

THE BAUXITE (PRODUCTION LEVY) ACT

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SCHEDULES

THE BAUXITE (PRODUCTION LEVY) ACT

Acts
29 of 1974,
12 of 1985
Sch.,
19 of 1998.

[1st January, 1974.]

1. This Act may be cited as the Bauxite (Production Levy) Act. Short title
- 2.—(1) In this Act unless the context otherwise requires— Interpre-
tation
- “basic rate” means the amount for the time being described in the First Schedule as the basic rate; First
Schedule.
- “bauxite producer” means a holder of a mining lease or special mining lease under the Mining Act for bauxite or laterite;
- “Commissioner of Taxpayer Appeals” means the Commissioner of Taxpayer Appeals appointed under section 11B of the Revenue Administration Act; L.N.
8B/2002.
- “current rate” means the amount for the time being described in the First Schedule as the current rate;
- “officer” means an officer of customs and excise, and includes any person who is expressly authorized by the Commissioner of Taxpayer Audit and Assessment to perform the duties of an officer of customs and excise for the purposes of this Act; 12 1985
Sch.
L.N
8B/2002
- “quarterly period” means a period of three consecutive months commencing on the 1st day of January, or the 1st day of April, or the 1st day of July, or the 1st day of October, in any year;
- “ton” in relation to bauxite or laterite means a ton by standard measure of weight provided in the Weights and Measures Act (twenty hundredweights each of 112 standard pounds weights) after deducting the moisture content of the ore.

Imposition of
production
levy.

3.—(1) Notwithstanding anything in any law, enactment or agreement, a tax to be known as a production levy shall be paid on all bauxite or laterite extracted or won in Jamaica on or after the 1st January, 1974, and accordingly nothing in any such law, enactment or agreement shall be construed as derogating from the provisions of this Act or any obligations arising thereunder, or give rise to any cause of action in respect of any act done in accordance with this Act or regulations made thereunder.

(2) The production levy shall be calculated at the current rate.

(3) The production levy payable under this Act shall be paid to such commercial bank as the Minister may approve, by the bauxite producers who extracted or won the bauxite or laterite in respect of which such levy is payable.

19/1998
S. 2.

How the
production
levy shall be
paid.
Second
Schedule.

4.—(1) For the purposes of this Act each of the bauxite producers named in the first column of the Second Schedule—

(a) shall be deemed to have extracted or won in Jamaica, during each quarterly period, not less than the number of tons of bauxite or laterite specified in respect of that bauxite producer in the second column of the said Schedule (hereinafter referred to as the “minimum tonnage”); and

19/1998
S. 3 (a).

(b) shall pay to the commercial bank approved pursuant to section 3 (3) within fifteen days after the end of each quarterly period, the sum of money arrived at by multiplying the minimum tonnage by the basic rate (hereinafter referred to as the “provisional quarterly payment) on account of

the true amount of the production levy payable by him for that quarterly period.

(2) Every bauxite producer shall, in respect of each quarterly period, make to the Commissioner of Taxpayer Audit and Assessment, in such form (if any) as may be prescribed, within thirty days after the end of that quarterly period—

12/1985
Sch.
L.N.
8B/2002.

- (a) a return in writing showing the number of tons of bauxite or laterite extracted or won in Jamaica by him;
- (b) statements of the prices (expressed in lawful currency of the United States of America) received by him or by any associate for primary aluminium, differentiating between the prices received in respect of transactions between associates and other transactions.

(3) Every bauxite producer shall, within ninety days after the end of each year, supply to the Minister such further information as may be prescribed for the purposes of determining the average realized price for primary aluminium.

(4) The Minister shall, as soon as may be practicable after the 30th day of April in each year, by order prescribe the average realized price (expressed in lawful currency of the United States of America) for primary aluminium for the last preceding year, taking into account all relevant information, including the information referred to in subsections (2) and (3).

(5) In this section “associate” means any person who controls, or is controlled by, or is under common control with, the bauxite producer in relation to whom that term is used.

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L.N
8B/2002

(6) Within thirty days after the publication in the *Gazette* of an order made under subsection (4) every bauxite producer shall prepare and submit to the Commissioner of Taxpayer Audit and Assessment a statement in the prescribed form showing an assessment of the true amount of the production levy payable by such bauxite producer for each of the quarterly periods in the last preceding year. Such true amount shall be based on the current rate.

(7) Where the total number of tons of bauxite or laterite actually extracted or won in Jamaica by any bauxite producer in any year is less than four times the minimum tonnage specified for that bauxite producer, he shall, for the purpose of determining the true amount of the production levy payable by him for that year be deemed to have actually extracted or won four times the minimum tonnage so specified.

12 1985
Sch
L.N
8B/2002

(8) The Commissioner of Taxpayer Audit and Assessment shall, on the receipt of a statement submitted to him under subsection (6), determine the true amount of the production levy payable for the last preceding year by the bauxite producer who submitted that statement.

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Sch
L.N
8B/2002

(9) Where the amount determined by the Commissioner of Taxpayer Audit and Assessment under subsection (8) is greater than the total of the provisional quarterly payments paid by the bauxite producer in respect of whom that amount was determined, the bauxite producer shall notwithstanding any notice of objection under section 10, pay the difference to the commercial bank approved pursuant to section 3 (3) within thirty days after the Commissioner of Taxpayer Audit and Assessment serves upon him a notice in writing informing him of the difference.

19 1998
S 3 (b)
L.N
8B/2002

(10) Where the amount determined by the Commissioner of Taxpayer Audit and Assessment under subsection (8) is less than the total of the provisional quarterly

L.N
8B/2002

payments paid by the bauxite producer in respect of whom that amount was determined, the Minister shall refund the difference to the bauxite producer.

19 1998
S 3 (c)

(11) Any amount required by this section to be paid by a bauxite producer may, without prejudice to any other means of recovery, be recovered by a Collector of Taxes under the Tax Collection Act.

(12) The Minister may where he is satisfied that it is necessary so to do, extend the period within which any bauxite producer is required by this section to do anything.

(13) For the purposes of this section, the true amount of the production levy is the sum of money arrived at by multiplying the number of tons of bauxite or laterite extracted or won (or deemed under subsection (7) to have been so extracted or won) by the bauxite producer during the last preceding year by the current rate.

5.—(1) The Minister may from time to time by order amend the First and Second Schedules with effect from such date (not being earlier than the 1st of January of the year preceding the year in which the order is made) as may be specified in the order.

Power to
amend First
and Second
Schedules.

(2) Any order made under subsection (1) may contain such consequential, supplementary or ancillary provisions as the Minister thinks necessary or expedient.

(3) Every order made under subsection (1) shall be subject to affirmative resolution of the House of Representatives.

6. The Minister may, upon the application of any person liable for payment of any production levy, if he is satisfied that it is just and equitable so to do, waive, remit or refund such levy in whole or in part and any such waiver, remission or refund

Power to
waive, remit
or refund
production
levy.

may be subject to such conditions as the Minister may see fit to impose:

Provided that a notice of such waiver, remission or refund shall be published in the *Gazette*.

Refund of
overpayment.
19/1998
S. 4.

7.—(1) Any amount paid as production levy under this Act which is in excess of the amount required to be paid under this Act shall be refunded by the Minister, on the production to him of such evidence as he may require as proof of such overpayment.

19/1998
S. 4.

(2) Any application for a refund under subsection (1) shall be made within two years of the date of the overpayment to which it relates or such longer period as the Minister may allow if satisfied that, in the special circumstances of the case, it was not reasonably practicable for the bauxite producer to make his application within two years as aforesaid.

Records and
returns.

8. Every bauxite producer shall—

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Sch.
L.N.
8B/2002.

(a) keep such books, records, accounts and other documents in relation to the production or disposal of bauxite or laterite by that bauxite producer as may be prescribed; and

12/1985
Sch.
L.N.
8B/2002.

(b) permit the Commissioner of Taxpayer Audit and Assessment or any officer authorized in that behalf by him to enter any premises used by that bauxite producer in connection with the production or disposal of bauxite or laterite and to inspect, and make copies of entries in, any books, records, accounts or other documents which relate or appear to relate to the business of that bauxite producer; and

(c) if required so to do by the Commissioner of Taxpayer Audit and Assessment or any officer authorized in that behalf by him, produce, at such time and place

as the Commissioner of Taxpayer Audit and Assessment or such officer may specify, any books, records, accounts or other documents relating to the business of that bauxite producer; and

12 1985
Sch
L N
8B 2002

(d) at such times and to such persons as the Commissioner of Taxpayer Audit and Assessment may specify, make such returns as may be prescribed and give such other information relating to the business of that bauxite producer as the Commissioner of Taxpayer Audit and Assessment may require.

12 1985
Sch
L N
8B 2002

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8B 2002

9.—(1) If any bauxite producer fails to submit to the Commissioner of Taxpayer Audit and Assessment the statement referred to in subsection (6) of section 4 the Commissioner of Taxpayer Audit and Assessment may assess the amount of production levy which, in the opinion of the Commissioner of Taxpayer Audit and Assessment, is payable under this Act by that bauxite producer and cause to be served on him a notice stating the amount of production levy so assessed.

Commis-
sioner of
Taxpayer
Audit and
Assessment
may assess
amount of
levy
payable
12/1985
Sch.
L.N.
8B/2002

(2) Notwithstanding any other provision of this Act, any amount assessed by the Commissioner of Taxpayer Audit and Assessment under subsection (1) shall be paid within ten days after the service of the notice referred to in that subsection.

12/1985
Sch.
L.N.
8B/2002.

(3) Where it appears to the Commissioner of Taxpayer Audit and Assessment that the amount paid by a bauxite producer or that any amount determined or assessed under this Act is less than that which ought to be paid, the Commissioner of Taxpayer Audit and Assessment may, within two years after the end of the relevant year, assess the amount which in his judgment ought to be paid.

12/1985
Sch.
L.N.
8B/2002.

L.N
8B/2002

10.—(1) If any bauxite producer disputes the amount determined under subsection (8) of section 4 or assessed under section 9 he may apply to the Commissioner of Taxpayer Audit and Assessment, by notice of objection in writing, to review

Objections

12/1985
Sch.
L.N.
8B/2002

and revise that amount. Such notice of objection shall state precisely the grounds of objection to the amount aforesaid and shall be made within thirty days from the date of service of the notice served on the bauxite producer under section 4 or 9, as the case may be

12/1985
Sch
L N
8B/2002

(2) On the receipt of a notice of objection the Commissioner of Taxpayer Audit and Assessment may require the bauxite producer by whom the notice of objection is given to furnish such particulars as the Commissioner of Taxpayer Audit and Assessment thinks necessary and to produce all books and other documents in his custody or under his control relating to the objection, and may by notice in writing summon any person whom he thinks is able to give evidence in respect thereof to attend before him, and may examine such person on oath or otherwise.

12/1985
Sch
L N
8B/2002

(3) Where any bauxite producer who has given a notice of objection subsequently agrees with the Commissioner of Taxpayer Audit and Assessment as to the amount payable by such bauxite producer, the amount referred to in subsection (1) shall, if necessary, be amended accordingly but, in the absence of such agreement, the Commissioner of Taxpayer Audit and Assessment shall give notice in writing to the bauxite producer of his decision in respect of the objection.

L N
8B/2002

Appeals
L N
8B/2002.

11.—(1) Any bauxite producer (hereinafter in this section called the “objector”) who is dissatisfied with the decision of the Commissioner of Taxpayer Audit and Assessment therein, may appeal to the Commissioner of Taxpayer Appeals within thirty days of the date of receiving the decision:

Provided that the Commissioner of Taxpayer Appeals upon being satisfied that owing to absence from the Island, sickness or other reasonable cause, the person disputing the assessment was prevented from making the application within such period, shall extend the period as may be reasonable in the circumstances.

(2) Upon an appeal under subsection (1) the Commissioner of Taxpayer Appeals may confirm, reduce the amount under or vacate the decision complained of.

L. N.
8B/2002

(3) An objector who is dissatisfied with the decision of the Commissioner of Taxpayer Appeals may appeal to the Revenue Court within thirty days of the date of receiving that decision or within such longer period as may be permitted by or pursuant to rules of court.

L. N.
8B/2002

(4) An appeal to the Revenue Court shall be limited to the grounds stated in the notice of objection but the Revenue Court may in its discretion permit the grounds of appeal to be amended.

L. N.
8B/2002.

(5) The onus of proving that the amount complained of is erroneous shall be on the objector.

12.—(1) There is hereby established a fund, to be called the Capital Development Fund (in this section referred to as “the Fund”).

The Capital
Develop-
ment Fund

(2) Subject to the provisions of this Act any moneys and securities forming part of the Fund shall be held by the commercial bank approved pursuant to section 3 (3).

19/1998
S. 5.

(3) All sums received as payment of production levy under this Act and all other income from the assets of the Fund shall be paid into the Fund.

(4) Any moneys and investments forming part of the Fund may from time to time be invested or realized, as the case may be, in accordance with the directions of the Minister.

(5) The Minister may from time to time by order direct that such sum as shall be specified in the order shall be drawn from the Fund for such purposes and subject to such conditions as shall be so specified.

(6) Every order made under subsection (5) shall be subject to affirmative resolution of the House of Representatives.

(7) Accounts of the Fund shall be prepared in such form and manner and at such times as the Minister may direct and shall be audited by the Auditor-General, who shall report thereon to the House of Representatives.

(8) The Minister shall, not later than 31st March in each year, cause a report on the operations of the Fund in respect of the last preceding year to be laid on the Table of the House of Representatives.

Offences.

13.—(1) Any person who—

- (a) fails to pay any production levy payable by him under this Act; or
- (b) in connection with any production levy payable by him under this Act makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular, or, with intent to deceive, produces or makes use of any book, record, account, return or other document which is false in a material particular; or
- (c) extracts, wins or exports any bauxite or laterite, or any alumina made therefrom, in contravention of any regulations made under this Act; or
- (d) is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion, by him or any other person, of any production levy payable under this Act,

shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars or treble the amount of the levy which is unpaid or in respect of which payment is sought to be evaded, as the case may be, at the election of the Commissioner of Taxpayer Audit and Assessment, and in default of payment to imprisonment for a term not exceeding five years.

12/1985
Sch.
L. N.
8B/2002.

(2) Any person who contravenes any of the provisions of section 8 shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars and in default of payment to imprisonment for a term not exceeding three years.

(3) Any person who without lawful excuse refuses or neglects to attend or to give evidence in pursuance of notice served on him under subsection (2) of section 10 or to produce any books or documents which he is required to produce under the said subsection, or who refuses to answer any lawful question touching the matters under consideration, or who knowingly or wilfully gives any false evidence before the Commissioner of Taxpayer Audit and Assessment, shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding twenty thousand dollars and in default of payment to imprisonment for a term not exceeding two years.

12/1985
Sch.
L.N.
8B/2002.

14. The Manager or other principal officer in Jamaica of any corporation, society, association, partnership or other body of persons shall be answerable for doing all such acts, matters and things as shall be required by or under this Act to be done by such corporation, society, association, partnership or body.

Manager,
etc. of
corporation
answerable

15.—(1) The Minister may make regulations generally for the proper carrying out of the provisions and purposes of this Act and in particular, but without prejudice to the generality of the foregoing, may make regulations—

Regulations.

- (a) restricting or prohibiting the extracting, winning, disposal or exporting of bauxite or laterite, or any alumina made therefrom, by any bauxite producer who is in default with his payment of any production levy or part thereof;
- (b) providing for the entry of officers on premises on or from which bauxite or laterite is extracted or won, stored, processed or transported and for the powers and duties of such officers;

- (c) as to the administration and management of the Capital Development Fund;
- (d) providing for the manner in which the amount of bauxite or laterite extracted or won in Jamaica by bauxite producers is to be ascertained;
- (e) prescribing any matter or anything which may be, or is required by this Act to be, prescribed.

(2) Regulations made under this section may provide that those regulations shall come into force on such date, which may be earlier than the date of publication of those regulations in the *Gazette* but shall not be earlier than the 1st day of January, 1974, as shall be specified in those regulations.