, as it does not raise a question of law. Second, the

interpretation of a particular Article in a tax law is a question of law, and therefore, the decision of the Authority on such a question may be appealed to the Federal High Court and can be further appealed to the Federal Supreme Court. Third, a question of whether particular facts ascertained fall within a particular Article of a tax law is regarded as a question of law. For example, the question of whether a particular expenditure incurred is a deductible expenditure under the business income tax is a question of law, and therefore, the decision of the Commission on this question may be appealed to the Federal High Court and can be further appealed to the Federal Supreme Court.

Consequently, the Federal High Court and Federal Supreme Court can review only the legality of the decision of the Tax Appeal Commission. This means, for example, that an appeal to the Federal High Court will be successful only if the Commission is found to have made an error of law that resulted in a decision different to the decision that would have been made if there had been no error of law. Generally, the Federal High Court will make its decision based on the findings of fact, and the inferences drawn from those facts, by the Commission.

Sub-article (5) provides that the Federal High Court must hear the appeal and may make any of the following decisions:

(1) A decision to affirm the decision of the Tax Appeal Commission.

(2) A decision to set aside the decision of the Tax Appeal Commission and make a decision in substitution of the decision of the Commission.

(3) A decision to set aside the decision of the Tax Appeal Commission and remit the decision to the Tax Appeal Commission or Authority for reconsideration in accordance with the directions of the Court.

(4) A decision to dismiss the appeal.

(5) Any other decision that the Court thinks appropriate.

It is intended that the Federal High Court hearing and decision will be in accordance with the normal procedural rules applicable to the Court.

58. Appeal to Federal Supreme Court

This Article provides for appeals from the decision of the Federal High Court to the Federal Supreme Court.

Sub-article (1) provides that a party to a proceeding before the Federal High Court who is dissatisfied with the decision of the Federal High Court may appeal the decision to the Federal Supreme Court. The party appealing must file the notice of appeal with the Federal Supreme Court within thirty days of being served with notice of the decision of the Federal High Court. Sub-article (2) empowers the Federal Supreme Court to grant an extension of time to file a notice of appeal.

It is intended that the Federal Supreme Court hearing and decision will be in accordance with the normal procedural rules applicable to the Court.

59. Burden of proof

This Article provides that, in any proceedings under Part Nine, the burden is on the taxpayer to prove that a tax decision is incorrect. Importantly, there is no obligation on the Authority to prove that a tax decision is correct. The reason for reversing the burden of proof is that information relating to a tax decision, particularly a tax assessment, is in the knowledge of the taxpayer to whom the decision relates. As objection and appeal proceedings are civil proceedings, the taxpayer must prove their case on the balance of probabilities. In other words, the taxpayer must establish that it is more likely than not that the position is as they allege.

The following are proceedings under Part Nine:

(1) An objection to a tax decision filed with the Authority.

(2) An appeal from an objection decision to the Tax Appeal Commission.

(3) An appeal from a decision of the Tax Appeal Commission to the Federal High Court.

(4) An appeal from a decision of the Federal High Court to the Federal Supreme Court.

60. Implementation of Decision of Commission or Court

This Article provides for the implementation of decisions of the Tax Appeal Commission, Federal High Court, and Federal Supreme Court.

Under the sub-article (1), the Authority must, within 30 days after being served with notice of the decision of the Tax Appeal Commission, Federal High Court, or Federal Supreme Court, take such action as is necessary to give effect to the decision. It is expressly provided that this may include the service of a notice of an amended assessment on the taxpayer.

Sub-article (2) provides that the normal five-year time limit for the amendment of tax assessments in Article 28 does not apply for the purposes of giving effect to a decision of the Tax Appeal Commission, Federal High Court, and Federal Supreme Court.

61. Tax Clearance

This Article provides for the issuing of tax clearance certificates by the Authority.

Sub-article (1) provides that a taxpayer may apply to the Authority for a tax clearance certificate. An application for a tax clearance certificate must be in the approved form, i.e. the form approved by the Authority for such applications (see Article 79).

Sub-article (2) obliges the Authority to issue a tax clearance certificate to a taxpayer if satisfied that the taxpayer has fulfilled its obligations to pay tax under the tax laws as determined under a Directive issued by the Authority. The reference to "tax" includes all taxes within the definition in Article 2(31), such as income tax and VAT. The Directive will provide for cases when a taxpayer has been given an extension of time to pay under Article 32 or the tax is the subject of a dispute under the objection or appeal proceedings under Part Nine.

A tax clearance certificate must be issued to the taxpayer within 14 days of the taxpayer filing an application under sub-article (1).

Sub-article (3) applies when an applicant for a tax clearance certificate was not registered for tax for the preceding year or years. In this case, the tax clearance certificate shall state that the taxpayer is registered with the Authority. Again, the tax clearance certificate must be issued to the taxpayer within 14 days of the taxpayer filing an application under sub-article (1).

Sub-article (4) prohibits a Ministry, Municipality, Department, or Office of the Federal or Regional Government from issuing or renewing a licence to a taxpayer unless the taxpayer produces a tax clearance certificate. Further, sub-article (4) prohibits a taxpayer from participating in public tenders unless the taxpayer produces a tax clearance certificate.

Sub-article (5) provides that, if the Authority refuses to issue a taxpayer with a tax clearance certificate, the Authority must provide the taxpayer with notice of the decision within 14 days of the taxpayer filing an application under sub-article (1). Article 52 requires the notice to include a statement of reasons for the refusal. The Authority's decision on an application for the issue of a tax clearance certificate is an "appealable decision" as defined in Article 2(2). A taxpayer dissatisfied with the decision can challenge the decision only by appealing the decision to the Tax Appeal Commission under Article 56 (see Article 53(1)).

62. Filing of Memorandum and Articles of Association

This Article provides for the filing of a memorandum of association or other document of formation of a body with the Authority.

Sub-article (1) obliges a body to file with the Authority a copy of the memorandum of association, articles of association, statute, partnership agreement, or other document of formation or registration within thirty days of the date of registration of the body. A body that fails to comply with sub-article (1) is liable for an administrative penalty under Article 114(2).

Sub-article (2) obliges a body to notify the Authority, in writing, of any change made to a document referred to in sub-article (1) within thirty days of the change being made. A body that fails to comply with sub-article (1) is liable for an administrative penalty under Article 114(2).

This Article applies to every entity treated as a body under the definition in Article 2(5). The list of documents in sub-article (1) is intended to be broad enough to cover the different types of entities treated as bodies for the purposes of TAP.

63. Public Auditors

This Article sets out the responsibilities of certified and public auditors in relation to tax.

Sub-article (1) obliges an auditor to file with the Authority the audit report of their clients within three months from the date the auditor provided the report to their client. "Auditor" is defined in sub-article (3). Taking account of that definition, the obligation under sub-article (1) applies to a certified auditor and a public auditor as defined in the Financial Reporting Proclamation (Article 2(4&11)). A public auditor who fails to comply with sub-article (1) is liable for an administrative penalty under Article 114(3).

If a public auditor fails to comply with sub-article (1), sub-article (2) provides that the Authority must notify the Accounting and Auditing Board of Ethiopia or the Institute of Certified Public Accountants of the failure and may request the Board or Institute to withdraw the auditor's licence. It is mandatory for the Authority to notify the Board or Institute of each breach of sub-article (1). However, it is permissive only for the Authority to request the Board or Institute to withdraw an auditor's licence for a breach of sub-article (1). It is intended that such a request would be made only in cases of serious breach of sub-article (1), such as a public auditor who has repeatedly failed to provide the Authority with audit reports of their clients.

64. Notification of Services Contract with Non-resident

This Article provides a reporting mechanism in relation to services contracts entered into with non-residents. It is particularly relevant to the non-resident tax imposed under Articles 51 and 53 of the ITP and the related withholding obligation in 89 of the ITP.

Sub-article (1) obliges a person who enters into an Ethiopian source services contract with a non-resident to notify the Authority within 30 days of the earlier of: (i) the signing of the contract; or (ii) the commencement of performance of services under the contract. The latter case will be particularly relevant if the services are provided under an oral or implied contract. A notification under sub-article (1) must be in the form approved by the Authority for such notices (see Article 79).

Sub-article (2) provides that a services contract is an "Ethiopian source services contract" if the primary purpose of the contract is the performance of services, whether or not goods are also provided, that give rise to Ethiopian source income. An employment contract is expressly excluded from being an Ethiopian source services contract. Thus, the Article applies to contracts entered into with non-resident contractors.

Articles 6(3) and 6(4)(e) and (g) of the ITP apply in determining whether a services contract gives rise to Ethiopian-source income.

65. Notice to Obtain Information and Evidence

This Article provides the Authority with an administrative summons power.

The power is stated broadly. The only limits on the exercise of the power are that it must be exercised for the purposes of administering a tax law (defined in Article 2(36)) and the general law requirement that an administrative power must be exercised in good faith.

The scope of the power is set out in sub-article (1). There are three ways in which the Authority may use the power. First, the Authority may serve a notice, in writing, on any person requiring the person to furnish the Authority with any information required by the notice (sub-article (1)(a)). The notice may be served on any person whether or not a taxpayer. Further, the information sought may relate to the tax affairs of the person on whom the notice is served or the tax affairs of any other person. For example, a notice may be served on an accountant relating to the tax affairs of a client of the accountant. The person served with the notice must furnish the information sought within the time specified in the notice.

Second, the Authority may serve a notice, in writing, on any person requiring the person to attend and give evidence regarding the tax affairs of that person or any other person as specified in the notice (sub-article (1)(b)). The person must attend at the time and place set out in the notice. Again, the notice may be served on any person whether or not a taxpayer.

Third, the Authority may serve a notice in writing on any person requiring the person to produce any documents in the person's custody or under the person's control as specified in the notice

(sub-article (1)(c)). Again, the notice may be served on any person whether or not a taxpayer. The obligation to provide a document applies only when the document is described in the notice with reasonable certainty (sub-article (2)). "Document" is defined in Article 2(9) and includes a document in electronic format. Documents are regarded as being in the custody of a person if the person has physical possession of them (for example, an accountant may have actual possession of a client's accounts). Documents are under the control of a person when the person, while lacking physical possession, has the right or power to require another person to produce the document. The document must be produced within the time specified in the notice.

It is expressly provided in sub-article (3) that the Article overrides any rule of law relating to privilege (for example, legal professional privilege or the privilege against self-incrimination) or to the public interest in relation to the giving of information or the production of documents (including in electronic format). It also overrides any contractual duty of confidentiality, such as a bank's duty of confidentiality in relation to customer records. As stated above, the only limits on the exercise of the power are that it is exercised for the purposes of administering a tax law and the general law requirement that an administrative power is exercised in good faith.

A person who fails to comply with a notice under this Article commits an offence under Article 126(3)(a) and (b).

66. Power to Enter and Search

This Article provides the Authority with a statutory right of access for the purposes of administering a tax law.

The statutory right of access provided for in the Article is broadly stated. The only limits on the exercise of the power are that the power is exercised for the purposes of administering a tax law

(defined in Article 2(36)) and the general law requirement that an administrative power must be exercised in good faith.

Sub-article (2) provides that the only persons permitted to exercise the right of access powers in the Article are the Director-General personally or a tax officer (referred to as an "authorised officer") specifically authorised by the Director-General for the purposes of the Article. This means that the general delegation power in Article 8(3) of the Ethiopian Revenue and Customs Establishment Proclamation does not apply for the purposes of this Article. The requirement that a tax officer must be specifically authorised to exercise the powers under the Article is necessary because of the serious nature of the powers. It is intended that a tax officer will be authorised generally to exercise the right of access powers in this Article, rather than being authorised for each specific exercise of the right of access.

Sub-article (3) provides that a tax officer must not enter or remain on any premises or place if, upon request by the owner or lawful occupier, the officer is unable to produce the Director General's written authorisation permitting the officer to exercise powers under the Article. The request can be made by the owner of the premises or place, or any other person lawfully occupying the premises or place, such as a tenant or employee of the owner. Thus, the failure by a tax officer to produce the authorisation when requested to do so removes the tax officer's statutory right of access. However, the tax officer may still be entitled to remain on the premises pursuant to some other right, for example, at the invitation of the owner or lawful occupier.

The scope of the statutory right of access is set out in sub-article (1) as follows:

(1) The Authority must have full and free access to any premises, place, goods, property, documents, or data storage device for the purposes of administering any tax law (sub-article (1)(a)). "Documents" is defined broadly in Article 2(9) and

includes documents in electronic format. The reference to a data storage device is intended to be interpreted broadly to include all means of electronic storage of information, such as computers, mobile phones (including smart phones, such as iPhones and Blackberrys), digital cameras, mp3 players (such as iPods) and tablets (such as iPads).

The access provided for in sub-article (1)(a) must be available at all times. Ordinarily, it would be expected that the access power would be exercised during normal business hours, but there may be occasions when the power has to be exercised outside of that time, particularly if there is a concern that documents or property may be destroyed, or if the taxpayer's business operates outside normal business hours (such as a nightclub).

The premises, place, goods, property, document, or data storage device to which access is sought does not have to belong to the taxpayer under investigation. They can belong to any person and access is available provided it is for the purposes of a tax law. For example, sub-article (1)(a) may be used to gain access to documents kept by the taxpayer's accountant or in a safety deposit box of a taxpayer held by a bank.

The Director-General or authorised officer is not required to give advance warning of the exercise of the right of access, although they may choose to do so in particular cases.

It is intended that sub-article (1)(a) authorises a "roving enquiry", i.e. when the Authority or duly authorised officer merely suspects that the access may provide relevant information. In particular, it is not necessary for the Director-General or duly authorised officer to specify in advance the documents sought.

(2) The Director-General or authorised officer may make an extract or copy of any documents to which access is sought

under sub-article (1)(a) (sub-article (1)(b)). This includes making an extract or copy of documents in electronic format on a data storage device. For example, the Director-General or authorised officer may make an electronic copy of documents by downloading the documents onto a USB stick or a portable hard drive.

(3) The Director-General or authorised officer may seize any document that, in the opinion of the Director-General or authorised officer, affords evidence that may be material in determining the tax liability of a taxpayer (sub-article (1)(c)). The Authority can retain any document seized for as long as the document may be required in determining a taxpayer's tax liability or for any proceeding under a tax law (such as proceedings in the Tax Appeal Commission or judicial proceedings). Sub-article (6) requires the Director-General or authorised officer to sign for any document seized.

(4) The Director-General or authorised officer may seize a data storage device if a hard or electronic copy of information stored on the device is not provided (sub-article (1)(d)). The Authority can retain a data storage device only for as long as is necessary to copy the relevant information stored on the device. Sub-article (6) requires the Director-General or authorised officer to sign for any data storage device seized.

A person who fails to provide full and free access as required under sub-article (1) is guilty of an offence under Article 126(3)(c).

Sub-article (4) obliges the owner or lawful occupier of the premises or place to which access is sought under sub-article (1) to provide all reasonable facilities and assistance for the effective exercise of the access power. This could include, for example, opening any safe, safety deposit box, container, envelope, or other receptacle on the premises to which access is obtained under sub-article (1). The reference to a lawful occupier would

include, for example, a tenant or employee of the owner. It is expressly provided that the owner or lawful occupier must:

(1) Answer questions relating to any document on the premises, whether on a data storage device or otherwise (sub-article (4)(a)). The answers may be required to be given orally or in writing. A person who fails to answer questions or provide information commits an offence under Article 126(3)(d).

(2) Provide access to decryption information necessary to decrypt data to which access is sought under the Article (sub-article (4)(b)). A person who fails to provide the necessary information commits an offence under Article 126(3)(d).

Sub-article (5) entitles the owner of a document or data storage device seized under sub-article (1) to have access to the documents or device during normal office hours while the documents or device are in the custody of the Authority. Access to a data storage device may be provided on such terms and conditions as the Authority may specify and is at the owner's expense. It is expected that access to a seized data storage device would be subject to strict supervision to avoid the owner destroying or altering any files on the device.

The Article is the legal basis for the conduct of field audits of taxpayers by the Authority, particularly of self-assessed liabilities. For this reason, the access power is stated in broad terms. It is expressly provided in sub-article (7) that the Article overrides any rule of law relating to privilege (e.g. legal professional privilege or the privilege against self-incrimination) or to the public interest in relation to the access to premises or places, or the production of, or access to, property (such as a data storage device) or documents (including in electronic format). It also overrides any contractual duty of confidentiality, such as a bank's contractual duty of confidentiality in relation to customer records.

67. Implementation of Mutual Administrative Assistance Agreements

This Article provides for the implementation of mutual administrative assistance agreements entered into by the Government. It also obliges the Authority to use the powers available under the tax laws or other legislation to meet Ethiopia's obligations under a tax treaty or mutual administrative assistance agreement.

Sub-article (1) empowers the Minister for Finance and Economic Cooperation, on behalf of the Government, to enter into, amend (through a protocol), or terminate a mutual administrative assistance agreement with a foreign government or governments. The reference to "a foreign government or governments" means that a mutual administrative assistance agreement may be bilateral or multilateral. "Mutual administrative assistance agreement" is defined in sub-article (4) to mean a tax information exchange agreement or other international agreement for mutual administrative assistance in relation to taxation matters. "International agreement" is defined in sub-article (4) to mean an agreement between the Government of Ethiopia and a foreign government or governments. Again, this makes clear that a mutual administrative assistance agreement may be bilateral or multilateral.

A tax information exchange agreement is an international agreement providing for the exchange of information between the competent authorities of the governments that have signed the agreement. Mutual administrative assistance in relation to taxation matters means taxation administrative assistance provided between countries through the exchange of information, or reciprocal assistance in the collection of tax or service of process. An example of mutual administrative assistance agreement is the Multinational Convention of Mutual Administrative Assistance in Taxation Matters.

Sub-article (2) provides that, if there is any conflict between the terms of a mutual administrative assistance agreement that has force of law under sub-article (1) and a tax law (including TAP), the mutual administrative assistance agreement prevails.

Sub-article (3) obliges the Authority to use the powers available under TAP or any other law to meet Ethiopia's administrative assistance obligations under a tax treaty or mutual administrative assistance agreement having legal effect in Ethiopia. "Tax treaty" is defined in sub-article (4) to mean an international agreement relating to the avoidance of double taxation and the prevention of fiscal evasion.

The obligations specified in sub-article (3) are: (i) the exchange of information; (ii) reciprocal assistance in the recovery of tax; or (iii) reciprocal assistance in the service of process. The Authority must use the powers available under TAP or any other law. The reference to another law includes a tax law or any other relevant law, such as a law dealing with the service of process.

Sub-article (3) provides for the following mechanical rules to give effect to the obligation in the sub-article:

(1) A reference in TAP or another law to "tax" includes a foreign tax to which the exchange of information or reciprocal assistance relates.

(2) A reference in TAP or another law to "unpaid tax" includes an amount of foreign tax to which the exchange of information or reciprocal assistance relates that has not been paid by the due date. This is particularly relevant to the application of the recovery of unpaid tax provisions in Chapter Three of Part Seven for reciprocal assistance in the recovery of foreign tax.

(3) A reference in TAP or another law to "taxpayer" includes a person liable for an amount of foreign tax to which the exchange of information or reciprocal assistance relates.

(4) A reference in TAP or another law to "tax law" includes the law under which the foreign tax to which the exchange of information or reciprocal assistance relates is imposed.

68. Binding Public Rulings

This article provides for a system of binding public rulings.

Sub-article (1) provides that the Ministry of Finance and Economic Cooperation may make a public ruling setting out the Ministry's interpretation on the application of a tax law in the circumstances specified in the ruling. A public ruling is made by the Ministry rather than the Authority because the making of the ruling may involve consideration of policy issues, which is the responsibility of the Ministry. It is expected, though, that the Ministry will consult with the Authority in making a public ruling.

The purpose of public rulings is to achieve consistency in the administration of the tax laws and provide guidance to taxpayers (particularly for the purposes of making self-assessments). A public ruling will be of general application and not specific to a particular taxpayer or taxpayers, although the circumstances of a particular taxpayer may be the initial reason for making the public ruling. A public ruling is made in accordance with article 69.

Sub-article (2) states that a public ruling properly made in accordance with article 69 is binding on the Ministry and Authority until withdrawn in accordance with article 70. This means, for example, that the Authority cannot assess a taxpayer in a way that is contrary to a public ruling validly in force for the tax period relevant to the assessment. Making public rulings binding on the Ministry and Authority provides taxpayers with certainty in making self-assessments.

As a public ruling is not law, sub-article (3) provides that a public ruling is not binding on taxpayers. This means that taxpayers

are free to prepare their tax declarations (particularly a self-assessment declaration) as they see fit. If a taxpayer prepares a tax declaration (i.e. self-assessment) in a way that is contrary to a public ruling, it is for the Authority to decide whether to amend the taxpayer's self-assessment under article 28. If the Authority assesses in accordance with a public ruling, the taxpayer may challenge the resulting tax assessment or amended assessment under Part Nine.

It is noted that, under article 139(2), the provisions for the making of public rulings commence on the date notified by the Minister of Finance and Economic Cooperation by notice published in a newspaper of wide circulation. This allows the Minister to activate these provisions only when the Ministry and Authority are sufficiently ready for their implementation.

69. Making a Public Ruling

This article provides for the making of public rulings.

Sub-article (1) provides that the Ministry makes a public ruling by publishing a notice of the ruling on the official website of the Ministry.

Sub-article (2) provides that a public ruling must state that it is a public ruling. It must have a number and a subject heading for the purposes of identification.

Sub-article (3) provides that a public ruling has effect from the date specified in the public ruling. If no date is specified, it has effect from the date of publication on the official website of the Ministry.

A public ruling simply states the Ministry's opinion on how a tax law applies in specified circumstances. As a statement of opinion only, it has no legal effect on taxpayers (see article 68(3)) and, therefore, is not a decision of the Ministry. Sub-article (4) makes this clear by providing that a public ruling is a statement of the

Ministry's opinion and, as such, is not a decision of the Ministry for the purposes of TAP or any other law. Thus, a public ruling is not a tax decision or an appealable decision, and, therefore, cannot be challenged under Part Nine, or on any other legal basis (such as judicial review of administrative action). A taxpayer can only challenge a decision made by the Authority that is based on a public ruling (such as an estimated or amended assessment).

70. Withdrawal of a Public Ruling

This article provides for the withdrawal of a public ruling.

Two bases of withdrawal are specified. First, sub-article (1) provides that the Ministry can withdraw a public ruling by publishing a notice of withdrawal on the official website of the Ministry. In this case, the ruling is withdrawn from the later of: (i) the date specified in the notice of withdrawal; or (ii) the date that the notice of withdrawal is published on the official website of the Ministry. The Ministry can withdraw a ruling in whole or part.

Secondly, sub-article (2) provides that an existing public ruling is withdrawn when legislation is passed or a later public ruling is published that is inconsistent with the existing public ruling. If the legislation or later ruling is only partly inconsistent with the ruling, the ruling is withdrawn under sub-article (3) only to the extent of the inconsistency.

Sub-article (3) provides that a public ruling that is withdrawn continues to apply to a transaction that was entered into before the ruling was withdrawn. This ensures that a public ruling cannot be withdrawn with retrospective effect. A withdrawn public ruling does not apply to a transaction entered into after the ruling was withdrawn to the extent of the withdrawal.

The reference to "transaction" in sub-article (3) is intended as a reference to a transaction that gives rise to a tax event. For example, in the case of the acquisition and disposal of a business asset, the reference to "transaction" is a reference to the sale or

other disposal of the asset. If the disposal occurs while a public ruling relevant to the disposal is in force, the public ruling applies to the disposal. If the disposal occurs after a relevant public ruling has been withdrawn, the ruling has no application even if the asset was acquired when the ruling was in force.

71. Binding Private Rulings

This article sets out a procedure for taxpayers to obtain a private ruling from the Ministry setting out the Ministry's opinion on the application of a tax law to a transaction that the taxpayer has entered into or proposes to enter into. Private rulings are an important element of the self-assessment system as they provide taxpayers with an opportunity to discover the Ministry's view on the application of a tax law to a transaction particularly when the application of the law is uncertain.

Sub-article (1) provides that a taxpayer may apply to the Ministry for a private ruling setting out the Ministry's position regarding the application of a tax law to an existing or proposed transaction of the taxpayer.

Sub-article (2) specifies the following requirements for an application for a private ruling:

(1) The application must be in writing.

(2) The application must include full details of the transaction that is the subject of the application.

(3) The application must be accompanied by all documents relevant to the transaction.

(4) The application must clearly specify the question that is the subject of the ruling application.

(5) The application must include a detailed statement of the applicant's opinion of the application of the relevant tax law to the transaction.

Unless article72 applies to a private ruling application, sub-article (3) obliges the Ministry to make a private ruling on the question specified in the application within sixty days of receipt of the application for the ruling. As with a public ruling, a private ruling is made by the Ministry rather than the Authority because the making of the ruling may involve consideration of policy issues, which is the responsibility of the Ministry. It is expected, though, that the Ministry will consult with the Authority in making a private ruling.

Sub-article (4) provides that a private ruling is binding on the Ministry and Authority if two conditions are satisfied:

(1) The taxpayer has made a full and true disclosure of all aspects of the transaction relevant to the making of the ruling.

(2) The transaction has proceeded in all material respects as described in the taxpayer's application for the ruling. The meaning of "in all material respects" will depend on the particular facts of the case. In this context, a "material" difference in a way a transaction is carried out is a difference that would give rise to a different tax outcome.

As a private ruling is not law, sub-article (5) provides that a private ruling is not binding on the taxpayer who applied for it. As explained above with public rulings, taxpayers are free to prepare their tax declarations (including self-assessments) as they see fit.

Sub-article (6) provides that, if a private ruling is inconsistent with an existing public ruling, the private ruling has priority but only to the extent of the inconsistency. This rule applies only in respect of a pre-existing public ruling. It is assumed that, in making a private ruling, the Ministry is aware of existing public rulings and, therefore, the Ministry must have intended the later inconsistent private ruling to override the pre-existing public

ruling. A subsequent inconsistent public ruling is treated as withdrawing a private ruling under article 74(2).

It is noted that, under article139(2), the provisions for the making of private rulings commence on the date notified by the Minister of Finance and Economic Cooperation by notice published in a newspaper of wide circulation. This allows the Minister to activate these provisions only when the Ministry and Authority is ready for their implementation.

72. Refusing an Application for a Private Ruling

This article sets out the circumstances when the Ministry can refuse an application for a private ruling.

Sub-article (1) provides that the Ministry may refuse an application for a private ruling in the circumstances listed in the sub-article. The sub-article is permissive only so it is still open to the Ministry, in an appropriate case, to consider the application and make a private ruling in one of the circumstances listed in sub-article (1). Unless a ruling application is covered by sub-article (1), the Ministry must make the private ruling requested in the application in accordance with article73.

The Ministry can refuse an application for a private ruling on any of the following grounds:

(1) The Ministry or Authority has already dealt with the question that is the subject of the private ruling application in: (i) a notice of a tax assessment served on the taxpayer; (ii) a public ruling made under Article 69 that is in force; or (iii) a private ruling made public under article 75 that is in force.

(2) The application relates to a question that is the subject of a tax audit of the taxpayer's tax affairs, a notice of objection filed by the taxpayer, or an application by the taxpayer under Article 29 for an amendment to a self-assessment. An application for a private ruling must be made before any

process for reviewing the taxpayer's tax affairs has begun. If an audit has commenced, the question in the ruling is dealt with through the amended assessment process and any objection to that assessment. If the taxpayer has filed a notice of objection in relation to the question in the ruling, the question is dealt with through the objection process. If the taxpayer has filed an application under Article 29 for an amendment to a self-assessment, the question is dealt with in deciding the Article 29 application.

(3) The application is frivolous and vexatious. In broad terms, a private ruling application is frivolous if there is no reasonable chance of a favourable ruling being given to the applicant. A private ruling application is vexatious if it would bring hardship to the Ministry in devoting resources to a private ruling application that has little chance of resulting in a favourable ruling to the applicant.

(4) While an application for a private ruling may be made under article71 in relation to a proposed transaction, the Ministry can refuse the application if there are reasonable grounds for believing that the proposed transaction will not go ahead.

(5) The taxpayer has not provided the Ministry with sufficient information to make the ruling.

(6) The Ministry is of the opinion that it would be unreasonable to comply with the application, having regard to the resources needed to comply with the application and any other matters the Ministry may consider relevant.

(7) The making of the ruling involves the application of a "tax avoidance provision", which is defined in article 2(33) to mean the tax avoidance provisions of the ITP and Value Added Tax Proclamation. The main examples of tax avoidance provisions are: (i) Articles 78 (income splitting), 79 (transfer pricing), and 80 (general anti-avoidance provision)

of the ITP; and (ii) any provision in the Value Added Tax Proclamation specifying a general anti-avoidance rule. While the Ministry is not bound to make a private ruling in relation to the operation of a tax avoidance provision, the Ministry may choose to do so in an appropriate case.

Sub-article (2) obliges the Ministry to serve the taxpayer with written notice of a decision to refuse an application for a private ruling.

73. Making a Private Ruling

This Article provides for the making of a private ruling.

Sub-article (1) provides that the Ministry makes a private ruling by serving written notice of the ruling on the applicant. A private ruling remains in force for the period or periods specified in the ruling (see sub-article (3)(c)) unless withdrawn earlier under Article 74.

Sub-article (2) provides that the Ministry, in making a private ruling, may make assumptions about the happening of a future event or as to any other matter as the Ministry considers appropriate. This is relevant mainly to ruling applications relating to proposed transactions.

Sub-article (3) provides that a private ruling must contain the following information:

(1) A statement that it is a private ruling.

(2) The question that is the subject of the private ruling.

(3) The name of the taxpayer.

(4) The tax law relevant to the private ruling.

(5) The tax period or periods covered by the private ruling. A private ruling will usually be specific to a tax period or periods rather than having an open-ended application. For example, if the private ruling relates to the income tax, the

ruling will ordinarily specify the tax year or years to which the ruling applies.

(6) An outline of the transaction to which the ruling relates.

(7) A statement of any assumptions that the Ministry has relied upon pursuant to sub-article (2) in making the private ruling.

A private ruling simply states the Ministry's opinion on how the tax law applies in relation to the question set out in the ruling application. As a statement of opinion only, it has no legal effect on the applicant (see article 71(5)) and, therefore, is not a decision of the Ministry. Sub-article (4) makes this clear by providing that a ruling is a statement of the Ministry's opinion and, as such, is not a decision of the Ministry for the purposes of TAP or any other law. Thus, a private ruling is not a tax decision or an appealable decision and, therefore, cannot be challenged under Part Nine, or on any other legal basis. A taxpayer can only challenge a decision made by the Authority based on a private ruling (such as an estimated or amended assessment).

74. Withdrawal of a Private Ruling

This article provides for the withdrawal of a private ruling.

As with public rulings, two bases for withdrawal of private rulings are specified. First, sub-article (1) provides that the Ministry can withdraw a private ruling, in whole or part, by serving written notice of the withdrawal on the recipient of the ruling. A private ruling is withdrawn from the date specified in the notice of withdrawal. It is expressly provided that the Ministry must have a reasonable cause for withdrawing a private ruling. This is intended to provide taxpayers with certainty in the application of a private ruling by ensuring that the ruling is not arbitrarily withdrawn. An example of when the Ministry may have reasonable cause to withdraw a private ruling is when it is subsequently discovered that the applicant for the ruling has not disclosed all relevant information necessary to make the ruling.

Second, sub-article (2) provides that a private ruling is withdrawn if legislation is passed or a later public ruling is issued that is inconsistent with the earlier private ruling. If the legislation or later public ruling is only partly inconsistent with an earlier private ruling, the private ruling is withdrawn only to the extent of the inconsistency. A private ruling is treated as withdrawn, in whole or part, from the date of application of the inconsistent legislation or later public ruling.

Sub-article (3) provides that a private ruling that is withdrawn continues to apply to a transaction that was entered into before the ruling was withdrawn. It does not apply to a transaction entered into after the ruling was withdrawn to the extent of the withdrawal. The discussion above of the meaning of "transaction" in relation to the application of Article 70(3) applies equally for the purposes of sub-article (3).

It is noted that a private ruling has effect only for the tax period or periods to which it applies as specified in the ruling (see article73(3)(c)).

75. Publication of Private Rulings

This article provides for the publication of private rulings on a confidential basis so that other persons can rely on them. The publication of a private ruling ensures that there is transparency in the making of private rulings and that the ruling system does not give a particular business taxpayer a competitive advantage.

Sub-article (1) obliges the Ministry to publish a private ruling made under article73 on the official website of the Ministry. However, in publishing the ruling, the Ministry must ensure that the following are not disclosed: (i) the identity of the taxpayer to whom the ruling relates and (ii) any confidential commercial information mentioned in the ruling.

Sub-article (2) provides that any person can rely on a published private ruling as binding on the Ministry and Authority in

relation to the application of the tax law to the facts covered in the ruling, and for the tax period or periods covered by the ruling. Thus, other persons with identical circumstances can rely on a published ruling as binding on the Ministry and Authority. A private ruling is binding on the Ministry and Authority under sub-article (2) only if it has been published on the official website of the Ministry. Further, it is binding only for the same tax period or periods covered by the ruling.

Sub-article (3) applies when a published ruling has been withdrawn in accordance with article74. In this case, the Ministry must immediately publish a notice of withdrawal on the official website of the Ministry stating that the ruling ceases to be binding with effect from the date determined under article74.

76. Other Advice Provided by the Authority

The article provides that no guidelines, publication, or other advice (oral or in writing) provided by the Ministry or Authority is binding on the Ministry or Authority except a public ruling binding under article 68(2), or a private ruling binding under article71(4) or 75(2).

77. Working Languages

This Article provides that any communications with the Authority under the tax laws must be in Amharic.

The Article provides that Amharic is the official language of the tax laws and the Authority may refuse to recognise any communication or document that is not in an official language. This is subject to Article 17(1)(a), which provides that documents required under the tax laws can also be maintained in English.

While the Authority is not required to accept a communication or document that is not in Amharic, the Authority may choose to do so in its discretion.

78. Forms and Notices

This Article provides for forms and notices to be used for tax purposes.

Sub-article (1) provides that any forms, notices, tax declarations, statements, tables, and other documents approved or published by the Authority may be in such form as the Authority determines for the efficient administration of the tax laws. Further, unless required by a tax law, publication of such documents on the official website of the Authority is not required. Some documents (such as tax declarations) must be filed in the approved form in accordance with Article 79.

Sub-article (2) obliges the Authority to make the documents referred to in sub-article (1) available to the public at offices of the Authority and at any other locations as the Authority determines. It is also provided that the Authority may make the documents available by mail, electronically, or other means. The reference to "electronically" would include, for example, having the documents available for downloading from the Authority's website.

79. Approved Form

There are many provisions in the tax laws that require documents to be filed in the approved form. This Article sets out the requirements that must be satisfied for a document to be considered to be filed in the approved form.

Sub-article (1) provides that a tax declaration, application, notice, statement, or other document (referred to below as a "tax document") is filed in the approved form when three conditions are satisfied:

(1) The tax document is in the form approved by the Authority for the particular tax document filed. For example, Article 9(5)(a) requires a person to file an application for registration

in the approved form. Thus, the application must be filed in the particular form approved by the Authority for registration applications. A document that is filed in a form that is not an approved form for the particular document is not regarded as filed in the approved form. Despite this, the Authority has discretion under sub-article (3) to accept a document as filed in the approved form when it substantially contains the information required by the form.

(2) The tax document must contain all the information required by the form, including any attached documents required. Consequently, a tax document that is incomplete is not regarded as filed in the approved form. Despite this, the Authority has discretion under sub-article (3) to accept a document as filed in the approved form when it substantially contains the information required by the form.

(3) If required by the form, the tax document must be signed. Again, a tax document that is not signed as required by the form is not in filed the approved form. This is subject to the requirements relating to the electronic filing of documents under Article 82.

Sub-article (2) obliges the Authority to notify a person, in writing, if a tax document filed by the person is not in the approved form. This notification is important in cases when there is a time limit for the filing of the relevant document.

80. Manner of Filing Documents with the Authority

This Article provides for the manner of filing documents with the Authority.

Sub-article (1) provides that a person must file tax documents electronically if required to do so by the Authority under Article 82(2). A document may be filed electronically through the use of a computer or a mobile device such as a mobile phone. A person who, without good cause, fails to comply with sub-article (1) may

be liable for a penalty under Article 111. Despite being required to file tax documents electronically, the Authority may authorise a person, by notice in writing, to file manually under sub-article (2). An authorisation to file manually may be for an indefinite or specified period. An authorisation may be given to file manually for an indefinite period if the Authority is satisfied that the person does not have the capacity to file documents electronically. An example of an authorisation given to file manually for a specified period is when the person or the Authority has a significant computer outage at the due date for filing the tax document.

Sub-article (2) applies when electronic filing of a document is not required. This applies to two classes of person:

(1) A person who is not required by the Authority to file tax documents electronically under Article 82(2).

(2) A person who is required to file tax documents electronically under Article 82(2), but who is authorised by the Authority under sub-article (1) to file a tax document or tax documents manually.

In this case, a person may file the tax document by personal delivery to an office of the Authority or by normal post. The person filing the tax document must ensure that the tax document is filed by the due date (if relevant).

81. Service of Notices

This Article provides for the service of notices by the Authority for the purposes of a tax law.

Sub-article (1) specifies five methods for service by the Authority to taxpayers. The rules in sub-article (1) apply unless the TAP or another tax law provides otherwise. The accepted methods of service are:

(1) The notice or other document may be delivered personally to the taxpayer or the taxpayer's tax representative or

licensed tax agent (sub-article (1)(a)). Thus, in the ordinary case for an individual, a notice is properly served when served personally on the individual or the individual's licensed tax agent. For any other person, a notice is properly served when served personally on the person's tax representative or licensed tax agent. For example, a notice is properly served on a company if served personally on a director of the company (see Article 2(40(b)).

(2) If a person referred to in (1) cannot be located to accept personal service, a notice or document may be served on the taxpayer by affixing the notice to the door or other available part of the taxpayer's place of business or residence in Ethiopia (sub-article (1)(a)).

(3) The notice or other document may be sent by registered post to the taxpayer's usual or last known place of business or residence in Ethiopia (sub-article (1)(b)).

(4) The notice or other document is transmitted to the taxpayer electronically under Article 82(3) (sub-article (1)(c)).

(5) If none of the methods of service specified above are effective, service may be discharged by publication in any newspaper in which court notices may be advertised (sub-article (2)). The cost of publication is charged to the taxpayer.

Sub-article (3) provides that a taxpayer cannot challenge the validity of service of a notice or other document once there has been full or part compliance with the notice or document.

82. Application of Electronic Tax System

This Article provides for the "electronic tax system".

Sub-article (1) empowers the Authority to authorise the following to be done electronically through a computer system or mobile electronic device (such as a smart phone or tablet):

(1) The filing of an application for registration under a tax law (e.g. registration of a taxpayer under Article 9 or registration of a person under the Value Added Tax Proclamation) (sub-article (1)(a)).

(2) The filing of a tax declaration or other document under a tax law (e.g. a tax declaration to be filed under Article 83 of the ITP) (sub-article (1)(b)).

(3) The payment of tax or other amounts under a tax law (e.g. income tax payable under Article 84 of the ITP) (sub-article (1)(c)).

(4) The payment of a refund under a tax law (e.g. a refund payable under Article 50) (sub-article (1)(d)).

(5) The service of any document by the Authority (sub-article (1)(e)). This aligns with Article 81(1)(c).

(6) The doing of any other act or thing that is required or permitted to be done under a tax law (sub-article (1)(f)).

While sub-article (1) authorises the Authority to permit the things specified in that sub-article to be done by a taxpayer electronically, sub-article (2) empowers the Authority to require any of the things specified in sub-article (1) to be done by a taxpayer electronically. Further, sub-article (5) provides that a person who files a tax declaration and pays tax electronically must continue to do so unless otherwise authorised by the Authority. A person who fails to comply with a requirement to do an act or thing electronically is liable for an administrative penalty under Article111.

Sub-article (3) provides that any certificate of registration, service of a notice, issuing of any document, payment of a refund, or other act or thing that is required to be done by the Authority under a tax law, may be issued, served, made, or done electronically.

It is intended that the use of the electronic tax system is permissive only. This is indicated by the use of the word "may" (rather than "shall") in sub-articles (1), (2), or (3). Importantly, it is not intended that a person be required to use the electronic tax system if they have no capacity to do so. Sub-article (4) makes this clear by providing that the Authority must not direct a taxpayer to do anything referred to sub-article (1) electronically or be required to receive communications electronically if the Authority is satisfied that the taxpayer does not have the means or capacity to do so.

The application of sub-article (4) may be particularly relevant for taxpayers in remote areas where there may be limited or no access to the internet.

83. Due Date for Filing of a Document or Payment of Tax

This Article provides for the due date for filing documents with the Authority, the payment of tax, or taking of any other action under a tax law.

The Article provides that when the due date for filing, payment, or taking other action under a tax law is a weekend or public holiday in Ethiopia, the due date is the next following business day. Thus, for example, if the due date for the payment of tax is a Saturday, the tax is due on the following Monday. If the Monday is a public holiday, the tax is due on the following Tuesday. This applies only for public holidays in Ethiopia.

84. Defect not to Affect Validity of Notices

This Article provides for the validity of notices of tax assessments and other documents served or issued under the tax laws.

The Article applies when the following conditions specified in sub-article (1) are satisfied:

(1) A notice of a tax assessment or any other document has been served on a taxpayer under a tax law (sub-article (1)(a)). The reference to "served" means that the Article applies only to notices that have been properly served on a taxpayer (such as under Article 81). This is made clear in sub-article (2)(a). It is not intended that this Article overrides the service rules applicable to notices under the tax laws, particularly Article 81.

(2) The notice is, in substance and effect, in conformity with, or is consistent with the intent and meaning of, the tax law under which the notice has been made (sub-article (1)(b)).

(3) The taxpayer assessed, intended to be assessed, or affected by the notice, is designated in the notice according to common intent and understanding (sub-article (1)(c)).

If these conditions are satisfied, the following applies:

(1) Provided the notice of the tax assessment or other document has been properly served, the notice is not affected by reason that any of the provisions of the tax law under which the notice has been made have not been complied with (sub-article (2)(a)). Unless a tax law provides otherwise, a notice is properly served if it has been served in a manner specified in Article 81.

(2) The notice of a tax assessment or other document cannot be challenged for want of form (sub-article (2)(b)). This means, for example, that a minor error of form does not render a notice of a tax assessment void.

(3) The notice of a tax assessment or other document is not affected by reason of any mistake, defect, or omission therein (sub-article (2)(c)).

Sub-article (3) provides further rules relating to the validity of tax assessments. A tax assessment is not voided by any of the following:

(1) A mistake in the tax assessment as to: (i) the name of the person assessed; (ii) the description of the income or other amount; or (iii) the amount of tax charged. However, this applies only when the mistake is not likely to deceive or mislead the taxpayer assessed.

(2) Any variance between a tax assessment and the duly served notice of the tax assessment, provided the variance is not likely to deceive or mislead the person affected by the tax assessment.

85. Correction of Errors

This Article empowers the Authority to rectify mistakes in notices of tax assessments or other documents served by the Authority under a tax law. This Article applies to clerical, arithmetical, or other errors 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.

The power must be exercised within five years from the date of service of the notice of the tax assessment or other document. This corresponds with the amendment period for tax assessments in Article 28(2)(b).

86. Establishment of Tax Appeal Commission

This Article provides for the establishment of the Tax Appeal Commission (referred to as the "Commission"). The Commission is an independent administrative body established to hear appeals against appealable decisions.

Sub-article (1) provides for the establishment of the Tax Appeal Commission for the purpose of hearing appeals against appealable decisions. "Appealable decision" is defined in Article 2(2). The following are appealable decisions:

(1) An objection decision made under Article 55.

(2) Any other decision of the Authority made under a tax law, other than:(i) a tax decision (defined in Article 2(34));or (ii) a decision made in the course of making a tax decision. A "tax decision" is a not an appealable decision as a taxpayer dissatisfied with a tax decision must first file a notice of objection to the decision under Article 54.

Sub-article (2) provides that the Prime Minister is to appoint a member of the Tax Appeal Commission as the President of the Commission. The member appointed holds the office of President for such term as the Prime Minister may determine. Sub-article (3) provides that the Commission is accountable to the Prime Minister.

The effect of Article 53(1)(a) is that a person wishing to challenge an appealable decision may do so only under Part Nine. This means that a person dissatisfied with an appealable decision must first appeal the decision to the Tax Appeal Commission. The effect of Article 53(1)(a) is to exclude any other basis for challenging an appealable decision, such as judicial review of administrative action.

The Commission is an administrative (not judicial) body. The role of the Commission is to hear appeals against appealable decisions made by the Authority. As indicated above, the effect of Article 53(1)(a) is that an appeal to the Commission is the compulsory first step for a person wanting to challenge an appealable decision. A person dissatisfied with an appealable decision of the Commission can appeal the decision to the Federal High Court, but only on a question of law (see Article 57). Consequently, the Commission is the final arbiter of questions of fact.

87. Appointment of Members to the Commission

This Article provides for the appointment of the non-Presidential members of the Commission.

Sub-article (1) provides that the Prime Minister is responsible for appointing members to the Commission. This is consistent with the Commission being accountable to the Prime Minister's office (Article 86(3)). The Prime Minister is empowered to appoint as many members to the Commission as considered necessary having regard to the needs of the Commission.

Sub-article (2) sets out the following classes of persons who may be appointed as a member of the Commission:

(1) A lawyer with significant experience in tax or commercial matters.

(2) A member of the Institute of Certified Public Accountants with significant experience in tax matters.

(3) An individual previously engaged as a tax officer with significant technical and administrative experience in tax matters. Only a former tax officer can be appointed as a member of the Commission and then only after a two-year "cooling off" period (see sub-article (3)(a)).

(4) An individual with special knowledge, experience, or skills relevant to the functions of the Commission. This may cover, for example, an academic with significant teaching and research experience in relation to tax law and policy.

The reference to "significant experience" is intended to refer to experience at a high level of practice (tax or commercial) over a substantial period of time on a wide range of tax-related matters.

Sub-article (3) provides that the following classes of persons are ineligible to be appointed as a member of the Commission:

(1) A currently serving tax officer. This is intended to ensure the independence of the Commission.

(2) An individual who has ceased to be a tax officer for a period of not less than two years. A "cooling off" period applies to former tax officers before they can be appointed to the

Commission. Again, this is to ensure the independence of the Commission and limit the possibility of conflicts of interest.

(3) An individual who has been liable for a penalty or convicted of an offence under a tax law relating to tax avoidance or evasion. This includes a penalty or offence provided for under Part Fifteen of TAP, or under any other tax law. It includes a penalty or offence imposed under a tax law before TAP comes into force.

(4) An individual who has been convicted of a crime of corruption under the Corruption Crimes Proclamation or any other law.

(5) An individual who is an undischarged bankrupt.

Sub-article (4) provides that an individual may be appointed as either a full-time or part-time member of the Commission. An individual is appointed as a member for a period of 3 years and may be re-appointed. The terms and conditions of the appointment (including remuneration) are to be determined by the Prime Minister.

An individual's tenure as a member of the Commission is subject to sub-article (5), which provides for the termination of the appointment of a member in advance of expiration of his or her term of appointment. There are seven situations when a member's appointment is terminated. These largely align with the classes of persons who are ineligible for appointment under sub-article (3) and, therefore, will be mainly relevant when an individual is appointed but their status changes after the appointment:

(1) The member becomes employed or engaged as a tax officer.

(2) The member is liable for a penalty or convicted of an offence under a tax law relating to tax avoidance or evasion.

(3) The member is convicted of a crime of corruption under the Corruption Crimes Proclamation or any other law.

(4) The member becomes an undischarged bankrupt.

(5) The member resigns by notice in writing to the Prime Minister.

(6) The member's term of appointment comes to an end and is not reappointed as a member of the Commission.

(7) The Prime Minister removes the member from office, by notice in writing, for inability to perform the duties of office or for proven misconduct. An example of misconduct by a member would be a failure to disclose a conflict of interest as required under Article 90(3).

Sub-article (6) provides that a member of the Commission is not liable to any action or suit for any act or omission in the proper execution of the member's duties.

88. Notice of Appeal

This Article provides for the filing of a notice of appeal with the Tax Appeal Commission.

Article 56(1) provides that a taxpayer dissatisfied with an appealable decision may appeal the decision to the Tax Appeal Commission. "Appealable decision" is defined in Article 2(2). The following are appealable decisions:

(1) An objection decision made under Article 54.

(2) Any other decision of the Authority made under a tax law, other than: (i) a tax decision (defined in Article 2(34)); or (ii) a decision made in the course of making a tax decision. A "tax decision" is a not an appealable decision as a taxpayer dissatisfied with a tax decision must first file a notice of objection to the decision under Article 54.

Sub-article (1) provides that a person wanting to appeal an appealable decision must file a notice of appeal against the decision with the Commission. The notice of appeal must be in the approved form and filed with the Commission within 30 days after service of the notice of the appealable decision. Sub-article (2) provides that a notice of appeal must include a statement of reasons for the appeal. Sub-article (5) provides the approved form is the form approved by the President of the Tax Appeal Commission for notices of appeal.

Sub-article (3) provides that the Commission may, on an application in writing and when good cause is shown, grant an extension of time for filing a notice of appeal. Sub-article (4) provides that the Commission may issue a Directive specifying the procedure for dealing with applications for an extension of time under sub-article (3).

89. Authority to File Documents with the Commission

This Article provides for the filing of documents by the Authority with the Commission. The Article is necessary because the Commission is an administrative body that can fully review the appealable decision (both facts and law). For this purpose, the Commission must have before it all relevant documents that the Authority had in making the decision that is the subject of the appeal.

Sub-article (1) specifies the documents that the Authority must file with the Commission when a person has filed a notice of appeal against an appealable decision made by the Authority. The documents must be filed with the Commission within 30 days after a copy of the notice of appeal was served on the Authority or within such further time as the Commission allows. The required documents are:

(1) The notice of the appealable decision to which the appeal relates.

(2) A statement setting out the reasons for the appealable decision (if these are not included in the notice of decision). Sub-article (2) empowers the Commission to require the Authority to provide a more detailed statement of the reasons for the decision.

(3) Any other document that is relevant to the Commission's review of the appealable decision. This is to be determined objectively.

Sub-article (3) provides a mechanism for the Commission to request, by notice in writing, further documents from the Authority if the Commission believes that such documents are relevant to the review of an appealable decision. The Authority must file the additional documents within the time specified in the notice.

Sub-article (4) obliges the Authority to provide the person appealing an appealable decision with a copy of all documents filed with the Commission under this Article.

90. Proceedings of the Commission

This Article provides for proceedings of the Commission.

Sub-article (1) provides that the President of the Tax Appeal Commission is to assign a member or members to the hearing of an appeal as the President considers appropriate having regard to the issues raised by the appeal.

Sub-article (2) empowers the Prime Minister to issue a Directive for the conduct of proceedings by the Commission. Given that the Commission is an administrative (and not judicial body), it is intended that proceedings before the Commission should be conducted with as little formality and technicality as possible. The Directive could include rules relating to: (i) the nature of the evidence that may be presented to the Commission; (ii) the calling of witnesses; and (iii) the adjournment of proceedings.

Sub-article (3) obliges a member to disclose to the President of the Commission any conflict of interest that exists between the member and any party or parties to a proceeding. A member must not take part in the proceeding where the member has a conflict of interest. The failure by a member to disclose a conflict of interest may amount to proven misconduct and, therefore, constitute grounds for termination of the member's appointment under Article 87(5)(g).

Sub-article (4) provides that the President of the Tax Appeal Commission may delegate authority to a Regional Tax Appeal Commission to hear any appeal under Article 88. This is necessary because the Tax Appeal Commission will not normally sit in the Regions.

91. Decision of the Commission

This Article provides for the making of decisions by the Tax Appeal Commission.

Sub-article (1) obliges the Commission to hear and determine an appeal and make a decision as set out in sub-article (5) or (7), which provide the Commission with broad powers as to the form its decision may take. Sub-article (5) applies when the appeal relates to a tax assessment. If the Commission decides that the tax assessment is correct, the Commission must make a decision to affirm the assessment. In any other case, the Commission has the power to decrease or otherwise amend the assessment. This means that the Commission, itself, can amend the tax assessment and, therefore, does not have to refer the tax assessment back to the Authority. Alternatively, the Authority may remit the tax assessment back to the Authority for reconsideration in accordance with its directions.

If the Commission is of the view that the amount of tax assessed under a tax assessment that is subject to an appeal should be increased, sub-article (6) obliges the Commission to remit

the tax assessment to the Authority for reconsideration in accordance with the Commission's directions. This means that the Commission does not have power to increase the amount assessed under a tax assessment. This can be done only by the Authority.

Sub-article (7) applies when the appeal relates to any other appealable decision. If the Commission decides that the decision is correct, the Commission must affirm the decision. When the Commission wholly or partly agrees with the taxpayer's appeal, the Commission may vary or set aside the decision. Alternatively, the Commission may remit the decision to the Authority for reconsideration in accordance with the directions of the Commission.

Sub-article (2) requires that the Commission must make a decision on an appeal within 120 days after the notice of appeal was filed with the Commission under Article 88. Sub-article (3) provides that the President of the Commission may, by notice in writing to the parties to an appeal, extend the period for deciding the appeal by a further period not exceeding 60 days. In making a decision under sub-article (3), the President must have regard to the complexity of the issues in the case and the interests of justice. Sub-article (4) makes it clear, though, that a failure by the Commission to make a decision within the time specified under sub-article (2) or the extended time under sub-article (3) does not affect the validity of a decision made by the Commission on the appeal.

Sub-article (8) obliges that the Commission to serve each party to the appeal with a copy of its decision on the appeal within seven days of making the decision. Sub-article (9) provides that the Commission's decision must include the reasons for the decision, the Commission's findings on material questions of fact, and the evidence and other material relied on by the Commission in support of its findings of fact.

Sub-article (10) provides that the Commission's decision comes into operation upon the giving of the decision or on such other date as is specified by the Commission in the notice of the decision.

When a decision of the Commission is in favour of the taxpayer, sub-article (11) obliges the Authority to take such steps as are necessary to implement the decision, including serving notice of an amended assessment (Article 28), within 30 days of receiving notice of the decision under sub-article (8).

92. Administration of the Commission

This Article provides for the administration of the Commission.

Sub-article (1) provides that the President is responsible for managing the administrative affairs of the Commission.

Sub-article (2) provides that the Commission is to have a Registrar and such other staff as the President determines. The Registrar is the administrative head of the Commission.

Sub-article (3) provides that the Registrar has power to do all things necessary or convenient to be done for the purpose of assisting the President in the administration of the Commission. It is expressly provided that the Registrar may act on behalf of the President in relation to the administrative affairs of the Commission.

93. Finances

This Article provides for the financing of the Commission's operations.

Sub-article (1) provides that the budget of the Commission is to be allocated by the Federal Government.

Sub-articles (2) and (3) provide for the keeping and auditing of books of account of the Commission.

94. Annual Report of the Commission

This Article requires the President of the Tax Appeal Commission to prepare an Annual Report.

Sub-article (1) obliges the President of the Commission to prepare an Annual Report of the affairs of the Commission for each fiscal year (i.e. the budget year of the Government of Ethiopia).

Sub-article (2) requires that the Annual Report of the Commission for a fiscal year must be submitted to the Prime Minister within three months after the end of the year.

95. Application for a Tax Agent's Licence

This Article provides for applications by individuals, partnerships and companies to be licensed as a tax agent. The effect of Part Fourteen is that, generally, only a licensed tax agent can charge a fee for providing tax agent services (see Article 98).

Sub-article (1) provides that an individual, partnership, or company wishing to provide tax agent services may apply to the Authority for licensing as a tax agent. An application for a tax agent licence must be in the approved form, i.e. the form approved by the Authority for such applications (see Article 79). Only an individual, company (defined in Article 2(7)), and a partnership (defined in Article 2(23)) can apply for a tax agent's licence.

Sub-article (2) defines "tax agent services" to mean:

(1) The preparation of tax declarations (Article 2(35)) on behalf of taxpayers.

(2) The preparation of notices of objection on behalf of taxpayers (Article 54).

(3) The provision of advice to taxpayers on the application of the tax laws (Article 2(36)).

(4) Representing taxpayers in their dealings with the Authority.

(5) The transaction of any other business on behalf of taxpayers with the Authority.

It is noted that, under Article 139(2), the provisions for the licensing of tax agents commence on the date notified by the Authority in a notice published in a newspaper of wide circulation. This allows the Minister to "activate" these provisions only when the Authority is ready for their implementation.

96. Licensing of Tax Agents

This Article provides for the licensing of persons as tax agents.

The Article applies to individuals, partnerships, and companies that have applied for a tax agent licence under Article 95.

Sub-article (1) provides for the licensing of an individual as a tax agent. The Authority must licence an individual who has applied for a tax agent licence if the Authority is satisfied that the applicant is a fit and proper person to provide tax agent services.

Sub-article (2) provides for the licensing of a partnership as a tax agent. The Authority must licence a partnership as a tax agent if the following conditions are satisfied:

(1) A partner in, or employee of, the partnership is a fit and proper person to provide tax agent services.

(2) Every partner in the partnership is of good character and integrity. The reference to "good character and integrity" is not a reference to the tax skills of the partners but rather to their general character and integrity,

Sub-article (3) provides for the licensing of a company as a tax agent. As a company acts through the individuals who are the employees of the company, the focus is on those employees. The Authority must licence a company as a tax agent if the following conditions are satisfied:

(1) An employee of the company is a fit and proper person to provide tax agent services.

(2) Every director, manager and other executive officer of the company is of good character and integrity. The reference to "good character and integrity" is not a reference to the tax skills of the director, manager and other executive officers of the company but rather their general character and integrity,

The licensing of an individual, partnership, or company as a tax agent depends on whether the individual, a partner or employee of the partnership, or an employee of the company is a fit and proper person to provide tax agent services. This depends on the relevant individual's particular facts and circumstances. It would be expected that the Authority would have regard to the individual's formal training and practical experience in taxation. Also, the individual's personal tax compliance record may be factor. If, for example, the individual has been liable for a tax understatement penalty or subject to prosecution for making a false or misleading statement in their personal tax declaration, the applicant may not be considered to be a fit and proper person to be licensed as a tax agent. Sub-article (4) provides that the Regulations may provide guidelines for determining when a person is fit and proper to provide tax agent services.

Sub-article (5) obliges the Authority to provide an applicant under Article 95 with written notice of the decision on the application. Article 52 requires that a notice of a decision to refuse an application under Article 95 must include a statement of reasons for the decision. The decision of the Authority on an application for a tax agent licence is an "appealable decision" as defined in Article 2(2). An applicant dissatisfied with the decision can challenge the decision only by filing a notice of appeal with the Tax Appeal Commission under Article 56 (see Article 53(1)).

Sub-article (6) provides that the licensing of a person as a tax agent remains in force for three years from the date of issue and

may be renewed under Article 97. A licence may be cancelled earlier if one of the circumstances in Article 99 applies.

Sub-article (7) allows the Authority, from time to time, to publish, in such manner as the Authority determines, a list of persons licensed as tax agents. The Authority has discretion as to the manner of publication. For example, it may be published on the Authority's website. The publication of the names of licensed tax agents will assist taxpayers to know if they are dealing with a licensed tax agent or to find a licensed tax agent to assist them with their tax affairs.

Sub-article (8) makes clear that a tax agent licence is a professional licence only. A person wanting to carry on business as a tax agent must be also issued with a business licence.

97. Renewal of Tax Agent's Licence

This Article provides for the renewal of tax agent licences. The original issue of a tax agent licence under Article 96(6) is for a period of three years from the date of issue of the licence. A licence may be terminated earlier under Article 99.

Sub-article (1) provides that a tax agent may apply to the Authority for renewal of their tax agent's licence. Sub-article (2) provides that a renewal application must be made in the approved form (Article 79) and filed with the Authority within 21 days of the date of expiry of the tax agent's licence or such later date as the Authority may allow.

Sub-article (3) provides that the Authority must renew the licence of a tax agent if the tax agent continues to satisfy the conditions for licensing in Article 96.

Sub-article (4) provides that the renewal of a tax agent's licence is valid for three years from the date of renewal and can be further renewed in accordance with the Article.

Sub-article (5) provides that the Authority must provide an applicant under sub-article (1) with notice, in writing, of the decision on the application. If the Authority refuses an application for renewal of a tax agent's licence, the Authority must provide the applicant with a statement of reasons for the decision (Article 52).The decision of the Authority on an application for renewal of a tax agent licence is an "appealable decision" as defined in Article 2(2). An applicant dissatisfied with the decision can challenge the decision only by filing a notice of appeal with the Tax Appeal Commission under Article 56 (see Article 53(1)).

98. Limitation on Providing Tax Agent Services

This Article provides that only a licensed tax agent can accept a fee for providing tax agent services.

The effect of sub-article (1) is that only a licensed tax agent can provide tax agent services for a fee. "Tax agent services" is defined in Article 95(2). This is a quality assurance measure to ensure that those providing tax agent services (such as the preparation of tax declarations) are properly qualified to do so. This is particularly important in the context of self-assessment.

Sub-article (2) provides an exception to sub-article (1) for a licensed advocate, provided the advocate is acting in the ordinary course of their profession. The exception does not apply to the preparation of tax declarations. Only a licensed tax agent can charge a fee for the preparation of tax declarations.

A person who contravenes the Article commits an offence under Article 130.

99. Cancellation of a Tax Agent's Licence

This Article provides for the cancellation of the licence of a tax agent.

Sub-article (1) obliges a licensed tax agent to provide written notice to the Authority if the agent ceases to carry on business as a tax agent. The notice must be provided at least seven days before ceasing to carry on business as a tax agent. A tax agent who fails to notify the Authority as required under sub-article (1) is liable for an administrative penalty under Article 112(3).

Sub-article (2) provides that a licensed tax agent may apply, in writing, for cancellation of the tax agent's licence if the tax agent no longer wishes to be licensed as a tax agent.

Sub-article (3) obliges the Authority to cancel the licence of a tax agent in any of the following circumstances:

(1) A tax declaration prepared and filed by the tax agent is false in any material particular, unless the tax agent establishes to the satisfaction of the Authority that this was not due to any wilful or negligent conduct by the tax agent (sub-article (3)(a)).

(2) The tax agent ceases to satisfy the conditions for licensing as a tax agent in Article 96 (sub-article (3)(b)). For example, a partnership may no longer have a partner or employee who is a fit and proper person to provide tax agent services.

(3) The Authority is satisfied that the tax agent has committed professional misconduct (sub-article (3)(b)). Sub-article (6) requires the Authority to report suspected professional misconduct by a licensed tax agent to the Institute of Certified Public Accountants, the Accounting and Auditing Board of Ethiopia, or other body having authority for the licensing of the person as an accountant, auditor, or lawyer, and to the licensing authority for issuing business licences. This requirement overrides any provision in the tax laws, such as the secrecy provision in Article 8.

(4) The tax agent has ceased to carry on business as a tax agent (sub-article (3)(c)). This includes the case when a licensed tax agent that is a company or partnership is liquidated or otherwise ceases to exist.

(5) The tax agent has applied for cancellation of the agent's licence under sub-article (2).

(6) The tax agent's licence has expired and the agent has not filed an application for renewal of the licence under Article 97.

Sub-article (4) obliges the Authority to give written notice to a tax agent of a decision to cancel their licence. The decision of the Authority to cancel the licence of a tax agent is an "appealable decision" as defined in Article 2(2). A licensed tax agent who is dissatisfied with the decision can only challenge the decision by filing a notice of appeal with the Tax Appeal Commission under Article 56 (see Article 53(1)).

Sub-article (5) provides that the cancellation of the licence of a tax agent takes effect from the earlier of: (i) the date the person ceased to carry on business as tax agent; or (ii) sixty days after the tax agent has been served with notice of cancellation of the licence.

100. General Provisions Relating to Administrative and Criminal Liabilities

This Article sets out the basic principles applicable to the imposition of administrative penalties and the prosecution of tax offences.

Generally, a person who has committed an act or omission that is a breach of a tax law may be subject to either an administrative penalty under Chapter Two of Part Fifteen or the prosecution of an offence under Chapter Three of Part Fifteen. However, there are some situations when a person who has committed

an act or omission in breach of tax law may be subject to both an administrative penalty and prosecution of an offence. When both an administrative penalty and prosecution of an offence can apply for the same act or omission, it would be expected that the Authority would generally choose whether to impose an administrative penalty or prosecute the offence. In the ordinary case, the Authority may choose to impose an administrative penalty because it can be imposed through service of a notice of assessment of the penalty under Article 115. If the Authority does choose to impose an administrative penalty in such case, sub-article (1) makes clear that the person committing the act or omission is not be relieved from criminal liability by the mere fact that an administrative penalty is imposed.

Sub-article (2) makes it clear that a taxpayer who is assessed for an administrative penalty or prosecuted for a criminal offence is not relieved from liability to pay any tax due.

101. Penalties Relating to Registration and Cancellation of Registration

This Article provides for administrative penalties relating to tax registration.

Sub-article (1) applies when a person fails to apply for registration as required under TAP. The general registration provision is in Article 9, which requires a person to apply for registration when they first become liable for tax. There may be separate registration requirements under other tax laws. For example, the Value Added Tax Proclamation requires a person to apply for registration when the level of their taxable supplies exceeds the registration threshold. Article 107 of the Tax Administration Proclamation applies to a person who fails to register for VAT as required under the VAT Proclamation.

The amount of the penalty under sub-article (1) is 25% of the tax payable by the person for the period commencing on the date that the person was first required to apply for registration

and ending on the earlier of: (i) the date that the person first files the application for registration; or (ii) the date that the person is registered on the Authority's own motion.

If no tax is payable for the period specified in sub article (1), sub-article (2) provides that the person is liable for a penalty of 1000 birr for each month or part month for the period commencing on the day on which the person should have been registered and ending on the day the person is actually registered.

The penalty imposed under sub-article (1) is subject to sub-article (3), which applies when the penalty imposed under sub-article (1) is less than the penalty that would be imposed under sub article (2) if sub-article (2) were to apply. In this case, sub-article (3) provides that the penalty under sub-article (2) applies. Consequently, sub-article (2) sets a "floor" for the penalty imposed under sub-article (1). For example, if a person has failed to apply for registration as required under Article 9 and the penalty calculated under sub-article (1) is 2,000 birr and under sub-article (2) is 5,000 birr, then the higher penalty under sub-article (2) applies.

Sub-article (4) provides for a penalty in relation to cancellation of registration. Sub-article (2) applies when a person, without reasonable excuse, fails to apply for cancellation of registration as required under TAP. The obligation to apply for cancellation of registration is in Article 11, which applies when a registered person ceases to be liable for tax under all tax laws.

The amount of the penalty under sub-article (4) is birr 1,000 for each month or part month for the period commencing on the date that the person was required to apply for cancellation of registration and ending on the earlier of: (i) the date that the person filed the application for cancellation of registration; or (ii) the date that the Authority cancelled the person's registration on the Authority's own motion.

The Authority has power under Article 115(4) to remit the whole or part of a penalty imposed under the Article in appropriate cases.

102. Penalty for Failing to Maintain Documents

This Article imposes an administrative penalty on a person who fails to maintain documents as required under a tax law.

Sub-article (1) imposes a penalty on a person who fails to maintain any document as required under a tax law. The failure may relate to an obligation to maintain specific documents as required under a tax law (such as an obligation to maintain VAT documentation under the Value Added Tax Proclamation) or a failure to maintain documents in the manner specified in Article 17 (such as a failure to maintain documents in Ethiopia or in the Amharic or English language). Because of the importance of taxpayers maintaining proper documents for the purposes of the tax system, the failure to maintain documents does not have to be the result of deliberate or reckless conduct for a penalty to be imposed.

The amount of the penalty is 20% of the tax payable by the taxpayer for the tax period for which documents were not maintained. It is only the tax payable under the tax law to which the failure relates that is taken into account in calculating the percentage penalty. For example, if a taxpayer failed to maintain documents in a tax year for the purposes of the business income tax, the amount of penalty is based on the taxpayer's business income tax liability for that year. However, if the failure relates to more than one tax (such as both the income tax and VAT), the penalty is imposed in relation to both taxes based on the tax liabilities for the tax periods to which each failure relates.

Sub-article (2) applies when a person does not have a tax liability for the tax period for which the failure to maintain documents relates. In this case, a fixed penalty applies. This situation could

arise, for example, when a business income taxpayer has a loss for a tax year under Article 26 of the ITP or a VAT registered person has an excess of input tax credits for a tax period. The amount of the penalty differs depending on the tax to which the failure relates. For income tax, the penalty is 20,000 birr for each tax year that the person failed to maintain documents. For other taxes (such as VAT), the penalty is 2,000 for each tax period that the person failed to maintain documents.

The penalty imposed under sub-article (1) is subject to sub-article (3), which applies when the penalty imposed under sub-article (1) is less than the penalty that would be imposed under sub-article (2) if sub-article (2) were to apply. In this case, sub-article (3) provides that the penalty under sub-article (2) applies. Consequently, sub-article (2) sets a "floor" for the penalty imposed under sub-article (1).

Sub-article (4) provides that, if a taxpayer is liable for a penalty under the Article for more than two tax years, the business licensing authority, on notification by the Authority, must cancel the taxpayer's business licence.

Sub-articles (5) and (6) provide for specific penalties in two cases:

(1) A Category 'A' taxpayer who fails to retain documents for the period specified in Article 17(2) is liable for a penalty of birr 50,000 (sub-article (5)).

(2) A Category 'B' taxpayer who fails to retain documents for three years as required under Article 33(4) of the ITP is liable for a penalty of birr 20,000 (sub-article (6)).

These penalties apply in priority to the penalties specified in sub-articles (1) or (2).

The Authority has power under Article 115(4) to remit the whole or part of a penalty imposed under this Article in appropriate cases.

103. Penalty in Relation to TINs

This Article imposes administrative penalties in relation to TINs.

Sub-article (1) provides that a taxpayer who fails to state their TIN on a tax invoice, tax debit or credit note, tax declaration, or any other document as required under a tax law is liable for a penalty of birr 3,000 for each failure.

Sub-article (2) provides that a taxpayer is liable for a penalty of birr 10,000 if the taxpayer:

(1) Provides their TIN for use by another person. There is an exception when the taxpayer provides their TIN to a licensed tax agent in accordance with Article 14(6).

(2) Uses the TIN of another person. There is an exception if a licensed tax agent uses the TIN of another person (i.e. a client) with the permission of that other person in accordance with Article 14(6).

Sub-article (3) applies when the pecuniary advantage obtained by the taxpayer or another person as result of conduct referred to in sub-article (2)(a) or (b) exceeds birr 10,000. In this case, the amount of the penalty is equal to the pecuniary advantage obtained.

The Authority has power under Article 115(4) to remit the whole or part of a penalty imposed under this Article in appropriate cases.

104. Late Filing Penalty

This Article imposes an administrative penalty (referred to as a "late filing penalty") on a person for failing to file a tax declaration by the due date.

Sub-article (1) imposes a late filing penalty on a person who fails to file a tax declaration by the due date as required under a tax

law. The penalty applies in respect of all documents treated as a "tax declaration" for the purposes of TAP under Article 2(35).

The failure to file a tax declaration by the due date does not have to be the result of deliberate or reckless conduct for a late filing penalty to be imposed. A penalty is imposed if, as a matter of fact, the tax declaration or other document is not filed by the due date regardless of the reason for the omission.

The amount of the penalty depends first on whether there is any tax payable by the person for the period to which the tax declaration relates. If no tax is payable for the tax period to which the tax declaration relates, sub-article (5) provides that the penalty is 10,000 birr for each tax period that the tax declaration remains unfiled.

If there is tax payable for the tax period to which the period tax declaration relates, then sub-article (1) sets out a base penalty of 5% of the unpaid tax for each tax period that the tax declaration remains unfiled. This is subject to two limitations that place a ceiling on the amount of the penalty. First, sub-article (2) provides that the total amount of the penalty for the first tax period of default must not exceed 50,000 birr. Second, sub-article (1) provides that the amount of the penalty is not to exceed 25% of the unpaid tax. Further, sub-article (4) places a floor on the sub-article (1) penalty that it must not be lower than 10,000 birr (i.e. the penalty that applies under sub-article (5) in the case of no tax being payable under the tax declaration.

The Authority has power under Article 115(4) to remit the whole or part of a late filing penalty in appropriate cases.

105. Late Payment Penalty

This Article imposes an administrative penalty (referred to as "late payment penalty") on a taxpayer for failing to pay tax by the due date.

Sub-article (1) imposes a late payment penalty on a taxpayer who fails to pay tax by the due date. If the Authority has granted an extension of time for payment of tax under Article 32 (including permission to pay tax in instalments), a late payment penalty is imposed only if the taxpayer fails to pay the tax by the extended due date or dates (in the case of instalments). Thus, an extension of time under Article 32 protects a taxpayer against the imposition of late payment penalty.

The Article applies to every amount treated as "tax" for the purposes of TAP under the definition in Article 2(31). However, it is expressly provided in sub-article (4) that the Article does not apply to withholding tax as this is subjected to a separate penalty provision in Article 106.

Article 31(2)(a) provides that secondary liabilities and tax recovery costs are treated as a "tax" for the purposes of the Article. Thus, late payment penalty applies when a secondary liability or tax recovery costs are not paid by the due date specified in the notice of demand served on the person liable under Article 31(1).

The failure to pay tax by the due date does not have to be the result of deliberate or reckless conduct for a late payment penalty to be imposed. A penalty is imposed if, as a matter of fact, tax is not paid by the due date regardless of the reason for the failure. If a taxpayer is having a difficulty in paying tax by the due date, the taxpayer should apply under Article 32 to the Authority for an extension of time to pay the tax. By virtue of Article 31(2), Article 32 applies also to a secondary liability or a liability for tax recovery costs.

There are two components to the computation of the amount of the late payment penalty. The total amount of the penalty is the sum of the following amounts:

(1) 5% of the amount of the tax that remains unpaid at the end of one month after the due date.

(2) 2% of the amount of the tax for each month or part month thereafter that remains unpaid.

Sub-article (2) provides that the amount of the penalty is not to exceed the amount of unpaid tax.

Sub-article (3) provides for a refund of late payment penalty to the extent that the underlying tax in respect of which the penalty has been paid is subsequently found not to have been payable. The refund must be made in accordance with Article 50(4), which provides for the refund of overpaid tax by the Authority. In particular, the amount of the refund must be applied first against any tax owing by the taxpayer under any tax law (Article 50(4)(a) and (b)). The balance is refunded to the taxpayer subject to the taxpayer agreeing that it be carried forward for offset against future tax liabilities (Article 50(4)(c)).

As a result of Article 37(4), late payment penalty is in addition to late payment interest imposed under Article 37(1). Late payment penalty is a culpability penalty intended to punish the taxpayer for the wrongdoing associated with the late payment of tax, whereas late payment interest compensates the Government for being out of funds when tax is not paid by the due date. In other words, Article 37 and this Article serve different purposes.

The Authority has power under Article 115(4) to remit the whole or part of a late payment penalty in appropriate cases.

106. Withholding Tax Penalties

This Article provides for administrative penalties in relation to withholding tax.

Sub-article (1) provides that a person who fails to withhold tax or, having withheld tax, fails to pay the tax to the Authority, as required under the ITP is liable for an administrative penalty equal to 10% of the tax to be withheld or actually withheld but not transferred to the Authority. "Withholding tax" is defined in

Article (2)(44) to mean tax that a person is required to withhold from a payment under Part Ten of the ITP (i.e. Articles 88-93 of the ITP). The penalty applies both when a person: (i) fails to withhold tax as required under Part Ten of the ITP; and (ii) withholds tax but fails to pay the withheld tax to the Authority.

Sub-article (2) applies when sub-article (1) applies to a body (defined in Article 2(5)). In this case, the manager (defined in Article 2(19) of the body, chief accountant, or any other officer of the body responsible for ensuring the withholding and payment of withholding tax is liable for a penalty of birr 2,000 each. This is in addition to the penalty imposed on the body under sub-article (1). This reflects the importance of withholding tax as a basis for ensuring the collection of tax on withholding income. In some cases, particularly payments to non-residents that are subject to taxation under Article 52 and 54, withholding tax is the only basis on which the tax can feasibly be collected.

Sub-article (3) applies when Article 92(2) of the ITP applies. Article 92(2) of the ITP relates to the monetary thresholds for imposition of withholding tax under Article 92(1) of the ITP and provides for the aggregation of the payments for separate supplies when it would reasonably be expected that the goods or services would ordinarily be supplied in a single supply. In other words, Article 92(2) applies when there has been fragmentation of a single supply into separate supplies to avoid the withholding tax thresholds in Article 92(1). In this case, sub-article (2) provides that both the supplier and purchaser are liable for a penalty of birr 20,000 each.

Sub-article (4) applies when a person refuses to supply goods or services to a person who is obliged to withhold tax from the payment for the supply under Article 92 of the ITP so as to avoid the payment being subject to withholding tax under Article 92 of the ITP. In this case, the person is liable for a penalty of birr 10,000.

The Authority has power under Article 115(4) to remit the whole or part of a penalty imposed under the Article in appropriate cases.

107. VAT Penalties

This Article provides for administrative penalties in relation to VAT. These penalties were previously provided for in the VAT Proclamation.

The Article provides for the following penalties:

(1) A person is liable for a penalty if the person fails to apply for registration as required under the Value Added Tax Proclamation (sub-article (1)). A person is obliged to apply for VAT registration if the level of their taxable transactions in any 12-month period exceeds the VAT registration threshold specified in the Value Added Tax Proclamation. The amount of the penalty is birr 2,000 for each month or part thereof for the period commencing on the date that the person was required to apply for registration and ending on the date that the person files the application for registration or the person is registered on the Authority's own motion.

Sub-article (2) provides that a person to whom that sub-article (1) applies is also liable for a penalty of 100% of the amount of VAT payable on taxable transactions made by the person during the period commencing on the date on which the person was required to apply for registration and ending on the date that the person files the application for registration or the person is registered on the Authority's own motion. This is in addition to the penalty specified in sub-article (1).

Sub-article (3) provides that the imposition of penalty under sub-article (2) does not relieve the person from liability for the VAT payable on the taxable transactions made by the person during the period specified in sub-article (2).

However, the amount of the VAT payable is reduced by any turnover tax paid by the person on those transactions. Turnover tax is paid by persons who are not registered for VAT.

(2) A person is liable for a penalty if the person deliberately issues an incorrect tax invoice resulting in a decrease in the VAT payable on a taxable transaction or an increase in the creditable VAT in respect of a taxable transaction. The amount of the penalty is birr 50,000. The requirements for the issuing of tax invoices are specified in Article 22 of the Value Added Tax Proclamation.

The Authority has power under Article 115(4) to remit the whole or part of a penalty imposed under the Article in appropriate cases.

108. Failure to Issue Tax Invoice

This Article provides for an administrative penalty when a taxpayer fails to issue a tax invoice as required under a tax law. The amount of the penalty is 50,000 birr for each transaction to which the failure to issue a tax invoice relates.

The Authority has power under Article 115(4) to remit the whole or part of a penalty imposed under the Article in appropriate cases.

109. Tax Understatement Penalty

This Article imposes an administrative penalty (referred to as "tax understatement penalty") on a taxpayer who has understated their tax liability.

Sub-article (1) applies when the declared tax liability of a taxpayer is less than the taxpayer's actual correct tax liability. The difference between the two amounts is referred to as the "tax shortfall"). When sub-article (1) applies, the taxpayer is liable for an administrative penalty equal to 10% of the tax shortfall.

Sub-article (2) provides that the penalty is increased to 30% of the tax shortfall for the second application of the Article to the taxpayer and sub-article (3) provides that the penalty is increased to 40% of the tax shortfall for the third or subsequent application of the Article.

The application of sub-article (1) is subject to sub-article (4), which applies to a self-assessment taxpayer (defined in Article 2(30)). Sub-article (1) provides that no penalty is payable if the tax shortfall arose as a result of a self-assessment taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in making a self-assessment. A position taken by a self-assessment taxpayer is regarded as reasonably arguable if it is as likely as not to be correct. The self-assessment taxpayer's position does not have to be the "better view", but rather at least a "50:50 bet". Importantly, the position taken by the self-assessment taxpayer must relate to a contentious area of the law or a case of uncertainty in the application of the tax law to the taxpayer's circumstances. Sub-article (4) states that a position taken by a taxpayer in making a self-assessment is not a reasonably arguable position if the position is contrary to any of the following:

(1) A public ruling in force under Article 69 at the time the self-assessment declaration was filed.

(2) A private ruling issued to the taxpayer and in force under Article 73 at the time the self-assessment declaration was filed.

(3) A private ruling published under Article 75 and in force at the time the self-assessment declaration was filed.

This would be the case only when the opinion of the Ministry in a public ruling or private ruling is found to be a correct opinion on the application of the law.

The application of sub-article (4) protects only against the imposition of a penalty. A liability for late payment interest can still arise under Article 37 if the tax was not paid by the due date.

The Authority has power under Article 115(4) to remit the whole or part of a penalty imposed under the Article in appropriate cases.

110. Tax Avoidance Penalty

This Article imposes an administrative penalty (referred to as "tax avoidance penalty") in respect of the application of a tax avoidance provision to a taxpayer.

Sub-article (1) provides that, if the Authority has applied a tax avoidance provision in assessing a taxpayer, the taxpayer is liable for a tax avoidance penalty. The amount of the penalty is double the avoided tax. "Tax avoidance provision" is defined in Article 2(33) to mean the tax avoidance provisions of the ITP and Value Added Tax Proclamation. The main examples of a tax avoidance provision are:

(1) Articles 78 (income splitting), 79 (transfer pricing), and 80 (general anti-avoidance provision) of the ITP.

(2) A provision in the Value Added Tax Proclamation specifying a general anti-avoidance rule.

The Authority has power under Article 115(4) to remit the whole or part of a tax avoidance penalty in appropriate cases.

111. Penalty for Failing to Comply with Electronic Tax System

This Article imposes an administrative penalty on a taxpayer for failing to comply with the electronic tax system.

Sub-article (1) applies when a taxpayer fails to file a tax declaration or pay tax electronically as required by the Authority

under Article 82(2). When this occurs, sub-article (1) obliges the Authority to serve the taxpayer with a notice in writing seeking reasons for the failure.

Sub-article (2) provides for the imposition of penalty if the taxpayer fails to provide the Authority with adequate reasons for the failure to file the tax declaration or pay tax electronically. The taxpayer has fourteen days after being served with a notice under sub-article (1) to provide reasons for the failure. The amount of the penalty is 50,000 birr. The imposition of penalty in this case is to ensure that the Authority obtains the efficiency benefits of the electronic tax system. These benefits are lost if a taxpayer sometimes files electronically and sometimes files manually.

The Authority has power under Article 115(4) to remit the whole or part of a penalty imposed under this Article in appropriate cases.

112. Tax Agent Penalties

This Article provides for the imposition of an administrative penalty on a licensed tax agent who fails to comply with obligations under TAP. "Licensed tax agent" is defined in Article 2(17) to mean a tax agent licensed to provide tax agent services under Article 96 or 97.

A licensed tax agent is liable for a penalty in the following situations:

(1) A licensed tax agent preparing, or assisting in the preparation of, a tax declaration of a taxpayer is liable for a penalty if the agent fails to provide the taxpayer with either: (i) a certificate required under Article 22(1); or (ii) a statement required under Article 22(2).

(2) A licensed tax agent is liable for a penalty if the agent fails to keep certificates and statements provided to clients as required under Article 22(4).

(3) A licensed tax agent is liable for a penalty if the agent fails to notify the Authority that they have ceased to carry on business as a tax agent as required under Article 99(1).

The amount of the administrative penalty imposed under this Article is 10,000 birr.

The Authority has power under Article 115(4) to remit the whole or part of a penalty imposed under this Article in appropriate cases.

113. Penalties Relating to Sales Register Machines

This Article provides for the imposition of administrative penalties relating to the use of sales register machines.

Sub-article (1) provides for the following penalties on a person who has the obligation to use sales register machine:

(1) If a person is found using sales register machine or point of sales machine software not accredited or registered by the tax Authority (Sub-Article 1(a)) or carrying out transactions without receipt or invoice or using any other receipt not generated by a sales register machine except at the time the machine is under repair or for any other justifiable reason (Sub-Article 1(b)), a penalty of Birr 50,000 (Fifty Thousand Birr) is imposed.

(2) If a person caused damage to or change of fiscal memory or attempts to cause damage to or change of fiscal Memory (Sub-Article 1(c)), a penalty of Birr 100,000 (One Hundred Thousand Birr) is imposed.

(3) For obstructing inspection of the audit system of a sales register machine by officer of the Tax Authority or for failure to have annual machine inspections performed by a service centre (Sub-Article 1(d)) ; or for not having a valid service contract with an authorized service centre for a sales register machine in use, or for using the sales register

machine without connecting to the terminal, or for not keeping the inspection booklet besides the sales register machine, or for issuing refund receipts without properly recording the return of goods or customers' request for refund in the refund book (Sub-Article 1(e)), a penalty of Birr 25,000 (Twenty -five thousand birr) is imposed.

(4) A penalty of Birr 10,000 (Ten Thousand Birr) is imposed for failure to inform the Tax Authority and the machine service center within three days of the termination of a sales register machine use due to theft or irreparable damage, or within four hours for failure to report machine malfunction due to any other causes (Sub-Article 1(f).

(5) Birr 50,000 (Fifty Thousand Birr) for failure to notify the Tax Authority the correct place of business the sales register machine is in use (Sub-Article 1(g); Birr 25,000 (Twenty-five Thousand Birr) for failure to notify the Tax Authority change of name or address or for failure to notify the Tax Authority and Service Center three days in advance in cases of termination of business (Sub-Article 1(h); Birr 10,000 (Ten Thousand Birr) for failure to put a conspicuous notice containing one or all the following information at a place where the machine is installed (Sub-Article 1(i):- (a) the name of the machine user, trade name, location of trade, taxpayers' identification number, accreditation and permit numbers for the sales register machine; (b) text stating that "in case of machine failure sales personnel must issue manual receipts authorized by the Tax Authority"; and (c) text that reads "Do not pay if a receipt is not issued";

(6) For changing or improving a point of sales machine software by a person not accredited by the Tax Authority (Sub-Article 1(j)), the law imposes penalty of Birr 30,000 (Thirty Thousand Birr).

Sub-Article 2 provides for the following penalties on a person who is accredited and permitted for the supply of sales register machine or software

(1) The legislation imposes a penalty of Birr 100,000 (One Hundred Thousand Birr) for failure to notify change of business address to the Tax Authority (Sub-article 2(a)); Birr 500,000 (Five Hundred Thousand Birr) for selling a sales register machine not accredited by the Tax Authority (Sub-article 2(b));

(2) Failure to get a machine registration code for each sales register machine from the Tax Authority or for not affixing the machine code stickers on a visible part of the machine (Sub-Article 2(c) results in a penalty of Birr 50,00 (Fifty Thousand Birr); Birr 100,000 (One Hundred Thousand Birr) penalty is imposed for failure to notify the Tax Authority in advance any change made to the sales register machine in use or for inserting or adding incorrect information or for omitting the correct information from the manual that guides the use of sales register machine (Sub-Article 2(d)); Birr 50,000 (Fifty Thousand Birr) penalty is imposed for failure to notify the Tax Authority in advance or for not being able to replace, within three days of the request made by a service center, sales register machine lost due to theft or sustained irreparable damage (Sub-Article 2(e));

(3) Birr 50,000 (Fifty Thousand Birr) for failure to keep information about service centers with which it has signed agreements or for failure to notify the Tax Authority about contracts terminated or newly entered agreements with service centers (Sub-Article 2(f)).

Sub-Article 3 provides for the following penalties on a Sales Register Machine Service Centre:

(1) A penalty of Birr 20,000 (Twenty Thousand Birr) is imposed for failure to report to the Tax Authority within two days

of change of the fiscal memory of a sales register machine (Sub-Article 3(a)); or for failure to perform annual technical inspections on sales register machines that are under contract (Sub-Article 3(b));

(2) Birr 50,000 (Fifty Thousand Birr) for deploying every person not certified by the supplier and not registered by the Tax Authority (Sub-Article 3(c)).

114. Miscellaneous Penalties

This Article provides for the imposition of penalty in a number of situations mainly relating to breach of reporting obligations.

The following penalties apply under the Article:

(1) A taxpayer who fails to notify the Authority of any change to their personal circumstances as required under Article 10 is liable for a penalty of birr 20,000 (sub-article (1)).

(2) A body that fails to file a copy of its memorandum of association, articles of association, statute, partnership agreement, or other document of formation or registration, or any amendment to such document, with the Authority as required under Article 62 is liable for a penalty of birr 10,000 for each month or part month that the document remains unfiled (sub-article (2)).

(3) A public auditor who fails to file an audit report with the Authority as required under Article 63 is liable for a penalty of birr 10,000 for each month or part month that the document remains unfiled (sub-article (3)).The penalty is in addition to any action taken by the Accounting and Auditing Board of Ethiopia in relation to the public auditor's licence (sub-article (4)).

(4) A person who fails to notify the Authority that they have entered into an Ethiopian source services contract with a non-resident as required under Article 64 is liable for a penalty of birr 1,000 for each day of default (sub-article (5)).

(5) A taxpayer who fails to provide details of transactions with related persons as required under Article 79(5)of the ITP is liable for a penalty of birr 100,000 (sub-article (6)).

(6) A person who has an obligation to supply information to the Authority (including on request) but who fails to provide the information to the authority is liable for a penalty of birr 5000 (sub-article (7)). If the person is a body, then the head of the body is liable for the penalty.

115. Assessment of Administrative Penalties

This Article provides for general matters relating to the imposition of administrative penalties.

Sub-article (1) provides that the Authority must serve a person liable for an administrative penalty with a notice of the penalty assessed. A liability of a person to pay a penalty arises only if the Authority serves the person with a notice of the penalty assessed. The notice must state the amount of penalty payable and the due date for payment. This means that administrative penalties are assessed liabilities.

A penalty assessment is treated as a "tax assessment" and, therefore, a "tax decision" for the purposes of TAP (see Article 2(32) definition of "tax assessment" and Article 2(34) definition of "tax decision"). This means that a person assessed to a penalty can challenge the assessment only under the objection and appeal procedure in Part Nine. Further, penalty is treated as "tax" for the purposes of TAP (see Article 2(31)(c)). This means, for example, that the Authority can rely on the powers in Chapter Three of Part Seven for the collection and recovery of any unpaid penalty.

Sub-articles (3)-(6) set out a procedure for waiver of penalty either on application of the person subject to the penalty or on the Authority's own motion. Sub-article (3) provides that a person liable for penalty may apply, in writing, to the Authority

for waiver of the penalty payable. The waiver application must include reasons supporting the waiver of the penalty. Sub-article (4) provides that the Authority can waive a penalty either on application by the person liable or on the Authority's own motion. The waiver of penalty must be in accordance with a Directive issued by the Authority on waiver of penalties.

Sub-article (5) obliges the Authority to maintain a public record of each penalty waived together with the reasons for the waiver. The Authority must report the record of penalty waivers to the Ministry on a quarterly basis. This ensures transparency in the process of waiving penalties.

116. Procedure in Tax Offence Cases

This Article provides that a tax offence is a violation of the criminal law of Ethiopia and is charged, prosecuted, and appealed in accordance with Ethiopian criminal procedure law.

117. Offences Relating to TINs

This Article provides for tax offences in relation to TINs.

Sub-article (1) provides for the following offences:

(1) A person commits an offence when the person obtains or attempts to obtain more than one TIN (sub-article (1)(a)). Sub-article (2) provides that there is a separate offence for each additional TIN obtained or attempted to be obtained.

(2) A person commits an offence when the person allows their TIN to be used by another person. This is the case even when the persons are related in some way, such as companies in the same corporate group. Separate TINs are issued to taxpayers and each taxpayer must use their own TIN. However, sub-article (3) provides that an offence is not committed under sub-article (1)(b) when a licensed tax agent uses the TIN of a client if the conditions in Article 14(6) are satisfied, namely: (i) the client has given written

permission to the licensed tax agent to use the TIN; and (ii) the licensed tax agent uses the TIN only in respect of the tax affairs of the client.

(3) A person commits an offence when the person uses the TIN of another person. Again, sub-article (3) provides that an offence is not committed when a licensed tax agent uses the TIN of a client if the conditions in Article 14(6) are satisfied.

118. False or Misleading Statements, and Fraudulent Documents

This Article provides for an offence when a person makes a false or misleading statement or provides fraudulent documents.

Sub-article (1) provides that a person commits an offence in the following circumstances:

(1) The person makes a statement to the Authority that is false or misleading. A statement can be made in writing or orally. A statement is false if it is contrary to the truth or the facts. This is a question of fact. A statement is misleading if it is reasonably likely to mislead a person belonging to the class of persons to whom it is directed. The clearest example is a false or misleading statement made by a taxpayer in a tax declaration filed with the Authority. Sub-article (2) provides that the reference in sub-article (1) to a statement made to the Authority by a person includes a statement made by the person to another person with the knowledge or reasonable expectation that the person will pass on the statement to the Authority. This may apply, for example, if a taxpayer provides false or misleading information to its licensed tax agent with the intention that the tax agent will pass the information onto the Authority. Importantly, an offence is committed only when the false or misleading statement has been made with intent to defraud the Authority.

(2) The person provides the Authority with fraudulent documents. This may involve a person altering, changing, or modifying a document for the purpose of deceiving the Authority. It may also involve a person passing on to the Authority a copy of a document that the person knows to be false. Again, an offence is committed only when the fraudulent document has been provided to the Authority with intent to defraud the Authority.

Sub-article (3) provides that sub-article (1) applies to a person who, with the intention of evading tax, engages in business in the capacity of an agent by obtaining a trade licence in the name of a person who is not alive or whose address is not known or who doesn't have the legal capacity to give power of attorney or who doesn't benefit from the business or who otherwise does not exist. The offence is in addition to the person being responsible for the tax liability of the business.

119. Fraudulent or Unlawful Tax Invoices

This Article provides for offences in relation to fraudulent invoices.

Sub-article (1) provides for the following offences:

(1) A person commits an offence if the person prepares, produces, sells, or distributes fraudulent invoices.

(2) A person commits an offence if the person uses fraudulent invoices to reduce their tax liability or to claim a refund.

Sub-article (2) applies if the pecuniary benefit obtained under sub-article (1) exceeds birr 100,000. In this case, sub-article (2) provides that the fine on conviction is equal to the pecuniary benefit obtained and a longer term of imprisonment applies.

Sub-article (3) provides that a person commits an offence if the person possesses, sells, leases, or otherwise supplies a machine, equipment, or software that is used in making, preparing, or

printing fraudulent invoices. Sub-article (4) makes clear that conviction for an offence under sub-article (3) does not prevent confiscation of the machine, equipment, or software, and of the proceeds of the crime.

Sub-article (5) provides that a person commits an offence if the person possesses, keeps, facilitates, or arranges the sale, or commissions the use of fraudulent invoices.

120. General Offences Relating to Invoices

This Article provides for general offences in relation to invoices.

The Article provides for the following offences:

(1) A taxpayer commits an office if the taxpayer fails to provide a tax invoice for transaction as required under a tax law (sub-article (1)).

(2) A person commits an offence if the person understates a sales price by entering different amounts of the price in identical copies of the invoice for a single transaction (sub-article (2)). Sub-article (3)) applies if the actual sales price exceeds birr 100,000. In this case, sub-article (3) provides that the fine on conviction is equal to the highest of the prices specified on the invoices and a longer term of imprisonment applies.

(3) A person commits an offence if the person provides or accepts an invoice for which there is no transaction (sub-article (4)). Sub-article (5) applies if the invoice to which sub-article (4) applies is for an amount in excess of birr 200,000. In this case, sub-article (5) provides that the fine on conviction is equal to the amount stated on the invoice and a longer term of imprisonment applies.

(4) A person commits an offence if the person prints tax invoices without authorisation from the Authority (sub-article (6)). Sub-article (7) provides that a person convicted

of an offence under sub-article (6) of this Article for the second time forfeits their printing machine and their business licence is to be cancelled.

121. Claiming Unlawful Refunds and Excess credits

This Article provides for an offence in relation to claiming unlawful refunds or excess tax credits. It is relevant to Articles 49 and 50 of the ITP.

Sub-article (1) provides that a taxpayer commits an offence when the taxpayer claims a refund or tax credit using a falsified receipt or other similar method. An offence is committed only if the refund or credit was claimed with intent to defraud the Authority.

Sub-article (2) makes clear that person convicted of an offence under sub-article (1) is still required to repay the refund as required by notice under Article 50(6).

122. VAT Offences

This Article provides for offences relating to VAT. These offences were previously provided for in the Value Added Tax Proclamation.

The Article provides for the following offences:

(1) A person who is not registered for VAT commits an offence if the person provides a tax invoice (sub-article (1)).

(2) A person commits an offence if the person refuses to provide a tax debit note or tax credit note as required under the Value Added Tax Proclamation.

(3) A person commits an offence if the person provides a tax debit note or tax credit note otherwise than as allowed under the VAT Proclamation.

123. Stamp Duty Offences

This Article provides for offences relating to stamp duty.

The Article provides for the following offences:

(1) A person commits an offence if the person executes or signs (other than as a witness) a document subject to stamp duty on which no stamp duty is paid (sub-article (1)(a)).

(2) A person commits an offence if the person disguises or hides the true nature of a document with the intention of not paying stamp duty or paying a lower amount of stamp duty (sub-article (1)(b)).

(3) A person who is authorised to sell stamps or stamped paper commits an offence if the person violates the Stamp Duty Proclamation or Stamp Duty Regulations (sub-article (2)(a)).

(4) A person commits an offence if the person sells or offers for sale stamps or stamped papers without authorisation (sub-article (2)(b)).

124. Offences Relating to Recovery of Tax

This Article provides for offences relating to the recovery of unpaid tax.

The following offences are specified:

(1) A person who is a receiver as defined in Article 40(6) commits an offence when the person contravenes Article 40 (sub-article (1)). This applies to the following contraventions of Article 40: (i) the failure by a receiver to provide a notice as required under Article 40(1); (ii) the disposal of an asset by a receiver in breach of Article 40(3)(a); and (iii) the failure by a receiver to set aside the amount required under Article 40(3)(b).

(2) A person who has been served with notice of a seizure order commits an offence in the following circumstances (sub-article (2)):

(a) The person sells, exchanges, or otherwise disposes of property that is the subject of the seizure order.

(b) The person hides, breaks, spoils, or damages the property that is the subject of the seizure order.

(c) The person destroys, hides, removes, damages, changes, cancels, or deletes any documents relating to property the subject of the seizure order.

(3) A person commits an offence when the person fails to comply with a garnishee order served on the person (sub-article (3)). Article 43 empowers the Authority to serve a garnishee order on a person owing money to, or holding money on behalf of, a defaulting taxpayer requiring them to pay the amount specified in the order to the Authority (rather than to the taxpayer). A person fails to comply with a garnishee order, for example, if the person pays the money specified in the notice to the taxpayer or as the taxpayer directs rather than to the Authority, or if they withhold the money but fail to pay it to the Authority by the due date specified in the notice.

Sub-article (4) provides that there is no breach of a garnishee order if the person served with the notice has notified the Authority under Article 43(5) that the person is unable to comply or fully comply with the order. If the Authority serves the person with a notice under Article 43(6) and the person is in breach of that notice, an offence is then committed.

Sub-article (5) provides that the conviction of a person of an offence under sub-article (3) does not relieve the person from liability to pay the amount specified in the garnishee order.

(4) A person commits an offence when the person departs or attempts to depart Ethiopia in contravention of a departure prohibition order issued under Article 44 (sub-article (6)).

(5) A financial institution commits an offence if the financial institution fails to comply with an administrative order served on the financial institution under Article 42 (sub-article (7)). If a financial institution commits an offence under sub-article (7) with the knowledge or as a result of negligence of the manager of the financial institution, sub-article (8) provides that the manager is also treated as having committed an offence.

(6) A person commits an offence when the person opens, or removes the seal of, business premises that are subject to a closure order under Article 45 without the written permission of the Authority (sub-article (9)).

125. Tax Evasion

This Article provides for offences relating to tax evasion.

Sub-article (1) provides that a person commits an offence if the person, with intent to evade tax, conceals income, fails to file a tax declaration, or fails to pay tax by the due date.

Sub-article (2) provides that withholding agent (Article 2(43)) commits an offence if, with intent to evade tax, the withholding agent withholds tax from a payment but fails to pay the withheld tax to the Authority by the due date.

126. Obstruction of Administration of Tax Laws

This Article provides for offences when a person obstructs the administration of the tax laws.

Sub-article (1) provides that a person commits an offence when the person obstructs or attempts to obstruct a tax officer in the performance of duties under a tax law. "Tax officer" is defined in Article 2(37). The offence applies in relation to all laws treated as "tax laws" under Article 2(36).

Sub-article (2) provides that a person commits an offence when the person otherwise obstructs or attempts to obstruct the administration of a tax law.

Sub-article (3) provides that, for the purposes of the Article, the following actions (and similar actions) are considered to be obstruction:

(1) A refusal to comply with a request of the Authority for inspection of documents (see Article 18) or the provision of reports or information relating to the tax affairs of a taxpayer (for example, as required under Articles 62 and 63) (sub-article (3)(a)). It is expressly provided that this includes a refusal to comply with a notice served on the person under Article 65 (such as a refusal to provide information or documents).

(2) A refusal by a person to attend and give evidence as required under a notice served on the person under Article 65.

(3) The prevention of the Director-General or an authorised officer from exercising the right of access under Article 66.

(4) A refusal to provide reasonable assistance or facilities to the Director-General or authorised officer in relation to the exercise of the right of access as required under Article 66(4).

(5) The provoking of a disturbance in an office of the Authority or impeding an employee of the Authority from performing their duties of employment.

127. Unauthorised Tax Collection

This Article provides that a person commits an offence when the person collects or attempts to collect tax under a tax law when not authorised to do so.

128. Aiding or Abetting a Tax Offence

This Article provides an offence for aiding or abetting the commission of a tax offence.

The Article provides that a person commits an offence when the person aids, abets, assists, incites, or conspires with another person to commit an offence (referred to as the "principal offence") under a tax law. The terms "aid", "abet", "incite", and "conspire" have their normal legal meaning. The sanction is the same as that imposed for the principal offence. For example, if a person induces another person to provide fraudulent documents to the Authority in breach of Article 118, the first-mentioned person commits an offence under this Article and the sanction is the same as that imposed under Article 118.

129. Offences Relating to the Tax Appeal Commission

This Article provides for offences relating to the Tax Appeal Commission.

Sub-article (1) provides that the following persons commit an offence:

(1) A person who insults a member of the Commission in the exercise of his or her powers or functions as member.

(2) A person who interrupts a proceeding of the Commission without authorisation.

(3) A person who creates a disturbance, or takes part in creating a disturbance, in or near a place where the Commission is

sitting with the intent of disrupting the proceedings of the Commission.

(4) A person who otherwise obstructs the functioning of the Commission.

Sub-article (2) provides that the following persons commit an offence:

(1) A person who, without reasonable excuse, refuses or fails to comply with a summons to appear before the Commission.

(2) A person who, without reasonable excuse, refuses or fails to produce any document or provide any information to the Commission.

(3) A person who, without reasonable excuse, refuses or fails to take an oath or affirmation before the Commission.

(4) A person who, without reasonable excuse, refuses or fails to answer any question asked of the person during a proceeding before the Commission.

Sub-article (3) provides that a person commits an offence if the person knowingly gives false or misleading evidence to the Commission.

130. Offences by Tax Agents

This Article provides that a person commits an offence if the person provides tax agent services in breach of Article 98.

The effect of Article 98(1) is that only a licensed tax agent can provide tax agent services for a fee. "Tax agent services" is defined in Article 95(2)). Except when the exception in Article 98(2) applies (applicable to a licensed advocate), an unlicensed person who provides tax agent services commits an offence.

131. Offences relating to Sales Register Machines

This Article provides for offences relating to the use of sales register machines.

Sub-article (1) provides for the following offences by a person who has the obligation to use a sales register machine:

(1) The person commits an offence if person uses a sales register machine that is not accredited or registered by the Authority (sub-article (1)(a)).

(2) The person commits an offence if the person carried out transactions without issuing a receipt or invoice, or issued a receipt not generated by a sales register machine (sub-article (1)(b)). It is a defence to an offence under sub-article (1)(b) if the sales register machine was under repair or there is another justifiable reason for the failure.

(3) The person commits an offence if the person has caused damage or change to the fiscal memory of a sales register machine or attempts to cause damage or change to the fiscal memory of the machine (sub-article (1)(c)).

Sub-article (2) provides for the following offences by a person who is accredited and registered to supply sales register machines:

(1) The person commits an offence if the person sells software or a sales register machine not accredited by the Tax Authority (sub-article (2)(a)).

(2) The person commits an offence if the person failed to notify the Authority in advance of any change made to the sales register machine in use, or if inserted incorrect information to or omitted the correct information from, the manual that guides the use of a sales register machine (sub-article (2)(b)).

Sub-article (3) provides that a person commits an offence if the person distributes a sales register machine or software without being licensed to do so.

Sub-article (4) provides that a person operating a sales register machine service centre commits an offence if the person deploys service personnel who are not certified by the supplier and/or not registered by the Authority.

Sub-article (5) provides that a person who belongs to the personnel of a sales register machine service centre commits an offence if, without the knowledge of the service centre and the Authority, the person: (i) dismantles or assembles a sales register machine; (ii) deliberately removes the seals on a sales register machine or changed parts of a sales register machine not reported to have any break down; or (iii) commits any other similar act.

Sub-article (6) provides that a tax officer commits an offence if:

(1) The tax officer, in violation of the rules and procedures of the use of sales register machines, dismantles or assembles a sales register machine or approves its utilisation without the presence of any service personnel or changes the machine registration code (sub-article (6)(a)).

(2) The tax officer, in violation of the rules and procedures of the use of sales register machines, knowingly or negligently fails to report to the Authority, within 24 hours, offences committed by the user, service centre, or its personnel or supplier of a sales register machine (sub-article (6(b)).

132. Offences by Bodies

This Article provides for the treatment of offences committed by bodies.

Sub-article (1) provides that a manager of a body is treated as having committed any offence committed by the body and

may be prosecuted for the offence. "Body" is defined in Article 2(5). "Manager" is defined in Article 2(19). For a partnership, the partners and general manager of the partnership are treated as a manager of the partnership. For a company, the CEO, directors, the general manager, and any other similar officer are treated as a manager of the company. For any other body of persons, the general manager and any other similar officer holder is treated as a manager of the body.

Sub-article (2) provides for a defence if a person specified in sub-article (1) satisfies both the following conditions:(i) the person proves that the offence was committed without his or her consent or knowledge (subjectively determined); and (ii) the person proves that he or she exercised all reasonable diligence to prevent commission of the offence. Whether reasonable diligence has been exercised is objectively determined having regard to the nature of the person's functions and to all the circumstances of the offence.

133. Publication of Names

This Article empowers the Authority to publish the names of persons convicted of an offence under a tax law on its website and through other mass media.

134. Reward for Verifiable Information of Tax Evasion

This Article provides for a reward for persons providing information relating to tax evasion.

Sub-article (1) applies when a person provides verifiable and objective information of tax evasion through concealment, under-reporting, fraud, or other improper means. In this case, the Authority is obliged to grant the person a reward equal to 20% of the amount of the tax evaded at the time the tax is collected by the Authority. Sub-article (3) requires that details of the reward must be specified in a Directive.

Sub-article (2) provides that no reward is payable: (i) to a person who participated in the tax evasion; or (ii) when reporting the tax evasion was part of the person's duties of employment.

135. Reward for Outstanding Performance

This Article empowers the Authority to reward a tax officer for outstanding performance and discharge of duties and a taxpayer for exemplary discharge of his or her tax obligations. Sub-article (2) requires that the Minister must specify details of the reward in a Directive.

136. Power to Issue Regulations and Directives

This Article empowers the Council of Ministers to issue of Regulations necessary for the proper implementation of TAP. It also empowers the Minister to issue Directives necessary for the proper implementation of TAP and the Regulations.

137. Transitional Provisions

This Article provides for transitional provisions consequent upon the enactment of TAP. Further transitional provisions may be provided for in the Regulations.

Sub-article (1) provides that the TAP applies to any act or omission occurring, or any taxation decision made, before TAP enters into force under Article 139. However, this is subject to the application of sub-article (2).

Sub-article (2)(a) provides that any administrative penalties applicable to the non-payment of taxes due before the TAP enters into force are to be assessed in accordance with the tax laws in force prior to the TAP entering into force.

Sub-article (2)(b) provides that any case that has been pending in the Tax Appeal Commission when the TAP enters into force is to be adjudicated in accordance with the tax laws in force prior to the TAP entering into force.

Sub-article (2)(c) provides that existing Tax Complaint Review Committee and Tax Appeal Commission continue to function until the review department provided for under Article 55(1) and the Tax Appeal Commission provided for under Article 86 are established.

Sub-article (2)(d) applies when the period for the making of an application or appeal has expired before the TAP entered into force. Sub-article (2)(d) makes clear that nothing in TAP is to be construed as enabling the application or appeal to be made under the TAP by reason only of the fact that a longer period is specified in the TAP. In other words, the TAP cannot "refresh" application and appeal periods that have expired before the TAP entered into force.

Sub-article (3) applies if the Institute of Certified Public Accountants is not established at the time that the TAP enters into force. In this case, sub-article (3) provides that any reference in the TAP to the Institute is treated as a reference to the Accounting and Auditing Board of Ethiopia until the Institute is established.

Sub-article (4) provides that that the Obligatory Use of Sales Register Machines Council of Ministers Regulations No. 139/2007 continue to apply for the purposes of Article 20 until replaced by new Regulations issued by the Council of Ministers.

138. Inapplicable Laws

This Article provides that the provisions of TAP override any equivalent provisions in another tax law to the extent of any inconsistency. This is subject to the operation of the transitional rules in Article 137.

139. Effective Date

Sub-article (1) provides that TAP enters force on the date of its Publication in the Federal Negarit Gazeta.

Sub-article (2) provides that Part Eleven (ruling system) comes into operation on such date as the Minister may specify by notice published in a newspaper of wide circulation.

Sub-article (3) provides that Part Fourteen (licensing of tax agents) comes into operation on such date as the Authority may specify by notice published in a newspaper of wide circulation.

Sub-articles (2) and (3) allow for the delay in the start of Parts Eleven and Fourteen until the Authority is ready for their implementation.

P. O. Box 2559 • Addis Ababa • Ethiopia
Tel: Helpline/free phone call center at 8199
Fax: +251-(0)116 629 906
Email: erca@ethionet.et

Design + Print @ Eclipse +251 115 572222/23, Addis Ababa, Ethiopia