



ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER C62

COMMUNICATION LEVY ACT

Showing the Law as at 15 December 2010

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 10/2010, in force 1 November 2010

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COMMUNICATION LEVY ACT

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COMMUNICATION LEVY ACT**Interpretation**

1. (1) In this Act—

“Act” includes a provision of an Act and a regulation or provision of a regulation made under this Act;

“assess” includes reassess;

“communication services” include all usage, purchase and rental of bandwidth, line rentals, line leases and the following—

- (a) internet, fixed line telephone, mobile telephone, facsimile, data services;
- (b) any service that the consumer may use or be charged for to satisfy their communications needs; and
(Am. in L.R. 15/12/2010)
- (c) all telecommunication services as defined under the Telecommunication Act;

“consumer” does not include the Government or a designated government agency;

“designated government agency” means—

- (a) the Anguilla Community College;
- (b) the Anguilla Tourist Board;
- (c) the Health Authority of Anguilla;
- (d) the Water Corporation of Anguilla;
- (e) the Anguilla Air and Sea Ports Authority; or
- (f) a prescribed government agency;

“prescribed” means prescribed by regulation under section 22(1)(a);

“service provider” means the person licensed under the Telecommunication Act to provide a public telecommunication service.

(2) Section 6(d) of the Interpretation and General Clauses Act does not apply to computing time under this Act.

(3) This Act shall be read together with the applicable provisions of the Inland Revenue Department Act as if they constituted a single Act.

(4) For greater certainty, except where this Act provides otherwise, when a notice or document is to be served on a person under this Act, it shall be served on that person in accordance with section 34 of the Inland Revenue Department Act.

Communication levy on service provider

2. A service provider shall pay a communication levy to the Comptroller at the rate of 7% of the total income from the sale of communication services provided to consumers.

Filing returns and remitting communication levy

3. A service provider who is liable to pay a communication levy under section 2 shall, not later than 30 days after the end of each month—

- (a) file a return in relation to the communication levy for the previous month in the form and manner and containing the information prescribed or, if no regulation is made prescribing the foregoing, then in the form and manner and containing the information specified by the Comptroller; and
- (b) remit to the Comptroller the communication levy for the previous month.

Assessment of communication levy

4. (1) The Comptroller may—

- (a) assess any communication levy required to be remitted by a service provider under this Act within 4 years from the day the communication levy was required to be remitted; and
- (b) assess interest and penalties in addition to the communication levy required to be remitted.

(2) Notwithstanding subsection (1), if a service provider—

- (a) has made any misrepresentation that is attributable to neglect, carelessness or wilful default;
- (b) has committed fraud in making a return or in furnishing any information under this Act or the Inland Revenue Department Act in relation to a communication levy; or
- (c) has failed to disclose any relevant information;

the Comptroller may assess any communication levy required to be remitted and assess interest and penalties at any time the Comptroller considers reasonable.

(3) Liability to remit a communication levy imposed by this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(4) The Comptroller is not bound by a return filed or information furnished by or on behalf of any service provider under this Act or the Inland Revenue Department Act in relation to a communication levy and may, notwithstanding a return filed or information so furnished, or if no

return has been filed or information has been furnished, assess the communication levy payable under this Act.

Late filing penalty

5. If a service provider fails to file a return as and when required by this Act, the Comptroller may assess against the service provider a penalty of \$50 for each day of default to a maximum of \$2,000.

Effect of assessment

6. (1) Unless it is varied or vacated on an objection or appeal—

- (a) an assessment under section 4, 5 or 9 is deemed to be valid and binding notwithstanding any error, defect or omission in it or in any proceeding under this Act relating to it; and
- (b) the amount assessed in an assessment under section 4, 5 or 9 is, for the purposes of collection and recovery, deemed to be an amount owing under this Act and to be conclusively established as a debt due to the Crown.

(2) Every service provider assessed under section 4, 5 or 9 shall, within 15 days after service of the notice of assessment, pay the amount assessed against the service provider whether or not an objection to or appeal from the assessment is pending.

Notice of assessment

7. The Comptroller shall serve or cause to be served a notice of an assessment under this Act on the service provider assessed.

Onus of proof

8. The onus of disproving an assessment under this Act is on the service provider assessed.

Penalty in addition to amount owing

9. (1) When—

- (a) a service provider owes an amount to the Crown under this Act; and
- (b) the Comptroller is of the opinion that the reason that the amount is owing to the Crown by that service provider is attributable to—
 - (i) neglect, carelessness or wilful default by or on behalf of that service provider, or
 - (ii) fraud or evasion committed by or on behalf of that service provider;

the Comptroller may determine the amount owing by the service provider and assess against the service provider a penalty in the amount of 25% of the amount owing.

(2) On assessing a penalty under subsection (1), the Comptroller may in the assessment demand payment of the amount owing and the amount of the penalty from the service provider to whom the demand is directed.

(3) Evidence that a demand has been made under subsection (2) is proof, in the absence of evidence to the contrary, that the unpaid amount and the penalty assessed under this section are owing to the Crown from the service provider to whom the demand is directed in the amounts stated in the demand.

Notice of objection

10. A service provider may, in accordance with section 26 of the Inland Revenue Department Act, object to an assessment under section 4, 5 or 9 by the Comptroller.

Records

11. Every service provider shall keep such records as may be prescribed.

Hindering officer

12. No person shall—

- (a) hinder, molest or interfere with any compliance officer or assistant engaged in the performance of any duty or in the exercise of any power imposed or conferred on him by sections 21, 22 and 24 of the Inland Revenue Department Act in relation to the administration and enforcement of this Act; or
- (b) prevent or attempt to prevent such officer or assistant from performing such duty or exercising such power.

Offence re documents and records

13. Any person who—

- (a) makes, participates in, assents to, or acquiesces in, the making of false or deceptive statements in a return, statement, record or other document delivered or made under this Act or in a return, statement, record or other document delivered or made under the Inland Revenue Department Act in relation to a communication levy;
- (b) destroys, alters, mutilates, or disposes of records that a service provider is required to keep under this Act or the Inland Revenue Department Act in relation to communication levies;
- (c) makes or assents to, or acquiesces in, the making of false or deceptive entries in, or omits or assents to or acquiesces in omitting a material particular from, any record referred to in paragraph (b);
- (d) wilfully evades or attempts to evade compliance with this Act or the Inland Revenue Department Act in relation to a matter under this Act; or
- (e) conspires with any person to commit an offence described in paragraphs (a) to (d);

is guilty of an offence and, in addition to any other punishment provided by this Act, is liable on summary conviction to a fine of not more than 300% of the communication levy sought to be evaded or to imprisonment for not more than 2 years or to both.

Failure to file return

14. A service provider who fails to file a return as and when required by this Act, or provide or produce information or a document as and when required by the Inland Revenue Department Act in relation to a communication levy is guilty of an offence and liable on summary conviction to a fine of \$100 for each day of default.

Failure to pay or remit communication levy

15. A service provider who contravenes section 2 or 3(b) is guilty of an offence and, in addition to any other punishment provided by this Act, is liable on summary conviction to a fine of 300% of the communication levy required to be paid or remitted under section 2 or 3(b).

Actions by corporate agent

16. A corporation is guilty of an offence if a person acting or purporting to act on its behalf—

- (a) knowingly; or
- (b) under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act;

makes or participates in, assents to, or acquiesces in the making of a false statement or omission in a return, application, statement or answer filed or made as required by or under this Act or by or under the Inland Revenue Department Act in relation to a matter under this Act, as a result of which the communication levy that would have been payable by the corporation, if the communication levy had been assessed or determined on the basis of the information provided in the return, application, statement or answer, is less or more, as the case may be, than the communication levy payable by the corporation.

Offences and punishments re corporation

17. (1) A corporation that wilfully evades or attempts to evade payment of a communication levy payable by it is guilty of an offence.

(2) Where a corporation is guilty of an offence under subsection (1), it is liable on summary conviction to a fine of 300% of the amount of the communication levy sought to be evaded.

Offences and punishments re individual

18. (1) An individual is guilty of an offence who—

- (a) makes or participates in, assents to or acquiesces in the making of false or deceptive statements in a return, application, statement or answer filed or made as required by or under this Act or the Inland Revenue Department Act in relation to a matter under this Act;
- (b) destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a corporation;
- (c) makes or assents to or acquiesces in the making of false or deceptive entries or omits or assents to or acquiesces in omitting to enter a material particular in records or books of account of a corporation;

(d) wilfully in any manner evades or attempts to evade compliance with this Act or payment of a communication levy imposed by this Act or the Inland Revenue Department Act in relation to a matter under this Act; or

(e) conspires with any person to commit an offence described in paragraphs (a) to (d);

and in so doing enables or assists or attempts to enable or assist, or causes or could cause, a corporation to evade or attempt to evade payment of a communication levy payable by it, or to claim or attempt to claim a refund greater than that to which it is entitled.

(2) When an individual is guilty of an offence under subsection (1) in relation to a corporation that evades or attempts to evade payment of airline ticket tax payable by it, that individual is liable on summary conviction—

(a) to a fine of 300% of the amount of the communication levy sought to be evaded; or

(b) to a fine referred to in paragraph (a) and to imprisonment for a term of 2 years.

(3) When an individual is guilty of an offence under subsection (1) in relation to a corporation that claims or attempts to claim a refund greater than that to which it is entitled, that individual is liable on summary conviction—

(a) to a fine of 300% of the amount that is the difference between the amount of the refund claimed and the amount of the refund to which the corporation is entitled; or

(b) to a fine referred to in paragraph (a) and to imprisonment for a term of 2 years.

Offences by directors, officers or agents of the Corporation

19. Where an offence committed by a Corporation under this Act is proved to have been committed with the authorisation, consent, connivance, acquiescence or participation of any director, officer or agent of the Corporation, that person as well as the Corporation shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

General punishment

20. A person who contravenes a provision of this Act or the Inland Revenue Department Act in relation to a matter under this Act for which a punishment is not otherwise provided is guilty of an offence and liable on summary conviction—

(a) for a first offence, to a fine of \$10,000 or to imprisonment for not more than 6 months or to both;

(b) for a second offence, to a fine of \$20,000 or to imprisonment for not more than 12 months or to both; and

(c) for a third or subsequent offence, to a fine of \$40,000 or to imprisonment for not more than 2 years or to both.

Limitation period

21. A prosecution for an offence under this Act may be commenced within 4 years from the date of the contravention but not afterwards.

Regulations by Minister

22. (1) The Minister may make regulations for the better administration of this Act including regulations—

- (a) prescribing anything under this Act that may be prescribed;
- (b) respecting the duties of service providers in relation to the remittance of communication levy under this Act;
- (c) respecting returns to be made to the Comptroller;
- (d) defining any term used but not defined in this Act.

(2) A regulation may provide that a contravention of any of its provisions is an offence.

Regulations by Governor in Council

23. The Governor in Council may by regulation amend or repeal and replace section 2.

Citation

24. This Act may be cited as the Communication Levy Act, Revised Statutes of Anguilla, Chapter C62.
