

LAWS OF SOUTH SUDAN

TAXATION ACT (Amendment No. 2) PROVISIONAL ORDER, 2012

Provisional Order No. 26

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TAXATION ACT (Amendment No. 2) PROVISIONAL ORDER, 2012

In exercise of powers vested in the President under Article 86 (1) of the Transitional Constitution of the Republic of South Sudan, 2011, the President hereby issues the following Provisional Order:

CHAPTER I

PRELIMINARY PROVISIONS

1. Title and Commencement.

This Provisional Order shall be cited as the “Taxation Act (Amendment No. 2) Provisional Order, 2012” and shall come into force on the date of its signature by the President.

2. Purpose.

The purpose of this Provisional Order is to amend the Taxation Act, 2009, to correct several small errors under that Act, and to provide for related matters.

3. Authority and Application.

This Provisional Order is drafted in accordance with the provisions of Article 177(2) of the Transitional Constitution of the Republic of South Sudan 2011, which grants the National Government authority to legislate for raising revenue or collecting taxes from certain sources.

4. Amendment to Chapter XI of the Principal Act

Section 57. Gross Income of the Taxation Act (Principal Act) is amended so that paragraph (f) of subsection (2) is deleted in its entirety. The new Section 57(2) shall read as follows:

(2) The following income shall be exempted from the calculation of gross income:

- (a) wages received by foreign diplomatic and consular representatives and foreign personnel of Liaison Offices in Southern Sudan;
- (b) wages received by foreign representatives, foreign officials and foreign employees of international governmental organizations and international nongovernmental organizations;
- (c) where provided by an agreement with Government of Southern Sudan wages received by foreign representatives, foreign officials and foreign employees of

- donor agencies or their contractors or grantees carrying out humanitarian aid, reconstruction work, civil administration or technical assistance;
- (d) compensation for the damage or destruction of property, harm to an individual, and the proceeds of life insurance policies; and
- (e) interest and dividends where tax is withheld under Chapter XIV of this Provisional Order.

5. Amendment to Chapter XII of the Principal Act

Section 83. Advance Payment of Tax of the Principal Act is deleted and replaced with the following:

Section 83. Advance Payment of Tax

Taxpayers shall remit an advance payment of tax in an amount prescribed by regulation on or before the following dates:

Filing Date	Tax Period
15 April	1 January to 31 March
15 July	1 April to 30 June
15 October	1 July to 30 September
15 <u>January</u>	1 October to 31 December

6. Amendment to Chapter XIII of the Principal Act

Section 87. Rate of Tax in the Principal Act is deleted and replaced with the following:

Section 87 Rate of Tax

Tax shall be applied to all goods entered into South Sudan at the rate of 3 (three) percent.

7. Amendment of Chapter XIV of the Principal Act

Section 92. Tax Withholder in the Principal Act is amended as follows:

The following persons shall withhold tax determined under this Chapter at the time of payment:

- (a) every person who is an employer paying wages to an employee;
- (b) legal entities that pay dividends;
- (c) persons who pay interest, ~~except in cases of the payment of interest on a loan or other debt~~; and,
- (d) persons who pay royalties to individuals and legal entities.
- (e) person who pay rent to individuals and legal entities.

Section 94. Withholding Rate in the Principal Act is amended as follows:

- (1) An employer shall withhold tax from an employee's wages for the appropriate payroll period in accordance with the provisions of Schedule II of this Provisional Order.
- (2) Any person who pays dividends, interest, rent or royalties shall withhold tax at the rate of ten percent (10%) of the amount of the payment at the time of payment, regardless of whether the beneficiary of the payment is a resident or not.
- (3) An employee may be exempted from tax under subsection (1) above in accordance with the provisions of exemption from Personal Income Tax set forth in Schedule II of this Provisional Order.

8. Amendment of Chapter XV of the Principal Act.

Chapter XV of the Principal Act is amended as indicated below:

CHAPTER XV

EXCISE TAX

Section 97. Interpretations

In this Chapter, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them respectively:

<i>“Air transport service”</i>	means airplanes or other modes of airborne equipment which carries passengers or cargo for a fee. Every person operating an aircraft designed or adapted to carry persons in addition to the flight crew shall be liable for excise tax.
<i>“Alcohol product”</i>	means any article covered by Harmonized System numbers 2203, 2204, 2205, 2206, 2207.10.30, or 2208;
<i>“Charter Services”</i>	means the payment for services of airplane, helicopters, boats, and other charter services which carries passengers or cargo for a service;
<i>“Customs Value”</i>	means the cost of the goods plus insurance and freight;
<i>“Excisable goods”</i>	means any goods subject to this Chapter, and include alcoholic beverages; tobacco products, fuels and vehicles.
<i>“Excisable services”</i>	means any services subject to this Chapter, and include: air transport services; insurance services; telecommunication services; and hotel and restaurant services.
<i>“Excise tax”</i>	means an indirect tax that is included in the selling price of excisable goods or services;

<i>“Harmonized system number”</i>	means a number assigned to a commodity for the classification of goods in the administration of taxes as developed by the World Customs Organization;
<i>“Insurance service”</i>	means any service that covers, indemnifies, or insures persons, property, or other objects, tangible or otherwise;
<i>“Fuel”</i>	means any article covered by Harmonized system numbers 2710.00.10, 2710.00.15, or 2710.00.18;
<i>“Telecommunication Service”</i>	means a service provided to transmit voices, pictures, printed and written materials, symbols, or sounds by telephone, telegraph, wire, wireless, satellite, internet, or any other similar means;
<i>“Tobacco product”</i>	means any article covered by Harmonized System Number 2402 or 2403.

Section 98. Object of Tax

Excise tax shall be imposed on goods and services in accordance with Schedule III of this Provisional Order and shall apply to:

- (a) the production of excisable goods in South Sudan;
- (b) the importation of excisable goods into South Sudan; and,
- (c) the provision of excisable services in South Sudan.

Section 99. Taxpayers

Taxpayers under this Chapter are:

- (a) persons engaged in the production of excisable goods in South Sudan;
- (b) persons who are importers of excisable goods; and,
- (c) persons engaged in providing excisable services.

Section 100. Value for Tax

- (a) The value, on which tax is assessed, shall be the greater of the manufacturer’s selling price or fair market value of goods produced in South Sudan or, in the case of imported goods, the customs value or, in the case of services the greater of the amount paid for the service or fair market value.
- (b) The air transport services and charter services excise taxes shall be chargeable for every paying passenger boarding a flight, or all cargo loaded on a flight, to any destination within or outside South Sudan.

Section 101. Calculation of Tax

The tax rate, as set forth in Schedule III of this Provisional Order may be:

- (a) expressed as a percentage of the value and shall be calculated by multiplying the value of the excisable goods by the rate; or
- (b) expressed as a fixed amount per unit of measure of the goods and calculated by multiplying the excise tax rate by the appropriate number of units of excisable goods.
- (c) expressed as a percentage of the value of services.

Section 102. Time of Tax

Tax shall be applied as follows:

- (a) in the case of excisable goods produced in South Sudan, at the time goods are released outside the production premises;
- (b) in the case of excisable goods entering South Sudan, at the time the importation is completed pursuant to the provisions of the National Customs Law;
- (c) in the case of air transport or charter services, at the time the ticket is sold, or charter agreement is signed; and
- (d) in any other case at the time the excisable goods are in the possession of a person or excisable services are provided in South Sudan as may be prescribed by regulations.
- (e) In the case of air passenger that, the tax shall be due when the aircraft first takes off on the passenger's flight, but shall be collected by the airline or travel agent, as the case may be, at the time the ticket is sold.

Section 103. Exemptions

- (1) Aviation fuel shall be exempted from excise tax in accordance with the system of registration and exemption certificates set forth in the regulations.
- (2) Where provided by an Agreement with the Republic of South Sudan, the United Nations, the UN Specialized Agencies, diplomatic missions, or other international donors or their contractors that import goods or supply or purchase goods or services in South Sudan are exempt from the excise tax but only to the extent that such goods or services are directly related to the to the diplomatic mission or donor-funded project.
- (3) Notwithstanding paragraph (1), all excise taxes become immediately due and payable if the goods are disposed of in South Sudan to private persons or are no longer used in or are necessary for the diplomatic mission or donor-financed

project, unless the ownership of goods is transferred to the Republic or another person exempt from excise tax under this section.

Section 104. Tax Return and Payment of Tax

Each taxpayer shall submit a tax return and pay the tax reported on that return not later than the 15th day of the month following the action which gave cause for the tax liability. Such filing and payment shall be in the manner and form prescribed by regulations.

9. Amendment of Chapter XVI of the Principal Act.

New Chapter XVI of the Principal Act is added as follows:

CHAPTER XVI

SALES TAX

Section 105. Interpretations

In this Chapter, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them respectively:

- | | |
|--------------------------------------|---|
| <u>“Customs Value”</u> | <u>means the cost of the goods plus insurance and freight;</u> |
| <u>“Imported”</u> | <u>means goods crossing any international border into South Sudan;</u> |
| <u>“Produced”</u> | <u>means goods which are made or manufactured from components or raw materials.</u> |
| <u>“Hotel service”</u> | <u>means renting of rooms, houses, or other lodging accommodations for a fee;</u> |
| <u>“Restaurant and bar services”</u> | <u>means any establishment providing food or drink for a fee;</u> |

Section 106. Object of Tax.

Sales tax shall be imposed on goods in accordance with Schedule IV of this Provisional Order and, shall apply to:

- (a) the production of goods in South Sudan;
- (b) the importation of goods into South Sudan, and
- (c) specified services

Section 107. Taxpayers

Taxpayers under this Chapter are:

- (a) all importers of goods into South Sudan;
- (b) producers of goods in South Sudan; and.

- (c) providers of specified services in South Sudan.

Section 108. Value for Tax

The value, on which tax is assessed, shall be:

- (1) For produced goods, the greater of the manufacturers' selling price inclusive of excise duties or fair market value;
- (2) For imported goods, the customs value, plus excise duty and customs duty; and
- (3) For services, the greater of the amount paid for the services inclusive of excise duties or fair market value.

Section 109. Calculation of Tax

The sales tax shall be equal to the value of goods as determined under section 108 of this Provisional Order multiplied by the rate applicable to the goods or services as provided in Schedule IV of this Provisional Order.

Section 110. Time of Tax

Tax shall be applied as follows:

- (1) in the case of goods produced in South Sudan, at the time goods are released outside the production premises;
- (2) in the case of imported goods, at the time the importation is completed pursuant to the provisions of the National Customs Law; and,
- (3) in the case of services, at the time services are provided in South Sudan as may be prescribed by regulations.

Section 111. Exemptions

- (1) Where provided by an Agreement with the Republic, the United Nations, the UN Specialized Agencies, diplomatic missions, or other international donors or their contractors that import goods or supply or purchase goods or services in South Sudan are exempt from the sales tax but only to the extent that such goods or services are directly related to the to the diplomatic mission or donor-funded project.
- (2) Notwithstanding paragraph (1), all sales taxes become immediately due and payable if the goods are disposed of in South Sudan to private persons or are no longer used in or are necessary for the diplomatic mission or donor-financed project, unless the ownership of goods is transferred to the Republic or another person exempt from excise tax under this section.

Section 112. Tax Return and Payment of Tax

- (1) Manufacturers and service providers shall submit a tax return and pay the tax reported on that return not later than the 15th day of the month following the action which gave cause for the tax liability. Such filing and payment shall be in the manner and form prescribed by regulations.
- (2) Payment on imported goods shall be made prior to importation to a Republic bank account designated in the regulations or, no later, than the time of import at the border.

Section 113. Effective Date of Sales Tax

Sales tax at manufacturing point will be implemented from the date announced by the Minister of Finance and Economic Planning.

Chapters XVI through Chapter XIX of the Principal Act are renumbered to increase by one (Chapter XVI becomes Chapter XVII, etc.) and Sections 106 through 122 increase by eight (Section 106 becomes 114 etc.).

10. Amendment of Schedule I of the Principal Act.

Schedule I of the Principal Act is deleted and replaced with the following:

(a) Amendment to Schedules

The rates of tax and exemptions are set out in these Schedules and may be amended in an annual Appropriations Regulation or a Supplement to an Annual Appropriations Regulation as appropriate to suit economic conditions and to meet revenue needs.

(b) Legal Tender

The fine shall be in South Sudanese Pounds or its equivalent as determined by the Bank of South Sudan from time to time.

11. Amendment to Schedule III of the Principal Act.

Schedule III of the Principal Act, is amended as follows:

SCHEDULE III EXCISE GOODS

Harmonized System Number	Article Description	Percentage	Specific Rate
<u>2009</u>	<u>fruit juices</u>	<u>5%</u>	
<u>2201</u>	<u>Waters, including natural or artificial mineral waters</u>	<u>5%</u>	

<u>2202</u>	<u>soft drinks and other flavoured waters</u>	<u>5%</u>	
2203	Beer made from malt	20%	
2204	Wine of fresh grapes , including fortified wines; grape (other than unfermented grape)	20%	
2205	Vermouth and other wines of fresh grapes flavored with plants or aromatic substances	20%	
2206	Other fermented beverages (including cider, prune wine, rice wine, or sake, sherry, and mead)	20%	
2207.10.30	Indentured ethyl alcohol of an alcoholic strength by volume of 80 percent volume or higher for beverage purposes	30%	
2208	Indentured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used in the manufacture of beverage	30%	
2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or tobacco substitutes	30%	
2403	Other manufactured tobacco and manufactured tobacco substitutes; “homogenized” or “reconstituted” tobacco; tobacco extracts and essences	30%	
2710.00.10, 2710.00.15, or 2710.00.18	Gasoline, diesel fuel and other petroleum products	5%	
8703	motor cars principally designed for the transport of <i>persons</i>	15%	
<u>8707</u>	<u>bodies of cars</u>	<u>5%</u>	
<u>8711</u>	<u>Motorcycles</u>	<u>15%</u>	
	<u>Air transportation of passengers-services</u>	10% maximum of SSP 400	
	<u>Charter Services</u>	<u>10%</u>	
	Telecommunication service	10%	
	<u>Insurance Premiums</u>	5%	

12. Amendment to the Schedules of the Principal Act.

Schedule IV and Schedule V are added as follows:

Schedule IV
SALES TAX

Sales Tax Rates shall be as follows:

Sales tax rate on Produced Goods by businesses/enterprises:

<u>No</u>	<u>Types of Business</u>	<u>Tax rate</u>
<u>1</u>	<u>Small Business/Enterprises</u>	<u>Zero percent (0%)</u>
<u>2</u>	<u>Medium Business/Enterprises</u>	<u>Five percent (5%)</u>
<u>3</u>	<u>Large Business/Enterprises</u>	<u>Five percent (5%)</u>

States shall have authority to levy a presumptive sales tax on Small Business/Enterprises

Sales Tax Rate on Hotel, Restaurant and Bar Services:

<u>No</u>	<u>Types of Business</u>	<u>Tax rate</u>
<u>1</u>	<u>Small Business/Enterprises</u>	<u>Five percent (5%)</u>
<u>2</u>	<u>Medium Business/Enterprises</u>	<u>Five percent (5%)</u>
<u>3</u>	<u>Large Business/Enterprises</u>	<u>Five percent (5%)</u>

Schedule V
AUSTERITY BUDGET SALES TAX

For purposes of this schedule, the term Government Austerity Budget shall refer to the period for which there is no oil revenue.

All rates in Schedule IV are increased by 10 % during the period the Government's Austerity Budget is in effect.
