

ANTIGUA AND BARBUDA



THE ANTIGUA AND BARBUDA SALES TAX (AMENDMENT) ACT, 2008

No. 2 of 2008

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*The Antigua and Barbuda Sales Tax
(Amendment) Act, 2008.*

2

No. 2 of 2008.

THE ANTIGUA AND BARBUDA SALES TAX (AMENDMENT) ACT, 2008

ARRANGEMENT

Sections

1. Short title.
2. Interpretation
3. Amendment of section 2
4. Amendment of section 7
5. Amendment of section 14
6. Amendment of section 15
7. Amendment of section 20
8. Amendment of section 24
9. Amendment of section 25
10. Amendment of section 27
11. Amendment of section 29
12. Amendment of section 39
13. New section 41A
14. Amendment of section 44
15. Amendment of section 58
16. Amendment of Schedule 1
17. Amendment of Schedule 2
18. Amendment of Schedule 3
19. Amendment of Schedule 4
20. Amendment of Schedule 5

*The Antigua and Barbuda Sales Tax
(Amendment) Act, 2008.*

4

No. 2 of 2008.



I Assent,

[L.S.]

Louise Lake-Tack,
Governor-General.

11th November, 2008

ANTIGUA AND BARBUDA

THE ANTIGUA AND BARBUDA SALES TAX (AMENDMENT) ACT, 2008

No. 2 of 2008

AN ACT to amend the Antigua and Barbuda Sales Tax Act, 2006

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

- (1) This Act may be cited as the Antigua and Barbuda Sales Tax (Amendment) Act, 2008.
- (2) Except as otherwise provided, this Act applies from the day on which the Principal Act commenced.

2. Interpretation

In this Act,

- (a) “Principal Act” means the Antigua and Barbuda Sales Tax Act 2006, (No. 5 of 2006); and
- (b) a word or phrase not specifically defined in this Act but defined in the Principal Act has the meaning assigned to it in that Act, whether that meaning applies for the purposes of the entire Act or only part of the Act.

3. Amendment of section 2

Subsection 2(1) of the Principal Act is amended

- (a) in the definition “acquisition”, by replacing the second occurrence of “(b)” with “(c)”;
- (b) in the definition “government entity” by deleting everything after the word “Barbuda” ;
- (c) in the definition “holiday or hotel accommodation”, by combining paragraph (b) and the second occurrence of paragraph (a);
- (d) by replacing the definition “phone card” with the following definition:

““phone card” means a card or other item in whatever form it is issued, including electronically, which entitles the holder to receive telecommunications services, whether or not it also entitles the holder to receive other goods or services, and includes a pre-paid mobile phone card, a rechargeable card or similar item, and a unique identification number or other identifier that represents a payment or prepayment for airtime;”

- (e) by replacing the definition “voucher” with the following definition:
““voucher” means a voucher, stamp, token, coupon, or similar article, including an article issued electronically, that can be redeemed by the holder for supplies of goods or services, and includes a phone card and a prepaid telecommunications account but does not include a postage stamp;” and

- (f) by adding the following definitions in alphabetical order within the subsection:

““air time” means the right to acquire telecommunications services up to a certain value, or for a defined period of time;

“long-term lease” means a lease that, at the time of its grant, assignment, or transfer, is for a term of at least 40 years and can reasonably be expected to continue for at least 40 years and for which at least ninety per cent of the consideration is paid in advance, either as a premium or as the first payment of rent;

“pre-paid telecommunications account” means a pre-paid mobile phone account or any other account with a telecommunications supplier that records amounts that have been pre-paid by a customer and can be used by the customer to pay for telecommunication services, including an account that can also be used to pay for supplies of goods or services other than telecommunications services;”

“sale”, in relation to real property, means an arrangement under which

- (a) the ownership of land will be transferred from one proprietor to another in accordance with the Registered Land Act Cap. 374;
- (b) the ownership of a condominium lot will be transferred from one proprietor to another in

accordance with the Registration of Condominium Titles Act Cap. 376 and the Registered Land Act Cap. 374;

- (c) the ownership of land not registered under the Condominium Titles Act Cap. 376 or the Registered Land Act Cap. 374 will be transferred from one person to another by grant, assignment, or other means; or
- (d) units in a unit trust, shares in a company, or membership interests in any other person are transferred from one owner to the other, if the units, shares, or interests, carry with them an entitlement for the holder to occupy any land or part thereof as if the person were the owner of that land or part thereof,

but does not include a grant, assignment, or transfer of a lease, other than a long-term lease;”.

4. Amendment of section 7

Paragraph 7(1)(e) of the Principal Act is amended

- (a) in subparagraph (i) by replacing the word “or” with the word “and” at the end; and
- (b) in sub-paragraph (ii), by replacing the words “is one in which the entity carries on activities” with the words “is an activity”.

5. Amendment of section 14

(1) Section 14 of the Principal Act is amended by repealing subsections (4) and (5) and substituting the following:

“(4) Where a person makes a supply of imported goods after the goods are imported but before the goods are entered for home use, the goods are deemed to have been located outside Antigua and Barbuda at the time of supply.

(5) Where a supply by a non-resident is of the lease, hire, or licence of goods, including under a charter party or agreement for chartering, for the purposes of subsection (1)(b)(i) the goods are treated as located in Antigua and Barbuda at the time of supply during any period in which

- (a) the goods are for use, or are used, wholly or partly in Antigua and Barbuda; or
- (b) the goods are used in international territory if immediately before and after that use the goods are used in Antigua and Barbuda.”

(2) This section has effect from the date on which this Act is published in the Gazette.

6. Amendment of section 15

Subsection 15(1) of the Principal Act is amended

- (a) in the blank line after the word “formula” and before the word “where” by inserting the following formula:

“ $R/(100+R)$ ”; and

- (b) in the line commencing “where”, by inserting the symbol “**R**” immediately after the word “where”.

7. Amendment of section 20

Subsection 20(2) of the Principal Act is amended by repealing the acronym “GST” and substituting the acronym “ABST”.

8. Amendment of section 24

(1) Subsection 24(4) of the Principal Act is amended by repealing all the words after the words “tax fraction” and substituting the following:

C - P

where—

C is the consideration for all taxable supplies of goods and services made by the taxable person in that tax period that are not zero-rated because of subsection (3); and

P is the consideration paid or payable by the person for the acquisition, in that tax period, of such goods and services for the purpose of on-supply.”

(2) Subsection 24(5) of the Principal Act is repealed and substituted with the following:

“(5) If **P** exceeds **C** in the calculation in subsection (4) for a particular tax period, the excess amount is included in the value of **P** for the following tax period.”

9. Amendment of section 25

Section 25 of the Principal Act is amended

- (a) in paragraph (a), by inserting the words “for home use” after the word “entered”;
- (b) in paragraph (b), by inserting the words “where goods are imported for use in Antigua and Barbuda” after the word “case”.

10. Amendment of section 27

Section 27 of the Principal Act is amended by repealing all the words after the word “following” and substituting the following”

“formula—

A -B

where—

A is the total output tax payable by the person in relation to the period; and

B is the total input tax credits allowed to the person under sections 16, 17, 29, 30, 31 and 44 in respect of that tax period.”

11. Amendment of section 29

Subsection 29(3) of the Principal Act is amended in paragraph (c) by repealing the words after the word “following” and substituting the following”

“formula—

A x ^B/_C

where—

A is the total amount of input tax payable in respect of imports or acquisitions made by the person during the period, less the input tax accounted for under paragraphs (a) and (b);

B is the value of all taxable supplies made by the taxable person during the period;

C is the value of all supplies made by the taxable person during the period; and

B and **C** do not include the value of supplies made through a taxable activity carried on by the person outside Antigua and Barbuda.”

12. Amendment of section 39

Subsection 39(2) of the Principal Act is amended by adding the word “and” at the end of paragraph (c) and inserting the following paragraph at the end”

“(d) be signed by

- (i) if the taxable person is an individual, the taxable person or another person authorised by the taxable person in writing to sign the return; or

- (ii) if the taxable person is not an individual, a representative of the taxable person or another person authorised by the taxable person in writing to sign the return.”

13. New section 41A

The Principal Act is amended by adding the following section after section 41:

“41A. Barbuda amounts

(1) Subject to this section, the references to the “Commissioner” in section 27, and subsections 39(2) and 41(1) are to be read, with respect to taxable persons located in Barbuda as references to the Barbuda Council.

(2) The Barbuda Council is entitled to retain the revenue generated from the ABST with respect to taxable persons located in Barbuda and shall provide full details to the Commissioner of the remittance forms and payments received.

(3) Any penalty or interest occasioned by late submission or payment is to be collected by the Commissioner and any refunds due shall be administered and remitted by the Commissioner.

(4) Revenue retained by the Barbuda Council shall be offset against the amounts due under the annual estimates.”

14. Amendment of section 44

(1) Subsection 10 of section 44 is repealed and substituted with the following:

“(10) The Commissioner may authorise, subject to subsection (11), a refund of ABST charged on the supply of goods or on the importation of goods, to a person constructing new residential premises or premises intended solely for use for an approved purpose, where -

- (a) those goods are incorporated in the premises or on the site of the premises; and
- (b) the supply of goods would have been zero-rated by virtue of item 8 of paragraph 2 of Schedule 3 if they had been supplied by a supplier making to the same person supplies of services referred to in item 7 of that paragraph, including the use or installation of the goods, and any required certificate had been given.

(11) The Commissioner is not required to consider a claim for a refund of ABST under this section unless the claim –

- (a) is made within the designated time and in the designated form and manner;

- (b) contains the designated information; and
- (c) is accompanied by the designated documents.

(12) The Commissioner may designate times, forms, manners, information and documents for the purpose of subsection (11).

(13) For the purpose of subsection (10) “use for an approved purpose” has the same meaning as in Schedule 3.

(14) 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 for the purpose of section 61.

(15) Subsections 10 to 13 have effect from the date on which this Act is published in the Gazette.”

15. Amendment of section 58

Section 58 of the Principal Act is amended by repealing the first subsection (2).

16. Amendment of Schedule 1

(1) The title of Schedule 1 to the Principal Act is amended by repealing the word “GODS” and substituting the word “GOODS”.

(2) Paragraph (1) of Schedule 1 to the Principal Act is amended by adding the following items, immediately after item 7:

“8. A supply of aircraft’s stores, including airline catering supplies, or ship’s stores, or of spare parts for an aircraft or ship, if the stores or parts are for use, consumption, or sale on the aircraft or ship during a flight or voyage that constitutes international transport.

9. A supply of an aircraft or ship imported or acquired for use exclusively in international transport.”

(3) Schedule 1 to the Principal Act is amended by inserting the following at the end:

“(4) Where a supply by a resident is of the lease, hire, or licence of goods, including under a charter party or agreement for chartering, for the purposes of item 6 of paragraph (1)—

- (a) the goods are treated as located outside Antigua and Barbuda at the time of supply during any period in which the goods are for use, or are used, wholly or partly outside Antigua and Barbuda; and

- (b) there is a presumption that the supplier will not import the goods during the relevant period if the goods are outside Antigua and Barbuda during that period.”

(4) Subsection (3) comes into force on the day on which this Act comes into force.

17. Amendment of Schedule 2

(1) Item 9 in paragraph (1) of Schedule 2 to the Principal Act is repealed and substituted with the following:

“**9.** A supply of services if—

- (a) the services—
 - (i) are not directly connected with land, or improvements to land, situated in Antigua and Barbuda;
 - (ii) are not directly connected with goods situated in Antigua and Barbuda at the time the services are performed; and
 - (iii) do not consist of refraining from or tolerating an activity, a situation, or the doing of an act in Antigua and Barbuda, if the restraint or toleration will be effectively used or enjoyed in Antigua and Barbuda; and
- (b) the recipient of the supply is
 - (i) a non-resident person who is outside Antigua and Barbuda at the time the services are performed; or
 - (ii) a person who is outside Antigua and Barbuda at the time the services are performed and who will effectively use or enjoy the services outside Antigua and Barbuda.”

(2) Item 10 in paragraph (1) of Schedule 2 to the Principal Act is amended by repealing the full stop that occurs after the word “of” at the end of the opening line of the item and substituting it with a colon.

(3) Paragraph (1) of Schedule 2 to the Principal Act is amended by inserting, the following items at the end:

“**13.** A supply of the services of repairing, maintaining, cleaning, renovating, modifying, or treating an aircraft or ship engaged in international transport.

14. A supply of services that

- (a) consist of the handling, pilotage, salvage, or towage of a ship or aircraft engaged in international transport; or
- (b) are provided directly in connection with the operation or management of a ship or aircraft engaged in international transport.”

(4) Paragraph (3) of Schedule 2 to the Principal Act is repealed and substituted with the following paragraphs—

“(3) Without limiting paragraph (2), a supply of services is not zero-rated under item 9, 11, or 12 of paragraph (1) if—

- (a) the services are supplied under an agreement that is entered into, whether directly or indirectly, with a person who is a non-resident;
- (b) the performance of the services is, or it is reasonably foreseeable at the time the agreement is entered into that the performance of the services will be, received in Antigua and Barbuda by another person, and
- (c) it is reasonably foreseeable, at the time the agreement is entered into, that the other person will not be a taxable person when it receives the performance of the services.

(4) For the avoidance of doubt, if paragraph (3) applies to a supply of a right or option to receive goods or services, paragraph (3)(b) is to be read as referring to the receipt of the goods or services supplied when the right or option is exercised.”

18. Amendment of Schedule 3

(1) Paragraph (1) of Schedule 3 to the Principal Act is repealed and substituted with the following paragraph:

“(1) In this Schedule—

- (a) the classification and description of goods which bear heading numbers designated in the Customs Tariff are to be interpreted in accordance with the rules for interpretation set out in Part I of the Customs Tariff; and
- (b) unless the context requires otherwise—

“new residential premises” means residential premises that—

- (a) have not previously been sold as residential premises or been the subject of a long-term lease; or

- (b) have replaced demolished premises on the same land;

but does not include premises that have been occupied by any person for a period of more than five years since their construction;

“use for an approved purpose” means:

- (a) use for an approved charitable purpose; or
- (b) use for an approved residential purpose;

“use for an approved charitable purpose” means use by an approved non-profit body otherwise than in the course or furtherance of a taxable activity, or part of such activity, that is carried on for a profit; “use for an approved residential purpose” means use as—

- (a) a home or other institution providing residential accommodation for children;
- (b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder;
- (c) a hospice;
- (d) residential accommodation for students or school pupils;
- (e) residential accommodation for members of the Royal Police Force of Antigua and Barbuda or the Defence Force of Antigua and Barbuda;
- (f) a monastery, nunnery, or similar establishment; or
- (g) an institution which is the sole or main residence of at least 90 per cent of its residents

but does not include use as a hospital, a prison or similar institution, or a hotel or holiday accommodation.”

(2) Paragraph (2) of Schedule 3 to the Principal Act is amended by inserting, immediately after item 5, the following items:

“6. A sale of real property to the extent that the property is—

- (a) new residential premises; or
- (b) premises intended for use solely for an approved purpose and that have not previously been sold for that purpose.

7. A supply of any services to the extent that the services consist of, or are closely related to, the construction of—

- (a) new residential premises; or
- (b) premises intended for use solely for an approved purpose.

8. A supply of materials, builders' hardware, sanitary ware, or other articles of a kind ordinarily installed by builders as fixtures, where the supply is made in the course of supplying services covered by item 7 and—

- (a) both the services and goods are supplied by the same supplier to the same recipient; and
- (b) the supplier uses or installs the goods in the course of supplying the services.

9. A supply to a person who is not registered for ABST of a personal or laptop computer, as defined under the Customs Tariff Headings listed below, the value of which is less than the amount specified in the Regulations:

- 8471.30 Portable digital automatic data processing machines, weighing not more than 10kg, consisting of at least a central processing unit, a keyboard and a display.
- 8471.41 Other digital automatic data processing machines: Comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined.
- 8471.49 Other, presented in the form of systems.

10. A supply, to a person who is not registered for ABST, of equipment of a kind specified in the Regulations, if the equipment is supplied together with an eligible personal or laptop computer that is zero-rated under item 9.

11. A supply, to a person who is not registered for ABST, of computer software of a kind specified in the Regulations, if the software is supplied together with an eligible personal or laptop computer that is zero-rated under item 9 to the schedule, including software that is pre-loaded on the computer or supplied separately by any means.

12. A supply of any services to the extent that the services consist of the installation of a solar water heater.

13. A supply of materials, where the supply is made in the course of supplying services covered by item 12 and—

- (a) both the services and goods are supplied by the same supplier to the same recipient; and
- (b) the supplier uses or installs the goods in the course of supplying the services.

14. Imports by individuals under the Dollar Barrel Initiative during the period legislated in each calendar year subject to the conditions laid down in the annual legislative amendments to the Customs Duties Act and the Customs Service Tax Act.”

15. Supplies or imports of goods or supplies of services made to a company registered under the International Business Corporations Act Cap. 222.”

(3) Items 8, 12, 13 and 15, as enacted by subsection (2), have effect only from the date on which this Act is published in the Gazette.

(4) Schedule 3 to the Principal Act is amended by inserting, at the end of the Schedule, the following paragraphs:

“(4) A sale of real property is not zero-rated under item 7(a) of paragraph (2) unless—

- (a) the recipient has an unrestricted right to reside in the premises throughout the year;
- (b) the recipient intends to occupy the premises as the person’s main residence and has given the supplier a certificate to that effect in the form specified by the Commissioner; and
- (c) nothing in the contract of sale, the terms of a covenant or caveat, the Development Control Authority consent or similar permission, or the zoning of the land would prevent the person residing in the premises throughout the year as a principal place of residence.

(5) A sale of real property is not zero-rated under item 7(b) of paragraph (2) unless the recipient of the supply intends to use the premises for the approved purpose and has given the supplier a certificate to that effect in the form specified by the Commissioner.

(6) For the avoidance of doubt, a supply is zero-rated under item 6, 7, or 8 of paragraph (2) only to the extent that it is, or relates to, new residential premises or premises to be used for an approved purpose, and in particular a supply, or part of a supply, is only partly zero-rated if—

- (a) there is more than one building on the land being sold, and only some of the buildings are residential premises or intended for use solely for an approved purpose; or
- (b) part of a building (“the shared part”) is intended to be used both for residential purposes or for an approved purpose and for some other purpose.

(7) Where a supply is only partly zero-rated under item 6, 7, or 8 of paragraph (2), the extent to

which the supply is zero-rated must be determined on a fair and reasonable basis, so as to reflect the true extent to which the premises will be used for residential purposes or for an approved purpose.

(8) For the purposes of items 7 and 8 in paragraph (2), services consisting of or closely related to construction do not include the services provided by a Barrister-at-law, Solicitor, Architect, Land Surveyor, Quantity Surveyor, Civil Engineer, Electrical Engineer, Mechanical Engineer, or Structural Engineer.

(9) The reference in item 7 of paragraph (2) to the construction of premises does not include a reference to—

- (a) the conversion, reconstruction, alteration, or enlargement of existing premises; or
- (b) the construction of an extension or annexation to existing premises if
 - (i) internal access is provided to the existing building from the extension or annexe; or
 - (ii) the separate use, letting, or disposal of the extension or annexe is prevented by the terms of any covenant, caveat, zoning, or Development Control Authority consent or similar permission.

(10) The following types of goods are not zero-rated under item 8 of paragraph (2):

- (a) finished or prefabricated furniture, other than furniture designed to be fitted in kitchens;
- (b) materials for the construction of fitted furniture, other than kitchen furniture;
- (c) domestic electrical or gas appliances, other than those designed to provide space heating or water heating or both; or
- (d) carpets or carpeting material.

(11) Domestic supplies under item 15 are only zero rated where the supplier is in possession of a purchase order or similar document certified prior to the supply by the ABST division of the Inland Revenue.”

19. Amendment of Schedule 4

(1) Paragraph (1) of Schedule 4 to the Principal Act is amended

- (a) in item 2, by repealing the phrase “unless the supply is made to a registered person” and substituting “or if the goods are a passenger vehicle on which the person incurred input tax and was denied a credit under section 28(2)(b)”

- (b) by inserting the following new item 6 after item 5 and renumbering items the other items accordingly;

“6. The following supplies relating to land in Barbuda:

- (a) a grant of an exclusive right of occupation of land in accordance with section 7(a) of the Barbuda Land Act 2007; or
- (b) a grant or renewal of a lease under section 8(1) or (2) of the Barbuda Land Act 2007, to the extent that it relates to a right covered by section 7(a) of that Act.”
- (c) in paragraph 20(a) (formerly paragraph 19(a)), by adding the word “seeds” before the word “seedlings” at the beginning of that paragraph;
- (d) by replacing items 23 to 28 (formerly items 22 to 27) with the following:

“23. A supply of local entertainment services.

24. A supply of a ticket in a lottery conducted by the Leeward Islands Lottery Holding Company, or any other approved lottery operator.”

(2) Paragraph (2) of Schedule 4 to the Principal Act is amended by replacing the phrase “6 or 7” with “7 or 8”.

(3) Schedule 4 to the Principal Act is amended by repealing item 28, which appears at the end of the Schedule after paragraph (3).

20. Amendment of Schedule 5

(1) Schedule 5 to the Principal Act is amended in item 2(a) of paragraph (1) by repealing the phrase “10 or 11(a)” and substituting the phrase “11 or 12(a)”.

(2) Schedule 5 to the Principal Act is amended in item 15 by repealing the phrase “22, 23 or 24 of Schedule 4” and substituting the phrase “9, 10 or 11 of Schedule 3” and by repealing the word

“exempt” and substituting the word “zero-rated.”

No. 2 of 2008. 19

*The Antigua and Barbuda Sales Tax
(Amendment) Act, 2008.*

Passed by the House of Representatives on
this 7th day of July, 2008.

Passed by the Senate on this 21st day of
August, 2008.

D. Gisele Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

L. Thomas,
Acting Clerk to the House of Representatives.

L. Thomas,
Acting Clerk to the Senate.