Ministry of Finance and Economic Planning
Directorate of Taxation

Tax Act 2009 - Regulations

Table of Contents

Chapter I

No Regulations under this chapter

Chapter II

No Regulations under this chapter

Chapter III

Taxpayer and Tax Withholder Registration

Regulation 1.17 Taxpayer and Tax Withholder Registration

(1) Failure to Register

When the Directorate of Taxation identifies persons which are required to register under Article 17 of the Act but fail to register, the Directorate of Taxation shall enter such persons in a temporary register pending completion by such persons of the registration process by submitting a complete and accurate Registration Application form.

(2) Penalties for Failure to Register

Persons who are required to register under Article 17 of the act or under paragraph (2) of these regulations but fail to register shall be liable for penalties under section 114 of the Act.

Explanatory Comment

For persons who fail to register, the Directorate of Taxation is authorized to register them in a temporary register in order to tax them pending completion of the registration process. A temporary register rather than registration by the Directorate of Taxation is preferable since it requires the taxpayers to complete the registration process themselves. Registration in turn will help educate these taxpayers about their self-assessment obligations.

Regulation 1.18(f): Cancellation of Registration

(1) **Purpose of Regulation 1.18 (f)**

As prescribed by section 18(f) of the Act, these regulations prescribe other cases when the Director General of Taxation may cancel a registration and other rules related to the consequences of cancellation of registration.

(2) **Other Cases When Registration may be Cancelled**

In addition to the cases when the Director General of Taxation may cancel a registration under Article 18(a)-(e) of the Act, the Director General may cancel a registration in the following cases:

(a) if a person fails to conduct economic activity in two consecutive years;

(b) if a person voluntarily requests cancellation of registration though a written request to the Director General of Taxation, provided that all tax liabilities have been paid in full and the closing balance sheet has been submitted to the Directorate of Taxation; or

(c) a court orders cancellation of registration through a written decision of a legally recognized court in Southern Sudan.

(3) **Consequences of Cancellation**

In case of a cancellation of registration under Article 18 of the Law or under paragraph (2) of these regulations:

(a) persons whose registration is cancelled shall remain responsible for all outstanding tax obligations and the Directorate of Taxation may assess tax liability after the registration is cancelled; and

(b) data regarding persons whose registration is cancelled shall be kept in the register for six years from the date of cancellation of registration.

Explanatory Comment

This regulation provides additional circumstances when a registration may be cancelled. It also makes clear that cancellation of registration does not mean cancellation of outstanding tax liabilities.

Regulation 1.20 Tax Identification Number and Certificate of Registration

The Directorate of Taxation of the Republic of South Sudan (GoSS) has the sole legal authority to review and process certificates of registration and issue taxpayer identification numbers (TINs) and only those TINs issued by the GoSS Taxation Directorate have legal effect for purposes of the Act and other legal acts.

Explanatory Comment

This regulation establishes the Directorate of Taxation of GoSS as the sole legal authority for processing certificates of registration and issuing taxpayer identification numbers. TINs issued by other Ministries or other levels of government, for example, the states will have no legal effect for purposes of this Act or other acts.

Chapter IV

Taxpayer Rights and Duties

Regulation 1.21 Filing Returns and Extension of Time

(1) **Filing Date for Annual Tax Return**

Persons required by the Act to file an annual tax return must file such return on or before the first day of April of the year following the tax year to which the return relates.

(2) **Tax Withholder Rights and Duties**

(a) Unless otherwise provided in the Act or these regulations, a tax withholder has the same rights and obligations of a taxpayer required to file a tax return.

(b) A tax withholder has the following additional duties:
- (i) Accurately calculate and withhold tax from a taxpayer in accordance with Chapter XIV of the Act;
- (ii) To pay tax withheld to the Government by the due dates specified in the Act;
- (iii) To keep records of income paid to and taxes withheld from all taxpayers, and of payments transferred to the treasury;
- (iv) To provide the Directorate of Taxation and taxpayers accurate information declarations by the due dates specified in Chapter XIV of the Act.

(3) Exception to Extension of Time

Section 21(3) providing for an automatic two month extension to file a tax return when tax owed is paid at the original due date for the tax return does not apply to taxes imposed under Chapters XIV and XV of the Act.

<u>Explanatory Comment</u>

A tax withholding agent is entitled to the same rights and is subject to the same obligations as taxpayers. In addition, tax withholders have the additional obligation to accurately withhold taxes, pay such taxes to the treasury and provide information returns to both the government and taxpayers. These obligations are contained in Chapter XIV but it is important to include them in the Chapter IV since this chapter focus is on taxpayer rights and duties. The regulations also provide that the automatic two month extension of time to file a return when tax is paid on or before the original due date does not apply to withholding taxes under Chapter XIV nor to Excise Tax under Chapter XV.

Regulation 1.22 Payments of Tax and Other Amounts

(1) Time for Payment of Tax

As provided in Section 22(1), persons required to file a tax return or other filing under this Act, shall pay the tax owed at the time and place fixed for filing the return.

(2) **Extension of Time to Pay Tax**

(a) If a taxpayer's financial circumstances prevent the taxpayer from fully paying his tax liabilities by the due date and the amount of tax owed is 500 or more legal tender issued at the time by the Government, the taxpayer may request to extend the payment deadline by entering into an installment payment agreement with the Directorate of Taxation.

(b) The taxpayer must request an installment payment arrangement in writing. The request must be addressed to the Director General of Taxation and must set out the reasons why the taxpayer is unable to pay his liabilities.

(c) The Director General of Taxation (or his delegate for installment requests of involving 1,000 or less of legal tender issues at the time by the Government) may at his or her discretion agree to an installment payment arrangement taking into account the amount of tax to be paid, the nature of the taxpayer's business; and the financial resources at the taxpayer's disposal.

(d) The period for installment payment arrangements may not exceed six months.

(e) The Director General of Taxation may require a bank guarantee before agreeing to an installment payment arrangement or require the taxpayer to pay not less than 25% of the tax that is due and payable upon signing the installment agreement.

(f) An installment payment agreement must be in writing and signed by the Director General of Taxation or his or her delegate and by the taxpayer and set forth the installment terms.

(g) Interest must be paid by the taxpayer in respect of all tax liabilities for which payment is deferred under an installment payment arrangement.

(h) An installment payment arrangement may be revoked by the Directorate of Taxation if –

i. the taxpayer fails to make payments in accordance with the agreement; or
ii. the taxpayer fails to pay other tax liabilities arising during the period covered by the arrangement.
iii. fails to pay current tax liability.

(i) If an installment payment agreement is revoked, any outstanding tax liability which is the subject of the payment installment agreement becomes due and payable within 30 days after the day such agreement is revoked.

Explanatory Comment

The intent of this regulation is to prevent the acceptance of post dated cheques for the payment of tax owed. Instead, taxpayers may extend the time to pay the tax only if they request an installment payment agreement, granted in the sole discretion of the Director General based on the financial circumstances of the taxpayer. An installment agreement cannot last more than six months and interest must be paid on the amount of taxes deferred. An installment arrangement may be revoked if the taxpayer fails to abide by the terms of the arrangement.

Regulation 1.24 Books and Records

(1) Books and Records

All taxpayers who must file tax or information returns and all tax withholders as defined in section 5 of the Law must keep account of all transactions in the manner prescribed in paragraphs (2) and (3) of these regulations and make such accounts available for inspection by a taxation officer as defined in section 5 of this Act.

(2) Required Manner of Keeping Books and Records for Taxpayers

All taxpayers described in section 24 of the Act and paragraph (1) of these regulations must fully, accurately and promptly record all transactions and prepare and maintain accounting books and ledgers, which record:

(a) Daily sales of goods or provision of services subject to tax, including the amount of each transaction;

(b) Transactions completed but not yet invoiced;

(c) Any non-taxable transaction; and

(d) Payments for goods and services, including the amount paid and the name and address of the supplier.

(e) For taxpayers who earn or receive income from entrepreneurial activities, additional books and records required by section 60 of the Act and regulations 1.60(e).

(3) Required Manner of Keeping Books and Records for Tax Withholders

All tax withholders as defined in section 5 of the Act who must withhold tax in accordance with Article 92 of the Act must fully, accurately and promptly record the following information at the time of payment of income subject to withholding on Form 95-1:

(a) Amount of wages, interest, dividends and royalties paid;

(b) Name of person receiving wages, interest, dividends or royalties;

(c) Amount of tax withheld;

(d) For tax withholding on wages, an annual statement for each employee showing total amount of wages paid, amount of pension contributions made and amount of tax withheld; and

(e) For tax withholding on wages, an annual tax reconciliation statement Form 95-4 showing for each employee, the total amount of wages paid, amount of pension contributions made and the amount of tax withheld.

(4) **Denial of Deduction**

No deduction shall be allowed for any expense or capital allowance unless books and records are maintained in the manner required under paragraphs (2) and (3) of these regulations.

Explanatory Comment

This regulation describes the manner and form of maintaining books and records for both taxpayers and tax withholders. The rules are intentionally simple and do not require double entry book keeping. The regulation uses the correct term of "taxation officer" rather than revenue officer in section 24 of the Act. It also references the books and records requirements for entrepreneurs under section 60 of the Act.

Regulation 1.25 Transactions in Foreign Currency

Any transaction which is recorded in or effected in a foreign currency shall be converted into legal tender issued at the time by the Government at the rate prevailing as of the date of the transaction or as of the last day of the month in which the transaction took place.

Explanatory Comment

Section 25 does not provide a rule as to what date foreign currency should be converted. This regulation provides some flexibility for taxpayers to convert payments into legal tender either on the day of the transaction or on the last day of the month in which the transaction took place.

1.26 Communications with Taxpayers

The date of issue of any notice or other document as described in section 26 of the Act sent to the taxpayer shall be the date such notice or document is sent for delivery, and the date of receipt by the taxpayer shall be deemed to be five business days after the date of issue.

Explanatory Comment

As the law requires taxpayers to respond to notices or other documents issued by the Directorate of Taxation within a certain time period, it is necessary to establish rules as to when the documents are considered issued and deemed received by the taxpayer.

1.28 Taxpayer Advisor

(1) The Directorate of Taxation or an Appeals Board will interact with a duly appointed taxpayer advisor in all matters connected with a taxpayer's rights and obligations.

(2) Notwithstanding the appointment of a taxpayer advisor, the taxpayer remains responsible for complying with all tax obligations and paying tax owed.

Chapter V

Tax Assessment and Notice

Regulation 1.29(f)

Assessment of Tax

(1) The Director General of Taxation shall in addition to the reasons listed in section 29 of the Act have the authority to make an assessment based on –

(a) the results of an investigation under section 14 of the Act; or,

(b) the taxpayer engages in transactions with related persons as defined in section 5 of the Act on a non-arms-length basis or engages in transactions without economic effect.

(2) Basis for Assessment

In addition to the basis for assessment in Section 29(2), an assessment may be based on a comparison with similar economic activity carried on by other taxpayers.

(3) New Assessment

When an assessment is made under section 29 of the Act, the Directorate of Taxation must issue a new assessment and provide a written notification of the assessment in accordance with sections 26 and 32 of the Act.

(4) Burden of Proof

When an assessment is made in accordance with section 29 of the Act, the burden of proving that the amount of such assessment is incorrect shall be on the taxpayer and the taxpayer will have the right to appeal under Chapter X of the Act.

(5) Assessment Based on Related Party Transactions

When an assessment is made in accordance with paragraph 1(b) of these regulations, the assessment must reflect the taxable income that would have resulted from a comparable transaction between unrelated persons.

Explanatory Comment

This regulation provides additional circumstances when an assessment may be made and on what basis. In addition, it provides that the burden of proof shifts to the taxpayer when an assessment is made by the Director General of Taxation. Finally, it makes clear that the Directorate of Taxation must issue a new written assessment to the taxpayer.

Regulation 1.30 Assessment of an Individual

(1) Under section 30 of the Act, the Director General is authorized to make an assessment based on a cash expenditure analysis of a taxpayer to establish that the taxpayer could not have spent the amount he or she did in a given year unless he or she had more taxable income than was reported on the tax return.

(2) Under the cash expenditure analysis, the amount of underreported income for the year at issue is equal to personal expenditures in that year less total income declared in the tax return for that year.

(3) The taxpayer shall be permitted to submit evidence that income from previous periods was available to fund the personal expenditures or submit other evidence to dispute either the amount of personal expenditures or additional sources of non-taxable income to reduce or eliminate the amount of underreported income under the formula in paragraph (2).

(4) If the taxpayer contends that significant amounts of cash were at his or her disposal at the beginning of the fiscal year, the Taxation Officer will examine the net income reported on the taxpayer's prior year returns.

Regulation 1.31 Inaccurate or Destroyed Records

In case of inaccurate or destroyed records as described in section 31 of the Act, the Director General may determine the tax payable under one or more of the following indirect methods of reconstructing income:

(a) Source and application of funds which involves a comparison of all known expenditures with all known sources of income;

(b) Net worth which involves comparing assets less liabilities determined at the beginning and at the end of the taxable year;

(c) Bank deposits which involves verifying gross receipts and cash expenditures claimed by a taxpayer on the income tax return;

(d) Percentage computation which involves the use of percentages or ratios considered typical of the business or individual items of income or expenses;

(e) Unit and volume method which involves determining gross receipts by applying price and profit figures to the known or ascertainable volume of business conducted by the taxpayer.

Explanatory Comment

These regulations provide guidance on indirect methods of assessing an individual or a taxpayer who fails to maintain accurate books and records. The cash expenditure method is used for an individual. Under this method, the amount of income reported on the return is compared to the expenditures of the taxpayer and any difference is considered to be underreported income unless the taxpayer can prove cash on hand at the beginning of the year. For taxpayers with inaccurate or destroyed records, the regulations provide five possible methods of reconstituting income. An audit/investigation manual will be necessary to explain how these methods work in practice and which method is preferable in particular cases.

Regulation 1.34.3 Penalty for Understatement

The penalty which the Director General of Taxation may impose for an understatement of tax is the greater of –

(a) An amount equal to the amount of understated tax; and

(b) 200 legal tender issued at the time by the Government.

Chapter VI

Time Limits for Assessments and Collection

Regulation 1.35a Time Limit for Assessment of Tax

An assessment shall be made within three years from the earlier of -

(a) the date the tax return was submitted or

(b) the date the tax return was due as provided in section 35(1) of the Act.

Regulation 1.35(b)

(1) Exceptions to Time Limit for Assessment

The time limit in section 35(1) of the Act may be extended under section 35(2) when:

(a) A new assessment is made as a result of an appeal against a previous assessment, then the time limit is the later of –
  (i) the time limit established in section 35(1); and
  (ii) 30 days from the final determination of the appeal.

(b) An assessment is made as a result of an investigation, the time limit is the later of-
  (i) the time limit established in section 35(1); and
  (ii) 30 days from the issue of the final written decision of the investigation.

(c) Any time in cases where the taxpayer commits fraud or evades tax.

Explanatory Comment

In general, the Directorate of Taxation has three years from the date a tax return is filed or is due to make an assessment. This time limit is extended when an appeal is filed, an investigation of the taxpayer is made, or the taxpayer commits fraud or evades tax. This regulation is necessary since it isn't clear under section 35(2) if the time for assessment can be extended only when the taxpayer evades taxes or also when the taxpayer fails to file a return or files an incorrect return. In both of these later cases, tax evasion is not necessarily involved.

Chapter VII

Interest, Penalties and Other Charges

Regulation 1.36 Interest

(1) **Calculation of Interest**

(a) For purposes of section 36, interest is charged on the outstanding tax liability only and not on penalties and interest which accrue.

(b) Interest shall be calculated on a per month basis and not on a compounding basis.

Explanatory Comment

These regulations provide that interest is charged only on the outstanding tax liability and not on interest or penalties. In addition, interest is calculated on a non-compounding basis.

Regulation 1.37 Penalties

(a) For purposes of section 37, penalties are charged on the outstanding tax liability only and not on penalties and interest which accrue.

(b) Penalties shall be calculated on a per month basis and not on a compounding basis.

Explanatory Comment

These regulations provide that penalties are charged only on the outstanding tax liability and not on interest or penalties. In addition, penalties are calculated on a non-compounding basis.

Regulation 1.37(2) Penalties

For purposes of computing the time period for penalties under section 37(2), the term "month" shall mean the following time periods based on the day and month in which the tax was due or return filed:

(1) 31 days for the months of January, March, May, July, August, October and December;
(2) 30 days for the months of April, June, September and November
(3) 28 days for February

Explanatory Comment

As most but not all tax payments and filing requirements fall on the 15^{th} of the month and penalties are calculated on a monthly basis, it follows that the term month should be defined in terms of days and not the 1^{st} day of the month.

Regulation 1.37(3) Penalties

(1) Waiver of Penalties

(d) Penalties imposed under section 37 for failure to pay tax due or any portion of tax due may be waived solely at the discretion of the Director General if the taxpayer can demonstrate in writing to the Director General that the failure to pay tax owed was due to circumstances beyond the control of the taxpayer such as an illness or disability of the taxpayer or a close family member, key employee, a natural disaster such as a flood or fire or because of severe financial distress or bankruptcy of the taxpayer.

(e) Penalties shall be waived only in cases where the taxpayer acted in good faith and discloses all relevant information to the Director General and provides proof of the reason for the waiver, such as payment of an insurance claim, death certificate or medical report.

Regulation 1.38 Additional Charges

For purposes of this section and for Chapter VII, the term "additional charges" means penalties.

Explanatory Comment

Section 38 imposes "additional charges" on failure to pay tax or file an information return. The regulation clarifies that "additional charges" means penalties.

Regulation 1.38(3) Additional Charges

(1) Waiver of Additional Charges

(a) Penalties imposed under Section 38 for failure to file a return by the date prescribed in the Act or in these regulations may be waived solely at the discretion of the Director General if the taxpayer can demonstrate in writing to the Director General that failure to file a return was due to circumstances beyond **the control** of the taxpayer, such as an illness or disability of the taxpayer or a close family member or key employee, a natural disaster such as flood or fire or because of severe financial distress or bankruptcy of the taxpayer that destroys or severely damages the records of the business or affects the ability of the person responsible for preparing the tax return.

(b) Penalties shall be waived only in cases where the taxpayer acted in good faith and discloses all relevant information to the Director General and provides proof of the reason for the waiver, such as payment of an insurance claim, death certificate or medical report.
.

Explanatory Comment

These regulations provide a "reasonable cause" exception to the imposition of penalties when the taxpayer acted in good faith and failure to comply with the law was due to circumstances beyond the control of the taxpayer, such as an illness, natural disaster or bankruptcy and the taxpayer provides proof for the failure to pay or file a return by the date prescribed by the Act.

Regulation 1.40(2) Partial Payment of Amounts Due

(1) As provided in section 140 of the Act, partial payments of tax liabilities are applied against liabilities in the following order:

(a) Interest
(b) Penalties, including additional charges
(c) Tax
(d) Administrative Costs

(2) Examples

Example (1) A taxpayer assessed his tax liability of 10,000 for April, which must be paid by the 15th of May. If he fails to pay the tax within the due date, he would owe the following:

Tax 10,000

Penalties 500 (5% of 10,000)

Interest 200 (2% assumed)

Total: 10,700

On the 16th of June, he still has not paid any of the amount owed. He now owes

Amount owed 10,700

Penalties	500	(penalties charged only on original tax owed)
Interest on tax owed	200	(interest charged only on original tax owed)
Total:	11,400	

Example (2) Same facts as example 1, except that on the 14th of May, he paid 5,000 of the 10,000 he owed. The penalty for failing to pay on time is 5 percent of the outstanding amount per month (5000 in this example) which is 250 and the interest (2% assumed) on the 5,000 due tax is 100. The total due

Tax due	5,000	
Penalties	250	(penalties charged only on tax owed)
Interest on tax owed	100	(interest charged only on tax owed)
Total:	5,350	

Example (3) The same taxpayer made another payment of 5,000 on the 14th of June. Assuming no administrative expenses, the 5,000 payment made on the 14th of June would first be applied to interest of 100, second to the penalty of 250 and the remaining 4,650 to the tax owed, leaving 350 as tax due:

Amount Paid	5,000
Less interest	100
Less penalties	250
Balance allocated to tax owed	4,650
Remaining balance to which interest and penalties apply	350

Example (4) To eliminate the entire tax obligation owed, the taxpayer would have to pay an additional 350 by the 15th of June. If he fails to do so, interest and penalties would be charged on the 350 outstanding liability until the time the entire liability is paid.

Chapter VIII

No Regulations under this chapter

Chapter IX

Collection of Unpaid Tax

Regulation 1.42 Methods of Collection

(1) Authority to Collect Unpaid Tax

When a taxpayer fails to pay assessed tax in accordance with a notice of assessment and demand for payment in accordance with sections 32 and 33 of the Act, section 42 of the Act authorizes the Director General of Taxation to use a variety of methods to collect the total assessed tax, including interest, penalty, additional charges or costs as described in section 42(2) of the Act and paragraph 2 of these regulations.

(2) Methods of Collecting Unpaid Tax

The Director General of Taxation may use any or all of the following methods to collect assessed tax which is due:

(a) Offset the tax due to the taxpayer from any amount that may be refundable to the taxpayer under the Act.

(b) Place a lien on property owned by the taxpayer whether it is in the possession of the taxpayer or third persons and pursuant to a court order seize such property in accordance with sections 43 and 44 of the Act and regulations 1.43(6) and 1.44(6).

(c) Auction all or part of the taxpayer's property in accordance with section 45 of the Act and regulations 1.45(1) and 1.45(2).

(d) Seize property and funds of the taxpayer owed to the taxpayer from third persons, including but not limited to employers for accrued but unpaid wages, traders or other persons which owe the taxpayer money, banks in accordance with section 46 of the Act and regulation 1.46(1), and if amounts due are not paid within the time specified seek a court order to collect amounts due under section 46(2) of the Act and regulation 1.46(2).

(e) Offset amounts due and owed to the taxpayer by the Republic of South Sudan Bodies by directly deducting the amount of income owed to the taxpayer from the government to the extent of tax due.

(f) Seek a court order to transfer the tax liability, including interest and penalties, to third persons who received property or funds from the taxpayer pursuant to a plan of the taxpayer to avoid the payment of tax due in accordance with section 47(2) and 47(3) and regulations 1.47(2).

(g) Suspend customs clearance of international trade or transactions by prohibiting the taxpayer from carrying on the import/export business in accordance with section 42(g) of the Act and regulation 1.42(g).

(h) Hold officers or directors who knowingly sold assets of a business to avoid payment of assessed tax personally liable for the assessed tax in accordance with section 46(3) of the Act and regulation 1.46(3).

(i) In cases where the Director General of Taxation determines that collection of tax is in jeopardy, issue an order for immediate assessment and collection and apply for a court order prohibiting the taxpayer from leaving the country in accordance with section 47(1) of the Act and regulation 1.47(1).

Regulation 1.42(g) Suspension of International Trade and Transactions

(a) Under section 42(g) of the Act, the Director General may authorize and approve an order to prohibit the taxpayer from carrying on an import or export business in cases where the taxpayer fails to pay assessed taxes. The order, prepared by the Manager of Collection, shall be sent to the Customs Authority requesting immediate suspension of the import/export license of the taxpayer.

(b) The order shall be sent or delivered to the taxpayer at the last known address of the business.

Explanatory Comment

This regulation lists all the enforced collection methods authorized under Chapter IX and references the applicable section of the Act and regulations which provide explanations and instructions on the methods.

Regulation 1.43(6) Lien and Seizure of Property

(1) **Purpose of this Regulation**

Pursuant to the authority granted by section 43(6) of the Act, these regulation prescribe the form and manner required to file and execute a lien and seize the assets of a taxpayer who fails to pay assessed tax on or before the due date.

(2) **Lien**

The term “lien” means the legal right of the government to attach a claim or charge on property for payment of unpaid tax debts.

(3) **Notice of a Lien**

Section 43(2) requires the Director General of Taxation to give written notice to the taxpayer whose property is subject to lien. The Notice of Lien must contain the necessary information to properly identify the taxpayer, the outstanding tax liability, and the government's authority under the Act for placing a lien on property. The Notice of Lien must include the following information:

(a) Name of local tax office issuing the lien
(b) Name of the responsible Taxation Officer
(c) The government's authority under section 43 of the Act to place a lien on property
(d) Taxpayer's name
(e) Taxpayer's address
(f) Type of tax owed (e.g., personal income tax, business profit tax, excise tax)
(g) Tax period for each tax owed
(h) Taxpayer identification number, if applicable
(i) Date of assessment
(j) Total outstanding assessed balance for each period at the time of the lien filing, including tax liability, interest and penalties
(k) The location of the public registry where the lien is being filed
(l) Total unpaid balance of assessment
(m) Notice that unless the taxpayer pays the assessed tax within fifteen days, the Director General of Taxation intends to seek a court order to seize property subject to the lien and continued failure to pay the assessed tax may result in the seized property being sold to satisfy the tax debt.
(n) Location at which the Notice of Lien is signed and date on which it signed
(o) Name and title of authorized Taxation Officer

(4) Filing a Notice of a Lien

(a) Filing a notice of a lien provides notice to others that the government has a claim on the property of a taxpayer.

(b) The Notice of Lien shall be filed in offices where real property deeds are registered, transfers or conveyances of property are recorded and other legal transactions are recorded. In addition, the Notice of Lien shall be sent or delivered to companies or individuals with whom the taxpayer does business with on a recurring basis.

(c) If all applicable notice and filing requirements have been satisfied, any lien shall be valid against all other rights in the property subject to the lien and shall have priority over all subsequently filed liens with respect to such property.

(d) A taxpayer shall have the right to appeal to the Director General for a release of a lien on the grounds that the lien was improperly executed. If the Taxation Officer agrees with the taxpayer, the officer shall issue a certificate of lien release to the office or offices where the Notice of Lien was originally filed within 10 days after the decision. If the Taxation Officer does not agree with the taxpayer, the taxpayer may file an appeal with the Appeals Board as provided for in Chapter X of the Act.

Explanatory Comment

This regulation describes the procedures to use if the Directorate of Taxation decides to place a lien on property or properties owned by taxpayers who have failed to pay their tax liabilities on time as authorized under section 43 of the Act. The term "lien" generally means the right of the government to attach a claim or charge on property for payment of unpaid tax debts. The regulation sets forth the information that should be included in the notice of the lien as well as the procedures to file a lien. The decision to file a tax lien must be carefully considered as it restricts the ability of the taxpayer to borrow funds with which to pay his delinquent tax liability. However, it also protects the government's interest by preventing a sudden transfer of assets to avoid the payment of taxes. Section 43 provides authority to impose a lien against any property owned by the taxpayer other than property described in section 43(5).

Regulation 1.44(6) Enforcement of Seizure

(1) Purpose of this Regulation

Pursuant to the authority granted by section 44(6) of the Act, these regulations prescribe the method of enforcing seizure of property whether in the possession of a taxpayer or a third person to satisfy all outstanding tax liabilities.

(2) Application for a Court Order to Seize Property

(a) In order to seize property of a taxpayer, the Director General may make an application through the Ministry of Legal Affairs and Constitutional Development to obtain a court order to seize property in accordance with section 44(6) of the Act.

(b) The determination to make an application to the Ministry of Legal Affairs and Constitutional Development should be based on an analysis of the particular facts and circumstances of the taxpayer, including the taxpayer's ability to pay based on analysis of the financial data of the taxpayer, estimated value of the property subject to seizure and the degree of co-operation by the taxpayer.

(c) If based on the analysis in paragraph 2(b) of this regulation the Director General determines that seizure is warranted, the application to the Ministry of Legal Affairs and Constitutional Development must contain the following information

   i. Name of the local tax office requesting the seizure order
   ii. Name of the responsible Taxation Officer
   iii. Authority to seek a court order under section 44(6) of the Act
   iv. Taxpayer's name
   v. Taxpayer's address
   vi. Type of tax owed (e.g., personal income tax, business profit tax, excise tax)
   vii. Tax period for each tax owed
   viii. Taxpayer identification number, if applicable

ix. Date of assessment
x. Date of lien issued and location of the public registry or registries where the lien is being filed
xi. Total outstanding assessed balance for each period at the time of the lien filing, including tax liability, interest and penalties
xii. Total unpaid balance of assessment
xiii. Description and location of property to be seized on a property by property basis
xiv. Location at which the request for seizure is signed
xv. Name and title of authorized Taxation Officer making the request

(d) When the Directorate of Taxation through the Ministry of Legal Affairs and Constitutional Development obtains a court order authorizing seizure of property pursuant to the application described in paragraph (c) of these regulations, the Directorate of Taxation must provide a copy of the court order to the taxpayer and/or the third persons in possession of the seized property. If the taxpayer or third persons cannot be located and there is no place of business, the court order should be mailed or delivered to the last known address of the taxpayer.

(e) Taxation Officers responsible for seizing property shall place a notice on all property to be seized and prepare a complete inventory of all property that is subject to seizure.

(f) All movable property shall be seized and placed in a storage facility managed by the Directorate of Taxation.

(g) All immovable property shall be tagged in accordance with paragraph (e) of these regulations and secured by the Directorate of Taxation.

Explanatory Comment

This regulation provides the procedures that the Directorate of Taxation must use to obtain a court order to seize property of a taxpayer to satisfy tax due. The request for seizure must be obtained through the Ministry of Legal Affairs applying for the court order based on the information provided by the Directorate of Taxation. The taxpayer or third persons in possession of property to be seized must be provided with a copy of the court order and the Directorate of Taxation must seize and store all movable property and place a tag on immovable property under seizure and prepare a complete inventory of all property seized. Additional guidance on procedures to place liens, seize and sell property should be included in internal tax manuals.

Regulation 1.45(1) Sale of Seized Property

(1) Public Auction Sales

As provided in section 45(1) of the Act, any property of a taxpayer seized in accordance with section 44 of the Act shall be sold at a public auction in accordance with procedures and conditions set forth in these regulations.

(2) Notice of Sale

(a) A Notice of Sale shall be issued within 30 d ays from the date of the court order authorizing seizure of property under section 44 of the Act.

(b) The Notice of Sale shall be delivered to the taxpayer and third persons who are in possession of the taxpayer's property and who are the subject of the court order authorizing seizure of the taxpayer's property under sections 44 and 46 of the Act.

(c) The Notice of Sale shall be published in a local newspaper or in public spaces such as government buildings and posted outside the premises where the seized immovable property is located.

(d) The Notice of Sale should include

i. Date of Sale
ii. Time of Sale
iii. Place of Sale
iv. Description of the property on a property by property basis
v. Place where the property may be inspected before the sale
vi. Terms of auction, including sale to the highest bidder and mandatory cash payments
vii. Name, title and signature of Taxation Officer
viii Contact information regarding sale

(3) Sales Procedures

(a) The date of sale should be within 20 business days after the date of the Notice of Sale is issued.

(b) The place of sale shall take place in the area or region in which the property was seized.

(c) The public auction sale shall be conducted by a minimum of two Taxation Officers who shall prepare a report of the highest bids received for each property, name of bidder and cash received.

(d) Each purchaser shall receive a certificate of sale following payment of the full purchase price. The original certificate shall be given to the purchaser and one copy should be sent to the enforcement section of the Directorate of Taxation and a final copy should be placed in the taxpayer's file.

(e) The purchaser of the property must claim and remove movable property on the day of the public auction.

(4) Sale of Perishable Goods

(a) If it is determined that any property seized may perish within the 30 day period under paragraph (3) of these regulations, the property may be sold immediately after it has been appraised and the taxpayer has been given an opportunity to pay the appraised value.

(b) If the taxpayer does not pay the appraised value, the Directorate of Taxation immediately may proceed with the sale by public auction in accordance with the public auction procedure established under paragraph (3) of these regulations.

Regulation 1.45(2) Proceeds of Sale

(a) In accordance with section 45(2) of the Act, the sales proceeds shall be applied in the following order, first against the expenses of the sale and cost of storage, then interest, then penalties, then the tax liability.

(b) Any proceeds in excess of amounts in paragraph (a) of these regulations shall be returned to the taxpayer within ten business days.

Explanatory Comment

To ensure the integrity and transparency of sale procedures, the Act requires that any seized property be sold at an open auction. These regulations provide the general rules for conducting the public auction. Additional guidance for collection officers should be included in the collection manual. These regulations also clarify the order of applying the proceeds to the costs and debts of the taxpayer. The proceeds should first be used to reimburse the Directorate for the costs of storing and selling the property seized, followed by interest, penalties and the tax liability.

Regulation 1.46(1) Third Party Demands

(a) If the taxpayer fails to pay the assessed tax within the fifteen day period provided by section 43(3) of the Act, the Directorate of Taxation may issue a notice to third parties including the taxpayer's bank or employer ordering direct payment to the Directorate of Taxation of any amount owed by a third party to the taxpayer within 10 business days after the notice was sent to such third parties.

(b) The notice and demand for payment must follow the procedures and time limits set out in section 22 of the Act.

Regulation 1.46(2) Court Order to Enforce Third Party Demands

If the amounts are not paid within the time specified in the notice and demand for payment under section 46(1) and paragraph (1) of these regulations, the Directorate of Taxation may through the Ministry of Legal Affairs and Constitutional Development obtain a court order for collection of these amounts from third parties in accordance with the procedures in section 44 of the Act.

Explanatory Comment

Section 46 of the Act allows the tax administration to demand payment from third parties who owe the taxpayer money, such as an employer for accrued but unpaid wages or banks where the taxpayer has a bank account, to satisfy the taxpayer's debt. This regulation sets out the procedures that must be followed to demand payment from such third persons.

Regulation 1.46(3) Secondary Liability for Officers and Directors

(a) If the Directorate of Taxation determines in accordance with section 46(3) of the Act that an officer or director of a business participated in the sale of a substantial portion of the assets of the business or liquidated the business at a time when the business had an outstanding tax liability, such officers or directors shall be personally liable for the outstanding tax liability.

(b) Officers of a business will be held personally liable only if the colluded with the directors to sell assets or liquidate the business or personally benefited from a sale or liquidation of the business.

(c) Any officers or directors described in paragraph (1) or (2) of these regulations are jointly and severally liable for the outstanding tax liability of the business.

(d) The Directorate of Taxation must make a determination under paragraph (1) of these regulations within two years after the date of sale of property or liquidation of the business by officers or directors.

<u>Explanatory Comment</u>

Article 46(3) is aimed at giving the tax administration sufficient legal authority to combat the widespread avoidance tactic of selling assets to avoid payment of outstanding tax liability. These regulations expand article 46(3) by holding officers and directors personally liable also when they close a business with outstanding tax debts and reconstitute the business under a new name. Under this provision, the officer and directors who participated in the sale or liquidation of the business are jointly and severally liable for the outstanding tax of the business.

Regulation 1.48 Taxpayer Safeguards

(1) Time Limit for Enforcement Procedures

(a) Enforcement procedures under this Chapter of the Act must be commenced within five years from the date on which the unpaid tax was due.

(b) The time limit in paragraph (1) of these regulations shall be extended by:

(i) the duration of any appeal against the liability in accordance with section 52 of the Act;

(ii) the duration of any period during which the liability is the subject of an official investigation by the Directorate of Taxation; and

(iii) the duration of any period during which the liability in question is the subject of a penal case.

(2) Cancellation of Tax Liabilities

The Directorate of Taxation must cancel any tax liability after the expiration of the time limits under paragraph (1) of these regulations or under procedures for cancellation of uncollectible tax liabilities under paragraph (3) of these regulations.

(3) Uncollectible Tax Liabilities

(a) In the course of an investigation to collect delinquent tax liabilities, a Taxation Officer may determine that the amount owed by a taxpayer in whole or part is not collectible for any of the following exceptional circumstances:

(i) the taxpayer proves that payment of tax would cause extreme hardship;

(ii) the costs of collecting the liability exceed the amounts owed;

(iii) the taxpayer declared bankruptcy and the Directorate of Taxation is not a secured creditor;

(iv) the taxpayer terminated his/her business and there are no assets to place a lien on and seize in accordance with section 44 of the Act and the directors or officers cannot be assessed under section 46(3) of the Act and regulation 1.46(3); or

(v) the taxpayer cannot be located.

(b) Any determination made under paragraph (a) must be made in writing by a Taxation Officer with full documentation of the reasons why the tax liability in whole or part is uncollectible after a thorough investigation of the taxpayer, including bank records, property records, accounting books and records, prior tax returns and customs documents.

(c) The determination made under paragraph (a) must be reviewed and approved in writing by the supervisor of the Taxation Officer.

Explanatory Comment

The Act does not have a statute of limitations for enforced tax collection nor does it have rules for cancelling tax liabilities because the time limit expired or because the tax debt is determined to be uncollectible. These regulations under section 48 of the Act were made under the general authority of section 119 of the Act to make regulations necessary for the effective and efficient implementation of the provisions of this Act. Under these regulations, the statute of limitations for enforced collection is generally five years. In addition, in certain limited cases when the Directorate of Taxation through committee determines, like any other creditor, that the taxpayer will be unable to pay all or a part of the outstanding tax liability, the Directorate is authorized to extinguish the debt upon proof that it is uncollectible. To avoid problems of competence or corruption, the determination to extinguish a tax debt must be approved in writing by the supervisor of the Taxation Officer.

Chapter X

Appeals Board and Judicial Review

Regulation 1.50 Decisions of the Appeals Board

(1) The Appeals Board has the obligation to uphold, cancel or amend the assessment or decision of the Directorate of Taxation.

(2) The Appeals Board may require the Directorate of Taxation to obtain further information before reviewing the assessment or decision giving rise to the appeal.

(3) The taxpayer has the right to appeal before the Appeals Board to offer evidence and explanation to support his or her appeal and to have a written record of the proceedings.

Regulation 1.51 Judicial Review

Decisions of the Appeals Board may be appealed to the High Court by either the taxpayer or the Directorate of Taxation.

Explanatory Comment

These regulations provide that taxpayers may appeal any assessment or decision of the Directorate of Taxation to the Appeals Board. If either the taxpayer or the Directorate disagrees with the Appeals Board decision then either party may appeal that decision to the High Court.

Chapter XI

Personal Income Tax

Regulation 1.57(2) Exemption from Wage Taxation for Foreign Officials and Employees

(1) Exemption

Under section 57(2) and 57(3) of the Act, wages received by foreign diplomatic and consular representatives, officials and employees as well as representatives, officials and employees of described below in the exercise of their functions in Southern Sudan are exempt from tax:-

(a) international organizations;

(b) government donor agencies including their contractors as defined in paragraph (2) of these regulations; and

(c) international non-governmental organizations as defined in paragraph (3) of these regulations

(2) Government Donor Agency and Contractors

The term "government donor agency and contractors" means organizations registered with the Southern Sudan Relief and Rehabilitation Commission.

(3) International Non-Governmental Organization

The term "international non-governmental organization" means an organization that is –

(j) Registered as an international non-governmental organization with the Directorate of Registration of Businesses, Associations and Non-Government Organizations with the Ministry of Legal Affairs and Constitutional Development pursuant to the Non-Governmental Organizations Act of 2003; and

(k) Registered as an international non-governmental organization with the Southern Sudan Relief and Rehabilitation Commission.

Explanatory Comment

This regulation lists those foreigners who enjoy exemption from tax on w age income under sections 57(2) and 57(3) of the Act.

Regulation 1.59(2)(b) Deduction of Representation Costs

Under section 592(b) of the Act, representation costs as defined in section 53 of the Act may be deducted but only up to maximum amount of two percent of gross income from entrepreneurial activity.

Regulation 1.59(2)(c) Deduction of Bad Debts

(1) To deduct a bad debt under section 59(2)(c) of the Act, a taxpayer must have previously included the amount in his or her income or made a cash loan.

(2) A taxpayer may not take a bad debt deduction for money the taxpayer expected to receive but did not, for example, for money owed for services performed or for rent because those amounts were not previously included in income.

(3) Bad debts may be deducted in part or in full but only to the extent that whole or part of the debt is deemed worthless and the tax officer can show that he or she took all reasonable steps to collect the debt.

Regulation 1.59(2)(d) Limitation on Expenses

Under section 59(2)(d) of the Act, expenses for travel, meals, lodging and moving expenses may be deductible but only up to the maximum applicable to government employees. Amounts in excess of those allowed to government employees are non-deductible and such amounts cannot be carried forward and deducted in subsequent years.

Regulation 1.59(2)(e) Contributions to Pension Plans

Under section 59(2)(e) of the Act, contributions in an amount up t o fifteen percent of gross income from entrepreneurial activities paid to funded pension schemes approved by the Republic of South Sudan may be deducted. T hese funded schemes shall be referred to as qualified pension schemes for purposes of these regulations.

Explanatory Comments

These regulations above clarify the application of the Act's limits on expenses for PIT purposes. For example, the bad debt limitation is based on the limitations in Section 71 of the Act for BPT taxpayers. The limitations on meals, travel, contributions to pension plans are based on those that apply to employees under section 58 of the Act.

Regulation 1.59(5) Depreciation

(1) **Purpose of Regulation 1.59(5)**

As provided in section 59(5) of the Act, these regulations prescribe the method of depreciation and the calculation of depreciation deductions for purposes of the personal income tax.

(2) **Capital Assets**

The term "capital assets" means tangible or intangible assets:

(a) held for use in a trade or business or for the production of income;
(b) has an expected life of over one year; and
(c) a market value of 1,000 legal tender issued at the time by the Government.

(3) **Non-Depreciable Capital Assets**.

Non-depreciable capital assets include:

(a) Land;
(b) works of art;
(c) goodwill; and
(d) inventory.

(4) **Depreciation Form**

To calculate depreciation, taxpayers must complete specified form for deprecation and include this form in their tax return.

(5) **Classification of Property and Depreciation Rates**

As provided in section 59(5) of the Act, capital assets subject to depreciation are divided into three groups with different depreciation rates for each group as follows:

Category	Type of Property	Depreciation Rate as a Percentage
1.	Buildings and other structures	10

2.	Vehicles, office equipment and computers	33
3.	Any other property	25

(6) **Calculation of Annual Depreciation Amounts**

(a) Depreciation is calculated for each category of assets separately under the straight line method of depreciation depending on the useful life of the assets within the category.

(b) Expenditures for capital assets in Category I shall be recovered on an asset by asset basis over 10 years and the annual deduction for each of those 10 years is equal to 10 percent of the original cost of each capital asset increased by the value of improvements that exceed 5 percent of the original value of such asset.

(c) Expenditures for capital assets in Category 2 shall be recovered over 3 years and the annual deduction in each of those 3 years is equal to 33 percent of the original cost of all capital assets in that category placed in service during that tax year increased by the value of improvements that exceed 5 percent of the original value of such assets.

(d) Expenditures for capital assets in Category 3 shall be recovered over 4 years and the annual deduction in each of those 4 years is equal to 25 percent of the original cost of all capital assets in that category placed in service during that tax year increased by the value of improvements that exceed 5 percent of the original value of such assets.

Explanatory Comment

Section 59(5) of the Act requires the straight line method of depreciation which in turn depends on the useful life of assets. The table in section 59(5) groups assets in three categories of useful lives: 10 years, 3 years and 5 years. The three categories indicates that pooling of assets should be used but only closed end pooling (meaning that only property placed in service during that tax year is included) can be reconciled with straight line method because under open-ended pooling (meaning property added in different tax years is also included) no record is kept of the remaining useful life of any individual asset.

(7) **Recapture of Depreciation Deductions when Capital Assets Sold**

Amounts previously deducted as depreciation for Category I capital assets will be treated as income to a taxpayer when such asset is sold for more than the adjusted cost (original cost plus improvements less depreciation deductions) of such asset.

(8) **Cost of Pre-2008 Capital Assets**

The cost of depreciable capital assets held by the taxpayer on January 1, 2008 for purposes of computing depreciation shall be its book value on that day. For this purpose, the allowance for depreciation and all other adjustments for prior periods shall be made under applicable prior income tax laws.

(9) **Intangible Property**

Deductions for amortization of intangible capital assets shall be computed as set forth in section 75 of the Act and section 1.75 of the regulations.

Explanatory Comment

Paragraph 7 of these regulations adds a limited "recapture" rule when a taxpayer sells a Category I asset for more than its adjusted basis. The recapture rule is limited to Category I property since there is no adjusted basis for an individual asset for categories 2 and 3 assets.

Regulation 1.59(6) Repairs and Improvements

(a) As provided in Section 59(6) of the Act, amounts expended to repair, maintain or improve capital assets are allowed as a deduction up to a maximum of five percent.

(b) To the extent such amounts are in excess of five percent, the excess shall be added to the value of Category 1 assets on an asset by asset basis.

(c) To the extent such amount are in excess of five percent for Category 2 and 3 assets, the excess shall be added to the value of such Category for the year in which the corresponding asset was placed in service.

Explanatory Comment

Like regulation 1.59(5), this regulation could be amended to conform to section 74(9) of the Act and section 1.74(14) of the regulations if the Act is amended to provide similar depreciation rules for PIT and BPT purposes.

Regulation 1.60(e) Additional Records Required by Entrepreneurs

Pursuant to the authority in section 60(e) of the Act, taxpayers who receive income from entrepreneurial activities outside of Southern Sudan must keep records of foreign source income earned, tax paid in the other state, and expenses incurred.

Explanatory Comment

As resident taxpayers are taxed on their worldwide income, a requirement to keep separate records of foreign source income, expenses and tax paid abroad will assist both the taxpayer and the Directorate compute and verify total taxable income.

Regulation 1.61 Advance Payment of Estimated Personal Income Tax

(1) Requirement to Make Advance Payments of Estimated Tax

Under section 61 of the Act, except as provided in paragraph (2) of these regulations, a person engaged in any entrepreneurial activity or receiving income from rent shall pay an advance tax equal to 100 percent of such taxpayer's tax for the preceding fiscal year. Such payments shall be in 4 equal installments as follows:

Payment Made On or Before the Following Dates in the Current Year	**Percentage of Tax Due**:
15 April	25%
15 July	25%
15 October	25%
15 January	25%

(2) **Special Rule for Taxpayers Who Did not Pay Tax in Previous Year**

If a person who engages in entrepreneurial activity or receives rent in the current fiscal year but did not engage in entrepreneurial activity or receive rent and pay tax on such income in the prior year, that person must estimate the amount of taxable income for each tax period of the current year and pay tax in accordance with paragraph (3) below.

(3) Transition Rule: Amount of Estimated Tax, Filing Period and Filing Dates

1. Filing Date	**2. Tax Period**	**3. Amount of Estimated Tax Payment**
15 April	1 January to 31 March	The amount of personal income tax estimated for the tax period in column 2
15 July	1 April to 30 June	The amount of personal income tax estimated for the tax period in column 2
15 October	1 July to 30 September	The amount of personal income tax estimated for the tax period in column 2
15 January	1 October to 31 December	The amount of personal income tax estimated for the tax period in column 2

(4) Minimum Amount of Estimated Income Tax

The total amount of estimated tax paid shall total not less than 100 percent of such taxpayer's tax on entrepreneurial or rental activities for the preceding year, or if less, 90% of the taxpayer's estimate of personal income tax payable for the current tax period.

(5) Underpayments

Any underpayment of advance tax payment required by section 61 of the Act and these regulations shall be subject to interest, at the rate provided in section 36 of the Act, from the filing date to the due date for the return for the current year under section 63(3) of the Act.

Explanatory Comment

Section 61 differs from section 83 (the advance tax provision for BPT taxpayers) by including the words "for the tax period" which implies that the estimate of tax should be based on income from the tax period as shown in the table of section 61 rather than interpreting "tax period" as the fiscal year.

Regulation 1.62(e) Foreign Tax Credit

(1) Foreign Tax Credit Limitation

Under section 62(e) of the Act, the amount of credit with respect to income taxes paid to any foreign country for any fiscal year shall not exceed the proportion of the taxpayer's total tax liability for such year that taxable income attributable to sources within the foreign country for such period bears to the taxpayer's total taxable income for such year.

(2) Year of Credit

A tax paid to a foreign country shall be creditable for the year in which the income is taxable in Southern Sudan.

(3) Foreign Country

For purposes of sections 62(d) and (e) of the Act, the term 'foreign country" includes a political subdivision of such country.

Explanatory Comment

These regulations clarify the rule in section 162(e) of the Act which imposes a per country limit on the amount of foreign tax credit that will be allowed. Under this per country limit, a credit is provided only to the extent that the foreign rate of tax in that country does not exceed the rate imposed under this Act on the taxpayer's taxable income. The regulations also provide that the credit shall be claimed in the year the foreign source income is included in the taxpayer's taxable income and subject to tax in Southern Sudan. This addresses the problem of countries with different fiscal years. Finally, paragraph (3) provides a credit for income taxes paid at any level of government, such as a state or province or local authority.

Regulation 1.63 Tax Return and Payment

(1) Purpose of this Regulation

Section 63(1) of the Act requires all taxpayers, with the exception of those described in section 63(2) of the Act and paragraph (2) of these regulations to file a tax return in the manner and form prescribed by regulations.

(2) Taxpayers Who Are Not Required to File a Tax Return

Taxpayers who meet the following two conditions as provided in section 63(2) of the Act are not required to file a tax return but may elect to file a tax return:

(a) those who have had their entire tax due withheld under Chapter XIV of the Act; and

(b) those who have not paid advance tax under Chapter XIII of the Act.

(3) Contents of the Tax Return

(a) Information about the taxpayer and the tax return

(i) the taxpayer’s name, physical location and postal address;
(ii) the taxpayer’s identification number;
(iii) the tax period for which the return is being submitted; and
(iv) status as a resident or non-resident of Southern Sudan during the tax period

(b) Gross Income and Deductions

(i) gross income of the taxpayer as defined in section 57 of the Act earned or received during the tax period;
(ii) deductions allowable under Chapter XI of the Act for the tax period; and
(iii) total taxable personal income tax for the tax period

(c) Calculation of Estimated Tax

(i) Total taxable personal income tax multiplied by tax rate in Schedule II of the Act

(d) Tax Credits
(i) amounts withheld as tax during the tax period under Chapter XIV of the Act;
(ii) advance payments of estimated tax under section 61 of the Act;
(iii) advance payments of income tax on imported goods under chapter XIII; and
(iv) foreign tax credits within the limits of section 62(e) of the Act

(e) Calculation of Final Tax Liability

(i) Estimated tax less total amount of tax credits

(f) Additional Payment or Refund

(g) Filing Requirements

i. the signature of the taxpayer attesting to the accuracy of the tax return;
ii. the date on which the return is signed; and
iii. the name and address and signature of a tax advisor as defined in section 28 of the Act, if any, attesting to the accuracy of the tax return

(4) Submission of Tax Return and Tax Payment

(a) Under section 63(3) of this Act, all taxpayers required to file a tax return must file such return and pay any tax owed on or before 1st of April of the year following the tax period.

(b) The tax return must be submitted to a local tax office of the Directorate of Taxation.

(c) Payment of tax shall be at a bank at which the Directorate of Taxation operates a collection account and the name of the bank and the account number of the Directorate of Taxation shall be specified on the return.

Explanatory Comment

These regulations set out the basic information about filing personal income tax returns and paying personal income tax including (1) who must file a tax return; (2) what information must be included in the return: (3) when the return must be filed and where; and (4) when payment must be made and where.

Chapter XII

Business Profits Tax

Regulation 1.64 Interpretations

(1) Small Business Enterprise

For purposes of section 64 of the Act and Schedule II of the Act, "small business enterprise" means a business organization as defined in section 64 of the Act with a turnover in a tax period of less than 1,000,000 legal tender issued by the government.

(2) Medium Business Enterprise

For purposes of section 64 of the Act and Schedule II of the Act, "medium business enterprise" means a business organization as defined in section 64 of the Act with a turnover in a tax period of 1,000,000 to 75,000,000 legal tender issued by the government.

(3) Permanent Establishments

The term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried out, including a place of management, a branch, an office a factory, a workshop, construction site and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources and also includes a dependent agent of a non-resident carrying on business on behalf of the non-resident, regardless of whether the dependent agent has a workplace but does not include:

(a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belong to the enterprise;
(b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(c) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
(d) The maintenance of a sixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
(e) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a)to (d) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

Explanatory Comment

These regulations define small and medium business enterprise for purposes of applying the tax rates in Schedule II. If Schedule II is amended, these regulations will also be amended. The regulations incorporate the definition of permanent establishment from the UN and OECD Model Tax Conventions. In this way, the commentary interpreting this concept can serve as guidance as to how this concept is applied in practice.

Regulation 1.69(1)(a) Exemption for Income of Non-Governmental Organizations

(1) Exemption for Non-Governmental Organizations

Income of a non-governmental organization as defined in section 69(1)(a) and paragraph (2) of these regulations shall be exempt from tax if such income is used exclusively for the public benefit purposes stated in its registration application, except as provided in paragraph (3) of these regulations.

(2) Non-Governmental Organizations

For purposes of section 69(1)(a) of the Act and these regulations, "non-governmental organization" means an organization that is –

(d) registered as a non-governmental organization with the Directorate of Registration of Businesses, Associations and NGOS within the Ministry of Legal and Constitutional Development pursuant to the Non-Governmental Organizations Act 2003; and

(e) registered as a non-governmental organization with the Southern Sudan Relief and Rehabilitation Commission.

(3) Unrelated Business Income

(a) The exemption from business profits tax under section 69(1)(a) of the Act shall not apply to any income generated by a non-governmental organization unrelated to the exercise or performance by such organization of the function or purpose constituting the basis for exemption under section 69 of the Act.

(b) For purpose of these regulations, the term "unrelated business taxable income" means the income derived by any non-governmental organization from an unrelated business carried on by it, reduced by deductions allowed under Chapter XII of the Act related to carrying on such business.

Regulation1.69 (1)(d)

(1) Exemption for Foreign Contractors

Profits derived by a foreign contractor, as defined in section 69(1)(d) of the Act and paragraph (2) of these regulations, from activities directly related to the objectives of the agreement between the Republic of South Sudan and a donor agency for the supply of goods and services are exempt from business profits tax, except as provided in paragraph (3) of these regulations.

(2) Foreign Contractors

For purposes of section 69(1)(d) of the Act, "foreign contractor" means an organization that-

(a) has a contract with a donor agency of a foreign government to supply goods or services in Southern Sudan and such donor agency has an agreement within the scope of section 69(1) (d) with the Republic of South Sudan; and

(b) is registered with the Southern Sudan Relief and Rehabilitation Commission; and

(c) is incorporated or established in a state other than Southern Sudan.

(3) Unrelated Business Income

(a) The exemption from business profits tax shall not apply to any income generated by a business unrelated to the objectives of the contract between the foreign contractor and the donor agency.

(b) For purpose of these regulations, the term "unrelated business taxable income" means the income derived by any foreign contractor from an unrelated business carried on by it, reduced by deductions allowed under Chapter XII of the Act related to carrying on such business.

Regulation 1.69(2) Co-ordination Committee

The Director General of Taxation shall create an inter-ministerial coordinating committee to review and make recommendations on the tax and custom aspects of agreements with donor agencies. The coordinating committee will consist of the Under Secretaries of Ministry of Economics and Financial Planning, Ministry of Commerce, Ministry of Regional Cooperation, The Director General of Customs and two expert members. The main tasks of the working group are to make policy and administrative recommendations to the Director General on ways to ensure that exemptions granted under the Act for donor assistance are carefully designed and enforced to curb abuse and promote foreign aid effectiveness.

Explanatory Comment

These regulations provide rules to define more precisely those organizations which enjoy exemption from business profits tax under section 69 of the Act. Unless this exemption is carefully designed and enforced, any foreign organization that supplies goods or services in Southern Sudan could claim exemption from tax under this provision, whether or not all of its activities and income are connected to a donor-funded project. (For example, importing and selling surplus goods on the local market free from custom duties and profits tax or local firms could re-incorporate abroad to claim exemption as “foreign” contractors. To curb this potential abuse these regulations provide that foreign contractors are exempt only if the contractor itself registers with the Relief and Rehabilitation Commission and only to the extent the profits are directly related to the objectives of the agreement between the donor agency and the government. The requirement that foreign contractors register is aimed at ensuring that information about the activities and information of particular contractors is known to the government. If registration by all foreign contractors is not common practice or is not feasible in the current context, the regulation should be changed to require only registration by the donor agency. Finally, to put some substance in section 69(2), the regulations require the Director General to create an intra-Directorate working group to review and make policy and administrative recommendations on the tax and customs aspect of donor agreements. These regulations can be more detailed and strengthened if abuse of the exemption under section 69(2) is or could be a significant problem in Southern Sudan and if the Directorate considers this issue a priority and has the capacity to address abuses.

Regulation 1.70(3) Charitable Contributions

(1) Limits on Charitable Contributions

Charitable contributions to organizations described in section 70(3) of the Act and paragraph (2) of these regulations are deductible up to a maximum of five percent of gross income or 250,000 legal tender, whichever is lower, provided that the contribution is documented as provided in paragraph (3) of these regulations.

(2) Charitable Organizations

A charitable organization for purposes of section 70(3) of the Act is any organization –

(a) organized and operated exclusively for religious, charitable, scientific, literary, cultural, humanitarian, health and environmental protection purposes;

(b) assets or earnings of which is used exclusively for public benefit purposes; and

(c) is registered with the Directorate of Registration of Businesses, Associations and NGOS within the Ministry of Legal and Constitutional Development pursuant to the Non-Governmental Organizations Act 2003.

(3) Documentation

Charitable contributions shall be allowed as a deduction only to the extent the taxpayer receives a receipt from the charitable organization showing the amount of contribution in cash or the value of non-cash contributions, the date of the contribution and the registration number of the charitable organization.

Regulation 1.70(4) Deduction of Representation Costs

Under section 70(4) of the Act, representation costs as defined in section 64 of the Act may be deducted but only up to maximum amount of two percent of gross income.

Explanatory Comment

There is little policy justification for allowing business organizations to deduct charitable contributions since these contributions are in substance representation costs (i.e., given to advertise or promote the business or brand). Nevertheless, section 70(3) provides for a deduction without limitation. Pursuant to the authority in section 119(1) of the Act, these regulations limit the amount of deduction to five percent of gross income or 250,000 legal tender, whichever is lower and require the taxpayer to obtain documentation from the organization to verify the deduction.

Regulation 1.71 Bad Debts

(1) To deduct a bad debt under section 71 of the Act, a taxpayer must have previously included the amount in his or her income or made a cash loan.

(2) A taxpayer may not take a bad debt deduction for money the taxpayer expected to receive but did not, for example, for money owed for services performed or for rent because those amounts were not previously included in income.

(3) Bad debts may be deducted in part or in full but only to the extent that whole or part of the debt is deemed worthless and the taxpayer can show that it took all reasonable steps to collect the debt.

(4) Bad debts that are deducted under section 71 of the Act and then collected later shall be included as income to the extent of the amount collected on the date the amounts were collected.

Explanatory Comment

These regulations are identical to those that apply to PIT taxpayers and are consistent with section 71 of the Act governing the deduction of bad debts.

1.72 Reserve Funds of Banks

(1) Establishment of Bad Debt Reserve

Any bank established or operating in Southern Sudan may establish and maintain a special reverse fund for the bank's doubtful assets in an amount that shall not exceed the maximum amount allowable by the Bank of Southern Sudan.

(2) Treatment of Withdrawals and Replenishments

Any net reduction in the reserve shall be included in income and any addition to the reserve within the limits of section 72(3) of the Act and paragraph (1) of these regulations shall be allowed as a deduction.

Explanatory Comment

This regulation stipulates that banks may establish a reserve fund as provided by the rules and regulations of the Bank of Southern Sudan. Once the fund is established, any amount withdrawn from the fund must be included in income and any amount added to the fund, up to the maximum allowed by the Bank of Southern Sudan may be deducted.

Regulation 1.73 Related Person

(1) General Rule

Under section 73 of the Act, otherwise deductible payments made to a related person as defined in section 5 of the Act are deductible only to the extent that payment is equal to the fair market value of the goods or services as defined in section 5 of the Act provided to that related person.

(2) Excessive Payments

Any amounts paid that are in excess of the fair market value shall be disallowed.

Explanatory Comment

Under section 73 of the Act, any payments made to related persons are deductible only to the extent that payment is based on a rms-length fair market value. 1 .73(2) makes clear that any excess over the fair market price is non-deductible.

Regulation 1.74: Depreciation of Tangible Property

(1) **Purpose of Regulation 1.74**

As provided in section 74(1) of the Act, these regulations prescribe the method of depreciation and the calculation of depreciation deductions for purposes of the business profit tax.

(2) **Depreciable Property**

The term "depreciable property" means tangible property:

(d) held for use in a trade or business or for the production of income;
(e) has an expected life of over one year; and
(f) a market value of 1,000 legal tender or more as set forth in Section 74(8) of the Act for property (other than Category I property defined in Section 74(3) of the Act).

(3) **Non-Depreciable Property**.

Non-depreciable property includes:

(e) land
(f) works of art
(g) goodwill and
(h) inventory.

(4) **Depreciation Form**

To calculate depreciation, taxpayers must complete a specified depreciation form and attach this form in their tax return.

(5) **Classification of Property and Depreciation Rates**

As provided in section 74 (2) and (3) of the Act, property subject to depreciation is divided into three groups with different depreciation rates for each group as follows:

Category	Type of Property	Depreciation Rate as a Percentage
1.	Buildings and other structures	10
2.	Vehicles, office equipment and computers	33
3.	Any other property	25

(6) **Calculation of Annual Depreciation Amounts**

Depreciation for property classified in Category I is calculated for each property separately under the straight line method of depreciation. The amount of annual depreciation deductions is equal to 10 percent of the original cost of the property increased by the value of improvements that exceed 5 percent of the current cost basis of the property.

(7) **Calculation of Annual Depreciation Amounts**

For property classified in Categories 2 and 3, depreciation deductions are calculated under the declining balance method by the applying the depreciation percentage rate provided in paragraph (5) to the balance of the category at the end of the tax year as calculated in accordance with paragraph (8).

(8) **End of Year Balance of a Category**

The balance of a category for purposes of calculating depreciation deduction in any taxable period is the amount determined as follows (but not less than zero):

(a) the balance of the category at the end of the preceding year; <u>plus</u>
(b) purchases of property in that category in accordance with paragraph (9); <u>minus</u>
(c) the amount received from the sale of property in that category in accordance with paragraph (10).

(9) **Purchases of Depreciable Property**

If during the year, property is purchased or constructed, the capital account of that property or category to which such property belongs shall be increased by the amount specified below:

(a) For property in Category I purchased and placed in service during the taxable period, the value of each Category I property shall be increased by an amount equal to the cost of the property plus taxes, duties, and interest for the periods before the property is placed into service in accordance with Section 74(6) of the Act.
(b) For property in Categories 2 and 3 purchased and placed in serviced during the taxable period, the value of the group shall be increased by the cost of the property plus insurance and freight in accordance with Section 74(5) of the Act.

(c) For property self-constructed and placed in service during the taxable period, the value of the Category shall be the actual expenses associated with the construction of that property including all taxes, duties, and interest attributable to such property before the property is placed in service.

(10) **Sales of Depreciable Property**

(a) For Category 2 and 3 properties, if the amount received from the sale of property from a group in the course of a tax year exceeds the balance of the group at the end of the year, the excess is included in taxable income and the balance of the group is equal to zero.

(b) For Category 2 and 3 properties, if the amount received from the sale of property from a group in the course of a tax year is less than the balance of the group at the end of the year, the remaining balance of the group is deductible.

(11) **Other Provisions**

If the ending balance of property in Categories 2 and 3 is less than 1,000 legal tender, the entire balance of the group is deductible and the balance of the group is equal to zero.

(12) **Example of Calculation of Depreciation of Category 3 Property**

All property belonging to Category 3 as described in Section 74(3) of the Act and section 1.74(5) of the regulations is grouped together and depreciated at a rate of 25% under the declining balance method as follows:

Year	**Beginning Balance of Category**	**Purchases**	**Sales**	**Balance Before Depreciation**	**Amount of Depreciation Deduction (25%)**	**Ending Balance**
1	50,000	0	0	50,000	12,500	37,500
2	37,500	20,000	0	57,500	14,375	43,125
3	43,125	0	16,000	27,125	6,781	20,344
4	20,344	10,000	6,000	24,344	6,086	18,258
5	18,258	0	18,000	258	258	0
6	0	5,000	0	5,000	1,250	3,750

(13) **Cost of Pre-2008 Depreciable Property**

As provided in Section 74(7) of the Act, the cost of depreciable property held by the taxpayer on January 1, 2008 for purposes of computing depreciation shall be its book value on that day. For this purpose, the allowance for depreciation and all other adjustments for prior periods shall be made under applicable prior income tax laws.

(14) **Repairs and Improvements**

(a) As provided in Section 74(9) of the Act, deductions are permitted in respect of each Category for expenses to repair, maintain or improve property belonging to that category.

(b) The amount of such expenses incurred during the tax year is deductible in that year but not in excess of 5 pe rcent of the current cost basis of Category I property or for Categories 2 and 3 property the balance of the category at the end of the year.

(c) The amount of such expenses exceeding 5 percent of the cost of Category I property or for Categories 2 and 3 properties the balance of the category shall be added to the value of that property or category.

Section 1.75 Amortization of Intangible Property

(1) The base for calculating amortization of intangible property, including patents, trademarks, contracts, franchises, copyrights, design or model, secret formula or process or information concerning industrial, commercial or scientific experience is the cost of developing or acquiring such property.

(2) Each intangible asset is amortized over ten years under the straight line method of depreciation, beginning in the year the intangible is placed in service, unless the taxpayer can demonstrate that the life of the intangible is shorter than ten years.

(3) Intangible property is amortized only if it is held for use in a trade or business or for the production of income.

(4) If an intangible property is connected with a start-up of a new business or a new activity of an existing business, the cost of the intangible can be amortized over a t hree year period, beginning in the year the intangible was placed in service.

Explanatory Comment

These regulations provide all the rules necessary to define depreciable and intangible property and to calculate depreciation and amortization for such property. Following best international tax practices, buildings and other structures are calculated separately for each property under the straight line method of depreciation since buildings and structures depreciate economically more equally than other types of property. For all other types of property, the property is grouped into two categories and depreciation is calculated using the declining balance method of depreciation. This method applies the depreciation rate to the ending balance of the group. The ending balance of the group is the beginning balance of the group in the following tax year. The regulations include an example illustrating the declining balance method as well as the form taxpayers will use to calculate depreciation. For intangible property, the regulations apply a simple 10 year straight line method to recover the cost of the intangible. Taxpayers may use a shorter period if they can demonstrate that the asset's life is less than ten years. To encourage the development of intangibles for use in new businesses or expansion of existing businesses, the regulations provide a three year amortization period.

Regulation 1.77 Asset Sales

(1) Purpose of the Regulations

These regulations define assets that are subject to capital gains tax and prescribe the method of calculating capital gains and capital losses for purposes of section 77 of the Act.

(2) Capital Asset

For purposes of section 77 of the Act, the term "capital assets" means –

(a) land;
(b) buildings and other structures subject to Category I deprecation under section 74(2) of the Act;
(c) securities, including shares in companies and bonds.

(3) Gains and Losses Upon the Sale or Transfer of Capital Assets

(a) The full amount of capital gain or capital loss on the sale or transfer of capital assets shall be included as taxable income or business loss in the year of such sale or transfer.

(b) Capital gains from the sale or transfer of a capital asset is the positive difference between the sales price of the asset as determined under paragraph (4) of these regulations and the adjusted cost of the asset as determined under paragraph (5) of these regulations.

(c) Capital losses from the sale or transfer of a capital asset is the negative difference between the sales price of the asset or transfer as determined under paragraph (4) of these regulations and the adjusted cost of the asset as determined under paragraph (5) of these regulations.

(4) Sales price

The sales price of a capital asset shall be the sum of any money received plus the fair market value of any property received and includes the amount of any indebtedness of the seller with respect to the transferred property that is assumed or forgiven in connection with the sale or transfer.

(5) Adjusted Cost

(a) The adjusted cost of a capital asset includes acquisition costs, production, construction, assembly, installation and other similar costs that increase the value of such assets, with the exception of costs for which the taxpayer is entitled to deduct.

(b) For capital assets described in paragraph 2(b) of these regulations, the amount described in paragraph (a) is reduced by depreciation under section 74 of the Act and increased by the cost of improvements under section 74(9) of the Act.

(c) If only part of a capital asset is sold or transferred, the cost of the capital asset at the time of sale or transfer is divided between the part sold and the part not sold in proportion to the fair market value of such capital asset.

(d) With respect to the sale or transfer of more than one identical security, such as shares in a company, the adjusted cost of the securities sold or transferred shall be determined by computing the average cost of all identical securities held by the taxpayer multiplied by the number of identical securities sold.

(6) Limitation on Capital Losses

(a) Capital losses for the tax year shall be recognized as business losses only to the extent of capital gains recognized as business income.

(b) Any loss disallowed for the taxable year under paragraph (a) of this regulation shall be carried forward for up to five years and shall be available as a deduction against capital gains in those years.

(7) Non-recognition of Gains or Losses

(a) No gain or loss shall be taken into account as business income or business loss in cases of involuntary destruction or disposition of capital assets, where the proceeds are reinvested in an asset of the same character or nature no later than two years following the year in which the destruction or disposition takes place.

(b) The cost of the replacement capital asset described in paragraph (a) of this regulation is equal to the cost of the asset involuntarily destroyed or disposed of at the time of destruction or disposition.

(c) Capital assets are involuntarily destroyed or disposed of if in whole or part the property is destroyed, stolen, seized or condemned.

(8) Losses on Quick Sales and Buy-Backs of Securities

If a taxpayer within 30 days before or 30 days after the date of sale or transfer of securities purchases substantially identical securities, any loss from such transfer or sale shall not be recognized as a business loss and the cost of the acquired security shall be the cost of the security sold or transferred and increased or decreased by the difference in the sales price of the two securities.

(9) Examples of Capital Gains and Losses

Example 1: Calculating Capital Gains. Company X, a construction company, is established in 2009. It purchases a building but not the land for 100,000. Company X business grows and it needs a larger building. It sells the original building for 150,000 in 2010 and purchases another building for 200,000. Under section 74(3) of the Act and regulation 1.74(6), a building is depreciated under the straight line of depreciation at a rate of 10% per year. The amount of capital gain realized by Company X in 2010 is equal to:

Sales Price:	150,000	
Less Adjusted Cost		90,000 (100,000 less 10% depreciation in 2009)
Capital Gain	60,000	

Example 2: Calculating Capital Loss. Assume the same facts as Example 1, except that the building was sold for 50,000, not 150,000. The amount of capital loss realized by Company X in 2010 is equal to:

Sales Price	50,000	
Less Adjusted Cost	90,000	
Capital Loss		(40,000)

Under regulation 1.77(6), capital losses are recognized as business losses only to the extent of capital gains in that taxable period. If Company X has no capital gains in 2010, the capital loss of 40,000 can be used to offset capital losses in the next five years (2011-2015).

Example 3: Assumption of Debt. Assume the same facts as Example 2, except that the building was sold in 2010 for 25,000 plus the purchaser agreed to assume the outstanding loan on the building held by Company X. The value of the loan on the date of sale is 100,000. The amount of capital gain realized by Company X is equal to:

Sales Price	125,000 (25,000 cash plus assumption of debt 100,000)
Less Adjusted Cost	90,000
Capital Gain	35,000

Example 4: Capital Loss. Company Z owns three retail stores. Assume the current fair market value and the adjusted costs for each store are the following:

Number	Fair Market Value	Adjusted Cost
1	120,000	80,000
2	200,000	150,000
3	80,000	100,000

Company Z decides to sell store 3 in 2010 because it has declined in value from 100,000 to 80,000 for a capital loss of 20,000. The capital gains inherent in stores 1 and 2 are not capital gains until those stores are sold. Company Z has a net capital loss of 20,000 which it cannot deduct in 2010 and must carry forward the loss and deduct against capital gains earned in years 2011 – 2015 in accordance with regulation 1.77(6).

Example 5: Sales of Shares Purchased for Different Prices. Company A invests in Company B through purchasing shares in Company B. In 2009, A purchased 100 shares in B at a cost of 5 per share. In 2010 it purchases 100 shares in B at a cost of 8 per share. Later in 2010, it sold 100 shares for 1,000. Under paragraph 5(d) of these regulations, the adjusted cost of the shares held by Company A is equal to the average cost of the securities. The adjusted cost for all shares is equal to 1,300 (500 plus 800). A owns 200 shares. Therefore the average cost of shares is equal to 1,300/200 or 6.5 per share. A sold 100 shares, for a adjusted cost of 650 and total capital gains of 350.

Example 6: Quick Sales and Buy-Back of Securities. Company D purchased 100 shares of stock in Company F for 100,000 and 100 shares of stock in Company G for 150,000. At the end of 2010, assume the shares in F have risen in value to 110,000 and D decides to sell the shares for a capital gain of 10,000. To offset its capital gain of 10,000, it sells its shares in G for 140,000 for a capital loss of 10,000 on 31 December. On 5th of January 2011, it re-purchases its 100 shares in G for 145,000. Because D sold and re-purchased shares in the same company within 30 days, paragraph (8) of these regulations provides that the loss on the sale is not recognized as a business loss and cannot be used to offset the capital gain. Therefore, D must recognize 10,000 of capital gains in 2010. The adjusted cost of the repurchased G share is equal to 150,000 plus 5,000 (additional amount of money paid for G shares in 2011) for a total adjusted cost of 155,000.

Example 7: Involuntary Conversions. Company H purchases a warehouse in 2008 for 100,000 and insures the building at its fair market value. Assume in 2010, the warehouse is destroyed by fire. In 2010, the adjusted cost taking into account depreciation under Category 1 of 10% straight line for two years was 80,000 while its fair market value was 90,000. H purchases another warehouse for 100,000. The capital gains for 2010 on the destroyed warehouse are equal to the insurance proceeds of 90,000 less adjusted cost of 80,000 or 10,000 capital gains. Under paragraph 7 of these regulations, H does not have to recognize the gain of 10,000 since the warehouse was "involuntarily disposed of". Instead, the gain is preserved by providing that the adjusted cost of the new building is equal to the adjusted cost of the old building or 80,000.

Explanatory Comment

These regulations provide a number of additional rules that are necessary to tax properly capital gains or losses. First, these regulations narrowly define taxable capital assets to include only land, buildings and structures and securities. A narrow definition is preferable for two reasons. First, taxable capital assets should include only those assets likely to be sold at a price in excess of the adjusted cost; in other words, those most likely to generate capital gains, not losses. This means that assets that are likely to be sold at a price less than adjusted costs will not generate a business loss. Secondly, sales of Category 2 and 3 assets are already taken into account as income under the pooled system of depreciation since sales reduce the amount of depreciation for that category. Pursuant to the authority in section 119 (1) of the Act, the regulations also add additional rules including (1) prescribing average cost method of defining cost for identical securities; (2) ring-fencing capital losses against capital gains: (3) non-recognition in the case of involuntary transfers and (4) wash sales rules. As these new rules may be new concepts, examples are given to illustrate how they work in practice.

Regulation 1.78 Business Loss

(1) **Loss Carry forward**. In accordance with section 78(1) of the Act, if the taxpayer's business deductions for the taxable year exceed the taxpayer's income for that year, the amount of such loss shall be carried forward to each of the five succeeding taxable periods and available as a deduction against any income arising in such succeeding years.

(2) **Order of Set Off.** If the taxpayer has a loss described in section 78(1) of the Act in more than one year, the losses shall be deducted in the order in which they arose.

Explanatory Comment

This regulation provides the ordering rule for losses when a taxpayer incurs a loss in more than one year. In that case, the losses are deductible on a first-in, first out basis.

Regulation 1.79(1) Asset Distributions and Capital Contributions

(a) **Distributions of Property.** In accordance with section 79(1) of the Act, if a business organization distributes any property, other than cash or stock in that organization, to a shareholder with respect to the shareholder's equity interest, the business organization shall recognize gain or loss as if such property had been sold to the shareholder at its fair market value at the date of distribution. The cost of such property to the shareholder shall be its fair market value as of the date of distribution.

(b) **Stock Dividends.** Distributions of stock in the business organization to a shareholder with respect to that shareholder's equity interest do not constitute income to the business organization or shareholder in cases when the distribution does not alter the respective equity interests of its shareholders in the business organization.

(c) **Allocation of Cost to Stock Dividends.** In cases to which paragraph (2) of these regulations apply, the cost of the taxpayer's stock shall be allocated between the existing and new stock in proportion to their respective values.

(d) **Capital Contributions.** The contribution of capital, including cash and other property, to a business organization in exchange for an equity interest shall not be taxable income to the shareholder nor the business organization. The cost of property contributed shall be the adjusted cost of the property immediately before the contribution.

Explanatory Comment

Section 79(1) provides that in the case of any distribution by a business organization of property other than cash or its own stock, the organization must recognize gain or loss as if the property had been sold for its fair market value at the date of distribution. The cost of the distributed property to the shareholder will be "stepped-up" to the fair market value. Under section 64 of the Act, a distribution other than one in complete liquidation is a dividend to the shareholder and is subject to withholding under section 92(b) of the Act. Paragraph 1.79.1 (b) of these regulation, however, provides that dividends paid in stock that do not change the relative interest of shareholders in the business organization are not taxable income since there is no increase in value of the shareholdings. In that case, the cost of the total shareholdings is divided between the old shares and the dividend shares proportionately.

Regulation 1.79(3) Liquidations

(a) **Liquidation of a Subsidiary.** As an exception to section 79(3) treatment of distributed property, no gain or loss shall be recognized by the parent company as defined in paragraph (b) below in the case of a distribution of property of a subsidiary as defined in paragraph (c) below to a parent pursuant to liquidation of the subsidiary.

(b) **Parent.** For purposes of these regulations, the term "parent" means a company that has at least 80 percent of the total combined voting power of all classes of shares and at least 80 percent of the total number of shares in each class.

(c) **Subsidiary**. For purposes of these regulations, the term "subsidiary" means an organization where at least 80 percent of the total combined voting power of all classes of shares and at least 80 percent of the total number of shares in each class is owned by another company.

(d) **Adjusted Cost of Distributed Property**. The adjusted cost of the distributed property is equal to its adjusted cost immediately before the distribution.

Explanatory Comment

Pursuant to the regulatory authority in section 79(3) of the Act, to foster business restructuring these regulations provide for non-recognition of income or loss when a parent liquidates its subsidiary. The adjusted cost of the property distributed to the parent is the cost of the property immediately before the liquidation ("rollover basis").

Regulation 1.80 Business Reorganization

(1) **No Tax Liability.** Transfers of property among business organizations which are parties to a reorganization as defined in paragraphs (4) and (5) according to a written plan for reorganization of a taxpayer's business approved by the Director General are not subject to tax.

(2) **Director General Approval.** The Director General shall approve written plans of reorganization through a written ruling in accordance with section 27 of the Act, unless tax avoidance by a business organization or shareholder is the principal purpose or effect of the reorganization.

(3) **Adjusted Cost of Property**. The adjusted cost of property held by business organizations which are parties to a reorganization is the same as the value of such property immediately before the reorganization.

(4) **Reorganization.** For purposes of section 80 of the Act and these regulations, the term "reorganization" means-

(a) a merger of two or more legal resident business organizations;

(b) the acquisition of 80 percent or more of the voting rights and 80 percent or more of the shares of a resident business organization solely in exchange for equity in a party to the reorganization;

(c) the acquisition of 80 percent or more of the assets of a resident legal person by another resident legal person solely in exchange for equity in a party to the reorganization;

(d) a division of a resident legal person into two or more resident legal persons;

(e) a combination of two or more entities into one entity; or

(f) a recapitalization of a business organization.

(5) **Parties to a Reorganization**. For purposes of section 80 of the Act and these regulations, the term "parties to a reorganization" means-

(a) a resident business organization that is directly involved in the reorganization; or

(b) a resident business organization that owns a resident business organization that is directly involved in the reorganization.

(6) **Ownership.** For purposes of 1.80(5), ownership of a business organization means ownership of 80 percent or more of the voting rights and 80 percent or more of the shares of a business organization.

(7) **Pooled Assets.** Section 80 of the Act and these regulations do not apply to tangible property which is depreciated under section 74 of the Act and these regulations using the pooling method, unless all assets in the pool are transferred at the same time.

Explanatory Comment

These regulations provide simple and basic rules for tax-free reorganizations. Once Southern Sudan has more experience with business restructurings and reorganizations in particular these regulations can be expanded to provide rules for taxable reorganizations, the tax treatment of compensation other than shares, for example, cash and other property, limits on carry forward of losses to prevent purchases of loss companies solely for tax reasons and rules for cross-border re-organizations.

Regulation 1.81 Transfer Pricing

(1) **Purpose of Regulation.** These regulations describe the methods for determining the arm's length price for cross border transactions between related parties as defined in section 8 of the Act.

(2) **Methods of Determining Arm's Length Price**. In accordance with section 81(2) of the Act, the arm's length price shall be determined under the comparable uncontrolled price (CUP) method as described in paragraph (3) of these regulations or in cases where the CUP method is not possible the resale price method as described in paragraph (4) of these regulations or the cost-plus method as described in paragraph (5) of these regulations.

(3) Comparable Uncontrolled Price (CUP) Method.

(a) Under the CUP method, the arm's length price is determined on the basis of sale of comparable goods or services to unrelated parties. Uncontrolled sales include a sale of the same or similar good or service by one of the related parties to an unrelated party or by comparable sales of the same product between two unrelated parties.

(b) The taxpayer shall establish the comparability of two transactions by demonstrating similar functions, risks, contractual terms, economic conditions and similar nature of the goods or services.

(c) For two transactions to be comparable, the parties should perform the same functions, such as providing similar services, research and development, product design or manufacture, marketing, transportation and warehousing or other functions.

(d) The parties must also establish that the risks borne by the parties are similar. Relevant risks include market risks, research risks, financial risks, credit and collection risks and general business risks.

(e) The contractual terms, such as quantity, duration or warranty, of the two transactions should be comparable. For purposes of the comparison, the economic conditions surrounding the two transactions, such as similarity of the geographic market, size and composition and market alternatives for buyers and sellers should be comparable.

(f) A taxpayer may make appropriate adjustments to transactions that are comparable but not identical to determine the arm's length price. The adjustments must be based on commercial practices, economic principles or statistical analysis.

(4) Resale Price Method.

(a) Under the resale price method, the arm's length price is determined by subtracting the profit margin charged by a distributor in uncontrolled transactions of similar nature from the resale price charged for goods or services to unrelated purchasers.

(b) The profit margin is equivalent to the profits realized by a distributor as a percentage of gross sales in uncontrolled transaction and measures how much a person should pay to have a product distributed.

(c) The resale price method should be used by a taxpayer to determine an arm's length price in situations where there are no CUP transactions and the related purchaser is a distributor of goods or services which does not add significant value to the goods or services.

(5) Cost Plus Method.

(a) Under the cost plus method, the arm's length price is determined by multiplying the profit margin charged by a manufacturer of identical or similar goods to an unrelated seller by the cost of the goods or services plus the cost of the goods or services.

(b) The cost plus method measures how much a person should pay to get a product manufactured.

(c) The cost plus method should be used by a taxpayer to establish an arm's length price in cases where there are no CUP transactions and the related purchaser adds substantial value to the product.

(6) **Documentation.** Taxpayers engaged in cross border transactions with related parties must keep separate documentation of each transaction, including the transfer price paid for the goods and services as well as the arm's length price as determined under one of the three methods prescribed under section 81 (2) of the Act and these regulations.

Explanatory Comment

Like the regulations regarding reorganizations, these transfer pricing regulations provide the basic rules necessary to apply the comparable uncontrolled price, resale and cost plus methods to determine the arm's length price. Consistent with transfer pricing rules in most domestic laws and treaty provisions, transfer pricing is limited to cross-border transactions. These regulations can be expanded to provide more detailed rules once taxpayers and the tax administration gain some experience in this complex area of tax law.

Regulation 1.82 Double Taxation

(1) Foreign Tax Credit Limitation

Under section 82(2) of the Act, the amount of credit with respect to profit or income taxes paid to any foreign country for any fiscal year shall not exceed the proportion of the taxpayer's total tax liability for such year that taxable income attributable to sources within the foreign country for such period bears to the taxpayer's total taxable income for such year.

(2) Year of Credit

A tax paid to a foreign country shall be creditable for the year in which the income is taxable in Southern Sudan.

(3) Foreign Country

For purposes of section 82 of the Act, the term 'foreign country" includes a political subdivision of such country.

Explanatory Comment

The regulations correct a mistake in section 82 in order to make it consistent with the similar provision in section 62 which provides a credit for PIT taxpayers for foreign taxes paid. The mistake in Section 82 is that it is limited to providing a credit only on profit tax paid by a permanent establishment of a Southern Sudan company. Consistent with section 62 of the Act and good tax policy, a credit should be provided for any income or profit tax paid abroad by a business organization. These regulations provide such a rule. For example, taxes on dividends paid by a foreign subsidiary to its Southern Sudan parent would be creditable under these regulations subject to the per country limitation and reciprocity requirement in section 82 of the Act.

Regulation 1.83 Advance Payment of Tax

(1) Requirement to Make Advance Payments of Estimated Tax

Under section 83 of the Act, except as provided in paragraph (2) of these regulations, a business organization shall pay an advance tax equal to 100 percent of such organization's tax for the preceding fiscal year. Such payments shall be in 4 equal installments as follows:

Payment Made On or Before the Following Dates in the Current Year	Percentage of Tax Due:
15 April	25%
15 July	25%
15 October	25%
15 November	25%

(2) **Special Rule for Taxpayers Who Did not Pay Tax in Previous Year**

If a business organization did not earn income and pay tax on such income in the prior year, that organization must estimate the amount of taxable income for each tax period of the current year and pay tax in accordance with paragraph (3) below.

(3) Transition Rule: Amount of Estimated Tax, Filing Period and Filing Dates

1. Filing Date	2. Tax Period	3. Amount of Estimated Tax Payment
15 April	1 January to 31 March	The amount of business profit tax estimated for the tax period in column 2
15 July	1 April to 30 June	The amount of business profit tax estimated for the tax period in column 2
15 October	1 July to 30 September	The amount of business profit tax estimated for the tax period in column 2
15 November	1 October to 31 December	The amount of business profit tax estimated for the tax period in column 2

(4) Minimum Amount of Estimated Income Tax

The total amount of estimated tax paid shall total not less than 100 percent of such taxpayer's tax for the preceding year, or if less, 90% of the taxpayer's estimate of business profit tax payable for the current tax period.

(5) Underpayments

Any underpayment of advance tax payment required by section 83 of the Act and these regulations shall be subject to interest, at the rate provided in section 36 of the Act, for the period from the filing date of the advance tax payment to the due date for the return for the current year.

Explanatory Comment

These regulations provide guidance on advance payments of business profits tax. The main difference between advance payments of business profits tax and personal income tax is the final payment date: for business profits tax it is 15 November and for personal income tax it is 15 January.

Regulation 1.84 Tax Return and Payment

(1) Purpose of this Regulation

A return for profit tax shall be filed with the Directorate of Taxation prior to April 1 of the year following the fiscal year by the following taxpayers –

(a) resident business organizations; and

(b) non-resident business organizations having income from a source in Southern Sudan as described in section 64 of the Act that is not taxed at source under Chapter XIV of the Act.

(c) medium and large taxpayer's tax returns shall contain a certification from an independent chartered accountant (CA) or certified public accountant (CPA)licensed by the Directorate of Taxation as to the accuracy of the tax liability.

(2) Contents of the Tax Return

(h) Information about the Taxpayer and the Tax Return

- (v) the business organization's name, physical location and postal address;
- (vi) the business organization's tax identification number;
- (vii) the tax period for which the return is being submitted; and
- (viii) status as a resident or non-resident of Southern Sudan during the tax period

(i) Gross Income and Deductions

- (iv) gross income of the business organization earned or received during the tax period;
- (v) deductions allowable section 70 or other sections of Chapter XI of the Act for the tax period; and
- (vi) total taxable business profits for the tax period

(j) Calculation of Tentative Tax

- (ii) total taxable business profit multiplied by the tax rate in Schedule II of the Act

(k) Tax Credits

- (v) amounts withheld as tax during the tax period under Chapter XIV of the Act;
- (vi) advance income tax payments under section 83 of the Act; and
- (vii) foreign tax credits subject to the limits of section 82 of the Act.

(l) Calculation of Final Tax Liability

- (ii) Estimated tax less total amount of tax credits

(m) Additional Payment or Refund

(n) Filing Requirements

i. the signature of the taxpayer attesting to the accuracy of the tax return;
ii. the date on which the return is signed; and
iii. the name and address and signature of a taxpayer's advisor as defined in section 28 of the Act, if any, attesting to the accuracy of the tax return

(3) Submission of Tax Return and Tax Payment

(d) Under section 84(3) of this Act, all taxpayers required to file a tax return must file such return and pay any tax owed on or before 1st of April of the year following the tax period.

(e) The tax return must be submitted to a local tax office of the Directorate of Taxation.

(f) Payment of tax shall be at a b ank at which the Directorate of Taxation operates a collection account and the name of the bank and the account number of the Directorate of Taxation shall be specified on the return.

Explanatory Comment

Pursuant to the provision in section 84(1) and 119(2) regarding regulatory authority, these regulations allow BPT taxpayers to claim credits for advance income tax and foreign tax paid and not just withholding tax as provided in section 84(2). Like the PIT provision governing tax returns, these regulations set out the basic information about filing business profit tax returns and paying business profit tax including (1) who must file a tax return; (2) what information must be included in the return: (3) when the return must be filed and where; and (4) when payment must be made and where. T he BPT return, unlike the PIT return will be slightly more complex, requiring more schedules and more instructions.

Chapter XIII

Advance Payment of Income Tax on Imported Goods

Regulation 1.88(a) Exemption for Certain Foods

Pursuant to the authority in section 88(a) of the Act, the food items listed in Schedule A of these regulations are exempt from the tax imposed by Chapter XIII of the Act:

Regulation 1.88(b): Exemption for Humanitarian Aid

(1) **Purpose of Regulation 1.88 (b)**

As prescribed by section 188(b) of the Act, humanitarian aid in the form of goods as defined in paragraph (2) of these regulations which are imported into Southern Sudan by a bona fide organization as defined in paragraph (3) of these regulations are exempt from the tax imposed by Chapter XIII, unless paragraph (4) of these regulations applies.

(2) **Humanitarian Goods**

Humanitarian goods are those goods which are:

(a) used to respond to humanitarian crises such as war, natural disasters, famine or health emergencies, whether natural or manmade;
(b) requested by the Republic of South Sudan in writing to specific humanitarian aid providers; and
(c) provided free of charge.

(3) **Bona Fide Organization**

A bona fide organization is a non-governmental organization as defined in section 1.69(1)(a) of the regulations under this Act.

(4) Sale of Goods

Notwithstanding paragraph (1), all taxes imposed under Chapter XIII of the Act become immediately due and payable if humanitarian goods are sold to private persons or are no longer used in or are necessary for the activities of the bona fide organization, unless the ownership of such goods is transferred to the Republic of South Sudan or another person exempt from tax under section 88 of the Act.

Explanatory Comment

This regulation provides a broad exemption for goods imported for humanitarian purposes by NGOs as defined in regulation 1.69(1)(a). If corruption or abuse of this exemption is likely, these regulations can be strengthened to reference official lists of goods that should qualify for exemption using guidance provided in Annex 9.b of the Istanbul Convention on Custom Duties and Chapter 5 of the Revised Kyoto Convention.

Regulation 1.88 (c) Exemption for Goods Imported by a Foreign Contractor

(1) Exemption for Foreign Contractors

Goods imported by foreign contractors, as defined in paragraph (2) of these regulations, which are used in performance of activities directly related to the objectives of the agreement between the Republic of South Sudan and a donor agency or the foreign contractor are exempt from the tax imposed by Chapter XIII of the Act, except as provided in paragraph (3) of these regulations.

(2) Foreign Contractors

For purposes of section 88(c) of the Act, “foreign contractor” means an organization defined in regulation 1.69(2).

(3) Sale of Goods

Notwithstanding paragraph (1), all taxes imposed under Chapter XIII of the Act become immediately due and payable if the goods are sold to private persons or are no longer used in or are necessary for the activities of the foreign contractor, unless the ownership of such goods is transferred to the Republic of South Sudan or another person exempt from tax under section 88 of the Act..

Explanatory Comment

This regulation provides an exemption for goods imported by a foreign contractor pursuant to a contract with a donor agency or the Republic of South Sudan. The regulation references the definition of foreign contractor in the regulations under section 69(1)(d) which provides for an exemption from business profits for such contractors. If the section 69(1)(d) definition is too broad, the regulations under that section should be amended and that revised definition will automatically apply for purposes of Chapter XIII.

Schedule A

List of Basic Necessities Exempt from Advance Payment on Imported Goods:

Raw Meat		
Raw Fish		
Eggs		

Cooking oils, fats		
Milk including powdered		
Cheese & butter		
Cassava, Sweet Potatoes, Irish Potatoes		
Onions		
Millet and Maize		
Rice		
Wheat		
Barley		
Maize flour		
Wheat flour		
Baking powder		
Yeast		
Purified water		
Educational material		
Prescription drugs		
Clinical Items: gauze, bandages, cotton, plasters		
Medical solutions & ointments		
Medical soap		
Fertilizers		
Pesticides		
Raw timber		

Cattle, meat, poultry and the products thereof, fish and milk and dairy products;
Fertilizers;
Seeds;
Insecticides and herbicides;
Drugs, for human and zoological use;
Flour;
Bread;
(First) All the agricultural products that are yielded by an agricultural activity and sold in their natural condition. Agricultural products shall not be deemed as being sold in their natural condition should they be changed into a new product or should their shape, type, or natural components be altered or should any substance that changes their nature be added thereto.
(Second) Live stock:
Live stock means products of animal resources; including cattle, sheep, camels and goats with exception to leathers being raw or tanned, wool, camel hair and their products.
(Third) Poultry and their products of eggs and chicken.
(Fourth) Fish, with exception to canned and processed fish.
(Fifth) Milk and dairy products including cheese, butter, cooking butter and yogurt,
(Sixth) Fertilizers:
(Seventh) Medicines and veterinary drugs.
(Eighth) Insecticides, and weedicides
(Nineth) Seeds.

Fertilizers, medicines and vetrinary drugs, insecticides, weedicides and seeds are hereabove used as they are defined in the acts pertinent thereto.
(Tenth) Locally produced flour.
(Eleventh) Bread.

(Twelveth) Goods imported for the members of the diplomatic corps in accordance with immunities and privileges act 1956 and the regulations and ordinances issued thereby without prejudice to the principle of reciprocation.
(Thirteenth) Goods and commodities imported in accordance with agreements signed with the government of Sudan that provide for value – added tax exemption
(Fourteenth) Personal effects carried by passengers arriving from abroad or purchased by them from duty – free zones and markets provided that their tax exempted value be assessed as being equivalent to the amount of customs exemption provided for in accordance with the provisions of the customs act and the regulations issued thereby.

Chapter XIV

Withholding on Wages

Regulation 1.94(1): Withholding on Wages

(1) **Purpose of Regulation 1.94**

As provided in Chapter XIV of the Act, these regulations prescribe the method of withholding tax on wages and the calculation of withholding tax on at the rates established by Schedule II of the Act.

(2) **Withholding by Principal Employers**

Withholding on e mployees by principal employers as defined in paragraph ( ) of these regulations shall for each month calculate withholding tax as follows:

Brackets	**Amount of Monthly Taxable Income**	**Tax**
1.	0 to 300 of legal tender	0
2.	301-5,000	10% of amount over 300 up to 470 of legal tender
3.	Over 5,000	470plus 15% of amount over 5,000

(3) **Employers Who are Not Principal Employers**

If the resident employer is not the employee's principal employer, the amount withheld shall be 10% of gross wages as defined in Section 58 of the Act and paragraph (7) of these regulations. No deduction for pension contributions under section 58(3) shall be allowed as a deduction from gross wages paid by an employer that is not a principal employer.

(4) **Principal Employer**

The term "principal employer" means -

(g) any employer if the employee has only one employer; or

(h) if an employee has more than one employer, the employer designated by the employee at the beginning of the year.

(5) **Resident Employer**

The term "resident employer" means an employer as defined in section 5 of the Act.

(6) Employee

The term "employee" means an employee as defined in section 5 of the Act.

(7) Gross Wages

The term gross wages include cash compensation and the value of all taxable in-kind benefits as provided in Section 58 of the Act and regulations under section 58.1., but does not include compensation excluded from gross income under section 58(2) of this Act, non-taxable in-kind benefits, medical health insurance premiums or any wages from sources outside of Southern Sudan.

(8) **Withholding Form**

To calculate withholding, principal employers must complete Form 95-1 and non-principal employers must complete Form 95-1(a).

(9) **Contributions to a Pension Plan by an Employee**

As provided in section 58(3) of the Act, an employee may deduct from gross wages contributions made to funded pensions schemes approved by the Republic of South Sudan in an amount up to 8 percent of gross wages. These pension plans shall be referred to as qualified pension plans for purposes of these regulations.

(10) **Employers' Obligation to Submit Statement and Pay Tax Withheld Monthly**

(a) Every principal employer required to withhold tax under section 92 of the Act must submit Form 95-1 and include all information required in that form for each employee.

(b) Every employer who is not a principal employer shall submit a return of tax withholding that includes for each employee, the gross amount of wages paid, and taxed withheld for that month in a form prescribed by the Director General of Taxation.

(c) Every principal employer shall submit Form 95-1 and every non-principal employer shall submit Form 95-1(a) and remit the correct amount of tax withheld to the Directorate of Taxation by the 15th day of the month following the month in which taxable wages are paid.

(d) If the total amount of taxes withheld in a month exceeds legal tender 300,000, t he employer shall remit such taxes and submit Form 95-1 or 95-1(a) within five business days after the close of the month.

(11) **Employers' Obligation to Submit Annual Report to Director General of Taxation**

Every resident employer required to withhold tax under section 92 of the Act must submit Form 95-4 and include all information required by that form. The annual information return must be submitted to the Director General of Taxation within 60 days after the end of the fiscal year.

(12) **Employers' Obligation to Submit Year End Statement to Employee, Upon Request**

At the request of any employee, a resident employer shall provide by 31 January of the year following a statement showing the amount of gross wages, qualified pension contributions and tax withheld for the previous year in a form prescribed by the Director General of Taxation in accordance with Section 95(3) of the Act.

(13) Withholding by Third Parties

Third parties that directly finance another principal employer's payroll must withhold taxes in accordance with the table as provided in paragraph (2) of these regulations. Third parties that directly finance another employer's payroll that is not a principal employer shall withhold taxes at a rate of 10% of gross wages paid. Third parties are subject to the same information return requirements and remittance of taxes withheld as other employers.

(14) Employees' Obligation to Provide Pension Contribution Amount to Principal Employers

(a) An employee who chooses to contribute to a qualified pension plan must submit a statement to his or her principal employer no later than the 15th of January of the current year requesting a certain percentage of gross wages, but in no case more than 8%, be deducted from gross wages each month and contributed to a qualified pension plan.

(b) If the employee decides to terminate the pension contribution or change the amount of contribution, the employee must submit a statement to the principal employer requesting the termination or change in the amount of contribution. The statement must be submitted no later than the 15th day of a month and the change shall take effect in the following month.

(15) Wage Withholding Treated as a Final Tax in Certain Circumstances

(a) If an employee has no gross income for the taxable year other than wages subject to withholding and interest and dividends subject to withholding under Chapter XIV of this Act and the taxpayer does not elect to file a return for the taxable year, the tax withheld will constitute the employee's final tax for the year and no return must be filed.

(b) If tax withheld on annual taxable wages exceeds the amount of tax which is owed on that amount, the employee must file a tax return, declare all gross taxable income and claim credit for amounts of taxes withheld on wages.

Chapter XIV

Withholding on Interest, Dividends and Royalties

Regulation 1.94(2):

(1) **Purpose of Regulation 1.94(2)**

As required by Chapter XIV of the Act, these regulations prescribe the method of withholding on interest as defined in paragraph (2) dividends as defined in paragraph (3) and royalties as defined in paragraph (4) of these regulations paid to persons, whether the person is a resident as defined in section 5 of the Act or a non-resident.

(2) **Interest**

The term "interest" for purposes of these regulations means income paid on bank deposits from sources within Southern Sudan as provided in section 92(c) of the Act.

(3) **Dividends**

The term "dividends" for purposes of these regulations means dividends as defined in section 64 of the Act from sources within Southern Sudan.

(4) **Royalties**

The term "royalties" for purposes of these regulations means payments of any kind received by individuals or legal entities from sources within Southern Sudan received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including a patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific process.

(5) **Withholding Form**

To calculate withholding, taxpayers must complete Form 95-1 and withhold tax at the time of payment of interest, dividends or royalties under Section 94(2) of the Act.

(6) **Payors' Obligation to Submit Information Return and Pay Tax Withheld Monthly**

(e) Every payor of interest, dividends and royalties required to withhold tax under section 92 of the Act must submit Form 95-1 and include all information required under that Form.

(f) Every payor of interest, dividends and royalties must submit the monthly information return and remit the correct amount of tax withheld to the Directorate of Taxation by the 15th day of the month following the month in which payments of interest, dividends and royalties are made in accordance with section 95(1) of the Act.

(g) If the total amount of taxes withheld in a month exceeds SDG 300,000, the payor must remit such taxes and submit the monthly information return within five business days after the close of the month in which the payments were made in accordance with section 95(1) of the Act.

(7) **Payers of Royalties: Obligation to Submit Annual Information Return**

(a) Every payer of royalties required to withhold tax under section 92 of the Act must submit an annual information return of tax withholding that includes for each resident payee, the name of the payee, the total amount of royalties paid in the year and the total amount of taxes withheld in Form 95-4

(b) Form 95-4 must be submitted to the Director General of Taxation within 60 days after the end of the fiscal year.

(8) **Final Tax for Interest and Dividends Payments and All Payments to Non-Residents**

(a) The withholding tax on interest and dividends paid to residents is a final tax and no additional taxes will be imposed on such payments nor will tax be refunded.

(b) The withholding tax on royalties is not a final tax and payees of royalties, whether resident or non-resident must include the gross income from royalties in their tax return and claim a credit for taxes withheld under Chapter XIV of the Act and these regulations.

(c) The withholding tax on interest and dividends is a final tax and no additional taxes will be imposed on such payments nor will tax be refunded.

Explanatory Comment

This regulation provides the withholding rules for payors of interest, dividends and royalties. As the definition of interest not subject to withholding includes any interest paid on a debt, interest subject to withholding is limited to interest paid on a bank deposit. While there is some overlap with the wage withholding rules, separate regulations are desirable since the payors are different and the withholding rate on interest, dividends and royalties is a flat rate and for interest and dividends the withholding tax is a final tax. Separate monthly and annual forms are also desirable for the same reason. While section 96 provides that the withholding tax on royalties is not a final tax, it will be extremely difficult if not impossible to collect any remaining tax from a non-resident recipient of royalties since that would require filing a tax return, reporting the royalty income and claiming a credit for the 10 percent withholding tax. Nevertheless, the regulations follow section 96.

Chapter XV

Excise Tax

1.102(c) Time of Tax

(1) In the case of the provision of excisable services, the tax shall be imposed on the person paying for the service and collected by the person furnishing the service at the time the service is furnished.

(2) In the case or any tax imposed by this Chapter, if the person liable for the tax does not pay it, the person having responsibility for collecting the tax shall also be liable for the tax and any interest and penalty that may be payable.

1.103 Aviation Fuel Exemption

(1) Aviation fuel used exclusively in international transportation shall be exempt from tax imposed by this Chapter if the producer or importer of such fuel registers with the Directorate of Taxation as provided in paragraph (2) of these regulations and receives an exemption certificate as described in paragraph (3) of these regulations.

(2) Every person which produces or imports aviation fuel used exclusively in international transportation shall submit an application for an exemption certificate, on the prescribed form, to the Directorate of Taxation and provide proof on the amount and value of fuel used exclusively in international transportation.

(3) Where an application for exemption has been made by a producer or importer of such fuel, unless the Director General of Taxation such application, the registration shall be made by the Director General of Taxation.

Regulation 1.105 Tax Return and Payment of Tax

(1) Purpose of this Regulation

A return for excise tax shall be filed with the Directorate of Taxation on or before the 15th day of the month following the month when excisable goods produced in Southern Sudan are released for sale.

(2) Contents of the Tax Return

(o) Information about the Taxpayer and the Tax Return

(ix) the producer's or importer's or service providers' name, physical location and postal address;
(x) the producer or importers' or service providers' tax identification number;
(xi) the tax period for which the return is being submitted; and

(p) The value or per unit of each excisable good or service multiplied by the percentage of value or specific rate (follow Schedule III in the return)

(q) Calculation of final excise tax for the tax period

(iii) Total of amounts in paragraph (b).
(iv) Final payment amounts

(r) Filing Requirements

i. the signature of the taxpayer attesting to the accuracy of the tax return;
ii. the date on which the return is signed.

(3) Submission of Tax Return and Tax Payment

(g) Under section 105 of the Act, all taxpayers required to file a tax return must file such return and pay any tax owed on or before the 15th day of the month following the date locally produced excisable goods are released for sale or the date such goods are imported.

(h) The tax return must be submitted to a local tax office of the Directorate of Taxation.

(i) Payment of tax shall be at a b ank at which the Directorate of Taxation operates a collection account and the name of the bank and the account number of the Directorate of Taxation shall be specified on the return.

<u>Explanatory Comment</u>

This regulation provides guidance on the contents of the return for excise taxes.

Republic of South Sudan Institution Taxes, Fees and Charges

Regulation 1.108 Exchange of Information with Local Government

(1) Exchange of Information

Pursuant to section 108 of this Act, the Director General of Taxation may enter into an exchange of information program with local government authorities to, among other purposes, verify if persons are doing business in Southern Sudan or to identify persons who should be regarded as taxpayers under this Act.

(2) Requests must be in Writing

All requests for information from the Director General of Taxation to local government authorities must be made in writing.

(3) Confidentiality of Information

Any information received under paragraph (1) shall be treated as confidential in the same manner as information obtained under the Act and disclosed only to persons authorized under the Act to obtain such information as provided in section 122 of the Act.

Explanatory Comment

Local governments will agree exchange information only if they are assured that the central government will keep such information confidential. T he maintenance of confidentiality is guaranteed under section 122 of the Act.

Chapter XVII

No regulations under this Chapter

Chapter XVIII

Fraud, Failure to Register and Other Tax Crimes

Regulation 1.116 Other Offences

A person who with respect to any tax imposed under this Act or regulations commits any of the following acts shall be punished under section 116(1) of the Act -

a. Intentionally hides or destroys any book, record, document, statement or other information relevant to a tax liability
b. Intentionally fails to obey a summons
c. Intentionally interferes with the determination or collection of such tax
d. Threatens or commits violence against a tax official
e. With respect to a tax official, solicits or accepts a bribe
f. Offers a bribe to a tax official
g. Intentionally discloses any tax information in a manner not authorized by law or regulations.

Explanatory Comment

This provision expands current Article 116 of the Act to specify the type of acts that may be subject to criminal sanctions or fines.

Chapter XIX

Miscellaneous Provisions

Regulation 1.122 Confidentiality

Pursuant to the authority in section 122(d) of the Act, the Directorate of Taxation and all current or former employees of the Directorate shall maintain confidentiality regarding all information regarding a taxpayer and may disclose such information only to the following persons:

a. The Competent Authority of another country pursuant to an international agreement entered into by the Republic of South Sudan and that country that provides for exchange of information;
b. Law enforcement agencies for the purpose of the prosecution of persons who may have committed offences under Chapter XVIII of the Act; and
c. Taxation officers for matters that deal with potential violations of the Code of Conduct under section 15(5) of the Act.

Explanatory Comment

This regulation adds additional exceptions to the general confidentiality rule based on international best practices. T he regulations also make clear that former employees are also required to maintain confidentiality.

Ministry of Finance and Economic Planning
Directorate of Taxation

Assent of the Minister of Finance and Economic Planning

Republic of South Sudan

In accordance with the provision of the article 119 (1) of the Taxation Act, 2009 I, Kosti Manibe Ngai, the Minister, Ministry of Finance and Economic Planning in the Republic of South Sudan, hereby Assent to the taxation regulation, 2012, and sign it into law.

Signed in Juba this ..19th.......... day in the month of ..January..... in the year 2012.

Kosti Manibe Ngai

Minister
Ministry of Finance and Economic Planning
Republic of South Sudan
Juba, South Sudan