

ENVIRONMENTAL LEVY BILL, 2010

EXPLANATORY MEMORANDUM

The draft Bill would revise the law relating to the imposition of environmental levy in order to make the law consistent with the provisions of the Revised Treaty of Chaguaramas and at the same time validate the environmental levy paid and collected pursuant to the 2008 Budgetary Proposals.

Clause 1 provides the short title of the Bill.

Clause 2 provides for the interpretation of the terms in the Bill.

Clause 3 provides for the Comptroller to administer the Bill and sets out the duty of the Comptroller to

- (a)* lay quarterly statements before Parliament at regular intervals; and
- (b)* present to the Minister on a semi-annual basis a confidential report on the operation of the Act.

Clause 4 provides that

- (a)* the environmental levy shall be charged, levied and collected on every good imported into Barbados and manufactured in Barbados;
- (b)* no environmental levy will be charged, levied or collected on the goods set out in the Second Schedule whether those goods are imported into or manufactured in Barbados; and
- (c)* the Minister may amend the Schedules by order.

The rate of the levy is specified in the First Schedule.

Clause 5 provides the purpose of the levy which is primarily for the preservation and enhancement of the environment.

Clause 6 states that the levy shall be charged on the customs value of imported goods and the price of the goods where they are manufactured in Barbados.

Clause 7 provides

- (a) that the levy chargeable is determined by the value of the goods;
- (b) how to determine the price of goods manufactured in Barbados;
- (c) how to determine whether two persons are associated in business with one another.

Clause 8 provides that section 106 of the *Customs Act* applies to this Act with such modifications and adaptations as are necessary for the purpose of giving the necessary effect to this Act.

Clause 9 states that the provisions of the *Customs Act* and regulations relating to the payment, collection and recovery of duties under the Act and contravention of that Act apply *mutatis mutandis* to the payment, collection and recovery of the levy and contravention of the *Environmental Levy Bill, 2010*.

Clause 10 provides when payment of the levy is due and payable to the Comptroller by the importer or registered manufacturer on any goods that are

- (a) imported into Barbados; and
- (b) manufactured for sale in Barbados.

Clause 11 states the circumstances in which the Comptroller may grant permission for the importation of goods without payment of the levy.

Clause 12 provides that the levy is to be paid into the Consolidated Fund.

Clause 13 provides that registered manufacturers of chargeable goods for consumption in Barbados shall apply to the Commissioner in the approved form to be registered under the Act.

Clause 14 provides that a registered manufacturer shall submit to the Comptroller quarterly statements containing the prescribed matters. The statements shall be submitted not later than 21 days after the end of each quarter, but this period may be extended by the Comptroller.

Clause 15 states that a registered manufacturer shall submit to the Comptroller not later than 31st March following the end of each calendar year, an annual statement which shall contain a summary for the year of the information required to be submitted under clause 13 for each quarter, amongst other matters.

Clause 16 provides for an assessment to be made by the Comptroller in certain circumstances or for a reassessment of the levy to be made where the levy has already been assessed by the registered manufacturer. Where the Comptroller is not satisfied with the declared value of chargeable goods, he may make an assessment of the value.

Clause 17 states that an assessment or reassessment may be made by the Comptroller in respect of any quarter in specified circumstances. The clause also provides that where a determination or decision of an appeal or Value Added Tax Tribunal required a reduction of or an increase in an assessment, the Comptroller shall give effect to the decision and issue a notice of reassessment accordingly.

Clause 18 provides that a Comptroller must issue a notice of assessment or reassessment in the approved form to the registered manufacturer where he assesses the levy payable for a quarter.

Clause 19 provides that a person who objects to an assessment or reassessment made by the Comptroller may deliver a notice of objection within 21 days after the date of the notice of assessment or reassessment or within such further time as the Comptroller allows. The notice shall be in writing and shall contain the precise grounds of objection.

Clause 20 states *inter alia* that the Comptroller must give a person who has lodged an objection an opportunity, either written or oral, to support the objection. The Comptroller may either allow or disallow the objection in whole or in part and must inform the objector of his decision.

Clause 21 provides *inter alia* that a person who is aggrieved by a decision of the Comptroller under section 12 or 19 may appeal to the Tribunal within 30 days of the decision of the objection or within such further time as the Tribunal allows.

Clause 22 provides that an appellant or Comptroller may appeal on a question of law to the High Court from a decision of the Tribunal and the High Court may

- (a) confirm, increase or order the reduction of any assessment or make such other order as it thinks fit; and
- (b) make such order as to cost as it thinks fit.

Clause 23 gives the Comptroller the discretion to suspend the recovery of the levy pending the determination of an objection or appeal.

Clause 24 states *inter alia* that the registered manufacturer shall keep such records or books of account to reflect the time and full nature of the transactions of the business.

Where the Comptroller is of the opinion that records or books are not being kept or not being properly kept he may direct the registered manufacturer to keep records or books and the registered manufacturer shall comply with the direction of the Comptroller.

The records or books of account shall be kept at the principal place of business of the registered manufacturer unless the Comptroller otherwise approves.

Clause 25 provides that for the purpose of administering the Act, the Comptroller may by notice in writing require the registered manufacturer or any other person to submit stated information.

Clause 26 states that the Comptroller may carry out an examination of the business activities of a registered manufacturer. The Comptroller or authorized person may enter premises where the business is carried on, examine records or books of account and inspect any raw material, trading stock or other assets.

The Comptroller may during the course of an examination take possession of any books, accounts or documents for further examination and after examination may retain or make copies of or take extracts from the books or documents.

Clause 27 provides that the levy when due and payable is a debt to the Crown and may be recovered by the Comptroller in civil proceedings notwithstanding that the amount exceeds the normal monetary limit of the jurisdiction of the magistrate.

In proceedings for the recovery of the levy it is not a defence that

- (a) the price of the goods or customs value of the goods is incorrect;
- (b) the levy payable is excessive; or
- (c) the assessment is the subject of objection or appeal.

Clause 28 provides for the recovery of a levy from persons leaving Barbados.

Clause 29 provides for the appointment of an agent.

Clause 30 provides for the indemnity of an agent.

Clause 31 provides that the Minister may remit any levy where he is satisfied it is just to do so, or to give effect to the terms of any agreement or arrangement that is binding on the Crown.

Where a levy remitted under this clause has been paid, it shall be refunded by the Comptroller.

Clause 32 provides for the refund of a levy paid by a person who imports goods that are re-exported. The goods in question are those specified in the First Schedule.

Where on appeal it is found that an importer or registered manufacturer has overpaid an amount of levy, the Comptroller shall refund the excess. A refund made under this clause and clause 32 is a charge on the Consolidated Fund.

Clause 33 provides that the rate of interest on a levy chargeable under the Act and remaining unpaid is 1½ percent.

Clause 34 provides *inter alia* for a penalty to be applied in respect of an unsubmitted quarterly or annual statement or an inaccurate or incorrect quarterly statement.

Clause 35 provides for the offences created under the Act.

Clause 36 provides for offences respecting liability to pay the levy.

Clause 37 makes provision for aiding or abetting an offence.

Clause 38 states that prosecutions may be instituted by the Comptroller.

Clause 39 provides for the commencement of proceedings within a 3 year time limit of the date the offence is committed or within 1 year after the offence comes to the knowledge of the Comptroller.

Clause 40 states that the Minister may make regulations for those matters which are required to be prescribed and also to give effect to the provisions of the Act.

Clause 41 provides for the validation of the environmental levy purportedly paid and collected under the *Environmental Levy Act*, Cap. 70 from the 3rd day of September, 2008 pursuant to the 2008 Budgetary Proposals.

Clause 42 provides for the repeal of the *Environmental Levy Act*, Cap. 70.

Clause 43 provides for the commencement of sections 1 to 40 and 42 of the Act on the 1st day of April, 2010.

FIRST SCHEDULE speaks to the goods that are imported and manufactured in Barbados and the rate of environmental levy that is attached to those goods.

SECOND SCHEDULE states the goods to which no levy shall be charged, whether the goods are imported into or manufactured in Barbados.