

(2) The interest rate for payments pursuant to section 158 shall be one-half per cent per month or part month, compounded monthly.

(3) Notwithstanding the provisions of subsections (1) and (2), the Minister may vary the interest rate by Order published in the *Gazette*.

CHAPTER XVI

RECOVERY OF TAX

160. The Commissioner-General may proceed with any remedy under this Chapter once the taxpayer is in default pursuant to section 152. General.

161. Institution of action under this Chapter shall be commenced within five years of the date on which the taxpayer was in default. Period of limitations for collection.

162. (1) Where the Commissioner-General is unable to recover an amount of tax, interest, or penalty due and payable by a person under this Act, the Minister may, on recommendation of the Commissioner-General and approval by the Cabinet, order the extinguishment of the liability as a debt due to the Government. Extinguishment of uncollectible amounts.

(2) Where the Commissioner-General determines that a person whose debt was extinguished under subsection (1) has assets that may be attached to recover all or part of the unpaid amounts, the liability for the debt may be reinstated by an order of the Minister, approved by Cabinet, revoking the order made under subsection (1).

163. (1) Tax that is due and payable shall be a debt to the Government and shall be payable to the Commissioner-General. Court proceedings.

(2) Where a person fails to pay tax when it is due, the Commissioner-General may commence proceedings in a court of competent jurisdiction to recover the debt outstanding in respect of the amount owing.

(3) In any proceedings under this section, the production of a certificate signed by the Commissioner-General, stating the name of the defendant and the amount of tax owing, shall be sufficient evidence that the amount is due for the court to give judgment in that respect.

(4) In any proceedings for the recovery of tax it shall not be a defence for the defendant that —

- (a) the tax, the taxable income or other tax base is incorrect;
- (b) the tax charged is excessive; or
- (c) the assessment is the subject of objection or appeal.

Lien.

164. (1) Where a taxpayer fails to pay a tax by the due date, a lien in favour of the Commissioner-General shall be created in the amount owing (together with interest, penalty and costs of collection that may accrue) on all property belonging to the taxpayer, and has priority as against all other rights, except as otherwise provided in this section.

(2) The lien referred to in subsection (1) shall arise at midnight at the commencement of the date of default and shall continue until the liability is satisfied or becomes unenforceable by reason of lapse of time.

(3) The lien imposed under this section shall not be valid against the interest of a person who is a purchaser from the taxpayer, a holder of a security interest granted by the taxpayer, or other lien holder specified in regulations, if the interest arises—

- (a) before the person had actual knowledge of the lien; or
- (b) before notice of the lien has been duly registered by the Registrar of the High Court and the Registrar of Lands,
whichever occurs first.

(4) The Commissioner-General may file notice of a lien at any time after a taxpayer is determined to be in default pursuant to section 152.

(5) The Commissioner-General may specify procedures for filing notice of a lien and may specify categories of interests against which the lien shall not be valid even though notice of the lien has been filed.

(6) At least fifteen days prior to registering a lien with the Registrar of the High Court and the Registrar of Lands, the Commissioner-General shall send notice of the intention to register the lien to the taxpayer.

(7) Subsection (6) shall not apply where the Commissioner-General believes that the ability to collect tax is in jeopardy.

(8) The Commissioner-General may file action in the High Court to enforce the lien created by this section.

(9) An affected person may apply to the Commissioner-General for a release of the lien on the person's property and a decision by the Commissioner-General not to release a lien may be appealed to the High Court.

165. (1) Where the taxpayer is in default, the Commissioner-General may cause execution to be levied on the taxpayer's property but, except when a determination has been made under subsection (7) of section 164, the Commissioner-General may proceed to execution only if the taxpayer has been served with a notice of intention to levy execution, and the taxpayer has failed to pay the tax within thirty days after service of the notice.

Execution
against
taxpayer's
property.

(2) Where the Commissioner-General has reasonable grounds to believe that the collection of tax is in jeopardy, the Commissioner-General may demand immediate payment

of the tax and, on failure of the taxpayer to pay the tax within the period stated in such demand, may proceed to levy execution on the taxpayer's property immediately, notwithstanding subsection (3) of section 152.

(3) A person (including a bank or other financial institution) in possession of, or holding security over, property on which a levy has been made shall, on demand, surrender the property, or discharge the security, to the Commissioner-General, except in respect of the part of the property that is already subject to attachment or execution under judicial process.

(4) A person who fails to comply with the demand shall be liable to the Commissioner-General in the amount of the value of the property or security held, but not in excess of the amount for the collection of which the levy is made.

(5) A person complying with the requirements of this section or of section 170 shall, from the time of compliance, be discharged from an obligation to the taxpayer or another person to the extent of the value of property surrendered, or the security discharged, to the Commissioner-General and shall not be personally liable for loss or damage incurred as a consequence of compliance.

(6) A levy under this section shall commence within five years of the date on which the taxpayer was in default.

(7) A taxpayer's personal effects and household furnishings without substantial value shall be exempt from a levy.

Sale of seized
property.

166. (1) Unless the Commissioner-General has good reason to release the seized property, the Commissioner-General shall sell the property seized pursuant to a levy.

(2) The sales proceeds shall be applied first against the expenses of the levy and sale, then against the liability for penalties, interest and tax and the excess shall be returned to the taxpayer.

(3) The Commissioner-General may make conditions with respect to the procedure on sale by public auction under the power of sale conferred on the Commissioner-General by this Act, and may—

- (a) fix an amount of a deposit to be made by the highest bidder;
- (b) reserve a price;
- (c) specify a time within which a deposit shall be made and the events following which it may be forfeited; and
- (d) declare, in the event that the highest bidder fails to make the required deposit or to complete the purchase within the required time, the next highest bidder to be the highest bidder and purchaser of the property.

(4) Seized goods or property shall be sold at public auction at a time and place as the Commissioner-General may direct, but no sale shall take place within fourteen days of the seizure of the goods or property, unless the goods seized are, in the opinion of the Commissioner-General, of a perishable nature, or the owner of the goods has requested their earlier sale.

(5) All goods seized under this Act shall be deposited in some fit place, or left in the possession of some fit person, as the Commissioner-General may determine.

(6) The date, time, and place of sale of all goods seized under this Act shall be published in the Gazette and notice thereof shall be given to the taxpayer prior to the date of sale unless those goods are being sold before the expiry of the fourteen day period under subsection (4).

(7) For the purpose of seizing and selling goods, a person may, if expressly authorised in writing by the Commissioner-General, execute a warrant of distress, and if necessary break

open a building in the day-time to levy such distress; and may seek assistance from a police officer, when so required, to assist in the execution of a warrant of distress and in levying the distress.

(8) At the sale of goods or other property, a duly designated officer of the Government may bid for and purchase the goods or other property on behalf of the Republic of Sri Lanka.

(9) Where goods or property advertised for sale are not sold on the day appointed for the sale, the property may be put up for sale again.

(10) The officer or other person conducting the sale may report to the Commissioner-General the result of the sale and the Commissioner-General may direct that, upon payment of the purchase money the property be conveyed to the purchaser.

(11) Where the Commissioner-General, after review of the report provided pursuant to subsection (10), is satisfied that there has been fraud or improper conduct in relation to the sale of a property mentioned in the report or that the relevant tax had been paid prior to the date of sale, the Commissioner-General may declare the sale to be *null and void*.

(12) Upon the execution of the deed of conveyance or the assignment to the purchaser by the Commissioner-General in accordance with this section, the goods or property shall be vested in the purchaser freed and discharged from all encumbrances arising under this Act.

(13) Notwithstanding anything contained in this Act authorising the Commissioner-General to sell a property for the recovery of tax, the conveyance or assignment executed to give effect to the sale shall not affect any interest, or right of the Republic of Sri Lanka in the property.

167. (1) Where the Commissioner-General is of opinion that any person who is a defaulter is about to or likely to leave Sri Lanka without paying:—

Departure
Prohibition
Order.

- (a) tax that is payable by that person; or
- (b) tax that is payable by a company in which that person is a controlling member,

which has become default as assessed upon his or otherwise, he may issue a certificate containing particulars of such tax and the name of such person to a Magistrate, who shall on receipt thereof issue a direction to the Controller General of Immigration and Emigration to take such measures as may be necessary to prevent such person from leaving Sri Lanka without paying the tax or furnishing security to the satisfaction of the Commissioner-General, for payment thereof.

(2) At the time of issue of the certificate to the Magistrate, the Commissioner-General shall issue to such person a notification thereof by registered post. However, the non-receipt of any such notification by such person shall not invalidate proceedings under this section.

(3) Where the Commissioner-General has reasonable grounds to believe that the departure from Sri Lanka of any person who is a defaulter referred to in subsection (1) is imminent and that sufficient time is not available to act in terms of subsection (1), the Commissioner-General may issue a departure prohibition order, in writing, to the Controller General of Immigration and Emigration stating—

- (i) the name and address of the person;
- (ii) the amount of tax that is or will become payable by the person or by the company in which the person is a controlling member,

and the Controller General of Immigration and Emigration shall take such measures as may be necessary to prevent such person from leaving Sri Lanka without paying the tax or furnishing security to the satisfaction of the Commissioner- General, for payment thereof:

Provided however that the Commissioner General shall, as soon as may be practicable and in any event within seventy two hours of issuing such departure prohibition Order, make an application to the Magistrate to have the Order confirmed. Such departure prohibition Order shall be treated as revoked where no application has been made to the Magistrate within the aforementioned time period.

(4) The production of a certificate signed by the Commissioner-General or a Deputy Commissioner, stating that the tax has been paid or that security had been furnished to for the payment of the tax, or payment of the tax to a police officer in charge of a police station, shall be sufficient authority for allowing such person to leave Sri Lanka. Any police officer to whom the amount of any tax has been paid shall forthwith pay such amount to the Commissioner-General.

Priority in
bankruptcy.

168. Notwithstanding anything contained in any other written Law—

- (a) the trustee in bankruptcy of an individual; or
- (b) the liquidator of a company which is being wound up,

shall apply the assets of the bankrupt individual or the company, as the case may be, in payment of tax due under this Act (whether assessed before or after the date of

bankruptcy or commencement of winding up) as a privileged debt in priority over all debts of that individual or company.

169. Where a government department, institution or Ministry is about to make a payment to any person, other than a payment in respect of wages or salary, that department, institution or Ministry may apply the whole or part of that payment in satisfaction in whole or in part to any amount in respect of which that person is in default under section 152, and shall notify that person accordingly.

Offset against payments.

170. (1) If a taxpayer is in default, the Commissioner-General may serve a notice in writing on a third party debtor.

Third party debtors.

(2) On receiving a notice, the third party debtor shall pay to the Commissioner-General (on account of the taxpayer and by the date specified in the notice) the least of the following three amounts:—

- (a) the amount in respect of which the taxpayer is in default;
- (b) the money owed by the third party debtor to the taxpayer; and
- (c) the amount specified in the notice.

(3) A notice may be served on a third party debtor in relation to an amount in a joint account only when:—

- (a) all the holders of the joint account have unpaid tax liabilities; or
- (b) the taxpayer may withdraw funds from the account (other than a partnership account) without the signature or authorisation of the other account holders.

(4) The date for payment specified in the notice shall not be before fifteen days following the date the third party debtor is served with the notice.

(5) On receiving a notice under subsection (1), the third party debtor shall not pay any amount to the taxpayer until the Commissioner-General withdraws the notice.

(6) As soon as practicable after service of the notice on the third party debtor, the Commissioner-General shall serve the taxpayer with a copy of the notice.

(7) Amounts payable to the Commissioner-General by a third party debtor under this section shall be a personal liability of the third party debtor, which may be collected in the same manner as a tax.

(8) Money owed to a taxpayer shall include—

- (a) amounts currently owing or that may subsequently become owing to a tax payer;
- (b) amounts held or that may subsequently be held for or on account of a tax payer;
- (c) amounts held or that may subsequently be held on account of a third person for payment to a tax payer;
- (d) amounts held by a person who has authority from a third person to pay the money to a tax payer; and
- (e) in relation to a third party debtor that is a financial institution, amounts that the tax payer holds in an account with the institution.

(9) A notice may be served under this section on the taxpayer's employer, requiring the employer to withhold and to pay to the Department, for a specified period, some part of the future wages or salary that becomes payable to the tax payer.

(10) The first seventy five thousand rupees of wages per month shall not be subject to withholding under a notice referred to in subsection (9).

(11) When the third party debtor fails to pay the amount specified within the time specified in a notice under this section, the provisions of this Act apply as if such amount were tax due and payable by the third party debtor on the date by which the third party debtor was required to make the payment to the Commissioner-General.

(12) In this section:—

“money” includes a debt obligation denominated or payable in money; and

“third party debtor”, in relation to a taxpayer, means a person who owes money to the taxpayer.

171. (1) A third party who pays to the Commissioner-General, pursuant to section 170 shall be treated as having acted with the authority of the taxpayer and of all other persons concerned.

Compliance with notice.

(2) Subsection (1) shall apply irrespective of a provision to the contrary in any other written law, contract, or agreement.

(3) A notice issued under section 170 shall cease to have effect once the tax or obligations described in it is paid or otherwise satisfied.

(4) If a third party served with a notice under section 170 and is unable to comply with the notice by reason of lack of money owing to or held for the taxpayer, the person shall notify the Commissioner-General by notice hereinafter referred to as a “third party notice”.

(5) A third party notice shall—

(a) be in writing;

(b) set out the reasons for the inability; and

(c) be filed with the Commissioner-General as soon as practicable after the third party becomes aware of the inability and, in any event, before the payment date specified in section 170 notice.

(6) On receipt of a third party notice the Commissioner-General may, by notice in writing served on the third party—

(a) accept the third party notice and cancel or amend the notice; or

(b) reject the third party notice.

(7) The filing of a third party notice shall have no effect on the third party's personal liability for amounts unless and until the Commissioner-General cancels or amends the section 170 notice.

(8) In this section, "third party" means a third party debtor served with a notice under the preceding section.

Preservation of
assets.

172. (1) This section shall apply where the Commissioner-General has reasonable cause to believe that:—

(a) a taxpayer will not pay the full amount of tax owing when due; and

(b) the taxpayer will take steps to frustrate the recovery of the tax, including the dissipation of the taxpayer's assets.

(2) The Commissioner-General may make an *ex-parte* application to the District Court having jurisdiction, for an order (hereinafter referred to as an "Asset Preservation Order") for the preservation of the assets of the taxpayer and prohibiting any person holding, controlling or managing assets belonging to the taxpayer from transferring, withdrawing, disposing or otherwise dealing with the assets.

(3) The Commissioner-General may take such steps as necessary to secure the assets of the taxpayer, including seizure of the assets, pending making an application for an order under subsection (2), which application shall be made within twenty four hours from taking steps to secure the taxpayer's assets.

(4) The District Court shall issue an asset preservation order when such court is satisfied that the requirements in subsection (1) are satisfied and the order shall be served on the taxpayer and any person having custody, control or management of the taxpayer's assets.

(5) An Asset Preservation Order shall be valid for ninety days and may be extended by the District Court on application by the Commissioner-General.

(6) A taxpayer whose funds are the subject of an Asset Preservation Order may, within fifteen days of being served with the order, apply to the District Court to discharge or vary the order.

(7) Where the District Court has issued an Asset Preservation Order, the Commissioner-General shall, within thirty days of service of notice of the order, determine the tax due by the taxpayer to whom the order relates and serve a notice of a tax assessment on the taxpayer and commence recovery of the tax assessed in accordance with the provisions of this Act.

(8) An Asset Preservation Order shall automatically expire upon service of a notice of assessment under subsection (7) unless the District Court extends the Order upon application by the Commissioner-General under subsection (5).

(9) A person who preserves funds pursuant to an Asset Preservation Order shall be, for all purposes, deemed to have acted within the authority thereof and such person and all other persons concerned shall be indemnified in respect of the actions taken in connection with the Order, against all

proceedings, civil or criminal and all process, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

(10) A person who, without reasonable cause, fails to comply with an Asset Preservation Order served on the person shall be personally liable for the amount specified in the Order.

Non-arm's
length
transferees.

173. (1) Where a taxpayer's liability has not been satisfied after levy of execution on property known to the Commissioner-General, a person who has received assets of the taxpayer in a transaction that is not at arm's length in the period of one year preceding the date of the levy shall be secondarily liable for the tax to the extent of the value of the assets received.

(2) Provisions of subsection (1) shall not apply to an amount for which a person is liable under section 148.

Transferred tax
liabilities.

174. (1) When a taxpayer (hereinafter referred to as the "transferor") has a tax liability in relation to a business carried on by the taxpayer and the taxpayer has transferred all or some of the assets of the business to an associate (hereinafter referred to as the "transferee"), the transferee shall be personally liable for the unpaid tax liability (hereinafter referred to as the "transferred liability") of the transferor in relation to the business.

(2) Provisions of subsection (1) shall not preclude the Commissioner-General from recovering the whole or part of the transferred liability from the transferor.

Receivers.

175. (1) A receiver shall be required to notify the Commissioner-General of the receiver's appointment within fourteen days after being appointed.

(2) The Commissioner-General may notify the receiver of the amount that appears to the Commissioner-General to

be sufficient to provide for payment of tax owing, or that will become owing, by the person whose assets are in the possession or care of the receiver.

(3) A receiver shall not dispose of an asset situated within Sri Lanka held in the receiver's capacity as receiver, without the prior permission of the Commissioner-General.

(4) A receiver shall set aside out of the proceeds of sale of an asset the amount notified by the Commissioner-General under subsection (2) or a lesser amount as may be agreed with the Commissioner-General.

(5) A receiver shall be personally liable for the amount of tax notified in subsection (2) to the extent of an amount required to be set aside under subsection (4), if the receiver fails to comply with the requirements of this section.

(6) In this section, "receiver" means a person who, with respect to an asset situated in Sri Lanka, is—

- (a) a liquidator of a company or other entity;
- (b) a receiver appointed out of court or by a court;
- (c) a trustee in bankruptcy;
- (d) a mortgagee in possession;
- (e) an executor, administrator or heir of a deceased individual's estate;
- (f) conducting the affairs of an incapacitated individual; or
- (g) a successor in a corporate reorganisation.

CHAPTER XVII

PENALTIES

Penalties.

176. (1) This section shall apply to penalties under this Act.

(2) Procedures for the assessment, payment, collection, and dispute of a tax shall apply equally to penalties relating to a tax.

(3) A person's liability for a penalty under a section in this Chapter is separate and distinct from the person's liability, if any, for a penalty under another section of this Act or any other law and is in addition to interest levied under Chapter XV and to a criminal sanction imposed under Chapter XVIII.

(4) The burden of proof shall be on the Commissioner-General to show non-compliance with the provisions of this Act with respect to the imposition of a penalty.

(5) The Commissioner-General may make an assessment of a penalty charged as if the penalty were tax payable under this Act, and may specify the date on which the penalty is payable.

(6) A notice of an assessment of a penalty shall be served on the person who is liable to the penalty and shall state the amount of the penalty payable, the provision under which it is payable, and the due date for payment, and on service of the notice —

- (a) the notice and the assessment shall be treated as if they were a notice and assessment of tax payable under this Act;
- (b) the amount of the penalty specified in the notice shall be treated as tax payable under this Act; and
- (c) the due date for payment is the date specified in the notice.