



BERMUDA

FOREIGN CURRENCY PURCHASE TAX ACT 1975
[formerly the Overseas Investment Tax Act 1975]

1975 : 32

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[preamble and words of enactment omitted]

Short title

1 This Act may be cited as the Foreign Currency Purchase Tax Act 1975.

Interpretation

1A In this Act—

“the Authority” means the Bermuda Monetary Authority established under section 2 of the Bermuda Monetary Authority Act 1969 [*title 16 item 11*];

“bank” means an institution licensed as a bank under the Banks and Deposit Companies Act 1999;

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“the Controller” means the Controller of Foreign Exchange as defined in the Exchange Control Act 1972 ;

“currency of Bermuda” means the currency of Bermuda established by section 8 of the Bermuda Monetary Authority Act 1969 [*title 16 item 11*];

“exempted transaction” means a transaction described in the Second Schedule;

“foreign currency” has the same meaning as in the Exchange Control Act 1972 [*title 16 item 1*];

“non-resident” means a person who is deemed not to be resident in Bermuda under the Exchange Control Regulations 1973; [*title 16 item 1(a)*]

“foreign currency purchase tax” means the tax charged under section 2;

“resident” means a person who is deemed to be resident in Bermuda under the Exchange Control Regulations 1973;

“Tax Commissioner” means the person appointed as Tax Commissioner under section 2 of the Employment Tax Act 1973.

[Section 1 amended by 1992:27 effective 4 April 1992; “Tax Commissioner” added 1999:32 s.2 effective 23 August 1999; “bank” substituted by BR81/1999 effective 1 January 2000]

Foreign currency purchase tax

2 (1) Subject to section 3, there is hereby charged a foreign currency purchase tax whenever foreign currency is purchased by a resident from a bank.

(2) The tax shall be charged at the relevant rate specified in Schedule on every dollar of the currency of Bermuda paid for the purchase of foreign currency.

(3) The tax shall be paid by or on behalf of the person purchasing the foreign currency and, subject to section 4, shall be collected and remitted to the Tax Commissioner in the currency of Bermuda by the bank from which the foreign currency is purchased.

[Section 2 amended by 1992:27 effective 4 April 1992; by 1994:3 effective 14 February 1994; subsection (3) amended 1999:32 s.3 effective 23 August 1999]

Exemptions

3 Foreign currency purchase tax is not payable on the purchase of foreign currency for the purpose of an exempted transaction.

[Section 3 repealed and replaced by 1992:27 effective 4 April 1992]

Tax Commissioner may authorize banks to render periodic returns of daily transactions

4 (1) Where the Tax Commissioner is satisfied that the revenue would be adequately safeguarded he may by notice in writing authorize any bank to render to him weekly, monthly or quarterly, in such form and containing such particulars as he may require, a return of the daily amount of currency of Bermuda paid for the purchase of foreign currency

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from that bank in respect of transactions on which foreign currency purchase tax is payable.

(2) Where a return is made in pursuance of subsection (1) the bank shall at the same time remit to the Tax Commissioner a sum equivalent to the amount of the tax due on the transactions shown in the return.

(3) A bank rendering a return under subsection (1) shall, if so required by the Tax Commissioner, produce such evidence as he may require to satisfy himself that no tax fell to be paid in respect of any other purchases of foreign currency not included in the return; and if the Tax Commissioner is not so satisfied, the bank making the return shall be liable to pay a sum equivalent to the amount of the tax which would have been payable in respect of such other purchases of foreign currency.

(4) No statement or information shall be required for the purposes of any return under this section with respect to the account of any customer of a bank.

[Section 4 heading and subsections (1)-(3) amended by substitution of "Tax Commissioner" by 1999:32 s.3 effective 23 August 1999]

Penalties

5 (1) Any bank which knowingly fails to collect and remit any foreign currency purchase tax commits an offence:

Punishment on summary conviction: a fine of \$5,000 or triple the amount of the tax payable, whichever is greater.

(2) Any person who, in connection with any return rendered or evidence produced under section 4, makes or produces or causes or allows to be made or produced any statement or information which is false in a material particular and which he knows to be false, commits an offence:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$500 or both such imprisonment and fine.

False statements

6 Any person who in connection with a claim for exemption from payment of tax under this Act makes or produces or causes or allows to be made or produced any statement or information which is false in a material particular and which he knows to be false or does not believe to be true commits an offence:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$1,000 or triple the amount of the tax payable whichever is the greater or both such imprisonment and fine.

Amendment of Schedules

7 (1) The Minister may by order amend—

- (a) the First Schedule;
- (b) the list of exemptions specified in the Second Schedule.

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(2) An order made under subsection (1) is subject to the affirmative resolution procedure.

[Section 7 substituted 1994:3 effective 14 February 1994]

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FIRST SCHEDULE

(Section 2(2))

The rate at which tax is to be charged on a purchase for the purposes of a transaction which is not an exempted transaction is 1.25%.

[First Schedule repealed and replaced by 1994:3 effective 4 February 1994; repealed and replaced by 2007:5 s.2 effective 1 April 2007; amended by 2010 : 13 s. 2 effective 1 April 2010; amended by 2019 : 4 s. 2 effective 1 April 2019]

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SECOND SCHEDULE

(Sections 1A, 7(1)(b))

EXEMPTED TRANSACTIONS

- 1 A transaction by one of the following bodies—
- (a) the Government;
 - (b) the Bermuda Monetary Authority;
 - (c) the Bermuda Housing Corporation;
 - (ca) Bermuda Hospitals Board;
 - (cb) the Bermuda Tourism Authority;
 - (cc) the Bermuda Deposit Insurance Corporation;
 - (d) a bank;
 - (e) an institution licensed as a deposit company under the Banks and Deposit Companies Act 1999;
 - (f) a credit union licensed under the Credit Unions Act 2010;
 - (g) a company holding an unlimited trust licence issued under the Trusts (Regulation of Trust Business) Act 2001;

being, as respects any such body, a transaction undertaken by that body for its own account.

A transaction undertaken by a body for its own account is, for the above purpose, a transaction undertaken by the body otherwise than for or on behalf of another person or body, whether or not that other person or body is an affiliated or a subsidiary company of the first-mentioned body within the meanings given to the expressions “affiliated company” and “subsidiary company” in section 2(1) of the Companies Act 1981 [*title 17 item 5*].

- 2 A remittance, in each case with the permission of the Controller—
- (a) of premium income by a local insurance company or a non-resident insurance undertaking; or
 - (b) of pension contributions by a local pension fund.

- 3 A transaction undertaken by Saturn Solar Bermuda 1 Ltd. in relation to the construction and management of the 6 MW Solar Farm on the airport peninsula, Parish of St. George, the construction of which is to be completed in 2020.

[Second Schedule repealed and replaced by 1992:27 effective 4 April 1992; para 1(e) amended by BR 81/1999 effective 1 January 2000; para 1(g) substituted by 2001:22 Sch 2 para 5 effective 25 January 2002; amended by 2010 : 13 s. 3 effective 1 April 2010; para 1(f) amended by 2010 : 43 s. 47 effective

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1 January 2011; paras (1)(cb) and (cc) inserted by BR 103 / 2015 para 2 effective 22 December 2015; para (3) inserted by BR 22 / 2020 para. 2 effective 25 March 2020]

[Assent Date: 31 May 1975]

[Amended by:

1975 : 35
BR 10 / 1979
1981 : 7
1986 : 9
1992 : 27
1994 : 3
1999 : 32
BR 81 / 1999
2001 : 22
2007 : 5
2010 : 13
2010 : 43
BR 103 / 2015
2019 : 4
BR 22 / 2020]