

THE CONTRACTORS LEVY ACT

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SCHEDULES

THE CONTRACTORS LEVY ACT

Act
21 of 1985.

[23rd December, 1985.]

1. This Act may be cited as the Contractors Levy Act. Short title.

2. In this Act— Interpre-
tation.

“Commissioner of Taxpayer Appeals” means the L.N.
8B/2002.
Commissioner of Taxpayer Appeals appointed under
section 11B of the Revenue Administration Act;

“construction operations” means such operations as are First
Schedule.
specified in Part I of the First Schedule but does not
include the operations specified in Part II of that
Schedule; and references to construction operations
shall be taken—

(a) except where the context otherwise requires, as
including references to the work of individuals
engaged in carrying out such operations; and

(b) as not including references to operations carried
out or to be carried out otherwise than in Jamaica;

“haulage operations” means operations of any description Third
Schedule.
specified in the Third Schedule;

“levy” means the levy imposed under this Act;

“principal contractor” means a person who, being a party to
a contract (not being a contract of service) is
responsible for the carrying out in Jamaica of
construction operations or tillage operations or haulage
operations under that contract, whether or not he
performs all or any of those operations;

“sub-contractor” means a person who is a party to a contract (not being a contract of service) with a principal contractor relating to construction operations or tillage operations or haulage operations and under that contract—

- (a) he is under a duty to the principal contractor to carry out operations or to furnish his own labour or the labour of others in the carrying out of the operations or to arrange for the labour of others to be furnished in the carrying out of the operations; or
- (b) he is answerable to the principal contractor for the carrying out of the operations by other persons whether under a contract or under other arrangements made or to be made by him;

“tillage operations” means operations of any description specified in the Second Schedule but does not include operations performed manually or with non-mechanical equipment.

Second
Schedule.

Imposition of
levy on
contractors.

3. Subject to any regulations made pursuant to section 14 (1) (d), any person who makes any payment either to or on account of a principal contractor or a sub-contractor pursuant to a contract entered into on or after the date of commencement of this Act in respect of construction operations, tillage operations or haulage operations performed, or required to be performed, by that principal contractor or sub-contractor shall deduct from the gross amount of the payment a levy equal to two *per centum* of that gross amount.

Collection of
levy.

4.—(1) Subject to section 13 (1), a person who deducts the levy from any payment shall be deemed to be collecting the levy on behalf of the Collector of Taxes for the parish in which the levy is deducted and shall, within fourteen

days after the end of the calendar month in which the levy is deducted, pay to the Collector of Taxes the amount of the levy so deducted.

(2) Subject to the provisions of this Act and except in so far as regulations otherwise provide, the provisions of the Tax Collection Act concerning payment, collection and recovery of tax and the enforcing of payment shall *mutatis mutandis* apply to the levy in the same way as they apply to tax.

(3) A person who is required to make a deduction of levy pursuant to this Act and fails to do so shall nevertheless be liable to make payment to the Collector of Taxes in like manner and in like amount as if he had made the deduction aforesaid.

(4) Every person who is required by this Act to deduct the levy from any payment shall, within fourteen days after making the payment, furnish the principal contractor or sub-contractor, as the case may be, with a certificate setting out the gross amount of the payment and the amount of the levy which has been deducted (or, as the case may be, ought to have been deducted) and such other particulars as may be prescribed.

5. For the purposes of the Income Tax Act the levy deducted from any payment to a principal contractor or sub-contractor in any year shall not be treated as an expense under section 13 of the Income Tax Act but shall be regulated by the provisions of section 25E or section 32 (3), as the case may be, of that Act.

6. A Collector of Taxes may authorize payment to, or on account of, a principal contractor or sub-contractor without deduction of the levy where he is satisfied that there is no liability to make a deduction of levy from that payment.

Treatment of levy for the purposes of income tax.

Collector of Taxes may authorize payment without deduction.

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Assessment
of levy.

7.—(1) A Collector of Taxes may assess the amount payable as levy where—

- (a) there is a dispute regarding the amount of the levy between the person liable to deduct the levy from any payment and either the person entitled to receipt of that payment or the principal contractor or sub-contractor, as the case may be; or
- (b) the amount (if any) deducted as levy from any payment is, in his opinion, either less or greater than the amount required to be deducted as levy under this Act; or
- (c) it appears to him that it is just in the circumstances of the case so to do.

(2) A Collector of Taxes shall cause a notice of assessment to be served personally or sent by registered post to any person appearing to him to be affected by the assessment; and—

- (a) where that person is, consequent on the assessment, required to make any payment to the Collector of Taxes, payment shall be made pursuant to section 4 (1) as if the date of receipt of the notice were the date on which levy was deducted from a payment; and
- (b) if any refund of levy is required, the Collector of Taxes shall make the refund or adjustment accordingly.

Objection
to assess-
ment.

8.—(1) If any person who is liable to deduct the levy from any payment or who is entitled to receipt of that payment disputes the assessment contained in the notice referred to in section 7 (2), he may, by notice of objection in writing, apply to the Collector of Taxes to review and to revise the assessment.

(2) A notice of objection under subsection (1) shall state precisely the grounds of objection to the assessment and shall be made within thirty days from the date of service of the notice of assessment.

(3) Where the Collector of Taxes is satisfied that owing to absence from the Island, sickness or other reasonable cause, the person disputing the assessment was prevented from making the application within the period stated in subsection (2) he may extend the period as may be reasonable in the circumstances.

(4) On receipt of the notice of objection by the Collector of Taxes, the Collector may require the person giving the notice of objection to furnish, within such period as the Collector may specify, such additional particulars relating to the payment as the Collector may deem necessary and to produce all books and other documents relating to the payment which are in the custody of or under the control of that person, and may, by notice, summon any person who he thinks is able to give evidence respecting the payment or the assessment to attend before him and may examine such person on oath or otherwise.

(5) Where a person giving notice of objection refuses or neglects to furnish any particulars or to produce any books or documents, as the case may be, within the period specified by the Collector of Taxes under subsection (4), the notice of objection served upon the Collector by that person shall cease to have effect and the assessment made shall be final and conclusive as regards that person, so, however, that nothing in this subsection shall prevent the Collector of Taxes from making any refund of amounts paid in excess and which do not involve the reopening of any matter determined by the assessment aforesaid.

(6) Any person who without lawful excuse refuses or neglects to attend or to give evidence pursuant to a notice served upon him under subsection (4), or to produce

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any books or documents which he is required to produce, or who refuses to answer any questions concerning the matters under consideration, or who knowingly or wilfully gives any false evidence to a Collector of Taxes commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(7) A Collector of Taxes shall, in respect of every notice of objection referred to in subsection (1), give notice in writing of his decision in respect of that objection to the person disputing the assessment.

(8) Notice under subsection (7) shall not be necessary where an objector and the Collector of Taxes—

- (a) agree as to the amount at which the assessment is made; or
- (b) agree as to the amount at which the assessment should be made and, in this event, the assessment shall be amended accordingly.

(9) Where no valid objection against an assessment has been lodged within the time specified for such objections, or where the amount of assessment has been agreed under subsection (8) or where the amount of levy has been determined by the Collector of Taxes on objection the assessment as made, agreed or determined, as the case may be, shall be final and conclusive as regards the amount of levy payable.

(10) Nothing in subsection (9) shall prevent a Collector of Taxes from making any refund of levy which he is satisfied is due.

9.—(1) Any person who is dissatisfied with an assessment made under section 8, may appeal to the Commissioner of Taxpayer Appeals within thirty days of the date of receiving the decision of the Collector of Taxes or such longer period as may be permitted under subsection (2).

Appeal
against
assessment.
L.N.
8B/2002.

(2) The Commissioner of Taxpayer Appeals may, upon being satisfied that owing to absence from the Island, sickness or other reasonable cause, the appellant under subsection (1) was prevented from making the appeal within the period specified thereunder, extend the period as may be reasonable in the circumstances.

L.N.
8B/2002.

(3) Upon an appeal under subsection (1) the Commissioner of Taxpayer Appeals may confirm, reduce the amount under or vacate the decision complained of.

L.N.
8B/2002.

(4) An appellant who is dissatisfied with the decision of the Commissioner of Taxpayer Appeals may appeal to the Revenue Court within thirty days of the date of receiving that decision or within such longer period of time as may be permitted by or pursuant to rules of court.

L.N.
8B/2002.

(5) The onus of proving that the assessment complained of is erroneous shall be on the person appealing to the Revenue Court.

L.N.
8B/2002.

(6) An appeal under subsection (4) shall be limited to the grounds stated in the notice of objection but the Revenue Court may, in its discretion, permit the grounds of appeal to be amended.

L.N.
8B/2002.

(7) Where the Revenue Court determines the amount of levy which is payable on assessment, the levy shall be paid in accordance with that decision, until, in the event of an appeal being made to the Court of Appeal, the Court of Appeal having heard and determined that appeal, shall otherwise order.

10. Every person who under this Act deducts the levy shall, in relation to that levy—

Proper
records to
be kept.

(a) keep proper books, records and accounts in relation to the contract, payment or levy;

- (b) permit any person authorized in writing by the Collector of Taxes at all reasonable times to inspect the books, records and accounts and to make copies of entries therein; or
- (c) produce if required by the Collector of Taxes or any person authorized by him in writing, at such time and place as the Collector of Taxes or other person may specify, any books, records, accounts or other documents relating to the contract, payment or levy.

Exemption
from payment
of levy.
Fourth
Schedule.

11. Where any of the institutions or persons specified in the Fourth Schedule is a principal contractor or a sub-contractor in relation to construction, tillage or haulage operations, that institution or person shall be exempt from the levy and accordingly payments to them shall be made without the deduction prescribed by section 3.

Power to
amend
Schedules.

12.—(1) The Minister may amend the Schedules by order published in the *Gazette*.

(2) An order made under subsection (1) shall be subject to negative resolution of the House of Representatives.

Penalties.

13.—(1) Where any person fails to pay or account for the levy by the date required by section 4 (1), he shall be treated as if the levy were increased at the rate of twenty-five *per centum* per annum, or such other rate as the Minister may by order prescribe, in respect of each day during which the failure continues after the date on which the levy is due and payable.

(2) Any person who knowingly makes or delivers any false certificate or who keeps or prepares any false accounts relating to any gross payment or deduction of levy under this Act commits an offence and is liable on conviction on indictment to a fine not exceeding ten thousand dollars and treble the amount of the levy which he ought to have deducted and in default of payment to imprisonment for a term not exceeding five years.

(3) Any person who aids, abets, assists, counsels, incites or induces another person to—

- (a) make or deliver any false certificate;
- (b) keep or prepare any false accounts relating to any payment or other transaction which may affect the amount of the levy,

commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars and in default of payment to imprisonment for a term not exceeding six months.

(4) A person who fails to comply with the provisions of section 10 commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars and in default of payment to imprisonment for a term not exceeding twelve months.

14.—(1) The Minister may make regulations generally for the proper carrying out of the provisions of this Act and in particular, but without prejudice to the generality of the foregoing, make regulations—

Regulations.

- (a) for the assessment, charge, collection and recovery of the levy;
- (b) for the return of any amount of levy paid in error;
- (c) for the keeping of records, and books of account relating to the deduction and payment of the levy;
- (d) relieving from the provisions of section 3 certain payments by a principal contractor to a sub-contractor and by a sub-contractor to a principal contractor.

(2) Regulations under subsection (1) shall be subject to negative resolution of the House of Representatives.

CONTRACTORS LEVY

FIRST SCHEDULE

(Section 2)

PART I

Construction Operations

1. Construction, alteration, repair, extension, demolition or dismantling of building and structures (whether permanent or not), including (without prejudice to the foregoing) offshore installations, that is to say, installations which are maintained or are intended to be established for underwater exploitation.

2. Construction, alteration, repair, extension or demolition of any works forming, or intended to form, part of the land, including (without prejudice to the foregoing) walls, road works, power-lines, telegraphic-lines, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water-mains, wells, irrigation works, sewers, industrial plant and installation for purposes of land drainage, coast protection or defence.

3. Installation in any building or structure of systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection.

4. Internal cleaning of building and structures so far as carried out in the course of their construction, alteration, extension, repair or restoration.

5. Operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this Schedule including site clearance, earth-moving, excavation, tunnelling or boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works.

6. Painting or decorating the internal or external surface of any building or structure.

PART II

Operations not regarded as Construction Operations

1. Drilling for, or extraction of, oil or natural gas.

2. Mining or extraction (whether by underground or surface working) of minerals by any company in the ordinary course of its business.

3. The professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or in the laying-out of landscape.

4. Haulage of any item mentioned in or connected with any operation specified in paragraphs 1 to 3.

SECOND SCHEDULE (Section 2)

Tillage Operations

Tillage.

THIRD SCHEDULE (Section 2)

Haulage Operations

1. Hauling goods or equipment for any construction operation, not being an operation described in Part II of the First Schedule.
2. Hauling equipment for any tillage operation.
3. Hauling soil, timber, shrubbery, grass or stone for any tillage operation.

FOURTH SCHEDULE (Section 11)

Institutions or Persons Exempt from the Levy

1. A Ministry or Department of Government.
2. A Statutory Body or Authority.
3. A company registered under the Companies Act, being a company in which the Government or any agency of Government holds not less than fifty-one *per centum* of the ordinary shares.
4. A Parish Council.
5. The Kingston and St. Andrew Corporation.
6. As respects any particular transaction, a person who satisfies the Collector of Taxes that—
 - (a) being in the business of construction operations, the transaction involved the construction of buildings for his own use or the use or occupation of that business or of persons employed by him;
 - (b) being in the business of tillage operations, the transaction involved the tilling of land for his own use; or
 - (c) being in the business of haulage operations, the transaction involved haulage for the purposes of construction or tillage operations undertaken by him for his benefit.