

No. 6 of 2006.

*The Antigua and Barbuda Sales Tax
(Transitional Provisions and
Consequential Amendment) Act, 2006.*

1 ANTIGUA
AND
BARBUDA



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

5th September, 2006.

ANTIGUA AND BARBUDA

No. 6 of 2006

AN ACT to repeal a number of indirect taxes consequent on the introduction of the Antigua and Barbuda Sales Tax, to set out rules for the transition from those taxes to the Antigua and Barbuda Sales Tax, and to provide for related matters.

*[Published in the official Gazette Vol. XXVI
No. 52 dated 14th September, 2006.]*

ENACTED by the Parliament of Antigua and Barbuda as follows—

**PART I
PRELIMINARY**

1. (1) This Act may be cited as the Antigua and Barbuda Sales Tax (Transitional Provisions and Consequential Amendments) Act, 2006.

Short title and commencement.

(2) This Act comes into force on the same day as the date appointed by the Minister for the purposes of section 1(2) of the Antigua and Barbuda Sales Tax Act, 2006.

2. (1) Unless the context requires otherwise, words and phrases used in this Act have the same meaning as in that Act.

Interpretation.

(2) Without limiting subsection (1), in this Act, unless the context requires otherwise—

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“ABST Act” means the Antigua and Barbuda Sales Tax Act, 2006;

“ABST Regulations” means the Antigua and Barbuda Sales Tax Regulations, 2006;

“commencement date” means the date specified for the purposes of section 1(2);

“consumption tax” means the tax imposed under the Consumption Tax Act, Cap. 98;

“hotel (bed-night) tax” means the hotel tax imposed under paragraph 3(1)(a) of the Hotel Tax Act, Cap. 205, in respect of each guest accommodated during a night or part of a night in a hotel or guest house;

“hotel guest levy” means the tax imposed under the Hotel Guest (Levy) Act, Cap.202;

“hotel guest tax” means the hotel tax imposed under paragraph 3(1)(b) of the Hotel Tax Act, Cap.205, upon each hotel bill;

“income tax laws” means the Income Tax Act, Cap.212;

“progressive or periodic supply” means—

(a) a supply of goods or services made progressively or periodically, whether or not payment for the supply is made progressively or periodically; or

(b) a supply of goods by way of a lease, hire, or licence (including a finance lease);

“regulated supply” means a supply occurring in the period commencing six months before and ending one year after the commencement date;

“repealed taxes” means the following taxes:

(a) consumption tax;

(b) hotel (bed-night) tax;

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(e) the Telecommunications Act, Cap. 424.

(3) The repealed legislation, including the rules governing the levy, payment, assessment, reporting, and recovery of those taxes, continues to apply to an import, supply, or acquisition taking place before the commencement date.

(4) All appointments made under the repealed legislation and subsisting at the commencement date are treated as appointments made under the ABST Act; and an oath of secrecy taken under the repealed legislation is treated as having been taken under the ABST Act.

(5) Until specified otherwise by the Commissioner of Inland Revenue or the Comptroller of Customs, all forms and documents used in relation to the repealed legislation may continue to be used for the purposes of the ABST Act, and all references in those forms and documents to provisions of and expressions appropriate to the repealed legislation are taken to refer to the corresponding provisions and expressions used in the ABST Act.

(6) No reference in any Act, other than the ABST Act, to consumption tax, hotel (bed-night) tax, hotel guest levy, hotel guest tax, restaurant and catering services tax, or telecommunications tax shall be treated as a reference to tax payable under the ABST Act, and for the avoidance of doubt, any references to ABST as a consumption tax are intended as descriptions of the nature of the ABST and not as references to the consumption tax.

PART III TRANSITIONAL PROVISIONS

Commencement
of ABST

4. The purpose of this Part is to ensure that—

- (a) ABST is only payable on a supply or importation to the extent that it is made on or after the commencement date; and
- (b) an entitlement to an input tax credit only arises on an acquisition or importation to the extent that it is made on or after the commencement date.

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5. (1) This section applies for determining when a supply, acquisition, or import is made for the purposes of this Act, and in particular, for determining which supplies and imports are subject to the tax imposed by section 8 of the ABST Act. Time of supply, acquisition, or import

(2) For the purpose of this Act—

(a) a supply of goods occurs:

- (i) when the goods are delivered or made available to the recipient of the supply; or
- (ii) if the goods are delivered or made available before it is certain that a supply will occur, when it becomes certain that a supply has occurred;

(b) a supply of services occurs as and when the services are performed.

(3) An acquisition is made at the same time as the corresponding supply.

(4) If a supply or acquisition is treated as being made after the commencement date by this Act and section 7(1) does not apply, section 13 of the Act applies for the purposes of determining the tax period in which the supplier or recipient has an amount of output tax or input tax in relation to a supply or acquisition.

(5) Section 25 of the ABST Act applies for determining when an import is made.

6. (1) Where this Act treats a supply, acquisition, or import as being made before the commencement date, no ABST is payable in relation to the supply or import and no amount of input tax arises in relation to the acquisition or import. Supplies made before ABST commences

(2) The fact that the time of supply referred to in section 13(1) of the ABST Act occurs after the commencement date does not alter the effect of subsection (1).

7. (1) Where this Act treats a supply or acquisition as being made on or after the commencement date, but before that date— Payment or invoice before ABST commences

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- (a) all or part of the consideration is received for the supply (or provided for the acquisition); or
- (b) an invoice is issued in relation to the supply or acquisition,

to the extent that there is an amount of output tax for the supplier or input tax for the recipient in relation to the supply or acquisition, the supply or acquisition is treated as being made on the commencement date.

(2) Whether or not subsection (1) would otherwise apply, if an invoice is issued in relation to the supply or acquisition, or all or part of the consideration is received for the supply (or provided for the acquisition), more than 12 months before the commencement date, to the extent of that invoice or payment, no ABST is payable in relation to the supply and no amount of input tax arises in relation to the acquisition.

(3) Subsection (2) does not apply in relation to a progressive or periodic supply, or part of that supply, that is treated under section 8 as occurring after the commencement date unless all of the consideration for that supply, or for that part of the supply, was paid more than 12 months before the commencement date.

Progressive or periodic supplies spanning the commencement of ABST.

8. (1) A progressive or periodic supply, or part of the supply, is treated as being made at a particular time to the extent that the thing supplied is delivered, made available, or performed at that time, or is available for the effective use or enjoyment of the recipient of the supply at that time.

(2) For the avoidance of doubt, a progressive or periodic supply that is a lease, licence, or other form of supply of the use of goods or intangible property takes place throughout the period for which the lease, licence, or other right of use is granted.

(3) Where a progressive or periodic supply is made over a period that starts before and ends after the commencement date, ABST is imposed only to the extent that the supply is made after the commencement date.

(4) Notwithstanding anything else in this Act or the ABST Act, if construction, reconstruction, manufacture, or extension of a building or civil engineering works is performed under a

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PART IV
IMPACT OF ABST ON CONTRACTS

Agreements
entered into
before ABST
commences

10. (I) Where a contract was concluded between two or more parties before the commencement date and no provision relating to ABST was made in the contract, notwithstanding anything in the agreement, the supplier and recipient shall negotiate to determine the amount, if any, by which the supplier may increase the price of taxable supplies made under the contract after the commencement date, such amount being calculated to recover from the recipient an amount that takes account of both the ABST due on those supplies and any tax savings resulting to the supplier because of the abolition of the repealed taxes.

(2) Where the supplier and recipient cannot reach an agreement under subsection (1)—

- (a) in the case of a taxable supply of services, the supplier may increase the price by the rate of ABST applicable to the supply;
- (b) in the case of a supply of goods other than real property, the supplier may increase the price by half the rate of ABST applicable to the supply;
- (c) in the case of a taxable supply of real property, the supplier may not increase the price of the supply.

(3) This section does not apply in relation to a taxable supply of hotel or holiday accommodation, nor to a supply of long term accommodation that is taxable at the rate specified in section 8(3)(b) of the ABST Act, because of a choice made by the supplier under paragraph (2) of Schedule 4 of that Act.

Agreements
entered into
after ABST
commences.

11. (1) For the avoidance of doubt and in accordance with section 57 of the ABST Act, which requires pricing to be ABST-inclusive, where a contract is concluded after the commencement date and does not include a provision relating to ABST, the contract price is deemed to include ABST and the supplier under the contract is required to account for the tax due whether or not the supplier took its ABST liability into account when setting the price.

12. (1) Subject to subsection (3), any person who makes a regulated supply for a price that is excessive having regard to—

Prevention of price exploitation on introduction of ABST

- (a) the introduction of the ABST Act or the abolition of the repealed taxes;
- (b) the person's costs;
- (c) whether the person is a taxable person;
- (d) supply and demand conditions relevant to the supply; and
- (e) any other relevant matter,

is liable to a penalty equal to \$2,000 for the first breach of this section and a penalty of \$5,000 for the second and each subsequent breach.

(2) No liability arises for a penalty under subsection (1) if—

- (a) the contravention was due to a genuine mistake; and
- (b) the person took reasonable precautions and exercised due diligence to avoid making the contravention.

(3) The Commissioner must publish in the *Gazette* guidelines for determining whether prices for regulated supplies are in contravention of subsection (1).

PART V TRANSITIONAL RATES

13. (1) For the purposes of section 8(3)(c) of the ABST Act, the rate of ABST applicable to a taxable supply of hotel or holiday accommodation is 10.5 per cent, but only if the supply is made on or after the commencement date but before the date occurring two calendar years after the commencement date.

Lower rate for suppliers of hotel and holiday accommodation

(2) The Minister may by Order extend the period of the concessionary rate allowed under subsection (1) for up to one further year.

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**PART VI
CONSEQUENTIAL AMENDMENTS**

Interaction of
ABST and
income taxes.

14. (1) Insert the following definitions into section 2 of the Income Tax Act Cap. 212 immediately before the definition of “Appeal Board”:

“ “ABST” means the Antigua and Barbuda Sales Tax imposed under the Antigua and Barbuda Sales Tax Act, 2006;

“ABST Act means the Antigua and Barbuda Sales Tax Act, 2006;”

(2) Immediately following section 2 of the Income Tax Act Cap. 212, insert the following section, to have effect from the commencement date of this Act:

“2A. (1) This section deals with the way in which ABST interacts with laws imposing tax on income.

(2) For the purposes of applying this Act, and in particular in determining the chargeable income of a person:

(a) to the extent that an amount of consideration received or receivable by a person includes ABST imposed under the ABST Act on a taxable supply made by the person, the ABST amount is treated as not being received or receivable by the person;

(b) to the extent that a person is entitled to an input tax credit under the ABST Act for an amount paid or payable by the person in respect of a taxable acquisition or importation made by the person, the input tax credit amount is

treated as not having been paid or payable by the person;

- (c) an amount that a person is required to pay because of subsections 11(6) and (7) of the ABST Act is treated as having been paid in respect of an acquisition or importation of the goods or services to which the amount relates, and the deemed payment is treated as being made in the tax period in which the payment is required to be made under those subsections;
- (d) if a person (the supplier) is required by section 16(2) of the ABST Act to treat an excess amount as output tax payable by the person under that Act, the excess amount is allowed as a deduction from the person's income if it was treated as income of the supplier in relation to the supply;
- (e) if a person (the recipient of a supply) is allowed by section 16(3) of the ABST Act to treat an excess amount as an input tax credit deductible by the person under that Act, the excess amount must be included in the income of the person if it was allowable as a deduction from income in relation to the acquisition;
- (f) if a person (the supplier) is allowed by section 16(4) of the ABST Act to treat an excess amount as an input tax credit deductible by the person under that Act, the excess amount must be included in the income of the person if it was previously excluded

from the person's income in relation to the supply by this section;

- (g) if a person (the recipient of a supply) is required by section 16(5) of the ABST Act to treat an excess amount as output tax payable by the person under that Act, the excess amount is allowed as a deduction from the person's income if it was previously excluded from the person's deduction in relation to the acquisition.

(3) Where paragraphs (2)(d) to (2)(g) apply, the relevant deduction or inclusion is taken to occur when the relevant amount was required or allowed to be included in the person's ABST return.

(4) Where paragraph (2)(e) applies in respect of an acquisition of an asset that is treated as capital for the purposes of this Act, or in respect of which expenditure is otherwise not immediately deductible under this Act—

- (a) the amount treated as an input tax credit is subtracted from any remaining amount for which a deduction is or may be allowed section 12 or 14, or any other provision providing a capital allowance, unless that asset has already been fully deducted through such capital allowance, in which case the amount is included in income as stated in the applicable paragraph;
- (b) no deduction is allowed under this Act in relation to the acquisition of the asset, paragraph (2)(e) does not apply.

(5) Where paragraph (2)(g) applies in respect of an acquisition of an asset that is treated as capital for the purposes of this Act, or in respect of which expenditure is otherwise not deductible under this Act—

- (a) the amount treated as output tax is added to the remaining amount (if any) for which a capital allow-

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ance is or may be available under this Act, unless that asset has already been fully deducted through such capital allowance, in which case the amount is deductible as stated in the applicable paragraph;

- (b) if no deduction is allowed under this Act in relation to the acquisition of the asset, paragraph (2)(g) does not apply.”

PART VII ADMINISTRATION AND REGULATIONS

15. For the purposes of giving effect to this Act, the Act should be treated as if it were part of the ABST Act, and in particular, any powers or duties of the Commissioner of Inland Revenue or the Comptroller of Customs under the ABST Act apply also for the purposes of this Act.

This Act forms part of the ABST Act.

16. The Minister may make regulations for transitional measures relating to the abolition of the repealed taxes, the start of ABST, the transition from the repealed taxes to ABST, and any other related matters.

Regulations.

Passed by the House of Representatives this 1st day of August, 2006.

Passed by the Senate this 21st day of August, 2006.

D. Giselle Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

Yvonne Henry,
Clerk to the House of Representatives.

Yvonne Henry,
Clerk to the Senate.

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**ANTIGUA AND BARBUDA SALES TAX
(TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS) ACT, 2006**

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