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Arrangement of Sections

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No. 22 of 2024

STAMP ACT, 2024

AN ACT TO PROVIDE FOR THE IMPOSITION OF STAMP DUTY; TO REPEAL THE STAMP ACT, 1925 AND FOR CONNECTED MATTERS

[Date of Assent - 26th June, 2024]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Stamp Act, 2024.
- (2) This Act shall come into operation on the 1st day of July, 2024.

2. Interpretation.

- (1) In this Act, unless the context otherwise requires —
 - “**authorised person**” means a person authorised in writing by the Comptroller to act for and on behalf of the Comptroller under this Act;
 - “**Bahamian**” means —
 - (a) a citizen of The Bahamas;
 - (b) a company in which not less than sixty per cent of the shares are beneficially owned by Bahamians;
 - “**beneficial owner**” means any person who is beneficially interested in any property including a beneficiary under a trust irrespective of whether his interest is vested or not and “**beneficially owned**” shall be construed accordingly;
 - “**business**” means a business or any part of a business that is licensed or required to apply for a licence under the Business Licence Act, 2023 (*No. 13 of 2023*) but does not include —

- (a) any business that has an average turnover of less than five hundred thousand dollars for the three years immediately preceding the date of the occurrence of the event that is subject to stamp duty;
- (b) any business falling within a category of business declared by order of the Minister published in the *Gazette* to be exempt from the payment of stamp duty on the sale of that business;

“change in beneficial ownership” in relation to a transfer of property means, the substitution or addition of any one or more persons as the beneficial owner of that property, and includes the transfer of an interest in property from one or more existing beneficial owner to another;

“company” means —

- (a) a company incorporated under the Companies Act (*Ch. 308*) other than a public company as therein defined or any company not for profit within the meaning of section 160 of the Companies Act (*Ch. 308*);
- (b) a company incorporated under the International Business Companies Act (*Ch. 309*);
- (c) a company incorporated under the laws of another jurisdiction; or
- (d) any other legal entity having the capacity to acquire and dispose of property save for a body corporate established by an Act of Parliament;

“Comptroller” has the meaning assigned to it by section 12 of the Value Added Tax Act (*Ch. 370A*);

“consideration” means the price that is payable on the sale of any property or business, or the value of such property or business, whichever is the greater;

“declaration of trust” includes any instrument by which a trust is created;

“executed” and **“execution”** or **“executing”** with reference to an instrument under seal, means “signed” and “signature” or “signing”;

“financial institution” means an institution within the meaning of section 3 of the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*);

“fixed penalty” means a fixed sum that is automatically imposed as an administrative penalty under section 14;

“Foreign currency-denominated debt instruments” means notes, bonds, debentures, or other instruments or certificates of indebtedness or obligation, including contingent indebtedness or obligation —

- (a) denominated in a currency other than Bahamian currency;
- (b) of any maturity whatsoever; and
- (c) offered for issuance outside The Bahamas by a licensed bank in The Bahamas;

“Government” means the Government of the Commonwealth of The Bahamas and includes a ministry, department, statutory body, agency, local government council, or agency, local government council, or other entity of Government;

“Guidelines” means guidelines published by the Comptroller in accordance with section 16, in respect of a matter under this Act involving stamp duty and includes —

- (a) Guidance Notes;
- (b) Recommended Practices and Procedures;
- (c) Practice Directions;

“instrument” means every written or printed or partly written and printed document, including the memorandum mentioned in section 4(2), whether under seal or not;

“land” means any realty or interest in realty situated in The Bahamas; or any share in a landowning company, except for a leasehold interest for a term of less than five years;

“land owning company” means any company that owns land directly or is the parent of any subsidiary company that owns land;

“marketable security” means a security of such a description as to be capable of being sold in any stock market for the time being approved for this purpose by the Minister by notice in the *Gazette*;

“merger” means any merger, consolidation or amalgamation of two or more companies under the Companies Act (*Ch. 308*) or under the International Business Companies Act (*Ch. 309*);

“Minister” means the Minister of Finance;

“mortgage” includes any mortgage, whether legal or equitable; a debenture creating a charge, whether fixed or floating; any promissory note made supplemental to or in connection with any mortgage or charge; and any other charge or incumbrance otherwise than a charge created by statute or arising from any order of a court;

“nominee” includes a trustee, agent or other fiduciary;

“parent” means any company that owns the majority of the issued shares of any class of shares in another company; or any company that ultimately controls another company either directly or through its control of an intervening subsidiary or subsidiaries however many in number;

“party to an instrument” includes any person in whose favour an instrument is executed notwithstanding that that person has not himself executed the instrument; and **“parties”** shall be construed accordingly;

“penalty” means a sum that is payable under this Act in addition to any stamp duty due on an instrument or transaction, and includes a fixed penalty;

“property” includes land and personalty of every description, an interest in any land or personalty and property that is partly in the nature of realty and partly in the nature of personalty;

“related person” has the meaning assigned to it in regulation 7 of the Value Added Tax Regulations, 2014¹;

“rules” means rules issued under section 16(1) by the Comptroller;

“sale” includes the transfer, exchange or other disposition of any property by whatever means for valuable consideration;

“sale of a business” includes —

- (a) the sale, exchange or other transfer or disposition, in whole or in part, of the goodwill or other property comprised in a business, either directly or indirectly, to another person;
- (b) the transfer or issuance of shares in a company that owns the goodwill or other property of that business;
- (c) the sale of an interest in a business;

“sham” means an instrument created for the purposes of evading or otherwise defrauding the Government of any duty payable under this Act;

“share” in a company includes —

- (a) any interest in any share in any company;
- (b) any unitized equity in any company;
- (c) any security that is convertible into shares in any company; and
- (d) any entitlement to participate in the division of profits in the event of the winding-up of any company;

“stamp duty” or **“duty”** means any duty payable under this Act;

¹Sub. Leg., Vol. VI, (Ch. 370A-32).

“**stamped**” means that the instrument referred to is stamped to reflect the required amount of duty and in accordance with the provisions of this Act;

“**subsidiary**” means any company the majority of whose issued shares of any class are owned or controlled by another company;

“**Tax Appeal Commission**” means the Tax Appeal Commission established under section 3 of the Tax Appeal Commission Act, 2020 (*No. 3 of 2020*);

“**taxable person**” means a person liable for the payment of stamp duty, and includes any person whose liability to pay stamp duty under this Act is in question whether or not, an amount is found to be payable;

“**transaction**” includes one or more elements or stages of a transaction or a series of transactions irrespective of whether the parties are uniformly the same in each instance and any reference to the stamping of a transaction means the stamping of the documents effecting or evidencing that transaction or the memorandum of transaction mentioned in section 4(2);

“**turnover**” has the meaning assigned to it, by section 32 of the Business Licence Act, 2023 (*No. 13 of 2023*);

“**value**” means the sum that would be expected to be realised on the sale of any property at the time of the sale in the open market by a willing seller to a willing buyer at market value.

- (2) Any reference in this Act to the “vendor” or “purchaser” of any property or any party to any transaction shall include the respective nominees of such persons.
- (3) References in this Act to any court means a court in The Bahamas of competent jurisdiction.
- (4) The rule of construction that ambiguities in revenue statutes are to be construed in favour of the person liable to pay the duty shall not apply in the interpretation of this Act.
- (5) In the interpretation and application of this Act —
 - (a) substance shall be given priority over form;
 - (b) the applicability of stamp duty to a particular instrument or transaction shall be determined having regard to the entirety of the series of instruments or transactions to which it is connected or related; and
 - (c) the Comptroller shall, in determining the applicability of stamp duty pursuant to paragraph (b) —
 - (i) ignore the internal characterisation of an instrument or transaction that, in the opinion of the Comptroller, does not

- reflect the true commercial reality of such instrument or transaction;
- (ii) ignore the insertion of steps in, or the creation of elements of, transactions that, in the opinion of the Comptroller, are not intended to have commercial efficacy but have been used to provide a pretext for the avoidance of stamp duty.
- (6) For the purpose of this Act —
- (a) a sale of property shall be deemed to have been completed and the sale exigible to stamp duty—
 - (i) where effective enjoyment and control of such property passes to the purchaser; and
 - (ii) notwithstanding the absence or deferral of a conveyance, assignment or other completion documentation;
 - (b) an option to purchase property shall be deemed to have been exercised in full, the purchase completed and the transaction exigible to stamp duty —
 - (i) as from the date that the grantee of the option exercises or enjoys any power, right or benefit of a kind normally exercisable or enjoyable only by a purchaser upon completion of sale; and
 - (ii) notwithstanding that the option to purchase the property has not been formally exercised by the grantee of the option;
 - (c) a sale of property completed in escrow shall be deemed to have been completed, and the sale exigible to stamp duty, on the first anniversary of the escrow unless —
 - (i) the sale was cancelled, and a new agreement for sale of such property has not been executed by the parties, prior to the first anniversary of the escrow;
 - (ii) the sale was completed in accordance with the escrow conditions prior to such first anniversary; or
 - (iii) upon application by a party to the agreement for sale, the Comptroller is satisfied after due inquiry that the purpose of continuing the escrow is not to delay or avoid the payment of stamp duty.
- (7) Without prejudice to any applicable exemption under the *Second Schedule* —
- (a) stamp duty payable under this Act on the sale of a business shall also apply to a sale of the business of a public company;
 - (b) a sale or purchase of property by a public company shall be exigible to stamp duty to the same extent as the sale or purchase of property by a private company;

- (c) the sale of the controlling interest in, or the book of business of, an insurance company or bank and or trust company incorporated under the laws of, and doing business in, The Bahamas shall be exigible to stamp duty in accordance with Item 2 of the *First Schedule*.
- (8) Notwithstanding any of the provisions of the Exempted Limited Partnership Act (*Ch. 312*), an exempted limited partnership, notwithstanding when it was established, shall be treated for all purposes of this Act as if it were a company incorporated under the International Business Companies Act (*Ch. 309*).
- (9) Notwithstanding Item 16 of the *Second Schedule*, a transfer by the personal representative of personalty comprised in the estate of a deceased person shall be exigible to stamp duty to the same extent as an ordinary conveyance of or personalty, where the transfer is made at the direction, or with the concurrence, of the person beneficially entitled to the personalty.

PART II – IMPOSITION AND LIABILITY FOR PAYMENT OF STAMP DUTY

3. Imposition of stamp duty.

- (1) Subject to the exemptions contained in the *Second Schedule* to this Act there shall be raised, levied, collected and paid in respect of the several instruments or transactions specified in the *First Schedule*, the several duties specified in the *First Schedule*.
- (2) Every instrument or transaction shall, notwithstanding the date of execution, be chargeable with *ad valorem* duty at the rate in the force at the time such instrument or transaction is presented to the Comptroller for stamping.
- (3) Stamp duty is not chargeable on the instruments and transactions specified in the *Second Schedule*, subject to such conditions and restrictions prescribed in rules.
- (4) An instrument or transaction that is exempt from stamp duty under the *Second Schedule* shall not be required to be presented to the Comptroller for stamping unless such instrument or transaction relates to the assignment, sale, transfer or other disposition of any property or business.

4. Liability of party to pay stamp duty.

- (1) Except as in this Act otherwise provided, liability to pay stamp duty and to submit the instrument evidencing any transaction for stamping, falls

jointly and severally on every party to any instrument or transaction required by this Act or any other Act to be stamped.

- (2) Where any transaction chargeable for stamp duty under this Act is not contained in or evidenced by any instrument, or where the parties to the transaction have determined in good faith, that the instrument evidencing the transaction is not in a form suitable to be stamped, it shall be the joint and several obligation of the parties to the transaction to execute a memorandum of transaction, setting out the consideration and all other facts and circumstances affecting the stamp duty chargeable in respect of the transaction.
- (3) The Comptroller shall, upon receipt of the duty payable on the transaction, stamp the memorandum denoting the receipt and thereupon the said transaction shall be deemed duly stamped subject to the provisions of this Act relating to surcharges and additional duty should the same be applicable.

5. Financial institution must file reports and submit records.

- (1) A financial institution shall within thirty days after the end of each calendar month —
 - (a) file in the form prescribed by the Comptroller a report on the stamp duty collected by such institution during the calendar month; and
 - (b) pay to the Comptroller the stamp duty collected during the calendar month.
- (2) A financial institution which fails within the time prescribed in subsection (1) to file a report, shall pay a late filing fee of one thousand dollars.
- (3) The Comptroller may, in order to determine the extent of the liability to stamp duty of a financial institution, or a particular instrument or transaction, require such institution to submit for the review of the Comptroller records in such form as the Comptroller may require relating or connected to the institution, instrument or transaction.
- (4) Without prejudice to the generality of subsection (3), the Comptroller may require a financial institution to submit on such regular basis and in such form as the Comptroller may require —
 - (a) records relating to transactions falling within Items 14 to 17 of the *First Schedule*; and
 - (b) a certificate attesting to the institution's total stamp duty liability based on its audited financial statements.
- (5) A financial institution shall, within thirty days of receipt of a written request from the Comptroller pursuant to paragraph (4), submit the records to the Comptroller in the form requested.

- (6) The Comptroller may impose on a financial institution which fails to submit records within the time prescribed in subsection (5), a fixed penalty of one thousand dollars for each day, or part of a day, during which the failure continues.
- (7) For the purposes of this section, “**a financial institution**” is an institution within the meaning of section 3 of the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*).

6. Stamping by the Comptroller.

- (1) Except as otherwise provided by this Act, an instrument or transaction required by this Act or any other Act to be stamped shall be submitted to the Comptroller for assessment and collection of stamp duty within six months of—
 - (a) the date of execution of the instrument; or
 - (b) the date that the transaction is deemed to have been completed, whichever is earlier.
- (2) The Comptroller may request—
 - (a) the applicant to produce any information, documents or records; and
 - (b) a sworn declaration, setting out the consideration and all facts and circumstances,

relevant to the charging of stamp duty on any instrument submitted for stamping under subsection (1) or the transaction to which the instrument relates.
- (3) A person on whose behalf an instrument is presented for stamping, shall, when requested by the Comptroller, produce any information, records, declaration or other documents requested by the Comptroller under subsection (2).
- (4) Any instrument submitted to the Comptroller for stamping, shall not be stamped, unless the total amount of the duty assessed is paid.
- (5) Subject to section 5, where the stamp duty payable in respect of any instrument or transaction specified in the *First Schedule*, exceeds the sum of ten dollars, such duty shall be denoted by the Comptroller on the instrument submitted for stamping by means of a stamp and issuance of a secure receipt in the manner determined by the Comptroller.

7. Surcharge for stamping after execution.

- (1) The parties to a transaction or instrument shall be liable to pay a surcharge of ten per centum of the unpaid stamp duty where the parties—

- (a) fail to submit the instrument to the Comptroller, within the time prescribed in this Act;
 - (b) fail to pay, or makes a late payment of the duty due and payable on the instrument or transaction.
- (2) Except where express provision to the contrary is made by this or any other Act, any unstamped or insufficiently stamped instrument may be duly stamped by the Comptroller after its execution on payment to the Comptroller of the unpaid duty and surcharge.
- (3) Whenever it is made to appear to the satisfaction of the Comptroller by declaration or otherwise, that the omission duly to stamp any instrument or transaction has not been wilful or with an intent to defraud, the Comptroller may remit the whole or any part of the surcharge payable on stamping the instrument or transaction.
- (4) Where an instrument or transaction has been duly stamped but additional stamp duty becomes payable thereon by virtue of any event or circumstance occurring subsequent to the original stamping, the instrument or transaction shall not be deemed duly stamped until such additional stamp duty has been paid together with a surcharge of ten percent of the unpaid duty.
- (5) Where a surcharge is due and payable under this Act, the surcharge is recoverable as if it were stamp duty due and payable under this section.

8. Postage stamps may only be used for nominal duty.

- (1) The Postmaster General shall have the custody, management and control of postage stamps.
- (2) The Postmaster General, officers in charge of branch post offices, district postmasters, Family Island Administrators and any other persons as may from time to time, be licensed by the Minister shall be authorised vendors of postage stamps.
- (3) The Postmaster General shall, from time to time, upon the requisition of officers in charge of branch post offices, district postmasters or Family Island Administrators, issue postage stamps to them and take their receipts for the issued postage stamps.
- (4) Subject to the rules, the Postmaster General shall from time to time, sell postage stamps to persons licensed as authorised vendors under subsection (2).
- (5) The Postmaster General, officers in charge of branch post offices, district postmasters and Family Island Administrators shall keep books in which transactions relating to the receipt and sale of postage stamps and to the prepayment of postage in the case of postage meter machines, shall be duly entered and such books shall be duly audited.

- (6) All sums received by district postmasters, officers in charge of branch post offices and Family Island Administrators for the sale of postage stamps shall be paid to the Postmaster General and all such sums, together with sums received for the sale of postage stamps and for the prepayment of postage in the case of postage meter machines at the main post office in Nassau, shall be paid by the Postmaster General to the Treasury.
- (7) A postage stamp —
 - (a) may only be used for the stamping of instruments subject to a nominal duty of ten dollars or less;
 - (b) shall be cancelled at the time of execution —
 - (i) by a witness to the instrument, or the drawer or preparer of the instrument writing or otherwise indelibly marking on or across the postage stamp, his name or initials, the name or initials of his firm, or the name or initials of the person for whom he is acting;
 - (ii) to make the postage stamp incapable of being used for any other instrument; and,
 - (c) shall be marked by the person who cancelled the postage stamp, with the date that it was cancelled.

9. Spoiled stamps.

- (1) Where after an instrument is stamped, but before it is used or recorded —
 - (a) the postage stamp affixed to the instrument is destroyed or spoiled;
 - (b) the instrument is lost or destroyed; or
 - (c) the parties request the transfer of the stamp duty due to an error in the instrument or otherwise,

the Comptroller may transfer the stamp to another instrument relating to the same transaction upon proof being given to the Comptroller's satisfaction by declaration or otherwise of the matters outlined in this subsection.
- (2) Where the Comptroller transfers a stamp under subsection (1) —
 - (a) the original instrument shall be produced to the Comptroller, except where the circumstances in subsection (1)(b) apply;
 - (b) the Comptroller shall cancel and make void the stamp on the original instrument; and
 - (c) the value of the stamp on the original instrument is to be transferred to the new instrument.
- (3) Where an instrument has been over-stamped, the Comptroller may cancel and make void and allow the value of the excess amount, on proof being

given to his satisfaction by declaration or otherwise of the document having been so over-stamped.

- (4) A public officer shall not be liable for the value of any stamps casually destroyed or spoiled while in his custody upon his producing satisfactory proof as aforesaid.
- (5) Every spoiled stamp shall be produced and given up to the Comptroller.

PART III – ADMINISTRATION OF THIS ACT

10. Comptroller responsible for the administration and enforcement of Act.

- (1) The Comptroller shall have responsibility for the administration and enforcement of this Act.
- (2) Subject to this Act, the powers, functions and duties of the Comptroller are to —
 - (a) ensure the effective and efficient assessment and collection of stamp duty in accordance with the provisions of this Act;
 - (b) prepare a national framework for the levy and collection of stamp duty, including administrative procedures, standards and protocols;
 - (c) advise the Minister on the information technology systems, personnel, skills and other resources required to ensure the optimal functioning in relation to stamp duty administration and enforcement;
 - (d) make decisions or determinations whether or not —
 - (i) a person is liable to pay stamp duty;
 - (ii) the payment of a transaction is subject to stamp duty;
 - (iii) an instrument or transaction is subject to *ad valorem* duty or exempt;
 - (iv) an instrument or transaction has been insufficiently stamped, sufficiently stamped or over-stamped;
 - (v) the correct amount of duty has been paid on an instrument or transaction;
 - (e) process claims for refund and decide whether a claim is allowable and the amount, if any allowed on the claim;
 - (f) withdraw or amend a decision, determination, or notice, made or issued by the Comptroller;
 - (g) advise the Minister on the level of fees to be set in relation to applications and forms made or required, and services performed by under or pursuant to this Act;
 - (h) coordinate, supervise and give advice on matters related to training

- for staff;
- (i) supervise the operations under or pursuant to this Act including the performance of staff;
- (j) annually review the performance of the Department of Inland Revenue and make changes to administrative procedures, standards and protocols as may be necessary or desirable to enhance performance in the administration and enforcement of this Act.
- (3) Notwithstanding any provision to the contrary contained in the Data Protection (Privacy of Personal Information) Act (*Ch. 324A*) —
 - (a) the Comptroller may, in the exercise of his functions and powers under subsection (2), request in writing from any a ministry, department, statutory body, agency, local government council, or other entity of Government, the documents and information as the Comptroller considers to be necessary or desirable to facilitate the administration and enforcement of this Act; and
 - (b) a ministry, department, statutory body, agency, local government council, or other entity of Government receiving a request by the Comptroller must provide the documents and information contained in the request to the Comptroller.

11. Delegation of functions and powers of the Comptroller.

- (1) The functions and powers of the Comptroller are exercisable and may be performed by officers of the Department of Inland Revenue or an authorised person.
- (2) An officer of the Department of Inland Revenue or authorised person must not, in the exercise of or in connection with his functions, powers and duties under this Act —
 - (a) directly or indirectly ask for, or take —
 - (i) a payment or reward, pecuniary or otherwise, which is not a payment or reward which such officer or authorised person is lawfully entitled to receive;
 - (ii) a promise or security for a payment or reward referred to in sub-paragraph (i);
 - (b) enter into, or acquiesce in, an agreement to do, abstain from doing, permit, conceal, or connive at any act or thing —
 - (i) whereby the stamp duty revenue is or may be defrauded; or
 - (ii) which is contrary to the provisions of this Act and the regulations or to the proper exercise of the duty of the officer or authorised person.

12. Power of Comptroller to prescribe forms and procedures.

- (1) Where no forms have been otherwise specifically prescribed by the rules, the Comptroller may from time to time prescribe forms and procedures by rules, to be published on the official website of the Department of Inland Revenue, including in electronic formats, for the purpose of the administration of this Act.
- (2) The production by the Comptroller of any document purporting to be a form prescribed by the Comptroller, or a copy of or extract from a prescribed form, shall in all Courts and in all proceedings, including proceedings before the Tax Appeal Commission, be sufficient evidence of the fact that the form or electronic format was prescribed by the Comptroller.
- (3) For the purposes of this section, “**form**” includes a letter, notice, application, declaration, or any other document.

13. Minister may give policy directions.

- (1) Subject to subsection (2), the Minister may give the Comptroller directions of a general character as to the policy the Minister considers to be necessary in the public interest to be followed by the Comptroller in the exercise and discharge of the Comptroller’s powers, functions and duties under this Act.
- (2) The Minister may not —
 - (a) intervene in matters relating to the day-to-day administration and collection of stamp duty or implementation of stamp duty policy;
 - (b) participate in the making of, or influence, any decision by the Comptroller concerning the —
 - (i) affairs of a particular taxable person;
 - (ii) enforcement of this Act in relation to a particular taxable person; or
 - (c) access, except by written request made to the Comptroller, information regarding the income, business or affairs of a particular taxable person.

14. Fixed penalty.

- (1) The Comptroller may impose fixed penalties for the contraventions set out in the *Fourth Schedule*.
- (2) The contraventions set out in the first column of the *Fourth Schedule*, are subject to the fixed penalties set out in the third column of the *Fourth Schedule*.

- (3) The fixed penalty may, be automatically applied by the Comptroller upon commission of a prescribed contravention by a person and thereupon the fixed penalty shall become immediately due and payable by the person.
- (4) Where the Comptroller applies the fixed penalty, the Comptroller may publish in the manner he deems appropriate a statement of the contravention or non-compliance in respect of which the fixed penalty is imposed.
- (5) Where a fixed penalty is due and payable under this Act, the fixed penalty is recoverable as if it were stamp duty due and payable under this section.
- (6) Notwithstanding the imposition of a fixed penalty under this section, a person may, where applicable, be liable to prosecution.
- (7) A person aggrieved by the decision of the Comptroller to apply the fixed penalty under this section may appeal the decision to the Tax Appeal Commission.

15. Procedure for the imposition of a fixed penalty.

The Comptroller may, subject to the rules, in determining the amount of a fixed penalty to be imposed on a person who has committed a contravention or non-compliance, take into account the —

- (a) degree of intention or negligence on the part of the person;
- (b) harm done by the contravention or non-compliance;
- (c) history of the person having regard to the imposition of any prior fixed penalty, or conviction for an offence under the Act, within the five-year period immediately before the contravention or non-compliance;
- (d) whether the person brought the contravention or non-compliance to the attention of the Comptroller;
- (e) whether or not the contravention or non-compliance was inadvertent;
- (f) efforts, if any, made to rectify the contravention or non-compliance and to prevent a recurrence;
- (g) potential financial consequences to the person, and to third parties including customers and creditors of the person, of imposing a fixed penalty; and
- (h) the amount of the penalties imposed by the Comptroller in other same or similar cases.

16. Power of Comptroller to make rules and publish Guidelines.

- (1) The Comptroller may, in performing his functions and duties in carrying out the administration of this Act, make rules providing for all matters as

that may be necessary or expedient for giving effect to his functions and duties and to the intent and purposes of this Act.

- (2) Every rule shall —
 - (a) have the force of law and shall be effective on the date published in the *Gazette*, or such any other date as may be specified in the Rules; and
 - (b) be subject to any regulations made under this Act and, where a conflict arises between any regulation and any rule made under this Act, the regulation made by the Minister shall prevail.
- (3) The Comptroller may from time to time, publish Guidelines on the official website of the Department of Inland Revenue, in order to clarify, explain, illustrate, or illuminate any procedure, process, or matter in respect of the administration and enforcement of this Act, and any regulations and rules made under this Act.
- (4) Guidelines shall not have the force of law and shall not be inconsistent with any regulations published under this Act.

17. Advance stamp duty ruling.

- (1) The Comptroller may, on application by a person in the prescribed form, issue an advance stamp duty ruling in respect of a matter involving the liability of a person to pay stamp duty on an instrument or transaction.
- (2) An advance stamp duty ruling shall not be provided —
 - (a) where the applicant has not provided all the information determined by the Comptroller to be necessary;
 - (b) where the Comptroller is of the opinion that there are no genuine points of uncertainty;
 - (c) where the applicant is asking the Comptroller to give tax planning advice;
 - (d) where the request relates to transactions which, in the Comptroller's view, are for the purposes of avoiding tax stamp duty; or
 - (e) in any other circumstances outlined by the Comptroller in rules.
- (3) Subject to subsection (4), an advance stamp duty ruling by the Comptroller takes effect in respect of the specific instrument or transaction to which the ruling relates and is valid for the period specified in the ruling.
- (4) An advance stamp duty ruling issued by the Comptroller on the basis of false, misleading or incorrect information provided in the application for the ruling, shall be void.

PART IV – PROVISIONS APPLICABLE TO INSTRUMENTS GENERALLY

18. Facts affecting duty to be set out in an instrument.

The consideration and all other facts and circumstances affecting the stamp duty chargeable in respect of any instrument or transaction shall be fully and set out in the instrument or, where the circumstances set out in section 4(2) apply, in a memorandum of the transaction.

19. Documents may not be recorded until duty paid to the Comptroller.

- (1) The Registrar General shall not receive for record nor enter in any of the books of record in his office, any instrument which he is required by any Act to enter or record, and which is required to be stamped by any Act, unless he confirms that the duty exigible in respect of the transaction to which such instrument relates has been paid in full to the Comptroller.
- (2) The Comptroller shall determine the required procedures to confirm to the Registrar General, that duty has been paid on an instrument.
- (3) The procedures specified in subsection (2) shall be prescribed by rules.

20. Payment of stamp duty on a condition of permission or approval under the Exchange Control Regulations Act.

- (1) Where any permission or approval is granted or issued under the Exchange Control Regulations Act (*Ch. 360*) in respect of the acquisition or the sale of any business it shall be a condition of the permission, permit or approval, whether expressed therein or not, that in the event that the applicable stamp duty on the instrument or transaction to which the permission, permit or approval relates remains unpaid for a period of six months from the time when the stamp duty became due, the permission, permit or approval shall be deemed to be rescinded from the expiration of the period of six months.
- (2) Subsection (1) shall not operate so as to prejudice any *bona fide* purchaser for value who may have acquired the business without actual or constructive notice that any relevant permission, permit or approval has been rescinded by reason of the non-payment of any applicable stamp duty.
- (3) Any permission, permit or approval rescinded under this section, shall automatically be re-instated with effect from the date of rescission upon payment of the unpaid stamp duty and any applicable surcharge.

21. Unstamped instruments not to be given in evidence.

No instrument which is required by any Act to be stamped shall be pleaded or given in evidence in any court, unless the said instrument shall be duly stamped and in the case of postage stamps, the stamps thereon cancelled, except as provided in section 22 of this Act.

22. Production in evidence of unstamped instrument.

- (1) Upon the production in evidence in any court of any instrument required by this Act to be stamped which is not duly stamped, the judge or magistrate may request information from the Comptroller with respect to the stamp duty due, for the stamping of the instrument.
- (2) On payment of the stamp duty into the court by the party producing such instrument, the said instrument shall be admissible in evidence.
- (3) Upon payment to the court of the stamp duty due on the instrument, the judge or magistrate shall give a receipt for the amount of the stamp duty.
- (4) The Comptroller shall, upon the production to him of a receipt for the payment of stamp duty under subsection (3), cause the instrument to be stamped in the amount of the stamp duty paid.
- (5) The court shall, as soon as practicable, pay the stamp duty to the Comptroller.
- (6) The decision of the Comptroller as to the necessity for the stamping of any instrument or as to the amount payable as stamp duty thereon shall be final.
- (7) No instrument shall in any criminal proceeding be inadmissible in evidence for want of a stamp by the Comptroller.

PART V – BUSINESS TRANSACTIONS

23. Sale of business.

- (1) Every transaction comprising the sale of any business, to the extent that the sale may involve the transfer of any land or any share in a landowning company, shall be subject to tax under the Value Added Tax Act (*Ch. 370A*).
- (2) Every transaction comprising the sale of any business, to the extent that the sale may involve the transfer of any property other than land, save for cash or monies on deposit in any bank, shall be chargeable for stamp duty at the rate specified in that behalf in the *First Schedule*.

- (3) For the avoidance of doubt, the stamp duty payable in respect of the sale of a business, shall be the price payable on the sale or the value of the business, whichever is higher.
- (4) For the purposes of subsection (3), “**value**” means —
 - (a) the market value on the date when the instrument is presented for stamping; or
 - (b) where not more than six months have elapsed between the execution of the instrument and its presentation for stamping, the market value on the date when the instrument was executed.
- (5) Subject to any rules, in determining the market value of any business, or interest in any business, the Comptroller may —
 - (a) accept the gross value of the assets the business reported for financial accounting purposes less cash, monies in deposit accounts and any other asset determined by the Comptroller to be properly excluded under this Act;
 - (b) require the parties to an instrument or transaction, or any one of such parties, to obtain an appraisal of the business.
- (6) The cost of an appraisal pursuant to subsection (5)(b) shall be borne by the parties to the instrument or transaction or any one of them, and the Comptroller shall not deduct such cost from any stamp duty payable by the parties.
- (7) The Comptroller may, in his discretion, accept or reject an appraisal obtained pursuant to subsection (5)(b).
- (8) The Comptroller may make rules to determine the market value of any business or interest in any business.

24. Mergers.

- (1) Notwithstanding anything contained in the Companies Act (*Ch. 308*) or the International Business Companies Act (*Ch. 309*), a merger of two or more companies shall in respect of any land or business that automatically vests in any surviving company in the merger, be chargeable for stamp duty in the same amount that would have been payable if that land or business had been transferred directly to the surviving company by one or more of the other companies in the merger.
- (2) No Articles of Merger relating to a merger that is chargeable for stamp duty under subsection (1), shall be accepted for record by the Registrar of Companies, unless the Articles of Merger are duly stamped pursuant to the requirements of this Act.

25. Corporate and trust transactions.

The following transactions shall be chargeable for stamp duty in like manner as a direct transfer or sale of a business if entered into for the purpose of effecting a direct or indirect change in the beneficial ownership of any business —

- (a) the allotment or issuance to any person or his nominee of any shares of any class in any company such that the person to whom the shares are issued or his nominee thereby becomes entitled to voting rights, dividends, or the surplus assets of the company in place of any person who previously enjoyed those rights;
- (b) the variation of the rights of shareholders of a company so that the person in whose favour such rights are varied becomes entitled to dividends or the surplus assets of the company in substitution for or to the exclusion of the other shareholders;
- (c) the admission to membership of any person in a company limited by guarantee whether having a share capital or not so that he becomes entitled to dividends or the surplus assets of the company in substitution for or to the exclusion of the other members;
- (d) any declaration of trust under which the present owner of a business declares himself a trustee of that business for another person;
- (e) any purchase by a company of its own shares, any redemption or cancellation of shares, any retention of shares as treasury shares, any conversion or exchange of shares into, or for, shares or other property of any class or description, or any other action of whatsoever nature that effects or facilitates any direct or indirect increase in the overall proportions of any person's shareholdings or effective equity in a company;
- (f) the addition of any person to the beneficial class of a trust and the contemporaneous or subsequent removal or exclusion of the other beneficiaries of the trust so that the only person who remains beneficially interested under the trust is the person so added;
- (g) any other transaction under or in relation to any trust or company resulting in any person indirectly acquiring or succeeding to the beneficial ownership of any business or any part thereof unless the transaction is exempted from stamp duty under any other provision of this Act.

26. Dividends-in-specie.

- (1) Subject to paragraph (2), a dividend-in-specie, or other transfer or vesting of the beneficial interest in property by a company to or in any of its members, shall constitute a change in beneficial ownership and accordingly shall be subject to stamp duty in the same manner as if such

change in beneficial ownership had occurred in favour of a person who was not a member of the company.

- (2) A dividend-in-specie, or other transfer or vesting of the beneficial interest in property by a company to a person who alone beneficially owns ninety-five per cent or more of the shares of the company shall only constitute a change in beneficial ownership to the extent of the proportion of the company's shares that are not beneficially owned by such person.
- (3) For the avoidance of doubt, subsection (2) does not include persons who separately own shares in a company which cumulatively amount to ninety-five per cent of the issued shares of the company.
- (4) This section shall apply whether the dividend-in-specie or other transfer or vesting of the beneficial interest in property occurs in the course of the winding-up of a company or otherwise.

27. Associated entities dealing with the sale of a business.

- (1) Where the sale of any business in The Bahamas is effected by the sale of shares or other equity by or in any privately-held parent of a company incorporated or registered under the Companies Act (*Ch. 308*) or the International Business Companies Act (*Ch. 309*), the sale shall be treated in the same manner as if the business had been sold directly in The Bahamas and accordingly shall, as to property other than land, be exigible to duty.
- (2) The amount owing in duty in respect of a sale described in subsection (1) shall, until the duty is paid, constitute a lien on the business which shall be enforceable at law against the assets comprised in the business.
- (3) The reference in subsection (1) to the sale of any business in The Bahamas shall include the sale of the controlling interest in such business.

PART VI – ASSESSMENTS

28. Powers of Comptroller relating to assessments.

- (1) The Comptroller may, at any time, make, or cause to be made, an assessment of the stamp duty chargeable on any executed instrument or transaction.
- (2) A fixed penalty may be assessed together with the amount of duty to which the fixed penalty relates.
- (3) The Comptroller may require the production of —
 - (a) the instrument referred to in subsection (1); or
 - (b) a memorandum of transaction as described in section 4(2); and

- (c) all other documents he may deem necessary, in order to satisfy himself whether all the facts and circumstances affecting the liability of the instrument or transaction to stamp duty, or the amount of the stamp duty chargeable thereon, are fully and truly disclosed.
- (4) An assessment by the Comptroller under this section, shall be based on the information available to the Comptroller and is the Comptroller's reasonable estimate of the stamp duty properly due and payable by the person assessed.
- (5) The Comptroller shall, where he makes an assessment under this section, serve a notice of assessment as shown in the *Third Schedule* on the person assessed specifying the —
 - (a) amount of duty payable by the person assessed;
 - (b) time, place, and manner of appealing the assessment.
- (6) The following provisions shall have effect with respect to the foregoing provisions of this section —
 - (a) an instrument for which the stamp duty has been assessed by the Comptroller shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment; and
 - (b) nothing in this section shall authorise the stamping after execution of any instrument which by law cannot be stamped after execution.
- (7) The Comptroller may, within three years after service of a notice of assessment, issued under this section —
 - (a) amend the assessment as the Comptroller considers necessary; and
 - (b) serve a written notice as prescribed of the amended assessment on the person assessed.
- (8) For the purposes of this Act, “assessment” includes an amended assessment.

29. Assessment as evidence in proceedings.

- (1) The original, or a copy certified by the Comptroller, of a notice of assessment is receivable in any proceedings as conclusive evidence that —
 - (a) the assessment is a true assessment duly made; and
 - (b) except in appeal proceedings before the Tax Appeal Commission, the amount and all particulars in the notice are correct.
- (2) A notice of assessment or other document purported to be made, issued, or executed under this Act shall not be quashed, or deemed to be void or voidable, for want of form or by reason of mistake, defect or omission where —

- (a) the assessment or other document is in substance and effect in conformity with this Act; and
- (b) the person assessed or intended to be assessed, or affected by the document, is identified in the assessment or document.

30. Mode of calculating *ad valorem* duty in certain cases.

- (1) Where an instrument is chargeable with *ad valorem* duty in respect of —
 - (a) any money in any foreign currency; or
 - (b) any stock or marketable security,the stamp duty shall be calculated on the value, on the day of the date of the instrument, of the money in Bahamian currency according to the current rate of exchange, or of the stock or security according to the average price thereof.
- (2) Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with that statement, it shall, so far as regards the subject matter of the statement, be deemed to be duly stamped unless or until it is shown that the statement is untrue and that the instrument is in fact insufficiently stamped.

31. How *ad valorem* duty to be calculated in respect of stock and securities.

- (1) Where the consideration, or any part of the consideration, for a conveyance, assignment or transfer, (in this section referred to as a “conveyance”), consists of any stock or marketable security, the conveyance shall be charged with *ad valorem* duty in respect of the value of the stock or security.
- (2) Where the consideration, or any part of the consideration, for a conveyance consists of any security not being a marketable security, the conveyance shall be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest upon the security.

32. Instruments to be separately charged with duty in certain circumstances.

Except where express provision to the contrary is made by this or any other Act

- (a) an instrument containing or relating to several distinct matters shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the matters;

- (b) an instrument made for any consideration in respect of which it is chargeable with *ad valorem* duty, and also for any other valuable consideration, shall be separately charged, as if it were a separate instrument, with duty in respect of each of the considerations.

33. Where several instruments, only one charged with *ad valorem* duty.

- (1) Where a loan is secured by a mortgage and several instruments form part of the collateral executed as security —
 - (a) only one instrument shall be chargeable with the *ad valorem* duty;
 - (b) each additional instrument forming part of the collateral as aforesaid, being supplemental to the mortgage, shall not be subject to stamp duty.
- (2) Subsection (1) only applies where —
 - (a) the entire amount of the loan is secured by the instrument to be stamped with *ad valorem* duty; and
 - (b) all the instruments that form a part of the collateral to secure the loan are submitted simultaneously for stamping.

34. Extraterritorial nature of transaction.

Where any instrument is chargeable with an *ad valorem* duty in respect of any consideration expressed in any foreign currency, the duty shall be calculated upon the value of the currency as fixed by law at the time of the execution of the instrument.

35. Stamp duty on foreign currency.

No transaction occurring outside The Bahamas, and no instrument executed or delivered outside The Bahamas, shall by virtue of that circumstance be exempt from any stamp duty that would otherwise be chargeable upon the transaction or instrument had it occurred or had been executed, as the case may be, within The Bahamas.

PART VII – INVESTIGATORY POWERS AND ENFORCEMENT

36. Investigatory powers of the Comptroller.

- (1) The Comptroller may, for purposes of the administration and enforcement of this Act, by notice in writing in the prescribed form require any person to —

- (a) furnish such information, documents and other records as the Comptroller specifies in the notice concerning himself or any other person the Comptroller considers may be liable to duty;
 - (b) attend at such time and place as the Comptroller specifies in the notice to be examined on oath before the Comptroller concerning matters in relation to stamp duty concerning himself or any other person;
 - (c) for the purposes of paragraph (b), produce any record or computer in his custody or control that the Comptroller may require him to produce; and
 - (d) provide the Comptroller with access to the premises where a business is carried on by him, or books of account are kept in respect of the business,
in order to —
 - (i) examine the records or books of account, or any other documents, that relate to the business;
 - (ii) inspect any raw materials, trading stock, or other assets;
 - (iii) inspect the processes used by him, including the methods adopted in recording sales or other transactions.
- (2) A person carrying on a business or an employee or agent of a person carrying on a business must, where a notice requiring access to premises pursuant to paragraph (d) of subsection (1) is received, give the Comptroller —
- (a) reasonable assistance in connection with the examination or inspection as the Comptroller may require; and
 - (b) answers, orally or in writing, as the Comptroller may require, to any questions relating to the examination or inspection.
- (3) A notice pursuant to paragraph (c) of subsection (1) is adequate and sufficient where the record or computer to be produced is described in the notice with reasonable certainty.
- (4) The Comptroller may, where during an examination or inspection it appears that there has not been a correct disclosure of liability to stamp duty —
- (a) take possession of books of account, or other documents or computer records, for further examination; and
 - (b) after the examination referred to in paragraph (a), retain or make copies of, or take extracts from, the books, documents, or computer records for any of the purposes of this Act.

- (5) Without prejudice to the generality of the Comptroller's powers under subsection (1), the Comptroller may by notice in writing as prescribed require a bank or other financial institution —
- (a) to furnish the Comptroller with —
 - (i) details of any banking account or other assets that may be held by or on behalf of a taxable person or related person;
 - (ii) a copy of bank statements or statement of assets of any banking account or other asset referred to in sub-paragraph (i);
 - (b) to permit the Comptroller, officer of the Department of Inland Revenue or authorised person authorised in writing by the Comptroller for such purpose, to inspect the records of the bank or other financial institution in relation to the banking account of a taxable person or related person; and
 - (c) to attend, by an officer or authorised person of the bank or other financial institution, before the Comptroller to give evidence in respect of bank accounts or other assets that may be held by the bank or financial institution on behalf of a taxable person or related person.
- (6) Subsection (5) has effect notwithstanding any other law to the contrary relating to privilege, public interest, bank confidentiality, or bank secrecy.
- (7) No person must use information furnished, or records or documents produced under this section, for a purpose other than that for which they were furnished or produced.
- (8) No person must —
- (a) contravene or fail to comply with a provision of this section; or
 - (b) prevent, impede or interfere in any way with the Comptroller in the lawful exercise of a power under this section.

37. Comptroller's powers of entry and seizure.

- (1) Where the Comptroller or any officer of the Department of Inland Revenue has reasonable grounds to believe that an offence under this Act is being or is about to be committed, or that evidence of the commission of such an offence is to be found, on any premises, the Comptroller or officer may apply to the court for a warrant authorising the officer to —
- (a) at any time and without prior notice, enter such premises or place where records are kept and search for records relating to any offence under this Act;
 - (b) pursuant to a search under paragraph (a), in any manner open and remove or cause to be opened or removed any article in which the officer suspects that records are kept;

- (c) seize any records that, in the opinion of the officer, may provide evidence material in determining the liability of any person to pay stamp duty under this or any other Act;
 - (d) retain records seized pursuant to paragraph (c) for as long as may be required —
 - (i) to determine a person's liability to pay tax under this Act; or
 - (ii) for any proceeding under this Act;
 - (e) examine and make extracts from, and copies of, any records and require from any person an explanation of entries in such records; and
 - (f) seize and retain a computer in which information is stored for as long as is reasonable to copy the information required.
- (2) An officer of the Department of Inland Revenue or authorised person exercising a power under subsection (1) must not enter or remain on or at any premises or place where, on being requested by the occupier of such premises or place, the officer is unable to or fails to produce the warrant referred to in subsection (1).
- (3) The owner, manager, or any occupier lawfully on or at a premises or place entered or proposed to be entered by an officer of the Department of Inland Revenue or authorised person under this section, must provide reasonable facilities and assistance for the effective exercise of the power by the officer.
- (4) A person whose records or computer have been removed and retained pursuant to the exercise of a power under subsection (1) may, during regular office hours and under such supervision as the officer may determine, examine and make copies or extracts from such records or computer.
- (5) An officer of the Department of Inland Revenue may, in exercising a power under subsection (1), request the assistance of a Customs officer or police officer and such Customs officer or police officer must render such assistance as the officer of the Department of Inland Revenue may reasonably require.
- (6) A warrant issued under this section remains in force for one month and an application for a warrant must be made in the form and manner prescribed in regulations.
- (7) No person must —
- (a) contravene or fail to comply with a provision of this section; or
 - (b) prevent, impede or interfere in any way with an officer of the Department of Inland Revenue in the lawful exercise of a power under this section.

38. Comptroller may request security.

- (1) The Comptroller may, where the Comptroller considers it reasonable to do so for the protection of Government revenues, issue a notice in writing in the prescribed form requiring a person to give security for the payment of stamp duty that is, or may become, payable by such person.
- (2) Security required under subsection (1) must be in the amount, form, and furnished within the time period, specified by the Comptroller in the notice.
- (3) The Comptroller must, where a security is in cash and the Comptroller is satisfied that the security is no longer required, apply the amount of the security in the manner prescribed in Rules.
- (4) A person aggrieved with a decision of the Comptroller under subsection (1), may appeal the decision to the Tax Appeal Commission.

39. Comptroller has lien on assets.

- (1) The Comptroller has, from the date on which stamp duty becomes due and payable under this Act and until the date the duty is paid, a lien on the assets in the possession or control of the Department of Inland Revenue, Customs Department or any other Government entity —
 - (a) of the person liable to pay the duty;
 - (b) of any related person where the Comptroller reasonably believes that the person liable to pay the duty —
 - (i) beneficially owns or enjoys the asset; and
 - (ii) transferred legal ownership of the asset to the related person in order to avoid payment of the duty.
- (2) A lien referred to in subsection (1), shall rank in priority to every other security interest in the asset.

40. Distress proceedings.

- (1) The Comptroller may recover unpaid stamp duty by distress proceedings against the personal property of the person liable to pay the stamp duty by specifying the —
 - (a) person liable;
 - (b) location of the property; and
 - (c) stamp duty liability to which the proceedings relate.
- (2) Property, other than perishable goods, on which the Comptroller levies a distress under this section must be kept for ten working days at the —
 - (a) cost of the person liable;

- (b) premises where the distress is levied or at such other place as the Comptroller may consider appropriate.
- (3) The Comptroller may, where the person liable does not pay the stamp duty due and the costs of a distress, sell by auction or in such other prescribed manner the property distrained on —
 - (a) in the case of perishable goods, within such period as the Comptroller considers reasonable having regard to the condition of the goods;
 - (b) in any other case, after ten working days.
- (4) The Comptroller —
 - (a) must apply the proceeds of a disposal pursuant to subsection (3), in order of priority towards the —
 - (i) costs of taking, keeping and selling the property distrained on;
 - (ii) stamp duty due and payable; and
 - (iii) restoration of the remainder of the proceeds, if any, to the person liable to pay stamp duty; and
 - (b) where the proceeds of the distress are not sufficient to meet the Comptroller's costs and the stamp duty due, may proceed under this Act with respect to any balance owed.
- (5) All costs incurred by the Comptroller in respect of a distress may be recovered by the Comptroller from the person liable as stamp duty due under this Act.
- (6) Distress may not be levied under this section upon tools of trade.
- (7) For the purposes of this section, **“tools of trade”** means equipment required for the production or repair of goods in the course or furtherance of a business activity, and does not include the inventory of the business, or any vehicle or vessel owned by or used in the business, or any other business asset not required for the production or repair of goods.

41. Right of entry to execute distress.

The Comptroller may for the purpose of executing a distress under section 40 —

- (a) at any time enter any house or premises;
- (b) require a Customs officer or a peace officer to be present while the seizure or distress is being executed.

42. Comptroller has power to recover stamp duty from agent.

- (1) The Comptroller may, by notice in writing as prescribed, require a person to be the agent of another person who is liable to pay stamp duty under

this Act where the person liable to pay stamp duty fails to do so by the due date and the person required by the Comptroller to be agent —

- (a) owes or may owe money to the person liable;
 - (b) holds or may subsequently hold money for or on account of the person liable;
 - (c) has authority from some other person to pay money to the person liable; or
 - (d) has possession of the property of the person liable.
- (2) A person in receipt of a notice under subsection (1), is deemed to be the agent of the person liable to pay stamp duty and must pay the money or deliver the property specified in the notice to the Comptroller —
- (a) in the case of money or property due or held, within the time stated in the notice;
 - (b) in case of money or property to become due or held, within two calendar days of the date on which —
 - (i) the money becomes due; or
 - (ii) the money or property is held in any of the circumstances referred to in subsection (1).
- (3) Any person on whom a notice has been served under this section that fails to comply with such notice, or who makes any disposition of money, property or arrangement that contradicts the purpose of the notice, is personally liable for the amount that he should have paid or property that he should have delivered in compliance with the notice, and such amount or property may be recovered by the Comptroller as if it were stamp duty due under this Act.
- (4) The time stated in the notice under subsection (2) shall not exceed fifteen calendar days, however, the Comptroller may, in his discretion, permit an agent to pay the money specified in the notice in instalments.
- (5) The Comptroller must serve a copy of the notice referred to in subsection (1) on the person liable to pay stamp duty.
- (6) An agent under subsection (1), who makes a payment or delivers property to the Comptroller pursuant to subsection (2), is treated as having acted under the authority of the person liable to pay the stamp duty, and of all other persons concerned, and such payment or property is treated in the hands of the Comptroller as if it were stamp duty due under this Act.
- (7) Notwithstanding any other law to the contrary, this section has effect and a person required to be an agent under subsection (1) incurs no liability in complying with the provisions of subsection (2).

43. Person leaving The Bahamas.

- (1) If the Comptroller reasonably suspects that a person has left or is about to leave The Bahamas, the Comptroller may, before the day otherwise fixed for payment, by notice to the person served in accordance with section 63, demand payment of any amount for which the person is liable under this Act or would be liable if the time for payment of the amount had arrived, and that amount shall be paid without delay despite any other provision of this Act.
- (2) If a person fails to pay an amount as required under subsection (1), the Comptroller may direct that money, goods and chattels of the person be distrained or garnished, and sections 40 to 42 shall apply.

44. Liability of transferee after non-arm's length transfer.

- (1) If a taxable person transfers money or other property, either directly or indirectly, by any means including by means of a trust, to or for the benefit of another person —
 - (a) with whom the transferor, at the time of the transfer, is not dealing at arm's length; or
 - (b) who is under the age of eighteen years, the transferee is liable, upon assessment under section 28, for the transferor's stamp duty debt to the extent provided for in subsection (2), unless the transferor establishes that he —
 - (i) did not have a stamp duty liability at the time of the transfer; or
 - (ii) did not make the transfer in anticipation of becoming liable for another person's existing stamp duty debt.
- (2) The limit of the transferee's liability under subsection (1) is the total of —
 - (a) the lesser of —
 - (i) the transferor's stamp duty debt at the time of the transfer and any stamp duty debt of the transferor assessed after the time of the transfer in respect of a stamp duty liability that arose before the time of the transfer; and
 - (ii) the amount, if any, by which the market value of the transferred property, including any transferred money, at the time of the transfer exceeds the market value at that time of the consideration given by the transferee for the transfer; and
 - (b) interest payable on that amount, calculated at the same rate that applies to the transferor's stamp duty debt —
 - (i) from the date of the transfer to the date of payment; or

- (ii) if the transferor's debt arose only upon an assessment under section 28 that was made after the date of the transfer, from the date of the assessment to the date of payment.
- (3) A payment in accordance with this section —
 - (a) by the transferee in respect of the transferor's stamp duty debt reduces the transferor's and the transferee's liability for the transferor's stamp duty debt;
 - (b) by the transferor reduces the transferee's liability only to the extent that it reduces the transferor's stamp duty debt below the amount for which the transferee is liable.
- (4) Except to the extent that the transferor's stamp duty debt is reduced by a payment by the transferee, nothing in this section affects the transferor's liability for the stamp duty debt.
- (5) For the purposes of this section —
 - (a) persons are deemed not to be dealing at arm's length with each other when they are related persons;
 - (b) a taxable person and a personal trust are deemed not to deal with each other at arm's length if the taxable person, or any person not dealing at arm's length with the taxable person, is beneficially interested in the trust;
 - (c) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

45. Duties of receivers.

- (1) In this section, a receiver is a person who in relation to an asset within The Bahamas is —
 - (a) a liquidator of a company;
 - (b) a judicial receiver or a receiver appointed out of court;
 - (c) a trustee for a bankrupt person;
 - (d) a mortgagee in possession;
 - (e) an executor of the estate of a deceased person; or
 - (f) any other person conducting business on behalf of a person legally incapacitated.
- (2) A receiver must notify the Comptroller in writing within fourteen calendar days after the person is appointed receiver, or takes possession of an asset of a person liable to stamp duty within The Bahamas, whichever event occurs first.
- (3) The Comptroller may in writing notify a receiver of the amount which appears to the Comptroller to be sufficient to provide for any stamp duty

which is or will become payable by the person whose assets are in the possession of the receiver.

- (4) A receiver —
 - (a) must set aside out of the proceeds of sale of an asset —
 - (i) the amount notified by the Comptroller under subsection (3);
or
 - (ii) the lesser amount as the Comptroller may subsequently agree with the receiver;
 - (b) is liable, to the extent of the amount set aside, for the stamp duty of the person who owned the asset; and
 - (c) notwithstanding any provision of this section, may pay any debt that has priority over the tax referred to in this section.
- (5) A receiver is personally liable to the extent of any amount required to be set aside under subsection (4) for the tax referred to in subsection (3) where, and to the extent that, the receiver fails to comply with the requirements of this section.

46. Comptroller has power to declare representatives.

- (1) The Comptroller may, where the Comptroller considers it necessary or desirable to do so for the administration and enforcement of this Act, declare a person to be a representative of a taxable person in the form and manner prescribed in Rules.
- (2) A person who is declared by the Comptroller under subsection (1), to be the representative of a taxable person is deemed to be the representative and must perform the duties imposed by this Act on the taxable person, including the duty to submit documents for stamping and pay stamp duty.
- (3) A representative is personally liable, in his representative capacity, for the payment of stamp duty payable where the representative during the time the amount remains unpaid —
 - (a) alienates, charges, or disposes of any money received or accrued in respect of which the stamp duty is payable;
 - (b) disposes of or parts with any fund or money belonging to the taxable person whose representative he is, and from or out of which such stamp duty could legally have been paid, which —
 - (i) is in the possession of the representative; or
 - (ii) comes to the representative after the stamp duty becomes payable.
- (4) Notwithstanding any provision of this section, a taxable person must perform any duty imposed under this Act on a taxable person which a representative declared under this section has failed to perform.

- (5) For the purposes of this section, “**a representative**” in relation to a taxable person is —
- (a) the financial controller or the designated officer of a company, other than a company in liquidation;
 - (b) a member of the committee of management of an unincorporated association or body;
 - (c) a person who is responsible for accounting for the receipt and payment of money or funds on behalf of a company or unincorporated association or body, where paragraphs (a) and (b) do not apply;
 - (d) the liquidator of a company in liquidation;
 - (e) a person responsible for accounting for —
 - (i) the receipt and payment of money under the provisions of any law;
 - (ii) the receipt and payment of public funds;
 - (iii) the receipt and payment of funds voted by Parliament to a statutory body;
 - (f) a partner in a partnership;
 - (g) a trustee of a trust;
 - (h) a person controlling the affairs of a resident or non-resident of The Bahamas, including a manager of a taxable activity carried on by the resident or non-resident of The Bahamas.
- (6) A person aggrieved with a decision of the Comptroller under subsection (1), may appeal the decision to the Tax Appeal Commission.

47. Schemes for obtaining stamp duty benefits.

Notwithstanding any other provision of this Act, the Comptroller may —

- (a) where the Comptroller is satisfied a scheme has been entered into or carried out;
- (b) where a person has obtained a stamp duty benefit in connection with the scheme in a manner that the Comptroller determines constitutes an abuse of the provisions of this Act; and
- (c) where, having regard to the substance of the scheme, it is reasonable to conclude that the person, or one of the persons, who entered into, or carried out the scheme, did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain the stamp duty benefit, determine the liability of the person who has obtained the stamp duty benefit —
 - (i) as if the scheme had not been entered into or carried out; or

- (ii) in such manner as the Comptroller, having regard to the circumstances of the case, considers appropriate for the prevention or reduction of the stamp duty benefit.

48. Liability of a director or similar officer of a company to pay stamp duty.

- (1) Subject to subsection (2), a person is jointly and severally liable together with a company to pay stamp duty payable by the company under this Act, together with surcharge in relation to the stamp duty, where —
 - (a) the company fails to pay an amount of stamp duty payable by the company within the time prescribed; and
 - (b) a person was at the time the company was liable to pay the amount of stamp duty a director or other similar officer of the company or acted, or purported to act, in such a capacity.
- (2) A person referred to in paragraph (b) of subsection (1) is not liable and may not be assessed for stamp duty where the Comptroller is satisfied that such person exercised the degree of care, diligence, and skill that a reasonably prudent person would have exercised in order to prevent the failure by the company to pay the amount of stamp duty payable within the prescribed time.
- (3) The Comptroller must serve on a person liable under subsection (1), a notice of assessment specifying the —
 - (a) amount of the stamp duty, together with any surcharge or other penalty, assessed;
 - (b) date the amount assessed is due and payable; and
 - (c) time, place, and manner of appealing the assessment.
- (4) A person served with a notice of assessment pursuant to subsection (3) —
 - (a) must pay in full the amount assessed by the date specified in the notice;
 - (b) may appeal the decision to the Tax Appeal Commission.
- (5) The Comptroller may not assess a person for an amount of stamp duty payable by such person under this section where —
 - (a) more than seven years have passed since the submission for stamping of the instrument relating to the amount concerned; or
 - (b) in the case where an assessment was made by the Comptroller under Part VI, more than seven years have passed since the date of the assessment relating to the amount.
- (6) A person who pays an amount of stamp duty payable by a company under this section, in whole or in part, is entitled to contribution in respect of the

amount so paid from the other persons who are liable to pay the amount under subsection (1).

PART VIII – RECORD KEEPING AND ACCOUNTS

49. Reliable accounting records to be kept.

- (1) Subject to subsection (3), every business must maintain within The Bahamas, up to date and reliable accounting records in the English language in relation to —
 - (a) all sums in money and money's worth received and expended by such person in a transaction that is subject to stamp duty and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transfers comprising the transaction; and
 - (b) the assets and liabilities of the business.
- (2) Accounting records maintained pursuant to this section —
 - (a) must be kept for a period of five years after the payment of stamp duty to which such records relate;
 - (b) shall not be disposed of where stamp duty due on a transaction to which such records relate has not been paid.
- (3) A person may apply in writing to the Comptroller for permission to dispose of records required to be maintained under this section, prior to the expiration of the period referred to in subsection (2) and the Comptroller may, if satisfied that the records are not likely to be required for any purposes under this Act, grant such permission in writing.
- (4) The Comptroller may, for any purpose under this Act, order an audit of the accounts of a taxable person or any other person.

50. Nature of records to be kept.

- (1) For the purposes of subsection (1) of section 49, accounting records must as applicable —
 - (a) correctly document and explain all transactions subject to stamp duty;
 - (b) enable a taxable person to accurately report transactions to the Comptroller;
 - (c) enable the Comptroller to determine with reasonable accuracy at any time the liability of the taxable person to pay stamp duty under this Act;

- (d) be maintained using the forms prescribed by this Act, the regulations and Rules; and
 - (e) include as applicable in order to facilitate (a), (b) and (c) —
 - (i) tax accounts;
 - (ii) purchase and sales ledgers;
 - (iii) invoices, for acquisitions of goods or services by the person;
 - (iv) copies of invoices, issued for sales of goods or provision of services by the person;
 - (v) tax debit notes and tax credit notes issued and received;
 - (vi) income and expense accounts;
 - (vii) till rolls, audit rolls and tapes or similar records;
 - (viii) bank statements;
 - (ix) customs documentation relating to imports and exports made by the person;
 - (x) sales invoices and sales receipts;
 - (xi) records relating to the sale of goods or services to officers, directors, and employees, whether or not the sales were made for consideration;
 - (xii) accounting instruction manuals, systems, programmes and any relevant documentation in use to describe the accounting system; and
 - (xiii) any other records related to the business, such as bookings, diaries, correspondence, computer print-outs, audit reports, contracts, or any other accounts or records in any way related to the person's business.
- (2) A business must maintain records by electronic means including, but not limited to, the use of such electronic tills or point of sale systems, and computerized accounting systems, as comply with the standards specified by the Comptroller.

PART IX – OFFENCES

51. Offences relating to instruments.

Any person who, with intent to defraud the Government of any duty —

- (a) executes any instrument in which all the facts and circumstances required by this Act to be set forth in such instrument are not fully and truly set forth;

- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances;
- (c) being employed or concerned in or about the preparation of any instrument, back-dates the same such that it purports to be executed prior to the commencement of this Act when in fact it was executed after the commencement of this Act;
- (d) executes a back-dated instrument knowing the same to be backdated;
- (e) executes any instrument purporting to create a mortgage over any property in connection with the sale of any business or property knowing the same to be a sham,

shall be guilty of an offence against this Act and be liable upon conviction to a fine of fifty thousand dollars.

52. Fine for neglecting to stamp instrument.

Every person who being required by any Act to stamp any instrument or pay stamp duty, wilfully neglects or refuses duly and effectually to do so in the manner therein provided, shall be guilty of an offence against this Act, and shall be liable to a fine of fifty thousand dollars.

53. Frauds.

- (1) Every person who —
 - (a) fraudulently uses or attempts to use any stamp which has been cut, torn or removed from any instrument;
 - (b) fraudulently alters or attempts to alter any instrument with intent to use any stamp on any such instrument;
 - (c) fraudulently cancels or attempts to cancel any stamp by writing thereon, or on any instrument to which the same may be affixed, or fraudulently obliterates or removes or attempts to obliterate or remove the cancellation of any stamp,

shall in every such case be guilty of an offence and on conviction thereof, shall be liable to a fine not exceeding fifty thousand dollars or to imprisonment for two years or to both such fine and term of imprisonment.

- (2) Any person who —
 - (a) fraudulently removes or causes to be removed from any instrument an adhesive stamp or affixes to any instrument any stamp which has been so removed, with intent that the stamp may be used again;
 - (b) sells or offers for sale or utters or affixes any adhesive stamp which has to his knowledge been so removed;

- (c) utters any instrument having thereon any adhesive stamp which has to his knowledge been so removed;
 - (d) practises or is concerned in any fraudulent act, contrivance or device not specially provided for, with intent to defraud His Majesty the King of any fee payable in stamps,
- shall be guilty of an offence against this Act, and be liable to a fine not exceeding fifty thousand dollars.

54. Offences relating to receipts.

Every person who upon receiving a sum of money for stamp duty, gives a receipt for a sum not exceeding eight dollars, or divides the amount paid into two or more receipts with intent to evade the duty, shall in every such case, be guilty of an offence against this Act, and shall be liable on conviction to a fine not exceeding ten thousand dollars.

55. Misappropriation of stamp duty.

- (1) Any person being counsel and attorney or salesman or broker for any party to an instrument or transaction who without the knowledge of that party, appropriates to his own use and benefit any monies deposited with or entrusted to him or otherwise placed under his control for the payment of stamp duty chargeable on the instrument or transaction, shall be guilty of an offence against this Act and shall be liable upon conviction to a fine not exceeding fifty thousand dollars or a term of imprisonment for one year or to both such fine and term of imprisonment.
- (2) It shall be no defence to a charge for an offence specified in subsection (1) and brought against any the counsel, attorney or salesman or broker under this section, that the monies were applied in or towards settlement of his professional fees or commission instead of the payment of the applicable stamp duties.

56. General offences.

- (1) A person commits an offence who —
 - (a) wilfully evades or attempts to evade the assessment, payment or collection of stamp duty;
 - (b) wilfully impedes or attempts to impede the Comptroller in the administration of this Act by —
 - (i) failing to comply with a lawful request by the Comptroller under this Act;
 - (ii) interfering with or obstructing, the exercise by the Comptroller of a lawful request under this Act;

(iii) in any manner whatsoever, contravening or failing to comply with a provision of the Act; or

(c) contravenes or fails to comply with a requirement of confidentiality under this Act,

and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) A person who contravenes section 65 of the Act commits an offence, and is liable on conviction where the stamp duty properly payable by the person exceeds the stamp duty payable on an assessment based on the false or misleading statement, to a fine equal to the sum of one thousand dollars, and in addition —

(a) the amount by which the stamp duty payable by the person would be reduced when assessed on the basis of the information provided in the statement; and

(b) the amount by which any refund applied for by the person would be increased when determined on the basis of the information provided in the statement.

(3) A person who is declared an agent by the Comptroller and who contravenes section 42 of this Act by failing within the prescribed time to pay money or deliver property specified in a notice issued by the Comptroller commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both the fine and imprisonment.

(4) A person who, in contravention of section 64 of this Act, fails to maintain confidentiality commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both the fine and imprisonment.

57. Summary conviction.

All offences under this Act shall be tried summarily before a stipendiary and circuit magistrate in Nassau, or where authorised by fiat of the Attorney-General before a magistrate of the district in which the offence was committed.

PART X – MISCELLANEOUS

58. Appeals to Tax Appeal Commission.

(1) Any person who is aggrieved —

(a) by an assessment made by the Comptroller under section 28 or 48;

- (b) by an advance stamp duty ruling under section 17;
- (c) by the Comptroller's decision to impose a fixed penalty under section 14;
- (d) by the Comptroller's decision to require a person to give security under section 38;
- (e) by the Comptroller's decision to declare a person to be the representative of a taxable person under section 46;
- (f) by the Comptroller's decision on a claim for a refund under section 61;

may within thirty calendar days after the date of service of the decision on such person, appeal to the Tax Appeal Commission.

- (2) An appeal under subsection (1) must —
 - (a) be made in the manner and form specified in the Tax Appeal Commission Act, 2020 (*No. 3 of 2020*);
 - (b) where it is an appeal against an assessment of stamp duty, be accompanied by payment of the total amount of stamp duty assessed, or security for such amount in a form acceptable to the Comptroller, at the time the appeal is lodged.

59. Expenses.

All expenses incurred in carrying out the provisions of this Act, shall be paid out of the Consolidated Fund by warrant in the usual manner.

60. Power to make regulations for compounding duty.

Where the collection of duty or the stamping of instruments according to the provisions of this Act or any other Act relating to stamp duties is impracticable or inexpedient, or where such collection or stamping causes undue inconvenience to trade or business or where the exercise of the power conferred by this section is in the interest of The Bahamas, the Minister may make regulations —

- (a) for the compounding of any duty; or
- (b) for delivery of accounts by, and collecting duty from, the persons making or issuing the instruments upon which duty is charged.

61. Refunds.

- (1) A person may be eligible for a refund of stamp duty where —
 - (a) stamp duty was paid on any instrument through mistake or inadvertence; or
 - (b) the amount of stamp duty paid by such person otherwise exceeds the amount chargeable under this Act.

- (2) A person who is eligible for a refund under subsection (1) shall apply in writing in the prescribed manner for a refund (“a claim”) and such claim shall be made within three years after the date the duty was paid through mistake or inadvertence or overpaid.
- (3) Where the instrument in respect of which a claim is made was recorded by the Registrar General before the application for the refund and the claim has been approved by the Comptroller, the claimant shall submit a memorandum of transaction for stamping outlining such matters as required by the Comptroller before the amount is refunded by the Comptroller.
- (4) Where a taxable person has failed to file an instrument required or any document requested by the Comptroller under this Act, the Comptroller may withhold payment of any amount refundable under this section until the taxable person files the instrument or document.
- (5) The Comptroller must serve on a claimant for refund, a notice in writing of the Comptroller's decision in respect of the claim —
 - (a) within thirty calendar days of the Comptroller receiving the claim; or
 - (b) where the Comptroller orders an audit of the claim, within ten calendar days of completion of the audit.
- (6) Where the Comptroller is satisfied that a claim is legitimately made, he shall apply the amount of the refund claimed in reduction of —
 - (a) any duty, surcharge, levy or other penalty payable by the claimant under this Act; and
 - (b) any unpaid amounts in tax, interest, levy or other penalty owing by the registrant under a provision of any other Act administered by an entity of Government; and
 - (c) after applying the refund in accordance with paragraphs (a) and (b), refund any excess remaining to the claimant.
- (7) A claimant under this section who is aggrieved by the Comptroller's decision under this section may appeal the decision to the Tax Appeal Commission.
- (8) A claimant may elect to have the refund amount stand in credit to be applied to any future amount of duty, surcharge, or other penalty he may accrue under this Act.

62. Electronic communications.

- (1) The Comptroller may establish an information processing system (in this section referred to as “the system”), including provision for any or all of the following operations —

- (a) filing of electronic communications with the Comptroller;
 - (b) service or issue of electronic communications with the Comptroller;
 - (c) payment or collection of stamp duty by electronic means.
- (2) The filing, service or issuance of documents by the Comptroller via an information processing system established by the Comptroller shall be valid and effective for all purposes under this Act and an electronic communication that is made by means of the system is deemed immediately upon sending to have been received by the person to whom it has been sent unless the contrary is shown.
- (3) The filing, service or issuance of documents by electronic means other than via an information processing system established by the Comptroller, shall be valid and effective for all purposes under this Act where provided in accordance with the Electronic Communications and Transactions Act (*Ch. 337A*).
- (4) For the purposes of this section, “**electronic**”, “**electronic communication**”, “**electronic means**” and “**information processing system**” have the meanings assigned to them respectively under section 2 of the Electronic Communications and Transactions Act (*Ch. 337A*).

63. Service of documents.

- (1) Where this Act requires a document to be served on or submitted to the Comptroller, such document may be —
- (a) served by electronic means in accordance with section 62;
 - (b) personally served on the Comptroller or on any person duly authorised by the Comptroller to accept the document; or
 - (c) delivered or sent by post to the office of the Department of Inland Revenue in the manner prescribed by the Comptroller
- (2) Where this Act requires a document to be served on any person other than the Comptroller, such document may be served —
- (a) by electronic means in accordance with section 62;
 - (b) by delivering it to the person on whom it is to be served;
 - (c) by leaving it at the usual or last known place of abode of that person;
 - (d) by sending it by post addressed to the person on whom it is to be served —
 - (i) to the usual or last known place of abode, office or place or business of such person;
 - (ii) to any post office box rented in the name of such person or employer of such person or known to the Comptroller to be used as an address for correspondence by such person; or

- (iii) in care of the Post Office (for general delivery) —
 - (aa) in the case where such person is known to the Comptroller to have a place of abode in New Providence; or
 - (bb) in the case where such person is known to the Comptroller to have a place of abode in an Family Island at a district post or sub-post office in that Family Island;
- (e) in the case of a company —
 - (i) by delivering it to an officer, employee, agent or other representative of the body corporate at its registered office or other place of business;
 - (ii) by sending it by post addressed to the secretary of that body corporate at any post office box rented in the name of that body corporate or known to the Comptroller to be used as an address for correspondence by that company, or at any post office box rented in the name of that company's registered office.

64. Confidentiality.

- (1) Subject to this section, an officer or employee of the Department of Inland Revenue or authorised person must not, except in the exercise and performance of the person's powers or duties under this Act, or by order of a court —
 - (a) disclose to any person any matter in respect of any other person that may come to the officer's knowledge in the exercise and performance of his powers and duties;
 - (b) permit any person to have access to any records in the possession or custody of the Comptroller or Department of Inland Revenue.
- (2) The Comptroller may disclose, or authorise disclosure of, documents or information under this Act —
 - (a) to any person, where such disclosure is necessary for the purposes of —
 - (i) the administration and enforcement of this Act;
 - (ii) assisting a Government entity in the administration and enforcement of any other fiscal laws;
 - (b) to a person authorised by any law in force in The Bahamas to receive the information;
 - (c) to the competent authority of the government of another country with which The Bahamas has entered into an agreement for the

- avoidance of double taxation or the exchange of information, to the extent permitted under such agreement or by any law; or
- (d) where such documents or information do not identify a specific person, to a person in the service of the Government in a revenue or statistical department in respect of which such disclosure is necessary for the performance of such person's official duties.
- (3) The Comptroller may disclose, or authorise disclosure of, documents or information concerning the affairs of a person in relation to stamp duty where —
- (a) the person consents in writing that such disclosure may be made to another specified person; or
 - (b) a person claims to be the taxable person or the authorised representative of the taxable person and the Comptroller has obtained reasonable assurance of the authenticity of the claim.
- (4) The Department of Inland Revenue may, where the Comptroller determines it to be necessary or convenient for the exercise of the Comptroller's powers under subsection (2) —
- (a) enter into a memorandum of understanding with any Government entity, or the competent authority of the government of another country, setting out the terms and conditions to which any disclosure by the Comptroller of documents or information is subject; and
 - (b) disclose documents or information obtained by the Comptroller in the exercise and performance of the Comptroller's duties and powers under this Act only in accordance with the memorandum of understanding referred to in paragraph (a).
- (5) A person receiving documents or information under subsection (2), must keep such documents or information secret and confidential, except to the minimum extent necessary to achieve the purpose for which the disclosure is made.

65. Making of a false or misleading statement.

- (1) A person must not knowingly or recklessly —
- (a) make a statement to the Comptroller, an officer of the Department of Inland Revenue or authorised person that is false or misleading in a material particular; or
 - (b) omit from a statement made to the Comptroller, an officer of the Department of Inland Revenue or an authorised person any matter or thing without which the statement is misleading in a material particular.

- (2) A statement referred to in subsection (1) may be made orally, in writing, or in any other form to the Comptroller or officer or authorised person acting in the performance of their respective duties under this Act and the regulations and includes a statement made —
- (a) in a document or information made, prepared, given, filed, lodged or furnished under this Act or the regulations;
 - (b) in a document or information furnished to the Comptroller or officer or authorised person otherwise than pursuant to this Act or the regulations;
 - (c) in an answer to a question asked of a person by the Comptroller or officer or authorised person; or
 - (d) to another person with the knowledge or reasonable expectation that the statement would be conveyed to the Comptroller or officer or authorised person.

66. Impeding tax administration.

A person must not, for the purpose of evading the assessment, payment, or collection of stamp duty, or otherwise impeding tax administration, contravene or fail to comply with any provision of this Act.

67. Savings and transition.

- (1) All subordinate legislation made under the enactment repealed by section 69 of this Act and in force immediately before the coming into operation of this Act, and not expressly repealed by section 69 of this Act, shall, so far as it is not inconsistent with the provisions of this Act, continue in operation as if made under this Act.
- (2) All duties which, at the time this Act comes into operation, are outstanding under the repealed Act, shall be payable at the rate prescribed under this Act, unless previously assessed under the repealed Act.
- (3) Any duty which at the commencement of this Act was assessable or payable under the repealed Act for the year 2023 or any previous year shall —
 - (a) where the duty has already been assessed, but has not yet been paid under the repealed Act, shall be recovered by the Comptroller under this Act;
 - (b) where the duty was not assessed by the Comptroller under the repealed Act, the duty shall be assessed and recovered by the Comptroller under this Act.
- (4) All assessments and other acts of authority by the Comptroller under the repealed Act, which had been taken before the commencement of this Act, shall be deemed to remain in full force and effect.

- (5) All criminal proceedings in respect of any offence committed before the commencement of this Act, may be instituted or continued under the repealed Act.

68. Consequential amendment.

The Tax Appeal Commission Act, 2020 (*No. 3 of 2020*) is amended by the deletion of section 5(1)(e) and the substitution of the following —

“(e) The Stamp Act, 2024 —

- (i) an assessment made by the Comptroller under section 28 or 48;
- (ii) an advance stamp duty ruling under section 17;
- (iii) the Comptroller's decision to impose a fixed penalty under section 14;
- (iv) the Comptroller's decision to require a person to give security under section 38;
- (v) the Comptroller's decision to declare a person to be the representative of a taxable person under section 46;
- (vi) the Comptroller's decision on a claim for a refund under section 61;”.

69. Repeal of No. 28 of 1925.

The Stamp Act (*No. 28 of 1925*) is repealed.

FIRST SCHEDULE

(sections 2(7)(c), 3(1), 5(4)(a), 6(5) and 23(2))

INSTRUMENTS AND TRANSACTIONS CHARGEABLE WITH AD VALOREM DUTY

Item	Instrument	Duty
1	An assignment, transfer, exchange of personalty — (a) \$100,000 and under; (b) in excess of \$100,000.	2½% of the value 10% of the value
2	A transaction comprising the sale of a business <i>to the extent that</i> that transaction involves the sale of property other than land (save for cash and deposit accounts).	6% of the consideration attributable to property other than land
3	A lease of realty with a term of less than five years.	2½% of annual rent reserved
4	A lease of personalty.	2½% of annual rent reserved
5	A bond for the payment of any sum of money.	1% of amount of the bond
6	A foreign currency denominated debt instrument.	\$1,000.00
7	A mortgage or transfer of mortgage of personalty.	1.00% of mortgage amount
8	A re-conveyance of personalty to a borrower or mortgagor only.	0.10% of mortgage amount
9	An endorsement on a mortgage of personalty under section 32 of the Conveyancing and Law of Property Act (<i>Ch. 138</i>) or other satisfaction or discharge of mortgage of personalty (including a satisfaction or discharge of a debenture).	0.1% of mortgage amount
10	A copy of the Act, charter or other document of incorporation of a company lodged for record under the provisions of the Companies Act (<i>Ch. 308</i>) or the International Business Companies Act (<i>Ch. 309</i>).	\$600.00

11 11 (continued)	A memorandum of association of a company — (a) limited by guarantee having no authorised capital; (b) where the capital is \$1,000,000 or under; (c) where the capital is over \$1,000,000 for every additional \$1,000,000 or fraction thereof.	\$100.00 \$100.00 \$100.00
12	A resolution increasing the capital of a company incorporated within The Bahamas, for every \$1,000,000 or fraction thereof.	\$100.00
13	A promissory note.	1% of the loan amount
14	A transaction, instrument or receipt, whereby funds are converted into foreign currency, whether or not the funds are remitted or transferred out of The Bahamas.	1½% of amount
15	A bill of exchange, draft, money order, mail transfer of money, cable transfer of money, traveller's cheque or letter of credit — (a) whereby funds in The Bahamas are remitted or transferred out of The Bahamas (other than remitted or transferred remittances made by a bank or outside of The Bahamas to cover exchange sold within The Bahamas by a bank); (b) whereby funds of or over five hundred thousand dollars per annum are converted into foreign currency and are remitted or transferred out of The Bahamas to a related party where the funds represent dividends or profits or payments for services to be rendered by the related party.	1½% of amount remitted or transferred out of The Bahamas 5% of amount remitted or transferred outside of The Bahamas
16	A bill of exchange drawn on any person outside of The Bahamas in order to effect payment for any goods.	1½% of amount drawn outside of The Bahamas
17 17 (continued)	A bill of exchange, electronic wallet transaction, bank receipt for withdrawal from funds on deposit, cheque or order drawn, issued, originating, paid or negotiated in The Bahamas, other than the direct debit of one payment from one	40 cents

	account to another.	
18	An assignment, transfer, lease, sublease or licence of a marina slip — (a) \$100,000 and under (b) in excess of \$100,000	2½% of the value 10% of the value

SECOND SCHEDULE

(section 2(7), 2(9), 3(1) and 3(3))

EXEMPTIONS

Item	Exemptions
1	Bank, Board of Trade or Government notes, bills of exchange, drafts, cheques or orders for payment of money issued by the Treasurer or by any public officer in his official capacity or by any public Board.
2	Grants, leases, writs or other instruments issued by and on behalf of the Crown and The Bahamas.
3	Instruments relating to a gift or voluntary disposition of property, where the transfer or other disposition of property would otherwise be exigible to stamp duty, by an individual to — (a) a company all of whose shares of every class are beneficially owned by the transferor and in relation to which no other person owns or has agreed to acquire any right, power, title, option or other interest in, over or concerning — (i) the shares; (ii) any of the property of the company; or (iii) any of the property of the transferor; (b) trustees upon trust where the express and unalterable terms of the trust instrument permanently excludes from taking or receiving any title to the trust property or income, or any power, right or benefit pertaining to the trust, every person except for — (i) the transferor; (ii) the transferor's spouse; (iii) the transferor's children or remoter issue.
4	Receipts given on behalf of the Crown or The Bahamas by the Treasurer or any other public officer.
5	Receipts given by any public officer or employee of the Government for money received by him as salary or wages.
6	Bonds, debentures and all other obligations whatsoever, whether under seal or under hand only given by the Government to secure the repayment of money.
7	Bail bonds in criminal cases.
8	Instruments relating to the acquisition of any property by any State with which the Government has concluded a consular convention for the purposes of a consular office or residence for a consular officer or employee or for any other purpose approved by the Governor-General arising out of the operation of a consular establishment, and receipts given by consular officers for money received for consular services.

9	Instruments relating to the remittance or transfer from The Bahamas to any place outside The Bahamas of any funds arising out of the operation of a consular establishment by a consular officer or employee.
10	Insurance policies.
11	Import entries in respect of all goods imported by charitable organizations approved by the Minister (not including non-profit companies registered under the Non-profit (Organisations) Act, 2019 (<i>No. 25 of 2019</i>)).
12	Instruments relating to a transfer operating as a voluntary disposition of property to a body of persons incorporated by a special Act, if that body is by its Act precluded from dividing any profit among its members and the property conveyed is to be held for the public benefit.
13	Instruments relating to a transfer of property or business between two or more companies that are constituent members of the same group of companies and under the ultimate ownership of the same person if no part of the consideration for the transfer is payable to any person that is not a constituent member of the same group of companies, the aforementioned ultimate ownership remains unchanged, and no person (other than the transferee and a pre-existing member of the same group of companies) acquires any interest in the property or business.
14	Instruments relating to a transfer of property that does not result in a change of beneficial ownership.
15	Instruments relating to the vesting of property in a beneficiary under a trust.
16	Instruments relating to the transmission of property upon the death or bankruptcy of the owner of property to his personal representatives or trustee-in-bankruptcy, as the case may be.
17	Instruments relating to the vesting of any property in any person by virtue of any statutory or common law entitlement save for a merger.
18	Instruments relating to the acquisition by a company of its own shares or any redemption of shares under the Companies Act (<i>Ch. 308</i>) or the International Business Companies Act (<i>Ch. 309</i>) except where the acquisition or redemption is intended or calculated to effect or facilitate a change in beneficial ownership or any direct or indirect increase in the overall proportions of any person's shareholding or effective equity in a company.
19	Instruments relating to any property transfer made pursuant to an adjustment order under the Matrimonial Causes Act (<i>Ch. 125</i>).
20	“Import entries in respect of tariff heading numbers in Chapters 1 to 97 of the Harmonized System Nomenclature set out in Part C of the Schedule to the Tariff Act, 2023 (<i>No. 27 of 2023</i>).
21	A deed of conveyance, re-conveyance, assignment, exchange, or transfer of realty.

22	A mortgage or transfer of mortgage of realty.
23	A lease of realty with a term of five years or more.
24	A transfer of a Crown lease.
25	A satisfaction or discharge of a mortgage of realty.
26	Instruments relating to — (a) the transfer, pledge or assignment of shares in a company; (b) the redemption of shares by a shareholder or a company; or (c) any other acquisition by a company of its own shares under the Companies Act (<i>Ch. 308</i>) or the International Business Companies Act (<i>Ch. 309</i>), irrespective of whether the instrument is intended or calculated to effect or facilitate a change in the beneficial ownership or any direct or indirect increase in the overall proportions or any person's shareholding or effective equity in a company: Provided that a company does not directly or indirectly own, control or have an interest in any property or business in The Bahamas.
27	An agreement not referred to in the <i>First Schedule</i> .
28	Articles of co-partnership.
29	Articles of clerkship.
30	Affidavits, other than affidavits of loss relating to a conveyance on which stamp duty or VAT was never paid.
31	An award in action before a court.
32	A warrant of survey of vessel or goods.
33	A certificate or report of surveyors.
34	A bottomry bond.
35	A bond of indemnity or other bond not being for payment of a specific sum of money.
36	A hypothecation on ship or on ship and cargo alone.
37	An instrument of apprenticeship.
38	A memorandum of association of a company formed for the promotion of objects that are religious, charitable, educational, scientific, historical, fraternal, literary, sporting, artistic or athletic.
39	A notarial — (a) certificate or declaration; (b) protest of a bill, note or other instrument.
40	A ship's — (a) protest; (b) report inwards; (c) report outwards.
41	A charter-party.

42	A receipt for money, other than a receipt under Item 14 or 17 of the <i>First Schedule</i> .
43	Power of Attorney.
44	A renunciation or release of dower.
45	Declaration of condominium.
46	Deed poll.
47	Grant of right of way.
48	Guarantee.
49	Lease of easement.
50	Instruments or transactions relating to loans granted under The Bahamas Co-operative Credit Unions Act (<i>Ch. 314A</i>), to a member of the co-operative credit union or any other instrument executed by or on behalf of co-operative credit unions registered under The Bahamas Co-operative Credit Unions Act (<i>Ch. 314A</i>) or executed by an officer or member relating to the business of the co-operative credit union and transactions with members of the co-operative credit union.
51	Any other instrument or transaction not otherwise provided for in the <i>First Schedule</i> or this <i>Schedule</i> .

FOURTH SCHEDULE

(section 14(1) and 14(2))

FIXED PENALTIES

First column	Second column	Third column
Description of contravention	Section of the Act	Fixed Penalty
Failure to comply with a request by the Comptroller made by notice in writing	Section 36	Maximum \$50,000
Failure to give the Comptroller reasonable assistance or to answer questions	Section 36	Maximum \$100,000
Failure to provide the Comptroller with documents requested pursuant to section 6 or section 36	Sections 6 and 36	Maximum \$150,000
Being a bank or other financial institution, failure to comply with a request by the Comptroller made in writing	Sections 5 and 36	Maximum \$150,000
Failure to provide security in the form, amount and time specified by the Comptroller	Section 38(1)	Maximum \$70,000
Preventing, interfering with or impeding the Comptroller in the exercise of his powers under section 36	Section 36	Maximum \$100,000
Impeding stamp duty administration by failing to comply with any provision under the Act	Section 66	Maximum \$50,000

Being deemed an agent, failing within the time prescribed to pay money or deliver property specified in the notice to the Comptroller	Section 42	Maximum \$100,000
Being a receiver, failing to give notice to the Comptroller in writing, the earlier of the occurrence of fourteen days after the appointment as a receiver or taking possession of an asset of a person liable to stamp duty within The Bahamas	Section 45	Maximum \$50,000
Being a receiver, failing to set aside the stamp duty assessed out of the proceeds of the disposal of an asset	Section 45	Maximum \$100,000
Being a declared representative contravening the provisions of section 46	Section 46	Maximum \$100,000
Being a director or similar officer, failing to pay within the specified time, the amount payable in a notice of assessment	Section 48	Maximum \$30,000
Failure by a business to keep reliable accounting records in English in relation to a transaction or failing to keep records for the time prescribed	Section 49	Maximum \$100,000
Making an omission, a false or misleading statement to the Comptroller	Section 65	Maximum \$150,000