

REVENUE ADMINISTRATION (AMENDMENT) ACT, 2022

(Act 37 of 2022)

ARRANGEMENT OF SECTIONS

SECTIONS

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I assent

A handwritten signature in black ink, appearing to read "Wavel".

Wavel Ramkalawan
President

29th December, 2022

AN ACT TO AMEND THE REVENUE ADMINISTRATION ACT (CAP 308).

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the Revenue Administration (Amendment) Act, 2022.

Amendment of section 2

2. Section 2 of the Revenue Administration Act (Cap 308) in this Act referred to as the “principal Act” is amended —

(a) by repealing in the definition of “Revenue decision” paragraph (b) and substituting therefor the following paragraph —

“(b) in relation to this Act, the Accommodation Turnover Tax, Business Tax Act, Corporate Social Responsibility Tax Act, Excise Tax Act, Goods and Services Tax Act, Income and Non-Monetary Benefits Tax Act, Tourism Marketing Tax Act or the Value Added Tax Act, Immovable Property Tax Act, a decision on any matter left to the discretion, judgement, direction, opinion, approval, consent, satisfaction, or determination of the Commissioner General, other than made in relation to the making of an assessment.

(b) by inserting after the definition of “Large business” the following new definition —

““Medical Board” means the Medical Board established under section 31D”;

Amendment of section 5

3. Section 5 of the principal Act is amended by inserting, after subsection (3), the following new subsection —

“(4) Notwithstanding subsection (1), the Commissioner General may when he considers necessary, on his own motion extend the time to furnish a return required to be furnished under a Revenue law.”

Amendment of section 11

4. Section 11 of the principal Act is amended by inserting after paragraph (a) of subsection (3), the following new paragraph —

- “(aa) in the case of transfer pricing, within seven years of the date the Commissioner General served or is treated as having served notice of the assessment on the taxpayer; or”.

Insertion of section 31A, 31B, 31C and 31D

5. The following new sections are inserted after section 31 of the principal Act —

“Suspension of recovery proceedings for outstanding revenue

31A.(1) In this section —

(a) “serious hardship” means the inability of a taxpayer to satisfy and pay their outstanding revenue for reasons of —

(i) a taxpayer being declared bankrupt;

(ii) a taxpayer who is an individual or a partner in a partnership —

(A) who has a serious illness or his or her dependants have a serious illness and that taxpayer does not hold any money or have ownership over any property, real or personal, from which the outstanding revenue can be satisfied or recovered in whole or in part; or

(B) who upon his or her death —

(I) did not hold any money or have ownership over any property, real or personal; or

- (II) his or her estate or succession does not contain any property, from which the outstanding revenue can be satisfied or recovered in whole or in part; or
 - (C) where his or her heir, legatee, trustee, fiduciary or executor or his or her estate or succession, as the case may be, is under a legal obligation to satisfy his or her debt, the heir, legatee, trustee, fiduciary or executor, as the case may be, does not have adequate means to satisfy the outstanding revenue or the estate or succession do not contain property from which the outstanding revenue can be satisfied or recovered in whole or in part.
- (b) “ownership” includes beneficial or derivative interest of monies or property or any right of pre-emption to any money or property or right to any undistributed estate or succession.
 - (c) “serious illness” means an illness, injury, impairment, disability, physical or mental certified by the Medical Board;
 - (d) “taxpayer” means —
 - (i) a person liable for revenue under a revenue law;

- (ii) an heir accepting the succession simply or under benefit of inventory;
- (iii) the universal legatee;
- (iv) the surviving spouse or partner where he or she does not fall under paragraph (ii) or (iii) and who is entitled to movable property;
- (v) legatees or donees of any money or property by gift *inter vivos* or Will; and
- (vi) the Curator in charge of a vacant succession,

but shall not include a person liable to deduct or withhold tax or withholding tax under any revenue law.

- (e) “outstanding revenue” means an amount of unsatisfied revenue of a taxpayer;
- (f) “uneconomical debt” means an outstanding revenue the cost of recovery of which would substantially exceed the outstanding revenue and the Commissioner General considers that it would be uneconomical to recover it.
- (g) “irrecoverable debt” means an outstanding revenue which has exceeded the prescription period under Article 2271 of the Civil Code of Seychelles Act, 2020.

(2) Subject to subsection (6), where the Commissioner General considers that —

- (a) a taxpayer has suffered or is in serious hardship;
- (b) the outstanding revenue of a taxpayer is an uneconomical debt; or
- (c) the outstanding revenue of a taxpayer is an irrecoverable debt,

the Commissioner General may direct that recovery of the outstanding revenue shall be suspended.

(3) Notwithstanding subsection (2), where the cause of the serious hardship is bankruptcy, serious illness or death, the Commissioner General may —

- (a) take steps preparatory to, or necessary, to initiate bankruptcy or winding up proceedings against the taxpayer;
- (b) exercise any action under section 24 or all the rights and actions of the taxpayer or the executor or the heir or legatee of the taxpayer to recover any outstanding revenue; or
- (c) take up proceedings relating to any transactions concluded by the taxpayer or the heir, legatee or executor, as the case may be, which constitute a fraud on the rights of the Commissioner General or to evade satisfaction of the outstanding revenue or to circumvent such satisfaction.

(4) A direction made under subsection (2) may be made by the Commissioner General on his own motion or on the request of a taxpayer.

(5) The suspension period in the recovery of the outstanding revenue shall constitute an interruption to the prescription period or time limitation period within which legal proceedings may be initiated or commenced against the taxpayer for the satisfaction or recovery of the outstanding revenue and such period shall be excluded in calculating the prescription period or time limitation period, as the case may be.

(6) The Commissioner General shall, before issuing a direction under subsection (2), carry out an assessment and prepare a report in terms of the provisions of subsection (7).

- (7) The report under subsection (6) shall include —
- (a) documentation of the history of the outstanding revenue;
 - (b) a breakdown of the outstanding revenue including penalties and interest;
 - (c) the period for which the outstanding revenue was unpaid;
 - (d) a statement as to whether the taxpayer is willing or has the capacity and means to pay the outstanding debt in instalments or to secure the satisfaction thereof;
 - (e) the steps taken to recover the outstanding revenue;
 - (f) in respect of serious hardship of the taxpayer —
 - (i) the evidence of bankruptcy, serious illness, death or any other relevant matters in relation thereto or connected therewith;

- (ii) any creditor of the taxpayer;
 - (iii) any property over which the taxpayer has ownership and any transaction or dealing with the property that has taken place during the prescription period and the nature and manner of such transaction or dealing;
- (g) in respect of a deceased taxpayer —
 - (i) the content and value, or an estimate of the value, of the estate or succession of the taxpayer;
 - (ii) the capacity or means of the heir, legatee or donee to pay the outstanding revenue in full or in instalments or to secure the satisfaction thereof;
 - (iii) if the estate or succession of the deceased taxpayer has been distributed or not;
- (h) in respect of an uneconomical debt, an assessment of the cost of recovery of the uneconomical debt;
- (i) other factors that the Commissioner General reasonably believes would likely arise.

(8) The Commissioner General shall inform the taxpayer in writing of the direction made under subsection (2) and that the direction is subject to the provisions of subsections (5) and section 31C (1).

(9) The Commissioner General shall maintain records

of all the outstanding revenue of which recovery has been suspended under this section, which shall contain —

- (a) the relevant details of the taxpayer such as name, address and tax identification number;
- (b) the amount of outstanding revenue; and
- (c) the reasons for the suspension of recovery.

(10) The Commissioner General shall include the details of the suspension of recovery of the outstanding revenue during a financial year in the annual report to be submitted under section 21 of the Seychelles Revenue Commission Act (Cap. 322).

(11) The Commissioner General shall, within 3 months before the end of each financial year, submit a detailed report to the Minister in respect of any outstanding revenue for which recovery has been suspended under this section during each financial year and make recommendations for the writing off, of the outstanding revenue.

(12) Notwithstanding subsection (11) the Minister may at any time direct the Commissioner General to furnish him or her with a report in respect of all or any outstanding revenue of which recovery has been suspended under this section.

Permission to write-off outstanding revenue

31B.(1) The Minister may, after considering the report made by the Commissioner General under section 31A(11) or (12) grant or refuse permission to write off any outstanding revenue specified in the report.

(2) Notwithstanding any other written law, where the Minister grants permission under subsection (1), to write-off an outstanding revenue, the Commissioner General shall make a write-off order specifying —

- (a) the names of all taxpayers in respect of whom permission has been granted; and
- (b) the amount of outstanding revenue written-off.

(3) The Commissioner General shall publish the write-off order under subsection (2) in the Gazette within 3 months after the end of each financial year.

(4) The Commissioner General shall include the write-off order under subsection (2) in the annual report submitted under section 21 of the Seychelles Revenue Commission Act (Cap. 322).

(5) Where the Minister refuses to grant permission to write-off outstanding revenue, the Minister shall in writing inform the Commissioner General of the reason for the refusal.

Reversion, cancellation or annulment of direction or write-off order

31C.(1) Notwithstanding a direction of the Commissioner General made under section 31A.(2) or a write-off order made under section 31B.(1), the Commissioner General may cancel, annul or reverse the direction or order and direct that the recovery of the outstanding revenue be reinstated or pursued in relation to all or part of the outstanding revenue, where —

- (a) in respect of serious hardship —
 - (i) the circumstances of the taxpayer changes and the serious hardship ceases to exist;
 - (ii) the Commissioner General receives, by operation of law, additional funds in respect of a taxpayer after the

- taxpayer becomes bankrupt, or if additional funds due to the taxpayer's estate or succession are discovered after the direction or write-off order;
- (b) in respect of an uneconomical debt that is outstanding revenue, the outstanding revenue is deemed not an uneconomical debt;
 - (c) the direction or write-off order was made due to false or misleading information provided by the taxpayer or any person and notwithstanding anything in any written law the outstanding revenue shall become due and payable.

Establishment of Medical Board

31D.(1) There is established a Medical Board for the purpose of certifying serious illnesses under section 31A.

(2) The Medical Board shall consist of at least three medical practitioners who shall be appointed by the Minister.

(3) The Minister may co-opt medical practitioners with specialised experience to assist the Medical Board.

(4) The Medical Board shall upon the request of the Commissioner General under section 31A(4) examine and assess the merits of a request.

(5) Where the Medical Board finds that a person has a serious illness that impairs his or her ability to satisfy his or her outstanding debt, the Medical Board shall issue the taxpayer with a certificate, certifying the serious illness of the taxpayer or his or her dependant.

(6) The Minister shall appoint a member of the Medical Board to be the Chairperson of the Medical Board.

(7) The quorum of the Medical Board shall be determined by the Minister.

(8) The members of the Medical Board shall hold office on such terms and conditions as the Minister may prescribe.

Insertion of section 50A

6. The following new sections are inserted after section 50 of the principal Act —

“Imposition of Additional Tax

50A.(1) Where the Commissioner General, in relation to the year of assessment 2023 or any subsequent year of assessment and pursuant to a Transfer Pricing audit —

- (a) increases the amount of income of a taxpayer;
- (b) reduces the amount of any loss of a taxpayer;
- (c) reduces the amount of any tax concession allowed to a taxpayer; or
- (d) increases the amount of withholding tax payable by a taxpayer,

the Commissioner General may make a determination and, depending on the amount of the increase or reduction, impose an additional tax on that taxpayer equal to 10 per cent or 25 per cent of the amount of the increase or reduction.

(2) Where a taxpayer is liable to an additional tax of 25 per cent, the taxpayer may gain a possible downward remission

of not less than 10 percent, where the conditions set out in subsection (6) exist.

(3) The Commissioner General, shall serve a taxpayer with written notice of the additional tax to be paid when the amount of income or withholding tax is increased or the amount of loss or tax concession is reduced as a result of the taxpayer obtaining a transfer pricing benefit under section 54(4) and (7) of the Business Tax Act (Cap 20).

(4) Notwithstanding, any objection to or an appeal lodged, under sections 15, 16, 17 and 18, against an assessment made resulting in an adjustment under section 54 of the Business Tax Act, the additional tax imposed under subsection (1), shall be paid —

- (a) within 21 days of receipt of the written notice served on the taxpayer under subsection (3); and
- (b) in the manner specified in the written notice.

(5) Where the condition set out under subsection (6) exist, the Commissioner General may remit wholly or in part any additional tax payable under that subsection.

(6) The conditions for remitting additional tax wholly or in part are as follows —

- (a) the taxpayer has been cooperative and provided complete responses within the timeline set by the Commissioner General;
- (b) the taxpayer has prepared and furnished complete Transfer Pricing Documentation in accordance with the Transfer Pricing Documentation Regulations;

- (c) the taxpayer has completed the Related Party Dealings Schedule in the business tax return for a tax year;
- (d) the taxpayer has a good compliance record of timely submission of returns and payment of tax by the due date for the current tax year and immediate two preceding tax years; and
- (e) the increase to income or withholding tax, or reduction of loss or tax concessions made by the Commissioner General following a Transfer Pricing audit, is less than SR150,000 or 5% of business tax payable, whichever is greater.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 14th December, 2022.



Mrs. Tania Isaac
Clerk to the National Assembly