



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**DEFAULT TAXES (SPECIAL PROVISIONS)
(AMENDMENT)**

A

BILL

to amend the Default Taxes (Special Provisions) Act, No. 16 of 2010

*Presented by the Prime Minister and Minister of Buddha Sasana and
Religious Affairs on 21st March, 2014*

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STATEMENT OF LEGAL EFFECT

Clause 2 : This Clause amends section 10 of the Default Taxes (Special Provisions) Act, No. 16 of 2010 (hereinafter referred to as the “principal enactment”) by the addition of new subsection (2) in that section and the legal effect of the section as amended is to make provision to enable the Commissioner-General of Inland Revenue to take steps stipulated under sections 10A, 10B, 10C, 10D, 10E, 10F and 10G of the principal enactment instead of instituting action in the High court of the Province for the recovery of taxes in default.

Clause 3 : This clause inserts sections 10A, 10B, 10C, 10D, 10E, 10F and 10G in the principal enactment and the legal effect of the amendment is to make provision—

- (a) to enable the Commissioner-General to take steps where immediate action for the recovery of tax in default is necessary;
- (b) in the case of a default made by a body corporate or by an unincorporated body of persons, for the recovery of tax in default from a manager, secretary, any director or principal officer of such body corporate or a partner or office bearer of such unincorporated body of persons;
- (c) to enable the Commissioner-General to recover tax in default by seizure and sale;
- (d) to recover the tax in default by proceedings before a Magistrate;
- (e) to recover the tax in default out of debts to be paid back to a defaulter;
- (f) to recover the tax in default by way of transfer of immovable property instead of paying in cash; and
- (g) to recover the tax in default out of the remuneration of the defaulter.

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L. D- O. 12/2014

AN ACT 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 Provisions) (Amendment) Act, No. of 2014 .

5 2. Section 10 of the Default Taxes (Special Provisions) Act, No. 16 of 2010 (hereinafter referred to as the “principal enactment”) is hereby amended as follows:-

(1) by re-numbering section 10 of that section as subsection (1) thereof ; and

10 (2) by the addition immediately after re- numbered subsection (1) , of the following subsections :-

15 “(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.”.

20 3. The following new sections are inserted immediately after section 10 of the principal enactment and shall have effect as sections 10A, 10B, 10C, 10D, 10E, 10F and 10G of that enactment:-

25 “Where immediate action for recovery of tax in default is necessary. 10A.(1) Where the Commissioner- General decides to take steps in terms of subsection (2) of section 10, to recover any tax in default he shall within fourteen days of the date on which he takes such steps , issue a notice to the

Short title.

Amendment
of section 10
of Act, No.
16 of 2010.

Insertion of
Sections 10A,
10B,
10C, 10D, 10E ,
10F and 10G
in the
principal
enactment.

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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.

5 (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
10 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:

15 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
20 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:

30 Provided that, no refund under this subsection shall exceed the tax recovered as a result of steps taken under subsection (1).

Recovery of tax from principal officers and others. 10B. (1) Where a body corporate has not paid any tax on or before the due date, as required by the relevant law under which such 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
of tax by
seizure
and sale.

10c. (1) The Commissioner-General may appoint persons to be tax collectors under this Act .

(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.

5 (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
10 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 –

15 (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;

20 (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
25 any balance applied in satisfaction of the tax in default; and

30 (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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5 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,
10 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 -

15 (i) firstly, in payment of the
costs and charges of
seizing, keeping and
selling of property; and

20 (ii) secondly, in satisfaction of
the tax in default, and any
balance shall be paid to the
owner of the property
seized.

25 (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
30 of property was effected.

(f) In this subsection the expression
“movable property” includes any
plant or machinery affixed to the
ground of a factory.

(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.

25 (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.

30 Proceedings for recovery before Magistrate. 10D. (1) Where the Commissioner-General is of the opinion in any case that 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
35 seizure and sale, he may issue a certificate containing particulars of such tax and the name and last known place of business or residence

5 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
10 (1) of section 291 (except paragraph (a), (d)
and (i) thereof) of the Code of Criminal
Procedure Act, No. 15 of 1979 relating to
15 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.
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(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
25 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
30 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.

35 (3) Nothing in subsection (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.

20 (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.

25 (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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5 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:

10 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
15 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 tax out of debts & c.
20 10E. (1) Where tax payable by any person under any of the laws specified in the Schedule 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 –

25 (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;

30 (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 –

30 (a) every person remitting money in compliance with a notice issued under subsection (1), shall intimate such fact to every other joint account holder;

35 (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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5 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;

10 (c) every joint account holder who is aggrieved by the order of the Commissioner-General made under paragraph (b), may institute an
15 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.

20 (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.

25 (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
30 of such payment against all proceedings, civil or criminal, notwithstanding the provisions of any written law, contract or agreement.

35 (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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 that no moneys referred to in that subsection
 have come into his hands or that no such
 moneys have become due from him within the
5 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
10 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
15 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
20 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
25 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.

30 (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
35 been payable by any person if he were alive is

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(a) the executor or administrator of a deceased person;

(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 .

15 Transfer of
immovable
property to
Government
in lieu of
payment of
20 tax in cash.

30 (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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5 (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.

15 (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.

35 (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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5 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
10 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
15 the following month, such employer or person,
20 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.

25 (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.”.

30 4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text
to prevail in
case of
inconsistency.

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