



BERMUDA

TAX REFORM COMMISSION ACT 2017

2017 : 39

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## TAX REFORM COMMISSION ACT 2017

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Proceedings of the Commission

WHEREAS it is expedient to provide for the establishment of the Tax Reform Commission;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

### PART 1 PRELIMINARY

#### Citation

- 1 This Act may be cited as the Tax Reform Commission Act 2017.

#### Interpretation

- 2 In this Act—
- “Chairman” means the Chairman of the Commission appointed under section 4;
  - “Commission” means the Tax Reform Commission established under section 3;
  - “Minister” means the Minister of Finance.

### PART 2 ESTABLISHMENT OF THE COMMISSION

#### Establishment of the Tax Reform Commission

- 3 (1) There is established a body corporate called the Tax Reform Commission (“Commission”) with a common seal and power, subject to the provisions of this Act, to perform such acts as bodies corporate may by law perform.
- (2) The objective of the Commission is to advise the Government of any measures that may be taken to best enable an equitable, effective, efficient, competitive and transparent system of taxation and revenue collection, in accordance with the functions set out in section 5 and the terms of reference set by the Minister.
- (3) Subject to subsection (4), the Commission shall exist under this Act and conduct the functions under this Act for a period of six months starting from the date of appointment of the Commission.

(4) The Minister may by order, subject to the negative resolution procedure, extend the period of existence and operation of the Commission.

(5) The Minister shall by order, subject to the negative resolution procedure, dissolve the Commission after the laying before both Houses of the Legislature of the Commission's final report and recommendations and its audited financial statements as provided under section 13(7).

#### Composition of the Commission

4 (1) The Commission shall be composed of seven members appointed by the Minister who shall, subject to sections 3(3) and 3(4), hold office for such period and on such terms as the Minister may determine.

(2) The Minister shall appoint a Chairman from among the members of the Commission.

(3) The Chairman and members of the Commission shall be persons with such suitable qualifications and experience, for the purposes of the Commission, as the Minister may direct.

(4) There may be paid to the Chairman and other members of the Commission such remuneration and allowances as the Minister may determine.

### PART 3

#### FUNCTIONS, OPERATIONS AND PROCEDURES

##### Functions and proceedings of the Commission

5 (1) The Commission shall—

- (a) examine Bermuda's tax system for the purpose of determining any measures that may be taken to best enable a system of taxation and revenue collection that is equitable, effective, efficient, competitive and transparent; and
- (b) prepare and submit its reports and recommendations in accordance with section 7.

(2) The Schedule shall have effect with respect to the proceedings of the Commission.

##### Programme of operations of the Commission

6 (1) The Commission shall decide for the purposes of its functions on the programme of operations, which shall be provided to the Minister.

(2) Without derogating from the generality of subsection (1), the Commission shall engage and solicit the input of a broad and diverse range of persons, associations and organisations, which may include—

- (a) members of the Legislature;

- (b) trade unions and other organisations that may represent the views of employers and employees;
- (c) companies, boards and statutory bodies;
- (d) professional bodies;
- (e) individuals; and
- (f) such other persons as the Commission may deem necessary.

(3) The Commission may employ such number of persons as staff members and consultants as it may determine necessary.

#### Reports and recommendations of the Commission

7 (1) The Commission shall submit to the Minister such number of reports and recommendations, and at such intervals, as may be determined in the programme of operations.

(2) The Commission shall submit its final report and recommendations to the Minister at the end of the six-month period referred to in section 3(3) or at the end of such period as the Minister may have determined by order under section 3(4).

#### Appointment of committees and delegation of powers

8 (1) The Commission may, in its discretion, appoint from among its own members or from among other persons such number of committees as it thinks fit for purposes which, in the opinion of the Commission, would be more expediently carried out or managed by such committees.

(2) The Commission may, subject to such conditions or restrictions as it thinks fit, delegate to—

- (a) the Chairman;
- (b) any of its members;
- (c) any committee appointed under subsection (1);
- (d) any public officer, or employee of the Commission,

any of the powers, functions or duties of the Commission under this Act, except the power of delegation conferred by this section.

(3) Any power, function or duty delegated as provided in subsection (2) shall be exercised or performed in the name and on behalf of the Commission by the person to whom delegated.

(4) The Commission may continue to exercise a power conferred upon it or to perform a function or duty under this Act, notwithstanding the delegation of such power, function or duty under this section.

(5) Notwithstanding a delegation made under subsection (2) to a committee or person, any report or recommendation made by such committee or person shall first be approved by the Commission before being submitted to the Minister.

Commission to be provided with information and assistance

9 (1) For the purposes of its functions, the Commission may, subject to this section, require any officer or employee of the Government or member or employee of a statutory body who is in its opinion able to provide information or assistance relevant to the functions of the Commission to give such information or assistance.

(2) The Secretary to the Cabinet shall ensure that requirements made by the Commission of any officer or employee of the Government under subsection (1) are attended to expeditiously.

(3) The Commission shall not require any person to furnish any information—

- (a) relating to proceedings or deliberations of the Cabinet or any committee of the Cabinet;
- (b) that might prejudice the security, defence or international relations of Bermuda;
- (c) that is subject to legal professional privilege; or
- (d) that might prejudice the investigation or detection of offences.

(4) For the purposes of subsection (3)(a), a written statement by the Secretary to the Cabinet, with the approval of the Premier, confirming that any information, question, document or part of a document so relates shall be conclusive.

Commission and staff to maintain confidentiality

10 (1) The Commission and every person employed, appointed or delegated to carry out the powers, functions or duties of the Commission under this Act shall maintain confidentiality in respect of all matters that come to their knowledge in the exercise of the powers, functions or duties of the Commission, and shall not communicate any such matter to any person except for the purpose of carrying out functions under this Act for the purpose of—

- (a) the reports and recommendations to the Minister under section 7;
- (b) the reports and recommendations to the Legislature under section 13(7);  
or
- (c) court proceedings.

(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from official Government sources.

PART 4  
FUNDS AND ACCOUNTS

Funds of the Commission

11 The funds of the Commission shall consist of—

- (a) all such sums as may be appropriated by the Legislature for the purposes of the Commission;
- (b) all grants, subsidies and contributions paid to the Commission or received from any source, and funds raised by all lawful means.

Surplus funds

12 At the end of the period of operation of the Commission, any surplus funds not utilized for the purposes of the Commission under this Act—

- (a) that were appropriated by the Legislature for the purposes of the Commission under section 11(a) shall be paid into the Consolidated Fund;
- (b) that are a grant, subsidy or contribution received by the Commission under section 11(b) shall be returned to the respective donor.

Accounts of the Commission

13 (1) The Commission shall cause proper statements of its financial affairs to be maintained and shall prepare in respect of the period of its operation a statement of its accounts in such form as required by applicable accounting standards.

(2) The accounts and financial statements of the Commission shall be audited by the Auditor-General or by an auditor appointed by the Auditor-General.

(3) A person shall not be qualified for appointment as an auditor under subsection (2) unless he is a public accountant who is registered or deemed to be registered under the Chartered Professional Accountants of Bermuda Act 1973.

(4) The statement of accounts must present fairly and accurately—

- (a) the financial transactions of the Commission during the period of its operation; and
- (b) the financial position of the period of its operation at the end of its operation.

(5) Where the Auditor-General is not the auditor under subsection (2), a copy of the audited financial statements and any report made by the auditor shall be forwarded to the Auditor-General at the same time they are submitted to the Commission.

(6) As soon as the accounts of the Commission and the financial statements have been audited in accordance with the provisions of this Act, a copy of the audited financial statements signed by the Chairman, together with a copy of any report made by the auditor, shall be submitted to the Minister.

(7) The Minister shall, as soon as practicable after receipt of the final report and recommendations and the audited financial statements of the Commission, cause a copy of each to be laid before both Houses of the Legislature.

PART 5  
MISCELLANEOUS

Immunity from suit

14 No action, suit, prosecution or other proceedings shall lie against any officer, employee or agent of the Commission, any member of the Commission or any person acting on behalf of the Commission in respect of any act done bona fide in pursuance or execution or intended execution of his functions under this Act.

Offences

- 15 (1) A person commits an offence if he intentionally—
- (a) makes a false statement to, misleads or attempts to mislead the Commission or another person in the exercise of any function under this Act, or otherwise obstructs the work of the Commission; or
  - (b) discloses information in contravention of this Act.
- (2) Any person who commits an offence contrary to subsection (1) is liable on summary conviction to a fine not exceeding \$5,000.
- (3) Notwithstanding anything in any other provision of law, proceedings in respect of an offence against this Act shall be commenced within two years after the date of the commission of the offence.
- (4) Compliance with section 9(1) shall be a defence for a person charged with an offence under subsection (1)(b).

Application of other laws

- 16 (1) Wherever the provisions of this Act, with respect to the disclosure of information to or by the Commission, are in conflict with any provision of any other Act or statutory instrument, the provisions of this Act shall prevail.
- (2) The provisions of the Public Access to Information Act 2010 do not apply to the Commission.

SCHEDULE

(section 5(2))

PROCEEDINGS OF THE COMMISSION

1. The Commission shall meet as often as necessary or expedient for the due performance of its functions.
2. The Chairman may summon a meeting at any time on giving such notice as, in his judgment, may be adequate.
3. At a meeting of the Commission, the proceedings shall be regulated as follows—
  - (a) four members of the Commission shall constitute a quorum;
  - (b) the Chairman shall preside at meetings of the Commission;
  - (c) if the Chairman is absent from a meeting of the Commission, the members present may elect another person from their number to act as Chairman and to preside at the meeting;
  - (d) if a member of the Commission has any direct or indirect interest (otherwise than by being a taxpayer) in any matter before the Commission—
    - (i) he shall disclose his interest to the Commission at the time of the matter being discussed; and
    - (ii) he shall have no vote in relation to the matter, unless the Commission has resolved that the interest does not give rise to a conflict of interest;
  - (e) subject to subparagraph (d)(ii), a member of the Commission shall have no vote in relation to any question arising which touches or concerns him;
  - (f) decisions of the Commission shall be by a majority of votes;
  - (g) in the event of an equality of votes, the Chairman shall have a casting vote; and
  - (h) the Commission shall determine its own procedure.

[Assent Date: 30 October 2017]

[Operative Date: 30 October 2017]