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CHAPTER 196

RENT TAXATION

Act 30 of 1986
Act 25 of 1988
Act 30 of 1989
Act 8 of 1992
Act 12 of 1998

ARRANGEMENT OF SECTIONS

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RENT TAXATION

To provide for the imposition of tax on rent and for matters connected therewith.

1. Interpretation

In this Act, unless the context otherwise requires –

“agent” includes every person who in Vanuatu, for or on behalf of any other person out of Vanuatu holds, controls, receives or disposes of any rent belonging to such other person;

“chargeable period” means either of the following 2 periods –

- (a) the period commencing on 1 December of any year and ending on 31 May in the immediately succeeding year; or
- (b) the period commencing on 1 June of any year and ending on 30 November of that year;

“Collector” means the Collector appointed under section 2 or any person acting under the authority of the Collector;

“lease” means any lease written or oral and includes a sublease or tenancy, and any licence, concession, permission or other right granted to any person for the use or occupation of any land in Vanuatu and “lessor” and “lessee” shall be construed accordingly;

“rent” includes all payments which a lessee is bound to make to the lessor under the terms of a lease without any deductions, and includes premiums;

“tax” means the tax chargeable under this Act, and includes any sum added to such tax by reason of defaults, and penalties imposed;

“taxpayer” means the person charged with or liable to pay the tax under this Act;

“trustee” includes any trustee, guardian, curator, manager, or other person having the direction, control or management of any land or property on behalf of any person.

2. Appointment of a Collector

For the purposes of this Act, there shall be appointed by the Minister, a Collector who shall be responsible for the collection of the tax under this Act and who shall be in charge of the general administration of this Act.

3. Imposition of tax on rent

Tax shall, subject to the provisions of this Act, be charged at the appropriate rates specified in Schedule 1 to this Act, for every chargeable period, on all rents derived from all leases during that chargeable period.

4. Persons chargeable

The tax shall, subject to the provisions of this Act, be charged to and paid by each person who derives rent from any leases, other than a person who is a registered person under the Value Added Tax Act [Cap. 247] to the extent that the registered person derives rent which is subject to value added tax.

5. Chargeability to tax, of trustees

- (1) Subject to the provisions of this Act, any person who derives rent as a trustee for another person who is identified as beneficially entitled to that rent, shall be chargeable to tax on that rent as if he were that identifiable person.

- (2) Subject to the provisions of this Act, any person who derives rent as a trustee for another person who is not identified as beneficially entitled to that rent shall be chargeable to tax on that rent as if he were beneficially entitled to that rent.

6. Tax on non-resident persons

A person not resident in Vanuatu shall be chargeable either in his own name or in the name of his agent or trustee on rents derived from his leases, whether such agent or trustee has the receipt of the rent or not.

7. Chargeability on rent derived by wife or child

- (1) The rent derived by any wife shall be aggregated with and deemed to form part of the rent derived by her husband, if the marriage subsists during that chargeable period.
- (2) The rent derived by any child under 18 years shall be aggregated with and deemed to form part of the rent derived by –
- (a) his father, if the marriage of his parent subsists during that chargeable period; or
 - (b) the parent who maintains him and with whom he lives during that chargeable period, if the marriage of his parent does not subsist in that chargeable period.

8. Chargeability to tax on rent of a sublease

Where a lessee pays rent to a lessor who is liable to pay tax on that rent under this Act, and such lessee sublets the whole or any part of the property to which the lease relates, to another person (sub-lessee), only the excess of the rent received by the lessee from the subletting over the rent paid by him to the lessor shall be deemed to be the rent derived by the lessee for the purpose of this Act, and tax shall be charged on such rent.

8A. Chargeability to tax on rent derived by the transferor of a lease

Where a lessor who is liable to pay tax under this Act, transfers during a chargeable period, the lease from which the rent is derived, the rent derived during the part of that chargeable period prior to the date of that transfer, shall for the purpose of this Act, be deemed to be the rent derived by the transferee of the lease and the tax shall be charged on the transferee for that chargeable period.

8B. Chargeability to tax on rent assessed by taxpayer

- (1) Where in terms of any lease –
- (a) the use or occupation of any land or premises is granted by the lessor to the lessee, in the form of a fringe benefit, salary package or otherwise; and
 - (b) no pecuniary consideration is paid by the lessee as rent in respect of the use or occupation of such land or premises or where such consideration is paid, it is below the market rental value of such land or premises,

for the purposes of this Act the lessor shall be deemed to derive rent from such lease, in respect of that land and premises, and shall be charged with and liable to pay tax on that rent in accordance with the provisions in subsection (2) of this section.

- (2) Tax which the taxpayer is liable to pay under this section shall be assessed and paid by such taxpayer, at the appropriate rate specified in schedule 1 to this Act, on the rental value assessed by him, corresponding as nearly as possible to the market rental value of any land and premises having identical or similar quality, character and location.
- (3) When the taxpayer has under-assessed the rental value, in the opinion of the Collector, and thereby under-assessed the tax payable on such rental value, the Collector may assess such taxpayer at the additional amount at which according to his opinion such taxpayer ought to have assessed, having due regard to the fair

market rental value of any land and premises having identical or similar quality, character and location and give notice to such taxpayer stating the amount of rent assessed and the amount of tax assessed and payable.

9. Exemption from tax

- (1) No tax shall be payable on any premium for any lease expressed to be for a term of 21 years or more without renewals.
- (2) *(Repealed)*
- (3) The following persons are exempt from paying tax under this Act –
 - (a) the persons specified in Schedule 2;
 - (b) religious institutions;
 - (c) benevolent associations; and
 - (d) political parties, any member of which holds membership of Parliament.

10. Minister's power to exempt

- (1) The Minister may in the public interest and having regard to the national economy, by Order exempt any person from paying tax under this Act.
- (2) The Minister may by Order –
 - (a) exempt from payment of tax any person;
 - (b) reduce or vary the rates specified in Schedule 1 to this Act, in respect of any person;

where such person is a citizen or a company all the shareholders of which are citizens.

11. Returns to be furnished by the taxpayer

- (1) Every taxpayer shall furnish to the Collector within 28 days, immediately succeeding the end of a chargeable period, a return in such form and containing such particulars as may be prescribed of the rent derived by such taxpayer during that chargeable period.
- (2) Any taxpayer who fails to furnish a return under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 50,000 and if the failure continues, to a further fine of VT 2,000 for each day on which the failure so continues.

11A. Bad debts

- (1) Subject to subsection (2), amounts due to a taxpayer in respect of rent or lease payments which have been written off as irrecoverable may be deducted from the total amount of all rent derived by the taxpayer during the chargeable period to which they relate.
- (2) If any amount shown as a deduction pursuant to subsection (1) or a part thereof is subsequently received by the taxpayer, such amount or part thereof shall be included as part of the total of all rent derived by the taxpayer during the chargeable period next following.

12. Returns to be furnished on notice

- (1) The Collector may give notice in writing to any person requiring him to furnish within the time specified in such notice a return in such form and containing such particulars as may be prescribed of the rent derived by that person during any chargeable period.

- (2) Any person who fails to comply with a notice given to him under subsection (1) requiring him to furnish a return of the rent derived, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 50,000 and if the failure continues, to a further fine not exceeding VT 2,000 for each day on which the failure so continues.

13. Penalty for failure to furnish returns

- (1) Whenever any taxpayer fails to furnish returns which he is required to furnish under section 11 or fails to comply with a notice given to him by the Collector under section 12 requiring him to furnish a return of the rent derived, the Collector may by notice in writing –

- (a) impose on such person a penalty of a sum not exceeding VT 50,000; and
- (b) require such person –
 - (i) to pay such penalty; and
 - (ii) to furnish such return;

within such period as may be specified in such notice.

- (2) The Collector may reduce or waive any penalty imposed on any person under this section, if such person proves to the satisfaction of the Collector, that his failure to furnish a return was due to circumstances beyond his control and that he has after the imposition of the penalty, furnished such return.
- (3) When a penalty is imposed on a person under this section he shall not be liable to prosecution for an offence under sections 11 and 12.

14. Payment of tax by self assessment

The tax, which any taxpayer is liable to pay under this Act, for any chargeable period shall be assessed by the taxpayer and paid by such taxpayer to the Collector within 28 days immediately succeeding the end of that chargeable period.

15. Assessment of the Collector

- (1) When a taxpayer has failed to furnish a return for any chargeable period, the Collector may within 14 days immediately succeeding the end of the period within which the return has to be furnished under section 11, or section 12, as the case may be, assess the tax which in the judgment of the Collector such taxpayer ought to have been assessed and paid and give notice to such taxpayer stating the amount of tax assessed by the Collector as payable.
- (2) Any assessment made under subsection (1) shall not affect the liability of such person to a penalty under section 13 for failure to furnish a return under the Act.

16. Additional assessment by the Collector

Where a taxpayer has understated in any return the amount of rent derived by him during any chargeable period, and the tax has been assessed at less than the proper amount, the Collector may assess such person at the additional amount at which according to his opinion such taxpayer ought to have assessed, and give notice to such taxpayer stating the amount of rent assessed and the amount of tax assessed and payable.

17. Appeal to the Minister

Any person aggrieved by the amount of an assessment made under section 15 or section 16, may within a period of 30 days of the notification of assessment appeal to the Minister against such assessment.

18. Finality of assessment

Where no valid appeal has been lodged within the time specified in section 17, against an assessment as regards the amount of the rent assessable, or when an appeal preferred against such an assessment is dismissed or where the amount of such rent assessable has been determined on appeal, the assessment as made or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Act, as regards the amount of such assessable rent.

19. Penalty for incorrect return

- (1) Where in an assessment made in respect of any taxpayer, the amount of the assessable rent exceeds the amount specified as his assessable rent in the return furnished by him under section 11 and 12 and the assessment is final and conclusive under section 18 unless that taxpayer proves to the satisfaction of the Collector that there is no fraud or wilful negligence involved in the disclosure of rent derived by that taxpayer in such return, the Collector shall in writing order that taxpayer to pay on or before a specified date, a sum equal to twice the tax on the amount of the excess as a penalty for making an incorrect return.
- (2) Where in respect of a taxpayer's return a penalty is imposed on him under this section, he shall not be liable to prosecution for an offence relating to that return under section 24.

20. Tax in default and sums added

- (1) Where tax for any chargeable period is not paid on or before the date specified in section 14, such tax or where any tax assessed by the Collector for any chargeable period, and required to be paid on or before the date specified in the notice of assessment is not so paid, such tax shall be deemed to be in default and, the taxpayer who is liable to pay such tax shall be deemed to be a defaulter for the purposes of this Act.
- (2) Where any taxpayer is in default, and where the amount in default is not paid, the defaulter shall in addition to the tax in default pay a further sum at the rate of 25 per cent per annum in respect of the period during which tax is in default.
- (3) The Collector may reduce or waive any sum added under this section if it appears to him that such reduction or waiver is just and equitable in all the circumstances of the case.

21. Tax in default to be a debt

- (1) The tax in default under this Act, shall be a debt due to the Government which shall, notwithstanding anything contained in any other law, be paid in priority.
- (2) For the purposes of this section and sections 22, 27 and 28 "tax in default" means tax chargeable under this Act together with any sum added to such tax by reason of defaults and penalties imposed under this Act.

22. Recovery of tax out of debts

- (1) Where tax payable by a taxpayer is in default, and it appears to the Collector to be probable that any person –
 - (a) was or is about to pay money to the taxpayer; or
 - (b) holds money for or on account of the taxpayer; or
 - (c) holds money on account of some other person for payment to the taxpayer; or
 - (d) has authority from some other person to pay money to the taxpayer as his agent,

the Collector may give to such person notice in writing (copy of which shall be sent by post to the defaulter) requiring him to pay any such monies not exceeding the amount of the tax in default, to the Collector, within such period as may be specified in such notice.

The notice shall apply to all such moneys which are in his hands or due from him at the date of receipt of such notice, or come into his hands or become due from him or are about to be paid by him at any time within a period of 3 months after the date of such notice.

- (2) Any person who has made any payment under this section shall be deemed to have acted under the authority of the taxpayer in default and of all other persons concerned and is hereby indemnified in respect of such payment against all proceedings, civil or criminal, notwithstanding the provisions of any written law, contract or agreement.
- (3) Any person to whom a notice has been given under subsection (1) who is unable to comply therewith owing to the fact that the moneys referred to in that subsection do not come into his hands or that no such moneys become due from him within the period referred in that subsection, shall within 14 days of the expiration thereof give notice in writing to the Collector apprising him of the facts.
- (4) Where any person to whom a notice has been given under subsection (1) is unable to comply therewith and has failed to give notice to the Collector as provided in subsection (3), or where such person had deducted or could have deducted the tax to which the notice relates or any part thereof and has not paid as required by the Collector the amount of such tax within 14 days after the expiration of the period referred to in subsection (1), such person shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding VT 20,000, and if the failure continues, to a further fine not exceeding VT 2,000 for each day on which the failure so continues.

23. Tax to be payable notwithstanding any prosecution or conviction

The institution of a prosecution in respect of an offence under this Act or the imposition of a penalty, fine or term of imprisonment in respect of any such offence shall not relieve any person from liability to assessment, or payment, of any tax for which he is or may be liable.

24. Offences relating to fraud

Any person who –

- (a) omits from a return made or furnished under this Act, any rent which he should have included in such return; or
- (b) makes any false statement, or entry in any return made or furnished under this Act; or
- (c) gives any false answer whether verbally or in writing to any question or request for information asked or made in accordance with the provisions of this Act; or
- (d) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of, any books of account or record; or
- (e) makes use of any fraud, art or contrivance whatsoever or authorizes the use of any such fraud, art or contrivance,

and thereby evades or attempts to evade tax or assists any other person to evade such tax shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 500,000 or to imprisonment for a term not exceeding 2 years, or to both such fine and imprisonment.

25. Prosecutions to be with the sanction of the Collector

No prosecution in respect of an offence under section 24 shall be commenced except at the instance or with the sanction of the Collector.

26. Collector's power to acquire further information

- (1) For the purposes of obtaining full information in respect of any rent derived by any person, the Collector may give notice in writing to such person or any other person, requiring him –
- (a) to furnish within the time specified in such notice fuller and further information relating to any matter as in the opinion of the Collector is necessary or relevant for the assessment of the tax payable by him or any other person;
 - (b) to produce for examination or transmit to the Collector, within the period specified in such notice any book, register, file, tape, disc, record, paper, cheque, instrument or other document or article, in his possession or control as may be specified in that notice;
 - (c) to attend in person or by representative authorized by him at such place and on such date and at such time as may be specified in the notice, for the purpose of being examined regarding the rent he or any other person derived.
- (2) Any person who fails to comply with a notice given to him under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 100,000 and if the failure continues, to a further fine not exceeding VT 2,000 for each day on which the failure so continues.

27. Summary procedures

The Judicial Committee shall provide summary court procedures for the recovery of tax in default.

28. Certificate by the Collector

In any proceedings for the recovery of tax in default under this Act –

- (a) a certificate by the Collector that any tax is in default shall be sufficient evidence of that fact until the contrary is proved;
- (b) a photocopy, of any document or extract from any document certified by the Collector to be such document shall be admissible in any proceedings to the same extent as the document itself;
- (c) a document purporting to be a certificate under paragraph (a) or (b) shall be accepted as such certificate unless the contrary is proved.

29. Records

- (1) Every taxpayer shall keep records and documents in Bislama, English or French within Vanuatu sufficient to enable an accurate calculation of the rent derived by him to be made for the purposes of this Act, and shall keep them for 4 years from the end of the relevant chargeable period.
- (2) Any taxpayer who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 100,000.

30. Collector's power to search

The Collector or any officer authorized by him, accompanied by a police officer, if in the opinion of the Collector the presence of a police officer is necessary, may enter and search at any reasonable time any building or place where he has reason to believe that any article, book of account or other document which in his opinion will be useful for or relevant to, any purposes of this Act may be found and examine any such article, book of account or other document if found, seize or place marks of identification thereon or make extracts or copies therefrom.

31. Offence by corporate body, etc.

Where an offence under this Act has been committed by a company or body of persons, corporate or unincorporate, any person who at the time of the commission of the offence was a director, manager, company secretary or other principal officer of that company or body of persons or who was acting or purporting to act in any such capacity, shall be guilty of the offence unless he proves that the offence was committed without his consent or knowledge and that he exercised all diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in such capacity and to all the circumstances.

32. Rent taxation not to be passed on to lessee or tenant

Notwithstanding anything to the contrary contained in any lease, monies due under this Act shall not be recoverable by the taxpayer from the lessee or tenant in respect of that lease.

33. Delegation of powers of the Collector

- (1) The Collector may by writing under his hand, delegate to any officer any of the powers or functions conferred on or assigned to the Collector by this Act.
- (2) Every officer to whom any power or function is delegated under subsection (1) shall exercise or discharge that power or function subject to the directions of the Collector.

34. Regulations

- (1) The Minister may by Order make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act.
- (2) In particular and without prejudice to the generality of the powers conferred by subsection (1) the Minister may make regulations in respect of any matter which is required or authorized by this Act to be prescribed.
- (3) Contravention of or failure to comply with any regulation made under this Act shall be an offence under this Act and shall be punishable on conviction with a fine not exceeding VT 200,000.

SCHEDULE 1

(section 3)

RATES OF TAX

Rates of tax for each chargeable period (i.e. half year rates) –

a. Where the taxpayer is a natural person:

<i>Total amount of all rent derived by the taxpayer during the chargeable period –</i>	<i>Amount of tax to be charged –</i>
– does not exceed VT 200,000	– no tax is charged
– exceeds VT 200,000	– 12.5% of the excess over VT 200,000

b. Where the taxpayer is not a natural person, the amount of tax to be charged is 12.5% of all rent derived by the taxpayer during the chargeable period.

SCHEDULE 2

(section 9)

EXEMPTION FROM TAX

The following are exempt from paying tax under this Act:

- (1) *(Repealed)*
- (2) *(Repealed)*
- (3) *(Repealed)*
- (4) National Housing Corporation.
- (5) National Provident Fund.
- (6) Local Government Councils.
- (7) Port Vila Municipal Council.
- (8) Luganville Municipal Council.

Table of Amendments

4	<i>Substituted by Act 12 of 1998</i>
8	<i>Amended by Act 25 of 1988</i>
8A, 8B	<i>Inserted by Act 30 of 1989</i>
9(2)	<i>Repealed by Act 30 of 1989</i>
11A	<i>Inserted by Act 25 of 1988</i>
Sched 1, para (a)	<i>Substituted by Act 8 of 1992</i>
Sched 1	<i>Amended by Act 12 of 1998</i>
Sched 2, para (1), (2), (3)	<i>Repealed by Act 30 of 1989</i>