

ABILL

ENTITLED

AN ACT to Validate and confirm as lawful the collection of tax on certain telephone calls, in good faith, during the period commencing on the 15th day of July, 2012 and ending on the date of coming into operation of this Act; to indemnify the Government and persons acting on behalf of the Government from liability in relation thereto; and for connected purposes.

WHEREAS section 3(1) of the *Provisional Collection of Tax Act* (hereinafter referred to as “the Act”) empowers the Minister responsible for finance to make an order providing for the variation of any tax for the time being in force, for the renewal for a further period of any tax in force during the previous financial year or which was imposed for any limited period, or for the imposition of any tax (hereinafter referred to as a “provisional collection of tax order”):

AND WHEREAS on the 24th day of March, 2012 revenue measures were tabled in the House of Representatives for the Fiscal Year 2012/2013 and pursuant to which it was announced that a tax would be imposed on inbound telephone calls terminating in Jamaica and calls emanating from and terminating in Jamaica:

AND WHEREAS the date for implementation of the tax on telephone calls at specified rates was announced in the House of Representatives to be the 15th day of July, 2012:

AND WHEREAS section 3(1) of the Act further provides that notwithstanding anything to the contrary the provisions of a provisional collection of tax order shall, for the period limited by that section and subject to the provisions of that Act, have effect as if contained in an Act of Parliament:

AND WHEREAS section 3(3) of the Act provides that a provisional collection of tax order shall, subject to subsection (4) of that section, continue for a period of six months next following publication thereof in the *Gazette* unless the House of Representatives by Resolution authorizes the continuance in force of the order for an additional period of three months:

AND WHEREAS the Minister responsible for finance made a provisional collection of tax order imposing a tax on certain telephone calls, cited as "The Provisional Collection of Tax (Telephone Calls Tax) Order, 2012", which came into operation on the date of its publication in the *Jamaica Gazette Proclamations, Rules and Regulations*, as legal Notice No. 125, on the 30th day of August, 2012 (hereinafter referred to as "the Order"):

AND WHEREAS section 3(4) of the Act provides further that a provisional collection of tax order shall cease to have effect if it is not confirmed (with or without modification) by Resolution of the House of Representatives within the next thirty days on which the House sits after the date of the order's publication in the *Gazette* or if an enactment comes into operation varying, renewing or imposing the tax:

AND WHEREAS section 4(2) of the Act provides that where a provisional collection of tax order under subsection (1) of section 3 ceases to have effect before an enactment comes into operation confirming or modifying the provisions thereof, any money paid in pursuance of that provisional collection of tax order shall be repaid or made good and any deduction made in pursuance of that provisional collection of tax order shall be deemed to be an unauthorized deduction:

AND WHEREAS the Order was not confirmed by the House of Representatives and without an enactment in operation confirming or modifying the provisions thereof, the continuance in force of the Order ceased in accordance with section 3(4) of the Act:

AND WHEREAS during the period commencing on the 15th day of July, 2012, prior to the publication of the Order and after the cessation of the continuance in force thereof—

- (a) persons who would have been liable for the payment of the tax on telephone calls under the Order purported to collect and make payment of the tax on telephone calls; and
- (b) the Government, and persons acting on behalf of the Government, varied, imposed, assessed and collected the tax on telephone calls,

in good faith, and inadvertent as to the collection of that tax being invalid, improper or without lawful authority, during that period:

AND WHEREAS it is desirable to validate and confirm as lawful the imposition, assessment, collection and variation of the tax on telephone calls in good faith, and inadvertent that the imposition, assessment, collection and variation thereof was invalid, improper and without lawful authority during the period commencing on the 15th day of July, 2012 and ending on the day of the coming into operation of this

Act and to indemnify the Government and persons acting on behalf of the Government from liability in relation thereto:

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NOW, THEREFORE, BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica and by the authority of the same as follows:—

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| Short title. | 1. This Act may be cited as the Telephone Calls Tax (Validation and Indemnification) Act, 2017. |
| Interpretation. | <p>2. In this Act, “tax” means the tax payable by a person who is a licensed carrier or service provider under the <i>Telecommunications Act</i>, on telephone calls provided—</p> <ul style="list-style-type: none"> (a) between points originating and terminating in Jamaica on a public network, whether a fixed network or a mobile network (other than a transit service); (b) from a point originating in Jamaica from a public network, whether a fixed network or a mobile network, and a point terminating outside of Jamaica; or (c) from a point originating outside of Jamaica and terminating on a mobile network in Jamaica that is a public network. |
| Validation and indemnity. | <p>3.—(1) Notwithstanding the <i>Provisional Collection of Tax Act</i> or anything to the contrary in any other enactment, the purported imposition, assessment, collection and variation of tax on telephone calls by the Government and persons acting on behalf of the Government, in good faith, and inadvertent as to the imposition, assessment, collection and variation of that tax being invalid, improper or having been collected without lawful authority, during the period commencing on the 15th day of July, 2012 and ending on the date of coming into force of this Act, is hereby declared to have been validly, properly and lawfully done and carried out to all intents and purposes and with effect as if duly authorized by law.</p> |

(2) Every person liable to be legally proceeded against on the ground that any of the acts referred to in subsection (1), though done in good faith, was unauthorized, unlawfully done, or otherwise illegal or improper, for any such reason, is hereby freed, acquitted, discharged and indemnified against The Queen's Most Excellent Majesty, Her Heirs and Successors as well as against all other persons, whatsoever, from such liability.

Passed in the House of Representatives this 15th day of March, 2017.

PEARNEL CHARLES
Speaker.

Passed in the Senate this 31st day of March, 2017 with one (1) amendment.

AUBYN HILL
Deputy President.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to validate and confirm as lawful the purported imposition, assessment, collection and variation of telephone call tax, in good faith, by the Government and persons acting on behalf of the Government and inadvertent as to the collection of that tax being invalid, improper or without lawful authority, during the period commencing July 15, 2012 and ending on the date of coming into operation of this Act.

**AUDLEY SHAW
Minister of Finance and the Public Service.**

A BILL

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AN ACT to Validate and confirm as lawful the collection of tax on certain telephone calls, in good faith, during the period commencing on the 15th day of July, 2012 and ending on the date of coming into operation of this Act; to indemnify the Government and persons acting on behalf of the Government from liability in relation thereto; and for connected purposes.

As passed in the Honourable House of Representatives.

As passed in the Honourable Senate.

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