

## CONSOLIDATION OF PAYROLL TAX ACT, 1993

S.N.W.T. 1993,c.11

In force July 1, 1993, except s.1,38(1),39,40,55,70(1)

s.1,38(1),39,40,55,70(1) in force May 1, 1993

(Current to: June 13, 2016)

The following provision has been deleted for the purposes of this consolidation:  
s.71 (Coming into force)

### AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

S.N.W.T. 1994,c.7

In force January 1, 1995: SI-019-94

S.N.W.T. 1995,c.11

S.N.W.T. 1998,c.31

### AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:

S.N.W.T. 1998,c.34

In force April 1, 1999

### AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2006,c.17,s.2

s.2 in force January 1, 2007

S.Nu. 2007,c.8,s.11

s.11 in force November 8, 2007

S.Nu. 2007,c.15,s.177(Sch.,s.11)

s.177(Sch.,s.11) in force April 1, 2008: SI-003-2008

S.Nu. 2013,c.20,s.31

s.31 in force May 16, 2013

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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**PAYROLL TAX ACT, 1993**

## INTERPRETATION AND APPLICATION

## Definitions

**1.** (1) In this Act,

"assessment" means an assessment, reassessment and additional assessment made under this Act and includes the confirmation or variation of an assessment under subsection 32(6); (*cotisation*)

"body corporate" includes a company or other body corporate wherever or however incorporated; (*personne morale*)

"employee" means an individual

- (a) who is employed by and in the service of an employer or holds office and receives remuneration in respect of the performance of the duties of the office, and
- (b) who, while in Nunavut at any time in a year, works, performs duties or provides services in Nunavut; (*employé*)

"employer" means a person who has a fixed place of business in Nunavut and pays remuneration to an employee; (*employeur*)

"Government" means the Government of Nunavut; (*gouvernement*)

"judge" means a judge of the Nunavut Court of Justice; (*juge*)

"Minister" means the Minister of Finance; (*ministre*)

"office" means the position of an individual entitling him or her to fixed or ascertainable remuneration and includes a judicial office, the office of a member of the Executive Council, the office of a member of the Legislative Assembly and any other office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity, and includes the position of the director of a body corporate; (*charge*)

"officer" means an officer appointed under subsection 38(2) and an officer by virtue of his or her office pursuant to subsection 38(3); (*agent d'exécution*)

"person" means a government, including the government of a province, territory or Canada, an individual, a partnership, a body corporate or a body that is a society, union, club, association, commission or other organization of any kind; (*personne*)

"place of business" means a place where an undertaking or activity, including a function of government, is carried on, whether or not carried on for gain or profit; (*établissement*)

"remuneration" includes all payments and the value of all benefits and allowances received or deemed to be received by an individual that, by reason of subsection 5(1) or section 6 or 7 of the *Income Tax Act* (Canada), are required to be included in the income of the individual for the purposes of that Act and, without limiting the foregoing, includes salaries and wages and the value of bonuses, taxable allowances and commissions and other similar amounts fixed by reference to the volume of sales made or contracts negotiated, but does not include

- (a) a pension, annuity or superannuation benefit paid by an employer to a former employee after retirement of the employee, or
- (b) any amount that may be deducted under paragraph 8(1)(c) or subsection 110(2) of the *Income Tax Act* (Canada); (*rémunération*)

"reporting period" means the period for which an employer must report under the regulations. (*période de déclaration*)

#### Fixed place of business

(2) In this Act, "fixed place of business" includes an agency, a branch, a construction site, an exploration site, a factory, a farm, a gas well, a mine, an office, an oil well, timberland, a warehouse and a workshop and, without limiting the generality of the foregoing,

- (a) a body corporate has a fixed place of business in Nunavut if it is incorporated or required to be registered in Nunavut;
- (b) a person shall be deemed to have a fixed place of business in Nunavut if the person carries on business in Nunavut through an employee or an agent either of whom has general authority to contract for the person;
- (c) a person shall be deemed to have a fixed place of business in Nunavut if an employee or agent of the person has a stock of merchandise in Nunavut owned by the person from which the employee or agent fills orders received by the employee or agent;
- (d) land or premises in Nunavut owned or leased by a person shall be deemed to be a fixed place of business of the person in Nunavut;
- (e) a person shall be deemed to have a fixed place of business in Nunavut where and at the time when the person uses, for the purpose of carrying on or conducting the person's business, machinery or equipment in Nunavut that is owned or leased by the person;
- (f) an insurance company has a fixed place of business in Nunavut if the company is required to be registered or licensed to do business in Nunavut;
- (g) a person has a fixed place of business in Nunavut if the person sells, produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves, processes or constructs, in whole or in part, any thing in Nunavut; and

- (h) a person has a fixed place of business in Nunavut if the person conducts or carries on business or conducts, carries on or transacts a portion of the person's business in Nunavut, whether or not the business is conducted, carried on or transacted for gain or profit.

#### References to employer, employee

(3) A reference in this Act to

- (a) an employer in relation to an employee shall be construed as a reference to a person or government that pays remuneration to the employee; and
  - (b) an employee in relation to an employer shall be construed as a reference to any individual to whom the employer pays remuneration.
- S.Nu. 2013,c.20,s.31(2),(5).

#### Government bound

2. This Act binds the Government of Nunavut. S.Nu. 2013,c.20,s.31(5).

## IMPOSITION OF TAX

#### Tax payable by employee

3. (1) Every employee is liable to pay to the Government a tax in the amount equal to 2% of the remuneration paid to the employee in the year.

#### Remuneration in year where employee normally works outside Nunavut

(2) Subject to subsection (4), where an employee normally works, performs duties or provides services outside Nunavut for an employer in the course of a year, the remuneration paid to the employee in the year by that employer is deemed, for the purposes of this section, to be the employee's remuneration for the year from that employer multiplied by the number of days, including any portion of a day, the employee works, performs duties or provides services in Nunavut for that employer divided by the total number of days during the year that the employee is employed by or performs the duties of the office held from that employer.

#### Meaning of normally works outside Nunavut

(2.1) For the purposes of this section, an employee is deemed to normally work, perform duties or provide services outside Nunavut for an employer in the course of a year where the employee is employed in a position or holds an office that requires the employee to work, perform duties or provide services outside Nunavut for more than half the number of days that the employee is employed by that employer in that position or holds that office from that employer, as the case may be, in the year.

S.Nu. 2013,c.20,s.31(5).

#### Where employee not liable for tax

- (2.2) An employee is not liable to pay the tax payable under subsection (1) where
- (a) the employee normally works, performs duties or provides services outside Nunavut for that employer; and
  - (b) the remuneration paid to the employee in the year by that employer does not exceed the prescribed amount.

#### Days not included for calculation of tax

(2.21) In the calculation made under subsection (2), a day or portion of a day shall not be included as a day the employee works, performs duties or provides services in Nunavut where

- (a) the employee works a portion of that day in Nunavut and a portion of that same day in a prescribed province or territory and pays to that province or territory a tax similar to the tax imposed under this Act on his or her remuneration for that day; or
- (b) the employee normally works, performs duties or provides services in a prescribed province or territory and pays to that province or territory a tax similar to the tax imposed under this Act on all his or her remuneration.

#### Interpretation

(2.3) Subsections (2), (2.2) and (2.21) shall not be interpreted so as to preclude the collection of the tax payable under subsection (1) prior to the determination of any limit on liability to pay the tax under subsection (2) or any exemption from liability to pay the tax under subsection (2.2) or (2.21).

#### Amounts included in remuneration

(3) In determining the tax payable under this Act by an employee, a payment made to the employee, including a payment in kind, may be deemed by the Minister to be part of the employee's remuneration where

- (a) in the case of an employee who is employed by and in the service of an employer,
  - (i) the payment is made by the employee's employer or former employer or another person who, at the time of the payment, did not deal at arm's length, within the meaning of section 251 of the *Income Tax Act* (Canada), with the employee's employer or former employer, and
  - (ii) it is reasonable for the Minister to consider that the payment is made to the employee in consideration for services rendered by the individual to the employer, the former employer or the other person who did not deal at arm's length with the employee's employer or former employer; or

- (b) in the case of an employee who holds office and receives remuneration in respect of the performance of the duties of the office, it is reasonable for the Minister to consider that the payment is made to the employee also in respect of the performance of the duties of the office.

#### Value of remuneration

(4) Where the value of remuneration received or deemed to be received is in question, the Minister may, subject to section 32 and any further appeal, affix or assign a value to it for the purposes of this Act. S.N.W.T. 1998,c.31,Sch.D,s.1; S.Nu. 2006,c.17,s.2(1); S.Nu. 2013,c.20,s.31(5).

#### Definitions

4. (1) In this section,

"non-resident employer" means an employer that is not a resident of Nunavut;  
(*employeur non résident*)

"resident of Nunavut" means a person who has a fixed place of business in Nunavut.  
(*résident des territoires*)

#### Deemed employee

(2) Where a resident of Nunavut enters into an agreement with a non-resident employer under which work is performed or services are provided during a year for the benefit of the resident of Nunavut by an individual employed by the non-resident employer, the resident of Nunavut shall be deemed to be the employer of the individual and the individual shall be deemed to be an employee of the resident of Nunavut during any period in the year when the work is performed or the services are provided, if

- (a) the non-resident employer does not have a fixed place of business in Nunavut during the period;
- (b) the work is performed or the services are provided in Nunavut;
- (c) the resident of Nunavut and the non-resident employer do not deal at arm's length, within the meaning of section 251 of the *Income Tax Act* (Canada), at any time during the period or did not deal at arm's length at the time they entered into the agreement or arrangement; and
- (d) the work being performed or the services being provided by the individual for the benefit of the resident of Nunavut are of a nature that, in the opinion of the Minister, could be expected to be carried out by an employee of the person for whose benefit the work is performed or the services are provided.

### Deemed payment of remuneration

(3) Where a resident of Nunavut referred to in subsection (2) is deemed by that subsection to be the employer of an individual employed by a non-resident employer during a period in a year, the resident of Nunavut shall be deemed to pay remuneration to the individual during the period in which the individual is deemed to be an employee of the resident of Nunavut in an amount equal to the remuneration paid or to be paid by the non-resident employer to the individual in respect of the work performed or the services provided by the individual in the period for the benefit of the resident of Nunavut. S.Nu. 2013,c.20,s.31(5).

## COLLECTION AND REMITTANCE OF TAX

### Collection of tax

**5.** (1) Every employer shall collect from each employee to whom the employer pays remuneration the tax payable by each employee under subsection 3(1) by deducting or withholding the amount of that tax, in accordance with the regulations, from remuneration to be paid to each employee.

### Effect of deduction

(2) When an amount has been deducted or withheld under subsection (1), it shall, for the purposes of this Act, be deemed to have been received at that time by the employee to whom the remuneration was paid.

### Remittance of tax with return

**6.** (1) Every employer shall, in the prescribed manner and within the prescribed time,

- (a) file with the Minister a return in the form approved by the Minister including the prescribed information and documents and any other information that may be required by the Minister from time to time and showing, in respect of the immediately preceding reporting period,
  - (i) the total amount of remuneration paid by the employer to the employer's employees, and
  - (ii) the amount the employer deducted or withheld under subsection 5(1); and
- (b) remit to the Minister the tax payable by the employer's employees in respect of the total amount of remuneration referred to in subparagraph (a)(i).

### Separate return

(2) An employer who is a trustee in bankruptcy, receiver, trustee or committee or other agent administering, managing, winding up, controlling or otherwise dealing with the property, business, estate or income of an employer shall file a separate return under subsection (1) for that employer.

Certification of return

(3) Every employer shall ensure that each return filed under this section is verified by a certificate that

- (a) states that the information contained in the return is true and correct; and
- (b) is signed by the employer, by a duly authorized officer of the employer or, where an employer has its head office outside Nunavut, by the manager or chief agent of the employer in Nunavut or by such other person or persons whom the Minister is satisfied have knowledge of the matters required to be disclosed in the return.

Variation of reporting period

(4) The Minister may, where he or she considers it necessary, alter or vary the reporting period of an employer. S.Nu. 2013,c.20,s.31(5).

Annual returns

7. (1) Every employer shall, in the prescribed manner and within the prescribed time, file with the Minister a return in the form approved by the Minister including the prescribed information and documents and any other information that may be required by the Minister from time to time and setting out the total amount of remuneration paid by the employer to the employer's employees for the year and the amount of tax collected for the year under this Act.

Where early return required

(2) An employer who ceases to have a fixed place of business or an employee before the end of a year shall file the return required under subsection (1) for the year with the Minister in the prescribed manner and at the prescribed time.

Separate return

(3) An employer who is a trustee in bankruptcy, receiver, trustee or committee or other agent administering, managing, winding up, controlling or otherwise dealing with the property, business, estate or income of an employer shall file a separate return under subsection (1) or (2) for that employer.

Certification of return

(4) Every employer shall ensure that each return filed under this section is verified by a certificate that

- (a) states that the information contained in the return is true and correct; and



- (b) is signed by the employer, by a duly authorized officer of the employer or, where an employer has its head office outside Nunavut, by the manager or chief agent of the employer in Nunavut or by such other person or persons whom the Minister is satisfied have knowledge of the matters required to be disclosed in the return.

#### Returns by trustees, etc.

(5) Every trustee in bankruptcy, assignee, liquidator, receiver, trustee or committee and every agent or other person administering, managing, winding up, controlling or otherwise dealing with the property, business, estate or income of an employer shall, if the employer has not filed a return under this section for a year, file with the Minister

- (a) a return for the employer, in the manner and time required under subsection (1) or (2), respecting the remuneration paid and the amount of tax collected by the employer; and
- (b) a return in the manner and time required under subsection (1) or (2), respecting the remuneration paid and the amount of tax collected by the trustee in bankruptcy, assignee, liquidator, receiver, trustee or committee or other agent.

#### Balance of tax

(6) Every person referred to in subsection (5) shall, in the prescribed manner, remit to the Minister the balance of tax, if any, payable under this Act by the employer's employees in respect of a year when the return under this section is required to be filed. S.Nu. 2013,c.20,s.31(5).

#### Supplemental return

**8.** (1) The Minister may, on demand served personally or by registered mail, require any person to file, within such reasonable time as may be stipulated in the demand, with the Minister a return in respect of any period of time setting out such information as the Minister may specify in the demand for the purposes of this Act.

#### Unpaid tax

(2) The Minister may require the person required to file a return for a period of time under subsection (1) to remit to the Minister with the return any tax under this Act that was not previously paid in respect of the period.

#### When remitted or paid

**9.** (1) An amount required by this Act to be remitted or paid to the Minister is remitted or paid on receipt of the remittance or payment by the Minister.

#### When return filed

(2) A return required by this Act to be filed with the Minister is filed on receipt of the return by the Minister.

Information to be provided to employer

**10.** An employee shall provide to his or her employer such information as may be prescribed.

## PENALTIES

Penalty re failure to collect

**11.** (1) Every person who fails to collect any amount as required under subsection 5(1) is liable to a penalty of

- (a) 10% of the amount that should have been collected; or
- (b) 20% of the amount that should have been collected, where the person had at the time of the failure been assessed a penalty under this subsection in respect of an amount that should have been collected during the 12 month period preceding the date of the failure.

Interest

(2) A person who fails to collect any amount as required under subsection 5(1) shall pay to the Minister interest on the amount at the rate prescribed under subsection 17(1) of the *Financial Administration Act*.

Liability to pay

(3) A person who fails to collect any amount as required under subsection 5(1) is liable to pay as tax under this Act on behalf of any employee from whom the tax should have been collected and is entitled to deduct or withhold from any amount paid or credited by the employer to the employee or otherwise to recover from the employee any amount paid by the employer as tax under this Act on behalf of the employee.

Penalty

**12.** (1) Every person who fails to remit or pay as and when required under this Act an amount collected as required under this Act is liable to a penalty of

- (a) 10% of that amount; or
- (b) 20% of that amount, where the person had at the time of the failure been assessed a penalty under this subsection in respect of a previous failure during the 12 month period preceding the date of the failure.

Interest

(2) A person who fails to remit or pay as and when required under this Act an amount deducted or withheld as required under this Act shall pay to the Minister interest on the amount at the rate prescribed under subsection 17(1) of the *Financial Administration Act*.

**Liability to pay**

(3) A person who fails to remit or pay as and when required under this Act an amount deducted or withheld from a payment to an employee as required by this Act is liable to pay as a tax under this Act on behalf of the employee the amount so deducted or withheld.

**Failure to file return**

**13.** Every person who fails to file a return as and when required under section 6 or 7 is liable to a penalty of \$100.

**Failure to answer demand**

**14.** Every person who fails to file a return when required pursuant to a demand issued under subsection 8(1) is liable to a penalty equal to the greater of

- (a) \$250; and
- (b) 5% of the amount of tax payable or remittable by the person for the period specified in the demand that was unpaid or unremitted on the day that the return was due.

**Failure to provide information**

**15.** Every person who fails to provide any information or document as and when required by or under this Act or the regulations is liable to a penalty of \$100 for every failure unless, in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information.

**False statements or omissions**

**16.** Every person who knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (in this section referred to as a "return") made in respect of a month, year or other period is liable to a penalty of the greater of \$250 and 25% of the amount, if any, by which

- (a) in the case of tax payable for a period,
    - (i) the amount of tax payable by the person for the period exceeds
    - (ii) the amount that would be the tax payable by the person for the period if the tax were determined on the basis of the information provided in the return; and
  - (b) in the case of an application for refund,
    - (i) the amount that would be the refund payable to the person if the refund were determined on the basis of the information provided in the return exceeds
    - (ii) the amount of the refund payable to the person.
- S.Nu. 2013,c.20,s.31(5)

## REFUNDS

## Refunds

- 17.** (1) Where the return required by section 7 to be filed by an employer has been filed, the Minister, subject to subsection (2),
- (a) may refund, without application, any overpayment made on account of the tax payable under this Act for the year; and
  - (b) shall refund any overpayment made on account of the tax payable under this Act for the year, on the application of the employer or an employee of the employer made within three years after the day on which the return was required to be filed under section 7.

## Assessment

- (2) Where the Minister is considering whether an overpayment was made by an employer, the Minister may assess the employer under section 29.

## Refund payable to employer or employee

- (3) A refund paid under subsection (1) in respect of a return sent by an employer shall be paid to the employer or, where the application for the refund is made by an employee under paragraph (1)(b) and the refund is in respect of tax on the remuneration of the employee, to the employee.

## Amounts to be paid to employees

- (4) Where a refund paid under subsection (1) is paid to an employer and the employer has collected an amount from the employer's employees in excess of the amount required by or under this Act, the employer shall pay, from the refund, such excess amount or amounts to the employees as were collected from them.

## Where amount not paid to employee

- (5) Any amount not paid to an employee as required under subsection (4) is a debt due to the employee and is recoverable as such in any court of competent jurisdiction in Nunavut.

## Where excess refunded

- (6) Any amount refunded under this Act in excess of the amount to which the person receiving the refund was entitled shall be deemed to be tax owing to the Government. S.Nu. 2013,c.20,s.31(5).

## Interest

- 18.** Where a refund is paid under paragraph 17(1)(b), the Minister may pay to the person to whom the refund is paid or may credit or apply in respect of the person to whom the refund is paid interest on the amount of the refund at the prescribed rate from the day the application for the refund was received by the Minister to the day the refund is sent, credited or applied.

## RECORDS

### Maintenance of records by employer

#### **19.** (1) Every employer shall

- (a) maintain, at the employer's place of business in Nunavut or at such other place as may be designated by the Minister, books and records in respect of remuneration paid to each of the employer's employees, in such form and containing such information as will enable the determination of the person's liabilities and obligations under this Act or the amount of any refund to which the person is entitled; and
- (b) retain the books and records referred to in paragraph (a), together with every account and voucher necessary to verify the information contained in the books and records, for at least six years from the time the tax is remitted to the Minister.

### Exception

(2) Where, in respect of a year, an employer has not filed a return as or when required under section 6 or 7, the employer shall retain the books and records that are required by this section to be kept that relate to the year, together with every account and voucher necessary to verify the information contained in the books and records, until the expiration of six years from the day the return for or in respect of that year is filed.

### Inadequate records

(3) Where a person fails to keep adequate books and records for the purposes of this Act, the Minister may require the person to keep such books and records as the Minister may specify and the person shall keep the records so specified.

### Objection or appeal

(4) Where a person required by this section to keep books and records serves a notice of objection or is a party to an appeal to the Nunavut Court of Justice under this Act, that person shall retain every book and record necessary for dealing with the objection or appeal until the later of the time specified in paragraph 19(1)(b) and,

- (a) in the case of the serving of a notice of objection, the time provided by section 33 to appeal has elapsed; or
- (b) in the case of an appeal, until the appeal is disposed of and any further appeal in respect of that appeal is disposed of or the time for filing any such further appeal has expired.

### Demand by Minister

(5) Where the Minister is of the opinion that it is necessary for the administration of this Act, the Minister may, by letter served personally or by registered mail, require any person required by this section to keep books and records to retain those books and records for such period as is specified in the letter.

#### Permission for earlier disposal

(6) A person required by this section to keep books and records may dispose of the books and records before the expiration of the period in respect of which the books and records are required to be kept if written permission for their disposal is given by the Minister. S.Nu. 2013,c.20,s.31(5).

### AUDITS

#### "Dwelling-house" defined

**20.** In section 21, "dwelling-house" means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes

- (a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway; and
- (b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence.

#### Inspections

**21.** (1) An officer may, at all reasonable times, for any purpose related to the administration or enforcement of this Act, inspect, audit or examine the documents, property or processes of a person that may be relevant in determining the obligations of that or any other person under this Act or the amount of any refund to which that or any other person is entitled and, for those purposes, the officer may

- (a) subject to subsection (2), enter any premises or place of business or where any business or commercial activity is carried on, any property is kept, anything is done in connection with any business or commercial activity or any documents are or should be kept; and
- (b) require the owner or manager of the property, business or commercial activity and any other person on the premises or in the place to give to the officer all reasonable assistance and to answer all proper questions relating to the administration or enforcement of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the officer.

#### Prior authorization

(2) Where any premises or place referred to in paragraph (1)(a) is a dwelling-house, an officer may not enter that dwelling-house without the consent of the occupant, except under the authority of a warrant issued under subsection (3).

#### Warrant for entry

(3) On application by the Minister that may be made *ex parte*, a judge may issue a warrant authorizing an officer to enter a dwelling-house, subject to such conditions as may be specified in the warrant, where the judge is satisfied by information on oath that

- (a) there are reasonable grounds to believe that a dwelling-house is a premises or place referred to in paragraph (1)(a);
- (b) entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act; and
- (c) entry into the dwelling-house has been refused or there are reasonable grounds to believe that entry will be refused.

#### Other court order

(4) Where, on an application made under subsection (3), the judge is not satisfied that entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, but is satisfied that a relevant document or property is or may be expected to be kept in the dwelling-house and that access to the dwelling-house has been or may be expected to be refused, the judge shall

- (a) order the occupant of the dwelling-house to provide an officer with reasonable access to the document or property; and
  - (b) make any other order the judge considers appropriate in the circumstances to carry out the purposes of this Act.
- S.Nu. 2013,c.20,s.31(3).

#### Requirement to provide documents or information

**22.** (1) Despite any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act, by notice served personally or by registered mail, require any person to provide the Minister, within such reasonable time as is stipulated in the notice, with

- (a) any information or additional information, including a return under this Act; and
- (b) any document.

#### Unnamed persons

(2) The Minister shall not impose on any person a requirement under subsection (1) to provide information or any document relating to one or more unnamed persons unless the Minister is satisfied that

- (a) the person or group is ascertainable; and
- (b) the requirement is made to verify compliance by the person referred to in paragraph (a) or persons in the group with any duty or obligation under this Act.

S.Nu. 2013,c.20,s.31(5).

#### Search warrant

**23.** (1) On application by the Minister that may be made *ex parte*, a judge may issue a search warrant where the judge is satisfied by information on oath that

- (a) there are reasonable grounds to believe that an offence under this Act has been committed;
- (b) a document or thing that may afford evidence of the commission of the offence is likely to be found; and

- (c) the building, receptacle or place specified in the application is likely to contain such a document or thing.

#### Powers under search warrant

(1.1) The warrant referred to in subsection (1) authorizes the officer named in the warrant to

- (a) enter and search any building, receptacle or place for any document or thing that may afford evidence of the commission of an offence under this Act;
- (b) seize the document or thing; and,
- (c) as soon as is practicable, bring the seized document or thing before, or make a report in respect of the seized document or thing to, the judge or, where that judge is unable to act, another judge, to be dealt with by the judge in accordance with this section.

**(2) Repealed, S.Nu. 2013,c.20,s.31(4).**

#### Contents of warrant

(3) A warrant issued under subsection (1) shall refer to the offence for which it is issued, identify the building, receptacle or place to be searched and the person who is alleged to have committed the offence, and it shall be reasonably specific as to any document or thing to be searched for and seized. S.Nu. 2013,c.20,s.31(4).

#### Seizure of document

(4) Any person who executes a warrant issued under subsection (1) may seize, in addition to the document or thing referred to in that subsection, any other document or thing that the person believes on reasonable grounds affords evidence of the commission of an offence under this Act and shall, as soon as is practicable, bring the document or thing before, or make a report in respect of the document or thing to, the judge who issued the warrant or, where that judge is unable to act, another judge, to be dealt with by the judge in accordance with this section.

#### Retention of things seized

(5) Subject to subsection (6), where any document or thing seized under subsection (1) or (4) is brought before a judge or a report in respect of a document or thing is made to a judge, the judge shall, unless the Minister waives retention, order that it be retained by the Minister, who shall take reasonable care to ensure that it is preserved until the conclusion of any investigation into the offence in relation to which the document or thing was seized or until it is required to be produced for the purposes of a criminal proceeding or a proceeding under this Act.

#### Return of things seized

(6) Where any document or thing seized under subsection (1) or (4) is brought before a judge or a report in respect of a document or thing is made to a judge, the judge may, on the judge's own motion or on summary application by a person with an interest in the document or thing on three clear days notice of application to the Deputy Attorney



General, order that the document or thing be returned to the person from whom it was seized or to the person who is otherwise legally entitled to it, if the judge is satisfied that the document or thing

- (a) will not be required for an investigation or a criminal proceeding or a proceeding under this Act; or
- (b) was not seized in accordance with the warrant or this section.

#### Access and copies

(7) The person from whom any document or thing is seized under this section is entitled, at all reasonable times and subject to such reasonable conditions as may be imposed by the Minister, to inspect the document or thing and, in the case of a document, to obtain one copy of the document at the expense of the Minister.  
S.Nu. 2013,c.20,s.31(4).

#### Copies

**24.** (1) Where any document is seized, inspected, examined or provided under sections 21 to 23, the person by whom it is seized, inspected or to whom it is provided or an officer may make, or cause to be made, one or more copies of the document, and any document purporting to be certified by the Minister or an officer to be a copy made under this section is evidence of the nature and content of the original document and has the same probative force as the original document would have if it had been proved in the ordinary way.

#### Compliance

(2) No person shall hinder, molest or interfere with any other person doing anything that the other person is authorized under subsection (1) or any of sections 21 to 23 to do or prevent or attempt to prevent any other person from doing any such thing.

#### "Foreign-based information or document" defined

**25.** (1) For the purposes of this section, "foreign-based information or document" means any information or document that is available or located outside Nunavut and that may be relevant to the administration or enforcement of this Act.

#### Requirement to provide foreign-based information

(2) Despite any other provision of this Act, the Minister may, by notice served personally or by registered mail, require a person resident in Nunavut, or a person resident outside Nunavut who carries on business in Nunavut, to provide any foreign-based information or document.

#### Notice

- (3) A notice referred to in subsection (2) shall set out
- (a) a reasonable period of time of not less than 60 days for the provision of the information or document;
  - (b) a description of the information or document being sought; and

- (c) the consequences under subsection (8) to the person for the failure to provide the information or document being sought within the period of time set out in the notice.

#### Review of foreign information requirement

(4) The person on whom a notice of a requirement is served under subsection (2) may, within 60 days after the service of the notice, apply to a judge for a review of the requirement.

#### Powers on review

(5) On hearing an application under subsection (4) in respect of a requirement, a judge may

- (a) confirm the requirement;
- (b) vary the requirement if satisfied that it is appropriate in the circumstances; or
- (c) set aside the requirement if satisfied that it is unreasonable.

#### Where requirement not unreasonable

(6) For the purposes of subsection (5), a requirement to provide information or a document shall not be considered to be unreasonable because the information or document is under the control of or available to a person resident outside Nunavut that is not controlled by the person served with the notice of the requirement under subsection (2) if that person is related, within the meaning of section 251 of the *Income Tax Act* (Canada), to the person resident outside Nunavut.

#### Time during consideration not to count

(7) The period of time between the day an application for the review of a requirement is made under subsection (4) and the day the review is decided shall not be counted in the computation of

- (a) the period of time set out in the notice of the requirement; and
- (b) the period of time within which an assessment may be made under section 29.

#### Consequence of failure

(8) If a person fails to comply substantially with a notice served under subsection (2) and if the notice is not set aside under subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act shall, on motion of the Minister, prohibit the introduction by that person of any foreign-based information or document covered by that notice. S.Nu. 2013,c.20,s.31(5).

#### Definitions

**26.** (1) In this section,

"custodian" means a person in whose custody a package is placed under subsection (3); (*gardien*)

"lawyer" means a barrister or solicitor; (*avocat*)

"solicitor-client privilege" means the right, if any, that a person has in any court in Nunavut to refuse to disclose an oral or documentary communication on the ground that the communication is one passing between the person and the person's lawyer in professional confidence, except that, for the purposes of this section, an accounting record of a lawyer, including any supporting invoice, voucher or cheque, shall be deemed not to be such a communication. (*privilège des communications entre client et avocat*)

#### Solicitor-client privilege defence

(2) Where a lawyer is prosecuted for failure to comply with a requirement under section 22 with respect to information or a document, the lawyer shall be acquitted if the lawyer establishes to the satisfaction of the Nunavut Court of Justice that the lawyer

- (a) believed on reasonable grounds that a client of the lawyer had a solicitor-client privilege in respect of the information or document; and
- (b) communicated to the Minister, or to a person duly authorized to act for the Minister, the lawyer's refusal to comply with the requirement, together with a claim that a named client of the lawyer had a solicitor-client privilege in respect of the information or document.

#### Seizure where privilege claimed

(3) Where, under section 23, an officer is about to seize a document in the possession of a lawyer and the lawyer claims that a named client of the lawyer has a solicitor-client privilege in respect of the document, the officer shall, without inspecting, examining or making copies of the document,

- (a) seize the document and place it, together with any other document in respect of which the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package; and
- (b) place the package in the custody of the Sheriff appointed under the *Judicature Act* or, if the officer and the lawyer agree in writing on another person to act as custodian, in the custody of that other person.

#### Retention where privilege claimed

(4) Where, under section 21 or 22, an officer is about to inspect or examine a document in the possession of a lawyer and the lawyer claims that a named client of the lawyer has a solicitor-client privilege in respect of the document, the officer shall not inspect or examine the document and the lawyer shall

- (a) place the document, together with any other document in respect of which the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package or, if the officer and the lawyer agree, allow the pages of

- the document to be initialled and numbered or otherwise suitably identified; and
- (b) retain it and ensure that it is preserved until it is produced to a judge as required under this section and an order is issued under this section in respect of the document.

#### Application to judge

- (5) Where a document is seized and placed in custody under subsection (3) or is retained under subsection (4), the client, or the lawyer on behalf of the client, may
- (a) within 14 days after the day the document was so placed in custody or began to be so retained apply, on three clear days notice of motion to the Deputy Attorney General, to a judge for an order
- (i) fixing a day, not later than 21 days after the day the order is made, and a place for the determination of the question whether the client has a solicitor-client privilege in respect of the document, and
- (ii) requiring the production of the document to the judge at that time and place;
- (b) serve a copy of the order on the Deputy Attorney General and, where applicable, on the custodian within six days after the day it was made and, within the same time, pay to the custodian the estimated expenses of transporting the document to and from the place of hearing and of safeguarding it; and
- (c) if the client or lawyer has proceeded as authorized by paragraph (b), apply at the appointed time and place for an order determining the question.

#### Disposition of application

- (6) An application made under paragraph (5)(c) shall be heard *in camera* and, on hearing the application, the judge
- (a) may, if the judge considers it necessary to determine the question, inspect the document and, if the judge does so, the judge shall ensure that it is repackaged and resealed; and
- (b) shall decide the matter summarily, and if the judge is of the opinion that the client
- (i) has a solicitor-client privilege in respect of the document, the judge shall order the release of the document to the lawyer, or
- (ii) does not have a solicitor-client privilege in respect of the document, the judge shall order that
- (A) the custodian deliver the document to the officer or some other person designated by the Minister in the case of a document that was seized and placed in custody under subsection (3), or

- (B) the lawyer make the document available for inspection or examination by the officer or other person designated by the Minister in the case of a document that was retained under subsection (4), and shall, at the same time, deliver concise reasons in which the document shall be identified without divulging any of its details.

#### Order on application

(7) Where a document is seized and placed in custody under subsection (3) or is retained under subsection (4) and a judge, on the application of the Attorney General for Nunavut, is satisfied that neither the client nor the lawyer has made an application under paragraph (5)(a) or, having made such an application, that neither the client nor the lawyer has made an application under paragraph (5)(c), the judge shall order that

- (a) the custodian deliver the document to the officer referred to in subsection (3) or (4), as the case may be, or some other person designated by the Minister in the case of a document that was seized and placed in custody under subsection (3); or
- (b) the lawyer make the document available for inspection or examination by the officer or other person designated by the Minister in the case of a document that was retained under subsection (4).

#### Delivery by custodian

(8) The custodian shall deliver the document

- (a) to the lawyer
  - (i) in accordance with a consent executed by the officer or by or on behalf of the Deputy Attorney General or the Minister, or
  - (ii) in accordance with an order of a judge under this section; or
- (b) to the officer or some other person designated by the Minister
  - (i) in accordance with a consent executed by the lawyer or the client, or
  - (ii) in accordance with an order of a judge under this section.

#### Continuation by another judge

(9) Where the judge to whom an application is made under paragraph (5)(a) cannot for any reason act or continue to act in the application under paragraph (5)(c), the application under paragraph (5)(c) may be made to another judge.

#### Costs

(10) No costs may be awarded on the disposition of any application under this section.

### Directions

(11) Where any question arises as to the course to be followed in connection with anything done or being done under this section, other than subsection (2), (3) or (4), and there is no direction in this section with respect to the course to be followed, a judge may give such direction with regard to the course to be followed as, in the judge's opinion, is most likely to carry out the object of this section of allowing solicitor-client privilege for proper purposes.

### Prohibition

(12) The custodian shall not deliver a document to any person except in accordance with an order of a judge or a consent under this section or except to any officer or servant of the custodian for the purposes of safeguarding the document.

### *Idem*

(13) No officer shall inspect, examine or seize a document in the possession of a lawyer without giving the lawyer a reasonable opportunity to make a claim of solicitor-client privilege under this section.

### Copies

(14) At any time while a document is in the custody of a custodian under this section, a judge may, on application of the lawyer that may be made *ex parte*, by order, authorize the lawyer to examine or make a copy of the document in the presence of the custodian or the judge, which order shall contain such provisions as may be necessary to ensure that the document is repackaged without alteration or damage and that the package is resealed.

### Waiver of privilege

(15) Where, for the purpose of subsection (2), (3) or (4), a lawyer makes a claim that a named client of the lawyer has a solicitor-client privilege in respect of information or a document, the lawyer shall at the same time communicate to the Minister or to a person duly authorized to act for the Minister the address of the client last known to the lawyer so that the Minister may endeavour to advise the client of the claim of privilege that has been made on the client's behalf and thereby give the client an opportunity, if it is practicable within the time limited by this section, to waive the claim of privilege before the matter is to be decided by a court.

### Compliance

(16) No person shall hinder, molest or interfere with any person doing anything that the person is authorized to do under this section or prevent or attempt to prevent any person doing any such thing and, despite any other Act or law, every person shall, unless the person is unable to do so, do everything the person is required to do under this section. S.N.W.T. 1995,c.11,s.40; S.Nu. 2013,c.20,s.31(5).

## FORFEITURE

### Forfeiture on consent

- 27.** (1) A document or thing seized by an officer under section 23 is forfeited to the Government where
- (a) the owner or person in whose possession it was at the time of seizure consents in writing to the forfeiture of the document or thing; or
  - (b) the Minister has attempted to return the document or thing to the owner or person in whose possession it was at the time of seizure but was unable to do so because the owner or person was no longer at the address of the owner or person last known to the Minister.

### Disposal or destruction

- (2) The Minister may dispose of or destroy any document or thing forfeited under subsection (1).

### Liability for costs

- (3) If the Minister so directs, the owner or the person who was in lawful possession of the document or thing at the time it was seized is liable for all reasonable costs and expenses incurred as a result of the disposal or destruction of the thing seized.

### Liability for thing seized

- 28.** No right of action lies and no right of compensation exists against the Government, the Commissioner, the Minister or an officer or a person acting under the authority of any of them for loss or damage arising from the disposal authorized by this Act or the deterioration of any document or thing during any period when it is under seizure unless the Government or any such person was negligent in the care of the document or thing seized.

## ASSESSMENT

### Assessment

- 29.** (1) Where an employer is liable to pay an amount under subsection 11(3) or 12(3) as tax, the Minister may assess the employer in respect of the tax, interest or penalties payable under this Act and may reassess or make an additional assessment of tax, interest or penalty.

### Period for assessment

- (2) An assessment under subsection (1) may be made
- (a) at any time if the employer or person filing the return for the year under this Act has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud, in filing the return or in supplying any information under this Act or in omitting to disclose any information; or

- (b) within six years after the later of the day on which the return required under this Act to be filed was received by the Minister and the day on which the return was required to be filed with the Minister.

#### Notice of assessment

(3) Where the Minister assesses tax, interest or penalties under subsection (1), the Minister shall serve personally or by registered mail, a notice of assessment on the person liable to pay the amount assessed.

#### Continuation of liability

**30.** (1) Liability for tax or interest payable under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

#### Minister not bound by returns

(2) The Minister is not bound by a statement, a return or information filed or provided under this Act by or on behalf of any person and may assess the tax and any interest and penalties payable under this Act whether or not a return has been filed and despite the contents of any return or information filed with or provided to the Minister.

#### Assessment valid and binding

(3) An assessment, subject to being varied or vacated on an objection or appeal and subject to further assessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act related to the assessment.

#### Proof of amount of tax

(4) Evidence that an assessment under section 29 or 32 has been made is, in the absence of evidence to the contrary, proof that the amount of tax so assessed is due and owing to the Government and is payable by the person so assessed.

#### Payment

(5) Every employer shall, within 21 days after the day a notice of assessment is served, pay any assessed tax, interest and penalties then remaining unpaid, whether or not the tax was collected or an objection to or an appeal from the assessment is outstanding.

#### Payment forthwith

(6) The Minister may direct that all taxes, interest and penalties then remaining unpaid by an employer on the day the notice of assessment is made be paid forthwith by the employer where

- (a) the Minister is satisfied that the employer has collected the tax from the employer's employees;
- (b) the Minister is of the opinion that the employer is attempting to avoid payment of the taxes, interest or penalties; or



- (c) the Minister made the assessment after the employer failed to file a return required by or under this Act or filed an incomplete or inaccurate return.

#### Liability of receivers, etc.

(7) Every trustee or other person required by this Act to file a return under subsection 7(5) in respect of a year

- (a) shall, within 21 days after the day a notice of assessment is sent, pay all taxes, interest and penalties payable under this Act by the employer to the extent that the person has or had, at any time since the year, in the person's possession or control property belonging to the employer or the estate of the employer; and
- (b) shall, on payment of the taxes, interest and penalties referred to in paragraph (a), be deemed to have made the payment on behalf of the employer.

#### Certificate of taxes paid

(8) Every assignee, liquidator, receiver, receiver-manager and other agent, other than a trustee in bankruptcy, before distributing any property of the employer under the person's control, shall obtain a certificate from the Minister certifying that all taxes, interest and penalties that have been assessed under this Act and are chargeable against or payable out of the property of the employer have been paid or that security for the payment of the taxes, interest or penalties has been given under section 42.

S.Nu. 2013,c.20,s.31(5).

#### Copy of notice of assessment to employee

**31.** Every employer shall, within 14 days after the day a notice of assessment is served, provide a copy of it to each employee who is directly affected by the assessment.

## OBJECTIONS AND APPEALS

#### Objection to assessment

**32.** (1) An employer who objects to an assessment made under section 29 may, within 90 days after the day on which the notice of assessment is served, serve on the Minister a notice of objection in the form approved by the Minister containing the prescribed information and setting out the reasons for the objection and the relevant facts on which the objection is based.

#### Objection by employee

(2) An employee who objects to an assessment of tax made under section 29 that is in respect of remuneration received or deemed to be received by that employee or who objects to the value assigned to remuneration received or deemed to be received by that employee may, within 90 days after the earlier of the day on which a copy of the notice of assessment is provided to the employee and the day on which the employee becomes aware as to how he or she is affected by the assessment, serve on the Minister a notice of objection in the form approved by the Minister containing the prescribed information and

setting out the reasons for the objection and the relevant facts on which the objection is based.

#### Service of notice of objection

(3) A notice of objection shall be served by registered mail addressed to the Minister or by such other method as may be prescribed.

#### Acceptance of notice

(4) The Minister may accept a notice of objection under this section even if the notice was not served in the manner required by subsection (3).

#### Extension of time

(5) The Minister may, where the Minister considers it appropriate, extend the time within which a notice of objection must be served where the application for extension is made within one year after the day the notice of assessment, which is the subject of the objection, is sent.

#### Minister's duty to reconsider

(6) On receipt of a notice of objection, the Minister shall forthwith reconsider the assessment and vacate, confirm or vary the assessment.

#### Notice of action

(7) The Minister shall forthwith serve a notice on the person who served the notice of objection under subsection (1) or (2) as to the action taken by the Minister under subsection (6).

#### Subsequent assessment

(8) An assessment by the Minister in respect of tax, interest or penalties that relates to the same period or year in relation to which a notice of objection is served on the Minister or an appeal in respect of an objection is commenced in accordance with this Act does not invalidate the objection or appeal.

#### Appeal

**33.** (1) Where an employer has served a notice of objection under subsection 32(1) or an employee has served a notice of objection under subsection 32(2), the employer or employee, as the case may be, may appeal to the Nunavut Court of Justice to have the assessment vacated or varied after

- (a) the Minister has confirmed the assessment or varied the assessment, or
- (b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the employer or employee, as the case may be, that the Minister has vacated, confirmed or varied the assessment,

but no appeal under this section may be instituted after the expiration of 90 days after the day notice is served on the employer or employee, as the case may be, in accordance with subsection 32(7) that the Minister has vacated, confirmed or varied the assessment.

### Subject-matter of appeal

- (2) An appeal under this section may be taken
- (a) by an employer in respect of any question relating to the determination of
    - (i) whether the employer pays remuneration to an employee, or
    - (ii) the value assigned to remuneration received or deemed to be received by an employee of the employer; and
  - (b) by an employee in respect of any question relating to the determination of
    - (i) whether he or she is an employee, or
    - (ii) the value assigned to remuneration received or deemed to be received by the employee.

### Institution of appeal

(3) An appeal shall be instituted by serving on the Minister a notice of appeal in duplicate containing the prescribed information and by filing a copy of the notice with the Clerk of the Nunavut Court of Justice.

### Service

(4) A notice of appeal shall be served on the Minister by registered mail addressed to the Minister or by such other method as may be prescribed.

### Required particulars

(5) The person appealing shall set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and the reasons that the person intends to submit in support of the person's appeal.

### Extension of time

(6) Where an appeal to the Nunavut Court of Justice has not been instituted by an employer or an employee within the time limited by subsection (1) for doing so, the employer or employee, as the case may be, may make an application to the Supreme Court for an order extending the time within which the appeal may be instituted and the Supreme Court may make an order extending the time for appealing and may impose such terms as it considers just. S.Nu. 2013,c.20,s.31(5).

### Minister's reply to notice

**34.** (1) The Minister shall, within 60 days after the day the notice of appeal is received, or within such further time as the Nunavut Court of Justice or a judge may either before or after the expiration of that time allow, serve on the appellant and file in the Nunavut Court of Justice a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as the Minister intends to rely on.

**Court's discretion — notice of appeal**

(2) The Nunavut Court of Justice or a judge may, in the Court's or judge's discretion, strike out a notice of appeal or any part of a notice of appeal for failure to comply with subsection 33(5) and may permit an amendment to be made to a notice of appeal or a new notice of appeal to be substituted for the one struck out.

**Court's discretion — replies**

(3) The Nunavut Court of Justice or a judge may, in the Court's or judge's discretion,

- (a) strike out any part of a reply for failure to comply with this section or permit the amendment of a reply; or
- (b) strike out a reply for failure to comply with this section and order a new reply to be filed within a time to be fixed by the order.

**Court's discretion — failure to file new notice**

(4) Where a notice of appeal is struck out for failure to comply with subsection 33(5) and a new notice of appeal is not filed as and when permitted by the Nunavut Court of Justice or a judge, the Nunavut Court of Justice or a judge of the Court may, in the Court's or judge's discretion, dispose of the appeal by dismissing it.

**Court's discretion — failure to file reply**

(5) Where a reply is not filed as required by this section or is struck out under this section and a new reply is not filed as ordered by the Nunavut Court of Justice or a judge within the time ordered, the Court may dispose of the appeal, *ex parte* or after a hearing, on the basis that the allegations of fact contained in the notice of appeal are true. S.Nu. 2013,c.20,s.31(5).

**Effect of filing of material**

**35.** (1) On the filing of the notice of appeal in accordance with section 33 and the reply in accordance with section 34, the matter shall be deemed to be an action in the Nunavut Court of Justice and, unless the Court otherwise orders, ready for hearing.

**Court's discretion to allow further pleadings**

(2) Any fact or statutory provision not set out in the notice of appeal or reply may be pleaded or referred to in such manner and on such terms as the Nunavut Court of Justice may direct.

**Irregularity**

(3) An assessment shall not be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observation of any directory provision of this Act.

**Powers of Court**

(4) The Nunavut Court of Justice may dispose of an appeal by dismissing it, allowing it or by allowing it and

- (a) vacating the assessment;
- (b) varying the assessment;
- (c) restoring the assessment; or
- (d) referring the assessment back to the Minister for reconsideration and reassessment.

#### Order for payment

(5) The Nunavut Court of Justice may, in delivering judgment disposing of an appeal, order payment or refund of tax, interest, penalties or costs by the employer or employee, as the case may be, or the Minister, as the Court considers appropriate. S.Nu. 2013,c.20,s.31(5).

#### Further appeal

**36.** An appeal from a decision of the Nunavut Court of Justice to the Court of Appeal lies on any point of law raised on the hearing of the appeal. S.Nu. 2013,c.20,s.31(5).

#### Collection of tax where pending appeal

**37.** The filing and service of a notice of appeal by any person or any delay in the hearing of the appeal does not affect the due date, interest, penalties or any liability for payment provided under this Act in respect of any taxes due and payable or that have been collected on behalf of the Government that are the subject-matter of the appeal or in any way delay the collection of those taxes, but, where an assessment is set aside or reduced on appeal, the Minister shall refund the amount or excess amount of taxes that have been paid or collected and of any additional interest or penalty imposed and paid on those taxes.

## ADMINISTRATION AND ENFORCEMENT

### Administration

#### Minister's duty

**38.** (1) The Minister shall administer and enforce this Act and control and supervise all persons employed to carry out or enforce this Act and the deputy minister may exercise all the powers and perform the duties of the Minister under this Act, except any authority conferred on the Minister to make a regulation as defined in the *Statutory Instruments Act*.

#### Appointment of officers

(2) The Minister may appoint officers for the purposes of administering and enforcing this Act and the regulations.

#### *Ex-officio* officers

(3) Members of the Royal Canadian Mounted Police are, by virtue of their office, officers under this Act.

#### Extension for returns and remittances

(4) The Minister may extend the time for filing a return, providing information or paying an amount required to be paid under this Act, with or without interest.

#### Effect of extension

(5) Where the Minister extends the time within which a return of a person shall be filed or information shall be provided,

- (a) the return shall be filed, or information shall be provided, within the time as so extended;
- (b) any tax payable that the person is required to report in the return shall be paid or remitted within the time so extended;
- (c) interest is payable under subsection 12(2) as if the time had not been extended;
- (d) a penalty under subsection 12(1) or section 14 on any tax payable that the person is required to report in the return is payable only where the return is not filed or the tax is not paid or remitted within the time as so extended; and
- (e) a penalty under section 13 or 15 is payable only where the return is not filed or the information is not provided, as the case may be, within the time as so extended.

#### Waiver of penalty or interest

(6) The Minister may, with the approval of the Executive Council, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act. S.Nu. 2013,c.20,s.31(5).

#### Application to register by employer

**39.** (1) Subject to subsection (2), every employer shall apply to the Minister, before the expiry of 21 days after the day the employer first pays remuneration to an employee, to be registered for the purposes of this Act.

#### Transitional

(2) Every employer who has an employee on May 1, 1993 shall apply, before June 1, 1993, to the Minister to be registered for the purposes of this Act.

#### Form and contents of application

(3) An application for registration shall be made in the form approved by the Minister containing the prescribed information and shall be filed with the Minister in the prescribed manner.

#### Minister may require registration

(4) The Minister may, on demand served personally or by registered mail, require an employer to apply, within the time or by the date set out in the demand, to the Minister to be registered for the purposes of this Act.

### Penalty for failure to apply

(5) Every person who fails to apply for registration in accordance with a demand made under subsection (4) is liable to a penalty of \$250 for each failure.

### Registration

**40.** The Minister may register any person who applies for registration under section 39 and shall, on registration, assign a registration number to the person and notify the person in writing of the registration number and the effective date of the registration.

## Enforcement

### Recovery of taxes, etc.

**41.** (1) All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to the Government and are recoverable as such in any court of competent jurisdiction in Nunavut or in any other manner provided by this Act.

### Limitation

(2) No proceedings for the recovery of any tax, penalty, interest or other amount payable or remittable by a person under this Act shall be commenced,

- (a) in the case of an amount that may be assessed under this Act, unless at the time the action is commenced the person has been assessed for that amount; and
- (b) in any other case, more than six years after the person became liable to pay or remit the amount.

### Recovery by deduction or set-off

(3) Where a person is indebted to the Government under this Act, the Minister may require the retention by way of deduction or set-off of such amount as the Minister may specify out of any amount, except an amount to be paid to an employer under section 17, that may be or become payable to that person by the Government.  
S.Nu. 2013,c.20,s.31(5).

### Security

**42.** (1) The Minister may, if the Minister considers it advisable in a particular case, require that security be furnished to the Minister in an amount and a form satisfactory to the Minister for payment of any amount that is or may become remittable or payable under this Act and, where the Minister does so, the security shall be furnished by or on behalf of the person so required.

### Surrender of excess security

(2) Where a person who has furnished security, or on whose behalf security has been furnished, under this section requests in writing that the Minister surrender the security or any part of the security, the Minister may surrender the security to the extent that the Minister considers appropriate.

#### Assessment before collection

**43.** The Minister may not take any collection action under sections 44 to 49 in respect of any amount payable or remittable by a person that may be assessed under this Act, unless the amount has been assessed.

#### Certificate

**44.** (1) An amount payable or remittable under this Act by a person (in this section referred to as the "debtor"), or any part of any such amount, that has not been paid or remitted as and when required under this Act may be certified by the Minister as an amount payable by the debtor.

#### Registration in Nunavut Court of Justice

(2) On production to the Nunavut Court of Justice, a certificate made under subsection (1) in respect of a debtor shall be registered in the Nunavut Court of Justice and when so registered has the same effect, and all proceedings may be taken on the certificate, as if the certificate were a judgment obtained in the Nunavut Court of Justice against the debtor for a debt in the amount certified plus interest and penalty on such amount as provided in section 11, 12, 13 or 14 to the day of payment and, for the purposes of any such proceedings, the certificate shall be deemed to be a judgment of the Nunavut Court of Justice against the debtor for a debt due to the Government and enforceable as such.

#### Costs

(3) All reasonable costs and charges incurred or paid in respect of the registration in the Nunavut Court of Justice of a certificate made under subsection (1) or in respect of any proceedings taken to collect an amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

#### Details in certificates

(4) Despite any law of Nunavut, in any certificate made under subsection (1) in respect of a debtor or in any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes

- (a) to set out, as the amount payable by the debtor, the aggregate of amounts payable by the debtor without setting out the separate amounts making up that aggregate; and
- (b) to refer to the rate of interest to be charged on the separate amounts making up the amount payable in general terms as interest at the rate prescribed under subsection 17(1) of the *Financial Administration Act* applicable from time to time on amounts payable to the Minister, without indicating the specific rates of interest to be charged on each of the separate amounts or to be charged for any particular period of time.

**(5) Repealed, S.N.W.T. 1998,c.34,Sch.C,s.26.**

S.N.W.T. 1998,c.34,Sch.C,s.26; S.Nu. 2013,c.20,s.31(5).



## Definitions

**45.** (1) In this section,

"institution" means a bank, credit union, trust company or similar institution; (*institution*)

"tax debtor" means a person who is liable to pay or remit an amount under this Act.  
(*débiteur fiscal*)

## Notice of garnishment

(2) Where the Minister has knowledge or has reasonable grounds to believe that a person is or will be, within 90 days, liable to make a payment to a tax debtor, the Minister may, by written notice served personally or by registered mail, require the person to pay forthwith, where the money is immediately payable, and, in any other case, as and when the money becomes payable, the money otherwise payable to the tax debtor in whole or in part to the Minister on account of the tax debtor's liability under this Act.

## Notice of garnishment — money to be loaned, advanced or paid

(3) Without limiting the generality of subsection (2), where the Minister has knowledge or has reasonable grounds to believe that within 90 days

- (a) an institution will loan or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a tax debtor who is indebted to the institution and who has granted security in respect of the indebtedness, or
- (b) a person other than an institution will loan or advance money to, or make a payment on behalf of, a tax debtor who the Minister knows or has reasonable grounds to believe
  - (i) is employed by or is engaged in providing services or property to the person or was or will be, within 90 days, so employed or engaged, or
  - (ii) is not dealing at arm's length, within the meaning of section 251 of the *Income Tax Act* (Canada), with the person, where the person is a body corporate,

the Minister may, by written notice served personally or by registered mail, require the institution or the person, as the case may be, to pay in whole or in part to the Minister, on account of the tax debtor's liability under this Act, the money that would otherwise be loaned, advanced or paid and any money so paid to the Minister shall be deemed to have been loaned, advanced or paid, as the case may be, to the tax debtor.

## Notice of garnishment — money to be paid to tax debtor or secured creditor

(4) Despite any other provision of this Act, any other enactment or any law, where the Minister has knowledge or has reasonable grounds to believe that a particular person is or will become, within 90 days, liable to make a payment

- (a) to a tax debtor, or

- (b) to a secured creditor who has a right to receive the payment that, but for a security interest in favour of the secured creditor, would be payable to the tax debtor,

the Minister may, by a letter served personally or by registered mail, require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Minister on account of the tax debtor's liability under this Act and, on receipt of that letter by the particular person, the amount of those moneys that is required by that letter to be paid to the Minister shall, despite any security interest in those moneys, become the property of the Government to the extent of that liability as assessed by the Minister and shall be paid to the Minister in priority to any such security interest.

#### Definitions

- (5) In subsection (4),

"secured creditor" means a particular person who has a security interest in the property of another person or who acts for or on behalf of the particular person with respect to the security interest, and includes a trustee appointed under a trust deed relating to a security interest, a receiver or receiver-manager appointed by a secured creditor or by a court on the application of a secured creditor, a sequestrator and any other person performing a similar function; (*créancier garanti*)

"security interest" means any interest in property that secures payment or performance of an obligation, and includes an interest created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for. (*garantie*)

#### Effect of requirement

(6) Where the Minister has, under this section, required a person to pay to the Minister moneys otherwise payable by the person to a tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement

- (a) is applicable in respect of all such payments to be made by the person to the tax debtor until the liability under this Act is satisfied; and
- (b) operates to require payments to the Minister out of each such payment of such amount as may be specified by the Minister in the written notice.

#### Receipt of Minister

(7) A receipt issued by the Minister for money paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

#### Failure to comply

(8) Every person who fails to comply with a requirement under subsection (2), (4) or (6) is liable to pay to the Government an amount equal to the amount that the person was required under subsection (2), (4) or (6), as the case may be, to pay to the Minister.

#### *Idem*

(9) Every institution or person that fails to comply with a requirement under subsection (3) with respect to money to be loaned, advanced or paid is liable to pay to the Government an amount equal to the lesser of

- (a) the aggregate of money so loaned, advanced or paid; and
- (b) the amount that the institution or person was required under subsection (3) to pay to the Minister.

#### Assessment

(10) The Minister may assess any person for any amount payable under this section by the person to the Minister and, where the Minister does so, subsection 29(3) and sections 30 to 37 apply, with such modifications as the circumstances require.

#### Time limit

(11) An assessment of an amount payable under this section by a person to the Minister shall not be made more than three years after the notice from the Minister requiring payment is served on the person.

#### Effect of payment as required

(12) Where an amount that would otherwise have been payable to or on behalf of a tax debtor is paid by a person to the Minister pursuant to a notice from the Minister served under this section or pursuant to an assessment under subsection (10), the person shall be deemed, for all purposes, to have paid the amount to or on behalf of the tax debtor. S.Nu. 2013,c.20,s.31(5).

#### Right of Minister to acquire debtor's property

**46.** For the purpose of collecting a debt owed by a person to the Government under this Act, the Minister may purchase or otherwise acquire any interest in the person's property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption and may dispose of any interest so acquired in such manner as the Minister considers reasonable.

#### "Tax debtor" defined

**47.** (1) In this section, "tax debtor" means a person who is liable to pay or remit an amount under this Act.

#### Right to moneys seized by police

(2) Where the Minister has knowledge or has reasonable grounds to believe that a person is holding moneys that were seized by a police officer from a tax debtor in the course of administering or enforcing the laws of Nunavut and that are restorable to the

tax debtor, the Minister may, by letter served personally or by registered mail, require that person to turn over the moneys otherwise restorable to the tax debtor in whole or in part to the Minister on account of the tax debtor's liability under this Act.

#### Receipt of Minister

(3) The receipt of the Minister for moneys turned over as required under this section is a good and sufficient discharge of the requirement to restore the moneys to the tax debtor to the extent of the amount so turned over. S.Nu. 2013,c.20,s.31(5).

#### Seizure of chattels

**48.** (1) Where a person fails to pay an amount as required under this Act, the Minister may, by notice served personally or by registered mail addressed to the person's latest known address, give 15 days notice to the person of the intention of the Minister to direct that the person's goods and chattels be seized and sold and, if the person fails to make the payment before the expiration of the 15 days, the Minister may issue a certificate of the failure and direct that the person's goods and chattels that are located in Nunavut be seized.

#### Sale of chattels

(2) Property seized under this section shall be kept for 10 days at the expense and risk of the owner and, if the owner does not pay the amount due together with all expenses within the 10 days, the property seized shall be sold by public auction.

#### Notice of sale

(3) Except in the case of perishable goods, notice of a sale under subsection (2) setting out the time and place of the sale, together with a general description of the property to be sold shall, a reasonable time before the goods are to be sold, be published at least once in one or more newspapers of general local circulation.

#### Payment of surplus

(4) Any surplus resulting from a sale under subsection (2), after deduction of the amount owing and all expenses, shall be paid or returned to the owner of the property seized.

#### Exemption from seizure

(5) Goods and chattels of a person in default that would be exempt from seizure under a writ of execution are exempt from seizure under this section. S.Nu. 2013,c.20,s.31(5).

#### Suspicion of person's impending departure

**49.** (1) Where the Minister has reasonable grounds to believe that a person has left or is about to leave Nunavut or Canada, the Minister may, before the day otherwise fixed for payment, by notice served personally or by registered mail addressed to the person's last known address, demand payment of all taxes, interest and penalties for which the person is liable or would be liable if the time for payment had arrived, and they shall be paid forthwith despite any other provision of this Act.

### Seizure of chattels

(2) Where a person fails to pay tax, interest or penalties demanded under this section as required, the Minister may direct that the goods and chattels of the person that are located in Nunavut be seized and, on seizure, subsections 48(2) to (5) apply, with such modifications as the circumstances require. S.Nu. 2013,c.20,s.31(5).

### Director's liability

**50.** (1) Where a body corporate fails to remit an amount as required under section 6 or 7, the directors of the body corporate at the time the body corporate was required to remit the amount are jointly and severally liable, together with the body corporate, to pay that amount and any interest on that amount or penalties relating to that amount.

### Limitations

- (2) A director is not liable under subsection (1) unless
- (a) a certificate for the amount of the body corporate's liability referred to in that subsection has been registered in the Nunavut Court of Justice under subsection 44(2) and execution for such amount has been returned unsatisfied in whole or in part;
  - (b) the body corporate has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the body corporate's liability referred to in that subsection has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or
  - (c) the body corporate has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* (Canada) and a claim for the amount of the body corporate's liability referred to in that subsection has been proved within six months after the date of the assignment or receiving order.

### Defence

(3) A director is not liable for a failure under subsection (1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

### Assessment

(4) The Minister may assess a person for any amount payable by the person under this section and, where the Minister does so, subsection 29(3) and sections 30 to 37 apply, with such modifications as the circumstances require.

### Time limit

(5) An assessment under subsection (4) of any amount payable by a person who is a director of a body corporate shall not be commenced more than six years after the person last ceased to be a director of the body corporate.

#### Amount recoverable

(6) Where execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

#### Preference

(7) Where a director pays an amount in respect of a body corporate's liability referred to in subsection (1) that is proved in liquidation or dissolution proceedings, the director is entitled to any preference that the Government would have been entitled to had such amount not been so paid and, where a certificate that relates to such amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is hereby empowered to make.

#### Contribution

(8) A director who satisfies a claim under this section is entitled to contribution from the other directors who were liable for the claim. S.Nu. 2013,c.20,s.31(5).

#### Compliance by unincorporated bodies

**51.** (1) Where any amount is required to be paid or remitted or any other thing is required to be done by or under this Act or the regulations by a person (in this section referred to as the "body") that is not an individual, body corporate, partnership, trust or estate, it shall be the joint and several liability and responsibility of

- (a) every member of the body holding office as president, chairperson, treasurer, secretary or similar officer of the body,
- (b) where there are no such officers of the body, every member of any committee having management of the affairs of the body, and
- (c) where there are no such officers of the body and no such committee, every member of the body,

to pay or remit that amount or to comply with the requirement, and if the amount is paid or remitted or the requirement is fulfilled by an officer of the body, a member of such a committee or a member of the body, it shall be considered as compliance with the requirement.

#### Assessment

(2) The Minister may assess any person for any amount for which the person is liable under this section and, where the Minister sends a notice of assessment, subsection 29(3) and sections 30 to 37 apply, with such modifications as the circumstances require.

#### Limitation

- (3) An assessment of a person under subsection (2) shall not
- (a) include any amount that the body was liable to pay or remit before the day the person became jointly and severally liable;
  - (b) include any amount that the body became liable to pay or remit after the day the person ceased to be jointly and severally liable; or

- (c) be made more than two years after the day the person ceased to be jointly and severally liable unless the person was grossly negligent in the carrying out of any duty or obligation imposed on the body by or under this Act or made, participated in, assented to or acquiesced in the making of, a false statement or omission in a return, application, form, certificate, statement or answer made by the body.

#### Exercise of powers for recovery

**52.** (1) The powers conferred by this Act for the recovery of taxes or money collected as taxes by action in court and by filing a certificate may be exercised separately, concurrently or cumulatively.

#### Liability for payment of tax

(2) The liability of a person for the payment of any tax under this Act or the liability to remit taxes collected, is not affected in any way by the fact that a fine or penalty has been imposed on the person or paid by the person in respect of a contravention of this Act.

### General

#### Action re withholding

**53.** (1) No action lies against any person for withholding or deducting any money in compliance or intended compliance with this Act.

#### Taxes as trust money

(2) Every person who collects a tax imposed under this Act shall be deemed to hold it in trust for the Government until it is remitted to the Minister.

#### Amounts in trust not part of estate

(3) In the event of any liquidation, assignment or receivership of or by a person, an amount equal to the amount deemed under subsection (2) to be held in trust for the Government shall, for all purposes, be deemed to be separate from and to form no part of the estate in liquidation, assignment or receivership, whether or not that amount has in fact been kept separate and apart from the person's own moneys or from the assets of the estate.

#### Receipt of Minister

(4) The receipt of the Minister for an amount withheld or deducted by any person as required under this Act is a good and sufficient discharge of the liability of the person to the employees from whom the amount was withheld or deducted to the extent of the amount referred to in the receipt.

#### Execution of documents by body corporate

**54.** A return, certificate or other document made by a body corporate under this Act or the regulations shall be signed on its behalf by the president, secretary or treasurer of

the body corporate or by any officer or person duly authorized by the board of directors or other governing body of the body corporate to sign on its behalf.

#### Confidentiality

**55.** (1) Despite the *Access to Information and Protection of Privacy Act* and subject to subsection (2), no person employed by the Government shall communicate or allow to be communicated to any person information obtained under this Act in the course of his or her employment or allow any person to inspect or have access to any written statement provided under this Act except

- (a) as may be required in connection with the administration or enforcement of this Act, any other Act administered by the Minister or the *Income Tax Act* (Canada), the *Workers' Compensation Act* or the regulations made under any of them;
- (b) as may be required in connection with the development and evaluation of tax policy by the Government;
- (c) with the consent of the person to whom the information or statement relates; and
- (d) to a barrister or solicitor for the person so prohibited by this section.

#### Exceptions

(2) Despite the *Access to Information and Protection of Privacy Act*, the Minister may

- (a) communicate or allow to be communicated information obtained under this Act, or
- (b) allow inspection of or access to any written statement provided under this Act,

to a person employed by the Government of Canada or the government of a province or another territory if

- (c) the information and written statements obtained by that government for the purpose of any Act that imposes a tax similar to the tax imposed under this Act are communicated or provided on a reciprocal basis to the Minister, and
- (d) the information and written statements are not used for any purpose other than the administration or enforcement of a federal or provincial law or a law of the another territory that provides for the imposition of a similar tax.

S.Nu. 2007,c.8,s.11; S.Nu. 2013,c.20,s.31(5).

#### Agreements for exchange of information

**56.** The Minister may, for the purpose of administering and enforcing this Act, enter into an agreement with the Government of Canada or the government of a province or another territory under which such government will be allowed access to information obtained under this Act and the Minister will be allowed access to information obtained under any Act of such government. S.Nu. 2013,c.20,s.31(5).



## OFFENCES AND PUNISHMENT

## Offence and penalty

**57.** (1) Every person who fails to file a return as and when required under this Act or the regulations or who fails to comply with an obligation under subsection 19(3) or section 21, 22 or 25 or an order made under subsection (2) is guilty of an offence and is liable on summary conviction to

- (a) a fine of not less than \$1,000 and not more than \$25,000; or
- (b) both the fine referred in paragraph (a) and imprisonment for a term not exceeding 12 months.

## Compliance order

(2) Where a person is convicted by a court of an offence under subsection (1) for failure to comply with a provision of this Act or the regulations, the court may make such order as it considers proper in order to enforce compliance with the provision.

## Evasion of tax

**58.** (1) Every person who

- (a) makes, or participates in, assents to or acquiesces in the making of, false or deceptive statements in a return, an application, a certificate, a statement, a document or an answer filed or made as required under this Act or the regulations,
- (b) destroys, alters, mutilates, secretes or otherwise disposes of the books or records of an employer in order to evade payment of a tax imposed by this Act,
- (c) makes, or assents to or acquiesces in the making of, false or deceptive entries, or omits, or assents or acquiesces in the omission, to enter a material particular, in books or records of an employer,
- (d) wilfully, in any manner, evades or attempts to evade compliance with this Act or payment of taxes imposed by this Act,
- (e) conspires with any person to commit an offence described by paragraphs (a) to (d),

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

- (f) a fine of not less than 50% and not more than 200% of the amount of the tax that was sought to be evaded, or
- (g) both the fine described in paragraph (f) and imprisonment for a term not exceeding two years.

## Penalty on conviction

(2) A person who is convicted of an offence under subsection (1) is not liable to pay a penalty imposed under section 15 for the same evasion or attempt, unless a notice of assessment for that penalty was issued before the information or complaint giving rise to the conviction was laid or made.

**Wrongful attempt to obtain refund**

(3) Every person who wilfully, in any manner, obtained or attempted to obtain a refund to which the person is not entitled under this Act or conspires with any person to commit that offence is guilty of an offence and is liable on summary conviction to

- (a) a fine of not less than 50% and not more than 200% of the amount of refund that was sought to be obtained; or
- (b) both the fine described in paragraph (a) and imprisonment for a term not exceeding two years.

**Failure to pay, collect or remit taxes**

**59.** Every person who wilfully fails to pay, collect or remit tax as and when required under this Act is guilty of an offence and, in addition to any penalty or interest otherwise provided, is liable on summary conviction to

- (a) a fine not less than 50% and not more than 200% of the amount of tax that should have been paid, collected or remitted; or
- (b) both a fine referred to in paragraph (a) and imprisonment for a term not exceeding two years.

**Failure to register**

**60.** Every person who fails to make an application under section 39 to be registered is guilty of an offence and is liable on summary conviction to a fine of not less than \$1000 and not more than \$5000.

**Offence re confidential information**

**61.** Every person who

- (a) contravenes section 55, or
- (b) has been provided with information or a written statement under section 55 and knowingly uses, communicates or allows to be communicated the information or the information in the written statement for any purpose other than that for which it was provided,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$5000 or to imprisonment for a term not exceeding 12 months, or to both.

**General offence**

**62.** Every person who fails to comply with any provision of this Act or the regulations for which no other penalty is provided by or under this Act is guilty of an offence and liable on summary conviction to a fine not more than \$1,000.

**Liability of officers, etc.**

**63.** Where a body corporate is guilty of an offence under this Act, an officer, director or agent of the body corporate who directed, authorized, assented to, acquiesced in or participated in, the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to the punishment provided for the offence whether or not the body corporate has been prosecuted or convicted.

### Minimum penalties

**64.** Despite any other Act or law, a court may not, in any prosecution or proceeding under this Act, impose less than the minimum fine or imprisonment fixed by this Act and the court may not suspend sentence. S.Nu. 2013,c.20,s.31(5).

### Limitation

**65.** No proceedings may be commenced in respect of an offence under this Act or the regulations after six years from the time when the subject-matter of the proceedings arose.

## PROCEDURE AND EVIDENCE

### Address where service by registered mail

**66.** (1) A notice or other document that may be served by registered mail under this Act may be sent by registered mail addressed to the person on whom the notice or document is to be served at the latest known address of the person.

### Address

(2) Where the Minister is authorized or required to serve a notice or other document on or to a person that

- (a) is a partnership, the notice or document may be addressed to the name of the partnership;
- (b) is a union, the notice or document may be addressed to the name of the union;
- (c) is a society, club, association, organization or other body, the notice or document may be addressed to the name of the body; or
- (d) carries on business under a name other than the name of the person, the notice or document may be addressed to the name under which the person carries on business.

### Personal service

(3) Where the Minister is authorized or required to serve a notice or other document on or to a person that carries on business, the notice or document shall be deemed to have been validly served if,

- (a) where the person is a partnership, it is served personally on one of the partners or left with an adult person employed at the place of business of the partnership; or
- (b) where the person is one other than a partnership, it is left with an adult person employed at the place of business of the person.

### Registered mail

(4) A notice or other document that is sent by registered mail shall be deemed to be served on the earlier of

- (a) the day the addressee actually receives the notice or document; and
- (b) the expiration of 10 business days after the day the notice or document is mailed.

### Exception

(5) Paragraph (4)(b) does not apply where the person to whom the notice or other document is sent establishes that, although acting in good faith, the person did not receive the notice until a later date.

### Laying of information or complaint

**67.** (1) An information or complaint under this Act may be laid or made by an officer, by a member of the Royal Canadian Mounted Police or by any person authorized to do so by the Minister and, where an information or complaint purports to have been laid or made under this Act, it shall be deemed to have been laid or made by a person authorized to do so by the Minister and shall not be called in question for lack of authority of the informant or complainant except by the Minister or by some person acting for the Minister.

### Multiplicity of offences in single information or complaint

(2) An information or complaint in respect of an offence under this Act may be for one or more offences and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

### Proof of service by mail

**68.** (1) Where, under this Act or the regulations, provision is made for serving or sending by mail a request for information, notice or demand, an affidavit of an officer, sworn before a commissioner or other person authorized to take affidavits, setting out the following is admissible in evidence as proof, in the absence of evidence to the contrary, of the sending and of the request, notice or demand:

- (a) that the officer has knowledge of the facts in the particular case;
- (b) that such a request, notice or demand was sent by registered mail on a named day to the person to whom it was addressed, indicating such address;
- (c) that the officer identifies as exhibits attached to the affidavit the post office certificate of registration of the request, notice or demand or a true copy of the relevant portion of the certificate and a true copy of the request, notice or demand.

### Proof of personal service

(2) Where, under this Act or the regulations, provision is made for personal service of a request for information, notice or demand, an affidavit of an officer, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has knowledge of the facts in the particular case, that such a request, notice or demand was served personally on a named day on the person to whom it was directed, and that the officer identifies as an exhibit attached to the affidavit a true copy of the request, notice or demand, is admissible in evidence as proof, in the absence of evidence to the contrary, of the personal service and of the request, notice or demand.

#### Proof of failure to comply

(3) Where, under this Act or the regulations, a person is required to file or make a return, an application, a statement, an answer or a certificate, an affidavit of an officer, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that after a careful examination and search of the records the officer has been unable to find in a given case that the return, application, statement, answer or certificate, as the case may be, has been filed or made by that person is admissible in evidence as proof, in the absence of evidence to the contrary, that in such case that person did not file or make the return, application, statement, answer or certificate, as the case may be.

#### Proof of time of compliance

(4) Where, under this Act or the regulations, a person is required to file or make a return, an application, a statement, an answer or a certificate, an affidavit of an officer, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that after careful examination of such records the officer has found that the return, application, statement, answer or certificate, as the case may be, was filed or made on a particular day, is admissible in evidence as proof, in the absence of evidence to the contrary, that it was filed or made on that day and not before.

#### Proof of documents

(5) An affidavit of an officer, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document annexed to it is a document or true copy of a document made by or on behalf of the Minister or some person exercising the powers of the Minister or by or on behalf of a person, shall be received as proof, in the absence of evidence to the contrary, of the nature and contents of the document and is admissible in evidence and has the same probative force as the original document would have if it had been proven in the ordinary way.

#### Proof of no objection or appeal

(6) An affidavit of an officer, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and has knowledge of the practice of the Government in respect of the records and that an examination of the records shows that a notice of assessment was served on a person on a particular day under this Act and that, after careful examination and search of the records, the officer has been unable to find that a notice of objection or of appeal from the assessment, as the case may be, was received within the time allowed for the service of an objection or the institution of an appeal, is admissible in evidence as proof, in the absence of evidence to the contrary, of the statements contained in the affidavit.

#### Proof of signature and official character

(7) Where evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer it is not necessary to prove the

signature of the person or that the person is such an officer nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

#### Proof of documents

(8) Every document purporting to have been executed under or in the course of administration or enforcement of this Act over the name in writing of the Minister or an officer authorized by the regulations to exercise powers or perform duties of the Minister under this Act shall be deemed to be a document signed, made and issued by the Minister or the officer, as the case may be, unless called in question by the Minister or by some person acting for the Minister.

#### Proof of return where prosecution

(9) In any prosecution for an offence under this Act, the production of a return, an application, a certificate or a statement required under this Act or the regulations, purporting to have been filed by or on behalf of the person charged with the offence or to have been made or signed by or on behalf of that person, is admissible in evidence as proof, in the absence of evidence to the contrary, that the return, application, certificate or statement, as the case may be, was filed by or on behalf of that person or was made or signed by or on behalf of that person.

#### Proof of return in proceedings

(10) In any proceedings under this Act, the production of a return, an application, a certificate or a statement required under this Act or the regulations purporting to have been filed, made or signed by or on behalf of a person is admissible in evidence as proof, in the absence of evidence to the contrary, that such return, application, certificate or statement, as the case may be, was filed, made or signed by or on behalf of that person.

#### Proof of tax, penalty or interest not received

(11) In any prosecution for an offence under this Act, an affidavit of an officer, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that an examination of the records shows that an amount required under this Act to be remitted to the Minister on account of tax, penalty or interest has not been received by the Minister, is admissible in evidence as proof, in the absence of evidence to the contrary, of the statements contained in the affidavit.

#### Mailing date

**69.** (1) Where any notice or demand that the Minister is required or authorized under this Act to serve on a person is mailed to the person, the day of mailing shall be presumed to be the date of the notice or demand.

#### Assessment date

(2) Where any notice of an assessment has been sent by the Minister as required by this Act, the assessment shall be deemed to have been issued on the day of mailing of the notice of the assessment.

## Forms

(3) Every form purporting to be a form approved by the Minister shall be deemed to be a form approved by the Minister unless called in question by the Minister or some person acting for the Minister.

## REGULATIONS

## Regulations

**70.** (1) The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing the provinces or territories referred to in subsection 3(2.21);
- (a.1) respecting when and in what manner the amount to be collected under subsection 5(1) shall be collected;
- (b) respecting the valuation of non-monetary remuneration and when the amount to be collected under subsection 5(1) shall be collected in respect of it;
- (c) prescribing the information and documents that must be included in a return, a notice of objection, a notice of appeal and an application for registration, including copies of forms that may be required under the *Income Tax Act* or the *Income Tax Act* (Canada);
- (d) establishing reporting periods for employers and classes of employers;
- (e) prescribing, for employers or classes of employers, the manner and time in which returns must be filed with and a payment or remittance made to the Minister;
- (f) respecting the amendment of returns filed under section 6 or 7 and the payment or remittance of tax payable in respect of any amendment;
- (g) prescribing the information that must be provided by an employee to his or her employer and the circumstances in which the information may be used by the employer and prohibiting an employer from using the information for any other purpose;
- (h) prescribing a rate of interest to be paid under section 18 and the manner of calculating it;
- (i) providing for the assessment of an employee for the tax payable where the Minister considers it necessary and for penalties and interest payable where an employee is assessed and incorporating provisions of this Act for the collection of the tax from the employee;
- (j) providing for service on the Minister;
- (k) prescribing the manner in which an application for registration must be filed and respecting the registration of employers under section 39;

- (l) prescribing any matter or thing that by this Act may or is to be prescribed; and
- (m) generally to carry out the purposes and the provisions of this Act.

#### Retroactivity

(2) A regulation made under this Act shall, if it so provides, have retroactive effect provided that it

- (a) has a relieving effect only;
- (b) corrects an ambiguous or deficient enactment that was not in accordance with the objects of this Act;
- (c) is consequential on an amendment to this Act that is applicable before the day the regulation is published in the *Nunavut Gazette*;  
or
- (d) gives effect to a budgetary or other public announcement, in which case the regulation shall not, except where paragraph (a), (b) or (c) applies, have effect
  - (i) before the day on which the announcement was made, in the case of a deduction or withholding from an amount paid or credited, and
  - (ii) before the year in which the announcement is made, in any other case.

S.N.W.T. 1998,c.31,Sch.D,s.2; S.Nu. 2013,c.20,s.31(5).