



BERMUDA

TAXES MANAGEMENT ACT 1976

1976 : 20

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PART I

PRELIMINARY

Interpretation

1 In this Act, unless the context otherwise requires—

“this Act” includes the regulations;

“agent” includes every person who, in Bermuda, for or on behalf of another person outside Bermuda, holds or has the management or control of the business of that other person and every person who is declared to be an agent for any other person under section 48;

“business” includes a profession, calling, trade, manufacture or undertaking of any kind whatever, and includes an adventure or concern in the nature of trade, but a person shall not be deemed to be carrying on business merely by reason of having been the author of a literary, dramatic, musical or artistic work and having assigned or granted an interest in the copyright of such work for a consideration;

“Collector” means the person responsible under the Taxes Acts for the collection of tax;

“estate representative” means the executor, original or by representation, or administrator for the time being of a deceased person or other person administering his estate under any provision of law;

“exempt undertaking” means an exempt undertaking within the meaning of section 9 of the Miscellaneous Taxes Act 1976 [*title 14 item 46*];

“financial year” means the period of twelve months extending from the first day of April in any year to the thirty-first day of March in the year next following;

“liquidator” means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a body corporate;

“Minister” means the Minister of Finance;

“person” includes any company, partnership, association, or body of persons, whether corporate or unincorporate;

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“prescribed” means prescribed by regulations;

“regulations” means regulations made under section 50;

“tax” where no specific tax is referred to means any tax, levy or duty chargeable under the Taxes Acts and includes any further or additional tax assessed or assessable in respect thereof and also a penalty for the late payment of tax;

“the Taxes Acts” means this Act and any statutory provision relating to the taxes to which this Act applies;

“tax period” shall be construed in conformity with the Taxes Acts;

“Tribunal” means the Tax Appeal Tribunal;

“trustee” includes an estate representative, guardian, receiver, liquidator, trustee or other person having the control of property in a fiduciary capacity.

Application of Act etc

2 (1) This Act shall apply in relation to the taxes specified in the First Schedule whether liability to tax arose before or after 1 April 1976:

[proviso omitted][spent]

(2) The Minister may by order published in the Gazette amend the First Schedule by the addition of any other tax, but no such order shall take effect until and unless a draft thereof has been approved by the Legislature by resolution of both Houses.

Performance of the functions of the Collector

3 The Collector may authorize any public officer to exercise any powers or to perform any duties conferred or imposed on the Collector by the Taxes Acts.

Official secrecy

4 (1) Except in the performance of his duties under the Taxes Acts, every person who is or has been employed in carrying out or assisting any person to carry out the Taxes Acts shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under the Taxes Acts and shall not communicate any such matter to any person otherwise than—

- (a) to or with the consent of the person to whom such matter relates, his authorized agents or trustees;
- (b) under the authority of the Minister;
- (c) for the purposes of any legal proceedings arising out of the Taxes Acts or any criminal proceedings;
- (d) to a person entitled to such information by virtue of any provision of law.

(2) Any person who contravenes subsection (1) commits an offence:

Punishment on summary conviction: imprisonment for three months or a fine of \$1,000 or both such imprisonment and fine.

Declaration on taking office

5 (1) Every person who is appointed to be a Collector shall make a declaration in the form set out in the Second Schedule before the Financial Secretary.

(2) Every person who is authorized under section 3 to perform any of the functions of a Collector shall make a declaration in the form set out in the Second Schedule before the Collector who grants him authority.

(3) A declaration under this section shall be made as soon as may be after the first appointment to the office in question.

PART II

REGISTRATION, RETURNS, INFORMATION AND ACCOUNTS

Registration

6 (1) Any person (not being a person who has registered under this section) who is chargeable to tax in respect of any tax period shall apply to the Collector, within seven days after the close of that tax period, in the prescribed form and manner, for registration under this section, and thereupon the Collector shall register him under this section.

(2) The Collector may cancel the registration of a person if that person has ceased to be a person to whom subsection (1) apply.

Returns

7 (1) Every person who is registered or required to apply for registration in accordance with section 6 shall within fifteen days after the close of each tax period furnish to the Collector in the prescribed form a return relating to that tax period containing the particulars required by such form.

(2) Where the Collector is of the opinion that it would be unduly onerous to require a person to furnish returns within the time specified in subsection (1) he may, by notice in writing, vary the time within which that person is required to furnish returns in pursuance of that subsection and that person shall, while that notice remains unrevoked, furnish returns accordingly.

(3) Where the Collector is of the opinion that it would be unduly onerous to require a person to furnish returns relating to each tax period, the Collector may, by notice in writing, authorize that person to furnish returns relating to such tax periods as may be specified in the notice, and that person shall, while that notice remains unrevoked, furnish returns accordingly.

Exemption from furnishing returns

8 (1) If the Collector is of the opinion that tax will be remitted in the case of a person liable to furnish a return under section 7, or, if paid, will be refunded, he may issue a certificate to that person exempting him from furnishing returns in accordance with section 7 but any such person shall, unless the Collector otherwise permits, furnish to the Collector

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within thirty days after the close of any financial year a return in the prescribed form relating to that financial year and containing the particulars required by such form.

(2) A certificate issued under subsection (1) may be subject to such conditions as are prescribed or as the Collector thinks fit.

(3) The issue of a certificate under subsection (1) shall not exempt any person from the payment of any tax, notwithstanding that it may have the effect of postponing the time for payment of any tax.

Corrective returns

9 (1) Where a person has furnished a return for the purposes of section 7 or 8 he may if the Collector permits thereafter furnish a further return in amplification or correction of the previous return:

Provided that if such further return reveals that tax is chargeable in excess of that revealed by the previous return such tax shall be paid at the same time as the further return is submitted.

(2) The Collector shall remit additional tax payable under subsection (2) of section 16 and any penalty payable under section 22 in respect of any tax paid under this section if he is satisfied that—

- (a) the original return was prepared in good faith and the necessity to amplify or correct it did not arise by reason of the gross negligence of the person furnishing it; and
- (b) the further return was submitted to the Collector as soon as reasonably practicable after the necessity to amplify or correct the original return became apparent; and
- (c) the further return was not furnished as a response to the Collector's requirement under section 10 for particulars.

Further particulars

10 In addition to any return required to be furnished by this Act, the Collector may for the purpose of the Taxes Acts, by notice in writing, require any person who is chargeable to tax, or the agent of such person, to furnish to him, within the time specified in the notice, such particulars as the Collector specifies in amplification of the return.

Separate returns and accounts as to branches

11 (1) Where the business of any person chargeable to tax embraces more than one branch of business, the Collector may require separate returns to be made and accounts to be kept for the purposes of this Part in relation to each branch.

(2) Nothing in this section shall affect the incidence of tax.

Consolidated returns and accounts

12 (1) Where two or more persons chargeable to tax carry on businesses (being businesses in respect of which tax is payable under the Taxes Acts) which, in the opinion

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of the Collector, are associated, the Collector may require or permit returns required to be made under this Part to be consolidated in such manner as he may determine.

(2) Nothing in this section shall affect the incidence of tax.

Power to obtain evidence

- 13 (1) The Collector may for the purposes of the Taxes Acts require any person—
- (a) to attend and give evidence before him or before any public officer engaged in the administration or execution of the Taxes Acts;
 - (b) to make available to him or to any such officer any books, documents and other papers whatsoever in his custody or under his control;
 - (c) to furnish evidence in writing and may further require that such evidence shall be verified by affidavit.

(2) In the exercise of his powers under subsection (1)(a) the Collector may require the evidence to be given on oath and either he or any public officer authorized by him may administer an oath.

(3) Nothing in this section shall authorize the Collector to obtain evidence as to the business affairs of an exempt undertaking or to or require such an undertaking to make available any of its accounts or records other than accounts or records required to be kept by section 14(1).

(4) Nothing in this section shall authorise the Collector to obtain from an institution licensed as a bank or a deposit company under the Banks and Deposit Companies Act 1999, any information as to the business affairs of any customer of such an institution except on the authority of an order of the Supreme Court or a judge.

(5) The Court or a Judge shall not make an order under subsection (4) unless satisfied—

- (a) that the information that is sought is likely to be of material assistance to the Collector in the exercise of his functions under the Taxes Acts; and
- (b) that the Collector is unable to obtain that information by the exercise of any other power vested in him by those Acts.

[section 13 subsection (4) substituted by BR81/1999 effective 1 January 2000]

Accounts

14 (1) Subject to subsection (2), any person who is chargeable to tax shall keep in Bermuda, at such place or places as may be prescribed, such documents of account and other records as may be prescribed as being documents and records necessary or expedient to be available so that the Taxes Acts or any requirement made under those Acts may be complied with or enforced.

(2) Except with the written permission of the Collector, it shall be unlawful for any person to destroy or otherwise make unavailable any such document or record as aforesaid

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during the period of five years commencing on the last day of the financial year in which any transaction took place to which the document or record relates.

(3) Any person who contravenes this section commits an offence:

Punishment on summary conviction: a fine of \$1,000.

PART III

PAYMENT, ASSESSMENT AND CLAIMS

Time for payment of tax

15 (1) Every person chargeable to tax shall pay the tax due in respect of any tax period or tax periods at the same time as he furnishes the return in respect of such tax period or tax periods in accordance with the Taxes Acts or at such other time as may be required or permitted by the Taxes Acts.

(2) On payment of the tax the Collector shall give a receipt.

Assessments

16 (1) Where—

(a) any person who is chargeable to tax—

(i) fails to furnish a return in accordance with the Taxes Acts; or

(ii) fails to keep any document or other record that he is required by section 14 to keep, or fails to make available, produce or furnish any book, document or other paper that he is required by or under any provision of the Taxes Acts to make available, produce or furnish; or

(b) it appears to the Collector that—

(i) the return furnished by any person is materially incomplete or inaccurate; or

(ii) any document, record, book or other paper kept, produced or furnished by any person for any purpose of the Taxes Acts is materially incomplete or inaccurate; or

(c) any person has not paid all the tax to which he is chargeable,

the Collector may cause an assessment to be made of the amount of tax or further tax to which, in his opinion, such person is chargeable.

(2) Subject to the Taxes Acts such person shall also be liable to pay, by way of additional tax, an amount equivalent to the amount of the tax or further tax assessed under subsection (1) but the Collector may if he thinks fit in any particular case remit such additional tax or any part thereof.

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(3) The Collector shall cause notice in writing of an assessment under subsection (1) of the amount of tax, further tax or additional tax which is to be paid to be served on such person.

(4) The amount of tax, further tax or additional tax specified in a notice under subsection (3) shall be paid on or before the date specified in the notice together with any other amount which may be payable in accordance with any other provision of the Taxes Acts.

Notice of assessment

17 Notice of any assessment to tax shall be served on the person assessed and shall state the time within which any objection to such assessment is to be lodged.

Refunds

18 (1) Where the Collector finds in any case that tax has been overpaid, he shall, upon application made by the person entitled thereto within two years after the date of the overpayment, refund to that person the amount of tax which has been overpaid.

(2) The Collector shall pay interest at the rate of five per centum per annum upon refunds made under this section from the date of the overpayment to the date of refund unless he is satisfied that the overpayment was occasioned by the negligence of the taxpayer.

(3) This section does not apply to passenger departure tax.

[Section 18(3) added by 1999:18 s.4(1)(a) effective 1 June 1999]

Recovery of tax repaid in consequence of fraud or negligence.

19 Where, in consequence of a person's fraud, wilful default or negligence, any tax has been repaid which ought not to have been repaid, the amount thereof may be assessed to tax by the Collector in the amount of such overpayment together with any interest paid under subsection (2) of section 18 and recovered accordingly.

Time limits

20 (1) Subject to the following provisions of this Act, and to any other provisions of the Taxes Acts, an assessment to tax may be made at any time not later than five years after the end of the tax period to which the assessment relates.

(2) Notwithstanding subsection (1), where any form of fraud or wilful default has been committed by or on behalf of any person in connection with or in relation to tax, assessments on that person to tax may, for the purpose of making good to the Crown any loss of tax attributable to the fraud or wilful default, be made at any time.

(3) For the purpose of the charging of tax on the estate representatives of a deceased person in respect of the tax period in which the deceased died or any previous tax period the time allowed by subsection (1) or (2) shall in no case extend beyond the end of the third year next following the end of the tax period in which the deceased died.

Time to pay extensions and instalments

- 21 (1) The Collector may where he thinks fit—
- (a) extend the time for payment of any tax; or
 - (b) permit the payment of tax to be made by instalments within such time as he specifies.
- (2) If any person should fail to make any instalment within the time specified by the Collector under subsection (1) the tax shall forthwith be payable in the full amount outstanding at the date of the default.

Penalty for late payment

- 22 (1) If tax, further tax or additional tax is not paid at or before the time fixed by or under this Act, a penalty for late payment shall be payable in an amount equal to five per centum of the unpaid tax for every month, or part of a month, during which the tax is unpaid, with a maximum penalty of an amount equal to thirty per centum of the unpaid tax.
- (2) The Collector may if he thinks fit, in any particular case, remit the penalty for late payment or any part thereof.
- (3) In subsection (1) “additional tax” includes both additional tax to which any person is liable under section 16(2) and also any penalty for late payment payable under the said subsection (1).

PART IV

OBJECTIONS AND APPEALS

Objections

- 23 (1) A person who is dissatisfied with any decision, determination or assessment made by the Collector under the Taxes Acts, by which his liability to pay tax is affected may, within thirty days after service of notice of the decision, determination or assessment as the case may be, lodge with the Collector an objection in writing stating the grounds on which he relies.
- (2) The Collector shall consider the objection and may either disallow it, or allow it, either wholly or in part.
- (3) If on the consideration of an objection the amount of tax charged on a person is reduced the Collector shall refund to the person the excess amount which has been paid.
- (4) The Collector shall serve on the objector written notice of, and the reason for, his decision on the objection.

Appeal Tribunal

- 24 (1) For the purposes of the Taxes Acts there shall be a Tribunal to be called the Tax Appeal Tribunal which shall consist of a Chairman and two other members selected by the Chairman from a panel of members.

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(2) The Chairman of the Tribunal shall be a person appointed for the purpose by the Minister and shall hold office during the Minister's pleasure.

(3) The panel of members of the Tribunal shall be not less than five or more than nine persons appointed by the Minister and shall hold office during the Minister's pleasure.

(4) Fees shall be paid to the Chairman and members of the panel in accordance with the Government Authorities (Fees) Act 1971 [*title 14 item 6*].

Appeal

25 (1) A person who is dissatisfied with a decision of the Collector on an objection made by that person may, within thirty days after service on him of notice of that decision or within such further time as the Tribunal may allow, by notice in writing accompanied by such fee as may be prescribed under the Government Fees Act 1965 [*title 15 item 18*], require the Collector to treat his objection as an appeal and to forward it to the Tribunal and the Collector shall, as soon as practicable, forward it accordingly.

(2) On appeal—

(a) the objector shall be limited to the grounds stated in the objection; and

(b) the burden of proving that any decision, determination or assessment objected to is unreasonable or excessive lies on the objector.

(3) The Tribunal, subject to this Part, may allow or dismiss the appeal, or may reverse or vary any part of the decision, determination or assessment of the Collector, whether the appeal relates to that part or not, and may, additionally or alternatively, set aside the decision, determination or assessment appealed against and remit the matter to the Collector for further consideration.

Procedure on appeal

26 (1) The Tribunal shall hear an appeal in accordance with the regulations and, subject to such regulations and this Act, may regulate its own procedure.

(2) The Tribunal may consider more than one appeal at one and the same time where, in the opinion of the Tribunal, such appeals raise substantially similar points for determination by the Tribunal or may for any other good and sufficient reason be conveniently considered together.

(3) On the hearing of an appeal by the Tribunal the Collector, and the appellant and any other person who, in the heard, shall be entitled to appear before the Tribunal in person or by his duly authorized representative and to produce any lawful evidence and to make representations relating to the appeal.

(4) Notwithstanding the foregoing provisions of this section, where in the course of determining any appeal one of the members of the Tribunal is unable to continue to act as a member for any reason, then, if all parties concerned agree, the Tribunal may proceed with the determination of that appeal in the absence of that member and shall be deemed to be duly constituted in so doing.

(5) The Tribunal shall at the request of the appellant exclude the public or any representative of the press from its sittings.

Evidence

27 (1) The Tribunal may summon any person (other than the appellant) to produce any document or to appear before it and give evidence, and a witness before the Tribunal may be examined on oath:

Provided that any agent or servant of the appellant, and any other person confidentially employed in the affairs of the appellant, may refuse to produce any document or to be sworn or to answer any question to which he objects.

(2) Any person who after being duly summoned—

- (a) neglects or refuses to appear before the Tribunal at the time and place appointed for that purpose; or
- (b) appears, but refuses to be sworn or to produce any document which he has been required to produce; or
- (c) refuses to answer any lawful question concerning the matters under consideration,

commits an offence:

Punishment on summary conviction: a fine of \$200.

Provided that—

- (i) the penalty imposed in respect of any offence under paragraph (b) or paragraph (c) of this subsection shall not apply to any such person as is within the proviso to subsection (1);
- (ii) no person shall without the consent of that undertaking be required to answer any question or produce any document (not being accounts or records required to be kept under section 14(1)) relating to the business affairs of an exempt undertaking.

(3) The Collector and any public officer employed in carrying out or assisting any other person to carry out the Taxes Acts shall not, in any proceedings before the Tribunal, give any evidence which would, without the consent of that person, disclose the private circumstances or business affairs of any person if such person is or may be identified by reason of the evidence given:

Provided that nothing in this subsection shall apply in the case of the private circumstances or business affairs of any person who is a party to the appeal in so far as these matters may be relevant to the proceedings.

Settling of appeals by agreement

28 (1) Subject to this section, where a person gives notice of appeal and, before the appeal is determined by the Tribunal, the Collector and the appellant come to an agreement, whether in writing or otherwise, that the decision, determination or assessment under

appeal should be treated as upheld without variation, or as varied in a particular manner or as discharged or cancelled, the like consequences shall ensue for all purposes as would have ensued if at the time when the agreement was to come to, the Tribunal had determined the appeal and had upheld the decision, determination or assessment without variation, had varied it in that manner or had discharged or cancelled it, as the case may be.

(2) Subsection (1) shall not apply where, within thirty days from the date when the agreement was come to, the appellant gives notice in writing to the Collector that he desires to repudiate or withdraw from the agreement.

(3) Where an agreement is not in writing—

- (a) the preceding provisions of this section shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by the Collector to the appellant or by the appellant to the Collector; and
- (b) the references in the preceding provisions of this section to the time when the agreement was come to shall be construed as references to the time of the giving of the said notice of confirmation. _

(4) Where—

- (a) a person who has given a notice of appeal notifies the Collector, whether orally or in writing, that he desires not to proceed with the appeal; and
- (b) thirty days have elapsed since the giving of the notification without the Collector giving to the appellant notice in writing indicating that he is unwilling that the appeal should be treated as withdrawn,

the preceding provisions of this section shall have effect as if, at the date of the appellant's notification, the appellant and the Collector had come to an agreement, orally or in writing, as the case may be, that the decision, determination or assessment under appeal should be upheld without variation.

(5) The references in this section to an agreement being come to with an appellant and the giving of notice or notification to or by an appellant include references to an agreement being come to with, and the giving of notice or notification to or by, a person acting on behalf of the appellant in relation to the appeal.

Appeal to the Supreme Court

29 (1) A party to proceedings before the Tribunal who is aggrieved by the decision of the Tribunal may appeal to the Supreme Court on a point of law within twenty-one days or such longer period as the Supreme Court may allow after the Tribunal delivers its decision by lodging notice of appeal with the Registrar.

(2) On any appeal under this Part, the Supreme Court may make such order, including an order for costs, as it thinks just.

(3) Section 62 of the Supreme Court Act 1905 [*title 8 item 1*] shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under this section,

Pending appeal not to delay payment of tax

30 The fact that an objection or appeal under this Part is pending shall not relieve any person from his obligation to pay tax in accordance with the Taxes Acts.

PART V

COLLECTION AND RECOVERY

Recovery of tax

31 (1) Tax shall be a debt due to the Crown and shall be paid into the Consolidated Fund.

(2) Proceedings for the recovery as a civil debt of sums owing as tax may be instituted in the name of the Collector in a court of summary jurisdiction by the Collector or other officer authorized in writing in that behalf by general or special directions of the Minister, and the Collector or officer may, although not a barrister and attorney, conduct such proceedings.

(3) Without prejudice to any other remedy for recovery of sums owing as tax, the directors and officers of a company or other body corporate that owes tax are liable jointly and severally for tax that became due while they were directors or officers, and proceedings may be taken under this section against all or any of them for recovery of that tax.

(4) For greater certainty, proceedings may be taken under this section against persons who were directors or officers after they cease to be directors or officers, including persons who ceased to be directors or officers before the coming into force of this section.

(5) A director or officer who has paid tax pursuant to proceedings under this section has a right of contribution against any other directors and officers of the company or other body corporate who are liable under this section for the tax paid by that director or officer, and a right to be indemnified by the company or body corporate in respect of that tax.

(6) For the purposes of subsections (3) to (5), "officer" means—

- (a) in the case of a company as defined in section 2 of the Companies Act 1981, an individual appointed as an officer of the company pursuant to section 91(4) of that Act; and
- (b) in the case of other companies and bodies corporate, an individual who performs functions for a company or other body corporate similar to those normally performed by an individual appointed as an officer of a company pursuant to section 91(4) of the Companies Act 1981.

[section 31 subsections (3) to (5) inserted by 2006:33 s.2 effective 7 December 2006]

Evidence

32 Where tax is in arrear, a certificate of the Collector that tax is due and unpaid, shall be sufficient evidence that the sum mentioned in the certificate is unpaid and is due to the

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Crown; and any document purporting to be such a certificate as is mentioned in this section shall be deemed to be such a certificate until the contrary is proved.

Liability of estate representative

33 (1) The estate representative of every deceased person shall have the power to pay tax chargeable to such deceased person out of any money for the time being in his hands or to raise the amount of such duty by the sale or mortgage of the assets of the estate.

(2) The amount of tax owed by a deceased person at the date of his death shall be paid out of the deceased person's estate in priority to all other debts after payment of reasonable funeral expenses and testamentary expenses; and the estate representative of such deceased person shall be liable for the tax chargeable on such person but his liability shall not exceed the assets, after the deduction of such expenses, which he has received as representative or might but for his own neglect or default have received.

Penalties not to relieve from tax

34 Payment of a penalty under the Taxes Acts shall not relieve any person from his obligation to pay any tax which is due from him.

Liquidator to give notice

35 (1) Every person who is the liquidator of a company which is being wound up and which is a company chargeable to tax shall, within fourteen days after he has become liquidator of that company, serve on the Collector notice in writing of his appointment as liquidator.

(2) *[repealed by 1977:36]*

PART VI

PENAL PROVISIONS

Offences

36 (1) Any person who—

- (a) fails, without reasonable cause, to make application for registration under section 6;
- (b) fails, without reasonable cause, to furnish a return in accordance with section 7 or section 8 or to comply with any requirement of the Collector under the Taxes Acts;
- (c) without reasonable cause refuses to answer any question put to him by the Collector or any public officer when he is giving evidence pursuant to a requirement under section 13,

commits an offence:

Punishment on summary conviction: a fine of \$1,000.

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(2) Any person who furnishes a return under sections 7, 8 or 9 which he knows to be false in any material particular or who supplies any particulars under section 6 or section 10 which he knows to be false or knowingly gives any false testimony when he is giving evidence pursuant to a requirement under section 13 (whether orally, in writing or by affidavit) commits an offence:

Punishment on summary conviction: a fine of \$2,500 or imprisonment for 6 months.

(3) Any person who assisted in or induced the making or delivery for any purposes of tax any return or accounts which he knows to be incorrect commits an offence:

Punishment on summary conviction: a fine of \$2,500 or imprisonment for 6 months.

(4) Where an offence under this section consists of the failure to do any act within a particular period, the offence shall be deemed to continue so long as the act has not been done.

Special duty of taxpayers collecting money from third parties

36A (1) Any person, who collects any sum of money from any other person by the exercise of his power to do so under a statutory provision to which this section applies shall, without prejudice to any other liability to which he is made subject by this Act or to which he is subject under any other law, be under a duty to pay that sum over to the Collector within fifteen days after the end of the tax period during which that sum was collected by him, or within such further period as the Collector may see fit to allow.

(2) A person—

- (a) in breach of his duty under subsection (1) is guilty of an offence and is liable on summary conviction to imprisonment for 6 months or a fine of \$2,500; or
- (b) in fraudulent breach of his duty under subsection (1) is guilty of an offence and is liable on conviction on indictment to imprisonment for 5 years or a fine of \$10,000.

(3) Section 36(4) shall apply in relation to an offence under subsection (2) as it applies in relation to an offence in relation to which section 36(4) applies, and a person guilty of a continuing offence under subsection (2) shall be liable, in addition to punishment under paragraph (a) or (b) of that subsection, as the case may be, to a further fine not exceeding thirty dollars for each day for which the offence continues.

(4) The statutory provisions to which this section applies are sections 26, 29 and 33 of the Miscellaneous Taxes Act 1976 [*title 14 item 46*], but so that—

- (a) in relation to section 26, the amount that an employer deducts from an employee's remuneration under that section shall, for the purposes of this section, be deemed to be a sum of money collected by the employer from another person by the exercise of a power under section 26; and
- (b) in relation to section 29 or 33, a hotel proprietor or a licensed person (as the case requires), hereafter in this paragraph referred to as "the taxpayer", shall for the said purposes be deemed to collect hotel occupancy tax or

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betting duty from a hotel guest or a better (as the case may be), by the exercise of the taxpayer's powers under that section, and to do so at the time that payment of the rack rate charge or the amount of the bet, as the case may be, is made to him.

Criminal tax evasion

37 (1) Any person who, by any wilful act or wilful default or by any art or contrivance whatever evades or attempts to evade payment of tax is guilty of an offence and is liable on summary conviction to imprisonment for 6 months or a fine of \$2,500.

(2) Any person who, by any fraud, evades or attempts to evade payment of tax is guilty of an offence and is liable on conviction on indictment to imprisonment for 5 years or a fine of \$10,000.

(3) A person convicted of an offence under subsection (1) or (2) is liable to an additional penalty not exceeding treble the amount of the tax evaded or attempted to be evaded.

(4) For the purposes of subsection (2) and section 36A(2)(b) "fraud" or "fraudulent breach" means any wilful act by a person with intent to defraud where—

- (a) that person knows that a substantial amount of tax would otherwise be due; and
- (b) the conduct involved constitutes a systematic effort or pattern of activity designed to falsify material records to the relevant authorities.

[section 37 repealed and substituted by 1999:36 s.3 effective 1 June 2001]

Obstructing officers

38 Any person who obstructs or hinders any public officer in the execution of his duty under the Taxes Acts, or in the exercise of any powers conferred on him thereby commits an offence:

Punishment on summary conviction: a fine of \$1,000.

Institution of prosecutions

39 An information for an offence against any provision of the Taxes Acts may be laid in the name of the Collector by any public officer authorized in that behalf by the Collector.

Offences by corporations

40 When an offence under the Taxes Acts which has been committed by a company or other body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any default on, the part of a director, manager, secretary or other similar officer of that company or other body corporate, or any person who is purporting to act in any such capacity, he, as well as the company or other body corporate shall be guilty of that offence and be liable to be proceeded against accordingly.

PART VII
MISCELLANEOUS

Responsibility of company officers

41 (1) Everything to be done by a company under the Taxes Acts shall be done by the company acting through the proper officer of the company, and service on a company of any document under or in pursuance of the Taxes Acts may be effected by serving it on the proper officer.

(2) For the purposes of this section—

- (a) the proper officer of a company which is a body corporate shall be the secretary or person acting as secretary of the company, except that if a liquidator has been appointed for the company the liquidator shall be the proper officer;
- (b) the proper officer of a company which is not a body corporate or for which there is no proper officer within paragraph (a), shall be the treasurer or the person acting as treasurer, of the company.

(3) In this section “company” means any body corporate or unincorporated association, but does not include a partnership.

Responsibility in case of partnership

42 (1) Where a trade or profession is carried on by two or more persons jointly, the precedent partner, that is to say, the partner who, being resident in Bermuda—

- (a) is first named in the agreement of partnership; or
- (b) if there is no agreement, is named singly, or with precedence to the other partners in the usual name of the firm; or
- (c) is the precedent acting partner, if the person named with precedence is not an acting partner,

shall be responsible on behalf of such persons for everything to be done by such persons under the Taxes Acts and service on the partnership of any document under or in pursuance of the Taxes Acts may be effected by serving it on the precedent partner.

(2) Where no partner is resident in Bermuda the responsibilities imposed on the precedent partner by this section shall be deemed to be imposed on the agent or manager of the firm resident in Bermuda.

(3) Nothing in this section shall prevent the Collector from requiring a return to be furnished under section 7 or particulars to be furnished under section 10 from a partner who is not the precedent partner for the purposes of this section.

Associated bodies corporate

43 (1) Where there are two or more associated bodies corporate the Collector shall deem them to be associated with each other for the purposes of the Taxes Acts in any tax period in which he is not satisfied—

- (a) that the separate existence of those bodies corporate during the tax period is principally for the purpose of carrying on the businesses of those bodies corporate in a more effective manner; and
- (b) that one of the main reasons for such separate existence is not to reduce the amount of tax that would otherwise be payable under the Taxes Acts.

(2) Where the Collector has deemed bodies corporate to be associated for the purposes of the Taxes Acts during any tax period such bodies shall be deemed to be so associated during subsequent tax periods until the Collector determines otherwise.

(3) For the purposes of subsection (1) two or more bodies corporate shall be deemed to be associated bodies corporate at a given time if, at that time or at any time within one year previously, one of them has control of the others, or both of them are under the control of the same person or persons.

Power to inspect records, enter upon premises etc

44 (1) The Collector, or any public officer shall have power on the authority in writing of the Minister to inspect all books, records and other documents which in the opinion of the Collector or such public officer may be relevant for the purpose of ascertaining whether or not any provision of the Taxes Acts has been complied with and, for that purpose may—

- (a) without previous notice at all reasonable times enter any premises or place where he has reason to believe such books, records or documents are kept;
- (b) make extracts from or copies of any such books, records or documents.

(2) Any person having the custody or control of any books, records or documents subject to inspection under this section may, before permitting such inspection, require the person seeking to inspect such books, records or documents, to show to him the authority of the Minister given under subsection (1), and if such authority is not so shown such permission may lawfully be withheld.

(3) Any person authorized in that behalf by the Collector may, on producing if so required evidence of his authority, at any reasonable time enter on and inspect, with a view to establishing their rental value, any premises the value of which falls to be determined for the purposes of calculating the chargeable remuneration of any person.

(4) Nothing in this section shall authorize the Collector or any public officer to inspect the books, records or other documents of an exempt undertaking except on the authority of an order of the Supreme Court or of a judge.

(5) The Court or judge shall not make an order under subsection (4) unless satisfied that there are reasonable grounds for believing that the exempt undertaking has failed to comply with section 14 or it, or any officer thereof, is guilty of a contravention of section 37.

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(6) An order under subsection (4) may be made either with or without notice to the exempt undertaking, and the costs of the application shall be in the discretion of the Court or a judge.

(7) Nothing in this section shall authorise the Collector or any public officer to inspect any book, record or other document in the possession of a bank or deposit company of a kind referred to in section 13(4) or an undertaking licensed under the Trusts (Regulation of Trust Business) Act 2001, for the purpose of obtaining information as to the business affairs of any customer of such bank, deposit company or undertaking, except on the authority of an order of the Supreme Court or a judge.

(8) The Court or a judge shall not make an order under subsection (7) unless satisfied—

- (a) that the information that is sought is likely to be of material assistance to the Collector in the exercise of his functions under the Taxes Acts; and
- (b) that the Collector is unable to obtain that information by the exercise of any other power vested in him by those Acts.

(9) An application for an order under subsection (4) or (7) shall be made by the Collector.

[section 44(7) substituted by 2001:22 Sch 2 para 4 effective 25 January 2002]

Loss, destruction or damage to assessments, returns, etc

45 Where any assessment to tax, or any duplicate of assessment to tax, or any return or other document relating to tax, to as has been lost or destroyed, or been so defaced or damaged as to be illegible or otherwise useless, the Collector may do all such acts and things as he might have done, and all acts and things done under or in pursuance of this section shall be as valid and effectual for all purposes as they would have been, if the assessment or duplicate of assessment had not been made, or the return or other document had not been made or furnished or required to be made or furnished:

Provided that, where any person who is charged with tax in consequence or by virtue of any act or thing done under or in pursuance of this section proves to the satisfaction of the Collector that he has already paid any tax for the same tax period in respect of the subject matter and on the account in respect of and on which he is so charged, relief shall be given to the extent to which the liability of that person has been discharged by the payment so made either by abatement from the charge or by repayment, as the case may require.

Want of form or errors not to invalidate assessments, etc

46 An assessment or other proceeding which purports to be made in pursuance of any provision of the Taxes Acts shall not be to in quashed, or deemed to be void or voidable, for want of form, or etc. be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if the person charged or intended to be charged or affected thereby is designated therein according to common intent and understanding.

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Evidence by certificate, etc

47 (1) A certificate of the Collector—

- (a) that a person was or was not, at any date, registered under section 6; or
- (b) that any return required by section 7 or section 8 or any particulars required under section 10 have not been made or had not been made at any date,

shall be sufficient evidence of that fact until the contrary is proved.

(2) A photograph or mechanically reproduced copy of any document furnished to the Collector for the purposes of the Taxes Acts and certified by him to be such a copy shall be admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.

(3) Any document purporting to be a certificate under subsection (1) or subsection (2) shall be deemed to be such a certificate until the contrary is proved.

Agents and trustees

48 (1) The Collector may, by notice served on a person, declare such person to be an agent for any other person for the purposes of the Taxes Acts.

(2) Every agent under the provisions of subsection (1) and every other agent or trustee of a person liable to tax (or who would be so liable but for death or incapacity)—

- (a) shall, in respect of any remuneration or receipts in respect of which the person for whom he is agent or trustee is chargeable to tax make the returns required under the Taxes Acts and be chargeable with tax thereon, but in his representative capacity only;
- (b) where as agent or trustee he pays tax, may recover the amount so paid from the person on whose behalf he paid it, or deduct it from any money in his hands belonging to that person;
- (c) is authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the tax;
- (d) shall be personally liable for the tax payable if, after the Collector has required him to make a return, or while the tax remains unpaid, he, except with the written permission of the Collector, disposes of or parts with any fund or money which comes to him from or out of which tax could legally be paid, but he shall not be otherwise personally liable for the tax;
- (e) is indemnified for all payments which he makes in pursuance of the Taxes Acts or by the requirement of the Collector.

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Service of documents by the Collector

49 (1) Any certificate, notice, form or other document required or authorized by the Taxes Acts to be served or given by the Collector shall be deemed to have been duly served or given—

- (a) if delivered personally to, or if left at the last known place of abode or business of the person, on or to whom the certificate, notice, form or document is to be served or given; or
- (b) if sent by prepaid letter post, addressed to the person on or to whom the certificate, notice, form or document is to be served or given at his last known place of business or abode in or out of Bermuda; or
- (c) if sent by prepaid letter post, addressed to the person on or to whom the certificate, notice, form or document is to be served or given at the address given by him in any return furnished under the Taxes Acts or if it is so addressed and left at such address.

(2) Service of a certificate, notice, form or document by post in accordance with subsection (1) shall prima facie be deemed to have been effected at the time when it would be delivered in the ordinary course of post.

Regulations

50 (1) The Minister may make regulations, not inconsistent with the Taxes Acts, providing for all or any of the following matters—

- (a) the forms to be used for the purposes of the Taxes Acts;
- (b) the manner of making any application to the Collector under the Taxes Acts;
- (c) the procedure of the Tax Appeal Tribunal;
- (d) providing for tax clearance certificates and certificates that any person is exempt from tax;
- (e) prescribing any matter (other than the rate of tax) which by the Taxes Acts are required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out of or giving effect to the Taxes Acts.

(2) The negative resolution procedure shall apply to regulations made under this section.

Transitional

51 (1) Regulations prescribed under the Taxes Acts prior to 1 April 1976 shall continue in force as though this Act had not been enacted until such time as they are amended or revoked by further regulations under section 50.

(2) *[omitted] [transitional]*

(3) *[omitted] [transitional]*

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Amendments to other laws

52 *[omitted]*

Commencement

53 *[omitted]*

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FIRST SCHEDULE

(Section 2)

EMPLOYMENT TAX

Betting Duty

Contracts Exchange Tax

Hospital Levy

Hotel Occupancy Tax

Timesharing Occupancy Tax

Timesharing Services Tax

Passenger Cabin Tax

Passenger Departure Tax

Payroll Tax

[First Schedule amended by 1995:8 effective 1 April 1995, by 1995:16 effective 1 April 1995; by 1998:6 effective 1 April 1998; and by 1999:18 s.4(1)(b) effective 1 June 1999]

SECOND SCHEDULE

(Section 5)

COLLECTORS AND OTHER OFFICERS

I, A.B., do solemnly declare that I will not disclose any information received by me in the execution of my duties except for the purposes of those duties or in such other cases as may be authorized by law.

Dated this day of 19 .

..... Signature.

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THIRD SCHEDULE

(Section 52)

[omitted]

[Assent Date: 25 March 1976]

[This Act is deemed amended by 1995:16 section 26 (subject to the provisions of that section) effective 1 April 1995 so as to reflect the inclusion of payroll tax except that for the avoidance of doubt it is declared that section 36A has no application to payroll tax]

[section 36A(2) substituted by 1999:36 s.2 effective 1 June 2001]

[This Act was brought into operation on 1 April 1976]

[This Act is deemed amended by 1995:16 section 26 (subject to the provisions of that section) effective 1 April 1995 so as to reflect the inclusion of payroll tax except that for the avoidance of doubt it is declared that section 36A has no application to payroll tax]

[Amended by:

1977 : 9

1977 : 35

1977 : 36

1980 : 11

1981 : 61

1981 : 73

1995 : 8

1995 : 16

1998 : 6

1999 : 18

1999 : 36

BR 81 / 1999

2001 : 22

2006 : 33]