



## ST. CHRISTOPHER AND NEVIS

### CHAPTER 20.52

## TAX ADMINISTRATION AND PROCEDURES ACT

### Revised Edition

showing the law as at 31 December 2017

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### TAX ADMINISTRATION AND PROCEDURES ACT

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## **CHAPTER 20.52**

### **TAX ADMINISTRATION AND PROCEDURES ACT**

AN ACT TO REVISE AND CONSOLIDATE THE LAW RELATING TO THE COLLECTION AND PAYMENT OF TAXES AND FEES IN THE NATURE OF TAXES, AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

#### **PART I**

##### **PRELIMINARY**

###### **Short title.**

1. This Act may be cited as the Tax Administration and Procedures Act.

###### **Interpretation.**

2. In this Act, unless the context otherwise requires—

“assessment” means—

- (a) the entering into the records of the Department the amount of a taxpayer’s liability for tax for a specific taxation period; and
- (b) a re-assessment;

“Commissioners” means the Commissioners of Inland Revenue appointed under section 41(1);

“Comptroller” means—

- (a) the Comptroller of Inland Revenue appointed under section 46(1);
- (b) the Acting Comptroller of Inland Revenue appointed under section 46(3); and
- (c) any other officer of the Department who is designated as such;

“Department” means the Department of Inland Revenue;

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

“Federation” means the Federation of Saint Christopher and Nevis;

“Minister” means the Minister responsible for Finance;

“re-assessment” means any assessment of a taxpayer’s liability for tax made after the original assessment has been made;

“tax” means—

- (a) any tax, fee, duty or levy imposed by any law or regulation to which this Act applies; and
- (b) any interest or penalty relating to that tax;

“tax law” means any law or regulation imposing a tax, duty, fee or other imposition, except a law or regulation imposing a customs duty or excise duty;

“taxpayer” means—

- (a) a person who is required to pay tax under any law or regulation to which this Act applies;
- (b) a person required to withhold tax and pay it to the Department;
- (c) a person who qualifies to pay tax pursuant to paragraph (a) or (b), but who is exempted from the payment of any tax, who shall furnish a return to the Comptroller, pursuant to section 10 of the Act;  
*(Paragraph (c) inserted by Act 7 of 2014)*

“tax return” means—

- (a) a report which a person is required to file to provide the Department with information about the person’s or some other person’s possible tax liability; and
- (b) an information return.

#### **Application of Act.**

3. Except as may otherwise be provided for in this Act, this Act shall apply to—
- (a) taxes imposed under a tax law; and
  - (b) any other taxes which may, from time to time be introduced, the administration of which the Department is responsible.

## PART II

### REGISTRATION OF TAXPAYERS

#### **Taxpayers to register with Comptroller.**

4. A person liable or about to become liable for the payment of a tax under any tax law to which this Act applies, shall register with the Comptroller and provide such information to the Comptroller as may be required to give effect to that registration.

#### **Comptroller to issue Tax Identification Numbers.**

5. (1) The Comptroller may, for the purpose of identifying a taxpayer, assign a Taxpayer Identification Number to the taxpayer and may, where he or she deems necessary, assign a number to a person who is not a taxpayer.

(2) Subject to the extent that may be provided by regulations made under this Act, a person may be required to—

- (a) include his or her Tax Identification Number on any declaration, notice or fee to which this Act applies; or
- (b) furnish the number to any other person designated in regulations made under this Act as a person who is required to furnish tax information, with respect to the person furnishing the number.



PART III

DUTIES OF TAXPAYERS

**Taxpayers to keep records and accounts.**

6. (1) A taxpayer who is engaged in a business or independent professional activity, and is not required by law to keep records listing all receipts and expenditures relating to that taxpayer's business or professional activity shall, on the commencement of this Act, keep records and accounts that relate to that taxpayer's business or professional activity.

(2) Where a person prepares records required under this Act in a language, other than English, that person shall, upon request, provide an English translation to the Comptroller.

**Records to be kept for a period of not less than six years.**

7. A person required to prepare records under this Act shall retain the documents for a period of six years, following the date on which the tax liability for the year of assessment in which the records were established, was first assessed.

**Banks etc. to keep records.**

8. A bank or financial institution that habitually makes payments of interest, shall maintain records of the payments, and the records shall include the following particulars—

- (a) the identity and address of the payee;
- (b) the amount of each payment;
- (c) the date of payment; and
- (d) the amount of any tax withheld from the payment.

**Directors, partners, etc. to maintain records.**

9. (1) Where a company is incorporated in the Federation, the Director, Manager, Secretary, or a senior officer of the Company shall be responsible for maintaining all records and filing all documents required to be maintained or filed by the Company for the purposes of this Act.

(2) Where a partnership, or other body of persons is subject to any tax to which this Act applies, it shall nominate a member or officer in the partnership or body, whose duty shall be to comply with the requirements of this Act.

(3) A person who is not resident in the Federation, and that person is liable to pay tax to which this Act applies, shall nominate an agent who resides in the Federation for the purpose of complying with this Act.

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

(5) For the purposes of this Act, a partnership shall ensure that underlying documents are maintained in all circumstances and that such documents reflect details of—

- (a) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place;

- (b) all sales and purchases and other transactions; and
- (c) the assets and liabilities of the relevant entity or arrangements.

*(Inserted by Act 22 of 2012)*

(6) Where a taxpayer, or any of the legal entities, partnerships or other bodies referred to in this Part, fails to maintain adequate records in compliance with the provisions of this Act, the taxpayer, legal entity or body of persons, commits an offence and is liable—

- (a) in the case of a taxpayer, to a fine not exceeding twenty-five thousand dollars;
- (b) in the case of a legal entity, partnership or other body corporate, to a fine not exceeding fifty thousand dollars.

*(Inserted by Act 22 of 2012)*

### **Taxpayers to furnish a tax return.**

**10.** (1) A taxpayer shall, if required by any tax law to which this Act applies, furnish to the Comptroller a tax return—

- (a) in the form;
- (b) within the time; and
- (c) at the place,

specified by the relevant tax law, or as may be demanded by the Comptroller.

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

(3) A tax return shall be signed by—

- (a) the taxpayer;
- (b) his or her agent; or
- (c) in the case of a taxpayer under a legal disability, the taxpayer's legal representative.

(4) Where a tax return or part of a tax return is prepared for reward by a person other than the taxpayer, that person shall also sign the tax return.

(5) The Comptroller may authorize specific taxpayers, whether based on size, industry, economic classification or other criteria to file and pay taxes electronically.

*(Inserted by Act 7 of 2014)*

### **Act to apply to information return as to tax return.**

**11.** Where a person is required by a tax law to which this Act applies to file a return of information relating to matters other than that person's own tax liability, the provisions of this Act shall apply in the same manner as if the return were a tax return.

### **Comptroller may extend the time to file tax returns.**

**12.** (1) The Comptroller may extend the time limit prescribed for filing a tax return where the taxpayer or other person required to file the tax return, applies for the extension of the due date.

(2) The extension of the time limit under subsection (1) shall not affect the due date for payment of tax, except where an extension of time for payment is also expressly granted.

#### PART IV

#### ASSESSMENT OF TAX

##### **Assessment to be in accordance with relevant tax law.**

**13.** (1) An assessment of a taxpayer's liability to pay tax shall be made in the manner prescribed by the relevant tax law to which this Act applies.

(2) Where a taxpayer files a tax return, the Comptroller shall assess the amount of tax payable and shall issue a notice of assessment to the taxpayer, indicating the amount of tax, and interest and penalty, if any, payable.

(3) Where a taxpayer fails to file a tax return as required, the Comptroller may make an assessment of the amount of tax payable, based upon such relevant information as may be available to him or her, or make an assessment to the best of his or her judgment.

##### **Re-assessment of tax.**

**14.** (1) The Comptroller may re-assess a taxpayer's liability within the period specified in section 15(2) if he or she is satisfied that the original assessment was incorrect.

(2) Where a taxpayer files an amended tax return within the time limit specified in section 10(2), the Comptroller may re-assess the taxpayer's liability if he or she is satisfied that the previous assessment was incorrect.

##### **Time limit for assessment and re-assessment.**

**15.** (1) A time limit shall not apply to an assessment made under section 13(3).

(2) Where an assessment is made under section 13(2), the re-assessment shall be made within six years of the date of the original assessment.

(3) A time limit shall not apply where—

(a) no assessment was previously made; or

(b) the original assessment was based upon incorrect information due to fraud or willful neglect of the taxpayer.

##### **Jeopardy assessment.**

**16.** (1) The Comptroller may make an assessment before the date on which a tax is normally due on being satisfied that action is required to secure the collection of the relevant tax.

(2) An assessment made under subsection (1) may be challenged by the taxpayer in court, on the ground that—

(a) it is excessive in amount; or

(b) there are no circumstances that justify an advance assessment.

**Finality of assessment.**

17. Subject to the right of the Comptroller to issue a revised assessment under section 14, and of the taxpayer to file an amended return under section 10(2), where a request for review is not made within the time specified under section 40(2), an assessment shall be deemed to be final.

## PART V

## PAYMENT OF TAXES

**Due date for a tax to be set by the relevant tax law.**

18. A tax shall be due and payable at the time specified by the relevant tax law to which this Act applies.

**Extension of time for payment of tax.**

19. (1) Upon written application by a taxpayer, the Comptroller may, for good cause, extend the time for the payment of a tax beyond the date on which it is required to be paid.

(2) Where a taxpayer is granted an extension under subsection (1), interest shall be payable as provided for under section 22, notwithstanding the extension of time.

**Currency in which tax to be paid.**

20. Tax shall be payable in Eastern Caribbean dollars.

**Place of payment of tax.**

21. Tax shall be payable—

- (a) where a notice of assessment is issued, at the place specified in the notice;
- (b) where no place is specified, at any office of the Department;
- (c) to the bailiff or any other officer authorized by the Comptroller; or
- (d) to a bank or other financial institution approved and authorized by the Comptroller to collect tax on his or her behalf.

*(Paragraph (d) inserted by Act 7 of 2014)*

**Interest on overdue tax.**

22. (1) If any amount in respect of tax is not paid by the due date, interest on the amount owing shall be charged commencing from the due date, to the date it is paid.

(2) Subject to subsection (3), the rate of interest charged under this section shall be 12 percent per annum.

(3) Where the amount owing is in respect of a tax liability under the—

- (a) Hotel Accommodation and Restaurant Tax Act, Cap. 20.20;
- (b) Self-Drive Motor Vehicle (Rentals) Tax Act, Cap. 20.37; or
- (c) Public Entertainment and Lotteries Tax Act, Cap. 20.34,

the rate of interest charged under this section, shall be 15 per cent per annum.

(4) In the case of tax due under a reassessment, the due date for the commencement of the calculation of interest shall be the date on which the tax was originally due for the particular year of assessment.

**Procedures relating to payment of tax etc. to apply to interest.**

**23.** Procedures for the payment and collection of taxes as well as settlement of tax disputes shall apply *mutatis mutandis* to interest due on a tax.

**Refund of excessive tax payment.**

**24.** (1) Where the amount of tax which is paid by a taxpayer exceeds the amount of tax assessed or found payable, the Comptroller shall, subject to the provisions of section 25—

- (a) apply the excess amount against any other liability of the tax payer owing under any tax law to which this Act applies; and
- (b) unless the taxpayer directs otherwise, apply any remaining excess amount to any future liability of the taxpayer.

(2) Subject to subsection (1), any excess amount shall be refunded to the tax payer.

**Order of payment of tax debts.**

**25.** (1) The Comptroller shall apply the excess amount mentioned in section 25 in the following order to any—

- (a) interest owing;
- (b) unpaid penalty; and
- (c) tax payable.

(2) The Comptroller may apply a tax payment to any specific tax or taxation period to which the payment should have been applied where—

- (a) the taxpayer fails to indicate to which specific tax or taxation period the payment should be applied; or
- (b) the payment is collected pursuant to a levy of execution.

**Tax Clearance Certificate to be obtained when Company winds up etc.**

**26.** (1) A taxpayer, or the agent of the taxpayer, shall first obtain a Tax Clearance Certificate from the Comptroller where the taxpayer intends to wind up a Company or settle a deceased person's estate.

(2) The Comptroller shall not provide a taxpayer with a Tax Clearance Certificate under subsection (1), unless the Comptroller is satisfied that the taxpayer has no outstanding taxes, or that the taxpayer has made arrangements that the Comptroller believes shall result in the payment of any outstanding tax.

**Liability for tax payment on liquidation of a company.**

**27.** (1) Where a company is liquidated without having satisfied its tax liabilities, including any liability to withhold and remit taxes, the persons who were shareholders of the company at the time of the liquidation, are jointly and severally liable to pay the unpaid tax.

(2) Where the tax liability of a company referred to in subsection (1) is in respect of a period when the company was under different ownership from the ownership at the time of liquidation, the Comptroller may collect taxes owed by the company from the persons who were shareholders during the period for which taxes are owed, except that liability of a person under this subsection is limited to the amount of assets received by the person in his or her capacity as shareholder of the company.

(3) Persons who are liable for the taxes of a company under this section, may avail themselves of any rights the company would have had against the Department.

#### **Write-off of uncollectable tax.**

**28.** The Comptroller shall prepare a list of accounts containing any unpaid tax, interest or penalty where—

- (a) the tax is irrecoverable under any tax law; or
- (b) the cost of collection, not exceeding \$100, would exceed the tax,

and submit the list to the Minister for approval by Cabinet, of the write-off.

## PART VI

### RECOVERY OF TAXES

#### **Recovery of tax through court proceedings.**

**29.** (1) Tax that is due and payable shall be a debt to the Crown and shall be payable to the Comptroller.

(2) Where the whole tax, or an installment, or amount of the tax agreed on or determined by the Comptroller, is not paid on or before the prescribed date or dates, then, that tax shall be deemed to be in arrears, and the Comptroller may, in his or her official name—

- (a) sue for and recover the tax or any portion of the tax as a civil debt in court; and
- (b) issue a warrant under his or her hand, directed to the Provost Marshall of the Federation, setting out in the warrant or in a schedule to the warrant, the several sums due on account of the tax from the person against whom the warrant is directed.

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

(4) Where proceedings in court for the collection of a tax are commenced, the period during which the tax may be collected by levy of execution shall be extended and shall not expire until the liability for the tax arising out of the judgment against the taxpayer, is satisfied.

#### **Crown's lien on taxpayer's property.**

**30.** (1) Subject to the provisions of this section, where a taxpayer fails to pay a tax by the due date, the amount owing and the interest on the amount, together with the

costs of collection that may accrue, shall create a lien in favour of the Crown on all property belonging to the taxpayer, and that lien shall, subject to subsection (3), have priority as against all other interests.

(2) The lien specified in subsection (1) shall accrue on the due date and shall continue until the liability is satisfied.

(3) The lien imposed by this section shall not be valid against the interest of—

(a) a person who is a *bona fide* purchaser of the property for value from the taxpayer;

(b) a holder of a security interest in the property granted by the taxpayer;  
or

(c) any other lien holder specified in regulations made under this Act; if that interest accrues before the persons mentioned in paragraphs (a), (b) and (c) have actual knowledge of the lien, or before a notice of the lien is duly registered, whichever occurs first.

(4) Regulations made under this Act may prescribe procedures for filing the notice of lien and may prescribe categories of interests against which the lien shall not be valid, notwithstanding the fact that the lien had been filed earlier.

(5) The Comptroller may file a civil action in the High Court to enforce the lien imposed by this section.

(6) An affected person may—

(a) apply to the Comptroller for a release of the lien on that person's property; or

(b) appeal against a decision by the Comptroller not to release the lien, to the High Court.

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

**31.** (1) Except where an extension of the due date is granted under section 19, where a taxpayer fails to pay a tax by the due date, and the Comptroller serves on the taxpayer a notice of intention to levy execution, and the taxpayer fails to pay the tax within one month after service of the notice, the Comptroller may cause execution to be levied on the taxpayer's property.

(2) Where the Comptroller has reasonable cause to believe that the collection of a tax is in jeopardy, he or she may demand immediate payment of the tax and, on failure of the taxpayer to pay the tax, may proceed to levy execution against the taxpayer's property immediately.

(3) Except for the part of the property already subject to attachment or execution under judicial process, a person, (including a bank or other financial institution) in possession of, or holding a security over property on which a levy has been made shall, on demand by a designated officer, surrender the property, or discharge the security to the Comptroller.

(4) A bank, or other financial institution shall not permit withdrawals or other payments from a taxpayer's bank account after receiving notice of intention to levy against that taxpayer's account.

(5) A person who fails to comply with the demand of the Comptroller under this section, shall be liable to the Crown 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.

(6) A person who complies with the requirements of this section or of section 33 shall be, from the time of compliance, discharged from any obligation to the taxpayer or any other person to the extent of the value of the property surrendered, or the security discharged to the Comptroller, and shall be indemnified by the taxpayer from any loss or damage incurred as a consequence of the compliance.

(7) A levy under this section shall be commenced within six years of the date of the issue of the notice of assessment or re-assessment pursuant to which the tax is levied.

(8) The personal effects, furnishings and tools used in a taxpayer's trade shall be exempt from a levy.

#### **Sale of taxpayer's seized property.**

**32.** (1) Any property seized and is the subject to a levy shall be sold by the Comptroller.

(2) The proceeds of the sale received pursuant to subsection (1) shall be applied as follows—

(a) payment of—

(i) expenses of the levy and sale; and

(ii) security for interest, penalties or tax, if any; and

(b) the remainder shall be paid to the taxpayer.

(3) Where administrative or judicial review of the assessment on the basis of which a levy is made is going on, including a review under section 31, the sale of the taxpayer's property shall be suspended, except for property which is subject to spoilage; and the taxpayer directs the Comptroller to sell it.

#### **Garnishee order against taxpayer's monies.**

**33.** (1) Pursuant to a levy of execution against a taxpayer under section 31, the Comptroller may issue a notice to any person (including an employer, bank or other financial institution) requiring that person to make direct payment to the Comptroller of any amount that person owes to the taxpayer, or holds on account of the taxpayer on the date of service of the notice of execution.

(2) A notice may be issued under this section on the taxpayer's employer, requiring the employer to withhold and to pay to the Department, for a specified period, a part of the future wages or salary that becomes payable to the taxpayer, provided that wages not exceeding \$1,000 per month shall not be subject to garnishment under this section.

#### **Liability of a transferee.**

**34.** Where a taxpayer's liability is not satisfied after a levy of execution on property known to the Comptroller, a person who receives assets of the taxpayer with prior notice of the taxpayer's tax liability during the period of one year preceding the date of the levy, shall be secondarily liable for the tax, to the extent of the value of the assets received.



**Responsibilities of Receivers of a taxpayer's property.**

**35.** (1) A Receiver of assets shall notify the Comptroller, within fourteen days after being appointed, or of taking possession of an asset situated in the Federation, whichever event first occurs, of his or her appointment.

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

(3) A Receiver shall not dispose of any asset situated within the Federation which he or she holds in his or her capacity as Receiver, without the prior permission of the Comptroller.

(4) A Receiver shall set aside, out of the proceeds of the sale of any asset, the amount notified by the Comptroller under subsection (2), or such lesser amount as may be agreed with the Comptroller.

(5) Where a Receiver fails to comply with the requirements of this section, he or she shall be personally liable for the amount of the tax notified in subsection (2), to the extent of any amount required to be set aside under subsection (4).

(6) In this section, "Receiver" means a person who, with respect to an asset situated in the Federation, is—

- (a) a liquidator of a company;
- (b) a Receiver appointed by the Court;
- (c) a trustee in bankruptcy; or
- (d) a mortgagee in possession.

## PART VII

## PENALTIES

**Procedures relating to payment of taxes.**

**36.** (1) The Procedures for the payment and collection of taxes as well as settlement of tax disputes shall apply equally to penalties relating to a tax.

(2) Liability for penalties under this Act shall be calculated separately, and shall be in addition to any interest levied under Part V, and to any criminal sanction imposed by section 60.

**Penalty for late filing or late payment.**

**37.** (1) A person who fails to file a return on or before the date by which filing is required is liable to a penalty equal to—

- (a) five percent of the amount of tax owing;
- (b) one hundred dollars per month or part thereof during which the failure to file continues, and
- (c) one thousand dollars per month or part thereof during which the failure to file continues by a person who qualifies as a taxpayer pursuant to section 2 of the Act but who is exempted from the payment of any tax.

*(Amended by Acts 7 of 2014 and 5 of 2016)*

(2) In addition to any penalty provided for by subsection (1), where the Comptroller makes a demand in writing that a person files a tax return or provides any other information that is relevant to the determination of the taxpayer's tax liability, and that person fails to file the return or provide the information within the time specified in the demand renders that person liable to a penalty of—

- (a) \$1000, in the case of a taxpayer's income tax liability; and
- (b) \$500, in the case of a taxpayer's other tax liability.

(3) Where any subsequent demand to the demand in subsection (2) is made by the Comptroller, and the taxpayer fails to comply within the time specified in the demand, the taxpayer shall be liable to an additional penalty of—

- (a) \$1000, in the case of a taxpayer's income tax liability; and
- (b) \$500, in the case of a taxpayer's other tax liability; or
- (c) such other amount as may be prescribed.

(4) Notwithstanding the amounts prescribed as penalties in subsections (2) and (3), different amounts may be prescribed by regulations made under this Act.

(5) Notwithstanding anything in any other law in force in Saint Christopher and Nevis, where a person—

- (a) fails to furnish returns in accordance with section 10;
- (b) being liable to pay tax, fails to pay the tax on three successive occasions;
- (c) violates any other rule made under this Act which is designated as a serious delinquency, by Regulations made under this Act; or
- (d) is convicted of an offence under this Act,

the Comptroller may publish, in a newspaper circulating in Saint Christopher and Nevis, the name of the person or the name of the business of that person, or both.

*(Inserted by Act 7 of 2014)*

(6) A person who fails to pay tax, being the whole or part of the remainder of any tax due or payable under this Act, by the due date shall be liable to a penalty equal to ten percent of the amount of tax due.

*(Inserted by Act 5 of 2016)*

### **Penalty for underpayment of tax due to fraud or negligence.**

**38.** Where any tax is underpaid, or may have been underpaid as a result of an incorrect statement or a material omission in the taxpayer's tax return, or other incorrect information provided by the taxpayer, and that statement or omission or incorrect information is a result of intentional conduct or negligence on the part of the taxpayer, the taxpayer shall be liable to a penalty in the amount of 25 percent of the underpayment.

### **Director's liability for unpaid tax.**

**39.** (1) Where a company—

- (a) fails to pay tax for which it is liable;
  - (b) fails to withhold tax from any payment made by it as required by law;
- or

- (c) having withheld tax as required, fails to account for such tax to the Department as required by any tax law,

any person who was a director of the company at the relevant time shall be liable for the respective tax.

(2) Notwithstanding subsection (1), a director shall not be liable if he or she exercises the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would exercise in like circumstances.

(3) A director who is liable to pay any tax under this section is entitled to be indemnified by the company for the payment of—

- (a) the expenses of the levy and sale; and  
(b) any security for interest, penalties, and tax.

## PART VIII

### OBJECTIONS AND APPEALS

#### **Taxpayer may request for administrative review.**

**40.** (1) A taxpayer who is dissatisfied with an assessment or any other decision of the Department may request the Comptroller for an administrative review of the decision.

(2) A request for administrative review shall be made to the Comptroller in the prescribed form not later than one month from the date of the assessment or the date the taxpayer was notified of the decision.

(3) The Comptroller shall consider the taxpayer's request and notify the taxpayer in writing of his or her decision, and the reasons for the decision within a reasonable time.

#### **Appointment, functions, and quorum of Commissioners.**

**41.** (1) The Governor General shall appoint Commissioners whose main function shall be to hear appeals against tax assessments but shall, in addition, perform any other functions that may be assigned to them by the Governor General from time to time.

(2) The Commissioners holding office immediately before the date of the commencement of this Act shall be deemed to have been appointed under this Act.

(3) Three Commissioners shall form a quorum at any meeting.

#### **Appeals to the Commissioners.**

**42.** (1) Except in cases to which subsection (3) applies, a taxpayer who disagrees with an administrative decision made under section 40 may appeal to the Commissioners in writing not later than one month after the date of the notice of the Comptroller's decision.

(2) An appeal to the Commissioners may not be made unless a request for administrative review has first been made, and a decision has been received from the Comptroller.

(3) A taxpayer who disagrees with a determination of liability under the Property Tax Act may appeal to the Property Tax Commissioners.

**Duty of taxpayer to prove an incorrect assessment.**

43. The burden of proving the degree of incorrectness of an assessment is on the taxpayer.

**Appeal from a decision of Commissioners to go to High Court.**

44. (1) Either party to any proceedings before the Commissioners who is dissatisfied with the decision of the Commissioners may, within one month from the date of being notified of the decision, file a notice of appeal with the Registrar of the High Court.

(2) The appellant referred to in subsection (1) shall serve a copy of the notice of appeal on the other party to the proceedings before the Commissioners.

(3) An appeal from the Commissioners may be made only on a point of law and shall be by way of case stated.

**Request for administrative review not to affect tax liability.**

45. Where a request for administrative review of an assessment is filed, or where a taxpayer appeals to the Commissioners against an assessment, the tax liability shall remain due and payable, unless the Comptroller grants extension of time under section 19.

PART IX

ADMINISTRATIVE PROVISIONS

**Appointment of Comptroller and other officers.**

46. (1) Subject to subsection (2), the Governor General shall appoint a Comptroller of Inland Revenue, and shall issue to the Comptroller a warrant of appointment under his or her hand.

(2) The Comptroller holding office immediately before the date of commencement of this Act shall be deemed to have been appointed under this Act.

(3) Where by reason of absence, illness or for any other reason, the Comptroller is unable to perform his or her duties under this Act, the Minister may appoint an Acting Comptroller to perform those duties.

(4) The Governor General shall appoint by warrant issued under his or her hand, other officers and persons as may be necessary to assist the Comptroller in the administration of this Act.

**Functions and powers of the Comptroller.**

47. The Comptroller, subject to the general directions of the Minister, shall—

- (a) assess taxes;
- (b) re-assess taxes where necessary;
- (c) collect taxes to which this Act applies;

- (d) account for taxes to which this Act applies;
- (e) have the power to—
  - (i) extend the time of payment of a tax after the due date;
  - (ii) bring charges for any criminal offence committed under this Act; and
  - (iii) grant waivers of penalties imposed under this Act and interest on any tax; and
- (f) generally administer and enforce compliance with the provisions of this Act and any regulations made under this Act.

**Comptroller may delegate powers.**

**48.** (1) The Comptroller may delegate, in writing, to any officer of the Department, any power or duty conferred on the Comptroller by this Act.

(2) Subject to such conditions as the Comptroller may specify, the Comptroller may direct that any information, declaration or document required to be furnished to the Comptroller, shall be supplied to such other person as she or he may nominate.

(3) Subject to the extent that may be provided by regulations made under this Act, a person may be required to—

- (a) include his or her Tax Identification Number on any declaration, notice or fee to which this Act applies; and
- (b) furnish the number to any other person designated in regulations made under this Act as a person who is required to furnish tax information, with respect to the person furnishing the number.

**Comptroller to rule on application of any tax law.**

**49.** (1) A taxpayer may make an application to the Comptroller to make a ruling on whether a specific tax law applies to a specific transaction proposed by the taxpayer, and the Comptroller shall respond to the application within fourteen days from the time he or she receives the application.

(2) The Comptroller may give to a taxpayer an advance ruling setting out the Department's position in relation to the application of a tax law to a specific transaction proposed by the taxpayer.

(3) Where a taxpayer makes 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 ruling shall be binding on the Department and the taxpayer with respect to the tax legislation as it stood at the time of the ruling.

(4) The Comptroller may set his or her own procedure for the issue of advance rulings and may charge a reasonable fee for the issue of the rulings.

**Duty not to divulge information.**

**50.** (1) A person having an official duty or being employed in the administration of this Act shall regard and deal with all documents, information returns, assessments lists, and copies of the lists relating to the income, or items of income of any person,

as secret and confidential, and shall subscribe to a declaration in the form prescribed to that effect before a Magistrate.

(2) A person who, having possession of, or control over any documents, information, returns or assessment lists or copies of lists relating to the income, or items of income of any person, communicates or attempts to communicate the information or anything contained in the documents, returns, lists or copies to a person—

- (a) other than a person to whom he or she is authorized by the Governor General to communicate with; or
- (b) otherwise than for the purposes of this Act, commits an offence and is liable, on conviction, to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding six months or both.

(3) Where provision is made for the granting of double tax relief under Part IV of this Act, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorized officers of the Governor General of a territory, of such facts as may be necessary to enable the proper relief to be given either in that territory or in this territory.

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

## PART X

### MISCELLANEOUS PROVISIONS

#### **Forms and notices etc.**

**51.** (1) The Comptroller may issue and require the completion of such forms, notices, declarations, statements, tables and other documents as may be required for the administration of any tax law to which this Act applies.

(2) The Department shall make the documents available to the public at its main office and at any other location, or by mail, as it may determine.

#### **Comptroller to communicate with taxpayer only if authorised by the law.**

**52.** A notice, statement, or agreement issued by the Comptroller to a taxpayer or other person shall be binding only if it is—

- (a) authorized by the law;
- (b) in writing;
- (c) signed by the Comptroller or other officer appointed by him or her;  
and
- (d) served upon the taxpayer or other person to whom it is addressed.

#### **Service of notices, documents and forms.**

**53.** (1) Where the Comptroller gives notice in writing to a person, the notice shall be considered sufficiently served if it is personally served upon that person or is sent by mail to that person's last known address.

(2) If the Comptroller is required to give notice in writing to a company, the notice shall be considered sufficiently served if it is delivered or sent by mail to the registered office of the company.

**Notices etc. not to be deemed invalid.**

**54.** A notice of assessment or any other notice or document issued under this Act, shall not be considered invalid or ineffective by reason of—

- (a) a failure to comply with the requirements of section 52, if the taxpayer had effective knowledge of the fact of the notice, or of its content; or
- (b) any 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.

**Comptroller may request for information.**

**55.** In respect of an authorized purpose, the Comptroller may, by giving reasonable notice in writing, require any person whether a taxpayer or not—

- (a) to furnish 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.

**Designated officer may enter any premises etc. for a purpose.**

**56.** (1) A designated officer may enter any business premises open to the public without prior notice, for an authorized purpose—

- (a) during normal business hours; or
- (b) at any other time if authorized in writing by a judicial officer upon application by the Comptroller.

(2) A designated officer may enter a taxpayer's dwelling, or other premises for an authorized purpose without first complying with the provisions of subsection (1), if he or she has the consent of the taxpayer.

(3) A designated officer who is lawfully upon premises or in a dwelling, in circumstances falling within the provisions of subsections (1) or (2) may—

- (a) make a copy of any record found on the premises or in the dwelling relevant to the authorised purpose;
- (b) seize any record or other item that appears to be relevant to the authorized purpose; or
- (c) seal any records or other items relevant to the purpose.

**Procedure on seizure of documents.**

**57.** (1) If a designated officer seizes a record or item pursuant to the authority provided under section 56(3), the Comptroller may make a copy of the record, or other item, and shall return the original to the person it was seized from as soon as it is practicable, unless otherwise directed by a court order.

(2) Any copy of a document made pursuant to the powers conferred by this section may be produced in Court and shall be subject to the rules of evidence as if it were an original.

(3) If a person asserts privilege under any law over documents or other evidence which the Comptroller wishes to seize or examine pursuant to this section, the materials over which privilege is claimed shall be deposited into an envelope which shall then be sealed and retained unopened by any officer of the department, pending an application by the Comptroller to a court of competent authority, to determine whether the items in question are privileged.

(4) Documents specifically requested by the Comptroller under section 51 and which a taxpayer or other specified person fails to provide, shall not be used by the taxpayer or any other person in judicial proceedings to challenge an assessment, except with the agreement of the Comptroller.

(5) For the purposes of section 55 and 56, “authorized purpose” means—

- (a) the collection of information for the purpose of determining the liability of a person for a specific tax; or
- (b) the collection of information for purpose of collecting tax from a specific person.

#### **Taxpayer’s right to information.**

**58.** Upon request by a taxpayer or his agent, the Department shall inform the taxpayer or his agent of the status of the taxpayer’s account with respect to any tax, provided the identity of the taxpayer or his agent is first ascertained to the satisfaction of the Department.

#### **Due dates for performance under the Act.**

**59.** (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 shall be considered timely if it is performed on the next succeeding day which the Department is open for business.

(2) A declaration, appeal, or other document shall be 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.

#### **Offences.**

**60.** (1) A person who evades or attempts to evade an assessment, payment or collection of tax commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or imprisonment for a term not exceeding one year or to both.

(2) A person who obstructs the Department in the administration of this Act commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding one year or to both.

(3) For the purposes of subsection (2), a person obstructs the administration of this Act by—

- (a) failing to comply with a lawful request by a designated officer to supply information, examine documents, records, or data within the knowledge or control of that person;



- (b) failing to comply with a lawful request by a designated officer to have the person appear before an official of the Department;
- (c) interfering with the rights of a designated officer of the Department to exercise any of the powers granted to him or her under section 56;
- (d) in anyway impeding or hindering the determination, assessment or collection of any tax or the conducting of a tax investigation;
- (e) aiding or abetting a person to commit an offence against the provisions of this Act, or counselling or procuring another person to commit such offence.

*(Substituted by Act 22 of 2012)*

**Waiving of penalty or interest by Comptroller.**

**61.** (1) The power to bring charges and seek prosecution for the criminal offences defined in this Act belongs exclusively to the Comptroller or his or her authorized delegate.

(2) If the Comptroller resolves to bring charges or to seek prosecution under this Act, the matter shall be referred to the Attorney-General.

**Regulations.**

**62.** The Minister may make regulations for the better administration of this Act.

**Retrospective effect of the Act.**

**63.** Where any law relating to 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 shall apply as if the Act were in effect when the matter not addressed in the prior law first arose.

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