

TAX APPEAL COMMISSION BILL, 2019

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TAX APPEAL COMMISSION BILL, 2019

A BILL FOR AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A TAX APPEAL COMMISSION AND FOR MATTERS CONNECTED THEREWITH

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Tax Appeal Commission Act, 2019.
- (2) This Act shall come into force on the 1st day of July, 2019.

2. Interpretation.

- (1) In this Act, unless the context otherwise requires —
 - “**appellant**” means a person who appeals to the Commission against a decision under any law specified in the *Second Schedule*;
 - “**Chairman**” means the Chairman of the Commission appointed pursuant to paragraph 1(1) of the *First Schedule*;
 - “**Clerk**” means the Clerk to the Commission appointed pursuant to paragraph 7(1) of the *First Schedule*;
 - “**Commission**” means the Tax Appeal Commission established under section 3;
 - “**Commissioner**” means a person appointed as such under paragraph 1(1) of the *First Schedule*;
 - “**decision-maker**” means the office holder responsible for the making of a decision under any law specified in the *Second Schedule*;

“**Minister**” means the Minister of Finance;

“**non-publication order**” means an order under subsection (2) or (3) of section 20;

“**objection**” means a communication in writing filed with a decision-maker in accordance with the provisions of any Act specified in the *Second Schedule* expressing dissatisfaction with a decision of a decision-maker that may be appealed under this Act;

“**on the papers**” in relation to the hearing of an appeal or part of an appeal, means an appeal or part of an appeal conducted entirely on the basis of documents, without the parties or their representatives or witnesses appearing at an oral hearing;

“**party**” means the appellant or the decision-maker against whose decision, or decision made on the decision-maker’s behalf, an appeal is commenced.

- (2) In this Act, a reference to filing, serving, providing, certifying or otherwise notifying an appeal, decision, action or state of affairs, includes notification by such electronic, digital or other means as may be approved by the Minister.

PART II – TAX APPEAL COMMISSION

ESTABLISHMENT AND FUNCTIONS OF COMMISSION

3. Establishment of Tax Appeal Commission.

- (1) There is hereby established an independent body to be known as the Tax Appeal Commission.
- (2) The Commission shall have a seal, which shall be judicially noted in all courts.
- (3) The operations of the Commission shall be funded from such sums as may be provided by Parliament.
- (4) The *First Schedule* shall have effect with respect to the constitution of the Commission, its staff and other matters related thereto.

4. Function and powers of Commission.

- (1) The function of the Commission is to hear and determine an appeal by way of a hearing on the merits of the case, against a decision referred to under section 5 given under any law specified in the *Second Schedule*.
- (2) The Commission may do all things necessary or convenient for exercising its jurisdiction and for that purpose may make directions or orders, including directions or orders —

- (a) that the parties to an appeal participate in a conference conducted by the Clerk or other alternative dispute resolution process;
 - (b) requiring a person, whether or not a party to an appeal, to —
 - (i) produce any publication or a copy of a publication;
 - (ii) give evidence by affidavit; or
 - (iii) attend the Commission and give evidence under oath;
 - (c) that all or part of an appeal be conducted by remote conferencing or on the papers;
 - (d) that a directions hearing be held to hear applications by parties or for another purpose the Commission considers appropriate;
 - (e) that one or more appeals be heard together;
 - (f) that a disruptive person be excluded from the place the Commission is sitting and that one or more prescribed persons are authorized to remove the person;
 - (g) that an appeal be struck out for want of jurisdiction or failure to comply with a direction of the Commission;
 - (h) that an appeal be struck out for failure to comply with a direction of the Commission be reinstated.
- (3) A person to whom the Commission makes a direction or order must comply with the direction or order, unless the person is excused from doing so by a valid claim for privilege.
- (4) In this section —
- “**prescribed person**” means a police officer, the Clerk or other member of staff of the Commission;
 - “**remote conferencing**” means teleconferencing, video conferencing or any other form of communication that allows persons taking part in a proceeding to hear and take part remotely in discussions as they occur.

APPEALS TO COMMISSION

5. Appealable decisions.

A person aggrieved by any of the following decisions of a decision-maker may appeal to the Commission against such decision —

- (a) in relation to the Value Added Tax Act (*No. 32 of 2014*) —
 - (i) a decision by the Comptroller of VAT on an objection under section 81; or
 - (ii) an advance VAT ruling under section 18;

- (b) in relation to the Business Licence Act, 2010 (*No. 25 of 2010*) a decision by the Secretary to —
 - (i) refuse the grant of a licence under section 4 or 5;
 - (ii) suspend, revoke, amend, cancel or restrict a licence under section 7;
 - (iii) disallow an objection under section 11; or
 - (iv) approve a business name in respect of an application for a business licence or change of name of an existing business under section 21;
- (c) a decision by the Chief Valuation Officer on an objection under section 12 of the Real Property Tax Act (*Ch. 375*);
- (d) a decision by the Comptroller of Customs under sections 228, 231 or 319 of the Customs Management Act (*Ch. 293*);
- (e) an assessment by the Treasurer in pursuance of the provisions of section 27 of the Stamp Act (*Ch. 370*) with respect to the amount of stamp duty chargeable upon an instrument or transaction.

6. Time to commence an appeal.

- (1) An appeal made against a decision pursuant to section 5 shall be made within thirty calendar days after —
 - (a) service of notice of the decision; or
 - (b) the expiration of ninety days from lodging an objection under section 81 of the Value Added Tax Act, 2014 (*No. 32 of 2014*) where notice of the decision is not served.
- (2) The Commission may accept an appeal after the time specified in subsection (1) where the Commission is satisfied that there has been no unreasonable delay in commencing the appeal.

7. Appeals may only be made to the Commission.

- (1) Where a decision-maker makes a decision which is appealable under this Act —
 - (a) no public official shall intervene in any matter relating to the decision; and
 - (b) any person who is aggrieved by such decision must utilize the procedures under this Act to dispute the decision.
- (2) For the purpose of this section, “**public official**” includes —
 - (a) any person holding an executive or an administrative office, or a parliamentarian, whether appointed or elected, whether permanent or temporary, or whether paid or unpaid;
 - (b) any other person who is employed in a public office,

but does not include a member of the staff of the Commission in relation to the lawful exercise of their duties in connection with an appeal filed under this Act.

8. Commencement of appeal.

- (1) An appeal may only be commenced by filing with the Commission a notice of appeal, in the form and manner set out in the *Fourth Schedule*, which shall include —
 - (a) the name, address, telephone number and tax information number of the appellant;
 - (b) the grounds of appeal;
 - (c) a copy of the relevant decision;
 - (d) where the appellant so indicates, a schedule of the documents or other evidence to be relied on by the appellant; and
 - (e) any other information that the Commission may from time to time consider necessary.
- (2) The commencement of an appeal does not affect the operation or prevent the implementation of the decision, unless the Commission, on the application of a party or on its own initiative, makes an order staying the operation of the decision upon such conditions, if any, as may be reasonable in the circumstances.

9. Grounds of appeal.

- (1) The notice of appeal must specify in detail the grounds on which the appeal is made.
- (2) Subject to subsection (3), the grounds are limited to the grounds stated in any relevant objection.
- (3) An appellant is limited to the grounds specified in the notice of appeal unless the Commission grants leave to add new grounds.

10. Appellant to serve notice of appeal.

- (1) The appellant shall serve a copy of the notice of appeal on the decision-maker.
- (2) The decision-maker shall within fourteen days of receiving a notice of appeal, provide to the Commission and the appellant such copies, and in such manner and form as may be approved by the Commission, of —
 - (a) a written statement of reasons for the decision; and
 - (b) any documents or information in the decision-maker's possession or control that may be relevant to the appeal.

11. Decision-maker to certify tax paid before determination of appeal.

- (1) The Commission may not hear and decide an appeal against the decision-maker's decision on an objection to an assessment unless the decision-maker certifies that the appellant —
 - (a) has paid the full amount of tax due under the assessment;
 - (b) has given sufficient security acceptable to the decision-maker for the amount of the tax that is unpaid and any interest and penalty that is or may become payable; or
 - (c) has made an instalment payment arrangement pending the appeal.
- (2) Notwithstanding subsection (1), where the appellant is an individual who is appealing against a decision on an objection under the Real Property Tax Act (*Ch. 375*), and can show before the appeal is heard, an inability —
 - (a) to pay the full amount of tax due; or
 - (b) to provide the required security for the amount of the tax that is unpaid,he may request the Commission to waive the requirements of subsection (1).

12. Decision-maker to assist the Commission.

- (1) The decision-maker must use his best endeavours to assist the Commission to make the decision on the appeal.
- (2) The obligation in subsection (1) also binds any person representing the decision-maker in an appeal.

PART III – HEARING OF APPEALS

PROCEDURE FOR APPEALS

13. Commission's procedure.

- (1) The Commission must —
 - (a) so far as it appears to the Commission to be appropriate, seek to avoid formality of proceedings;
 - (b) ensure that like cases are treated alike;
 - (c) observe judicial precedents; and
 - (d) observe the rules of procedural fairness.
- (2) Subject to provisions of this Act, the Commission may determine its own procedures and may make rules for that purpose.

- (3) The Chairman may make practice directions, not inconsistent with this Act or any rules made thereunder, about the practices and procedures of the Commission.
- (4) A practice direction does not constitute any type of subsidiary legislation.

14. Panels of Commission.

- (1) The functions of the Commission shall be exercised by panels of the Commission.
- (2) A panel of the Commission shall sit at such time and in such place as the Chairman may direct and more than one panel may sit at a time.
- (3) The Chairman shall make arrangements for determining which Commissioners are to constitute a panel of the Commission in relation to the exercise of any function.
- (4) Arrangements made pursuant to subsection (3) shall ensure that each panel is constituted as —
 - (a) the Chairman sitting alone;
 - (b) the Chairman sitting with two Commissioners; or
 - (c) a Commissioner who is also a counsel and attorney-at-law sitting with two other Commissioners.
- (5) Where the Commission is constituted for an appeal by the Chairman, or as a panel that includes the Chairman, the Chairman shall preside and in any other case the presiding member shall be appointed by the Chairman.
- (6) The Commissioners who constitute the panel for any appeal may exercise all the jurisdiction and powers of the Commission in relation to the appeal.

15. Fresh evidence only allowed where Commission gives consent.

Except with the consent of the Commission and on such terms as the Commission may determine, the appellant shall not at the hearing of an appeal, be allowed to —

- (a) produce any document which was not produced before the decision-maker; or
- (b) adduce the evidence of any witness whose evidence was not led before the decision-maker; or
- (c) adduce evidence of a witness whose evidence has already been recorded at the hearing before the decision-maker.

16. Investigations and related notification by Commission to parties.

- (1) In accordance with subsection (2), the Commission or any member of the staff of the Commission shall collect all necessary information to facilitate a determination of the appeal.
- (2) For the purpose of subsection (1) the Commission may —
 - (a) contact either party by any means of communication;
 - (b) invite either or both parties to an informal meeting;
 - (c) subject to subsection (3), give any party from whom further information is required fourteen days notice, or notice for a shorter period with the agreement of all parties in writing, specifying what further information is required;
 - (d) use any other lawful means that the Commission considers to be suitable to collect the relevant information.
- (3) The Commission may, where a party has not complied with any requirement in a notice under subsection (2) in the specified time, determine whether or not the party's reasons for not complying within the specified time are reasonable, and if the Commission so determines, it may extend time for compliance.
- (4) The Commission shall notify the parties in writing immediately on completion of its collection of all necessary information to facilitate its determination of the appeal.

17. Burden of proof upon appellant.

The appellant shall have the burden of proving on the balance of probabilities —

- (a) if a decision is concerned with an assessment, that the assessment is excessive or otherwise incorrect; or
- (b) in any other case, that the decision should not have been made or should have been made differently.

18. Conduct of formal hearing.

- (1) The Commission may conduct a formal hearing where it considers it necessary or upon the request of the appellant or the decision-maker.
- (2) Where the Commission conducts an appeal by way of a formal hearing, the Commission —
 - (a) shall fix a date, time and place for the hearing and shall give to each party, not less than fourteen days notice in writing thereof;
 - (b) may hear on oath or otherwise the appellant, the relevant decision-maker, or any other person; and
 - (c) shall give to each party an opportunity to —

- (i) make oral or written submissions;
- (ii) give evidence, including where the Commission considers it just and reasonable in the circumstances, evidence that had not been made available to the relevant decision-maker at the time of the relevant decision;
- (iii) call witnesses and put questions to any witness called to give evidence.

19. Hearing of appeal.

- (1) In the conduct of an appeal, a party may appear in person or be represented by —
 - (a) a counsel and attorney-at-law;
 - (b) an accountant; or
 - (c) another person with the leave of the Commission,and the decision-maker may also be represented by a public officer.
- (2) The Commission shall make determinations in relation to the admissibility of any evidence whether oral or documentary and in so doing, the Commission in the hearing and deciding of an appeal, shall not be bound by any written law or rule of law relating to the admissibility of evidence in proceedings before a court.
- (3) Official audio recordings are to be made of all oral hearings.
- (4) The Commission may re-open a hearing on the application of any party but not in relation to a decision that is or has been the subject of an appeal to the Supreme Court.
- (5) A Commissioner on becoming aware of a conflict of interest must not sit, or continue to sit, on the hearing of an appeal.

20. Private hearings and non-publication orders.

- (1) A hearing, other than a hearing on the papers, is to be conducted in public, unless —
 - (a) the appellant requests that it be conducted in private; or
 - (b) the Commission directs that all or any part of the hearing be conducted in private —
 - (i) to avoid interfering with the proper administration of justice;
 - (ii) to avoid endangering the well-being of any person;
 - (iii) to avoid publication of information where publication would be contrary to the public interest; or
 - (iv) for another reason in the interests of justice.

- (2) Where the appellant requests that a hearing be conducted in private, the Commission must make a non-publication order prohibiting the publication of any evidence given before the Commission or the contents of any publication produced to the Commission.
- (3) For any of the reasons specified in subsection (1)(b), the Commission may make a non-publication order prohibiting the publication of particular evidence given before the Commission or the contents or part of the contents of a publication produced to the Commission.
- (4) Unless —
 - (a) the appellant requests a private hearing; or
 - (b) an application for a non-publication order has been made but not decided,
 - (c) any part of the evidence produced to the Commission is subject to a non-publication order,the Commission's files are to be available for public inspection in accordance with rules.

21. Commission may affirm or recognize agreement between parties.

- (1) The Commission may affirm or recognize an agreement of the parties and consider the appeal withdrawn.
- (2) An affirmation or recognition under subsection (1) does not prohibit an appeal to the Commission if the agreement is not adhered to.

22. Failure of party to attend.

If one party or both parties fail to attend at the time and place fixed for the hearing of an appeal, the Commission may —

- (a) adjourn the hearing to a later date, having regard to any explanatory reasons submitted by any absent party or parties (whether orally, by an authorized representative, or in writing);
- (b) in the case of the first hearing date, whether or not explanatory reasons have been supplied by any absent party, adjourn the hearing to a later date in the interests of justice and equity;
- (c) determine the appeal after considering submissions by the party who is present and considering all the evidence and any written submissions of the absent party.

23. Determination of appeals by Commission.

- (1) The Commission must hear and determine an appeal within one hundred and eighty days after an appeal is commenced.
- (2) The Commission must —

- (a) in a case concerned with an assessment, confirm, vary, or set aside the assessment, or remit the matter back to the decision-maker for reassessment in accordance with the directions of the Commission;
 - (b) in any other case, confirm the decision or set the decision aside and remit the matter back to the decision-maker for reconsideration in accordance with the directions of the Commission.
- (3) The decision-maker must give effect to the Commission's determination as soon as practicable after service of the notice of determination.
- (4) The circumstances in which the Commission may decide to remit a matter back to the relevant decision-maker are that the parties have been given an opportunity to be heard, the appellant has been notified in writing that the matter has been remitted, and —
 - (a) where the Commission permits, new or additional information has been brought, which may affect the liability of the appellant to pay tax under the relevant law specified in the *Second Schedule*;
 - (b) the evidence provided to the decision-maker was not properly taken into account or the evidence provided by the appellant was not given due consideration by the decision-maker; or
 - (c) the Commission, having regard to all information and evidence, considers it necessary to remit the matter.
- (5) Where a matter is remitted by the Commission —
 - (a) the relevant decision-maker shall review the matter, having regard to the circumstances communicated by the Commission as the basis for the Commission's decision to remit;
 - (b) the Commission shall, in writing, specify the time within which the decision-maker shall complete the review;
 - (c) the remission does not preclude any further appeal arising from a revised decision of the decision-maker.
- (6) A determination of the Commission in an appeal is not invalid only because of a failure by the Commission to comply with a requirement for a notice or a defect or irregularity in connection with the appointment of a Commissioner.
- (7) The Commission may, on the application of a party or at its own initiative, correct a determination if the determination contains —
 - (a) a clerical mistake;
 - (b) an error arising from an accidental slip or omission;
 - (c) a miscalculation of figures or a mistake in the description of a matter, person or thing mentioned in the determination; or
 - (d) a defect in form.

24. Commission to give reasons.

- (1) The Commission must provide written reasons for its final determination on an appeal to the parties at the time that it serves a notice of the determination.
- (2) As soon as practicable, the Commission must cause a copy of the reasons to be published.
- (3) The obligation to provide and publish written reasons may be satisfied by —
 - (a) providing a transcript or audio recording of reasons delivered orally; and
 - (b) publishing a transcript.
- (4) The Commission must ensure that publication of its reasons does not include matters that are the subject of a non-publication order.

25. Withdrawal of appeal.

- (1) An appellant may withdraw an appeal at any time prior to the determination of the appeal by the Commission by filing written notice at any time with the Commission.
- (2) Where an individual appellant dies before his appeal has been determined, the Commission may direct that —
 - (a) the appeal shall be treated as withdrawn;
 - (b) where the Commission considers it necessary, the legal personal representative of the appellant may continue in the proceedings in the place of the appellant.
- (3) Where an appeal is withdrawn or treated as withdrawn —
 - (a) the Commission shall serve on the relevant decision-maker a notice that the appeal has been considered as having been withdrawn; and
 - (b) subject to the provisions of section 21 of this Act, no further appeal of the relevant decision may be submitted to the Commission.

26. Appeals on a question of law to the Court.

- (1) A party may appeal against a determination of the Commission, on matters of law only to the Supreme Court.
- (2) An appeal against an interlocutory determination may only be made to, and with the leave of, the Supreme Court.
- (3) Notice of the appeal must be filed within —
 - (a) twenty-one days after a notice of determination is given; or
 - (b) such further period as the Supreme Court may allow in exceptional circumstances.

- (4) An appeal to the Supreme Court shall be limited to the grounds stated in the Notice of Appeal submitted to the Commission, unless the Court in its discretion permits the grounds of appeal to be amended.

PART IV - MISCELLANEOUS

27. Costs.

- (1) Each party shall bear their own costs in connection with an appeal.
- (2) Notwithstanding subsection (1), in exceptional circumstances, the Commission may order that a party bear part or all of the costs of another party.

28. Confidentiality.

- (1) A person having an official duty or being employed in the administration of this Act or engaged as a consultant to the Commission shall consider and deal with all documents and information relating to the functions of the Commission as confidential.
- (2) A person in possession of or control over any document or information relating to any business or transaction of the Commission shall not communicate or attempt to communicate any information contained in that document or pass on the document to any person other than a person authorised under this Act to receive the document.

29. Annual report.

- (1) The Chairman must table in Parliament by the 30th day of September following the end of each financial year a report of the operations of the Commission for that year.
- (2) Subject to the terms of any non-publication order, the report must —
 - (a) summarize the performance of the Commission for the year;
 - (b) include the number of appeals, if any, not decided within the period referred to in section 23(1) and the reasons;
 - (c) contain such other particulars as the Minister in may direct in writing; and
 - (d) contain any recommendations to improve the Commission's performance of its functions.

30. Offences.

- (1) A person who fails to comply with a direction of the Commission without reasonable excuse commits an offence and is liable on summary

conviction to a fine not exceeding ten thousand dollars or to imprisonment to a term not exceeding two years or to both such fine and imprisonment.

- (2) A person who improperly attempts to influence a person in connection with a proceeding of the Commission, whether as a Commissioner, Clerk, party or witness, to act other than in accordance with the person's duty, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term not exceeding two years or to both such fine and imprisonment.
- (3) A member, employee, contractor or consultant of the Commission who, except in the performance of the person's duties under this Act or as required by law, discloses to any person any matter in respect of another person that comes to their knowledge in the performance of their duties commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars or to a term not exceeding two years or to both such fine and imprisonment.

31. Rules.

The Commission may make rules in respect of all or any of the matters in respect of which rules are required to be made under this Act.

32. Regulations.

The Minister may make regulations —

- (a) to facilitate the efficient and effective conduct of the Commission; and
- (b) to prescribe fees for lodging a notice of appeal (which shall be refundable if the Commission certifies that an appeal was decided wholly or partly in favour of the appellant), for obtaining a transcript of a hearing or for other purposes.

33. Transitional provisions.

- (1) Anything done or commenced under or by virtue of any provision in any Act in the *Second Schedule*, and which was subsisting immediately before the date of the coming into force of this Act shall be continued under that Act as if this Act had not been passed.
- (2) For the avoidance of doubt, the reference in subsection (1) to anything done or commenced before the date of the coming into force of this Act shall —
 - (a) include appeals commenced under any Act in the *Second Schedule*, where a notice of hearing had been issued to the parties;
 - (b) not include appeals, although filed, which had not yet been the subject of a notice of hearing issued to the parties.

- (3) Any appeal filed under any provision of any Act specified in the *Second Schedule* before the date of the coming into force of this Act, which had not yet been the subject of a notice of hearing, shall be heard by the Commission established under this Act as if such appeal had been made under this Act.
- (4) Notwithstanding the provisions of paragraph 1 of the First Schedule, a person who was a member of the Value Added Tax Appeal Commission under section 82 of the Value Added Tax Act, 2014 (*No. 32 of 2014*) immediately before the date of the coming into force of this Act, shall be deemed to be a member of the Tax Appeal Commission upon the coming into force of this Act, holding the same position held immediately before this Act comes into force —
 - (a) for the duration of his term of appointment under the Value Added Tax Act, 2014 (*No. 32 of 2014*); or
 - (b) until such earlier date as he resigns, retires or his office is otherwise terminated under this Act.

34. Repeals.

The provisions of the laws specified in the First Column of the *Third Schedule* are amended to the extent specified in the Second Column of the *Third Schedule*.

FIRST SCHEDULE

(section 3(4))

1. Constitution of Commission.

- (1) The Commission shall consist of a Chairman and no less than two and no more than eight Commissioners who shall —
 - (a) be appointed, in writing, by the Governor-General acting on the advice of the Prime Minister; and
 - (b) carry out the functions and powers of the Commission under section 4.
- (2) No person shall be appointed as —
 - (a) the Chairman, unless that person is a counsel and attorney of a minimum of ten years standing;
 - (b) a Commissioner, unless that person is —
 - (i) a person of high integrity who is able to exercise competence, diligence and sound judgment in fulfilling their responsibilities under this Act;
 - (ii) a counsel and attorney, licensed accountant or licensed broker experienced in taxation matters or assessment of real property; and
 - (iii) not a Member of Parliament, Senator or public officer.
- (3) A Commissioner may be appointed on a full-time, part-time or sessional basis.
- (4) The Chairman is responsible for the overall performance of the Commission's functions and the specific duties under this Act.
- (5) The appointment, resignation, death and termination of office of any Commissioner shall be published in the *Gazette*.

2. Tenure of Commissioners.

- (1) A Commissioner shall hold office for period not exceeding five years and may be eligible for reappointment for a further term not exceeding five years, but a Commissioner shall not serve for more than ten years.
- (2) A Commissioner must, upon appointment, take and subscribe an oath before a justice of the Supreme Court to faithfully and impartially perform the duties of his office.
- (3) A Commissioner whose term of office expires or who retires or resigns, continues to be a Commissioner, for the sole purpose of deciding an appeal that was wholly heard before the expiration of the term of office or before the retirement or resignation took effect.

- (4) Where a Commissioner is for any reason temporarily unable to act, the Minister may appoint an eligible replacement for such term as the Minister specifies in the notice of appointment, not exceeding the remainder of the term of the Commissioner he or she replaces.
- (5) No appointment under paragraph (1), and no act done by any person by virtue of such appointment, shall in any proceeding be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

3. Removal of Commissioners.

The Governor-General on the advice of the Prime Minister may at any time remove a Commissioner but only for good and sufficient reason, including —

- (a) engaging in any occupation for reward outside the duties of the Commissioner's office where the terms of appointment of the member prohibit such engagement;
- (b) disability; or
- (c) bankruptcy; or
- (d) proven neglect of duty or misconduct.

4. Remuneration.

The Chairman and other Commissioners shall be paid from the Consolidated Fund —

- (a) such remuneration as may be fixed by the Minister on the advice of the Judicial and Legal Service Commission; and
- (b) reimbursement of reasonable travel and living expenses incurred in the course performing duties away from the Commission's ordinary place of operations.

5. Accounts and audit.

- (1) The Commission shall keep proper accounts of its receipts, payments, assets and liabilities, and such accounts shall be audited annually by an auditor appointed in each year by the Commission with the approval of the Minister.
- (2) A statement of the audited accounts shall form part of the annual report submitted pursuant to section 29.
- (3) The Chairman shall, at such time within each year as the Minister may direct, submit to the Minister —
 - (a) a statement of the accounts of the Commission in accordance with subsection (1); and
 - (b) the estimates of expenditure for the proceeding financial year.

6. Commissioners not personally liable.

No person appointed as a Commissioner or any other member of the Commission, shall be held personally liable for any lawful act done or omitted to be done in good faith in pursuance or intended pursuance of his or her powers and authorities under this Act.

7. Staff of Commission.

- (1) A public officer shall be appointed by the Governor-General —
 - (a) to act as clerk to the Commission;
 - (b) to carry out such other functions as the work of the Commission may require.
- (2) The Clerk to the Commission must be a counsel and attorney, or other professional person experienced in taxation matters, with a minimum of five years standing.
- (3) The duties of the Clerk are—
 - (a) to assist the Commissioners in the discharge of their duties; and
 - (b) to conduct conferences with parties, and other alternative dispute resolution processes as directed by the Chairman, to promote efficient resolution of disputes;
 - (c) other duties as directed by the Chairman.

SECOND SCHEDULE

(section 4(1), 5, 23(4))

LAWS AGAINST WHICH A DECISION CAN BE APPEALED

Customs Management Act (*Ch. 293*)

Stamp Act (*Ch. 370*)

Real Property Tax Act (*Ch. 375*)

Business Licence Act, 2010 (*No. 25 of 2010*)

Value Added Tax Act, 2014 (*No. 32 of 2014*)

THIRD SCHEDULE

(section 34)

CONSEQUENTIAL AMENDMENTS

LAW	EXTENT OF REPEAL
<p>Business Licence Act (<i>No. 25 of 2010</i>)</p>	<p>In section 2 —</p> <ul style="list-style-type: none"> (a) delete the term “Review Board” and its definition; (b) insert in the appropriate alphabetical order, the following — “Tax Appeal Commission” has the meaning ascribed thereto in section 2 of the Tax Appeal Commission Act, 2019;”. <p>Repeal and replace section 12 as follows —</p> <p>“12. Appeals.</p> <p>(1) A person who is aggrieved by a decision of the Secretary —</p> <ul style="list-style-type: none"> (a) under sections 4 and 5 in relation to an application for a licence; (b) in relation to an objection under section 11 to the assessment of tax he is required to pay for a licence; (c) to suspend, revoke, amend or cancel a licence issued under section 7; or (d) on an application for a business name under section 21, <p>may appeal to the Tax Appeal Commission against that decision in the</p>

	<p>time and manner specified in sections 9 to 11 of the Tax Appeal Commission Act 2019.”.</p> <p>In section 21(7), delete the words “Review Board” and substitute the words “Tax Appeal Commission”.</p> <p>Repeal sections 24 and 25 and delete the heading “PART III, ESTABLISHMENT AND FUNCTION OF THE BUSINESS LICENCE REVIEW BOARD”.</p> <p>Delete section 30(1)(h).</p>
<p>Customs Management Act, 2011 (No. 30 of 2011)</p>	<p>In section 2 —</p> <ul style="list-style-type: none"> (a) delete the term “Commission” and its definition; (b) delete the term “Customs Appeal Commission” and its definition; (c) insert in the appropriate alphabetical order, the following — <p>“Tax Appeal Commission” has the meaning ascribed thereto in section 2 of the Tax Appeal Commission Act, 2019;”.</p> <p>Delete the words “Customs Appeal Commission” wherever they appear and substitute the words “Tax Appeal Commission”.</p> <p>In section 228, delete paragraph (b) and substitute the following —</p> <p>“(b) if dissatisfied with the decision made by the Comptroller, appeal to the Tax Appeal Commission in the time and manner specified in the Tax Appeal Commission Act, 2019.”.</p>

	<p>In section 231(12)(b), delete the words “the Commission under Division Three of Part XXIV” and substitute the words “Tax Appeal Commission”.</p> <p>Delete section 278.</p> <p>In section 317 —</p> <ul style="list-style-type: none"> (a) in subsection (1), delete the words “under Division Two of this Part”; (b) in subsection (2), delete the words “Commissioner under Division Three of this Part” and substitute the words “Tax Appeal Commission”; (c) delete subsection (3); and (d) in subsection (5), delete the word “338” and substitute the word “319”. <p>Delete section 319(4) and substitute —</p> <p>“(4) A person who is dissatisfied with the decision of the Comptroller under this section may appeal to the Tax Appeal Commission in the time and manner specified in the Tax Appeal Commission Act, 2019.”.</p> <p>Repeal sections 320 – 321 and delete the words “<i>DIVISION III – CUSTOMS APPEAL COMMISSION</i>”.</p> <p>Repeal sections 322 - 338 and delete the words “<i>DIVISION IV – PROCEEDINGS</i>”.</p> <p>Delete section 354(1)(s) and (t).</p>
Real Property Tax Act (<i>Ch. 375</i>)	In section 2 —

	<p>(a) delete the term “Tribunal” and its definition;</p> <p>(b) insert in the appropriate alphabetical order, the following —</p> <p>“Tax Appeal Commission” has the meaning ascribed thereto in section 2 of the Tax Appeal Commission Act, 2019;”.</p> <p>Repeal and replace section 13 as follows —</p> <p>“13. Appeal against decision of Chief Valuation Officer.</p> <p>Any person aggrieved by the decision of the Chief Valuation Officer upon an objection may appeal to the Tax Appeal Commission against that decision in the time and manner specified in the Tax Appeal Commission Act, 2019.”.</p> <p>Repeal sections 14 - 16.</p> <p>Delete the word “Tribunal” wherever it appears and substitute the words “Tax Appeal Commission”.</p> <p>Repeal the First Schedule.</p>
<p>Stamp Act (Ch. 370)</p>	<p>In section 2(1), insert in the appropriate alphabetical order, the following —</p> <p>“Tax Appeal Commission” has the meaning ascribed thereto in section 2 of the Tax Appeal Commission Act, 2019;”.</p> <p>Repeal and replace section 28 as follows —</p> <p>“28. Appeals to Supreme Court against assessment of Treasurer.</p> <p>Any person who is dissatisfied with any assessment made by the Treasurer in</p>

	<p>pursuance of the provisions of section 27 of this Act with respect to the amount of stamp duty chargeable upon an instrument or transaction may –</p> <ul style="list-style-type: none"> (a) after receiving from the Treasurer the instrument duly inscribed in accordance with subsection (4) of that section; and (b) on payment of the stamp duty in conformity therewith, <p>appeal to the Tax Appeal Commission in the time and manner specified in the Tax Appeal Commission Act, 2019.”</p>
<p>Value Added Tax Act, 2014 (<i>No. 32 of 2014</i>)</p>	<p>In section 2 —</p> <ul style="list-style-type: none"> (a) delete the term “Appeal Commissioner” and its definition; (b) delete the term “VAT Appeal Commission” and its corresponding definition; (c) insert in the appropriate alphabetical order, the following new term and definition – <p>“Tax Appeal Commission” has the meaning ascribed thereto in section 2 of the Tax Appeal Commission Act, 2019;”.</p> <p>In section 61(1)(b), delete the words “VAT Appeal Commission” and substitute the words “Tax Appeal Commission”.</p> <p>In section 81A —</p> <ul style="list-style-type: none"> (a) delete subsection (1) and substitute as follows – <p>“(1) A person aggrieved with an advanced VAT ruling made by</p>

	<p>the Comptroller under section 18 may appeal the ruling directly to the Tax Appeal Commission specified in the Tax Appeal Commission Act, 2019.”;</p> <p>(b) in subsections (3), (4) and (5), delete the word “Commission” and substitute the words “Tax Appeal Commission”;</p> <p>(c) delete the head note and substitute the words “Appeal to the Tax Appeal Commission of an advanced VAT ruling by the Comptroller.”.</p> <p>Repeal sections 82 and 83.</p>
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FOURTH SCHEDULE
(section 8)
FORM OF NOTICE OF APPEAL

COMMONWEALTH OF THE BAHAMAS

TAX APPEAL COMMISSION ACT, 2019

NOTICE OF APPEAL

To: The Tax Appeal Commission

1. Particulars of the Appellant			
Instructions: State the particulars of the person or entity that is appealing. Where the entity is not an incorporated company, the name of the owner(s) should be stated.			
Name			
Address			
Telephone number		Email address	
TIN			
2. Details of the Appeal			
Instructions: State the decision that you are appealing against. A copy of the decision must be attached.			
Decision (Place a tick in the applicable box)	Date of Notice (dd/mm/yyyy)	Date Notice received (dd/mm/yyyy)	
VAT Assessment (s. 81 of the VAT Act)			
Other Decision of VAT Comptroller on an Objection (s. 81			

of the VAT Act)			
Advance VAT Ruling (s. 18 of the VAT Act)			
Refusal of Grant of Business Licence (s. 4 or 5 of Business Licence Act)			
Suspension, Revocation, Amendment, Cancellation or Restriction of Business Licence (s. 7 of Business Licence Act)			
Business Licence Tax Assessment (s. 11 of the Business Licence Act)			
Approval of Business Name or Change of Business Name (s. 21 of the Business Licence Act)			
Real Property Tax (s. 12 of the Real Property Tax Act)			
Customs Duty Assessment (s. 228, 231 or 319 of the Customs Management Act)			
Stamp Duty Assessment (s. 27 of the Stamp Act)			
2A. Grounds of Appeal			
Instructions: Outline in detail your reasons for appealing against the decision. You			

may continue on a separate sheet or attach a separate document if the space is insufficient.

I am appealing against the decision on the following grounds:

2B. Supporting information and/or documents

Instructions: List and attach all documents, information or calculations in support of your appeal.

1			
2			
3			
4			
5			
6			
7			
8			

3. Reasons for late submission of Appeal

Instructions: Complete this section only if you are lodging your Appeal LATER THAN THIRTY (30) CALENDAR DAYS after you received the notice informing you of the decision.

Reason (Place a tick in the applicable box)	Details		
Absence from The Bahamas			
Sickness			
Other reasonable cause			

4. Payment or Security for Assessed Tax (Proof of payment or security MUST be attached)

Instructions: This section should only be completed where you are appealing against an assessment. To appeal an assessment, the total amount assessed must be paid in full or security in a form acceptable to the decision-maker must be provided.

Place a tick in the applicable box	YES	NO
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I have paid the total amount of tax assessed		
I have provided security for the tax assessed in the form of a – Bank guarantee Bond		
Note: original security documents must be submitted for processing		
5. Certification		
Instructions: This section must be completed and signed by the person completing the form		
I declare that the information provided in this Notice of Appeal and all supporting documents is, to the best of my knowledge, information and belief, true and complete.		

Signature of person completing the form		

Name and title of person completing the form (PLEASE PRINT)		

Date (dd/mm/yyyy)		

OBJECTS AND REASONS

Clause 1 of the Bill provides for the short title and commencement.

Clause 2 of the Bill provides for the definition of terms used throughout the Bill.

Clause 3 of the Bill establishes an independent body to be known as the Tax Appeal Commission.

Clause 4 of the Bill provides that the function of the Commission is to hear and decide appeals against a decision given under any law specified in the Second Schedule. Additionally this clause vests the Commission with powers to do all things that are necessary or convenient for exercising its jurisdiction and making directions or orders.

Clause 5 of the Bill provides for a list of decisions which were made under various laws by a decision-maker, to be appealed to the Commission.

Clause 6 of the Bill gives a person aggrieved by a decision given under any law specified in the Second Schedule, the right to appeal to the Commission. Such appeal shall be made within thirty calendar days after service of a notice of the decision, or the expiration of ninety days from lodging an objection under section 81 of the Value Added Tax Act, 2014 (*No. 32 of 2014*). However, the Commission may accept an appeal after the time specified where the Commission is satisfied that there has been no unreasonable delay in commencing the appeal due to absence from The Bahamas, sickness, or other reasonable cause.

Clause 7 of the Bill provides that appeals against decisions of decision-makers are solely permitted to be lodged and heard by the Commission.

Clause 8 of the Bill provides for the method of appeal. An appeal may be commenced by filing a notice of appeal with the Commission, in the form and manner prescribed in rules.

Clause 9 of the Bill provides that a notice of appeal must specify in detail the grounds on which the appeal is made. An appellant is limited to the grounds specified in the notice of appeal, or stated in any relevant objection, unless the Commission grants leave to add new grounds.

Clause 10 of the Bill provides that the appellant shall serve a copy of the notice of appeal on the decision-maker and that the decision-maker shall within fourteen days of receiving such notice, must provide the Commission and the appellant copies in the manner and form prescribed of —

- (a) written statement of reasons for the decision; and
- (b) any documents or information in the decision-maker's possession or control that are relevant to the appeal.

Clause 11 of the Bill provides that the Commission may not hear and decide an appeal against the decision-maker's decision on an objection to an assessment unless the decision-maker certifies that the appellant —

- (a) has paid the full amount of tax due under the assessment;
- (b) has given sufficient security acceptable to the decision-maker for the amount of the tax that is unpaid in addition to any interest and penalty that is or may become payable; or
- (c) has made an instalment payment arrangement pending the appeal.

Clause 12 of the Bill provides for the decision-maker to use his best endeavors to assist the Commission to make the decision on the appeal and this obligation binds any person representing such decision-maker in an appeal.

Clause 13 of the Bill outlines the procedures to be followed by the Commission and makes provision for the Commission to otherwise regulate its own procedure.

Clause 14 of the Bill makes provision the functions of the Commission to be exercised by panels of the Commission.

Clause 15 of the Bill prevents an appellant in a hearing of an appeal before the Commission from producing evidence which was not produced before the decision-maker unless the appellant obtains consent from the Commission to do so.

Clause 16 of the Bill makes provision for the Commission or any member thereof to be empowered to collect all necessary information to facilitate a determination of any appeal lodged. Additionally, the Commission in exercising such power, may inter alia, contact either party by any means of communication; invite either or both parties to an informal meeting; give any party from whom further information is required fourteen days notice, or notice for a shorter period with the agreement of all parties in writing, specifying what further information is required.

Clause 17 of the Bill puts the burden of proof on the appellant in an appeal before the Commission.

Clause 18 of the Bill provides for the manner in which the Commission may conduct a formal hearing where it considers it necessary or based on the request of the appellant or decision-maker.

Clause 19 of the Bill provides for the hearing of appeals by the Commission, the determinations to be made by the Commission during such appeals relative to the admissibility of any evidence whether oral or documentary, the Commission to be empowered to conduct official audio recordings of all its oral hearings, its power to reopen a hearing on the application of a party and a Commissioner once becoming aware of any conflict of interest, to cease sitting on the hearing of any appeal.

Clause 20 of the Bill provides for the conduct of private hearings and the issuance by the Commission of non-publication, in certain circumstances.

Clause 21 of the Bill provides that the Commission may affirm or recognize an agreement of the parties and consider the appeal withdrawn. An affirmation or appeal does not prohibit an appeal to the Commission if the agreement is not adhered to.

Clause 22 of the Bill provides for the procedures to which the Commission must comply if one or both of the parties fail to attend at the time and place fixed for the hearing of an appeal.

Clause 23 of the Bill imposes an obligation on the decision-maker to assist the Commission to make the decision on the appeal, by providing to the Commission and the appellant copies of a written statement of reasons for the decision, and any documents or information in the decision-maker's possession or control that may be relevant to the appeal.

Clause 24 of the Bill provides for the Commission to provide written reasons for its final determination on an appeal to the parties at the time that it serves a notice of the determination.

Clause 25 of the Bill provides for an appellant to withdraw an appeal at any time by filing a written notice at any time with the Commission. This clause also provides that where an appellant dies before his appeal has been determined, the Commission may either direct that such appeal shall be treated as withdrawn or that the legal personal representative of the above deceased appellant may continue in the proceedings in place of such appellant.

Clause 26 of the Bill provides that a party may appeal against a determination of the Commission, on matters of law only to the Supreme Court. It further provides that an appeal against an interlocutory determination may only be made to, and with the leave of, the Supreme Court.

Clause 27 of the Bill provides that that each party will defray its own costs in connection with an appeal. However, in exceptional circumstances, the Commission may order that a party defray part or all of the costs of another party.

Clause 28 of the Bill provides that a person having an official duty or being employed in the administration of this Act or engaged as a consultant to the Commission shall consider and deal with all documents and information relating to the functions of the Commission as confidential.

Clause 29 of the Bill provides that the Chair must table in Parliament an annual report of the operations of the Commission.

Clause 30 of the Bill makes provision for various offences of contravention of various provisions of the Bill.

Clause 31 of the Bill makes provision for the Commission to make rules in respect of all or any of the matters in respect of which rules are required to be made under this Act.

Clause 32 of the Bill makes provision for the Minister to make regulations to facilitate the efficient and effective conduct of the Commission, and to prescribe fees for lodging a notice of appeal for obtaining a transcript of a hearing or for other persons.

Clause 33 of the Bill makes provision for transitional provisions.

Clause 34 of the Bill makes provision for repeals.

The First Schedule of the Bill makes provision for the constitution, staff and accounting and reporting obligations of the Commission.

The Second Schedule of the Bill makes provision for a list of Acts, which a person aggrieved by a decision under any of the above acts, may appeal to the Commission.

The Third Schedule of the Bill makes provision for a list of consequential amendments.

The Fourth Schedule of the Bill makes provision for the notice of appeal, which contains a written statement of the reasons for the decision and any documents or information in the decision-maker's possession or control, that may be relevant to the appeal.