

**EXPLANATORY MEMORANDUM**  
**TAX ADMINISTRATION BILL 2015**

The Tax Administration Bill 2015 harmonizes, rationalizes, and simplifies the operation of tax administration and procedure in Grenada's tax laws. The Act applies to the VAT Act, 2009, Excise Tax Act (but not in respect of tax collected by the Comptroller of Customs), Income Tax Act, Property Tax Act, Property Transfer Tax Act, Provisional Collection of Taxes Act, and any taxes levied pursuant to this Act, and Annual Stamp Tax Act. In addition, the Act balances the powers given to the Inland Revenue Department with the rights of taxpayers. Overall, the Act facilitates consistent and effective tax administration and provides taxpayers with procedural safeguards and clear requirements and timelines.

## **PART I PRELIMINARY**

**Clause 2 (Preliminary)** sets out definitions under the Act. Notably, the definitions clarify that an assessment includes a self-assessment. The definition of tax is broad and means a compulsory payment to government imposed under a law to which the Act applies, regardless of the label placed on the payment and includes interest, late fee or penalties in relation to a tax. This means, for example, that where procedural rules for collection refer to "tax", the reference includes late fees, amounts payable under fixed penalties, and interest, even where these are not explicitly mentioned. Taxpayer is defined to mean a person required to pay tax or a person who is required to withhold tax and remit it to the Inland Revenue Department. Tax return is defined to include an information return.

**Clause 3 (Interpretation of tax laws)** provides interpretive support for taxpayers, tax administrators, and judges in interpreting the provisions of this Act or other tax laws. In particular, a purposive construction is favoured.

**Clause 4 (Scope of the Act)** addresses the scope of application of the Act. The taxes listed in Schedule I are covered by the Act, as is any other tax if the responsibility for the general administration of the tax is assigned to the Comptroller. If there is inconsistency between this Act and provisions of another Act, the provisions of the other Act prevail. This ensures that if there are more specific administration and procedure rules for a specific tax, those rules continue to apply.

## **PART II GENERAL PROVISIONS**

Part II covers a broad range of fundamental topics: the responsibilities of the Comptroller, delegation of the Comptroller's powers, assistance of experts, confidentiality requirements, taxpayer identification numbers, tax clearance certificates, public and advance rulings, communications with taxpayers and others, forms and notices, the effect of defects, agent and officers, the promulgation of regulations, a taxpayer's right to information, and due dates.

**Clause 5 (Comptroller and Inland Revenue Department)** requires the Public Service Commission to appoint a Comptroller of Inland Revenue and other persons as are necessary to ensure the administration of the Act. The Comptroller is responsible for the collection and accounting for taxes and for the administration and application of this Act. The Comptroller is also charged with administering the Inland Revenue Department. The Comptroller, as well as experts engaged pursuant to this Act and other persons required to perform functions under this Act, are insulated from civil liability if they act in good faith in the discharge of their functions. The Comptroller may prescribe forms as appropriate.

**Clause 6 (Delegation of Powers)** enables the Comptroller to delegate powers or duties conferred or imposed by this Act to another officer of the Department, either to a specific individual or to a specific post. The Comptroller may provide that material to be provided to the Comptroller be provided to another person nominated by the Comptroller. The Comptroller may personally exercise any power, duty, or function required by the Act. Delegations may be revoked in writing.

**Clause 7 (Assistance of Experts)** authorizes the Comptroller to engage experts in the proper performance of the Department's functions as long as the appointment is in writing and is expressly made under this section. Experts must be supervised by authorized tax officers. A person may refuse to deal directly with an expert but must not obstruct an expert. If the engagement of an expert gives rise to concerns about a conflict of interest, a person may complain to the Comptroller who will decide on the complaint. Experts are bound by the same confidentiality requirements as other tax officials, as well as anti-corruption rules.

**Clause 8 (Confidentiality)** sets out strict requirements for holding information received about a taxpayer in secret and confidence. These rules are designed to preserve taxpayer privacy and to encourage taxpayers to be forthcoming in providing information to the department. Persons who receive information related to a specific taxpayer in an official capacity may disclose that information only to a specified list of persons:

- (a) other agents and employees of the Department and of the Customs and Excise Department in the course, and for the purpose, of carrying out their duties;
- (b) the Minister of Finance in the course, and for the purpose, of carrying out supervision of the Department;
- (c) employees of the Ministry of Finance, for the purpose of reviewing and evaluating tax issues;
- (d) tax authorities of a foreign country, in accordance with an international agreement;
- (e) law enforcement agencies, for the purpose of the prosecution of a criminal offence; and
- (f) a court, in a proceeding to establish a taxpayer's tax liability or responsibility for an offence under a taxation law.

For purposes of subclause (a), agents would include, for example, attorneys, such as attorneys in the office of the Attorney General who are representing the Department.

Even if information is disclosed to someone in the specified list, it must only be disclosed to the minimum extent necessary to achieve the objective of the disclosure. Recipients are subject to the same requirement to keep information secret and in confidence, except to the minimum extent necessary to achieve the objective for which the information was received. The provisions contain three additional exceptions to the requirement to keep information secret and confidential. First, the Comptroller may disclose information about a taxpayer's affairs to the taxpayer or an authorized representative of the taxpayer after obtaining reasonable assurance of the authenticity of the claim. Second, the taxpayer may waive, through written consent, the requirement to keep information secret and confidential. Third, the Comptroller may publish the names of noncompliant taxpayers.

**Clause 9 (Taxpayer Identification Numbers)** requires the Comptroller to assign a unique taxpayer identification number to every taxpayer, which must be included on all correspondence sent to a taxpayer by the Comptroller that concerns the taxpayer's tax liability. Each taxpayer will have one number that will be used for all taxes to which the Act applies. The Comptroller may also assign a taxpayer identification number to a person who is not a taxpayer, but who needs such a number for specified reasons. Taxpayers must include their number on returns and correspondence with the Comptroller. The requirements to use a taxpayer identification number on other documents or to furnish the number to another person will be set out by regulation. If a taxpayer changes its name, address, place of business, or nature of taxable activity, the taxpayer must notify the Comptroller in writing. If the taxpayer has registered under the *VAT Act*, notice of the change must be made within fourteen days of the change occurring; otherwise notice must be provided within one year.

**Clause 10 (Registration)** sets forth the requirements for taxpayers to register with the Comptroller.

**Clause 11 (Public Rulings)** sets out the role and practice of public rulings. Public rulings allow the Comptroller to set out the Comptroller's interpretation of the application of tax legislation and provide taxpayers with assurances about the consistency of tax administrative practices. Public rulings are binding on the Comptroller, but not on taxpayers, and are binding until they are revoked. This allows taxpayers to rely on rulings as guidance, but a taxpayer is not required to follow a ruling if the taxpayer considers that the ruling is inconsistent with the law (the difference of opinion may ultimately have to be settled by a court).

**Clause 12 (Advance Rulings)** provides a legal framework for advance rulings. Advance rulings allow a taxpayer contemplating a transaction to obtain certainty about the tax treatment of the transaction before carrying it out. This facilitates investment and business planning. The Comptroller may issue a ruling setting out the Department's position on the application of tax legislation to a specific transaction proposed by a specific taxpayer. Assuming the taxpayer makes full and true disclosure of the transaction and the transaction is carried out in accordance with that disclosure, the ruling is binding on the Department and on the taxpayer. The Comptroller may amend or revoke a ruling for reasonable cause, but must provide written notice to the taxpayer and amendment or revocation has only prospective effect. Change in legislation, if inconsistent with the ruling, also revokes a ruling to the extent of the inconsistency. Advance rulings must be published by the Comptroller to enhance transparency and accountability, but the taxpayer's name and other specific information must be deleted or redacted. The Comptroller may specify reasonable fees to be charged for advance rulings.

**Clause 13 (Other Statements)** limits the circumstances where a statement or agreement about a taxpayer's tax liability binds the Department to advance rulings and other cases authorised by law.

**Clause 14 (Communications with Taxpayers and Other Persons)** details the formal requirements for communicating with taxpayers and other persons. Notices, statements, or agreements issued by the Comptroller to a taxpayer or other person are effective only if they are (1) authorised by law, (2) in writing, (3) signed by an official of the Department with apparent authority, and (4) served upon the taxpayer or other person to whom it is addressed. Notice required to be given to an individual in writing is 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 and in accordance with the *Electronic Transactions Act*.

Where notice in writing to a company is required, the notice is sufficiently served if it is:

- (a) served personally on, or communicated electronically and in accordance with the *Electronic Transactions Act* to, the company's representative;
- (b) delivered to the company's principal place of business in Grenada; or
- (c) sent by registered mail to the registered office of the company.

Notices sent by registered mail are considered served seven days after the day when posted if the address is in Grenada and thirty days after posted if the address is otherwise. A notice under the Property Tax Act may be served on a person by leaving it at the usual or last known place of abode or by addressing it to "the owner" of the property, describing the property, and delivering to a person on the property or affixing a copy of it to a conspicuous part of the property. Unless the contrary is shown, a signature written on a document and purporting to be the signature of a particular person is considered to be the signature of that person.

**Clause 15 (Forms and Notices)** enables the Comptroller to prescribe or publish forms and other documents and requires that those documents be made available to the public. Every public notice must be signed by the Comptroller or a person with apparent authority.

**Clause 16 (Defect Does not Affect Validity)** is a saving clause for breaches of the technical communication requirements of the Act in clause 14, as long as the taxpayer had effective knowledge of the fact of the notice and its content. In addition, assessments, notices, or documents issued under this Act are not invalid if they are in substance and effect in conformity with this Act and if the person assessed or affected by the document is designated in accordance with common understanding. For example, a misspelling of the taxpayer's name will generally not invalidate an assessment.

**Clause 17 (Regulations)** confirms that the Minister may make regulations. This power applies not only in instances where the Act specifically refers to regulations, but more broadly where the Minister considers that regulations are needed to better carry out or give effect to the Act.

**Clause 18 (Taxpayer's Right to Information)** guarantees the taxpayer the right to be informed of the status of the taxpayer's account and to receive a copy of a tax return filed with the Department and still on file, upon the taxpayer's request.

**Clause 19 (Due Dates)** clarifies the due date where the last date for performance is on a day on which the Department is closed for business (the next day it is open) and the date on which a declaration, appeal, or other document (other than a payment) is considered filed (on the date it is stamped as received by the Department or, if mailed, on the date of the postmark).

### **PART III RECORDKEEPING AND INFORMATION COLLECTION**

Part III provides the foundational provisions that govern the requirements for taxpayers to keep books and records and to file tax returns, and sets out the requirements for the Comptroller where additional information is required from a taxpayer.

**Clause 20 (Accounts and Records)** addresses the important requirement that taxpayers maintain appropriate books and records. Every taxpayer engaged in business or independent professional activity or required to make a return under tax legislation is required to keep and maintain in Grenada 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. Taxpayers must also keep source documents and underlying documentation utilized in the creation of the records and accounts. These documents must be kept for seven years from the date on which the transaction took place, unless a longer retention period is needed to match the period of limitations on assessment for any tax period to which the records are relevant. Where records are not kept in English, the person may be required, at their expense, to provide a transaction acceptable to the Comptroller; nevertheless, all financial statements, invoices, books of original entry, and written communications with the Department must be in English.

**Clause 21 (Obligations of Financial Institutions)** confirms that a bank or financial institution is required to keep account of all transactions with a client, including the client's identity. This information is available to the Comptroller under section 28.

**Clause 22 (Tax Returns)** imposes on taxpayers the requirement to furnish the Comptroller with a tax return if required by law, within the time and at the place specified by that law, or as demanded by the Comptroller. The Comptroller may 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.

A taxpayer may file an amended return no later than six years after the latest date on which the original return was required to be filed. An amended return must be filed on the appropriate form for amended returns, which may require the taxpayer to explain the rationale for the amendment and set forth the differences between the original return and the return as amended. Taxpayers must attest to the accuracy and completeness of tax returns. If a return or part of a return was prepared by some other person for reward, that other person must also sign the return. The Comptroller may, by notice in writing, require a person to file fuller or additional returns.

**Clause 23 (Notice to require filing)** allows the Comptroller to require taxpayers who have failed to furnish a return to do so. A taxpayer who complies with such a notice may still, however, be liable for interest and late fees due to the failure to file.

**Clause 24 (Return deemed to be furnished by due authority)** provides a presumption that a return purported to have been furnished by a taxpayer was in fact furnished by that person, and provides that a taxpayer's signature attests that the taxpayer is aware of all matters contained in the return. A taxpayer therefore cannot claim not to have read the return and therefore not to be liable for misstatements on that return.

**Clause 25 (Information Returns)** confirms that provisions applying to returns also apply to a return of information. This includes, for example, rules about signing the return and late filing fees.

**Clause 26 (Extension of Time to File Returns)** allows the Comptroller to permit a taxpayer to file late, but clarifies that this does not alter the due date for payment unless an extension of time to pay is expressly granted. The Comptroller may grant the extension of time to file only if the taxpayer applies for the extension before the due date. A taxpayer who files within the extension deadline but pays the tax late will be liable for late payment fee and interest, if no extension of time for payment was granted.

**Clause 27 (Access to Information, Assets, and Land)** sets out the conditions under which an authorised officer may enter a business premises or other premises open to the public without prior notice for an authorized purpose, may enter a taxpayer's dwelling or other private and non-business premises for an authorized purpose, and may enter on property to survey and value it. When lawfully on a premises or in a dwelling, an authorised officer may --

- (a) make a copy of a record;

- (b) seize a record or other item that appears to be relevant to an authorised purpose; and
- (c) seal records or other items.

If an authorised officer seizes a record or other item, the Comptroller may make a copy of the record or other item and must return the original to the person in the shortest time practicable, unless otherwise permitted by court order. 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. Diplomatic, consular, or other missions of foreign countries and international organizations are exempt from the access provisions of this Act.

The provision also includes taxpayer rights. For example, a person whose books, records, or other items have been seized may examine them and make copies, at the person's expense, during office hours. The Comptroller or authorized officer must sign for all records, books, or other items removed and retained and must return them to the owner within fourteen days of the conclusion of the investigation or related proceedings.

A person may assert privilege over documents or other evidence which the Comptroller wishes to seize or examine. In that case, 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. If the Comptroller requests documents and a taxpayer or other person does not provide them, they cannot be used in a judicial proceeding by the taxpayer, unless the Comptroller agrees. The owner or lawful occupier of the premises or place subject to access must provide all reasonable facilities and assistance to the Comptroller or authorised officer.

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.

The Comptroller may require a peace officer to be present for the purposes of exercising powers under this section.

The Comptroller may engage in the information gathering activities described in this clause and in clause 28 only if the activities are undertaken for an authorised purpose, which 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.

**Clause 28 (Notice to Obtain Information)** applies where the Comptroller seeks information or seeks to compel the appearance of a person. By giving reasonable notice to a person in writing, the Comptroller may 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.

Importantly, for the effective operation of the tax administration, clauses 27 and 28 have effect notwithstanding a 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. Subsection (5) is, however, subject to subsection 8 of section 27, which sets forth the procedure for assertion of privilege.

## **PART IV ASSESSMENTS**

Part IV sets out the rules that govern assessments. As defined in section 2, tax is assessed when the taxpayer's liability is entered into the Comptroller's records. This can be done by the Comptroller or, in the case of a self-assessment, is deemed to occur. There can be more than one assessment event for a particular tax period, e.g., the initial assessment (self-assessment) by the taxpayer and a subsequent revised assessment by the Comptroller.

**Clause 29 (Assessments)** provides the baseline rules for taxpayer assessments. Assessments are to be made in the manner prescribed by this Act and by the relevant law to which the Act applies. Assessments may be based upon the information supplied by the taxpayer in a tax return and upon any other relevant information available to the Comptroller. 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; however, the Comptroller must provide an indication of the nature of the information on which the assessment is based. Where a taxpayer calculates the amount of tax in a tax return as required by the relevant law, the taxpayer's self-assessment is an assessment. (One implication of this is that the amount of tax self-assessed is due, without requiring an assessment by the Comptroller.) The Comptroller may, nevertheless, issue an additional or revised assessment. The Comptroller may, by notice in writing, determine that tax is due on a date before the usual due date if the Comptroller has reasonable grounds to believe that a taxpayer may leave Grenada before the regular due date.

**Clause 30 (New or Revised Assessment)** The Comptroller may make a new assessment or revise an assessment previously made, if the Comptroller is of the opinion that the original assessment was incorrect and the new or revised assessment is made within the required time limits. The Comptroller may also make a best judgement assessment. If the taxpayer files an amended return, the Comptroller must revise the original assessment if the Comptroller is satisfied that the original assessment was based on incorrect information.

**Clause 31 (Time Limits for Assessments and Revised Assessments)** fixes the time limits for assessments and revised assessments. The Comptroller may not make an assessment more than six years after the end of the tax period to which the assessment relates. Nevertheless, where an assessment is made using best judgement because the taxpayer has failed to file a return, or where the original assessment is based upon incorrect information due to fraud or willful neglect of the taxpayer, the assessment must be made within twelve years. If the taxpayer has not made a self-assessment, and no assessment is made within the time limits specified, the assessment is deemed to have been made that no tax is payable, unless an amount has been withheld, in which case the amount of tax withheld is deemed to be the amount of tax payable. An assessment may be amended to give effect to a decision of the Tax Appeal Board or Court.

**Clause 32 (Jeopardy Assessment)** allows the Comptroller to make an assessment using best judgement and information reasonably available, in advance of the date on which tax is normally due, if that action is required to secure the collection of the tax. A taxpayer may appeal this assessment to the High Court on the ground that -

- (a) its amount is excessive; or
- (b) circumstances that justify an advance assessment do not exist.

Circumstances that justify a jeopardy assessment may include evidence that the taxpayer is about to depart the jurisdiction, transfer property outside the jurisdiction, or become bankrupt, and thereby jeopardize the collection of tax.

**Clause 33 (Notice of Assessment)** specifies the information that is required to be given by the Comptroller in a notice of assessment. In light of section 16, however, a notice of assessment may be valid despite minor defects.

**Clause 34 (Anti-avoidance)** is a broad anti-avoidance provision, with three limbs under which the Comptroller may proceed. Subsection (1) is designed to ensure that the Comptroller, and ultimately the Courts, have the responsibility to disregard a transaction or series of transactions that are artificial or fictitious, or to treat according to its economic substance a transaction or series of transactions that have been mischaracterized by the taxpayer.

Subsection (2) allows the Comptroller to adjust transactions between related person to market prices.

The remainder of the section allows the Comptroller to disregard transactions which were engaged in with a tax avoidance motive and which constitutes a misuse of the provisions of the tax law in question.

## **PART V OBJECTIONS AND APPEALS**

Part V provides taxpayers with the process for challenging a tax assessment or other decision of the Department and provides procedural safeguards and required timelines for both taxpayers and the Comptroller.

**Clause 35 (Taxation Decisions)** makes explicit that there are no remedies to dispute tax decisions or assessment amounts unless the proceeding is made pursuant to Part V.

**Clause 36 (Reviewable decisions)** lists the decisions which are subject to appeal under Part V.

**Clause 37 (Administrative Review)** provides requirements for the first stage for a taxpayer seeking to challenge an assessment or other decision of the Department – administrative review. 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. 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.

**Clause 38 (Appeal from Administrative Review)** provides that if a person is unsatisfied with the results of an administrative review, the person may appeal to the Appeal Commissioners. This appeal may only occur after –

- (a) a decision has been received from the Comptroller; or
- (b) ninety days have elapsed since the request for administrative review was made.

If the Appeal Commissioners are satisfied that the appellant is overcharged they may reduce the amount of assessment by the amount of the overcharge, and if they are satisfied that the appellant is undercharged, they may increase the amount of the assessment by the amount of the undercharge. The Appeal 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 appropriate to the Appeal Commissioners. Notice of an appeal must be given in writing to the Comptroller within ninety days from the date of the refusal of the Comptroller to amend the assessment as requested as part of the administrative review. The taxpayer may be granted leave to appeal against the assessment after the deadline for appeals has passed if the Appeal Commissioners are satisfied that owing to absence from Grenada, sickness or other reasonable cause the taxpayer was prevented from giving notice of appeal within ninety days, and that there has been no unreasonable delay on the appellant's part.

**Clause 39 (Constitution of Appeal Commissioners)** describes the constitution and function of the Appeal Commissioners. The Governor-General may appoint not more than seven suitable and qualified persons to serve, who may hold office for a period of five years. The Appeal Commissioners may meet as often as circumstances may require. Three members form a quorum. One of the members must be appointed to be chair and every decision of the Commissioners must be signified under the hand of the chair. The Governor-General must appoint some person to be secretary to the Appeal Commissioners and all notices and documents other than decisions of the Appeal Commissioners may be signified under the hand of the secretary. The Minister may prescribe aspects of the Appeal Commissioners' functioning as described.

**Clause 40 (Burden of Proof)** lays the burden of proof on the taxpayer or person making an objection to an assessment.

**Clause 41 (Appeals do not Suspend Collection of Undisputed Amounts)** makes clear that despite an objection or appeal, the undisputed tax liability remains due and payable, unless the Comptroller grants an extension of time. Subsection (2) caters for the situation where the taxpayer disputes all or part of the tax liability on frivolous grounds. In this case, the Comptroller may make a motion for a ruling that the dispute is frivolous and the tax therefore due immediately. Such a ruling may cover only a portion of the tax in dispute. In other words, the Appeal Commissioners may rule that a portion of the dispute is frivolous and the corresponding tax is due immediately, while the remaining dispute is on a reasonable ground and therefore the corresponding portion of the tax is not immediately payable.

**Clause 42 (Finality of Assessment)** stipulates that if the deadlines imposed for a review of an assessment or decision pass, an assessment is treated as final. The Comptroller may nevertheless issue a new or a revised assessment within the timelines permitted and a taxpayer may file an amended return but only if the tax shown on the amended return exceeds the tax assessed.

**Clause 43 (Appeal from a Decision of the Appeal Commissioners)** allows either party to a proceeding before the Appeal Commissioners who is dissatisfied with the decision of the Appeal Commissioners to file a notice of appeal with the Registrar of the High Court within ninety days after being notified of the decision. The appealing party must serve a copy of the notice of appeal on the other party to the proceeding before the Appeal Commissioners.

An appeal to the High Court, which may be made only on a point of law, may not be made unless an appeal request to the Appeal Commissioners has first been made, and –

(a) a decision has been received from the Tax Appeal Board; or

(b) ninety days have elapsed since the request for appeal to the Tax Appeal Board was made and no response to the request for appeal has been received from the Tax Appeal Board. The concept of point of law should be understood in light of court decisions such as *Edwards v. Bairstow and Harrison*, [1955] 3 All ER 48.

If an appeal is made from a decision of the Appeal Commissioners, the Appeal 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.

## PART VI LIABILITY FOR AND PAYMENT OF TAX

Part VI addresses a variety of issues related to taxpayers' liability for tax and for their payment of it. It includes provisions that address due dates, the liability and obligation of representatives, liabilities following a winding-up, refundable amounts, extension of time for payment, default, and order of payment of tax debts.

**Clause 44 (Liability of Taxpayer and Due Date)** deals with taxpayer due dates, confirming that tax is due and payable at the time provided by the relevant law to which the Act applies. It further confirms that, unless another Act has a different requirement, the amount of tax stated in a notice of assessment to be due, or deemed to be stated to be due is due and payable on the date stated in the notice. Tax that is self-assessed is due on the due date for the return. Tax is to be paid in the manner and place prescribed.

**Clause 45 (Liability and Obligations of Representatives)** sets out who is a representative of a person (for example, if a person is a company, a principal officer of the company is the representative). If a designated person is unable to perform the responsibilities imposed by the Act, the Comptroller may, in writing, declare another individual to be the representative. Representatives are responsible for the duties or obligations imposed by the Act on the person for whom they are the representative. Tax that is payable by a representative is recoverable from the representative only to the extent of any assets of the taxpayer that are in the possession or under the control of the representative unless the representative alienates, charges, or disposes of moneys received or accrued in respect of which the tax is payable or 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. In that case, the representative is personally liable. A representative may recover the amount paid from the person or 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. No person is relieved from performing duties imposed by this Act on the person because the representative of the person has failed to perform them.

If there are two or more representatives of a person, their duties or obligations apply jointly and severally but may be discharged by any of them. The provision also addresses the circumstances under which new partnerships or bodies are deemed to be a continuation of dissolved or discontinued partnerships as well as what happens where a taxable activity previously carried on by a taxable person is carried on by or on behalf of the executor or trustee of the person's estate, and what happens if a mortgagee is in possession of land or other property previously mortgaged by a mortgagor who is a taxable person.

Finally, 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.

**Clause 46 (Officers of Unincorporated bodies)** specifies the responsibility of officers of an unincorporated body.

**Clause 47 (Liability for Tax following Winding-up)** addresses a company that is wound up without having satisfied its tax liabilities, including any liability to withhold and remit tax. Under this provision, a shareholder is generally liable for these liabilities to the extent that the shareholder

received a distribution from the company within a year of its winding up. The shareholder's liability is limited to the amount of cash or the value of the property received from the company.

**Clause 48 (Managers of entities)** specifies the liability of company managers. A manager who exercised reasonable care will not be liable for tax of the company under this section. It is possible that a person is liable for the company's tax under both section 47 and 48. In this event, the Comptroller may proceed under either or both provisions, but may collect in total from the company, shareholders, and managers, no more than 100 percent of the company's tax.

**Clause 49 (Refundable Amounts)** requires a refund or credit application within six years of the date of payment and requires the Comptroller to apply a refundable amount against the taxpayer's assessed liability to pay tax, interest, late fees, or penalties and to advance payments and then to refund any residual.

**Clause 50 (Extension of Time for Payment)** allows taxpayers to apply for an extension of the time for payment of tax. The Comptroller may, with good cause, extend the time for payment, may grant an extension period different from the period requested by the taxpayer, and may make other arrangements to ensure payment of the tax, including arrangements requiring the person to pay the amount due in instalments. In deciding whether to grant an extension, the concept of good cause requires the Comptroller to balance the interest of the revenue against hardship faced by the taxpayer, and the Comptroller should generally grant an extension that is justified by the taxpayer unless collection of tax would be placed in jeopardy. If a taxpayer has been granted an extension, interest is still payable. 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. The Comptroller may also grant a general extension in the event of a natural disaster or other event that makes it difficult for a large number of taxpayers to file on time.

**Clause 51 (Default in Payment)** permits the Comptroller to send a notice to the taxpayer demanding payment when a tax is not paid by the date on which it became due and payable and sets out requirements for the content of the notice. The taxpayer is in default 21 days after service of the notice, unless the taxpayer –

- (a) has entered into a payment arrangement with the Comptroller; or
- (b) has received an extension,

and has remained in compliance with the terms of the arrangement. The concept of being in default under section 51 is relevant for the operation of several provisions relating to collection of tax.

**Clause 52 (Order of Payment of Tax Debts)** applies payments of a specific tax against the taxpayer's liability in the following order —

- (a) interest relating to the tax;
- (b) late fees relating to the tax;

- (c) penalties relating to the tax; and
- (d) the principal amount of the tax.

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 a levy of execution or by way of garnishment in accordance with the Act.

**Clause 53 (Currency)** explains that tax is payable in Eastern Caribbean dollars, except as otherwise provided in a tax law.

## **PART VII INTEREST AND LATE FEES**

Part VII governs interest payable to the government and to the taxpayer, as well as fees for late filing and late payment.

**Clause 54 (General)** confirms that procedures for the payment, collection, and dispute of a tax apply equally to interest and late fees relating to a tax and that liability for interest under this Act is calculated separately and is in addition to penalties provided by law.

Additionally, it guarantees that 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.

**Clause 55 (Interest on Underpayments)** stipulates that 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) to the date the tax is paid and 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.

**Clause 56 (Interest Rate)** sets the interest rate for this Part at one and one-half per cent per month or part month, compounded monthly; however, the Minister may vary the interest rate by Order published in the Gazette. The intention is to provide flexibility to the Minister to adjust the rate as interest rates in the economy change.

**Clause 57 (Late Filing of tax return)** imposes a late fee in the case of a taxpayer who fails to file a return by the due date. The late fee accrues for each additional month by which the return is late. The maximum total late fee in respect of one tax return is \$10,000.

**Clause 58 (Late Payment Fee)** imposes a late fee equal to 20 percent of the amount of tax due but not paid on a person who fails to pay all or part of a tax due for a tax period within fourteen days of

the date of assessment or reassessment, or by the due date specified in the notice of assessment, if later. In this context “tax” includes a withholding tax that a third party does not pay over. The late fee also applies where a person fails to pay all or part of an instalment required pursuant to the *Income Tax Act*. Finally, the provision confirms that where an extension is granted, a person is not liable to a late fee under subsection (1) unless the extension period expires without payment having been made.

The late fees under clauses 57 and 58 are independent. Depending on whether the taxpayer has filed on time but pays late, files late but has paid on time, or is late in both filing and payment, one or other or both of the late fees may apply.

*Clause 59 (Delinquency List)* directs the Comptroller of Customs to refuse clearance for imports by taxpayers on a list of delinquent taxpayers furnished by the Comptroller. Two types of taxpayer may be listed: those who are in default for an amount of tax under section 51(3) and those who have failed to file a required return by the due date. Once the Comptroller removes a taxpayer’s name from the list, the Comptroller of Customs must proceed with clearance under normal customs procedures. Similarly, the clerk of the court may not record any deed on which the grantor is on the list of delinquent taxpayers.

## **PART VIII RECOVERY OF TAX**

Part VIII addresses the mechanisms and timing for recovery of tax. Among other topics, it addresses liens, executions, sales, and third party debtors.

*Clause 60 (General)* stipulates that the Comptroller may proceed with any remedy under this Part once the taxpayer is determined to be in default. VAT collected by the Comptroller of Customs, which is recoverable under procedures for recovery of customs duty, is not subject to the application of Part VIII.

*Clause 61 (Period of limitations for collection)* restricts the commencement of proceedings to six years from the date on which the taxpayer was determined to be in default. It confirms that 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. The period of limitations for collection should be distinguished from the period of limitations for assessment of tax. In general, under section 31, tax may be assessed within six years of the end of the tax period. Suppose, for example, that tax is assessed just before expiration of this six-year limit and a notice of assessment is served on the taxpayer. Suppose that the taxpayer does not contest the assessment but does not pay the tax. Once the Comptroller sends a notice to the taxpayer under section 51 and the taxpayer is in default, the Comptroller has an additional six years under section 59 to collect the tax due.

*Clause 62 (Extinguishment of uncollectible amounts)* provides that if the Comptroller is unable to recover an amount of tax, interest, or penalty due and payable by a person under legislation to which this Act applies, the Minister may, on approval by the Cabinet, order the extinguishment of the liability as a debt due to the Crown and may also reinstate a liability for the debt by an order of the Minister, approved by Cabinet.

**Clause 63 (Court Proceedings)** confirms that tax that is due and payable is a debt to the Crown and is payable to the Comptroller. 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. 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.

**Clause 64 (Lien)** explains that 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. The provision protects bona fide purchasers in limited circumstances. It also protects taxpayers by requiring the Comptroller to send notice of the intention to register the lien to the taxpayer, unless the Comptroller believes that the ability to collect tax is in jeopardy. 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.

**Clause 65 (Departure from Grenada)** allows the Comptroller to stop (through the Immigration authorities) a taxpayer from leaving Grenada if the taxpayer is in default and fails to pay or make satisfactory arrangements for payment.

**Clause 66 (Withholding held in trust)** treats amounts of tax withheld but not yet paid over to the Comptroller as held in trust and therefore immune from execution by the withholder's creditors.

**Clause 67 (Priority in bankruptcy)** provides for priority in bankruptcy for tax debts.

**Clause 68 (Offset against payments)** allows the Accountant General to offset amounts of tax owing against payments to be made to the taxpayer.

**Clause 69 (Third Party Debtors)** regulates the collection of tax from third party debtors (i.e. persons who owe money to the taxpayer, including a financial institution at which the taxpayer has an account). In the case of employers, the provision exempts from collection action the first \$3,000 of wages, allowances, or other amounts per month. A third party debtor who claims not to owe amounts to the taxpayer is not liable to the Comptroller unless the Comptroller shows that in fact the third party owes an amount to the taxpayer. In these cases, the third party debtor will be protected unless the third party debtor pays amounts to the taxpayer after receiving the notice. In any event, the third-party debtor may not be asked to pay more than the amount of tax owed. In addition, the provision contemplates for the taxpayer to be notified of the third-party debtor procedure.

**Clause 70 (Compliance with Notice)** insulates a third party who pays the Comptroller pursuant to a notice issued under section 69 by deeming the party to have acted with the authority of the taxpayer and of all other persons concerned and the party is indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extra judicial. A third party may be excused from complying with a notice under section 69 where the third party provides notice in writing that sets out the reasons for the inability and meets the other requirements of section 70. The Comptroller may accept or reject the third party notice. Under clause 70(2), the third party may recover from the taxpayer amounts paid to the Comptroller. The recovery is typically effected by offsetting the amount paid to the Comptroller against debt that the third party has to the taxpayer.

**Clause 71 (Non-Arm's Length Transferees)** provides that 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. The provision does not apply if the person is liable on a winding-up.

**Clause 72 (Receivers)** requires a receiver to notify the Comptroller of the receiver's appointment within fourteen days after being appointed. The provision defines who a receiver is, sets out what the Comptroller must provide the receiver by way of notice of tax owing, restricts the disposition of assets held by receivers, and imposes personal liability on receivers if they fail to comply with the requirements of the provision.

## **PART IX OFFENCES**

Part IX imposes penalties for various acts or omissions that violate the requirements of the law and interfere with the collection of tax, including failure to notify of changes in taxpayer information; falsification of invoices, receipts, credit, and debit notes; late filing; negligent or fraudulent underpayment; making false or misleading statements; failure to maintain documents; failure to comply with third party notices; failure to provide facilities; failure to comply with notices to give information; and late payments.

Part IX is broken out into three Divisions. The first contains general provisions applicable to the entire Part. The second Division deals with fixed-penalty offences, which involve a procedure whereby the taxpayer can pay the fixed penalty specified by the statute and thereby avoid prosecution. The third Division involves more serious criminal offenses.

**Clause 73 (In General)** includes a number of rules of general application including that the burden of proof is on the Comptroller to show non-compliance with the provisions of tax laws with respect to the imposition of a penalty; Additionally, the period of limitations for assessing a penalty is seven years after the violation that causes the penalty to occur, unless the violation is under section 80 (underpayment of tax) in which case the limitation for assessing a penalty is the same as for assessment of the tax in question.

The Comptroller may refrain in whole or in part from assessing the penalty or remit or waive in whole or in part a penalty that has been assessed if the person liable for the penalty shows reasonable cause. Reasonable cause might include *force majeure*, severe illness that prevented the taxpayer from fulfilling an obligation, or an innocent mistake such as a clerical error. It could also include a reasonable interpretation of a statutory obligation that differs from the Comptroller's interpretation. It is the responsibility of the Comptroller to evaluate the existence of reasonable cause in the circumstances of each case.

**Clause 74 (Offences by Company)** delineates the circumstances where a director or similar officer is deemed to have committed an offence.

**Clause 75 (Fixed penalty notice)** sets forth the procedure for the fixed penalty notice. The contents of the notice are specified in **Clause 75 (Contents of fixed penalty notice)**.

**Clause 77 (Procedure)** explains how the fixed penalty procedure works. The taxpayer has the option of paying the penalty. If the taxpayer does not do so, then the taxpayer is liable for prosecution in the Magistrate's Court. The penalty imposed by the Court may not be less than the statutorily specified fixed penalty amount.

**Clause 78 (Failure to Notify of Changes in Taxpayer Information)** imposes a \$2,500 penalty for persons who fail to notify the Comptroller as required by this Act or by the laws, to which this Act applies, apply for cancellation of VAT registration, or inform the Valuation Officer of permission for subdivision of land.

**Clause 79 (Falsification of Invoices, Receipts, Credit and Debit Notes)** imposes a penalty of \$10,000 if a person uses a false taxpayer identification number, issues a false invoice or sales receipt, issues a false VAT credit note or debit note, or provides, or fails to provide, an invoice, credit note, debit note, or sales receipt as provided under Part IX of the *VAT Act*. The provision insulates suppliers under the VAT if they exercised all due care and believed on reasonable grounds that the information related to the recipient was accurate or (in limited cases) that the supplier was not a registered person.

**Clause 80 (Negligent or Fraudulent Underpayment)** imposes a penalty on taxpayers who underpay (or may have underpaid) tax intentionally or negligently, as a result of an incorrect statement or omission on the tax return. The amount of the penalty is based on the extent of the underpayment. If the taxpayer bases the tax return on a reasonable reading of a statutory provision, there is no intentional or negligent understatement of tax, even if the Comptroller or the court disagrees with the taxpayer's interpretation of the statute.

**Clause 81 (False or Misleading Statements)** addresses the serious infraction of making false or misleading statements to a taxation officer. The amount of the penalty is equal to \$250 or, if greater, an amount that is based on the amount of tax that would have been assessed (or refund reduced). If the person who made the false or misleading statement could not have known it was false or misleading, the penalty does not apply. The meaning of statement is defined broadly, although it does not include statements that result in a negligent or fraudulent underpayment penalty or a penalty under clause 79 (to avoid imposition of a duplicate penalty).

**Clause 82 (Failure to Maintain Documents)** imposes a \$50 a day penalty for the failure to maintain proper documents. The Comptroller must first issue a warning notice, and no penalty is due if the taxpayer complies with the notice in a timely manner.

**Clause 83 (Failure to Comply with Third Party Notice)** imposes a penalty on a person who fails to comply with a third party notice issued of 25 percent of the difference between the amount payable by the third party and the amount paid to the Comptroller by the specified due date.

**Clause 84 (Failure to Provide Facilities)** imposes a \$1,000 penalty for a person who fails to provide a taxation officer with reasonable facilities and assistance.

**Clause 85 (Failure to Comply with Notice to Give Information)** fixes a \$2,500 penalty for a person who fails to comply with a request for information properly made, within the specified time. A warning notice must also be issued in the case of this penalty, to give the taxpayer a chance to comply without incurring a penalty.

**Clause 86 (General Provisions)** enables the Comptroller to investigate an offence specified in this Act, but clarifies that the power to bring charges and seek prosecution for the criminal offences specified in this Act belongs to the Director of Public Prosecutions or a delegate authorised by the Director. This power must, however, be exercised with the consent of the Comptroller.

**Clause 87 (Aiding and Abetting)** is a standard provision in criminal law and provides that a person who willfully aids, abets, assists, counsels, incites, or induces another person to commit a criminal offence under this Act is liable on conviction to the same penalty as if the offence had been committed by that person.

**Clause 88 (Period of Limitations)** sets the time periods under which criminal proceedings under Division III must be commenced.

**Clause 89 (Tax Evasion)** provides that a person who wilfully evades, or attempts to evade the assessment, payment, or collection of tax is guilty of an offence and is liable on conviction to a fine of \$100,000, or to imprisonment for a term of two years, or both. Tax evasion is intended to have a broad meaning and to include any manner in which a person illegally attempts to avoid payment of tax. As a general matter, any behavior that is subject to a penalty under Division II might also be considered tax evasion. The determination as to whether the behavior is criminally punishable under clause 85 depends on factors such as the amount of tax evaded, and the taxpayer's state of mind (for example, conduct that is repeated and intentional will be more likely to constitute tax evasion than conduct that is isolated and merely negligent).

**Clause 90 (Impeding Tax Administration)** provides that a person who wilfully impedes or attempts to impede the Department in its administration of this Act is guilty of an offence and is liable on conviction to a fine of \$20,000, or to imprisonment for a term of one year, or both. It also provides a lengthy list of examples of actions that constitute impeding the administration and accepts suppliers for VAT purposes from two of the listed examples in limited circumstances. A person may be guilty of impeding tax administration even if the tax, the collection of which is being impeded, is not the person's own tax.

**Clause 91 (Failure to Preserve Secrecy)** ensures that a person bound to confidentiality under the Act who contravenes subsection (2) or (3) of section 8 is guilty of an offence and is liable on conviction to a fine of \$20,000, or to imprisonment for a term of one year, or both.

**Clause 92 (Offences by Taxation Officers)** provides that a taxation officer is guilty of 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, as well as to disqualification, if the officer, 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, abstain 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.

(Of course, failure to preserve secrecy is another offence that may be committed by a taxation officer.)

**Clause 93 (Compounding of Offences)** enables the Comptroller to, at any time prior to the commencement of the hearing by a Court of the proceedings relating to it, 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. The provisions sets out the conditions under which compounding may occur and places requirements on the content of the order.

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 at the time it is served on the taxpayer. The provision clarifies that 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**

The final provisions of the Act set out the legislation that is repealed by virtue of the coming into force of this Act, and spell out the effective date of this Act and the required transitional provisions.

**Clause 94 (Repealed Legislation)** notes that Schedule 2 contains provisions of law that are repealed or amended by this Act.

**Clause 95 (Effective Date and Transitional Provisions)** makes this Act take effect Jan. 1, 2016. In general, this means that actions taken, or events occurring after this date are governed by the Act, even if they relate to a prior taxation period. For example, an assessment made after the effective date is governed by the Act even if it relates to 2011. Repealed legislation continues to apply to years of assessment prior to the taxation year in which this Act comes into operation. The provision addresses other issues, like appointments, forms and documents, appeals, tax liabilities and so on.

If the law concerning tax administration and procedure in effect prior to the enactment of this Act is silent with respect to a matter addressed in this Act, the relevant provision in this Act applies with retroactive effect to matters that are not closed under the period of limitations.