



# **TAX ADMINISTRATION BILL 2022**

**(NO. 2 OF 2022)**





# **TAX ADMINISTRATION BILL 2022**

(NO. 2 OF 2022)

A

**BILL**

Entitled

**AN ACT TO PROVIDE FOR THE ADMINISTRATION OF TAX LAWS IN SOLOMON ISLANDS, AND FOR RELATED PURPOSES**

**ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.**

# TAX ADMINISTRATION BILL 2022

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# TAX ADMINISTRATION BILL 2022

## PART 1 PRELIMINARY MATTERS

### 1 Short title

This Act may be cited as the *Tax Administration Act 2022*.

### 2 Commencement

This Act commences on the day appointed by the Minister by notice in the *Gazette*.

### 3 Definitions

In this Act, unless the context otherwise requires:

“**administrative penalty**” means a monetary penalty that is imposed by the Commissioner under section 123 for contravention of this Act;

“**approved form**” means a form approved by the Commissioner under section 159;

“**arrangement**” means any contract, agreement, plan, or understanding, whether express or implied and whether legally enforceable or not;

“**assessment**” has the meaning given in section 41(1) and includes a default assessment and an amended assessment;

“**authorised employee**” means an employee of a tax agent referred to in section 26(2)(c);

“**authorised tax officer**” has the meaning given in section 8;

“**business closure notice**” means a notice issued by the Commissioner under section 92(2)(c);

“**Commissioner**” means the Commissioner of Inland Revenue holding office under section 6;

**"Comptroller of Customs"** means the Comptroller of Customs within the meaning of the *Customs and Excise Act* (Cap 121);

**"customs officer"** means a person employed by or contracted to provide services to the Customs and Excise Division of the Ministry;

**"default assessment"** means an assessment made by the Commissioner under section 42(2);

**"document"** includes:

- (a) books, accounts, records, rolls, registers, bank statements and papers; and
- (b) instruments; and
- (c) any information or data stored on a mechanical or data storage device; and
- (d) an electronic document;

**"electronic tax system"** means the system established and operated by the Commissioner under section 164;

**"file"** means to file, lodge or submit a document;

**"form"** means a form or format, and includes an electronic or online form or format;

**"government entity"** means:

- (a) the Government, including a department, division or agency of the Government; or
- (b) a provincial government or the Honiara City Council; or
- (c) a foreign government or political subdivision of a foreign government; or
- (d) a person who, under a Solomon Islands law, is responsible for issuing a licence, permit, certificate, concession, authorisation or other document for a fee;

**"incorporated body of persons"** means a body of persons incorporated or registered under a law in force in Solomon Islands or elsewhere;

**"Inland Revenue"** means the Inland Revenue Division continued under section 5(1);

**"international organisation"** means:

- (a) an organisation to which the *International Financial Organisations Act* (Cap. 141) applies; or
- (b) any other organisation the members of which are sovereign powers or governments of sovereign powers;

**"late payment interest"** means late payment interest imposed under section 112;

**"legal practitioner"** means a person who is qualified to practise as a legal practitioner under section 7 of the *Legal Practitioners Act* (Cap 16);

**"Ministry"** means the Ministry which is, under the Minister, responsible for the administration of this Act;

**"non-filing taxpayer"** means a taxpayer who is not required to file a return under a tax law;

**"notice"** includes an electronic notice;

**"person"** means a natural person, partnership, trust, incorporated or unincorporated body of persons, government entity or an international organisation;

**"prescribed"** means prescribed by regulation;

**"prescribed penalty"**, in relation to an administrative penalty imposed under Part 8, Division 3, means the penalty amount not exceeding the maximum prescribed penalty imposed for that administrative penalty;

**"register"** means the register of tax agents established under section 27;

**“regulation”** means a regulation made under this Act or another tax law;

**“Regulations”** means regulations made under this Act;

**“return”** means a document that a taxpayer files with the Commissioner for assessing or reporting tax payable by the taxpayer under a tax law;

**“rules”** or **“the Rules”** means rules made under section 169;

**“section 80 notice”** has the meaning given in section 80;

**“self-assessment”** has the meaning given in section 41(2);

**“tax”** means tax imposed by or under a tax law and includes late payment interest and any penalties imposed by or under a tax law;

**“tax agent”** means a person who is registered as a tax agent under Part 3, Division 6;

**“tax compliant”**, in relation to a person, means the person:

- (a) is not in default in complying with the requirements of a tax law in relation to the filing of tax returns and the payment of tax; and
- (b) is not in breach of any arrangement entered into with the Commissioner for the payment of tax; and
- (c) is not otherwise in breach of an obligation under or arising under a tax law;

**“tax decision”** has the meaning given in section 50;

**“tax law”** means any of the following:

- (a) this Act;
- (b) any other Act that specifies that it is a tax law for the purposes of this Act;
- (c) rules;



(d) regulations or other subsidiary legislation made under this Act or an Act referred to in paragraph (b);

“**tax officer**” has the meaning given in section 7;

“**taxpayer**” means a person who is or may be liable for tax under a tax law;

“**taxpayer identification number**” or “**TIN**” means:

(a) a number issued to a taxpayer under section 19; or

(b) a number issued to a taxpayer under section 41(3) of the *Income Tax Act* (Cap. 123) that is still valid;

“**tax period**”, in relation to a tax, means the period for which the tax must be reported to the Commissioner;

“**tax records**” means the accounts, documents and records that are required to be kept and maintained by a tax law or the Rules;

“**taxpayer representative**” means a person listed in section 24(1) or declared to be a tax representative under section 24(2);

“**trust**” includes the estate of a deceased person;

“**unpaid tax**” means tax payable that has not been paid by the due date.

*Note to section 3.*

*In this Act, in accordance with section 16(2) of the Interpretation and General Provisions Act (Cap. 85), a reference to “the Minister” is a reference to the Minister who is responsible for the administration of this Act.*

## 4 **Act binds the Crown**

This Act binds the Crown.

## **PART 2            INLAND REVENUE: ORGANISATION**

### **Division 1            Inland Revenue, Commissioner of Inland Revenue and tax officers**

#### **5            Inland Revenue**

- (1) There continues to be a division of the Ministry known as the Inland Revenue Division.
- (2) In this Act, a reference to Inland Revenue is a reference to the Inland Revenue Division acting through the Commissioner or other tax officer.

#### **6            Commissioner and Deputy Commissioner of Inland Revenue**

- (1) There must be a Commissioner of Inland Revenue and at least 1 Deputy Commissioner of Inland Revenue.
- (2) The Commissioner and Deputy Commissioners must be public officers.
- (3) In this Act, a reference to the Commissioner means the Commissioner acting personally or another tax officer acting for the Commissioner.

#### **7            Tax officers**

A tax officer is any of the following persons:

- (a) the Commissioner;
- (b) a Deputy Commissioner;
- (c) a person who holds the position of tax officer in Inland Revenue;
- (d) a person contracted to Inland Revenue to carry out duties of a tax officer.

## **8 Authorised tax officer**

- (1) An authorised tax officer is a tax officer who is authorised by the Commissioner in writing to exercise a power or function listed in subsection (3):
  - (a) generally; or
  - (b) for the occasion specified in the authorisation.
- (2) A person must not exercise a power or function listed in subsection (3) unless the person is a tax officer who is authorised by the Commissioner to exercise the power or function.
- (3) The power or function referred to in subsection (1) is any of the following:
  - (a) execution of a possession notice (section 76);
  - (b) issue of a departure prohibition notice (section 90);
  - (c) issue of a foreign currency prohibition notice (section 91);
  - (d) execution of a business closure notice (section 93);
  - (e) entry and search for tax-related information (section 95);
  - (f) signing a document or notice issued, served or given by the Commissioner (section 160).
- (4) However:
  - (a) nothing in this section prevents the Commissioner from exercising a power or function listed in subsection (3); and
  - (b) the exercise of a power or function specified in subsection (3) by an authorised tax officer is to be taken to be exercised by the Commissioner.

## **Division 2 Powers and functions of Commissioner**

### **9 Commissioner's overall function**

- (1) The Commissioner:

- (a) has the function of implementing, enforcing and administering the tax laws; and
  - (b) has the powers conferred on the Commissioner by the tax laws or otherwise necessary for carrying out his or her function.
- (2) The Commissioner must administer the tax laws so as to collect the highest net revenue over time as is reasonably practicable within those laws, having regard to:
- (a) promoting voluntary compliance; and
  - (b) compliance costs to the taxpayer; and
  - (c) the resources available to the Commissioner.

## **10 Commissioner may delegate**

- (1) The Commissioner may delegate to any person any of the Commissioner's powers and functions, except this power of delegation.
- (2) The delegation:
- (a) must be made in a written document; and
  - (b) may be made subject to conditions specified in the document; and
  - (c) may be general or otherwise as specified in the document; and
  - (d) continues despite a change in the person who is Commissioner; and
  - (e) may be revoked by the Commissioner at any time; and
  - (f) does not prevent the Commissioner from exercising or performing the delegated power or function.
- (3) A power or function that is delegated under this section is, when exercised or performed by the delegate, to be taken to be exercised or performed by the Commissioner.

## **11 Tax officer must comply with Commissioner's directions**

A tax officer must comply with a direction given by the Commissioner in relation to the tax officer's powers or functions under this Act.

## **PART 3 TAXPAYERS**

### **Division 1 General**

## **12 Outline of taxpayer's tax obligations**

A taxpayer must do the following:

- (a) as required under a tax law:
  - (i) file a return; or
  - (ii) make a self-assessment and file a return;
- (b) unless the taxpayer is a non-filing taxpayer or is filing a return for the purposes of income tax, correctly determine the amount of self-assessed tax payable by the taxpayer under the tax laws;
- (c) deduct or withhold the correct amounts of tax from payments or receipts of the taxpayer when required to do so by a tax law;
- (d) pay tax on time;
- (e) keep all necessary information (including books and records) and maintain all necessary accounts or balances required under the tax laws;
- (f) disclose to the Commissioner in a timely and useful way all information (including books and records) that the tax laws require the taxpayer to disclose;
- (g) to the extent required by the tax laws, co-operate with the Commissioner in a way that assists the exercise of the Commissioner's powers under the tax laws;

- (h) comply with all the other obligations imposed on the taxpayer by the tax laws.

## **Division 2      Secondary tax liability**

### **13      Definitions for Part 3, Division 2**

In this Division:

**“associate”:**

- (a) of a person (“**A**”), means another person (“**B**”) who acts or may act (other than solely by reason of an employment or client relationship) in accordance with A’s directions, requests, suggestions or wishes; and
- (b) of person B, if B acts in accordance with A’s directions, requests, suggestions or wishes other than solely by reason of an employment or client relationship, means person A;

**“controlling shareholder”**, of a company, means any person who beneficially holds directly or indirectly, either alone or together with an associate or associates:

- (a) more than 50% of the voting rights in the company; or
- (b) more than 50 % of the rights to dividends; or
- (c) more than 50% of the rights to capital;

**“director”**, in relation to a company, means any person occupying the position of director of the company.

### **14      Liability of director or controlling shareholder**

- (1) This section applies if an arrangement has been entered into with the intention or the effect of rendering a company unable to satisfy a current or future tax liability under a tax law.
- (2) Subject to section 15, every director or controlling shareholder of the company at the time the arrangement was entered into is jointly and severally liable for the company’s tax liability.

## **15 Limit of director's liability**

A director of a company is not liable under section 14 for a tax liability of the company if:

- (a) the director, on becoming aware of the arrangement:
  - (i) dissented from the arrangement and ensured that the company formally recorded his or her dissent; and
  - (ii) notified the Commissioner in writing of the arrangement; and
- (b) the Commissioner is satisfied that:
  - (i) the director derived no financial or other benefit from the arrangement; and
  - (ii) at the time the arrangement was entered into, the director was not involved in the executive management of the company; and
  - (iii) at the time the arrangement was entered into, the director had no knowledge of the arrangement and could not reasonably have been expected to know of it.

## **Division 3 Taxpayer records and audit**

### **16 Taxpayer must keep and maintain tax records**

- (1) A taxpayer must keep and maintain tax records in Solomon Islands for 7 years after the end of the tax period to which they relate.
- (2) Tax records must be available in the English language.
- (3) For the purposes of subsection (2), a tax record is available in the English language if:
  - (a) it is kept in English; or
  - (b) the taxpayer, on being required by written notice by the Commissioner to do so, makes available at the taxpayer's expense an English translation of the record by a translator approved by the Commissioner.

- (4) The Rules may prescribe the records that must be kept and maintained for the purposes of a tax law.

**17 Commissioner may audit taxpayer**

- (1) The Commissioner may audit the tax affairs of any taxpayer for the purpose of administering or enforcing a tax law.
- (2) In requiring an audit, the Commissioner may have regard to the following:
  - (a) the taxpayer's history of compliance or non-compliance with tax laws;
  - (b) the amount of tax payable by the taxpayer;
  - (c) the type of business carried on by the taxpayer;
  - (d) any other matter that the Commissioner considers relevant to ensuring the collection of tax that is or may be due.
- (3) The audit of a taxpayer in one tax period does not preclude an audit of the taxpayer in any other tax period, whether an earlier or later tax period.

**Division 4 Taxpayer identification numbers**

**18 Application for TIN**

- (1) Every taxpayer other than a non-filing taxpayer must have a taxpayer identification number ("**TIN**").
- (2) Unless a taxpayer is a non-filing taxpayer or has already been issued with a TIN that is still valid, the taxpayer must apply for a TIN.
- (3) An application for a TIN must be:
  - (a) in the approved form; and
  - (b) accompanied by the prescribed evidence of the applicant's identity; and
  - (c) filed with the Commissioner.



- (4) The application must contain or be accompanied by all the information or documents:
  - (a) required by the approved form; and
  - (b) otherwise prescribed; and
  - (c) otherwise required by a notice under subsection (5).
- (5) The Commissioner may by written notice require an applicant to provide within 30 days of the notice any further information or documents that the Commissioner considers necessary for determining the application.

## **19 Issue of TIN**

- (1) The Commissioner may issue a TIN if satisfied that:
  - (a) the identity of the taxpayer to whom the TIN is issued is established; and
  - (b) the taxpayer has not already been issued with a TIN that is still valid.
- (2) The Commissioner may issue a TIN:
  - (a) on an application under section 18; or
  - (b) to a taxpayer on the initiative of the Commissioner, without an application.

## **20 Updating TIN information**

- (1) A taxpayer who has been issued with a TIN must notify the Commissioner of any change in the following information provided by the taxpayer to the Commissioner in an application for a TIN or otherwise:
  - (a) the taxpayer's name;
  - (b) the taxpayer's physical or postal address;
  - (c) the taxpayer's electronic address for communicating with the Commissioner;

- (d) the taxpayer's bank account for use in transacting with the Commissioner;
  - (e) other information that may be prescribed.
- (2) A taxpayer must notify the change within 21 days after the change has occurred by filing a notice of change of details with the Commissioner.

## **21 Cancellation of TIN**

- (1) The Commissioner must cancel a TIN that has been issued to a taxpayer if the Commissioner is satisfied that:
- (a) the TIN has been issued to a person under an identity that is not the person's true identity; or
  - (b) the person has already been issued with a TIN that is still valid; or
  - (c) the person has died or, in the case of a person other than an individual, has been liquidated, deregistered or dissolved or has otherwise ceased to exist; or
  - (d) the person:
    - (i) has no outstanding tax obligations; and
    - (ii) is otherwise not likely to have a future tax liability; and
    - (iii) is not subject or party to any proceeding brought under a tax law.
- (2) The Commissioner may at any time cancel a TIN that has been issued to a person in order to issue the person with a new TIN.
- (3) The Commissioner must not cancel a TIN on the ground referred to in subsection (1)(d) without giving the person written notice of the intention to cancel at least 21 days before cancellation of the TIN.
- (4) However, subsection (3) does not apply if the person has applied to the Commissioner for cancellation of the TIN.

## **22 Notice of issue, cancellation or refusal of TIN**

- (1) The Commissioner must give written notice to a taxpayer of:
  - (a) the issue to that person of a TIN; or
  - (b) the cancellation of a TIN issued to that person.
- (2) If the Commissioner refuses an application for a TIN made under section 18, the Commissioner must serve a notice of refusal of the application on the applicant within 15 days after the decision to refuse.
- (3) A notice under subsection (2) must state the reasons for the refusal.

## **Division 5 Taxpayer representatives**

### **23 Responsibility of taxpayer representative**

- (1) A person who is the taxpayer representative of a taxpayer is responsible for the performance by the taxpayer of the taxpayer's duties and obligations under a tax law, including the payment of tax.
- (2) If there are 2 or more taxpayer representatives of a taxpayer, they are jointly and severally responsible under subsection (1) but any one of them may discharge that responsibility or part of it.
- (3) Nothing in this Part relieves a taxpayer from performing the taxpayer's duties and obligations under a tax law should a taxpayer representative fail to do so.

### **24 Who is taxpayer representative**

- (1) A taxpayer representative is any of the following:
  - (a) in the case of an individual under a legal disability, the guardian, trustee or manager who receives, or is entitled to receive, income on the individual's behalf or for his or her benefit;
  - (b) in the case of a company, the managing director, the chief executive officer or any director of the company;

- (c) in the case of a partnership, a partner in the partnership;
  - (d) in the case of a trust, a trustee of the trust;
  - (e) in the case of a body of persons other than a company or a partnership, any individual who is responsible for accounting for the receipt or payment of money or funds by the body;
  - (f) in the case of the Government, a provincial government or the Honiara City Council, any individual who is responsible for accounting for the receipt or payment of money or funds by the Government, provincial government or Honiara City Council;
  - (g) in the case of a foreign government or agency of a foreign government, any individual who is responsible for accounting for the receipt or payment of money or funds in Solomon Islands by the foreign government or agency;
  - (h) in the case of a non-resident person, any individual controlling or managing the person's affairs in Solomon Islands, including any manager of any business of that person;
  - (i) in the case of a taxpayer whose property is in the possession or control of a person in the capacity of liquidator within the meaning of section 85(2), that liquidator;
  - (j) an individual declared to be a person's tax representative under subsection (2).
- (2) The Commissioner may, by notice in writing to an individual, declare that person to be the representative of a taxpayer (including a taxpayer referred to in subsection (1)(a) to (i)) for the purposes of this section.

## **25 Liability of taxpayer representative for unpaid tax**

- (1) A taxpayer representative must ensure that payment of tax due by the taxpayer is made from the assets or proceeds of assets of the taxpayer that are in the possession or control of the representative and from or out of which the tax can legally be paid.

- (2) A taxpayer representative is personally liable for the payment of unpaid tax due from the taxpayer to the extent that, while the tax is unpaid, the representative:
- (a) alienates, charges, or disposes of any money received or accrued in respect of which the tax is payable; or
  - (b) disposes of or parts with any money or funds:
    - (i) that belong to the taxpayer and are in the representative's possession or come into the representative's possession after the tax becomes payable; and
    - (ii) from or out of which the tax payable could legally have been paid.

## **Division 6      Tax agents**

### **26      Restriction on acting as tax agent**

- (1) A person must not, for a fee or other remuneration, do any of the following things unless that person is registered as a tax agent:
- (a) prepare a tax return for a taxpayer;
  - (b) prepare an objection on behalf of a taxpayer;
  - (c) otherwise advise or act for a taxpayer in relation to that person's rights or obligations under a tax law.
- (2) Subsection (1) does not apply:
- (a) to a legal practitioner to the extent that the legal practitioner performs a legal service for a taxpayer in relation to that person's rights or obligations under a tax law; or
  - (b) to a person to the extent that he or she is providing a service relating to tax for his or her employer as taxpayer; or
  - (c) to a person who:
    - (i) is an employee of a tax agent; and

- (ii) does any of the things specified in subsection (1) under the supervision of the tax agent; and
- (iii) is not a disqualified person within the meaning of section 30(2).

(3) A person who contravenes subsection (1) commits an offence.

Maximum penalty: 20,000 penalty units or imprisonment for 12 months, or both

## **27 Register of tax agents**

- (1) The Commissioner must establish and maintain a register of tax agents.
- (2) The register must be kept in the form that the Commissioner considers expedient, which may include an electronic form.
- (3) The Commissioner must allow reasonable public access to the register.

## **28 Contents of register**

- (1) The register must contain for each registered tax agent:
  - (a) the information required to be contained in or to accompany the application for registration under section 29(3); and
  - (b) any other prescribed information; and
  - (c) any changes in the information referred to in paragraph (a) or (b).
- (2) A registered tax agent must notify the Commissioner in writing of any changes in the information contained in the register within 21 days after the change has occurred.

## **29 Application for registration as tax agent**

- (1) Any person who is eligible to act as a tax agent may apply to the Commissioner for registration as a tax agent.
- (2) An application for registration must be:

- (a) in the approved form; and
  - (b) complete; and
  - (c) filed with the Commissioner.
- (3) The application must contain or be accompanied by all the information or documents:
- (a) required by the approved form; and
  - (b) otherwise prescribed; and
  - (c) otherwise required by a notice under subsection (4).
- (4) The Commissioner may by written notice require an applicant to provide, within 30 days after the date of the notice, any further information or documents that the Commissioner considers necessary for determining the application.

**30 Eligibility to act as tax agent**

- (1) A person is eligible for registration as a tax agent if:
- (a) the person is registered with the Institute of Solomon Islands Accountants as a registered certified practising accountant or a registered book-keeper; and
  - (b) the person has a TIN; and
  - (c) the person is not a disqualified person; and
  - (d) the Commissioner is satisfied that the person has adequate knowledge of the tax laws to act as a tax agent.
- (2) A person is a disqualified person for the purposes of subsection (1)(c) if he or she:
- (a) is a public officer or an employee of the Government; or
  - (b) is insolvent; or
  - (c) is not tax compliant; or

- (d) has been convicted, within the previous 10 years, of any of the following offences:
  - (i) an offence against a tax law or customs and excise legislation;
  - (ii) an offence against another law, the maximum penalty for which is not less than 20,000 penalty units (or its equivalent) or imprisonment for 12 months;
  - (iii) an offence against a law of a foreign country that is in the nature of a tax law or customs and excise legislation.
- (3) A person is insolvent for the purposes of subsection (2)(b) if he or she is:
  - (a) currently subject to a receiving order under the *Bankruptcy Act* (Cap. 3); or
  - (b) an adjudicated bankrupt under that Act; or
  - (c) an undischarged bankrupt in a foreign jurisdiction.

### **31 Determination of application**

- (1) The Commissioner must determine an application for registration as a tax agent as soon as practicable and give the applicant written notice of the determination.
- (2) Registration as a tax agent may be subject to such conditions as the Commissioner considers necessary or expedient.
- (3) If the Commissioner refuses the application, the notice must state:
  - (a) the reason for the refusal; and
  - (b) the right of the applicant to object under Part 5.

### **32 Duration and renewal of registration**

- (1) A person is registered as a tax agent when his or her name is entered in the register.
- (2) A person is registered as a tax agent for 3 years unless registration is earlier cancelled.



- (3) The Commissioner may, subject to eligibility, renew a person's registration on expiry, and registration may be renewed more than once.
- (4) If the Commissioner refuses to renew a registration, the Commissioner must without delay:
  - (a) remove the person's name from the register; and
  - (b) give the person written notice of the refusal.
- (5) The notice must state:
  - (a) the reason for refusal; and
  - (b) the right of the person to object under Part 5.

### **33 Certificate of registration**

- (1) On the registration or renewal of registration of a person as a tax agent, the Commissioner must without delay issue to that person a certificate of registration.
- (2) A registered tax agent must display the certificate of registration at his or her business premises.

### **34 Cancellation**

- (1) The Commissioner must cancel the registration of a person as a tax agent if:
  - (a) the person makes a written request for cancellation; or
  - (b) the person ceases to carry on business as a tax agent; or
  - (c) the person is not or has ceased to be eligible for registration;  
or
  - (d) the person contravenes section 28(2); or
  - (e) the Commissioner is satisfied that the person has failed to adequately supervise an authorised employee; or

- (f) the Commissioner is satisfied that the person has prepared and filed a tax return knowing that it was false in a material particular; or
  - (g) the Commissioner is satisfied that the person is not or has ceased to be competent to act as a tax agent.
- (2) On cancellation of a person's registration, the Commissioner must without delay give the person written notice of the cancellation.
- (3) In the case of cancellation of a person's registration under subsection (1)(b) to (g):
- (a) cancellation is not effective until 15 days have elapsed from the date of the notice; and
  - (b) the notice must state:
    - (i) the reason for cancellation; and
    - (ii) the right of the person to object under Part 5.

### **35 Tax agent offences**

- (1) A person who falsely holds out or otherwise represents that he or she is a registered tax agent commits an offence.

Maximum penalty: 20,000 penalty units or imprisonment for 12 months, or both

- (2) A registered tax agent who breaches a condition of his or her registration commits an offence.

Maximum penalty: 20,000 penalty units or imprisonment for 12 months, or both

## **PART 4 FILING AND ASSESSMENT**

### **Division 1 Filing return**

#### **36 Taxpayer's filing obligations**

- (1) A person must file a return if required to do so:

- (a) under a tax law; or
- (b) by notice under section 37.

(2) The person must file the return in the approved form.

**37 Notice to file return**

(1) The Commissioner may by service of a notice that complies with subsection (2) require a person to file a return by the date specified in the notice if:

- (a) the person is required under a tax law to file a return and has failed to do so; or
- (b) the person has filed a return that is incomplete or incorrect.

(2) The notice must:

- (a) be in writing; and
- (b) specify the last date for filing the return; and
- (c) in the case of a notice to file a further return, specify those matters in respect of which the first return is incomplete or incorrect.

(3) A notice issued under subsection (1)(a) does not affect the due date under the tax law for filing the return.

**38 Notice to file further information**

(1) The Commissioner may by service of a notice that complies with subsection (2) require a person who has filed a return to file further information relating to the return.

(2) The notice must:

- (a) be in writing; and
- (b) specify the last date for filing the information; and
- (c) specify the further information required.

### **39 Extension of time for filing**

- (1) A person required to file a return or to provide further information under section 37 or 38 may apply to the Commissioner for an extension of time for filing.
- (2) The Commissioner may extend the time for filing if satisfied that there are reasonable grounds for the extension.
- (3) The Commissioner must serve the applicant with written notice of the Commissioner's decision.
- (4) If the Commissioner extends the time for filing, the notice must specify the last date for filing (and the person must file the return or further information on or before that date).
- (5) However, the extension of time does not change the due date for filing on which the calculation of late payment interest is based.

### **40 Return presumed to be filed by or with authority of taxpayer**

A return that appears to be filed by or on behalf of a person must be treated as having been filed or authorised by that person, unless the contrary is shown.

## **Division 2 Assessments**

### **41 Assessment and self-assessment**

- (1) An assessment is the assessment by the Commissioner of tax payable by a taxpayer.
- (2) A self-assessment is the assessment by a taxpayer in a tax return of tax payable by that taxpayer.
- (3) A person who is required to file a tax return, other than a return for purposes of income tax, must make a self-assessment of the tax payable by that person.
- (4) To avoid doubt, an assessment or self-assessment may assess tax payable as zero or negative.

## **42 Default assessment**

- (1) This section applies if a taxpayer fails to file a return in respect of tax payable.
- (2) If the Commissioner considers it necessary or expedient, the Commissioner may determine the amount of the tax payable and assess the person accordingly.
- (3) A default assessment by the Commissioner under subsection (2) does not affect any other liability incurred by the taxpayer under a tax law.

## **43 Amendment of assessment or self-assessment**

- (1) The Commissioner may amend or further amend an assessment or a self-assessment by making any alteration or addition that the Commissioner considers necessary to ensure that the assessment or self-assessment reflects the correct amount of tax payable by the taxpayer for the period to which the assessment or self-assessment relates.
- (2) For the purposes of this Act and the tax law under which the assessment or self-assessment was made, the assessment as amended has effect as the original assessment.
- (3) A taxpayer may apply to the Commissioner for the amendment by the Commissioner of a self-assessment.

## **44 Time for making or amending assessment or self-assessment**

- (1) In the case of fraud or wilful neglect by or on behalf of the taxpayer, the Commissioner may at any time:
  - (a) make an assessment; or
  - (b) amend or further amend an assessment or self-assessment.
- (2) In the case of an assessment made on the executors or administrators of a deceased estate in relation to the income of the deceased, the Commissioner may amend or further amend the assessment within 3 years after the end of the year in which the deceased died.

- (3) In all other cases, the Commissioner may:
- (a) make an assessment within 7 years after the expiry of the relevant tax period; and
  - (b) amend an assessment within 7 years after service or deemed service of the original assessment on the taxpayer; and
  - (c) amend a self-assessment within 7 years after the original self-assessment was filed by the taxpayer; and
  - (d) further amend an assessment within the later of:
    - (i) 7 years after service or deemed service of the original assessment on the taxpayer; or
    - (ii) 1 year after service of the notice of an amended assessment on the taxpayer; and
  - (e) further amend a self-assessment within the later of:
    - (i) 7 years after the original self-assessment was filed by the taxpayer; or
    - (ii) 1 year after service of the notice of an amended self-assessment on the taxpayer.
- (4) The amendment of an assessment or self-assessment does not affect or alter the due date for the payment of tax under the assessment or self-assessment.

#### **45 Notice of assessment**

The Commissioner must serve a notice of an assessment on the taxpayer as soon as practicable after:

- (a) making the assessment under section 42 or 44; or
- (b) amending or further amending an assessment or self-assessment under section 43.

#### **46 Assessment in case of departing taxpayer**

- (1) This section applies if:

- (a) the Commissioner believes on reasonable grounds that:
    - (i) a taxpayer may leave or has left Solomon Islands; and
    - (ii) the taxpayer's absence is likely to be more than temporary; and
  - (b) the taxpayer has not been assessed (by self-assessment or otherwise) for a tax period (including the current tax period).
- (2) The Commissioner may make an assessment of the tax payable by the taxpayer for the tax period in question but the assessment does not affect any other liability incurred by the taxpayer under a tax law.

#### **47 Correction for overstatement of tax payable**

- (1) On the application of the taxpayer, the Commissioner may correct an assessment or a self-assessment following the filing of a return if satisfied that:
- (a) the return contained an error or mistake of fact; and
  - (b) by reason of the error or mistake of fact the assessment overstated the tax payable.
- (2) An application under subsection (1) must be made within 2 years after the tax period to which the return relates.
- (3) If satisfied as to the matters in subsection (1), the Commissioner must repay any balance of tax overpaid after setting off the tax overpaid against the taxpayer's unpaid tax.
- (4) However, the Commissioner must not repay any tax overpaid:
- (a) if:
    - (i) the error or mistake related to the basis on which the tax liability of the taxpayer should have been computed; and
    - (ii) the return complied with the practice generally prevailing at the time the return was filed; or
  - (b) if the tax has been passed on by the taxpayer to another person.

- (5) A correction of an assessment or self-assessment made under this section must not be invalidated for an error or defect in procedure, form or detail if, despite the error or defect, the correction substantially complies with the tax law under which it is made and any other tax laws that apply to it.

#### **48 Evidence of assessment or self-assessment**

- (1) The production of a notice of an assessment or a document issued by the Commissioner purporting to be a copy of a notice of an assessment is conclusive evidence that:
  - (a) the assessment was made; and
  - (b) the amount and particulars of the assessment are correct.
- (2) In the case of a self-assessment, the production of the original return of self-assessment or a document issued by the Commissioner purporting to be a copy of that return is conclusive evidence as to the contents of the return.

#### **49 Evidence of electronic assessment or self-assessed return**

- (1) Section 48(1) applies to a notice of assessment that is served using the electronic tax system if the copy of the notice is accompanied by a certificate by the Commissioner that:
  - (a) identifies the return; and
  - (b) states the authentication code of the relevant registered user; and
  - (c) specifies the device used in the production and transmission of the electronic assessment.
- (2) Section 48(2) applies to a return of a self-assessment filed using the electronic tax system if the copy of the notice is accompanied by a certificate by the Commissioner that:
  - (a) identifies the return; and
  - (b) states the authentication code of the relevant registered user; and



- (c) (if known) specifies the device used in the production and transmission of the electronic return.

## **PART 5            TAX DECISIONS**

### **Division 1        General**

#### **50            What is tax decision**

- (1) Subject to subsection (2), a tax decision is:
  - (a) an assessment by the Commissioner; or
  - (b) any other decision under a tax law on any matter left to the discretion, judgement, direction, opinion, consent, approval, satisfaction or determination of the Commissioner.
- (2) The following decisions are not tax decisions:
  - (a) a decision to correct an assessment under section 47;
  - (b) a decision to issue a departure prohibition notice under section 90;
  - (c) a decision to issue a foreign currency prohibition notice under section 91;
  - (d) a decision to issue a notice under section 144;
  - (e) a public ruling under Part 9.
- (3) The Commissioner must as soon as practicable give written notice of a tax decision to the taxpayer concerned and the notice must inform the taxpayer of the right to object under Division 2.
- (4) A separate notice of a tax decision is not required if the decision is contained in another document that is issued to, served on or given to the taxpayer (for example, an assessment) and the document informs the taxpayer of the right to object under Division 2.

#### **51            Expanded definition of taxpayer for this Part**

For the purposes of this Part, “**taxpayer**” includes a person who is affected by a tax decision that applies to the person.

## **52 When tax decision may be disputed**

- (1) A tax decision may be disputed by an objection or appeal under this Part but not otherwise.
- (2) For the purposes of an objection or appeal brought by a taxpayer under this Part, the taxpayer has the onus of proving:
  - (a) in the case of an assessment, that the assessment is incorrect; or
  - (b) in the case of any other tax decision, that the decision should not have been made or should have been made differently.

## **53 Validity of tax decision**

A tax decision must not be invalidated for an error or defect in procedure, form, or detail if, despite the error or defect, the tax decision substantially complies with the tax law under which it was made and any other tax laws that apply to it.

## **Division 2 Objections**

### **54 Objection to tax decision**

- (1) A taxpayer who is dissatisfied with a tax decision may object to the decision in accordance with section 55.
- (2) However, the Commissioner may refuse to consider an objection if the objector is not tax compliant.

### **55 Objection to amended assessment**

An objection to an amended assessment is limited to an objection to the alterations or additions made to the original assessment or self-assessment.

### **56 Procedure for objection to tax decision**

- (1) A taxpayer may object to a tax decision by filing a notice of objection.
- (2) A notice of objection must:
  - (a) be in the approved form; and

- (b) state fully and in detail the grounds of objection; and
  - (c) be filed with the Commissioner within 60 days after service of notice of the tax decision.
- (3) The Commissioner may by written notice to an objector require the objector to file specified further information or documents within a specified period.
- (4) On the application of an objector, the Commissioner may grant an extension of time to file a notice of objection.
- (5) The Commissioner must serve a notice of the Commissioner's decision under subsection (4) as soon as practicable on the objector.

**57 Determination of objection**

- (1) After considering an objection the Commissioner must determine it by:
- (a) allowing the objection, in whole or in part; or
  - (b) disallowing it.
- (2) The Commissioner must as soon as practicable serve on the objector a notice of the Commissioner's determination of the objection.
- (3) If the Commissioner disallows the objection or allows it in part only, the notice under subsection (2) must state the reasons for the determination.
- (4) An objection must be treated as disallowed if the Commissioner has not determined an objection within 60 days after the filing of the notice of objection or the filing of additional information and documents in accordance with section 56(3), as the case may be.

**58 Disputed tax remains payable**

- (1) The tax due under a disputed assessment remains payable while an objection or appeal is brought under this Part.

- (2) However, the Commissioner may agree to stay recovery of tax in dispute to a maximum of 50% of the disputed tax, but only if the taxpayer:
  - (a) has paid all the tax due under the assessment that is not in dispute; or
  - (b) has an arrangement under section 65(2) for the payment of the undisputed due tax.

## **Division 3      Appeals**

### **59      Appeal to High Court**

- (1) An objector whose objection is disallowed or allowed in part only under section 57 may appeal to the High Court.
- (2) The objector must file the appeal in the High Court:
  - (a) within 60 days after service on the objector of notice of the determination of the objection; or
  - (b) if section 57(4) applies, within 60 days after the expiry of the 60-day period referred to in that subsection.
- (3) The Commissioner must be cited as the respondent to the appeal.
- (4) The High Court may determine the appeal by:
  - (a) confirming, cancelling or varying the Commissioner's determination of the objection; or
  - (b) in the case of a disputed assessment:
    - (i) reducing the amount of the assessment; or
    - (ii) increasing the amount of the assessment to a greater amount that the Commissioner could have assessed as payable; or
    - (iii) substituting another assessment that the Commissioner could have made for the assessment.

## **60 Appeal to Court of Appeal**

- (1) An appeal to the Court of Appeal may be made against a decision of the High Court on an appeal under section 59.
- (2) The appeal may be brought:
  - (a) by the objector or the Commissioner; and
  - (b) on a question of law only.
- (3) The appellant must file the appeal in the Court of Appeal within 60 days after the date the judgment of the High Court is delivered.
- (4) The Court of Appeal may determine the appeal by:
  - (a) confirming, cancelling or varying the Commissioner's determination of the objection; or
  - (b) in the case of a disputed assessment:
    - (i) reducing the amount of the assessment; or
    - (ii) increasing the amount of the assessment to a greater amount that the Commissioner could have assessed as payable; or
    - (iii) substituting another assessment that the Commissioner could have made for the assessment.

## **61 Grounds of appeal**

- (1) The grounds of an appeal brought by a taxpayer under section 59 or 60 are limited to the grounds of objection contained in the notice of objection.
- (2) However, the Court hearing the appeal may grant a taxpayer leave to add new grounds of appeal.

## **Division 4 Effect of objection or appeal**

### **62 Finality of determination**

The determination of an objection or appeal under this Part is final if it cannot be appealed because:

- (a) there is no right of appeal; or
- (b) the time for filing an appeal has expired.

### **63 Implementation of final determination**

- (1) When the determination of an objection or appeal under this Part is final, the Commissioner must take the steps necessary to implement the result.
- (2) Steps necessary to implement the result may include the following:
  - (a) amending a disputed assessment;
  - (b) refunding a taxpayer tax paid under a disputed assessment;
  - (c) paying a taxpayer interest on tax paid under a disputed assessment.
- (3) The time limit in section 44 for amending an assessment does not apply for the purpose of implementing the determination of an objection or appeal under this Part.

## **PART 6 RECOVERY OF TAX**

### **Division 1 General**

#### **64 Payment of tax**

- (1) Tax payable under a tax law is a debt due to the Crown.
- (2) Tax is payable to the Commissioner:
  - (a) on or before the due date under the tax law; and
  - (b) in the prescribed manner; and
  - (c) at the prescribed place.
- (3) If a taxpayer makes a payment of tax, the amount paid must be applied in the following order of priority:
  - (a) first, to pay any unpaid penalties;
  - (b) second, to pay any late payment interest due; and

(c) third, to pay the taxpayer's assessed tax liability.

## **65 Extension of time for payment**

- (1) A taxpayer may apply to the Commissioner in writing for an extension of time to pay tax due under a tax law.
- (2) On an application under subsection (1), and having regard to the circumstances of the case, the Commissioner may:
  - (a) grant the taxpayer an extension of time to pay; or
  - (b) permit the taxpayer to pay in instalments as the Commissioner determines.
- (3) An extension of time or permission to pay in instalments does not affect the liability of the taxpayer under section 112 for late payment interest accruing from the original due date for payment.

## **66 Default in payment by instalments**

On default by a taxpayer in paying an instalment of tax as determined by the Commissioner under section 65(2)(b):

- (a) the permission to pay in instalments is cancelled; and
- (b) the whole balance of the unpaid tax outstanding at the date of default becomes immediately payable.

## **67 Remission or refund of tax**

- (1) On the written request by a taxpayer who is a natural person, the Commissioner may remit or refund tax under subsection (2).
- (2) The Commissioner, on the ground of serious hardship to the taxpayer, may remit or refund some or all of:
  - (a) the tax payable by the taxpayer; or
  - (b) any tax paid by the taxpayer in the financial year in which the request is made.
- (3) The Commissioner must:

- (a) serve the taxpayer with a written notice of the decision of the Commissioner; and
- (b) if the decision is to remit or refund:
  - (i) remit by issuing an amended tax assessment; or
  - (ii) refund by paying the taxpayer the amount refunded (but interest is not payable on the amount refunded).
- (4) The Commissioner may reverse a remission or refund of tax if the remission or refund was made on the basis of false or misleading information provided by the taxpayer.
- (5) The Commissioner must not remit or refund tax unless the Commissioner is satisfied that the tax has not been passed on by the taxpayer to another person.

**68 Commissioner may write off tax**

- (1) The Commissioner may write off tax payable under a tax law if the Commissioner determines that collection of the tax:
  - (a) is uneconomic; or
  - (b) is impractical; or
  - (c) in the case of a taxpayer who is a natural person, would cause that person serious hardship.
- (2) Circumstances in which the Commissioner may determine that the collection of tax is uneconomic, is impractical or would cause serious hardship include the following:
  - (a) the taxpayer is dead and the taxpayer's estate has been distributed;
  - (b) the taxpayer is:
    - (i) currently subject to a receiving order under the *Bankruptcy Act* (Cap. 3); or
    - (ii) adjudicated bankrupt under that Act;



- (c) the taxpayer is in liquidation or is subject to a liquidation proceeding;
  - (d) the taxpayer has been removed from the register of companies or otherwise dissolved;
  - (e) the taxpayer is seriously ill or incapacitated;
  - (f) the taxpayer has been imprisoned;
  - (g) the taxpayer is missing or resides overseas.
- (3) In any case where the Commissioner writes off tax in a circumstance set out in subsection (2)(a) to (c), the Commissioner may reinstate all or part of the tax written off if:
- (a) additional funds due to the taxpayer's estate are discovered after the taxpayer's estate has been distributed; or
  - (b) the Commissioner receives, by operation of law, additional funds in respect of a taxpayer after the taxpayer is adjudicated bankrupt or is liquidated.
- (4) The Commissioner may reverse a write off if the write off was made on the basis of false or misleading information provided by the taxpayer.

**69      Transfer of excess tax**

- (1) The Commissioner may transfer part or all of excess tax paid by a taxpayer to another tax period or another type of tax the taxpayer is liable to pay.
- (2) The Commissioner may make the transfer on the Commissioner's own initiative or on the request of the taxpayer.

## **70 Tax clearance certificate**

- (1) The Commissioner must issue a tax clearance certificate on the application of a taxpayer if the Commissioner is satisfied that the taxpayer is tax compliant at the date of certification.
- (2) If the Commissioner refuses to issue a tax clearance certificate, the notice of the decision given under section 50(3) must state the reason for the refusal.
- (3) The Commissioner must not charge a fee for the issue of a tax clearance certificate.

## **Division 2 Proceedings by Commissioner**

### **71 Commissioner may sue to recover unpaid tax**

- (1) This section applies subject to the *Crown Proceedings Act* (Cap.85).
- (2) The Commissioner may bring a proceeding in any court of competent jurisdiction to recover unpaid tax of a taxpayer.
- (3) The proceeding must be brought in the Commissioner's official name.
- (4) In a proceeding under this section:
  - (a) the Commissioner may produce a certificate signed by him or her that states the name of the taxpayer and the amount of tax payable; and
  - (b) on production of the certificate, the court may give judgment with full costs against the taxpayer for the amount stated without further evidence required.

### **72 No limitation of action for recovery of tax**

A proceeding under section 71 is not barred or otherwise affected by any law prescribing or providing for a limitation period or other limitation defence.

## **Division 3      Proceeding against property**

### **73      Tax is charge on property**

- (1) There is a charge on the real and personal property of a taxpayer for the amount of unpaid tax.
- (2) On the application of the Commissioner, the High Court may make orders to enforce the charge under subsection (1) on the property of a taxpayer, including the following orders:
  - (a) for the sale of all or part of the property;
  - (b) for the appointment of a receiver of the rents, profits or income from the property;
  - (c) for applying proceeds obtained under paragraph (a) or (b) to payment of the unpaid tax and the costs of the Commissioner in enforcing the charge.
- (3) In this section, the property of a taxpayer includes the beneficial interest of a taxpayer in property.
- (4) Nothing in this section affects the operation or effect of the *Secured Transactions Act 2008*.

### **74      Caveat over taxpayer's real property**

- (1) A charge under section 73(1) creates an interest in real property sufficient to support a caveat over the property.
- (2) On the application of the Commissioner in accordance with subsection (3), the Registrar of Titles must register a caveat against real property if the Registrar is satisfied that there is a charge on the property under section 73.
- (3) The Commissioner's application must:
  - (a) identify the property by its legal description; and
  - (b) state the amount of unpaid tax; and
  - (c) contain or be accompanied by any other prescribed information or documents.

- (4) The provisions of the *Land and Titles Act* (Cap. 133) relating to the registration and discharge of caveats apply with all necessary modifications to a caveat registered under subsection (2).

## **75 Proceeding against personal property**

- (1) Instead of proceeding under section 73(2), the Commissioner may seize the personal property of a taxpayer for the recovery of unpaid tax by:
  - (a) issuing a possession notice that complies with subsection (2); and
  - (b) executing the notice under section 76; and
  - (c) dealing with the seized property under section 77.
- (2) A possession notice must:
  - (a) be in writing; and
  - (b) be signed by the person issuing it; and
  - (c) identify the taxpayer; and
  - (d) identify the property to be seized; and
  - (e) identify the premises where the property is located; and
  - (f) specify the nature and amount of unpaid tax.

## **76 Procedure for executing possession notice**

- (1) An authorised tax officer executing a possession notice may:
  - (a) at any time enter the premises identified in the notice for the purposes of executing the notice; and
  - (b) may require a police officer to be present.
- (2) A copy of the possession notice must be:
  - (a) left with the person in control or custody of the property seized or otherwise left at the premises in a prominent place; and

- (b) served without delay on the taxpayer.
- (3) Property seized under a possession notice must:
  - (a) have affixed to it a notice in durable material:
    - (i) identifying it as property seized by or with the authority of the Commissioner under this Act; and
    - (ii) bearing the date of seizure; and
  - (b) except in the case of perishable goods, must be kept for 10 days where found or in storage.
- (4) The property must be immediately released to the taxpayer if the unpaid tax is paid before the property is dealt with under section 77.
- (5) Property seized that is perishable goods must be:
  - (a) sold without delay; or
  - (b) if not able to be sold, disposed of at the Commissioner's discretion.

## **77 Dealing with property seized under possession notice**

- (1) The Commissioner may deal with property seized under a possession notice in accordance with this section if the taxpayer does not pay, before the expiry of the 10-day period for keeping the property:
  - (a) the unpaid tax; and
  - (b) the costs of seizure.
- (2) The property may be dealt with as follows:
  - (a) if goods, by sale at public auction;
  - (b) if a negotiable instrument, by sale through a broker at the prevailing market rate;
  - (c) if money (including foreign currency), by deposit with the Central Bank of Solomon Islands.

## **78 Proceeds of property seized**

- (1) The proceeds of dealing with seized property under section 76(5)(a) or 77 must be applied in the following order of priority:
  - (a) first, to the costs incurred in seizing, keeping and dealing with the property;
  - (b) second, to the unpaid tax;
  - (c) third, within 45 days of dealing with the last of the property, to paying any surplus proceeds to the taxpayer.
- (2) A taxpayer remains liable for any amount of unpaid tax or costs of seizure that is not discharged under subsection (1) and the unpaid costs of seizure must be treated as unpaid tax for the purposes of recovery.

## **Division 4 Recovery from third parties**

### **79 Definitions for Part 6, Division 4**

In this Division:

“**debtor**” means a person listed in section 80(2);

“**section 80 notice**” means a notice referred to in section 80(2).

### **80 Recovery from third parties**

- (1) This section applies if:
  - (a) a taxpayer has not paid tax that is payable; or
  - (b) the Commissioner has reasonable grounds for believing that the taxpayer will not pay tax that is becoming payable.
- (2) The Commissioner may by a notice that complies with section 81 require any of the following persons to pay an amount towards the taxpayer’s unpaid tax:
  - (a) a person who owes or will owe money to the taxpayer;
  - (b) a person who holds money for or on account of the taxpayer;

- (c) a person who holds money on account of some other person for payment to the taxpayer;
  - (d) a person who has authority from some other person to pay money to the taxpayer.
- (3) To avoid doubt:
- (a) the requirement under this section to pay an amount towards the taxpayer's unpaid tax overrides any contrary contractual arrangement between the taxpayer and the debtor; and
  - (b) money held for or on account of the taxpayer or on account of some other person for payment to the taxpayer includes money held in a solicitor's trust account.

## **81 Notice requiring debtor to pay**

- (1) A section 80 notice must:
- (a) identify the taxpayer; and
  - (b) state the basis on which the debtor is liable to pay; and
  - (c) specify the amount that must be paid or, if payment is to be made in instalments, specify the amount and frequency of each instalment; and
  - (d) specify how the payment or payments may be made, and the due date for payment; and
  - (e) be served on the debtor and the taxpayer.
- (2) The amount to be paid must not exceed the amount of the tax that is unpaid or that the Commissioner believes will be unpaid.
- (3) If the amount to be paid is a deduction from a pension, salary, wages or other remuneration paid to the taxpayer, the amount to be paid in each instalment must not exceed 20% of each payment of pension, salary, wages or other remuneration.
- (4) In the case of payment out of money that will be owed by the debtor, a section 80 notice must not require the debtor to make a

payment out of that money before the money becomes owing or due to the taxpayer.

## **82 Updating section 80 notice**

- (1) The Commissioner must update a section 80 notice:
  - (a) by cancelling it, if the taxpayer has:
    - (i) paid all the tax payable; or
    - (ii) made an arrangement satisfactory to the Commissioner for the payment of all the tax payable; or
  - (b) by amending it, if the taxpayer has paid part of the tax payable.
- (2) A notice updating a section 80 notice must be served on the debtor and the taxpayer.

## **83 Debtor relief**

- (1) A debtor may file a notice with the Commissioner claiming relief from the liability to make payment under a section 80 notice on the ground that the debtor owes or holds on account less than the amount that must be paid.
- (2) The debtor's notice must be filed before the due date for payment specified in the section 80 notice.
- (3) The Commissioner may, by notice served on the debtor and the taxpayer:
  - (a) accept the claim for relief, and cancel or amend the section 80 notice accordingly; or
  - (b) reject it.

## **84 Liability of debtor**

- (1) The Commissioner may recover an amount for which a debtor is liable under a section 80 notice as if it were unpaid tax payable on the debtor's own account.



- (2) A debtor who makes a payment in accordance with a section 80 notice does not incur any liability to the taxpayer by reason only of making the payment.

## **Division 5      Taxpayer in liquidation or bankruptcy, etc**

### **85      Division applies to liquidator**

- (1) This Division applies to a liquidator who, in the capacity of liquidator, has possession or control of the property of a taxpayer.

- (2) In this Division:

**“liquidator”** means any of the following:

- (a) the liquidator of a company;
- (b) a receiver of property;
- (c) a trustee in bankruptcy;
- (d) a mortgagee in possession;
- (e) an executor of a deceased estate;
- (f) any other person holding a similar office or acting in a similar capacity;

**“notified tax”**, in relation to a taxpayer, means the total amount of tax that is:

- (a) unpaid by the taxpayer; and
- (b) is or will become payable by the taxpayer;

**“section 87 notice”** means a notice given under section 87 stating a taxpayer’s notified tax.

### **86      Liquidator must give notice to Commissioner**

A person who becomes a liquidator having possession or control of property of a taxpayer must notify the Commissioner of that fact within 14 days after becoming the liquidator.

## **87 Notice to liquidator of unpaid tax and tax payable**

- (1) The Commissioner must give a notice in writing to a liquidator who notifies the Commissioner under section 86.
- (2) The notice must:
  - (a) state the notified tax of the person whose property is in the liquidator's possession or control; and
  - (b) be given as soon as practicable after the liquidator notifies the Commissioner under section 86 but in any event not later than 2 months after being notified.
- (3) The liquidator must not, before receiving the section 87 notice, dispose of any property of the taxpayer in the liquidator's possession or control unless the Commissioner agrees.
- (4) Subsection (3) does not apply to the extent that the liquidator pays from the assets:
  - (a) a debt that has priority over the notified tax; or
  - (b) the liquidator's expenses properly incurred in that capacity, including the liquidator's remuneration.

## **88 Liquidator must set aside property to meet tax payable**

- (1) A liquidator who receives a section 87 notice must set aside, out of the property available after payments referred to in section 87(4), the following property:
  - (a) property to the value of the notified tax; or
  - (b) if there is insufficient property to meet the notified tax, all the property.
- (2) If the notified tax is not paid by the liquidator out of the property required to be set aside, the liquidator is liable for:
  - (a) the tax payable to the extent of the value of the property that was required to be set aside (whether it was or not); and
  - (b) late payment interest on that tax under section 112.

- (3) The Commissioner may recover any amount for which a liquidator is liable under subsection (2) as if it were unpaid tax payable on the liquidator's own account.

## **Division 6          Other measures to enforce payment of tax**

### **89          Security for tax becoming payable**

- (1) If subsection (2) applies, the Commissioner may by written notice served on a person require the person to give security for tax that may become payable.
- (2) The Commissioner may serve the notice if the Commissioner has reasonable grounds for believing that the person served:
  - (a) is establishing a business in Solomon Islands and intends to carry on the business for a limited time only; or
  - (b) for any other reason, may not pay tax when it becomes payable.
- (3) A person served with a notice under subsection (1) must provide the Commissioner with security for the amount and in the form specified in the notice.

### **90          Departure prohibition notice**

- (1) The Commissioner may issue a departure prohibition notice in respect of any taxpayer if the Commissioner has reason to believe that:
  - (a) the taxpayer is not tax compliant; and
  - (b) is about to leave, or is likely to leave, Solomon Islands.
- (2) The notice:
  - (a) must state the taxpayer's name, address and TIN; and
  - (b) must state the grounds for believing that the taxpayer is not tax compliant; and
  - (c) must prohibit the taxpayer from leaving Solomon Islands while the notice is in force; and

- (d) must state that leaving or attempting to leave Solomon Islands in breach of the notice is an offence under section 136; and
  - (e) must state that the Commissioner will revoke the notice on the taxpayer becoming tax compliant; and
  - (f) must be served on the taxpayer and the Director of Immigration.
- (3) The notice must not be invalidated for an error or defect in procedure, form or detail if, despite the error or defect, the notice substantially complies with the tax law it is made under or any other tax laws applying to it.
- (4) While the notice is in force, an immigration officer must not permit the person to leave Solomon Islands.
- (5) If the taxpayer becomes tax compliant, the Commissioner must without delay revoke the notice by written notice served on the taxpayer and the Director of Immigration.

## **91 Foreign currency prohibition notice**

- (1) The Commissioner may issue a foreign currency prohibition notice in respect of any taxpayer if:
- (a) the Commissioner has reason to believe that the taxpayer is not tax compliant; and
  - (b) the Commissioner in his or her discretion considers it expedient for the recovery of tax.
- (2) The notice:
- (a) must state the taxpayer's name, address and TIN; and
  - (b) must be served on the taxpayer and the Central Bank of Solomon Islands; and
  - (c) may be served on such licensed financial institutions (as defined in section 2 of the *Financial Institutions Act 1998*)

carrying on retail banking business in Solomon Islands as the Commissioner considers expedient.

- (3) The notice must not be validated for an error or defect in procedure, form or detail if, despite the error or defect, the notice substantially complies with the tax law it is made under or any other tax laws applying to it.
- (4) While the notice is in force, a bank that has been served with the notice must not, without the consent of the Commissioner, permit the taxpayer to purchase, or make a remittance in, a foreign currency.
- (5) If the taxpayer becomes tax compliant, the Commissioner must without delay revoke the notice by written notice served on the taxpayer, the Central Bank of Solomon Islands and each licensed financial institution served under subsection (2)(c).

## **92 Temporary closure of business**

- (1) This section applies if:
  - (a) a taxpayer is the proprietor or legal owner of a business; and
  - (b) the taxpayer is liable, in relation to that business, to:
    - (i) file a return under a tax law; or
    - (ii) file a monthly summary of tax withheld from employment income; or
    - (iii) pay tax due under a tax law; or
    - (iv) pay tax withheld from employment income; and
  - (c) the taxpayer is in default under paragraph (b).
- (2) The Commissioner may close the business or part of it for a period not longer than 14 days if:
  - (a) the Commissioner has notified the taxpayer in writing of the Commissioner's intention to close the business or a part of it if the default is not remedied within 7 days after the date of the notice; and

- (b) the taxpayer has failed to remedy the default to the satisfaction of the Commissioner within the time specified; and
  - (c) the Commissioner issues a business closure notice for the temporary closure of the business or a part of it.
- (3) A business closure notice must specify the business to which it applies and the physical location of the premises of the business.
  - (4) The Commissioner is not liable for any financial or other loss suffered by a taxpayer as a result of the temporary closure of the taxpayer's business under this section.

**93 Execution of business closure notice**

- (1) The Commissioner may at any time enter the premises specified in a business closure notice for the purpose of executing the notice.
- (2) The Commissioner may require a police officer to be present while the business closure notice is executed.
- (3) The Commissioner must fix a notice to the premises in a prominent place that complies with subsection (4).
- (4) The notice must:
  - (a) specify the business that is carried on at the premises (or part of the premises) to which the notice relates; and
  - (b) state that the business is closed; and
  - (b) state the duration of closure; and
  - (c) state the reason for the closure; and
  - (d) be in the name of the Commissioner.
- (5) The Commissioner must remove the notice:
  - (a) on the expiry of the period of 14 days after the Commissioner executes the business closure notice; or
  - (b) if the default is remedied before the 14 day period expires, as soon as practicable after remedy of the default.

## **PART 7            INFORMATION COLLECTION AND HANDLING**

### **Division 1        Information search**

#### **94            Definitions for Part 7**

In this Part:

***“information”*** means:

- (a) any document, whether in hard copy or electronic form; or
- (b) any computer-stored information; or
- (c) any other electronically-stored information (for example, information stored on an electronic device such as a mobile phone);

***“place”*** includes:

- (a) a building or other premises; and
- (b) a vehicle, including a vessel or aircraft; and
- (c) personal property found on or at a place;

***“tax-related information”*** means information that the Commissioner considers:

- (a) is or may be relevant to determining the liability of a taxpayer under a tax law; or
- (b) affords or may afford evidence of the commission of an offence under a tax law; or
- (c) is or may be relevant in a proceeding against a taxpayer under a tax law.

#### **95            Power to enter and search for information etc**

- (1) The Commissioner has at all times and without notice the power to enter or obtain access to a place for the purpose of searching the place for tax-related information.

- (2) A tax officer other than the Commissioner who exercises the power of entry and search under subsection (1):
  - (a) must be an authorised tax officer; and
  - (b) must not enter or remain at or in a place or continue the search of a place if:
    - (i) the owner, occupier or other person in possession of the place requires evidence of the authority of the tax officer to enter and search; and
    - (ii) the tax officer does not produce the written authority to that person.
- (3) The Commissioner may require a police officer to be present for the purpose of exercising powers under this Division.
- (4) The Commissioner, a tax officer or a police officer is not liable for any damage resulting from the exercise of powers under this Division provided that the Commissioner, tax officer or police officer has acted in accordance with the provisions of this Division and, where force has been used, has not used, consented to or acquiesced in the use of unreasonable force.

## **96 Carrying out entry and search**

A tax officer who enters and searches a place under section 95:

- (a) may, under the supervision of a police officer who is present, use reasonable force to enter the place and conduct the search; and
- (b) must be given full and free access to the place to conduct the search; and
- (c) may do whatever is reasonably necessary to conduct a search; and
- (d) may bring a tool or device (including a computer) to the place and use it for search or examination if the tax officer considers on reasonable grounds that the tool or device is necessary for that purpose; and



- (e) may require a person in occupation of the place to give such assistance in the search as is reasonable, including the provision of passwords for access to a computer, other information system or electronic device found at the place.

**97 Dealing with information found on search**

- (1) A tax officer who searches a place under section 95 may:
  - (a) examine information found in the course of the search; and
  - (b) seize any tax-related information found in the course of the search; and
  - (c) seize a computer, other information system or electronic device found at the place for later examination if a tax officer considers that:
    - (i) the computer, information system or electronic device contains or may contain tax-related information; and
    - (ii) it is not practicable to obtain a hard copy of the information or a copy of it on a data storage device for later examination.
- (2) A tax officer who seizes tax-related information or property under subsection (1) must give a receipt for the information and other property seized to the owner, occupier or other person in occupation or possession of the place searched.
- (3) The Commissioner must return property seized under subsection (1)(c) to its owner not later than 90 days after the property was seized.

**98 Access to computer, information system or electronic device**

- (1) In the course of searching for or examining information at a place under this Division, a tax officer:
  - (a) may use any computer, other information system or electronic device found at the place if the requirement in subsection (2) is met; and

- (b) does not require the permission of the occupier of the place or any other person to use the computer, information system or electronic device.
- (2) It is a requirement for the operation of the computer, information system or device that the tax officer considers on reasonable grounds that:
- (a) it is necessary for the tax officer to operate the computer, information system or electronic device to:
    - (i) search for a document; or
    - (ii) examine a document; or
    - (iii) put a document into readable form; or
    - (iv) copy a document to some other document to examine it or put it into readable form; and
  - (b) the computer, information system or electronic device is suitable for the search or examination; and
  - (c) the search or examination can be carried out without damage to the computer, information system or electronic device or to the document.
- (3) The use of a computer, information system or electronic device in accordance with this section includes using it to access a document that the computer, information system or electronic device can lawfully access, including a document held or stored at another place.

## **99 Retention of seized information**

- (1) The Commissioner may retain any tax-related information for as long as it is required for the purposes of determining the liability of a taxpayer under a tax law or bringing a prosecution or other proceeding under a tax law.
- (2) The Commissioner must allow a person whose tax-related information or other property is seized under section 97 reasonable access to the information or other property for the purpose of copying or downloading information at the person's expense.

## **100 Confidentiality and privilege**

This exercise of a power under this Division is not affected by:

- (a) any law relating to:
  - (i) privilege (including legal professional privilege); or
  - (ii) the public interest with respect to access to a place; or
  - (iii) the public interest with respect to the production of any property or information; or
- (b) any contractual duty of confidentiality; or
- (c) any law relating to privacy.

## **Division 2 Mandatory disclosure of information**

### **101 Commissioner may require person to provide information, etc**

- (1) For the purposes of administering a tax law, the Commissioner may by a notice that complies with subsection (3) require a person to do any one or more of the things listed in subsection (2).
- (2) The things the Commissioner may require the person to do are:
  - (a) provide the Commissioner with the information or type of tax-related information specified in the notice; or
  - (b) attend on the Commissioner and give evidence concerning the person's or another person's tax affairs; or
  - (c) produce to the Commissioner the following information that is in the person's custody or under the person's control:
    - (i) documents, whether in hard copy or electronic form;
    - (ii) computer-stored information.
- (3) The notice must be:
  - (a) in writing; and

- (b) served on the person personally or by being left at the person's last known usual place of business or residence.
- (4) The Commissioner may require the information or evidence referred to in subsection (2) to be given on oath, verbally or in writing, and for that purpose the Commissioner may administer the oath.
- (5) The Regulations may prescribe scales of expenses to be paid to a person required to attend and give evidence under this section.

## **102 Confidentiality and privilege**

The exercise of a power under section 101 is not affected by:

- (a) any law relating to:
  - (i) privilege (including legal professional privilege); or
  - (ii) the public interest with respect to providing information or giving evidence; or
  - (iii) the public interest with respect to the production of any property or information; or
- (b) any contractual duty of confidentiality; or
- (c) any law relating to privacy.

## **Division 3 Secrecy**

### **103 Expanded meaning of tax officer**

For the purposes of this Division, a tax officer includes:

- (a) a person employed by Inland Revenue; and
- (b) a person contracted to provide services to Inland Revenue; and
- (c) a person formerly employed by or contracted to the Inland Revenue; and
- (d) a former tax officer.

**104 Duty of secrecy**

- (1) A tax officer must regard and deal with as secret all sensitive material that comes into his or her possession or knowledge in the performance of the officer's duties or otherwise in the course of employment or service as tax officer.
- (2) In subsection (1), "*sensitive material*" means:
  - (a) all documents and information relating to the tax affairs of an identifiable person; and
  - (b) all confidential instructions given by the Commissioner in respect of the administration of a tax law.

**105 Offence of breach of duty of secrecy**

A person who breaches the duty of secrecy set out in section 104 commits an offence.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both

**106 Permitted disclosure by tax officer**

- (1) Nothing in section 104 prevents a tax officer from disclosing a document or information to the extent necessary to enable:
  - (a) another tax officer carry out a duty arising under a tax law; or
  - (b) the Auditor-General, or a person authorised by the Auditor-General in writing, perform the Auditor-General's official duties; or
  - (c) the Permanent Secretary of the Ministry, or a person authorised by the Permanent Secretary in writing, perform the Permanent Secretary's official duties; or

- (d) the Comptroller of Customs, or a customs officer authorised by the Comptroller in writing, perform the Comptroller's official duties; or
  - (e) the Government Statistician appointed under section 3(1) of the *Statistics Act* (Cap 54), or a person authorised by the Government Statistician in writing, perform the Government Statistician's official duties; or
  - (f) a competent authority or agency of a government of a foreign country with which Solomon Islands has entered into an information sharing agreement receive or access the document or information under that agreement; or
  - (g) a person authorised to receive or access the document or information by the Commissioner in writing receive or access the document or information; or
  - (h) a tax agent receive or access the document or information, if the document or the information relates to a client of the agent and the client has authorised the agent in writing to receive or access sensitive material.
- (2) A person who receives or accesses a document or information under subsection (1) or section 107 is subject to the duty of secrecy under section 104 as if he or she were a tax officer.

## **107 Customs access to Inland Revenue systems**

- (1) Without limiting section 106(1)(d), the Commissioner may give access to Inland Revenue online systems and data storage to the Comptroller of Customs or a customs officer authorised by the Comptroller in writing.
- (2) For the purposes of subsection (1), the Commissioner and the Comptroller may enter into an information sharing agreement that sets out the conditions and other requirements for access to Inland Revenue online systems and data storage.
- (3) Nothing in section 104 prevents the Comptroller of Customs or a customs officer authorised by the Comptroller from disclosing a document or information to another customs officer.

## **108 Immunity from giving evidence**

- (1) A tax officer must not be compelled or required to:
  - (a) produce in a court any information or document that has come into the tax officer's possession or knowledge in the performance of his or her duties or otherwise in the course of employment or service as a tax officer; or
  - (b) communicate to a court any information that has come into the tax officer's possession or knowledge in the performance of his or her duties or otherwise in the course of employment or service as a tax officer.
- (2) Subsection (1) does not apply to the production of a document or the communication of information necessary for:
  - (a) giving effect to a provision of a tax law; or
  - (b) bringing a prosecution for an offence under a tax law; or
  - (c) assisting in the course of a prosecution for an offence under a tax law.

## **PART 8 INTEREST, PENALTIES AND OFFENCES**

### **Division 1 Interpretation for Part 8**

#### **109 Meaning of statement made to tax officer**

A reference in sections 119 and 130 to a statement made to a tax officer refers to a statement made in writing or orally to a tax officer acting in the performance of the tax officer's duties under a tax law, and includes a statement made:

- (a) in an application, certificate, declaration, notification, tax return, objection or other document filed under a tax law; or
- (b) in information required to be provided under a tax law; or
- (c) in a document provided to a tax officer; or
- (d) in answer to a question asked by a tax officer; or

- (e) to another person with the knowledge or the reasonable expectation that the statement would be passed on to a tax officer.

## **110 Meaning of tax position**

In sections 111 and 120 to 122, "**tax position**" means a position or approach with regard to tax under a tax law including, without limitation, a position or approach with regard to any one or more of the following:

- (a) a liability for an amount of tax, or the payment of an amount of tax;
- (b) an obligation to deduct or withhold an amount of tax, or the deduction or withholding of an amount of tax;
- (c) a right to a tax refund, or to claim or not to claim a tax refund;
- (d) a right to a credit of tax, or to claim or not to claim a credit of tax;
- (e) the obligation to file or not file a return;
- (f) the derivation of an amount of income, including exempt income or a capital gain, or the inclusion or non-inclusion of an amount in income;
- (g) the estimation of the provisional tax payable;
- (h) a right to a tax credit.

## **111 Meaning of reasonably arguable position**

- (1) In sections 119 to 122, a tax position is reasonably arguable if, on an objective interpretation of the relevant law and its application to the facts of the case, the taxpayer's position is as likely to be correct as incorrect.
- (2) However, subsection (1) applies subject to subsections (3) and (4).
- (3) A tax position that is contrary to a public or private ruling issued by the Commissioner is not capable of being a reasonably arguable position.



- (4) A taxpayer does not take a tax position that is not a reasonably arguable position merely by making a mistake in the calculation or recording of numbers used in, or for use in preparing, a return.

## **Division 2      Late payment interest**

### **112      Late payment interest**

- (1) A person is liable for late payment interest if, on or before the due date, the person:
  - (a) fails to pay tax as required by or under a tax law; or
  - (b) fails to remit to the Commissioner an amount deducted as tax; or
  - (c) fails to pay an administrative penalty.
- (2) Late payment interest is:
  - (a) calculated at the rate of 15% per annum (or at any other prescribed rate) on the amount of the unpaid tax or the administrative penalty from the date on which payment was due to the date payment is made; and
  - (b) computed as simple interest.
- (3) Late payment interest must be paid in addition to a penalty or fine under a tax law for the same default.
- (4) The Commissioner must refund an amount of late payment interest if the amount of unpaid tax or the administrative penalty to which it relates is found not to be payable.
- (5) This section is subject to section 113(2).

### **113      Recovery of late payment interest**

- (1) For the purposes of recovery under this Act, the Commissioner may recover late payment interest from a person as if it were a tax payable by that person.
- (2) In the following cases, late payment interest is the liability of the person in default and is not recoverable from any other person:

- (a) default in paying tax deducted or required to be deducted from a payment under sections 36, 36A, 36B, 37 or 38 of the *Income Tax Act* (Cap. 123); or
- (b) default in paying an amount that a third party is required to pay under a section 80 notice served on that person.

### **Division 3            Administrative penalties**

#### **114            Administrative penalty for failure to keep and maintain records**

A taxpayer who fails to keep and maintain tax records as required by a tax law is liable to the prescribed penalty.

#### **115            Administrative penalty for failure to apply for TIN**

A person who fails to apply for a TIN as required by section 18(1) is liable to the prescribed penalty.

#### **116            Administrative penalty for failure to update TIN information**

A person who fails to update information as required by section 20 is liable to the prescribed penalty.

#### **117            Administrative penalty for failure to display tax agent certificate**

A registered tax agent who fails to display the tax agent's certificate of registration at his or her business premises as required by section 33(2) is liable to the prescribed penalty.

#### **118            Administrative penalty for late filing**

- (1) A person who fails to file, by the due date, a return or other document required to be filed by a tax law is liable to the prescribed penalty.
- (2) For the purposes of subsection (1), a person ceases to be in default of filing:
  - (a) in the case of a return, when the Commissioner receives the return or makes a default assessment for the period covered by the return; or

- (b) in any other case, when the Commissioner receives the document.

**119 Administrative penalty for false or misleading statement**

- (1) A person is liable to the prescribed penalty if:
  - (a) the person:
    - (i) makes a statement to a tax officer that is false or misleading in a material particular; or
    - (ii) omits from a statement made to a tax officer anything without which the statement is false or misleading in a material particular; and
  - (b) the tax liability of a person calculated on the basis of the statement is less than it would have been had the statement not been false or misleading in a material particular.
- (2) Subsection (1) does not apply if:
  - (a) the statement:
    - (i) is made by a taxpayer in making a self-assessment return; and
    - (ii) is a reasonably arguable position; or
  - (b) the person who makes the statement does not know and could not reasonably be expected to know that the statement is false or misleading in a material particular.
- (3) Nothing in subsection (2) prevents the imposition of late payment interest under section 112 in respect of a tax shortfall arising because of a calculation referred to in subsection (1)(b) if the amount of the tax the person is liable to pay is not paid by the due date.

**120 Administrative penalty for not taking reasonable care**

- (1) A taxpayer is liable to the prescribed penalty if:
  - (a) the taxpayer takes a tax position that is not a reasonably arguable position; and

- (b) a person exercising reasonable care in the position of the taxpayer would not take that tax position; and
  - (c) the tax position results in a tax shortfall.
- (2) Subject to subsection (3), if, in taking a tax position, a taxpayer relies on the action or advice of a tax advisor engaged by the taxpayer, the taxpayer is taken to have exercised reasonable care in taking that tax position (whether or not it is a reasonably arguable position) and is not liable to the prescribed penalty.
- (3) Subsection (2) does not apply if the taxpayer:
- (a) is the employer of the tax advisor; or
  - (b) does not provide to the tax advisor adequate information relating to the tax position; or
  - (c) does not provide to the tax advisor adequate instructions relating to the tax position; or
  - (d) has reason to believe that the action or advice is incorrect; or
  - (e) has previously, for a period ending less than 4 years before the beginning of the period to which the tax position relates, had a tax shortfall for the same type of tax arising from a corresponding tax position and does not take reasonable care to avoid the further tax shortfall.
- (4) In this section, “**tax advisor**” means any of the following persons:
- (a) a tax agent;
  - (b) a legal practitioner;
  - (c) a person registered with the Institute of Solomon Islands Accountants as a registered certified practising accountant.

## **121 Administrative penalty for gross carelessness**

- (1) A taxpayer is liable to pay the prescribed penalty if:
- (a) the taxpayer is grossly careless in taking a tax position that is not a reasonably arguable position; and

- (b) the tax position results in a tax shortfall.
- (2) For the purposes of subsection (1), “**gross carelessness**” means doing or not doing something in a way that, in all the circumstances, suggests or implies:
  - (a) complete disregard for the consequences; or
  - (b) a high level of disregard for the consequences.

**122 Administrative penalty for intentional disregard**

A taxpayer is liable to pay the prescribed penalty if:

- (a) the taxpayer takes a tax position that is not a reasonably arguable position in disregard of a clear obligation under a tax law; and
- (b) the taxpayer does so with the dominant intention of reducing or removing a tax liability or obtaining a tax benefit; and
- (c) the tax position results in a tax shortfall.

**123 Assessment of administrative penalty**

- (1) The Commissioner:
  - (a) may impose an administrative penalty in accordance with this section; and
  - (b) in doing so, must not impose an administrative penalty that exceeds the prescribed maximum penalty amount for the administrative penalty.
- (2) The Commissioner must:
  - (a) make an assessment of the penalty that may be imposed under this Division; and
  - (b) serve on the person subject to the penalty a notice of assessment of penalty that complies with subsection (3).
- (3) The notice must state:
  - (a) the grounds for imposing the penalty; and

- (b) the amount of the penalty; and
  - (c) the due date for payment which must not be less than 30 days after the notice is served.
- (4) If the Commissioner brings a prosecution relating to an act or omission for which a penalty has been imposed under this Division:
- (a) the Commissioner must refund an amount that has been paid towards the penalty; and
  - (b) the penalty is payable only if the prosecution is withdrawn.

#### **124 Remission of administrative penalty**

- (1) The Commissioner may remit part or all of an administrative penalty:
- (a) on the Commissioner's own initiative; or
  - (b) on the application in writing of the person assessed for the penalty under section 123.
- (2) The grounds for a remission of the penalty are the following:
- (a) serious hardship to the person subject to the penalty;
  - (b) the incorrect imposition or calculation of a penalty;
  - (c) circumstances that the person subject to the penalty cannot change or influence;
  - (d) an honest unintentional failure to pay unpaid tax by the person subject to the penalty;
  - (e) any other prescribed ground.

#### **125 Recovery of administrative penalty**

- (1) The Commissioner may recover an administrative penalty from a person as if it were tax payable by that person.
- (2) Recovery of an administrative penalty from a person does not relieve that person of any liability for the payment of tax for which the person is or may be liable.

## **Division 4      Tax offences**

### **126      Failing to file return or further information**

- (1) A person commits an offence if the person without reasonable excuse:
- (a) fails to file a return or other document as required by a tax law; or
  - (b) fails to file a return as required by a notice under section 37; or
  - (c) fails to file further information as required by a notice under section 38.
- (2) If the Commissioner has extended the last date for filing the return, document or information, an offence under subsection (1) is committed if the return, document or information is not filed by the close of the extended date.

Maximum penalty:      20,000 penalty units or imprisonment for  
12 months, or both

### **127      Failing to keep and maintain tax records**

A person commits an offence if the person knowingly or recklessly fails to keep and maintain tax records as required by section 16.

Maximum penalty:      20,000 penalty units or imprisonment for  
12 months, or both

### **128      Failure to comply with information notice**

A person who without reasonable excuse fails to comply with a notice served on that person under section 101 commits an offence.

Maximum penalty:      20,000 penalty units or imprisonment for  
12 months, or both

### **129      Use of false TIN**

- (1) A person commits an offence if the person uses a false TIN on a tax return or other document prescribed or used for the purpose of a tax law.

Maximum penalty: 20,000 penalty units or imprisonment for 12 months, or both

- (2) For the purposes of subsection (1), a person who uses the TIN of another person is presumed to use a false TIN, unless the person proves on a balance of probability that the TIN is used:
  - (a) with the authority of that other person; and
  - (b) the tax return or document in question relates to the tax affairs of that other person.
- (3) In this section, a false TIN is a TIN that has not been issued or ought not to have been issued to the person using it.

### **130 False or misleading statement**

- (1) A person commits an offence if the person knowingly or recklessly:
  - (a) makes a statement to a tax officer that is false or misleading in a material particular; or
  - (b) omits from a statement made to a tax officer anything without which the statement is false or misleading in a material particular.

Maximum penalty: 50,000 penalty units or (if a tax shortfall results) twice the shortfall, whichever is higher, or imprisonment for 5 years, or both

- (2) Section 109 applies in determining when a statement is made to a tax officer.

### **131 Obstructing tax officer**

A person commits an offence if the person obstructs a tax officer in the exercise or performance of his or her powers or functions under a tax law.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both

### **132 Removing or interfering with seized property**

A person commits an offence if the person:



- (a) without the authority of the Commissioner, removes or otherwise interferes with property that:
  - (i) is the subject of an order under section 73(2)(a); or
  - (ii) has been seized under section 75; or
- (b) before, on or after the seizure of property under section 75, damages, destroys, or otherwise interferes with the property or documents relating to the property with the intention of preventing:
  - (i) the seizure of the property or a part of the property; or
  - (ii) the securing of the property or a part of the property; or
  - (iii) the proof of an offence.

Maximum penalty: 20,000 penalty units or imprisonment for 12 months, or both

### **133 Taking or offering unlawful reward or payment**

- (1) A person commits an offence if:
  - (a) the person is:
    - (i) a tax officer or former tax officer; or
    - (ii) any other person employed by, or contracted to provide services to, Inland Revenue in any capacity; and
  - (b) the person directly or indirectly asks for or takes an unlawful reward or payment.

Maximum penalty: 150,000 penalty units or imprisonment for 15 years, or both

- (2) A person commits an offence if the person directly or indirectly offers or gives a tax officer or a former tax officer an unlawful reward or payment.

Maximum penalty: 150,000 penalty units or imprisonment for 15 years, or both

- (3) In this section, “**unlawful reward or payment**”:
- (a) means a reward or payment of any kind, whether monetary or otherwise, which:
    - (i) is asked for, taken, offered or given in connection with the recipient’s duties or work for Inland Revenue; and
    - (ii) the recipient is not lawfully entitled to receive; and
  - (b) includes a promise or security for that reward or payment.

**134 Dereliction of duty by tax officer**

A person commits an offence if:

- (a) the person is a tax officer; and
- (b) the person enters into or acquiesces in an agreement to:
  - (i) do an act or thing; or
  - (ii) abstain from doing an act or thing; or
  - (iii) permit or connive in the doing of an act or thing; or
  - (iv) conceal an act or thing; and
- (c) the conduct set out in paragraph (b)(i), (ii), (iii) or (iv) is or would be:
  - (i) conduct by which the Government is or may be defrauded of revenue; or
  - (ii) contrary to a tax law; or
  - (iii) contrary to the proper execution of the person’s duties as a tax officer.

Maximum penalty: 150,000 penalty units or imprisonment for 15 years, or both

**135 Inducing dereliction of duty by tax officer**

A person commits an offence if:

- (a) the person proposes or enters into an agreement with a tax officer in order to induce the tax officer to:
  - (i) do an act or thing; or
  - (ii) abstain from doing an act or thing; or
  - (iii) permit or connive in the doing of an act or thing; or
  - (iv) conceal an act or thing; and
- (b) the conduct set out in paragraph (a)(i) to (iv) is or would be:
  - (i) conduct by which the Government is or may be defrauded of revenue; or
  - (ii) contrary to a tax law; or
  - (iii) contrary to the proper execution of the tax officer's duties as a tax officer.

Maximum penalty: 150,000 penalty units or imprisonment for 15 years, or both

**136 Breach of departure prohibition notice**

A person who breaches a departure prohibition notice served on that person under section 90 by leaving or attempting to leave Solomon Islands while the notice is in force commits an offence.

Maximum penalty: 20,000 penalty units or imprisonment for 12 months, or both

**137 Failure to make or pay deduction**

- (1) This section applies to a person who is required by a tax law to:
  - (a) deduct an amount from a payment made to another person; or
  - (b) deduct an amount from a payment received from another person.
- (2) A person to whom this section applies commits an offence if the person does any of the following things:

- (a) fails to make the deduction;
- (b) fails to pay the deduction to the Commissioner;
- (c) makes a false declaration under a tax law regarding the deduction;
- (d) fails to furnish a monthly summary or annual tax deduction certificate in respect of the deduction as required by a tax law;
- (e) gives false information to the Commissioner or another person regarding the deduction;
- (f) gives false information to the Commissioner or another person in relation to a matter or thing in a monthly summary or annual tax deduction certificate referred to in paragraph (d).

Maximum penalty: 20,000 penalty units or (if a tax shortfall results) twice the shortfall, whichever is higher, or imprisonment for 12 months, or both

- (3) In a prosecution for an offence under this section, a certificate signed or purporting to be signed by the Commissioner stating the amount that should have been deducted is evidence, unless the contrary is shown, of:
  - (a) the amount that should have been deducted; and
  - (b) the Commissioner making the certificate without any proof of appointment or signature.

### **138 Failure to comply with section 80 notice**

- (1) Subject to subsection (2), a person who fails to comply with a section 80 notice commits an offence.
- (2) If a person has applied for relief under section 83, a person does not commit an offence under subsection (1) if:
  - (a) the section 80 notice is cancelled; or
  - (b) in the case of amendment of the section 80 notice or rejection of the claim for relief, the person within 15 days after notice

under section 83(2) is served pays the amount due under the section 80 notice or amended section 80 notice.

Maximum penalty: 20,000 penalty units or imprisonment for 12 months, or both

**139 Evasion or similar offence**

(1) A person commits an offence if:

(a) the person:

- (i) knowingly does not keep the documents required to be kept by a tax law; or
- (ii) knowingly does not provide information (including tax returns and tax forms) to the Commissioner or any other person when required to do so by a tax law; or
- (iii) knowingly provides altered, false, incomplete or misleading information (including tax returns and tax forms) to the Commissioner or any other person in respect of a tax law or a matter or thing relating to a tax law; or
- (iv) knowingly does not make a deduction or withholding of tax required to be made by a tax law; or
- (v) pretends to be another person for a purpose or reason relating to a tax law; and

(b) the person does so:

- (i) intending to evade the assessment or payment of tax by the person or any other person under a tax law; or
- (ii) to obtain a refund or payment of tax in the knowledge that the person is not lawfully entitled to the refund or payment under a tax law; or
- (iii) to enable another person to obtain a refund or payment of tax in the knowledge that the other person is not lawfully entitled to the refund or payment under a tax law.

Maximum penalty: 50,000 penalty units or (if a tax shortfall results) twice the shortfall, whichever is higher, or imprisonment for 5 years, or both

- (2) A person who evades or attempts to evade the assessment or payment of tax by the person or another person under a tax law commits an offence.

Maximum penalty: 50,000 penalty units or (if a tax shortfall results) twice the shortfall, whichever is higher, or imprisonment for 5 years, or both

#### **140 Promotion of tax evasion scheme**

- (1) A person commits an offence if the person promotes or otherwise facilitates a tax evasion scheme.
- (2) In subsection (1), "**tax evasion scheme**" means a scheme for avoiding the payment of tax by illegal means.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both

#### **141 Liability of officer of body for offence by body**

- (1) In this section:

"**body corporate**" means an incorporated or unincorporated body of persons.

- (2) If a body corporate commits an offence under a tax law, a person who is any of the following persons at the time the offence is committed also commits the offence:
- (a) the managing director, the chief executive officer, the company secretary, a director or a similar officer of the company;
- (b) if the affairs of the body corporate are managed by the members of the body corporate, a member of the body corporate who performs a function in managing the affairs of the body corporate;

- (c) if an officer of the body corporate is another body corporate, an officer of that other body corporate;
  - (d) a person acting in any of the capacities set out in paragraphs (a) to (c);
  - (e) a person in accordance with whose directions or instructions the officers of a body corporate are accustomed to act.
- (3) If a body corporate is convicted of an offence against a tax law, every officer of the body corporate is also guilty of the offence (and may be convicted and sentenced) if it is proved:
- (a) that the act that constituted the offence took place with the officer's authority, permission or consent; or
  - (b) that the officer:
    - (i) knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and
    - (ii) failed to take reasonable steps to prevent or stop it.
- (4) If the officer is convicted of the offence, the maximum penalty to which the officer is liable is the maximum penalty specified for committing the offence.

## **Division 5 Procedure for prosecution of tax offences**

### **142 Commissioner must approve prosecution**

A prosecution of an offence under a tax law must not be brought unless the Commissioner has approved it.

### **143 Time for bringing prosecution**

- (1) A prosecution of an offence under a tax law must be brought not later than 7 years after the commission of the offence.
- (2) However, subsection (1) does not apply to an offence under the following sections:
  - (a) section 133 (taking or offering an unlawful reward or payment);

- (b) section 134 (dereliction of duty by tax officer);
- (c) section 135 (inducing dereliction of duty by tax officer);
- (d) section 139 (evasion or similar offence);
- (e) section 140 (promotion of tax evasion scheme).

#### **144 Commissioner may compound offence**

- (1) This section applies if:
  - (a) a person ("***the offender***") has committed an offence under a tax law other than an offence under sections 133 to 135; and
  - (b) admits the offence in writing; and
  - (c) applies to the Commissioner in writing for the offence to be dealt with under this section.
- (2) The Commissioner may, at any time before the trial of the offender for the offence, compound the offence by issuing a notice requiring the offender to pay a sum of money as the Commissioner thinks fit, except that the sum of money must not be greater than the maximum pecuniary penalty for the offence in question.
- (3) A notice under subsection (2) must:
  - (a) be in writing; and
  - (b) specify:
    - (i) the name of the offender; and
    - (ii) the offence compounded; and
    - (iii) the sum of money that the offender must pay; and
    - (iv) the date or dates for payment of the money; and
  - (c) have attached a copy of the offender's written admission; and
  - (d) be served on the offender.



**145 Effect of notice compounding offence**

- (1) A notice under section 144:
  - (a) is final and is not subject to appeal or other challenge; and
  - (b) is not a tax decision; and
  - (c) does not relieve the offender of any liability for the payment of tax for which the offender is or may be liable; and
  - (d) may be enforced in the same way as an order of court for payment of the sum specified in the notice; and
  - (e) must, on production to a court, be treated as proof of the conviction of the offender for the offence specified in the notice; and
  - (f) must not be invalidated for an error or defect in procedure, form or detail if, despite the error or defect, the notice substantially complies with section 144 and any other tax laws applying to it.
- (2) If the Commissioner issues a notice under section 144, the offender is not liable for prosecution or penalty for the same act or omission that constituted the offence specified in the notice.

**146 Prosecution does not prevent liability for tax**

The prosecution of a person for an offence under a tax law, or the imposition of a penalty following a conviction, does not relieve that person of any liability for the payment of tax for which the person is or may be liable.

**147 Evidence in proceedings for failure to furnish returns or information**

- (1) This section applies to a proceeding against a person for refusing or failing to:
  - (a) provide a tax return or information as and when required by a tax law or the Commissioner; or

- (b) produce for inspection a document as and when required by a tax law or by the Commissioner.
- (2) A certificate signed by the Commissioner, that the tax return, information or document has not been received at the time required is, in the absence of proof to the contrary, sufficient evidence that the person has refused or failed to furnish the return, information or document, as the case may be.

**148 Evidence of unpaid tax**

A certificate signed by the Commissioner that a sum specified in the certificate is, at the date of the certificate, the unpaid tax of the person named in the certificate is, in the absence of proof to the contrary, evidence of the matters stated in the certificate.

**PART 9 RULINGS**

**Division 1 Public ruling**

**149 Commissioner may make public ruling**

- (1) The Commissioner may make a public ruling in accordance with section 150 setting out how a tax law applies in relation to a type of person or a type of arrangement.
- (2) A public ruling made in accordance with section 150 is binding on the Commissioner until withdrawn.

**150 Procedure for making public ruling**

- (1) The Commissioner makes a public ruling by publishing the ruling in the Gazette.
- (2) The Commissioner must also publish the ruling on an Inland Revenue Division's internet site to which the public has free access.
- (3) A public ruling must:
  - (a) state that it is a public ruling made under this Act; and
  - (b) have a number and subject heading by which it can be identified.

- (4) A public ruling applies from the date specified in the ruling or, if no date is specified, from the date of publication in the *Gazette*.
- (5) A public ruling has effect despite, and must not be invalidated for, an error or defect in procedure, form or detail that does not affect the substance or effect of the ruling.

**151 Commissioner may amend or withdraw public ruling**

- (1) The Commissioner may amend a public ruling or withdraw a public ruling, in whole or in part. The Commissioner must publish the amendment or withdrawal in the *Gazette*.
- (2) A public ruling must be treated as withdrawn, and not to have effect, to the extent that it is inconsistent with:
  - (a) a subsequent tax law or amendment to a tax law; or
  - (b) a subsequent public ruling.

**152 Effect of amendment or withdrawal of public ruling**

- (1) The amendment of a public ruling takes effect on and from the date specified in the notice of amendment or, if no date is specified, on or from the date of publication in the *Gazette*.
- (2) However, the amendment of a public ruling does not apply to an arrangement that commenced before the ruling takes effect.
- (3) The withdrawal of a public ruling or part of it takes effect:
  - (a) if section 151(1) applies, on and from the date specified in the notice of withdrawal or, if no date is specified, on or from the date of publication in the *Gazette*; or
  - (b) if section 151(2)(a) applies, on and from the date on which the subsequent tax law or amendment commences or otherwise takes effect; or
  - (c) if section 151(2)(b) applies, on and from the date that the ruling applies.
- (4) A public ruling that has been withdrawn, in whole or in part:

- (a) continues to apply to an arrangement that commenced before the ruling was withdrawn; and
- (b) to the extent that the ruling is withdrawn, does not apply to an arrangement that commenced after the ruling was withdrawn.

## **Division 2      Private ruling**

### **153      Commissioner may make private ruling**

- (1) The Commissioner may make a private ruling in accordance with this section.
- (2) A taxpayer may apply in the approved form to the Commissioner for a private ruling setting out the Commissioner's position regarding how a tax law applies, or would apply, to the taxpayer and to the arrangement for which the ruling is sought.
- (3) Unless section 155 applies, the Commissioner must make the ruling applied for.
- (4) The Commissioner may make a private ruling on the basis of assumptions about a future event or other matter as the Commissioner considers appropriate.

### **154      Effect of private ruling**

- (1) A private ruling is binding on the Commissioner in relation to the taxpayer who applied for it on condition that:
  - (a) the taxpayer has made full and true disclosure of all aspects of the arrangement in question that are relevant to making the ruling; and
  - (b) the arrangement has proceeded in all material respects as described in the taxpayer's application for the ruling.
- (2) If both a private ruling and a public ruling applies to or in relation to a taxpayer, the private ruling prevails, and the public ruling does not apply, to the extent of any inconsistency between the rulings.

**155 Commissioner may refuse private ruling**

- (1) The Commissioner may refuse an application for a private ruling on any of the following grounds:
  - (a) the Commissioner has in an assessment already decided the matter that is the subject of the application;
  - (b) the Commissioner considers that a current public ruling adequately covers the matter that is the subject of the application;
  - (c) the application relates to a matter that is the subject of a tax audit or an objection;
  - (d) the application is frivolous or vexatious;
  - (e) the arrangement to which the application relates has not been carried out and there are reasonable grounds for believing that it will not proceed;
  - (f) the applicant has provided the Commissioner with insufficient information for making a private ruling;
  - (g) the Commissioner considers that it would be unreasonable to make a private ruling in view of the resources available to the Commissioner.
- (2) The Commissioner must serve the applicant with written notice of a refusal to make a private ruling.

**156 Procedure for making private ruling**

- (1) The Commissioner makes a private ruling by serving a written notice of the ruling on the applicant.
- (2) A private ruling must set out the matter ruled on, identifying:
  - (a) the taxpayer; and
  - (b) the tax law relevant to the ruling; and
  - (c) the tax period to which the ruling applies; and
  - (d) the arrangement to which the ruling relates; and

(e) any assumptions on which the ruling is based.

**157 Commissioner may withdraw private ruling**

- (1) The Commissioner may at any time withdraw a private ruling by service of a notice of withdrawal on the taxpayer.
- (2) A private ruling must be treated as withdrawn to the extent that it is inconsistent with:
  - (a) a subsequent tax law or amendment to a tax law; or
  - (b) a subsequent public ruling.

**158 Effect of withdrawal of private ruling**

- (1) The withdrawal of a private ruling or part of it takes effect:
  - (a) if section 157(1) applies, on and from the date specified in the notice of withdrawal; or
  - (b) if subsection 157(2)(a) applies, on and from the date on which the subsequent tax law or amendment commences or otherwise takes effect; or
  - (c) if subsection 157(2)(b) applies, on and from the date that the public ruling applies.
- (2) A private ruling that has been withdrawn, in whole or in part:
  - (a) continues to apply to an arrangement that commenced before the private ruling was withdrawn; and
  - (b) to the extent that the private ruling is withdrawn, does not apply to an arrangement that commenced after the private ruling was withdrawn.

**PART 10 ADMINISTRATION**

**Division 1 Documents**

**159 Approved forms**

- (1) The Commissioner may approve forms for use under a tax law.

- (2) If a tax law requires the use of an approved form for a specific step or action:
  - (a) the form approved for that purpose must be used and properly completed in accordance with the instructions in the form; and
  - (b) no step or action done is effective unless the requisite approved form is used and properly completed.
- (3) The Commissioner must:
  - (a) make available an approved form to a person on request and without charge; and
  - (b) ensure that the approved forms are published on an Inland Revenue Division's internet site to which the public has free access.
- (4) The Commissioner must not refuse to accept a form merely because it is not an approved form if the differences between the form used and the approved form are minor.

**160 Documents issued or served by Commissioner**

- (1) A notice or other document issued, served or given by the Commissioner under a tax law that is required to be signed by the Commissioner may be signed by an authorised tax officer.
- (2) A notice or other document purporting to be signed by order of the Commissioner is, unless the contrary is proved, presumed to have been signed by an authorised tax officer.
- (3) A notice or other document issued, served, or given by the Commissioner under a tax law is sufficiently authenticated if the name or title of the Commissioner or an authorised tax officer is printed, stamped or written on the document.

**161 Filing documents**

- (1) A document that must or may be filed under a tax law must be filed:
  - (a) in the manner prescribed; or

- (b) if no manner of filing is prescribed, in a manner approved by the Commissioner.
- (2) If the due date for filing a document or for the payment of tax under a tax law falls on a Saturday, Sunday or public holiday, the due date becomes the next following working day.

**162 Service of documents**

- (1) A notice or other document that the Commissioner must or may serve on a person under a tax law is properly served if it is:
- (a) personally served on the person, the person's taxpayer representative or the person's agent to receive service; or
  - (b) left at:
    - (i) the person's usual or last known place of abode or business; or
    - (ii) the address shown on the person's most recently filed tax return; or
  - (c) sent by post to:
    - (i) the person's usual or last known address; or
    - (ii) a post box rented by the person or his or her employer; or
    - (iii) the address shown on the person's most recently filed tax return; or
  - (d) sent to the person through the electronic tax system established under section 164, provided it is sent in conformity with the applicable terms and conditions set by the Commissioner under section 165.
- (2) There must be no challenge to the validity of service of a notice or other document under a tax law if the notice or document has been complied with or partly complied with.



### **163 Service by post**

- (1) Service by the Commissioner by post, unless the contrary is proved, is taken to be effected at the time the item posted would be delivered in the ordinary course of post.
- (2) For proof of service by post, it is sufficient to prove that the envelope containing the notice or other document was:
  - (a) properly addressed; and
  - (b) posted.
- (3) A person who neglects or refuses to take delivery of an item sent by registered post is treated as served with the item.

## **Division 2 Electronic documents**

### **164 Electronic tax system**

The Commissioner may establish and operate an electronic tax system for:

- (a) the electronic filing of a return or other document that must or may be filed with the Commissioner under a tax law; and
- (b) the electronic service by the Commissioner of a notice or other document that the Commissioner must or may serve or give under a tax law.

### **165 Terms and conditions of use of electronic tax system**

- (1) For the purpose of operating an electronic tax system, the Rules may provide for the use of the system, including terms and conditions relating to any of the following:
  - (a) the registration of users of the system;
  - (b) the issue of authentication codes to registered users and the cancellation of those codes;
  - (c) the tax returns or other documents that may be filed with the Commissioner using the system;

- (d) the notices or other documents that the Commissioner may serve or give using the system;
  - (e) the correction of errors in or amendments to tax returns or other documents filed with the Commissioner using the system;
  - (f) the use of the system, including the measures that apply if the system breaks down or is otherwise interrupted;
  - (g) the use of symbols, codes, abbreviations or other notations to represent any particulars or information required under a tax law;
  - (h) any other matters necessary or expedient for the efficient operation of the system.
- (2) The use of the system for a transaction referred to in section 164 is not effective for the purposes of a tax law unless the transaction complies with the Rules.

**166 Presumption of use by registered user**

A return or other document that is filed electronically using the valid authentication code of a registered user is presumed, unless the contrary is proved, to be filed by that user.

**167 Admissibility of electronic document**

- (1) An electronic document is not inadmissible in evidence in a proceeding merely because it was filed, served or given using the electronic tax system without being filed, served or given in hard copy form.
- (2) If an electronic document is filed, served or given using the electronic tax system, it is presumed, unless the contrary is proved, that the contents of the document were correctly and accurately transmitted.

## **Division 3        Regulations and rules**

### **168        Regulations**

- (1) The Minister may make regulations, not inconsistent with this Act, to prescribe matters that are necessary or expedient for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the Regulations may prescribe:
  - (a) the documentary evidence of the identity of an applicant that must accompany an application for a TIN (see section 18(3)(b)); or
  - (b) information that must be notified to the Commissioner if changed (see section 20(1)(e)); or
  - (c) information or documents for inclusion in the register of tax agents (section 28 (1)(b)); or
  - (d) the manner and place for payment of tax (see section 64(2)(b) and (c)); or
  - (e) information or documents that must be contained in or accompany an application for a caveat by the Commissioner under section 74 (see section 74(3)(c)); or
  - (f) scales of expenses to be paid to a person required to attend and give evidence under section 101 (see section 101(5)); or
  - (g) the rate for calculating late payment interest (see section 112(2)(a)); or
  - (h) a ground for the remission of penalty (see section 124(2)(e)); or
  - (i) the manner of filing a document that may or must be filed under a tax law (see section 161(1)(a)); or
  - (j) the amount of a fee that is payable under a tax law; or
  - (k) circumstances in which a fee is payable under a tax law; or
  - (l) procedures for anything that can or must be done under this Act provided that the procedures are not inconsistent with this Act; or

- (m) the maximum penalty amount for each administrative penalty set out in Part 8, Division 3 and, without limiting the penalty amounts that may be prescribed, prescribe:
  - (i) different amounts of penalty; and
  - (ii) penalties for continuing breach that include a penalty for each day or month that the breach in question continues.

## 169 Rules

- (1) The Commissioner may:
  - (a) make rules for ensuring due administration of a tax law; and
  - (b) amend or revoke a rule or rules.
- (2) The Commissioner must not make a rule that is inconsistent with any other tax law.
- (3) The Commissioner makes the Rules by publishing them by notice in the Gazette.
- (4) A rule:
  - (a) has effect on and from the date specified in the gazette notice or, if no date is specified, on and from the date the notice is published in the Gazette; and
  - (b) has no effect to the extent that it is inconsistent with a tax law.
- (5) The Commissioner must also publish the Rules on an Inland Revenue Division's internet site to which the public has free access.

## PART 11 TRANSITIONAL ARRANGEMENTS AND CONSEQUENTIAL AMENDMENTS

### 170 Definitions for Part 11

In this Part:

**"commencement"** means the commencement of this Act;

**"existing instalment arrangement"** means an instalment arrangement that was entered into under the *Income Tax Act* and

that has not been discharged before commencement by payment in accordance with the arrangement;

“*Income Tax Act*” means the *Income Tax Act* (Cap. 123).

## 171 Transitional arrangements

- (1) The persons who, immediately before commencement, held the positions of Commissioner or Deputy Commissioner under the *Income Tax Act* continue holding office as Commissioner or Deputy Commissioner under section 6 (and references to the Commissioner in a law, document or publication made and having effect before the commencement apply as if they were references to the Commissioner).
- (2) All other appointments made under the *Income Tax Act* and subsisting immediately before commencement must be treated as appointments made under this Act.
- (3) Nothing in this Act affects the status or terms and conditions of employment or engagement of a person who immediately before commencement was an officer, employee or contractor appointed, employed or engaged to act, work or provide services for Inland Revenue.
- (4) Subject to subsections (5) to (7), this Act applies to an act or omission occurring, or a tax assessment made, under a tax law in force before commencement.
- (5) An appeal, a prosecution, an objection or other proceeding begun before commencement under the *Income Tax Act* or legislation amended by this Act must be continued and disposed of as if this Act had not commenced.
- (6) If the period for an application, appeal, prosecution or objection has expired before commencement, nothing in this Act is to be construed as enabling the application, appeal, prosecution or objection to be made under this Act by reason only of the fact that a longer period is specified in this Act.
- (7) Any tax liability (including any liability to a penalty or interest in respect of tax) that arose before commencement may be recovered under this Act, but without prejudice to any action already taken for the recovery of the tax.

## **172 Regulations relating to transitional matters**

The Regulations may, for all or any of the following purposes:

- (a) provide transitional, consequential and savings provisions relating to the coming into force of this Act, which may be in addition to, or in place of, or which may amend, any transitional, consequential and savings provisions in this Part and the Schedule;
- (b) facilitate the bringing into force of any regulations under this Act;
- (c) provide that subject to any conditions that are specified in the regulations, during a specified transitional period, specified provisions of this Act (including definitions) do not apply;
- (d) provide for any other matters necessary for facilitating or ensuring an orderly transition from any enactments replaced or affected by this Act to the provisions of this Act.

## **173 Rules continue in force**

On the commencement, rules made under the *Income Tax Act* that are in force immediately before the commencement:

- (a) continue in force as if they were rules made under section 169 of this Act; and
- (b) have effect subject to this Act.

## **174 Consequential amendments**

The consequential amendments set out in the Schedule have effect according to that Schedule.

## **175 Income Tax (Instalment Interest Rates) Order revoked**

- (1) The *Income Tax (Instalment Interest Rates) Order (LN 4 of 1984)* is revoked.
- (2) An existing instalment arrangement continues after commencement on the same terms as before commencement except that:

- (a) it must be treated as having been made under section 65(2)(b); and
- (b) any liability to late payment interest in respect of the tax liability to which it relates must be calculated under section 112.

## **SCHEDULE: CONSEQUENTIAL AMENDMENTS**

### **Division 1 Amendment of Goods Tax Act (Cap. 122)**

#### **1 Goods Tax Act amended**

This Division amends the *Goods Tax Act* (Cap. 123).

#### **2 New section 1A inserted**

The Act is amended by inserting the following section after section 1:

##### **“1A Act is tax law**

This Act is a tax law for the purposes of the *Tax Administration Act*.”

#### **3 Amendment of section 2**

- (1) Section 2 is amended by deleting the definitions of “**assessment**”, “**Commissioner**” and “**tax**” and substituting the following definitions:

““**assessment**” means an assessment or self-assessment as defined in section 3 of the *Tax Administration Act*.”;

““**Commissioner**” means the Commissioner of Inland Revenue holding office under section 6 of the *Tax Administration Act*.”;

““**tax**” includes tax payable under the *Tax Administration Act*.”.

- (2) Section 2 is amended by inserting in alphabetical order the following definition:

““**Tax Administration Act**” means the *Tax Administration Act 2022*.”.

**4 Repeal of sections 4 and 5**

Sections 4 and 5 are repealed.

**5 Amendment of section 6**

- (1) Section 6(4)(b) is amended by deleting “subsection (12)” and substituting “section 89 of the *Tax Administration Act*”.
- (2) Section 6(12) to (16) is repealed.

**6 Repeal of sections 24, 39, 40 and 41**

Sections 24, 39, 40 and 41 are repealed.

**7 Amendment of section 42**

Section 42 is amended by deleting “Subject to sections 48 and 49, a person” and substituting “A person”.

**8 Repeal of sections 43 to 46**

Sections 43 to 46 are repealed.

**9 Amendment of section 47**

Section 47(1) and (2) is repealed.

**10 Repeal of sections 48 to 62**

Sections 48 to 62 are repealed.

**11 Amendment of section 63**

Section 63 is amended by deleting “section 43(2)” and substituting “section 43 of the *Tax Administration Act*”.

**12 Repeal of sections 64 to 66**

Sections 64 to 66 are repealed.

**13 Amendment of section 67**

Section 67(c) to (i) is repealed.



**14 Repeal of sections 68, 71 to 73 and 77**

Sections 68, 71 to 73 and 77 are repealed.

**Division 2 Amendment of Income Tax Act (Cap. 123)**

**1 Income Tax Act amended**

This Division amends the *Income Tax Act* (Cap. 123).

**2 New section 1A inserted**

The Act is amended by inserting the following section after section 1:

**“1A Act is tax law**

This Act is a tax law for the purposes of the *Tax Administration Act*.”

**3 Amendment of section 2**

- (1) Section 2 is amended by deleting the definitions of “**approved form**”, “**assessment**”, “**Commissioner**”, “**Deputy Commissioner**” and “**Minister**” and substituting the following definitions:

““**approved form**” means a form approved under section 159 of the *Tax Administration Act*;”;

““**assessment**” means an assessment or self-assessment as defined in section 3 of the *Tax Administration Act*;”;

““**Commissioner**” means the Commissioner of Inland Revenue holding office under section 6 of the *Tax Administration Act*;”;

““**Deputy Commissioner**” means a Deputy Commissioner holding office under section 6 of the *Tax Administration Act*;”;

““**Minister**” means the Minister with responsibility for this Act;”.

- (2) Section 2 is amended by inserting in alphabetical order the following definitions:

““**Tax Administration Act**” means the *Tax Administration Act 2022*;”;

“**taxpayer identification number**” or “**TIN**” has the same meaning it has in section 3 of the *Tax Administration Act*”.

**4 Amendment of section 38J**

Section 38J is amended by deleting “sections 83(4), 84, 85, 87, 88, 89 and 89A” and substituting “the *Tax Administration Act*”.

**5 Amendment of section 41**

- (1) Section 41(3) is amended by deleting “an Inland Revenue number” and substituting “a taxpayer identification number”.
- (2) Section 41(4) is amended by deleting “the Inland Revenue number” and substituting “the taxpayer identification number”.

**6 Repeal of sections 42, 49 and 52 to 56**

Sections 42, 49 and 52 to 56 are repealed.

**7 Amendment of section 57**

- (1) Section 57(1) is amended by:
  - (a) deleting “section 114(b)” and substituting “section 169 of the *Tax Administration Act*”; and
  - (b) deleting “subsections (2) or (3)” and substituting “section 37 of the *Tax Administration Act*”.
- (2) Section 57(2) to (7) is repealed.

**8 Repeal of sections 58 and 61 to 82**

Sections 58 and 61 to 82 are repealed.

**9 Amendment of section 83**

- (1) Section 83(1) is amended by deleting “section 87 and to any rules made under section 114(b)” and substituting “to any rules made under section 169 of the *Tax Administration Act*”.
- (2) Section 83(3) and (4) is repealed.
- (3) Section 83(5) is amended by deleting “under section 71”.

**10 Repeal of sections 84 to 89 and 92**

Sections 84 to 89 and 92 are repealed.

**11 Repeal of sections 94 to 114**

Sections 94 to 114 are repealed.

**12 Repeal of Schedule 8**

Schedule 8 is repealed.

**13 Amendment of Schedule 9**

Paragraph 5(4) of Schedule 9 is amended by deleting “section 84 of the Act” and substituting “section 112 of the *Tax Administration Act*”.

**Division 3 Amendment of Sales Tax Act (Cap. 125)**

**1 Sales Tax Act amended**

This Division amends the *Sales Tax Act* (Cap. 125).

**2 New section 1A inserted**

The Act is amended by inserting the following section after section 1:

**“1A Act is tax law**

This Act is a tax law for the purposes of the *Tax Administration Act 2022*.”

**3 Amendment of section 2**

Section 2 is amended by deleting the definitions of “*authorised officer*”, “*Commissioner*” and “*Minister*”.

**4 Repeal of sections 7 to 9, 16, 16A, 19 and 20**

Sections 7 to 9, 16, 16A, 19 and 20 are repealed.

5           **Amendment of section 21**

Section 21(1) and (2) is repealed.

6           **Repeal of sections 22 to 32**

Sections 22 to 32 are repealed.

**Division 4           Amendment of Stamp Duties Act (Cap. 126)**

1           **Stamp Duties Act amended**

This Division amends the *Stamp Duties Act* (Cap. 126).

2           **New section 1A inserted**

The Act is amended by inserting the following section after section 1:

“1A       **Act is tax law**

This Act is a tax law for the purposes of the *Tax Administration Act 2022*.”

3           **Amendment of section 2**

Section 2 is amended by deleting the definition of “**Collector**”, and substituting the following definitions in alphabetical order:

““**Chief Collector of Stamp Duties**” means the Commissioner of Inland Revenue holding office under section 6 of the *Tax Administration Act 2022*;”

““**Collector**” means a tax officer;”:

““**tax officer**” has the same meaning it has in section 3 of the *Tax Administration Act 2022*;”.

4           **Repeal of sections 4 and 5**

Sections 4 and 5 are repealed.

5           **Amendment of section 6**

Section 6 is amended by repealing subsection (1).

**6 Repeal of sections 7, 8, 12 to 15, 20, 24, 26 and 28**

Sections 7, 8, 12 to 15, 20, 24, 26 and 28 are repealed.

**Division 5 Amendment of Public Financial Management Act 2013**

**1 Public Financial Management Act 2013 amended**

This Division amends the *Public Financial Management Act*.

**2 New section 80A**

The following section is inserted after section 80:

**“80A Tax refunds account**

- (1) The Minister must establish and maintain a tax refunds account in accordance with subsection (2) for the purpose of paying refunds of tax.
- (2) The following apply for administering the account:
  - (a) the account must be part of the Consolidated Fund;
  - (b) the Minister must prescribe signatories for the operation of the account;
  - (c) a withdrawal or transfer of funds from the account may be made for the purpose of paying a refund of tax only;
  - (d) there must be included in the annual Appropriation Bill for each financial year a proportion of the Government tax receipts for that year for transfer to the account.
- (3) In this section:

**“Government tax receipts”** means the gross revenue received by the Government under the tax laws and customs and excise legislation;

**“proportion of Government tax receipts”** means the proportion of 1% or a proportion greater than 1% prescribed by regulation;

**“refund of tax”** means a refund of tax or customs duties that must be paid under a tax law or customs and excise legislation.”.

## **Division 6 Goods Tax Regulations**

### **1 Amendment of Goods Tax Regulations**

This Division amends the *Goods Tax Regulations (LN 9 of 1993)*.

### **2 Repeal of regulation 38**

Regulation 38 is repealed.

### **3 Repeal of regulations 52 to 63**

Regulations 52 to 63 are repealed.

### **4 Schedule amended**

The Schedule is amended by deleting Form F.

# TAX ADMINISTRATION BILL 2022

## EXPLANATORY MEMORANDUM

### OBJECTS

The object of the Tax Administration Bill 2022 is to provide for the administration of the tax laws of Solomon Islands, with the intention of providing a modern administrative basis for the tax system and ensuring that arrangements are consistent across the different taxes administered by the Commissioner. The Bill includes amendments to the *Goods Tax Act* (Cap 122), the *Income Tax Act* (Cap 123), the *Sales Tax Act* (Cap 125), the *Stamp Duties Act* (Cap 126) and the *Public Financial Management Act 2013* that enable the administration of those Acts to be carried out under the Bill.

The Bill deals with the Inland Revenue Division, the Commissioner of Inland Revenue and tax officers, and their powers, functions and duties, and outlines the general obligations of taxpayers, tax representatives and tax agents under tax laws. It also enables the Commissioner to make public and private rulings about how a tax law applies generally or to individuals and individual arrangements.

The Bill provides a right to object to tax decisions and appeal to the High Court and Court of Appeal, the powers for recovering tax and prosecuting offences, and the types of penalties for non-compliance, including late payment interest.

The Bill also sets up an electronic tax system enabling filing of returns and issuing of assessments electronically.

The Bill is part of the tax reform process of the tax arrangements in Solomon Islands which began in 2007.

# CONTENT

## Part 1 Preliminary matters

Clause 1 states the short title of the Act.

Clause 2 is the commencement clause and provides that the Act commences on the day appointed by the Minister by notice in the *Gazette*. (Under section 16(2) of the *Interpretation and General Provisions Act* (Cap. 85), “the Minister” is the Minister responsible for the administration of the Act.)

Clause 3 sets out the definitions of terms used in the Bill. Central to the scheme of the Bill is the definition of “*tax law*”. Since the Bill is intended to be the location of all provisions relating to the administration of tax laws in Solomon Islands, “*tax law*” includes the Act and any other Act that specifies that it is a tax law for the purposes of the Act. Legislation such as the *Goods Tax Act* (Cap. 122), the *Sales Tax Act* (Cap. 125) and the *Stamp Duties Act* (Cap. 126) are consequentially amended as set out in the Schedule to the Bill. Those amendments provide that each of those statutes is a tax law for the purposes of the Act. The consequential amendments repeal the provisions in those statutes relating to tax administration, since under the Bill these are common to all tax laws and are located in revised and modernised form in the Bill.

Clause 4 provides that the Act binds the Crown.

## Part 2 Inland Revenue: organisation

Clause 5 provides for the continuation of the Inland Revenue Division.

Clause 6 requires that there must be a Commissioner of Inland Revenue and at least 1 Deputy Commissioner. Part 11 (which deals with transitional arrangements) provides for the continuance in office of the persons who, immediately before the commencement of the Act, held the positions of Commissioner or Deputy Commissioner.

Clause 7 sets out who is a tax officer for the purposes of the Act. Under clause 5(2), a reference in the Bill to Inland Revenue means the Inland Revenue Division acting through the Commissioner or other tax officer.

Clause 8 provides that the Commissioner’s functions and powers set out in clause 8(3) may be performed or exercised by a tax officer who is authorised by the Commissioner in writing to do so. This does not prevent the Commissioner performing or exercising those functions and powers.



Clause 9 states the Commissioner's overall function and powers. Clause 9(2) requires the Commissioner to administer the tax laws so as to collect the highest net revenue over time as is practicable.

Clause 10 provides for delegation by the Commissioner.

Clause 11 requires a tax officer to comply with directions given by the Commissioner in relation to the officer's powers or functions under the Act.

### **Part 3 Taxpayers**

Clause 12 outlines a taxpayer's tax obligations. A taxpayer is a person who is or may be liable for tax under a tax law.

Clause 13 defines the terms "*associate*", "*controlling shareholder*" and "*director*" for the purposes of director or shareholder secondary liability.

Clause 14 provides for the liability of a director or controlling shareholder of a company for the company's tax liability. This secondary liability (ie, liability for the tax payable by another person) only arises where an arrangement has been entered into with the intention or the effect of rendering the company unable to meet a tax liability.

Clause 15 sets out a safe harbour for a director who might otherwise be liable for the tax liability of a company under clause 14. A director is not liable if he or she formally dissents from the arrangement in question and notifies the Commissioner accordingly, and the Commissioner is satisfied as to the probity of the director's position in relation to the arrangement.

Clause 16 requires a taxpayer to keep and maintain tax records in Solomon Islands for 7 years after the end of the tax period to which the records relate. Tax records are the accounts, documents and records that are required to be kept by a tax law or the Rules.

Clause 17 provides for the audit (ie, the examination or review) of a taxpayer's tax affairs by the Commissioner.

Clause 18 requires every taxpayer, other than a non-filing taxpayer, to apply for a taxpayer identification number (a "TIN"). A taxpayer who fails to apply for a TIN may be liable for a penalty under section 115.

Clause 19 sets out the circumstances in which the Commissioner may issue a TIN. The Commissioner must be satisfied as to the identity of the taxpayer and that the taxpayer does not already have a TIN.

Clause 20 requires a taxpayer to provide the Commissioner with updated details if the information provided in a TIN application, or otherwise, changes.

Clause 21 requires the Commissioner to cancel a TIN in certain circumstances. These include false identity, duplication or death or, in the case of a non-individual, liquidation or similar demise.

Clause 22 requires the Commissioner to give notice to a taxpayer of the issue of a TIN to that taxpayer or the cancellation of the taxpayer's TIN.

Clauses 23 to 25 deal with taxpayer representatives. Under clause 23, a taxpayer representative is responsible for the performance by a taxpayer of the taxpayer's duties and obligations under a tax law. This includes the payment of tax.

Clause 24 sets out who is a taxpayer representative. A taxpayer representative is an individual who occupies a position in relation to the taxpayer in which the individual can or should ensure that the taxpayer duly performs the taxpayer's duties and obligations. Examples are the director of a company, a trustee of a trust and a partner in a partnership.

Clause 25 deals with the liability of a taxpayer representative for failure by a taxpayer to pay tax. Clause 25(1) provides that the representative must ensure that payment is made of tax due by the taxpayer out of available assets or proceeds of assets. However, the representative is personally liable for unpaid tax to the extent that the representative disposes of money or funds that could have been applied to the unpaid tax. By virtue of the definition of "tax", a taxpayer representative's liability may extend to any penalty for late filing and for late payment interest that arises out of the taxpayer's default.

Clauses 26 to 35 pertain to tax agents. Broadly, clause 26(1) provides that acting for a person for remuneration in relation to that person's tax affairs requires registration as a tax agent. Under clause 26(2), there are specified exceptions, for example, for a legal practitioner providing a legal service in relation to a client's tax affairs or an in-house book-keeper or accountant providing tax services to their employer. Acting as a tax agent without registration constitutes an offence.

Clause 27 requires the Commissioner to establish and maintain a register of tax agents.

Clause 28 sets out what the register of tax agents must contain and requires the tax agent to notify the Commissioner of any changes to that information within 21 days of the change.

Clause 29 sets out the steps for making an application for registration as a tax agent.

Clause 30 defines who is eligible for registration as a tax agent. Amongst other requirements, a person must be tax compliant. "*Tax compliant*" is defined in clause 3, and means that a person is tax compliant if the person is not in default in complying with a tax obligation.

Clause 31 requires the Commissioner to determine an application for registration as a tax agent as soon as practicable. Registration may be subject to conditions.

Clause 32 provides that registration is for a period of 3 years unless earlier cancelled. The Commissioner may renew a registration on expiry but this is subject to the continuing eligibility of the person concerned to be registered as a tax agent.

Clause 33 requires the Commissioner to issue a tax agent with a certificate of registration on first registration and on subsequent renewals of registration. A tax agent who fails to display this certificate may be liable to a penalty under clause 117.

Clause 34 sets out the circumstances in which the Commissioner must cancel the registration of a person as a tax agent. The grounds for cancellation include a request by the person for cancellation, ceasing to carry on business as a tax agent and ineligibility for registration or continued registration under clause 34(1)(a) to (c). Under clause 34(1)(f) and (g) the Commissioner must cancel for dishonesty in relation to a tax return and incompetence.

Clause 35 provides for 2 offences that relate to tax agents. The first is falsely holding out or representing that a person is a registered tax agent. The second is breaching a condition of registration.

#### **Part 4 Filing and assessment**

Clause 36 requires a taxpayer to file a return if required to do so. A taxpayer may be required to file in 2 ways: filing may be a requirement of a tax law, or may be required by a notice to file under clause 37. "Return" is defined in clause 3 to mean a document filed with the Commissioner for assessing or reporting tax payable by that taxpayer under a tax law.

Clause 37 empowers the Commissioner to serve a notice on a person requiring that person to file a tax return.

Clause 38 empowers the Commissioner to require a person who has filed a return to file further information relating to the return.

Clause 39 allows a person to apply to the Commissioner for an extension of time for filing a return or filing further information.

Clause 40 provides that a return that appears to be filed by or on behalf of a person must be treated as having been filed or authorised by that person.

Clause 41 relates to assessment and self-assessment. An assessment is the assessment by the Commissioner of tax payable by a taxpayer. A self-assessment is the assessment by a tax payer in a return of tax payable by that taxpayer. Under clause 41(3), a self-assessment is required in every case where a person files a return under a tax law, except a return for purposes of income tax.

Clause 42 provides for a default assessment by the Commissioner if a taxpayer fails to file a return in respect of tax payable.

Clause 43 provides for the amendment by the Commissioner of an assessment or a self-assessment to reflect the correct amount of tax payable for the period to which the assessment or self-assessment relates.

Clause 44 sets out the time limits for an assessment or amendment by the Commissioner. There is no time limit in the case of fraud or wilful neglect by or on behalf of a taxpayer.

Clause 45 requires the Commissioner to serve notice on a taxpayer of an assessment or amendment.

Clause 46 provides for assessment by the Commissioner in the case of a departing taxpayer.

Clause 47 provides for the correction by the Commissioner of an assessment or self-assessment that overstates tax payable through an error or mistake of fact contained in the relevant return. The Commissioner may correct on the application of the taxpayer but the application must be made within 2 years after the end of the tax period to which the return relates.

Clause 48 provides that a notice of assessment or a copy of a notice of assessment issued by the Commissioner is conclusive evidence that the assessment was made and that the assessment was correct.

Clause 49 provides for evidence of assessment where the notice of assessment is served using the electronic tax system.

## **Part 5 Tax decisions**

Clause 50 sets out what is a tax decision. Clause 50(2) identifies certain decisions under the Bill that are not tax decisions.

Clause 51 expands the definition of “taxpayer” for the purposes of Part 5 to include a person affected by a tax decision, since in some cases a tax decision may capture a person who is not a taxpayer.

Clause 52 provides that a tax decision may be challenged by a taxpayer objection or an appeal under Part 5 but may not otherwise be disputed. In other words, the objection and appeal procedure established by Part 5 is the only route for disputing a tax decision.

Clause 53 preserves from invalidity a tax decision, that is affected by a non-material error provided the decision, in substance and effect, conforms with the tax law to which it relates.

Clause 54 provides for a right of objection by a taxpayer to a tax decision. However, the Commissioner may refuse to consider an objection if the taxpayer is not tax compliant.

Clause 55 confines the right to object to an amended assessment to an objection to the alterations or additions made to the original assessment or self-assessment.

Clause 56 sets out the procedure for objecting to a tax decision.

Clause 57 deals with the steps that the Commissioner must take in determining the objection. The Commissioner must determine the objection by allowing it (which may be allowing it in part only) or by disallowing it.

Clause 58 provides that disputed tax remains payable while an objection or appeal under Part 5 is determined. However, the Commissioner may in certain circumstances agree to stay recovery of up to 50% of the disputed tax pending determination.

Clause 59 provides for an appeal to the High Court by an unsuccessful objector. The appeal must be filed within 60 days after service on the objector of the notice of determination of the objection.

Clause 60 provides for a further appeal to the Court of Appeal from the determination of the objector's appeal to the High Court. However, this second tier of appeal is limited to an appeal on a question of law only. Both the objector and the Commissioner may appeal at this stage.

Clause 61 confines a taxpayer appeal to the grounds of objection contained in the taxpayer's notice of objection. However, the Court hearing the appeal may allow a new ground of appeal to be introduced.

Clause 62 sets out when the determination of an objection or appeal under Part 5 is final. It is final if there is no right of appeal (for example, there is no right of appeal from the High Court on a question of fact) or, if there is a right of appeal, the time for filing an appeal has expired.

Clause 63 requires the Commissioner to take the steps necessary to implement the final determination after completion of the objection and appeal process. Necessarily this requirement does not arise if the taxpayer has wholly failed.

## **Part 6 Recovery of tax**

Clause 64 provides that tax payable under a tax law is a debt due to the Crown, and is payable to the Commissioner in the manner and at the time and place prescribed. Subclause (3) sets out how a payment of tax is to be applied, that is to pay unpaid penalties, to pay late payment interest and to pay the assess tax liability in that priority.

Clause 65 provides a procedure for extending the time for paying tax due under a tax law.

Clause 66 provides that if a taxpayer, who is able to pay tax due by instalments under section 65(2)(b), defaults in paying an instalment, the taxpayer's instalment plan is cancelled and the whole amount of outstanding tax becomes immediately payable.

Clause 67 provides for the remission or refund of tax on the ground of serious hardship to the taxpayer. This is only available if the taxpayer is a natural person. Under clause 67(4), the remission or refund of tax is reversible if the remission or refund was made on the basis of false or misleading information provided by the taxpayer.

Clause 68 empowers the Commissioner to write off tax payable under a tax law. The grounds for writing off tax are serious hardship to a natural person,

or tax recovery is impractical or uneconomic. Clause 68(2) sets out examples of hardship or impracticality, etc.

Clause 69 allows the Commissioner to transfer excess tax paid by a taxpayer so as to credit tax payable due by the taxpayer in another tax period or under another tax type.

Clause 70 requires the Commissioner to issue a tax clearance certificate on the application of a taxpayer. The Commissioner must be satisfied that the taxpayer has no outstanding tax obligations at the date of certification.

Clause 71 provides that the Commissioner may sue to recover the unpaid tax of a taxpayer.

Clause 72 provides that the Commissioner's right to sue under clause 71 is not subject to any limitation period or limitation defence.

Clause 73 creates a statutory charge over the real and personal property of a taxpayer for the amount of unpaid tax. The Commissioner may apply to the High Court for an order enforcing the charge, including an order for the sale of all or part of the property.

Clause 74 provides that the statutory charge under clause 73 creates an interest in the taxpayer's real property sufficient to support a caveat over the property.

Clause 75 relates to a proceeding by the Commissioner for the seizure of a taxpayer's personal property. The Commissioner commences the proceeding by issuing a possession notice in respect of the property to be seized. The person executing a possession notice must be an authorised tax officer.

Clause 76 provides for entry by the authorised tax officer executing the possession notice to the premises where the property to be seized is located.

Clause 77 sets out how the Commissioner must deal with property that has been seized under a possession notice.

Clause 78 sets out how the proceeds of property seized under a possession notice must be applied. Any surplus after paying the unpaid tax in question must be paid to the taxpayer.

Clauses 79 to 84 provide for recovery of unpaid tax from a person who owes the taxpayer money or in other ways by which money held for or to be paid to

the taxpayer is paid towards the taxpayer's unpaid tax. Under clause 79, this person is defined as "the debtor".

Clause 80 provides that the Commissioner may issue a notice (referred to in the Bill as "a section 80 notice") to the debtor if a taxpayer has unpaid tax or has tax becoming payable which the Commissioner believes will not be paid. Under the notice the Commissioner may require the debtor to pay an amount towards the taxpayer's tax liability.

Clause 81 sets out the requirements for a section 80 notice. Clause 81(2) and (3) limits the amount that can be required to be paid under a section 80 notice. First, it must not exceed the amount of unpaid tax or tax expected not to be paid. Second, if the money passing through the hands of the debtor is payment of a pension, salary, wages or other remuneration, the debtor must not be required to pay to the Commissioner more than 20% of each payment.

Clause 82 provides for updating a section 80 notice. As the notice imposes an ongoing obligation on the debtor, it will require cancellation or amendment if the unpaid tax is paid in full or in part.

Clause 83 operates if the debtor owes or holds money that is less than the amount specified by the section 80 notice. In that case, the debtor may apply to the Commissioner for relief from the obligation to pay the full amount.

Clause 84 provides that the Commissioner may recover an amount which a debtor must pay under a section 80 notice as if the amount to be paid were unpaid tax payable on the debtor's own account.

Clauses 85 to 88 apply to a liquidator who is in possession or control of a taxpayer's property. Ordinarily liquidation refers to the liquidation of a body corporate but in this context "liquidator" includes persons other than a corporate liquidator, such as a receiver of property, a trustee in bankruptcy, a mortgagee in possession or an executor of a deceased estate.

Clause 86 requires a person who becomes a liquidator to notify the Commissioner within 14 days.

Clause 87 provides a procedure requiring the Commissioner to give a liquidator a notice (a "section 87 notice") notifying the liquidator of the unpaid tax and tax becoming payable by the person whose property is in the liquidator's possession or control. In the interim period between becoming liquidator and receiving a section 87 notice, a liquidator must not dispose of



property without the Commissioner's agreement (there are exceptions for a debt with priority to the Commissioner's claim and for the liquidator's expenses).

Clause 88 requires a person who receives a section 87 notice to set aside out of the taxpayer's property sufficient to pay the notified tax or, if there is insufficient, to set aside all the property that there is. If the liquidator fails to pay the notified tax out of the property required to be set aside, the liquidator is liable to pay the notified tax and late payment interest.

Clause 89 gives the Commissioner the power to require security for tax becoming payable. The grounds for exercising the requirement are set out in clause 89(2).

Clause 90 provides for the service of a departure prohibition notice on a taxpayer in the case of the imminent or likely departure from Solomon Islands of a taxpayer with outstanding tax obligations. While the notice is in force an immigration officer must not permit the person to leave Solomon Islands.

Clause 91 provides for the issue of a foreign currency prohibition notice in respect of a taxpayer who the Commissioner believes is not tax compliant. The intended effect is that by service of the notice on commercial banks in Solomon Islands the person in question is unable to purchase foreign currency.

Clause 92 empowers the Commissioner to close temporarily the business of a taxpayer if the taxpayer is in tax default in relation to that business. The Commissioner initiates closure by issuing a business closure notice. The limit for closure is 14 days.

Clause 93 sets out the procedure for the execution of a business closure notice.

## **Part 7 Information collecting and handling**

Clauses 94 to 100 relate to the power of Inland Revenue to search for tax-related information, including the power to enter premises for the purpose of searching those premises for tax-related information. "Tax-related information" is defined in clause 94.

Clause 95 confers a broad power of search and entry on the Commissioner who may at any time and without notice enter or obtain access to any place for the purpose of searching for tax-related information. However, clause 95(2) requires that the search and entry must be carried out by an authorised

tax officer. In addition, the tax officer must not enter or remain at the place to be searched or continue the search if the tax officer is unable to produce written authority from the Commissioner to make the search.

Clause 96 provides that a tax officer conducting a search may do whatever is reasonably necessary to conduct the search and provides for other aspects of conducting a search.

Clause 97 provides for the examination and seizure of tax-related information found in the course of a search, and provides also for the seizure of computers, other information systems and electronic devices (such as mobile phones).

Clause 98 allows a tax officer conducting a search to use a computer, other information system or an electronic device found at the place searched if it is considered reasonably necessary for the purposes of the search.

Clause 99 allows the Commissioner to retain tax-related information seized under a search. The information may be retained for the purpose of determining tax liability or bringing a prosecution.

Clause 100 excludes any confidentiality or privacy restrictions on the exercise of a power under Division 1 of Part 7.

Clause 101 sets out the powers of the Commissioner to compel the giving of information, including attending and giving evidence. The power to compel information is initiated by a notice given by the Commissioner.

Clause 102 excludes any confidentiality or privacy restrictions on the exercise of the Commissioner's power to compel information.

Clauses 103 to 108 deal with the obligations of secrecy that bind a tax officer. Clause 103 provides for an expanded meaning of "tax officer" for the purposes of the duty of secrecy. A tax officer includes a former tax officer and any current or former Inland Revenue employee or contractor.

Clause 104 provides that a tax officer's duty of secrecy attaches to sensitive information that comes into the tax officer's possession or knowledge in the course of occupying that position. "Sensitive information" is defined in clause 104(2).

Clause 105 provides that breach of a tax officer's duty of secrecy is an offence.

Clause 106 sets out exceptions to the duty of secrecy and permits disclosure by a tax officer of sensitive information in certain cases. Mostly these relate to disclosure for Government purposes but include also disclosure to a duly authorised tax agent.

Clause 107 provides for access by the Comptroller of Customs or a duly authorised customs officer to Inland Revenue online systems and data storage.

Clause 108 confers immunity on a tax officer in relation to giving evidence or producing a document in court if the information or document in question has come into his or her possession or knowledge in the course of occupying the position of tax officer. Clause 108(2) sets out exceptions for court proceedings to enforce tax laws.

## **Part 8 Interest, penalties and offences**

Clauses 109 to 111 are interpretation provisions for the purposes of Part 8. Clause 109 sets out what encompasses a statement made to a tax officer for the purposes of clause 119 (which imposes an administrative penalty for a false or misleading statement to a tax officer) and clause 130 (which creates an offence in relation to a false or misleading statement to a tax officer).

Clause 110 sets out the meaning of the term "tax position". This is relevant to clauses 111 (meaning of reasonably arguable tax position), 120 (Administrative penalty for not taking reasonable care), 121 (Administrative penalty for gross carelessness) and 122 (Administrative penalty for intentional disregard).

Clause 111 sets out the meaning of the term "reasonably arguable position". This term is used in clauses 119 (Administrative penalty for false or misleading statement), 120 (Administrative penalty for not taking reasonable care), 121 (Administrative penalty for gross carelessness) and 122 (Administrative penalty for intentional disregard).

Clauses 112 and 113 provide for late payment interest. Clause 112(1) sets out the circumstances in which a person is liable to pay late payment interest. Broadly, any person who must pay a sum of money to the Commissioner and who fails to do so by the due date may be charged late payment interest. Subclause (2) specifies the basis for calculating late payment interest. Subclause (3) provides that liability to pay late payment interest is a separate liability from the liability to a penalty or fine for the failure to pay on time.

Clause 113 relates to the recovery of late payment interest and specifies that it is recoverable as if it were unpaid tax.

Clauses 114 to 125 provide for administrative penalties. In general, an administrative penalty is a monetary penalty imposed by a regulator (in this case, the Commissioner) for a non-criminal default or contravention under the legislation administered by the regulator. Clauses 114 to 122 set out the defaults and contraventions for which the Commissioner may impose an administrative penalty. They are:

- failure to keep and maintain the tax records required by a tax law;
- failure to apply for a TIN;
- failure to update TIN information;
- failure to display a tax agent certificate;
- late filing;
- false or misleading statement to a tax officer;
- failure to take reasonable care in taking a tax position;
- gross carelessness in taking a tax position;
- taking a tax position in disregard of a clear tax law obligation with intent to reduce or remove a tax liability or obtain a tax benefit.

Clause 123 deals with the assessment of an administrative penalty. For each category a maximum penalty will be prescribed by regulation. The Commissioner must make an assessment of penalty and serve a notice for payment of the penalty on the person who is subject to it. A person must not be liable to both an administrative penalty and a criminal prosecution for conduct that could both attract a penalty and constitute an offence. If a penalty is paid for conduct that is later prosecuted as an offence, the Commissioner must repay the penalty, which only becomes once more payable if the prosecution is subsequently withdrawn.

Clause 124 allows the Commissioner to remit a penalty in certain circumstances, notably if the consequence is serious hardship to the person subject to the penalty, or the penalty has been incorrectly imposed or calculated.

Clause 125 provides that, in the case of a taxpayer, a penalty is recoverable as if it were tax payable by the taxpayer.

Clauses 126 to 140 provide for tax offences. In some cases, the conduct that constitutes an offence may overlap with conduct for which the Commissioner may impose an administrative penalty. The Commissioner cannot both prosecute and impose an administrative penalty for the same conduct, but must elect one or other of these options. An example is the overlap between clauses 118 and 126. Clause 126 creates the offence, among others, of failure without reasonable cause to file a return while under clause 118 failure to file a return by the due date attracts an administrative penalty. Doubtless the Commissioner will make an election on the basis of the gravity of the failure.

Clause 141 provides for the liability of company officers for an offence under a tax law committed by the company in question. The company officers liable are the managing director, the CEO, a director or any similar officer, and any person acting in any of those capacities. However, a person is not liable under subclause (2) if the offence was committed by the company without the company officer's consent or knowledge, and the company officer has taken reasonable care to prevent commission of the offence.

Clauses 142 to 148 provide for the prosecution of tax offences. Clause 142 stipulates that prosecution of an offence under a tax law requires the approval of the Commissioner.

Clause 143 states the general rule that there is a time limit of 7 years for prosecuting a tax offence. However, this does not apply to the offences specified in subclause (2).

Clause 144 permits the Commissioner to compound almost all offences under a tax law. The exceptions are the offences set out in clauses 133 to 135. Compounding allows the Commissioner to deal with an offender administratively rather than by way of criminal prosecution.

Clause 145 sets out the effect of compounding. Broadly, the offender must pay the sum of money demanded by the Commissioner in return for immunity from prosecution.

Clause 146 provides that prosecution for a tax offence does not affect a person's tax liability.

Clause 147 is a technical provision relating to evidence in a proceeding against a person for certain defaults.

Clause 148 provides that a certificate by the Commissioner provides evidence of tax due and payable.

## **Part 9 Rulings**

Clauses 149 to 152 provide for public rulings by the Commissioner. A public ruling sets out how a tax law applies in relation to a type of person or type of arrangement.

Clause 150 sets out the procedure for making a public ruling. In addition to publication in the *Gazette*, a ruling must be published on an Inland Revenue Division's internet site to which the public have access.

Clause 151 provides for the amendment or withdrawal of a public ruling.

Clause 152 sets out the effect of the amendment or withdrawal of a public ruling. Since taxpayers rely upon a ruling to arrange their tax affairs, it is necessary to spell out when an amendment or withdrawal takes effect and to preserve the effectiveness of arrangements that have been made before that point in reliance on the ruling.

Clauses 153 to 158 provide for private rulings by the Commissioner. A private ruling is made on the application of a taxpayer and is confined to the application of a tax law to the applicant and the arrangement for which the ruling is sought. The Commissioner must make the ruling unless any of the exclusions in clause 155 apply.

Clause 154 provides that a private ruling binds the Commissioner in relation to the applicant, but the binding effect is conditional upon full disclosure by the taxpayer and the arrangement for which the ruling has been given proceeding as described. As far as the applicant is concerned, a private ruling overrides a public ruling in the event of inconsistency.

Clause 155 allows the Commissioner to refuse to make a private ruling in certain cases.

Clause 156 sets out the procedure for making a private ruling.

Clause 157 provides for the withdrawal of a private ruling and a private ruling is automatically treated as withdrawn to the extent that it is inconsistent with a subsequent tax law or amendment to a tax law, or a subsequent public ruling. There is no provision for amending a private ruling.

Clause 158 provides for the effect of withdrawal of a private ruling and mirrors the provisions of clause 152 in relation to public rulings, with the difference that clause 158 applies to the effect of withdrawal only.

## **Part 10 Administration**

Clause 159 to 163 provide for matters relating to documents used in connection with tax administration.

Clause 159 allows the Commissioner to approve forms for use under a tax law. Subclause (2) stipulates that failure to use an approved form as required by a tax law renders ineffective the step or action for which the form is required.

Clause 160 makes provision for an Inland Revenue document to be signed by an authorised tax officer. It is not necessary that every document issued, served or given by the Commissioner be signed by the Commissioner personally.

Clause 161 relates to the filing of documents with Inland Revenue: if a method is prescribed by regulation, that method must be used but otherwise it is the method of filing approved by the Commissioner.

Clause 162 sets out how service of a notice or other document may be effected by the Commissioner.

Clause 163 sets out a presumption that service by post is effective at the point in time when the item posted could be expected to be delivered in the ordinary course of post.

Clauses 164 to 167 relate to electronic documents. Clause 164 allows the Commissioner to establish and operate an electronic tax system for electronic filing by taxpayers dealing with Inland Revenue and for service of notices and other documents by Inland Revenue on taxpayers.

Clause 165 provides for making rules for the terms and conditions of the use of the electronic tax system. Compliance with the Rules is essential for a transaction using the electronic tax system to be effective.

Clause 166 provides for a presumption as to filing by a registered user of the electronic tax system.

Clause 167 relates to the admissibility of documents filed, served or given using the electronic tax system. Admissibility in this context refers to admissibility in evidence in a court.

Clauses 168 and 169 relate to regulations and rules. Clause 168(1) is the general power to make regulations for the purposes of the Act or to give effect to the Act. However, the Bill in various provisions refers to making regulations for a particular purpose and these provisions are collected for ease of reference in subclause (2). It is important to note that the power to make the regulations referred to in subclause (2) must not be read as limiting the regulations that may be made under subclause (1).

Clause 169 provides for rules to be made by the Commissioner for due administration of a tax law. The Rules governing the use of an electronic tax system is an example of rules for tax purposes.

## **Part 11 Transitional arrangements and consequential amendments**

Clause 170 is an interpretation provision for Part 11.

Clause 171 provides for transitional arrangements dealing with matters that continue after the commencement of the Act. Under clause 172 regulations may be made adjusting provisions of the Act in order to effect a smooth transition to the new tax administration regime.

Clause 173 provides for continuation of rules made under the *Income Tax Act* (Cap. 123).

Clause 174 read with the Schedule provides for consequential amendments to the current tax laws. These are amendments necessary to ensure that the current tax laws and the new tax administration regime fit together. Of particular importance is Division 5 of the Schedule which amends the *Public Finance Management Act 2013* to establish a new account within the Consolidated Fund for the payment of refunds of tax.

Clause 175 revokes the *Income tax (Instalment Interest Rates) Order* (LN 4 of 1984).

**HON. HARRY KUMA**  
MINISTER FOR FINANCE AND TREASURY

Honiara, Solomon Islands  
Printed under the authority of the  
Solomon Islands Government

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Printed by Provincial Press