

MONTSERRAT

MONTSERRAT CUSTOMS AND REVENUE SERVICES
(ENABLING) ACT

No. 6 of 2017

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I ASSENT

(Sgd.) Elizabeth Carriere
Governor

DATE: 21.08.2017

M O N T S E R R A T

No. 6 of 2017

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE MONTSERRAT CUSTOMS AND REVENUE SERVICES; FOR THE APPOINTMENT OF A DIRECTOR GENERAL RESPONSIBLE FOR THE ADMINISTRATION AND MANAGEMENT OF THE MONTSERRAT CUSTOMS AND REVENUE SERVICES AND FOR CONNECTED MATTERS.

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat and by the authority of the same as follows:—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the Montserrat Customs and Revenue Services (Enabling) Act, 2017.

2 Interpretation

In this Act—

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- “**Board**” means the Tax Advisory Board;
- “**Director General**” means the person appointed as Director General under section 4;
- “**Commissioners**” means the Customs and Revenue Commissioners appointed under section 18;
- “**Comptroller of Customs and Excise**” means a person appointed as the Comptroller of Customs and Excise under section 84 of the Constitution;
- “**Comptroller of Inland Revenue**” means a person appointed as Comptroller of Inland Revenue under section 84 of the Constitution and section 41 of the Income and Corporation Tax Act;
- “**Constitution**” means the Constitution of Montserrat (Cap. 1.01);
- “**court**” means a court of Montserrat of competent jurisdiction;
- “**Customs (Control and Management) Act**” means the Customs (Control and Management) Act (Cap. 17.04);
- “**Customs Duties and Consumption Tax Act**” means the Customs Duties and Consumption Tax Act (Cap. 17.06);
- “**Government**” means Her Majesty's Government of Montserrat;
- “**Income and Corporation Tax Act**” means the Income and Corporation Tax Act (Cap. 17.01);
- “**Minister**” means the Minister with responsibility for finance;
- “**Montserrat Customs and Revenue Services**” or “**MCRS**” means the division of the Ministry of Finance established under section 3;
- “**Property Tax Act**” means the Property Tax Act (Cap. 17.16);

“**public officer**” has the same meaning assigned to it in section 107(1) of the Constitution;

“**revenue laws**” means the laws relating to revenue and includes the Income and Corporation Tax Act, the Customs (Control and Management) Act, the Customs Duties and Consumption Tax Act, the Hotels Tax Act (Cap. 17.13), the Property Tax Act and the Tax Information Exchange Act (Cap. 17.24); and

“**revenue**” includes the taxes, duties, fees, levies, fines and other charges payable under the revenue laws.

PART 2—ESTABLISHMENT OF MCRS AND APPOINTMENT AND FUNCTIONS OF DIRECTOR GENERAL

3 Establishment of Montserrat Customs and Revenue Services

The Montserrat Customs and Revenue Services is established as a division of the Ministry of Finance and is comprised of—

- (a) the Inland Revenue Unit; and
- (b) the Customs and Excise Unit.

4 Appointment of Director General

- (1) The Deputy Governor shall appoint a Director General of the MCRS, who shall report to the Financial Secretary.
- (2) The Director General is the chief executive officer of the MCRS.
- (3) The Deputy Governor shall cause the appointment, removal or resignation of the Director General to be published by Notice in the *Gazette*.

5 Functions of Director General

- (1) The Director General is responsible for the administration and management of the MCRS.
- (2) In administering and managing the MCRS, the Director General shall—
 - (a) plan, direct, supervise and coordinate the activities of the MCRS;
 - (b) employ a modern and efficient tax administration system for use in the administration of all taxes;
 - (c) establish and maintain an appropriate system for the convenient and effective identification of all taxpayers; and
 - (d) do anything or enter into any arrangement which, in his opinion, is incidental or conducive to the proper performance of his functions.

6 Directions by Financial Secretary

The Financial Secretary may give directions in writing or otherwise to the Director General with regard to the administration and collection of taxes and the implementation of tax policies and the Director General shall give effect to the directions.

7 Delegation of functions

The Director General may, in writing, delegate any of his functions under this Act to the Comptroller of the Inland Revenue or the Comptroller of Customs and Excise.

8 Appointment to act as Director General

If the post of Director General is vacant, the Deputy Governor may appoint the Comptroller of Inland Revenue or the Comptroller of Customs and Excise to act as Director General.

PART 3—TAX ADVISORY BOARD

9 Establishment of Tax Advisory Board

There is established a Tax Advisory Board.

10 Membership of the Board

(1) The Governor shall appoint the following persons as members of the Board—

(a) as *ex officio* members,—

- (i) the Director General, who is the Chairperson;
- (ii) the Financial Secretary or his representative;
- (iii) the Comptroller of Customs and Excise; and
- (iv) the Comptroller of Inland Revenue; and

(b) three members appointed on the advice of Cabinet, being—

- (i) two representatives from a registered business association; and
- (ii) a representative from a registered professional association.

(2) A member of the Board under subsection 10(1)(b) holds office for two years and is eligible for reappointment.

11 Resignation of members

A member of the Board under section 10(1)(b) may resign his office by instrument in writing addressed to the Governor and transmitted through the Chairperson and from the date of receipt of the instrument by the Governor, that person ceases to be a member.

12 Vacancy in membership

(1) The office of a member under section 10(1)(b) becomes vacant—

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- (a) on the absence of the member from two consecutive meetings of the Board, unless the absence is approved by the Governor;
 - (b) at the expiration of two years from the date of the appointment of the member; or
 - (c) on the death, resignation or removal from office, of the member.
- (2) The Governor may remove a member of the Board appointed under section 10(1)(b) from office if the member—
- (a) is adjudged by a court to be suffering from an infirmity of the body or mind and is incapable of performing the functions of his office;
 - (b) has failed to perform the functions of his office; or
 - (c) has been placed, by conduct or otherwise, in a position that is incompatible with the due execution of his office.
- (3) If a vacancy occurs in the membership of the Board under section 10(1)(b), the Governor acting on the advice of Cabinet may appoint a person to act in place of that member, but—
- (a) that appointment shall be made in the same manner and from among the same category of persons as would be required in the case of an original appointment; and
 - (b) the newly appointed member holds office for the remainder of the period for which the previous member was appointed.

13 Publication of change in membership of Board

The Secretary to the Board shall cause the appointment, resignation, removal from office or death of a member to be published by Notice in the *Gazette*.

14 Proceedings and meetings of the Board

- (1) The Board shall meet at a time as may be expedient to carry out its functions, but shall meet at least three times in each year.
- (2) The Chairperson may convene a meeting of the Board by giving not less than seven days written notice to the members of the Board.
- (3) Three members of the Board, two of whom shall be *ex officio* members and one of whom shall be a member appointed under section 10(1)(b), constitute a quorum of the Board.
- (4) The Chairperson shall preside at meetings of the Board and in the case of his absence from a meeting, the members present shall elect a member from among their number to preside at that meeting.
- (5) The validity of the proceedings of the Board is not affected by a vacancy among the members or by any defect in the appointment of a member.
- (6) The decisions of the Board at a meeting is by a majority of votes.
- (7) In the event of an equal division of the votes on a matter before a meeting of the Board, the Chairperson presiding at that meeting has a casting vote in addition to his original vote.
- (8) The Board shall confirm the minutes of each meeting as soon as practicable at a subsequent meeting.
- (9) The Board may, in its discretion, invite a person to attend a meeting of the Board for the purpose of assisting the Board in respect of any matter under its consideration, but that person is not entitled to vote.

15 Functions of the Board

The Board shall—

- (a) review tax policy proposals;

- (b)* formulate policy advice for the Government on the introduction of new taxes;
- (c)* provide advice to the Government on tax policies, systems and procedures and their impact on taxes, taxpayers and the general public;
- (d)* operate as a medium of consultation in relation to Government tax policy and research;
- (e)* advise on the risks to the efficient, effective and economic collection of revenue by the MCRS, and necessary advice on the appropriate risks mitigation measures to be put in place; and
- (f)* provide support and advice to the Government to ensure the Government's compliance with standards of best practice in international taxation.

16 Secretary to the Board

- (1) The Governor acting on the advice of Cabinet shall appoint a Secretary to the Board.
- (2) The Secretary to the Board shall—
 - (a)* attend meetings of the Board;
 - (b)* record the minutes of each meeting in proper form; and
 - (c)* perform any other duty connected with the work of the Board.

17 Board to report to the Minister

The Board shall, as soon as practicable after the beginning of each year, submit to the Minister a report of its activities undertaken during the preceding year.

PART 4—CUSTOMS AND REVENUE COMMISSIONERS

18 Customs and Revenue Commissioners

- (1) The Governor acting on the advice of Cabinet shall appoint five persons as Commissioners, with experience in matters relating to—
- (a) income tax;
 - (b) property tax;
 - (c) customs duties and excise.
- (2) A public officer shall not be appointed as a Commissioner.
- (3) A Commissioner holds office for three years and is eligible for reappointment.
- (4) The Commissioners shall—
- (a) sit and hear—
 - (i) objections against assessments or objections to directions issued by the Comptroller of Inland Revenue under the Income and Corporation Tax Act;
 - (ii) appeals—
 - (A) for property tax relief from persons liable to pay property tax under the Property Tax Act; and
 - (B) against a surcharge on property tax under the Property Tax Act; and
 - (iii) appeals from the decision of the Comptroller of Customs and Excise made under section 137(3) of the Customs (Control and Management) Act in relation to disputes on any amount of duty demanded by a customs officer; and
 - (b) perform any other duty assigned to them under this Act or the revenue laws.

- (5) The Governor acting on the advice of Cabinet shall appoint from among the Commissioners a Chairperson and a Deputy Chairperson.
- (6) The Chairperson shall preside over a hearing of the Commissioners and in the absence of the Chairperson, the Deputy Chairperson shall preside.
- (7) Three Commissioners constitute a quorum, one of whom shall be the Chairperson or the Deputy Chairperson.

19 Resignation of Commissioner

A Commissioner may resign from the office of Commissioner by instrument in writing addressed to the Governor and transmitted through the Chairperson and from the date of receipt of the instrument by the Governor, that person ceases to be a Commissioner.

20 Vacancy in the office of Commissioner

- (1) The office of a Commissioner becomes vacant—
 - (a) on the absence of the Commissioner from four consecutive meetings, unless the absence is approved by the Governor;
 - (b) at the expiration of three years from the date of the appointment of the Commissioner; or
 - (c) on the death, resignation or removal from office, of the Commissioner.
- (2) The Governor may remove a Commissioner if the Commissioner—
 - (a) is adjudged by a court to be suffering from an infirmity of the body or mind and is incapable of performing the functions of his office;
 - (b) has failed to perform the functions of his office; or
 - (c) has been placed, by conduct or otherwise, in a position that is incompatible with the due execution of his office.

- (3) If a vacancy occurs in the office of Commissioner, the Governor acting on the advice of Cabinet may appoint a person to act in place of that Commissioner, but—
- (a) that appointment shall be made in accordance with section 18(1) ; and
 - (b) an acting Commissioner holds office for the remainder of the period for which the previous Commissioner was appointed.

21 Secretary to the Commissioners

The Governor acting on the advice of Cabinet shall appoint a Secretary to the Commissioners and the Secretary shall—

- (a) attend meetings of the Commissioners;
- (b) record the minutes of each meeting in proper form;
- (c) sign all documents from the Commissioners except decisions or orders of the Commissioners; and
- (d) perform any other duty connected with the work of the Commissioners.

PART 5—MISCELLANEOUS

22 Obligation of secrecy

- (1) A person who has an official duty or is employed in the administration of this Act shall—
- (a) regard and deal with as secret and confidential all information obtained by him in the performance of his duties or otherwise; and
 - (b) take the oath or affirmation as set out in the Schedule, to be administered by the Governor, that he will faithfully and honestly exercise the functions of his office and that he will not, except in accordance with this Act, disclose any information he receives.
- (2) A person referred to in subsection (1) who obtains information and discloses or attempts to disclose the

information to a person commits a summary offence and is liable to a fine of \$2,000 or to twelve months' imprisonment or to both.

23 Disclosure of information in certain circumstances

Despite section 22, a person may disclose information if the disclosure is—

- (a) in compliance with an order of a court;
- (b) in accordance with or for the purposes of the administration of this Act;
- (c) to a person as the Governor acting on the advice of Cabinet directs, if the Governor acting on the advice of Cabinet certifies that it is necessary in the public interest that the information should be disclosed; or
- (d) in accordance with a domestic, regional or international agreement between Montserrat and another jurisdiction for the exchange of tax information.

24 Transitional provisions

A proceeding on contract, agreement, deed, bond or other instrument which is pending immediately before the date of commencement of this Act and to which the Inland Revenue Department or the Customs and Excise Department is a party shall be continued as if the MCRS was a party to the proceeding in place of the Inland Revenue Department or the Customs and Excise Department.

25 MCRS to enter into agreements etc.

- (1) Any—
 - (a) agreement in respect of payment of taxes, fines or fees, payment of arrears or any obligation related to or connected with taxes, fines or fees, whether it be in the form of an order of a court or an agreement in writing; and

(b) deed, bond or other instrument by way of taxes, fines or fees or related to or connected in any way with taxes, fines or fees,

to which the Inland Revenue Department or the Customs and Excise Department was a party or which affected the Inland Revenue Department or the Customs and Excise Department have effect as if the MCRS were a party to the agreement, obligation, deed, bond or other instrument or affected instead of the Inland Revenue Department or the Customs and Excise Department and as if for every reference to Inland Revenue Department or Customs and Excise Department there were substituted in respect of anything to be done on or after the date of commencement of this Act, a reference to the MCRS.

(2) Subsection (1) applies whether or not the agreement, deed, bond or other instrument was of a nature that the rights, liabilities and obligations under the agreement, deed, bond or other instrument could be assigned.

26 Regulations

The Governor acting on the advice of Cabinet may make regulations for the effective implementation of this Act.

SCHEDULE

(Section 22(1)(b))

OATH FOR DUE EXECUTION OF OFFICE AND SECRECY

I, *(name of person)* swear that —

- (a) I will faithfully and honestly exercise the functions of the office of *(name of office)*; and
- (b) I will not without due authority in any manner whatsoever disclose or communicate any information being facts or expressions of opinion based on facts that come to my knowledge by reason of my employment or any official duty under the Montserrat Customs and Revenue Services (Enabling) Act.

So help me God!

SWORN before)
The Governor at the)
Governor's Office, Brades,)
Montserrat, this day)
of , 20) *(Name of person)*

Before me:-

.....

Governor

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(Sgd.) Shirley Osborne
SPEAKER

Passed by the Legislative Assembly this 27th day of July, 2017.

(Sgd.) Judith Baker
CLERK OF THE LEGISLATIVE ASSEMBLY