

# VAT Administration

## Chartered Accountancy Strategic Level Corporate Taxation (TAX)

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## 14. VAT ADMINISTRATION

### 1. FURNISHING OF THE RETURN (SEC 21)

Every registered person shall furnish to the CGIR a return either in writing or by electronic means of his supplies **not later than last day of the month after the end of the taxable period.** (17 of 2013)

Every such return shall be in the specified form containing all such particulars and relevant schedules as the CGIR may specify by Order published in the Gazette. (20 of 2016)

#### Furnishing of Returns

State the due date for furnishing VAT return by a company for the taxable period ended 30.09.2021.

#### 1.1. Person deemed not to have furnished the Return (Sec 21(1A)) (20 of 2016)

If return furnished by a registered person **does not contain particulars with relevant schedules as specified by the CGIR**, such person shall be **deemed not to have furnished the return** under the Act on supplies.

#### 1.2. Communication by the Assistant Commissioner for Incomplete Return (Sec. 21(1B)) (20 of 2016)

Where the return furnished by a registered person is deemed not to have furnished as mentioned in 1.1 above, **the Assistant Commissioner** shall issue to such registered person and inform him such fact **before the expiry of 14 days from the last day of the month after the expiry of such taxable period.**

#### 1.2.1. Rectification of Incompleteness (Sec. 21(1C)) (20 of 2016)

Where any registered person receives any notice from an Assistant Commissioner as discussed in 1.2 above, **such person shall within 14 days of receipt of such notice**, furnish a proper return containing all such particulars. If such person does so, the provision as discussed in 1.1 above does not apply.

#### 1.2.2. Acknowledgment of Receipt of Return (Sec. 21(1D)) (20 of 2016)

The Assistant Commissioner shall acknowledge the receipt of the return only upon a receipt of a proper return which shall be considered as a valid return.

#### 1.3. An Assessor can call for the Return (Sec 21(2))

An Assessor may, by notice in writing, require any person who is not a registered person but, in his judgment is a person chargeable with tax, to furnish a return in the specified form within the time specified in such notice.

#### 1.4. **Penalty for failure to furnish a Return (Sec 21(10))**

Where a person failed to comply with furnishing of return, **CGIR may impose a penalty for a sum not exceeding Rs. 50,000** and give notice in writing to such person to pay such penalty and to furnish the return required.

However, the CGIR may reduce or annul any penalty imposed, if such person proves to the satisfaction of the CGIR that his failure was due to the circumstances beyond his control and he has subsequently complied with the requirement.

#### 1.5. **Offence for failure to furnish a Return (Sec 21(12))**

Every person who contravenes the provisions of furnishing the return shall be guilty of an offence under the Act and shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding Rs. 50,000 or to an imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

However, this provision is applicable except where CGIR imposes a penalty under section 21(10).

### 2. **PAYMENT OF TAX (SEC 26)**

Tax in respect of any taxable period shall be paid not later than 20<sup>th</sup> day of the month following the end of the taxable period.

However, in case of a **registered person whose taxable period falls as three months** as per the definition, **shall pay the tax**, subject to the making of any final adjustments, if any, **with the submission of the return in the following manner.**

- (a) Tax payable for the first month of the taxable period shall be paid not later than 20<sup>th</sup> day of the second month of the taxable period.
- (b) Tax payable for the second month of the taxable period shall be paid not later than 20<sup>th</sup> day of the third month of the taxable period.
- (c) Tax payable for the taxable period after deducting there from the amount in (a) and (b) shall be paid not later than 20<sup>th</sup> day of the month following the end of the taxable period.

#### 2.2 **Penalty for Default (Sec 27)**

Where any tax is in default, the defaulter shall pay as penalty in addition to such tax in default as follows.

- (a) A sum equivalent to 10% of tax in default and,
- (b) 2% on any outstanding tax for every period of one month or part thereof for which the tax remains unpaid after the lapse of one month after the due date. Total penalty cannot exceed 100% of tax in default.

However, the CGIR may waive or reduce the penalty if he is satisfied that such waiver or reduction is just and equitable.

### 3.0 ASSESSMENTS OF TAX

#### 3.1 Power of Assessor to Make Assessment (Sec 28)

The Assessor shall assess the amount of the tax, which the person in the judgment of the Assessor, ought to have paid for that taxable period and shall, by notice in writing, require that person to pay such amount forthwith. The assessment can be issued under the following circumstances.

- (a) any registered person who in the opinion of the Assessor is chargeable with tax, fails to furnish a return for any taxable period
- (b) any registered person, who is chargeable with tax, furnishes a return in respect of any taxable period but fails to pay tax for that taxable period
- (c) any person requests the Commissioner General in writing to make any alteration or addition to any return furnished by such person for any taxable period

#### 3.2 Additional Assessment (Sec 31)

Where it appears to an Assessor that a person chargeable with tax has for any taxable period paid as tax an amount less than the proper amount of the tax payable by him for that taxable period, or chargeable from him for that period, the assessor may, at any time, assess such person at the additional amount at which, according to the judgment of such assessor, tax ought to have been paid by such person. The assessor shall give such person notice of assessment.

#### 3.3 Assessor to State why he is not accepting a Return (Sec 29)

Where the Assessor does not accept a return furnished by any person under section 21 for any taxable period and makes an assessment or an additional assessment under section 28 or 31 respectively on that person for that taxable period, he shall communicate to such person by registered letter sent through the post why he is not accepting the return.

#### 3.4 Power of Assessor to determine Open Market Value (Sec 30)

Where the Assessor is of opinion that a registered person has made a taxable supply

- (a) for a value less than the open market value of such supply or for no value or
- (b) the transaction in respect of which taxable supply has been made, is between two associated persons

in order to avoid the payment of tax, he shall determine the open market value of such supply on which tax shall be charged, having regard to the circumstance of the transaction and the time of supply.

#### 3.5 Limitation of Time for Assessment or Additional Assessment (Sec 33)

##### 3.5.1 Time bar for three years (Sec 33(1))

Where any registered person has furnished a return as provided in section 21 in respect of that period or has been assessed for tax in respect of any period, **it shall not be lawful for the Assessor** where an assessment

- (a) has not been made, **to make an assessment**, or

(b) has been made, **to make an additional assessment after the expiration of three years from the end of the taxable period** in respect of which the assessment was made or the return was furnished.

### **3.5.2 No time bar for non disclosure willfully or fraudulently**

Where the assessor is of opinion that **a person has willfully or fraudulently failed to make a full and true disclosure of all the material facts** necessary to determine the amount of tax payable by him for any taxable period, it shall be lawful for the assessor where an assessment

- (a) has not been made, to make an assessment at any time, or
- (b) has been made, to make an additional assessment at any time.

## **4.0 APPEALS (SEC 34)**

### **4.1 Appeals to the Commissioner General (Sec 34(1))**

**Any registered person may**, if he is dissatisfied with any assessment or additional assessment made in respect of him by an Assessor, or a penalty imposed under this Act, **appeal against such assessment or additional assessment or penalty to the Commissioner General within thirty days after the service of notice of assessment.**

Provided that the Commissioner General, upon being satisfied that owing to absence from Sri Lanka, sickness or other reasonable cause, the appellant was prevented from appealing within such period, shall grant an extension of time for preferring the appeal.

#### **4.1.1 Conditions for a Valid Appeal (Sec. 34(5))**

A valid appeal must include the following;

1. The petition of appeal was made within the period specified in section 34(1).
2. The appeal shall be in writing addressed to the Commissioner General and shall state precisely the grounds of appeal. (Sec. 34(2))
3. Where the appeal is made against an assessment made in the absence of a return, the appeal should be sent together with the return with the proof of the payment of the tax and penalty on such return. (Sec. 34(3))
4. Taxes must have been paid as per the Return with penalty. However, Commissioner General may grant an extension of time for the payment of such taxes and penalty considering the serious financial hardship suffered by the appellant or other reasonable cause. (Sec. 34(4))

#### **4.1.2 Appeal before the Assessor (Sec 34(6))**

On receipt of a valid petition of appeal, the CGIR may cause further inquiry to be made by an Assessor other than the Assessor who made the assessment (8 of 2006) and if in the course of such inquiry an agreement is reached as to the matters specified in the petition of appeal, the necessary adjustment of the assessment shall be made.

#### **4.1.3 Appeal before the Commissioner General (Sec 34(7) to 34(12))**

Where no agreement is reached between the appellant and the Assessor, the CGIR shall fix a time and place for the hearing of the appeal.

Every appellant shall attend before the CGIR at the time and place fixed for the hearing of the appeal. The appellant may attend the hearing of the appeal in person or by an authorized representative. The CGIR may, if he thinks, fit, from time to time, adjourn the hearing of an appeal for such time and place as he shall fix for the purpose. In any case in which an authorized representative attends on behalf of the appellant, the CGIR may adjourn the hearing of the appeal and may, if he considers that the personal attendance of the appellant is necessary for the determination of the appeal, require that the appellant shall attend in person at the time and place fixed for the adjourned hearing of the appeal.

#### **4.1.4. Dismissal of Appeal**

If the appellant or his authorized representative fails to attend at the time and place fixed for the hearing or any adjourned hearing of the appeal, or if the appellant fails to attend in person when required so to attend by the CGIR, the CGIR shall dismiss the appeal:

If the appellant shall within a reasonable time after the dismissal of an appeal satisfy the CGIR that he or his authorized representative was prevented from due attendance at the hearing or at any adjourned hearing of such appeal by reason of absence from Sri Lanka, sickness, or other reasonable cause, the CGIR may vacate the order of dismissal and fix a time and place for the hearing of the appeal.

#### **4.1.5. Time Limit for Determination**

Every petition of appeal under this Chapter shall be agreed or determined by the CGIR within two years from the date on which such petition of appeal is received by the CGIR, unless the agreement or determination of such appeal depends on the furnishing of any document or the taking of any action by any person other than the appellant or the CGIR or an Assessor.

Where such appeal is not agreed to or determined within such period the appeal shall be deemed to have been allowed and the tax charged accordingly.

The receipt of every appeal shall be acknowledged within 30 days of its receipt and where so acknowledged, the date of the letter of acknowledgment shall for the purposes of this section be deemed to be the date of receipt of such appeal. Where however the receipt of any appeal is not so acknowledged, such appeal shall be deemed to have been received by the CGIR on the day on which it is delivered to the CGIR. (8 of 2006)



#### **4.1.6. Hearing Procedure**

The CGIR shall have power to summon any person whom he may consider to give evidence in respect of the appeal, to attend before him and examine such person on oath or otherwise. Any person so attending may be allowed by the CGIR any reasonable expenses necessarily incurred by such person in so attending.

Before making his determination on any appeal, the CGIR may, if he considers it necessary so to do, by notice given in writing to any person require that person to produce for examination, or to transmit to the CGIR within the period specified in such notice, any such deeds, plans, instruments, books of account, trade lists, stock lists, registers, cheques, paying in slips, auditors' reports or other documents in his possession as may be specified in such notice.

Where the CGIR hears the evidence of the appellant or of any other person in respect of the appeal, he shall maintain or cause to be maintained a record of such evidence.

#### **4.1.7. Determination of the Appeal**

In determining an appeal under this section the CGIR may confirm, reduce, increase or annul the assessment appealed against and shall give notice in writing to the appellant of his determination on the appeal.

### **4.2 Appeals to the Tax Appeals Commission**

#### **4.2.1 Establishment of Tax Appeals Commission**

For the period prior to April 01, 2011, any appellant who was dissatisfied with the determination of the Commissioner General could appeal against such determination to the Board of Review established under the Inland Revenue Act. However, for the period after April 01, 2011, the Board of Review was replaced by the Tax Appeals Commission in order to make sure fair hearing is given on appeals by independent body of persons who have expertise in the relevant fields.

The method of appealing to the Tax Appeals Commission and appeal hearing procedures are laid down in the Tax Appeals Commission Act, No. 23 of 2011.

#### **4.2.2 Composition of the Tax Appeals Commission**

The Commission shall comprise of not more than 3 members who shall be appointed from amongst retired Judges of the Supreme Court and Court of Appeal and two other members amongst persons who have wide knowledge of and have gained eminence in the field of Taxation, Finance and Law, by the Minister of Finance. One of the members shall be appointed as the Chairman.

There shall be a Secretary to the Commission who shall be appointed by the Minister of Finance.

The Minister shall appoint a Panel of Legal Advisors comprising not more than 10 persons who have gained eminence in the field of law, for assisting the Commission. Not less than 2 members of the Panel shall be nominated by the Commission to attend the hearing of the Commission.

#### **4.2.3 Procedure for making Appeal to the Commission**

Any person, who is aggrieved by the determination of the Commissioner General of Inland Revenue in respect of any matters relating to imposition of following taxes, may appeal to the Commission in terms of the provisions of the Tax Appeals Commission Act.

- a. Income Tax
- b. Value Added Tax
- c. Nation Building Tax
- d. Economic Service Charge
- e. Stamp Duty
- f. Turnover Tax
- g. Goods and Services Tax

The procedures in relation to appeal to the Tax Appeals Commission are laid down below.

##### **(i) Notification to the Commission**

A person shall notify to the Commission within 30 days of the communication of the determination of the Commissioner General of the fact that he intends to prefer an appeal to the Commission against the determination.

##### **(ii) Communication for Reason for Determination**

Once the said notification is made as mentioned in 4.2.4 above, the Commission shall forward a copy of such notification to the Commissioner General and require him to transmit in writing, to the Commission and the aggrieved party and his authorized representative, his reasons for the determination within 30 days of the receipt of the notification.

##### **(iii) Appeal to the Commission**

If the person is not satisfied with the reasons given by the Commissioner General, he may prefer an appeal to the Commission within 30 days from the date of such communication of the reason.

Any person who wishes to appeal to the Commission is required to pay into a special account opened and operated by the Commission, an amount:



- a. equivalent to 10% of the sum as assessed by the Commissioner General which is non refundable, or
- b. equivalent to 25% of sum assessed by the Commissioner General which is refundable or provide a bank guarantee for the equivalent amount which shall remain valid until the appeal is determined by the Commissioner.

The Commission shall hear and determine the appeal as per the rules made by the Commission from time to time.

The manner and form of submitting an appeal and the fees, if any, payable shall be as per the rules made by the Commission. The rules made with regard to the petition of appeal are prescribed in the gazette notification bearing number 1760/4 dated May 28, 2012. According to this rule a fee of Rs. 2,500 shall be paid to the nominated bank account and receipt shall be annexed to the petition.

#### **4.2.4 Hearing Procedures**

Upon receipt of an appeal the Secretary to the Commission shall fix a date and time and place for hearing the appeal within 30 days of the receipt of the appeal and shall give 42 days notice both to the appellant and to the Commissioner General.

Every appellant shall attend in person or by an authorized representative, on the day fixed for the hearing.

The Assistant Commissioner who made the assessment or a person authorized by the Commissioner General shall attend the hearing of the Commission, in support of the determination of the Commissioner General.

The onus of proving the assessment as determined by the Commissioner General is excessive or erroneous, shall be on the appellant. All appeals shall be heard in camera.

Except with the consent of the Commission and on such terms as the Commission may determine, the appellant shall not be allowed at the hearing to produce any document which was not produced before the Commissioner General, or to adduce the evidence of any witness whose evidence was not led before the Commissioner General, or adduce evidence of a witness whose evidence has already been recorded at the hearing before the Commissioner General.

After hearing the evidence, the Commission shall on appeal either confirm, reduce, increase or annul the assessment as determined by the Commissioner General or may remit the case to the Commissioner General with the decision of the Commission on such appeal. The decision of the Commission shall be notified to the appellant and the Commissioner-General in writing.

Where the Commission does not reduce or annul an assessment, the Commission may order the appellant to pay as costs a sum not exceeding rupees five thousand, in addition to the assessed amount, which shall be added to the tax charged by the assessment and recovered therewith.

Rules made relating to hearing and determination of the appeals are prescribed in the gazette notification bearing number 1760/4 dated May 28, 2012.

#### **4.2.5 Time Frame for the Determination**

The Commission shall hear all appeals received by it and make its determination within 270 days from the date of the commencement of the hearing of the appeal.

#### **4.3 Appeal on a Question of Law to the Court of Appeal (Sec 36)**

The decision of the Tax Appeals Commission shall be final;  
provided that either the appellant or the CGIR may make an application requiring the Tax Appeals Commission to state a case on a question of law for the opinion of the Court of Appeal.

The provisions of the Inland Revenue Act relating to appeals to the Court of Appeal and to the Supreme Court shall, mutatis mutandis, apply to an application and reference under this section.

#### **5.0 FINALITY OF ASSESSMENTS (SEC 37)**

Where no valid appeals has been preferred within the time specified in this Act against an assessment in respect of tax or where the amount of tax has been determined on appeal, the assessment as made or reduced or increased or confirmed on appeal, as the case may be, shall be final and conclusive for all purposes of his Act as regards the amount of such tax:

Provided that nothing in this section shall prevent an Assessor from making an assessment or additional assessment for any taxable period if it does not involve reopening any matter which has been determined on appeal for that taxable period.

#### **6.0 PENALTY FOR INCORRECT RETURN (SEC 38))**

Where in an assessment made on any person, the tax exceeds, the tax paid by him as the amount due from him in respect of the taxable supplies specified in his return and the assessment is final and conclusive under section 37, the Commissioner-General may, unless that person proves to the satisfaction of the CGIR that there was no fraud or willful neglect involved in the disclosure of the taxable supplies made by that person in such return, in writing, order that person to pay, on or before a specified date, as penalty for making an incorrect return, a sum not exceeding twenty five thousand rupees and a sum equal to twice the amount of the difference between the total tax claimed in the assessment and the tax paid on the return.

#### **7.0 REFUND OF TAX (SEC 58)**

Where for any taxable period payment has been made in excess of the Tax Assessed a refund claim must be made in writing within 3 years from the end of the period.

## 8.0 OFFENCE AND PENALTIES

### 8.1 Penal Provisions related to Fraud (Sec 66)

Any person who does the following and thereby evades or attempts to evade tax or assists any other person to evade or to attempt to evade tax shall be guilty of an offence under this Act, and shall be liable, after summary trial before a Magistrate, to a fine consisting of the following.

- (i) a sum equal to twice the amount of tax so evaded or attempted to be evaded for which he is liable under this Act.
- (ii) a sum not exceeding Rs. 25,000 or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.
- (a) gives any false answer whether orally or in writing to any question or when requested to furnish information.
- (b) omits from a return any particulars which he should have included in such return; or
- (c) makes any false return or false entry in any return.
- (d) Submit false documents for online registration, uploading incorrect information for registration or submitting false documents under electronic filing system permitted under the Revenue Administration Management Information System (RAMIS). (20 of 2016)

### 8.2 Penal Provisions relating to returns etc (Sec 67)

Every person who does the following shall be guilty of an offence under this Act, and shall be liable, on conviction after summary trial before a Magistrate, to a fine not exceeding Rs. 25,000, or to imprisonment of either description for a term not exceeding six months or both such fine and imprisonment.

- (a) fails to apply for registration as required under section 10 or section 25A (17 of 2013)
- (b) fails to notify the CGIR of any matters required to be notified under section 19 (change of address etc) or section 25A(5)
- (c) fails to issue a tax invoices as required in section 20(1) or an invoice under section 20(6)
- (d) issues more than one tax invoice for each taxable supply
- (e) issues a tax invoice where such person is not, entitled to issue such tax invoice under section 20
- (f) fails to furnish a return under section 21 or section 25B (17 of 2013)
- (g) having appeared before an officer of the Department of Inland Revenue in compliance with a notice issued to him under section 21 or section 25B

- (17 of 2013) or section 34 fails, without sufficient cause, to answer any question lawfully put to him by an officer acting under this Act
- (h) gives any incorrect information relating to any matter or thing affecting his own liability to tax or the liability of any other person
  - (i) permits the payment to any other person, other than the CGIR of any amount to be paid under section 44.
  - (j) wilfully obstructs or delays the CGIR or any other officer in the exercise of his power under section 62 or 63.
  - (k) fails to maintain records as required under section 64.
  - (l) not being a person registered under this Act, issues a tax invoice.
  - (m) fails to comply with the requirements specified by order published in the Gazette or the guidelines issued by the CGIR under sections 25C(2) (17 of 2013)
  - (n) fails to furnish an annual adjustment under section 25C(1). (17 of 2013)

### **8.3 Prosecution to be with the sanction of the CGIR (Sec 68)**

No prosecution in respect of an offence under this Chapter shall be commenced except at the instance, or with the sanction of the CGIR.

### **8.4 Compounding of Offence (Sec 69)**

The CGIR may with the consent of the parties, having regard to the circumstances in which any offence under this Act was committed compound, such offence for a sum not exceeding one third the maximum fine imposed for that offence under this Act.

