

**ANTIGUA AND BARBUDA**



**TAX ADMINISTRATION AND PROCEDURE BILL 2017**

**NO. OF 2017**



**ANTIGUA AND BARBUDA**

**TAX ADMINISTRATION AND PROCEDURE BILL 2017**

**NO. OF 2017**

**ARRANGEMENT OF CLAUSES**

Clauses

**PART I**

**PRELIMINARY**

1. Short title and Commencement
2. Interpretation
3. Scope of the Act
4. General application of Act

**PART II**

**GENERAL PROVISIONS**

5. Commissioner and Inland Revenue Department
6. Delegation of powers
7. Assistance of experts
8. Obligation of experts
- 9 Confidentiality
10. Taxpayer identification numbers
11. Tax Compliance Certificate
- 12 Public rulings
13. Advance rulings
- 14 Other statements
15. Communications with taxpayers and other persons
16. Forms and notices
17. Defect does not affect validity
18. Agents and Officers
19. Taxpayer's right to information

20. Due dates

### **PART III**

#### **RECORD KEEPING AND INFORMATION COLLECTION**

- 21. Accounts and records
- 22. Obligations of financial institutions
- 23 Tax returns
- 24. Information returns
- 25. Extension of time to file returns
- 26. Access to information, assets, and land
- 27. Notice to obtain information

### **PART IV**

#### **ASSESSMENTS**

- 28 Assessments
- 29. New or revised assessment
- 30. Time limits for assessments and revised assessments
- 31. Jeopardy assessment
- 32. Notice of assessment
- 33. Anti-avoidance

### **PART V**

#### **OBJECTIONS AND APPEALS**

- 34 Taxation decisions
- 35. Administrative review
- 36. Appeal from administrative review
- 37. Constitution of Tax Appeal Board
- 38. Burden of proof
- 39. Appeals do not suspend collection of undisputed amounts
- 40. Finality of assessment
- 41. Appeals from a decision of the Tax Appeal Board

### **PART VI**

#### **LIABILITY FOR AND PAYMENT OF TAX**

- 42. Liability of taxpayer and due date

- 43. Liability and obligations of representatives
- 44. Liability for tax following winding-up
- 45. Refundable amounts
- 46. Power of Commissioner to enquire
- 47. Extension of time for payment
- 48. Default in payment
- 49. Absconding taxpayers
- 50. Order of payment of tax debts
- 51. Currency

## **PART VII**

### **INTEREST**

- 52. General
- 53. Interest Rate
- 54. Interest on underpayments
- 55. Interest on refundable amounts
- 56.. Interest on late payment

## **PART VIII**

### **RECOVERY OF TAX**

- 57. General
- 58. Period of limitations for collection
- 59. Extinguishment of uncollectible amounts
- 60. Directors of companies
- 61 Court Proceedings
- 62. Lien
- 63. Execution against taxpayer's property
- 64. Sale of seized property
- 65. Third party debtors
- 66 Compliance with Order
- 67. Non-arm's length transferees
- 68. Receivers

**PART IX**

**PENALTIES**

- 69. General
- 70. Failure to notify of changes in taxpayer information
- 71. Late filing
- 72. Failure to maintain documents
- 73. Failure to comply with third party notice
- 74. Failure to provide facilities
- 75. Failure to comply with notice to give Information
- 76. Late payment
- 77. Negligent or fraudulent underpayment

**PART X**

**CRIMINAL OFFENCES**

- 78. General
- 79. Falsification of invoices, receipts, credit and debit notes
- 80. False or Misleading Statements
- 81. Tax evasion
- 82. Impeding tax administration
- 83 Aiding and abetting
- 84. Failure to preserve secrecy
- 85 Offences by corporations or partnerships
- 86. Offences by taxation officers
- 87 Commissioner's investigative powers
- 88. Period of limitation

**PART XI**

**COMPOUNDING OF OFFENCES**

- 89. Compounding of offences

**PART XII**

**FINAL PROVISIONS**

- 90. Repealed legislation

- 91. Consequences of repealed legislation
- 92. Application of the law to procedures under repealed legislation
- 93. Regulations
- 94. Transitional
- 95. Commencement

**SCHEDULES**

- SCHEDULE 1
- SCHEDULE 2
- SCHEDULE 3
- SCHEDULE 4
- SCHEDULE 5

**ANTIGUA AND BARBUDA**

**TAX ADMINISTRATION AND PROCEDURE BILL 2017**

**NO. ....OF 2017**

**AN ACT** to revise and consolidate the law relating to the administration of taxation laws and to ensure the efficient collection of taxes and other fees in the nature of taxes.

**ENACTED** by the Parliament of Antigua and Barbuda as follows —

**PART I**

**PRELIMINARY**

**1. Short Title and commencement**

(1) This Act may be cited as the Tax Administration and Procedure Act 2017.

(2) This Act comes into force on such day as the Minister appoints by notice in the Official Gazette.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings indicated:

“ABST Act” or “ABST” means the Antigua and Barbuda Sales Tax Act 2006 No.5;

“assessment” means the entering into the records of the Department of the amount of a taxpayer’s liability for tax for a specific taxation period, and includes a revised assessment and an assessment described in subsection 28(5);

“Commissioner” means the Commissioner of Inland Revenue;

“Department” means the Inland Revenue Department;

“designated officer” means, with respect to a function, the officer of the Department designated to carry out that function;

“law” means an Act of the Parliament of Antigua and Barbuda and regulations, rules, or determinations made under such an Act;

“Minister” means the Minister of responsible for Finance;

“tax” means a compulsory payment to government imposed under a law to which this Act applies, regardless of whether that payment is designated as a tax, fee, duty, levy or otherwise, and, unless the context otherwise requires, includes interest or penalty in relation to a tax;

“tax legislation” means a law imposing a tax or a regulation under such a law, but does not include a law imposing a customs duty or excise duty, or a regulation under such a law; “taxpayer” means —

- (a) a person who is required to pay tax under a law or regulation to which this Act applies; or
- (b) a person who is required to withhold tax and pay it to the Department;

“taxpayer” means

- (a) a person who is required to pay a tax under a law or regulation to where this Act applies; or
- (b) a person who if required to withhold a tax and pay it to the Department;

“tax return” means a return, including an information return, that a person is required to file with the Department, in which information about that person’s or some other person’s possible tax liability is provided.

(2) When this Act applies in respect of a law, any term not defined in this Act has the meaning that it has for the purposes of that law.

### **3. Scope of the Act**

(1) Except as otherwise provided, this Act applies to—

- (a) the taxes imposed under the laws, as amended, listed in **Schedule I**; and
- (b) a tax under another law if responsibility for the general administration of the tax is assigned to the Commissioner.

(2) If there is inconsistency between the provisions of this Act and the provisions of an Act to which this Act applies, the provisions of the other Act prevail.

(3) This Act does not apply to provisions for the collection and recovery of tax that reside with the Comptroller of Customs.

### **4. General application of the Act**

(1) The following are part of this Act—

- (a) the headings of the Sections, Parts, Divisions, and Subdivisions into which the Act is divided; and
- (b) the Schedules to the Act.

(2) In interpreting a provision of this Act or an Act to which this Act applies, a construction that would promote the purpose or object underlying the provision (whether that purpose or object is expressly stated in the Act or not) should be preferred to a construction that would not promote that purpose or object.

(3) Subject to subsection (5), in interpreting a provision of this Act or any Act to which this Act applies, if any material that does not form part of the Act is capable of assisting in ascertaining the meaning of the provision, consideration may be given to that material:

- (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision, taking into account its context in the Act and the purpose or object underlying the Act; or
- (b) to determine the meaning of the provision when:
  - (i) the provision is ambiguous or obscure; or
  - (ii) the ordinary meaning conveyed by the text and taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or is unreasonable.

(4) Without limiting the generality of subsection (3), the material that may be considered in interpreting a provision of this Act includes:

- (a) all matters not forming part of the Act that are set out in the document containing the text of the Act as printed by the Government Printer;
- (b) any treaty or other international agreement or international assistance agreement that is referred to in the Act;
- (c) any explanatory memorandum relating to the Bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of, either House of the Parliament by a Minister before the time when the provision was enacted;
- (d) the speech made to a House of the Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in that House;
- (e) any document (whether or not a document to which a preceding paragraph applies) that is declared by the Act to be a relevant document for the purposes of this section; and
- (f) any relevant material in any official record of proceedings of debates in the Parliament or either House of the Parliament.

(5) In determining whether consideration should be given to any material in accordance with subsection (3), or in considering the weight to be given to any such material, regard should be had, in addition to any other relevant matters, to—

- (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; and
- (b) the need to avoid prolonging legal or other proceedings without compensating advantage.

## **PART II**

### **GENERAL PROVISIONS**

#### **5. Commissioner and Inland Revenue Department**

(1) The Public Service Commission shall appoint a Commissioner of Inland Revenue and other officers and persons as may be necessary for the administration of this Act.

(2) The Commissioner is responsible, subject to the general control and supervision of the Minister—

- (a) for the collection of and accounting for taxes to which this Act applies; and
- (b) for the administration and application of the provisions of this Act.

(3) There is established an Inland Revenue Department which is to be administered by the Commissioner.

(4) The Commissioner, an officer of the Inland Revenue Department, an expert engaged under section 7, or any other person authorised by the Commissioner to perform any functions under this Act shall not be personally liable in civil proceedings in connection with any act done by the person in good faith in the discharge of those functions.

(5) The Commissioner may, by Order published in the Gazette, prescribe such forms as the Commissioner considers appropriate for the purposes of this Act.

#### **6. Delegation of powers**

(1) The Commissioner may, in writing delegate to an officer of the Department a power or duty conferred or imposed on the Commissioner by this Act, other than this power of delegation.

(2) A delegation by the Commissioner may be either to a specific individual or to the incumbent of a specific post.

(3) Subject to conditions that the Commissioner specifies, the Commissioner may provide that any information, declaration, or document required to be furnished to the Commissioner is to be supplied to such other person as the Commissioner may nominate.

(4) A delegation under this section does not prevent the Commissioner from personally exercising the power, duty, or function in question.

(5) The Commissioner may, at any time, in writing, revoke a delegation under this section.

### **7. Assistance of experts**

(1) The Commissioner may, with the approval of the Minister, engage experts, on terms and conditions as the Commissioner thinks fit, to assist the Department and its tax officers in the proper performance of its functions.

(2) A tax officer authorised for the function in question shall supervise assistance provided by an expert.

(3) Every person has the right to refuse to deal directly with an expert but a person shall not obstruct an expert that is assisting a tax officer.

(4) A person has the right to complain to the Commissioner, in writing that the engagement of a particular expert involves a conflict of interest.

(5) The Commissioner shall decide on a complaint made under subsection (4) within 30 days; and the decision of the Commissioner whether to continue with the engagement is final.

(6) The appointment of an expert is ineffective unless it is in writing and is expressly made under this section.

### **8. Obligation of experts**

(1) An expert to whom this section 7 applies shall regard and deal with as secret and confidential all information and documents that, by reason of the employment, engagement, or assistance, come into the expert's possession in connection with a tax law

(2) This section applies to experts appointed under section 7.

(3) Where a decision required by subsection (5) of section 7 is not made within 30 days, the expert may no longer be engaged on the matter.

**9. Confidentiality**

(1) Except as provided in subsections (3), (4), or (5), every person having a duty under this Act or being employed in the administration of this Act, shall regard as secret and confidential all information and documents the person has received in an official capacity in relation to a specific taxpayer, and may disclose that information only to the following persons:

- (a) other agents and employees of the Department and of the Customs and Excise Division in the course, and for the purpose, of carrying out their duties;
- (b) the Minister of Finance in the course, and for the purpose, of carrying out supervision of the Department;
- (c) employees of the Ministry of Finance, for the purpose of reviewing and evaluating tax issues;
- (d) tax authorities of a foreign country, in accordance with an international agreement;
- (e) law enforcement agencies, for the purpose of the prosecution of a criminal offence; and
- (f) a court, in a proceeding to establish a taxpayer's tax liability or responsibility for an offence under a law.

(2) If a person is permitted to disclose information under subsection (1), the person shall maintain secrecy except to the minimum extent necessary to achieve the object for which disclosure is permitted.

(3) If a person receives information under subsection (1), that person shall maintain secrecy except to the minimum extent necessary to achieve the object for which the information was received.

(4) The Commissioner may disclose information concerning a taxpayer's affairs to a person claiming to be the taxpayer or the taxpayer's authorised representative only after obtaining reasonable assurance of the authenticity of the claim.

(5) Information concerning a taxpayer may be disclosed to another person with the taxpayer's written consent.

**10. Taxpayer identification numbers**

(1) The Commissioner shall assign a unique taxpayer identification number to every taxpayer.

(2) The Minister may, by notice in the Gazette, require that the unique taxpayer identification number is to be used for all taxes to which this Act applies.

(3) The Commissioner may assign a taxpayer identification number to a person who is not a taxpayer, but who makes payments which are subject to tax in the hands of the recipient.

(4) To the extent provided by regulations, a person is required —

- (a) to include the person's taxpayer identification number on returns, notices, or other documents relating to a tax to which this Act applies; and
- (b) to furnish the number to another person designated in regulations as a person who is required to furnish tax information with respect to the person furnishing the number.

(5) The Commissioner shall include the taxpayer identification number on all correspondence sent to a taxpayer concerning the taxpayer's tax liability.

(6) A taxpayer shall notify the Commissioner in writing of a change in name (including business name or other trading name), address, place of business, or nature of the taxable activity carried on by the taxpayer.

(7) If the taxpayer has registered under the ABST Act, notice of the change as required by subsection (6) shall be made within fourteen days of the change occurring; otherwise notice shall be provided by the due date of the next tax filing, or within one year, whichever is sooner.

## **11. Tax compliance certificate**

(1) A taxpayer may request a Tax Compliance Certificate in a form set out in Schedule 2, from the Commissioner.

(2) The Commissioner shall provide a taxpayer with a Tax Compliance Certificate only if the Commissioner is satisfied that the taxpayer —

- (a) does not have tax due and outstanding; or
- (b) has made an arrangement that the Commissioner believes will result in the payment of tax due and outstanding and has paid all instalments due at the date of the request.

(3) The Minister may make regulations to specify the circumstances in which a taxpayer may be required to produce a tax compliance certificate.

## **12. Public rulings**

(1) To achieve consistency in the administration of tax legislation and to provide guidance to the general public and officers of the Department, the Commissioner may

issue public rulings setting out the Commissioner's interpretation of the application of the tax legislation.

- (2) A public ruling is binding on the Commissioner until revoked.
- (3) A public ruling is not binding on taxpayers.

### **13. Advance rulings**

(1) The Commissioner may issue to a taxpayer an advance ruling setting out the Department's position regarding the application of tax legislation to a specific transaction proposed by the taxpayer.

(2) If the taxpayer has made a full and true disclosure of the nature of all aspects of the transaction relevant to the ruling and the transaction proceeds in all material respects as described in the taxpayer's application for the ruling, the advance ruling is binding on the Department and on the taxpayer with respect to the application to the transaction of the law as it stands at the time of the ruling.

(3) For reasonable cause, the Commissioner may amend or revoke an advance ruling, in whole or in part, by written notice served on the applicant.

(4) Revocation or amendment of an advance ruling has prospective effect only, and the specifics of how the revocation or amendment is applied with prospective effect shall be stated in the notice of revocation or amendment.

(5) The subsequent passage of legislation that is inconsistent with an advance ruling revokes the ruling to the extent of the inconsistency.

(6) The Commission shall publish advance rulings, deleting or redacting the taxpayer's name and other information specific to the taxpayer that is not needed by others to understand the ruling.

(7) The Commissioner may adopt procedures for the issuance of advance rulings and specify reasonable fees to be charged.

### **14. Other statements**

With the exception of a ruling issued under section 13 and other cases authorised by law, no statement or agreement concerning a taxpayer's tax liability made by an officer of the Department is binding on the Department.

### 15. Communications with taxpayers and other persons

(1) A notice, statement, or agreement issued by the Commissioner to a taxpayer or other person is effective only if it is authorised by law, is in writing, is signed by an official of the Department with apparent authority, and is served upon the taxpayer or other person to whom it is addressed.

(2) If the Commissioner is required to give notice in writing to an individual, the notice is considered sufficiently served if it is —

- (a) served personally on that person;
- (b) is sent by registered mail to the person's last known address; or
- (c) communicated electronically and in accordance with the **Electronic Transactions Act, 2006**.

(3) If the Commissioner is required to give notice in writing to a company, the notice is considered sufficiently served if it is —

- (a) served personally on, or communicated electronically to and in accordance with the **Electronic Transactions Act, 2006**, the appointed tax agent;
- (b) delivered to the company's principal place of business in Antigua and Barbuda, with receipt of signed acknowledgement of delivery by an employee of the company; or
- (c) sent by registered mail to the registered office of the company.

(4) A notice sent by registered mail is considered served seven working days succeeding the day when posted where the address is in Antigua and Barbuda and, where the address is not in Antigua and Barbuda, thirty days succeeding the day when posted.

(5) A notice under **the Property Tax and Valuation Act, 2006 No. 20** may be served on a person by leaving it at the usual or last known place of abode of that person or, if no other service option is practicable, by addressing the notice to "the owner" of the property, describing the property to which it relates, and by delivering it to a person on the property to whom it can be delivered or by affixing it or a copy of it to a conspicuous part of the property.

(6) A signature written on a notice, statement, agreement, return, form, declaration, table, or other document and purporting to be the signature of a particular person is considered to be the signature of that person unless the contrary is shown.

**16. Forms and notices**

(1) Forms, notices, declarations, statements, tables, and other documents prescribed or published by the Department may be in the form the Commissioner determines for the efficient administration of this Act.

(2) The Department shall make the documents described in subsection (1) available to the public at its main office and at other locations, and may make the documents available to the public by mail or electronically, as it determines.

(3) Every public notice to be given by the Commissioner under this Act shall be signed by the Commissioner or by a person with apparent authority, and is considered valid if the signature is printed or written on it.

**17. Defect does not affect validity**

(1) A notice of assessment or other notice or document issued under this Act is not to be considered invalid or ineffective by reason of a failure to comply with the requirements of section 15 if the taxpayer had effective knowledge of the fact of the notice and of its content.

(2) A notice of assessment or other notice or document issued under this Act is not to be considered invalid or ineffective by reason of defects if it is, in substance and effect, in conformity with this Act, and the person assessed, or affected by the document, is designated in it according to common understanding.

**18. Agents and officers**

(1) A company incorporated in Antigua and Barbuda shall appoint a company secretary or other officer to be responsible for maintaining all records and filing all documents required to be maintained or filed by the company under this Act or a law to which this Act applies.

(2) A partnership or other body of persons that is subject to a tax to which this Act applies or that has a duty under a tax to which this Act applies shall nominate a member or officer whose duty it is to comply with the requirements of this Act.

(3) A person who is not resident in Antigua and Barbuda and who is liable to pay tax or who has a duty to pay tax to which this Act applies shall nominate as agent, for the purposes of compliance with this Act, a person resident in Antigua and Barbuda.

(4) The appointment of a company secretary, member, officer, or agent under this section does not of itself relieve a person from liability for failure to comply with the requirements of this Act.

### **19. Taxpayer's right to information**

Upon request by a taxpayer, the Department shall—

- (a) inform the taxpayer of the status of the taxpayer's account with respect to tax; and
- (b) provide a copy of a tax return filed by the taxpayer and still retained by the Department.

### **20. Due dates**

(1) If the last day for performing an act prescribed by tax legislation falls on a day on which the Department is not open to the public for business, the act is considered timely if it is performed on the next succeeding day on which the Department is open for business.

(2) A declaration, appeal, or other document, other than a payment, is considered filed on the date it is stamped as received by the Department or, in the case of filing by mail, on the date of the postmark, or, in the case of electronic delivery, on the date of receipt.

## **PART III**

### **RECORDKEEPING AND INFORMATION COLLECTION**

#### **21. Accounts and records**

(1) A person engaged in business or independent professional activity or who is required to make a return under tax legislation is required to keep and maintain in Antigua and Barbuda records and accounts sufficient to record all transactions and to ascertain the gains and profits made or the loss incurred in respect of those transactions.

(2) In addition to the records and accounts described in subsection (1), a taxpayer shall also retain source documents and underlying documentation utilized in the creation of the records and accounts.

(3) A person required to prepare or retain records of a transaction under tax legislation shall retain the documents—

- (a) for a period of seven years from the date on which the transaction took place; or
- (b) if longer than the period specified in paragraph (a), until expiration of the time limit for assessment of tax for a tax period to which the records are relevant.

(4) If a person has prepared records required under this section in a language other than English, that person is required at that person's expense, upon request, to provide an English translation acceptable to the Commissioner.

(5) Financial statements, invoices, books of original entry, and all written communications between the Department and the taxpayer shall be in English.

(6) For the purposes of this section, source documents include—

- (a) sales and purchase invoices, costing documents, bookings, diaries, purchase orders, delivery notes, bank statements, contracts, and other documents which relate to an element of a transaction; and
- (b) for purposes of the ABST Act, a copy of all ABST invoices, ABST credit notes, ABST debit notes issued and received by the person, all customs documentation relating to imports and exports of goods by a person and, in relation to imported services to which section 19 of the ABST Act applies, sufficient written evidence to identify the supplier and the recipient, and to show the nature and quantity of services supplied, the time of supply, the place of supply, the consideration for the supply, and the extent to which the supply has been used by the recipient for particular purposes.

## **22. Obligations of financial institutions**

A bank or financial institution is required to keep account of all transactions with a client, including the client's identity.

## **23. Tax returns**

(1) Every taxpayer shall, if required by a law to which this Act applies, furnish to the Commissioner a tax return in accordance with subsection (2), within the time and at the place specified by that law, or as determined for all taxes by the Commissioner.

(2) For the purposes of subsection (1) the Commissioner must specify—

- (a) the form for returns;
- (b) the information to be furnished on the return and attachments, if any, required to be filed with the return; and
- (c) the manner of filing.

(3) A taxpayer shall file an amended return no later than six years after the latest date on which the original return was required to be filed.

(4) A taxpayer shall attest to the accuracy and completeness of the tax return or, in the case of a taxpayer under a legal disability, the taxpayer's legal representative shall attest to its accuracy and completeness.

(5) If a return or part of a return was prepared for reward by some other person, that other person shall also sign the return.

(6) The Commissioner may, by notice in writing, require a person to file, whether on that person's own behalf or as agent or trustee for another person, fuller or additional returns for a tax period as the Commissioner requires, even if the taxpayer has not submitted a return for the period.

#### **24. Information returns**

The provisions of this Act relating to returns apply to a person required by a law to which this Act applies to file a return of information related to matters other than the person's own tax liability.

#### **25. Extension of time to file returns**

(1) The Commissioner may extend the time limit prescribed for filing a tax return if the taxpayer or other person required to file applies for the extension by the due date.

(2) The granting of an extension of time under subsection (1) does not affect the due date for payment of tax, unless an extension of time for payment is also expressly granted.

#### **26. Access to information, assets, and land**

(1) A designated officer may enter a business premises, or other premises open to the public, without prior notice, for an authorised purpose—

- (a) during normal business hours; or
- (b) at another time authorised in writing by a Magistrate upon application by the Commissioner and showing the necessity to enter at that time.

(2) The designated officer may enter a taxpayer's dwelling, or other premises not described in subsection (1), for an authorised purpose—

- (a) with the consent of the taxpayer; or
- (b) at the time stated and in the manner authorised in writing by a Magistrate upon application by the Commissioner and showing the necessity to enter the taxpayers dwelling or other premises at that time.

- (3) The designated officer may enter to, survey, and value any property—
- (a) with the consent of the taxpayer; or
  - (b) after giving not less than twenty-four hours' notice in writing.
- (4) A designated officer who is lawfully upon premises or in a dwelling under subsections (1), (2), or (3) may—
- (a) make a copy of a record;
  - (b) seize a record or other item that appears to be relevant to an authorised purpose; or
  - (c) seal records or other items.
- (5) If a designated officer seizes a record or other item pursuant to the authority provided under this section, the Commissioner may make a copy of the record or other item and shall return the original to the person in the shortest time practicable, unless otherwise permitted by court order.
- (6) A copy of a document made pursuant to the power conferred by this section may be tendered in Court and has the same evidentiary value as if it were an original.
- (7) This section does not authorise access to premises of diplomatic, consular, or other missions of foreign countries and international organizations which enjoy immunity from such investigations under international law.
- (8) If a person asserts privilege under law over documents or other evidence which the Commissioner wishes to seize or examine pursuant to this section, the materials over which privilege is claimed shall be deposited into envelopes which are then sealed and retained unopened by an officer of the Department pending an application by the Commissioner to a court of competent jurisdiction to determine whether the items in question are privileged.
- (9) Documents specifically requested by the Commissioner under this section, and which a taxpayer or other specified person fails to produce, may not be used by the taxpayer or other person in a judicial proceeding challenging an assessment, except with the agreement of the Commissioner.
- (10) Notwithstanding subsection (9), if the taxpayer can show reasonable cause for the failure to produce the documents requested by the Commissioner, a taxpayer may use those documents in a judicial proceeding challenging an assessment.
- (11) The owner or lawful occupier of the premises or place to which an exercise of power under this section relates shall provide all reasonable facilities and assistance to the Commissioner or authorised officer.

(12) The Commissioner or authorized officer shall sign for all records, books, or other items removed and retained under this section and shall return them to the owner within twenty-one days of the conclusion of the investigation or related proceedings.

(13) The Commissioner may cause any land to be visited, inspected, and measured and may call on any person with legal authority with respect to such land to produce for inspection any map, plan, title deed, instrument of title, or other document in the custody or under the control of that person which relates to the land.

(14) The Commissioner may require a peace officer to be present for the purposes of exercising powers under this section.

(15) In this section and section 27, “authorised purpose” means:

- (a) the collection of information for the purpose of determining the liability of a specific person for a tax;
- (b) the collection of information for the purpose of collecting tax from a specific person; or
- (c) the collection of information related to the investigation or prosecution of tax matters related to a specific person.

## **27. Notice to obtain information**

(1) In respect of an authorised purpose, the Commissioner may, by giving reasonable notice in writing, require a person —

- (a) to furnish the information that is required by the notice, including information concerning another person, if it is within the person’s knowledge; or
- (b) to appear at the time and place designated in the notice for the purpose of being examined or of producing documents or other evidence in the control of that person which are described in the notice.

(2) Section 26 and this section have effect notwithstanding a law relating to confidentiality, privilege, or the public interest with respect to the production of or access to documents or other evidence, including a law relating to bank secrecy and any contractual duty of confidentiality.

(3) Where a taxpayer reasonably asserts legal professional privilege over a document subject to section 26 or this section, the Commissioner shall apply to a Judge in Chambers for an order requiring a taxpayer to produce the documents.

**PART IV**  
**ASSESSMENTS**

**28. Assessments**

(1) An assessment of a taxpayer's liability to pay tax must be made in the manner prescribed by this Act and any other relevant law.

(2) An assessment by the Commissioner may be based upon the information supplied by the taxpayer in a tax return and upon any other relevant information available to the Commissioner.

(3) If a taxpayer fails to file a tax return as required, the Commissioner may make an assessment of the amount of tax payable, based upon best judgement and information reasonably available to the Commissioner.

(4) If the Commissioner bases an assessment in whole or in part on information other than that supplied by a taxpayer in a tax return, the Commissioner shall provide an indication of the nature of the information on which the assessment is based.

(5) If a relevant law to which this Act applies requires the taxpayer to include in a tax return a calculation of the amount of tax payable, the filing of the return has the same effect as if the Commissioner had made an assessment in that amount, but does not prevent the Commissioner from issuing a new or revised assessment.

(6) If the Commissioner has reasonable grounds to believe that a taxpayer may leave Antigua and Barbuda before the due date for payment of an amount that would be due under a law to which this Act applies, that tax is due on the date specified by the Commissioner by notice in writing to the person.

**29. New or revised assessment**

(1) The Commissioner may make a new assessment, or may revise an assessment previously made, within the time limits specified in section 30, if the Commissioner is of the opinion that the original assessment was incorrect.

(2) If the taxpayer has failed to comply with record keeping requirements or has submitted inaccurate information, the Commissioner may use best judgement and information reasonably available in making a new or revised assessment.

(3) If a taxpayer files an amended return under subsection (3) of section 23, the Commissioner shall revise the original assessment if satisfied that the original assessment was based on incorrect information.

### **30 Time limits for assessments and revised assessments**

(1) The Commissioner may not make an assessment, including a new assessment or a revised assessment, more than six years after the end of the tax period to which the assessment relates.

(2) Notwithstanding subsection (1), in the case of an assessment made –

- (a) under subsection (3) of section 28; or
- (b) under subsection (1) of section 29,

if the original assessment was based upon incorrect information due to the fraud or wilful neglect of the taxpayer, the assessment shall be made within twelve years.

(3) If an assessment is not made within the time limits specified in this section, and no assessment has been made under subsection (5) of section 28, an assessment is treated to have been made in the amount of tax, if any, that has been withheld for the tax period, or, if no tax has been withheld, that no tax is payable.

(4) Nothing in this section prevents the amendment of an assessment to give effect to a decision of the Tax Appeal Board or the High Court.

### **31. Jeopardy assessment**

(1) The Commissioner may make an assessment, using best judgement and information reasonably available, in advance of the date on which tax is normally due, if that action is required to secure the collection of the tax.

(2) In addition to a right of appeal under Part V, an appeal against an assessment made under this section may be made to the High Court on the ground that—

- (a) its amount is excessive; or
- (b) circumstances that justify an advance assessment do not exist.

### **32. Notice of assessment**

When an assessment, new assessment or revised assessment is made under subsection (2) or (3) of section 29, under section 30, or under section 31, the Commissioner shall issue a notice of assessment, bearing the chronological number of the assessment, and the short title of this Act served on the person assessed, it shall be signed by the Commissioner or other designated officer, and contain the following information—

- (a) the name of the taxpayer;
- (b) the taxpayer identification number, if one has been issued to the taxpayer;
- (c) the date of issue of the notice;

- (d) the matter to which the notice relates;
- (e) the amount of tax payable;
- (f) a demand for payment of the tax by the date stipulated in the notice;
- (g) the place at which payment is to be made;
- (h) a summary statement of the reasons why the Commissioner made the assessment and the manner in which the assessment is calculated;
- (i) the time, place, and manner of objecting to the assessment; and
- (j) other relevant information, at the discretion of the Commissioner.

### **33. Anti-avoidance**

In making an assessment, the Commissioner may disregard a transaction or series of transactions that are artificial or fictitious, or treat according to its economic substance, a transaction or series of transactions that have been mischaracterised.

## **PART V**

### **OBJECTIONS AND APPEALS**

#### **34. Taxation decisions**

Except in proceedings under this Part—

- (a) no taxation decision may be disputed in the Tax Appeal Board, or in another proceeding on another ground; and
- (b) the amount and particulars of every assessment are to be treated as correct and the liability of the taxpayer is to be determined accordingly.

#### **35. Administrative review**

(1) A taxpayer who is dissatisfied with an assessment or other decision of the Department may request the Commissioner to review the decision.

(2) A request for administrative review shall be made to the Commissioner in writing not later than thirty days after the taxpayer was notified of the decision, and shall specify in detail the grounds upon which it is made.

(3) The Commissioner shall consider the taxpayer's request and notify the taxpayer in writing of the Commissioner's decision and the reasons for the decision.

### **36. Appeal from administrative review**

(1) Subject to this section, a person aggrieved by the result of a review under section 35 may appeal against the assessment to the Tax Appeal Board, constituted as provided in section 37.

(2) An appeal to the Tax Appeal Board may not be made unless a request for administrative review has first been made, and—

- (a) a decision has been received from the Commissioner; or
- (b) ninety days have elapsed since the request for administrative review was made.

(3) If the Tax Appeal Board is satisfied that the appellant is overcharged it may reduce the amount of the assessment by the amount of the overcharge, and if it is satisfied that the appellant is undercharged, it may increase the amount of the assessment by the amount of the undercharge.

(4) Notwithstanding anything contained in Part VIII, if the Tax Appeal Board is satisfied that the decision upon the appeal may not succeed, the Tax Appeal Board may require the appellant to furnish security for payment of the tax, if any, which may become payable by the appellant rendered by as may be to the Tax Appeal Board.

(5) Notice of an appeal under this section shall be given in writing to the Commissioner within ninety days from the date of the decision of the Commissioner under section 35

(6) Notwithstanding subsection (5), the appellant may appeal against the assessment if the Tax Appeal Board is satisfied that owing to absence from Antigua and Barbuda, on account of within ninety days sickness, or other reasonable cause the appellant was prevented from giving notice of days of the event described in subsection (2)-, and that there has been no unreasonable delay on the appellant's part.

### **37. Constitution of Tax Appeal Board**

(1) The Governor-General shall, on the advice of the Cabinet, appoint not more than seven suitable and qualified persons in accountancy, law and commerce to serve on the Tax Appeal Board, who shall hold office for a period of five years.

(2) The Governor General shall, on the advice of the Cabinet, appoint one of the members to be Chair of the Tax Appeal Board and every decision of the Tax Appeal Board shall be signified under the hand of the Chair in addition to the members of the panel.

(3) The Minister shall appoint some person to be secretary to the Tax Appeal Board and all notices and documents, other than decisions of the Tax Appeal Board, may be signified under the hand of the secretary.

(4) The Tax Appeal Board may meet in panels as often as circumstances may require.

(5) Three members constitute a panel.

(6) The Chair of the Tax Appeal Board shall select the members of the panel and appoint one of the members of the panel to preside over the meeting of the panel.

(7) The Tax Appeal Board shall regulate its own procedure.

(8) The Minister shall prescribe the allowances to be paid to members of the Tax Appeal Board when they sit to hear and determine appeals.

### **38. Burden of proof**

The burden of proof is on the taxpayer or person making an objection to an assessment to show, on the balance of probabilities that the assessment is incorrect.

### **39. Appeals do not suspend collection of undisputed amounts**

If a request for administrative review of an assessment has been filed or a taxpayer has appealed to the Tax Appeal Board against an assessment, the undisputed tax liability remains due and payable, unless the Commissioner grants an extension of time under section 47.

### **40. Finality of assessment**

(1) Subject to the right of the Commissioner to issue a new or revised assessment under section 29, and subject to subsection (2), if no request for review is made within the time permitted by section 36, an assessment is to be treated as final.

(2) If an assessment is final under subsection (1), and the taxpayer files an amended return under section 25, the filing of the amended return has the effect of revising the assessment, but only if the tax shown on the amended return exceeds the tax assessed.

### **41. Appeals from a decision of the Tax Appeal Board**

(1) Either party to a proceeding before the Tax Appeal Board who is dissatisfied with the decision of the Tax Appeal Board may, within thirty days after being notified of the decision, file a notice of appeal to the High Court with the Registrar of the High Court;

and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the Tax Appeal Board.

(2) An appeal to the High Court may not be made unless an appeal to the Tax Appeal Board has first been filed and—

- (a) a decision has been received from the Tax Appeal Board; or
- (b) ninety days have elapsed since an appeal to the Tax Appeal Board was filed and no response has been received from the Tax Appeal Board.

(3) An appeal from the Tax Appeal Board to the High Court may be made only on a point of law or a point of mixed law and fact.

(4) If an appeal is made from a decision of the Tax Appeal Board, the Tax Appeal Board shall provide a written decision, including a summary of the evidence, the Board's finding of the facts, and its conclusions on the points of law involved.

## **PART VI**

### **LIABILITY FOR AND PAYMENT OF TAX**

#### **42. Liability of taxpayer and due date**

(1) Tax is due and payable at the time provided by the relevant law to which this Act applies.

(2) Subject to subsection (1), the amount of tax—

- (a) stated in a notice of assessment to be due; or
- (b) deemed to be stated to be due under subsection (5) of section 28 or subsection (3) of section 29, is due and payable on the date stated in the notice or, if no date is stated, thirty days after the date of issue of the notice.

(3) Tax shall be paid in the manner and place prescribed by the Commissioner.

#### **43. Liability and obligations of representatives**

(1) For the purposes of this Act, “representative,” in respect of a person, means—

- (a) if the person is an individual under a legal disability, the guardian or manager who receives or is entitled to receive income on behalf of, or for the benefit of, the individual;
- (b) if the person is a company, a principal officer of the company;
- (c) if the person is a partnership, a partner;
- (d) if the person is a trust, a trustee;

- (e) if the person is a body of persons other than a partnership or company, an individual responsible for accounting for the receipt and payment of moneys or funds on behalf of the body;
- (f) if the person is the Government of Antigua and Barbuda, an individual responsible for accounting for the receipt and payment of moneys or funds on behalf of the Government;
- (g) if the person is a local authority in Antigua and Barbuda, an individual responsible for accounting for the receipt and payment of moneys or funds on behalf of the local authority;
- (h) if the person is a foreign government or political subdivision of a foreign government, an individual responsible for accounting for the receipt and payment of moneys or funds in Antigua and Barbuda on behalf of the government or political subdivision of the government; or
- (i) if the person is a non-resident, a person controlling the person's affairs in Antigua and Barbuda, including a manager of a business of that person in Antigua and Barbuda

(2) A person who is an agent of a taxpayer for the purposes of the Income Tax Act Cap.212 or the Unincorporated Business Tax Act 2016 is considered to be a representative of the taxpayer for the purposes of this Act.

(3) If a representative of a person designated under subsection (1) is unable to perform the representative's duties, the person shall, within 30 days, advise the Commissioner, by notice in writing, of that person appointed as the new representative for the purposes of this Act.

(4) If a person fails to advise the Commissioner of the new representative as required by subsection (3), the Commission may, by notice in writing, and with the approval declare another individual to be a representative of the person for the purposes of this Act.

(5) Every representative of a person is responsible for performing duties or obligations imposed by this Act on the person, including the payment of tax.

(6) Subject to subsection (8), tax that, by virtue of subsection (5), is payable by a representative of a person is recoverable from the representative only to the extent of any assets of the person that are in the possession or under the control of the representative.

(7) A representative of a person who pays tax owing by the person is entitled to recover the amount so paid from the person or to retain the amount so paid out of any moneys of the person that are in the representative's possession or under the representative's control.

(8) A representative is personally liable for the payment of tax due by the representative in a representative capacity if, while the amount remains unpaid, the representative—

- (a) alienates, charges, or disposes of moneys received or accrued in respect of which the tax is payable; or
- (b) disposes of or parts with moneys or funds belonging to the taxpayer that are in the possession of the representative or which come to the representative after the tax is payable, if the tax could legally have been paid from or out of the moneys or funds.

(9) Nothing in this section relieves a person from performing duties imposed by this Act on the on the ground that the person, being the representative of the person, has failed to perform such duties.”

(10) If there are two or more representatives of a person, the duties or obligations referred to in this section apply jointly and severally to the representatives but may be discharged by any of them.

(11) If—

- (a) a partnership or other unincorporated association or body is dissolved or otherwise ceases to exist because of the retirement or withdrawal of one or more, but not all, of its partners or members, or because of the admission or a new partner or member; and
- (b) apart from the provisions of this Act a new partnership, association, or body, consisting of the remaining members, or of the existing or remaining members and one or more new members, thereby comes into existence; and
- (c) the new partnership, association, or body continues to carry on the activity that was carried on by the dissolved partnership, association, or body,

the dissolved partnership, association, or body and the new partnership, association, or body are, for the purposes of this Act, deemed to be one and the same, unless the Commissioner, having regard to the circumstances of the case, otherwise directs.

(12) If, after the death of a taxable person or the sequestration of a taxable person’s estate, a taxable activity previously carried on by the taxable person is carried on by or on behalf of the executor or trustee of the person’s estate or anything is done in connection with the termination of the taxable activity, the estate of the taxable person, as represented by the executor or trustee, is deemed for the purposes of this Act to be the taxable person in respect of the taxable activity.

(13) If a mortgagee is in possession of land or other property previously mortgaged by a mortgagor who is a taxable person, and the mortgagee carries on a taxable activity in

relation to the land or other property, the mortgagee is deemed, from the date the mortgagee took possession of that land or property until such time as the mortgagee ceases to be in possession of the land or property, to be the taxable person carrying on the taxable activity.

(14) For the purposes of this Act, if a person is a trustee in more than one capacity, the person is treated as a separate person in relation to each of those capacities.

#### **44. Liability for tax following winding-up**

(1) This section applies to a company that is wound up without having satisfied its tax liabilities, including any liability to withhold and remit tax.

(2) A person who was a shareholder of the company at the time of the winding-up is jointly and severally liable with other shareholders to pay the unpaid tax to the extent of a distribution of cash or property from the company received as a shareholder within one year prior to its winding-up.

(3) If the tax liability of a company described in this section is in respect of a period when the company was under different ownership from its ownership at the time of the winding-up, the Commissioner may collect taxes owed by the company from a person who was a shareholder during the period for which taxes are owed.

(4) A person liable for tax of a company under this section may invoke any rights as against the Department that would have been available to the company.

(5) No person who would be liable under this section is liable if the company obtains a Tax Compliance Certificate on winding-up.

(6) Subsection (5) is of no effect if the Tax Compliance Certificate was obtained based on fraudulent information or negligently provided incorrect information.

#### **45. Refundable amounts**

(1) If the amount of tax which has been paid by a taxpayer exceeds the amount of tax assessed or found to be payable, the Commissioner shall—

- (a) apply the refundable amount against the taxpayer's future assessed liability for tax penalties and interest to which this Act applies or permit an input tax credit where the taxable person has erroneously overpaid ABST for a tax period; and
- (b) unless the taxpayer objects, apply an amount remaining against the taxpayer's liability to make advance payments of tax that will become due within the succeeding six months.

(2) Subject to subsection (1), refundable amounts shall be paid to the taxpayer.

(3) A refund or credit may be made under this section only if the taxpayer applies for it within six years of the date of payment or, if made on the Commissioner's initiative, within this time period.

#### **46. Power of Commissioner to enquire**

The Commissioner, for the purpose of inquiring into, or ascertaining, the liability of a person to tax under this Act, may, by notice in writing, require any person, including but not limited to a bank or financial institution, friendly society, statutory bodies and regulatory bodies, whether or not that person is liable to tax or required under this Act to withhold tax, or to remit tax to do any of the following:

- (a) to furnish the Commissioner with such information as the Commissioner may require;
- (b) to attend and give evidence, either orally or in writing, before the Commissioner or before an officer authorized by the Commissioner for that purpose; or
- (c) to produce any books of account or any other documents or records in the custody or under the control of the person.

(2) A requirement under subsection (1)-

- (a) does not require a person referred to in that subsection to furnish information which a person would be entitled to refuse to produce on the grounds of legal professional privilege; and
- (b) shall, subject to paragraph (a), prevail notwithstanding any restrictions from disclosure under any other law.

(3) The Commissioner, an officer of the Inland Revenue Department or a person authorised by the Commissioner in writing for any purpose relating to the administration or enforcement of this Act, may, at any reasonable time, enter into any premises or place that is relevant to an investigation in order to-

- (a) audit or examine the books, records and any other document relating to the information relevant for the determination of tax liability;
- (b) inspect any property, process or matter which may, in his opinion, assist in the determination of tax liability;
- (c) require the owner or manager of the property or business and any other person on the premises or place to give him all reasonable assistance for the purposes of discharging his functions under this subsection; or

- (d) do any other reasonable thing as appears necessary for enabling him to perform his functions in relation to the investigation.

#### **47. Extension of time for payment**

(1) The taxpayer may apply, in the form prescribed by the Commissioner, for an extension of the time for payment of tax beyond the date on which it is required to be paid under section 25.

(2) The Commissioner may, with good cause, extend the time for payment as requested under subsection (1), may grant an extension period different from the period requested by the taxpayer, and may make other arrangements to ensure payment of the tax, including arrangements requiring the person to pay the amount due in instalments.

(3) If the Commissioner does not notify the person who made an application under subsection (1) of the decision in writing within thirty days, the application is granted.

(4) If a taxpayer has been granted an extension under subsection (1), interest is payable under Part VII notwithstanding the extension of time.

(5) If an extension is granted by permitting the taxpayer to pay by instalments and the taxpayer defaults in paying any of the instalments, the whole balance of the tax outstanding becomes payable immediately.

#### **48. Default in payment**

(1) The Commissioner may, by notice to the taxpayer, demand payment of tax due is not paid by the date on which it became due and payable.

(2) The notice shall state:

- (a) the name of the taxpayer;
- (b) the taxpayer identification number, if one has been issued to the taxpayer;
- (c) the date of issue of the notice;
- (d) the amount of tax, interest, and penalties payable, and the tax period or periods to which they relate;
- (e) a demand for payment of these amounts;
- (f) the place at which payment is to be made; and
- (g) that the taxpayer is on notice that, if payment is not made within thirty days after service of the notice, the Commissioner has the right to pursue collection action to collect the amounts specified in the notice.

(3) The taxpayer is in default thirty days after service of the notice.

(4) Subsection (3) does not apply if the taxpayer has –

- (a) entered into a payment arrangement with the Commissioner pursuant to the applicable tax legislation; or
- (b) received an extension pursuant to section 47, and has remained in compliance with the terms of the arrangement.

(5) A notice under subsection (1) must be served on the person on whom the demand is to be made, and in the case of a company other like body, on a person who represents the company on like body.

#### **49. Absconding taxpayers**

(1) Notwithstanding anything contained in any enactment, where the Commissioner has reliable information that a taxpayer who has unpaid tax, is about to leave the Commissioner the may apply to a Judge in Chambers for an order to prevent the person leaving the jurisdiction without satisfying his liability.

(2) An application under subsection (1) must be supported by affidavit and a certificate of urgency.

(3) If the order is granted it must be served on the Commissioner of Police and the Chief Immigration Officer for distribution to officers at all ports of entry in Antigua and Barbuda.

(4) Without prejudice to anything contained in subsection (3) the Commissioner may serve the order on police officers and immigration officer at all ports of entry in Antigua and Barbuda.

#### **50. Order of payment of tax debts**

(1) Payments of a specific tax must be are applied against the taxpayer's liability in the following order—

- (a) penalties relating to tax.
- (b) interest on the tax; and
- (c) the principal amount of the tax.

(2) The Commissioner may apply a tax payment to any tax which has been assessed and is due—

- (a) if the taxpayer fails to indicate to which specific tax or taxation period the payment should be applied; or
- (b) if the payment has been collected pursuant to section 59.

(3) Where amounts described in paragraphs (1)(b) and (c) of this section remain outstanding for more than 180 days, such amounts will be capitalized and considered part of the principal amount of the tax outstanding.

### **51. Currency**

Tax is payable in Eastern Caribbean dollars, except as otherwise provided in a law to which this Act applies.

## **PART VII**

### **INTEREST**

#### **52. General**

(1) Procedures for the payment, collection, and dispute of a tax apply equally to interest relating to a tax.

(2) Liability for interest under this Act is calculated separately and is in addition to penalties provided by law.

(3) If a person has paid interest under this Part and an amount to which the interest relates is found not to have been payable, the interest paid on that amount shall be refunded to the person.

#### **53. Interest Rate**

(1) The interest applicable to sections 50 and 52 is one per cent per month or any part of a month.

(2) Notwithstanding subsection (1) the Minister may vary the interest rate by Order published in the Gazette.

#### **54. Interest on underpayments**

(1) If an amount of tax is not paid by the due date, the taxpayer is liable for interest on the amount for the period from the due date (determined without regard to an extension of time under section 47 to the date the tax is paid.

(2) In the case of tax due under a revised assessment, the due date for the calculation of interest is the original due date of the tax.

**55. Interest on refundable amounts**

(1) If the Commissioner is required to refund an amount under subsection (2) of section 45, interest shall be paid to the taxpayer from the due date until the date on which the refundable amount is paid.

(2) Notwithstanding subsection (1), if the Commissioner does not pay a refund required by the **ABST** Act within the time required pursuant to the said **ABST** Act, interest is payable by the Commissioner.

(3) A refundable amount that is applied against another tax liability under subsection (1) of section 45 is considered to have been paid to the taxpayer on the due date of the liability against which the refundable amount was applied.

**56. Interest on late payment**

(1) A person who fails to pay all or part of a tax due for a tax period within thirty days of the date of assessment or reassessment, or by the due date specified in the notice of assessment, if later, is liable to pay interest on late payment.

(2) A person who fails to pay all or part of an instalment required pursuant to the Income Tax Act within fourteen days of the due date for the instalment is liable to pay interest on the late payment.

(3) Where an extension is granted under section 47, a person is not liable for a late payment penalty under subsection (1) unless the extension period expires without payment having been made.

**PART VIII**

**RECOVERY OF TAX**

**57. General**

(1) The Commissioner may proceed with any remedy under this Part once the taxpayer is determined to be in default pursuant to section 48.

(2) This Part does not apply to **ABST** collected by the Comptroller of Customs, which is recoverable under procedures for recovery of customs duty.

**58. Period of limitation for collection**

(1) Proceedings under this Part shall be commenced within six years of the date on which the taxpayer was determined to be in default.

(2) Subject to subsection (1), no enactment relating to the limitation of actions bars or affects an action or remedy for the recovery of unpaid tax, interest, or penalties under this Act.

### **59. Extinguishment of uncollectible amounts**

(1) If the Commissioner is unable to recover an amount of tax, interest, or penalty due and payable by a person under legislation to which this Act applies, the Minister may, with approval by the Cabinet, order the extinguishment of the liability as a debt due to the Crown.

(2) If the Commissioner determines that a person whose debt was extinguished under subsection (1) has assets that may be attached to recover all or part of the unpaid amounts, the liability for the debt may be reinstated by an order of the Minister, approved by Cabinet, revoking the order made under subsection (1)

### **60. Directors of companies**

(1) If a company fails to pay tax on time, every person who is or has been a director of the company at any time since the relevant time is jointly and severally liable with the company and every other such person for payment of the tax.

(2) Subsection (1) applies irrespective of whether or not the company ceases to exist.

(3) Subsection (1) does not apply to a director who has exercised the degree of care, diligence, and skill that a reasonably prudent person in the position of the director would have exercised in preventing the initial and continuing failure to pay tax.

(4) Amounts payable to the Commissioner by a director under this section are a personal tax liability of the director.

(5) If a director pays tax by reason of a liability under subsection (1), the director may recover the payment from the company as a debt due.

(6) A director of a company may not be assessed for an amount under this section after the period of limitations for assessing the entity for the relevant tax has expired.

(7) In this section –

"relevant time" is six months before the events that gave rise to the company's tax liability.

## **61. Court proceedings**

(1) Tax that is due and payable is a debt to the Crown and is payable to the Commissioner.

(2) If a person fails to pay tax when it is due, the Commissioner may commence proceedings in a court of competent jurisdiction to recover the debt outstanding in respect of the amount owing.

(3) In any proceedings under this section, the production of a certificate signed by the Commissioner, stating the name of the defendant and the amount of tax owing, is sufficient evidence that the amount is due and suffices for the court to give judgment in that amount.

## **62. Lien**

(1) If a taxpayer fails to pay a tax by the due date, a lien in favour of the Commissioner is created in the amount owing (together with interest, penalty, and costs of collection that may accrue) on all property belonging to the taxpayer, and has priority as against all other rights, except as otherwise provided in this section.

(2) The lien described in subsection (1) arises at midnight at the end of the due date and continues until the liability is satisfied or becomes unenforceable by reason of lapse of time.

(3) Before seeking to enforce a lien created under subsection (1), the Commissioner shall register the lien with the Registrar of Lands in the case of real property, with the Registrar of Companies in the case of securities of an incorporated company and in all other cases, the Commissioner shall apply to the High Court.

(4) The lien imposed by this section is not valid against the interest of a person who is a purchaser from the taxpayer, a holder of a security interest granted by the taxpayer, or other lien holder specified in regulations, if the interest arises—

- (a) before the person has actual knowledge of the lien; or
- (b) before notice of the lien has been duly registered by the Registrar of the High Court, the Registrar of Lands and the Registrar of Companies, whichever first occurs.

(5) The Commissioner may file notice of a lien at any time after a taxpayer has a tax liability, or related interest, assessed, but unpaid in whole or in part.

(6) Regulations may prescribe procedures for filing notice of a lien and may prescribe categories of interests against which the lien is not valid even though notice of the lien has been filed.

(7) The Commissioner may file an action in the High Court to enforce the lien imposed by this section.

(8) An affected person may apply to the Commissioner for a release of the lien on the person's property and a decision by the Commissioner not to release a lien may be appealed to the High Court within thirty days of decision not to release.

(9) A lien for the purposes of this section must be in form set out in **Schedule 3**.

### **63. Execution against taxpayer's property**

(1) If the taxpayer is in default, the Commissioner may cause execution to be levied on the taxpayer's property but, the Commissioner may proceed to execution only if the taxpayer has been served with a notice of intention to levy execution, and the taxpayer has failed to pay the tax within thirty days after service of the notice.

(2) If the Commissioner has reasonable grounds for believing that the collection of tax is in jeopardy, the Commissioner may demand immediate payment of the tax and, on failure of the taxpayer to pay the tax, may proceed to levy on the taxpayer's property immediately, notwithstanding subsection (3) of section 48.

(3) A person (including a bank or other financial institution) in possession of, or holding security over, property on which a levy has been made shall, on demand of a designated officer, surrender the property, or if the property is already subject to attachment or execution under judicial process, the Commissioner may place a second charge on the property.

(4) A person who fails to comply with the demand is liable to the Commissioner in the amount of the value of the property or security held, but not in excess of the amount for the collection of which the levy is made.

(5) A person complying with the requirements of this section is, from the time of compliance, discharged from an obligation to the taxpayer or another person to the extent of the value of property surrendered, or the security discharged, to the Commissioner and is not personally liable for loss or damage incurred as a consequence of compliance.

(6) A levy under this section shall be commenced within six years of the date of the issuance of the notice of assessment pursuant to which the tax is levied.

(7) A taxpayer's personal effects and household furnishings without substantial value are exempt from a levy.

### **64. Sale of seized property**

(1) The Commissioner shall sell property seized pursuant to a levy.

(2) The sales proceeds are applied first, against the expenses of the levy and sale, then against the liability for penalties, interest and tax, and the excess shall be returned to the taxpayer.

(3) The Minister may make regulations with respect to the procedure on sale by public auction under the power of sale conferred on the Commissioner by this Act, and may—

- (a) fix an amount of a deposit to be made by the highest bidder;
- (b) reserve a price;
- (c) fix a time within which a deposit shall be made and the events following which it may be forfeited; and
- (d) declare, in the event that the highest bidder fails to make the required deposit or to complete the purchase within the required time, the next highest bidder shall be deemed to be the highest bidder and purchaser of the property.

(4) Seized goods or property shall be sold at public auction at a time and place as the Commissioner may direct; but no sale is to take place within twenty-one days of the seizure of the goods or property, unless the goods seized are, in the opinion of the Commissioner, of a perishable nature, or the owner of the goods has requested their earlier sale.

(5) All goods seized under this Act shall be deposited at some fit place, or left in the possession of some fit person, as the Commissioner may determine.

(6) The date, time, and place of sale of all goods seized under this Act shall be published by notice in the Gazette and in two issues in at least one newspaper circulating the Antigua and Barbuda, prior to the date of sale unless those goods are being sold before the expiry of the twenty-one day period under subsection (4).

(7) Property may not be sold to satisfy liability for penalties, interest, and tax in dispute.

(8) The authority to seize and sell under this section must be in the form in **Schedule 4**.

(9) For the purpose of seizing and selling goods, a person may, if expressly authorised in writing by the Commissioner, execute a warrant of distress obtained from a Magistrate, and if necessary break open a building in the day-time to levy such distress; and may seek assistance from a peace officer, when so required, to assist in the execution of a warrant of distress and in levying the distress.

(10) At the sale of goods or other property under the provisions of this Act a duly authorised officer of the Government may bid for and purchase the goods or other property on behalf of the Crown.

(11) If goods or property advertised for sale are not sold on the day appointed for the sale, the property may again be put up for sale.

(12) The officer or other person conducting the sale may report to the Commissioner the result of the sale and the Commissioner may direct that, upon payment of the purchase money the property be conveyed to the purchaser.

(13) Where the Commissioner, after review of the report provided pursuant to subsection (12), is satisfied that there has been fraud or improper conduct in relation to the sale of a property mentioned in the report or that the relevant tax had been paid, the Commissioner may declare the sale to be null and void.

(14) Upon the execution of the deed of conveyance or the assignment to the purchaser by the Commissioner in accordance with this section, the goods or property shall be vested in the purchaser freed and discharged from all encumbrances arising under this Act.

(15) Notwithstanding anything contained in this Act authorising the Commissioner to sell a property for the recovery of tax, the conveyance or assignment executed to give effect to the sale shall not affect any estate, interest, or right of the Crown in the property.

### **65. Third party debtors.**

(1) If a taxpayer is in default, and the Commissioner wishes to obtain payment of all or part of the debt outstanding from a third party debtor, the Commissioner shall follow the attachment of debts process set out in the **Eastern Caribbean Supreme Court Civil Procedure Rules 2000** with the amendment that a provisional order obtained in accordance with the process set out in those rules becomes a final order 14 days after service without the necessity of a hearing.

(2) Fourteen days after service of the order described in **rule 50.3** of the **Eastern Caribbean Supreme Court Civil Procedure Rules 2000** the third party debtor shall pay to the Commissioner (on account of the taxpayer and by the date specified in the order) an amount not exceeding the lesser of—

- (a) the amount in respect of which the taxpayer is in default;
- (b) the money owed by the third party debtor to the taxpayer; and
- (c) the amount specified in the order.

(3) The date for payment specified in the order shall not be before either—

- (a) the date the money owed by the third party debtor becomes payable to the taxpayer or is held on behalf of the taxpayer; or
- (b) a date fixed by the court pursuant to the attachment of debts process.

(4) After the service of an order of the court, the third party debtor shall not pay an amount to the taxpayer until the conditions of the order are satisfied.

(5) Amounts payable to the Commissioner by a third party debtor under this section are a personal liability of the third party debtor, which may be collected in the same manner as a tax.

(6) A person is indebted to the taxpayer if the person owes the taxpayer money, including:

- (a) amounts currently owing or that may subsequently become owing to a taxpayer;
- (b) amounts held or that may subsequently be held for or on account of a taxpayer;
- (c) amounts held or that may subsequently be held on account of a third person for payment to a taxpayer;
- (d) amounts held by a person who has authority from a third person to pay the money to a taxpayer; and
- (e) in relation to a third party debtor that is a financial institution, amounts that the taxpayer holds in an account with the institution.

(7) An order may be served under this section on the taxpayer's employer, requiring the employer to withhold and to pay to the Department, for a specified period, some part of the future wages or salary that become payable to the taxpayer.

(8) The first \$3,000 of wages per month are not subject to withholding under an order described in subsection (7).

(9) A third party who pays the Commissioner pursuant to this section is treated as having acted with the authority of the taxpayer and of all other persons concerned and may not be held personally liable in respect of the payment in any proceeding, civil or criminal.

(10) This section and section 67 do not apply where section 40 of the Finance Administration Act, 2006 and the regulations under that law apply.

(11) In this section—

"money" includes a debt obligation denominated or payable in money; and

"third party debtor", in relation to a taxpayer, means a person who owes money to a taxpayer, or holds money on behalf of a taxpayer.

**66. Compliance with order.**

(1) A third party who pays the Commissioner pursuant to section 67 is—

- (a) treated as having acted with the authority of the taxpayer and of all other persons concerned; and
- (b) indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extra judicial.

(2) Subsection (1) applies irrespective of a provision to the contrary in written law, contract, or agreement.

(3) An order under section 67 ceases to have effect once the tax or obligations described in it is paid or otherwise satisfied.

(4) If a third party served with an order under section 67 is unable to comply with the order by reason of lack of money owing to or held for the taxpayer, the person shall notify the Commissioner (a "third party notice").

(5) A third party notice shall—

- (a) be in writing;
- (b) set out the reasons for the inability; and
- (c) be filed with the Commissioner as soon as practicable after the third party becomes aware of the inability and, in any event, before the payment date specified in the section 66 order.

(6) On receipt of a third party notice the Commissioner may, by notice in writing serve on the third party—

- (a) accept the third party notice and cancel or amend the section 67 order; or
- (b) reject the third party notice.

(7) The filing of a third party notice has no effect on the third party's personal liability for amounts under section 62 unless and until the Commissioner cancels or asks the court to amend the section 66 order.

(8) In this section, "third party" means a third party debtor served with an order under 67.

**67. Non-arm's length transferees**

(1) If a taxpayer's liability has not been satisfied after levy of execution on property known to the Commissioner, a person who has received assets of the taxpayer in a transaction that is not at arm's length or executed in good faith in the period of one year preceding the date of the levy is secondarily liable for the tax to the extent of the value of the assets received.

(2) Subsection (1) does not apply to an amount for which a person is liable under section 44.

**68. Receivers**

(1) A receiver is required to notify the Commissioner of the receiver's appointment within fourteen working days after being appointed.

(2) The Commissioner may notify the receiver of the amount that appears to the Commissioner to be sufficient to provide for payment of tax owing, or that will become owing, by the person whose assets are in the possession or care of the receiver.

(3) A receiver may not dispose of an asset situated within Antigua and Barbuda held in the receiver's capacity as receiver, without the prior permission of the Commissioner.

(4) A receiver shall set aside out of the proceeds of sale of an asset the amount notified by the Commissioner under subsection (2), or a lesser amount as may be agreed with the Commissioner.

(5) A receiver is personally liable for the amount of tax notified in subsection (2) to the extent of an amount required to be set aside under subsection (4), if the receiver fails to comply with the requirements of this section.

(6) In this section, "receiver" means a person who, with respect to an asset situated in Antigua and Barbuda, is—

- (a) a liquidator of a company or other entity;
- (b) a receiver appointed out of court or by a court;
- (c) a trustee in bankruptcy;
- (d) a mortgagee in possession;
- (e) an executor, administrator, or heir of a deceased individual's estate;
- (f) conducting the affairs of an incapacitated individual; or
- (g) a successor in a corporate reorganisation.

**PART IX****PENALTIES****69. General**

(1) This section applies to penalties under this Act or under any other tax law.

(2) Procedures for the assessment, payment, collection, and dispute of a tax apply equally to penalties relating to a tax.

(3) A person's liability for a penalty under a section in this Part is separate and distinct from the person's liability, if any, for a penalty under another section of this Act or another tax law and is in addition to interest levied under Part VII and to a criminal sanction imposed under Part X.

(4) The burden of proof is on the Commissioner to show non-compliance with the provisions of tax laws with respect to the imposition of a penalty.

(5) The Commissioner may make an assessment of a penalty charged as if the penalty were tax payable under this Act, and may specify the date on which the penalty is payable.

(6) A notice of an assessment of a penalty shall be served on the person subject to the penalty and shall state the amount of the penalty payable, the provision under which it is payable, and the due date for payment, and on service of the notice—

- (a) the notice and the assessment are treated as if they were a notice and assessment of tax payable under this Act;
- (b) the amount of the penalty specified in the notice is treated as tax payable under this Act; and
- (c) the due date for payment is the date specified in the notice.

(7) A person's liability to pay a penalty arises on the making of an assessment by the Commissioner under subsection (6).

(8) The period of limitations for assessing a penalty is seven years after the violation that causes the penalty occurs, unless the violation includes the taxpayer's provision of incorrect information due to fraud or wilful neglect in which case the limitation for assessing a penalty is twelve years.

(9) If a person liable for a penalty shows reasonable cause, the Commissioner may—

- (a) refrain in whole or in part from assessing the penalty; or
- (b) remit or waive in whole or in part a penalty that has been assessed.

(10) A penalty payable for each day, month, or other period during which a particular state of affairs exists or continues, is payable in full for part of that day, month, or other period in which the state of affairs commences, continues, or ends.

**70. Failure to notify of changes in taxpayer information.**

A person who fails to—

- (a) notify the Commissioner as required by subsections (6) and (7) of section 8;
- (b) apply for cancellation of the person's registration as required by subsection 11(1) of the ABST;
- (c) inform the Chief Valuation Officer of the construction or alteration of a building as required by subsection (5) of section 65 of the **Property Tax and Valuation Act, 2006,**

is liable for a penalty not exceeding \$1,000.

**71. Late filing**

(1) A person who fails to file a tax or other return on or before the date by which filing is required is liable to a penalty equal to the greater of—

- (a) **five percent of the amount of the tax owing;**
- (b) **a penalty of \$250; and**
- (c) **1% interest per month or part thereof**

**72 Failure to maintain documents**

(1) A person who fails to maintain proper documents as required by this Act or any tax law is liable for a penalty for each month or part of a month during which the failure continues.

(2) The penalty is \$50 per day for each day the failure continues.

(3) Notwithstanding subsection (2), the Commissioner may waive the application of the penalty for a maximum of thirty days from the date that the Commissioner notifies the taxpayer in writing of a violation of this section.

**73. Failure to comply with third party notice**

A person who fails to comply with a notice issued under section 66 is liable for a penalty of 25 percent of the difference between the amount payable by the third party and the amount paid to the Commissioner by the due date specified in a notice under section 66 notice.

**74. Failure to provide facilities**

A person who fails to provide a taxation officer with reasonable facilities and assistance as required under this Act or an Act to which this Act applies is liable for a penalty not exceeding \$1,500.

**75. Failure to comply with Notice to give information.**

A person who fails to comply with a request for information properly made under this Act, or an Act to which this Act applies, within the specified time, is liable-

- (a) in the case of an individual , a penalty of \$500.00 for each day on part thereof or which failure endures;
- (b) in the case of a company, partnership, friendly society, statutory body to a penalty of \$500.00 for each say on part thereof, or which the breach continues.

**76. Late payment**

(1) A person who fails to pay all or part of a tax due for a tax period within fourteen days of the date of assessment or reassessment, or by the due date specified in the notice of assessment, if later, is liable to a late payment penalty equal to 10 percent of the amount of tax due but not paid.

(2) A person who fails to pay all or part of an instalment required pursuant to the Income Tax Act within fourteen days of the due date for the instalment is liable to a late payment penalty equal to 10 percent of the amount of tax due but not paid.

(3) Where an extension is granted under section 47, a person is not liable to a late payment penalty under subsection (1) unless the extension period expires without payment having been made.

**77. Negligent or fraudulent underpayment**

If tax is underpaid, or under declared, as a result of an incorrect statement or a material omission in a taxpayer's tax return, and that statement or omission is a result of intentional conduct or negligence on the part of the taxpayer, the taxpayer is liable to a penalty in the amount of –

- (a) 25 percent of the underpayment if paragraph (b) does not apply; or
- (b) 75 percent of the underpayment if the amount of the underpayment is more than the greater of—
  - (i) \$150,000; or
  - (ii) 50 per cent of the person's tax liability for the period.

**PART X**  
**CRIMINAL OFFENCES**

**78. General**

A person's liability for offences under this Act is separate and distinct from the person's liability to pay tax and interest under this Act.

**79. Falsification of invoices, receipts, credit and debit notes**

(1) A person commits an offence if the person—

- (a) uses a false taxpayer identification number or a taxpayer identification number that does not apply to the person;
  - (b) issues a false ABST invoice or sales receipt;
  - (c) issues a false ABST credit note or debit note; or
  - (d) provides, or fails to provide, an invoice, credit note, debit note, or sales receipt as provided under Part IX of the ABST Act; and
- (fe is liable on summary conviction to a fine not exceeding \$15,000.

(2) A supplier under the ABST Act does not commit an offence under paragraph 1(b), (c) or (d) only because information relating to the recipient of the supply, which was relevant to the issue of, or required to be included in, the invoice, debit or credit note, or sales receipt (including information about the registration status or taxpayer identification number of the person) was incorrect, if the person, having exercised all due care, believes on reasonable grounds that the information relating to the recipient was accurate.

(3) A supplier under the ABST Act does not commit an offence under paragraph 1(d) if the supplier, having exercised all due care, believes on reasonable grounds that the recipient of the supply for which an invoice, debit or credit note, or sales receipt was required to be issued was or was not a registered person.

**80. False or misleading statements**

(1) A person who makes a statement to a taxation officer that is false or misleading in a material particular commits as an offence and is liable on summary conviction to a fine not exceeding \$10,000.

(2) It is a defence if the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular.

(3) A reference in this section to a statement made to a taxation officer includes a reference to a statement made orally, in writing, or in another form to that officer acting in the performance of the officer's duties under this Act, and includes a statement made—

- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, lodged, or furnished under this Act;
- (b) in any information required to be furnished under this Act;
- (c) in a document furnished to a taxation officer otherwise than pursuant to this Act;
- (d) in an answer to a question asked of a person by a taxation officer; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer,

but does not include a statement to which section 78 applies.

(4) A reference in this section to a statement that is misleading in a material particular includes a reference to a statement that is so because of the omission of a matter or thing from the statement.

### **81. Tax Evasion**

A person, an individual or legal entity, who wilfully evades, or attempts to evade the assessment, payment, or collection of tax, or who wilfully claims a refund of tax to which the person is not entitled, commits an offence and is liable on indictment conviction to a fine not exceeding of \$100,000, or to imprisonment for a term of five years, or both.

### **82. Impeding tax administration**

(1) A person who wilfully impedes or attempts to impede the Department in its administration of this Act commits an offence and is liable on conviction on indictment to a fine not exceeding \$20,000, or to imprisonment for a term of one year, or both.

(2) For the purposes of this section, a person impedes the administration of this Act if the person—

- (a) refuses to comply with a lawful request by officers of the Department to examine documents, records, or data within the control of the person;
- (b) fails to comply with a lawful request by officers of the Department to have the person appear before officials of the Department;
- (c) interferes with the lawful right of an official of the Department to enter onto a business premises or a dwelling unit;

- (d) fails to file a return;
- (e) uses a false taxpayer identification number or a taxpayer identification number that does not apply to the person;
- (f) issues a false ABST invoice, sales receipt, ABST credit note, or ABST debit note;
- (g) fails to pay security within the time allowed for payment pursuant to section 51 of the ABST Act;
- (h) refuses to allow the Commissioner to inspect or measure land or refuses to deliver for inspection any map, plan, title deed, instrument of title, or other document; or
- (i) otherwise impedes the determination, assessment, or collection of tax.

(3) A person does not commit an offence under paragraph (f) only because information relating to the recipient of the supply, which was relevant to the issue of, or required to be included in, the ABST invoice, debit or credit note, or sales receipt (including, but not limited to, information about the registration status or taxpayer identification number of the person) was incorrect, if the person, having exercised all due care, believes on reasonable grounds that the information relating to the recipient was accurate.

### **83. Aiding and abetting**

A person who wilfully aids, abets, assists, counsels, incites, or induces another person to commit a criminal offence under this Act is liable on conviction to the same penalty as if the offence had been committed by that person.

### **84. Failure to preserve secrecy**

A person who contravenes subsection (2) or (3) of section 8 commits an offence and is liable on summary conviction to a fine not exceeding \$20,000, or to imprisonment for a term of one year, or both.

### **85. Offences by corporations or partnerships**

- (1) If an offence under this Act is committed by a body of persons—
  - (a) in the case of a body corporate, every director or similar officer of that body is deemed to have committed the offence; or
  - (b) in the case of a partnership, every partner or officer of the partnership is deemed to have committed the offence.
- (2) Subsection (1) does not apply in respect of a person if—

- (a) the offence was committed without the person's consent or knowledge; and
- (b) the person exercised all diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and all the circumstances.

### **86. Offences by taxation officers**

A taxation officer who, in carrying out the provisions of this Act—

- (a) directly or indirectly asks for, or takes, in connection with the officer's duties, a payment or reward, whether pecuniary or otherwise, or a promise or security for the payment or reward, not being a payment or reward which the officer is lawfully entitled to receive; or
- (b) enters into or acquiesces in an agreement to do, abstain from doing, permit, conceal, or connive at an act or thing that is contrary to the provisions of this Act or to the proper execution of the officer's duty, or that has the effect that the tax revenue is or may be defrauded,

commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding two years, or both, and the Court may, in addition to imposing a fine, order the convicted person to pay to the Commissioner an amount of tax that has not been paid as a result of the officer's wrong doing and which cannot reasonably be recovered from the person liable for the tax.

### **87. Commissioner's investigative powers**

(1) The Commissioner may investigate an offence specified in this Act and in other laws to which this Act applies.

(2) The power to bring charges and seek prosecution for the criminal offences specified in this Act belongs exclusively to the Director of Public Prosecutions.

(3) Proceedings under this Act do not affect criminal proceedings that may be brought under any other Act or law.

### **88. Period of limitation**

Proceedings under this Part may be commenced—

- (a) if the offence alleged involves the doing of an act **by an individual**, within five years after the doing of the act;
- (b) if the offence alleged involves the failure to do an act, within twelve years after the failure occurred or, if later, within three years after the Commissioner becomes aware of the failure; or

- (c) if the offence alleged involves the non-disclosure or incorrect disclosure by a person of information relating to that person's liability under a tax law, within six years after the person's correct liability to tax becomes final for that tax period.

## **PART XI**

### **COMPOUNDING OF OFFENCES**

#### **89. Compounding of offences**

(1) If a person has committed an offence under this Act or under another law to which this Act applies, other than an offence under section 81 or 83, the Commissioner may, at any time prior to a charge being preferred by the Director of Public Prosecutions, compound the offence and order the person to pay a sum of money as specified by the Commissioner, not exceeding three-quarters of the maximum amount of the fine prescribed for the offence.

(2) The Commissioner may compound an offence under this section only if the person concerned requests the Commissioner in writing to do so, and the request is witnessed by another person who signs the request.

(3) If the Commissioner compounds an offence under this section, the order described in subsection (1) shall—

- (a) be in writing and have attached the written request described in subsection (2);
- (b) specify—
  - (i) the offence committed;
  - (ii) the sum of money to be paid; and
  - (iii) the due date for the payment; and
- (c) be served on the person who committed the offence.

(4) An order under subsection (3) is final and not subject to appeal.

(5) If the Commissioner compounds an offence under this section and payment is made as ordered by the Commissioner, the offender is not liable to prosecution for that offence.

(6) The Commissioner shall not compound an offence in respect of which a charge has been preferred by the Director of Public Prosecutions, unless the Director of Public Prosecutions gives approval in writing.

(7) The Commissioner's power under this section is subject to the powers of the Director of Public Prosecutions under the Constitution, and the Commissioner shall give the Director of Public Prosecutions a copy of the order described in subsection (3) at the time it is served on the taxpayer.

(8) The amount ordered to be paid under subsection (1) is recoverable as if it were tax due and payable under this Act.

## **PART XII**

### **FINAL PROVISIONS**

#### **90. Repealed legislation**

(1) The following laws of Antigua and Barbuda are repealed—

- (a) Business Tax Act, Cap. 65;
- (b) Inland Revenue Administration Act, Cap. 217;
- (c) Land Sales Duty Act, Cap. 236; and
- (d) The Sugar Export Cess Act, Cap. 418; and
- (e) Tax Administration and Procedure Act 2012 No.19

(2) Provisions of the laws set out in Schedule 5 are repealed or amended as provided in that Schedule to conform to the introduction and application of this Act.

(3) A reference in this Part to repealed legislation is a reference to legislation specified in subsection (1) or repealed or amended pursuant to subsection (2).

#### **91. Consequences of repealed legislation**

(1) The repealed legislation continues to apply in respect of events occurring prior to the date on which this Act comes into operation pursuant to subsection (1).

(2) All appointments made under the repealed legislation and subsisting at the date of commencement of this Act are treated as appointments made under this Act.

(3) All forms and documents used in relation to the repealed legislation may continue to be used under this Act, and all references in those forms and documents to provisions of and expressions appropriate to the repealed legislation are taken to refer to the corresponding provisions and expressions of this Act.

(4) A reference in this Act to a previous year of assessment includes, as the context requires, a reference to a year of assessment to which the repealed legislation applied.

(5) Appeals, prosecutions and other proceedings commenced before the commencement date continue and are disposed of as if this Act had not come into force.

(6) Tax liabilities that arose before the commencement date may be recovered by fresh proceedings under this Act, but without prejudice to an action already taken for the recovery of the tax.

(7) A reference in this Act to "this Act" or "this law" or to a provision of "this Act" or "this law" includes, as the context requires, a reference to the prior law or to a corresponding provision of the prior law, respectively.

## **92. Application of the law to procedures under repealed legislation**

If the law concerning tax administration and procedure in effect prior to the enactment of this Act is silent with respect to a matter addressed in this Act, the relevant provision in this Act applies with retroactive effect to matters that are not closed under the period of limitations.

## **93. Regulations**

(1) The Minister may make regulations generally in order to give effect to the provisions of this Act; and

(2) Without prejudice to anything contained in subsection (1), the Minister may make regulations in order to amend sections 10(2), 10(4), 11(3) and 64(3).

## **94. Transitional**

All matters commenced under the Tax Administration and Procedure Act 2012 No.19, shall continue until completed, as if the said Act was not repealed.

**SCHEDULE 1**

**Section 3**

Laws, as amended, to which this Act applies:

Antigua and Barbuda Sales Tax Act, 2006

Income Tax Act

Insurance Levy Act

International Business Corporations (Exemption from Income Tax) Act

Non-Citizens Undeveloped Land Tax Act

Unincorporated Business Tax Business Act 2016

Property Tax and Valuation Act, 2006

Provisional Collection of Taxes Act, and any taxes levied pursuant to this Act.

Stamp Act

Travel Tax Act

**SCHEDULE 2**

**Section 11(1)**

**TAX ADMINISTRATION AND PROCEDURE ACT 2017**

**Tax Compliance Certificate No. 1**

I .....hereby certify that ..... of  
..... does not have tax due and outstanding.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

.....

Commissioner of Inland Revenue

**SCHEDULE 3**

**ANTIGUA AND BARBUDA**

**TAX ADMINISTRATION AND PROCEDURE ACT 2017**

(Section 62(9))

**LIEN**

**WHEREAS** it is provided by section 62 of the **Tax Administration and Procedure Act 2017** (“the Act”) it is provided that where a taxpayer fails to pay tax by the date due a **LIEN** in favour of the Commissioner of Inland Revenue (“the Commissioner”) arises in the amount of .....due and owing plus interest, penalty and costs of the Collection may accrue.

**AND WHEREAS** .....a taxpayer was assessed to pay .....in tax and a demand by the Commissioner for payment of the said tax was made on.....

**AND WHEREAS** the said taxpayer failed to pay the tax plus interest, penalty and costs of the collection the accrued;

**AND WHEREAS LIEN** in favour of the Commissioner has arisen on all property owned by the taxpayer and which has priority over and other rights.

**AND WHEREAS** it is further provided that the **LIEN** arises at midnight at the end of the due date.

**NOW THEREFORE:**

1. The **LIEN** aforesaid is placed by the Commissioner on the following property which is/are is registered in the name of the said taxpayer:

.....  
.....  
.....  
.....  
.....





**SCHEDULE 5**

**Section 90(2)**

**CONSEQUENTIAL CHANGES TO LEGISLATION AND REGULATIONS**

**Part 1 .Amendments to the Antigua and Barbuda Sales Tax Act, 2006**

1. The following provisions of the Antigua and Barbuda Sales Tax Act, 2006, are repealed—

- (a) Section 38;
- (b) Sections 39(2), (3), (4), and (5);
- (c) Sections 40(1) and (2);
- (d) Sections 41(3), (4), (5), (6), (7), (8), and (9);
- (e) Sections 44(4) and (5);
- (f) Sections 45(1), (5), (6), (7), (8), (9), (11);
- (g) Section 47;
- (h) Section 48;
- (i) Section 49;
- (j) Section 50;
- (k) Section 53;
- (l) Section 61;
- (m) Section 62;
- (n) Section 65;
- (o) Section 66;
- (p) Section 67;
- (q) Section 68;
- (r) Section 69;
- (s) Section 70;
- (t) Section 71;
- (u) Section 73;
- (v) Section 74;
- (w) Section 75;
- (x) Section 80;
- (y) Section 81;
- (z) Section 82;
- (aa) Section 83
- (bb)Section 84;

(cc) Section 85;  
(dd) Section 87;  
(ee) Section 88;  
(ff) Section 89;  
(gg) Section 90;  
(hh) Section 91;  
(ii) Section 92;  
(jj) Section 93;  
(kk) Section 96;  
(ll) Section 97;  
(mm) Section 98;  
(nn) Section 99;  
(oo) Section 100;  
(pp) Section 101;  
(qq) Section 102;  
(rr) Section 103;  
(ss) Section 104;  
(tt) Section 105  
(uu) Section 106;  
(vv) Section 107;  
(ww) Section 108;  
(xx) Section 109;  
(yy) Section 110;  
(zz) Section 111;  
(aaa) Section 112; and  
(bbb) Section 113.

2. The following sections of the Antigua and Barbuda Sales Tax Act, 2006, are amended as follows—

- (a) Section 45(10) is amended to provide:  
“The Commissioner may make an assessment at any time if the assessment is made under subsection (2) or (3)”.
- (b) Section 45(12) is amended to provide:  
“Nothing in this section prevents any interest or penalty payable in respect of ABST assessed under subsection (2) or (3), from being computed from the date on which payment of the ABST would have been due under section 41 if the supply had been a taxable supply”.
- (c) Section 94(1)(c) is amended to provide:  
“a decision under section 24(1) of the Tax Administration and Procedure Act not to allow a person to lodge fuller or additional returns;”

- (d) Section 94(1)(d) is amended to provide:
  - a decision under section 22(6) of the Tax Administration and Procedure Act to require a person to lodge fuller or additional returns;
- (e) Section 94(1)(e) is amended to provide:
  - “a decision under section 45 of the Tax Administration and Procedure Act on a request for an extension of time to pay, including a decision not to grant the request, to require payment sooner than requested, or to require a taxpayer to comply with other payment arrangements;”
- (f) Section 94(1)(f) is amended to provide:
  - “a decision under section 75(3) of the Tax Administration and Procedure Act not to waive a late lodgement penalty”;
- (g) Section 94(1)(h) is amended to provide:
  - “the issue of an assessment under Part IV of the Tax Administration and Procedure Act”;
- (h) Section 94(1)(i) is amended to provide:
  - “a decision under section 32 of the Tax Administration and Procedure Act to make a determination in relation to a taxpayer’s liability for an amount”;
- (i) Section 94(1)(k) is amended to provide:
  - “ a decision under section 67(9) of the Tax Administration and Procedure Act not to remit a penalty, or a decision to remit the penalty only in part”;
- (j) Section 94(1)(l) is amended to provide:
  - “ a decision under section 42 of the Tax Administration and Procedure Act to appoint a person as a representative of a taxable person”.
- (k) Section 95(2) is amended to provide:
  - “Part V of the Tax Administration and Procedure Act applies to objections made under this section”.
- (l) Section 41A(1) is amended to provide:
  - “Subjection to this section, the references to “Commissioner” in section 27 and subsection 41(1) of this Act, and section 22 of the Tax Administration and Procedure Act are to be read, with respect to taxable persons located in Barbuda as references to the Barbuda Council”.
- (m) Section 44(10) is amended to provide:
  - “Where the Commissioner does not pay a refund within the time required under this section, interest is payable on the amount outstanding at the rate specified under Part VII of the Tax Administration and Procedure Act”.

**Part 2. Amendments to the Income Tax Act**

1. The following provisions of the Income Tax Act are repealed—

- (a) Section 3;
- (b) Section 4;
- (c) Subsection 18(3);
- (d) Section 26;
- (e) Section 27
- (f) Section 28;
- (g) Section 29;
- (h) Subsection 40(5);
- (i) Section 46;
- (j) Subsections 47(1) and (5);
- (k) Section 48;
- (l) Sections 49, 49B, and 49C;
- (m) Section 50;
- (n) Section 51;
- (o) Section 52;
- (p) Section 53;
- (q) Section 54;
- (r) Section 55;
- (s) Section 56;
- (t) Section 57;
- (u) Section 58;
- (v) Section 59;
- (w) Section 60;
- (x) Section 61;
- (y) Section 62;
- (z) Section 68;
- (aa) Section 69;
- (bb) Section 70;
- (cc) Section 71;
- (dd) Section 72;
- (ee) Section 73;
- (ff) Section 74;
- (gg) Section 75;
- (hh) Section 76;
- (ii) Section 77;
- (jj) Section 78;
- (kk) Section 79;

(II) Section 83;

2. The following sections of the Income Tax Act are amended as follows —

(a) The definition of “Appeal Board” in section 2 is amended to read as follows

—

“Appeal Board” means the Tax Appeal Board as constituted by the Tax Administration and Procedure Act 2017.

(a) The first paragraph of Section 49A is amended to read as follows —

Every return delivered to the Commissioner in accordance with this Act shall be accompanied by

### **Part 3. Amendments to the Insurance Levy Act**

1. The following provisions of the Insurance Levy Act are repealed—

(a) Section 5;

(b) Section 6

### **Part 4 .Amendments to the Unincorporated Business Tax Act 2005**

**1. The following provisions of the Unincorporated Business Tax Act 2005 are repealed—**

**(a) Section 14;**

**(b) Section 26 to 33;**

**(c) Section 34 to 35;**

**(d) Section 36 to 40;**

### **Part 5. Amendments to the Property Tax and Valuation Act, 2006**

1. In this Bill “principal Act” means the Property Tax and Valuations Act, 2006

2. Amendment of section 7 of the principal Act

Section 7 of the principal Act is amended-

(a) by inserting the words “investment property” after the word “residential” appearing in line two thereof;

(b) by adding a new subsection (4) as follows:

“(4) For this purposes of this Act “investment property “ includes:

(a) apartments;

(b) condominiums;

(c) town houses;

- (d) row houses;
- (e) homes; or
- (f) villas,

that are rented on a period of six months or less in any year.”

3. Amendment of section 27 of the principal Act

Section 27 of the principal Act is amended -

- (a) by deleting subsection (1) and (2) thereof and substituting as subsections (1) , (2) and (2A)-

(1) For the avoidance of doubt, due date for the payment of property tax is between 1<sup>st</sup> January and 30<sup>th</sup> May, in every year.”

(2) As soon as practicable at the beginning of every tax year, the amount of the property tax payable in respect of any property for the year shall be demanded by or on behalf the Commissioner from the owner of the property and the property tax shall be payable within the time specified in subsection (1).; and

(2A) If property tax is paid in instalment, being not less than 50% of the total tax due, shall paid during of [sixty days] before the due date, being 1<sup>st</sup> January, and the balance shall be paid on or before the end of the due date, being 30<sup>th</sup> May, in every year.”.

4. The following provisions of the principal Act are repealed—

- (a) Section 3;
- (b) Section 26(3);
- (c) Section 28;
- (d) Section 29;
- (e) Section 30;
- (f) Section 31;
- (g) Section 32;
- (h) Section 33;
- (i) Section 34;
- (j) Section 35;
- (k) Section 36;
- (l) Section 37;
- (m) Section 38;
- (n) Section 39;
- (o) Section 40;
- (p) Section 41;

- (q) Section 42;
- (r) Section 43;
- (s) Section 44;
- (t) Section 45;
- (u) Section 46;
- (v) Section 47;
- (w) Section 48;
- (x) Section 62(3) and (4);
- (y) Section 63;
- (z) Section 65(3) and (6);
- (aa) Section 68;
- (bb)Section 78;

**Part 6. Amendments to the Travel Tax Act and repealed of the Tax Administration and Procedure Act**

1. The following provision of the Travel Tax Act is repealed—
  - (a) Section 8;
2. The tax Administration and procedure Act 2012 is repealed

Passed by the House of Representatives  
this day of 2017.

Passed by the Senate  
this day of 2017.

Speaker  
Clerk to the House of Representatives

President  
Clerk to the Senate

## **EXPLANATORY MEMORANDUM**

### **TAX ADMINISTRATION AND PROCEDURE ACT 2017**

The Tax Administration and Procedure Act 2017 harmonizes, rationalizes, and simplifies the operation of tax administration and procedure in Antigua and Barbuda's tax laws. The Act applies to the Antigua and Barbuda Sales Tax Act, 2006, Income Tax Act, Insurance Levy Act, International Business Companies (Exemption from Income Tax) Act, Non-Citizens Undeveloped Land Tax Act, Personal Income Tax Act, 2005, Property Tax and Valuation Act, 2006, Provisional Collection of Taxes Act, and any taxes levied pursuant to this Act, Stamp Act, Travel Tax Act, and any other law if responsibility for the general administration of the tax is assigned to the Commissioner. In addition, the Act balances the powers given to the Inland Revenue Department with the rights and obligations of taxpayers. Overall, the Act facilitates consistent and effective tax administration and provides taxpayers with procedural safeguards and clear requirements and timelines.

#### **PART I PRELIMINARY**

**Clause 2 (Preliminary)** sets out definitions under the Act. Notably, the definitions clarify that an assessment includes a self-assessment. The definition of tax is broad and means a compulsory payment to government imposed under a law to which the Act applies, regardless of the label placed on the payment and includes interest or penalties in relation to a tax. Taxpayer is defined to mean a person required to pay tax or a person who is required to withhold tax and remit it to the Inland Revenue Department. Tax return is defined to include an information return.

**Clauses 3 and 4 (Scope of the Act)** address the scope of the Act. The taxes listed in Schedule I are covered by the Act, as is any other tax if the responsibility for the general administration of the tax is assigned to the Commissioner. If there is inconsistency between this Act and provisions of another Act, the provisions of the other Act prevail. This ensures that if there are more specific administration and procedure rules for a specific tax, those rules continue to apply.

#### **PART II GENERAL PROVISIONS**

Part II covers a broad range of fundamental topics: the responsibilities of the Commissioner, delegation of the Commissioner's powers, assistance of experts, confidentiality requirements, taxpayer identification numbers, tax compliance certificates, public and advance rulings, communications with taxpayers and The Tax Administration

and Procedure Act, 2013, forms and notices, the effect of defects, agent and officers, the promulgation of regulations, a taxpayer's right to information, and due dates.

**Clause 5 (Commissioner and Inland Revenue Department)** requires the Public Service Commissioner to appoint a Commissioner of Inland Revenue and other persons as are necessary to ensure the administration of the Act. The Commissioner is responsible for the collection and accounting for taxes and for the administration and application of this Act. The Commissioner is also charged with administering the Inland Revenue Department. The Commissioner, as well as experts engaged pursuant to this Act and other persons required to perform functions under this Act, are insulated from civil liability if they act in good faith in the discharge of their functions. The Commissioner may prescribe forms as appropriate.

**Clause 6 (Delegation of Powers)** enables the Commissioner to delegate powers or duties conferred or imposed by this Act to another officer of the Department, either to a specific individual or to a specific post. The Commissioner may provide that material to be provided to the Commissioner be provided to another person nominated by the Commissioner. The Commissioner may personally exercise any power, duty, or function required by the Act. Delegations may be revoked in writing.

**Clause 7 (Assistance of Experts)** authorizes the Commissioner to engage experts in the proper performance of the Department's functions as long as the appointment is in writing and is expressly made under this section. Experts shall be supervised by authorized tax officers. A person may refuse to deal directly with an expert but shall not obstruct an expert. If the engagement of an expert gives rise to concerns about a conflict of interest, a person may complain to the Commissioner who will decide on the complaint. Experts are bound by the same confidentiality requirements as other tax officials.

**Clause 8:** Set out the obligations of an expert appointed under clause 7.

**Clause 9 (Confidentiality)** sets out strict requirements for holding information received about a taxpayer in secret and confidence. Persons who receive information related to a specific taxpayer in an official capacity may disclose that information only to a specified list of persons:

- (a) other agents and employees of the Department and of the Customs and Excise Division in the course, and for the purpose, of carrying out their duties;
- (b) the Minister of Finance in the course, and for the purpose, of carrying out supervision of the Department;
- (c) employees of the Ministry of Finance, for the purpose of reviewing and evaluating tax issues;

- (d) tax authorities of a foreign country, in accordance with an international agreement;
- (e) law enforcement agencies, for the purpose of the prosecution of a criminal offence; and
- (f) a court, in a proceeding to establish a taxpayer's tax liability or responsibility for an offence under a taxation law.

Even if information is disclosed to someone in the specified list, it shall only be disclosed to the minimum extent necessary to achieve the objective of the disclosure. Recipients are subject to the same requirement to keep information secret and in confidence, except to the minimum extent necessary to achieve the objective for which the information was received. The provisions contain two additional exceptions to the requirement to keep information secret and confidential. First, the Commissioner may disclose information The Tax Administration and Procedure Act, 2017 about a taxpayer's affairs to the taxpayer or an authorized representative of the taxpayer after obtaining reasonable assurance of the authenticity of the claim. Second, the taxpayer may waive, through written consent, the requirement to keep information secret and confidential.

**Clause 10 (Taxpayer Identification Numbers)** requires the Commissioner to assign a unique taxpayer identification number to every taxpayer, which shall be included on all correspondence sent to a taxpayer by the Commissioner that concerns the taxpayer's tax liability. Upon notice in the Gazette, each taxpayer will have one number that will be used for all taxes to which the Act applies. The Commissioner may also assign a taxpayer identification number to a person who is not a taxpayer, but who makes payments that are taxable to the recipient of those payments. The requirements to use a taxpayer identification number on returns or other documents or to furnish the number to another person will be set out by regulation. If a taxpayer changes its name, address, place of business, or nature of taxable activity, the taxpayer shall notify the Commissioner in writing. If the taxpayer has registered under the Antigua and Barbuda Sales Tax Act, notice of the change shall be made within fourteen days of the change occurring; otherwise notice shall be provided within one year.

**Clause 11 (Tax Compliance Certificate)** provides for a general tax compliance certificate, which applies for the purposes of all taxes. Tax Compliance Certificates allow a taxpayer to demonstrate that taxes due and outstanding have been paid or that realistic arrangements for payment have been made and instalments have been met. A taxpayer may request a tax compliance certificate from the Commissioner. Additionally, the Minister may make regulations that require the provision of a tax compliance certificate in specific circumstances.

**Clause 12 (Public Rulings)** sets out the role and practice of public rulings. Public rulings allow the Commissioner to set out the Commissioner's interpretation of the application of

tax legislation and provide taxpayers with assurances about the consistency of tax administrative practices. Public rulings are binding on the Commissioner, but not on taxpayers, and are binding until they are revoked.

**Clause 13 (Advance Rulings)** provides guidelines for advance rulings. The Commissioner may issue a ruling setting out the Department's position on the application of tax legislation to a specific transaction proposed by a specific taxpayer. Assuming the taxpayer makes full and true disclosure of the transaction and the transaction is carried out in accordance with that disclosure, the ruling is binding on the Department and on the taxpayer. The Commissioner may amend or revoke a ruling for reasonable cause, but shall provide written notice to the taxpayer and amendment has only prospective effect. Change in legislation, if inconsistent with the ruling, also revokes a ruling to the extent of the inconsistency. Advance rulings shall be published by the Commissioner to enhance transparency and accountability, but the taxpayer's name and other specific information shall be deleted or redacted. The Commissioner may specify reasonable fees to be charged for advance rulings.

**Clause 14 (Other Statements)** limits the circumstances where a statement or agreement about a taxpayer's tax liability binds the Department to advance rulings and other cases **authorised by law.**

**Clause 15 (Communications with Taxpayers and Other Persons)** details the formal requirements for communicating with taxpayers and other persons. Notices, statements, or agreements issued by the Commissioner to a taxpayer or other person are effective only if they are (1) authorised by law, (2) in writing, (3) signed by an official of the Department with apparent authority, and (4) served upon the taxpayer or other person to whom it is addressed. Notice required to be given to an individual in writing is sufficiently served if it is:

- (a) served personally on that person;
- (b) sent by registered mail to the person's last known address; or
- (c) communicated electronically and in accordance with the **Electronic Transactions Act, 2006.**

Where notice in writing to a company is required, the notice is sufficiently served if it is:

- (a) served personally on, or communicated electronically and in accordance with the Electronic Transactions Act to, the appointed tax agent;
- (b) delivered to the company's principal place of business in Antigua and Barbuda; or
- (c) sent by registered mail to the registered office of the company.

Notices sent by registered mail are considered served seven days after the day when posted if the address is in Antigua and Barbuda and thirty days after posted if the address is otherwise. A notice under the Property Tax and Valuation Act may be served on a person by leaving it at the usual or last known place of abode or by addressing it “the owner” of the property, describing the property, and delivering to a person on the property or affixing a copy of it to a conspicuous part of the property. Unless the contrary is shown, a signature written on a notice, statement, agreement, return, form, declaration, table, or other document and purporting to be the signature of a particular person is considered to be the signature of that person.

**Clause 16 (Forms and Notices)** enables the Commissioner to prescribe or publish forms and other documents and requires that those documents be made available to the public. Every public notice shall be signed by the Commissioner or a person with apparent authority.

**Clause 17 (Defect Does not Affect Validity)** is a saving clause for breaches of the technical communication requirements of the Act in clause 13, as long as the taxpayer had effective knowledge of the fact of the notice and its content. In addition, assessments, notices, or documents issued under this Act are not invalid if they are in substance and effect in conformity with this Act and if the person assessed or affected by the document is designated in accordance with common understanding.

**Clause 18 (Agents and Officers)** requires companies incorporated in Antigua and Barbuda, a partnership or other body of persons subject to tax, and a person not resident in Antigua and Barbuda and liable to pay the Tax Administration and Procedure Act, 2013 No. of 2013 64 tax to nominate an agent or officer. This appointment does not relieve the taxpayer itself from liability for failure to comply with the Act.

**Clause 19 (Taxpayer’s Right to Information)** guarantees the taxpayer the right to be informed of the status of the taxpayer’s account and to receive a copy of a tax return filed with the Department and still on file, upon the taxpayer’s request.

**Clause 20 (Due Dates)** clarifies the due date where the last date for performance is on a day on which the Department is closed for business (the next day) and the date on which a declaration, appeal, or other document (other than a payment) is considered filed (on the date it is stamped as received by the Department or, if mailed, on the date of the postmark).

### **PART III RECORDKEEPING AND INFORMATION COLLECTION**

Part III provides the foundational provisions that govern the requirements for taxpayers to keep books and records and to file tax returns, and sets out the requirements for the Commissioner where additional information is required from a taxpayer.

**Clause 21 (Accounts and Records)** addresses the important requirement that taxpayers maintain appropriate books and records. Every taxpayer engaged in business or independent professional activity or required to make a return under tax legislation is required to keep and maintain in Antigua and Barbuda records and accounts sufficient to record all transactions and to ascertain the gains and profits made or the loss incurred in respect of those transactions. Taxpayers shall also keep source documents and underlying documentation utilized in the creation of the records and accounts. These documents shall be kept for seven years from the date on which the transaction took place, unless a longer period is specified. Where records are not kept in English, the person may be required, at their expense, to provide a translation acceptable to the Commissioner; nevertheless, all financial statements, invoices, books or original entry, and written communications with the Department shall be in English.

**Clause 22 (Obligations of Financial Institutions)** confirms that a bank or financial institution is required to keep account of all transactions with a client, including the client's identity.

**Clause 23 (Tax Returns)** imposes on taxpayers the requirement to furnish the Commissioner with a tax return if required by law, within the time and at the place specified by that law, or as demanded by the Commissioner. The Commissioner may specify

- (a) the form for returns;
- (b) the information to be furnished on the return and attachments, if any, required to be filed with the return; and
- (c) the manner of filing.

A taxpayer may file an amended return no later than six years after the latest date on which the original return was required to be filed. Taxpayers shall attest to the accuracy and completeness of tax returns. If a return or part of a return was prepared by some other person for reward, that other person shall also sign the return. The Commissioner may, by notice in writing, require a person to file fuller or additional returns.

**Clause 24 (Information Returns)** confirms that provisions applying to returns also apply to a return of information.

**Clause 25 (Extension of Time to File Returns)** allows the Commissioner to permit a taxpayer to file late, but clarifies that this does not alter the due date for payment unless an extension of time to pay is expressly granted.

**Clause 26 (Access to Information, Assets, and Land)** sets out the conditions under which a designated officer may enter a business premises or other premises open to the public without prior notice for an authorized purpose, may enter a taxpayer's dwelling or

other private and non-business premises for an authorized purposes, and may enter on property to survey and value it. When lawfully on a premises or in a dwelling, a designated officer may –

- (a) make a copy of a record;
- (b) seize a record or other item that appears to be relevant to an authorised purpose; and
- (c) seal records or other items.

If a designated officer seizes a record or other item, the Commissioner may make a copy of the record or other item and shall return the original to the person in the shortest time practicable, unless otherwise permitted by court order. A copy of a document made pursuant to the power conferred by this section may be produced in Court and has the same evidentiary value as if it were an original. Diplomatic, consular, or other missions of foreign countries and international organizations are exempt from the access provisions of this Act.

The provision also includes taxpayer rights. For example, a person whose books, records, or other items have been seized may examine them and make copies, at the person's expense, during office hours. The Commissioner or authorized officer shall sign for all records, books, or other items removed and retained and shall return them to the owner within fourteen days of the conclusion of the investigation or related proceedings

A taxpayer may assert privilege over documents or other evidence which the Commissioner wishes to seize or examine. In that case, the materials over which privilege is claimed shall be deposited into envelopes which are then sealed and retained unopened by an officer of the Department pending an application by the Commissioner to a court of competent jurisdiction to determine whether the items in question are privileged. If the Commissioner requests documents and a taxpayer or other person does not provide them, they cannot be used in a judicial proceeding by the taxpayer, unless the Commissioner agrees or the taxpayer can show reasonable cause for the failure to produce those documents. The owner or lawful occupier of the premises or place subject to access shall provide all reasonable facilities and assistance to the Commissioner or authorised officer.

The Commissioner may cause any land to be visited, inspected and measured and may call on any person to produce for inspection any map, plan, title deed, instrument of title or other document in the custody or under the control of that person which relates to the land. The Commissioner may require a peace officer to be present for the purposes of exercising powers under this section.

The Commissioner may engage in the information gathering activities described in this clause and in clause 27 only if the activities are undertaken for an authorised purpose, which means:

- (a) the collection of information for the purpose of determining the liability of a specific person for a tax;
- (b) the collection of information for the purpose of collecting tax from a specific person; or
- (c) the collection of information related to the investigation or prosecution of tax matters related to a specific person.

**Clause 27 (Notice to Obtain Information)** applies where the Commissioner seeks information or seeks to compel the appearance of a person. By giving reasonable notice to a person in writing, the Commissioner may require a person, whether a taxpayer or not

—

- (a) to furnish the information that is required by the notice, including information concerning another person; or
- (b) to appear at the time and place designated in the notice for the purpose of being examined or of producing documents or other evidence in the control of that person which are described in the notice.

Importantly, for the effective operation of the tax administration, clauses 25 and 26 have effect notwithstanding a law relating to confidentiality, privilege or the public interest with respect to the production of or access to documents or other evidence, including a law relating to bank secrecy and any contractual duty of confidentiality. However, where a taxpayer reasonably asserts legal professional privilege over a document, the Commissioner shall apply to a judge for an order requiring the taxpayer to produce the documents.

## **PART IV ASSESSMENTS**

Part IV sets out the rules that govern assessments.

**Clause 28 (Assessments)** is the provision that provides the baseline rules for taxpayer assessments. Assessments are to be made in the manner prescribed by this Act and by the relevant law to which the Act applies. Assessments may be based upon the information supplied by the taxpayer in a tax return and upon any other relevant information available to the Commissioner. If a taxpayer fails to file a tax return as required, the Commissioner may make an assessment of the amount of tax payable, based upon best judgement and information reasonably available to the Commissioner; however, the Commissioner shall provide an indication of the nature of the information on which the assessment is based. Where a taxpayer calculates the amount of tax in a tax return as required by the relevant

law, the taxpayer's self-assessment is an assessment. The Commissioner may, nevertheless, issue an additional or revised assessment. The Commissioner may, by notice in writing, determine that tax is due on a date before the usual due date if the Commissioner has reasonable grounds to believe that a taxpayer may leave Antigua and Barbuda before the regular due date.

**Clause 29 (New or Revised Assessment)** The Commissioner may make a new assessment or revise an assessment previously made, if the Commissioner is of the opinion that the original assessment was incorrect and the new or revised assessment is made within the required time limits. The Commissioner may also make a best judgement assessment. If the taxpayer files an amended return, the Commissioner shall revise the original assessment if the Commissioner is satisfied that the original assessment was based on incorrect information.

**Clause 30 (Time Limits for Assessments and Revised Assessments)** fixes the time limits for assessments and revised assessments. The Commissioner may not make an assessment more than six years after the end of the tax period to which the assessment relates. Nevertheless, where an assessment is made using best judgement because the taxpayer has failed to file a return, or where the original assessment is based upon incorrect information due to fraud or willful neglect of the taxpayer, the assessment shall be made within twelve years. If no assessment is made within the time limits specified, the assessment is deemed to have been made that no tax is payable, unless an amount has been withheld, in which case the amount of tax withheld is deemed to be the amount of tax payable. An assessment may be amended to give effect to a decision of the Tax Appeal Board or Court.

**Clause 31 (Jeopardy Assessment)** allows the Commissioner to make an assessment using best judgement and information reasonably available, in advance of the date on which tax is normally due, if that action is required to secure the collection of the tax. A taxpayer may appeal this assessment to the High Court on the ground that –

- (a) its amount is excessive; or
- (b) circumstances that justify an advance assessment do not exist.

**Clause 32 (Notice of Assessment)** specifies the information that is required to be given by the Commissioner in a notice of assessment.

**Clause 33 (Anti-avoidance)** is a broad anti-avoidance provision, designed to ensure that the Commissioner, and ultimately the Courts, have the responsibility to disregard a transaction or series of transactions that are artificial or fictitious, or to treat according to its economic substance a transaction or series of transactions that have been mischaracterised.

## **PART V OBJECTIONS AND APPEALS**

Part V provides taxpayers with the process for challenging a tax assessment or other decision of the Department and provides procedural safeguards and required timelines for both taxpayers and the Commissioner.

**Clause 34 (Taxation Decisions)** makes explicit that there are no remedies to dispute tax decisions or assessment amounts unless the proceeding is made pursuant to Part V.

**Clause 35 (Administrative Review)** provides requirements for the first stage for a taxpayer seeking to challenge an assessment or other decision of the Department – administrative review. A request for administrative review shall be made to the Commissioner in writing not later than thirty days after the taxpayer was notified of the decision, and shall specify in detail the grounds upon which it is made. The Commissioner shall consider the taxpayer’s request and notify the taxpayer in writing of the Commissioner’s decision and the reasons for the decision.

**Clause 36 (Appeal from Administrative Review)** provides that if a person is unsatisfied with the results of an administrative review, the person may appeal to the Tax Appeal Board. This appeal may only occur after –

- (a) a decision has been received from the Commissioner; or
- (b) ninety days have elapsed since the request for administrative review was made.

If the Tax Appeal Board is satisfied that the appellant is overcharged it may reduce the amount of assessment by the amount of the overcharge, and if it is satisfied that the appellant is undercharged, it may increase the amount of the assessment by the amount of the undercharge. The Tax Appeal Board may require the appellant to furnish security for payment of the tax, if any, which may become payable by the appellant as may seem appropriate to the Tax Appeal Board. Notice of an appeal shall be given in writing to the Commissioner within ninety days from the date of the refusal of the Commissioner to amend the assessment as requested as part of the administrative review. The taxpayer may be granted leave to appeal against the assessment after the deadline for appeals has passed if the Tax Appeal Board is satisfied that owing to absence from Antigua and Barbuda, sickness or other reasonable cause the taxpayer was prevented from giving notice of appeal within ninety days, and that there has been no unreasonable delay on the appellant’s part.

**Clause 37 (Constitution of Tax Appeal Board)** describes the constitution and function of the Tax Appeal Board. The Governor-General shall, on the advice of Cabinet, appoint not more than seven suitable and qualified persons to serve on the Tax Appeal Board who shall hold office for a period of five years. The Tax Appeal Board may meet as often as

circumstances may require. Three members form a panel. Shall The Governor-General shall appoint some person to be secretary to the Tax Appeal Board and all notices and documents other than decisions of the Tax Appeal Board may be signified under the hand of the secretary.

**Clause 38 (Burden of Proof)** lays the burden of proof on the taxpayer or person making an objection to an assessment, except if the dispute is about the imposition of a penalty.

**Clause 39 (Appeals do not Suspend Collection of Undisputed Amounts)** makes clear that despite an objection or appeal, the undisputed tax liability remains due and payable, unless the Commissioner grants an extension of time.

**Clause 40 (Finality of Assessment)** stipulates that if the deadlines imposed for a review of an assessment or decision are missed, an assessment is treated as final. The Commissioner may nevertheless issue a new or a revised assessment within the timelines permitted and a taxpayer may file an amended return but only if the tax shown on the amended return exceeds the tax assessed.

**Clause 41 (Appeal from a Decision of the Tax Appeal Board)** allows either party to a proceeding before the Tax Appeal Board who is dissatisfied with the decision of the Tax Appeal Board to file a notice of appeal with the Registrar of the High Court within ninety days after being notified of the decision of the Tax Appeal Board. The appealing party shall serve a copy of the notice of appeal on the other party to the proceeding before the Tax Appeal Board.

An appeal to the High Court, which may be made only on a point of law or mixed law and fact, may not be made unless an appeal request to the Tax Appeal Board has first been made, and –

- (a) a decision has been received from the Tax Appeal Board; or
- (b) ninety days have elapsed since the request for appeal to the Tax Appeal Board was made and no response to the request for appeal has been received from the Tax Appeal Board.

If an appeal is made from a decision of the Tax Appeal Board, the Tax Appeal Board shall provide a written statement of its decision, including a summary of the evidence, the Board's finding of the facts, and its conclusions on the points of law involved.

## **PART VI LIABILITY FOR AND PAYMENT OF TAX**

Part VI addresses a variety of issues related to taxpayers' liability for tax and for their payment of it. It includes provisions that address due dates, the liability and obligation of representatives, liabilities following a winding-up, refundable amounts, extension of time for payment, default, and order of payment of tax debts.

**Clause 42 (Liability of Taxpayer and Due Date)** deals with taxpayer due dates, confirming that tax is due and payable at the time provided by the relevant law to which the Act applies. It further confirms that, unless another Act has a different requirement, the amount of tax stated in a notice of assessment to be due, or deemed to be stated to be due is due and payable on the date stated in the notice or, if no date is stated, thirty days after the date of issue of the notice. Tax is to be paid in the manner and place prescribed.

**Clause 43 (Liability and Obligations of Representatives)** sets out who is a representative of a person (for example, if a person is a company, a principal officer of the company is the representative). If a designated person is unable to perform the responsibilities imposed by the Act, the person shall advise the Commission within 30 days of the person who is appointed the new representative. If the person fails to declare a new representative as required, the Commissioner may declare a representative. Representatives are responsible for the duties or obligations imposed by the Act on the person for whom they are the representative. Tax that is payable by a representative is recoverable from that person only to the extent of any assets of the taxpayer that are in the possession or under the control of the representative unless the representative alienates, charges, or disposes of moneys received or accrued in respect of which the tax is payable or disposes of or parts with moneys or funds belonging to the taxpayer that are in the possession of the representative or which come to the representative after the tax is payable. In that case, the representative is personally liable. A representative may recover the amount paid from the person or retain the amount so paid out of any moneys of the person that are in the representative's possession or under the representative's control. No person is relieved from performing duties imposed by this Act on the person because the representative of the person has failed to perform them.

If there are two or more representatives of the person, their duties or obligations apply jointly and severally but may be discharged by any of them. The provision also addresses the circumstances under which new partnerships or bodies are deemed to be a continuation of dissolved or discontinued partnerships as well as what happens where a taxable activity previously carried on by a taxable person is carried on by or on behalf of the executor or trustee of the person's estate, and what happens if a mortgagee is in possession of land or other property previously mortgaged by a mortgagor who is a taxable person.

Finally, if a person is a trustee in more than one capacity, the person is treated as a separate person in relation to each of those capacities.

**Clause 44 (Liability for Tax Following Winding-up)** addresses a company that is wound up without having satisfied its tax liabilities, including any liability to withhold and remit tax

**Clause 45 (Refundable Amounts)** requires a refund or credit application within six years of the date of payment and requires the Commissioner to apply a refundable amount against the taxpayer's assessed liability to pay tax, interest, or penalties and to advance payments and then to refund any residual.

**Clause 46 (Power of Commissioner to enquire)**

**Clause 47 (Extension of Time for Payment)** allows taxpayers to apply for an extension of the time for payment of tax. The Commissioner may, with good cause, extend the time for payment, may grant an extension period different from the period requested by the taxpayer, and may make other arrangements to ensure payment of the tax, including arrangements requiring the person to pay the amount due in instalments. If a taxpayer has been granted an extension, interest is still payable. If an extension is granted by permitting the taxpayer to pay by instalments and the taxpayer defaults in paying any of the instalments, the whole balance of the tax outstanding becomes payable immediately.

**Clause 48 (Default in Payment)** permits the Commissioner to send a notice to the taxpayer demanding payment when a tax is not paid by the date on which it became due and payable and sets out requirements for the content of the notice. The taxpayer is in default thirty days after service of the notice, unless the taxpayer has –

- (a) entered into a payment arrangement with the Commissioner pursuant to the applicable tax legislation; or
- (b) has received an extension,

and has remained in compliance with the terms of the arrangement.

**Clause 49 (Absconding taxpayers)** This clause gives the Commissioner the power to deal with taxpayers seeking to absconding without satisfying their tax liability.

**Clause 50 (Order of Payment of Tax Debts)** makes clear that payments of a specific tax are applied against the taxpayer's liability in the following order —

- (a) the principal amount of the tax;
- (b) interest on the tax; and
- (c) penalties relating to tax.

The Commissioner may apply a tax payment to any tax which has been assessed and is due –

- (a) if the taxpayer fails to indicate to which specific tax or taxation period the payment should be applied; or
- (b) if the payment has been collected pursuant to a levy of execution or by way of garnishment in accordance with the Act.

If a debt under this section remains outstanding for more than 180 days, the outstanding amount is capitalized and considered part of the principal.

**Clause 51 (Currency)** explains that tax is payable in Eastern Caribbean dollars, except as otherwise provided in a law to which this Act applies.

## **PART VII INTEREST**

Part VII is a short part that addresses interest.

**Clause 52 (General)** confirms that procedures for the payment, collection, and dispute of a tax apply equally to interest relating to a tax and that liability for interest under this Act is calculated separately and is in addition to penalties provided by law.

Additionally, it guarantees that if a person has paid interest under this Part and an amount to which the interest relates is found not to have been payable, the interest paid on that amount shall be refunded to the person.

**Clause 53 (Interest on Underpayments)** stipulates that if an amount of tax is not paid by the due date, the taxpayer is liable for interest on the amount for the period from the due date (determined without regard to an extension of time) to the date the tax is paid and in the case of tax due under a revised assessment, the due date for the calculation of interest is the original due date of the tax.

**Clause 54 (Interest on Refundable Amounts)** If the Commissioner is required to refund an amount under this Act, interest shall be paid to the taxpayer from the due date until the date on which the refundable amount is paid. Nevertheless, if the Commissioner does not pay a refund required by the Antigua and Barbuda Sales Tax Act within the time required pursuant to the Antigua and Barbuda Sales Tax Act, interest is payable by the Commissioner.

This provision also confirms that a refundable amount that is applied against another tax liability is considered to have been paid to the taxpayer on the due date of the liability against which the refundable amount was applied.

**Clause 55 (Interest on Late Payment)** imposes an interest equal to 10 percent of the amount of tax due but not paid on a person who fails to pay all or part of a tax due for a tax period within fourteen days of the date of assessment or reassessment, or by the due date specified in the notice of assessment, if later. It also imposes a penalty on a person who fails to pay all or part of an instalment required pursuant to the Income Tax Act. Finally, the provision confirms that where an extension is granted, a person is not liable to a late payment penalty under subsection (1) unless the extension period expires without payment having been made.

**Clause 56 (Interest Rate)** sets the interest rate for this Part at one per cent per month or part month of interest under sections 53 and 56 and ten percent of the amount of tax due but not paid under section 52. No. of 2013 The Tax Administration and Procedure Act, 2013The Minister may vary the interest rate by Order published in the Gazette. The intention is to provide flexibility to the Minister to adjust the rate as interest rates in the economy change.

## **PART VIII RECOVERY OF TAX**

Part VIII addresses the mechanisms and timing for recovery of tax. Among other topics, it addresses liens, executions, sales, and third party debtors.

**Clause 57 (General)** stipulates that the Commissioner may proceed with any remedy under this Part once the taxpayer is determined to be in default. ABST collected by the Comptroller of Customs, which is recoverable under procedures for recovery of customs duty, is not subject to the application of Part VIII.

**Clause 58 (Period of Limitations for Collection)** restricts the commencement of proceedings to six years from the date on which the taxpayer was determined to be in default. It confirms that no enactment relating to the limitation of actions bars or affects an action or remedy for the recovery of unpaid tax, interest, or penalties under this Act.

**Clause 59 (Extinguishment of Uncollectible Amounts)** provides that if the Commissioner is unable to recover an amount of tax, interest, or penalty due and payable by a person under legislation to which this Act applies, the Minister may, on approval by the Cabinet, order the extinguishment of the liability as a debt due to the Crown and may also reinstate a liability for the debt by an order of the Minister, approved by Cabinet.

**Clause 60 (Directors of Companies)** makes jointly and severally liable with the company every person who is or has been a director of the company, if a company fails to pay tax on time, irrespective of whether the company ceases to exist. This liability does not apply to a director who has exercised the degree of care, diligence, and skill that a reasonably prudent person in the position of the director would have exercised in preventing the initial and continuing failure to pay tax.

**Clause 61 (Court Proceedings)** confirms that tax that is due and payable is a debt to the Crown and is payable to the Commissioner. If a person fails to pay tax when it is due, the Commissioner may commence proceedings in a court of competent jurisdiction to recover the debt outstanding in respect of the amount owing. The production of a certificate signed by the Commissioner, stating the name of the defendant and the amount of tax owing, is sufficient evidence that the amount is due and suffices for the court to give judgment in that amount.

**Clause 62 (Lien)** explains that if a taxpayer fails to pay a tax by the due date, a lien in favour of the Commissioner is created in the amount owing (together with interest, penalty, and costs of collection that may accrue) on all property belonging to the taxpayer, and has priority as against all other rights, except as otherwise provided in this section. The provision protects bona fide purchasers in limited circumstances. It also protects taxpayers by requiring the Commissioner to send notice of the intention to register the lien to the taxpayer, unless the Commissioner believes that the ability to collect tax is in jeopardy. An affected person may apply to the Commissioner for a release of the lien on the person's property and a decision by the Commissioner not to release a lien may be appealed to the High Court.

**Clause 63 (Execution against Taxpayer's Property)** addresses the process for execution where a taxpayer is in default. It additionally provides that if the Commissioner has reasonable grounds for believing that the collection of tax is in jeopardy, the Commissioner may demand immediate payment of the tax and, on failure of the taxpayer to pay the tax, may proceed to levy on the taxpayer's property immediately. A person (including a bank or other financial institution) in possession of, or holding security over, property on which a levy has been made shall, on demand of a designated officer, surrender the property or enable the Commissioner to place a second charge on the property. Failure to comply with this demand results in liability in the amount of the value of the property or security held, but not in excess of the amount for the collection of which the levy is made. A person who complies with the requirements of this provision is, from the time of compliance, discharged from an obligation to the taxpayer or another person to the extent of the value of property surrendered, or the security discharged, to the Commissioner and is indemnified for loss or damage incurred as a consequence of compliance. A levy shall be commenced within six years of the date of the issuance of the notice of assessment pursuant to which the tax is levied. Personal effects and householder furnishings without substantial value are exempt from a levy.

**Clause 64 (Sale of Seized Property)** enables the Commissioner to sell property seized pursuant to a levy. Sales proceeds are applied first against the expenses of the levy and sale, then against the liability for penalties, interest, and tax and the excess shall be returned to the taxpayer. The provision sets out the process for the sale of goods at public auction, for the deposit of seized goods, and for the transfer of sold property to a purchaser. Property may not be sold to satisfy liability for penalties, interest, and tax in dispute. The provision also sets conditions for breaking open a building to levy a distress and enables the Commissioner to seek assistance from a peace officer.

**Clause 65 (Third Party Debtors)** replaces section 13A of the Inland Revenue Administration Act with a more workable provision relating to third party debtors. This provision is used by the Commissioner as a last resort after other collection efforts have

been exhausted. The provision follows the process set out in the Eastern Caribbean Supreme Court Civil Procedure Rules 2000. Those rules set out the process for an order for attachment of debts. They allow a court to make a provisional order on an ex parte hearing. The provisional order shall be served on the garnishee. Parts 50.9, 50.10, and 50.11 of the Civil Procedure Rules do not apply. Instead, a provisional order becomes final 14 days after service. In the case of employers, the provision exempts from collection action the first \$3,000 of wages, allowances, or other amounts per month. The amended provision clarifies that the third-party debtor may not be asked to pay more than the amount of tax owed. In addition, the amended provision contemplates for the taxpayer to be notified of the third-party debtor procedure.

**Clause 66 (Compliance with Order)** insulates a third party who pays the Commissioner pursuant to a notice issued under section 62 by deeming the party to have acted with the authority of the taxpayer and of all other persons concerned and the party is indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extra judicial. A third party may be excused from complying with a notice under section 62 where the third party provides notice in writing that sets out the reasons for the inability and meets the other requirements of section 63. The Commissioner may accept or reject the third party notice.

**Clause 67 (Non-Arm's Length Transferees)** provides that if a taxpayer's liability has not been satisfied after levy of execution on property known to the Commissioner, a person who has received assets of the taxpayer in a transaction that is not at arm's length in the period of one year preceding the date of the levy is secondarily liable for the tax to the extent of the value of the assets received. The provision does not apply if the person is liable on a winding-up.

**Clause 68 (Receivers)** requires a receiver to notify the Commissioner of the receiver's appointment within fourteen days after being appointed. The provision defines who a receiver is, sets out what the Commissioner shall provide the receiver by way of notice of tax owing, restricts the disposition of assets held by receivers, and imposes personal liability on receivers if they fail to comply with the requirements of the provision.

## **PART IX PENALTIES**

Part IX imposes penalties for failure to notify of changes in taxpayer information; late filing; failure to maintain documents; failure to comply with third party orders; failure to provide facilities; failure to comply with notices to give information; late payments; and negligent or fraudulent underpayments..

**Clause 69 (General Provisions)** includes a number of statements of general application including that procedures for the assessment, payment, collection, and dispute of a tax apply equally to penalties relating to a tax; that the burden of proof is on the

Commissioner to show non-compliance with the provisions of tax laws with respect to the imposition of a penalty; that the Commissioner may make an assessment of a penalty charged as if the penalty were tax payable under this Act, and may specify the date on which the penalty is payable; and that a notice of an assessment of a penalty imposed under this Part shall be served on the person subject to the penalty and shall include information set out by the Act. Additionally, a person's liability to pay a penalty arises on the making of an assessment by the Commissioner and the period of limitations for assessing a penalty is seven years after the violation that causes the penalty to occur, unless the violation includes the taxpayer's provision of incorrect information due to fraud or wilful neglect in which case the limitation for assessing a penalty is twelve years.

The Commissioner may refrain in whole or in part from assessing the penalty or remit or waive in whole or in part a penalty that has been assessed if the person liable for the penalty shows reasonable cause. Reasonable cause might include force majeure, severe illness that prevented the taxpayer from fulfilling an obligation, or an innocent mistake such as a clerical error. It could also include a reasonable interpretation of a statutory obligation that differs from the Commissioner's interpretation. It is the responsibility of the Commissioner to evaluate the existence of reasonable cause in the circumstances of each case.

**Clause 70 (Failure to Notify of Changes in Taxpayer Information)** imposes a \$1,000 penalty for persons who fail to notify the Commissioner as required by this Act or by the laws to which this Act applies. The Tax Administration and Procedure Act, 2013 No. of 2013 76

**Clause 71 (Late Filing)** imposes a late filing penalty of a minimum of \$500 and a maximum of five percent of the amount of the tax owing, plus a further one percent of the amount of tax owing for each month or part of a month during which the failure to file continues, but not beyond the time when the Commissioner issues an assessment.

**Clause 72 (Failure to Maintain Documents)** imposes a \$50 a day penalty for the failure to maintain proper documents. The Commissioner may waive the application of the penalty for a maximum of thirty days from the date that the Commissioner notifies the taxpayer of a violation of this section.

**Clause 73 (Failure to Comply with Third Party Order)** imposes a penalty on a person who fails to comply with a third party notice issued of 25 percent of the difference between the amount payable by the third party and the amount paid to the Commissioner by the specified due date.

**Clause 74 (Failure to Provide Facilities)** imposes an up to \$1,500 penalty for a person who fails to provide a taxation officer with reasonable facilities and assistance.

**Clause 75 (Failure to Comply with Notice to Give Information)** fixes an up to \$1,000 penalty for a person who fails to comply with a request for information properly made, within the specified time.

**Clause 76 (Late Payment)** imposes a penalty equal to 10 percent of the amount of tax due but not paid on a person who fails to pay all or part of a tax due for a tax period within fourteen days of the date of assessment or reassessment, or by the due date specified in the notice of assessment, if later. It also imposes a penalty on a person who fails to pay all or part of an instalment required pursuant to the Income Tax Act. Finally, the provision confirms that where an extension is granted, a person is not liable to a late payment penalty under subsection (1) unless the extension period expires without payment having been made.

**Clause 77 (Negligent or Fraudulent Underpayment)** imposes a penalty on taxpayers who underpay (or may have underpaid) tax intentionally or negligently. The value of the penalty is based on the percent of the underpayment.

## **PART X CRIMINAL OFFENCES**

Part X imposes the criminal sanctions under the Act, including sanctions for falsification of invoices, false or misleading statements, tax evasion, impeding tax administration, aiding and abetting, failure to preserve secrecy, offences by corporations or partnerships, and offences by taxation officers.

**Clause 78 (General Provisions)** This clause clarifies that a person's liability for offences is separate and distinct from their liability to pay tax and interest.

**Clause 79 (Falsification of Invoices, Receipts, Credit and Debit Notes)** imposes a penalty not exceeding \$25,000 if a person uses a false taxpayer identification number, issues a false invoice or sales receipt, issues a false ABST credit note or debit note, or provides, or fails to provide, an invoice, credit note, debit note, or sales receipt as provided under Part IX of the ABST Act. The provision insulates suppliers under the ABST if they exercised all due care and believed on reasonable grounds that the information related to the recipient was accurate or (in limited cases) that the supplier was not a registered person.

**Clause 80 (False or Misleading Statements)** addresses the serious infraction of making false or misleading statements to a taxation officer. If the person who made the false or misleading statement could not have known it was false or misleading, the penalty does not apply. The meaning of statement is defined broadly, although it does not include statements that result in a negligent or fraudulent underpayment penalty (to avoid imposition of a duplicate penalty).

**Clause 81 (Tax Evasion)** provides that a person who willfully evades, or attempts to evade the assessment, payment, or collection of tax is guilty of an offence and is liable on conviction to a fine of \$100,000, or to imprisonment for a term of two years, or both.

**Clause 82 (Impeding Tax Administration)** provides that a person who willfully impedes or attempts to impede the Department in its administration of this Act is guilty of an offence and is liable on conviction to a fine of \$20,000, or to imprisonment for a term of one year, or both. It also provides a lengthy list of examples of actions that constitute impeding the administration and excepts suppliers for ABST purposes from two of the listed examples in limited circumstances.

**Clause 83 (Aiding and Abetting)** provides that a person who willfully aids, abets, assists, counsels, incites, or induces another person to commit a criminal offence under this Act is liable on conviction to the same penalty as if the offence had been committed by that person.

**Clause 84 (Failure to Preserve Secrecy)** ensures that a person bound to confidentiality under the Act who contravenes subsection (2) or (3) of section 7 is guilty of an offence and is liable on conviction to a fine of \$20,000, or to imprisonment for a term of one year, or both.

**Clause 85 (Offences by Corporations or Partnerships)** delineates the circumstances where a director or similar officer or a partner or officer of a partnership is deemed to have committed an offence.

**Clause 86 (Offences by Taxation Officers)** provides that a taxation officer is guilty of an offence and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year, or both, as well as to disgorgement, if the officer, in carrying out the provisions of this Act –

- (a) directly or indirectly asks for, or takes, in connection with the officer's duties, a payment or reward, whether pecuniary or otherwise, or a promise or security for the payment or reward, not being a payment or reward which the officer is lawfully entitled to receive; or
- (b) enters into or acquiesces in an agreement to do, abstain from doing, permit, conceal, or connive at an act or thing that is contrary to the provisions of this Act or to the proper execution of the officer's duty, or that has the effect that the tax revenue is or may be defrauded.

**Clause 87 (Commissioner's investigating powers)** enables the Commissioner to investigate an offence specified in this Act, but clarifies that the power to bring charges and seek prosecution for the criminal offences specified in this Act belongs exclusively to the Director of Public Prosecutions or a delegate authorised by the Director.

**Clause 88 (Period of Limitations)** sets the time periods under which criminal proceedings shall be commenced.

## **PART XI COMPOUNDING OF OFFENCES**

**Clause 89 (Compounding of Offences)** enables the Commissioner to, at any time prior to the commencement of the hearing by a Court of the proceedings relating to it, compound the offence and order the person to pay the sum of money as specified by the Commissioner, not exceeding the maximum amount of the fine prescribed for the offence. The provisions sets out the conditions under which compounding may occur and places requirements on the content of the order.

The Commissioner's power under this section is subject to the powers of the Director of Public Prosecutions under the Constitution, and the Commissioner shall give the Director of Public Prosecutions a copy of the order at the time it is served on the taxpayer. The provision clarifies that the amount ordered to be paid under subsection (1) is recoverable as if it were tax due and payable under this Act.

## **PART XII FINAL PROVISIONS**

The final provisions of the Act provide guidance on the interpretation of the Act, set out the legislation that is repealed by virtue of the coming into force of this Act, and spell out the effective date of this Act and the required transitional provisions.

**Clause 90 (Repealed Legislation)** sets out the laws of Antigua and Barbuda that are repealed by this Act and notes that Schedule 4 contains provisions of law that are repealed or amended by this Act.

**Clause 91 (Effective Date and Transitional Provisions)** makes this Act take effect on 1 January 2013. In general, this means that actions taken, or events occurring after 1 January 2013 are governed by the Act, even if they relate to a prior taxation period. For example, an assessment made after 1 January 2013 is governed by the Act even if it relates to 2011. The provisions that address default in payment and third party debtors take effect on 1 July 2012. Repealed legislation continues to apply to years of assessment prior to the taxation year in which this Act comes into operation. The provision addresses other issues, like appointments, forms and documents, appeals, tax liabilities and so on.

**Clause 92 (Application of the Law to Procedures under Repealed Legislation)** provides that if the law concerning tax administration and procedure in effect prior to the enactment of this Act is silent with respect to a matter addressed in this Act, the relevant provision in this Act applies with retroactive effect to matters that are not closed under the period of limitations.

**Clause 93** This clause empowers the Minister to make such regulations that will give effect to the provisions of the Act.

**Clause 94** creates the legal matrix whereby all matters commenced under the Tax Administration and Procedure Act 2012 No. 19 shall continue as if the Act had not been repealed.

---

***Hon Gaston Browne***  
*Prime Minister and*  
*Minister of Finance*