

## **SECTION 5**

### **Inspection and Conclusion Report of Tax Inspector**

#### **Article 28. Basis for issuing inspection and conclusion report of tax inspector**

- 28.1. The tax inspector shall issue an inspection report on the basis indicated in the Item 3 of the Article 7, and shall issue a conclusion on the basis indicated in the Item 7 of the Article 7 of this law. The act comprises 2 parts: findings and decision.
- 28.2. The tax inspector's inspection report and conclusion shall become valid from the date of introducing to the taxpayer. The tax inspector shall take notes on service of the inspection report and conclusion. The act and the conclusion shall be signed and certified by the head of Taxation Department and the head of the Inspection Department. The inspection report and conclusion shall have the permanent number and index.
- 28.3. The inspection report and the conclusion are issued in triplicate. The first should be kept by the taxpayer, second by the tax administration for its auditing documents, and third should be kept for the taxpayer's personal file.

#### **Article 29. Implementation of the inspection report and conclusion of tax inspector**

- 29.1. The tax administration and the tax inspector shall apply to a court regarding to an inspection report and a conclusion, which are not being implemented within the tax administration and tax inspector's right and obligation.
- 29.2. The director of the division of tax office, in which the tax inspector works, and the senior tax inspector shall control over the implementation of the inspection report and conclusion made by the tax administration and the tax inspector.

#### **Article 30. Change and cancellation of the inspection report**

- 30.1. If the state tax inspector's inspection report or conclusion is considered groundless, the director of the corresponding tax office shall change or suspend the inspection report and conclusion.

- 30.2. The basis / reason and evidence / of the inspection report and conclusion, made by the tax administration and the tax inspector, shall be determined by the special commission appointed by the head of Taxation Department.

## **SECTION 6**

### **Responsibilities for Other Organizations**

#### **Article 31. Responsibilities for banking and financial organizations**

- 31.1. Banks and other financial organizations shall have the following responsibilities concerning tax issues:
- 31.1.1. To notify the tax administration of the information on opening a new bank account ("account") and changing the number of the account in accordance with the Law on Savings, Payment and Banking Loans within 10 working days.
- 31.1.2. To fulfill the taxpayer's orders concerning tax payments and tax administration demand in an undisputed way regarding payments of tax, interest and fines on a priority basis before making any payments, other than those provided by the court decision, to the involved bank, financial institutions and other lenders and creditors.
- The above mentioned responsibilities concerning tax payment shall not apply toward the Article 17 Item 2 of the Law on Savings, Payment and Banking loans.
- 31.1.3. Pursuant to the paragraph 4 in the Article 24 Item 1 of the General Tax Law, to fulfill tax administration decision to temporarily terminate the payment transactions of a taxpayer's bank account until the tax payments are made.

#### **Article 32. Responsibilities for police organization**

- 32.1. The police organization shall assist the tax administration or tax inspector when they face organized resistance and using force in carrying out accessing residence as well as auditing inspection and inventory.

- 32.2. The police organization shall assist the tax administration in registering and carrying background check in citizens of Mongolia, foreign citizens and stateless persons by providing information and data, which shall not contain any personal confidentiality.
- 32.3. At the tax administration's request, the police organization shall organize a search throughout the entire country by sending search parties to find the economic entity and organization or the taxpayer who deliberately avoided or escaping from paying their taxes due, and the police organization shall cooperate with the tax administration.

**Article 33. Responsibilities for other organizations**

- 33.1. Investigative and administrative or other state organizations and officials shall have the duty to report to the tax administration any information on tax violations, which are found during their activities.
- 33.2. The customs organization shall supervise over the taxpayer's registration number on the customs declaration and provide the tax administration with information on the taxpayer's export and import activities.

**SECTION 7**

**Other Issues**

**Article 34. Procedures in payment and imposition of interest and fines**

- 34.1. Interest shall be imposed on late payment for the period between the payment deadline set out in the law and the payment date.
- 34.2. If the taxes overpaid due to errors of the tax administration, the excess must be refunded and interest of 0.3 percent shall be calculated in the refunded taxes for the period from the budgeted date to the refunded date. This interest shall be financed by the budget.

**Article 35. Dispute resolution at administrative level**

- 35.1. The taxpayer's complaints regarding tax issues, unless it is not indicated differently in this law and other tax laws, shall be resolved in accordance with the law on Citizen's complaint resolution over State organizations and officials.
- 35.2. The taxpayer's complaints over tax inspectors' decision regarding tax issues shall be resolved in the following way:
  - 35.2.1. Complaints over tax inspectors' decision may be forwarded to the tax office, in which the involved tax officer works.
  - 35.2.2. Complaints over tax inspectors' decision may be forwarded to the headquarters of the tax administration.
  - 35.2.3. If the taxpayer considers that it is necessary, he/she may bring his/her complaints to any higher tax administration.

**Article 36. Bringing complaints to court**

- 36.1. The taxpayer shall have the right to bring his/her complaints over tax office decision to a court only in this case the taxpayer's complaints, which were forwarded according to the part 2 and 3 in the article 35 of this Law, are rejected. However, the taxpayer may have no right to bring his/her suit to a court in the case that he/she has not complied with the legal requirements such as reporting or deadline of the tax obligation.

**Article 37. The reason of sealing of property**

- 37.1. The tax administration and state tax inspector may seal or collect a taxpayer's property, money, document, records, residence and storage (hereinafter referred to as "property") on the following basis and time period if the taxpayer has to pay tax liabilities exceed from the dates due:
  - 37.1.1. In case the taxpayer has not paid the payment, interest and penalty within the required time set out.
  - 37.1.2. Until the tax auditing, inspection and counting activities are completed;

- 37.1.3. If the taxpayer has not paid the taxes within the due date set out by the Law and defined the tax administration.
- 37.2. The tax administration shall notify the Real Estate Registry Office of such an event when real estate is being sealed, taken as collateral or seized by it.
- 37.3. Properties that have been sealed or taken as collateral will be under the control of the owners at all times.
- 37.4. The tax administration shall take the following procedure within 60 days with regard to properties that have been sealed or taken as collateral :
  - 37.4.1. In case the tax obligor is not able to pay the tax obligations in cash, such properties are seized by a jurisdictional tax administration and sold at a public auction advertised through the mass media.
  - 37.4.2. Upon the expiration of the period defined in the subparagraph 2 in the paragraph 1 of the article 37 of the Law, such properties that have been sealed and taken as collateral shall be returned to the said tax obligor.
  - 37.4.3. At the expiration of the period defined in the subparagraph 3 in the part 1 of the article 37, or from the time that the taxes are not deemed to be paid voluntarily after the demand is made, the tax administration will have the right to sell such properties.

**Article 38. Procedure on taking properties as collateral**

- 38.1. In case it has been proved that the involved taxpayer is not able to pay the taxes, fine and penalty within the required time set out by the Law or if his/her bank account is showing the fact that he/she is not able to pay the taxes, fine and penalty in cash, then his/her certain properties shall be taken as collateral and seized by the tax administration.
  - 38.1.1. Properties, taken as collateral for tax obligation, shall belong to the owner.
  - 38.1.2. The tax administration shall make a contract with the taxpayer on the valuation of the property and its quality, shape, location, and whom it does belong when he takes the property as collateral. If real estate has been taken as collateral the tax inspector shall notify the real estate registry office of such an event.
  - 38.1.3. The deadline of the contract will be set out by the taxpayer and the tax administration. As soon as the deadline is over the property that has been taken as collateral shall be

paid into the tax administration's budget. The property shall be sold in accordance with the part 3 in the article 26.

- 38.1.4. The taxpayer, whose property has been taken as collateral, has right to get back his property in case he/she pays the taxes within the due date. The tax inspector and tax administration shall not use, spend, break or destroy the properties. If there is any damage to the property, taken as collateral, the tax inspector and tax administration shall be responsible for that.
- 38.1.5. If the proceeds from sale of the property cannot cover the tax payments, the taxpayer will not be released from the responsibilities to pay the remaining taxes.
- 38.1.6. The following properties shall not be taken as collateral, sealed and seized:
  - 1) Clothing of the family which they wear and use in their everyday life
  - 2) The properties which do not belong to the taxpayer
  - 3) Food and food stuff which spoil easily
  - 4) Second hand and worn-out furniture and things
  - 5) House or residence where the taxpayer lives permanently
  - 6) Fuel such as wood and coal if it is winter

#### **Article 39. Procedures on sealing property**

- 39.1. The sealing of property shall be carried out by the designated officer and state tax inspector in charge of performing tax auditing, inspection and counting;
- 39.2. The taxpayer, his/her legal representative, or the local government representative shall be present during sealing of property.
- 39.3. The tax inspector, who performed sealing of property, shall issue an act and notes. The notes shall contain the property amount, the quality, size and specifications. An act shall contain the basis and time period of sealing properties.
- 39.4. A witness shall be present during the sealing of property. The witness shall be responsible for giving evidence of sealing of property and sign the notes.
- 39.5. The tax inspector shall seal and wax the property and hand over to the owner.

39.6. The owner shall be responsible for safekeeping of sealed property. It is unauthorized for the owner to remove the seal without permission of the tax administration, sell or transfer the sealed properties.

The tax inspector shall explain the legal responsibilities for failure to perform his/her duties. The notes on explanation shall be signed by the owner.

#### **Article 40. Temporarily termination of business activities**

40.1. According to the order of the head of the GDNT, the tax administration may temporarily terminate the taxpayer's business activities if severe or recurring violations are detected during the tax auditing, until the eradicating activities which violate the tax laws and the underlying factors are cleared.

40.2. The taxpayer and his/her legal representative may bring complaints regarding to activities described in article 37, 38, the part 1 of article 38 of this Law to the tax administration or a court. When such a complaint is rejected, the taxpayer may appeal to an upper tax administration. In case that it is not recognized at that level, such a complaint may be filed at the supreme tax administration. Only in the case that the complaint is rejected by the supreme tax administration can it be lodged in the courts.

#### **Article 41. Responsibilities for breach of tax law**

41.1. If criminal responsibilities are not suitable for the following citizen and officials of an entity, who violated the law on supervision of tax levy, payment and tax collection, the tax administration and tax inspector shall impose the following administrative penalties:

41.1.1. A fine of 30,000-1,000,000 Tg shall be imposed on a citizen, an accountant, a director or an official and a head of any economic entities who has failed to register with the tax administration within the required time set out in the part 1, 2, 3, 4, 5, 6 and 7 of the article 5 of this law and violated State Registration's regulation, and or failed to pay the taxes and define the tax return correctly; set the term of living in Mongolia falsely; carried out service and manufacture without paying taxes by an individual proprietor whose income cannot be defined each month, and used fraudulent information or altered the dates on it.

- 41.1.2. A fine of 3,000-1,000,000 Tg shall be imposed on a citizen and official, who has failed to submit financial statements on the tax liabilities and other taxable property; failed to take notes on essential accounting materials; concealed income that shall be paid as tax liabilities; increased the expenses without any reason; defined the condition of exempting from tax liabilities wrongly; failed to translate the necessary documents written in English into Mongolian and failed to keep materials and documents concerning to tax and financial liabilities until the due date set out in the law.
- 41.1.3. A fine of 30,000-1,000,000 Tg shall be imposed on a taxpayer who has failed to fulfill his duty set out in General Tax Law, failed to pay his taxes by submitting the tax return, written in the form to determine the income, to the tax administration within the required time; failed to sign on the tax return, failed to have the tax calculation sealed by the certified public tax accountant and put the stamp.
- 41.1.4. A fine of 50,000-1,000,000 Tg shall be imposed on citizens and officials who has failed to withhold at source, transferred the taxable property to others and did not notify it to the tax administration.
- 41.1.5. A fine of 50,000-2,000,000 Tg shall be imposed on a citizen and official, who has failed to fulfill the requirements set out in acts, documents, notifications and payment sheet; for the resistance to the tax inspector and authorized person to carry out inspection on documents, property and money counting, perform surveillance and inspection, hampering the activities and exerting pressure on the tax administration and tax inspector. If a taxpayer or a citizen and official seriously hampers and bothers the inspector's activities and inspection he/she will be arrested in accordance with the administrative penalty law.
- 41.1.6. A fine of 50,000-5,000,000 Tg shall be imposed on a citizen and official who has bought or lost the properties that had been sealed and taken as collateral by the taxpayer, or transferred them to other people or broken them.
- 41.1.7. A fine of 50,000-5,000,000 Tg shall be imposed on a citizen and official who has violated the resolution of terminating his/her trade, manufacture and other service activities issued by the tax administration because of his violation the Law; and his/her equipment, machine or any technical items, house or residence and warehouse which he/she used to carry out the prohibited activities shall be seized and paid into the State budget.



- 41.1.8. A fine of 50,000-5,000,000 Tg shall be imposed on following officials of organizations, that have a close and constant relationship and contact with the tax administration, who have failed to fulfill his/her duty set out in the Law
- 41.1.9. A bank official who has failed to fulfill the requirements or notification of terminating the taxpayer's out-flowing bank account /credit note/ ; failed to transfer the income from the taxes, interest and penalty; failed to execute and fulfill the taxpayer's demand and failed to provide the taxpayer with the information related to payment slip in the bank account of an entity, according to the article 31 of the Law.
- 41.1.10. An official of the Police, who has failed to inspect and examine in detail the location or a place or an address of the taxpayer who deliberately avoided to pay taxes and escaped; and failed to fulfill his duty to assist the tax administration at their request.
- 41.1.11 A Custom official who has failed to provide the important data or information and survey related to the export and import service activities carried out by the taxpayer.
- 41.1.12. An official of the General Department of Satisfying Judgement Resolution who has failed to complete the payment related activities and failed to submit the payment into the State budget and delayed the transferring of the tax payment for 3 days
- 41.1.13 An official of a financial organization who has failed to fulfill his/her duty to provide with news, data, information, report, and tax return concerning to the expenses in accordance with the article 31 of the Law

**Article 42. Entry into force**

This law shall come into force from . . . . .



## **Appendix 4**



**TAX ACCOUNTANT LAW**  
**Article by Article Explanation (Proposed)**

**SECTION 1**  
**General Provisions**

**Article 1.**

**[Explanation]**

The objectives for the country in establishing a tax accountant system is to create a system in which a person of appropriate character and capability is able to provide a service of acting on behalf of a tax obligors fulfilling the taxpayer's trust and endeavor to justly perform the tax obligations as provided for in the laws so as to contribute to the operation of a smooth, and appropriate voluntary self-assessment and payment system.

The Tax Accountant Law presumes that tax accounting practice possesses social and public nature and by providing that the tax accounting practice to be a realm exclusive to the professional tax accountants, it provides the tax accountants with professional privileges and at the same time imposes upon them certain obligations that go with such privileges.

That is why tax accountants when they take upon an assignment from a tax obligor, independence and fairness are required of them. It is natural therefore, as a professional in matters relating to taxation, to expect tax accountants to always maintain fair judgment and good sense grounded on his own set of principles. The provision "As an expert in matters relating to taxation, independent fair position" is meant to clarify this intent.

Therefore, this article provides a tax accountant to maintain an independent and fair stance and live up to the trust placed upon him by the tax obligor and strive to appropriately fulfill tax obligations as stipulated under laws related to taxation as that tax accountant's mandate and the Article makes clear the principal basis for any interpretation of this set of laws.

**Article 2.**

**[Explanation]**

**(1) Activities of a Tax Accountant**

“Tax accounting” means a profession to perform tasks contained in each of the clauses in this Article regarding taxation (refers to taxes, fees and tariffs as stipulated under General Taxation Law but excludes customs tariffs. The same applies below) based upon requests made of them by others. By “profession”, it is meant to perform repetitiously and on an on-going basis or with an intention of performing repetitiously and on an on-going basis tasks contained in each of the clauses herein this Article and may not necessarily require to be for consideration.

Suppose that a merchant consults with a person having expertise in the field of taxation or tasks that the merchant performs relating to taxation as a service to a customer in order to provide a convenience to customers at his/her request. From a perspective of responding to a request from a party and acting on certain concrete facts, this would be interpreted as having engaged in the profession of tax accounting. However, making presentations or taking questions and answers relating to taxation but without becoming involved with any specific facts or details but restricted only to the explanation of the tax laws in a general manner would be interpreted as being outside of the definition of having practiced tax accounting. Also performing tasks related to taxation for a specific party such as if an employee of an enterprise prepares documents relating to the enterprise’s tax matters, or if, on behalf of the enterprises, performs tasks relating to taxation would not be considered to have engaged in tax accounting.

**(2) Taxes Eligible to be practiced by Tax Accountants**

Tax categories that are subject for the practice of tax accounting will include, in principle, all national and regional taxes. However, for tax items that are deemed to not to require tax accountant assistance or customs tariffs that are deemed not to befit tax accounting practice are excluded.

**(3) Tax Representative**

Performance of an act of “**Tax Representative**” includes acting as an agent or representing a taxpayer in the submission of returns, applications, requests, notification, reports,

declarations, grievances or similar acts (hereinafter referred collectively as “Returns”) to the General Department of National Taxation (hereinafter referred to “GDNT”) and other similar organs as provided for in the laws and rules relating to taxation, or making assertions or statements with respect to inspections or dispositions by the GDNT and other organizations. “Representative” is a person who on behalf of another performs legal acts (Declaration of intent and notice of abandonment that have legal effect. Includes notice of intent) or be a recipient of legal acts on behalf of another and the legal effect reverts to the party being represented. This is a concept that is used in legal affairs. “Agent” is the act of performing an act on behalf of the principal party.

When a tax accountant acts as a “tax representative”, in actuality in many cases at the time of a tax inspection the tax accountant on behalf of the taxpayer provides assistance to the taxpayers by acts that cannot be said to be legal acts such as clarification of facts and making statements. If such acts were deemed not to be an act of practicing tax accounting, it would go against the expectations held by the taxpayers and the tax accountants. That is why Clause 1 Item 1 of this Article, in order to avoid such objections, makes clear that the “tax representation” is not limited only to the legal act of “representation” but also is inclusive of the factual act of “agent”. With respect to “assertion” and “statements”, while the interpretation is that the former means to actively express one’s own opinions, the latter includes in addition to a simple “assertion” explanation of facts, when a tax accountant interacts with the GDNT on behalf of the taxpayer he or she makes assertions and statements from his position of being a tax expert in the normal course of his or her performance of his function; therefore, there is no real merit in making a differentiation between “assertion” and “statements” in the discussions. With respect to a simple factual explanation “statement”, it is not without merit to say that inclusion of statements that have no specific relationship with a tax obligation is in appropriate. However, while it is theoretically plausible, in reality, it is difficult to conceive of a case where in course of presenting an explanation to the GDNT relating to taxation there is no relationship with a specific tax obligation.

#### **(4) Preparation of Tax Documents**

“Preparation of Tax Documents” refers to the preparation of returns, application, invoice, notice, reports, claims, petitions, computations, detailed statements, petition of grievance,

and any other similar documents (hereinafter referred collectively as “Returns”) to be tendered to the GDNT relating the filing of returns. In such cases, Returns refer to only documents that have been prepared in accordance with the provisions of the rules based on laws relating to taxation and submitted to the GDNT or other similar organs. Financial documents are prepared not only due to the requirements under the tax laws and although it is required to be submitted as attachments with the returns, it is not included in the definition of Returns in this context. “By preparing documents”, it means to prepare the above documents based on its own judgment and does not include acting purely as an agent.

**(5) Tax Advice**

Provision of “tax advice” means in relation to the preparation of assertion or statement or Returns as provided for in Clause 1 Item 1 of this Article for the GDNT or other organizations, the provision of consultations regarding items relating to taxation. Thus, “provide consultation” means to respond, to instruct or to express opinions to concrete questions and must be performed in relation to concrete facts of the tax obligor and a general commentary on the tax laws, trial computation of tax amounts based on hypothetical examples in an instructional class do not constitute “tax consultation” in this context.

**(6) Incidental Functions of a Tax Accountant**

A tax accountant, in addition to performing tasks of tax accounting, may use his/her designation as incidental to his tax accounting, perform duties including preparation of financial documents, act as agent in recording entries in the accounting books as a business and other administrative tasks related to financial affairs. However, tasks where another law has restricted the practice of such tasks as a business are excluded for this purpose. The intent behind this provision is that the tax calculation under the tax laws is based upon the knowledge of corporate accounting and bookkeeping and based on this knowledge calculation of tax obligation is performed as provided for in the tax laws and the actual practice of tax accounting has close relationship with the making entries and preparation of financial documents on the enterprise’s behalf and in reality the tax accountants perform these functions along with its tax accounting functions. Based on this reality, by, so to



speak, as a confirmation make explicit the fact that a tax accountant is able to perform such services to the client who requests tax accounting services, as an incidental function to its primary function of tax preparation and advisory it will enhance a tax accountant's professional standing. The accounting functions such as preparation of financial documents and bookkeeping for a party is basically a non-restricted area and the expressions used herein "in addition to tax accounting practice" and "as an incidental function to tax accounting" make it clear that this provision is not meant to make accounting practice an exclusive field of tax accountants. Of course, by the inclusion of this provision allowing incidental function does not exclude contracting the accounting services to parties other than a tax accountant to whom tax accounting service has been contracted. Tax accountants, of course, may not engage in acts that are restricted by other laws such as auditing and certifying financial statement even though these may be accounting functions.

### **Article 3**

#### **[Explanation]**

##### **(1) Applicants Qualified by the Tax Accountant Examinations**

As those who possess qualifications of becoming a tax accountant, firstly there are those who have successfully completed the tax account examinations. This is to make clear that with respect to qualification of becoming tax accountants, principle candidates are those who have successfully completed the tax accountant examinations. Next, in order to become a tax accountant, candidate needs either to successfully complete the examinations or be exempted from all examination subjects of the tax examination. The tax account examination is meant to judge the possession of necessary academic knowledge and application capability and examination is carried out in subjects dealing with tax laws, accounting, and tax practice. In the tax accountant examinations, by successfully completing one subject area, the candidate is granted an exemption in that particular subject area and if the candidate successfully complete all other required subject areas he or she will earn the qualifications of becoming a tax accountant.

##### **(2) Those Who Are Exempted from Examinations in All Subject Areas**

As the second means to qualify for tax accountant there are those who have been exempted from all examination subjects. In the tax accountant examinations candidates may be given

exemptions for a part or all of the examination subject areas depending upon the candidate's qualifications and experience. Also once the candidate successfully completes a subject area in a tax accountant examination, he or she is granted exemption for that examination subject area in future tax accountant examinations. Thus, if the sum of these exempted subject areas equal all subject areas to be covered in the examination, the candidate will earn the qualification for tax accountant.

For example, those who are qualified to be certified public accountants, of all tax account examination subjects, they are exempted from having to take accountant, related subjects and those who have engaged in administrative tasks related to taxation for a specified period of time the candidate is exempted from tax law related subjects. Therefore, if candidates who had been engaged in tax administrative functions and who are exempted from subjects related to tax laws, are also qualified as a certified public accountant he would then be exempted from all examination subjects and if a candidate who had previously taken a tax accountant examination and qualified for all tax law related subjects have earned a partial exemption of those subjects in the examination qualify as a certified public accountant, he will be deemed to have earned exemption for all tax accountant examination subjects and be granted qualification as a tax accountant. The above notwithstanding, those who have successfully completed the tax account examination or those who have become exempted from all tax account examination subjects are required to be engaged in a tax related administration for a period of not less than 2 years or must be engaged in the practice of accounting for a period not less than 5 years. In this case "tax related administrative or practice of accounting" means in addition to administration in the GDNT and other similar organs, or administrative functions relating to taxes or accounting (administrative tasks relating to accounting preparing balance sheets and profit and loss statements and excludes clerical tasks not requiring practice of judgment) in another government agencies, offices and enterprises and the required period of apprenticeship may be fulfilled before or after the time of qualification under the tax accountant examination or the time of decision being granted for exemption from all examination subjects.

#### Article 4

##### [Explanation]

The mission of a tax accountant is to fulfill the trust placed upon them by the tax obligors and perform the tax obligations as stipulated by the tax laws; therefore, even if the qualifications of tax accountant has been bestowed upon them persons who correspond to (i) of each Item of this Article do not possess the qualification to practice tax accounting. If after the registration for tax accountant has been completed and the person fulfills the conditions of any of the items of this Article, the registration shall be promptly expunged (Tax Law 20) and the person shall be deprived of the qualification of tax accountant.

- (1) Items 1 through 3 provides for incompetent persons, and it goes without saying that as a tax accountant in the performance of his duties must fulfill the trust placed upon him by tax obligors, that an incompetent person is not appropriate.

“Minor” refers to a person who has not yet reached the age of 18.

“Legally incompetent person” means a person who due to not being of his or her sound mind has been adjudicated by the court to being “legally incompetent” and such judgment has not been rescinded.

“Quasi-incompetent” means persons who due to being mental incapacity or the person’s inability to control his or her spending habits has been judged by the courts to be “quasi-incompetent” and such pronouncements has not yet been rescinded.

A person who is “bankrupt and has not been reinstated” is a person who has received a judgment from the courts of bankruptcy and has been absolved from fulfilling his obligations for repayment or some other means and there has not yet been a judgment reinstating his rights.

- (2) Items 4 and 5 deal with persons who have been sentenced with penalties of incarceration or heavier sentence under the laws relating to national or regional tax or under the Tax Accountant Law and provides that persons penalized under these laws are treated differently from those penalized under other laws and especially if a tax accountant violates these laws relating to taxation, as a person who has responsibility will forfeit his qualifications for a defined period of time. That is to say, persons who has been sentenced under provisions of laws relating to national or regional taxes or

Tax Accountant Law shall not be able to become reinstated as a tax accountant until a period of 5 years has passed since the day the sentence has expired or the day that the person has been relieved from serving the sentence. Also, if the person has been levied a fine under laws relating to national or regional taxes or the Tax Accountant Law, the person shall not be able to become reinstated until a period of 3 years has passed from the day of completion of serving the penalty

“Incarceration or heavier sentence” means imprisonment, servitude, or a death sentence.

“Completion of the sentence” means with respect to penalty fines, if the fines cannot be paid in full and the person is put into labor camp, means the expiration of the period, or if a parole has been granted and has not been rescinded and the term of the sentence has expired.

“Having been relieved from serving the sentence” means due to the expiry of the statute of limitations the execution of the sentence has been annulled, by having served the sentence in full or in part in a foreign country the sentence has been reduced or exempted in full and due to a granting of a pardon to rescind or reduce the sentence and thus exempted from serving the sentence or having the sentence reduced. If the sentence has been suspended, this will not correspond to not having to serve the sentence, however, if the period of suspension expires without the exercise of the sentence, the sentence will lose its force and reverts to a state of not having been served a sentence and upon reaching such time it will have the same effect as not having been served a sentence thus this provision if removal of qualification will no longer apply.

- (3) Item 6 provides for persons who has been penalized under laws other than the national or local taxes and Tax Accountant Law and only in cases where the punishment was incarceration or more severe, persons who have completed serving the sentence or have been exonerated from serving the sentence do not have the ability to qualify as a tax accountant until a period of 3 years have passed from the date of completion of the sentence or the day that the person has been relieved from serving the sentence.

- (4) Items 7 and 8 provides for tax accountants and civil servants who have received disciplinary actions and in the case of tax accountants, those whose registration have been revoked or expunged, or have been expelled will not be qualified to become a tax accountant until a period of 3 years have passed from the date of such disposition. "Disciplinary actions" is defined under the respective laws and is passed down as a sanction to persons who violate their obligations to maintain order.
- (5) Item 9 provides for (i) persons who have been forced to desist from practice of law or accountancy suspended by disciplinary action (Law Article 18 Clause 1 Item 1), persons who have illegally avoided the imposition or payment of taxes or have attempted the same or have aided or abetted in such acts and a period of 5 years from such date has not yet lapsed (Same Article Same Clause Item 3), illegally receive tax refunds or have attempted the same or have aided or abetted in same acts and a period of 5 years from the date of such acts has not yet lapsed (Same article same clause Item 4), those person who have committed acts in contravention of criminal laws in the performance of tasks related to taxation or accounting and a period of 5 years from the date of commission of such act has not lapsed (Same Article same clause item 5), (ii) those who in the application for a tax accountant registration materially false representations in items required for registration (Law Article 19 Clause 1), (iii) this is a provision for those who are deemed to have committed acts against the public interest in the performance of their duties as tax accountants in acts relating to taxation including tax reporting whether himself or through a taxpayer (Article 19 Clause 2) and provides that such persons shall not have the ability to qualify for tax accounting until a period of 3 years have lapsed from the day of receiving the disposition.

## SECTION 2

### Tax Accountant Examination

#### Article 5. Applicant Eligibility

##### [Explanation]

##### **(1) Persons with Administrative Experience in the GDNT**

Persons whose experience in working with the GDNT in administrative tasks relating to national or regional taxation totals 3 or more years shall have fulfilled eligibility requirements for the examination

“Administrative tasks in the GDNT” means administrative tasks at the GDNT, national tax bureaus, and tax offices and so long as the administrative tasks are performed within one of the above agencies, genre of tasks is not limited to only the assessment or the collection of taxes.

##### **(2) Mongolian Certified Public Accountants and Lawyers**

Eligibility for the examinations is granted to the Mongolian certified public accountants and lawyers. Those certified public accountants and lawyers who are given eligibility status are those persons who have the qualifications of certified public accountants and lawyers without regard for whether the person is actually practicing the profession.

##### **(3) Persons Engaged in Defined Accounting Tasks in an Incorporated Enterprise or in Defined Administrative Operations**

A person who has been employed in administrative capacity dealing with taxation or accounting in a national or regional government administrative agencies excluding the GDNT for a period of 5 years or more are given eligibility for the examination. Persons who are engaged in accounting in an incorporated enterprise are also given eligibility for the examination.

With respect to the period of 5 years or more, the eligibility is granted only in cases that have been documented in documents submitted to the GDNT.

“Defined accounting task” means tasks related to accounting involving preparation of balance sheet and profit and loss statements (excludes clerical tasks that does not

require exercise of judgments).

**(4) Persons Engaged in Supporting Functions to Tax Accountants and the Like**

If the period in which the person has been engaged in a supporting function to a tax accountant, certified public accountant, incorporated auditor or lawyers is 5 years or more, such person shall be granted eligibility for the examination.

**(5) University Graduates**

A person who has graduated and earned a degree in taxation, public finance, accounting, economics or the laws are given eligibility for the examination.

In such cases, definition of a university will include universities and colleges located outside of Mongolia. "To earn a degree" means to have earned a passing grade in one of the disciplines of taxation, fiscal finance, accounting, laws (constitutional law, civil laws etc), or economics (economic theory, economic policies etc.). Persons who have graduated from faculties other than law department, economics department or commerce department will be given eligibility so long as they have successfully completed courses related to taxation, fiscal finance, accounting, laws or economics

**(6) Persons Certified by the Specialist Committee**

The person whom the Specialist Committee certifies as having equivalent academic qualifications as those persons defined in the above Items 1 through 5, shall also be given eligibility for the examination. For example, in regard to Article 5, even if the applicant is still attending university, if the student has completed 2 years or more of his studies and has obtained the necessary credits for general education (3 subjects each in humanities, social science, natural science for total of 9 credits) and has obtained one or more subjects in taxation, public finance, accounting, laws or economics will be granted eligibility for the examination.

The person to receive the certificate from the Specialist Committee shall submit to the chairman of the Specialist Committee a document listing the academic or professional credentials attached to the Application for Certificate of Examination Eligibility.

**(7) Those Who Have Passed 1<sup>st</sup> Grade for Bookkeeping and Accounting Test Certified by the General Department of National Taxation**

In order to broaden the population of the examination applicants, the eligibility to take examination shall be provided to those who have passed 1<sup>st</sup> Grader for Bookkeeping and Accounting Test Certified by the General Department of National Taxation.

**(8) Calculation of the Periods**

Period in which the person's engagement shall be calculated using calendar days from the day succeeding the day the person begins to engage in the endeavor to the day immediately preceding the day of a tax accountant examination, However, in such a case if the person is engaged in two or more occupations that have different periodic requirements, convert each period to a 10 year equivalent and if the accumulated number of years in the occupations thus converted is 10 years or more the person will be given eligibility for the examination. As an illustrative example, if a person has worked in the GDNT for 2 years and as an assistant in a tax accounting office for 2 years, since the eligibility is given after 3 years service and convertible into a 10 year equivalent will require multiplication of the years by 3.3 thus the person will have equivalent of 6.6 years, while the eligibility earning requirement for an assistant to tax accounting office is 5 years and converting this into a 10 year equivalent requires multiplication by factor of 2 thus resulting in 4 years equivalent. Summing the two will produce 10.6 years equivalent thus the person will be eligible to take the examination.

**Article 6. Objectives of the Examinations and the Examination Subjects**

**[Explanation]**

This Article makes clear that the objective of the tax accountant examination is to judge whether the candidate possesses the necessary academic knowledge required for a tax accountant and the ability to harness such knowledge and stipulates two subjects elected by the candidate from subjects in tax law genre which is defined to include Individual Income Tax Law, Corporation Tax Law and Value Added Tax Law, bookkeeping theory and financial statements theory as subjects in the accounting genre as well as practical taxation and Tax Accountant Law be taken as examination subjects.



The Tax Accountant Examination is an examination to test the academic knowledge and application capabilities necessary to be a tax accountant and it goes without saying that based on the application questions, the details of the questions need to cover the principles and theory of taxation.

**Article 7. Partial Exemption from Examination Subjects**

**[Explanation]**

In the accountant examination, it is not required to pass all subjects in one sitting and the passing of the overall examination is not determined by the overall results of the examination at each sitting of the examination but the results will be evaluated by each examination subject and if the applicant passes an examination subject, the applicant will not be required to be tested for that examination subject for which he had achieved a passing performance. Therefore, it is sufficient over number of sittings of tax accountant examinations to pass the required examination subjects. For an examination subject it is possible to take the examination in installments. The passing grade is 70% of full marks. The applicant will be notified of subjects that the applicant has earned a passing grade and to receive an exemption for the examination subject in future tax accountant examinations, the subject to be exempted must be noted on the application for the tax accountant examinations and the notification of a qualifying grade must be attached as written evidence for the eligibility for exemption.

Examination subjects may be added or eliminated as a result of amendments to the tax laws and there will be cases where the tax laws for which the exemption has been earned is eliminated and in such a case the said tax law that has been eliminated is deemed to be one of examination subjects listed in Article 6.

**Article 8. Partial Exemption from Examination Subjects**

**[Explanation]**

The tax accountant examinations grants exemptions from examination subjects to applicants who have certain qualifications or certain level of work experience and due to such qualifications and experience, deemed to possess sufficient academic knowledge and application capabilities needed of a tax accountant without having to be tested upon application for those examination subjects for which the applicants are deemed to possess

sufficient academic knowledge and application capabilities.

The subjects for whom exemptions will be granted are as follows:

- (1) Making a distinction between the administrative tasks in the GDNT into (i) tasks relating to the assessment, collection and drafting of related tax laws and (ii) other tasks, for applicants who have had not less than 5 years experience in (i) shall be exempted from subjects classified as Tax Laws and those applicants with 10 or more years experience shall be exempted from all subjects and applicants who have 10 or more years experience in (ii) shall be exempted from subjects classified as Tax Laws and tax practice while those with 15 or more years experience will be exempted from all subjects.
- (2) Applicants who have been in a teaching post in subjects of taxation, public finance or laws for a period of 5 years or more shall be exempted from examination subjects in the tax laws category and those who have been in a teaching post in accounting and economics will be exempted from examination subjects in the accounting category.
- (3) Applicants as a profession practicing as a certified public accountant, will be exempted from subjects in the accounting classification and those who practice law as a lawyer will receive exemption from subjects dealing with tax laws.
- (4) Finally, applicants based on applicants' records and abilities deemed by the Specialist Committee to be worthy of becoming a Mongolian National Tax Accountant and approved by the Director General of the GDNT will be exempt from subjects that correspond to their fields of endeavor. It also stipulates that such exemption may extend to include all examination subjects.

The necessary periods for this purpose are stated in calendar years, but of the post, business or administrative tasks if an applicant has experience in 2 or more of these that correspond to the examination subject that are subject of exemption the period relevant to each experience shall be converted to a 10 year equivalent and if the sum of the 10 year equivalent periods equal or exceed 10 years, upon application that subject will be exempted.

Under the provisions of this Article applicants who wish to receive exemption under the

provision of this Article must attach evidence in writing of having possession of eligibility for exemption for which the applicant is applying. For applicants who are to receive exemption from all examination subjects, the applicant must attach evidence in writing of his eligibility for exemption from examinations to the application for tax accountant examination to receive the said exemption.

#### **Article 9. Rules Concerning Tax Accountant Examinations**

##### **[Explanation]**

The details regarding the various procedures relating to the tax accountant examinations shall be decided by the Specialist Committee and such decision shall be approved by the Director General of the GDNT. The tax accountant examinations are to be held more than annually and if the approval of the Director General of the GDNT is received the examinations may be conducted outside of Mongolia.

#### **Article 10. Cancellation of Acceptance**

##### **[Explanation]**

“Illegal means” means falsify eligibility to take the examination, have a substitute take the examination, to use reference documents that have been barred from reference or to plagiarize other person’s test papers. The Specialist Committee will terminate the tax accountant examination for such persons and if such facts become known after the tax accountant examination, Specialist Committee can rescind the qualification. Depending upon the circumstances, such persons can be barred from taking the tax examination for a period not less than 3 years from the date of such act.

#### **Article 11. Acceptance License**

##### **[Explanation]**

“Successful candidate of tax accountant examination” means a person who has successfully completed all examination subjects during the tax examination. Therefore, if the applicant has already earned exemptions from some examination subjects and if the applicant achieves passing grades in the remainder of the examination subjects, the applicant will become a successful candidate of the tax accountant examination. If the applicant has achieved passing grades in some examination subjects and later receives

exemptions for the remaining subjects, he will have the qualification to become a tax accountant but he will not be considered a successful candidate of the tax accountant examination. For those who have achieved passing grades for some subjects, he will be so notified by the way of tax accountant examination partial acceptance notice

**Article 12. Examination Details**

**[Explanation]**

This article makes clarification to the effect that with respect to the details relating to taking the tax accountant examinations, these will be decided by the Specialist Committee. Specifically the Specialist Committee will decide the necessary items relating to the tax accountant examinations including date of implementation of the tax accountant examination, location and acceptance period for submissions of the applications for the tax accountant examinations. Those who wish to take the tax accountant examinations or those who seek to receive exemptions under the tax accountant examinations must submit an application for the examination or application for exemption from the examination in a prescribed form set by the Specialist Committee.

## **SECTION 3**

### **Registration**

#### **Article 13. Registration**

**[Explanation]**

Persons who have qualification to become a tax account shall become a tax accountant upon completion of registration. Therefore those who are qualified but not registered are not considered tax accountants.

Persons who possess the qualification of becoming a tax account are persons as provided for in the law Article 3 and those who do not correspond to the disqualification clauses defined in Article 4.

In order to be registered, an application for registration must be submitted to the Specialist Committee. Items to be included in the registration are as follows:

- (i) name
- (ii) date of birth
- (iii) name and location of the tax accounting office
- (iv) nationality and address
- (v) classification of qualification to become tax accountants and the date of acquisition of such qualification
- (vi) for the persons who had been employed in administration in the GDNT and other similar organs the name of the post and the period of employment in the position for the most recent 5 years before leaving the said administrative post

#### **Article 14. Tax Accountant Registry**

**[Explanation]**

The tax accountant registry shall be kept by the Specialist Committee in a format to be determined by the Specialist Committee. Registration into the registry will be made by the Specialist Committee. The registry registration system is a system that assumes that persons to be registered will be subject to supervision.

#### **Article 15. Amendments to Registration**

**[Explanation]**

If items contained in the tax accountant registry needs to be amended, amendments to the registration must be applied for promptly without delay. Items that will require amendments include name of the registrant, name of the tax accountant office, location, nationality, and changes in the classification of the tax accountant qualifications. The registrant shall make application for changes to the registration promptly after any changes containing the details of the amendment and the cause as well as the date of occurrence of events requiring such amendments and any other relevant information in an application for registration amendment to the Specialist Committee.

**Article 16. Application for Registration**

**[Explanation]**

Persons wishing to register in the tax accountant registry must submit an application for registration containing registration items as provided for in the Law Article 13, academic credentials, professional resume and other items to be referred with a document evidencing the applicant's qualification with a photograph to the Specialist Committee. Those registering amendments to the registration, in accordance with the law Article 15 regarding amendments to registration items must submit the registration to the Specialist Committee. Applicants for registration and applicants for amendments to the registration shall submit the appropriate application for registration in triplicate, 1 original, and 2 copies. The format of the application for registration will be decided by the Specialist Committee.

**Article 17. Approval of the Registration**

**[Explanation]**

The Specialist Committee, after accepting the application for tax accountant registration from the applicant, must determine whether the applicant possesses the qualification to become a tax accountant or whether a cause for denial (law 1B) applies to the application and if it is determined that the applicant has the qualification and there is no cause for refusal the Specialist Committee will declare the application to be approved for registration. If it is found that the applicant does not have the qualification for a tax accountant or corresponds to a condition for denial is applicable, the application for registration will be denied. When the Specialist Committee registers the applicant into

the tax accountant registry, after giving prior notification to the said applicant shall confer a tax accountant license directly.

When the Specialist Committee denies an application, they will notify the applicant in writing with the reasons for the denial. In denying the registration, if the applicant had failed to include in the application for registration material information (qualification to be a tax accountant or cause for denial of registration) or if the application is based on falsified facts, it must be noted in writing to that effect on the notice of denial of the application. Those who have been refused on such grounds, in accordance with the provisions contained in the law Article 4 Clause 1 Item 9, shall not have a qualification for becoming a tax accountant for a period of 3 years from the date of denial of the application; thus, in order to make clear the facts of the disposition this measure is necessary.

#### **Article 18. Causes for Denial of Registration**

##### **[Explanation]**

This article defines the conditions for denial of tax accountant registrations. In spite of possessing the qualification of a tax accountant, if the applicant falls under any of the causes for denial of registration defined herein, the applicant will not be able to register in the tax account registry.

Causes for refusal of registration of tax accountant are of two categories (i) a person who are deemed not to be fit to practice tax accounting ((1) and (3)–(8) below) and (ii) currently engaged in a public office and would not be appropriate to practice tax accounting during such period ((2)).

##### **(1) Persons Under Disciplinary Action**

These persons referred to are lawyers currently under disciplinary action or certified public accountant who has been barred from practice or has had his qualifications suspended and such state remain in force currently. If a tax accountant after registration into the tax accountant registry become barred from practice or has his qualifications suspended due to disciplinary actions he or she cannot practice tax accounting during such periods (Law 39).

**(2) Persons Serving Public Office**

Including those who serve public office with compensation, excluding those who hold post of representative of national assembly or assembly of regional public bodies and part-time posts, cannot be registered as a tax accountant.

“Public office with compensation” refers to staff of national assembly, courts, and administrative agencies and public agencies of national or local public bodies. And “compensation” means a consideration for provision of certain services and does not include reimbursement of expenses.

**(3) Persons Committing Tax Evasion and a Period of 2 Years Not Yet Elapsed**

A person who unlawfully evaded tax assessment or payment of taxes or attempted to evade such or cause another to unlawfully evade tax assessment or payment or have aided and abetted the same and a period of 5 years has not lapsed since the date of such act.

In this case in the definition of “taxes” customs tariffs are included. Those who was not given a fine or incarceration, avoided the assessment or payment of taxes but subjected to a fine, or if a complaint was lodged with the courts but the case was dropped or was not prosecuted and was served with a fraud penalties this would constitute “evasion” but if the person was preparing to evade or initiated execution of evasion or enter into consultations will constitute “attempt to evade” while if a person instigates or aid and abet another to evade or force another to evade constitutes “forcing another to evade” or “aiding and abetting evasion”.

“The day of the act” means in the case of an act which was admitted in the court the day of such act, if there were no act admitted in the court the date of the criminal act admitted to the legal investigating authorities and if there were no such admitted day of such acts, said date recognized by the Director General of the National Tax Agency, head of the tax office or head of Customs (with respect to regional taxes the head of the regional public body). The same applies to (4) and (5) below.

**(4) Persons Unlawfully Receiving Refunds of National Tax and 2 Years have not Elapsed**

Person who has received or has attempted to receive refunds of taxes unlawfully or



have caused another to receive tax refunds unlawfully or aided and abetted the same and a period of 5 years has not lapsed from the date of such act.

**(5) Those Who Committed Acts that Infringed Upon Penal Laws in the Course of Duties Relating to National Tax, Local Tax or Accounting**

A person who committed acts that infringe upon penal laws in the course of duties relating to taxation or accounting and a period of 5 years has not lapsed since the day of the act.

“Tasks related to taxation or accounting” is not limited to tasks in an administrative agency but includes administering withholding taxes and accounting administration, “Acts that infringe on penal laws” refers to acts in addition to criminal acts defined under Tax Accountant Law, Certified Public Accountant Law, or Laws Regarding Lawyers, for example of embezzlement of tax receipts, and falsification of accounting records would also be applicable. Those who have committed such acts shall be subject to refusal for registration for a period of 5 years from the day of such act. Here reference is made only to those who have committed acts that infringe penal laws but have not been punished under the laws for if they had received punishment they would naturally fall under the disqualification clause (Law 4) and they will not be qualified to become a tax accountant for a defined period after the termination of the sentence or if they had not been sentenced from the date that they were relieved from serving the sentence.

**(6) Persons with Mental and Physical Disabilities**

This refers to persons who due to mental or physical disabilities may not be fit to practice tax accounting. So long as such concerns do not exist, registration will not be refused for a person even with physical or mental disabilities.

“May not be fit” refers to persons who due to physical or mental disabilities the persons will not be able to fulfill the responsibilities of a tax accountant and would not be able to perform a proper job as a tax accountant.

**(7) Those Who Lack the Qualification as a Tax Accountant**

This refers to those who pose concern of causing damage to the credibility and degrade

the overall tax accounting industry and in light of the other responsibilities of the tax accountants, is deemed to lack personal qualification as a tax accountant.

Tax accountants has the responsibility to fulfill the trust placed upon them by the tax obligors and his mission is to carry out a just and proper performance of tax obligations but in order to carry out this mission a tax accountant must maintain his dignity and gain trust. For a tax accountant maintaining dignity and gaining trust are the most important factors and persons who pose concerns in this regard, and in light of the other responsibilities of tax accountants, the lack of personal qualification and will constitute a cause for denial of registration.

**(8) Persons Who Fail to Pay the Registration Fee**

Those who fail to pay the tax accountant registration fee will naturally be denied registration.

**Article 19. Revocation of Registration**

**[Explanation]**

The Clause 1 of this Article provides for the Specialist Committee revoking the registration of a registrant who is found to have registered based on an application for registration containing false statements. That is to say, if it is found that the registration applicant fails to record what is required with respect to the applicant's qualification as a tax accountant or items regarding causes for refusal of registration as provided for in the items in the law Article 18 or have recorded false statements in the application for registration, the application will be denied by the Specialist Committee, if discovered before the registration (Law 17), and the person will be denied of eligibility to become a tax accountant for a period of 3 years from the date of refusal for registration Law 4). If the facts are uncovered after the registration had been effected, under the provision of this Article the Specialist Committee may revoke the registration and the person will not have eligibility to become a tax accountant for a period of 3 years from the date of revocation (Law 4).

Clause 2 provides that if a tax accountant who has been registered, in the course of performance of his duties as a tax accountant, either on his own or through a taxpayer is deemed to exhibit behavior contrary to public interests in any acts relating to taxation

including reporting, the Specialist Committee can revoke the tax accountant's registration. "On his own or through a taxpayer" means to by not only the tax accountant and his employees but using a taxpayer or instigation take actions relating to taxation that are deemed to be antisocial and it provides for the Specialist Committee to take actions to revoke the registration of the said tax accountant.

"Any act relating to taxation including reporting" means all items and acts relating to taxation and anything relating to it directly, as a matter of course, but includes also indirect actions.

"If it is deemed to be against public interest" means that if the act were ignored it is deemed that there would be significant effect on other taxpayers or it would cause significant impairment in tax administration in the GDNT and other similar organs and it is stipulated that the Specialist Committee shall make such judgments.

Clause 3 deals with a tax accountant who is registered but fails to pay periodic membership fees or a tax accountant who fails to attend a mandatory registration renewal training in two separate occasions and provides that in both cases the Specialist Committee has the ability to revoke the registration of such tax accountants. It goes without saying that persons who possess the qualifications to become tax accountants can become tax accountants only upon registration into the tax accountant registry, and from the point of view of ensuring maintenance of qualifications as a professional the renewal of membership is at the discretion of the Specialist Committee. In the renewal of membership a payment of a renewal fee and attendance at training at renewal time are required. Therefore it recognizes the right to revoke registrations of those who fail to pay the renewal fee or those who fail to attend the training sessions in two occasions without due reasons. Due reasons should be limited to those that are clear and effectively deprive the ability to attend such as sickness or injuries

Under the provisions of Clauses 1 through 3 above, if the Specialist Committee revokes a registration, this provides that the Specialist Committee must provide to the tax accountant who is having his or her registration revoked and to the GDNT a notice of revocation noting the reasons for the revocation and it would suffice to have the notice to be sent to the address noted in the tax accountant registry

**Article 20. Deletion of Registration**

**[Explanation]**

This Article defines situations in which the tax accountant registrations are expunged from the registry and that the qualification of tax accountant is personal and makes it clear that it cannot be inherited or transferred.

**(1) In the Case of Discontinuance of Practice**

At the time of a tax accountant discontinuing his or her practice, as the person is no longer in need of the qualification, in order to clear the tax accountant registry the registration will be expunged from the registry by the Specialist Committee. When a tax accountant discontinues his or her practice he or she or a representative must submit a notice of discontinuance to the Specialist Committee. The Specialist Committee upon receipt of the notice shall promptly expunge the registration but in this case his or her status as a tax accountant (being a tax accountant) shall be retained until the erasure of his or her registration.

**(2) In the Case of Death**

In the case where a tax accountant passes away the qualification of tax accountant shall lapse with the person's death thus erasure of the registration is nothing more than house cleaning of the registry.

**(3) In the Case of Revocation of Registration**

In the case of a tax accountant having the registration revoked by the Specialist Committee, in accordance with the items in Article 19, the tax accountant shall lose his status as a tax accountant upon the revocation and the expunging the registration from the registry is merely an ex post facto procedure.

**(4) In the Case a Condition for Disqualification is Met**

If a tax accountant falls under preceding item in this Article, if a tax accountant falls under any of the conditions for disqualification under Items 2 through 9 of Article 4 of the Law or if for some reason a tax accountant loses his qualification the status of tax accountant shall be lost and the expunging tax accountant registration will merely be an

ex post facto procedure. If a tax accountant falls under any of the items of Article, save for Item 3 of this Article, he, she or a representative or heir must without delay report such to the Specialist Committee.

#### **Article 21. Public Notice of Registration and Expunging Registration**

##### **[Explanation]**

Tax accountants have close relationships with tax obligors and the tax accounting practice is built upon the relationship of trust between the tax obligor and the tax accountant; therefore, the registration of tax accountants need to create fairness. Therefore, the article requires that when the Specialist Committee registers a tax accountant or when a registration is expunged it must promptly publicize, in the case of registration being expunged with the reasons (for example, classification such as discontinuance, death) in a general media.

#### **Article 22. Return of the Tax Accountant License**

##### **[Explanation]**

Tax accountant license is issued upon registration of a tax accountant (Law 17) when a tax accountant acts as a tax representative and visits with the staff of National Tax Agency and similar organs presentation of the license is required (Law 26).

Tax accountant licenses is a public evidence of having been registered as a tax accountant and when the registration has been expunged the person, legal representative or heir must return the tax accountant license to the Specialist Committee.

If a tax accountant assumes a paid public post (excludes representative of national or regional assemblies and part-time posts) it is stipulated that while in the post the person may not practice tax accounting (Law 37) or in the case due to disciplinary actions the person is prohibited from practicing it provides that such persons cannot practice tax accounting while being under disciplinary action (Law 37). In both cases the person or his or her legal representative must return the tax account license to the Specialist Committee. Further, a tax accountant is given a suspension or prohibition of practicing tax accounting practice (Law 39, Law 40) the tax accountant license must similarly be returned to the Specialist Committee.

When a person who had suspended his tax accounting practice or has been barred from

practice has become able to resume practice, upon application the Specialist Committee will reissue the tax accountant license.

## **SECTION 4**

### **Maintenance of Tax Accountant Registration**

#### **Article 23. Maintenance of Tax Accountant Registration**

##### **[Explanation]**

This Article provides that as the tax accountant qualification requires high level of specialized professional capabilities, the registered tax accountants are obliged to attend training sessions held at least annually by the Specialist Committee to maintain registration. If a tax accountant fails to attend the training session without due reason in two or more occasions or if a tax accountant fails to pay to the Specialist Committee registration renewal fee, the Article provides that the tax registration be revoked by the Specialist Committee (Law 19 (i)).

## **SECTION 5**

### **Rights and Obligation of Tax Accountants**

#### **Article 24. Expression of Authority of Tax Representative**

##### **[Explanation]**

When a tax accountant performs duties of a tax representative he must present a document that evidences that he is in possession of an authority to act as such to the GDNT and other similar organs.

Since GDNT and other similar organs with respect to taxation or collection thereof and other matters is dealing with a tax accountant who is a representative, that an act of a tax accountant representation and agent must be based upon an appropriate legal authorization goes without saying, but the Article provides for the necessity arising of a

need to show the GDNT and other similar organs who are the counterparts to the fact that a tax accountant has the authority to perform the act of tax accountant representation and agency.

Tax accountant when “performing duties of a tax representative” submits a document evidencing his or her possession of authority to do so and “to perform duties of a tax representative” means to be a tax representative for a single purpose. Determination of whether the tax representation is of a single purpose is made based on the singularity of client, person performing the representation and agency act, the GDNT and other similar organs who are the counterparty to the act of representation and agency, and the purpose of the representation and agency. In this case, reporting, application, request, and grievance etc. are each different tax representation may be used as one standard for the determination

The timing for the submission of the document evidencing the authority to act as tax representative is in principle at the time of initiating the act of representation and agency. In many cases, it is attached to the documents submitted that are the subject of representation and agency such as returns, applications etc. But if there are extenuating circumstances it should not be taken that the requirement is for submission at the initiation across the board but it should be interpreted as allowing in exceptional cases to be submitted during the performance of acts of representation and agency or at its conclusion. As to the addressee of the submission, the Article stipulates only that it should be to the GDNT and other similar organs. There is no need to record the address of the GDNT and other similar organs to where it must be submitted on the document and it will be sufficient to have a staff authorized to receive the document at the GDNT and other similar organs receive the document.

Even if the documents were not submitted the act of representation and agency has validity and non-submission has no effect but the tax accountant cannot be released from the responsibility of not having performed his or her obligation of submission of the document.

**Article 25. Items Requiring Special Delegation**

**[Explanation]**

This Article provides that in cases where a tax accountant performs a role of tax representative, especially in cases where there is a substantial impact on the interests of the taxpayer, a general authority for representation and agency is not sufficient and that a special delegation for such representation and agency needs to be obtained.

This is a reason why a submission of documents evidencing the authority to the GDNT and other similar organs is required and especially with respect to items raised in this Article a separate submission of a document that bestows special delegation is required. A format is not specified for the documents evidencing general delegation for representation and agency but documents for tax representation under a special delegation is required to take the same format as those required for a power of attorney.

“Selection of representative” in Clause 2 of this Article refers to a selection of a representative by a tax accountant who himself is an agent of the principal and means in essence, selection of secondary representative. The principal and a tax accountant are bound individually by personal trust relationship thus it is problematically of having a third party acting as a secondary representative and the responsibility for and the results of acts of the secondary representative to reverted back to the principal. Therefore, it provides that when selecting a secondary representative a special delegation from the principal is required to be obtained. If the acts of the secondary involve the practice of tax accounting, the secondary representative must also be a tax accountant.

**Article 26. Presenting Tax Accountant License**

**[Explanation]**

This article provides that when a tax accountant performs acts as tax representative and meets with a staff of the GDNT or other similar organs he or she must present a license certifying that he or she is a tax accountant. Coupled with the submission of documents that he or she has the proper authority to act as tax representative as provided for in the second above Article, it ensures that a person who has qualification of a tax accountant acting on a legal authority to act as tax representative is performing the tax representation. “When performing tax representation” has the same meaning and content as “When performing tax representation” as defined in Article 27. When a tax accountant meets



with a staff of the GDNT and other similar organs he or she must present the tax accountant license certifying that he or she is a tax accountant without having been requested by the staff. The presenting of the tax accountant license is an obligation of the tax accountant and does not necessarily mean that the staff cannot meet without the presentment of the license.

This is the other side of the coin to the provisions under Article 67 and has the intent of excluding persons who are not tax accountants from performing tax accounting functions.

### **Article 27. Obligation for Signature**

#### **[Explanation]**

This Article provides that when a tax accountant performs duties as a tax representative or prepares tax documents, in order to clarify the responsibilities the documents prepared by the tax accountant must be signed personally by the tax accountant. In performing as the tax representative when preparing and submitting returns, applications or requests to the GDNT or other similar organs he or she must affix his or her signature as a representative. In such a case, if the documents are income tax returns or request for tax refunds in addition to the signature of the tax accountant, taxpayer's signature must also be affixed to the document.

The intent behind the requirement for the principal's signature in addition to the signature of the tax accountant is because these documents, being the basis for determination of tax obligations and being requests for tax refunds are of extreme importance to both the taxpayer and the GDNT and other similar organs, it is important that the principal is fully cognizant of the significance and details of the preparation of such documents and in addition to clarifying the responsibilities of the tax accountant who, as representative, prepared the documents, it is important to clarify the responsibilities of the principals.

Tax accountant, not only does he or she have the obligation to sign documents for which he or she acted as representative, in cases of preparing tax documents in order to clarify the responsibilities associated with the document preparation, he or she must sign the tax documents he or she prepares.

The omission of tax accountant's signature does not invalidate the documents. Therefore the lack of signature in of itself does not make the documents null and void.

**Article 28. Notification of Inspection****[Explanation]**

This Article defines the provisions regarding tax accountant's right to represent. This provision by providing for an obligation to give notice of a taxpayer inspection by the staff of the GDNT and other similar organs, it gives the relevant tax accountant a right to react and is meant to facilitate an efficient inspection by the GDNT and other similar organs. However, the law does not touch upon any responsibilities in case the staff violates his obligation to notify and there is no legal remedy for the taxpayer or the tax accountant against a violation of an obligation that should have been given some importance. The obligation to notify in this Article is qualified by the phrase "in principle" and such judgment is made by the GDNT and other similar organs. For example, if it is presumed that the taxpayer has committed an act of tax evasion, if a prior notification of inspection is given to the taxpayer and the tax accountant it may lead to being unable to uncover such acts thus in such a case the staff of the GDNT and other similar organs can conduct the inspection as a matter of course without giving prior notice. This Article provides for giving of notice, in principle, in the case of a direct inspection of the taxpayer by the tax officials. The lack of observance of this provision by the tax staff does not affect the validity of the inspection.

The requirements for the in principle prior notification of inspections are: (i) it is an inspection in which the time, date and tax categories to be inspected are notified in advance to the taxpayer and the tax accountant, (ii) relevant tax accountant is one who has submitted documentation showing he or she has the proper authority to act as tax representative with respect to the said taxes. The prior notification can be given in written form, verbally or telephonically but requires it to be given with sufficient time allowance prior to the commencement of inspection and should not be a formality of a telephone notification immediately preceding the commencement of inspection

The details of the notification will suffice it to be time, location and tax items for inspection and there is no need to add other details such as the objectives for the inspection but there is no harm in providing such additional details. Tax accountant who receives the notification can, as a tax representative, observe the inspection and provide opinions.

This notification is given respecting the tax accountant's position as a representative and

has no bearing on confirmation of the existence of the authority of the tax representative, therefore, even without having received the notification the tax accountant can, in his capacity as a representative, observe the inspection and express his intentions.

**Article 29. Prohibition against Consultation of Evasion and the Like**

**[Explanation]**

The mission of a tax accountant is “as a tax professional, from the position of independence and fairness following the philosophy of system of self-assessment fulfilling the trust placed upon him or her by the tax obligor undertake a fair performance of tax obligations as provided for in the tax laws”. It would be unconscionable for a tax account with such mission to instruct, provide advice or perform other similar acts with respect to evasion of assessment or payment of national or regional taxes or unlawfully obtain refunds of national or regional taxes whether himself or through the taxpayer and tax accountants who perform such acts must be regarded as lacking the qualification of a tax accountant. This is the reason this Article prohibits tax accountants from engaging in such acts. The Tax Accountant Law provides for this type of persons suspension of practice of tax accounting for a period of one year or less or disciplinary action of prohibition of practice of tax accounting (Law 39) and in addition it provides as penalty, imprisonment for a period not to exceed 3 years or fine not to exceed 1 million Tg (Law 72).

The main player in these acts is the tax accountant and this Article will be applied in a case where a tax accountant commits the act himself, issues instructions, provide consultations etc. with regard to such unlawful acts

The “taxes” referred to in this Article is not limited only to the tax items that are included in tax accounting practice but covers all tax categories. Therefore, this Article also covers the provision of instructions, consultations etc for customs tariffs that are not included in the tax accountant’s exclusive bailiwick.

“Provide instruction” means to providing directions on concrete methods and “provide consultation” means to become an adviser providing positive responses. In addition, “similar acts” as instruction or advice for tax evasion etc., for example, expression of specific opinion with the intent of inducing intent to evade in a certain person will also be subject to application of this Article. No consideration is given as to whether or not the

tax obligor who was provided instruction or consultation from a tax consultant, in fact performed such acts of evasion etc. Therefore, even though in reality no act of evasion has taken place, it is possible that a tax accountant may be subject to penalties.

If a person other than a tax accountant provided instruction or advice regarding evasion etc, if the person impersonated a tax accountant the person will have violated the restrictions against the use of the title and the restrictions against the practice of tax accounting and the person will be charged with the crime of violating the restriction of the use of the title, and restrictions against practice of tax accounting and crime of instigating evasion etc.

### **Article 30. Prohibition against Acts Causing Loss of Credibility**

#### **[Explanation]**

Tax accountants, in light of their mission, naturally are required to retain high level of creditability and dignity and this Article provides for the retention of credibility and enhancement of dignity. In another words, it provides that tax accountants must not take such actions that will damage the credibility and dignity of tax accountants. The credibility and dignity of tax accountant referred to here is the credibility and dignity of the tax accounting profession in its entirety and not just of individual tax accountants. However, in order to retain the credibility and enhance dignity of the overall profession, each individual tax accountant must make his or her own contribution to this end. This is a matter of course considering that tax accountants must mutually cooperate to retain the credibility and enhance dignity of the overall tax accounting profession.

### **Article 31. Obligation for Confidentiality**

#### **[Explanation]**

Tax account in the course of his performance of duties deal with the taxpayer's income, property, liability, other assets, details of management and have opportunities to know confidential information. The tax obligors, on the other hand, by divulging these secrets enable the realization of fair and appropriate conduct of his tax obligations, thus the relationship between the tax obligor and a tax accountant has to be based on maintenance of mutual trust

This is the reason this Article imposes the obligation for maintenance of confidentiality

and the tax accountant, without due cause, must not divulge confidential information gained in the course of performance of his duties to third parties or misuse such for his own or third party's gain. This prohibition will continue to be in force even after the tax account ceases to be a tax accountant. In another words, tax accountants may not divulge any confidential information gained in the course of his duties without the principal's consent or except in cases such as being summoned as a witness in a court of law and are required to disclose confidential information or other such obligations based on some other laws, must not without due cause, divulge or convey to a third party or use such information to his own gain without the consent of the principal, and this restriction remains in force even after discontinuing the tax accounting practice.

In the Article it advocates that those who violate this Article as tax accountant responsibility be subject to general disciplinary action (Law 40) and that, in addition, criminal responsibility should be pursued (Law 74).

#### **Article 32. Obligation to Observe Organization Rules**

##### **[Explanation]**

Tax accountant must observe the rules of not only the association of tax accountants to which he or she belongs but also must observe the rules of the Federation of Association of Tax Accountants. That is to say, association of tax accountants and the Mongol Federation of Association of Tax Accountants are established bodies based on the Tax Accountant Law with membership comprised of tax accountants or association of tax accountants, both bodies are autonomous bodies that have the objective of providing guidance, communication, and supervision of the members. Thus for a tax accountant who is a direct and indirect member of these organizations must observe the rules of its own autonomous body is a matter of course

However, it is understood that both the association of tax accountants and the Mongolian Federation of Associations of Tax Accountants have no mandate that will enable exclusion of members who are deemed unfit as members judging from their nonobservance of the rules. Therefore, to deal with this issue an obligation to observe association rules has been imposed and for those violators application of general disciplinary actions as provided in Law Article 40 may be requested to the Director General of the GDNT.

### **Article 33. Obligation to Maintain an Office**

#### **[Explanation]**

Tax accountant must establish an office to practice tax accounting. The office to practice tax accounting has a uniform name "Tax Accountant Office" and a tax accountant must not establish 2 or more offices.

The reasons for the limitation to one office under the existing system are: (i) by limiting the location of the practice to one location it will facilitate the clarification of legal relationships, (ii) restrict from the limitation on tax accountant office, the expansion of practice beyond the individual's capacity for supervision and by this prevent the appearance of unqualified tax accountants.

Tax accountant office referred to herein refers to a location where practice of tax accounting is performed on an ongoing basis and the criteria for judgment of whether it is a location where tax accounting is practiced on an ongoing basis or not is based on objective facts such as external displays, facilities, existence of employees and so forth. Incorporated tax accountant office is not permitted. This is due to the fact that the tax accountant qualification is a personal one and does not bode well with incorporation in which there is an assumption of permanence.

Next, with respect to "hired tax accountant" who are employed in a tax accountant office, so long as the person does not practice tax accounting as a tax accountant for his or her own clients, there is no need to establish a separate office.

### **Article 34. Obligation to Keep Books**

#### **[Explanation]**

The practice of tax accounting is complex and there are cases of issues arising ex post facto thus it is necessary to maintain clear records of his or her acts. For this purpose keeping of certain books and recordation of required items are required.

Items that should be recorded for each client for tax representation, preparation of tax documents or tax consultation for each case are its details and the outcomes. The details and the outcomes for tax representation, preparation of tax documents or tax consultation need only contain sufficient details to make known the summary of the assignment and its outcome. The books must be retained for a period of 5 years from the date of preparation.

**Article 35. Supervisory Obligation over Employees etc.**

**[Explanation]**

When an employer hires employees to perform employer's tasks, it goes without saying that the employer is in a position of supervising the employee but this Article is provided especially in the case of tax accountants in light of the qualification of tax accountant being given to the tax accountant personally and the tax accounting practice is defined to be an exclusive practice, the trust of the tax obligors should not be placed at risk as a result of acts performed by employees. The intent behind the establishment of this provision is by making explicit the supervisory obligation over employees in the Tax Accountant Law it further promotes the enhancement of tax accountant's level of awareness of the obligation for supervision over its employees in order to gain the trust of the tax obligors and ensure the healthy development of the tax accountant system.

Items relating to supervision of employees engaged in accounting practice and other staff, in accordance with Law Article 53 Clause 2 Item 6, are to be determined by the rules of the association of tax accountants and as to how the employees should be supervised, it is as an internal autonomous matter for the association of tax accountants.

"Employees and other staff" provided for in this draft means in addition to persons who are in contractual relationship with the tax accountant as employee, all others who have no employment contracts but are under the control, supervision of tax accountants with regard to tax accounting practice; therefore, it includes family workers who are engaged in tax accounting practice.

**Article 36. Obligation to Advise**

**[Explanation]**

This Article provides that if the tax accountant with respect to his client, comes aware facts relating to tax evasion and the like he is obligated to provide advice to take corrective actions and at the same time report to the GDNT and other similar organs of such facts. It is considered that if a tax accountant in the course of performing his or her duties comes aware of his or her client committing tax evasion or maintaining dual books or undertaking transactions under fictitious names with the intent of committing tax evasion, to overlook such acts, from the tenet of striving for fair and just performance of

tax obligations, is unconscionable and to seek remedial action is, so to speak, the natural responsibility of the tax accountant; thus, this provision has been established.

When a tax accountant in performing his or her duties of tax accountant becomes aware of a client committing any of the following acts, he or she will in addition to advising remedial actions, report such acts to the GDNT and other similar organizations.

- (i) Unlawfully evading assessment or collection of taxes
- (ii) Unlawfully obtaining tax refunds
- (iii) Conceal or disguise all or part of facts that are the computation basis for assessment basis and the like for taxation

Those who violate this Article, as the responsibility of a tax accountant assessed with disciplinary action (Law 39) for aiding and abetting tax evasion and criminal responsibility will be pursued and will be subject to imprisonment for a period not to exceed one year or a fine not to exceed 200,000 Tg (Law 75).

#### **Article 37. Suspension of Practice**

##### **[Explanation]**

This Article provides that if a certified public accountant or lawyers have been suspended or barred from practice by disciplinary actions under their respective Certified Public Account Law or Law Concerning Lawyers, during the disciplinary period as a penal measure prohibits the practice of tax accounting practice. Also as a result of a tax accountant assuming a paid public post, during the time of assumption of such posts considering the nature of the post suspends the practice of tax accounting.

##### **(1) Suspension of Practice as a Result of Disciplinary Action**

In the case a tax accountant is concurrently a certified public accountant or a lawyer and such person has been suspended or barred from practicing due to disciplinary action, during the period of such disciplinary action is prohibited from practicing tax accounting.

Persons who have the qualifications to be a tax accountant but during the period for which he or she has been suspended or barred from practice as above the registration shall be denied (Law 18). In the similar vein, after becoming a tax accountant if he or she is suspended during the period of such suspension or being barred from practice he



or she is prohibited from practicing tax accounting. If a tax accountant who concurrently practice other professions and in the other profession is expelled, expunged from registration and the like as a disciplinary action, this will constitute a condition for disqualification (Law 4) and will result in loss of tax accountant qualification.

**(2) Suspension of Practice as a Result of Assumption of Paid Public Post**

When a tax account assumes a paid public post or during the period of serving in such posts tax accounting practice will be suspended.

Paid public posts are all paid public posts that excludes representative of national assembly or regional public bodies and part-time posts and includes posts in the national assembly, courts, national administrative agencies, prefecture, municipalities, etc. Such persons if engaged in paid public posts before tax accountant registration will be refused registration while holding such posts even if he or she possesses the qualification (Law 18). If a tax accountant assumes such post after being registered as a tax accountant he or she will be suspended from practicing tax accounting during the period of assumption of the post.

**(3) Return of Tax Accountant License**

At the time of being suspended from the practice of tax accounting, he or she or his or her legal representative shall promptly return the tax accountant license to the Specialist Committee (Law 22).

## SECTION 6

### Responsibilities of the Tax Accountant

#### Article 38. Categories of Disciplinary Actions

##### [Explanation]

As categories of disciplinary action there are three categories: (i) warning, (ii) suspension from practice of tax accounting for a period not to exceed one year, and (iii) prohibition from practicing tax accounting.

“Warning” constitute issuance of warning to the said tax accountant for the act that is the subject of discipline and no specific changes are effected as to the tax accounting practice or the qualification of the tax accountant. However, since the tax account places paramount importance of maintenance of trust, even if the discipline is a “warning” as a lesson for the future, the fact that a disciplinary action was received is in of itself a cause for a loss of trust and this is the aimed effect of the disciplinary action and though this effect contribute to the retention of trust and dignity for the entire tax accountant profession and the intended objective for the disciplinary action can be said to be achieved.

If a tax accountant is served with the disciplinary action of “suspension of practice of tax accounting”, naturally he or she will not be able to practice tax accounting. Therefore, the said tax accountant will need to rescind agreements with the client. Depending on the suspension of practice, there may not be any effect on the registration of the tax accountant, the treatment of rights within the association of tax accountants will be determined in accordance to the rules of the particular Association of Tax Accountant of which the said tax accountant is a member but as a rule will be suspended or receive some other internal disciplinary actions.

Of the disciplinary actions, the most serious is the “prohibition from practice of tax accounting”. If this action is served, it will result in a loss of tax accountant qualification and tax accountant registration will be expunged and naturally will need to withdraw from the association of tax accountants. If this disciplinary action is imposed, in accordance with the provision of Law Article 4 Item 7, the person will be considered disqualified for a period until a period of 3 years has lapsed from the date of imposition of the discipline and is barred from re-registration in the tax accountant registry.

**Article 39. Disciplinary Action for Aiding and Abetting Tax Evasion**

**[Explanation]**

This Article and Article 40 below defines the authority of the Director General of the GDNT with respect to disciplinary actions against tax accountants and constituent elements for disciplinary actions. Disciplinary actions should be taken commensurate to the facts and nature of the acts that are defined to be unworthy of a tax accountant as defined in this Article and Article 40 below.

An act that is most inappropriate for a tax accountant is to perform an act contrary to the facts or be a part of an act to evade taxation. Therefore, if a tax accountant commits such an act, the Act provides that a disciplinary action of a prohibition of tax accounting practice or suspension of tax accounting practice should be meted out. That is to say, if a tax accountant based on the data provided them and based on the tax accountant's professional knowledge and experience with the knowledge that it is contrary to the truth, perform tax representation or preparation of tax documents on behalf of a taxpayer contrary to the true facts or perform an act of providing instruction, consultation with respect to evasion of taxation etc., or perform similar acts, it provides that a disciplinary action equaling to suspension of tax accounting practice for a period not exceeding 1 year or a prohibition of tax accounting practice should be applied.

Tax accountants are required to practice tax accounting with certain amount of care and based on the true facts, thus, to intentionally (with deliberate intent) perform tax accounting practice contrary to facts must be said to be the worst kind of act. Clause 1 of the Article provides that against tax accountants who have committed such acts should be punished by a disciplinary action.

Next, if a tax accountant, not deliberately, but due to failure to exercise due care and if an act resulting from such failure to exercise caution constitute acts subject to disciplinary actions described above, in another words performed without intent but the end result perform tax representation or prepare tax documents contrary to the true facts, or perform act of providing instructions, consultations with respect to tax evasion or other similar acts, if this is caused by the failure of exercising due care required as a tax accountant, a tax professional, it provides that such tax accountant should be given a disciplinary action of suspension of tax accounting practice for a period not to exceed one year.

It should be noted that the relationship between the disciplinary actions described herein the Article and the expunging tax accountant registration as provided for in the Law Article 19 Clause 2 is as described below. Firstly, this Article describes disciplinary actions taken under the authority of the Director General of the GDNT for disciplinary actions, whereas the dispositions defined in the Law Article 19 Clause 2 are meted to deal with unlawful acts by the Specialist Committee and if such unlawful acts is of conspicuously serious nature it is the final disposition handed out by the Specialist Committee. Therefore, for example, if a tax accountant for his behalf perform acts of tax evasion involving disguise and concealment, naturally the Specialist Committee will expunge the tax accountant registration of the said tax accountant as provided for in the Law Article 19 Clause 2. However, if a similar act is performed on behalf of a taxpayer, a decision will be made by the Director General of the GDNT as to which disposition shall be taken based on gross amount of the evasion, social impact, methods of evasion, and the degree of involvement in the act of evasion and if the act contain unlawful elements that are beyond the authority given to the Director General of the GDNT for disciplinary actions as provided for in this Article, a notice to that effect is given to the Specialist Committee and the Specialist Committee shall take steps to expunge tax accountant registration.

#### **Article 40. General Disciplinary Actions**

##### **[Explanation]**

In this Article it provides for disciplinary action and its constituent elements for tax accountants that are not due to a gross negligence but due to a general violation as a tax accountant.

It provides that when a tax accountant makes false statements in a tax return or in the various attached documents thereto or violated this Law or provisions in laws relating to taxation, disciplinary actions should be taken.

Discipline is one of warning, suspension of tax accounting practice for a period not to exceed one year or prohibition of practicing tax accounting depending upon the particular circumstances, but if the tax accountant intentionally perform tax representation contrary to the true facts, this would constitute a suspension of practice of tax accounting for a period not to exceed one year, prohibition of practice of tax accounting or expunging of

tax accountant registration, but if the act is a result of failure of exercising due care it would constitute a warning or suspension of practice of tax accounting for a period not to exceed one year; therefore, in the case of general disciplinary actions the type and the severity of the disciplinary actions be determined in accordance with these standards for disciplinary actions.

#### **Article 41. Procedures for Disciplinary Action**

##### **[Explanation]**

This Article establishes the route to take in seeking appropriate actions when there is cause for disciplinary action and a party who has become aware of such events notifies the Director General of the GDNT who has the authority for disciplinary actions and provides that this must be according to certain procedures.

- (1) In order to have the mission as a tax accountant always from an independent and fair position, it is not proper to be under any suspicion from tax obligors, as a matter of course, but also from society in general with respect to the actions taken by tax accountants. It is provided that any persons who comes aware of any facts with respect to tax accountants that would constitute a subject of disciplinary actions, he or she should notify the Director General of the GDNT to seek appropriate measures. In another words, any person if he or she becomes aware of a tax accountant who has acted as tax representative or prepare tax documents contrary to true facts, or perform an act of providing instruction, consultation with respect to evasion of taxation etc., or perform similar acts, or when a tax accountant violates provisions of laws relating to taxation, report such facts to the Director General of the GDNT to seek appropriate actions.
- (2) Disciplinary action is a serious action that affects the livelihood of the tax accountant and equivalent to a court judgment in a criminal punishment, thus, in dealing out disciplinary actions utmost care is required to be taken. The Director General of the GDNT when he becomes aware of a tax accountant committing an act worthy of disciplinary action, must examine the facts and in dealing with the act as a subject of disciplinary action, so notify the said tax accountant in advance and determine a

suitable period of time and provide an opportunity for the tax accountant to himself or through a representative provide explanations of the circumstances. If in spite of providing an opportunity to present an explanation if the tax accountant either him or herself or through a representative, provide no explanations or if an explanation is given but such explanation is insufficient to convince the Director General, the Director General will determine disciplinary actions.

- (3) When pronouncing disciplinary actions for tax accountants, the Director General of GDNT a notice giving the reasons for the discipline must be given to the tax accountant being disciplined and to the Specialist Committee. The notice is deemed to have been given by sending the notice to be given to the tax accountant to the address registered in the tax accountant registry.

When a tax accountant has been prohibited from practicing tax accounting as a result of a disciplinary action, it becomes full force and effect at that point in time and tax accountant qualification is lost and the registration is expunged. The reason for the disciplinary action coming into force at the time of disposition is due to the following reasons

Tax accountants are given a legal protection of exclusivity in their profession in order to realize just performance of tax obligations and in return maintenance of propriety is required in performance of their duties. For this reason if in the case the disciplinary action becoming subject to court action, the effect of the disciplinary action will not come into force until the determination of judgment at the courts and the subject tax accountant who is unworthy of practicing tax accounting were free to practice tax accounting in the meantime, this would materially defeat the disciplinary effect. This is the rationale for the discipline being effective at the time of disposition. If the party being disciplined has a grievance against the disciplinary action, under the administrative litigation law, he or she can seek relief of rights and when necessary may be given injunctions against the execution of the disciplinary action thus it can be considered that there is protection of tax accountant rights.

**Article 42. Public Notices of Disciplinary Action**

**[Explanation]**

When the Director General of the GDNT dispenses warning, suspension of tax accountant practice or prohibition of tax accountant practice in disciplinary action, he or she must promptly place a notice in general press media. This is to make known to the general public the fact of the disciplinary action in order to prevent the tax obligors who commission tax accountants from suffering unforeseen damages.

On the other hand, when a prohibition against practicing tax accountancy is dispensed the Specialist Committee will promptly expunge the registration of the said tax accountant and post the fact with the reasons thereof in a general press media (Law 21).

**SECTION 7**

**Specialist Committee**

**Article 43. Establishing Specialist Committee**

**[Explanation]**

Objectives for the Specialist Committee include conducting tax accountant examination, determination of qualification of the applicants for tax accountant registration, registration of tax accountants and provision of guidance and supervision of tax accountant (includes revocation of tax accountant registration as provided for the Law Article 19).

The operation of the Specialist Committee includes: (i) implementation of tax accountant examination, (ii) certificate of eligibility for tax accountant examination, (iii) certification of certain administration or profession necessary to become eligible for the tax accountant examination, (iv) certification of exemption from examination subjects for tax accountant examination, (v) determination of successful completion of tax accountant examination and qualified tax accountant registry applicants, (vi) tax accountant registration and expunging registration (includes registration renewals), (vii) provision of guidance of tax accountants, and (viii) supervision.

**Article 44. Organization of the Specialist Committee**

**[Explanation]**

This Article defines the organization for the Specialist Committee.

The Specialist Committee shall be composed of 5 members from both state agencies and private institutions and the Vice Director General of the National Tax Agency will assume the post of permanent chairman of the Specialist Committee and shall integrate and represent the affairs of the committee and shall, as the chairman of the committee, designate and appoint the remaining 4 members.

The term of each member is 2 years and if there is a vacancy during the term, the replacement member shall serve the remaining term of the vacating member. And each member will serve on a part-time basis. Since the provision does not prevent reappointment, each member may be reappointed.

Specialist Committee shall have a permanent secretary and if the Chairman deems a need, an advisor may be appointed and naturally the right to appoint rests with the chairman.

**Article 45. Method of Resolution**

**[Explanation]**

This Article determines the method of resolution in the Specialist Committee.

The resolution of items deliberated will be by a vote of the majority of the members of the committee.

**Article 46. Tax Accountant Examination Committee**

**[Explanation]**

This Article defines the Tax Accountant Examination Committee and its members.

A Tax Accountant Examination Committee will be formed within the Specialist Committee for the purpose of preparation of the tax accountant examination questions, conduct of the examination, grading the examination and determination of the successful examination applicants.

A member of the Tax Accountant Examination Committee will be appointed by the Director General of the GDNT from members of the Specialist Committee and the tax officials of the GDNT based upon the recommendation of the Specialist Committee and the members of the examination committee shall serve on a part-time basis. In this case,



since there is no provision against reappointment, an examination committee member may be reappointed, but the examination member is appointed each time the tax accountant examination is held, and after the tasks of the examination is completed the term of office of the member expires.

#### **Article 47. Requirements for the Chairman and Members**

##### **[Explanation]**

This Article defines the concrete requirements for the Chairman of the Specialist Committee and each member.

- (i) It provides that the Chairman and each member of the Specialist Committee must possess Mongolian nationality
- (ii) It provides that a membership of the Specialist Committee must include 3 members of the staff of the GDNT and 2 people who possess academic experience in the field of taxation or accounting and must have served in a post in an administrative agency or in a teaching post at a university for a period exceeding 3 years.

As it is a natural requirement of a tax accountant to be highly professional in the field, those in the position to register, guide, and supervise these professionals are required to be of even higher caliber. As the staff of the GDNT naturally possesses the qualities relating to taxation and tax administration, the Article provides that 3 of the members should be appointed from the GDNT staffs. Also it provides that since having academic background in taxation or accounting and having held posts in administrative agencies or in teaching in a university for a period exceeding 3 years would provide the qualities required, the remaining 2 members need to fulfill these requirements.

- (iii) It also provides that the person must have the ability to bear the responsibilities stipulated by the law and meet the professional and moral requirements.

Since the Specialist Committee is an institution that registers, guides and supervises tax accountants from a position of fairness, the Article provides that the members of the committee must have the specialist qualifications in taxation and tax administration and be able to fairly execute their duties and must have the ability to fulfill the obligations as a member as provided for in this Law.

**Article 48. Withdrawal from the Committee and the Post of Chairman**

**[Explanation]**

This Article defines the items relating to the withdrawal of members and the Chairman from the Committee and the Chairman and members must withdraw from the Committee if he or she meets one or more of the following conditions:

- (i) Due to deterioration of the person's health he/she is no longer able to fulfill his or her duties of Specialist Committee.
- (ii) When a request for a voluntary withdrawal has been made by the principal to the Specialist Committee.
- (iii) If he or she violates the laws or moral codes relating to tax accountants
- (iv) When a judgment for criminal penalties has been handed to the principal. If a criminal penalties based on applicable laws has been served on the principal who is a member of the Specialist Committee, withdrawal will take effect at the time of being forced out of the Specialist Committee.
- (v) When a member changes jobs and can no longer perform concurrently the duties of the committee.

GDNT staff is appointed on the basis of the person being a staff of the GDNT and if he or she changes jobs and becomes no longer a staff of the GDNT, he/she will no longer be able to fulfill the duties of the committee thus at the time of leaving the post he or she automatically is withdrawn from the membership of the committee. The above notwithstanding, if a person who has been in a teaching position at a university changes careers such as to management of an enterprise, there is no absolute requirement for withdrawal from membership but only if he is no longer able to concurrently fulfill the duties of his new post and the duties of the committee upon his application withdrawal will take effect and will constitute the withdrawal conditions outlined in (ii) above.

**Article 49. Specialist Committee Authority**

**[Explanation]**

This Article defines the authority vested in the Specialist Committee.

The Specialist Committee, in addition to the authorities contained in the Articles and

Clauses of this Law, the Article provides that he or she has following additional authority:

- (i) All tasks related to the establishment, amendment and compliance of bylaws and moral code relating to tax accountants and their execution
- (ii) Organization of the Tax Accountant Examination Committee
- (iii) Tax Accountant Examination Committee will conduct the tax accountant examination at least annually and present the qualification to become tax accountants to those successfully completing the examination
- (iv) Tasks related to presentment of tax accountant certificate and tax accountant license and all tasks related to the tax accountant registration

Those successfully completing the tax accountant examinations (including those who have received exemptions from examination subjects) can receive tax accountant license with the prerequisite of tax account registration. The tax accountant certificate must be displayed in the tax accountant office prominently where it is visible to clients and potential clients and the tax accountant license must be carried with the tax accountant can also be used as a form of identification.

- (v) Tasks relating to conducting tax account examination outside of Mongolia and to those successful candidates and who have completed tax accountant registration presenting permit to practice tax accounting in Mongolia tax accountant certificate and tax accountant license.

When conducting tax accountant examination outside of Mongolia, so long as the person fulfills the eligibility requirements foreign nationals may take the tax accountant examination but when the applicant successfully completes the examination (including those who have received exemptions of examination subjects) the Specialist Committee upon the applicant completing the tax accountant registration, will present a permit to practice tax accounting in Mongolia, tax accountant certificate and tax accountant license.

- (vi) With respect to the compliance of moral codes by individual tax accountants, the Specialist Committee has the obligation to autonomously or upon the request of a taxing agency or clients will supervise the said tax accountant's practice of tax accounting and report the results to the Director General of the GDNT.

This provision makes clear that the Specialist Committee's authority for supervision covers the entire tax accounting practice and provides that such

supervision can be performed autonomously by the Specialist Committee or upon request from a taxing agency or clients and in either case the results will be reported to the Director General of the GDNT.

- (vii) Supervision function against tax accountants who violate laws and moral codes established by the Specialist Committee and expunge said tax accountant's registration or issue suspension of tax accounting practice.
- (viii) This Article makes clear that it has, in addition to the authority for revocation as outlined in the clauses in the Law Article 19, it has the authority to implement expunging of tax accountant registration upon a tax accounting practice prohibition notice issued by the Director General of the GDNT and it can also expunge registration or issue suspension of tax accounting practice action to tax accountants who violates the tax accountant's moral codes as established by the Specialist Committee.
- (ix) Various training programs and the registration renewal training contracted to and conducted by the GDNT training department is extremely important to the tax accountant as a professional involved in taxation, in order for the tax accountant to be up to date and understand the tax system and various items relating to the execution of tax administration for the tax accountant to perform tax accounting practice fairly and justly. This provision has been established in order to ensure the implementation of most suitable training through contracting this most important component to the GDNT training department.
- (x) Support and make suggestions to the GDNT with respect to improvements in the implementation of tax laws and development of management measures. This provision has been developed as although improvements of operations related to the implementation of tax laws and development of management measures are properly in the sphere of the GDNT's functions, there is a need, also from the point of view of fostering the development of tax accountants, of the Specialist Committee to cooperate with the GDNT in achieving such ends by independently taking on development function which is properly the GDNT's prerogative and propose measures to the GDNT. By this, depending upon the circumstances opens a way for the GDNT to offer direct financial assistance for these endeavors.
- (xi) Conduct public relations relating to taxation and performance of various measures

to implement the same.

Tax accountants are professionals in the field of taxation and it is necessary for the tax accountant to conduct public relation measures toward the taxpayers with regard to taxation but this Article provides for the Specialist Committee, independently from the GDNT, to undertake various public relations efforts to contribute to the maintenance of the self-assessment system of taxation and its development.

- (xii) Support operations to universities and other institutions (includes administrative agencies) that are conducting tax education or training.

This Article provides that the Specialist Committee, having a public character, is able to provide assistance to universities and other institutions that are providing tax education to persons who are candidates for future tax accountants and to agencies (including administrative agencies) that are providing tax training.

- (xii) Specialist Committee has the right to request appropriate compensation for the conduct of all operations relating to tax accountant examinations, issuance of permit for tax accounting practice, tax account certificate and tax account license issued at the time of performance of tax accounting practice, and conduct of various training for the tax accountants.

#### **Article 50. Accounting Report for the Specialist Committee**

##### **[Explanation]**

This Article provides for the accounting aspects of the Specialist Committee.

- (i) The operating budget of the Specialist Committee shall be met from the proceeds of compensation for service provided as provided for in this Law Article 49. It stipulates that as the Specialist Committee exists for the tax accountants, all expenses incurred by the Specialist Committee shall be met from the proceeds of the compensations received under this Law Article 49.
- (ii) The Specialist Committee shall use the source of revenues for the purpose of exercising its authority. The source of revenue of the Specialist Committee is met, as noted above, from the proceeds from the compensation received for services as provided for in this Law Article 49 thus it is natural that the use of funds cannot be reckless and the Article makes clear that the uses are limited to operations the are

within the authorities provided for under this Law.

- (iii) The Specialist Committee shall submit to the Director General of the GDNT financial statements containing the details of the annual receipt and expenditures on a date specified.

This is to define specifically the accounting report by the Specialist Committee and makes clear that the Specialist Committee has the obligation to submit financial statements to the supervising entity, the Director General of the GDNT.

**Article 51. Supervision of the Specialist Committee**

**[Explanation]**

This Article stipulates that the Director General of the GDNT has the authority to exercise supervision over the operation and accounting of the Specialist Committee.

**SECTION 8**

**Mongolian Association of Tax Accountants**

**Article 52. Association of Tax Accountants**

**[Explanation]**

In view of the mission of the tax accountant, he or she must possess the character and judgment sufficient to live up to the trust placed upon him or her by the taxpayers and realizes the fair and just performance of tax obligations and possesses professional knowledge of the laws relating to taxation. For this end it is a matter of course that rather than the passive urging by the supervisory agencies such as disciplinary actions against tax accountants, it is necessary to apply oneself to undertake in-depth study of tax laws and strive for enhancement of dignity and actively work to improve the professional talents as a tax accountant. Further, in an autonomous body made up by tax accountants, mutual encouragement and voluntarily endeavor to achieve the mission placed upon tax accountants and prevent acts of violations are also necessary ingredients.

From this point of view, it is provided that the objectives of the association of tax accountants are defined to include guidance of its members, administration relating to

communications and administration relating to supervision and the tax accountants based on such intent establishes an association of tax accountants as an incorporated autonomous body, and upon registration as a tax accountant the tax accountant is automatically enrolled into the body, and he or she will operate in a system in which tax accountant registration equals immediate enrolment.

**(1) Establishment of Association of Tax Accountants**

This Article is a provision relating to the association of tax accountants. Firstly, an Association of Tax Accounts can be established for each jurisdictional district of each National Tax Bureau. Therefore, in principle, for each National Tax Bureau using its jurisdictional district as a district one association of tax accountants would exist. However, it stipulates that the association of tax accountants to which non-residents of Mongolia belongs will be restricted to the association of tax accountants in the Ulaanbaatar National Tax Bureau jurisdictional district.

**(2) Purpose for the Association of Tax Accountants**

Association of tax accountants is an organization having tax accountants as its members and is an autonomous association of tax accountants. Moreover, there is expectation for results from tax accountant, as a professional dealing in taxation, engaged in the realization of fair and just compliance of tax obligations. Tax accountants who shoulder such mission and professional responsibilities should not be complacent with just meeting the demands of the GDNT, its supervisory agency, but must actively make own efforts to improve and advance in the practice of tax accounting and have consideration for the sound tax operations.

Association of tax accountants is established for the purpose of providing guidance to branches and members, perform administrative tasks relating to communications and supervision to contribute to the compliance of tax accountant's responsibilities and to improvements and advances in the tax accounting practice, in order to fulfill the tax accountants' mission and professional responsibilities.

**(4) Stature of Association of Tax Accountants and Restrictions on the Nomenclature**

Association of tax accountants is an incorporated judicial person under the provision of

the Tax Accountant Law. The objectives set for the association of tax accountants is substantial and its mission is important and within the name the phrase “association of tax accountants” must be included and other organizations other than association of tax accountants unless specifically permitted under other laws may not use the nomenclature of “association of tax accountants” (Law 68).

### **Article 53. Rules of the Association of Tax Accountants**

#### **[Explanation]**

This Article contains provisions regarding establishing an association of tax accountants.

When tax accountants wish to establish an association of tax accountants, rules for the associations must be drafted and the rules must be approved by the Director General of the GDNT.

As the operation of the association of tax accountants has a material effect on the operation of tax administration, the Article provides for the requirement for the Director General’s approval.

#### **(1) Items Contained in the Rules and Application**

The rules of association of tax accountants must contain, at the least, the following: (i) name of the association of tax accountants and the location of its office, (ii) rules concerning the enrolment and withdrawals of members, (iii) rules regarding officers, (iv) rules regarding meetings, (v) rules regarding retention of tax accountant’s dignity, (vi) rules regarding supervision of staff and other employees involved in tax accounting practice, (vii) rules regarding membership fees, and (viii) rules regarding general affairs and accounting.

- (i) With respect to the name of the association and location of its office, if in addition to its main office subsidiary offices are established, the locations of such subsidiary offices must also be listed (office set up for the purpose of communication with association of tax accountants of the branch is not considered a subsidiary office).
- (ii) With respect to enrollment and withdrawal of members, since tax accountants are automatically enrolled at the time of tax accountant registration, the items relating to this and regarding transfers of members among associations and define the



- causes of and procedures for enrolment, withdrawal.
- (iii) The rules regarding officers must establish provisions regarding the types of officers and method of appointment, and the term of office. Each association must have the posts of chairman and vice chairman the rules must define the other officer posts and the number. When an association of tax accountant establishes a post with an appropriate title, if the post is an officer's post it must be contained in the rules of the association but if it is not an officer post, there is no need for inclusion.
  - (iv) Rules regarding meetings must define the types of meetings, composite members, holding meetings, methods of resolution and agenda items. As the association of tax accountants is an autonomous association, it would be desirable to have all material items of the association determined through meetings and the Tax Accountant Law provides that at the least amendments to the association rules, budget and closing of the accounts be approved by a vote in a general meeting.
  - (v) Tax accountants with their mission and professional responsibilities are required to have high level of dignity and learning and the association is an organization to achieve such objectives, thus, maintenance of dignity are of paramount importance among the rules. Association of tax accountants must voluntarily strive for the mutual maintenance of dignity and enhancement of professional talents among the members thus in this section the rules must define discipline and punishment.
  - (vi) When an employer employs an employee for the purpose of engaging in employer's business, it is matter of course for the employer to be imposed with the responsibility for supervision but the tax accountant qualification is a personal one and the practice is one that is of highly public in nature and given exclusivity, any act of an employee damaging the trust of the tax obligors must not be allowed to take place and considering the importance of the concern, this item has been included in the association rules.
  - (vii) Association of tax accountants in order to act autonomously must have association dues to maintain such activities and rules must define the methods of determination of the dues, amount of dues, collection of dues and remedies in cases of nonpayment of dues. The method of determination of dues is an item that is solely determined in the rules but with respect to the amount of the dues, there is no need

for equality across all members and existence of differentials among members is of no concern. As to the remedies against nonpayment of dues, although those who fails to pay dues without due reason may be subjected to disciplinary action under the Tax Accountant Law for failing to perform the obligation to observe association rules, but it is not simply an issue of such legal issues but those who fail to bear the burden of the autonomous association must be treated as lacking in the dignity and qualities required of a tax accountant.

- (viii) Since the association of tax accountant is an autonomous association, the decision making of the association and other fundamental principles should be passed at the general meeting following the opinions of the overall membership. However, tasks such as general affairs and collection of dues and expenditure of expenses will require a person to take charge. The rule needs to decide how such general affairs and accounting be dealt with and what type of staff should be placed in charge.

The above are the required items for the rules of the association and any rules must contain at least those items.

## **(2) Amendments to the Association Rules**

Rules of the association are the basic laws of the association of tax accountants and the operation of the association is based on the rules of the association. Therefore, the Article provides that all amendments to the rules of the association require the approval of the Director General of the GDNT. Further, considering that amendments to the association rules is such an important item on the agenda it should require a special general assembly vote with a quorum of at least one half of the members and amendment be approved by at least two thirds of the members present (normal general assembly item will require presence of at least one half of the members and a simple majority).

## **Article 54. Timing of Formation**

### **[Explanation]**

This Article provides for the timing of the formation of association of tax accountants. Formation of an association of tax accountants has special significance to the tax accountants and related parties, and taking into consideration the particular deep

relationship with the general society, it provides that the founding general assembly and approval of the Director General of the GDNT are insufficient and only upon completion of registration will the association's formation be finalized.

#### **Article 55. Registration**

##### **[Explanation]**

This Article deals with items regarding registration of the association of tax accountants. The items that need to be contained in the registration are: (i) purpose and operations, (ii) name, (iii) office, (iv) name, address and qualification of the person who has the authority to represent the association, (v) if period of existence or reasons for the dissolution have been determined record such period or reasons. When a necessity arises for amendments, such amendments must be registered within 2 weeks of the date of occurrence of such change.

#### **Article 56. Enrolment and Withdrawal**

##### **[Explanation]**

This Article provides for the enrolment into and withdrawal from the association of tax accountants.

A tax accountant upon being registered as a tax accountant will automatically be enrolled as a member of an association of tax accountants established in a district in which the tax accountant office is located. A system where registration equals instantaneous enrollment is adopted. The intent behind this is due to the rationale that as the association of tax accountant is an organization for the purpose of achieving improvements and advancements in the practice of tax accounting and those with tax accountant qualifications and registered as a tax account should naturally be a member of the association.

A tax account when fulfilling one of the following conditions, as a matter of course, shall withdraw from the association: discontinuance of tax accounting practice, death of the tax accountant, disqualification as a tax accountant, revocation of tax accountant registration etc.

Also since registration equals instantaneous enrollment, when a tax account relocates the tax accounting office to a location outside of the district in which the tax accountant

maintains membership in the association of tax accountants or if there are changes to the district where the association of tax accountants is established and the location of the tax accountant office no longer is within the defined district of the association of tax accountants, naturally upon such relocation or change, the tax accountant will withdraw from the present association and enrolled in association of tax accountants established in the district to which the office is relocated or changed as a result of a move or changes to the district.

**Article 57. Officers**

**[Explanation]**

This Article provides for the officers of an association of tax accountants.

Association of tax accountants shall have a chairman and a vice chairman and other officers as defined by the rules of the association and the title, the number and the term of office must all be defined by the rules of the association.

The chairman is a post that represents the association of tax accountants and integrates all affairs of the association and the vice chairman provides assistance to the chairman in carrying out his roles and should the chairman become incapacitated due to events outside his control the vice chairman will act on behalf and when there is vacancy in the post of chairman, the vice chairman will assume chairman's duties

When there is more than one vice chairman, the chairman will decide the choice of vice chairman and the manner in which the chairman's duties should be performed.

**Article 58. General Meeting**

**[Explanation]**

This Article deals with the general meeting of the association of tax accountants.

General meeting can be divided into regular general meeting and extraordinary general meeting.

A regular general meeting must be held by an association of tax accountants at least annually. Normally, budget and closing of accounts, operational report and other reports of the year's business as well as operating plans and budgets for the following year etc. are deliberated.

Extraordinary general meetings, on the other hand, are called ad hoc as required and in

many cases are called to deliberate urgent items. The rules of the association will determine the occasions, which will constitute grounds for calling extraordinary meetings Of the operations of the association of tax accountants, as to which items would require a resolution of the general assembly, the Tax Accountant Law provides that amendments to rules of the association, budgets and closing of the books require the approval of the general assembly but other items are left to be defined by the association rules. Therefore, amendments to the association rules, budget and the closing of the books will be items that will be a resolution item for the general assembly, it would be desirable to have the operation of the association follow the members wises and run democratically and important items for the association of tax accountants be resolved in the general meeting. Further, it should be provide that an association of tax accountants when calling a general meeting, in accordance with the rules of the association, a notice in writing containing the time, date, location and purpose of the meeting, be given to the member tax accountants by 2 weeks before the day of the meeting.

The items for the general meeting of the association of tax accountants, other than items such as amendments to rules of the association and items specially required by the rules of the association will be decided by a simple majority of the quorum which is defined to be at least one half of the membership.

Tax accountant should personally attend the general meetings to deliberate the agenda but those who are not able to attend can entrust to a party who will be in attendance with a notice of yea or nay in writing on an agenda item and persons who are exercising his right of vote through a proxy should be considered to be present for the purpose of counting for a quorum. Member in this case means a member to whom the notice of holding of general meeting of the association of tax accountants should have been sent.

#### **Article 59. Report of Resolutions of the General Meeting**

##### **[Explanation]**

This Article provides for reporting of resolutions passed by the general meeting of the association of tax accountants.

Association of tax accountants in its operation of its business is under the supervision of the Director General of the GDNT, the Article provides that it must report resolution of the general meeting and appointment and retirement of officers to the Director General of

the GDNT.

**Article 60. Proposals**

**[Explanation]**

This Article provides for making proposals and reports by the association of tax accountants.

Tax accountants as professionals regarding taxation and possess broad base of knowledge and deep insight into tax administration and the tax system, and this Article enables tax accountants to put together opinions within the association of tax accountants which is an autonomous association of tax accountants and make proposals to the Director General of the GDNT or enables making reports to demands from the Director General of the GDNT. Items to be proposed are items related to tax administration, taxation or tax accountant system; therefore, proposals can cover all areas, save for custom tariffs, of the system and its execution of taxation as well as system of tax accountants.

Proposal means to offer one's opinion and state it openly.

The GDNT, on occasions, will make inquiries to an association of tax accountants regarding tax administration, taxation, or tax accountant system and an association of tax accountants can file reports regarding such inquiries.

With respect to proposals, whether an association of tax accountant is able to make a proposal that has a differing content to a proposal submitted by the Mongolian Federation of Association of Tax Accountants to which it belongs, for items that have been approved by the Mongolian Federation of Association of Tax Accountants, that is to say by all tax accountants, it would be reasonable to have each association of tax accountants making the proposal consistent with such decisions.

**Article 61. Mongolian Federation of Association of Tax Accountants**

**[Explanation]**

This Article provides items relating to the Mongolian Federation of Association of Tax Accountants.

Mongolian Federation of Associations of Tax Accountants is the only incorporated body in the country established under the Tax Accountant Law.

Tax accountant in the country is given the powers to establish the Mongolian Federation

of Association of Tax Accountants, and the Mongolian Federation of Association of Tax Accountants is an incorporate body that is established with the association of tax accountants in the country as its members. Each association of tax accountants is naturally a member of the Mongolian Federation of Association of Tax Accountants.

The purpose of the Mongolian Federation of Association of Tax Accountants, in consideration of the mission and professional responsibilities of tax accountants, to make contribution to the tax accountants' compliance of obligations and to the improvements and advancements in tax accounting practice, perform operations relating to the provision of guidance to associations of tax accountants and their members, communications and supervision.

Mongolian Federation of Association of Tax Accountants in order to achieve the above objectives should undertake tasks including the following:

- (i) To make recommendations or issue instructions to association of tax accountants and its members necessary items related to the provision of guidance to member association of tax accountants and to its members, communication, and supervision. Supervisory tasks of the Mongolian Federation of Association of Tax Accountants toward members of associations of tax accountants are in, principle, carried out through the associations of tax accountants, for example, in issuing action to a member of an association of tax accountants member, it would not be desirable for the Mongolian Federation of Association of Tax Accountants to ignore the views of the relevant association of tax accountants and mete out the action directly.

This is rooted in the composition of the Mongolian Federation of Association of Tax Accountants. Each member of the Mongolian Federation of Association of Tax Accountants is an association of tax accountants and tax accountants are indirectly members. Therefore, it should be interpreted that when the Mongolian Federation of Association of Tax Accountants wishes to exercise its authority to supervise against individual member of each association of tax accountants, who in turn are members of Mongolian Federation of Association of Tax Accountants, in principle, it should do so using the relevant association of tax accountants and if it should exercise supervisory authority directly it should do so based only upon opinions expressed by the relevant association of tax accountants.

- (ii) To conduct examination and study with regard to the system relating to association of tax accountants.
- (iii) To conduct examination and study with respect to the improvements and advancements of association of tax accountants' members' operations.
- (iv) To undertake public relations activities with respect to system relating to tax accountants and the practice of tax accounting.
- (v) To issue membership bulletins.
- (vi) To take necessary steps relating to the training for members of the association of tax accountants.
- (vii) Other, to undertake measures necessary to achieve the Federation's objectives.

**Article 62. Membership Rules of the Mongolian Federation of Association of Tax Accountants**

**[Explanation]**

This Article provides for membership rules for the Mongolian Federation of Association of Tax Accountants.

Following must be included in the rules of the Mongolian Federation of Association of Tax Accountants: (i) name and location of its office, (ii) provisions relating to officers, (iii) provisions relating to meetings, (iv) provisions regarding maintenance of tax accountant's dignity, (v) provisions relating to membership fees, and (vi) provisions relating to general affairs and accounting.

Further it provides that changes to the rules of Mongolian Federation of Association of Tax Accountants will not take effect until the receipt of approval from the Director General of the GDNT.

**Article 63. Application of Rules Relating to Association of Tax Accountants**

**[Explanation]**

With respect to the rules of Mongolian Federation of Association of Tax Accountants regarding establishment, timing of formation, registration, officers, general meeting, reports of resolution of general meeting and presenting proposals, respective rules that exist in associations of tax accountants will be applied as is without alterations. However since the member of the Mongolian Federation of Association of Tax Accountants are associations of tax accountants, there are no applicable items for the Mongolian



Federation of Association of Tax Accountants with respect to the eligibility for membership and items relating to the enrollment and withdrawals.

Among the associations of tax accountants that are members of the Mongolian Federation of Association of Tax Accountants, there are some with large memberships and there are some with only few members; therefore, to give each member association of tax accountants a vote for the Mongolian Federation of Association of Tax Accountants general meeting may not necessarily reflect the reality thus the votes in the rules it should be structured such that the vote corresponds with the membership numbers of each association.

#### **Article 64. Revocation of General Meeting Resolution and Dismissal of Officers**

##### **[Explanation]**

This Article provides for the supervision by the Director General of the GDNT over the association of tax accountants and the Mongolian Federation of Association of Tax Accountants on important matters.

The operation of the association of tax accountants and the Mongolian Federation of Association of Tax Accountants can potentially significantly impact upon the tax administration, and in consideration of this, a provision regarding supervision over the same has been established and if a resolution passed at a general meeting of an association of tax accountants or Mongolian Federation of Association of Tax Accountants general meeting or if an act of an officer of either organization is in violation of laws, rules as established by the Specialist Committee, association rules of association of tax accountants or the Mongolian Federation of Association of Tax Accountants or otherwise is in contrary to public interests, the Director General of the GDNT may rescind the resolution of the general meeting or order the dismissal of the officer.

#### **Article 65. General Supervision**

##### **[Explanation]**

This Article provides for supervision by the Director General of the GDNT over the association of tax consultants and the Mongolian Federation of Association of Tax Accountants for general matters.

The Director General of the GDNT in addition to the special supervisory authority as

outlined in the preceding Article, reflecting the important effects the operation of association of tax accountants and the Mongolian Federation of Association of Tax Accountants have on national, regional public bodies and general taxpayers, the Article provides that in order to ensure proper operation, may as need arises, solicit opinions from these organizations, make recommendations with respect to the operations of the organizations and have staff of the GDNT inspect the state of operations or its books and other items.

## **SECTION 9**

### **Compensation for Tax Accountants**

#### **Article 66. Compensation of Tax Accountants**

##### **[Explanation]**

This Article provides for the tax accountant compensation.

It provides that tax accountant shall be able to receive compensation for the practice of tax accounting and provisions relating to the amount of compensation will be determined by the Specialist Committee.

## **SECTION 10**

### **Miscellaneous Rules**

#### **Article 67. Limitation of Tax Accounting Practice**

##### **[Explanation]**

This Article defines the limitations to the practice of tax accounting.

Persons who are not tax accountants, except when specifically permitted by the Tax Accountant Law, shall not practice tax accounting.

Because of the substantial impact that the conduct of tax accounting practice has on national, regional public bodies and general taxpayers and the strong public interest

orientation of the practice a restrictions have been placed upon the practice of tax accounting.

Practice of tax accounting is limited to those activities defined in Article 2.

Those who violate this provision shall be provided with a punishment of imprisonment for a period not to exceed 2 years or a fine not to exceed 300,000 Tg (Law Article 73).

#### **Article 68. Restriction on the Use of the Nomenclature**

##### **[Explanation]**

This Article is a provision the defines the restrictions against the use of the nomenclature of tax accountant, or tax accountant office and association of tax accountants and Mongolian Federation of Association of Tax Accountants.

Practice of tax accounting is a practice held exclusive to tax accountants therefore unless the use of the title of tax accountant or the tax accountant office is prohibited its effect will not be sufficient and at the same time, the title of tax accountant has been give its own inherent concessions and this needs to be protected.

In the same vein the use of the names association of tax accountants and the Mongolian Federation of Association of Tax Accountants by third parties needs to be prohibited and these nomenclature and its inherent privileges must be protected.

#### **Article 69. Obligation of Employees of Tax Accountants to Maintain Confidentiality**

##### **[Explanation]**

This Article provides for the obligation of the employees of the tax accountants to maintain confidentiality.

For the tax accountant there is a provision prohibiting the tax accountant from without due cause confidential information gained in the course of performing the practice of tax accounting divulge or use the same without permission (Law Article 31) but the same can be said of employees of tax accountants thus the obligation for maintenance of confidentiality is imposed on the employees of the tax accountants. In another words, tax accountant's staff and other employees, without due cause, divulge confidential information gained in the course of performance of the practice of tax accounting to a third party or use the same without permission and this prohibition will remain in effect even after the person is no longer a staff or other employee of a tax accountant.

With respect to as to what is “due” cause, it refers to situations where the principal has given his or her consent or situation such as being summoned as a witness in a court of law where the person is forced to divulge the confidential information and the scope should be interpreted in the same way as the scope of the obligation of the tax accountant to maintain confidentiality.

#### **Article 70. Supervisory Measures**

##### **[Explanation]**

This Article provides for the authority of the Director General of the GDNT over the tax accountants.

The Director General of the GDNT, when it is necessary to ensure a proper operation of the tax accounting practice, may solicit reports from tax accountants or through a staff question the tax accountant or inspect the books relating to the said practice. It is provided that a part of this authority of the Director General of the GDNT may be delegated to Bureau head of the National Tax Bureau or the head of a tax office (Law Article 71).

If the tax accountant fails to report or submits a falsified report, do not respond to questions or make false responses, or refuses, hinders or evade inspections said tax accountant shall be levied a fine not to exceed 100,000 Tg (Law Article 77).

#### **Article 71. Delegation of Administration**

##### **[Explanation]**

This Article provides for the delegation of a part of the administrative tasks assigned to the Director General of the GDNT under the Tax Accountant Law to the head of the National Tax Bureau or to the head of a tax office.

It enables a part of the administrative tasks listed below to be delegated by the Director General of the GDNT to the head of the National Tax Bureau and to head of tax offices:

##### **I. Administrative tasks to be given to Head of National Tax Bureau**

- (1) Soliciting reports from tax accountants
- (2) Question tax accountants or administrative tasks relating to inspection of books relating to the said practice

2. Administrative tasks to be given to the heads of tax offices

- (1) Soliciting reports from tax accountants
- (2) Question tax accountants or administrative tasks relating to inspection of books relating to the said practice

## **SECTION 11**

### **Penalties**

#### **Articles 72 – Article 78**

##### **[Explanation]**

Of the penalties the most severe is the penalties assessed for the tax accountant violates the prohibition against aiding and abetting tax evasion in the course of his duties as a tax accountant and in such cases the tax account is assessed an imprisonment for a period not to exceed 3 years or a fine not greater than 1,000,000 Tg (Law Article 72).

The next most severe penalties are assessed on those violating the restrictions against the tax accounting practice and impose imprisonment for a period not to exceed 2 years or a penalty not to exceed 300,000 Tg (Law Article 73).

If a tax accountant or his staff violates the obligation to maintain confidentiality he or she will be assessed a penalty of imprisonment for a period not to exceed 2 years or a fine not to exceed 200,000 Tg.. However, this penalty is only applicable when there has been a charge brought against the tax accountant or his or her staff (Law Article 74).

(i) If those who have been a civil servant in a national or regional public body violated the restrictions placed upon the post or a tax accountant who holds another free occupation having been suspended from practice and violated the restriction against practice of tax accounting (Article 37) and (ii) those who, as a result of a disciplinary action, have been suspended from the practice of tax accounting and has violated the suspension (Article 39 and Article 40) will each be served with imprisonment for a period not to exceed 1 year or a fine not to exceed 200,000 Tg (Law Article 75).

Those who violate the restrictions against the use of the nomenclature of tax accountant, tax accountant office, association of tax accountants, or Mongolian Federation of

Association of Tax Accountants will be served with a fine not to exceed 200,000 Tg (Law Article 68).

Tax Accountant or association of tax accountants or Mongolian Federation of Association of Tax Accountants violates its reporting obligations to a supervisory body or fails to submit to an inspection a fine of an amount not to exceed 100,000 Tg will be levied (Law Article 77).

If these acts of violation are committed under a judicial entity name or as an employee of another in addition to punishing the party committing the act, the judicial entity and the person shall also be subject to punishment (Law Article 78).

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