



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

31st March, 2005

ANTIGUA AND BARBUDA

No. 1 of 2005

AN ACT to impose tax on the income of individuals and to provide for related matters.

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ENACTED by the Parliament of Antigua and Barbuda as follows —

**PART I
PRELIMINARY**

1. This Act may be cited as the Personal Income Tax Act, 2005 and shall come into operation on the 1st April, 2005. Short title.

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

“assessable income” means an individual’s income other than —

- (a) income which is exempt from the tax by or under this Act or any other law;
- (b) income which is, under any agreement to which the Government is a party, exempt from the tax;

“assessable employment income” means income derived from any of the sources mentioned in section 11;

“chargeable income” means an individual’s income which is chargeable to tax, being —

- (a) employment income;
- (b) self-employment and other income; or
- (c) both employment income and self-employment and other income.

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“Commissioner” means the Commissioner of Inland Revenue appointed pursuant to the Inland Revenue Administration Act;

“contract of employment” means any arrangement, whether executed by a formal contract, informal agreement, or any other means, for the establishment of an employment relationship;

“employee” means a person who performs services pursuant to a contract of employment and also means a former employee;

“employer” means a person who receives the benefit of services performed pursuant to a contract of employment or the person responsible for providing an employee with income from employment and also means a former employer;

“employment” means the provision of personal services by an individual where:

- (a) the services are provided under the control or guidance or responsibility of the person for whom the services are performed; and
- (b) the resources required to provide the service are mostly provided by the person for whom the services are performed;

“employment income” means any emoluments or benefits whether in cash or in kind accruing to or received by an employee in respect of employment;

Registration of
persons liable to
tax or required to
deduct tax, and
assignment of tax
identification
numbers

6. (1) Subject to subsection (3) —

- (a) every individual who, under subsection (1) of section 9, is liable, or becomes liable, to tax; and
- (b) every person who is or becomes an employer, shall apply to the Commissioner for registration —
 - (i) in the case of an individual or an employer who, on the commencement of this Act, is liable to tax or is a person who is an employer, as the case may be, not later than the 15th April, 2005; or
 - (ii) in the case of an individual or an employer who, at any time after the commencement of this Act, becomes liable to tax or is a person who becomes an employer, as the case may be, not later than fifteen days after he first becomes liable to tax or becomes an employer.

(2) The Commissioner shall register every individual and every employer who applies in the prescribed form for registration under subsection (1) and, upon such registration, assign and issue to the individual or the employer registered a tax identification number in the prescribed form.

(3) An individual or an employer who, before the expiration of the period applicable to him under subsection (1), is registered under section 75A of the Income Tax Act, need not apply for registration under this section and his tax identification number under that Act shall be regarded as his tax identification number for the purposes of this section until the Commissioner notifies him, either personally or in any other manner the Commissioner may consider appropriate, of any change in the tax identification number.

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(4) An individual's or employer's tax identification number referred to in subsection (2) or (3) shall also be regarded as the tax identification number in relation to any period prior to that person's date of registration or, as the case may be, prior to the date on which subsection (3) begins to apply to him and during which he was liable to tax or to deduct and withhold tax.

- (b) self-employment and other income, including partnership income.

Liability to tax,
exemptions etc.

9. (1) Every individual who has income in an income year is liable to the personal income tax imposed by section 8 except to the extent to which the income is, by or under this Act or any other law, not liable to tax.

(2) The income referred to in this subsection is exempt from the tax, and includes:

- (a) the emoluments payable to members of the permanent consular services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity;
- (b) gratuities granted to persons upon expiration of a fixed period contract of service up to 12.5% of total income for the period or at such other rate that the Minister may by Order determine;
- (c) capital sums withdrawn by individuals on retirement from any provident society or other fund approved by the Cabinet;
- (d) income arising from a scholarship held by an individual receiving full time instruction at a university, college, school, or other educational establishment; and for the purposes of this paragraph the expression “scholarship” includes any exhibition, bursary or any other similar educational endowment;
- (e) income arising from the business of shipping or air transport carried on by an individual not resident in Antigua and Barbuda provided that the Commissioner is satisfied that an equivalent exemption from income tax is granted by the country in which such individual is resident to individuals resident in Antigua and Barbuda; and for the purposes of this paragraph “business of shipping or air transport” means the business carried on by an owner or charterer of a ship or aircraft;

- (f) interest, capital gains and dividends;
- (g) a benefit, other than the chargeable income to which paragraph (h) applies, under the Social Security Act;
- (h) the amount of pension, other similar benefit or other terminal benefit not exceeding \$60,000 per annum paid to an individual;
- (i) income which is, under any agreement to which the Government is a party, exempt from the tax;
- (j) service charges and tips received by an individual engaged in the hospitality industry.

(3) Tax shall not be payable in respect of any income arising outside of Antigua and Barbuda and accruing to a person who is in Antigua and Barbuda for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in Antigua and Barbuda at one or more times for a total period of six months or more in the relevant income year.

10. (1) Except as otherwise provided in this Act, tax shall be charged at the rates specified in the Schedule.

Rates of tax.

(2) For the purpose of the efficient application of the rates of tax, the Commissioner shall prepare and publish tax tables setting out the amounts of tax payable in respect of various periods as appropriate.

(3) Any instalment of tax in accordance with the tax tables or otherwise or any tax withheld from payments which are liable to tax shall be allowed as a credit against the individual's ultimate tax liability.

11. Subject to this Act tax shall be paid on employment income including —

Tax on
employment
income.

- (a) salary, wages, leave payments, overtime payments, gratuities, commissions, and bonuses;
- (b) director's fees;

- (c) any allowance, other than an allowance provided by the employer which is wholly and exclusively utilized in the production of the employer's assessable income;
- (d) any payments, however described, made on termination of employment in respect of entitlements outstanding at the time of termination, excluding severance payment;
- (e) the reimbursement or discharge by an employer of any expense of the employee other than an expense wholly and exclusively incurred in the production of the employer's assessable income;
- (f) the amount of any waiver where an employer waives an obligation of the employee to pay an amount owing to the employer.

Tax on self-employment and other income.

12. Subject to this Act, tax shall be paid on self employment and other income, including —

- (a) gains or profits from any trade, business, profession or vocation;
- (b) the portion of any pension in excess of \$60,000 per annum;
- (c) rents, royalties, and any other income, arising from property;
- (d) any annual gains or profits not falling under any of paragraphs (a) to (c);
- (e) gains or profits deemed to be income of that individual under this Act arising outside Antigua and Barbuda.

Tax on partnership income.

13. Subject to this Act, tax on to the income of a partnership shall be paid in respect of the share of the gains or profits of each partner and the tax shall be computed in the manner provided in Part V.

14. Where an individual derives income from more than one employer or from self-employment or other income the individual's assessable income consists of the income from all sources and the tax is payable on the aggregate of his income.

Tax on income from more than one employer or from self-employment and other income.

PART IV
WITHHOLDING TAX ON ASSESSABLE
EMPLOYMENT INCOME

15. (1) Every employer shall withhold the appropriate amount of tax from the employment income of each employee liable to tax as set out in the tax tables.

Employer to withhold tax.

(2) An employer who withholds an amount under this Act is deemed to hold the amount separate and apart from the property of the employer in trust for the Commissioner and for payment to the Commissioner in the manner and at the time provided under this Act.

(3) Where at any time an amount deemed to be held by an employer in trust for the Commissioner is not paid to the Commissioner in the manner and at the time provided under this Act, the property of the employer, equal in value to the amount so deemed to be held in trust shall be regarded as —

- (a) being held, from the time the amount was withheld by the employer, separate and apart from the property of the employer, in trust for the Commissioner, and
- (b) forming no part of the estate or property of the employer from the time the amount was so withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the employer; and
- (c) property beneficially owned by the Commissioner notwithstanding any security interest in such property and in the proceeds thereof,

and the proceeds of such property if the property is sold shall be paid to the Commissioner.

(4) An employer who fails to withhold and remit any amount as required by this section in respect of a payment made to an

employee is liable to pay as tax on behalf of the employee the whole of the amount that should have been so withheld and remitted, including any tax penalty and interest.

Employer to
maintain record.

16. (1) Every employer shall, in respect of each of his employees, maintain a record showing in relation to each month and income year —

- (a) the names and tax identification number of the employee;
- (b) the employment income accrued to the employee; and
- (c) the amount of tax deducted from the employment income of the employee.

(2) An employer shall retain the records relating to each employee for a period of seven years from the date on which the person first became an employee.

Employer to
remit tax and
submit monthly
and annual
returns to
Commissioner.

17. (1) An employer who, under subsection (1) of section 15, is required to withhold any amount of tax shall, not later than fifteen 15 days after the last day of each, remit the amount to the Commissioner and the remittance shall be accompanied by a return in the prescribed form.

(2) An employer who, under section 15 is required to withhold tax shall, not later than the 15th February in each year, submit to the Commissioner an annual return in the prescribed form in respect of the preceding income year.

(3) An employer shall provide each of his employees, whether or not tax has been withheld from the employee's income —

- (a) at the time of payment, a record showing:
 - (i) the amount of employment income;
 - (ii) the amount of tax, if any, withheld from the employee's income in respect of the previous month; and
- (b) not later than the 15th February in each year or twenty-one days after he ceases to be the employer of a particular employee, a record showing:

PART V
PERSONAL INCOME TAX ON ASSESSABLE
SELF-EMPLOYMENT OR OTHER INCOME

Assessable self-employment or other income.

20. (1) An individual's assessable self-employment or other income for an income year is the individual's gross self-employment or other income for the income year computed under this Act.

(2) For the purpose of ascertaining the chargeable self-employment or other income of an individual, the provisions of sections 10, 11, 12, 13, 14 and 15 of the Income Tax Act shall apply.

Estimated tax on self-employment or other income.

21. (1) An individual who, on or after the 1st April, 2005, derives on self-employment or other income in an income year shall estimate the amount of tax that he is liable to remit, on the following basis and shall remit the amount in monthly instalments:

(a) for the income years 2005 and 2006 —

- (i) one percent of the gross income in excess of the personal allowance for each month; or
- (ii) an amount for each month as determined on an assessment from an income tax return;

(b) for the income year 2007 and subsequent years, one-twelfth of the tax liability of the latest income of the year for each month; as determined on an assessment or otherwise approved by the Commissioner.

(2) The Commissioner, after consultation with an individual who commences to derive self-employment or other income on or after 1st April, 2005, shall determine the amount of tax to be remitted each month.

(3) Where the Commissioner is satisfied, on reasonable grounds, that the amount remitted exceeds or is less than the amount that ought to have been remitted, he may determine the amount to be remitted and issue to the individual an assessment of the amount to be remitted.

gross income for each month, apportioned according to the partnership agreement;

- (b) for the income year 2007 and subsequent years, the partnership shall remit to the Commissioner on behalf of the partners one-twelfth of the tax liability of the latest income year apportioned according to the partnership agreement for each month as determined on an assessment or otherwise approved by the Commissioner.

(4) In the case of a partnership formed on or after 1st April, 2005, the Commissioner shall determine the amount of the monthly instalment to be remitted by the partnership on behalf of the partners, such amount being calculated with due regard to the proportionate share of the gains or profits of each partner in accordance with the partnership agreement.

(5) Where the Commissioner is satisfied, on reasonable grounds, that the amount remitted exceeds or is less than the amount that ought to have been remitted, he may determine the amount to be remitted and issue to the partnership an assessment of the amount to be remitted on a monthly basis on behalf of the partners.

Other income of
non-residents.

26. (1) Where a person in Antigua and Barbuda pays to an individual not resident in Antigua and Barbuda mortgage or debenture interest or any rent, annuity or other payment which the payer is entitled to deduct under section 10(1) of the Income Tax Act (as provided under section 20(2) of this Act) in arriving at the payer's chargeable income, the payer shall upon paying the interest, rent, annuity or other payment withhold tax at the rate of twenty-five percent on every dollar of such payment and the payer shall no later than the 15th day of the month subsequent to the month in which the payment was made, remit to the Commissioner the amount of tax withheld; and the amount withheld shall be credited towards the non-resident's ultimate tax liability.

(2) Where a person in Antigua and Barbuda pays to an individual not resident in Antigua and Barbuda or his agent, factor or trustee a payment of a nature not referred to in subsection (1) but which under the provisions of section 8 would, in the hands of such non-resident individual, fall to

be regarded as income chargeable to tax in Antigua and Barbuda the person shall, on making the payment, withhold tax at the rate of twenty-five percent on every dollar; and the amount withheld shall be credited towards the non-resident's ultimate tax liability.

PART VI
DETERMINATION OF ULTIMATE TAX LIABILITY

27. (1) The Commissioner may, by notice in writing, require any person liable to tax or to remit tax or furnish a return or such other information for the purpose of enabling the Commissioner to compute or determine the tax liability or the amount of tax to be remitted by that person.

Commissioner may require return or information to be furnished.

(2) Where an individual derives income from more than one employer or from self employment or other income, the individual shall, not later than 31st March in each year determine his tax liability, submit to the Commissioner an annual return in the prescribed form and remit any outstanding amount of tax in respect of the preceding income year.

28. (1) Where, in respect of a year of income, the Commissioner is satisfied that —

Determination ultimate tax liability.

- (a) the tax payable by an individual has not been paid;
- (b) the amount of tax remitted by or on behalf of an individual is incorrect because it was underpaid or overpaid; or for any other reason;
- (c) a person required to submit a return has failed to do so;
- (d) the information provided in any return that is required by this Act is incorrect or false in any material particular and would give rise to an underpayment of tax;
- (e) a person required to remit tax has failed to remit the tax;

the Commissioner shall take the appropriate steps provided for in subsection (2).

(2) Pursuant to subsection (1), the Commissioner shall —

- (a) in any case other than a case of an overpayment of the tax —
 - (i) assess and determine the amount of tax to be paid; and
 - (ii) serve the individual, or as the case may be, the person liable to remit the tax with a notice of assessment in the prescribed form requiring the person concerned to remit the proper amount of tax, and any tax penalty and interest within 30 days after the date of the assessment notice or such longer period as the Commissioner may direct;
- (b) in the case of an overpayment of the tax, notify the individual, in the prescribed form, and make a refund of the excess amount or, with the consent of the individual, credit the excess amount in favour of the individual to the following income year.

(3) The Commissioner may, by further notice in writing, amend or revoke a notice given under subsection (1).

(4) Without prejudice to the power of the Commissioner under paragraph (b) of subsection (2) of section 28, an individual, in respect of his employment income, submit to the Commissioner an annual return in the prescribed form claiming a refund of an amount of tax remitted by the employer which the employee considers to be in excess of the amount that ought to have been remitted.

Calculation of
ultimate tax
liability.

29. The Commissioner shall examine the individual's personal income tax return for an income year, assess the tax for the year, and interest and penalties, if any, and determine —

- (a) the amount of refund, if any, to which the individual may be entitled by virtue of this Act for the income year; or
- (b) the amount of tax owing, if any, deemed by this Act to be paid on account of the individual's tax payable for the year.

30. An individual who has an ultimate tax liability as determined under section 29 shall remit the tax due within 30 days after the date of the of assessment notice or such longer period as the Commissioner may direct.

Payment of tax
after assessment.

31. (1) For the purpose of inquiring into, or ascertaining, the liability of a person to tax under this Act, the Commissioner may, by notice in writing, require any person, whether or not that person is liable to tax or required under this Act to withhold tax, or to remit tax to do any of the following:

Commissioner
may carry out
inquiry or audit.

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

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

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

Powers of entry. **32.** For the purposes of this Act, the Commissioner, an officer of the Inland Revenue Department or any person authorised in writing by the Commissioner to exercise powers under this section, may at all reasonable times and on production of that authority —

- (a) enter any building or place in which he has reason to believe that business is being carried on or that there are any books of account, documents or other papers relating to the business and take copies of any such books, documents or papers; and
- (b) inspect the building or place where any business is being carried on.

Payment by instalments. **33.** (1) The Commissioner may permit payment of tax to be made by instalments within such time as the Commissioner considers appropriate.

(2) Permission to pay tax by instalments may be given subject to such conditions as the Commissioner thinks appropriate but without prejudice to the provisions of this Act.

Tax-avoidance transactions or arrangements. **34.** (1) Where any person to which this Act applies enters into any transaction or arrangement or series of transactions or arrangements that have as the main object or the main effect an evasion of tax liability, the Commissioner may —

- (a) disregard any transaction or arrangement or part of any transaction or arrangement with the main object or effect as described; and
- (b) treat all persons affected by the transaction or arrangement as if the disregarded transaction or arrangement or disregarded part of the transaction or arrangement had not taken place.

(2) Where the Commissioner applies subsection (1) to disregard any transaction or arrangement or part of any transaction or arrangement, he shall apply the provisions of this Act as if the person or persons who had entered into the transaction or arrangement had instead entered into the transaction most likely to have been pursued if the transaction or arrangement had been conducted not for the purpose of evasion or reduction of tax liability.

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S.L. (5) Subsection (4) also applies to a case stated for the consideration of the Court of Appeal under the Income Tax (Appeals) Rules as applied in subsection (3).

PART VIII
TAX PENALTIES AND INTEREST

Interpretation
and
construction.

37. (1) In this Act, a tax penalty means a penalty or interest, as the case may be, imposed under this Part.

(2) A tax penalty is recoverable as a civil debt due to the Government in the same manner as the principal amount of the tax to which it relates.

(3) A tax penalty shall not be construed as a bar to criminal proceedings under Part X.

Failure to deliver
tax form.

38. Where a person who is required to submit a tax form fails to do so by the due date, he shall be liable to a tax penalty of \$500.

Failure of
employer to
withhold or to
remit tax
withheld.

39. Where an employer who is required to withhold or remit tax withheld in respect of the employment income of that person's employee fails to remit all or part of such tax by the due date, that employer shall be liable to a tax penalty of fifteen percent of the tax not paid by the due date and an interest at two percent per month or part thereof of the tax that remains unpaid.

Failure to remit
tax.

40. Where a person who is required to remit tax, fails to deliver all or part of such tax by the due date, he shall be liable to a tax penalty of ten percent of the tax not paid by the due date and interest at two percent per month or part thereof of the tax that remains unpaid.

Understatement
of tax on
withholding tax
return.

41. Where a person who is required to submit a withholding tax return form has understated the amount of tax required to be shown on that tax return, that person shall be liable to a tax penalty of fifteen percent of the amount by which the tax was understated and interest at the rate of two percent per month or part thereof on the amount by which the tax is understated.

Understatement
of tax on
personal income
tax return.

42. Where an individual who is required to submit an annual return under section 23 has understated the amount of chargeable income required to be shown on that tax return, that individual

- (b) fails to pay any amount of tax due by him when it is due and payable;
- (c) fails to submit a return of income as and when required;
- (d) fails to keep, create, maintain or retain records;
- (e) fails, without proper justification, to do anything that he is required to do under the Act;
- (f) hinders, molests, obstructs, impedes or interferes, with any person doing anything that he is lawfully authorised to do in connection with the administration of this Act;
- (g) negligently, in relation to this Act or any possible liability—
 - (i) makes any false or deceptive return,
 - (ii) gives any false or deceptive information,
 - (iii) destroys, alters, mutilates, conceals or otherwise disposes of the records of himself or of any other person; or
 - (iv) makes or assents to, or acquiesces in the making of false or deceptive entries, or omits, or assents to or acquiesces in the omission of, a material particular in the records of himself or any other person;

commits an offence and, in addition to any tax penalty, is liable—

- (a) on summary conviction to a fine not exceeding \$20,000 or to imprisonment for term not exceeding 3 months; or
- (b) on conviction on indictment to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 12 months.

(2) A person who —

- (a) wilfully, knowingly, or without reasonable excuse —

- (i) fails to apply for registration as required by section 6;
- (ii) makes any false or deceptive return;
- (iii) gives any false or deceptive information;
- (iv) destroys, alters, mutilates, conceals or otherwise disposes of the records of himself or of any other person in order to facilitate an evasion of tax;
- (v) makes or assents to, or acquiesces in the making of false or deceptive entries, or omits, or assents to or acquiesces in the omission of, a material particular in the records of account of himself or any other person; or
- (vi) in any manner evades or defeats or attempts to evade or defeat, tax or the payment or collection of tax; or

(b) aids, abets, incites or conspires with any other person to commit an offence described in paragraph (a),

commits an offence, and in addition to any tax penalty is liable —

- (a) on summary conviction to fine not exceeding \$50,000 or imprisonment for a term not exceeding 6 months; or
- (b) on conviction on indictment to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 12 months.

(3) Every person who communicates or allows to be communicated to a person not legally entitled thereto any information obtained under this Act or who allows any person not legally entitled to do so to inspect or have access to any written statement furnished under this Act commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

Offences by
bodies corporate
or partnerships.

49. (1) Where an offence under this Act is committed by a body of persons —

- (a) in the cases of a body corporate, every director or other officer of that body shall be deemed to have committed the offence;
- (b) in the case of a partnership, every partner or officer of the partnership shall be deemed to have committed the offence.

(2) A person referred to in subsection (1) shall not be convicted of an offence where that person establishes before the court that the offence was committed without the consent or connivance of that person or that reasonable steps had been taken before the occurrence of the offence to prevent the commission of the offence.

Limitation of
time for prosecu-
tions Cap. 212.

50. Section 79 of the Income Tax Act shall apply to the prosecution of offences under this Act.

PART XI MISCELLANEOUS

Protection of of-
ficers and other
persons from per-
sonal liability.

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

Cabinet may re-
mit tax.

52. (1) The Cabinet may, if it is satisfied that it is just and equitable to do so, by Order remit —

- (a) the whole or any or all of the tax payable by any person;
- (b) any tax penalty, interest, fee or charge imposed for or as the result of non-payment of the tax, including any expenses of levy and sale.

(2) An Order made under this section shall be subject to affirmative resolution of the House of Representatives.

- (b) 10% of the first \$9,000 of chargeable income, that is, from \$1 — \$9,000;
- (c) 15% of the next \$54,000 of chargeable income, that is, from \$9,001 — \$63,000;
- (d) 20% of the next \$45,000 of chargeable income, that is, from \$63,001 — \$108,000;
- (e) 25% of the remainder of chargeable income, that is, any amount greater than \$108,000.

(2) In respect of the income year 2006 and subsequent years:

- (a) 0% of chargeable income of \$36,000 or less, being the personal allowance.
- (b) 10% of the first \$12,000 of chargeable income, that is, from \$1— \$12,000.
- (c) 15% of the next \$72,000 of chargeable income, that is, from \$12,001 — \$84,000.
- (d) 20% of the next \$60,000 of chargeable income, that is, from \$84,001 — \$144,000.
- (e) 25% of the remainder of chargeable income, that is, any amount greater than \$144,000.

(3) Personal Allowance

The personal allowance referred to in this Act shall be —

- (a) in the case of tax paid on a monthly instalment basis — \$3,000 for a month; or
- (b) where the tax liability is computed on the basis of an income year —
 - (i) in respect of the income year 2005 — \$27,000;
 - (ii) in respect of the income year 2006 and subsequent years — \$36,000.

EXPLANATORY MEMORANDUM

The purpose of this Bill is to make provisions for imposing personal income tax on the income of individuals, with effect from the 15th April, 2005 and, for this purpose, to prescribe the rates of tax, relating to employment income, income derived from self-employment and income from other sources.

The Bill also seeks to provide for the method of determining ultimate tax liability, the administration, collection and enforcement of the tax and to create offences and penalties for the contravention of the provisions of the proposed Act as well as to make minor consequential amendments to the Inland Revenue Administration Act.

Part I of the Bill sets out the preliminary provisions of the Bill, including the definitions of various terms and expressions used in the Bill.

Clause 3 of the Bill seeks to disapply the Income Tax Act (which currently contains provisions relating to tax on individuals' incomes in addition to tax on corporate entities) to the extent to which the provisions of this Bill, if enacted, would apply to the same matter under that Act.

Part II of the Bill provides for the basic administration of the personal income tax system which the Bill seeks to establish.

Under **Clause 4** of the Bill, the Commissioner of Inland Revenue would be entrusted with responsibility for the administration, collection and enforcement of the tax in accordance with the Inland Revenue Administration Act except to the extent provided in the Bill.

Clause 6 of the seeks to require every individual who, on or after the commencement of the Act proposed in this Bill, would be liable to tax to register himself with the Commissioner.

A similar obligation applies to a person who is or becomes an employer on or after the commencement of the proposed Act.

Every person registered would be assigned a tax identification number. However, as a transitional measure, an individual or an employer who, on the 1st April is already registered under section 75A of the Income Tax Act or a person who registers himself under that section prior to his becoming an employee or an employer need not register himself as envisaged under this Clause, but his tax identification number under the Income Tax Act would be treated as his tax identification number under the proposed Act.

Clause 7 of the Bill is intended to establish a Stabilisation Fund into which all moneys collected as personal income tax would be paid. The Fund would have the same status as a special fund established under the Finance and Audit Act and would be managed in accordance with that Act.

The money collected under this Act is to be used by the Government for the following purposes:

- (a) The development and maintenance of physical infrastructure;
- (b) The development and maintenance of economic and social infrastructure, systems and programs;
- (c) The procurement of goods and services for the operation of government and public administration;
- (d) The maintenance of law and order;
- (e) Such other purpose as may be determined by the Minister.

Part III of the Bill contains provisions for the imposition of personal income tax on the chargeable income of individuals which, under Clause 8, accrues in or is derived from Antigua and Barbuda or elsewhere in respect of the following:

- (a) employment income
- (b) self-employment and other income, including partnership income.

The tax is to be computed on an annual basis but, in most cases, is to be remitted to the Commissioner on a monthly basis in order to maintain a regular cash flow of revenue.

Clause 9 of the Bill lays down a general principle whereby every individual who has assessable income would be liable to tax and also sets out the types of income that would be exempt from tax, including income which is exempt from tax under the Income Tax Act or under any agreement to which the Government is a party and income which is not liable to tax, such as exempt income or that portion of income which may be deducted from assessable income for the purposes of determining the ultimate tax liability of an individual.

Clause 10 of the Bill would provide for the rates at which tax is to be paid, as detailed in the First Schedule to the Bill, and also empowers the Commissioner to prepare and publish in the *Gazette* the tax tables indicating the amounts of tax to be remitted periodically. Tax withheld would be treated as a credit against the individual's ultimate tax liability.

Clause 11 of the Bill is intended to set out the types of employment income that would be subject to tax. These include salary, wages, allowances and other benefits arising from employment.

Clause 12 of the Bill sets out the types of self-employment or other income that would be subject to tax. These include gains or profits from any trade, business, profession or vocation, dividends, interest, rents, royalties and so much of the gains or profits of an individual not ordinarily resident and accruing outside Antigua and Barbuda but paid in Antigua and Barbuda.

Clause 13 of the Bill seeks to impose tax on the employment income derived by a partner in a partnership who is employed by the partnership and also on the gains or profits of a partnership as such.

Clause 14 of the Bill would provide for the aggregation of income from the various categories of income, upon which the ultimate tax liability of an individual would be computed.

Part IV of the Bill deals with the manner in which employment income is to be withheld by the employer and paid to the Commissioner on behalf of the employee.

Under *Clause 17* of the Bill, an employer who withholds tax must remit the tax deducted to the Commissioner within fifteen days after the last day of each month following the month in respect of which the tax was deducted from the employee's emoluments.

Furthermore, each employer would be required to submit monthly and annual returns in respect of his employees. An employer is also required to provide each of his employees, whether or not tax has been withheld from the employer's income, a record showing the amount of employment income, the amount of tax, if any, withheld from the employee's income in respect of the previous month.

Part V of the Bill seeks to provide for the manner in which self-employment and other income would be dealt with, initially based on a self-assessment by the individual, as provided for in *Clause 21* of this Bill.

As in the case of employment income, *Clause 22* of the Bill would require the individual to make a monthly remittance of tax to the Commissioner on the basis of the self-assessment but the individual's ultimate tax liability is to be determined by the Commissioner, as provided in *Clause 23*, on the basis of the individual's annual return and a final assessment by the Commissioner.

Clause 25 of the Bill describes the type of business arrangement that would constitute partnership arrangement for the purposes of the Act. For the purpose

of this Act, an arrangement where a trade, business, profession or vocation is carried on jointly by two or more individuals, the law would recognize the individuals as partners. The income of a partner employed by the partnership would be dealt with as employment income and subject to the provisions of the Act relating to the calculation and collection of the tax.

Payments to a non-resident of mortgages or debenture interest or rent or annuity or other payments, such as employment income, partnership income or self-employment income, which the payer is entitled to deduct shall be remitted to the Commissioner at the rate of 25% of the income.

Part VI of the Bill would provide for the determination and computation, by the Commissioner, of the ultimate tax liability of an individual or the amount of tax to be remitted.

Under this Part, the Commissioner would be enabled to do any of the following:

- (a) at any time, to require an individual liable to tax or an individual who had an obligation to withhold and remit tax to furnish a return or to provide information, as provided in **Clause 27** of the Bill;
- (b) to determine, in any particular case, whether the amount of tax remitted has been underpaid or overpaid and to order the payment of the amount falling short of the correct amount or, respectively, to make a refund of the amount overpaid, as provided in **Clauses 28 and 29** of the Bill;
- (c) to carry out investigations and, for that purpose, to order any person (whether or not that person has a direct tax obligation) to attend before him and give evidence or produce books of account or other documents and records, as provided in **Clause 31** of the Bill;
- (d) to carry out an audit or examination of the books, records and any other documents and to inspect any property or matter relevant to the investigation;
- (e) to enter into and inspect buildings and premises, as provided in **Clause 32** of the Bill.

Under **Clause 33** of the Bill, the Commissioner would be empowered to allow outstanding amounts of tax to be paid by instalments.

Clause 34 of the Bill enables the Commissioner, for the purposes of ascertaining ultimate tax liability, to ignore tax avoidance transactions or arrangements the main object or effect of which is to evade tax or to reduce liability to tax.

Clauses 35 and 36 would allow objections to be submitted to the Commissioner and, thereafter, appeals to the Appeal Board established under the Income Tax Act and to a Judge of the Supreme Court. In both cases, the law and procedure applicable to these matters under the Income Tax Act would apply in the same manner to the objections and appeals made under the proposed Act.

Part XI of the Bill would provide for miscellaneous matters in the following respects:

- (a) *Clause 51*, of the Bill would protect the Commissioner, officers of the Department of Inland Revenue and any other persons duly authorised to perform functions under the proposed Act from personal liability;
- (b) *Clause 52*, would authorise the cabinet to remit personal income tax as, in the case of income tax provided under the income tax Act in respect of coporates entities;
- (c) *Clause 53*, of the Bill would authorise the Commissioner, on reseasable grounds, to remit taxes up to any amount not exceeding \$5000
- (d) *Clause 55*, would authorise the Commissioner to prescribe appropriate forms for the purpose of the Act. Such forms would be required to be published in the *Gazette*.

Part XII, in *Clause 56* of the Bill, seeks to make minor amendments to the Inland Revenue Administration Act by repealing section 16 of that Act. The effect of section 16 of that Act, which requires any inconsistency between the Act and any other law to be resolved inexorably in favour of the Act, not only violates a fundamental principle of statutory interpretation that a later statute *in pari materia* prevails over an earlier statute, but is also repugnant to the well-established principle that the power of the legislature should not be unreasonably curtailed.

Furthermore, this Clause seeks to add the proposed Act to the Schedule to the Inland Revenue Administration Act as one of the laws to be administered under that Act.

Finally, the *Schedule* to the Bill contains the prop0osed rates of tax referred to in Clause 10 of the Bill and therefore to prescribe the rates of tax for the income year 2005 (consisting of nine months from 1st April, 2005) and for subsequent years

Justin L. Simon, Q.C.
*Attorney-General and
Minister of Legal Affairs.*
March, 2005

No. 1 of 2005.

The Personal Income Tax Act, 2005.

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ANTIGUA
AND
BARBUDA

**ANTIGUA AND BARBUDA
THE PERSONAL INCOME TAX ACT, 2005**

ARRANGEMENT OF SECTIONS

**PART I
PRELIMINARY**

Section

1. Short title.
2. Interpretation.
3. Restrictions on application of Income Tax Act.

**PART II
ADMINISTRATION**

4. Administration, collection and enforcement of tax by Commissioner.
5. Official secrecy.
6. Registration of persons liable to tax or required to deduct tax.
7. Establishment of Stabilisation Fund.

**PART III
IMPOSITION AND RATES OF TAX**

8. Imposition of personal income tax.
9. Liability to tax, exemptions etc.
10. Rates of tax and tax tables.
11. Tax on employment income.
12. Tax on self-employment and other income.
13. Tax on to partnership income.
14. Tax on income from more than one employer or from self-employment and other income.

**PART IV
WITHHOLDING TAX ON ASSESSABLE EMPLOYMENT INCOME**

15. Employer to withhold tax
16. Employer to maintain records.
17. Employer to remit tax and submit monthly and annual returns to Commissioner.
18. Withheld tax to be satisfaction of individual's tax liability.
19. Attribution of income in respect of prepayment or post-payment.

PART V
PERSONAL INCOME TAX ON ASSESSABLE
SELF-EMPLOYMENT OR OTHER INCOME

20. Assessable self-employment or other income.
21. Estimated tax on self-employment or other income.
22. Monthly remittance of tax on self-employment or other income.
23. Annual returns and assessment.
24. Individual to maintain records.
25. Income arising from partnerships.
26. Other income of non-residents.

PART VI
DETERMINATION OF ULTIMATE TAX LIABILITY

27. Commissioner may require returns or information to be furnished.
28. Determination of ultimate tax liability.
29. Calculation of ultimate tax liability.
30. Payment of tax after assessment.
31. Commissioner may carry out inquiry or audit.
32. Powers of entry.
33. Payment by instalments.
34. Tax avoidance transactions or arrangements.

PART VII
OBJECTIONS AND APPEALS

35. Objections.
36. Appeals to Appeal Board and to a Judge.

PART VIII
TAX PENALTIES AND INTEREST

37. Interpretation and construction.
38. Failure to deliver tax form.
39. Failure of employer to withhold or to remit tax withheld.
40. Failure to remit tax.
41. Understatement of tax on withholding tax return.
42. Understatement of tax on personal income tax return.
43. Failure to create, maintain or retain records.
44. Evasion of tax.

PART IX
RECOVERY AND ENFORCEMENT OF TAX

- 45. Commissioner may sue for and recover tax.
- 46. Recovery of tax and assessment of persons leaving Antigua and Barbuda.
- 47. Liability of person required to withhold and remit tax.

PART X
OFFENCES

- 48. Offences and penalties.
- 49. Offences by bodies corporate or partnerships.
- 50. Limitation of time for prosecutions.

PART XI
MISCELLANEOUS

- 51. Protection of officers and other persons from personal liability.
- 52. Cabinet may remit tax.
- 53. Commissioner may remit tax not exceeding \$5,000
- 54. Regulations.
- 55. Forms.

PART XII
CONSEQUENTIAL AMENDMENTS

- 56. Amendment of Inland Revenue Administration Act.

SCHEDULE
Rates of Tax