

No. 4 of 2006.

Tax Administration Act 2006.

Certified on: 29th March 2006.

AUTONOMOUS REGION OF BOUGAINVILLE.

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Tax Administration Act 2006.

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AUTONOMOUS REGION OF BOUGAINVILLE.

No. 4 of 2006.

AN ACT

entitled

Tax Administration Act 2006.

Being an Act to provide for the general administration of the tax laws of the Autonomous Bougainville Government,

MADE by the House of Representatives, to come into operation in accordance with a notice in the Bougainville Gazette by the Minister.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *National Constitution*, namely –

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *National Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *National Constitution*; and
- (c) the right to freedom of information conferred by Section 51 of the *National Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

2. INTERPRETATION.

In this Act, unless the contrary intention appears –

“Bougainville Collector” means a Bougainville Collector of Taxes appointed under Section 4;

“Bougainville tax” means any tax imposed by a Bougainville law, but does not include a tax imposed by a level of formal government below the level of the Autonomous Bougainville Government;

“Bougainville tax Act” means a Bougainville law that –

- (a) imposes or otherwise relates to Bougainville tax and is to be read as part of this Act; or
- (b) is administered by the Chief Bougainville Collector;

“Chief Bougainville Collector” means the Chief Bougainville Collector of Taxes appointed under Section 3;

“private tax information” means information about the affairs of a person disclosed under any Bougainville tax Act;

“records” includes deeds, writings and documents and other records of information, whether compiled, recorded or stored by microfilm or electronic process or otherwise;

“this Act” includes the Regulations;

3. CHIEF BOUGAINVILLE COLLECTOR OF TAXES.

(1) The Bougainville Senior Appointments Committee may, by notice in the Bougainville Gazette, appoint a suitably qualified person to be the Chief Bougainville Collector of Taxes.

(2) In the exercise and performance of any of his powers, functions, duties and responsibilities under this Act or any other Bougainville tax Act, the Chief Bougainville Collector is subject to the directions of the Bougainville Executive Council.

- (3) Subject to Subsection (2), the Chief Bougainville Collector –
- (a) is responsible for the administration of this Act and all other Bougainville tax Acts; and
 - (b) has all the powers, functions, duties and responsibilities of a Bougainville Collector; and
 - (c) has such other powers, functions, duties and responsibilities as are conferred or imposed on him by or under this Act or any other Bougainville law; and
 - (d) as provided for by Section 45(2)(b) (*collection of taxes*) of the *Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*, by agreement with the Internal Revenue Commission, collect, for and on behalf of the Internal Revenue Commission, company tax, goods and services tax and customs duties.

4. BOUGAINVILLE COLLECTORS OF TAXES.

(1) The Chief Bougainville Collector may, by notice in the Bougainville Gazette, appoint persons to be Bougainville Collectors of Taxes.

(2) Subjected to any directions of the Chief Bougainville Collector, a Bougainville Collector -

- (a) has such functions, duties and responsibilities for the purpose of this Act or any other Bougainville tax Act as are conferred or imposed on him by the Chief Bougainville Collector; and
- (b) has such other powers, functions, duties and responsibilities as are conferred or imposed by or under this Act or any other Bougainville tax Act.

5. DECLARATION OF OFFICE.

Before entering on the duties of their respective offices, the Chief Bougainville Collector and the Bougainville Collectors shall make, before the Minister responsible for finance matters, or before a person authorized by the Minister for the purpose, the Declaration of Office in Form 1 of the Schedule.

6. SECRECY OF INFORMATION.

- (1) In this section; “Bougainville tax officer” means –
- (a) the Chief Bougainville Collector; or
 - (b) a Bougainville Collector; or

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- (c) a member of the Bougainville Administration staff who, because of his being a member of the Bougainville Administration staff or in the course of his employment as a member of the Bougainville Administration staff, may acquire, or has acquired, private tax information.

(2) Except as permitted by this Act or any other Bougainville tax Act, a Bougainville tax officer or former Bougainville tax officer who, directly or indirectly -

- (a) makes a record of any private tax information other than in the performance of his duties as a Bougainville tax officer; or
- (b) gives to any person (including a member of the Bougainville Executive Council) any private tax information,

is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding two years, or both.

(3) A Bougainville tax officer or former Bougainville tax officer shall, on receiving a written direction from the Minister responsible for finance matters so to do, give to that Minister such private tax information as that Minister may require.

(4) This section does not prevent the giving of any information, matter or thing referred to in any of the proceeding provisions of this section -

- (a) to a court in proceedings under this Act or any other Bougainville tax Act; or
- (b) by a Bougainville tax officer, in the performance of his duties as such; or
- (c) by the Chief Bougainville Collector, or by a person authorized by the Chief Bougainville Collector, to -
 - (i) a Bougainville Collector; or
 - (ii) a member of the Bougainville Administration performing any duty under any Bougainville tax Act, for the purpose of enabling him to carry out that duty.
 - (iii) an officer of the Internal Revenue Commission, in relation to taxes collected under an agreement referred to in Section 22.

(5) A person (other than a Bougainville tax officer) to whom any information, matter or thing is given under Subsection (4)(c)(ii), and any person under the control of such a person, is subject in respect of the information, matter or thing to the duties and obligations conferred or imposed by Subsection (2) as if he were a Bougainville tax officer.

(6) A Bougainville tax officer shall, when required so to do by the Chief Bougainville Collector, make before the Chief Bougainville Collector, or before a person authorized by the Chief Bougainville Collector for the purpose, the Declaration of Secrecy in Form 2 of the Schedule.

7. PREPARATION OF TAX RETURNS.

- (1) In this Section, "Bougainville tax officer" has the same meaning as in Section 6.

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- (2) A Bougainville tax officer who, otherwise than in the performance of his duties as such or as authorized by the Chief Bougainville Collector -
- (a) prepares a return or other document under or for the purposes of a Bougainville tax Act; or
 - (b) advises or assists any person in the preparation of such a document,
- is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding two years or both.

8. RECORDS.

(1) In this section, "the prescribed records", in relation to a person, mean such records of his transactions as are approved or reasonably required by the Chief Bougainville Collector as being necessary or desirable in order to enable his liability to pay any Bougainville tax to be conveniently ascertained.

(2) Subject to Subsection (3), a person who is or may be liable to pay a Bougainville tax must keep the prescribed records.

(3) Unless the Chief Bougainville Collector gives permission for their destruction or disposal at an earlier date, a person to whom Subsection (2) applies must keep the prescribed records for at least five years.

Penalty: A fine not exceeding K2,000.00

9. ACCESS TO PREMISES, RECORDS, ETC.,

(1) The Chief Bougainville Collector, or a person authorized in writing by him for the purpose, shall at all times be given full and free access to all land, premises and vehicles and to all records, documents and other papers, for any of the purposes of this Act or any other Bougainville tax Act, and for any such purpose may -

- (a) enter and inspect or search any such land, premises or vehicle; and
- (b) examine and take extracts from or copies of records, and where such records are stored, electronically or otherwise, open the medium of storage for the purposes of examining and taking extracts and copies.

(2) Where an interested person demands its production, a person authorized under Subsection (1) must, before exercising or continuing to exercise any of his powers under that subsection, produce to the person making the demand his authority under that subsection.

10. SEIZURE OF PROPERTY REQUIRED AS EVIDENCE.

(1) Subject to Subsections (2) and (3), the Chief Bougainville Collector, or a Bougainville Collector authorized by him in writing for the purpose, may take possession of and retain any property (other than land) that is, or may be, required as evidence in any proceedings before a court or tribunal under or for the purposes of this Act or any other Bougainville tax Act.

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(2) Where an interested person demands its production, a Bougainville Collector authorized under Subsection (1) must, before exercising or continuing any of his powers under that subsection, produce to the person making the demand his authority under that subsection.

(3) As soon as practicable after the end of the period for which its retention under Subsection (1) is reasonably required for the purpose referred to in that subsection, any property of which possession is taken or that is retained under that subsection shall be returned to the person entitled to it.

(4) Neither the Chief Bougainville Collector nor a Bougainville Collector is liable for or on account of any loss of or damage to any property of which possession is taken or that is detained under Subsection (1), but this subsection does not relieve the Autonomous Bougainville Government of any liability for or on account of any such loss or damage.

11. REQUIREMENT OF INFORMATION, AND EVIDENCE.

(1) Where a court is satisfied that it is desirable and proper for the purposes of this Act or any other Bougainville tax Act to do so, the court may by order authorize the Chief Bougainville Collector to require, by written notice, any person (including a member of the Bougainville Administration or a person employed by an authority established by or under a Bougainville law) -

- (a) to give to the Chief Bougainville Collector any information that the Chief Bougainville Collector requires; and
- (b) to attend and give evidence before the Chief Bougainville Collector, or before a person authorized by the Chief Bougainville Collector for the purpose, concerning his or any other person's transactions, dealings or affairs; and
- (c) to produce all records in his possession or under his control relating to such transactions, dealings or affairs,

but only in relation to such matters and to such extent as are reasonably necessary for the purposes of this Act and any other Bougainville tax Act.

(2) An order made by a court under Subsection (1) may be made subject to such conditions and limitations as the court thinks proper.

(3) The Chief Bougainville Collector may require the evidence to be given on oath or affirmation and either orally or in writing, and for that purpose he or the person authorized under Subsection (1) may administer an oath or affirmation.

(4) A person required under this section to attend is entitled to the same witness fees as a person summoned in a civil action in a District Court.

12. OBSTRUCTION, ETC.,

A person who, without reasonable cause (proof of which is on him) -

- (a) hinders or obstructs a person in the exercise of a power or the performance of a function under this Act or any other Bougainville tax Act; or

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- (b) refuses or fails to give information to attend or give evidence, or to produce or make available any reasons when required to do so under Section 11,

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

13. REFUNDS.

- (1) Where the Chief Bougainville Collector is satisfied that -
- (a) an amount of tax under a Bougainville tax Act has been overpaid; or
 - (b) a person who was not liable to pay an amount by way of such tax has paid the amount; or
 - (c) an amount by way of such tax has been paid on, or in relation to, or by reference to, any goods or services on which tax was not payable,

and that a refund under this section has not already been made, or where a Bougainville tax Act so provides, he may authorize a refund to be made of the amount, and the public revenues of Bougainville are, to the necessary extent, appropriated accordingly.

(2) The reference in Subsection (1) to a refund of an amount of tax shall be read as including a reference to an adjustment or allowance made or to be made in any subsequent payment of an amount of the tax.

14. EXEMPTION, ETC., ON GROUNDS OF HARDSHIP.

In case of hardship (including any case in which any land, thing on land or other property that is subject to a Bougainville tax Act has or have been destroyed or damaged by fire, flood or natural disaster), the Bougainville Executive Council may, on application by the tax payer or potential taxpayer, by instrument grant to a person an exemption from, or a remission or deferment of, any amount of Bougainville tax.

15. FORFEITURE OF CERTAIN GOODS.

(1) Where a person is convicted of an offence against this Act or any other Bougainville tax Act in relation to any Bougainville tax payable on or in relation to, or by reference to, any property (other than land), the court that convicts him may order that any of the property that is owned by, or that is in the possession or under the control of the convicted person be forfeited to the Autonomous Bougainville Government.

(2) Any property forfeited to the Autonomous Bougainville Government under Subsection (1) shall, subject to any order made by the court which ordered the forfeiture, be sold or otherwise dealt with as directed by the Chief Bougainville Collector.

16. CONTINUING TAX OFFENCES.

Where under any Bougainville tax Act -

- (a) it is an offence if any thing (including the payment of any amount of Bougainville tax) required by law is not done on or before a date (whether specified or not), or during a period; or
- (b) it is a defence to a charge of such an offence that an excuse for not doing any such thing exists on or is related to a date on which such an offence is otherwise committed,

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then, unless the context indicates otherwise or some other intention is clearly intended, a new liability to do the thing in question arises, by virtue of this section, under the relevant provision on each day after –

- (c) the date, or the end of the period, referred to in Paragraph (a); or
- (d) the date on which the excuse, or the circumstances giving rise to the excuse, ceases or cease to apply.

17. OFFENCES BY CORPORATIONS.

Where a corporation is guilty of an offence against a Bougainville tax Act –

- (a) each director and each member of the controlling body of the corporation (including the person who constitutes, or the persons who constitute, the corporation for the time being); and
- (b) each officer of the corporation,

who is in default is also guilty of the offence.

18. RECOVERY OF BOUGAINVILLE TAX.

(1) Any amount of any Bougainville tax due may be recovered by the Chief Bougainville Collector, on behalf of the Autonomous Bougainville Government, as a debt.

(2) A conviction of an offence of failing to pay any amount of Bougainville tax (whether or not the offence is defined in relation to the expression “failure”) does not relieve any person of liability to pay the amount.

19. CERTIFICATES BY CHIEF BOUGAINVILLE COLLECTOR.

A certificate under the hand of the Chief Bougainville Collector certifying that any amount of Bougainville tax is or was at any time due or has not been, or has not been at any time, paid is, in any proceedings for or in respect of non-payment of Bougainville tax, *prima facie* evidence as to the matters certified.

20. DELEGATION.

The Chief Bougainville Collector may, by instrument, delegate to a Bougainville Collector, or to any member of the Bougainville Administration, all or any of his powers or functions (other than this or any other power of delegation) under this Act or under any other Bougainville tax Act.

21. ANNUAL REPORTS.

(1) The Chief Bougainville Collector shall give to the Bougainville Executive Council annually, at such time as is directed by the Bougainville Executive Council, a report on the workings of this Act and of all other Bougainville tax Acts.

(2) In a report under Subsection (1), the Chief Bougainville Collector shall draw attention to any breaches or evasions of this Act or of any other Bougainville tax Act that have come to his notice.

(3) The Bougainville Executive Council shall cause a report under Subsection (1) to be presented to the House of Representatives as soon as practicable after its receipt, and in any event not later than the last day of the first meeting of the House of Representatives that commences after the Bougainville Executive Council receives the report.

22. COLLECTION OF TAXES ON BEHALF OF INTERNAL REVENUE COMMISSION.

Where, in accordance with Section 45(2)(b) (*collection of taxes*) of the *Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*, an agreement has been made with the Internal Revenue Commission for the collection, on behalf of the Internal Revenue Commission, of company tax, goods and services tax and customs duties, such collection shall be made in accordance with the agreement.

23. REGULATIONS.

The Bougainville Executive Council may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary to be prescribed for carrying out or giving effect to this Act.

SCHEDULE.

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Sec. 5.

FORM 1.

DECLARATION OF OFFICE.

I,, do solemnly swear that I will and truly serve the Autonomous Region of Bougainville in the office of the Chief Bougainville Collector of Taxes/Bougainville Collector of Taxes.

Before me thisday of

Tax Administration Act 2006.

Sec. 6(6).

FORM 2.

DECLARATION OF SECRECY.

I,, do solemnly swear that I shall comply with the secrecy provisions of the Tax Administration Act 2006.

Before me thisday of

I hereby certify that the foregoing is a fair copy of the Tax Administration Act 2006 which has been made by the House of Representatives.

Acting Clerk of the House of Representatives.

I, NICHOLAS PENIAI, Speaker of the House of Representatives, hereby certify that the Tax Administration Act 2006 was made by the House of Representatives on 29th March 2006 by an absolute majority of votes in accordance with the Bougainville Constitution.

Speaker of the House of Representatives.