

# PART IV

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## **MAJOR LEGISLATIVE ENACTMENTS OF 2010 RELATING TO THE FUNCTIONS AND OPERATIONS OF THE CENTRAL BANK AND BANKING INSTITUTIONS IN SRI LANKA**

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## Default Taxes (Special Provisions)

### Act, No. 16 of 2010

[Certified on 07th December, 2010]

AN ACT TO PROVIDE FOR A STREAMLINED AND SPEEDIER PROCESS FOR THE RECOVERY OF TAXES IN DEFAULT IN A TIME BOUND MANNER ; TO PROVIDE FOR THE WRITING-OFF OF TAXES IN DEFAULT IN CERTAIN CIRCUMSTANCES AND FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO.

WHEREAS it has become imperative to formulate a mechanism for the speedy recovery of taxes imposed under certain specified laws and which have been in default for over a long period of time :

AND WHEREAS it has become necessary in order to facilitate such process, to evolve a method for the recovery of some of these default taxes in a manageable and justifiable manner and to ensure that in the future, taxes in arrears are maintained at a reasonable limit and the officials entrusted with this task be made more accountable towards the collection of these taxes :

AND WHEREAS it has also become necessary to write-off some of the taxes which are in default, adopting a transparent and an accountable process :

NOW THEREFORE be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Default Taxes (Special Provisions) Act, No. 16 of 2010 and the provisions of this Act other than this section, shall come into operation on such date as may be determined by the Minister by Order published in the *Gazette* (hereinafter referred to as the “appointed date”). The provisions of this section shall come into effect, in terms of paragraph (1) of Article 80 of the Constitution, on the date on which the Certificate of the Speaker is endorsed.
2. Notwithstanding anything in any other written law to the contrary, the provisions of this Act shall apply to the recovery, discharge or write-off of taxes charged and levied on or before December 31, 2009 under any of the laws specified in the Schedule to this Act and which continue to be in default under any such laws, for a period of over two years or more, or where applicable, after the appellate procedures specified in any such laws for the recovery of any such tax (in this Act referred to as “tax in default”) have been exhausted :

Provided however where pursuant to any action taken for the recovery of any tax in default prior to the appointed date, a defaulter has agreed to or an effective arrangement has been made for the settlement of such tax in default, by the payment of the same in installments or otherwise and the defaulter concerned has thereafter failed to comply with such agreement or arrangement, as the case may be, the provisions of this Act shall apply in regard to the recovery of the balance sum remaining unpaid in terms of such agreement or arrangement, other than in instances where such agreement or arrangement was entered into or made, in pursuance of an order made by a court.

3. (1) The Minister shall appoint an Advisory Committee (hereinafter referred to as the “Committee”) consisting of five members of whom one member shall be a retired judge of the Supreme Court or of the Court of Appeal or of the High Court, as the case may be, who shall be the Chairman of the Committee. The other

- four members shall be selected from among persons who have knowledge, experience and shown capacity in taxation law, accountancy and auditing, business management or finance.
- (2) The quorum for any meeting of the Committee shall be three members and the Chairman shall preside at all meetings of the Committee. In the absence of the Chairman from any meeting of the Committee, the members present shall elect one of the members present to preside at such meeting.
  - (3) The Committee may regulate the procedure in regard to the meetings of the Committee and the transaction of all business at such meetings.
  - (4) The Minister may for reasons assigned therefore, remove a member of the Committee from his office by a letter sent to him in that behalf. A member of the Committee may resign from his office by letter to that effect addressed to the Minister and such resignation shall take effect upon it being accepted by the Minister writing.
  - (5) The members of the Committee may be paid an honorarium in such amount as may be determined by the Minister.
4. (1) The functions of the Committee shall be to:—
- (a) respond to communications received from the Commissioner-General under section 7, regarding the write-off of any tax in default ; and
  - (b) advise on any matter referred to it for its advice by the Commissioner-General or the Minister, as the case may be.
- (2) In the discharge of its functions, the Committee shall have the power to summon any person whom it considers is able to give any information or produce any document, with regard to a matter which is before such Committee for its deliberation.
5. There shall be established a unit called the Default Tax Recovery Unit under the purview of the Commissioner-General, with a Deputy Commissioner-General assigned to be in charge of such unit.
6. The Commissioner-General shall within six months of the date of the appointment of the Committee, cause the Default Tax Recovery Unit to prepare and finalize a report, identifying taxes in default of:—
- (a) Public Corporations ;
  - (b) Government Owned Business Undertakings ;
  - (c) Government Owned Business Undertakings established as corporations under section 2 of the Conversion of Government Owned Business Undertakings into Public Corporations Act, No. 22 of 1987 ;
  - (d) Government Ministries ;
  - (e) Government Departments ; and
  - (f) Co-operative Societies registered under the Co-operative Societies Law, No. 5 of 1972, including any Corporative Rural Bank.

7. (1) Subject to the provisions of subsection (2), with regard to taxes in default of any institution identified under section 6 of this Act, the Commissioner-General shall:—
- (a) having verified from the persons concerned of the accuracy of the amount recorded as being due as tax in default ; and
  - (b) having obtained the confirmation of the Secretary to the Treasury that such institutions is dependent on Government funding to meet its tax liabilities,

take all necessary steps to write-off the tax in default of such identified institution.

- (2) The Commissioner-General shall three months prior to taking necessary steps to write-off any tax in default under subsection (1), inform the Committee of such fact and the Committee shall be entitled to make any comments on the same within three months of the receipt of such information. In the event the Committee makes any comments, it shall be the responsibility of the Commissioner-General to respond to such comments immediately.

8. Where any tax in default is written-off under section 7 of this Act:—
- (a) the Commissioner-General shall, notwithstanding any provision relating to secrecy contained in the law under which the tax in default was levied and charged, publish that information in the *Gazette*, within thirty days of the date of such write-off ; and
  - (b) the tax in default which had been written-off is subsequently recovered under the provisions of the relevant law under which such tax was charged and levied, the amount so recovered shall not be refunded to the defaulter.
9. (1) Where any tax in default is not written-off under section 7, then, notwithstanding:—
- (a) any agreement that may have been entered into by the defaulter with the Commissioner-General for the payment in installment of the sum in default ; or
  - (b) the commencement of any proceedings for the recovery of such tax under the law under which such tax was levied and charged, other than where any proceedings for recovery has been filed in a court,

the Commissioner-General shall issue a notice to the defaulter concerned, setting out the details of the amount due as tax in default and requesting that such amount be settled within sixty days of the receipt of such notice.

- (2) A defaulter who is issued with a notice under subsection (1) may, prior to the expiry of the sixty days referred to therein, shall write to the Commissioner-General:—
- (a) requesting that such defaulter be permitted to settle the amount of tax in default in installments as shall be agreed to with the Commissioner-General ; or
  - (b) raising any objections in regard to the payment of the tax in default referred to in the notice.
- (3) Where a defaulter makes a request for the payment of the tax in default in installments, the Commissioner-General may agree to such payment, subject to the condition that the payment of the amount due is

paid in full within a period not exceeding three years from the date of entering into such agreement. The Commissioner-General shall also inform the Committee of the details of the agreement entered into with the defaulter.

- (4) Where the defaulter raises any objections in regard to the payment of the tax in default referred to in a notice sent, the Commissioner-General shall make his decision in regard to the same within sixty days of the receipt of such objections and where the objection involves a re-determination of the tax liability concerned, he shall discharge the excess if any, of the tax in default over the amount so determined.

10. Where a defaulter to whom a notice is sent under subsection (1) of section 9:—

- (a) fails to respond to the notice within the period specified in that subsection ; or
- (b) having entered into an agreement with the Commissioner-General to pay the tax in default in installments, has failed to pay any installment for over thirty days,

the Commissioner-General shall issue a Notice of Default on the defaulter and the amount due as tax in default shall be recovered by action instituted in that behalf in a High Court established for a Province under Article 154P of the Constitution and which is empowered with civil jurisdiction, by an Order made under section 2 of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996.

11. The Commissioner-General may for the purpose of any recovery of tax in default under this Act, by notice issued in that behalf require any person to furnish such information within such period as shall be specified in such notice, and it shall be duty of such person to furnish the information requested for within the period so specified. Where however the person is unable for whatever reasons to furnish the information requested for, it shall be his duty to forthwith inform the Commissioner-General of those reasons.

12. It shall be the duty of the Commissioner-General to ensure that the aggregate of any taxes, not including any penalty accrued thereon or any part of tax held over or deferred, which is in default under any law specified in the Schedule to this Act as at the end of any calendar year commencing on or after January 1, 2010, over the aggregate of taxes in default as at the end of the immediately preceding year, shall not exceed three *per centum* of the total tax collected from the taxes levied and charged under the said laws, in the immediately preceding year.

13. (1) Where the aggregate of taxes, not including any penalty accrued thereon or any part of tax held-over or deferred, which is in default under any law specified in the Schedule to this Act as at the end of any calendar year commencing on or after January 1, 2010, over the aggregate of taxes in default as at the end of the immediately preceding year, exceeds three *per centum* of the total tax collected from the taxes levied and charged under the said laws in the immediately preceding year, the Commission-General shall submit a report to the Minister within four months of the end of that year, giving reasons for such excess and make recommendations in regard to any remedial action that may be adopted, to overcome such excess.

- (2) In the event that the reasons given by the Commissioner-General in his report submitted under subsection (1) are accepted by the Minister, he shall request the Commissioner-General to take all such steps as he shall consider necessary, to give effect to the recommendations made in the report submitted.

- (3) Where the reasons given by the Commissioner-General in his report submitted under subsection (1) is not accepted by the Minister as being adequate to warrant such excess, the Minister shall in writing require the Commissioner-General to comply with the requirement imposed by that subsection, within six months of the receipt of his communication.
- (4) Where the Commissioner-General fails to comply with a request made under subsection (3) within the time stipulated under that subsection, the Cabinet of Ministers shall take such action against the Commissioner-General, as it shall deem appropriate in the circumstances.
14. Every members of the Committee shall, before entering upon his duties as such member, sign a declaration pledging to observe strict secrecy in respect of all matters which has come to his knowledge in the discharge of the functions of the Committee under section 4 of this Act and shall by such declaration, pledge himself not to disclose any such matter to anyone, except:—
- (a) when required or called upon to do so by any court of law ; or
- (b) for the purpose of discharging his functions under this Act.
15. The Commissioner-General may delegate to the Senior Deputy Commissioner-General, any Deputy Commissioner-General, Senior Commissioner, Commissioner, Deputy Commissioner or an Assessor appointed or deemed to have been appointed under the Inland Revenue Act, No. 10 of 2006, any of the functions or powers conferred upon him by this Act.
16. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.
17. In this Act, unless the context otherwise requires:—
- “Commissioner-General”, “Senior Deputy Commissioner-General”, “Deputy Commissioner-General”, “Senior Commissioner”, “Commissioner”, “Deputy Commissioner” and “Assessor”, shall have the same meaning as given to those terms in the Inland Revenue Act, No. 10 of 2006 ;
- “defaulter” means any person whose tax is in default in terms of the provisions of section 2 of this Act ; and
- “Government Owned Business Undertaking” means a business undertaking acquired by or vested in the Government, under the Business Undertaking (Acquisition) Act, No. 35 of 1971.
18. The First Schedule to the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996, is hereby amended by the addition immediately after item (3) of that Schedule, of the following new item :—
- “(4) Actions instituted under section 10 of the Default Taxes (Special Provisions) Act, No. 16 of 2010.”.

**SCHEDULE** [Section 2]

1. Betting and Gaming Levy Act, No. 40 of 1988
2. Capital Levy Act, No. 51 of 1971
3. Debits Tax Act, No. 16 of 2002
4. Economic Service Charge Act, No. 13 of 2006
5. Estate Duty Act, No. 13 of 1980
6. Finance Act, No. 11 of 1963
7. Finance (Amendment) Act, No. 8 of 2004
8. Finance Act, No. 11 of 2004 - Part I
9. Finance Act, No. 5 of 2005 - Part I
10. Goods and Services Tax Act, No. 34 of 1996
11. Inland Revenue Act, No. 4 of 1963
12. Inland Revenue Act, No. 28 of 1979
13. Inland Revenue Act, No. 38 of 2000
14. Inland Revenue Act, No. 10 of 2006
15. National Security Levy Act, No. 52 of 1991
16. Profits Tax (Special Provisions) Act, No. 36 of 1964
17. Rice Subsidy Tax Act, No. 13 of 1967
18. Save the Nation Contribution Act, No. 5 of 1996
19. Stamp Duty Act, No. 43 of 1982
20. Surcharge on Wealth Tax Act, No. 25 of 1982
21. Surcharge on Income Tax Act, No. 26 of 1982
22. Surcharge on Income Tax Act, No. 12 of 1984
23. Surcharge on Income Tax Act, No. 7 of 1989
24. Surcharge on Wealth Tax Act, No. 8 of 1989
25. Surcharge on Income Tax (Amendment) Act, No. 17 of 1991
26. Surcharge on Income Tax (Amendment) Act, No. 32 of 1992
27. Surcharge on Income Tax (Amendment) Act, No. 28 of 1993
28. Surcharge on Income Tax (Amendment) Act, No. 23 of 1994
29. Surcharge on Income Tax (Amendment) Act, No. 13 of 1995
30. Surcharge on Income Tax Act, No. 6 of 2001
31. Turnover Tax Act, No. 69 of 1981
32. Value Added Tax Act, No. 14 of 2002



**Public Enterprises Reform Commission  
of Sri Lanka (Repeal) Act, No. 18 of 2010**

[Certified on 07th December, 2010]

AN ACT TO PROVIDE FOR THE REPEAL OF THE PUBLIC ENTERPRISES REFORM COMMISSION OF SRI LANKA ACT, NO. 1 OF 1996; TO MAKE PROVISION CONSEQUENTIAL TO THE REPEAL OF THE PUBLIC ENTERPRISES REFORM COMMISSION OF SRI LANKA ACT, NO. 1 OF 1996; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Public Enterprises Reform Commission of Sri Lanka (Repeal) Act, No. 18 of 2010.
2. The Public Enterprises Reform Commission of Sri Lanka Act, No. 1 of 1996 shall be repealed with effect from the date of the coming into operation of this Act.
3. Upon the repeal of the Public Enterprises Reform Commission of Sri Lanka Act, No. 1 of 1996, as provided for in section 2 of this Act—
  - (a) all officers and employees of the Public Enterprises Reform Commission of Sri Lanka holding office on the day immediately preceding the date of repeal shall, if the services of any such officer or employee are deemed to be essential to the Public Enterprises Department by the Secretary to the Treasury, be recruited as officers and employees of the Public Enterprises Department with the approval of the Public Service Commission and such officers and employees shall with effect from the date of repeal, hold office in the Public Enterprises Department on terms and conditions not less favourable to those enjoyed by them under the Public Enterprises Reform Commission of Sri Lanka:

Provided however the terms and conditions agreed to shall be personal to such officers and employees;

- (b) all contracts, deeds, bonds, agreements, guarantees, powers of attorney, grants of legal representation and other instruments of whatever nature of the Public Enterprises Reform Commission of Sri Lanka, subsisting or having effect on the day immediately preceding the date of repeal and to which the Commission is a party or which are in favour of the Commission shall, be deemed with effect from the date of repeal, to be contracts, deeds, bonds, agreements, guarantees, powers of attorney, grants of legal representation and other instruments of whatever nature entered into by, or granted in favour of, as the case may be, the Government of Sri Lanka;
    - (c) all actions and proceedings of whatever nature instituted by or against the Public Enterprises Reform Commission of Sri Lanka and pending on the day immediately preceding the date of repeal shall be deemed as from the date of repeal, to be actions and proceedings instituted by or against the Government of Sri Lanka and may be continued accordingly;
    - (d) all judgements, decrees or orders entered in favour of, or against, the Public Enterprises Reform Commission of Sri Lanka by any Court in any action or proceeding subsisting on the day immediately preceding the date of repeal shall with effect from the date of repeal be deemed to be a judgement, decree or order entered in favour of, or against, the Government of Sri Lanka.

4. All assets and liabilities of the Public Enterprises Reform Commission subsisting on the day immediately preceding the date of repeal shall, with effect from the date of repeal, vest in the Government of Sri Lanka.
5. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.
6. For the purposes of this Act, unless the context otherwise requires—

“Public Enterprises Reform Commission of Sri Lanka” means the Commission established by section 2 of the Public Enterprises Reform Commission of Sri Lanka Act, No. 1 of 1996.