



A GUIDE TO EFFECTIVE CRIMINAL

TAX **INVESTIGATIONS**

VOLUME 1



GUIDE

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Foreword

We are honoured to write the foreword for this important handbook which has been developed by experienced tax investigators in collaboration with technical and legal experts.

The Handbook on effective Criminal Tax Investigations addresses a lacuna in literature and will benefit Tax Investigators, Prosecutors and relevant stakeholders in virtually all aspects of what is key for effective Tax Investigations. It not only speaks to the investigative processes, but also covers the law, principles and best practices for effective criminal tax investigations.

Special recognition goes to the passion and commitment of Mr. Julius Bichumi (OBR), Ms. Angella Muneni (TRA), Ms. Donna Ayebare Sekitoleko (URA), Ms. Irene Muthee (KRA), Mr. Akuei Kuereng (NRA), Mr. Emmanuel Medalakini (TRA), Mr. Auni Lada (TRA), Mr. Stone Mugisha (RRA) and Ms. Uwera Marie Jeannette (RRA), who took time in spite of their busy schedules to develop and constitute this Handbook.



Abbreviations

EAC	East African Community
EACCMA	East African Community Customs Management Act
EARACG	East African Revenue Authority Commissioner General
EARACTI	East Africa Revenue Authority Commissioner Tax Investigations
EARACTI- TC	East Africa Revenue Authority Commissioner Tax Investigations Technical Committee
LPFNF	Loi N0 1/12 du 25 Novembre 2020 relative aux procedures fiscales e et non fiscales
OECD	Organization for Economic Cooperation and Development.
PEP	Politically Exposed Person
RA	Revenue Authority 2015
SSP	South Sudanese Pounds
TA	Taxation Act, 2009 (R.E 2022)
TAA	Tax Administration Act, 2019
TID	Tax Investigation Department
TPA	Tax Procedures Act, No. 29 of 2015
TPL	Tax Procedure Law, No. 020 of 2023
TPCA	Tax Procedure Code Act, 2014



Introduction

There is no basic template for adoption in the conduct of criminal investigations in the EAC region. Criminal investigations can be imprecise undertakings, often performed in reaction to unpredictable and still-evolving events with incomplete information to guide the process.

This guide outlines the law, principles and best practices with the goal of providing practical tools to ensure successful investigative processes and practices. Most importantly, this book informs you on how to approach investigations by adopting “best practices.”

The overall goal of this handbook is to;

- * Act as a guide to effective tax investigations.
- * Improve the quality of criminal tax investigations.
- * Increase the yield of successful prosecutions (convictions of fraudulent tax evaders.)
- * Enhance continued detection, disruption and deterrence of tax fraud schemes.
- * Instil confidence in the fair administration of tax processes and procedures, thereby boosting voluntary compliance.



“Evidence forms the building blocks of the investigative process and for the final product to be built properly, evidence must be recognized, collected, documented, protected, validated, analyzed, disclosed, and presented in a manner which is acceptable to the court.”

INVESTIGATIONS

MANDATE of TIDS

A black calculator is positioned in the lower-left foreground. Behind it, a document with various numbers and handwritten notes is visible. The numbers include 373 0, 109 0, 96 73, 99 31, 99 80, 7 076, 7 935, 28 331, 369 491, 1 033 850, 5 063 875, and R 35 414. Handwritten notes include "Start at monthly" and "Can he do this?".

Unlike Tax Audits, Tax Investigations are carried out based on available, precise and definite evidence of taxpayers' misconduct and deliberate actions and/or omissions resulting to tax evasion. Tax audits on the other hand are ordinary routine inspections on a taxpayer's financial records and supporting documents, which substantiate the position in a tax return without any suspicion of fraud.

The mandate to carry out criminal tax investigations of tax fraud offences is vested in the tax investigation function of RAs. It is focused on the enforcement of tax laws with an aim to occasion deterrence, foster compliance and instil confidence in the tax systems in accordance with the applicable laws, procedures and processes.



RATIONALE of THE HANDBOOK

SAMPLES

The rationale of the handbook is to guide investigators into the suggested practices of investigative response. This is in order to prepare them to explain their thinking and actions to the court and is an effort towards standardisation of criminal tax investigations within the EAC region.

LEGAL CONCEPTS & GENERAL PRINCIPLES OF CRIMINAL LAW IN RELATION TO TAX INVESTIGATIONS.

1. Evidence

The term “evidence” as it relates to investigations, speaks to a wide range of information sources, which inform court in order to help prove or disprove points at issue before the trier of fact.

Each piece of evidence will be considered based on its weight, integrity and/or the persuasive value that the court assigns to it. It should be able to prove a point in question for the case being heard.

2. Actus Reus and Mens Rea

Actus reus is a Latin term translated as “the guilty act” or “the criminal act”, while Mens rea means “guilty mind” - the intent to commit a crime.

For any specific offence, the actus reus is described by the wording of the statute that prohibits the conduct. The mens rea, on the other hand seeks to determine if the accused person had the intent to commit the offence.

3. Prima Facie Case, Elements of the Offence, and the Criminal Information (Charge)

Prima facie means at first sight, and is the minimum amount of evidence required to prove each element of a formal charge against the accused.

The elements of an offence include proving the specific acts alleged in the offence. It is the presentation of evidence that, if believed, would establish each of the elements necessary for the prosecution to succeed.

In assessing whether a prima facie case is made, the trier does not decide whether the evidence is likely to be believed, but merely whether, if it were, it would establish the necessary elements for a conviction.

4. The burden of proof

The prosecution has the task of proving the guilt of the person charged with an offence beyond reasonable doubt. This is to mean that it is not up to the accused to prove their innocence.

5. Double jeopardy.

The principle of criminal law called the ‘double jeopardy rule’ is that no person should be punished more than once for the same offence, and that no person ought to be placed twice in jeopardy (at risk) of being convicted. This means that a person who has been charged, tried and acquitted cannot be charged again for the same matter. 8



FUNDAMENTAL RIGHTS AND FREEDOMS OF TAXPAYERS UNDER INVESTIGATION.

The 10th Principle of the OECD Global Principles demands that Taxpayers suspected or accused of committing a tax crime must be able to rely on basic procedural and fundamental rights. These rights are constitutionally protected and more so enshrined in various International Instruments ratified by EAC jurisdictions.

As such, breach of these rights of a taxpayer may attract adverse legal consequences that may disadvantage tax fraud investigations. Investigators are called upon to uphold these rights even as they conduct their investigations.

These include, though are not limited to the following:

- a) The right to a presumption of innocence
- b) The right to be advised of the particulars of what one is accused of
- c) The right to remain silent; not to incriminate oneself
- d) The right to interpretation and translation
- e) The right to access documents and case material, also known as a right to full disclosure
- f) The right to a speedy trial
- g) The right to protection from double jeopardy
- h) The right to confidentiality within the applicable laws in respect of their personal rights to privacy
- i) The right to expect fair, just and impartial treatment during investigations
- j) The right to be informed of their rights, including the right to object and appeal against a tax decision as provided in law.
- k) The right to be represented by an advocate, tax agent or tax consultant of their choice.



POWER of the INVESTIGATORS UNDER EACCMA

The 3rd Principle of the OECD 10 Global Principles stipulates that jurisdictions must have appropriate investigative powers to successfully investigate tax crimes.

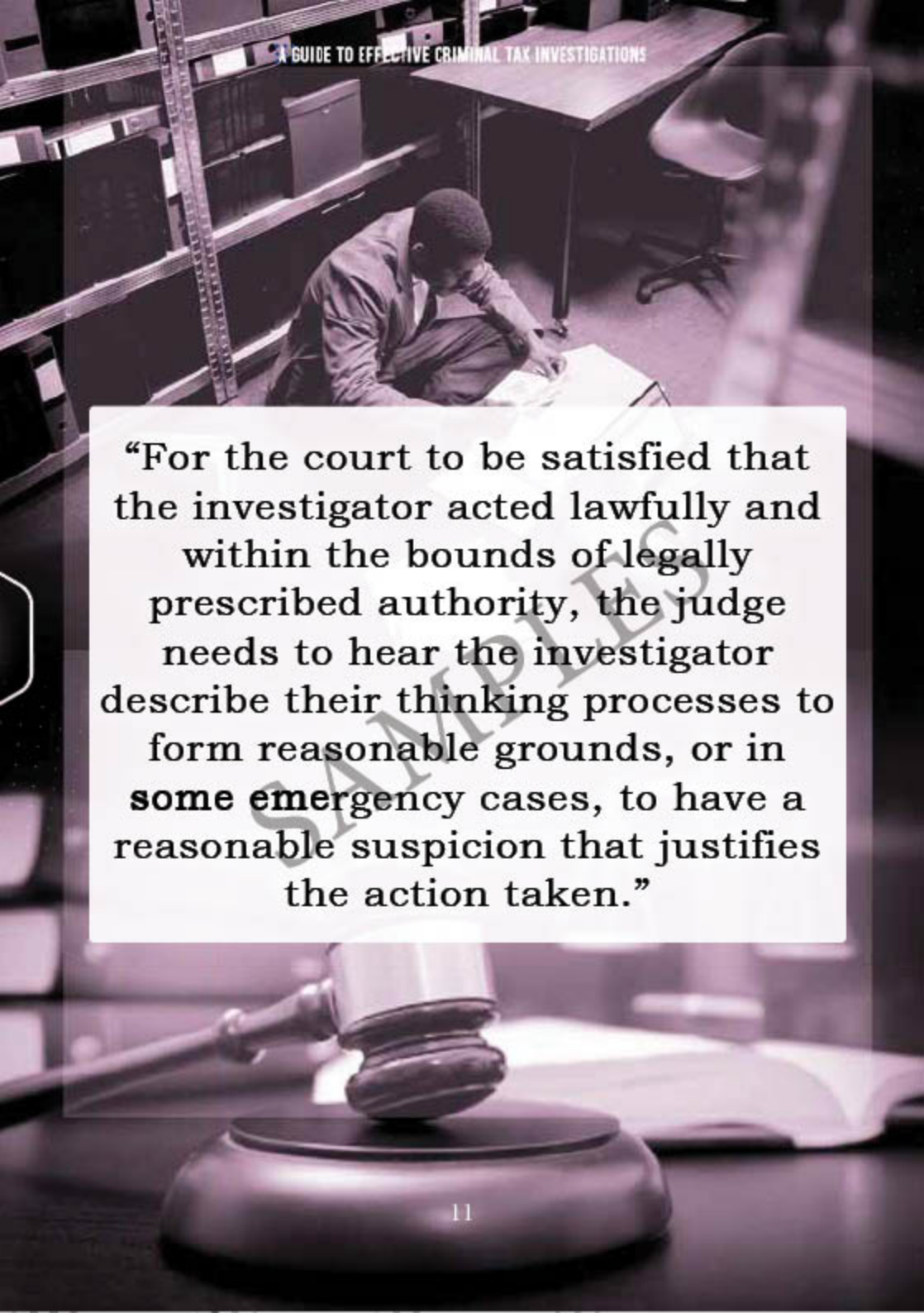
Investigations serve to establish either inculpatory (incriminating) or exculpatory (exonerating) evidence. For this reason, jurisdictions must have appropriate range of investigative powers that are necessary to obtain requisite information to successfully investigate tax crimes.

The nature and extent of investigatory powers may vary from jurisdiction to jurisdiction. Some RAs are directly empowered to conduct investigations while others may seek the intervention of Law Enforcement Authorities such as police.

Investigative powers of RAs are aimed at enabling access to information for easier determination and establishment of culpability on commission of tax offences.

Notably, the legal procedures of the different jurisdictions should be adhered to while invoking the investigatory powers.

For this reason, Section 7 of EACCMA donates powers of police officers to proper officers for the purposes of undertaking effective investigations.

A person in a suit is sitting at a desk in an office, looking at papers. The background shows office shelves and a desk with a chair. The text is overlaid on a white box in the center of the image.

“For the court to be satisfied that the investigator acted lawfully and within the bounds of legally prescribed authority, the judge needs to hear the investigator describe their thinking processes to form reasonable grounds, or in **some emergency cases**, to have a reasonable suspicion that justifies the action taken.”

Powers of an Investigator in conduct of investigations of Customs Offences

POWERS/PRIVILEGES

LEGAL PROVISION

Power to enter premises and stop vehicles, etc., without warrant

Sec.153 EACCMA

Power to arrest

Sec.156 EACCMA

Power to search without warrant in special circumstances

Sec.155 &157 EACCMA,

Power to search with warrant

Sec 158 EACCMA

Power to search a person

Sec 155 EACCMA

Stoppage and detention

Sec.156(2) EACCMA

Power to search a person

Sec 155 EACCMA

Protection from personal liability

Sec.153 & 250 EACCMA.

Power to require production of document, any book or any things kept under the provision of the customs laws

Sec. 157 (2) (a) EACCMA

Power to examine and take copies of books or documents required under the provision of the customs laws

Sec. 157 (2) (b) EACCMA

Power to seize and detain any books, documents or anything believed to afford evidence of commission of offence under ECCMA

Sec 157 (2) (c) EACCMA

Power to require an owner or occupier to answer a question relating to any book, document or thing to any declaration in such books or document

Sec. 157 (2) (d) EACCMA



POWERS/PRIVILEGES

LEGAL PROVISION

Power to require any container, envelop or other receptacle in the premises to be opened

Sec 157 (2) (e) EACCMA

Power to open and examine any package, goods or material in the premises at the risk and expense of licensee, owner or occupier.

Sec 157 (2) (f) EACCMA

Power to take and retain without payment reasonable sample of goods or material deemed necessary in performance of duties

Sec 157 (2) (g) EACCMA

Power to lockup, seal, mark or otherwise secure any premises, room, place, equipment, tank or container.

Sec 157 (2) (h) EACCMA

Power to seize and carry away any uncustomed goods or documents upon a search of any premises.

Sec 157 (3) EACCMA



Powers of an Investigator in conduct of Investigations on Domestic Tax Offences

Investigators under different jurisdictions have powers similar to those of police enshrined in their various domestic tax legislations to enable the conduct of effective investigations.

POWERS/PRIVILEGES	LEGAL PROVISION
1. Power to inspect goods and records	Sec 58 TPA, Kenya Sec 41 (ii) TPCA, Uganda
2. Power to require production of documents for examination	Sec 59(1) (a) TPA, Kenya Sec 42 (1)(a) TPCA, Uganda
3. Power to require to be furnished with information relating to tax liability of any person	Sec 59(1) (b) TPA, Kenya Sec 42(1)(a) TPCA, Uganda
4. Power to require attendance for purposes of giving evidence and Summons to appear before Commissioners.	Sec 59(1) (b) TPA, Kenya Sec 42(1)(a) TPCA, Uganda
5. Power to access buildings, place, property, documents, Data storage devices e.t.c (with warrant)	Sec 60(1)TPA, Kenya Sec 41 (1)(a)(i), TPCA, Uganda
6. Power to seize, retain and make copies of documents	Sec 60(3)TPA, Kenya Sec 41(1)(b)(c) TPCA, Uganda
7. Power to seize and forfeit goods	Sec 44 TPA, Kenya
8. Power to require an owner/ lawful occupier/ employee to answer questions relating to documents/information obtained from a building/place	Sec 60(3)(d) TPA, Kenya Sec 41(2)(3)(a) TPCA, Uganda
9. Power to issue Departure Prohibition Orders	Sec 45 TPA, Kenya

STAGES OF INVESTIGATION AND SUBSEQUENT BEST PRACTICE.

Below is a suggested sequence;

Investigation stages	Technique /Approach	Best practice
Case selection		Case selection criteria i. Estimated tax ii. Fraud indicators iii. Involvement of PEPs and High Profile Individuals iv. Similar previous investigations v. Public interest
Pre-analysis		a. Prosecution checklist informed by covertly collected intelligence
Investigation planning		a. Work plan guided by SLA and taxpayer's charter
Execution of investigation	Technique /Approach	Best practice
i. Securing covertly obtained evidence in a manner admissible in Court ii. Securing of corroborative evidence iii. Assets tracing to support possible preservation orders or agency notices. iv. Collaborative activities e.g. Exchange and sharing of Information	Search and seizure.	a. Introduction letter b. Search warrant c. Search without warrant where the law permits d. Witnessed and signed off inventory form e. Maintenance of proper chain of custody
	System Data and third Party information acquisition and management	a. Formal request letters b. Prescribed computer printout certificate/ Witness statement/affidavit (For Bank statements) c. Certification of documents for court purposes. d. Maintenance of chain of custody e. Faceless reconciliation of evaded tax amount.

STAGES OF INVESTIGATION AND SUBSEQUENT BEST PRACTICE.

Investigation stages	Technique/Approach	Best practice
	Interview and statement recording	a. Inform the witness/suspect of their rights b. Proper identification of witnesses c. Deployment of best interviewing techniques (Interview Witnesses before Suspects etc) d. Comprehensive statement recording in accordance with the law.
Quality Assurance	Evidence analysis/ prosecution threshold	
Compilation of a prosecution file	a. Case Summary/ Covering report b. Charging document c. Witness statements d. Statements by the accused e. Expert witness reports f. Investigations diary g. Exhibit inventories h. Search warrants i. Authorisations to intercept private communications j. Third party information requests and feedback, etc.	
Publicity	a. Approval by Management b. Media brief/press release a day before arraignment in Court c. Social media handles d. Public Notices	
Post prosecution evaluation	a. Strategic brief on impact of the investigations (Policy changes, law, system, process and procedure reforms), and learning points b. Tactical paper mapping out identified scheme (Trend Analysis) c. Debt collection of taxes evaded	

COMMON OFFENCES AND THEIR ELEMENTS UNDER EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT (EACCMA)

Considering that the highest standard of proof in criminal trials is 'beyond reasonable doubt', elements of offences must be satisfied for court to have facts established.

Below are some common offences and elements that investigators must prove in order to sustain a conviction.

Offences	Element of Offence
1 Directly or indirectly ask for or take a reward or promise of reward not entitled to claim or receive by officer contrary to section 9 (1) (a) of the Act	<ul style="list-style-type: none"> a. Officer within the definition of the Act b. The act of asking, receiving and/or being promised a reward or security of reward not entitled to c. Specific duty of the officer
2 Conspiracy to contravene provision of this Act contrary to Section 193.	<ul style="list-style-type: none"> a. There are two or more persons b. Common intent between the persons c. Violation of a specific provision of the Act.
3 Wilful interference with the custom seal contrary to Section 195 of the Act.	<ul style="list-style-type: none"> a. Interference with the custom seal b. Deliberateness
4 Being in charge of a vehicle used in conveying goods contrary to the EACCMA 2004 contrary to Section 199 (b) (iii) of the EACCMA	<ul style="list-style-type: none"> a. Goods contrary to Sec 199(b) (iii) in transit b. Vehicle transporting goods in transit c. Accused in charge of vehicle



Offences	Element of Offence
<p>5 Being in charge of a vehicle used in conveying goods contrary to the EACCMA 2004 contrary to Section 199 (b) (iii) of the EACCMA Being in charge of a vehicle used in conveying goods contrary to the EACCMA 2004 contrary to Section 199 (b) (iii) of the EACCMA</p>	<p>a. Goods contrary to Sec 199(b) (iii) in transit b. Vehicle transporting goods in transit c. Accused in charge of vehicle</p>
<p>6 Acquisition and possession of uncustomed goods contrary to Section 200(d)(iii)</p>	<p>a. Actual or constructive possession b. The nature of goods is uncustomed c. Absence of required documents evidencing importation/exportation of uncustomed goods d. Value of the goods</p>
<p>7 Making false or incorrect entries and declarations contrary to Section 203 (a) and (b) of the Act</p>	<p>False or incorrect entries/declarations The Maker/Declarant of the false/incorrect entry or declaration. Amount of duty evaded</p>
<p>8 Interference with goods under customs control contrary to section 203(f) of the Act</p>	<p>a. Interference with goods under customs control b. The accused did the interference</p>
<p>9 Diversion of transit goods, contrary to Regulation 104 (22)</p>	<p>a. Goods are goods on transit b. Declared/gazetted transit route c. Proof of diversion from declared/gazetted transit route, d. Value of goods</p>

COMMON OFFENCES AND THEIR ELEMENTS UNDER EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT (EACCMA)

Offences	Element of Offence
10 Concealment of imported or exported goods contrary to Section 202 (a) of the Act	<ul style="list-style-type: none"> a. Importation or exportation of goods, b. Concealment of the goods c. Value of the goods involved
11 Interference with customs gears contrary to section 205 of the Act.	<ul style="list-style-type: none"> a. Interference with specific customs gears
12 Aiding the commission of an offence under the Act contrary to Section 208 of the Act.	<ul style="list-style-type: none"> a. The principal offender, b. The specific offence committed under the Act by the principal offender c. Act or omission of the abettor that enabled the commission of specified offence by the Principal offender d. The penalty prescribed for the specific offence committed by the principal offender.

SAMPLES

SOME EXAMPLES OF CUSTOMS OFFENCES WITH DECIDED CASES

Offences

- 1 Directly or indirectly ask for or take a rewards or promise of reward not entitled to claim or receive by officer contrary to section 9 (1) (a) of the Act
- 2 Conspiracy to contravene provision of this Act contrary to Section 193.
- 3 Wilful interference with the custom seal contrary to Section 195 of the Act.
- 4 Acquisition and possession of uncustomed goods contrary to Section 200(d)(iii)

Decided Cases

COURT OF APPEAL
CRIMINAL APPEAL NO.
234 OF 2021.

ANTI CORRUPTION
COURT CRIMINAL CASE
NO. 7 OF 2018

ANTI CORRUPTION
CRIMINAL CASE NO.
CO-0041/2021

COURT OF APPEAL
CRIMINAL APPEAL NO.
234 OF 2021.



SOME EXAMPLES OF CUSTOMS OFFENCES WITH DECIDED CASES

Offences

Decided Cases

5 Being in charge of a vehicle used in conveying goods contrary to the EACGMA 2004 contrary to Section 199 (b) (iii) of the EACGMA

ANTI CORRUPTION
CRIMINAL CASE NO.
CO-0041/2021

6 Acquisition and possession of uncustomed goods contrary to Section 200(d)(iii)

HIGH COURT CRIMINAL
APPEAL NO. 7 OF 2022.

COURT OF APPEAL NO.
239 OF 2015

7 Making false or incorrect entries and declarations contrary to Section 203 (a) and (b) of the Act

ANTI CORRUPTION COURT
CRIMINAL CASE NO. 7 OF
2018.

8 Interference with goods under customs control contrary to section 203(f) of the Act

ANTI CORRUPTION COURT
CRIMINAL CASE NO.
CO-017-2018

**OFFENCES AND THEIR ELEMENTS
UNDER DOMESTIC TAX LAWS FROM EAC**



BURUNDI

No. Offence & Applicable law	Element of Offence
<p>1 Non-use of E-Billings machine contrary to Article 55 of the VAT Act, 2020</p>	<ul style="list-style-type: none"> * Intent * Obligation to use E-Billing * Failure to honour obligation * Amount evaded
<p>2 Issuance of an incorrect electronic invoice which results in a reduction in the VAT due or an increase in the deductible VAT or which does not invoice an operation subject to VAT contrary to Article 56 of the VAT Act, 2020</p>	<ul style="list-style-type: none"> * Intent * Obligation to issue an e- bill * Issuance of the incorrect electronic invoice * Incorrectness of the electronic invoice * The amount of VAT reduced or increased for deductible VAT * Failure to invoice a vatable operation * VAT amount evaded
<p>3 Issue of an invoice other than that issued by the electronic machine contrary to the Article 57of the VAT Act, 2020</p>	<ul style="list-style-type: none"> * Intent * Obligation to issue an electronic invoice * Issuance of non-electronic invoice
<p>4 Failure to file tax return within the time limit contrary to the Article 59 of the VAT Act, 2020</p>	<ul style="list-style-type: none"> * Intent * Duty to file tax returns within the time limit * Due date * Failure to file tax return by due date * Period to which the failure relates * Amounts due
<p>5 Withhold tax at source and not transfer it to the Tax Administration contrary to the section.142 of the TPA</p>	<ul style="list-style-type: none"> a. Mens rea b. Duty to levy and transfer c. Proof of tax levied at source d. Lack of proof of the transferred levied tax to the tax administration authorities e. The amount levied and not transferred to the tax administration authorities

OFFENCES AND THEIR ELEMENTS UNDER DOMESTIC TAX LAWS FROM EAC

BURUNDI

No. Offence & Applicable law	Element of Offence
<p>6 Fraudulently evading or attempting to evade the settlement or partial or total payment contrary to the section 134 and 135 of the TPA</p>	<ul style="list-style-type: none"> a. Mens rea b. Duty to settle or to pay the tax c. Fraudulent act of tax evasion d. Act of attempt to tax evasion e. Amount pertaining to the alleged tax evasion or attempt f. Omission of declaration g. Lack of declaration h. Under valuation i. Act of insolvency or fraud j. The amount evaded k. Judgement on tax evasion convicting the offender l. The amount evaded
<p>7 Failing to make or cause to be made entries or to make or cause to be made inaccurate or fictitious entries in the journal or in the documents in lieu thereof contrary to the section 1360 of the TPA</p>	<ul style="list-style-type: none"> a. Intent b. Failure to make or cause to be made entries or to make or cause to be made inaccurate or fictitious entries in the journal book or documents in lieu thereof c. Documents containing inaccurate or fictitious entries d. Lack of entries e. Act to prove inaccurate or fictitious have been cause by someone f. Amount evaded
<p>8 Certify declarations without having the approval (section 27 of Income Tax Act No.1/14 of December 24, 2020) contrary to the section 137 (paragraph 3) and section 134 of the TPA</p>	<ul style="list-style-type: none"> a. Intent b. Proof of certification of declarations without having approval
<p>9 In the event of a repeat offense within a 5-year period contrary to section 140 of the TPA</p>	<ul style="list-style-type: none"> a. Intent b. Proof of occurrence commission by the same person of the same offence within a 5-year period c. Documents supporting the accusations d. Previous taken decision on the similar case of offence committed by the same person

OFFENCES AND THEIR ELEMENTS UNDER DOMESTIC TAX LAWS FROM EAC



KENYA

No. Offence & Applicable law	Element of Offence
<p>1 Failure to pay Tax by the due date contrary to Section 95 as read with 104 (1) of the TPA, No. 29 of 2015.</p>	<p>a. Taxes owing b. Due date of payment c. Non-payment by due date d. Amount of tax not paid</p>
<p>2 Knowingly omitting from returns amounts which should have been included contrary to Section 97 (a) as read with 104 (3) of the TPA, No. 29 of 2015.</p>	<p>a. Knowledge/intent b. Omission c. Amount omitted d. Returns for tax period of omission</p>
<p>3 Knowingly claiming relief or refund not entitled to contrary to Section 97 (b) as read with 104 (3) of the TPA, No. 29 of 2015.</p>	<p>a. Knowledge b. Claim of relief or refund not entitled c. The amount of relief or refund claimed d. Returns for tax period to which the claim relates</p>
<p>4 Knowingly making incorrect statement affecting liability to tax contrary to Section 97 (c) as read with 104 (3) of the TPA, No. 29 of 2015.</p>	<p>a. Knowledge/intent b. The incorrectness of the statement c. Effect on tax liability d. Amount evaded e. Returns for tax period to which the incorrect statement relates</p>
<p>5 Knowingly preparing false books of accounts or other records relating to other person or falsifying such books or records contrary to Section 97 (a) as read with 104 (3) of the TPA, No. 29 of 2015.</p>	<p>a. Knowledge/intent b. Falsity of the books of account or other records c. Identity of the other person to whom the books or record relate d. Amount evaded e. Returns for the tax period to which the false books of the accounts or other records relate</p>

OFFENCES AND THEIR ELEMENTS UNDER DOMESTIC TAX LAWS FROM EAC



KENYA

No.	Offence & Applicable law	Element of Offence
6	Deliberately defaulting on any obligation imposed under the tax law contrary to Section 97 (a) as read with 104 (3) of the TPA, No. 29 of 2015.	<ul style="list-style-type: none"> a. Intention b. Obligation imposed by tax law c. Default of the obligation d. Amount evaded e. Returns for the period to which the defaulted obligation relates
7	Use of a false PIN on a return or other document used for purposes of a tax law contrary to Section 91 TPA	<ul style="list-style-type: none"> a. Identification of the false PIN b. The return/document on which the false PIN was used
8	Failure to apply for registration as required by the law contrary to Section 90(1) of the TPA No.29 of 2015.	<ul style="list-style-type: none"> a. Obligation to register b. The law imposing the obligation to register c. Non-registration
9	Aiding or abetting an offence contrary to Section 101 of the TPA No. 29 of 2015.	<ul style="list-style-type: none"> a. The principal offender b. The specific offence committed under the Act by the principal offender c. Act or omission of the abettor that enabled the commission of specified offence by the principal offender

OFFENCES AND THEIR ELEMENTS UNDER DOMESTIC TAX LAWS FROM EAC



RWANDA

No. Offence & Applicable law	Element of Offence
1 Intentional use of forged document which is contrary to the Article 90 of TPL, 2023	<ul style="list-style-type: none"> a. Intent b. Forgery of the document c. Use of forged document d. Amount of tax evaded
2 Intentional counterfeit and use of documents or materials of the Tax Administration used for taxation contrary to the Article 90 of TPL, 2023	<ul style="list-style-type: none"> a. Intent b. Counterfeited materials c. The act of use of the counterfeited materials d. Amount of tax evaded
3 Intentional hiding of taxable goods or assets related to business contrary to the Article 90 of TPL, 2023	<ul style="list-style-type: none"> a. Intent b. Act of hiding c. Taxable goods/assets related to business d. Amount of tax evaded
4 Intentionally making a declaration indicating that the taxpayer has not made sales contrary to the Article 90 of TPL, 2023.	<ul style="list-style-type: none"> a. Intent/ knowledge b. Identification of the rightful person c. Fraudulent registration d. Amount of tax evaded

OFFENCES AND THEIR ELEMENTS UNDER DOMESTIC TAX LAWS FROM EAC



RWANDA

No. Offence & Applicable law	Element of Offence
5 Intentional fraudulent registration of trade under the name of another person contrary to the Article 90 of TPL, 2023.	<ul style="list-style-type: none"> a. Intent/ knowledge b. Identification of the rightful person c. Fraudulent registration d. Amount of tax evaded
6 Intentional hiding of accounting documents from the Tax Administration or damaging them contrary to the Article 90 of TPL, 2023.	<ul style="list-style-type: none"> a. Intent/ Knowledge b. Concealment of accounting document to be used by tax administration c. Damaged accounting documents d. Amount of tax evaded
7 Intentional use of forged accounting records contrary to the Article 90 of TPL of 2023.	<ul style="list-style-type: none"> a. Intention b. Forgery in the accounting record c. Usage of the forged accounting record
8 Fraudulent request for refund of tax contrary to the Article 91 of TPL, 2023.	<ul style="list-style-type: none"> a. Intent b. A request for refund c. Non-entitlement of refund d. Amount

OFFENCES AND THEIR ELEMENTS UNDER DOMESTIC TAX LAWS FROM EAC



UGANDA

No. Offence & Applicable law	Element of Offence
<p>1 Failing to furnish a tax return contrary to Section 54 (1) of the TPCA, 2014</p>	<p>a. Duty to file tax returns b. Due date c. Failure to furnish tax return by due date d. Period to which the failure relates e. Amount evaded</p>
<p>2 Failure to comply with obligation under the TPCA contrary to section 55 (1) of the TPCA, 2014</p>	<p>a. Obligation imposed by tax law b. Default of the obligation c. Amount evaded as a results of the failure on the obligation.</p>
<p>3 Deliberate failure to maintain proper records contrary to section 56 of the TPCA, 2014</p>	<p>a. Knowledge/intent/recklessness b. A duty to maintain a proper record c. Unavailability of proper record</p>
<p>4 Obstructing a tax officer in the performance of their duties under the tax law contrary to Section 50 (9) of TPCA, 2014</p>	<p>a. Identification of Tax officer as defined by the Act b. Specific duty of the tax officer that has been obstructed c. The act of obstruction d. Limitation of performance of duty by tax officer at the particular time.</p>
<p>5 Aiding or abetting a tax offence contrary to Section 60 of the TPCA, 2014</p>	<p>a. The principal offender b. The specific offence committed under the Act by the principal offender c. Act or omission of the abettor that enabled the commission of specified offence by the principal offender</p>
<p>6 Deliberate failure to apply for registration as required under the tax law contrary to Section 62 (a) TPCA, 2014</p>	<p>a. Knowledge/intent b. Obligation for registration under the specific tax law c. Failure to register</p>

OFFENCES AND THEIR ELEMENTS UNDER DOMESTIC TAX LAWS FROM EAC



UGANDA

No. Offence & Applicable law	Element of Offence
7 Failure to affix or activate tax stamps on good prescribed under section 19A(3) contrary to section 62B of the TPCA	<ul style="list-style-type: none"> a. Goods prescribed under section 19A(3) b. Obligation to affix or activate tax stamps on goods. c. Failure to honour the obligation d. Evaded amount
8 Printing over or defacing of tax stamps on goods prescribed under sec 19A(3) contrary to sec 62C	<ul style="list-style-type: none"> a. Goods prescribed under section 19A (3) b. Existence of tax stamps on goods c. Proof of printing over or defacing of tax stamps d. Amount evaded
9 Being found in possession of forged tax stamps contrary to section 62D of the TPCA	<ul style="list-style-type: none"> a. Forgery of tax stamps b. Possession of forged tax stamps c. Amount evaded
10 Failure of a taxpayer specified under section 73A(2) to use electronic receipting or invoicing in accordance with section 73 of the TPCA	<ul style="list-style-type: none"> a. Requirement to use electronic receipting or invoicing b. Omission to use electronic receipting or invoicing c. Amount evaded
11 Forgery or being found in possession of a forged electronic receipt or invoice contrary to section 62F of the TPCA	<ul style="list-style-type: none"> a. Forgery of electronic receipt or invoice b. Possession of forged electronic receipt or invoice c. Amount evaded
12 Interference with the electronic fiscal device or electronic dispensing control devise contrary to section 62G of the TPCA	<ul style="list-style-type: none"> a. Prohibition of Interference b. Act of Interference c. Amount evaded

OFFENCES AND THEIR ELEMENTS UNDER DOMESTIC TAX LAWS FROM EAC



UGANDA



No. Offence & Applicable law	Element of Offence
13 Failure to file an information return for purposes of Automatic Exchange of Information contrary to section 62H(a) of the TPCA	<ul style="list-style-type: none"> a. Duty to file b. Failure to file c. Amount evaded
14 Failure to maintain records for purposes of Automatic Exchange of Information contrary to sec 62H(b) of the TPCA	<ul style="list-style-type: none"> a. Duty to maintain records b. Failure to maintain records c. Amount evaded
15 Making a false or misleading statement in information return contrary to section 62H(c) of the TPCA	<ul style="list-style-type: none"> a. Obligation to make correct statement b. Falsity of the statement c. False or misleading statement
16 Omission from a statement made in the information return contrary to section 62H(d) of the TPCA	<ul style="list-style-type: none"> a. Obligation to make accurate statement b. Failure to comply with obligation.
17 Deliberate use of a false TIN on returns or other prescribed document/ or for other purpose of tax law contrary to section 57 (1) of the TPCA, 2014.	<ul style="list-style-type: none"> a. Knowledge/intent/recklessness b. Identification of the TIN being false c. Use of the TIN on returns, or other prescribed document/ or for other purpose of tax law
18 Knowingly/ recklessly making a false statement to a tax officer which is misleading in any material particular contrary to section 58 (1) (a) of the TPCA, 2014	<ul style="list-style-type: none"> a. Knowledge/intent/recklessness b. Falsity of the statement c. Identification of tax officer to which the statement was made d. Act or omission occasioned by false statement

OFFENCES AND THEIR ELEMENTS UNDER DOMESTIC TAX LAWS FROM EAC



TANZANIA

No. Offence & Applicable law	Element of Offence
1 Failure to Comply with tax law contrary to Section 82 TAA, 2019	a. Obligation imposed by Tax law b. Default of the obligation c. Amount evaded
2 Failure to pay tax on or before the date is payable contrary to Section 83 of TAA, 2019	a. Obligation to pay tax b. Default the obligation to pay any tax c. Period of payment of tax d. Amount of tax evaded
3 Makes declaration, application, return, account or other document which is false in any material particular contrary to Section 84 (1) (b)	a. Obligation to make true declaration, application, return, account or other document b. Falsity of the declaration, application, return, account or other document c. Amount of tax evaded
4 Refuse to answer any question when required to answer by an officer or make any false or incorrect statement in reply contrary to section 84 (1) (c) TAA, 2019	a. Identification of Tax officer as defined by the Act b. Specific question posed by an officer c. The omission to respond d. Falsity/incorrect statement in reply e. Amount of tax evaded
5 Fraudulent involvement in evasion of the payment of any tax	a. Obligation to pay tax b. Involvement in any fraudulent act or omission occasioning the evasion c. Amount of tax evaded.
6 Obtaining remission, rebate, refund of tax not entitled to obtain contrary to section 84 (1) (e) TAA, 2019	a. The amount of remission, rebate or refund obtained b. Non entitlement of the remission, rebate or refund obtained
7 Make false statement or false representation to obtain remission, rebate, refund of tax or tax benefit contrary to section 84 (1) (f) of TAA, 2019	a. Falsity of the statement or misrepresentation b. The false statement c. Objective of making false statement/misrepresentation

OFFENCES AND THEIR ELEMENTS UNDER DOMESTIC TAX LAWS FROM EAC TANZANIA

No. Offence & Applicable law	Element of Offence
8 Counterfeit or falsifies or uses when counterfeited or in any way falsified any document required or issued by or used for the purpose of the tax contrary to Section 84 (1) (h) TAA, 2015	<ul style="list-style-type: none"> a. Document which is counterfeited or falsified or used when counterfeited b. Usage/issued/required document for purpose of the tax c. Amount of tax evaded
9 Acquire, possess, keeps, conceals, deals with fiscal receipt or fiscal document which is false or incorrect in material particular contrary to Section 84 (1) (j) of TAA, 2019	<ul style="list-style-type: none"> a. False or incorrect fiscal receipt or fiscal document b. Acquisition, possession, keep, concealment or deals with false fiscal receipt or document c. Amount of tax evaded.
10 Making a false statement to a tax officer which is misleading in any material particular contrary to Section 84 (2) (a) TAA, 2019	<ul style="list-style-type: none"> a. Falsity of the statement b. Identification of tax officer to which the statement was made c. Amount of tax evaded
11 Failure to acquire and use electronic fiscal device upon commencement of business or operation contrary to Section 86 (1) (a) of the TAA, 2019	<ul style="list-style-type: none"> a. Obligation to acquire and use Electronic Fiscal Device b. Omission to acquire and use Electronic Fiscal Device c. Time for commencement of business d. Amount of tax evaded
12 Issue Fiscal Receipt or fiscal invoice that is correct in material particular contrary to Section 86 (1) (c) of TAA, 2019	<ul style="list-style-type: none"> a. Obligation to issue fiscal receipt or fiscal invoice b. Omission to issue fiscal receipt or invoice c. Supply of goods or service d. The act of receiving payment e. Amount of tax evaded
13 Uses electronic fiscal device in a manner that misleads the system or the commissioner contrary to Section 86 (1) (d) of TAA, 2019	<ul style="list-style-type: none"> a. Obligation to use electronic fiscal device in proper manner b. The manner in which the electronic fiscal device or machine was used c. Amount of tax evaded
14 Uses electronic fiscal device in a manner that misleads the system or the commissioner contrary to Section 86 (1) (d) of TAA, 2019	<ul style="list-style-type: none"> a. Obligation to issue fiscal receipt or fiscal invoice b. Omission to issue fiscal receipt or invoice c. Supply of goods or service d. The act of receiving payment e. Amount of tax evaded

OFFENCES AND THEIR ELEMENTS UNDER DOMESTIC TAX LAWS FROM EAC



SOUTH SUDAN

No. Offence & Applicable law	Element of Offence
1 Failure to register within one month under the tax law contrary to Section 122 (a) TA 2009 R.E 2022	a. Obligation to register within one month b. Failure to register
2 Failure to comply with the provisions of TA contrary to Section 123(a)TA	a. Obligation imposed by the law b. Failure to honour the obligation c. Amounts underpaid
3 Making any declaration , certificate , application, return, account or other document which is false or incorrect contrary to section 123A (1) (b) Taxation Act 2009 ,R.E 2022	a. Obligation to make declaration, application, return, account or other document b. Falsity of the declaration, application, return, account or other document c. Amount of tax evaded
4 Deliberate refusal to answer such question by an officer contrary to 123 (c) of Taxation Act 2009 ,R. E 2022	a. Knowledge/intent b. Identification of officer as defined by the Act c. Specific question posed by an officer d. The omission to respond e. Amount of tax evaded
5 Making a false or incorrect entry of a building, room, place or item of a plant contrary to Section 123A(1) (a)	a. False or incorrect entry b. Identification of a building, room, place or item of a plant which relate to the false or incorrect entry c. Amount of tax underpaid.
6 Obtain any remission, rebate or any refund of tax or duty which he/she is not entitled to obtain contrary to section 123A (1) (e) of the Taxation Act 2009 R.E 2022	a. Obtain remission, rebate or refund of tax not entitled b. The amount of remission, rebate or refund obtained
7 Impeding or attempting to impede administration of TA contrary to section 123B (1) of Taxation Act 2009, RE 2022	a. Identification of administration action b. The act/ attempt occasioning the impediment c. Limitation of administration of TA d. Evaded amount

OFFENCES AND THEIR ELEMENTS UNDER DOMESTIC TAX LAWS FROM EAC



SOUTH SUDAN

No. Offence & Applicable law	Element of Offence
<p>8 Obtain any remission, rebate or any refund of tax or duty which he/she is not entitled to obtain contrary to section 123A (1) (e) of the Taxation Act 2009 R.E 2022</p>	<p>a. Obtain remission, rebate or refund of tax not entitled, b. The amount of remission, rebate or refund obtained</p>
<p>9 Impeding or attempting to impeding administration of TA contrary to section 123B (1) of Taxation Act 2009 , RE 2022</p>	<p>a. Identification of administration action b. The act/ attempt occasioning the impediment c. Limitation of administration of TA d. Evaded amount</p>
<p>10 Deliberately refusing to produce required documents contrary to Section 123B(F) of Taxation Act 2009, RE 2022</p>	<p>a. Obligation to produce document b. Refuse to honour the obligation</p>
<p>11 Indirectly or directly ask for or take, in connection with the person during any payment or reward or promise contrary to Section 123C(a) of the Taxation Act 2009 R.E 2022</p>	<p>a. Officer within the definition of the Act, b. The act of asking, receiving, being promised a reward or security of reward not entitled to, c. Specific duty of the officer</p>

OFFENCES UNDER DOMESTIC TAX LAWS AND SOME DECIDED CASES



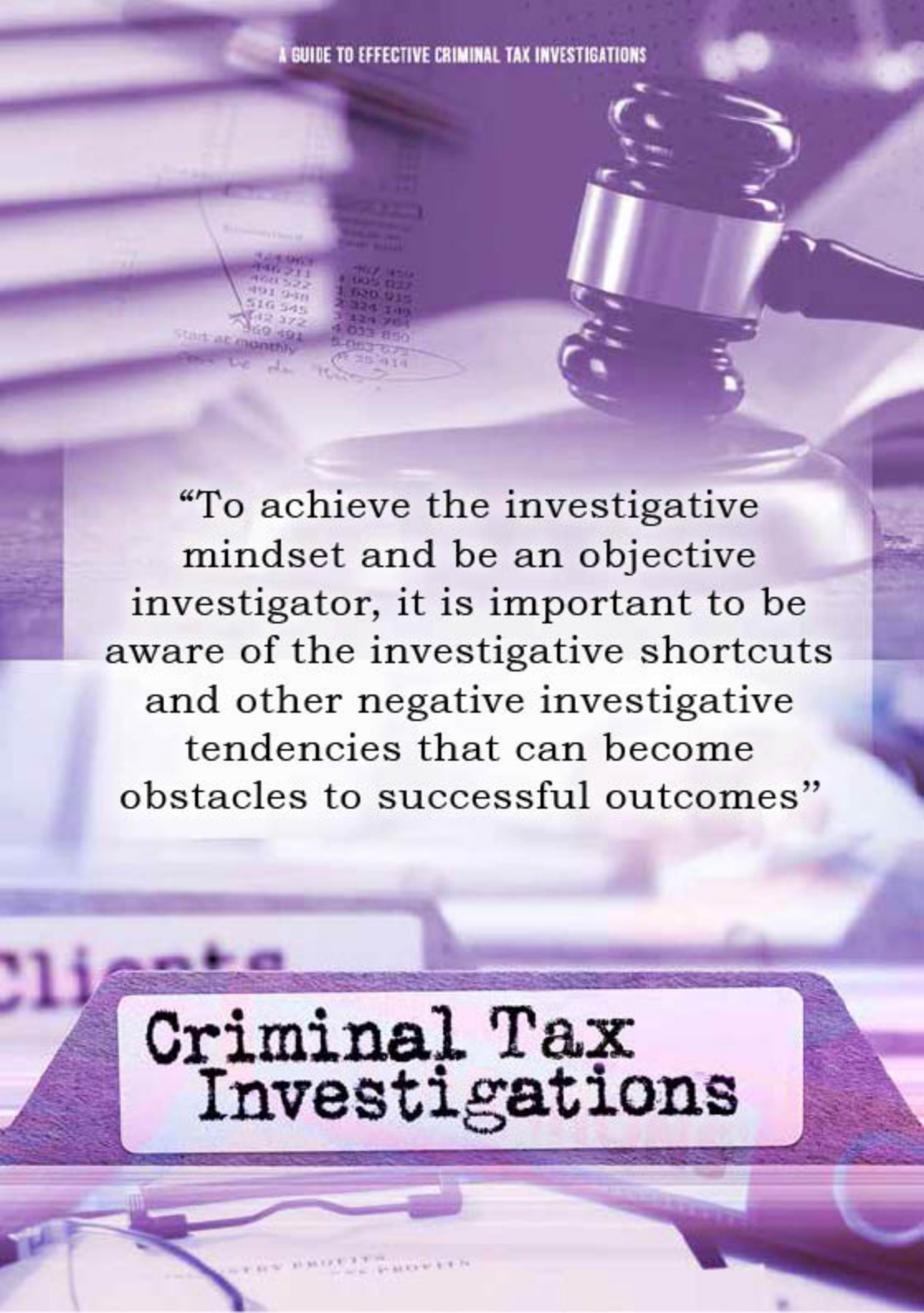
Below are some examples of decided cases with respect to offences under various domestic tax laws and Regulations from which investigators can pick learning points.

Offences

Decided Cases

- | | |
|--|--|
| <p>1 Deliberate use of a false TIN on returns, or other prescribed document/ or for other purpose of tax law contrary to section 57 (1) of the TPCA, 2014.</p> | <p>HIGH COURT CRIMINAL APPEAL NO. 2 OF 2023</p> |
| <p>2 Knowingly/ recklessly making a false statement to a tax officer which is misleading in any material particular contrary to section 58 (1) (a) of the TPCA, 2014</p> | <p>HIGH COURT CRIMINAL APPEAL NO. 2 OF 2023
HIGH COURT CRIMINAL APPEAL NO 18 OF 2022</p> |

SAMPLES



“To achieve the investigative mindset and be an objective investigator, it is important to be aware of the investigative shortcuts and other negative investigative tendencies that can become obstacles to successful outcomes”

Criminal Tax Investigations