



ANALYSIS

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1980, No. 7

An Act to impose use tax and to provide for their assessment levy and collection

(30 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 - This Act may be cited as the Use Tax Act 1980.
2. Interpretation - In this Act, unless the context otherwise requires: -

"Comptroller" means the Comptroller of Customs and includes any person designated by the Comptroller to be acting on his behalf;

"Declaration" means a declaration made in accordance with the provisions of this Act;

"Documents" includes books;

"Goods" means all kinds of movable personal property;

"Intent to defraud the revenue" means :

- (a) An intent to evade, or to enable any other person to evade, payment of the use tax or any part of the use tax payable or any goods; or
- (b) An intent to obtain, or to enable any other person to obtain, in respect of any goods, any refund of use tax not authorised by law; or
- (c) An intent to evade, or to enable any other person to evade, payment of any money payable to the Crown under this Act.

"Minister" means the Minister of Customs;

"Officer" means Officer of Customs and acting under the Customs Act 1913;

"Use" means any use, whether the use is of such nature as to cause the goods to be appreciably consumed or not, or the keeping of the goods for such use, and shall include the exercise of any right or power over the goods as an incident to the ownership of that property; but shall not include:

- (a) Use for the purposes of sale to any person;

- (b) Use by the importer of any goods acquired by him solely by way of gift;
- (c) Use for the purpose of installation in any ship or aircraft;
- (d) Use as personal effects of any person arriving in the Cook Islands and which are not subject to any Customs Duty or Import Levy.

"Use Tax" means the use tax imposed by this Act;

"Taxable goods" means goods of a class or kind not for the time being exempted from use tax.

PART I - ADMINISTRATION

3. Act to be administered by the Customs Department - This Act shall be administered by the Customs Department as constituted by the Customs Act 1913; and the Minister, the Comptroller, and every Collector shall have and may exercise in respect of the collection of use tax the like powers and authorities (so far as the same are applicable and with all necessary modifications) as if the use tax were duty under the Customs Act 1913.

PART II - IMPOSITION AND COLLECTION

4. Use Tax - (1) Subject to the provisions of this Act, use tax shall be levied, collected and paid on all goods imported into the Cook Islands for use in the Cook Islands at the rate of five percent of the value of those goods.

(2) The High Commissioner may from time to time, by Order in Executive Council reduce or increase the rate of use tax imposed by this section.

5. Value of goods - For the purposes of this Act, the value of goods shall be the sum of the following amounts, namely:

- (i) the equivalent in New Zealand currency of the value of these goods for Customs duty, such value being ascertained in accordance with the Customs Act in force at the time of importation;
- (ii) the amount of Customs duty and import levy (if any) payable on the goods.

6. Exemptions - Subject to the provisions of this section, the following goods shall be exempt from use tax:

- (a) Goods of a class or kind specified in the first Schedule to this Act;
- (b) Goods of a class or kind exempted from use tax by the High Commissioner by order in Executive Council provided that in a like manner any exemption made under this paragraph and any exemption listed in the Schedule to this Act may be revoked.

7. Disputes - Where any dispute arises as to whether any class or kind of goods which are imported into the Cook Islands are subject to the provisions of section 4 of this Act, the Minister may determine such dispute in such manner as appears to him just and his decision thereon shall be final.

8. Use Tax a Crown debt - (1) The use tax payable on any goods shall immediately on the importation thereof constitute a debt owing to the Crown by the importer.

(2) Such debt shall be recoverable by action at the suit of the Comptroller on behalf of the Crown.

(3) The right to recover use tax as a Crown debt shall not be affected by the fact that a bond or other security has been given for the payment of use tax, or that no proper assessment of use tax has been made in due course under this Act, or that a deficient assessment of import levy has been made.

9. "Importation" defined - (1) For all the purposes of this Act, goods shall, except where otherwise expressly provided, be deemed to be imported into the Cook Islands if and so soon as in any manner whatever, whether lawfully or unlawfully they are brought into the Cook Islands from parts beyond the seas.

(2) Goods whose destination is not of the Cook Islands shall not be deemed to have been so imported unless they are removed in the Cook Islands from the vessel or aircraft in which they arrived there, but if so removed they shall for all the purposes of this Act be deemed to have been imported as soon as they were brought into the Cook Islands as aforesaid.

(3) All goods specified in the inward report of any vessel or aircraft or in any invoice produced in relation to any entry shall be presumed to have been actually imported unless the contrary is proved.

(4) For the purposes of this section the term "Cook Islands" shall be deemed to include not only all the waters comprised within the territorial waters of the Cook Islands but also the whole of the waters comprised within any part or landing place.

10. Use Tax declaration - (1) The importer of any goods shall, within fourteen days from the arrival in the Cook Islands of the vessel or aircraft on which the goods were imported, or such later time as the Comptroller may in any case permit make and deliver to the Comptroller a declaration (to be known as a use tax declaration) as to the importation of those goods.

(2) Any person making any use tax declaration shall truly answer all questions asked by the Comptroller or other officer of Customs relating to the goods referred to in the declaration.

11. Form of use tax declaration - The Comptroller shall from time to time prescribe the form required as a use tax declaration.

12. Verification of declaration - The Comptroller may, if he thinks fit, require from any person making a use tax declaration the production of documents showing the description, quantity and value of the goods to which the declaration relates.

13. Liability of owners of vessels or aircraft for use tax on missing goods - If any goods liable to use tax are smuggled or unlawfully landed in the Cook Islands from any vessel or aircraft, the owner and the master of the vessel, or the owner and the pilot in command of the aircraft, as the case may be, shall (in addition to the liability of any other person) be jointly and severally liable for the payment of the use tax on such goods, as if imported by them and entered for home consumption.

14. Minimum tax payable - Where use tax has been levied under this Act and the amount so levied is less than two dollars then the amount payable shall be two dollars.

15. Warehousing of goods - Use tax shall be paid at the time entry is made to remove any goods to a licensed warehouse.

16. Recovery of tax paid in error - (1) At any time within one year after the payment of any sum by way of use tax the person by whom payment was so made may institute proceedings against the Crown for a refund of such use tax, or of any part thereof, on the grounds that the use tax was

not lawfully chargeable or was charged in excess, and whether the error alleged is one of fact or of law.

(2) Nothing in this section shall be so construed as to entitle any person to take proceedings for a refund of Use Tax on any ground on which the determination of the Minister is made final by this Act.

17. Refund of tax paid in error - If the Comptroller is satisfied that any use tax has been paid in error, whether of fact or of law, he may refund the same on application made at any time within three years after the payment thereof.

18. Recovery of use tax refunded in error - All moneys refunded by the Comptroller in error, whether of fact or of law, shall be recoverable by action at the suit of the Crown at any time within three years after the payment thereof, or without limit of time if the refund has been obtained by fraud.

19. Drawback not allowed when goods exported - Drawback of use tax paid on goods that will be exported from the Cook Islands to any other country shall not be allowed.

PART III - AGENTS, LIQUIDATORS AND DECEASED USE TAX PAYER

20. Liability of principal for acts of agent - (1) Every act done or declaration made by an agent in the course of his agency in relation to the importation of goods, or otherwise in relation to this Act, shall be deemed to have been done or made by his principal also, and the principal shall be liable accordingly to all use tax, fines, or penalties imposed by this Act.

(2) For the purposes of this section the knowledge and intent of the agent shall be imputed to the principal in addition to his own.

(3) For the purposes of this section, the agent of an agent shall be deemed to be also the agent of the principal.

21. Liability of agents - Where any person acts or assumes to act as the agent of any other person in relation to the importation of goods, or otherwise in relation to this Act, he shall be liable to the same use tax, fines, or penalties as if he were the principal for whom he so acts or assumes to act.

22. Liability of agent winding up business of absentee principal -

(1) Where an agent for a principal absent from the Cook Islands has been required by the principal to wind up the business of his principal he shall, before taking any steps to wind up the business, notify the Comptroller of his intention so to do, and shall set aside such sum out of the assets of the principal as appears to the Comptroller to be sufficient to provide for any use tax that then is or will thereafter become payable in respect of the business of the principal.

(2) Every agent who fails to give notice to the Comptroller or fails to provide for payment for use tax as required by this section shall be liable to a fine of two hundred dollars.

23. Payment of tax by executors or administrators - (1) Where, at the time of a taxpayer's death, he has not paid the whole of the use tax therefor owing by him, the Comptroller shall have the same powers and remedies for the assessment and recovery of use tax from the executors or administrators of the taxpayer as he would have had against the taxpayer if he were alive.

(2) The amount of use tax owing by the taxpayer as aforesaid shall, until payment, be a charge on all the taxpayer's estate in the hands of the executors or administrators.

(3) The executors or administrators shall furnish such of the returns

required by this Act as have not been made by the taxpayer, and such other returns and information as the Comptroller may require.

24. Recovery of tax where there are no executors or administrators -

(1) Where administration of the estate of any deceased taxpayer has not been granted within twelve months of his death, the Comptroller may assess the use tax owing by the deceased at the time of his death at such sum as he thinks proper.

(2) At any time after the making of an assessment under this section, the Comptroller may issue a warrant of distress in the form in the Second Schedule hereto under the seal of the Customs authorising and requiring any constable or any other person named therein to collect the amount of use tax owing by the deceased, and also the expenses of the execution by distress and sale of the goods and chattels of the deceased.

(3) Upon the issue, of any such warrant the person so authorised shall have power to collect such amount and expenses accordingly.

PART IV - POWERS OF OFFICERS

25. Power to impound documents - The Comptroller may impound and retain any document presented in connection with any return or required to be produced under this Act; but the person otherwise entitled to the document shall, in lieu thereof, be entitled to a copy certified as correct by the Comptroller under the seal of the Customs, and the copy so certified shall be received in all Courts as evidence in lieu of the original.

26. Power to question persons and require production of documents -

(1) The Comptroller may question any person as to the particulars shown in any return delivered to him by a taxpayer in accordance with this Act, and may if he thinks fit require from the taxpayer proof by declaration or the production of documents (in addition to any declaration or documents otherwise required by this Act) of the correctness of the return.

(2) If any taxpayer refuses or fails without reasonable cause to make any such declaration or to produce such documents as aforesaid he shall be liable to a fine of one hundred dollars, or to a fine of the amount of value of the goods in respect of which the return is made, whichever sum is the greater.

(3) The Comptroller may by order under his hand require any person to produce for inspection by him or by any specified officer all or any receipts, records, other documents relative to any goods with reference to which any question has arisen under this Act; and to allow the Comptroller or such specified officer to make copies of or extracts from any such receipts, records or other documents and to appear before the Comptroller or such specified officer and to answer all questions put to him concerning any such goods, or such receipts, records or documents as aforesaid.

(4) Every person who fails or refuses to conform to any requisition under the last preceding sub-section shall be liable to a fine of one hundred dollars.

(5) An order under this section may be directed to any corporation or local authority, or to any member, officer, or servant of any such corporation or local authority.

27. Use tax warrants - Any Customs Warrant or import levy warrant issued under the Customs Act 1913 or the Import Levy Act 1972 shall also be deemed to be a use tax warrant and may be used in a like manner without further need.

28. Securities for payment of tax and compliance with Act - (1) The Comptroller shall have the right to require and take securities for payment of use tax and generally for compliance with this Act and for the protection of the revenue payable under this Act, and, pending the giving of the required security, he may refuse to do any act in the execution of his office in relation to any matter in respect of which the security is required.

(2) Any security under this Act may, as required by the Comptroller, be by bond (with or without sureties) or guarantee to Her Majesty the Queen, or by a deposit of cash, or by all or any of those methods, to the satisfaction of the Comptroller.

(3) Any such security may be given either in relation to any particular transaction, or generally with respect to any class of transactions, or to all transactions, and for such period and amount as the Comptroller thinks fit, and under such conditions as to forfeiture, penalty or otherwise as the Minister may direct.

(4) Any security required or given under this Act may be taken with respect to matters arising under the Customs Act 1913 or the Import Levy Act 1972 in addition to matters arising under this Act.

(5) Regulations under this Act may prescribe forms of bonds, guarantees and other securities; and any security may be either in the prescribed form, or to the like effect, or in such other form as the Comptroller in any particular case approves.

29. New Securities may be required - If the Comptroller is at any time dissatisfied with the sufficiency of any security, he may require a new security in lieu thereof, or in addition thereto; and, in default of such new security being given, he may do or refuse to do any act in the execution of his office in relation to any matter in respect of which the new security is required.

PART VI - OFFENCES AND PENALTIES

30. Aiding and abetting offences - Every person who aids, abets, counsels, or procures the commission of an offence against this Act shall be deemed to have committed that offence, and shall be liable accordingly.

31. Attempts - Every attempt to commit an offence against this Act shall be an offence punishable in like manner as if the offence so attempted has been actually committed.

32. General penalty - Every person who commits an offence against this Act for which no other penalty is provided shall be liable to a fine of fifty dollars.

33. Defrauding the revenue - Every person who commits any offence against this Act or does any other act, with intent, in either case to defraud the revenue -

- (a) By evading or enabling any other person to evade payment of the use tax or any part of the use tax on any goods; or
- (b) By obtaining or enabling any other person to obtain any money by way of refund of use tax on any goods; or
- (c) In any other manner whatsoever in relation to any goods;

or who conspires with any other person (whether that other person is in the Cook Islands or not) so to defraud the revenue in relation to any goods, shall be liable to a fine of two hundred dollars or to a fine of three times the value of those goods, whichever sum is the greater.

34. Erroneous returns or statements - Every person who for the purposes of this Act makes any return or statement which is erroneous or defective in any particular, shall be liable to a fine of two hundred dollars.
35. Erroneous refunds - Every person who obtains any refund or remission of use tax by means of any erroneous or defective declaration or written statement, or by producing to an officer any declaration or other document of any kind whatsoever which is not genuine or which is in any respect erroneous or defective, shall be liable to a fine of two hundred dollars or to a fine of three times the amount of that refund or remission, whichever sum is the greater.
36. Erroneous declaration - Every person who makes any declaration under this Act which is erroneous in any particular shall be liable to a fine of two hundred dollars.
37. Wilfully false declarations - Every person who knowingly makes any false declaration under this Act shall be guilty of an offence punishable by imprisonment for a term not exceeding two years.
38. Production of false documents - Every person who produces or delivers to an officer in the execution of his office any document as genuine which is not genuine, or any document as true which is in any respect erroneous, shall be liable to a fine of two hundred dollars.
39. Failure to answer questions truly - Every person is liable to a fine of one hundred dollars who, when required under this Act to answer any question put to him, fails or refuses to answer such question, or does not truly answer the same.
40. Liability of officers of a company for offence by company - Where a person convicted of an offence against this Act is a company, every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the Act constituting the offence took place without his knowledge or consent.
41. Offence punishable under different provision - When any offence is punishable under two or more different provisions of this Act the offender may be proceeded against under any of those two provisions, but he shall not be punished twice for the same offence.
42. Charge of intent to defraud the revenue - Whenever under this Act any act is an offence although done without intent to defraud the revenue, the offender may be convicted of that offence on an information charging him with doing the act with that intent, and shall not be acquitted on that information merely because the intent is not proved.
43. Arrest of suspected offenders - Any officer under this Act or any officer of police who has reasonable cause to believe or suspect that any person has committed any offence against this Act with intent to defraud the revenue, and is about to leave the Cook Islands, may arrest that person without warrant.
44. Source of information need not be disclosed - No officer under this Act or officer of police, and no witness for the Crown, in any proceedings under this Act, shall be compellable to disclose the fact that he received any information, or the nature or source thereof, or to produce or disclose the existence or nature of any reports made by or received by him in an official or confidential capacity.
45. Burden of Proof - (1) In any proceedings under this Act instituted by or on behalf of or against Her Majesty every allegation made on behalf of Her Majesty in any statement of claim, statement of defence, plea, or information, shall be presumed to be true unless the contrary is proved.

(2) The aforesaid presumption shall not be excluded by the fact that evidence is produced on behalf of Her Majesty in support of any such allegation.

(3) If any civil proceeding under this Act is instituted against Her Majesty in pursuance of the Crown Proceedings Act 1952, a statement of defence may be filed on behalf of Her Majesty, and this section shall apply to the allegations contained in that statement accordingly.

(4) For the purposes of this and the next succeeding section every proceeding instituted by or against Her Majesty in which any question arises as to the rights, power, obligations, or liabilities of Her Majesty or any other person under this Act shall be deemed to be a proceeding under this Act.

(5) The provisions of this section shall extend and apply to proceedings in which the existence of an intent to defraud the revenue is in issue.

46. Offences presumed to have been committed with intent to defraud the revenue - When any offence has been committed against this Act, it shall for all the purposes of this Act and in all proceedings thereunder be presumed to have been committed with intent to defraud the revenue, unless the contrary is proved; and this presumption shall not be excluded by the fact that evidence has been produced on behalf of Her Majesty or the prosecutor of the existence of such an intent.

47. Actions pending alterations of use tax - (1) When any resolution in favour of an alteration of the law relating to use tax has in any session been passed by the Legislative Assembly or any Committee thereof no person shall be competent to commence, at any time before the end of the session, any proceedings of any description whatever against the Crown or the Minister, or any officer under this Act or any officer of police, or any other person, on any cause of action or on any ground which would not have been sufficient if the said resolution had possessed the force of law according to the tenor thereof as an amendment of this Act.

(2) For the purpose of any period of limitation established by this or any other Act, any cause of action which is subject to the last preceding sub-section shall be deemed to have first arisen on the last day of the said session of the Legislative Assembly and no sooner.

(3) For the purpose of determining whether any act done by the Minister or any officer under this Act or any officer of police was done in the execution of his office under this Act, his office shall be deemed to include the duty of acting at all times during the said session of the Legislative Assembly in accordance with any such resolution as aforesaid as if it had the force of law according to its tenor.

PART VII - MISCELLANEOUS

48. Remission of fines by High Commissioner - When any fine has been incurred by any person under this Act, the High Commissioner acting on the advice of the Minister, may, whether before or after the conviction of that person, remit the fine whether wholly or in part.

49. General power to make regulations - (1) The High Commissioner may by Order in Executive Council make regulations under this Act prescribing all matters which by this Act are required or permitted to be prescribed, or with respect to which regulations are necessary or convenient for giving effect to this Act.

(2) Whenever the term "prescribed" is used in this Act in respect of any matter, the High Commissioner may by Order in Executive Council make regulations in respect of that matter.

(3) Regulations made under this Act may prescribe for any breach thereof a fine not exceeding one hundred dollars and all the provisions of this Act relating to fines shall apply to fines imposed by any such regulations.

50. Orders in Executive Council to be laid before Legislative Assembly - (1) Every order in Executive Council made under this Act shall be laid before the Legislative Assembly within fourteen days after the making thereof if the Legislative Assembly is then in session, and if not, then within fourteen days after the commencement of the next ensuing session.

(2) If the Legislative Assembly resolves that any such Order in Executive Council should be revoked or varied, it shall thereupon be revoked or varied in accordance with the terms of the resolution.

51. Application of Act to the Crown - Use 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 use tax in any particular case is unfair to any use tax payer.

52. Act deemed part of the Customs Acts - For purposes of section 3 of the Customs Act 1913, this Act shall be deemed to form part of the Customs Acts.

This Act is administered by the Customs Department.

FIRST SCHEDULEEXEMPTIONS FROM USE TAXGoods imported by:

- (a) any overseas government for use by it in the Cook Islands whether an office established by it or in any approved aid project; or
- (b) the United Nations, South Pacific Bureau of Economic Co-operation or the South Pacific Commission or any agency of those organisations approved project in the Cook Islands; or
- (c) any other overseas agency for use in any approved project in the Cook Islands.

NOTE: "Approved aid project" or "approved project" means a project entered into with the consent of the Government of the Cook Islands.

Goods imported by the University of the South Pacific for use at its centre on Rarotonga.

Goods imported by any religious organisation for its own use or for use in any educational facility attached to it provided that the organisation is permitted to operate in the Cook Islands under the provisions of the Religious Organisations Restrictions Act of 1975.

Goods sent to any person who satisfies the Comptroller that the goods are a bona-fide gift only and not intended for disposal by sale or otherwise:

Personal effects of any person arriving in the Cook Islands provided that this would not include:

- (a) any alcohol, cigarettes or tobacco;
- (b) any goods that will be subject to customs duty and/or import levy
- (c) do not meet any exemption given under the Import Levy Act 1972 or the provisions of the Customs Act 1913 and any related legislation.

Goods - Machinery, implements, appliances and other articles especially suited for use in agriculture and horticulture as the Minister may determine but not including vehicles for the carriage of passengers or goods;

Goods - Manure and other growth regulating and promoting substances and preparations for agricultural use as the Minister may determine.

Goods imported by any recognised sports organisation for that organisation's own use and not for resale;

Goods imported by such charitable organisations as the Minister may approve, and which the Minister is satisfied are for donation to any educational, health or religious institutions or a community project".

SECOND SCHEDULECOOK ISLANDSTHE USE TAX ACT 1980

WARRANT OF DISTRESS FOR USE TAX DUE BY DECEASED TAXPAYER TO
WHEREAS of died on the day
of 19 , and administration of his estate has not been

granted: And whereas there is due and payable by the said deceased for use tax the sum of dollars and cents: This is therefore to command you forthwith to tax the said sum of \$, and the expenses of this execution, by distress and sale of the goods and chattels of the said deceased: And you are hereby commanded to pay what you shall so tax forthwith to the Comptroller of Customs at , and to make return of what you shall do by virtue of this warrant immediately upon the execution thereof.

Given under my hand and the seal of the Customs this
day of 19 .

(Customs Seal)

Comptroller of Customs.
