



ANALYSIS

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1980, No. 6

An Act to impose turnover taxes and to provide for their assessment
 levy and collection

(24 July 1980)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title and commencement - (1) This Act may be cited as the Turnover Tax Act 1980.
 (2) This Act shall come into force on such day as the Minister may appoint by notice in the Gazette.

PART I - INTERPRETATION: ADMINISTRATION

2. Interpretation - In this Act, unless the context otherwise requires -

"Cassual sale" means an occasional or isolated sale or transaction involving tangible personal property -

- (a) by a person who is not engaged in business; or
 (b) which is not ordinarily sold in the business of a person who is regularly engaged in business;

"Collector" means the Collector of Inland Revenue appointed under the Income Tax Act 1972:

"Department" means the Department of Inland Revenue established under the Income Tax Act 1972

"Minister" means the Minister of Finance

"Person" or "Company" includes every individual, incorporated company, partnership, society, unincorporated association, group, corporation sole, personal representative, trust or other entity whether such persons are doing business for themselves or in a fiduciary capacity, and whether the individuals are residents or non-residents of the Cook Islands, and whether the company or other association is created or organized under the laws of the Cook Islands or elsewhere. Any person who has in his possession, for sale in the Cook Islands, the property of a non-resident owner, other than as an employee of such owner, shall be deemed the seller of the property, when sold:

"Purchasing agent" means any person who, as an agent and not a seller, for a consideration, is engaged in the Cook Islands in the business of purchasing for his principal or principals from a seller or sellers property for use by such principals, in the Cook Islands, including forwarding orders for such purchases, on behalf of such principals, whether he is compensated for his services by the seller or by the purchaser; provided that the term "purchasing agent" does not include an employee of the purchaser:

"Representative" means any salesman, commission agent, manufacturer's representative, broker or other person who is authorised or employed by a seller to assist such seller in selling any property (real or personal) for use in the Cook Islands by procuring orders for such sales or otherwise, and who carries on such activities in the Cook Islands, whether such activities are regular or intermittent; provided that the term "representative" does not include a manufacturer's representative whose functions are wholly promotional and to act as liaison between sellers, and which do not include the procuring, soliciting or accepting of orders for any property or the making of deliveries of any property, or the collecting of payment for deliveries of any property, or the keeping of books of account concerning any property orders, deliveries or collections transpiring between sellers. Any seller who in person carries on any such activity in the Cook Islands shall be classed as a representative:

"Sale" or "sales" includes the exchange of properties as well as the sale thereof for money:

"Taxpayer" means any person liable for any tax hereunder:

"Tax year" or taxable year" means either the calendar year, or the taxpayer's fiscal year when the same constitutes the tax period instead of the calendar year pursuant to section 11 of this Act.

3. "Businesses", "engaging" in business, defined -

- (1) "Business" as used in this Act, includes all activities (personal, professional, or corporate), engaged in or caused to be engaged in with the object of gain or economic benefit either direct or indirect, but does not include casual sales.
- (2) The term "engaging" as used in this Act with reference to engaging or continuing in business also includes the exercise of corporate or franchise powers.

4. "Gross income", "gross proceeds of sale" defined -

- (1) "Gross income" means the gross receipts, cash or accrued, of the taxpayer received as reward for personal services and the gross receipts of the taxpayer derived from trade, business, commerce, or sales and the value proceeding or accruing from the sale of tangible personal property, or service, or both, and all receipts, actual or accrued as hereinafter provided, by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees or other emoluments however designated and without any deductions on account of the cost of property sold the cost of materials used, labour cost, taxes, royalties, interest or discount paid or any other expenses whatsoever.
- (2) "Gross proceeds of sale" means the value actually proceeding from the sale of tangible personal property without any deduction on account of the cost of property sold or expenses of any kind:
- (3) The words "gross income" and "gross proceeds of sales" shall not be construed to include : gross receipts from the sale of bonds or other evidence of indebtedness or shares, or except as otherwise provided, dividends as defined by section 4 of the Income Tax Act 1972; group discounts allowed and taken on sales, the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit; or the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in the "gross income" or "gross proceeds of sales". Accounts found to be worthless and actually written off may, at corresponding periods, be within this Act, so far as they reflect taxable sales made, or gross income earned, but shall be added to gross proceeds of sale or gross income when and if afterwards collected.

5. "Wholesale purchaser" defined - (1) A "wholesale purchaser" means a person making purchases at wholesale.

- (2) Only the following are purchases at wholesale:
 - (a) Purchases by a retail merchant or other seller for purposes of resale;
 - (b) purchases by a manufacturer of materials or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and which will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer; or

- (c) purchases by a contractor of material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses; or
- (d) purchases by a producer, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services, for the purpose of raising or producing animal or poultry products for disposition as described in section 7 hereof or to be incorporated in a manufactured product as described in paragraph (b) of this section for the purposes of breeding, hatching, milking, or egg laying other than for the customer's own consumption of the meat, poultry, eggs, or milk so produced; or
- (e) purchases by a producer of seed or fertilizer for producing agricultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural products or fish are to be disposed of as described in section 7 hereof or to be incorporated to a manufactured product as described in paragraph (b) of this section; or
- (f) purchases by a producer of cartons and such other containers, wrappers and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products; of seedlings and cuttings for producing nursery plants, or of chick containers; which cartons and such other containers, wrappers and sacks, binders, seedlings, cuttings and containers are to be used as described in paragraph (b) of this section:
- (g) purchases of tangible personal property by a person engaged in any service business provided that (i) the said property is not consumed or incidental to the performance of the services; (ii) there is a resale of said article, and (iii) the resale of said article is separately charged or billed by the person rendering the services.

6. "Wholesale service user" defined - A "Wholesale service user" means a person who is engaged in any profession, trade, occupation, service business or calling who uses or obtains activities or services provided by any other person who is engaged in any profession, trade, occupation, service business, or calling, and who acts or acts in the nature of an intermediary between the person rendering such activities or services and the ultimate recipient of the benefits of such activities or services; and includes any person who is so engaged in any profession, trade, occupation, service business or calling as a contractor.

7. "Producer" defined - "Producer" includes any person engaged in the business of raising and producing agricultural, animal or poultry products in their natural state, or in producing natural resource products, or engaged in the business of fishing, for sale of the agricultural, animal or poultry products in their natural state, or butchered and dressed, or the natural resource products or the fish.

8. "Contractor" defined - "Contractor" includes, for purposes of this Act: (a) Every person engaging in the business of contracting to erect, construct, repair or improve buildings or structures, of any kind or description, including any portion thereof, or to make any installation therein, or to make, construct, repair or improve any highway, road, street, sidewalk, ditch, excavation, fill, bridge, shaft, well, culvert, sewer, water system, drainage system, dredging or harbour improvement project, electric or steam rail, lighting or power station, transmission line, tower, dock, wharf, or other improvement; and - (b) Every person engaging in the practice of architecture, professional engineering, land surveying, or landscape architecture.

9. "Service Business or calling", defined - "Service business or calling" includes all non professional activities engaged in for other persons for a consideration which involve the rendering of a service as distinguished from the sale of tangible property. "Service business or calling" does not include the services rendered by any employee to his employer.

10. Administration by Department - (1) This Act shall be administered by the Department.

(2) The Department shall have, in addition to all of the duties and powers herein respectively prescribed or granted, all the duties and powers respectively prescribed or granted by the existing or future tax laws of the Cook Islands so far as the same may be applicable to the administration of this Act and are not contrary to the express provisions hereof.

11. Tax year - The assessment of taxes herein made and the returns required therefor shall be for the year ending on December 31. If the taxpayer keeps his books reflecting the same on a basis other than the calendar year, he may, with the assent of the Department, and upon the direction of the Department shall, make his annual returns and pay taxes for the year covering his accounting period as shown by the method of keeping his books.

PART II - REGISTRATION

12. Registration as wholesale purchaser - (1) Any person who is a wholesale purchaser of any property or class or type of property may apply to the Collector in writing for registration as a wholesale purchaser of that property or class or type of property -

(2) Every application shall specify -

- (a) The property or class or type of property purchased by the applicant as a wholesale purchaser;
- (b) Such other information as the Collector shall consider relevant.

(3) If the Collector is satisfied that the applicant is a wholesale purchaser of any specified property of any class or type of property the Collector shall register the applicant as a wholesale purchaser in respect of that property or type or class of property.

13. Registration as a wholesale service user - (1) Any person who is a wholesale service user of any profession, trade, occupation, service business or calling may apply to the Collector in writing for registration as a wholesale service user in respect of that profession, trade, occupation, service

business or calling.

(2) Every application shall specify -

- (a) The profession, trade, occupation, service business or calling in respect of which the applicant uses or obtains activities or services;
- (b) such other information as the Collector shall consider relevant.

(3) If the Collector is satisfied that the applicant is a wholesale service user of a specified profession, trade, occupation, service business or calling the Collector shall register the applicant as a wholesale service user in respect of that profession, trade, occupation, service business or calling.

14. Variation of registration - (1) If the Collector is satisfied either on the application of the registered wholesale purchaser or wholesale service user as the case may be or on his own enquiry that any registration pursuant to section 12 to 13 of this Act should be varied in some material respect the Collector shall so vary the said registration.

(2) Before the Collector shall vary the registration following his own enquiry, he shall give the registered wholesale purchaser or wholesale service user as the case may be 14 days prior notice in writing of his intention to so vary the registration. Prior to the expiration of the 14 days the registered wholesale purchaser or wholesale service user as the case may be may make representations in writing to the Collector relating to the proposed variation and such representations shall be considered by the Collector before he makes his decision.

15. Cancellation of registration - (1) If the Collector considers that any registered wholesale purchase or wholesale service user may no longer be engaged in any activity for which he is registered pursuant to section 12 or 13 of this Act, the Collector shall give notice in writing to him of the intention of the Collector to enquire into the possible cancellation of the registration in respect of that activity.

(2) Within 14 days of the receipt by him of the notice referred to in sub-section (1) hereof the registered wholesale purchaser or wholesale service user may make representations in writing to the Collector relating to the activity in question.

(3) Before cancelling any such registration in respect of any such activity the Collector shall advise the registered wholesale purchaser or wholesale service user concerned of the reasons for his decision and shall give the said person affected a further period of 7 days in which to make further representations thereon.

(4) In after complying with the provisions of sub-sections (1), (2) and (3) hereof the Collector is satisfied that any registered wholesale purchaser, or wholesale service user is no longer engaged in any activity for which he is registered the Collector shall cancel the registration of that activity.

16. Appeals - (1) Any applicant for registration pursuant to sections 12 and 13 of this Act and any person affected by any decision of the Collector pursuant to sections 14 and 15 of this Act may appeal to the High Court of the Cook Islands against any decision of the Collector pursuant to sections 14 and 15 of this Act.

(2) Every such appeal shall be commenced by notice in writing filed in the High Court of the Cook Islands within 21 days of the decision of the Collector to be appealed against or such further time as the Court may allow.

(3) On the hearing of any such appeal the High Court may affirm, vary or annul the decision of the Collector.

PART III - IMPOSITION OF TAXES

17. Turnover Tax - (1) Subject to the provisions of this Act there shall be assessed levied and paid for the use of Her Majesty a tax herein referred to as turnover tax.

(2) Turnover tax shall be payable by persons on account of their business and other activities in the Cook Islands measured by the application of rates against values of products, gross proceeds of sales, or gross income.

18. Tax upon sale of property - Every person engaging or continuing within the Cook Islands in the business of selling any tangible personal property shall pay a tax levied and assessed at a rate equivalent to -

- (a) 1% of the gross proceeds of the sales of the business to any person who is registered as a wholesale purchaser pursuant to section 12 of this Act in respect of the property sold to him;
- (b) 4% of the gross proceeds of the sales of the business in all other cases.

19. Tax upon services - Every person engaging or continuing within the Cook Islands in any profession, trade, occupation, service business or calling shall pay a tax levied and assessed at a rate equivalent to -

- (a) 1% of the gross income thereof obtained or derived from any person registered as a wholesale service user of that profession, trade, occupation, service business or calling pursuant to section 13 of this Act.
- (b) 4% of the gross income thereof in all other cases.

20. Tax upon contractors - Every contractor engaging or continuing within the Cook Islands in the business of contracting, shall pay a tax levied and assessed at a rate equivalent to -

- (a) 1% of the gross income thereof obtained or derived from any person registered as a wholesale service user in respect of that part of the business of the contractor undertaken for the wholesale service user pursuant to section 13 of this Act.
- (b) 4% of the gross income thereof in all other cases.

21. Tax upon theatres, amusements, and radio broadcasting stations etc., - Every person engaging or continuing within the Cook Islands in the business of operating a theatre, opera house, movie picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station or any other place at which amusements are offered to the public, shall pay a tax levied and assessed at a rate equal to 4% of the gross income of the business.

22. Tax upon sales representatives or purchasing agents -

Every person classified as a representative or purchasing agent under section 2 of this Act engaging or continuing within the Cook Islands in the business of performing services for another, other than as an employee, shall pay a tax levied and assessed at a rate equal to 4% of the commissions and other reward attributions to the services so rendered by him.

23. Tax upon licensed tourist business - Every person who holds a licence issued under the Tourist Authority Act 1968 shall pay a tax levied and assessed at a rate equal to 4% of the gross income of all business engaged in or carried on and 4% of the gross proceeds of all sales of tangible personal property made pursuant to or in connection with that licence.

24. Tax on banking business - Every person who holds a licence issued under the Banking Act 1969 shall pay a tax levied and assessed at a rate equivalent to -

- (a) 4% of the interest received by that person;
- (b) 4% of all other charges made by that person.

25. Tax on shipping and airline business - (1) Every person engaged in any shipping or airline business shall pay a tax levied and assessed at a rate equivalent to -

- (a) 1% of the gross income derived by that person from the transport of all goods and commodities from the Cook Islands to any place outside the Cook Islands;
- (b) 4% of the gross income derived by that person from the transport of all persons from the Cook Islands to any place outside the Cook Islands or between any islands of the Cook Islands.

(2) No turnover tax shall be payable on any income derived from the transport of goods and commodities between any islands of the Cook Islands.

26. Tax on insurance business - (1) Every person engaging or continuing within the Cook Islands in the business of insurance shall pay a tax levied and assessed at a rate equivalent to 4% of the gross premiums derived or obtained from such insurance.

(2) For the purpose of this section a person shall be deemed to be engaging or continuing within the Cook Islands in the business of insurance if the risk or property insured is situated within the Cook Islands or the premium in respect of any contract of insurance is derived or obtained from the Cook Islands.

27. Tax on export sales - Every person who sells for export outside the Cook Islands any tangible personal property shall pay a tax levied and assessed at a rate equal to 1% of the gross proceeds thereof provided that the gross proceeds from the sale of fresh primary produce for exports will not attract turnover tax.

28. Tax on other business - (1) Every person engaging or continuing within the Cook Islands in any business, not included in the preceding sections or any other provisions of this Act, shall pay a tax levied and assessed at a rate equal to 4% of the gross income thereof.

(2) The rate prescribed by sub-section (1) hereof shall apply to a business taxable under one or more of the preceding sections or other provisions of this Act, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted.

29. Segregation of gross income, etc on records and returns

(1) The imposition of taxes and the application of tax rates shall not depend upon the business in which the taxpayer is primarily engaged. One business may be subject to two or more tax rates. If a business is within the purview of 2 or more of the provisions of sections 18 to 28 of this Act or other provisions of this Act all of them apply, each provision being applicable to the appropriate item of gross income, gross proceeds of sales, or value of products.

(2) Any person engaging or continuing in a business having gross income, gross proceeds of sales and value of products, or any of these as the case may be, taxable at different rates, shall be subject to taxation upon the aggregate amount of the gross income, gross proceeds of sales, and value of products of the business at the highest rate applicable to any part of the aggregate, unless he shall segregate, the parts taxable at different rates upon his records and in his returns.

(3) The burden of proving that the segregation was correctly made shall be upon the taxpayer.

(4) The same item of gross income, gross proceeds of sales or value of products shall not be subject to the imposition of more than one tax.

30. Further provisions as to application of tax - (1) Where a coin operated device produces gross income which is divided between the owner or operator of the device, and the owner or operator of the premises where such device is located, the tax imposed by this Act shall apply to each such person only in respect of his portion of the proceeds.

(2) Where gate receipts or other admissions are divided between the person furnishing or producing a play, concert, lecture, athletic event or similar spectacle (including any motion picture showing) and a promoter (including any proprietor or other operator of a motion picture house) offering the spectacle to the public, the tax imposed by this Act shall, if the promoter is subject to the tax imposed by this Act, apply only to the promoter measured by the whole of the proceeds, and the promoter shall be authorised to deduct and withhold from the portion of the proceeds payable to the person furnishing or producing the spectacle the amount of the tax payable by him upon such portion. No tax shall apply to a promoter with respect to such portion of the proceeds as is payable to a person furnishing or producing the spectacle who is exempted by section 25 from taxation upon such activity.

31. Consideration paid not indicative of true value - Where the sale of any products is made by a taxpayer, taxable under this Act, to other affiliated companies or persons, or under other circumstances where the consideration paid, if any, is not indicative of the true value of the products sold the taxpayer shall pay the tax imposed by this Act measured by the value, corresponding as nearly as possible to the gross proceeds of sale of similar products, of like quality and character, by other persons, where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar. If no such comparable sales exist between non-affiliated buyers and sellers, the Department shall prescribe equitable and uniform rules for ascertaining the value.

32. Principles applicable in certain situations - A person or company having shareholders or members including any corporation, association, group, trust, partnership, or other person shall be taxable upon its business with them, and they shall be taxable upon their business with it. A person or company, whether or not called a co-operative, through which shareholders or members are pursuing a common objective including the obtaining of property or services for their individual businesses or use, or the marketing of their

individual products, shall be a taxable person, and such facts shall not give rise to any tax exemption or tax benefit except as specifically provided. Even though a business has some of the aspects of agency it shall not be so regarded unless it is a true agency. The reimbursement of costs or advances made for or on behalf of one person by another shall not constitute gross income of the latter, unless the person receiving such reimbursement also receives additional monetary consideration for making such costs or advances.

33. Apportionment - If any person engaged in business both within and outside the Cook Islands or in selling goods for delivery outside the Cook Islands and if under the laws of the Cook Islands the entire gross income of such person cannot be included in the measure of his tax, there shall be apportioned to the Cook Islands' and included in the measure of the tax that portion of the gross income which is derived from activities within the Cook Islands, to the extent that the apportionment is required by the laws of the Cook Islands. In other cases, if and to the extent that the apportionment cannot be accurately made by separate accounting methods, there shall be apportioned to the Cook Islands and included in the measure of this tax that portion of the total gross income, so requiring apportionment, which the cost of doing business within the Cook Islands, applicable to the gross income, bears to the cost of doing business both within and outside the Cook Islands, applicable to the gross income.

34. Amounts not taxable - This Act, shall not apply to the following amounts:-

- (a) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;
- (b) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment of annuity contracts, either during the term or at maturity, or upon surrender of the contract;
- (c) Amounts received under any accident insurance or health insurance policy or contract or under legislation relating to workers compensation or employers' liability, as compensation for personal injuries, death or sickness including also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of the personal injuries, death or sickness;
- (d) The value of all property of every kind and sort acquired by gift, bequest, or devise, and the value of all property acquired by descent or inheritance;
- (e) Amounts received by any person as compensatory damages for any tort injury to him, or in his character or reputation, or received as compensatory damages for any tort injuring to or destruction of property, whether as the result of action or by private agreement between the parties;
- (f) Amounts received as salaries or wages for services rendered by an employee to an employer;
- (g) Amounts received as maintenance or alimony and other similar payments and settlements;
- (h) Amounts received as old age, destitute, or infirmed persons, or child, benefits under any legislation in force in the Cook Islands for the time being and amounts received as war pensions.
- (i) Amounts received as re-payment of capital in respect of any loan or advance;
- (j)
 - (i) Amounts received by any religious, charitable or other organisation where the amounts received will not be distributed among its members, but will be used solely for the purposes for which the organisation was formed;
 - (ii) Application may be made to the Minister for exemption under this section, which may be allowed or refused. The Minister may attach such condition or conditions as he considers appropriate where any application is allowed.

35. Exemption of low turnover - Any provisions of law to the contrary notwithstanding, there shall be exempted from, and excluded from the measure of, the taxes imposed by this Act: -

- (a) All sales, and the gross proceeds of all sales, of any tangible property sold by any person in any one year where the total value of the sales of all tangible personal property to which this Act applies by that person in that year does not exceed \$500;
- (b) The gross income of any person engaging in any profession, trade, occupation, service business or calling in any one year where the total gross income of that person from all professions, trades, occupations, service business or calling engaged in by him in that year does not exceed \$500.

36. Agents in the case of absentees - (1) Where any person acts or assumes to act as the agent of any other person who is outside the Cook Islands or does not have place of business in the Cook Islands he shall be liable to the same turnover tax and all obligations imposed by this Act as if he were the principal for whom he so acts or assumes to act.

(2) Where any person in the Cook Islands enters into any contract of insurance or contract of hire of any film with any person who does not have a place of business in the Cook Islands he shall be deemed to be the agent of that person for the purposes of sub-section (1) of this section.

PART IV - RETURNS AND PAYMENTS

37. Monthly or quarterly return:- (1) The taxes levied under this Act shall be payable in monthly instalments on or before the 20th day of the calendar month following the month in which they accrue. The taxpayer shall, on or before the 20th day of the calendar month, complete and sign a return of the instalment of tax for which he is liable for the preceding month and transmit the same, together with a remittance in the form required by section 38, for the amount of the tax to the office of the Department.

(2) Notwithstanding anything contained in sub-section (1) hereof, the Collector may, for good cause, permit a taxpayer to file his return required under this section and make payments thereon on a quarterly basis during the calendar year, the return and payment to be made on or before the 20th day of the calendar month after the close of each quarter, to wit, on or before April 20, July 20, October 20 and January 20, provided that the Collector is satisfied that the grant of such permit will not jeopardize the collection of the taxes due thereon and further that the Collector is satisfied that the taxpayer's total tax liability for the calendar year under this Act will not exceed \$200. The Collector may also for good cause, permit a taxpayer to make monthly payments based on his estimated quarterly liability, provided the taxpayer shall file a reconciliation at the end of each quarter during the calendar year, as herein provided.

(3) If a taxpayer filing his return on a quarterly basis, as herein provided, does not conform to the requirements of this Act or regulations made thereunder, the filing of his return or the payment of the taxes due thereon, or if the liability of the taxpayer who possesses a permit to file his return and to make payments on a quarterly basis exceeds \$200 in turnover taxes during the calendar year, or if the Collector determines that any such quarterly filing or return would unduly jeopardize the proper administration of this Act, the Collector may, at any time, revoke a taxpayer's permit, in which case the taxpayer shall then be required to file his return and make payments thereon as provided in sub-section (1) of this section.

38. Remittances - All remittances of taxes imposed by this Act shall be made by money, bank draft, cheque, cashier's cheque, money order, or certificate of deposit to the office of the Department or such other place as shall be determined by the Minister and notified in the Gazette. The Department shall issue its receipts therefor to the taxpayer and shall pay the moneys into the Cook Islands Government Account to be kept and accounted for as provided by law.

39. Annual return, payment of tax - On or before the 20th day of April after the end of the tax year each taxpayer shall make a return showing the value of products, gross proceeds of sales or gross income, and compute the amount of tax chargeable against him in accordance with this Act and deduct the amount of monthly payments (as hereinbefore provided), and transmit with his report a remittance in the form required by section 38 of this Act covering the residue of the tax chargeable against him to the office of the Department. The return shall be signed by the taxpayer, if made by an individual, or by a director or secretary if made on behalf of a company or if made on behalf of a partnership firm, society, un-incorporated association, group, trust or other entity, any individual delegated by the entity shall sign the same on behalf of the taxpayer. If for any reason it is not practicable for the individual taxpayer to sign the return, it may be done by a duly authorised agent. The Collector, for good cause shown may extend the time for making the return on the application of any taxpayer and grant such reasonable additional time within which to make the same as may, by it, be deemed advisable.

40. Filing of return : Inspection - (1) All monthly and annual returns shall be transmitted to the office of the Department.

(2) Monthly and annual returns shall be available for Inspection by Officers of the Department and not otherwise; provided that the Department may permit the inspection of any return by any other person being satisfied that the inspection is desired for some lawful and proper purpose.

(3) The Department may destroy the monthly returns filed pursuant to section 37 of this Act or any of them upon the expiration of 7 years after the end of the calendar year in which the taxes so returned accrued.

41. Erroneous returns, disallowances of exemption, payment -

(1) If any return made is erroneous, or is so deficient as not to disclose the full tax liability, or if the taxpayer, in his return, disclaims liability for the tax on any gross income or gross proceeds of sales liable to the tax, or if the taxpayer applies for an exemption to which he is not entitled, the Collector shall correct the error or assess the proper amount of taxes. If such recomputation results in an additional tax liability, or if the Collector proposes to assess any gross income or gross proceeds of sales by reason of the disallowance of an exemption claimed in the return or for which application has been filed, the Collector shall first give notice to the taxpayer of the proposed assessment, and the taxpayer shall thereupon have an opportunity within 30 days to confer with the Collector. After the expiration of 30 days from the notification the Collector shall assess the gross income or gross proceeds of sales of the taxpayer or any portion thereof which it believes has not theretofore been assessed, and shall give notice to the taxpayer of the amount of tax, and the amount thereof shall be paid within 20 days after the date the notice was mailed, properly addressed to the taxpayer at his last known address or place of business.

(2) No preliminary notice shall be necessary where the amount of the tax is calculated by the Collector from gross income returned by the taxpayer as subject to the tax (unless the taxpayer shall have

claimed that the applicable rate of tax is lower than the rate of tax applied by the Collector), in such case the tax shall be due and payable on the 10th day after the date the statement was mailed. In a case of disallowance of an exemption for which application was made the Department, before making an assessment may require thereof to the address shown in the application, to file information returns as to his gross income or gross proceeds of sales within such reasonable time as the Department may allow, and in the event of failure, neglect, or refusal to comply with the demand, the Department shall make an assessment under section 43 of this Act in lieu of this section.

42. Refunds and credits - If the amount already paid exceeds that which should have been paid on the basis of the tax recomputed as provided in section 41 of this Act, the excess so paid shall be immediately refunded to the taxpayer. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing hereunder.

43. Failure to make a return - If any person fails, neglects or refuses to make a return the Collector may as it deems best obtain information on which to base the assessment of the tax. After procuring the information the Collector shall assess the tax as provided in section 41 of this Act, and the assessment shall be presumed to be correct until and unless, upon an objection duly taken as provided in this Act, the contrary shall be clearly proved by the person assessed, and the burden of proof upon such objection shall be upon the person assessed to disprove the correctness of the assessment.

44. Additions to taxes for non-compliance or evasion - There shall be added to and become part of the tax imposed by this Act and collected as such:

- (a) In the case of any failure to file any return required to be filed on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause and not due to neglect, there shall be added to amount required to be shown as tax on the return 5% of the amount of the tax if the failure is for not more than one month, with an additional 5% for each additional month or part thereof during which the failure continues, not exceeding 25% in the aggregate. For the purposes of this paragraph, the amount of tax required to be shown on any return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.
- (b) If any part of any underpayment is due to negligence of intentional disregard of the provisions of this Act (but without intent to defraud) there shall be added to the tax an amount of up to 10% of the underpayment as determined by the Collector.
- (c) If any part of the underpayment of tax required to be shown on any return is due to fraud, there shall be added to the tax an amount of up to 50% of the underpayment as determined by the Collector.
- (d) If any penalty is assessed under paragraph (c) hereof for an underpayment of tax which is required to be shown on a return no penalty under paragraph (a) hereof shall be assessed with respect to the same underpayment.

PART V - GENERAL

45. Inspection of documents, inquiry - The provisions of sections 232 to 236 (both inclusive) of the Income Tax Act 1972 shall apply as if they were incorporated in and formed part of this Act.

46. Limitation period - (1) The amount of turnover taxes imposed by this Act shall be assessed or levied within 7 years after the annual return was filed or within three years of the due date prescribed for the filing of the said return, whichever is later, and no proceeding in Court without assessment for the collection of any such taxes shall be begun after the expiration of such period, provided that:

- (a) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the annual return, the tax may be assessed or levied at any time. However, in the case of a return claimed to be false or fraudulent with intent to evade tax, the determination as to the claim must first be made by a Judge of the High Court;
 - (b) Where, before the expiration of the period prescribed in sub-section (1) of this section, both the Collector and the taxpayer have consented in writing to the assessment or levy of the tax after the date fixed by sub-section (1), the tax may be assessed or levied at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.
- (2) No credit or refund shall be allowed more than 7 years after the annual return was filed, or in any case, of payment of tax without the filing of an annual return, more than 7 years after payment of tax, unless a claim for the credit or refund was filed within such period. The limitation shall not apply to a credit or refund pursuant to an objection provided for by Section 48 of this Act.

47. Records to be kept; examination; penalties - Every taxpayer shall keep within the Cook Islands and preserve for a period of 7 years, suitable records of gross proceeds of sales and gross income, and such other books, records of an account and invoices as may be required by the Department and all such books, records, and invoices shall be open for examination at any time by the Department or the authorised representative thereof. Any person who contravenes this section shall be guilty of an offence and any director, secretary or other officer of a company who permits, aids or abets the company to contravene this section shall likewise be guilty of an offence, the penalty for such offence shall be that prescribed by section 43 of this Act for individuals, companies or officers of companies, as the case may be, for contravention of that section.

PART VI - OBJECTIONS

48. Objections - Any person who has been assessed for turnover tax for any month or any year may object against the assessment in the manner and within the time and in all other respects as provided in the case of income tax objections by Part IV of the Income Tax Act 1972.

49. Payment and recovery of tax - The provisions of sections 207 to 216 (both inclusive) of Part XII of the Income Tax Act 1972 relating to the payment and recovery of tax shall apply as if they were incorporated in and formed part of this Act, all reference therein to

"income tax" being read as references to "turnover tax" and with all other necessary modifications.

PART VII - ENFORCEMENT OF PAYMENT

50. Bulk sales; penalties - (1) In any case of the sale in bulk of the whole or a large part of a stock of merchandise and fixtures, or merchandise, or fixtures, or other assets of a business, otherwise than in the ordinary course of trade, and in the regular and usual prosecution of the seller's business, the seller shall make a written and verified report of the bulk sale to the Collector not later than ten days after the possession, or the control, or the title of the property or any part thereof, has passed to the purchaser. The report shall contain the name and address of the purchaser, a brief description of the property sold and the purchase price, the date when the sale is to be or was consummated and such other facts as the department may require. The purchaser may make the report for the seller.

(2) The purchaser of the property shall withhold payment of the purchase price until the receipt of a certificate from the Collector to the effect that all taxes, penalties and interest levied or accrued under this Act against the seller or constituting a lien upon the property, have been paid, which certificate shall show on its face that the Department has had notice of the bulk sale and shall also show the names of the seller and purchaser, a brief description of the property sold, and the date of consummation of the sale together with such other information as the collector shall prescribe.

(3) If the required report of the bulk sale is not made, or if the taxes, penalties and interest shall not be paid within 20 days after the possession, or the control, or the title of the property, or any part thereof, has passed to the purchaser, or within such further time as the Collector may allow, the purchaser shall be personally liable to pay to the Crown the amount of all taxes, penalties, and interest levied or accrued under this Act against the seller or constituting a lien upon thereafter accruing, not exceeding, however, the amount of the purchase price, but the issuance of a certificate in the prescribed form shall be a complete defense to such liability of the purchaser. In any case of such liability upon the part of the purchaser, a written report thereof shall be made by the purchaser upon the next due date for the payment of gross income taxes.

(4) For the purposes of this section the "purchase price" shall include money, or the value of any consideration other than money.

(5) Failure to make any report required by this section shall constitute an offence punishable by a fine of not more than \$500. In addition, penalties and interest shall apply to such delinquent taxes if not paid within twenty days after the possession, or the control, of the title of the property, or any part thereof, has passed to the purchaser, or within such further time as the Department may allow, whether or not an assessment of the tax has been made or notice of the delinquency given.

(6) The Purchaser shall have his remedy against the seller for the amount of taxes, penalties, or interest paid by him.

PART VIII - OFFENCES AND PENALTIES

51. Penalties - The provisions of Part XIV of the Income Tax Act 1972 relating to penalties shall apply in respect of the provisions of this Act as if the provisions of this Act were incorporated in and formed part of the Income Tax Act 1972.

52. Application of Act to the Crown - Turnover Tax shall not be payable by the Crown or any agency or division thereof except as may be determined by the Minister by notice in the Gazette where the Minister considers that the non-application of the turnover tax in any particular case is unfair to any turnover tax payer or use tax payer under the Use Tax Act 1980.

53. Offences and penalties - (1) It shall be unlawful for any person to refuse to make the return provided to be made in section 39 of this Act or to make any false or fraudulent return or false statement in any return, with intent to defraud the Crown or to evade the payment of any tax imposed by this Act; or for any director, secretary or other officer of any corporation to make or permit to be made for any false statement in any return required by this Act, with the intent to evade the payment of any tax hereunder. Any person contravening this subsection or contravening section 35 of this Act in relation to the tax imposed by this Act shall be liable on conviction to a fine not exceeding \$1,000 or a term of imprisonment not exceeding one year, or both. Any corporation for which a false return, or a return containing a false statement is made shall be liable on conviction to a fine not exceeding \$1,000.

(2) It shall be an offence for any tax payer to indicate whether directly or indirectly in any advertisement, tender or invoice, price label or otherwise howsoever that the tax or any part thereof that is imposed by this Act is or is not included in the price of any commodity, goods, property, or services sold or supplied or to be sold or supplied by the taxpayer. Any person who commits an offence against this subsection shall be liable on conviction to a fine not exceeding \$200 and where the offence is a continuing offence, to a further fine not exceeding \$200 for every day on which the offence has continued.

54. Regulations - (1) The High Commissioner may from time to time, by order in Executive Council, make all such regulations as, in his opinion, may be deemed necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power to make regulations conferred by sub-section (1) of this section it is hereby declared that regulations may be made under this section prescribing forms and rules or procedure for the ascertainment, assessment and collection of taxes imposed under this Act.

(3) All regulations made under this section shall be laid before the Legislative Assembly within 28 days after the making thereof, if the Legislative Assembly is then in session, and if not, shall be laid before the Legislative Assembly within 28 days after the commencement of the next ensuing session.

This Act is administered in the Inland Revenue Department.