

TAX ADMINISTRATION (AMENDMENT) BILL, 2020

EXPLANATORY NOTES

This Bill seeks to amend the Tax Administration Act No. 14 of 2016 which was enacted in 2016 and brought into force on 1st May, 2016. This Bill seeks to clarify the procedures for administration of penalties under the Tax Administration Act and other tax legislation.

Clause 1 provides for the short title and the commencement.

Clause 2 provides for amendment to section 12 of the principal Act.

Clause 3 provides for amendment to Division II of Part IX of the principal Act.

Clause 4 provides for insertion of a new Schedule 3.

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Darshan Ramdhani
ATTORNEY-GENERAL

TAX ADMINISTRATION (AMENDMENT) BILL, 2020

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment to section 12 of principal Act
3. Amendment to Division II of Part IX of principal Act
4. Insertion of new Schedule 3 to principal Act

TAX ADMINISTRATION (AMENDMENT) BILL, 2020

GRENADA

ACT NO. OF 2020

AN ACT to amend the Tax Administration Act No. 14 of 2016.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives and by the authority of the same as follows—

Short title and commencement

1. This Act may be cited as the

TAX ADMINISTRATION (AMENDMENT) ACT, 2020,

and shall be read as one with the Tax Administration Act No. 14 of 2016, hereinafter referred to as the “**principal Act**”.

- (2) This Act shall come into force on a day fixed by the Minister by Order published in the *Gazette*.

Amendment to section 12 of principal Act

2. Section 12 of the principal Act is amended by inserting after subsection (4) the following new subsections—

“(5) In the case of a body corporate, the Comptroller shall issue a registered person with a Registration Certificate in the approved form, stating the day on which the registration takes effect and the TIN of the body corporate.

- (6) A body corporate to which a Registration Certificate under subsection (5) was issued shall display in a prominent position—

- (a) at the principal place at which the body corporate carries on its activity, the original Registration Certificate; and
- (b) at every other place from which the body corporate carries on its activity, a certified copy of the Registration Certificate, which must be obtained from the Comptroller.”.

Amendment to Division II of Part IX of principal Act

3. (1) Part IX of the principal Act is amended by repealing Division II and substituting therefor the following new Division—

“Division II Fixed Penalty Offences

Penalty notice

74. (1) Where an authorised officer reasonably believes that a person has committed a fixed penalty offence, the authorised officer may serve on the person a fixed penalty notice, informing the person that if the person does not wish to be prosecuted for the alleged offence in court, the person may pay, in the manner and by the time specified in the notice, the amount of the penalty prescribed for the offence, if dealt with under this section.

(2) A fixed penalty notice shall be served on a person within thirty calendar days after the occurrence that gives rise to the allegation of the fixed penalty offence.

(3) Notwithstanding subsection (2), a fixed penalty notice relating to a fixed penalty offence under section 80 may be served together with a notice of assessment of the tax to which the offence relates.

(4) A person who receives a fixed penalty notice may decline to have the matter dealt with under the provisions of this Part, and where the person fails to pay the fixed penalty provided for the offence within the time specified in the fixed penalty notice, or within such further time as may, in any particular case, be allowed, the person is deemed to have declined to be dealt with under the provisions of this Part.

Contents of fixed penalty notice

75. A fixed penalty notice shall be signed by an authorised officer and shall specify—

- (a) the date, time and place of the issuance of the notice;
- (b) the section of the tax law creating the offence alleged, and such particulars of the offence as are required under this Act;
- (c) the time within which the fixed penalty may be paid;
- (d) the amount of the fixed penalty;

- (e) the clerk of the Magistrate's Court to whom, and the address at or to which, the fixed penalty may be paid or remitted; and
- (f) the address of the Magistrate's Court at which the person is required to appear in the event of the person's failure to pay the fixed penalty within the specified time, and the date and time of such appearance,

and shall be in the form set out as Schedule 3.

Procedure

76. (1) Where a fixed penalty notice is issued under section 74, the person to whom the notice is issued may pay the fixed penalty in accordance with the notice.

(2) The time within which a fixed penalty is payable is thirty-one (31) calendar days from the date of service of the notice.

(3) Notwithstanding subsection (2), the time within which a fixed penalty under section 80 is payable is thirty-one (31) calendar days from the date of final determination of the understatement of tax to which the penalty relates.

(4) Where payment reaches the clerk of the Magistrate's Court eleven (11) or more calendar days after the period under subsection (2) or (3) as the case may be, it shall be returned to the sender.

(5) Where the fixed penalty is paid in accordance with the notice, no person shall then be liable to be convicted for the offence in respect of which the notice was given, and it shall be deemed that the proceedings instituted by the notice have been dismissed.

(6) Notwithstanding anything to the contrary contained in this Act or any other law, where in respect of an offence attracting a fixed penalty, a person is served with a fixed penalty notice under section 74 requiring the person to pay the fixed penalty or to appear at the court specified, but the person does not pay the fixed penalty and instead is proceeded against in court, if the person is convicted of the offence and the court decides to impose a fine, that fine shall not be less than the sum that is the fixed penalty attached to that offence by this Act or another tax law.

Failure to register and to display registration certificate

77. (1) A person who is required to be registered under section 12 and does not apply for registration within the required time commits an offence and is liable—

- (a) on service of a fixed penalty notice by an authorised officer if the person so chooses, to a fixed penalty of two thousand five hundred dollars;
- (b) on summary conviction, to a fine not less than two thousand five hundred dollars but not exceeding five thousand dollars.

(2) A person who is required to display a Registration Certificate under section 12 and does not display a Registration Certificate accordingly commits an offence and is liable—

- (a) on service of a fixed penalty notice by an authorised officer if the person so chooses, to a fixed penalty of two thousand five hundred dollars;
- (b) on summary conviction, to a fine not less than two thousand five hundred dollars but not exceeding five thousand dollars.

Failure to notify of changes in taxpayer information

78. A person who fails to—

- (a) notify the Comptroller as required by subsections (6) and (7) of section 11 or section 45 (4) (ii);
- (b) apply for cancellation of the person's registration as required by section 15 (1) of the Value Added Tax Act, Chapter 333A; or
- (c) inform the Valuation Officer of the permission for subdivision of land as required by section 35 of the Property Tax Act, Chapter 257B,

commits an offence and is liable—

- (i) on service of a fixed penalty notice by an authorised officer if the person so chooses, to a fixed penalty of two thousand five hundred dollars;

- (ii) on summary conviction, to a fine not less than two thousand five hundred dollars but not exceeding five thousand dollars.

Falsification of invoices, receipts, credit and debit notes

79. (1) A person commits an offence and is liable —

- (a) on service of a fixed penalty notice by an authorised officer if the person so chooses, to a fixed penalty of ten thousand dollars;
- (b) on summary conviction, to a fine not less than ten thousand dollars but not exceeding twenty thousand dollars,

if the person—

- (i) uses a false taxpayer identification number or a taxpayer identification number that does not apply to the person;
- (ii) issues a false invoice or sales receipt;
- (iii) issues a false credit note or debit note; or
- (iv) provides, or fails to provide, an invoice, credit note, debit note, or sales receipt where so required by any enactment.

(2) A supplier for the purposes of the Value Added Tax Act, Chapter 333A is not liable for a penalty under paragraph 1 (b), (c) or (d) only because information relating to the recipient of the supply, which was relevant to the issue of, or required to be included in, the invoice, debit or credit note, or sales receipt including information about the registration status or taxpayer identification number of the person, was incorrect, if the person having exercised all due care believes on reasonable grounds that the information relating to the recipient was accurate.

(3) A supplier for the purposes of the Value Added Tax Act, Chapter 333A is not liable for a penalty under paragraph 1 (d) if the supplier, having exercised all due care, believes on reasonable grounds that the recipient of the supply for which an invoice, debit or credit note, or sales receipt was required to be issued was or was not a registered person.

Negligent or fraudulent underpayment

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

- (a) on service of a fixed penalty notice by an authorised officer if the person so chooses to a fixed penalty in the amount of—
 - (i) 25 per cent of the underpayment if paragraph (ii) does not apply; or
 - (ii) 75 per cent of the underpayment if the amount of the underpayment is—
 - (A) greater than one hundred and fifty thousand dollars; or
 - (B) greater than 25 per cent of the person's tax liability for the period;
- (b) on summary conviction, to a fine not less than the value for the purposes of paragraph (a) but not exceeding an amount equivalent to two times the value for the purposes of paragraph (a).

False or misleading statements

81. (1) A person who makes a statement to an authorised officer that is false or misleading in a material particular commits an offence and is liable—

- (a) on service of a fixed penalty notice by an authorised officer if the person so chooses for a fixed penalty pursuant to subsection (2);
- (b) on summary conviction, to a fine not less than the value for the purposes of paragraph (a) but not exceeding an amount equivalent to two times the value for the purposes of paragraph (a),

if an amount properly payable by or refundable to the person under this Act exceeds or is inferior to the amount that would be payable or refundable if the person were assessed on the basis that the statement was true.

(2) The amount of the fixed penalty for which the person commits an offence and is liable—

- (a) on service of a fixed penalty notice by an authorised officer if the person so chooses to the greater of two hundred and fifty dollars and—
 - (i) if an amount payable by the person would have been less if it were determined on the basis of the information provided in the statement, the amount by which that amount would have been so reduced; or
 - (ii) if the amount of a refund that the person applied for would be increased if it were determined on the basis of the information provided in the statement, the amount by which that amount would have been so increased;
- (b) on summary conviction, to a fine not less than the value for the purposes of paragraph (a) but not exceeding an amount equivalent to two times the value for the purposes of paragraph (a).

(3) No penalty shall be imposed under this section if the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular.

(4) A reference in this section to a statement made to an authorised officer includes a reference to a statement made orally, in writing, or in another form to that officer acting in the performance of the officer's duties under this Act, and includes a statement made—

- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, lodged, or furnished under this Act;
- (b) in any information required to be furnished under this Act;
- (c) in a document furnished to an authorised officer otherwise than pursuant to this Act;
- (d) in an answer to a question asked by an authorised officer; or

- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to an authorised officer.

(5) A reference in this section to a statement that is misleading in a material particular includes a reference to a statement that is so because of the omission of a matter or thing from the statement.

(6) This section does not apply to conduct consisting of an offence under section 79 or 80.

Failure to maintain documents

82. (1) A taxpayer who fails to maintain proper documents as required by this Act or any tax law commits an offence and is liable—

- (a) on service of a fixed penalty notice by an authorised officer if the person so chooses to a fixed penalty in accordance with subsection (2);
- (b) on summary conviction, to a fine not less than the value for the purposes of paragraph (a) but not exceeding an amount equivalent to two times the value for the purposes of paragraph (a).

(2) The fixed penalty is fifty dollars per day for each day the failure continues.

(3) Before issuing a fixed penalty notice relating to an offence under this section, the Comptroller shall first issue a notice warning the taxpayer of his or her failure, and if the taxpayer complies with the notice within the time specified no penalty shall be applied under this section.

Failure to comply with third party notice

83. A taxpayer who fails to comply with a notice issued under section 68 commits an offence and is liable—

- (a) on service of a fixed penalty notice by an authorised officer if the person so chooses to a fixed penalty of 25 per cent of the difference between the amount payable by the third party and the amount paid to the Comptroller by the due date specified in the notice under section 68;
- (b) on summary conviction, to a fine not less than the value for the purposes of paragraph (a) but not exceeding an amount equivalent to two times the value for the purposes of paragraph (a).

Failure to provide facilities

84. A taxpayer who fails to provide an authorised officer with reasonable facilities and assistance as required under this Act, or an Act to which this Act applies, commits an offence and is liable—

- (a) on service of a fixed penalty notice by an authorised officer if the person so chooses to a fixed penalty of one thousand dollars;
- (b) on summary conviction, to a fine not less than one thousand dollars but not exceeding two thousand dollars.

Failure to comply with notice to give information

85. (1) A person who fails to comply with a request for information properly made under this Act, or an Act to which this Act applies, within the specified time, commits an offence and is liable—

- (a) on service of a fixed penalty notice by an authorised officer if the person so chooses to a fixed penalty of two thousand five hundred dollars;
- (b) on summary conviction, to a fine not less than two thousand five hundred dollars but not exceeding five thousand dollars.

(2) Before issuing a fixed penalty notice relating to an offence under this section, the Comptroller shall first issue a notice warning the taxpayer of his or her failure, and if the taxpayer complies with the notice within the time specified no penalty shall be due under this section.”.

(2) Section 77 of the principal Act as amended by subsection (1) shall not apply until the expiration of six months from the commencement date.

Insertion of new Schedule 3 to principal Act

4. The principal Act is amended by inserting after Schedule 2 the following new schedule—

“SCHEDULE 3

(section 75)

Notice of Opportunity to Pay Fixed Penalty

Take Notice that, I,, have reason to believe that

(name of authorised officer)

an offence, particulars of which are given hereunder, has been committed. The fixed penalty for the offence is

(penalty in words and figures)

If this amount is paid to the Clerk of the Magistrate's Court within thirty-one (31) calendar days from the date of this notice, that is to say, not later than no proceedings will be taken and any liability to conviction of the offence will be deemed to have been dismissed.

The offence carries a maximum fine of \$

In paying the fixed penalty, the following conditions shall be observed—

- (1) The fixed penalty shall be accompanied by this notice on which shall be inserted in the space provided the TIN of the person liable for the offence.
- (2) Where payment of the fixed penalty is made otherwise than in conformity with the Tax Administration Act, the Clerk shall as soon as practicable after payment return the amount paid to the sender, and thereafter proceedings in respect of the alleged offence shall begin.
- (3) Payment of the fixed penalty shall be made or remitted to—

“The Clerk of the Magistrate's Court” at the following address—

.....

This notice was given at
(state location)

on, 20..... at a.m./p.m.
(state date) (state time)

Should you fail to pay the fixed penalty not later than....., you are hereby required to attend the Magistrate's Court on the day of, 20....., at 9:00 o'clock in the forenoon at the under-mentioned address, as the defendant

(state name and address of court)

PARTICULARS OF OFFENCE

At a.m./p.m. on the day of, 20.....,

at

you

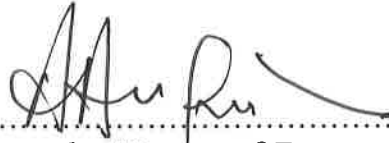
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Contrary to
(state section/regulation contravened)

of the
(state Act/regulation)

.....
Signature of authorised officer”

Passed by the House of Representatives this 20th day of October, 2020.



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Clerk to the House of Representatives

Passed by the Senate this day of , 2020.

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Clerk to the Senate

