ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER M103

MONEY TRANSMISSION LEVY 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 revises Act 30/2021, in force 1 January 2022

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MONEY TRANSMISSION LEVY ACT

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MONEY TRANSMISSION LEVY ACT

Interpretation

1. (1) In this Act—

"assess" includes reassess;

"Class A licensee" means a person holding a Class A licence pursuant to the Money Services Business Act;

"Comptroller" means the Comptroller of Inland Revenue;

"money services business" has the same meaning as in the Money Services Business Act;

"money transmission levy" means the money transmission levy imposed under section 3.

(2) This Act shall be read together with the applicable provisions of the Inland Revenue Department Act, as if they constituted a single Act.

(3) For greater certainty, except where this Act provides otherwise, when a notice or document is to be served on a person under this Act, it shall be served on that person in accordance with section 73 of the Inland Revenue Department Act.

Application

2. (1) This Act applies to all holders of a Class A licence pursuant to the Money Services Business Act.

(2) Notwithstanding subsection (1) where a holder of a Class A licence is a government department, only sections 3 and 12 are applicable.

Money transmission levy on a Class A licensee

3. (1) Any Class A licensee is required to collect from its customers, a 2% transaction levy on the amount of funds being transmitted outside of Anguilla, per transaction.

(2) Class A licensees shall remit the collected money transmission levy, on behalf of the customer, to Comptroller on a monthly basis.

(3) For the purposes of this Act, if a Class A licensee does not collect the money transmission levy under subsection (1), the Class A licensee is nevertheless deemed to have collected the levy.

Filing returns and remitting money transmission levy

4. A Class A licensee who is liable to remit a money transmission levy under section 3 shall, not later than 30 days after the end of each month—

(a) file a return in relation to the money transmission levy for the previous month in the form and manner and containing the information prescribed or, if no regulation is made prescribing the foregoing, then in the form and manner and containing the information specified by the Comptroller; and

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(b) remit to the Comptroller the money transmission levy for the previous month.

Assessment of money transmission levy

5. (1) The Comptroller may—

(a) assess any money transmission levy required to be remitted by a Class A licensee under this Act within 4 years from the day the money transmission levy was required to be remitted; and

(b) assess interest and penalties in addition to the money transmission levy required to be remitted.

(2) Notwithstanding subsection (1), if a Class A licensee—

(a) has made any misrepresentation that is attributable to neglect, carelessness or wilful default;

(b) has committed a fraud in making a return or in furnishing any information under this Act or the Inland Revenue Department Act in relation to a money transmission levy; or

(c) has failed to disclose any relevant information;

the Comptroller may assess any money transmission levy required to be remitted and assess interest and penalties at any time the Comptroller considers reasonable.

(3) The duty to remit a money transmission levy imposed by this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(4) The Comptroller is not bound by a return filed or information furnished by or on behalf of any Class A licensee under this Act or the Inland Revenue Department Act in relation to a money transmission levy and may, notwithstanding a return filed or information so furnished, or if no return has been filed or information has been furnished, assess the money transmission levy payable under this Act.

Late filing penalty

6. If a Class A licensee fails to file a return as and when required by this Act, the Comptroller may assess against the Class A licensee a penalty of $50 for each day of default to a maximum of $2,000.

Effect of assessment

7. (1) Unless it is varied or vacated on an objection or appeal—

(a) an assessment under section 5, 6 or 10 is deemed to be valid and binding, notwithstanding any error, defect or omission in it or in any proceeding under this Act relating to it; and

(b) the amount assessed in an assessment under section 5, 6 or 10 is, for the purposes of collection and recovery, deemed to be an amount owing under this Act and to be conclusively established as a debt due to the Crown.

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(2) Every Class A licensee assessed under section 5, 6 or 10 shall, within 15 days after service of the notice of assessment, pay the amount assessed against the Class A licensee whether or not an objection to or appeal from the assessment is pending.

Notice of assessment

8. The Comptroller shall serve or cause to be served notice of an assessment under this Act on the Class A licensee assessed.

Onus of proof

9. The onus of disproving an assessment under this Act is on the Class A licensee assessed.

Penalty in addition to amount owing

10. (1) When—

(a) a Class A licensee owes an amount to the Crown under this Act; and

(b) the Comptroller is of the opinion that the reason that the amount is owing to the Crown by that Class A licensee is attributable to—

(i) neglect, carelessness or wilful default by or on behalf of that Class A licensee, or

(ii) fraud or evasion committed by or on behalf of that Class A licensee;

the Comptroller may determine the amount owing by the Class A licensee and assess against the Class A licensee a penalty in the amount of 25% of the amount owing.

(2) On assessing a penalty under subsection (1), the Comptroller may in the assessment demand payment of the amount owing and the amount of the penalty from the Class A licensee to whom the demand is directed.

(3) Evidence that a demand has been made under subsection (2) is proof, in the absence of evidence to the contrary, that the unpaid amount and the penalty assessed under this section are owing to the Crown from the Class A licensee to whom the demand is directed in the amounts stated in the demand.

Notice of objection

11. A Class A licensee may, in accordance with section 60 of the Inland Revenue Department Act, object to an assessment under section 5, 6 or 10 by the Comptroller.

Records

12. Every Class A licensee shall keep such records as may be prescribed or, if no regulation is made prescribing the foregoing, then in the form and manner and containing the information specified by the Comptroller.

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Hindering officer

13. No person shall—

(a) hinder, molest or interfere with any compliance officer or assistant engaged in the performance of any duty or in the exercise of any power imposed or conferred on him by sections 55, 56 and 58 of the Inland Revenue Department Act in relation to the administration and enforcement of this Act; or

(b) prevent or attempt to prevent such officer or assistant from performing such duty or exercising such power.

Offence re documents and records

14. Any person who—

(a) makes, participates in, assents to or acquiesces in the making of false or deceptive statements in a return, statement, record or other document delivered or made under this Act or in a return, statement, record or other document delivered or made under the Inland Revenue Department Act in relation to a money transmission levy;

(b) destroys, alters, mutilates or disposes of records that a Class A licensee is required to keep under this Act or the Inland Revenue Department Act in relation to money transmission levies;

(c) makes or assents to, or acquiesces in the making of false or deceptive entries in, or omits or assents to or acquiesces in omitting a material particular from, any record referred to in paragraph (b);

(d) wilfully evades or attempts to evade compliance with this Act or the Inland Revenue Department Act in relation to a matter under this Act; or

(e) conspires with any person to commit an offence described in paragraphs (a) to (d);

is guilty of an offence and, in addition to any other punishment provided by this Act, is liable on summary conviction to a fine of 300% of the money transmission levy sought to be evaded or to imprisonment for 2 years or to both.

Failure to file return

15. A Class A licensee who fails to file a return as and when required by this Act, or to provide or produce information or a document as and when required by the Inland Revenue Department Act in relation to a money transmission levy is guilty of an offence and liable on summary conviction to a fine of $100 for each day of default.

Failure to remit money transmission levy

16. A Class A licensee who contravenes section 3 or 4(b) commits an offence and, in addition to any other punishment provided by this Act, is liable on summary conviction to a fine of 300% of the money transmission levy required to be remitted under section 3 or 4(b).

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Actions by corporate agent

17. If a person acting or purporting to act on behalf of a corporation—

(a) knowingly; or

(b) under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed under this Act;

makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, statement or answer filed or made as required under this Act or the Inland Revenue Department Act in relation to a matter under this Act, as a result of which the money transmission levy that would have been payable by the corporation, if the money transmission levy had been assessed or determined on the basis of the information provided in the return, application, statement or answer, is less or more than the money transmission levy payable by the corporation, the corporation is guilty of an offence.

Offences and punishments re corporation

18. (1) A corporation that wilfully evades or attempts to evade payment of a money transmission levy payable by it commits an offence.

(2) Where a corporation commits an offence under subsection (1), it is liable on summary conviction to a fine of 300% of the amount of the money transmission levy sought to be evaded.

Offences and punishments re individual

19. (1) An individual commits an offence who—

(a) makes or participates in, assents to or acquiesces in the making of false or deceptive statements in a return, application, statement or answer filed or made as required under this Act or the Inland Revenue Department Act in relation to a matter under this Act;

(b) destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a corporation;

(c) makes or assents to or acquiesces in the making of false or deceptive entries or omits or assents to or acquiesces in omitting to enter a material particular in records or books of account of a corporation;

(d) wilfully in any manner evades or attempts to evade compliance with this Act or payment of a money transmission levy imposed by this Act or the Inland Revenue Department Act in relation to a matter under this Act; or

(e) conspires with any person to commit an offence described in paragraphs (a) to (d);

if, in so doing, the individual enables or assists or attempts to enable or assist or causes or could cause, a corporation to evade or attempt to evade payment of a money transmission levy payable by it, or to claim or attempt to claim a refund greater than that to which it is entitled.

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(2) When an individual commits an offence under subsection (1) in relation to a corporation that evades or attempts to evade payment of a money transmission levy payable by it, that individual is liable on summary conviction—

(a) to a fine of 300% of the amount of the money transmission levy sought to be evaded; or

(b) to a fine referred to in paragraph (a) and to imprisonment for a term of 2 years.

(3) When an individual commits an offence under subsection (1) in relation to a corporation that claims or attempts to claim a refund greater than that to which it is entitled, that individual is liable on summary conviction—

(a) to a fine of 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which the corporation is entitled; or

(b) to a fine referred to in paragraph (a) and to imprisonment for a term of 2 years.

Offences by directors, officers or agents of the Corporation

20. Where an offence committed by a Corporation under this Act is proved to have been committed with the authorisation, consent, connivance, acquiescence or participation of any director, officer or agent of the Corporation, that person as well as the Corporation is guilty of that offence, and is liable to be proceeded against and punished accordingly.

General punishment

21. A person who contravenes a provision of this Act or the Inland Revenue Department Act in relation to a matter under this Act for which a punishment is not otherwise provided commits an offence and liable on summary conviction—

(a) for a first offence, to a fine of $10,000 or to imprisonment for not more than 6 months or to both;

(b) for a second offence, to a fine of $20,000 or to imprisonment for not more than 12 months or to both; and

(c) for a third or subsequent offence, to a fine of $40,000 or to imprisonment for not more than 2 years or to both.

Limitation period

22. A prosecution for an offence under this Act may be commenced within 4 years from the date of the contravention, but not afterwards.

Regulations by Minister

23. (1) The Minister may make regulations for the better administration of this Act including regulations—

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

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(b) respecting the duties of Class A licensees in relation to the remittance of the money transmission levy under this Act;

(c) respecting returns to be made to the Comptroller; and

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

(2) A regulation may provide that a contravention of any of its provisions is an offence.

Regulations by Governor in Council

24. The Governor in Council may by regulation amend or repeal and replace section 3.

Citation

25. This Act may be cited as the Money Transmission Levy Act, Revised Statutes of Anguilla, Chapter M103.

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