



“Commissioner” means the Commissioner of Inland Revenue;

“Department” means the Inland Revenue Department;

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

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

“Minister” means the Minister responsible for finance;

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

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

“taxpayer” means—

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

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

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

3. Scope of the Act

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

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

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

THE TAX ADMINISTRATION AND PROCEDURE ACT, 2012

No. 19 of 2012

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[L.S.]



I Assent,

Louise Lake-Tack,
Governor-General.

28th March, 2013

ANTIGUA AND BARBUDA

TAX ADMINISTRATION AND PROCEDURE ACT, 2012

No. 19 of 2012

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

ENACTED by the Parliament of Antigua and Barbuda as follows—

PART I
PRELIMINARY

1. Short Title

This Act may be cited as the Tax Administration and Procedure Act 2012.

2. Interpretation

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

“assessment” means the entering into the records of the Department of the amount of a taxpayer’s liability for tax for a specific taxation period, and includes a revised assessment and an assessment described in subsection 27(5);

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19. Due Dates

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

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

PART III RECORDKEEPING AND INFORMATION COLLECTION

20. Accounts and Records

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

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

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

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

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

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

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

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

PART II GENERAL PROVISIONS

4. Commissioner and Inland Revenue Department

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

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

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

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

(4) The Commissioner, an officer of the Inland Revenue Department, an expert engaged under section 6, or any other person authorised by the Commissioner to perform any functions under this Act shall not be personally liable in civil proceedings in connection with any act done by the person in good faith in the discharge of those functions.

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

5. Delegation of Powers

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

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

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

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

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

6. Assistance of Experts

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

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

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

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

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

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

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

(8) Section 7 and section 71 apply to experts appointed under this section.

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

7. Confidentiality

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

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

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

16. Agents and Officers

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

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

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

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

17. Regulations

The Minister may make regulations—

- (a) for matters that under this Act are to be prescribed by regulations, as specified in subsections 8(4), 9(3), 36(6), 57(4), and 57(6); or
- (b) whether or not to be prescribed by regulations under this Act, for matters necessary or convenient to be prescribed for the better carrying out or giving effect to this Act or the Acts to which this Act applies.

18. Taxpayer's Right to Information

Upon request by a taxpayer, the Department must—

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

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

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

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

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

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

14. Forms and Notices

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

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

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

15. Defect Does not Affect Validity

(1) A notice of assessment or other notice or document issued under this Act is not to be considered invalid or ineffective by reason of a failure to comply with the requirements of section 13 if the taxpayer had effective knowledge of the fact of the notice and of its content.

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

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

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

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

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

8. Taxpayer Identification Numbers

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

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

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

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

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

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

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

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

9. Tax Compliance Certificate

(1) A taxpayer may request a Tax Compliance Certificate in a form set out in Schedule 3 from the Commissioner.

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

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

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

10. Public Rulings

(1) To achieve consistency in the administration of tax legislation and to provide guidance to the general public and officers of the Department, the Commissioner may issue public rulings setting out the Commissioner's interpretation of the application of the tax legislation.

(2) A public ruling is binding on the Commissioner until revoked.

(3) A public ruling is not binding on taxpayers.

11. Advance Rulings

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

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

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

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

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

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

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

12. Other Statements

With the exception of a ruling issued under section 11 and other cases authorised by law, no statement or agreement concerning a taxpayer's tax liability made by an officer of the Department is binding on the Department.

13. Communications with Taxpayers and Other Persons

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

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

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

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

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

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

(5) Notice of an appeal under this section must be given in writing to the Commissioner within ninety days from the date of the decision of the Commissioner under section 34.

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

36. Constitution of Tax Appeal Board

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

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

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

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

(5) Three members form a *panel*.

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

- (a) sales and purchase invoices, costing documents, bookings, diaries, purchase orders, delivery notes, bank statements, contracts, and other documents which relate to an element of a transaction; and
- (b) for purposes of the *Antigua and Barbuda Sales Tax Act*, a copy of all ABST invoices, ABST credit notes, ABST debit notes issued and received by the person, all customs documentation relating to imports and exports of goods by a person and, in relation to imported services to which section 18 of the *Antigua and Barbuda Sales Tax Act* applies, sufficient written evidence to identify the supplier and the recipient, and to show the nature and quantity of services supplied, the time of supply, the place of supply, the consideration for the supply, and the extent to which the supply has been used by the recipient for particular purposes.

21. Obligations of Financial Institutions

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

22. Tax Returns

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

(2) The Commissioner specifies—

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

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

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

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

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

23. Information Returns

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

24. Extension of Time to File Returns

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

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

25. Access to Information, Assets, and Land

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

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

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

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

(3) The designated officer may enter on, survey, and value any property—

- (a) with the consent of the taxpayer; or
- (b) after giving not less than twenty-four hours’ notice in writing.

- (i) the time, place, and manner of objecting to the assessment; and
- (j) other information, at the discretion of the Commissioner.

32. Anti-avoidance

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

**PART V
OBJECTIONS AND APPEALS**

33. Taxation Decisions

Except in proceedings under this Part—

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

34. Administrative Review

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

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

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

35. Appeal from Administrative Review

(1) A person aggrieved by the result of a review under section 34 may appeal against the assessment to the Tax Appeal Board, constituted as provided in Section 36.

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

amount of tax, if any, that has been withheld for the tax period, or, if no tax has been withheld, that no tax is payable.

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

30. Jeopardy Assessment

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

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

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

31. Notice of Assessment

When an assessment, new assessment or revised assessment is made under subsection (2) or (3) of section 27, under section 28, or under section 30, the Commissioner shall issue a notice of assessment, to be served on the person assessed, which must be signed by the Commissioner or other designated officer, and contain the following information—

- (a) the name of the taxpayer;
- (b) the taxpayer identification number, if one has been issued to the taxpayer;
- (c) the date of issue of the notice;
- (d) the matter to which the notice relates;
- (e) the amount of tax payable;
- (f) a demand for payment of the tax by the date stipulated in the notice;
- (g) the place at which payment is to be made;
- (h) a summary statement of the reasons why the Commissioner made the assessment and the manner in which the assessment is calculated;

(4) A designated officer who is lawfully upon premises or in a dwelling under subsections (1), (2), or (3) may—

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

(5) If a designated officer seizes a record or other item pursuant to the authority provided under this section, the Commissioner may make a copy of the record or other item and must return the original to the person in the shortest time practicable, unless otherwise permitted by court order.

(6) A copy of a document made pursuant to the power conferred by this section may be produced in Court and has the same evidentiary value as if it were an original.

(7) This section does not authorise access to premises of diplomatic, consular, or other missions of foreign countries and international organizations which enjoy immunity from such investigations under international law.

(8) If a person asserts privilege under law over documents or other evidence which the Commissioner wishes to seize or examine pursuant to this section, the materials over which privilege is claimed must be deposited into envelopes which are then sealed and retained unopened by an officer of the Department pending an application by the Commissioner to a court of competent jurisdiction to determine whether the items in question are privileged.

(9) Documents specifically requested by the Commissioner under this section, and which a tax payer or other specified person fails to produce, may be admissible in evidence in judicial proceedings, but the Tax Appeal Board or the Court may make an order as to costs against the taxpayer, whether or not, the taxpayer is successful in the judicial proceedings.

(10) The owner or lawful occupier of the premises or place to which an exercise of power under this section relates must provide all reasonable facilities and assistance to the Commissioner or authorised officer.

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

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

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

(14) In this section and section 26, “authorised purpose” means:

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

26. Notice to Obtain Information

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

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

(2) The Commissioner shall apply to a judge in chambers for an Order, requiring a taxpayer to produce documents or give access to documents or other evidence, notwithstanding any law relating to confidentiality, privilege or the public interest.

PART IV ASSESSMENTS

27. Assessments

(1) An assessment of a taxpayer’s liability to pay tax is to be made in the manner prescribed by this Act and the relevant law to which this Act applies.

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

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

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

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

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

28. New or Revised Assessment

(1) The Commissioner may make a new assessment, or may revise an assessment previously made, within the time limits specified in section 29, if the Commissioner is of the opinion that the original assessment was incorrect.

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

(3) If a taxpayer files an amended return under subsection (3) of section 22, the Commissioner must revise the original assessment if satisfied that the original assessment was based on incorrect information.

29. Time Limits for Assessments and Revised Assessments

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

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

- (a) under subsection (3) of section 27; or
- (b) under subsection (1) of section 28 if the original assessment was based upon incorrect information due to the fraud or wilful neglect of the taxpayer,

the assessment must be made within twelve years.

(3) If an assessment is not made within the time limits specified in this section, and no assessment has been made under subsection (5) of section 27, an assessment is treated to have been made in the

(3) A refundable amount that is applied against another tax liability under subsection (1) of section 44 is considered to have been paid to the taxpayer on the due date of the liability against which the refundable amount was applied.

51. Interest on late Payment

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

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

(3) Where an extension is granted under section 45, a person is not liable to a late payment penalty under subsection (1) unless the extension period expires without payment having been made.

52. Interest Rate

(1) The interest applicable to section 49 and 50 is one per cent per month or part of a month.

(2) The interest rate applicable to section 51 is ten percent of the amount of tax due but not paid

(3) Notwithstanding subsections (1) and (2), the Minister may vary the interest rate by Order published in the *Gazette*.

PART VIII RECOVERY OF TAX

53. General

(1) The Commissioner may proceed with any remedy under this Part once the taxpayer is determined to be in default pursuant to section 46.

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

54. Period of Limitations for Collection

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

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

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

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

37. Burden of Proof

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

38. Appeals do not Suspend Collection of Undisputed Amounts

If a request for administrative review of an assessment has been filed or a taxpayer has appealed to the Tax Appeal Board against an assessment, the undisputed tax liability remains due and payable, unless the Commissioner grants an extension of time under section 45.

39. Finality of Assessment

(1) Subject to the right of the Commissioner to issue a new or revised assessment under section 28, and subject to subsection (2), if no request for review is made within the time permitted by section 34, an assessment is treated as final.

(2) If an assessment is final under subsection (1), and the taxpayer timely files an amended return under section 22, the filing of the amended return has the effect of revising the assessment, but only if the tax shown on the amended return exceeds the tax assessed.

40. Appeal from a Decision of the Tax Appeal Board

(1) Either party to a proceeding before the Tax Appeal Board who is dissatisfied with the decision of the Tax Appeal Board may, within **thirty** days after being notified of the decision, file a notice of appeal with the Registrar of the High Court; and the party so appealing must serve a copy of the notice of appeal on the other party to the proceeding before the Tax Appeal Board.

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

(a) a decision has been received from the Tax Appeal Board; or

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

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

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

41. Liability of Taxpayer and Due Date

- (1) Tax is due and payable at the time provided by the relevant law to which this Act applies.
- (2) Subject to subsection (1), the amount of tax—
 - (a) stated in a notice of assessment to be due; or
 - (b) deemed to be stated to be due under subsection (5) of section 27 or subsection (3) of section 29, is due and payable on the date stated in the notice or, if no date is stated, thirty days after the date of issue of the notice.
- (3) Tax must be paid in the manner and place prescribed by the Commissioner.

42. Liability and Obligations of Representatives

- (1) For the purposes of this Act, "representative," in respect of a person, means—
 - (a) if the person is an individual under a legal disability, the guardian or manager who receives or is entitled to receive income on behalf of, or for the benefit of, the individual;
 - (b) if the person is a company, a principal officer of the company;
 - (c) if the person is a partnership, a partner;
 - (d) if the person is a trust, a trustee;
 - (e) if the person is a body of persons other than a partnership or company, an individual responsible for accounting for the receipt and payment of moneys or funds on behalf of the body;
 - (f) if the person is the Government of Antigua and Barbuda, an individual responsible for accounting for the receipt and payment of moneys or funds on behalf of the Government;

47. Order of Payment of Tax Debts

- (1) Payments of a specific tax are applied against the taxpayer's liability in the following order—
 - (a) the principal amount of the tax.
 - (b) interest on the tax; and
- (2) The Commissioner may apply a tax payment to any tax which has been assessed and is due—
 - (a) if the taxpayer fails to indicate to which specific tax or taxation period the payment should be applied; or
 - (b) if the payment has been collected pursuant to section 58.

48. Currency

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

**PART VII
INTEREST**

49. Interest on Underpayments

- (1) If an amount of tax is not paid by the due date, the taxpayer is liable for interest on the amount for the period from the due date (determined without regard to an extension of time under section 45) to the date the tax is paid.
- (2) In the case of tax due under a revised assessment, the due date for the calculation of interest is the original due date of the tax.

50. Interest on Refundable Amounts

- (1) If the Commissioner is required to refund an amount under subsection (2) of section 44, interest shall be paid to the taxpayer from the due date until the date on which the refundable amount is paid.
- (2) Notwithstanding subsection (1), if the Commissioner does not pay a refund required by the Antigua and Barbuda Sales Tax Act within the time required pursuant to the Antigua and Barbuda Sales Tax Act, interest is payable by the Commissioner.

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

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

46. Default in Payment

(1) The Commissioner may send a notice to the taxpayer demanding payment when a tax is not paid by the date on which it became due and payable.

(2) The notice must state:

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

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

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

- (a) entered into a payment arrangement with the Commissioner pursuant to the applicable tax legislation; or
- (b) received an extension pursuant to section 45, and has remained in compliance with the terms of the arrangement.

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

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

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

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

(5) Subject to subsection (7), tax that, by virtue of subsection (4), is payable by a representative of a person is recoverable from the representative only to the extent of any assets of the person that are in the possession or under the control of the representative.

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

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

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

(8) Nothing in this section relieves a person from performing duties imposed by this Act on the person that the representative of the person has failed to perform.

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

(10) If—

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

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

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

(12) If a mortgagee is in possession of land or other property previously mortgaged by a mortgagor who is a taxable person, and the mortgagee carries on a taxable activity in relation to the land or other property, the mortgagee is deemed, from the date the mortgagee took possession of that land or property until such time as the mortgagee ceases to be in possession of the land or property, to be the taxable person carrying on the taxable activity.

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

43. Liability for Tax Following Winding-up

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

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

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

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

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

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

44. Refundable Amounts

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

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

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

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

45. Extension of Time for Payment

(1) The taxpayer may apply, on a form prescribed by the Commissioner, for an extension of the time for payment of tax beyond the date on which it is required to be paid under section 41.

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

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

- (a) fails to comply with a lawful request by officials of the Department to examine documents, records, or data within the control of the person;
- (b) fails to comply with a lawful request by officials of the Department to have the person appear before officials of the Department;
- (c) interferes with the lawful right of an official of the Department to enter onto a business premises or a dwelling unit;
- (d) fails to file a return;
- (e) fails to pay security within the time allowed for payment pursuant to section 51 of the ABST Act;
- (f) refuses to allow the Commissioner to inspect or measure land or refuses to deliver for inspection any map, plan, title deed, instrument of title, or other document; or
- (g) otherwise impedes the determination, assessment, or collection of tax.

70. Aiding and Abetting

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

71. Failure to Preserve Secrecy

A person who contravenes subsection (2) or (3) of section 7 commits an offence and is liable on conviction to a fine not exceeding \$20,000, or to imprisonment for a term of one year, or both.

72. Offences by Corporations or Partnerships

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

55. Extinguishment of Uncollectible Amounts

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

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

56. Court Proceedings

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

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

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

57. Lien

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

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

(3) The Commissioner shall, immediately a lien is created under subsection (1), register such lien with the Registrar of Lands in the case of real property, and in the case of any securities of an incorporated company with the Registrar of *Companies*. In all other cases, the Commissioner shall apply to the High Court.

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

- (a) before the person has actual knowledge of the lien; or

(b) before notice of the lien has been duly registered by the Registrar of the High Court, the Registrar of Lands and the Registrar of Companies,

whichever first occurs.

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

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

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

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

58. Execution against Taxpayer's Property

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

(2) If the Commissioner has reasonable grounds for believing that the collection of tax is in jeopardy, the Commissioner may demand immediate payment of the tax and, on failure of the taxpayer to pay the tax, may proceed to levy on the taxpayer's property immediately, notwithstanding subsection (3) of section 46.

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

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

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

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

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

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

(a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, lodged, or furnished under this Act;

(b) in any information required to be furnished under this Act;

(c) in a document furnished to a taxation officer otherwise than pursuant to this Act;

(d) in an answer to a question asked of a person by a taxation officer; or

(e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer, but does not include a statement to which section 65 applies.

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

67. Failure to Maintain Documents

A person who fails to maintain proper documents as required by this Act or any tax law commits an offence and is liable on conviction to a fine not exceeding \$1,000 and shall be ordered to rectify his default within a maximum period of four months from the date of his conviction.

68. Tax Evasion

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

69. Impeding Tax Administration

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

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

- (c) inform the Chief Valuation Officer of the construction or alteration of a building as required by subsection (5) of section 65 of the Property Tax and Valuation Act, 2006, commits an offence and is liable on conviction to a fine not exceeding \$1000.

64. Falsification of Invoices, Receipts, Credit and Debit Notes

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

- (a) uses a false taxpayer identification number or a taxpayer identification number that does not apply to the person;
- (b) issues a false ABST invoice or sales receipt;
- (c) issues a false ABST credit note or debit note; or
- (d) provides, or fails to provide, an invoice, credit note, debit note, or sales receipt as provided under Part IX of the Antigua and Barbuda Sales Tax Act.

and is liable on conviction to a fine not exceeding \$15,000.00

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

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

65. Negligent or Fraudulent Underpayment

If tax is underpaid, or might have been underpaid, as a result of an incorrect statement or a material omission in a taxpayer's tax return, and that statement or omission is a result of intentional conduct or negligence on the part of the taxpayer, the taxpayer commits an offence and is liable on conviction to a fine not exceeding \$20,000.

66. False or Misleading Statements

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

59. Sale of Seized Property

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

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

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

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

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

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

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

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

(8) The authority to seize and sell under this section may be in the form in Schedule 2.

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

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

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

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

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

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

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

60. Non-Arm's Length Transferees

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

(2) Subsection (1) does not apply to an amount for which a person is liable under section 43.

61. Receivers

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

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

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

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

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

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

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

PART IX CRIMINAL OFFENCES

62. General

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

63. Failure to Notify of Changes in Taxpayer Information

A person who fails to—

- (a) notify the Commissioner as required by subsections (6) and (7) of section 8;
- (b) apply for cancellation of the person's registration as required by subsection 11(1) of the Antigua and Barbuda Sales Tax; or

SCHEDULE 2

Section 9

Tax Compliance Certificate No. 1

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

Dated this _____ day of _____ 20__.

.....
Commissioner of Inland Revenue

This certificate is valid for four (4) months from the date hereof.

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

73. Offences by Taxation Officers

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

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

commits an offence and is liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding two years, or both, and the Court may, in addition to imposing a fine, order the convicted person to pay to the Commissioner an amount of tax that has not been paid as a result of the officer’s wrong doing and which cannot reasonably be recovered from the person liable for the tax.

74. General Provisions

- (1) The Commissioner may investigate an offence specified in this Act and in other laws to which this Act applies.
- (2) The power to bring charges and seek prosecution for the criminal offences specified in this Act belongs exclusively to the Director of Public Prosecutions.
- (3) Proceedings under this Act do not affect criminal proceedings that may be brought under any other Act or law.

75. Period of Limitation

Proceedings under this Part may be commenced—

- (a) if the offence alleged involves the doing of an act, within twelve years after the doing of the act;

- (b) if the offence alleged involves the failure to do an act, within twelve years after the failure occurred or, if later, within three years after the Commissioner becomes aware of the failure; or
- (c) if the offence alleged involves the non-disclosure or incorrect disclosure by a person of information relating to that person's liability under a tax law, within six years after the person's correct liability to tax becomes final for that tax period.

**PART X
COMPOUNDING OF OFFENCES**

76. Compounding of Offences

(1) If a person has committed an offence under this Act or under another law to which this Act applies, other than an offence under section 71 or 73, the Commissioner may, at any time prior to a charge being preferred by the Director of Public Prosecutions, compound the offence and order the person to pay a sum of money as specified by the Commissioner, not exceeding *one half of the maximum* amount of the fine prescribed for the offence.

(2) The Commissioner may compound an offence under this section only if the person concerned requests the Commissioner in writing to do so.

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

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

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

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

SCHEDULE 1

Section 3

Laws, as amended, to which this Act applies:

Antigua and Barbuda Sales Tax Act, 2006

Income Tax Act

Insurance Levy Act

International Business Corporations (Exemption from Income Tax) Act

Non-Citizens Undeveloped Land Tax Act

Personal Income Tax Act, 2005

Property Tax and Valuation Act, 2006

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

Stamp Act

Travel Tax Act

80. Application of the Law to Procedures under Repealed Legislation

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

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

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

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

**PART XI
FINAL PROVISIONS**

77. General Application of the Act

(1) The following shall be considered to be part of this Act—

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

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

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

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

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

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

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

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

78. Repealed Legislation

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

- (a) Business Tax Act, Cap. 65;
- (b) Inland Revenue Administration Act, Cap. 217;

(c) Land Sales Duty Act, Cap. 236; and

(d) The Sugar Export Cess Act, Cap. 418.

(2) Provisions of the laws set out in Schedule 3 are repealed or amended as provided in that Schedule to conform to the introduction and application of this Act.

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

79. Effective Date and Transitional Provisions

(1) This Act comes into force on a date to be appointed by the Minister by Notice published in the *Gazette*.

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

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

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

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

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

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

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

- (k) Section 48;
- (l) Sections 49, 49B, and 49C;
- (m) Section 50;
- (n) Section 51;
- (o) Section 52;
- (p) Section 53;
- (q) Section 54;
- (r) Section 55;
- (s) Section 56;
- (t) Section 57;
- (u) Section 58;
- (v) Section 59;
- (w) Section 60;
- (x) Section 61;
- (y) Section 62;
- (z) Section 68;
- (aa) Section 69;
- (bb) Section 70;
- (cc) Section 71;
- (dd) Section 72;
- (ee) Section 73;
- (ff) Section 74;

Tax Compliance Certificate No. 2

I hereby certify that of has made satisfactory arrangements with the Commissioner that the Commissioner believes will result in the payment of the tax due and outstanding.

Dated this _____ day of _____ 20__.

.....
Commissioner of Inland Revenue

This certificate is valid for four (4) months from the date hereof.

Tax Compliance Certificate No. 3

I hereby certify that of
has made satisfactory arrangements with the Commissioner for the payment of the tax due and
outstanding and has paid all instalment due as of the date hereof.

Dated this _____ day of _____ 20__.

.....

Commissioner of Inland Revenue

This certificate is valid for four (4) months from the date hereof.

(k) Section 95(2) is amended to provide:

Part V of the Tax Administration and Procedure Act applies to objections made under this section.

(l) Section 41A(1) is amended to provide:

Subject to this section, the references to “Commissioner” in section 27 and subsection 41(1) of
this Act, and section 22 of the Tax Administration and Procedure Act are to be read, with respect to
taxable persons located in Barbuda as references to the Barbuda Council.

(m) Section 44(10) is amended to provide:

Where the Commissioner does not pay a refund within the time required under this section,
interest is payable on the amount outstanding at the rate specified under section 52 of the Tax
Administration and Procedure Act.

**PART 2
AMENDMENTS TO THE INCOME TAX ACT**

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

- (a) Section 3;
- (b) Section 4;
- (c) Subsection 18(3);
- (d) Section 26;
- (e) Section 27
- (f) Section 28;
- (g) Section 29;
- (h) Subsection 40(5);
- (i) Section 46;
- (j) Subsections 47(1) and (5);

(b) Section 45(12) is amended to provide:

Nothing in this section prevents any interest or penalty payable in respect of ABST assessed under subsection (2) or (3), from being computed from the date on which payment of the ABST would have been due under section 41 if the supply had been a taxable supply.

(c) Section 94(1)(c) is amended to provide:

a decision under section 24(1) of the Tax Administration and Procedure Act not to allow a person to lodge fuller or additional returns;

(d) Section 94(1)(d) is amended to provide:

a decision under section 22(6) of the Tax Administration and Procedure Act to require a person to lodge fuller or additional returns;

(e) Section 94(1)(e) is amended to provide:

a decision under section 45 of the Tax Administration and Procedure Act on a request for an extension of time to pay, including a decision not to grant the request, to require payment sooner than requested, or to require a taxpayer to comply with other payment arrangements;

(f) Section 94(1)(f) is amended to provide:

a decision under section 75(3) of the Tax Administration and Procedure Act not to waive a late lodgement penalty

(g) Section 94(1)(h) is amended to provide:

the issue of an assessment under Part IV of the Tax Administration and Procedure Act;

(h) Section 94(1)(i) is amended to provide:

a decision under section 32 of the Tax Administration and Procedure Act to make a determination in relation to a taxpayer's liability for an amount;

(i) Section 94(1)(k) is amended to provide:

a decision under section 65(9) of the Tax Administration and Procedure Act not to remit a penalty, or a decision to remit the penalty only in part;

(j) Section 94(1):

(l) is amended to provide: a decision under section 42 of the Tax Administration and Procedure Act to appoint a person as a representative of a taxable person.

SCHEDULE 3

Section 78(2)

CONSEQUENTIAL CHANGES TO LEGISLATION AND REGULATIONS

PART 1

Amendments to the Antigua and Barbuda Sales Tax Act, 2006

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

(a) Section 38;

(b) Sections 39(2), (3), (4), and (5);

(c) Sections 40(1) and (2);

(d) Sections 41(3), (4), (5), (6), (7), (8), and (9);

(e) Sections 44(4) and (5);

(f) Sections 45(1), (5), (6), (7), (8), (9), and (11);

(g) Section 47;

(h) Section 48;

(i) Section 49;

(j) Section 50;

(k) Section 53;

(l) Section 61;

(m) Section 62;

(n) Section 65;

(o) Section 66;

- (p) Section 67
- (q) Section 68;
- (r) Section 69;
- (s) Section 70;
- (t) Section 71;
- (u) Section 73;
- (v) Section 74;
- (w) Section 75;
- (x) Section 80;
- (y) Section 81;
- (z) Section 82;
- (aa) Section 83
- (bb) Section 84;
- (cc) Section 85;
- (dd) Section 87;
- (ee) Section 88;
- (ff) Section 89;
- (gg) Section 90;
- (hh) Section 91;
- (ii) Section 92;
- (jj) Section 93;
- (kk) Section 96;

- (ll) Section 97;
- (mm) Section 98;
- (nn) Section 99;
- (oo) Section 100;
- (pp) Section 101;
- (qq) Section 102;
- (rr) Section 103;
- (ss) Section 104;
- (tt) Section 105
- (uu) Section 106;
- (vv) Section 107;
- (ww) Section 108;
- (xx) Section 109;
- (yy) Section 110;
- (zz) Section 111;
- (aaa)Section 112; and
- (bbb)Section 113.

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

- (a) Section 45(10) is amended to provide:

The Commissioner may make an assessment at any time if the assessment is made under subsection (2) or (3).

- (d) Section 13;
- (e) Section 14;
- (f) Section 15;
- (g) Section 16;
- (h) Section 17;
- (i) Section 18

- (n) Section 35;
- (o) Section 36;
- (p) Section 37;
- (q) Section 38;
- (r) Section 39;
- (s) Section 40;
- (t) Section 41;
- (u) Section 42;
- (v) Section 43;
- (w) Section 44;
- (x) Section 45;
- (y) Section 46;
- (z) Section 48;
- (aa) Section 49;
- (bb) Section 50;
- (cc) Section 51;
- (dd) Section 52;
- (ee) Section 53;
- (ff) Section 54;
- (gg) Section 55;
- (hh) Section 56

PART 5

AMENDMENTS TO THE PERSONAL INCOME TAX ACT, 2005

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

- (a) Section 4;
- (b) Section 5;
- (c) Section 6;
- (d) Subsection 23(2);
- (e) Section 24;
- (f) Subsection 27(1);
- (g) Section 28;
- (h) Section 29;
- (i) Section 30;
- (j) Section 31;
- (k) Section 32;
- (l) Section 33;
- (m) Section 34;

**PART 6
AMENDMENTS TO THE PROPERTY TAX AND VALUATION ACT, 2006**

1. The following provisions of the Property Tax and Valuation Act are repealed—

- (a) Section 3;
- (b) Section 26(3);
- (c) Section 28;
- (d) Section 29;
- (e) Section 30;
- (f) Section 31;
- (g) Section 32;
- (h) Section 33;
- (i) Section 34;
- (j) Section 35;
- (k) Section 36;
- (l) Section 37;
- (m) Section 38;
- (n) Section 39;
- (o) Section 40;
- (p) Section 41;
- (q) Section 42;
- (r) Section 43;
- (s) Section 44;
- (t) Section 45;

- (gg) Section 75;
- (hh) Section 76;
- (ii) Section 77;
- (jj) Section 78;
- (kk) Section 79;
- (ll) Section 83;

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

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

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

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

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

**PART 3
AMENDMENTS TO THE INSURANCE LEVY ACT**

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

- (a) Section 5;
- (b) Section 6

**PART 4
AMENDMENTS TO THE NON-CITIZENS UNDEVELOPED LAND TAX ACT**

1. The following provisions of the Non-Citizens Undeveloped Land Tax Act are repealed—

- (a) Subsection 10 (4);
- (b) Section 11;
- (c) Section 12;

- (u) Section 46;
- (v) Section 47;
- (w) Section 48;
- (x) Section 62(3) and (4);
- (y) Section 63;
- (z) Section 65(3) and (6);
- (aa) Section 68;
- (bb) Section 78;

PART 7
AMENDMENTS TO THE TRAVEL TAX ACT

1. The following provision of the Travel Tax Act is repealed—

- (a) Section 8;

Passed by the House of Representatives on
the 26th day of November, 2012.

D. Gisele Isaac-Arrindel,
Speaker.

Ramona Small,
Clerk to the House of Representatives.

Passed by the Senate on the 30th day of
November, 2012.

Hazelyn M. Francis,
President.

Ramona Small,
Clerk to the Senate.