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ASSESSMENT AND COLLECTION OF TAXES (AMENDMENT) ORDINANCE 2012

An Ordinance to amend the Assessment and Collection of Taxes Ordinance 2003

G. E. STACEY
ADMINISTRATOR

1st October 2012.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. Short title

This Ordinance may be cited as the Assessment and Collection of Taxes (Amendment) Ordinance 2012.

2. Commencement

This Ordinance comes into force on 22 October 2012.

3. Assessment and Collection of Taxes Ordinance 2003 amended

The Assessment and Collection of Taxes Ordinance 2003(a) is amended in accordance with sections 4 to 27.

4. Section 2 amended (interpretation)

- (1) Section 2 is amended by repealing the definition of “body of persons”.
- (2) Section 2 is amended by repealing the definition of “company” and substituting the following definition—

““company” has the meaning given in section 2 of the Income Tax Ordinance 2003(b);”.

5. Section 5 amended (returns)

- (1) Section 5(1) is repealed and the following subsections substituted—

“(1) Any company that in a tax year has income referred to in section 5 of the Income Tax Ordinance 2003 and any individual, whose gross income referred to in that section exceeds in a tax year the amount of income taxable at a nil rate as set out in Schedule 2 to that Ordinance must deliver a tax return, and any documents specified in the tax return, to the Commissioner on or before 30 April of the year following the tax year; and it is immaterial whether or not the person has received a tax return from the Commissioner.

(1A) Despite subsection (1)—

- (a) a person (not being a person receiving emoluments within the meaning of section 43) who is not required under this Ordinance to keep books of account and records or to prepare audited accounts may deliver the tax return on or before 30 June of the year following the tax year;
- (b) a person who is required under this Ordinance to keep books of account and records or to prepare audited accounts (or to comply with both such requirements) may deliver the tax return on or before 31 December of the year following the tax year;
- (c) in the case of a person receiving emoluments within the meaning of section 43, a tax return may be delivered to the employer in a manner and form to be specified in regulations; and in such a case the employer is not to be liable for the fact that the content of the tax return may be incomplete or misleading, except to the extent that it relates to emoluments received from, and deductions made by, the employer.”

(2) Section 5(2) is amended by omitting “Notwithstanding subsection (1)” and substituting “Despite subsections (1) and (1A)”.

(3) Section 5(3) is amended by omitting “in accordance with subsection (1) above”.

(4) Section 5(4) is repealed and the following subsections substituted—

“(4) A tax return or statement required under this section must be delivered in writing, using forms approved by the Commissioner, or using computerised, electronic or other means approved by the Commissioner; and—

- (a) subject to paragraph (b), a tax return must be accompanied by documents referred to in the return;
- (b) where a tax return is delivered by computerised, electronic or other means, the Commissioner may permit any documents referred to in the return to be delivered by other means or not to be delivered with the return; and, in the latter case, any such documents must be kept for 7 years from the end of the tax year to which they relate by the person required to deliver them or by that person’s agent, and the Commissioner must be allowed to inspect them at all reasonable times;
- (c) for the purpose of delivering a document by computerised, electronic or other means, the Commissioner may provide a person with a security password to be used instead of the signature that the document would have had to bear if not so delivered;
- (d) where a person is required under this Ordinance to keep books of account and records and to prepare audited accounts, the information contained in that person’s tax return must be consistent with the audited accounts.

(5) Any documents not referred to in the tax return but which directly or indirectly support any amount or information referred to in the return must be kept by the person responsible for delivering the return or that person’s agent for 7 years from the end of the tax year to which they relate.”

6. New section 5A inserted

The following new section is inserted after section 5—

“5A. Companies must register in tax register, etc

- (1) A company that is incorporated under the Companies Ordinance 2007(c) or that is resident in the Areas must—
 - (a) register in the tax register of the Republic and obtain a tax identity number; and
 - (b) notify any change to its entry in the register within 60 days after the change.
- (2) This section does not apply to an authorised service organisation that is a company.”

7. Section 6 amended (statements by employers and other persons)

- (1) Section 6(4) is amended by—
 - (a) omitting “body of persons” and substituting “company”; and
 - (b) omitting “in the case of a company”.
- (2) Section 6(6) is repealed.

8. New section 6A inserted

The following new section is inserted after section 6—

“6A. Commissioner’s power to obtain information from banks

- (1) Despite the provisions of any other Ordinance, a bank must deliver to the Commissioner a statement of the total amount of interest credited to customers as a whole each year.
- (2) Despite the provisions of any other Ordinance, for the purpose of investigating the tax affairs of a person (the “taxpayer”), the Commissioner may, in relation to any tax year in respect of which tax may be payable, require a bank, by notice in writing, to provide the Commissioner with documents and information retained by the bank that relates to any account held by the taxpayer in the 7 years immediately preceding the notice.
- (3) The documents and information required by the Commissioner under subsection (2) must be provided to the Commissioner within 60 days after receipt of the notice, together with any explanations and clarifications reasonably required by the Commissioner.
- (4) The Commissioner may not exercise the power in subsection (2) unless the Commissioner has—
 - (a) obtained the written consent of the Attorney-General and Legal Adviser; and
 - (b) notified the taxpayer and every joint account holder in writing of the proposed course of action.
- (5) For the purposes of obtaining the Attorney-General and Legal Adviser’s consent, the Commissioner must make a written request to the Attorney-General and Legal Adviser that contains the following (and send a copy of the request to the bank)—
 - (a) the identity of the taxpayer and every joint account holder;
 - (b) a description of the type of documentation or information required and the manner in which it is to be provided;
 - (c) the reasons for the belief that the bank has the documentation or information;

- (d) the period to which the requested documentation or information relates;
 - (e) a statement by the Commissioner that the Commissioner has exhausted all other means (other than by application to court) to obtain the documentation or information;
 - (f) the reasons for making the request.
- (6) Where consent is given by the Attorney-General and Legal Adviser, the Commissioner must inform the taxpayer and every joint account holder as soon as possible.”

9. Heading to section 12 repealed and substituted

The heading to section 12 is repealed and the following heading substituted “**Managers of unincorporated bodies**”.

10. Section 12 amended (managers of unincorporated bodies)

Section 12 is amended by—

- (a) omitting “a body of persons” and substituting “an unincorporated body”;
- (b) omitting “such body of persons” and substituting “such unincorporated body”.

11. New section 12A inserted

The following new section is inserted after section 12—

“12A. Requirement to deliver electronic returns, etc

- (1) The following persons must deliver a tax return by electronic means or by other means approved from time to time by the Commissioner—
 - (a) a person who by virtue of section 5 is not required to deliver a tax return until 31 December of the year following the tax year to which the return relates;
 - (b) a person whose tax return is delivered on the person’s behalf by a tax professional.
- (2) Where a person delivers a tax return by electronic means, any deadline for delivery of the return provided for in this Ordinance must be treated as being extended by 3 months.
- (3) This section overrides any other provision of this Ordinance.”

12. Section 13 amended (Commissioner to make assessments)

- (1) Section 13 is amended by repealing the proviso after subsection (1).
- (2) Section 13 is amended by inserting the following new subsection after subsection (1)—
 - “(1A) Whether or not the Commissioner makes an assessment under subsection (1)—
 - (a) a person who is required to deliver a tax return on or before the date referred to in section 5(1A)(a) must, on delivering the return, pay any tax due in accordance with the return;
 - (b) a person who is required to deliver a tax return on or before the date referred to in section 5(1A)(b) must calculate and pay tax on or before 1 August of the year following the tax year in question; and if the tax return is delivered after 1 August, must pay interest on the tax in accordance with section 39;
 - (c) where a person receiving emoluments within the meaning of section 43 delivers a tax return to the employer in accordance with section 5(1A)(c), the employer must calculate the tax in a manner and a form to be prescribed in regulations.”

- (3) Section 13(3) and the proviso that follows it are repealed and the following subsections substituted—

- “(3) Where a person fails to deliver a tax return by the date required by this Ordinance, and the Commissioner thinks that the person is liable to tax, the Commissioner may, to the best of the Commissioner’s ability, assess the amount of tax due from that person based on the findings of an inspection or investigation or on information in the Commissioner’s possession; but any such assessment does not affect any other liability to which the person may be subject by reason of the person’s refusal or failure to deliver a return.
- (4) For the purpose of imposing tax under this Ordinance in respect of a tax year, the Commissioner may use the findings of any inspection or investigation relating to any other tax year in respect of which—
- (a) the person failed to deliver a tax return timeously or at all, to keep adequate books or records or to provide appropriate facilities to verify the foregoing; or
- (b) the Commissioner found the person’s tax return to be incomplete or inaccurate.”

13. Section 14 amended (agents, etc of incapacitated and non-resident persons to be assessed)

Section 14(2) is amended by omitting “any body of persons” and substituting “a company”.

14. Section 20 amended (objections to assessments)

Section 20(1) and the proviso following it are repealed and the following subsections substituted—

- “(1) A person (the “objector”) who objects to an assessment may, by notice in writing, apply to the Commissioner for the assessment to be reviewed and amended.
- (1A) If the objector has not already delivered a tax return for the tax year to which the assessment relates, the objector must, at the same time as giving a notice under subsection (1), deliver to the Commissioner a return for that tax year and pay the tax (if any) due in accordance with the return.
- (1B) Unless otherwise provided in any other Ordinance, a notice under subsection (1) must be given no later than the end of the month that follows the month in which the notice referred to in section 19 was served on the objector or, in the case of a notice served during December, no later than the end of February of the following year.
- (1C) A notice under subsection (1) must state precisely the grounds of the objection; and, where the objector claims that an amount of income, a deduction, exemption, relief or credit set out in the notice under section 19 exceeds or is less than the equivalent amount in the objector’s return, the objector must state the amount that the objector claims to be correct in the notice under subsection (1) and must provide supporting information and documents.
- (1D) If the Commissioner is satisfied that the objector was prevented from giving notice under subsection (1) within the period referred to in subsection (1B) owing to the objector’s absence from the Areas, sickness or other reasonable cause, the Commissioner may grant such extension as is reasonable in the circumstances.”

15. Section 26 amended (additional payments and repayments in certain cases)

- (1) Section 26(1) is amended by omitting the “the property upon which tax is provisionally paid” and substituting “the value of the property upon which tax is provisionally paid”.
- (2) Section 26 is amended by inserting the following subsection after the proviso that follows subsection (1)—
- “(1A) For the purposes of subsection (1), where a temporary assessment is not

delivered by the taxpayer under section 24 or where the Commissioner does not make a temporary assessment under section 25, the amount of tax provisionally paid must be treated as being nil.”

16. Section 28 amended (public officers to assist Commissioner)

- (1) Section 28(1) is amended by omitting “The Commissioner” and substituting “Despite the provisions of any other Ordinance, the Commissioner”.
- (2) Section 28(3) is repealed and the following subsection substituted—
 - “(3) In this section “public officer” includes a person in the employment of, or holding office under, a municipal or community council.”

17. Section 30 repealed and substituted

Section 30 is repealed and the following section substituted—

“30. Books of account, etc to be kept

- (1) A person (including a partnership) with income from a source specified in section 5(1)(a), (e) or (f) or (2)(a), (d) or (e) of the Income Tax Ordinance 2003 must, in respect of each tax year,—
 - (a) issue invoices and receipts in respect of transactions in accordance with regulations made by the Administrator;
 - (b) keep books of account and records and from them prepare accounts in accordance with generally accepted accounting principles, to be audited by a person who may be appointed as the auditor of a company under the Companies Ordinance 2007.
- (2) Subsection (1)(b) does not apply to an individual whose annual turnover does not exceed €70,000.
- (3) The records referred to in subsection (1) must be kept for at least 7 years after the end of the tax year to which they relate unless the Commissioner notifies the taxpayer that this requirement does not apply.
- (4) The Commissioner may, during the tax year and within 7 years after the end of the tax year,—
 - (a) inspect and take copies of any books of account, records, invoices, receipts and audited accounts required to be kept under subsection (1); and
 - (b) undertake an inspection of the taxpayer’s business premises for the purpose of checking compliance with subsection (1).
- (5) For the purpose of exercising a power conferred by or under this Ordinance, the Commissioner may, on reasonable notice, enter and search any business premises (other than a dwelling) and inspect any goods and documents found on such premises during normal business hours.
- (6) Books and records that are required to be kept under subsection (1) must be up to date by no later than 4 months after the end of the month that follows the relevant transaction.
- (7) An invoice that is required to be issued must be issued within 30 days after the transaction to which it relates or within such longer period as the Commissioner may permit by notice in writing to the taxpayer following the taxpayer’s request.
- (8) A business undertaking that has trade goods must draw up an inventory annually at the end of the undertaking’s accounting period; and the inventory must be provided to the Commissioner on request.”

18. Section 34 amended (company dividends)

Section 34 is amended by omitting “body of persons” and substituting “company”.

19. Section 37 amended (extracts from lists to be sent to tax collector)

Section 37(2) is amended by omitting “, unless the Court should otherwise order under section 38(3)”.

20. Section 38 amended (time-limits for payment of tax)

(1) Section 38(1) is amended by—

- (a) omitting from paragraph (a) “by 1st August of the year following the tax year to which the assessment relates:” and substituting “ by 1 December;”;
- (b) omitting the proviso following paragraph (a).

(2) Section 38 is amended by inserting the following new subsection after subsection (1)—

“(1A) Despite subsection (1)(a)—

- (a) where a person is required to deliver a tax return by 30 June of the year (the “following year”) following the tax year to which the return relates, tax is payable on or before 30 June of the following year;
- (b) where a person is required to deliver a tax return by 31 December of the year (the “following year”) following the tax year to which the return relates, tax is payable on or before 1 August of the following year.”

21. Section 39 amended (additional sum and interest for non-payment of tax on time)

Section 39(1) and (2) are repealed and the following subsections substituted—

“(1) If any tax is not paid by the due date as provided in this Ordinance, interest at 9% per year is payable on the outstanding amount calculated from the due date.

(2) From the 2012 tax year and subsequent tax years, interest at 9% per year is payable on unpaid tax—

- (a) where the tax return is required to be delivered by 30 June of the year (the “following year”) following the tax year to which the assessment relates, calculated from 1 July of the following year;
- (b) in any other case, calculated from 1 August of the following year.

(2A) Despite subsections (1) and (2), interest is not payable where—

- (a) a tax return is delivered within the period specified by this Ordinance;
- (b) tax is paid in accordance with the return within the period specified by this Ordinance; and
- (c) the Commissioner makes an assessment more than 3 years after the date specified for the delivery of the return.”

22. Section 42 amended (anticipation of default in payment)

Section 42(1), (2)(c) and (4) are amended by omitting “security” and substituting, in each case, “a guarantee”.

23. Section 49 amended (false statements, etc)

Section 49(3) is amended by omitting “one thousand pounds” and substituting “€1,708”.

24. Section 50 amended (other offences)

(1) Section 50(1) is amended by omitting “five pounds” and substituting “€17”.

(2) Section 50(3) is amended by omitting “five hundred pounds” and substituting “€854”.

25. New section 53A inserted

The following new section is inserted after section 53—

“53A. Administrative penalties

- (1) The Commissioner may, by written notice to a person, require the person to pay an administrative penalty in accordance with subsection (2), (3) or (5).
- (2) A person who fails to deliver a tax return, provide information or comply with any other obligation imposed by this Ordinance within the period provided for in this Ordinance may be required to pay an administrative penalty of up to €100.
- (3) A person who fails to deliver a tax return, provide information or comply with any other obligation imposed by this Ordinance within the period for compliance stated in a notice sent to the person by the Commissioner may be required to pay an administrative penalty of up to €200.
- (4) The Commissioner may not require a person to pay an administrative penalty under both subsections (2) and (3) in respect of the same default.
- (5) A person who fails to pay the tax due under this Ordinance within the period provided in this Ordinance or the period for compliance stated in a notice sent to the person by the Commissioner may be required to pay an administrative penalty of up to 5% of the tax due.
- (6) The Commissioner may send a notice to a person for the purposes of subsection (3) or (5) in respect of a duty referred to in those subsections whether or not this Ordinance provides for a period for compliance with the obligation; and the period for compliance with the duty stated in any notice must not be less than 60 days.
- (7) An administrative penalty payable under this section is recoverable as a debt.
- (8) The prosecution of a person for an offence under this Ordinance does not affect the person’s liability to pay an administrative penalty under this section.”

26. Section 55 amended (regulations)

Section 55(2) is amended by—

- (a) omitting “Any person” and substituting “Regulations may provide that any person”; and
- (b) omitting “two hundred pounds” and substituting “€341”.

27. New section 55A inserted

The following new section is inserted after section 55—

“55A. Delegation of functions to the Republic

- (1) The functions placed on the Administrator and the Commissioner by this Ordinance are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007(d).
- (2) Subsection (1) does not apply to the functions in section 55.”

Notes

- (a) Ordinance 30/03.
- (b) Ordinance 29/03, amended by Ordinances 19/11 and 13/12.
- (c) Ordinance 2/07.
- (d) Ordinance 17/07.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

1. This explanatory note relates to the Assessment and Collection of Taxes (Amendment) Ordinance 2012 (the “Ordinance”). It has been prepared by the Office of the Attorney-General and Legal Adviser in order to assist the reader of the Ordinance and should be read in conjunction with it.

2. The Ordinance amends the Assessment and Collection of Taxes Ordinance 2003 (the “principal Ordinance”). The amendments largely reflect amendments made to the corresponding law of the Republic by laws 106(I)/2005, 135(I)/2005, 72(I)/2008, 46(I)/2009 and 136(I)/2010.

3. The principal changes are as follows—

- New provision is made for the dates by which tax returns must be delivered (see new section 5(1) and (1A) of the principal Ordinance).
- An employee may deliver a tax return to the employer in a manner and form to be specified in regulations (see new section 5(1A)(c) of the principal Ordinance). In such a case, the employer must calculate tax in accordance with regulations.
- Express provision is made to enable tax returns to be delivered by electronic means and for the provision of a security password to be used in place of a signature (see amended section 5(4) of the principal Ordinance). Certain persons must deliver tax returns electronically. Where tax returns are delivered electronically, the deadline for their delivery is treated as being extended by 3 months (see new section 12A of the principal Ordinance).
- Documents that support information referred to in a tax return, even though not referred to in the return, must be retained for 7 years (see new section 5(5) of the principal Ordinance).
- A company must register in the tax register of the Republic (see new section 5A of the principal Ordinance). This does not apply to authorised service organisations.
- Banks must provide a statement of the total amount of interest credited to customers each year (see new section 6A(1) of the principal Ordinance). With the consent of the Attorney-General and Legal Adviser, the Commissioner may, for the purpose of investigating a taxpayer’s affairs, require a bank to provide information about accounts held by the taxpayer within the previous 7 years (see new section 6A(2) to (6) of the principal Ordinance).
- New provision is made for the time by which tax must be paid (see new section 13(1A) and amended section 38 of the principal Ordinance).
- The Commissioner’s power to require public officers to provide information is extended to include employees of a municipal or community council (see new section 28(3) of the principal Ordinance).
- The obligation to keep invoices and receipts in respect of transactions, in accordance with regulations made by the Administrator, is confined to those with sources of income referred to in section 5(1)(a), (e) or (f) or (2)(a), (d) or (e) of the Income Tax Ordinance 2003 (see new section 30 of the principal Ordinance). All taxpayers with such income (other than individuals whose turnover does not exceed €70,000) must prepare accounts in accordance with generally accepted accounting principles to be audited by a person qualified to be appointed as the auditor of a company under the Companies Ordinance 2007. Provision is made for inspection of books and records by the Commissioner.
- Interest at 9% is payable on unpaid tax (see new section 39(1) and (2) of the principal Ordinance).
- Administrative penalties may be charged in respect of a failure to comply with the principal Ordinance (see new section 53A of the principal Ordinance).
- The failure to comply with regulations made under section 55 of the principal Ordinance will no longer automatically be a criminal offence. Instead, regulations may provide that failure to comply will be an offence (see amended section 55(2) of the principal Ordinance).

4. The fact that certain functions of the Commissioner and the Administrator under the principal Ordinance are delegated to the authorities of the Republic of Cyprus is made clear on the face of the principal Ordinance in accordance with current drafting practice (see new section 55A of the principal Ordinance). In addition, a number of amendments update references in consequence of the change from the pound to the euro.

(SBA/AG/2/TA/223)