

M O N T S E R R A T

TAX ADMINISTRATION BILL 2022

No. 10 of 2022

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY	6
1. Short title and commencement	6
2. Interpretation	6
3. Interpretation of tax laws.....	9
4. Scope of the Act	10
PART II – GENERAL PROVISIONS	10
5. Comptroller and Inland Revenue Department.....	10
6. Delegation of powers	11
7. Assistance of experts	11
8. Obligation of secrecy	12
9. Taxpayer Identification Numbers.....	14
10. Registration	14
11. Public rulings	15
12. Advance rulings	15
13. Other statements.....	16
14. Notices	16
15. Forms and notices	18
16. Defect does not affect validity	18
17. Regulations.....	19
18. Taxpayer’s right to information	19
19. Due dates.....	19
PART III – RECORDKEEPING AND INFORMATION COLLECTION	20
20. Accounts and Records	20
21. Obligations of financial institutions	21
22. Tax returns	21
23. Notice to require filing	22
24. Return deemed to be furnished by due authority.....	22

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

25.	Information returns.....	23
26.	Extension of time	23
27.	Access to information, assets and land.....	23
28.	Notice to obtain information	26
29.	Official information and official secrecy	27
PART – IV ASSESSMENTS.....		27
30.	Assessments	27
31.	New or Revised Assessment	28
32.	Time limits for Assessments and Revised Assessments	28
33.	Jeopardy Assessment	29
34.	Notice of Assessment.....	29
35.	Anti-avoidance.....	30
PART V – OBJECTIONS AND APPEALS		32
36.	Taxation decisions.....	32
37.	Reviewable decisions	32
38.	Administrative Review.....	34
39.	Appeal from Administrative Review	34
40.	Burden of Proof.....	36
41.	Appeals do not suspend collection of undisputed amounts	36
42.	Finality of Assessment	36
43.	Appeal from a decision of the Commissioners.....	37
44.	Appeals to Court of Appeal.....	38
PART VI – LIABILITY FOR AND PAYMENT OF TAX.....		38
45.	Liability of taxpayer and due date.....	38
46.	Liability and obligations of representatives	39
47.	Officers of unincorporated bodies	42
48.	Liability for tax following winding-up.....	43
49.	Managers of entities	43
50.	Refundable Amounts.....	44
51.	Extension of time for payment.....	44
52.	Default in payment.....	45
53.	Order of payment of tax debts.....	46
54.	Currency.....	46
PART VII – INTEREST AND PENALTIES FOR LATE FILING AND PAYMENT.....		47
55.	General	47
56.	Interest on underpayments	47
57.	Interest Rate	47
58.	Late filing of tax return	47
59.	Penalty for non-payment of tax	48

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

PART VIII – RECOVERY OF TAX 49

60.	General	49
61.	Period of limitations for collection.....	49
62.	Write off of uncollectible amounts.....	49
63.	Court proceedings	49
64.	Lien	50
65.	Departure from Montserrat.....	51
66.	Withholding held in trust.....	52
67.	Offset against payments	52
68.	Third party debtors	53
69.	Compliance with Notice.....	54
70.	Non-Arm’s length transferees	55
71.	Receivers	56
72.	Recovery of tax by levy on goods etc.	57
73.	Priority of claim for tax.....	57
74.	Sale by tax authorities	58
75.	Commission to Bailiff	58

PART IX – OFFENCES AND ADMINISTRATIVE PENALTIES. 58

76.	General	58
77.	Offence by company	59
78.	Notice of administrative penalty	60
79.	Contents of notice of administrative penalty.....	60
80.	Procedure	61
81.	Failure to register	61
82.	Failure to notify of changes in taxpayer information	61
83.	Falsification of invoices, receipts, credit and debit notes.....	61
84.	Negligent or fraudulent underpayment.....	62
85.	False or misleading statements.....	62
86.	Failure to maintain documents	64
87.	Failure to comply with third party Notice	64
88.	Failure to provide facilities	64
89.	Failure to comply with Notice to give information	64
90.	General provisions	65
91.	Aiding and abetting	65
92.	Period of Limitations.....	66
93.	Tax Evasion.....	66
94.	Impeding Tax Administration	66
95.	Failure to preserve secrecy	67
96.	Offences by taxation officers	67
97.	Compounding of offences	68

PART X FINAL PROVISIONS 69

98.	Repealed legislation	69
99.	Effective date and transitional provisions	69

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

SCHEDULE	70
OATH OF SECRECY	70

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

I ASSENT

Governor

DATE:

M O N T S E R R A T

No. 10 of 2022

A BILL FOR

AN ACT TO REVISE AND CONSOLIDATE THE LAW RELATING TO THE
ADMINISTRATION OF TAXATION AND TO ENSURE THE EFFICIENT
COLLECTION OF TAXES AND OTHER FEES IN THE NATURE OF TAXES.

BE IT ENACTED by the King's Most Excellent Majesty, by and
with the advice and consent of the Legislative Assembly of
Montserrat and by the authority of the same as follows:

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the Tax Administration Act 2022 and comes into force 1 January 2023.

2. Interpretation

(1) In this Act—

“**administrative penalty offence**” means an offence described in Division II of Part IX;

“**assessment**” means entering into the records of the Department the amount of a taxpayer’s liability for tax for a specific taxation period, including a revised assessment;

“**authorised officer,**” in relation to a function, means the Comptroller or any person employed in the Department and authorised in writing by the Comptroller to perform the function;

“**bank**” has the meaning given in the Banking Act (Cap. 11.03);

“**Comptroller**” means the Comptroller of Inland Revenue;

“**Department**” means the Inland Revenue Unit of the MCRS;

“**financial institution**” has the meaning given in the Banking Act (Cap. 11.03);

“**law**” means an Act of the Legislative Assembly of Montserrat and subordinate legislation made under such an Act;

“**non-resident**” means a person who is not a resident;

“**notice**” means an agreement, statement, demand note, or other communication issued by the Comptroller to the taxpayer or other person;

“**resident**” in relation to a calendar year means—

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (a) in the case of an individual, that—
- (i) the individual’s permanent place of abode is in Montserrat and that the individual is physically present therein for some period of time during the year unless the Comptroller is satisfied that the individual’s absence throughout the whole of the year was for the purpose of education, medical treatment, the performance of duties on behalf of the Government or for any other purpose which, in the opinion of the Comptroller is reasonable; or
 - (ii) the individual is physically present in Montserrat for not less than 183 days during the year; or
 - (iii) the individual is physically present in Montserrat for some period of time during the year and that such period is continuous with a period of physical presence during the year for the immediately preceding or succeeding year of such duration as to qualify the individual for the status of a resident for such preceding or succeeding year under subparagraph (ii);
- (b) in the case of an estate of a deceased person, that immediately prior to the person’s death the deceased person qualified for the status of a resident under paragraph (a);
- (c) in the case of a trust or a body of persons, that such trust or body of persons was established in Montserrat.

“**tax**” means a compulsory payment to Government imposed under one of the revenue laws to which

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

this Act applies under section 4, regardless of whether that payment is designated as a tax, fee, duty, levy or otherwise, and, unless the context otherwise requires, includes interest, late fee, or penalty in relation to a tax;

“tax legislation” means a revenue law to which this Act applies under section 4, or a regulation under such a law;

“taxpayer” means—

- (a) a person who is required to pay tax under a revenue law; or
- (b) a person who is required to withhold or deduct tax and pay it to the Department;

“tax return” means a return, including an information return, that a person is required to file with the Department, in which information about that person’s or some other person’s possible tax liability is provided;

“TIN” has the meaning given in section 9; and

- (2) The terms **“Commissioners”**, **“Comptroller of Inland Revenue”**, **“Comptroller of Customs and Excise”**, **“Government”**, **“MCRS”**, **“Minister”**, and **“revenue laws”** have the meaning given in the Montserrat Customs and Revenue Services (Enabling) Act, (Cap. 17.06).
- (3) The terms **“body of persons”**, **“company”**, **“individual”**, **“person”**, and **“trade”** have the meaning given in the Income and Corporation Tax Act (Cap.17.01).
- (4) Where this Act applies in respect of a revenue law, any term not defined in this Act has the meaning that it has for the purposes of that revenue law.
- (5) Where this Act refers to something being written, in writing, contained in a record or document, or the like, the reference shall be read as including information communicated or stored electronically.

3. Interpretation of tax laws

- (1) In the case of a revenue law, the following shall be considered to be part of the law—
- (a) the headings of the sections, Parts, Divisions, and Subdivisions into which the law is divided; and
 - (b) any Schedule to the law.
- (2) In interpreting a provision of a revenue law, a construction that would promote the purpose or object underlying the provision or the law (whether that purpose or object is expressly stated in the law 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 revenue law, if any material that does not form part of the law 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 law and the purpose or object underlying the law; 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 and taking into account its context in the law and the purpose or object underlying the law, 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 revenue law includes—
- (a) any treaty or other international agreement or international assistance agreement that is referred to in the law;

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (b) 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 Legislative Assembly, by a Minister, before the time when the provision was enacted; and
- (c) any relevant material in any official record of proceedings of debates in the Legislative Assembly.

4. Scope of the Act

- (1) Except as otherwise provided, this Act applies to a person who is liable or may become liable to pay a tax imposed under a revenue law.
- (2) If there is inconsistency between the provisions of this Act and the provisions of a revenue law, the provisions of the revenue law prevail.
- (3) This Act does not apply to provisions for the collection and recovery of tax that reside with the Comptroller of Customs and Excise.
- (4) Notwithstanding subsection (3), section 8 applies to all persons having an official duty or employed in the administration of the Montserrat Customs and Revenue Services (Enabling) Act, (Cap.17.06).

PART II – GENERAL PROVISIONS

5. Comptroller and Inland Revenue Department

- (1) The Comptroller is responsible—
 - (a) for the collection and accounting for taxes to which this Act applies; and
 - (b) for the administration and application of the provisions of this Act and the laws to which this Act applies.
- (2) The Comptroller, an officer of the Department, an expert engaged under section 7, or any other person authorised by

the Comptroller to perform any functions under this Act shall not be personally liable in civil proceedings in connection with any act done by the person in good faith in the discharge of those functions.

- (3) The Comptroller may prescribe such forms as the Comptroller considers appropriate for the purposes of this Act.

6. Delegation of powers

- (1) The Comptroller may delegate to an officer of the Department a power or duty conferred or imposed on the Comptroller by this Act, other than this power of delegation.
- (2) A delegation by the Comptroller may be either to a specific individual or to the incumbent of a specific post.
- (3) Subject to conditions that the Comptroller specifies, the Comptroller may provide that any information, declaration, or document required to be furnished to the Comptroller is to be supplied to such other person as the Comptroller may nominate.
- (4) A delegation under this section does not prevent the Comptroller from personally exercising the power, duty, or function in question.
- (5) The Comptroller may, at any time, revoke a delegation under this section.

7. Assistance of experts

- (1) The Comptroller may engage experts, on such terms and conditions as the Comptroller thinks fit, to assist the Department and its tax officers in the proper performance of their functions.
- (2) An authorised officer must supervise assistance provided by an expert.
- (3) A person has the right to refuse to deal directly with an expert but a person must not obstruct an expert that is assisting an authorised officer.

- (4) A person has the right to complain to the Comptroller that the engagement of a particular expert involves a conflict of interest.
- (5) Subject to the terms of the engagement of the expert, the Comptroller must decide on a complaint made under subsection (4) and the decision of the Comptroller whether to continue with the engagement is final.
- (6) The engagement of an expert is ineffective unless it is in writing and is expressly made under this section.
- (7) An expert to whom this section applies must regard and deal with as secret and confidential all information and documents that, by reason of the expert's employment, engagement, or assistance, come into the expert's possession in connection with a tax law.
- (8) Sections 8, 95, and 96 apply to experts engaged under this section.

8. Obligation of secrecy

- (1) Except as provided in subsection (3), (4), (5), or (7) a person having an official duty under a revenue law or being employed in the administration of a revenue law, must regard and deal with 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—
 - (a) to other agents and employees of the MCRS in the course, and for the purpose, of carrying out their duties;
 - (b) to the Minister in the course, and for the purpose, of carrying out supervision of the MCRS;
 - (c) to employees of the Ministry of Finance, for the purpose of reviewing and evaluating tax issues;
 - (d) to a person as the Governor acting on the advice of Cabinet directs, if the Governor acting on the advice

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- of Cabinet certifies that it is necessary in the public interest that the information should be disclosed;
- (e) in accordance with a domestic, regional, or international agreement between Montserrat and another jurisdiction for the exchange of tax information;
 - (f) to law enforcement agencies, for the purpose of the investigation and prosecution of a criminal offence;
 - (g) in compliance with an order of a court; or
 - (h) if it is information needed by a third-party debtor to comply with section 68.
- (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.
 - (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 written 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 shall continue to apply in respect of any person notwithstanding that the person ceases to be appointed under or employed in carrying out the provisions of this Act.
 - (7) The Comptroller may publish a list of the names of taxpayers—
 - (a) who are in default under section 52;
 - (b) who have failed to file a return as required; or

(c) on whom an understatement penalty has been imposed.

9. Taxpayer Identification Numbers

- (1) The Comptroller must assign a unique taxpayer identification number (“TIN”) to a 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 or other purposes.
- (4) A person is required—
 - (a) to include the person’s TIN on documents relating to a tax to which this Act applies; and
 - (b) to furnish the TIN to any other person who is required to furnish tax information with respect to the person furnishing the number.
- (5) The Comptroller must include the TIN on correspondence sent to a taxpayer concerning the taxpayer’s tax liability, and the taxpayer must include the TIN on returns and correspondence with the Comptroller.
- (6) A taxpayer must notify the Comptroller in writing of a change in name (including business name or other trading name), address, place of business, or nature of the taxable activity carried on, within one year of the change.

10. Registration

- (1) A person who commences an activity that will render the person liable to pay tax, furnish a return, or perform any other obligation under a revenue law, and who is not already registered, is required to register with the Comptroller in the prescribed form and manner no later than 30 days after the commencement of the activity
- (2) A person registering under this section is required to submit the application for registration in the form and

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

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 Governor acting on the advice of Cabinet 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.
- (5) The Comptroller must promptly notify a registrant of the registrant's TIN, unless the Comptroller determines, and so notifies the registrant, that the registrant is not entitled to register, including because the registrant is already registered.
- (6) Within 10 days of registration of a business, registration of a small business, or incorporation of a company, the Commissioner of the Financial Services Commission shall notify the Comptroller of the registration or incorporation.

11. Public rulings

- (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 written 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.

12. Advance rulings

- (1) Upon a taxpayer's request, the Comptroller may issue to a taxpayer a written advance ruling setting out the Department's position regarding the application of tax legislation to a specific transaction proposed by the taxpayer.

- (2) For reasonable cause, the Comptroller may amend or revoke an advance ruling, in whole or in part, by written notice served on the applicant.
- (3) 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.
- (4) The subsequent passage of a revenue law that is inconsistent with an advance ruling revokes the ruling to the extent of inconsistency.
- (5) The Comptroller must make advance rulings available to the public, deleting or redacting the taxpayer's name and other information specific to the taxpayer that is not needed by others to understand the ruling.
- (6) The Comptroller may adopt procedures for the issuance of advance rulings and specify reasonable fees to be charged.

13. Other statements

With the exception of a ruling issued under section 11 or 12 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.

14. Notices

- (1) A notice is effective only if it is—
 - (a) authorised by law;
 - (b) in writing;
 - (c) signed by an official of the Department with apparent authority, the signature being duly printed or written thereon;and is served upon the taxpayer or other person to whom it is addressed.

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (2) If the Comptroller is required to give notice in writing to a person other than a company or a partnership, the notice is considered sufficiently served if it is—
- (a) served personally on that person;
 - (b) sent by registered mail to the person’s last known address; or
 - (c) communicated electronically in accordance with the Electronic Transactions Act (Cap. 11.32).
- (3) If the Comptroller is required to give notice in writing to a company or other body of persons, the notice is considered sufficiently served if it is—
- (a) served personally on, or communicated electronically in accordance with the Electronic Transactions Act (Cap. 11.32) to the company’s or body’s representative;
 - (b) delivered to the company’s or body’s principal place of business in Montserrat; or
 - (c) sent by registered mail to the registered office of the company or body.
- (4) If the Comptroller is required to give notice in writing to a partnership, the notice is considered sufficiently served if it is—
- (a) served personally on, or communicated electronically in accordance with the Electronic Transactions Act (Cap. 11.32) to, the precedent partner or agent of the partnership;
 - (b) left at or sent by registered mail to the partnership’s last known address for service of notices; or
 - (c) left at or sent by registered mail to any office or place of business of the partnership.
- (5) A notice sent by registered mail is considered served fourteen days succeeding the day when posted where the address is in Montserrat and, where the address is not in Montserrat, one month succeeding the day when posted.

- (6) A notice under the Property Tax Act (Cap. 17.16) may be served on a person as provided in subsections (1) through (4) or, if no other service option is practicable, by addressing the notice to the owner of the property, describing the property to which it relates, and delivering it to a person on the property to whom it can be delivered or affixing it or a copy of it to a conspicuous part of the property.
- (7) A signature written on a notice, statement, agreement, return, form, declaration, table, or other document and purporting to be the signature of a particular person is considered to be the signature of that person unless the contrary is shown.

15. Forms and notices

- (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) A 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.

16. Defect does not affect validity

- (1) A notice of assessment or other notice or document issued under a revenue law is not to be considered invalid or ineffective by reason of a failure to comply with the requirements of section 14 if the taxpayer had effective knowledge of the fact of the notice and of its content.
- (2) A notice of assessment or other notice or document issued under this Act is not to be considered invalid or ineffective by reason of defects if it is, in substance and effect, in

conformity with this Act, and the person assessed, or affected by the document, is designated in it according to common understanding.

- (3) If a notice of assessment contains an error, the Comptroller must correct the error in a timely manner either on the Comptroller's initiative or at the request of the person assessed.

17. Regulations

The Governor acting on the advice of Cabinet may make regulations—

- (a) for matters that under this Act are to be prescribed by regulations; or
- (b) whether or not to be prescribed by regulations under this Act, for matters necessary or convenient to be prescribed for the better carrying out or giving effect to this Act or the Acts to which this Act applies.

18. Taxpayer's right to information

Upon request by a taxpayer, the Department must—

- (a) inform the taxpayer of the status of the taxpayer's account with respect to tax;
- (b) provide a copy of a tax return filed by the taxpayer and still on file with the Department; and
- (c) provide a copy of any assessments of tax in respect of which any tax is still outstanding and still collectible or which have been issued within the past six years.

19. Due dates

- (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 or before 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—
- (a) in the case of filing by mail, on the date of the postmark;
 - (b) in the case of electronic delivery, on the date and at the time when the electronic delivery enters the designated information processing system in accordance with the Electronic Transactions Act; and (Cap. 11.32); or
 - (c) in other cases, on the date it is stamped as received by the Department.

PART III – RECORDKEEPING AND INFORMATION COLLECTION

20. Accounts and Records

- (1) A taxpayer engaged in a trade, business, or independent professional activity or required to make a return under a revenue law is required to keep and maintain in Montserrat 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, 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 shall 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

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

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 a revenue law must retain the documents—
 - (a) for a period of seven years from the date on which the transaction took place; or
 - (b) if longer than the period specified in paragraph (a), until expiration of the time limit for assessment of tax for any tax period to which the records are relevant.
- (6) Financial statements, invoices, books of original entry, and all written communications between the Department and the taxpayer must be in English.
- (7) For the purposes of this section, source documents 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.

21. Obligations of financial institutions

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

22. Tax returns

- (1) A taxpayer must, if required by a revenue law, furnish to the Comptroller a tax return in accordance with subsection (2), within the time and at the place specified by that law, 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.

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (3) A person may, in accordance with section 5 of the Electronic Transactions Act (Cap. 11.32), deliver a return online in the prescribed form.
- (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 consideration 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.
- (7) A taxpayer may file an amended return for a tax period no later than six years after the end of the tax period.

23. Notice to require filing

- (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 seven days from the date of service of such notice.
- (2) Nothing in this section shall be construed as extending the time limits provided by the relevant revenue law for the furnishing of a return.

24. Return deemed to be furnished by due authority

A return, statement, or form purporting to be furnished under this Act by or on behalf of any person shall for all purposes of this Act be 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 shall be deemed to be cognisant of all matters contained in the return, statement, or form.

25. Information returns

- (1) The provisions of this Act relating to returns apply to a person required by subsection (2) or by a revenue law to file a return of information related to matters other than the person's own tax liability.
- (2) By notice published in the Gazette, the Comptroller may require any class of persons to file a periodic return of information concerning other persons, as specified in the notice.
- (3) The notice described in subsection (2) must specify the due date for the return, which may not be earlier than six months from the date of publication of the notice.

26. Extension of time

- (1) The Comptroller may extend the time limit prescribed for filing a tax return, providing information, or taking other action required under a revenue law, if the taxpayer or other person required to file, provide the information, or take the action shows reasonable cause for an extension and applies for that extension either before the due date or within a reasonable time after the reasonable cause ended, whichever is later.
- (2) The Comptroller may issue a general extension of the time limit for filing tax returns for a specific tax period in cases of natural disaster or similar events that impede filing of returns.
- (3) The granting of an extension of time under subsection (1) or (2) does not affect the due date for payment of tax, unless an extension of time for payment is also expressly granted.

27. Access to information, assets and land

- (1) An authorised officer may enter a business premises or other premises open to the public, without prior notice, for an authorised purpose—
 - (a) during normal business hours; or

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (b)* at any other time authorised in writing by a magistrate upon application by the Comptroller, showing the necessity to enter at that time.
- (2)** An authorised officer may enter a taxpayer’s dwelling or other premises not described in subsection (1), for an authorised purpose—
 - (a)* with the consent of the taxpayer; or
 - (b)* at the time stated and in the manner authorised in writing by a magistrate upon application by the Comptroller, showing the necessity to enter at that time.
- (3)** An authorised officer may enter on any property for the purpose of surveying and valuing it—
 - (a)* with the consent of the taxpayer; or
 - (b)* after giving not less than twenty-four hours’ notice in writing.
- (4)** An authorised officer who is lawfully upon premises or in a dwelling under subsections (1), (2), or (3) may—
 - (a)* make a copy of a record;
 - (b)* seize a record or other item that appears to be relevant to an authorised purpose; or
 - (c)* seal records or other items.
- (5)** If an authorised officer seizes a record or other item pursuant to the authority provided under this section, the Comptroller may make a copy of the record or other item.
- (6)** A copy of a document made pursuant to the power conferred by this section may be produced in Court and has the same evidentiary value as if it were an original.
- (7)** This section does not authorise access to premises of diplomatic, consular, or other missions of foreign countries and international organizations which enjoy immunity from such investigations under international law.

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (8) If a person asserts privilege under law over documents or other evidence which the Comptroller wishes to seize or examine pursuant to this section, the materials over which privilege is claimed must be deposited into envelopes which are then sealed and retained unopened by an officer of the Department pending an application by the Comptroller to a court of competent jurisdiction to determine whether the items in question are privileged.
- (9) Documents specifically requested by the Comptroller under this section or section 28, and which a taxpayer or other specified person fails to provide, cannot be used by the taxpayer or other person in a judicial proceeding challenging an assessment, except with the agreement of the Comptroller.
- (10) The owner or lawful occupier of the premises or place to which an exercise of power under this section relates must provide all reasonable facilities and assistance to the Comptroller or authorised officer.
- (11) An authorised officer must sign for all records, books, or other items removed and retained under this section and must return them to the owner within fourteen days of the conclusion of the investigation or related proceedings.
- (12) The Comptroller may cause any land to be visited, inspected, and measured and may call on any person to produce for inspection any map, plan, title deed, instrument of title, or other document in the custody or under the control of that person which relates to the land.
- (13) The Comptroller may require a police officer to be present for the purposes of exercising powers under this section.
- (14) In this section and section 28, “**authorised purpose**” means—
 - (a) the collection of information for the purpose of determining the liability of a specific person for a tax;
 - (b) the collection of information for the purpose of collecting tax from a specific person; or

- (c) the collection of information related to the investigation or prosecution of tax matters related to a specific person.

28. Notice to obtain information

- (1) In respect of an authorised purpose, the Comptroller may, by giving reasonable notice in writing, require a person, whether a taxpayer or not—
 - (a) to furnish the information that is required by the notice, including information concerning another person; or
 - (b) to appear at the time and place designated in the notice for the purpose of being examined or of producing documents or other evidence in the control of that person which are described in the notice.
- (2) Without prejudice to the generality of subsection (1), the Comptroller may require any—
 - (a) bank to furnish to the Comptroller details of any banking account or other assets which may be held on behalf of any person, or to furnish a copy of bank statements of any such banking account;
 - (b) bank to permit the Comptroller or an authorised officer to inspect the records of the bank with respect to the banking account of any person;
 - (c) bank to furnish annually a schedule showing the amount of interest paid on deposits together with the names and addresses of the persons to whom such interest accrued;
 - (d) officer of a bank to appear before the Comptroller to give evidence respecting any bank account or other assets which may be held by the bank on behalf of any person.
- (3) Subsection (1) extends to the supply of information, the production of documents and the giving of evidence to the Comptroller in relation to—

- (a)* the payment of income by any person to a person who is a non-resident for the year of payment;
 - (b)* the payment of remuneration by an employer to an employee, the deduction of tax from the remuneration and the accounting for any tax so deducted.
- (4) The Comptroller may make copies of books of account or other documents that are produced for purposes of this section, or may retain them where such course of action appears to the Comptroller to be necessary for the purposes of any prosecution or the substantiation of any assessment.
- (5) Subject to section 27(8), section 27 and this section have effect notwithstanding any law relating to confidentiality, privilege, or the public interest with respect to the production of or access to documents or other evidence, including a law relating to bank secrecy and any contractual duty of confidentiality.

29. Official information and official secrecy

The Comptroller may require any officer in the employment of the Government or other public body to supply such particulars as may be required for the purposes of a revenue law and which may be in the possession of such officer, other than any particulars as to which the officer is under any statutory obligation to observe secrecy.

PART – IV ASSESSMENTS

30. Assessments

- (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 revenue law.
- (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 best judgement and information reasonably available to the Comptroller.

31. New or Revised Assessment

- (1) The Comptroller may make a new assessment, or may revise an assessment previously made, within the time limits specified in section 32, 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 best judgement and information reasonably available in making anew or revised assessment.
- (3) If a taxpayer files an amended return under subsection (7) of section 22, the Comptroller must revise the original assessment if satisfied that the original assessment was based on incorrect information.

32. Time limits for Assessments and Revised Assessments

- (1) The Comptroller may not make an assessment, including a new assessment or a revised assessment, more than six years after the end of the tax period to which the assessment relates.
- (2) Notwithstanding subsection (1), in the case of an assessment made under subsection (1) of section 31 if the original assessment was based upon incorrect information due to the fraud or wilful neglect of the taxpayer, the revised assessment must be made within 6 years of the end of the tax period to which the return relates.
- (3) Notwithstanding subsection (1), an assessment under section 30(3) must be made within 6 years of the end of the tax period to which the return relates, but if the taxpayer files a return within 6 years after the end of the tax period, the assessment must be made within 6 years of the end of the year in which the return is filed.

- (4) Notwithstanding subsection (1), if the return for a tax period is filed 5 years or later after the end of the tax period, an assessment must be made within one year of the end of the year in which the return is filed, and a revised assessment may be made at any time, if no return has yet been filed.
- (5) If an assessment is not made within the time limits specified in this section, an assessment is treated to have been made in the amount of tax, if any, that has been withheld for the tax period, or, if no tax has been withheld, that no tax is payable.
- (6) Nothing in this section prevents the amendment of an assessment to give effect to a decision of the Commissioners or Court.

33. Jeopardy Assessment

- (1) The Comptroller may make an assessment, using best judgement and information reasonably available, in advance of the date on which a tax return is normally due, if that action is required to secure the collection of the tax.
- (2) In addition to a right of appeal under Part V, an appeal against an assessment made under this section may be made to the High Court on the ground that—
 - (a) its amount is excessive; or
 - (b) circumstances that justify a jeopardy assessment do not exist.

34. Notice of Assessment

- (1) When an assessment is made, 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;

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (c) the date of issue of the notice;
 - (d) the matter to which the notice relates;
 - (e) the amount of tax payable;
 - (f) a demand for payment of the tax by the date stipulated in the notice;
 - (g) the 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 manner of objecting to the assessment, and the time limit for doing so; 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 V, that the amount and all particulars of the assessment are correct.

35. Anti-avoidance

- (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) In this section—
“**scheme**” includes a course of action and an agreement, arrangement, promise, plan, proposal, or undertaking,

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

whether expressed or implied and whether or not legally enforceable;

“**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;

“**related person**”, in relation to a person, means any other person who—

- (a) being an individual, is a relative of the person; or
- (b) being a company, is controlled, directly or indirectly, by the person; or
- (c) is controlled, directly or indirectly, by a person or group of persons that control the person; and

“**relative**”, in relation to an individual, means the individual’s spouse, a lineal descendant of the individual’s great-grandparents, or a spouse of such lineal descendant.

- (4) 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 revenue law; and
 - (b) having regard to the substance of the scheme, it would be concluded that the main purpose, or one of the main purposes for the person, or one of the persons, who entered into or carried out the scheme, was to enable 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.

- (5) For the purposes of determining a person's liability under subsection (4), 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
 - (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).

PART V – OBJECTIONS AND APPEALS

36. Taxation decisions

Except in proceedings under this Part—

- (a) no taxation decision may be disputed in the Appeal Commissioners, in a Court, or in another proceeding on another ground; and
- (b) the amount and particulars of an assessment are to be treated as correct and the liability of the taxpayer is to be determined accordingly.

37. Reviewable decisions

- (1) The following decisions under the Income and Corporation Tax Act are reviewable decisions—

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (a) a decision under section 4(2) to refuse to approve varying the basis period or making an adjustment under the last paragraph of section 4(2);
 - (b) the issuance of a direction under section 32(6);
 - (c) a decision not to provide relief in the full amount demanded by a person under section 65;
 - (d) an assessment of tax.
- (2) The following decisions under the Property Tax Act (Cap. 17.16) are reviewable decisions—
 - (a) a decision under section 39 to make an amendment in any property tax;
- (3) The following decisions under this Act are reviewable decisions—
 - (a) an assessment of tax;
 - (b) the declaration of a person as a representative under section 46(5);
 - (c) a decision under section 51(3) in response to a request for extension of time for payment;
 - (d) assessment of a penalty under section 58 or 59 or an administrative penalty under Part IX;
 - (e) a decision to issue a certificate of noncompliance under section 65(2);
 - (f) the issuance of a notice under section 68(1) or a decision to reject a third party notice under section 69(7)(b);
 - (g) a decision under section 64(8) not to release a lien; and
 - (h) a decision that the requirements of section 39(6) are not satisfied.

38. Administrative Review

- (1) A taxpayer who is dissatisfied with a reviewable decision of the Department described in section 37 may request the Comptroller to reconsider the decision.
- (2) A request for administrative review must be made to the Comptroller in writing not later than thirty days after the taxpayer was notified of the decision, and must specify in detail the grounds upon which it is made.
- (3) Where the objection is against an assessment which has been made in the absence of a return required to be made, the notice of objection must be sent together with a return duly made.
- (4) The Comptroller must consider the taxpayer's request and notify the taxpayer in writing of the Comptroller's decision and the reasons for the decision.
- (5) Notwithstanding the deadline specified in subsection (2), the taxpayer may make the request for administrative review if the Comptroller is satisfied that owing to absence from Montserrat, sickness, or other reasonable cause the taxpayer was prevented from making the request within that deadline, and that there has been no unreasonable delay on the taxpayer's part.

39. Appeal from Administrative Review

- (1) A person aggrieved by the result of a review under section 38 may appeal to the Commissioners.
- (2) An appeal to the Commissioners may not be made unless a request for administrative review has first been made, and—
 - (a) a decision has been received from the Comptroller; or
 - (b) ninety days have elapsed since the request for administrative review was made.
- (3) If the Commissioners are satisfied that the appellant is overcharged they may reduce the amount of the assessment by the amount of the overcharge, and if they

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

are satisfied that the appellant is undercharged, they may increase the amount of the assessment by the amount of the undercharge.

- (4) Notwithstanding anything contained in Part VIII, if the Commissioners are satisfied that tax in accordance with their decision upon the appeal may not be recovered, the Commissioners may require the appellant to furnish security for payment of the tax, if any, which may become payable by the appellant as may seem to the Commissioners to be proper.
- (5) Notice of an appeal under this section must be given in writing to the Comptroller within sixty days from the date of the decision of the Comptroller under section 38.
- (6) Notwithstanding the deadline specified in subsection (5), the appellant may appeal against an assessment or other reviewable decision if the Commissioners are satisfied that owing to absence from Montserrat, sickness, or other reasonable cause the appellant was prevented from giving notice of appeal within that deadline, and that there has been no unreasonable delay on the appellant's part.
- (7) The Commissioners shall have—
 - (a) power to summon to attend at the hearing of an appeal any person who in their opinion is or might be able to give evidence respecting the appeal;
 - (b) power, where any person is so summoned, to examine the person on oath or otherwise;
 - (c) power to require any person to produce any books or documents which are in the person's custody or control and which the Commissioners may consider necessary for the purpose of the appeal;
 - (d) all the powers of a subordinate court with regard to the enforcement of attendance of witnesses, hearing evidence on oath, and punishment for contempt;
 - (e) power to admit or reject any evidence adduced, whether or not admissible under the provisions of any

written law for the time being in force relating to the admissibility of evidence;

- (f) power to postpone or adjourn the hearing of an appeal where the Commissioners are satisfied that, for any reasonable cause, either party to the appeal has been prevented from attending on the date fixed for such hearing; and
 - (g) power to determine the procedure to be followed in an appeal.
- (8) At the hearing of an appeal by the Commissioners the proceedings shall be *in camera*.
- (9) Where the Commissioners are not unanimous in their decision the appeal shall be determined by the decision of the majority.

40. Burden of Proof

The burden of proof is on the taxpayer or person making an objection to an assessment to show that the assessment is incorrect.

41. Appeals do not suspend collection of undisputed amounts

- (1) If a request for administrative review of an assessment has been filed or a taxpayer has appealed to the Commissioners against an assessment, the undisputed tax liability remains due and payable, unless the Comptroller grants an extension of time under section 51.
- (2) Notwithstanding subsection (1), the Commissioners or the High Court may rule, upon the Comptroller's 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.

42. Finality of Assessment

If no request for review is made within the time permitted by section 38, an assessment is treated as final, unless the Comptroller issues a revised assessment under section 31.

43. Appeal from a decision of the Commissioners

- (1) Either party to a proceeding before the Commissioners who is dissatisfied with the decision of the Commissioners may, within thirty days after being notified of the decision, file a notice of appeal with the Registrar of the High Court; and the party so appealing must serve a copy of the notice of appeal on the other party to the proceeding before the Commissioners.
- (2) An appeal to the High Court may not be made unless an appeal request to the Commissioners has first been made, and—
 - (a) a decision has been received from the Commissioners; or
 - (b) ninety days have elapsed since the request for appeal to the Commissioners was made and no response to the request for appeal has been received from the Commissioners.
- (3) An appeal from a decision of the Commissioners to the High Court may be made only on a point of law.
- (4) If an appeal is made from a decision of the Commissioners, the Commissioners must provide a written statement of their decision, including a summary of the evidence, their finding of the facts, and their conclusions on the points of law involved.
- (5) In any appeal to the High Court—
 - (a) the proceedings shall be held *in camera* unless the person whose assessment is in issue requests that the hearing be in open court and in such a case the appeal shall be heard in open court;
 - (b) the onus of proof shall be on the appellant;
 - (c) costs shall be in the discretion of the Judge hearing the appeal and shall be such sum as the Judge shall determine.

44. Appeals to Court of Appeal

- (1) Either the appellant or the respondent in an appeal to a Judge of the High Court may appeal to the Court of Appeal and an appeal shall be made within the time and in the manner laid down for appeals from the High Court to the Court of Appeal and shall be subject to the law relating to such appeals.
- (2) Where there is adequate reason why the time limits in respect of an appeal to the Commissioners or in respect to a Judge of the High Court could not be complied with, the Commissioners or a Judge of such court, as the case may be, may extend those time limits for a fixed period as may be determined by the Commissioners or by the Judge.
- (3) Subject to section 42—
 - (a) a final assessment or an assessment confirmed by the Judge of the High Court; and
 - (b) subject also to an appeal to a Judge of such High Court, a settled assessment or an assessment confirmed by order of the Commissioners,shall be final and binding and except in proceedings on appeal under this Act shall not be questioned in any Court or in any proceedings.

PART VI – LIABILITY FOR AND PAYMENT OF TAX

45. Liability of taxpayer and due date

- (1) Tax is due and payable at the time provided by the relevant revenue law.
- (2) Tax must be paid in the manner and place prescribed by the Comptroller.
- (3) If the Comptroller—
 - (a) has reasonable grounds to believe that a taxpayer may leave Montserrat before the due date for payment of an amount that would be due under a revenue law; or

(b) assesses tax under section 33,
that tax is due on the date specified by the Comptroller by
notice in writing to the person.

46. Liability and obligations of representatives

- (1) For the purposes of this Act, subject to subsection (2),
“**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;
 - (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 moneys or
funds on behalf of the body;
 - (f) if the person is the Government of Montserrat, an
individual responsible for accounting for the receipt
and payment of moneys 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 Montserrat on behalf
of the government or political subdivision of the
government; or
 - (h) if the person is a non-resident for a given year, a
person controlling the person’s affairs in Montserrat
at any time during such year, including a manager of
a business of that person in Montserrat.

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (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 Montserrat, unless there is none in relation to the person.
- (4) A company carrying on business in Montserrat must be represented for the purposes of this Act by a principal officer residing in Montserrat and if there is none, by an authorised agent residing in Montserrat, and must notify the Comptroller of its appointed representative within one month after it commences carrying on business in Montserrat, or one month after the designated representative ceases to qualify as such.
- (5) If a representative of a person 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) A 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 representative of a person is recoverable from the representative only to the extent of any assets of the person that are in the possession or under the control of the representative.
- (8) A 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 moneys of the person that are in the representative's possession or under the representative's control.

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (9) A representative is personally liable for the payment of tax due by the representative in a representative capacity if, while the amount remains unpaid, the 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 moneys or funds belonging to the taxpayer that are in the possession of the representative or which come to the representative after the tax is payable, if the tax could legally have been paid from or out of the moneys or funds.
- (10) Nothing in this section relieves a person from performing duties imposed by this Act on the person that the representative of the person has failed to perform.
- (11) If there are two or more representatives of a person, the duties or obligations referred to in this section apply jointly and severally to the 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 or a new partner or member; and
 - (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.

47. Officers of unincorporated bodies

- (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 is 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 taken to have been committed by the officers of the unincorporated body.

48. Liability for tax following winding-up

- (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.

49. Managers of entities

- (1) If an entity fails to pay tax on time, a person who is or has been a manager of the entity at any time since the relevant time is jointly and severally liable with the entity and the person for payment of the tax.
- (2) Subsection (1) applies irrespective of whether the entity ceases to exist.
- (3) Subsection (1) does not apply to a manager who has exercised the degree of care, diligence, and skill that a reasonably prudent person in the position of the manager would have exercised in preventing the initial and continuing failure to pay tax.
- (4) Amounts payable to the Comptroller by a manager under this section are a personal tax liability of the manager.
- (5) If a manager pays tax by reason of a liability under subsection (1), the manager may recover the payment from the entity as a debt due.

- (6) A manager of an entity may not be assessed for an amount under this section after the period of limitations for collecting the relevant tax from the entity has expired.
- (7) In this section—
- “**entity**” means any taxpayer other than a partnership, unincorporated body, or an individual;
- “**manager**” of an entity includes a person purporting to act as a manager of the entity and, in the case of a company, includes a director, the chief executive officer, and the chief financial officer of the company; and
- “**relevant time**” is six months before the events that gave rise to the entity’s tax liability.

50. Refundable Amounts

- (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) apply an amount remaining against the taxpayer’s liability to make advance payments of tax that will become due within the succeeding six months if the taxpayer so requests.
- (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 six years of the date of payment or, if made on the Comptroller’s initiative, within this time period.

51. Extension of time for payment

- (1) The taxpayer may apply, on a form prescribed by the Comptroller, for an extension of the time for payment of

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

tax beyond the date on which it is required to be paid under section 45.

- (2) An application under subsection (1) is valid only if filed before the due date on which tax is required to be paid under section 45.
- (3) The Comptroller may, with good cause, extend the time for payment as requested under subsection (1), may grant an extension period different from the period requested by the taxpayer, may extend time for payment pending resolution of an appeal, and may make other arrangements to ensure payment of the tax, including arrangements requiring the person to pay the amount due in instalments.
- (4) If the Comptroller does not notify the person who made an application under subsection (1) of the decision in writing within thirty days, the application is granted.
- (5) If a taxpayer has been granted an extension under subsection (1), interest is payable under Part VII notwithstanding the extension of time.
- (6) 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.

52. Default in payment

- (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;

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (e)* a demand for payment of these amounts;
 - (f)* the manner in 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 twenty-one 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; or
 - (b)* received an extension pursuant to section 51, and has remained in compliance with the terms of the arrangement.

53. Order of payment of tax debts

- (1)** Payments of a specific tax are applied against the taxpayer's liability in the following order—
 - (a)* interest relating to the tax;
 - (b)* penalties relating to the tax; and
 - (c)* the principal amount of the tax.
- (2)** The Comptroller may apply a tax payment to any tax which has been assessed and is due—
 - (a)* if the taxpayer fails to indicate to which specific tax or taxation period the payment should be applied; or
 - (b)* if the payment has been collected pursuant to Part VIII.

54. Currency

Tax is payable in Eastern Caribbean dollars.

**PART VII – INTEREST AND PENALTIES FOR LATE
FILING AND PAYMENT**

55. General

- (1) Procedures for the payment, collection, and dispute of a tax apply equally to interest and penalties relating to a tax.
- (2) Liability for interest under this Act is calculated separately and is in addition to penalties provided by law.
- (3) If a person has paid interest under this Part 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.

56. Interest on underpayments

- (1) If an amount of tax is not paid by the due date, the taxpayer is liable for interest on the amount for the period from the due date (determined without regard to an extension of time under section 51) to the date the tax is paid.
- (2) In the case of tax due under a revised assessment, the due date for the calculation of interest is the original due date of the tax.

57. Interest Rate

- (1) The interest rate for this Part is six percent simple interest per annum.
- (2) Notwithstanding subsection (1), the Governor acting on the advice of Cabinet may vary the interest rate by Order published in the *Gazette*.

58. Late filing of tax return

- (1) Subject to this section, a person who fails to file a tax return on or before the date by which filing is required shall be 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

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

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—

 - (a)* \$100, if the return is filed within one month of the due date;
 - (b)* \$1,000 if the return is filed within six months of the due date; and
 - (c)* \$10,000, in all other cases.
- (3) The penalty under subsection (1) does not apply where the failure to file was due to reasonable cause.
- (4) 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.
- (5) For purposes of subsection (1), a failure to file in respect of a tax period is deemed not to extend beyond the date on which the Comptroller issues an assessment for that period under section 30(3).
- (6) A tax return includes a return required under section 40(3) of the Property Tax Act.

59. Penalty for non-payment of tax

- (1) A person who fails to pay all or part of a tax (including withholding tax and instalments of income tax) due for a tax period on or before the due date, or the due date specified in the notice of assessment, if later, is liable to a late payment fee equal to 5 percent of the amount of tax due but not paid.
- (2) Where an extension is granted under section 51, a person is not liable to a late payment fee under subsection (1) unless the extension period expires without payment having been made.

PART VIII – RECOVERY OF TAX

60. General

The Comptroller may proceed with any remedy under this Part once the taxpayer is determined to be in default pursuant to section 52.

61. Period of limitations for collection

- (1) Proceedings under this Part must be commenced within six years of the date on which the taxpayer was determined to be in default pursuant to section 52.
- (2) Subject to subsection (1), no 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.

62. Write off of uncollectible amounts

- (1) If the Comptroller is unable to recover an amount of tax, interest, or penalty due and payable by a person under a revenue law, the Comptroller may, on the approval of Cabinet, order the write off of the liability as a debt due to the Crown.
- (2) If the Comptroller determines that a person whose debt was written off under subsection (1) has assets that may be attached to recover all or part of the unpaid amounts, the liability for the debt may be reinstated by an order of the Minister, approved by Cabinet, revoking the order made under subsection (1).

63. Court proceedings

- (1) Tax that is due and payable is a debt to the Crown and is payable to the Comptroller.
- (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.

- (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) Subject to section 41, in any proceedings for the recovery of tax it shall not be competent for the defendant to enter a defence that—
 - (a) the chargeable income or other tax base is incorrect; or
 - (b) the tax charged is excessive; or
 - (c) the assessment is the subject of objection or appeal.

64. Lien

- (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, late fees, 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 52.
- (5) At least fifteen days prior to registering a lien with the Registrar of the High Court and the Registrar of Lands, the Comptroller must send notice of the intention to register the lien to the taxpayer.
- (6) Subsection (5) does not apply if the Comptroller believes that the ability to collect tax is in jeopardy.
- (7) The Comptroller may file an action in the High Court to enforce the lien imposed by this section.
- (8) 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 notwithstanding section 36.

65. Departure from Montserrat

- (1) If the Comptroller has reasonable grounds to believe that any person may leave Montserrat without paying the tax payment of which is in default under section 52 and is due from the person, or from a company or other body of persons controlled by the person, the Comptroller may, by notice in writing served on that person, require the person within the timeframe specified in the notice to:
 - (a) make payment in full; or
 - (b) make arrangements satisfactory to the Comptroller for the payment of the tax or to secure the amount that is owing.
- (2) If any person fails to make payment in full or give satisfactory security as required under subsection (1), the Comptroller may issue a Certificate of Non-Compliance, stating that the person has an outstanding tax debt, and a copy of the certificate must be given to the person and to the Chief Immigration Officer, who shall not permit the person to leave Montserrat until the Comptroller revokes

the certificate because the debt is paid or appropriate security is given.

- (3) Where a certificate is given under subsection (2)—
- (a) the Comptroller may revoke the certificate at any time; and
 - (b) the Comptroller shall revoke the certificate within 24 hours of the person complying with the notice given under subsection (1).
- (4) Nothing in this section prevents the Chief Immigration Officer from allowing the person to leave Montserrat if, in the view of the Chief Immigration Officer, there are compelling circumstances justifying a decision to allow the person to leave.

66. Withholding held in trust

Notwithstanding anything contained in any other enactment, all amounts of tax deducted or withheld by any person pursuant to the Income and Corporation Tax Act shall be deemed to be held in trust by that person for the Comptroller and shall not be 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 shall form no part of the estate in liquidation, assignment or bankruptcy but shall be paid in full to the Comptroller before any distribution of the property is made.

67. Offset against payments

When the Accountant General is about to make a payment to any person, other than the first \$1,000 of wages in a given month, the Accountant General may apply the whole or part of that payment in satisfaction in whole or in part to any amount owing under a revenue law by that person and shall notify that person accordingly.

68. Third party debtors

- (1) If a taxpayer is in default under section 52, the Comptroller may serve a notice in writing on a third party debtor.
- (2) On receiving a notice, the third party debtor must pay to the Accountant General (on account of the taxpayer and by the date specified in the notice) the lesser of the following three amounts—
 - (a) the amount in respect of which the taxpayer is in default;
 - (b) the money owed by the third party debtor to the taxpayer; and
 - (c) the amount specified in the notice.
- (3) The date for payment specified in the notice must not be before fifteen days following the date the third party debtor is served with the notice.
- (4) On receiving a notice under subsection (1), the third party debtor must not pay any amount to the taxpayer until the Comptroller withdraws the notice.
- (5) As soon as practicable after service of the notice on the third party debtor, the Comptroller must serve the taxpayer with a copy of the notice.
- (6) Amounts payable to the Comptroller by a third party debtor under this section are a personal liability of the third party debtor, which may be collected in the same manner as a tax.
- (7) Money owed to a taxpayer includes—
 - (a) amounts currently owing or that may subsequently become owing to a taxpayer;
 - (b) amounts held or that may subsequently be held for or on account of a taxpayer;
 - (c) amounts held or that may subsequently be held on account of a third person for payment to a taxpayer;

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (d) amounts held by a person who has authority from a third person to pay the money to a taxpayer; and
 - (e) in relation to a third party debtor that is a financial institution, amounts that the taxpayer holds in an account with the institution.
- (8) A notice may be served under this section on the taxpayer's employer, requiring the employer to withhold and to pay to the Accountant General for a specified period, some part of the future wages or salary that become payable to the taxpayer.
- (9) The first \$1,000 of wages per month are not subject to withholding under a notice described in subsection (8).
- (10) If the third party debtor fails to pay the amount specified in subsection (2) within the time specified in a notice under this section, the provisions of this Act shall apply as if such amount were tax due and payable by the third party debtor on the date by which the third party debtor was required to make the payment to the Comptroller.
- (11) In this section—
 - “**money**” includes a debt obligation denominated or payable in money; and
 - “**third party debtor**” in relation to a taxpayer, means a person who owes money to the taxpayer.

69. Compliance with Notice

- (1) A third party who pays the Comptroller pursuant to section 68 is—
 - (a) treated as having acted with the authority of the taxpayer and of all other persons concerned; and
 - (b) indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extra judicial.
- (2) A third party who pays the Comptroller pursuant to section 68 may be entitled to recover the amount paid from the

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

taxpayer originally liable to make the payment, by offset or otherwise.

- (3) Subsection (1) applies irrespective of a provision to the contrary in written law, contract, or agreement.
- (4) A notice under section 68 ceases to have effect once the tax or obligations described in it is paid or otherwise satisfied.
- (5) If a third party served with a notice under section 68 is unable to comply with the notice by reason of lack of money owing to or held for the taxpayer, the person must notify the Comptroller (a "third party notice").
- (6) A third party notice must—
 - (a) be in writing;
 - (b) set out the reasons for the inability; and
 - (c) be filed with the Comptroller within three days after the third party becomes aware of the inability and, in any event, before the payment date specified in the section 68 notice.
- (7) On receipt of a third party notice the Comptroller may, by notice in writing served on the third party—
 - (a) accept the third party notice and cancel or amend the section 68 notice; or
 - (b) reject the third party notice.
- (8) The filing of a third party notice has no effect on the third party's personal liability for amounts under section 68 unless and until the Comptroller cancels or amends the section 68 notice.
- (9) In this section, "third party" means a third party debtor served with a notice under 68.

70. Non-Arm's length transferees

- (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 48.

71. Receivers

- (1) A receiver is required to notify the Comptroller of the receiver's appointment within fourteen 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 Montserrat held in the receiver's capacity as receiver, without the prior permission of the Comptroller.
- (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 Montserrat, 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.

72. Recovery of tax by levy on goods etc.

- (1) Where tax is in arrears the Comptroller may, and the Bailiff, immediately on receipt of a warrant, shall, proceed to levy upon the real and personal property of the person against whom the warrant is directed and to sell in the manner provided in section 74 so much of the same as may be required to satisfy the sums due on account of the tax from the person against whom the warrant is directed.
- (2) Where the amount of tax, penalty, and interest due in respect of a tax and tax period is \$20 or less, such amount shall be deemed to have been remitted.

73. Priority of claim for tax

- (1) No property belonging to any person at the time any tax becomes in arrear shall be liable to be taken by virtue of any execution or other process, warrant, or authority, or by virtue of any assignment, or otherwise, except at the suit of the landlord for rent, unless the person at whose suit the execution or seizure is made, or to whom the assignment was made pays or causes to be paid to the Comptroller before the sale or removal of the property, all arrears of tax which are due at the time of seizure, or which are payable for the year in which the seizure is made.
- (2) In case of neglect or refusal to pay the tax so claimed, the Bailiff or the Comptroller shall distrain the property notwithstanding the seizure or assignment, and shall proceed to the sale thereof for the purpose of obtaining payment of the whole of the tax charged and claimed and the reasonable costs and charges attending such distress and sale. The Bailiff and the Comptroller so doing shall be indemnified by virtue of this Act.

74. Sale by tax authorities

- (1) Subject to subsection (2), a sale under this Act shall be by public auction held at such time and place as the Comptroller or Bailiff may direct.
- (2) A notice of an intended sale shall be given in at least three issues of the *Gazette* or a newspaper circulating in Montserrat, but in no case shall a sale take place before the expiration of ninety days from the date of publication of the first notice.
- (3) The proceeds of a sale under this Act shall be applied to the payment of the tax due and the expenses of levy and sale, and the surplus, if any, shall be paid on application to the person entitled thereto.

75. Commission to Bailiff

- (1) There shall be paid to the Bailiff in respect of the duties performed by the Bailiff under this Act, a commission of 2%—
 - (a) on arrears collected by the Bailiff; and
 - (b) on the net proceeds of any sale over and above all other expenses of the levy and sale under this Act, not exceeding the amount of commission on arrears to which the Bailiff would have been entitled had there been no sale.
- (2) All sums of money received or recovered by the Bailiff as commission shall be paid to the Accountant General.

**PART IX – OFFENCES AND ADMINISTRATIVE
PENALTIES**

Division I – General Provisions

76. General

- (1) This section applies to offences and administrative penalties under this Act or under any other revenue law.

- (2) A person's liability for an administrative penalty under a section in this Part is separate and distinct from the person's liability, if any, for a penalty under another section of this Act or another revenue law and is in addition to the person's liability for the tax itself (including cases where the penalty is based on the amount of tax), interest, or penalty levied under Part VII, and to a criminal sanction imposed under Division III.
- (3) The burden of proof is on the Comptroller to show non-compliance with the provisions of revenue laws with respect to the imposition of a penalty.
- (4) The period of limitations for assessing a penalty is seven years after the violation that causes the penalty occurs, except for a violation under section 84, in which case the limitation for assessing a penalty is the same as the limitation for assessing the tax to which the penalty relates.
- (5) If a person liable for a penalty shows reasonable cause for the violation, 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.
- (6) A penalty 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.

77. Offence by company

- (1) Subsection (2) applies if—
 - (a) an act has been committed, or an omission has been made, by a company; and
 - (b) because of the act or omission, the company is liable to a penalty or to prosecution for an offence in relation to the act or omission.

- (2) A person who, at the time of the act or omission referred to in subsection (1)—
- (a) was a director or other similar officer of the company; or
 - (b) was acting or purporting to act in such capacity,
- is liable to a penalty and may be prosecuted for an offence, as if the person were the company.
- (3) Subsection (2) does not apply in respect of a person if—
- (a) the offence was committed without the person's consent or knowledge; and
 - (b) the person exercised all diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and all the circumstances.

Division II – Administrative Penalty

78. Notice of administrative penalty

- (1) Where an authorised officer has reason to believe that a person has committed an act or made an omission giving rise to an administrative penalty, the officer may serve on the person a notice of administrative penalty.
- (2) A notice of administrative penalty must be served on a person within the period specified in section 76(4).

79. Contents of notice of administrative penalty

A notice of administrative penalty must be signed by the authorised officer and must specify—

- (a) the date, time, and place of the issuance of the notice;
- (b) the section of the Act imposing the penalty, and such particulars of the act or omission giving rise to the penalty as are required under this Act;
- (c) the time when the administrative penalty is payable;

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (d) the amount of the administrative penalty;
- (e) the manner in which the administrative penalty may be paid; and
- (f) the taxpayer's right to an administrative review under section 38.

80. Procedure

- (1) An administrative penalty shall be assessed, paid, recovered, and appealed in the same manner as an assessment of tax.
- (2) An administrative penalty is payable thirty-one (31) days from the date of service of the notice.
- (3) Notwithstanding subsection 2, the time within which an administrative penalty under section 84 is payable is thirty-one (31) days from the date of final determination of the understatement of tax to which the penalty relates.

81. Failure to register

A person who is required to be registered under section 10 and does not apply for registration within the required time is liable for an administrative penalty of \$1,000.

82. Failure to notify of changes in taxpayer information

A person who fails to—

- (a) notify the Comptroller as required by section 9(6) or section 46(4); or
- (b) inform the Valuation Officer of the permission for subdivision of land as required by section 43(2) of the Property Tax Act (Cap. 17.16).

is liable for an administrative penalty of \$2,500.

83. Falsification of invoices, receipts, credit and debit notes

A person is liable for an administrative penalty of \$10,000 if the person—

- (a) uses a false taxpayer identification number or a taxpayer identification number that does not apply to the person; or
- (b) issues or creates a false invoice or sales receipt.

84. Negligent or fraudulent underpayment

If tax is underpaid, or might have been underpaid, as a result of an incorrect statement or a material omission in a taxpayer's tax return, and that statement or omission is a result of intentional conduct or negligence on the part of the taxpayer, the taxpayer is liable to an administrative penalty in the amount of—

- (a) 25 percent of the underpayment if paragraph (b) does not apply; or
- (b) 75 percent of the underpayment if the amount of the underpayment is—
 - (i) greater than \$150,000; or
 - (ii) greater than 25 per cent of the taxpayer's tax liability for the period.

85. False or misleading statements

- (1) A person who makes a statement to a taxation officer that is false or misleading in a material particular is liable for an administrative penalty under this section if an amount properly payable by or refundable to the person under the tax legislation exceeds or is inferior to the amount that would be payable or refundable if the person were assessed on the basis that the statement were true.
- (2) The amount of the administrative penalty for which the person is liable is the greater of \$250 and—
 - (a) if an amount payable by the person would have been less if it were determined on the basis of the information provided in the statement, the amount by which that amount would have been so reduced; or

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

- (b) if the amount of a refund that the person applied for would be increased if it were determined on the basis of the information provided in the statement, the amount by which that amount would have been so increased.
- (3) No penalty is imposed under this section if the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular.
- (4) A reference in this section to a statement made to a taxation officer includes a reference to a statement made orally, in writing, or in another form to that officer acting in the performance of the officer's duties under this Act, and includes a statement made—

 - (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, lodged, or furnished under this Act;
 - (b) in any information required to be furnished under this Act;
 - (c) in a document furnished to a taxation officer otherwise than pursuant to this Act;
 - (d) in an answer to a question asked of a person by a taxation officer; or
 - (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.
- (5) A reference in this section to a statement that is misleading in a material particular includes a reference to a statement that is so because of the omission of a matter or thing from the statement.
- (6) This section does not apply to conduct consisting of an offence under section 83 or 84.

86. Failure to maintain documents

- (1) A person who fails to maintain proper documents as required by this Act or any tax law or to follow a direction of the Comptroller under section 20(2) is liable for an administrative penalty for each month or part of a month during which the failure continues.
- (2) The penalty referred to in subsection (1) is \$50 per day for each day the failure continues.
- (3) Before issuing an administrative penalty notice under this section, the Comptroller must issue a warning notice, and no penalty is due under this section if the taxpayer complies with the warning notice within the time specified in the notice.

87. Failure to comply with third party Notice

A person who fails to comply with a notice issued under section 68 is liable for an administrative penalty of 25 percent of the difference between the amount payable by the third party and the amount paid to the Comptroller by the due date specified in the section 68 notice.

88. Failure to provide facilities

A person who fails to provide a taxation officer with reasonable facilities and assistance as required under this Act or an Act to which this Act applies is liable for an administrative penalty in the amount of \$1,000.

89. Failure to comply with Notice to give information

- (1) A person who fails to comply with a request for information properly made under this Act or an Act to which this Act applies, within the specified time, is liable for an administrative penalty in the amount of \$2,500.
- (2) Before issuing an administrative penalty notice under this section, the Comptroller must issue a warning notice, and no penalty is due under this section if the taxpayer complies with the warning notice within three days of service of the notice.

Division III – Offences Punishable by Imprisonment

90. General provisions

- (1) The Comptroller may investigate an offence specified in this Act or a tax law.
- (2) The power to bring charges and seek prosecution for the criminal offences specified in this Act belongs exclusively to the Director of Public Prosecutions.
- (3) Proceedings under this Act do not affect criminal proceedings that may be brought under any other Act or law.
- (4) Where, in respect of a single act, omission, or course of conduct, a person is convicted of more than one offence under this Part—
 - (a) the maximum term of imprisonment imposed for the offences may not exceed a term of 5 years; and
 - (b) the person may not subsequently be prosecuted for additional offences in relation to the same act, omission, or course of conduct.
- (5) No administrative penalty is payable under a section in Division III in respect of an act, omission, or course of conduct by a person if—
 - (a) the person has been convicted of an offence under this Division in respect of the same act, omission, or course of conduct; or
 - (b) the offence has been compounded by the Director of Public Prosecutions.

91. Aiding and abetting

A person who wilfully aids, abets, assists, counsels, incites, or induces another person to commit a criminal offence under this Division is liable on conviction to the same penalty as if the offence had been committed by that person.

92. Period of Limitations

Proceedings under this Division may be commenced—

- (a) if the offence alleged involves the doing of an act, within twelve years after the doing of the act;
- (b) if the offence alleged involves the failure to do an act, within twelve years after the failure occurred or, if later, within three years after the Comptroller becomes aware of the failure; or
- (c) if the offence alleged involves the non-disclosure or incorrect disclosure by a person of information relating to that person's liability under a tax law, within three years after the person's correct liability to tax becomes final for that tax period.

93. Tax Evasion

A person who wilfully evades, or attempts to evade the assessment, payment, or collection of tax, or who wilfully claims a refund of tax to which the person is not entitled, is guilty of an offence and is liable on conviction to a fine not exceeding \$100,000, or to two years' imprisonment or to both.

94. Impeding Tax Administration

- (1) A person who wilfully impedes or attempts to impede the Department in its administration of a revenue law is guilty of an offence and is liable on conviction to a fine not exceeding \$20,000, or to imprisonment for a term not exceeding one year, or both.
- (2) For the purposes of this section, a person impedes the administration of this Act if the person—
 - (a) fails to comply with a lawful request by officials of the Department to examine documents, records, documents, or data within the control of the person;
 - (b) fails to comply with a lawful request by officials of the Department to have the person appear before officials of the Department;

- (c) interferes with the lawful right of an official of the Department to enter onto a business premises or a dwelling unit;
- (d) fails to file a return;
- (e) uses a false taxpayer identification number or a taxpayer identification number that does not apply to the person;
- (f) refuses to allow a Valuation Officer or authorised person under section 41 of the Property Tax Act to exercise powers under that section;
- (g) makes a statement to a taxation officer that is false or misleading in a material particular;
- (h) fails to comply with a notice issued under section 68;
- (i) fails to maintain required records; or
- (j) otherwise impedes the determination, assessment, or collection of tax.

95. Failure to preserve secrecy

A person who contravenes section 8 is guilty of an offence and is liable on conviction to a fine not exceeding \$20,000, or to imprisonment for a term not exceeding one year, or both.

96. Offences by taxation officers

- (1) A taxation officer who, in carrying out the provisions of this Act—
 - (a) directly or indirectly asks for, or takes, in connection with the officer's duties, a payment or reward, whether pecuniary or otherwise, or a promise or security for the payment or reward, not being a payment or reward which the officer is lawfully entitled to receive; or
 - (b) enters into or acquiesces in an agreement to do, refrain from doing, permit, conceal, or connive at an act or thing that is contrary to the provisions of this Act or

to the proper execution of the officer's duty, or that has the effect that the tax revenue is or may be defrauded,

commits an offence and is liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year, or both, and the Court may, in addition to imposing a fine, order the convicted person to pay to the Accountant General an amount of tax that has not been paid as a result of the officer's wrongdoing and which cannot reasonably be recovered from the person liable for the tax.

- (2) This section applies in addition to and does not limit the operation of the Integrity in Public Office Act (Cap. 6.19).

97. Compounding of offences

- (1) If a person has committed an offence under this Division or under another law to which this Act applies, other than an offence under section 95 or 96, the Comptroller may, at any time prior to the commencement of the hearing by a Court of the proceedings relating thereto, compound the offence and order the person to pay the sum of money as specified by the Comptroller, not exceeding the maximum amount of the fine prescribed for the offence.
- (2) The Comptroller may compound an offence under this section only if the person concerned requests the Comptroller in writing to do so.
- (3) If the Comptroller compounds an offence under this section, the order described in subsection (1) must—
- (a) be in writing and have attached the written request described in subsection (2);
 - (b) specify—
 - (i) the offence committed;
 - (ii) the sum of money to be paid; and
 - (iii) the due date for the payment; and
 - (c) be served on the person who committed the offence.

- (4) An order under subsection (3) is final and not subject to appeal.
- (5) If the Comptroller compounds an offence under this section, the offender is not liable for prosecution or penalty in respect of that offence.
- (6) The Comptroller's power under this section is subject to the powers of the Director of Public Prosecutions under the Constitution, and the Comptroller must give the Director of Public Prosecutions a copy of the order described in subsection (3) at the time it is served on the taxpayer.
- (7) The amount ordered to be paid under subsection (1) is recoverable as if it were tax due and payable under this Act.

PART X FINAL PROVISIONS

98. Repealed legislation

- (1) Provisions of the laws set out in the Revenue Laws (Consequential Amendments) Act, 2022 are repealed or amended as provided in the Revenue Laws (Consequential Amendments) Act.
- (2) A reference in this Part to repealed legislation is a reference to legislation repealed or amended pursuant to the Revenue Laws (Consequential Amendments) Act, 2022.

99. Effective date and transitional provisions

- (1) Despite this Act, the repealed legislation continues to apply in respect of events occurring prior to the date on which this Act comes into operation.
- (2) All appointments made under the repealed legislation and subsisting at the date of commencement of this Act are treated as appointments made under this Act.
- (3) All forms and documents used in relation to repealed legislation may continue to be used under this Act, and all

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

references in those forms and documents to provisions of and expressions appropriate to repealed legislation are taken to refer to the corresponding provisions and expressions of this Act.

- (4) Appeals, prosecutions, and other proceedings commenced before the commencement date continue and are disposed of as if this Act had not come into force.
- (5) Tax liabilities that arose before the commencement date may be recovered by fresh proceedings under this Act, but without prejudice to an action already taken for the recovery of the tax.
- (6) A reference in this Act to "this Act" or "this law" or to a provision of "this Act" or "this law" includes, as the context requires, a reference to the prior law or to a corresponding provision of the prior law, respectively.
- (7) Section 9(1) does not preclude the use, on an interim basis, of a different identification number assigned before this law came into effect.
- (8) Where under the repealed legislation an assessment is time-barred as of January 1, 2023, section 32 shall not apply so as to allow such an assessment to be made on or after January 1, 2023.

SCHEDULE

(section 8)

OATH OF SECRECY

TAX ADMINISTRATION ACT

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

I of
.....
a person having official duty under the Tax
Administration Act, hereby declare that I will regard
and deal with as secret and confidential all information
and documents I receive in an official capacity in
relation to a specific taxpayer, and that I will not at any
time divulge in any manner anything contained in such
documents save as authorised by the Act.

Declared before and in the presence of

Governor

SPEAKER

Montserrat
Tax Administration Bill, 2022
No. 10 of 2022

Passed by the Legislative Assembly this day of 2022.

CLERK OF THE LEGISLATIVE ASSEMBLY