



MONTSERRAT

CHAPTER 17.12

FOREIGN CURRENCY LEVY ACT and Subsidiary Legislation

Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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CHAPTER 17.12

FOREIGN CURRENCY LEVY ACT

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CHAPTER 17.12

FOREIGN CURRENCY LEVY ACT

(Acts 10 of 1985, 13 of 1988, 9 of 2011, S.R.O.s 95/2005 and 41/2007)

AN ACT TO CONSOLIDATE AND AMEND THE STATUTORY PROVISIONS
RELATING TO A FOREIGN CURRENCY LEVY.

Commencement

[11 June 1985]

Short title

1. This Act may be cited as the Foreign Currency Levy Act.

Interpretation

2. In this Act—

“**authorised dealer**” means a person authorised by the Governor acting on the advice of Cabinet to act for the purposes of the Exchange Control Act as an authorised dealer in relation to foreign currency; *(Amended by Act 9 of 2011)*

“**foreign currency**” means any currency other than local currency and includes travellers cheques, cheques and postal orders expressed in a foreign currency;

“**local currency**” means the currency issued by the Eastern Caribbean Central Bank;

“**Minister**” means the Minister responsible for Finance.

Tax on transaction involving foreign currency

3. (1) Subject to the provisions of section 6 there shall be imposed a tax (hereinafter referred to as “**the Levy**”) on every sale of foreign currency at such rate as specified below—

- (a) where the sale of foreign currency is in exchange for East Caribbean dollars at the rate of 0.00 per centum of the amount of the foreign currency involved in the sale; and
- (b) where the sale of foreign currency is in exchange for another foreign currency at the rate of 0.00 per centum of the amount of the foreign currency involved in the sale.

(2) The Governor acting on the advice of Cabinet may by order vary the rate of the Levy specified in subsection (1).

(Substituted by Act 13 of 1988 and amended by S.R.O. 41/2007 and Act 9 of 2011)

Tax payable on recipient of foreign currency

4. (1) Subject to the provisions of section 3, the Levy shall be payable in the first instance by the authorised dealer who sells foreign currency the subject of the Levy.

(2) An authorised dealer shall be entitled to require any person on whose behalf he sells foreign currency to remit to him the amount of the Levy payable on such transaction, and shall be entitled for that purpose to deduct the Levy from the proceeds of such transaction.

(3) An authorised dealer shall be liable to pay the Levy in respect of every sale whether on his own behalf or on behalf of another person if the Levy is payable on the transaction but not paid by any other person.

Tax when payable

5. (1) Subject to the provisions of subsection (2) the Levy shall become payable at the time and by reference to the exchange rates in effect when the sale is effected.

(2) Every authorised dealer shall remit to the Accountant General the Levy due on all sales effected by the authorised dealer, whether in his own right or on behalf of any other person, within fourteen days of the end of the calendar month in which such sale was so effected.

(3) Every authorised dealer shall make such periodical returns as may be required by regulations made under section 8 in relation to sales in foreign currency to which this Act applies and which have been effected by him, the Levy due thereon, the sum remitted by him and such other matters as may be prescribed.

Exemptions

6. (1) No Levy shall be payable where the sum involved in a sale of foreign currency, as expressed in local currency, is less than \$200.

(2) No Levy shall be payable on a sale of foreign currency, where the proceeds of such sale are shown to the satisfaction of the Minister to be for the purpose of purchasing or building residential property in Montserrat.

(3) No Levy shall be payable on a sale of foreign currency effected by or on behalf of—

(a) those charitable or similar organisations listed in the First Schedule; or

(b) those statutory corporations and similar bodies listed in the Second Schedule.

(4) The Governor acting on the advice of Cabinet may by Order exempt from all or any of the provisions of this Act an enterprise which is approved for the purposes of the Fiscal Incentives Act or a financial institution licenced for banking business under the provisions of the Banking Act. (*Amended by Act 9 of 2011*)

(5) No Levy shall be payable on a sale of foreign currency effected by or on behalf of the Government of Montserrat. In the event of any dispute arising as to the application of this exemption, the decision of the Minister shall be final and conclusive. In particular, no Levy shall be payable on the sale to an authorised dealer of foreign currency in the course of the collection of a tax.

Recovery of tax

7. All tax due under the provisions of this Act may be recovered by the Accountant General as a debt due to the Crown, and without prejudice to any other remedy may be recovered in a court of competent jurisdiction as a civil debt.

Regulations

8. The Governor acting on the advice of Cabinet may make regulations for the better carrying into effect of the provisions of this Act and without prejudice to the generality of the foregoing, may make regulations providing—

(a) for information to be supplied by authorised dealers when accounting for the tax;

- (b) for the methods of and time for the payment of the tax to the Accountant General;
- (c) for the issue of receipts upon payments of the tax.
(Amended by Act 9 of 2011)

Offence and penalties

9. (1) If any person fails to pay or account for any tax imposed under the provisions of this Act he shall be guilty of an offence and liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of two years, or to both such fine and imprisonment.

(2) If an offence under subsection (1) is committed by a body corporate, any person who, at the time of the commission of the offence was a director, manager, secretary or other similar officer of such a body corporate, or was purporting to act in any such capacity, may be found guilty of that offence, in addition to such body corporate, unless he proves that the contravention was committed without his knowledge or consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

FIRST SCHEDULE

(Section 6(3)(a))

Montserrat Branch British Red Cross Society
Save the Children Fund
Order of St. John
Scout Association
Girl Guide Association
Boys Brigade
Montserrat Family Planning Association
University of the West Indies
Old People's Welfare Association
Caribbean Family Planning Affiliation

SECOND SCHEDULE

(Section 6(3)(b))

Montserrat Development Finance and Marketing Corporation
Montserrat Utilities Limited
Montserrat Port Authority
Montserrat Land Development Authority
Montserrat Volcano Observatory
(Amended by S.R.O. 95/2005)

FOREIGN CURRENCY LEVY REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title
2. Interpretation
3. Records to be kept
4. Payment of tax
5. Receipts
6. Inspection of records
7. Application for exemption
8. Documentary evidence required
9. Refund of tax after production of evidence

APPENDIX 1: Certificate

APPENDIX 2: Application for Exemption from Foreign Currency Levy

FOREIGN CURRENCY LEVY REGULATIONS – SECTION 8

(S.R.O.s 23/1977 and 35/1979 and Act 9 of 2011)

Commencement

[1 July 1977]

Short title

1. These Regulations may be cited as the Foreign Currency Levy Regulations.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“**Accountant General**” means the Accountant General of Montserrat and includes any person appointed to act in that capacity;

“**Act**” means the Foreign Currency Levy Act;

“**authorised dealer**” means, in relation to any foreign currency, a person for the time being authorised by an order of the Governor acting on the advice of Cabinet to act, for the purposes of the Exchange Control Act, as an authorised dealer, in relation to foreign currency; *(Amended by Act 9 of 2011)*

“**foreign currency**” means any currency other than local currency and includes travellers cheques expressed in foreign currency;

“**Tax**” means the tax imposed by section 3 of the Act.

Records to be kept

3. Every authorised dealer shall keep records in such form as the Accountant General may require.

Payment of tax

4. (1) Every authorised dealer shall, not later than fourteen days after the end of each calendar month pay over to the Accountant General the tax collected by him during that month.

(2) At the time of payment every authorised dealer shall furnish to the Accountant General a statement showing—

- (a) the total amount of each foreign currency dealt in;
- (b) the total tax collected on all foreign currency;
- (c) the total tax collected on all foreign currencies during the month in respect of which the tax is being paid.

(3) At the time of payment every authorised dealer shall furnish to the Accountant General a Certificate in the form prescribed by Appendix to these Regulations.

Receipts

5. The Accountant General shall issue to each authorised dealer an official receipt for the amount paid to him.

Inspection of records

6. Every authorised dealer shall make available for inspection by the Accountant General and the Government Auditor on request the records prescribed to be kept by the Accountant General in Regulation 3.

Application for exemption

7. Any person wishing to apply for exemption from tax on the sale of foreign currency where the proceeds of sale are to be used for the purchase of property in Montserrat for residential purposes or the building of residential premises in Montserrat shall make application to the Minister responsible for Finance in the form prescribed in the Appendix 2.

(Inserted by S.R.O. 35/1979)

Documentary evidence required

8. The form shall be submitted in triplicate and shall be supported by the following documentary evidence—

- (a) Purchase of Property—
 - (i) the Vendor's receipt for the purchase price, if it has been paid;
 - (ii) a statutory declaration sworn by the purchaser or his duly authorised agent before a Commissioner of Oaths that the funds

are to be used or have been used for the purchase of the property described in the declaration;

- (iii) such other documentary evidence as the Minister may from time to time require;

(b) Building of Residential Property—

- (i) a copy of the Construction Agreement together with copies of the progress payment receipts, if any progress payments have been made;
- (ii) a statutory declaration sworn by the purchaser or his duly authorised agent before a Commissioner for Oaths that the funds are to be used or have been used for the construction of the property;
- (iii) such other documentary evidence as the Minister may from time to time require.

(Inserted by S.R.O. 35/1979)

Refund of tax after production of evidence

9. In the event that the required documentary evidence is not immediately available, exemption from the Levy will be granted only by way of refund when such documentary evidence has been produced.

(Inserted by S.R.O. 35/1979)

APPENDIX 1

FOREIGN CURRENCY LEVY REGULATIONS

(Regulation 4(3))

CERTIFICATE

I,, authorised signatory of the Bank an Authorised Dealer under the Exchange Control Act do hereby declare that the statement hereto attached exhibits a true and accurate record of the Bank's dealings in foreign currency for the purposes of the Foreign Currency Levy Act, during the period, 20..... .

.....
Authorised Signatory.

Date

APPENDIX 2

FOREIGN CURRENCY LEVY REGULATIONS

(Regulation 8)

APPLICATION FOR EXEMPTION FROM FOREIGN CURRENCY LEVY

1. Name and address of applicant
(BLOCK LETTERS)
2. Name and address of Bank through
which application is made.
3. Foreign Currency on which
exemption is sought (Amount in
words and figures)
4. Method of transfer (e.g. draft, M.T.,
T.T.)
5. Purpose for which proceeds of sale of
Foreign Exchange are to be used. (a) Purchase of Residential
Property
(b) Building of Residential
Property (*Delete as necessary*)
6. Where proceeds of sale are to be used
for the purchase of a Residential
Property—
 - (i) Address of Property to be
purchased.
 - (ii) Description of Property e.g.
Lot No./type of property.
 - (iii) Name and address of present
owner
.....
 - (iv) Purchase Price
 - (v) Name and address of Purchaser's
Solicitor

7. Where proceeds of sale of Foreign Exchange are to be used for building a residential property—

(i) Address of Plot/Lot No.

(ii) Name and address of contractor

(iii) Total cost of construction

(iv) Payment terms

I/We apply for exemption from foreign exchange Levy on the proceeding of sale of the amount of foreign exchange referred to in section 3 above.

Date: Signature of applicant.

Stamp of bank verifying applicant's signature and vouching for the accuracy of the statements.

Application approved/not approved

Stamp of Authorised Dealer

Ministry of Finance

Date

Date

FOREIGN CURRENCY LEVY (EXEMPTION) ORDER – SECTION 6

(S.R.O. 8/1988)

Commencement

[3 May 1988]

Short title

1. This Order may be cited as the Foreign Currency Levy (Exemption) Order.

Exemption from Foreign Currency Levy

2. The Bank of Montserrat Ltd. is hereby exempted from the Levy within the meaning of section 3 of the Foreign Currency Levy Act.
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