ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER I13

INLAND REVENUE DEPARTMENT ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 6/2010, in force 1 November 2010
Act 4/2013, in force 25 September 2013
Act 10/2015, in force 31 December 2015
Act 8/2018, in force 8 August 2018
Act 8/2019, in force 7 September 2020
Act 12/2021, in force 27 April 2021

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INLAND REVENUE ACT

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INLAND REVENUE ACT

PART 1
PRELIMINARY

Interpretation

1. (1) In this Act—

"Act" includes a provision of an Act and a regulation or provision of a regulation under this Act;

"certificate of good standing" means a certificate of good standing provided for under the regulations;

"compliance officer" means a person designated as such under section 7;

"Comptroller" means the Comptroller of Inland Revenue and includes any person acting as, or, to the extent of his or her authority, performing the functions of, the Comptroller;

"Court" means the High Court;

"Department" means the Inland Revenue Department continued under section 4;

"Deputy Comptroller" means the Deputy Comptroller of Inland Revenue and includes any person acting as, or, to the extent of his or her authority, performing the functions of, the Deputy Comptroller;

"designated tax Act" means one of the following Acts—

(a) the Accommodation Tax Act[*];

(b) the Airline Ticket Tax Act[†];

(c) the Communication Levy Act[‡];

(d) the Environmental Levy on Electricity Act;

(e) the Resort Residence Annual Levy Act;
(Act 12/2021, s. 20(a))

(f) the Tourism Levy Act[§];

"documents" include books, records, letters, vouchers, invoices, accounts and statements, financial or otherwise, whether computerized or not, and also money, cheques and securities;

"Minister" means the minister with responsibility for finance;

[*] Goods and Services Tax Act, 2021 (Act 18/2021) *repealed* the Accommodation Tax Act, R.S.A. c. A17.
[†] Airline Ticket Tax (Repeal) Act, 2020 (Act 17/2020) *repealed* the Airline Ticket Tax Act, R.S.A. c. A53.
[‡] Goods and Services Tax Act, 2021 (Act 18/2021) *repealed* the Communication Levy Act, R.S.A. c. C62.
[§] Tourism Levy (Repeal) Act, 2019 (Act 14/2019) *repealed* the Tourism Levy Act, R.S.A. c. T17.

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"Permanent Secretary" means the permanent secretary with responsibility for finance;

"prescribed" means prescribed by regulation under section 75;
(Am. in L.R. 15/12/2010)

"relevant tax legislation" means a tax Act and includes regulations made under a tax Act;
(Act 8/2018, s. 3)

"responsible representative" has the meaning given in section 35;
(Act 8/2018, s. 3)

"tax" means a tax, levy or duty;

"tax Act" means one of the following Acts—

(a) the Accommodation Tax Act[**];

(b) the Airline Ticket Tax Act[††];

(c) the Communication Levy Act[‡‡];

(d) the Embarkation Tax Act[§§];

(e) the Environmental Levy on Electricity Act;

(f) the Licensed Financial Institutions Levy Act;

(g) the Property Tax Act;
(Act 10/2015, s. 85(a))

(h) the Public Entertainments Tax Act;

(i) the Public Lotteries Tax Act;

(j) the Resort Residence Annual Levy Act;
(Act 20/2021, s. 20(b))

(k) the Stamp Act;

(l) the Tourism Levy Act[***].

(2) Section 6(d) of the Interpretation and General Clauses Act (computing time within a time not exceeding 6 days) does not apply to computing time under this Act.

[**] Goods and Services Tax Act, 2021 (Act 18/2021) *repealed* the Accommodation Tax Act, R.S.A. c. A17.
[††] Airline Ticket Tax (Repeal) Act, 2020 (Act 17/2020) *repealed* the Airline Ticket Tax Act, R.S.A. c. A53.
[‡‡] Goods and Services Tax Act, 2021 (Act 18/2021) *repealed* the Communication Levy Act, R.S.A. c. C62.
[§§] Embarkation Tax (Repeal) Act, 2020 (Act 16/2020) *repealed* the Embarkation Tax Act, R.S.A. c. E40.
[***] Tourism Levy (Repeal) Act, 2019 (Act 14/2019) *repealed* the Tourism Levy Act, R.S.A. c. T17.

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(3) The provisions of this Act relating to a designated tax or a designated tax Act shall be read together with the provisions of the designated tax Act as if they constituted a single Act and, unless the contrary intention appears, when a provision of this Act refers to liability of a person under a designated tax Act to pay an amount of tax and—

(a) the designated tax Act provides for tax to be collected from a person and paid by the collector to the Comptroller, the provision of this Act shall be interpreted as a reference to tax collected or deemed to be collected by the collector;

(b) a designated tax Act provides—

(i) for a tax to be collected from a person and paid by the collector to the Comptroller, and

(ii) for another tax to be imposed on the person who collects tax under subparagraph (i) but in the person's own right and paid to the Comptroller,

the provision of this Act shall be interpreted as a reference to both the tax collected or deemed to be collected by the collector and to the tax imposed on the person who collects tax under subparagraph (i) but in his or her own right.

(4) The Comptroller may exercise a power or perform a duty even if it has been delegated to another person.

(5) Unless the contrary intention appears, when a written notice or document is to be served by a person under this Act, it shall be served by that person in accordance with section 73.

Application of Act

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

(a) the taxes imposed under the tax Acts; and

(b) a tax under another Act if responsibility for the general administration of the tax is assigned to the Comptroller.

(2) This Act does not apply to—

(a) fees, interest, penalties or other charges that under the Financial Services Commission Act or any other enactment are to be collected by the Financial Services Commission;

(b) fees and other charges that are collected by the Registrar of Companies;

(c) customs duties, interest, penalties or other charges that are to be collected by the Comptroller of Customs under the Customs Act, Customs Administrative Costs Recovery Act or any other Act under which the Comptroller of Customs is responsible for the collection of customs duties, interest, penalties or other charges;

(d) the collection of fines, penalties and other amounts, other than fixed or administrative penalties, imposed for criminal offences;

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(e) the proceeds of the sale of property that is forfeited to the Crown in connection with criminal matters or that otherwise becomes the property of the Crown; or

(f) the collection of other prescribed amounts.

(Act 8/2018, s. 4)

Interpretation of a tax Act

3. (1) The following are considered to be part of a tax Act—

(a) the headings of the sections, Parts, Divisions, and Subdivisions into which the Act is divided; and

(b) any Schedule to the Act.

(2) In interpreting a provision of a tax Act, a construction that would promote the purpose or object underlying the provision or the Act (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 (4), in interpreting a provision of a tax Act, 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, 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), material that may be considered in interpreting a provision of a tax Act includes—

(a) all matters not forming part of the Act that are set out in the document containing the text of the Act;

(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 the House of the Assembly, by a Minister, before the time when the provision was enacted;

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(d) the speech made to the House of Assembly 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; and

(e) any relevant material in any official record of proceedings of debates in the House of Assembly.

(Act 8/2018, s. 5)

PART 2

ADMINISTRATION

Continuation of IRD

4. The Inland Revenue Department is continued.

Appointment of Comptroller of Inland Revenue and staff

5. There shall be appointed a Comptroller of Inland Revenue, who shall be head of the Department, a Deputy Comptroller of Inland Revenue and such staff as are necessary for the due administration of the Department.

Comptroller's powers and duties

6. (1) Under the direction and supervision of the Minister and the Permanent Secretary, the Comptroller shall—

(a) administer the Inland Revenue Department;

(b) subject to subsection (2), administer and enforce this Act, the tax Acts and any other Act the administration or enforcement of which is expressly assigned to the Comptroller;

(c) collect fees, charges, penalties (other than fixed or administrative penalties) and related amounts imposed by or under the provisions of an Act, the collection of which is expressly assigned to the Comptroller by or under that Act;

(d) collect fees, charges, penalties and related amounts, not being assigned for collection to any other public officer, which are assigned to the Comptroller by written directive of the Minister;

(e) collect rent, royalties and other similar revenue from Crown land or from the grant of concessions, domain names and other similar rights;

(f) take steps, including commencing proceedings in the Magistrate's Court or the High Court, to recover revenue of a type or from a source referred to in paragraph (b), (c), (d) or (e);

(g) collect fixed or administrative penalties;

(h) take steps to initiate prosecutions under any Act, the enforcement of which is expressly assigned to the Comptroller;

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(i) account without delay for revenue received; and

(j) exercise any powers or perform any duties assigned to the Comptroller by regulation or by written directive of the Minister in relation to revenue matters.

(2) Under the direction and supervision of the Comptroller, the collection of stamp duties in relation to alien land holding licences under the Aliens Land Holding Regulation Act and in relation to the registration of instruments under the Registered Land Act is assigned to the Director of Lands and Surveys.

(3) The Comptroller may—

(a) on behalf of any public officer who has responsibility for the collection of an amount of money owing to the Crown of a type or from a source not referred to in paragraph (1)(b), (c), (d) or (e) undertake the recovery of that money; and

(b) when he or she does so, exercise, subject to the approval of the public officer, the powers referred to in paragraph (1)(f) or (g) in relation to the recovery of that money.

(4) The Commissioner of Inland Revenue shall assist the Court in the enforcement of Maintenance Orders and in this regard the Commissioner shall withhold a Certificate of Good Standing, licence, permit or benefit issued or offered by Government in accordance with the instructions of the Court.

(Act 8/2019, s. 56(3))

Designation of compliance officers

7. (1) The Minister may designate any person or class of persons as compliance officers for the purposes of this Act and any designated tax Act.

(2) The Minister may not designate a public officer in a department for which another minister is responsible unless that other minister and the head of the department agree to the designation.

(3) The Comptroller and Deputy Comptroller are *ex officio* compliance officers for the purposes of this Act.

(4) For the purposes of this Act, a person designated as a compliance officer may exercise all the powers and perform all the duties of a compliance officer under this Act unless the Minister specifies limits on those powers or duties when designating any person or class of persons to act as compliance officers.

Identification card

8. (1) The Minister shall furnish the Comptroller, Deputy Comptroller and each person designated as a compliance officer with an identification card and, on entering any place in the exercise of his or her powers or performance of his or her duties under this Act, the compliance officer shall, on request, produce the identification card and identify and explain the nature of the powers or duties the compliance officer wishes to exercise or perform.

(2) The identification card remains the property of the Government.

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(3) A person to whom an identification card is furnished shall return it to the Minister without delay upon request.

Delegation of Comptroller's powers and duties

9. (1) The Comptroller may delegate any of the powers or duties assigned to him or her under this or any other Act to any public officer who reports to the Comptroller and may make the delegation subject to conditions and limitations.

(2) Subject to subsection (3), the Comptroller may in writing delegate any of the powers or duties assigned to him or her under this or any other Act to a public officer outside the Department and may make the delegation subject to terms and conditions or limitations.

(3) Before making a delegation under subsection (2), the Comptroller shall obtain the consent of the minister responsible for the department and the head of the department in which the public officer is employed.

PART 3

GENERAL PROVISIONS

Confidentiality

10. (1) Except as provided in subsection (3), (4), (5) or (7), 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 Department 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;

(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 investigation or prosecution of an offence; and

(f) a court, in a proceeding to establish a taxpayer's tax liability or responsibility for an offence.

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

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

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(4) The Comptroller 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.

(6) The obligation as to secrecy imposed by this section continues to apply in respect of any person, notwithstanding cessation of the person's employment or appointment.

(7) The Comptroller may publish a list of the names of taxpayers—

(a) who are in default under section 40;

(b) who have failed to file a return as required; or

(c) on whom a penalty has been imposed under relevant tax legislation.

(Act 8/2018, s. 6)

Taxpayer Identification Numbers

11. (1) The Comptroller must assign a unique Taxpayer Identification Number ("TIN") to every taxpayer.

(2) The TIN is to be used for all taxes to which this Act applies.

(3) The Comptroller may assign a TIN to a person who is not a taxpayer, but who requires a TIN for tax administration purposes.

(4) To the extent provided by the regulations, a person is required to include the person's TIN on documents relating to a tax to which this Act applies.

(5) Regulations may require a person to furnish the person's TIN to an information provider, namely someone who is required by regulations to furnish tax information to the Comptroller with respect to the person furnishing the TIN.

(6) The Comptroller must include the TIN on all correspondence sent to a taxpayer concerning the taxpayer's tax liability, and the taxpayer must include the number on returns and correspondence with the Comptroller.

(7) A taxpayer must notify the Comptroller in writing of a change in the name (including business name or other trading name), address, place of business, or the nature of the taxable activity carried on.

(Act 8/2018, s. 6)

Registration

12. (1) Every person liable to furnish a return under an Act to which this Act applies, and who is not already registered, is required to register with the Comptroller no later than 30 days after the commencement of activity that will give rise to that liability.

(Act 8/2018, s. 2)

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(2) A person registering under this section is required to submit the application for registration in the form and manner prescribed by the Comptroller and to provide such information to the Comptroller as the Comptroller may require to give effect to such registration.

(3) The Minister may by regulations prescribe additional classes of persons required to register under this section.

(4) The Comptroller may register any person whom the Comptroller considers to appear to meet the requirements for registration and assign the person a TIN.

(Act 8/2018, s. 6)

Public rulings

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

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

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

(Act 8/2018, s. 6)

Advance rulings

14. (1) A taxpayer may make a request to the Comptroller for an advance ruling regarding the application of tax legislation to a specific transaction proposed by the taxpayer.

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

(3) 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.

(4) If the Comptroller proposes to issue a ruling where the tax treatment differs from that proposed by the taxpayer in its application, the Comptroller must notify the taxpayer and give the taxpayer an opportunity to withdraw the ruling request.

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

(6) 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.

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

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(8) The Comptroller shall 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.

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

(Act 8/2018, s. 6)

Other statements

15. With the exception of a ruling issued under section 14 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.

(Act 8/2018, s. 6)

Forms and notices

16. (1) Forms, notices, declarations, statements, tables and other documents prescribed or published by the Department may be in the form the Comptroller 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, or by mail or electronically, as it may determine.

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

(Act 8/2018, s. 6)

Defect does not affect validity

17. 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 prescribed by law if the taxpayer had effective knowledge of the fact of the notice and of its content.

(Act 8/2018, s. 6)

Taxpayer's right to information

18. Upon request by a taxpayer, the Department shall—

(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 on file with the Department.

(Act 8/2018, s. 6)

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PART 4

RECORDS, RETURNS AND ASSESSMENTS

Accounts and records

19. (1) A taxpayer engaged in business or independent professional activity or required to make a return under tax legislation is required to keep and maintain in Anguilla 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) Where the Comptroller is of the opinion that records or books of account are not being kept in accordance with subsection (1), or where no records or books of account are being kept, by any person carrying on business then, in addition to prosecution for an offence, the Comptroller may direct such person to keep such records or books of account as the Comptroller may specify.

(3) The records or books of account required by this section must be kept at the place of business of the person carrying on business unless the Comptroller approves of them being kept at some other place.

(4) 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.

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

(a) for a period of 7 years from the date on which the transaction took place; or

(b) until expiration of the time limit for assessment of tax for any tax period to which the records are relevant.

(6) 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 Comptroller.

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

(8) For the purposes of this section, source documents and underlying documentation include 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.

(Act 8/2018, s. 6)

Obligations of financial institutions

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

(Act 8/2018, s. 6)

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Tax returns

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

(2) The Comptroller shall specify—

(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 for a tax period no later than 6 years after the end of the tax period.

(4) A taxpayer, or the taxpayer's duly authorised agent, must sign the return, attesting to its accuracy and completeness.

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

(6) The Comptroller 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 Comptroller requires, even if the taxpayer has not submitted a return for the period.

(Act 8/2018, s. 6)

Notice to require filing

22. (1) Where it appears to the Comptroller that any person is or may be liable to furnish a return and has not done so, the Comptroller may, by notice in writing, require such person to furnish a return within such time as may be specified in the notice, not being less than 7 days from the date of service of such notice.

(2) Nothing in this section extends the time limits provided by the relevant tax legislation for the furnishing of a return.

(Act 8/2018, s. 6)

Return deemed to be furnished by due authority

23. Every return, statement, or form purporting to be furnished under this Act by or on behalf of any person is deemed to have been furnished by that person or with the person's authority, as the case may be, unless the contrary is proved, and any person signing such return, statement, or form is deemed to be cognisant of all matters contained therein.

(Act 8/2018, s. 6)

Extension of time to file returns

24. (1) The Comptroller 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.

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(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.

(Act 8/2018, s. 6)

Assessments

25. (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 Act to which this Act applies.

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

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

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

(5) If the relevant tax legislation 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 Comptroller had made an assessment in that amount, but does not prevent the Comptroller from issuing a new or revised assessment.

(Act 8/2018, s. 6)

New or revised assessment

26. (1) The Comptroller may make a new assessment, or may revise an assessment previously made, if the Comptroller 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 Comptroller may use his best judgement and information reasonably available in making a new or revised assessment.

(3) If a taxpayer files an amended return under section 21(3), the Comptroller must revise the original assessment if satisfied that the original assessment was based on incorrect information.

(Act 8/2018, s. 6)

Notice of assessment

27. When an assessment is made under section 25(2) or (3) or under section 26, the Comptroller must issue a notice of assessment, to be served on the person assessed, which must be signed by an authorised 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;

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(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, or manner in which, payment is to be made;

(h) a summary statement of the reasons why the Comptroller made the assessment and the manner in which the assessment is calculated;

(i) the time, place, and manner of objecting to the assessment; and

(j) other information, at the discretion of the Comptroller.

(2) The original or a certified copy of a notice of assessment is receivable in proceedings as conclusive evidence that the assessment has been duly made and, except in proceedings in relation to the assessment under Part 8, that the amount and all particulars of the assessment are correct.

(Act 8/2018, s. 6)

Anti-avoidance

28. (1) In making an assessment, the Comptroller 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.

(2) In making an assessment, the Comptroller may adjust transactions between related persons to the terms that would have obtained if the transaction had taken place between unrelated persons at arm's length.

(3) If the Comptroller is satisfied that a scheme has been entered into or carried out and—

(a) a person has obtained a tax benefit in connection with the scheme in a manner that constitutes a misuse or abuse of the provisions of a tax Act; and

(b) having regard to the substance of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme, did so for the sole or dominant purpose of enabling the person to obtain the tax benefit;

the Comptroller may, in making an assessment, determine the liability of the person who has obtained the tax benefit as if the scheme had not been entered into or carried out, or in such manner as the Comptroller considers appropriate for the prevention or reduction of the tax benefit.

(4) For the purposes of determining a person's liability under subsection (3), and for the purposes of ensuring the prevention or reduction of the tax benefit, the Comptroller may do any of the following—

(a) treat a particular event that actually happened as not having happened;

(b) treat a particular event that did not actually happen as having happened and, if appropriate, treat the event as—

(i) having happened at a particular time, and

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(ii) having involved particular action by a particular person;

(c) treat a particular event that actually happened as—

(i) having happened at a time different from the time it actually happened, or

(ii) having involved particular action by a particular person (whether or not the event actually involved any action by that person).

(5) In this section—

"scheme" includes a course of action and an agreement, arrangement, promise, plan, proposal, or undertaking, whether expressed or implied and whether or not legally enforceable; and

"tax benefit" includes a reduction or deferral in the liability of a person to pay tax, or an increase in the entitlement of a person to a refund.

(Act 8/2018, s. 6)

Liability of taxpayer and due date

29. (1) Tax is due and payable at the time provided by the relevant tax legislation.

(2) Subject to subsection (1), the amount of tax—

(a) stated in a notice of assessment to be due; or

(b) deemed to be assessed under section 25(5);

is due and payable on the date stated in the notice or, in the case described in paragraph (b), on the due date for the return in question.

(3) Tax must be paid in the manner and place prescribed by the Comptroller.

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

(Act 8/2018, s. 6)

PART 5

PAYMENT OF TAX AND OTHER REVENUE

Application of tax payment

30. (1) A payment in relation to a tax under an Act to which this Act applies shall be applied by the Comptroller in the following order—

(a) to interest owing;

(b) to penalties owing;

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(c) to arrears of tax;

(d) to tax payable.

(2) If a payment made by a person is intended to be applied to tax under an Act to which this Act applies but the person does not specify which tax, the Comptroller may apply the payment to the tax that the Comptroller considers appropriate.

(Act 8/2018, s. 2)

Interest on arrears of tax

31. (1) Interest is payable on arrears of tax under an Act to which this Act applies at the rate established under section 21 of the Financial Administration and Audit Act from the date the amount is due until the date the amount is received by the Comptroller.

(2) Notwithstanding the interest rate specified in section 6 of the Judgments Act, a judgment debt for tax under an Act to which this Act applies shall carry interest at the rate referred to in subsection (1).

(3) Procedures for the payment, collection and dispute of a tax apply equally to interest relating to a tax.

(4) Liability for interest under this Act is calculated separately and is in addition to penalties provided by law.

(5) If a person has paid interest under this Act and an amount to which the interest relates is found not to have been payable, the interest paid on that amount must be refunded to the person.

(Act 8/2018, s.2 and s. 7)

Interest on refundable amounts

32. (1) If the Comptroller is required to refund an amount under section 38(2), interest must be paid to the taxpayer from the later of—

(a) the due date; or

(b) the date the tax was paid;

until the date on which the refundable amount is paid.

(2) Notwithstanding subsection (1), no interest is payable in respect of a refund that is based on a claim for refund and is paid to the taxpayer within 60 days of the filing of the claim for refund.

(3) A refundable amount that is applied against another tax liability under section 38(1) is considered to have been paid to the taxpayer on the due date of the liability against which the refundable amount was applied.

(Act 8/2018, s. 8)

Waiver of interest or penalty

33. (1) In this section, "waiver committee" means the waiver committee established by the regulations.

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(2) Notwithstanding section 16 of the Financial Administration and Audit Act, but subject to subsection (3), the Comptroller may, with the approval of the waiver committee, waive the imposition of, or liability for, any interest or penalty or any part of interest or a penalty.

(3) A waiver by the Comptroller in relation to the interest or a penalty or any part of interest or a penalty under any one tax Act shall not, in relation to any person in any calendar year, exceed $1,000 or such other amount as may be prescribed for the purpose of this subsection.

(4) The waiver committee may, to the extent that it is satisfied that the circumstances that gave rise to interest or a penalty were beyond the control of the person owing the interest or penalty under an Act to which this Act applies, or were the responsibility of the Department, approve the waiver by the Comptroller of the imposition of, or liability for, any interest or penalty or any part of interest or a penalty.

(Act 8/2018, s. 2)

(5) Section 19 of the Financial Administration and Audit Act applies to a waiver of the imposition of, or liability for, any interest or penalty or any part of interest or a penalty imposed or payable under a designated tax Act as it applies to remissions under section 16 of that Act.

Agreements and security for payment of arrears of tax or other revenue

34. (1) Subsection (2) does not apply to payment of a fee for an application for or issue or grant of a licence, registration, permit or other service of the Crown.

(2) The Comptroller may, with the written authorisation of the Minister, enter into agreements in writing in relation to the orderly payment by a person of arrears of tax and any interest or penalty thereon or of other amount payable to or to be collected by the Comptroller and, if the Comptroller considers it advisable in a particular case, require security for payment of the amount, or part of the amounts.

(3) The authorisation of the Minister under subsection (2) may be specific or may apply to payments generally or to a class of payments.

(4) Subject to the regulations, the Comptroller may accept security for an amount referred to in subsection (2) on any kind of property and in any form approved by the Comptroller from the person liable for the amount or from any other person.

(5) If a person who has furnished security under subsection (4) requests in writing that the Comptroller surrender the security, the Comptroller shall surrender the security to the extent that, in the Comptroller's opinion, the value of the security exceeds the amount payable in relation to which the security was given by that person at the time the request was made.

Liability and obligations of responsible representatives

35. (1) For the purposes of this Act, subject to subsection (2), "responsible 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;

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(b) subject to subsection (4), if the person is a company, a principal officer of the company or an agent described in subsection (4);

(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 monies or funds on behalf of the body;

(f) if the person is the Government of Anguilla, an individual responsible for accounting for the receipt and payment of monies or funds on behalf of the Government;

(g) 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 Anguilla on behalf of the government or political subdivision of the government; or

(h) if the person is a non-resident, a person controlling the person's affairs in Anguilla, including a manager of a business of that person in Anguilla.

(2) Where, in relation to a person, there is more than one representative described in subsection (1), then the person must designate which of these serves as the representative, but in the absence of a designation all serve as representatives pending the designation.

(3) The designation under subsection (2) must be of a person residing in Anguilla, unless there are none in relation to the person.

(4) Every company carrying on business in Anguilla must be represented for the purposes of this Act by a principal officer residing in Anguilla and if there are none, by an authorised agent residing in Anguilla, and must notify the Comptroller of its appointed representative within one month after it commences carrying on business in Anguilla, or one month after the designated representative ceases to qualify as such.

(5) If a representative of a person designated under subsection (1) is unable to perform duties, the Comptroller may, by notice in writing, declare another individual to be a representative of the person for the purposes of this Act.

(6) Every responsible representative of a person is responsible for performing duties or obligations imposed by this Act on the person, including maintaining records, filing returns and other documents, and the payment of tax.

(7) Subject to subsection (9), tax that, by virtue of subsection (6) is payable by a responsible representative of a person, is recoverable from the responsible representative only to the extent of any assets of the person that are in the possession or under the control of the responsible representative.

(8) A responsible 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 monies of the person that are in the responsible representative's possession or under the responsible representative's control.

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(9) A responsible representative is personally liable for the payment of tax due by the representative in a representative capacity if, while the amount remains unpaid, the responsible 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 monies or funds belonging to the taxpayer that are in the possession of the responsible representative or which come to the responsible representative after the tax is payable, if the tax could legally have been paid from or out of the monies or funds.

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

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

(12) 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;

(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.

(13) 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.

(14) 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.

(15) For the purposes of the tax legislation, 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.

(Act 8/2018, s. 9)

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Officers of unincorporated bodies

36. (1) A liability or obligation imposed by tax legislation on an unincorporated body is imposed on the body and on any person who is an officer of the body at the time the liability or obligation is imposed, and the body and each such officer are jointly and severally liable for that liability or obligation.

(2) For the purposes of the tax legislation, the existence of an unincorporated body and any taxable activity carried on by the unincorporated body are deemed not to be affected by any change in its members or officers.

(3) A document which is required to be served on an unincorporated body under the tax legislation may be served on an officer of the body.

(4) An offence under the tax legislation committed by an unincorporated body is also taken to have been committed by the officers of the unincorporated body.

(Act 8/2018, s. 9)

Liability for tax following winding-up

37. (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 or during the preceding year is jointly and severally liable 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) 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.

(Act 8/2018, s. 9)

Refundable amounts

38. (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 Comptroller must—

(a) apply the refundable amount against the taxpayer's assessed liability to pay tax, interest, late fees, or penalties to which this Act applies; 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 6 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 6 years of the date of payment or, if made on the Comptroller's initiative, within this time period.

(Act 8/2018, s. 9)

Extension of time for payment

39. (1) The taxpayer may apply, on a form prescribed by the Comptroller, for an extension of the time for payment of tax beyond the date on which it is required to be paid under section 29.

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(2) The Comptroller may, with good cause—

(a) extend the time for payment as requested under subsection (1);

(b) grant an extension period different from the period requested by the taxpayer; and

(c) make other arrangements to ensure payment of the tax, including arrangements requiring the person to pay the amount due in instalments.

(3) If the Comptroller does not notify the person who made an application under subsection (1) of the decision in writing within 30 days, the application is granted.

(4) If a taxpayer has been granted an extension under subsection (1), interest is payable under section 31 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.

(Act 8/2018, s. 9)

Default in payment

40. (1) The Comptroller 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 21 days after service of the notice, the Comptroller has the right to pursue collection action to collect the amounts specified in the notice.

(3) The taxpayer is in default 21 days after service of the notice, in respect of any amounts remaining unpaid as of that date.

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

(a) entered into a payment arrangement with the Comptroller pursuant to the applicable tax legislation; or

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(b) received an extension pursuant to section 39;

and has remained in compliance with the terms of the arrangement or extension.
(Act 8/2018, s. 9)

PART 6

RECOVERY OF TAX AND OTHER REVENUE

Recovery of tax in general

41. The Comptroller may proceed with any remedy under this Part once the taxpayer is determined to be in default pursuant to section 40.
(Act 8/2018, s. 10)

Responsible representative personally liable for distribution made without certificate of good standing

42. (1) When at any time a person is a responsible representative of a person liable to pay an amount owing to the Crown or a government agency prescribed for the purposes of the regulations respecting certificates of good standing the responsible representative is jointly and severally liable with the person—

(a) to pay the amount that is payable by the person at or before that time and that remains unpaid, to the extent that the responsible representative is at that time in possession or control, in the capacity of responsible representative, of property that belongs or belonged to, or that is or was held for the benefit of, the person liable to pay the amount; and

(b) to perform any obligation or duty imposed on that person at or before that time and that remains outstanding, to the extent that the obligation or duty can reasonably be considered to relate to the responsibilities of the responsible representative acting in that capacity.

(2) If a responsible representative distributes property over which he or she has control in the capacity of responsible representative without obtaining a certificate of good standing, the responsible representative is personally liable for the payment of the amount to the extent of the value of the property distributed.

(3) For the purpose of subsection (2), an appropriation by a responsible representative of the property of the person liable to pay the amount that is in the possession or control of the responsible representative acting in that capacity is deemed to be a distribution of the property.

Tax, interest and penalties recoverable as a civil debt

43. (1) The amount of tax, interest or penalty payable under an Act to which this Act applies is recoverable by the Crown as a civil debt.
(Act 8/2018, s. 2)

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

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(3) In any proceedings under this section, the production of a certificate signed by the Comptroller, 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.

(4) In any proceedings for the recovery of tax it is not competent for the defendant to enter a defence that—

(a) the chargeable income or other tax base is incorrect;

(b) the tax charged is excessive; or

(c) the assessment is the subject of objection or appeal.

(Act 8/2018, s. 11)

Period of limitations for collection

44. (1) Proceedings under this Part must be commenced within 6 years of the date on which the taxpayer was determined to be in default pursuant to section 40.

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

(Act 8/2018, s. 12)

Lien

45. (1) If a taxpayer fails to pay a tax by the due date, a lien in favour of the Comptroller is created in the amount owing (together with interest, penalty, 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 lien imposed by this section is not valid against the interest of a person who is a purchaser from the taxpayer or a holder of a security interest granted by the taxpayer, 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 and the Registrar of Lands;

whichever first occurs.

(4) The Comptroller may file notice of a lien at any time after a taxpayer is determined to be in default pursuant to section 40.

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

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(6) The Comptroller must send notice of the intention to register the lien to the taxpayer at least 15 days prior to registering a lien with the Registrar of the High Court and the Registrar of Lands.

(7) Subsection (6) does not apply if the Comptroller believes that the ability to collect tax is in jeopardy.

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

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

(Act 8/2018, s. 12)

Withholding held in trust

46. Notwithstanding anything contained in any other enactment, all of tax amounts deducted or withheld by any person are deemed to be held in trust by that person for the Comptroller and are not subject to attachment in respect of any debt or liability of that person, and in the event of any liquidation, assignment or bankruptcy, the amounts do not form part of the estate in liquidation, assignment, or bankruptcy but must be paid in full to the Comptroller before any distribution of the property is made.

(Act 8/2018, s. 12)

Offset against payments

47. When the Accountant General is about to make a payment to any person, other than a payment in respect of wages or salary, the Accountant General may apply the whole or part of that payment in satisfaction in whole or in part to any amount in respect of which that person is in default under section 40 and must notify that person accordingly.

(Act 8/2018, s. 12)

Non-arm's length transferees

48. (1) If a taxpayer's liability has not been satisfied after levy of execution on property known to the Comptroller, a person who has received assets of the taxpayer in a transaction that is not at arm's length 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 37.

(Act 8/2018, s. 12)

Receivers

49. (1) A receiver is required to notify the Comptroller of the receiver's appointment within 14 days after being appointed.

(2) The Comptroller may notify the receiver of the amount that appears to the Comptroller 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 Anguilla held in the receiver's capacity as receiver, without the prior permission of the Comptroller.

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

(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 Anguilla, 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.

(Act 8/2018, s. 12)

Deposit of tax in bank account in trust for Comptroller

50. (1) Notwithstanding section 12 of the Financial Administration and Audit Act, or any provision of a designated tax Act in relation to remittance of a designated tax by a specified date, the Comptroller may serve written notice on a person liable to pay tax under a designated tax Act requiring the person, until further notice, to deposit, at such intervals as are specified in the notice commencing on the following business day, all amounts owing from time to time as tax into a trust account in the name of the Comptroller at a bank licenced under the Banking Act[†††] specified in the notice by the Comptroller.

(2) A notice may be amended, revoked or revoked and replaced in writing by the Comptroller.

(3) A notice of amendment, revocation or revocation and replacement referred to in subsection (2) shall be effective on the day specified in the notice, which shall not be earlier than the day following the day on which the notice is served.

(4) A person on whom a notice under subsection (1) or (3) is served who fails to comply with the notice is guilty of an offence and is liable on summary conviction to a fine of $2,000 and commits an offence for each day that he or she fails to comply with the notice.

(5) The Comptroller shall without delay serve or cause to be served a copy of each notice referred to in subsection (1) or (2) on the Accountant General.

[†††] Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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Certificate of amount not paid may be filed in Court as judgment

51. (1) When an amount of tax, interest or penalty that is payable under a designated tax Act has not been paid, the Comptroller may issue a certificate naming the person from whom the amount is payable and stating the amount that has not been paid.

(2) A certificate issued under subsection (1) may be filed in the Court as if it were a judgment of the Court and, when it is so filed, a copy shall be served without delay on the person owing the amount.

(3) When a certificate issued under subsection (1) is filed in the Court—

(a) the certificate has the same force and effect as if it were a judgment of the Court in the amount stated in the certificate, together with interest and penalties to the day of payment; and

(b) proceedings may be taken, after a copy of the certificate is served on the person owing the amount, to enforce payment of the amount owing in relation to the certificate in the same manner as if the certificate were a judgment of the Court.

(4) All reasonable costs and charges payable in relation to the filing of a certificate in the Court are recoverable as if they had been certified and the certificate had been filed under this section.

Redirection of payment by third party to tax debtor

52. (1) This section does not apply to prescribed indebtedness to, or prescribed payments to, a debtor.

(2) If the Comptroller has knowledge or suspects that a third party is or will become, within one year, indebted to, or required to make any payment to, a person who owes an amount of tax, interest or penalty under a designated tax Act (in this section referred to as the "debtor"), the Comptroller may serve a written notice on the person requiring him or her to pay the money otherwise payable to the debtor in whole or in part to the Comptroller on account of the amount owing by the debtor under the designated tax Act.

(3) In subsection (2), payment to a person who owes an amount under a designated tax Act includes payment of an advance or the proceeds of a loan to or on behalf of a debtor.

(4) A receipt issued by the Comptroller for money paid under this section is a good and sufficient discharge of the amount owing by the debtor to the extent of that payment.

(5) A person who, after being served with a notice under subsection (2), fails to comply with it is liable to pay to the Crown an amount equal to the lesser of—

(a) the total amount of money paid; and

(b) the amount that the person was required under this section to pay to the Comptroller.

Liability of directors when person responsible fails to remit

53. (1) When a person that is a corporation liable to pay an amount of tax has failed to remit tax as required by a designated tax Act, the directors of the corporation at the time the corporation was

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required to remit the tax are, subject to this section, jointly and severally liable, together with the corporation, to pay the tax and the interest and penalty relating to the tax.

(2) A director is liable under subsection (1) if—

(a) either—

(i) the amount of tax has been owing for not less than 180 days, or

(ii) the corporation is struck off the Register by the Registrar of Companies under the Companies Act[‡‡‡]; and

(b) the Comptroller serves notice on the director demanding payment of the tax and the interest and penalty relating to the tax.

(3) No action or proceedings to recover any amount payable by a director of a corporation under subsection (1) may be commenced more than 2 years after the director last ceased to be a director of that corporation.

(4) A director who has satisfied a claim under this section is entitled to recover the amount paid as a civil debt from the corporation liable to pay the amount of tax, interest and penalty and, if that corporation does not pay the amount within 7 days after service of a written notice by the director demanding payment, the director is entitled to claim contribution from any other directors who were liable for the claim under this section.

(5) In the event of dissolution or liquidation of the corporation, a director who has satisfied a claim under this section is entitled to make any claim that the Crown would be entitled to make in relation to the claim, unless the director recovers contribution from other directors, in which event the other directors are entitled to make the claim of the Crown in proportion to their contributions.

PART 7

GENERAL ENFORCEMENT POWERS

Powers of police officers

54. (1) Nothing in this Part limits the powers of a police officer to enforce this Act or a designated tax Act under any law.

(2) A police officer has all the powers of a compliance officer.

Demand for information

55. (1) The Comptroller may, for any purpose related to the administration or enforcement of a designated tax Act, by serving written notice—

(a) demand that the person liable to pay tax; or

‡‡‡ Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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(b) when the person liable to pay tax is a partnership or corporation, demand that a partner or the president or another officer or manager, secretary or any director, agent or representative of the partnership or corporation;

provide or produce any information or additional information or any document within a reasonable period of time, which shall not be less than 3 days, stipulated in the notice.

(2) The Comptroller may, for any purpose related to the administration or enforcement of this Act, by serving written notice, demand that—

(a) a person holding an amount for or paying or liable to pay any amount to a person liable to pay tax, or

(b) a partner, president or other officer, director or agent of any person holding an amount for or paying or liable to pay any amount to a person liable to pay tax,

provide or produce any information or additional information or any document within the reasonable period of time, which shall not be less than 3 days, stipulated in the notice.

(3) The Comptroller may, by serving written notice, demand the production by any person, or by that person's agent, of any document in the possession of or under the control of that person or that person's agent within a reasonable period of time, which shall not be less than 3 days, stipulated in the notice, for the purpose of determining what tax, if any, is payable under a designated Act by any person.

(4) Any document provided or produced to the Comptroller under subsection (1), (2) or (3) may be detained for a sufficient time to make a copy of it.

(5) If a person is served with a notice under this section and the person does not comply with the notice, or does not permit a document to be copied, Comptroller may apply to the Court for an order directing the person to comply with the notice or permitting the copy to be made.

(6) On hearing an application, the Court may do one or more of the following—

(a) make an order directing the person to provide or produce the information, additional information or document when the Court is satisfied that—

(i) the information or document demanded is in the possession of or under the control of the person, and

(ii) the information or document demanded is relevant to the administration or enforcement of a designated tax Act or this Act;

(b) make an order permitting documents to be copied;

(c) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;

(d) award costs in relation to the matter.

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Inspection and audit

56. (1) In this section, "dwelling house" means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence and includes—

(a) a building within the curtilage of a dwelling house that is connected to it by a doorway or by a covered and enclosed passageway; and

(b) a unit that is designed to be mobile and to be used as a permanent or temporary residence that is being used as a permanent or temporary residence.

(2) For the purposes of ensuring that a designated tax Act and this Act are being complied with, a compliance officer may, at any reasonable time—

(a) inspect or audit or examine—

(i) the records of a person who is required to keep records under a designated tax Act and this Act, and

(ii) any document of that person or of any other person that relates or may relate—

(A) to the information that is or should be in the records of the person who is required to keep records under a designated tax Act or this Act, or

(B) to any amount payable under a designated tax Act or this Act by or to the person referred to in subparagraph (i);

(b) require the production for inspection or audit or examination of all records or documents that are or may be relevant to the inspection, audit or examination; and

(c) detain any document inspected, audited, examined or produced for a sufficient time to make a copy of it.

(3) When a compliance officer on reasonable grounds believes that the records or documents referred to in subsection (2) are located in any place, the compliance officer may, at any reasonable time—

(a) subject to subsection (4), enter the place; and

(b) require the owner or manager of the place and any other person in the place to give the compliance officer all reasonable assistance and to make reasonable efforts to answer all proper questions relating to the administration of a designated tax Act or this Act and, for that purpose, require the owner or manager to attend at the place with the compliance officer.

(4) When the place referred to in subsection (3) is a dwelling house, the compliance officer shall not enter the dwelling house without the consent of the occupant of the dwelling house.

(5) If a compliance officer—

(a) is refused entry into a place referred to in subsection (3);

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(b) is not given consent to enter a dwelling house;

(c) has reasonable grounds to believe that he or she—

(i) will be refused entry into a place referred to in subsection (3), or

(ii) will not be given consent to enter a dwelling house; or

(d) is impeded or has reasonable grounds to believe that he or she will be impeded in the carrying out of an inspection or audit or examination of any record or document or making copies of documents;

the compliance officer may apply to the Court for an order authorizing him or her to enter the place or dwelling house and carry out the compliance officer's inspection or audit or examination.

(6) On hearing an application, the Court may do one or more of the following—

(a) make an order—

(i) authorizing the compliance officer to enter the place or dwelling house and carry out the compliance officer's duties,

(ii) directing any occupant to assist the compliance officer in any manner that the Court specifies,

(iii) restraining any person from impeding the compliance officer from entering the place or dwelling house or from carrying out the compliance officer's duties;

(b) make its order subject to any terms or conditions that the Court considers appropriate in the circumstances;

(c) award costs in relation to the matter.

Use of assistants

57. In exercising any powers or performing any duties under this Act, a compliance officer may be accompanied by any persons that the compliance officer considers necessary to assist the compliance officer in exercising his or her powers or performing his or her duties.

Copies

58. (1) If documents have been detained, inspected, audited, examined or produced under section 55 or 56, the person by whom they are detained, inspected, audited, examined or to whom they are produced or any assistant referred to in section 57 or public officer of the Department may make, or cause to be made, one or more copies.

(2) A compliance officer may authorise the documents referred to in subsection (1) to be removed for copying to another place, and when the compliance officer does so, he or she shall—

(a) give a receipt for the documents; and

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(b) return the documents as soon as the copying is complete and in any event within a reasonable time.

(3) A document purporting to be certified by the Comptroller or a person authorized by the Comptroller to be a copy made pursuant to this section shall be admitted in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

Powers of Comptroller

59. (1) The Comptroller may—

(a) by serving written notice on a person, require the person liable to pay tax under a designated tax Act, in a particular case—

(i) to keep any record,

(ii) to make any return, or

(iii) to comply with a specified method of accounting or keep its accounts in a particular manner,

for a purpose related to the administration of a designated tax Act or this Act;

(b) establish the form of any document or form used in the administration of a designated tax Act or this Act; or

(c) when the Comptroller is satisfied that a return was not filed on time by reason of circumstances beyond the control of the person liable to pay or that were the responsibility of the Department, extend the time for making a return under a designated tax Act.

(2) A notice referred to in subsection (1)(a) may be amended, revoked or revoked and replaced by the Comptroller.

(3) A notice referred to in subsection (1)(a) or a notice of amendment, revocation or revocation and replacement referred to in subsection (2) shall be effective on the day specified in the notice, which shall not be earlier than the day following the day on which the notice is served.

PART 8

NOTICE OF OBJECTION AND APPEAL

Notice of objection

60. (1) When a designated tax Act provides that a person may object to an action or decision of the Comptroller, that person may, within 90 days after the day the notice of the action or decision is served on the person, serve on the Comptroller a notice of objection in the prescribed form setting out the reasons for the objection and the relevant facts.

(2) The Comptroller may accept a notice of objection under this section notwithstanding that it was not served in accordance with section 73.

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(3) On receipt of a notice of objection, the Comptroller shall without delay reconsider the action or decision taken by the Comptroller and shall—

(a) vacate, confirm or vary that action or decision and notify the objector of the Comptroller's decision in writing; or

(b) when the decision relates to an assessment, serve a new notice of assessment.

Extension of time by Comptroller

61. (1) When no notice of objection has been served under section 60(1) within the time limited by that provision for doing so, the person may apply to the Comptroller for an extension of the time for serving the notice of objection.

(2) An application made under subsection (1) shall set out the reasons why the notice of objection was not served within the time otherwise limited by this Act for doing so.

(3) An application made under subsection (1) shall be served on the Comptroller and accompanied by a copy of the notice of objection.

(4) The Comptroller may accept an application under this section notwithstanding that it was not served in accordance with section 73.

(5) On receipt of an application made under subsection (1), the Comptroller shall without delay consider the application and grant or refuse it and serve written notice of the decision on the person.

(6) When an application made under subsection (1) is granted, the notice of objection is deemed to have been served on the day the decision of the Comptroller referred to in subsection (5) is served on the person.

(7) No application shall be granted under this section unless—

(a) the application is made within one year after the expiration of the time otherwise limited by this Part for serving a notice of objection; and

(b) the person demonstrates that—

(i) within the time otherwise limited by this Act for serving the notice, the person—

(A) was unable to act or to instruct another to act in the person's name, and

(B) intended in good faith to object to the assessment,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted.

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Extension of time by Court

62. (1) A person who has made an application under section 61(1) may apply to the Court to have the application granted after—

(a) the Comptroller has refused the application; or

(b) 90 days has elapsed after service of the application under section 61(1) and the Comptroller has not notified the person of the Comptroller's decision;

but no application under this section may be made after the expiration of 90 days after the day on which written notification of the decision was served on the person.

(2) An application under subsection (1) shall be made by serving on the Comptroller a copy of the documents referred to in section 61(3) and the notification, if any, referred to in section 61(5) and by filing a copy of each with the Registrar of the Court.

(3) The Court may grant or dismiss an application made under subsection (1) and, in granting an application, may impose such terms as it considers just or order that the notice of objection is deemed to have been served on the date of its order.

(4) No application shall be granted under this section unless—

(a) the application was made under section 61(1) within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection; and

(b) the person demonstrates that—

(i) within the time otherwise limited by this Act for serving the notice, the person—

(A) was unable to act or to instruct another to act in the person's name, or

(B) intended in good faith to object to the assessment,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made under section 61(1) as soon as circumstances permitted.

Notice of appeal

63. (1) A person who has served a notice of objection under section 60(1) may appeal to the Court to have the action or decision taken by the Comptroller vacated or varied—

(a) when the Comptroller has, under section 60(3), confirmed or varied the action or decision taken by the Comptroller or served a new notice of assessment; or

(b) after 90 days has elapsed after service of the notice of objection and the Comptroller has not acted under section 60(3);

but no appeal under this section may be instituted after the expiration of 90 days from the day a written notification under section 60(3) was served on the objector.

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(2) An appeal to the Court shall be instituted by serving on the Comptroller a notice of appeal and by filing a copy of the notice of appeal with the Registrar of the Court.

(3) The notice of appeal shall be attached to the notice of objection and, for the purposes of section 66, is deemed to be a claim.

Reply to notice of appeal

64. (1) The Comptroller shall, within 60 days from the day the notice of appeal is received or within any further time that the Court may, either before or after the expiration of that time, allow, serve on the appellant and file in the Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of any further allegations of fact and of any applicable statutory provisions and any reasons that the Comptroller intends to rely on.

(2) The Court may strike out a notice of appeal or any part of the notice for failure to comply with section 63 and may permit an amendment to be made to a notice of appeal or a new notice of appeal to be substituted for the one struck out.

(3) The Court may—

(a) strike out any part of a reply for failure to comply with this section or permit the amendment of a reply; or

(b) strike out a reply for failure to comply with this section and order a new reply to be filed within a time that it considers appropriate.

(4) If a notice of appeal is struck out for failure to comply with section 63 and a new notice of appeal is not filed as and when permitted by the Court, the Court may dismiss the appeal.

(5) If a reply is not filed as required by this section or is struck out under this section and a new reply is not filed as ordered by the Court within the time ordered, the Court may dispose of the appeal *ex parte* or after a hearing on the basis that the allegations of fact contained in the notice of appeal are true.

Powers of Court

65. (1) On the filing of the material referred to in sections 63 and 64(1), (2) and (3), the matter is deemed to be an action in the Court.

(2) A fact or statutory provision not set out in the notice of appeal or reply may be pleaded or referred to in any manner and on any terms that the Court may direct.

(3) The Court may, in an appeal of a decision with respect to a notice of objection under section 60(1) in relation to a notice of assessment—

(a) dismiss the appeal; or

(b) allow the appeal and—

(i) vacate the assessment,

(ii) vary the assessment,

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(iii) restore the assessment, or

(iv) refer the assessment back to the Comptroller for reconsideration.

(4) The Court may, in an appeal of a decision with respect to a notice of objection under section 60(1) in relation to a notice of refusal, suspension or cancellation of registration under a designated tax Act—

(a) dismiss the appeal; or

(b) allow the appeal and direct, as the case may be, that subject to the terms or conditions the Court considers appropriate—

(i) registration be granted,

(ii) the suspension be removed, or

(iii) the registration be reinstated.

(5) The Court may, in delivering judgment on an appeal, order payment or repayment of tax, interest, penalties or costs by the appellant or the Comptroller.

Practice and procedure

66. Except as provided in the regulations, the practice and procedure of the Court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter deemed to be an action under section 65, and every judgment and order given or made in such an action may be enforced in the same manner and by like process as a judgment or order given or made in an action commenced in the Court.

Irregularities

67. An assessment under a designated tax Act shall not be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of a person in the observation of a provision of the designated tax Act that does not affect the substance and is unlikely to mislead.

Appeals do not suspend collection of undisputed amounts

68. (1) Where a notice of objection has been served on the Comptroller under section 60(1), the undisputed tax liability remains due and payable, unless the Comptroller grants an extension of time under section 39, while the amount in dispute is not due and payable until a final decision by the Comptroller or the Court.

(2) Notwithstanding subsection (1), the Court may rule, upon the Comptroller motion, that all or a portion of the tax is being disputed on a frivolous basis, in which case such amount becomes due and payable.

(Act 8/2018, s. 13)

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Finality of assessment

69. (1) Subject to subsection (2) and the right of the Comptroller to issue a new or revised assessment under section 26, an assessment is treated as final if—

(a) no request for review is made within the time permitted by section 26; and

(b) no extension is granted under section 61 or 62.

(2) If an assessment is final under subsection (1), and the taxpayer files an amended return under section 21 in a timely manner, 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.

(Act 8/2018, s. 13)

PART 9

PENALTIES

General provisions for penalties

70. (1) This section applies to penalties under this Act or relevant tax legislation.

(2) Procedures for the assessment, payment, collection and dispute of a tax apply equally to penalties relating to a tax.

(3) The burden of proof is on the Comptroller to show non-compliance with the provisions of tax legislation with respect to the imposition of a penalty.

(4) The Comptroller may make an assessment of a penalty charged as if the penalty were tax payable under this Act, and may specify the date on which the penalty is payable.

(5) A notice of an assessment of a penalty must be served on the person subject to the penalty and must state the amount of the penalty payable, the provision under which it is payable, and the due date for payment, and on service of the notice—

(a) the notice and the assessment are treated as if they were a notice and assessment of tax payable under this Act;

(b) the amount of the penalty specified in the notice is treated as tax payable under this Act; and

(c) the due date for payment is the date specified in the notice.

(6) A person's liability to pay a penalty arises on the making of an assessment by the Comptroller under subsection (5).

(7) The period of limitations for assessing a penalty is 7 years after the violation that causes the penalty to occur, except for a penalty for understatement of tax due to fraud, neglect or the like, in which case the limitation for assessing the penalty is the same as the limitation for assessing the tax to which the penalty relates.

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(8) If a person liable for a penalty shows reasonable cause for his failure to comply, the Comptroller may—

(a) refrain in whole or in part from assessing the penalty; or

(b) remit or waive in whole or in part a penalty that has been assessed.

(9) A penalty that is payable for each day, month, or other period during which a particular state of affairs exists or continues, is payable in full for part of that day, month, or other period in which the state of affairs commences, continues, or ends.

(Act 8/2018, s. 14)

Late filing of tax return

71. (1) A person who fails to file a tax return on or before the date by which filing is required is liable to pay a penalty equal to the greater of—

(a) five percent of the amount of the tax owing, plus a further one percent of the amount of tax owing for each month or part of a month during which the failure to file continues; and

(b) $500, plus a further $100 for each month or part of a month during which the failure to file continues.

(2) The amount of the penalty in respect of a given tax return under subsection (1) is limited to $10,000.

(3) The penalty under this section is treated as an addition to the tax liability for the tax period to which the return relates and may be assessed and collected in the same manner as the tax for that period.

(Act 8/2018, s. 14)

Late payment

72. (1) A person who fails to pay all or part of a tax (including withholding tax) due for a tax period within 14 days of the due date, or by the due date specified in the notice of assessment, if later, is liable to a penalty equal to 20 percent of the amount of tax due but not paid.

(2) Where an extension is granted under section 39, a person is not liable to a penalty under subsection (1) unless the extension period expires without payment having been made.

(Act 8/2018, s. 14)

PART 10

MISCELLANEOUS

Serving notices and documents

73. (1) This section does not apply to any provisions of this Act or a designated tax Act that specifies the manner in which written notice or a document is to be served.

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(2) A written notice or document directed to the Comptroller or other public officer by a person, other than another public officer, is deemed to be sufficiently served if it is—

(a) personally given to the Comptroller or public officer;

(b) given to an adult person in charge of the office of the Comptroller or public officer;

(c) sent by registered mail addressed to the Comptroller or public officer;

(d) served in the manner prescribed for the purpose of this subsection.

(3) A written notice or document directed to an individual is deemed to be sufficiently served if it is—

(a) personally given to the individual or a person who holds a power of attorney from the individual under which the attorney is authorised to accept service of the notice or document;

(b) given to an adult person at the individual's residence or in charge of his or her place of business;

(c) sent by registered mail addressed to the individual at his or her address last known to the person serving the notice and the individual has acknowledged receipt in writing; or

(d) served in the manner prescribed for the purpose of this subsection.

(4) A written notice or document directed to a corporation or association is deemed to be sufficiently served if it is—

(a) personally given to a director or officer of the corporation or association;

(b) given to an adult person in charge of the office or place of business of the corporation or association;

(c) in the case of a corporation under the Companies Act[§§§], the International Business Companies Act[****] or the Limited Liability Corporation Act, served in the manner that a written notice or document may be given to the corporation under that Act;

(d) given to a person who holds a power of attorney for the corporation or association under which the attorney is authorised to accept service of the notice or document;

(e) sent by registered mail addressed to the corporation or association at its office or place of business and a person has acknowledged receipt in writing of the letter on behalf of the corporation or association; or

(f) served in the manner prescribed for the purpose of this subsection.

[§§§] Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.
[****] Business Companies Act, 2022 (Act 2/2022) *repealed* the International Business Companies Act, R.S.A. c. I20.

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(5) A written notice or document directed to a partnership is deemed to be sufficiently served if it is—

(a) in the case of a partner who is an individual, given to the partner in accordance with subsection (3);

(b) in the case of a partner that is a corporation or association, given to the partner in accordance with subsection (4);

(c) given to a person who holds a power of attorney from the partnership under which the attorney is authorised to accept service of the notice or document on behalf of the partnership; or

(d) served in the manner prescribed for the purpose of this subsection.

Due dates

74. (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.

(Act 8/2018, s. 15)

Regulations

75. The Governor in Council may make regulations generally for the better administration of this Act, including regulations—

(a) prescribing anything that may be prescribed under this Act;

(b) assigning powers and duties to the Comptroller for the purpose of section 6(1)(j);

(c) relating to the collection, under the direction and supervision of the Comptroller, of taxes and fees, charges, penalties and related amounts under sections 6(1)(c) or (d) by persons outside the Government;

(d) establishing a waiver committee of senior public officers for the purposes of section 33 and providing for any matter in relation to the committee including its quorum, decisions, procedures, conflicts of interest by members of the committee;

(e) governing the kinds, forms and amounts of securities that may be accepted by the Comptroller for the purpose of section 34(4);

(f) requiring any person who pays tax imposed by a designated tax Act to furnish security for its collection, payment and remittance and respecting the form and amount of the security and its forfeiture or return or surrender;

(g) providing that a certificate of good standing be required or produced in relation to a privilege of the Crown, whether or not provided by or under an Act, in relation to the

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registration of a document under the Registered Land Act or that a certificate may be given in relation to section 42 of this Act and making provision in relation to certificates of good standing, including—

(i) establishing classes of applicants or certificates,

(ii) determining the form and content of applications or classes of applications,

(iii) prescribing fees in relation to applications or classes of applications,

(iv) providing for the issue of certificates by the Comptroller, including, without limitation, the exercise of discretion by the Comptroller in relation to the terms on which a certificate is issued, including entry into an agreement and the provision of security under section 34(2), and the expiry date of a certificate,

(v) providing for the cancellation of a certificate issued in error or containing a material error,

(vi) making provision for the effect of the issue of a certificate or class of certificate in error or that contains a material error, and

(vii) establishing exemptions from the requirement for a certificate or class of certificate;

(h) qualifying the practice and procedure of the Courts for the purposes of section 66;

(i) requiring and governing the assignment of tax numbers;

(j) defining any term used but not defined in this Act.

Citation

76. This Act may be cited as the Inland Revenue Department Act, Revised Statutes of Anguilla, Chapter I13.

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