PARLIAMENT OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF

SRI LANKA

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DEFAULT TAXES (SPECIAL PROVISIONS)

(AMENDMENT) ACT, No. 14 OF 2014

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[Certified on 24th April, 2014]

Printed on the Order of Government

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Published as a Supplement to Part II of theGazette of the Democratic

Socialist Republic of Sri Lanka of April 25, 2014.

PRINTEDATTHEDEPARTMENTOFGOVERNMENTPRINTING,SRILANKA

TOBEPURCHASEDATTHEGOVERNMENTPUBLICATIONSBUREAU,COLOMBO5

Price : Rs. 27.00 Postage : Rs. 20.00

Default Taxes (Special Provisions) (Amendment) 1

Act, No. 14 of 2014

[Certified on 24th April, 2014]

L. D- O. 12/2014.

ANACT TO AMEND THE DEFAULT TAXES (SPECIAL PROVISIONS) ACT,

NO. 16 OF 2010

BE it enacted by the Parliament of the Democratic Socialist

Republic of Sri Lanka as follows:-

1. This Act may be cited as the Default Taxes (Special Short title.

Provisions) (Amendment) Act, No. 14 of 2014 .

2. Section 10 of the Default Taxes (Special Provisions) Amendment of

Act, No. 16 of 2010 (hereinafter referred to as the “principal section 10 of

Act, No. 16 of

enactment”) is hereby amended as follows:-

2010.

(1) by re-numbering section 10 of that section as

subsection (1) thereof ; and

(2) by the addition immediately after re- numbered

subsection (1), of the following subsection :-

“(2) Where the Commissioner - General is

satisfied that immediate action is necessary for

the recovery of a tax in default, he may, instead

of instituting an action under subsection (1), take

the steps stipulated in sections 10A, 10B, 10C,

10D, 10E, 10F and 10G of this Act.”.

3. The following new sections are inserted immediately Insertion of

after section 10 of the principal enactment and shall have Sections 10A,

10B,

effect as sections 10A, 10B, 10C, 10D, 10E, 10F and 10G of

10C,10D,10E ,

that enactment:- 10F and 10G in

the principal

“Where 10A. (1) Where the Commissioner- General enactment.

immediate decides to take steps in terms of subsection (2)

action for

of section 10, to recover any tax in default he

recovery of

tax in default shall within fourteen days of the date on which

is necessary. he takes such steps , issue a notice to the

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defaulter stating the particulars of the tax in

respect of which such steps have been taken

and the nature of the steps taken.

(2) Where there is an appellate procedure

against the assessment or assessments made

under the relevant law, under which the tax in

default is charged and the defaulter has not

appealed within the proper time under that law

against such assessment or assessments , he

may within thirty days of the notice issued

under subsection (1), make any objection to

the tax so charged and the Commissioner-

General shall, consider such objection and give

his decision thereon which shall be final:

Provided that, where the Commissioner-

General is satisfied that owing to illness,

absence from Sri Lanka or other reasonable

cause, the defaulter was prevented from

objecting within thirty days of the notice

issued under subsection (1), he shall grant an

extension of time for preferring such

objections.

(3) Where the tax recovered as a result of

any steps taken under subsection (1), is in

excess of the amount of tax determined under

subsection (2), to be payable by the defaulter

in respect of any year of assessment, such excess

shall be refunded to the defaulter:

Provided that, no refund under this

subsection shall exceed the tax recovered as a

result of steps taken under subsection (1).

Recovery of 10B. (1) Where a body corporate has not

tax from paid any tax on or before the due date, as

principal

officers and required by the relevant law under which such

others. tax in default is charged, it shall be lawful for

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the Commissioner-General to proceed under

section 10A, 10B, 10C,10D,10E, 10F or 10G

of this Act against the manager, secretary, any

director or any other principal officer of such

body corporate, as if such manager, secretary,

director or principal officer, as the case may

be, is responsible for such default, unless such

manager, secretary, director or principal

officer, as the case may be, proves the contrary

to the satisfaction of the Commissioner-

General, notwithstanding anything in any other

written law relating to such body corporate.

(2) Where an unincorporated body of

persons has not paid any tax on or before the

due date, as required by the relevant law under

which the tax in default is charged, it shall be

lawful for the Commissioner-General to

proceed under section 10A, 10B, 10C,10D,

10E, 10F or 10G of this Act against any partner

or office bearer of such unincorporated

body of persons as if he is responsible for

such default, unless such partner or office

bearer, as the case may be, proves the contrary

to the satisfaction of the Commissioner-

General, notwithstanding anything in any

other written law.

Recovery 10C. (1) The Commissioner-General may

of tax by appoint persons to be tax collectors under this

seizure

Act .

and sale.

(2) (a) Where any tax is in default under

section 2 of this Act, the Commissioner-General

may issue a certificate to a Government Agent,

Assistant Government Agent, Fiscal, Deputy

Fiscal or tax collector, containing particulars

of such tax and the name of the defaulter and

the officer to whom such certificate is issued

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shall be empowered and is hereby required, to

cause the tax to be recovered from the defaulter

named in the certificate by seizure and sale of

his movable property.

(b) A seizure of movable property shall be

effected in such manner as such officer shall

deem most expedient in that behalf and as soon

as any movable property is seized by such

officer, a list of such property shall forthwith

be made and signed by him and shall be given

to the defaulter and a copy thereof furnished to

the Commissioner-General.

(c ) Where the property so seized is –

(i) cash in Sri Lankan currency, such

cash shall be first applied in the

payment of the cost and charges

of seizure and any balance

applied in satisfaction of the tax

in default;

(ii) cash in foreign currency, such

cash shall be deposited in the

Central Bank or any commercial

bank and the proceeds therefrom

applied to the payment of the

costs and charges of seizure and

any balance applied in

satisfaction of the tax in default;

and

(iii) property other than cash, such

property shall be kept for five

days at the cost and charges of

the defaulter. If the defaulter does

not pay the tax in default

together with the costs and

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charges within the five days, the

Government Agent, Assistant

Government Agent, Fiscal,

Deputy Fiscal or tax collector

shall cause such property to be

sold by public auction, or where

such property is a negotiable

instrument or a share in any

corporation or public company,

to be sold through a broker at the

market rate of the day.

(d) The sum realized by a sale

referred in sub-paragraph (iii) of

paragraph (c ) shall be applied -

(i) firstly, in payment of the

costs and charges of

seizing, keeping and

selling of property; and

(ii) secondly, in satisfaction of

the tax in default, and any

balance shall be paid to the

owner of the property

seized.

(e) It shall be lawful for any officer

to recover from any defaulter,

reasonable expenses incurred by

him in proceeding against such

defaulter under this section,

notwithstanding that no seizure

of property was effected.

(f) In this subsection the expression

“movable property” includes any

plant or machinery affixed to the

ground of a factory.

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(3) Where any tax is in default and the

Commissioner-General is of the opinion that

the recovery by the means provided in

subsection (2) is impracticable or inexpedient,

he may issue a certificate to a District Court

having jurisdiction in any district where the

defaulter resides or in which any property,

movable or immovable, owned by the defaulter

is situated, containing particulars of such tax

and the name or names of the person or persons

by whom the tax is payable, and the courts

shall thereupon direct a writ of execution to

issue to the Fiscal, authorizing and requiring

him to seize and sell all or any of the property,

movable and immovable, of the defaulter, or

such part thereof as he may deem necessary for

recovery of the tax, and the provisions of

sections 226 to 297 of the Civil Procedure Code

(Chapter 101) shall, mutatis mutandis, apply

to such seizure and sale.

(4) Wherever the Commissioner-General

issues a certificate under this section, he shall

at the same time issue to the defaulter, whether

resident or non-resident, a notification thereof

by personal service, registered letter sent

through the post or telegraph; but the non-

receipt of such notification by the defaulter

shall not invalidate proceedings under this

section.

Proceedings 10D. (1) Where the Commissioner-

for recovery

General is of the opinion in any case that

before

Magistrate. recovery of tax in default by seizure and sale is

impracticable or inexpedient, or where the full

amount of the tax has not been recovered by

seizure and sale, he may issue a certificate

containing particulars of such tax and the name

and last known place of business or residence

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of the defaulter, to a Magistrate having

jurisdiction in the division in which such

place is situated. The Magistrate shall

thereupon summon such defaulter before him

to show cause why further proceedings for the

recovery of the tax should not be taken against

him, and in default of sufficient cause being

shown the tax in default shall be deemed to be

a fine imposed by a sentence of the Magistrate

on such defaulter for an offence punishable

with fine only or not punishable with

imprisonment, and the provisions of subsection

(1) of section 291 (except paragraphs (a), (d)

and (i) thereof) of the Code of Criminal

Procedure Act, No. 15 of 1979 relating to

default of payment of a fine imposed for such

an offence shall thereupon apply, and the

Magistrate may make any direction which, by

the provisions of that subsection, he could have

made at the time of imposing such sentence.

(2) The correctness of any statement in a

certificate issued by the Commissioner-General

for the purposes of subsection (1), shall not be

called in question or examined by the

Magistrate in any proceeding under this section

and accordingly, nothing in that subsection

shall be read and construed as authorizing a

Magistrate to consider, or decide the

correctness of any statement in such certificate

or to postpone or defer such proceeding for a

period exceeding thirty days, by reason only

of the fact that an appeal is pending against

the assessment, in respect of which the tax in

default is charged.

(3) Nothing in subsections (2) to (5) of

section 291 of the Code of Criminal Procedure

Act, No. 15 of 1979, shall apply in any case

referred to in subsection (1) of this section.

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(4) In any case referred to in subsection (1)

in which the defaulter is sentenced to

imprisonment in default of payment of the

fine deemed by that subsection to have been

imposed on him, the Magistrate may allow time

for the payment of the amount of that fine or

direct payment of that amount to be made in

instalments.

(5) The Court may require bail to be given

as a condition precedent to allowing time under

subsection (1) for showing cause as therein

provided, or under subsection (4) for the

payment of the fine; and the provisions of

Chapter XXXIV of the Code of Criminal

Procedure Act, No. 15 of 1979, shall apply,

where the defaulter is so required to give bail.

(6) Where a Magistrate directs under

subsection (4) that payment be made in

instalments and default is made in the payment

of any one instalment, proceedings may be

taken as if default had been made in payment

of all the instalments then remaining unpaid.

(7) In any proceeding under subsection

(1), the Commissioner-General’s certificate

shall be sufficient evidence that the tax has

been duly assessed and is in default, and any

plea that the tax is excessive, incorrect, or under

appeal, shall not be entertained.

(8) Where the tax default referred to in this

section is made by a body corporate , or an

unincorporated body of persons, the manager,

secretary, any director or any other principal

officer of such body corporate, or any partner

or office bearer of such unincorporated body

of persons, as the case may be, in addition to a

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fine imposed by a sentence of the Magistrate

under this section, shall be liable on

conviction after summary trial before the

Magistrate, to an imprisonment of either

description for a period not exceeding three

months:

Provided that, the Magistrate may allow

such manager, secretary, any director or any

other principal officer of such body corporate,

or any partner or office bearer of such

unincorporated body of persons, as the case

may be, to show cause that he is not responsible

for such default or that he has taken all

necessary steps within his power to avoid the

default of such tax.

Recovery of 10E. (1) Where tax payable by any person

tax out of under any of the laws specified in the Schedule

debts & c.

to this Act is in default and the Commissioner-

General is of the opinion that recovery of tax

in default in terms of sections 10A, 10B,10C

and 10D is impracticable or inexpedient and it

also appears to him to be probable that any

other person –

(a) owes or is about to pay money to the

defaulter or his agent;

(b) holds money for or on account of the

defaulter or his agent;

(c) holds money on account of some other

person for payment to the defaulter or

his agent; or

(d) has authority from some other person to

pay money to the defaulter or his agent,

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the Commissioner-General may give to such

other person notice in writing (a copy of which

shall be sent by post to the defaulter) requiring

him to pay any such moneys not exceeding

the amount of the tax in default, to the officer

named in such notice. The notice shall apply

to all such moneys which are in his hands or

due from him at the date of receipt of such

notice, or come into his hands or become due

from him or are about to be paid by him at any

time within a period of three months, after the

date of such notice.

(2) Where a person holds money for or on

account of the defaulter and any other person

or persons jointly (in this section referred to

as the “joint account holder or holders”) the

Commissioner-General may give a notice

under subsection (1) to such person, requiring

him to pay the amount of the tax in default or

part thereof to the officer named in such notice,

out of the monies or such part of such moneys

in the joint account which the Commissioner-

General is satisfied is attributable to the

contributions made by the defaulter, and is so

certified by the Commissioner-General:

Provided that –

(a) every person remitting money in

compliance with a notice issued

under subsection (1), shall intimate

such fact to every other joint account

holder;

(b) every joint account holder other than

the defaulter may, within two weeks

of the date on which he received an

intimation under paragraph (a),

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make a claim to the Commissioner-

General in respect of any part of such

remittance which represents his net

contribution to the balance in such

joint account as at the date of notice

issued by the Commissioner-

General, and the Commissioner-

General shall consider such claim

and make his order thereon;

(c) every joint account holder who is

aggrieved by the order of the

Commissioner-General made under

paragraph (b), may institute an

action in the District Court seeking

an order for the recovery of such

money or part of such money which

he claims to be attributable to the

contributions made by him.

(3) Notwithstanding any provision in the

Prescription Ordinance (Chapter 68), no action

shall be instituted for the recovery of such

money or part of such money after the

expiration of three months from the date of

notice issued by the Commissioner-General.

(4) Any person who has made any

payment in pursuance of this section shall be

deemed to have acted under the authority of

the defaulter, and of all other persons

concerned, and hereby indemnified in respect

of such payment against all proceedings, civil

or criminal, notwithstanding the provisions of

any written law, contract or agreement.

(5) Any person to whom a notice has been

given under subsection (1), who is unable to

comply therewith owing to the fact

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thatnomoneys referred to in that subsection

have come into his hands or that no such

moneys have become due from him within the

period referred to in that subsection, shall

within fourteen days of expiration thereof, give

notice in writing to the Commissioner-General

apprising him of the facts.

(6) Where any person to whom a notice

has been given under subsection (1), is unable

to comply therewith and has failed to give

notice to the Commissioner-General as

provided in subsection (5), or where such

person has deducted or could have deducted

the tax to which the notice relates or any part

thereof, and has not paid over, as required by

the Commissioner-General the amount of such

tax or part thereof within fourteen days after

the expiration of the period referred to in

subsection (1), such person shall, if he is an

individual be liable, or where such person is a

company or body of persons whether corporate

or unincorporated, the secretary, manager or

other principal officer of such company or

body shall be personally liable, for the whole

of the tax which such person has been required

to deduct, and such tax may be recovered from

such individual, secretary, manager or other

principal officer, as the case may be, by any of

the means provided in this Act.

(7) For the purpose of this section, the

expression “defaulter” shall be deemed to

include the agent of a person who is in default

and the provisions of this section shall apply

in any case where the tax which would have

been payable by any person if he were alive is

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in default; and for the purposes of the

application of those provisions in any such

case, the expression “defaulter” in subsection

(1) means -

(a) the executor or administrator of a

deceased person;

(b) any person who takes possession of or

intermeddles with, the property of a

deceased person; or

(c) any person who has applied or is

entitled to apply to a District Court for

the grant or resealing of a probate or

letters of administration, in respect of

the estate of a deceased person .

Transfer of 10F. (1) Any person liable to pay tax in

immovable default under any of the laws specified in the

property to

Schedule to this Act , may apply to the

Government

in lieu of Commissioner-General to transfer any

payment of immovable property owned by such person to

tax in cash. the Government, in lieu of payment of such

tax in cash at such value as is placed on such

property by agreement between such person

and the Commissioner-General, and the

Commissioner-General may allow such

application having regard to the feasibility of

managing such property after it is transferred

to the Government.

(2) Where the Commissioner-General

allows an application made under subsection

(1), and the amount agreed to in accordance

with the provisions of that subsection as the

value of the property in respect of which the

application is made, exceeds the amount of

tax payable by the applicant, the excess shall

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be deemed to be a donation within the meaning

of paragraph (b) of subsection (2) of section 34

of the Inland Revenue Act, No. 10 of 2006,

made to the Government of Sri Lanka by the

applicant.

Tax in 10G. (1) The Commissioner-General may,

default to be by notice in writing given to any employer of

recovered

an employee or to the person responsible for

from

remuneration the payment of remuneration of an employee,

of direct such employer or person to deduct during

employees. such period as may be specified in such notice,

from the remuneration of such employee, the

amount of tax in default payable by such

employee , in such number of monthly

instalments as may be specified in such notice.

The amount so deducted in each month from

the remuneration of an employee shall be paid

to the Commissioner-General by such employer

or such person, as the case may be.

(2) Where any tax is deducted under

subsection(1) from the remuneration of an

employee by his employer or by the person

responsible for the payment of such

remuneration, such employee shall for the

purposes of this Act, be deemed to have paid

such tax or part thereof on the date on which

the deduction is made.

(3) The Commissioner-General may at any

time after he has made a direction under

subsection (1), withdraw such direction wholly

or partly by notice given in writing to the

employer or the person responsible for the

payment of the remuneration of the employee,

if the employee has made arrangements to the

satisfaction of the Commissioner-General, for

the payment of his tax in default.

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(4) Where any employee from whose

remuneration any tax in default is to be

deducted under the preceding provisions of

this section by his employer or the person

responsible for the payment of such

remuneration, is about to leave or leaves his

employment, the employer or such person shall

deduct the whole amount of such tax or any

balance thereof which he has been directed to

deduct by the notice given to him by the

Commissioner-General, from all or any

payments payable by him to such employee,

after he becomes aware that such employee is

leaving , or has left, his employment.

(5) Where a direction for the deduction of

any tax from the remuneration of an employee

is given under subsection(1) to his employer

or to the person responsible for the payment of

such remuneration, and such employer or

person is unable to deduct the whole or any

part of such tax for the reason that such

employee has left his employment or for any

other reason, such employer or person shall

forthwith give notice in writing to the

Commissioner –General apprising him of the

facts of the matter, and any tax which such

employer or person has not deducted or cannot

deduct, shall immediately become payable by

the employee and be recovered by any of the

means provided under this Act.

(6) Where the employer or the person

responsible for the payment of remuneration

to an employee has failed to deduct from such

remuneration any tax which he has been

directed to deduct under subsection (1), and

such employer or person has failed to give

notice to the Commissioner-General as required

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by subsection (5), within fourteen days of the

date on which such deduction should have been

made, or where such employer or person has

deducted or could have deducted tax in any

month from such remuneration in accordance

with a direction under subsection (1), but has

not paid the amount of such tax to the

Commissioner-General by the fifteenth day of

the following month, such employer or person,

if he is an individual, shall be liable, or where

such employer or person is a company or a

body of persons, whether corporate or

unincorporated, the secretary, manager or other

principal officer of such company or body shall

be personally liable, for the whole of the tax

which such employer or such person has been

directed to deduct under this section, and such

tax may be recovered from such individual,

secretary, manager or other principal officer

by any of the means provided in this Act, and

such tax shall be deemed to be in default.

(7) Every employer or other person who

deducts tax from the remuneration of any

employee in accordance with a direction under

subsection (1), shall on request made by such

employee, issue to him a certificate in such

form as is specified by the Commissioner-

General, of the amount of tax deducted.”.

Sinhala text to 4. In the event of any inconsistency between the Sinhala

prevail in case and Tamil texts of this Act, the Sinhala text shall prevail.

of inconsistency.

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(Foreign), Payable to the SUPERINTENDENT, GOVERNMENT PUBLICATIONS BUREAU, DEPARTMENT OF

GOVERNMENT INFORMATION, NO. 163, KIRULAPONA MAWATHA, POLHENGODA, COLOMBO 05 before 15th

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