

CHAPTER 104

THE ENTERTAINMENTS TAX ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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SCHEDULES

CHAPTER 104

THE ENTERTAINMENTS TAX ACT

An Act to make provision for the entertainments tax.

[1st July, 1970]

[s. 4]

Acts Nos.
21 of 1970
18 of 1972
10 of 1973
23 of 1973
6 of 1981
1 of 1983
10 of 1987
18 of 1991
24 of 1997

Short title

1. This Act may be cited as the Entertainments Tax Act.

Interpretation
Act No.
18 of 1991 s. 14

2.–(1) In this Act, unless the context requires otherwise—
“admission” means admission as a spectator or audience and includes an admission to a dance, exhibition, tombola, meeting or any other scheduled entertainment;
“Commissioner” means the Commissioner for entertainments tax;
“entertainment” includes any exhibition, performance, amusement, game or sport to which persons are admitted whether or not any payment is required to be made for admission;
“Minister” means the Minister responsible for local government;
“night club” means a premises or part of premises declared by the Minister by order in the *Gazette* to be a night club for purposes of this Act, and the Minister may by the same or subsequent order, designate the days of the week and the time of the day or night during which the premises or part of the premises shall be deemed to be a night club;

“payment for admission” includes a payment by a person who having been admitted to one part of a place of entertainment is subsequently admitted to another part of it whether or not further payment is required for admission to that other part;

“proprietor” in relation to any entertainment, includes a person-

- (a) who is responsible for the management of the entertainment;
- (b) who organises the entertainment;
- (c) at whose invitation persons are admitted to the entertainment;
- (d) who is an employee or agent of the proprietor and who is responsible for admitting persons to the entertainment; or
- (e) on whose behalf payments for admission to entertainment are received;

“scheduled entertainment” means-

- (a) a class of entertainment specified in Part A of the First Schedule, where a single person admitted to the entertainment has been required to make a payment for admission;
- (b) a class of entertainment specified in Part B of the First Schedule, regardless of the fact that, persons admitted to the entertainment are admitted without being required to make any payment for admission.

(2) Where a person is admitted to a scheduled entertainment-

- (a) by reason of his being a member or a guest of a member of any body of persons, whether corporate or unincorporated, and a payment is required to be made or some other consideration is required to be given for the membership of that body of persons;
- (b) a donation is solicited from that person before, upon or after his admission to the scheduled entertainment; or

(c) an article is offered for sale to the persons admitted to the entertainment whether immediately before, during or after the entertainment, at a price higher than the price at which that article is normally sold, admission to the scheduled entertainment of that person shall, for purposes of this Act, be deemed to be an admission for payment although a payment may not be required to be made by that person for the admission.

Imposition of tax **3.**-(1) Subject to the provisions of this Act, there shall be charged, levied and paid on the admission of a natural person to a scheduled entertainment, a tax, in this Act referred to as the entertainments tax, at the rates specified in the Second Schedule:

Provided that, an entertainments tax shall not be charged, levied or paid, under this Act on the admission to a scheduled entertainment-

- (a) of a child who is under the apparent age of ten years unless a payment for admission was made by or on behalf of that child;
- (b) of the proprietor; and
- (c) any person lawfully exercising the powers of entry conferred by section 9.

Cap. 153 (2) Notwithstanding the provisions of section 4 of the Provisional Collection of Taxes and Duties Act, where an order made under section 2 of that Act by reason of which the rate of entertainments tax payable under this Act is increased or any new entertainments tax is imposed, expires or ceases to be of effect, a refund shall not be made of any entertainments tax paid in compliance with the order which is in excess of the entertainments tax payable immediately after that order expires or ceases to be of effect.

Appointment of
Commissioner
Act No.
18 of 1991 s. 14

4.-(1) An accounting officer for a local government authority shall be the Commissioner in relation to that local government authority.

(2) The Commissioner may by writing, delegate any of his functions under this Act to any public officer.

Payment of tax
Act No.
1 of 1983 s. 8

5.—(1) Subject to sections 9 and 11, the proprietor of a scheduled entertainment shall not admit a person to the scheduled entertainment without first issuing him with a ticket which has been stamped with a previously unused revenue stamp denoting that, the proper entertainments tax has been paid.

(2) This section shall not apply in respect of the admission of a person—

- (a) where by virtue of the proviso of section 3(1), a tax is not payable in respect of the admission of that person to the scheduled entertainment; or
- (b) where the Commissioner has by way of composition, agreed to accept a certain lump sum, making it unnecessary for the proprietor to issue tickets upon payment of the tax by a person admitted to the scheduled entertainment.

Penalty for
admission
without payment
of tax

6. Where a person is admitted to a scheduled entertainment and the provisions of section 5 are not complied with in respect of that admission, the proprietor of the scheduled entertainment commits an offence and on conviction, shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding five years or to both.

Exemptions and
amendment of
First Schedule
Act No.
18 of 1972 s. 8

7.—(1) The Minister may, on application being made to him in that behalf, declare a scheduled entertainment to be an exempt entertainment, and where an order is made, entertainments tax shall not be charged on admission to the entertainment specified in the order.

(2) The Minister may, by order in the *Gazette*, amend the First Schedule by deleting from it any item and where the item is deleted the entertainment to which the item relates shall, with effect from the date on which that order comes into operation, cease to be a scheduled entertainment.

Exemption of
VAT
registered
person
Act No.
24 of 1997 s.73
Cap 148

8. A person who or body of persons which has been registered under Part IV of the Value Added Tax Act, shall on the coming into operation of that Act be exempted from paying tax under this Act.

[s. 7A]

Minister may
permit single
tax on group
admission

9.-(1) Notwithstanding the provisions of section 5, the Minister may, by order under his hand, provide that, in the case of a scheduled entertainment specified in the order, two or more persons may be admitted to the entertainment on a single ticket.

(2) Where the Minister makes an order under subsection (1), he shall specify in that order or any subsequent order, the amount of the entertainments tax that shall be charged in respect of the admission of two or more persons on a single ticket:

Provided that, the entertainments tax payable on admission of two or more persons on a single ticket shall not be less than five shillings.

[s. 8]

Power of entry
and inspection

10.-(1) The Commissioner, police officer or other person authorised in that behalf by the Commissioner may enter any place of scheduled entertainment while an entertainment is proceeding, and may enter any place ordinarily used, or reasonably believed to be ordinarily used, as a place of entertainment at a reasonable time for the purpose of ascertaining whether or not the provisions of this Act or any regulations made under it are being complied with.

(2) A person who prevents or obstructs the entry of the Commissioner or a police officer or a person duly authorised by the Commissioner, commits an offence and on conviction,

shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both.

[s. 9]

Power to accept composition

11. The Commissioner may in his discretion accept in respect of any scheduled entertainment a lump sum by way of composition for or in lieu of entertainments tax in any case where, by reason of the smallness of the sum likely to be payable or for any other reason, he deems it expedient so to do.

[s. 10]

Evasion of tax

12. A proprietor of a scheduled entertainment, who, with intent to avoid payment of entertainments tax, does or permits or causes to be done any act or thing, commits an offence and on conviction, shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding five years or to both.

[s. 11]

Minister may prohibit entertainment by any person convicted of offence under this Act

13.—(1) Where a proprietor of a scheduled entertainment is convicted of an offence under this Act or under any regulations made under it, the Minister may, by order published in the *Gazette*, order that the proprietor shall not, for a period as may be specified in the order, manage, direct or assist in the direction or management of, or permit in any premises under his control or management, any scheduled entertainment.

(2) A person in respect of whom an order under subsection (1) is made shall, where he contravenes any of the provisions of the order, commit an offence and on conviction, shall be liable to a fine not exceeding twenty thousand shillings or for imprisonment to a term not exceeding five years or to both.

(3) Where an order is made under subsection (1) pursuant to a conviction and the conviction is, on appeal or revision, set aside and a conviction for any other offence under this Act or under any regulations made under it is not substituted for it,

the order shall cease to have effect and deemed never to have been made.

[s. 12]

Minimum sentence

14. A person convicted of an offence under this Act or under any regulations made under it shall not be sentenced to a fine of less than five hundred shillings or to imprisonment for a term of less than fourteen days.

[s. 13]

Jurisdiction of courts
Cap. 20

15. Where a person is convicted of an offence under this Act or under any regulations made under it by a court presided over by a resident magistrate, that court may, notwithstanding the provisions of section 8 of the Criminal Procedure Act, impose the maximum fine prescribed for the offence.

[s. 14]

Evidence

16. In the proceedings under this Act or under any regulations made under it, the burden to prove that, the entertainments tax has been paid or is not payable shall be on the person charged.

[s. 15]

Assessment of tax and recovery of tax assessed

17.—(1) Where the Commissioner has reason to believe that, persons have been admitted to a scheduled entertainment without tickets having been issued to them in accordance with the provisions of section 5, the Commissioner shall have the power to demand from the proprietor any sum of money which the Commissioner may reasonably believe to be the amount of the entertainments tax which would have been payable had the proprietor complied with the provisions of section 5.

(2) A demand under subsection (1) shall be made by notice in writing and upon the notice being served on the proprietor, the sum of money demanded shall be a debt due to the Government and shall be recoverable by a suit at the instance of the Commissioner.

(3) In a suit under this section, the burden to prove that-

- (a) the entertainments tax payable would have been less than the amount demanded by the Commissioner; or
- (b) there has been no contravention of the provisions of section 5,

shall be on the defendant.

(4) The fact that, a demand has been made under this section or that a payment has been made or recovered pursuant to the demand, shall not affect any criminal liability for any offence under this Act of the person from whom the demand is made or by or from whom the payment is made or recovered.

[s. 16]

Liability of
officers

18. Where an offence under this Act is committed by a body corporate, then as well as the body corporate, any person who, at the time of the commission of the offence was concerned, as a director or an officer, with the management of the affairs of that body corporate, commits an offence and shall be liable to be proceeded against and punished accordingly unless he proves to the satisfaction of the court that, he had no knowledge, and could not by the exercise of reasonable diligence have had knowledge, of the commission of the offence.

[s. 17]

Liability of
employer or
principal

19. Where an offence under this Act is committed by a person as an agent or employee then, as well as the agent or employee, the principal or employer commits the offence and shall be liable to be proceeded against and punished accordingly unless he proves to the satisfaction of the court that, he had no knowledge, and could not by the exercise of reasonable diligence have had knowledge, of the commission of the offence.

[s. 18]

Power to
compound
offences

20.-(1) The Commissioner or a person authorised in that behalf by the Commissioner in writing, may where he is satisfied that, a person has committed an offence under this

Act or under regulations made under it, compound the offence by accepting from that person a sum of money:

Provided that:

- (a) the sum of money shall not be less than fifty shillings or more than five hundred shillings;
- (b) the power conferred by this section shall only be exercised where the person admits in writing that, he has committed the offence and agrees in writing that the offence be dealt with under this section; and
- (c) the person exercising the power conferred by this section shall give the person from whom he receives that sum of money a receipt for it and shall, where the power is exercised by a person other than the Commissioner, as soon as may be practicable, report the exercise of that power to the Commissioner.

(2) Where an offence under this Act or under any regulations made under it, is compounded in accordance with the provisions of subsection (1) and proceedings are brought against the offender for the same offence, it shall be a good defence where the offender proved to the satisfaction of the court that, the offences with which he is charged have been compounded under subsection (1).

(3) Where a person is aggrieved by any order made under subsection (1), he may, within thirty days of the order being made, appeal against that order to the High Court and the provisions of Part X of the Criminal Procedure Act shall apply, *mutatis mutandis*, to the appeal as if it were an appeal against sentence passed by a district court in the exercise of its original criminal jurisdiction.

[s. 19]

Cap. 20

Regulations

21.-(1) The Minister may make regulations for the better carrying into effect of the purposes of this Act and, without prejudice to the generality of that power, the regulations may provide for-

- (a) securing the payment of entertainments tax;
- (b) the use of tickets covering the payment of two or more persons;
- (c) requiring proprietors of scheduled entertainments to submit returns; and
- (d) prescribing the form, the manner and the intervals at which, and the officers to whom, the returns shall be submitted.

(2) The regulations made under subsection (1) may impose penalties for their breach not exceeding a fine of five thousand shillings or imprisonment for a term of one year or to both.

[s. 20]

Protection of
officers exercising
powers under
this Act

22. A matter or thing done by the Commissioner or any other public officer shall not subject the Permanent Secretary to the Treasury or any other public officer to any action, liability, claim or demand of any kind if done *bona fide* in the execution or purported execution of the provisions of this Act.

[s. 21]

Repeal
R.L. Cap. 528

23. Repeals [the Entertainments Tax Act, 1963].

[s. 22]

Act No.
23 of 1973 Sch.

FIRST SCHEDULE

(Made under section 2(1))

PART A

- (i) Cinematographic exhibitions; and
- (ii) any theatrical or musical performance in Films and Stage Plays Act.

PART B

A scheduled entertainment or any ball or dance taking place in a night club.

Acts Nos.
6 of 1981 s. 3
10 of 1987 s. 11

SECOND SCHEDULE

(Made under section 3(1))

RATE OF TAX

- (a) Shs. 15/= for every admission to a cinematographic exhibition or a scheduled entertainment taking place in a night club; and
- (b) Shs. 5/= for any other scheduled entertainment.

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