

FINANCIAL ADMINISTRATION AND AUDIT (AMENDMENT) BILL, 2019

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A BILL FOR AN ACT TO AMEND THE FINANCIAL ADMINISTRATION AND AUDIT ACT, 2010

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Financial Administration and Audit Act, 2010 (*No. 26 of 2010*) may be cited as the Financial Administration and Audit (Amendment) Act, 2019.
- (2) This Act shall come into force on the 1st day of July, 2019.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended by the deletion of the term “tax legislation” and its corresponding definition.

3. Amendment of section 19I of the principal Act.

Subsection (2A) of section 19I of the principal Act is deleted and substituted as follows —

- “ (2A) Where an applicant for a Tax Compliance Certificate is a company, the Financial Secretary may require any other —
- (a) company with similar shareholding; or
 - (b) business with similar ownership,
- to satisfy its tax obligations under the enactments in Part B of the *Schedule* before issuing a Tax Compliance Certificate to the applicant company, where the Financial Secretary has reasonable cause to believe that the company with similar shareholding or

similar ownership was established to evade the payment of taxes due by the applicant company."

4. Amendment of section 23 of the principal Act.

Section 23 of the principal Act is amended —

- (a) in the headnote, by the deletion of the words "and revenue"; and
- (b) in subsection (1), by the deletion of the words "and no sums due to the consolidated fund shall be remitted without the general or specific authority of the Minister".

5. Insertion of new section 23A into the principal Act.

The principal Act is amended by the insertion immediately after section 23 of the following new section —

“ **23A. Remissions.**

- (1) No sums due to the Consolidated Fund by way of revenue and no other public moneys may be remitted except, in the case of sums —
 - (a) not exceeding twenty thousand dollars, under the written authority of the Minister;
 - (b) exceeding twenty thousand dollars, under the authority of the Cabinet on the recommendation of the Minister,and a detailed statement of the total sums so remitted shall be tabled in the House of Assembly within three months of the date of remission.
- (2) A recommendation by the Minister under subsection (1)(b) shall include a report that contains —
 - (a) a description of the proposed remission including the full value of the remission;
 - (b) the names and addresses of all beneficiaries of the proposed remissions including for a company, the names and addresses of the shareholders;
 - (c) a statement of the reasons the Minister considers the proposed remission to be in the public interest or that a hardship or injustice has or is likely to result;
 - (d) an analysis of the costs and benefits of the proposed remission;
 - (e) the conditions, if any, to which the remission is subject; and
 - (f) a list of the value of all remissions that have been granted to each and every one of the beneficiaries of the proposed remission in the past ten years.

- (3) The Minister or Cabinet, as the case may be, shall only grant a remission if satisfied that to do so is in the public interest or that a hardship or injustice has or is likely to result.”

6. Amendment of section 35A of the principal Act.

Section 35A of the principal Act is repealed and replaced as follows —

“ **35A. Revenue Collectors.**

- (1) The Minister may, after consultation with the revenue and taxing agencies, assign public officers and engage contract workers for specific periods (hereinafter referred to as “revenue collectors”) —
- (a) to investigate all matters related to revenue collection, management, and actual and potential revenue fraud; and
- (b) to focus on the collection of outstanding revenue and taxes, subject to the provisions of any other revenue law.
- (2) Notwithstanding any other law, a revenue collector shall —
- (a) be under the management and administrative control of the Financial Secretary;
- (b) have access to all revenue related information, files and information systems as may be incidental to the performance of their investigative and analytical duties.
- (3) Any agency responsible for the collection and enforcement of government revenue shall cooperate with revenue collectors with respect to investigations undertaken by revenue collectors including but not limited to access to facilities, access to and interaction with officers of the agency, and receipt of actionable information.
- (4) Notwithstanding any other law, any agency in receipt of actionable information from a revenue collector must report to the Financial Secretary within twenty-one days—
- (a) on the status or the outcome of the actionable information; and
- (b) on the final outcome of any actionable information indicating any action taken.
- (5) No request for information in connection with any investigation may be made directly to a person assigned or engaged under this section, except for a lawful request made by —
- (a) the Attorney-General;
- (b) the Director of Public Prosecutions;
- (c) the Royal Bahamas Police Force;

- (d) the Ministry of Public Service or the Public Service Commission;
 - (e) the Department of Internal Audit;
 - (f) the Department of the Auditor-General;
 - (g) any appointed Commission of Inquiry;
 - (h) any committee of Parliament; or
 - (i) any other person required to do so by law.
- (6) For the purposes of this section, "actionable information" means any intelligence, evidence or data that would be provided to an agency by a revenue collector that the revenue collector has reason to believe to represent outstanding revenue, actual or potential revenue fraud, or deficiency in the administration of revenue measures that would require the agency to take action under any prevailing law.”.

OBJECTS AND REASONS

This Bill seeks to amend several provisions in the Financial Administration and Audit Act, 2010 (*No. 26 of 2010*).

Clause 2 of the Bill seeks to delete the definition of tax legislation.

Clause 3 of the Bill seeks to amend section 19I of the principal Act to change the provision from a requirement that all taxes be paid on companies with similar shareholding where a company applies for a Tax Compliance Certificate to a discretionary power of the Financial Secretary to require evidence of tax compliance of other companies and businesses with similar shareholding or ownership before he issues a Tax Compliance Certificate, only where there is reason to believe that the company or business with similar ownership was established to evade the payment of taxes due by the applicant company.

Clause 4 of the Bill seeks to amend section 23 of the principal Act to limit its application to the control of expenditure.

Clause 5 of the Bill seeks to provide for a new section 23A to provide for remissions by either the Minister or the Cabinet in certain circumstances.

Clause 6 of the Bill seeks to repeal and replace section 35A of the principal Act —

- (a) to further empower public officers and engaged contract workers who are assigned by the Minister as revenue collectors to investigate all matters related to revenue collection, management, and actual and potential revenue fraud;

- (b) to give the Financial Secretary management and administrative control over persons who are engaged and assigned pursuant to this provision;
- (c) to require agencies responsible for the collection of government revenue to report to the Financial Secretary within twenty-one days on the status or outcome of any actionable information it has received;
- (d) to prohibit direct requests from any person or entity to a person engaged and assigned pursuant to section 35A, except a request made by the persons specified therein.