

No. 28 of 1993. *The Consumption Tax Act, 1993.*

ANTIGUA
AND
BARBUDA

[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

14th December, 1993.

ANTIGUA AND BARBUDA

No. 28 of 1993

An Act to repeal the Consumption Tax Act 1980, and to make provision for the imposition of a Consumption Tax on goods imported or manufactured, grown or produced in Antigua and Barbuda for consumption therein and for matters incidental thereto and connected therewith.

[23rd December, 1993]

ENACTED by the Parliament of Antigua and Barbuda as follows —

1. This Act may be cited as the Consumption Tax Act, 1993. **Short title.**

2. In this Act — **Interpretation.**

"aircraft" includes all balloons (whether captive or free), kites, gliders, airships, helicopters and other flying machines;

"chargeable goods" mean **all** goods imported into Antigua and Barbuda for consumption therein or manufactured, grown or produced in Antigua and Barbuda for consumption therein but does not include any goods in respect of which exemption from tax is provided under the First Schedule;

"Comptroller" means the Comptroller of Customs;

"Container" includes any bundle or package and any box, cask, or other receptacle whatsoever;

"dollar" means East Caribbean Dollar;

"goods" includes all kinds of goods, wares, merchandise and all other kinds of personal or moveable property other than money;

"import" with its grammatical variations and cognate expressions means to bring or cause to be brought within Antigua and Barbuda;

"Importer" includes the owner or any other person for the time being interested in an importation thereof until the same are duly delivered out of customs charge, and also any person who signs any document relating to any imported goods where such document is required by any law for the time being in force relating to customs to be signed by an importer;

"manufacture" means carrying on in Antigua and Barbuda the business of making any chargeable goods or of applying any process in the course of making such goods;

"Minister" means the Minister charged with the responsibility for Customs;

"proper" in relation to an officer means the officer whose right or duty it may be to exact the performance of or to perform the act referred to;

"registered person" means a person who is registered under and by virtue of this Act;

"Schedule" means a Schedule to this Act;

"seller" means a person who manufactures chargeable goods for sale for consumption in Antigua and Barbuda;

"ship" includes any boat or vessel whatever;

"tax" means the tax chargeable by virtue of this Act.

3. (1) subject to subsection (2) and section 4 there shall be charged a tax to be called consumption tax upon all goods — Charge to consumption tax.

- (a) imported into Antigua and Barbuda for consumption therein; or
- (b) manufactured, grown or produced in Antigua and Barbuda for consumption therein.

(2) There shall be exempted from the tax imposed by subsection (1) all goods —

- (a) of a kind specified;
- (b) intended for a use specified; or
- (c) intended for use by a person specified;

in the First Schedule.

(3) The rates of tax to be charged are those specified in the Second and Third Schedules.

4. (1) The Cabinet may by Order published in the *Gazette* — Power of Cabinet to vary rates.

- (a) vary the rates of consumption tax specified in the Second and Third Schedules, or
- (b) amend, revise or rescind or add to any of the items set forth in the Schedules and such order is of full force and effect from the date of its publication.

(2) Every order made under subsection (1) is subject to negative resolution of the House.

5. (1) Subject to subsections (2) and (3), tax shall not be charged on any chargeable goods where the Comptroller is satisfied that such chargeable goods are to be used as raw materials for the purposes of the manufacture in Antigua and Barbuda of chargeable goods by a registered person. No tax on raw materials to be used for purposes of manufacture of chargeable goods.

(2) Where any raw materials referred to in subsection (1) are imported into Antigua and Barbuda, the person by whom or on whose behalf such raw materials are imported shall certify in writing to the Comptroller, in such form as he may direct, that the said raw materials are to be used for the purposes of manufacture in Antigua and Barbuda of chargeable goods.

(3) Where any raw materials referred to in subsection (1) of this section have been manufactured in Antigua and Barbuda, the person who purchased the same shall certify in writing to the Comptroller in such form as the Comptroller may direct that the said raw materials are to be used solely for the purposes of the manufacturer in Antigua and Barbuda of chargeable goods by the said purchaser.

Mode of
determining value
of goods for
assessing tax ad
valore.

6. (1) For the purpose of this Act, the value of chargeable goods for the purpose of assessing tax ad valorem shall be taken to be the price which the Comptroller in the exercise of his discretion in accordance with the provisions of this section considers such goods would fetch at the C.I.F. value in Antigua and Barbuda in the case of goods imported into Antigua and Barbuda, at the time of their importation and in the case of goods manufactured in Antigua and Barbuda at the time when the tax becomes due thereon; and the tax shall be paid on that value.

No. 7 of 1993.

(2) In computing the value to be arrived at for chargeable goods imported into Antigua and Barbuda the provisions of the Second Schedule to the Customs (Control and Management) Act shall apply with the addition of any import duty of customs payable on the said goods.

(3) When it is necessary in determining the value referred to in subsection (2) to establish the equivalent in Eastern Caribbean dollars the rate of exchange to be used shall in any period be that as provided for this purpose by the Comptroller and published by him in the manner he considers appropriate.

(4) In computing the price to be arrived at for the purposes of chargeable goods manufactured in Antigua and Barbuda, the Comptroller shall assume that —

- (a) price is the sole consideration for the sale of the said goods; and

- (b) neither the person selling the said goods nor any person associated in business with him has any interest, direct or indirect, in any resale or disposal of the said goods.
- (c) there has not been and will not be any commercial relationship between the person selling the said goods and the buyer thereof, whether created by contract or otherwise, other than that created by the sale of the said goods;
- (d) commission and all other cost, charges and expenses incidental to the making of any contract for the sale of the said goods (except any tax payable on the said goods) are to be paid by the person selling the same.

7. Where any item of goods may reasonably be classified under two or more headings in respect of which different rates of tax are chargeable on items of goods described under such different headings, classification under one heading only shall be made by the Comptroller in accordance with the rules applicable for the interpretation of the Tariff imposed under the First Schedule to the Customs Duties Act, 1993.

Classification of Goods.

8. If any chargeable goods are imported into Antigua and Barbuda in any container intended for sale, or of a kind usually sold with the goods when the same are sold by retail, and marked or labelled, or commonly sold, as containing or commonly reputed to contain, a specific quantity of such goods, then such container shall for purposes of tax be deemed to contain not less than such specific quantity.

Tax chargeable on reputed quantities

9. If any chargeable goods subject to the payment of tax according to the weight thereof are imported into Antigua and Barbuda in any container intended for sale, or of a kind usually sold with the goods when the same are sold by retail, and such container is not marked or labelled, or is not in the opinion of the Comptroller commonly sold as containing or commonly reputed to contain a specific quantity of such goods, and the importer is not able to satisfy the Comptroller as to the correct net weight, the tax thereon shall be calculated according to the gross weight of such container and its contents.

Tax calculated on gross weight in certain cases.

Minister may fix
standard contents
for containers
containing liquid.

10. The Minister may by notice published in the *Gazette* specify, in the gallons or fractions of a gallon, standard capacities for containers containing chargeable goods according to the Liquid measurement thereof, in all cases where, in his absolute discretion he shall consider that such containers being of sizes, within limits to be specified in the notice, are reputed to be, or are sold as containers of standard sizes, whether or not any statement of the actual contents is contained on any label or other attachment to or part of such container, and thereupon all containers having capacities within the limits specified in any such notice shall be deemed to contain the standard capacity specified in the notice in each case.

Person accountable
for, and accruer of
tax.

11. (1) The person accountable for **tax** on chargeable goods is—

- (a) where such goods are imported into Antigua and Barbuda, the importer thereof;
- (b) where such goods are manufactured in Antigua and Barbuda, the seller thereof.

(2) Tax in respect of any chargeable goods becomes due —

- (a) where the goods are imported into Antigua and Barbuda, on such importation or when taken out of bond for consumption in Antigua and Barbuda;
- (b) where the goods are manufactured in Antigua and Barbuda, before any such goods are sold or otherwise disposed of for consumption in Antigua and Barbuda.

Registration.

12. (1) Every person whose business includes the **manufacturing** of any chargeable goods for sale for consumption in Antigua and Barbuda shall be registered under this Act.

(2) Every person **carrying** on business in such circumstances that he is required under subsection (1) to be registered shall make an application for registration in the prescribed form to the Comptroller —

- (a) before the expiration of fourteen days from the date when he begins to **carry** on business, or when the

circumstances of his business become such that he is required under subsection (1) to be registered.

(3) If any person fails to comply with any of the requirements of this section he is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to a further fine of two hundred dollars for each day during which the failure continues.

(4) The Comptroller shall register every person who is required by this Act to be registered and shall on his registration, issue to him a certificate thereof.

(5) Where a person who is registered ceases to be required by this Act to be registered the Comptroller shall cancel his registration.

(6) Not less than fourteen days before registering a person, otherwise than in accordance with an application for registration made by him, or cancelling the registration of a registered person, the Comptroller shall serve notice on him of his intention to register him or to cancel the registration, as the case may be.

13. (1) The Comptroller shall be responsible for collecting the **tax**, and the officers of the Customs Department, other than the Comptroller, shall perform such duties in connection with the collection of the tax as may from time to time be assigned to them by the Comptroller. **Collection of tax**

(2) All moneys and securities for moneys collected for or on account of the tax shall, as soon as practicable, be paid by the Comptroller to the Accountant General for the benefit of the general revenue.

14. Subject to any regulations made under section 19 authorising distress to be levied on the goods and chattels of a person neglecting or refusing to pay tax, tax shall be recoverable as a debt to the Government from the person who is accountable therefor. **Recovery of tax.**

15. Where a person who is accountable for any **tax**, or on whom any **duties are imposed by this Act or regulations made** thereunder, is **not resident in Antigua and Barbuda**, the Comptroller may, by notice in writing served on any agent, manager or factor, who is resident in Antigua and Barbuda and has acted on behalf of that **Substitution of agent, etc. for person not resident in Antigua and Barbuda.**

person in the matters by reference to which that person is accountable or those duties are imposed, direct that he shall be substituted for that person as the person accountable for the **tax** or that he shall be under an obligation to discharge those duties or any of them.

Determination of
disputes as to tax.
No. 7 of 1993.

16. The provisions of Part XII of the Customs (Control and Management) Act, 1993 shall apply in the determination of any dispute that may arise as to whether any or what **tax** is payable on any chargeable goods.

Comptroller or
authorised person
may demand books
etc. from any per-
son.

17. (1) Any person concerned with the purchase, importation, manufacture or sale of any goods shall, upon demand made by the Comptroller or by any other person authorised in that behalf by the Comptroller, produce any book, record, account or other document of whatever nature relating thereto for inspection by the Comptroller on such other person at such time and at such place as the Comptroller or such other person may require, and the Comptroller or such other person may make copies of any such book, record, account or other document.

(2) Any person who fails to comply with the provisions of subsection (1) is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment of three months.

Remission and re-
fund of tax.

18. (1) The Minister, upon application by an importer or seller, may remit or refund in whole or in any part any **tax** payable or paid by any person on any chargeable goods, imported or sold as the case may be, if it is satisfied that such goods are intended for charitable and non commercial purposes.

(2) Any money which shall have been overpaid as tax may be refunded at any time within two years after such payment on a document certified by the Comptroller that such money was overpaid within the time aforesaid.

Regulations.

19. (1) The Minister may make Regulations providing for any matter for which provision appears to him to be necessary for the purpose of giving effect to the provisions of this Act and of enabling the Comptroller to discharge his function thereunder, and in particular, but without limiting the generality of the preceding words may make regulations —

- (a) for the payment and collection of tax becoming due;
- (b) for requiring security for the payment of tax;
- (c) for imposing upon persons who appear to be sellers, the duty to furnish to the Comptroller within such period as may be prescribed information in the prescribed form of any facts relevant for determining whether such persons ought to be registered or the matters in respect of which they ought to be registered or of any other facts relating to their business as sellers.
- (d) for imposing upon registered persons, and upon such other persons as may be prescribed in relation to registered persons who have died or become subject to any incapacity, the duty to furnish to the Comptroller within such period as may be prescribed information in the prescribed form of any facts by virtue of which their registrations ought to be varied or cancelled;
- (e) for enabling persons to be treated as registered persons during a limited period by way of representation of registered persons who have died or become subject to incapacity;
- (f) as to the form, issue, continuance in effect, variation, custody, use and surrender of certificates of registration;
- (g) for requiring registered persons to keep accounts in such form and containing particulars with respect to such matters as may be prescribed, and to pay the tax due for them;
- (h) for authorising distress to be levied on the goods and chattels of a person neglecting or refusing to pay, in accordance with this Act, tax which he is thereby required to pay;
- (i) for requiring importers and sellers, or their agents, to furnish to the Comptroller within such time and in such form as he may require such information relat-

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ing to chargeable goods or any dealings therewith as he may specify, and to produce for inspection any books or accounts or other documents of whatever nature relating thereto;

- (j) for applying and adapting, with or without modification, to the tax and to the collection and repayments thereof and to registered persons, any Act or part thereof relating to customs or excise and any subsidiary legislation made under the authority of any law relating to customs or excise;
- (k) for prescribing any thing which by this Act is required or authorised to be prescribed.

(2) Regulations made under this section may provide that a person who contravenes or fails to comply with any of the requirements of such Regulations shall be guilty of an offence and on summary conviction shall be liable to —

- (a) a fine of five thousand dollars;
- (b) a further fine of two hundred dollars for each day during which the contravention or failure continues; or
- (c) a term of imprisonment of six months.

Provisions as to laying regulations and orders before the Parliament.

20. (1) Regulations made by the Minister under section 19 of this Act, shall be laid before both Houses of Parliament as soon as may be after making thereof, and if either House resolves that the Regulations be annulled, the Regulations shall thereupon cease to have effect but without prejudice to anything previously done hereunder or to the making of new Regulations.

(2) In reckoning any period of forty days specified in subsection (1) in relation to the laying of Regulations before both Houses of Parliament, no account shall be taken of any time during which Parliament is dissolved or prorogued.

Application of customs laws.

21. (1) The Customs (Control and Management) Act 1993, the Customs Duties Act, 1993 and any enactments amending the same, and other enactments (including provisions of regulations or other instruments having statutory effect) relating to Customs,

shall have effect with such exceptions and adaptations as may be prescribed, in relation to chargeable goods imported into Antigua and Barbuda whether liable to any Customs duties or not as if all such goods were liable to Customs duties and if those included the tax charged by virtue of this Act.

(2) For the avoidance of doubt the word "duty" in the Customs (Control and Management) Act when used with reference to imported goods, shall be deemed to include Consumption Tax chargeable under this Act.

22. (1) A person commits an offence, who, for purposes of this Act or Regulations made thereunder — Penalties for certain offences.

- (a) with intent to deceive, produces, furnishes, sends or otherwise makes use of, any book, account, estimate, return, or other document, which is false in material particular; or
- (b) in furnishing any information, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular;

(2) A person commits an offence if, with intent to deceive, he counterfeits, or uses, or lends to, or allows to be used by, another person, a certificate of registration issued under this Act, or makes or has in his possession any document so clearly resembling such a certificate as to be calculated to deceive.

(3) A person who is guilty of an offence under this section is liable on summary conviction to a fine of five thousand dollars or a term of imprisonment for twelve months.

23. (1) The Consumption Tax Act, 1980 is hereby repealed. Repeal of No. 11 of 1980.

(2) Notwithstanding the repeal specified in subsection (1), any regulation, rule or order made under the repealed Act shall continue in force until such regulation, rule or order is revoked.

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AND
BARBUDA

Passed the House of Representatives this 8th
day of November, 1993.

Passed the Senate this 22nd
day of November, 1993.

C.L. Murray,
Speaker.

B.T. Carrott,
President.

L.A. Dowe,
Clerk to the House of Representatives.

L.A. Dowe,
Clerk to the Senate.

FIRST SCHEDULE

GOODS EXEMPT FROM CONSUMPTION TAX

1. Arms, Ammunition, Uniforms and Prizes for the use of Her Majesty's Naval or any Military Forces, the Civil Service, the Police Force or any Militia or Defence Force or Rifle Association sanctioned by the Minister, and all goods for the use of Her Majesty's Naval or Military forces on the signed declaration of the officer, for the time being, in command of such Forces, Articles for the use of the Government of Antigua and Barbuda.

2. Goods imported temporarily into Antigua and Barbuda for repairs and improvements and so proved to the satisfaction of the Comptroller who may impose such condition as he considers necessary.

3. Articles passed by the Comptroller as the personal baggage of passengers, professional apparatus, professional books and workmen's tools brought in by passengers for their own use, and household effect brought in for personal use and not for sale, and which have been in the use of the passenger for at least one year, and personal effects, not being merchandise of Antiguans and Barbudans or other persons resident in Antigua and Barbuda who have died abroad.

4. Articles

(a) for the use, furnishing and decoration, of churches used for public worship including ecclesiastical vestments and ornaments, on the signed declaration of the Head of the denomination for which they are intended;

(h) for the use, furnishing, construction and repair of bona fide school houses;

(c) for the use of educational purposes in schools.

5. Articles for the use of the Government of Antigua and Barbuda.

6. Goods re-imported into Antigua and Barbuda on which tax has been paid previously and so proved to the satisfaction of the Comptroller.

7. Articles for the official use of any foreign consulate or the luggage and personal effects of the Consular representative of any foreign country, or his family, or suite, if such consular representative is not engaged in any other business or profession in Antigua and Barbuda.

8. Articles imported in exchange for similar articles previously imported on which tax has been paid and which has been exported within three months of their importation, notice in writing of such exportation having been given to the Comptroller of the time of exportation.

9. Goods imported or taken out of bond by or on behalf of the Antigua and Barbuda Red Cross Society and the St. John Ambulance Brigade: Provided that, if any such goods are sold for use or consumption in Antigua and Barbuda, the tax in respect thereof shall be paid by that body whom or on behalf of whom the goods were imported or taken out of bond.

10. Articles of second hand imported by any religious body or charitable institution of free distribution in Antigua and Barbuda upon the signed declaration of the Head of such body or institution and subject to such conditions as the comptroller may impose.

11. (i) Boats and navigation equipment and boat fittings, sail, canvas, marine engines, fuel and lubricants for services as approved by the competent Authority;
- (ii) Navigation aids.

Items (i) and (ii) of this paragraph apply only to boats and vessels approved for the business of shipping or for commercial fishing;

12. (i) Aircraft, component parts, accessories and instruments, for aircraft services and operations including air clubs, as approved;
- (ii) Fuel and lubricants for approved aircraft services and operations.

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