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THE EIGHT HUNDRED AND NINETY-SIXTH

# ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA  
ENTITLED

## INCOME TAX ACT, 2015

AN ACT to provide for the imposition of income tax and for related purposes.

DATE OF ASSENT: *1st September, 2015.*

PASSED by Parliament and assented to by the President:

### PART I

#### IMPOSITION OF INCOME TAX

##### **Imposition of income tax**

1. (1) Income tax is payable for each year of assessment by
  - (a) a person who has chargeable income for the year; and
  - (b) a person who receives a final withholding payment during the year.
- (2) The amount of income tax payable by a person for a year of assessment is the total of the amounts payable under subsection (1).
- (3) Subject to subsection (5), the income tax payable by a person under subsection (1)(a) is calculated by
  - (a) applying the relevant rates of income tax set out in the First Schedule to the chargeable income of that person; and
  - (b) deducting a foreign tax credit allowed to the person for the year.

(4) The income tax payable by a person under subsection (1)(b) is calculated by applying the relevant rate set out in the First Schedule to each final withholding payment.

(5) Income tax payable by an individual with respect to assessable income from a business may be subject to the modified taxation rules set out in the Second Schedule.

## **PART II**

### **INCOME TAX BASE**

#### *Division I: Chargeable income*

#### **Chargeable income**

2. (1) The chargeable income of a person for a year of assessment is the total of the assessable income of that person for the year from each employment, business or investment less the total amount of deduction allowed that person under this Act.

(2) A person who determines the chargeable income of that person or of another person shall, determine chargeable income from each source separately.

#### *Division II: Assessable income*

#### **Assessable income**

3. (1) The assessable income of a person for each year of assessment is the income of that person from any employment, business or investment.

(2) The assessable income of a person for a year of assessment from any employment, business or investment is

- (a) in the case of a resident person, the income of that person from each employment, business or investment for the year, whether or not the source from which the income is derived has ceased; and
- (b) in the case of a non-resident person,
  - (i) the income of that person from the employment, business or investment for the year, to the extent to which that income has a source in this country; and
  - (ii) where the person has a Ghanaian permanent establishment, income for the year that is connected with the permanent establishment, irrespective of the source of the income.

(3) The income of a person from an employment, business or investment has a source in this country if the income accrues in or is derived from this country.

(4) A person who is determining the assessable income of that person or of another person shall, determine the assessable income for each class of income separately.

**Income from employment**

4. (1) The income of an individual from an employment for a year of assessment is the gains and profits of that individual from the employment for the year or a part of the year.

(2) A person who is ascertaining the profits and gains of an individual from an employment for a year of assessment or for a part of that year shall

(a) include in the calculation, an amount specified in respect of

- (i) salary, wages, leave pay, fees, commissions, and gratuities;
- (ii) overtime pay and bonuses as provided by Regulations;
- (iii) personal allowances, including cost of living allowance, subsistence, rent, entertainment or travel allowance;
- (iv) a discharge or reimbursement of an expense incurred by an individual or an associate of the individual;
- (v) a payment made for the individual's agreement to conditions of the employment;
- (vi) subject to section 94, a retirement contribution made to a retirement fund on behalf of an employee and a retirement payment received in respect of an employment;
- (vii) other payments, including gifts, received in respect of the employment;
- (viii) other amounts required to be included under Part III; and

- (ix) any other allowance or benefit paid in cash or given in kind if they are derived by the individual during the year from the employment; and
- (b) exclude from the calculation, an amount specified in respect of
  - (i) an exemption under section 7;
  - (ii) a final withholding payment;
  - (iii) a discharge or reimbursement of an expense incurred by an individual on behalf of the employer of that individual that serves the proper business purposes of the employer;
  - (iv) a discharge or reimbursement of the dental, medical or health insurance expenses of an individual where the benefit is available to each full-time employee on equal terms;
  - (v) a payment providing passage of the individual to or from the country in respect of the first employment of that individual by the employer or termination of the employment where the individual
    - (A) is recruited or engaged outside the country;
    - (B) is in the country solely for the purpose of serving the employer; and
    - (C) is not a resident of the country;
  - (vi) a provision of accommodation by an employer carrying on a timber, mining, building, construction, farming business or petroleum operations to that person at a place or site where the field operation of the business is carried on or as prescribed by Regulations;
  - (vii) a payment made to employees on a non-discriminatory basis and which by reason of the size, type and frequency of the payments, are unreasonable or administratively impracticable for the employer to account for or to allocate to an individual; and
  - (viii) redundancy pay.

(3) For the purposes of this section, an amount, allowance or benefit is a gain or profit from employment, if the amount, allowance or benefit is provided

- (a) by the employer, an associate of the employer or a third party under an arrangement with the employer or the associate of the employer;
- (b) to an employee or an associate of the employee; and
- (c) in respect of past, present or prospective employment.

**Income from business**

5. (1) The income of a person from a business for a year of assessment is the gains and profits of that person from that business for the year or a part of the year.

(2) A person who is ascertaining the profits and gains of that person or of another person from a business for a year of assessment shall

(a) include in the calculation, an amount specified in respect of

- (i) service fees;
- (ii) consideration received in respect of trading stock;
- (iii) a gain from the realisation of capital assets and liabilities of the business as calculated under Part IV;
- (iv) an amount required by the Third Schedule to be included on the realisation of the depreciable assets of the person which are used in the business;
- (v) an amount derived as consideration for accepting a restriction on the capacity of the person to conduct the business;
- (vi) a gift received by the person in respect of the business;
- (vii) an amount derived that is effectively connected with the business and that would otherwise be included in calculating the income of the person from an investment; and
- (viii) any other amount required to be included under sections 54, 59, Part III or Part VI if they are derived by the person during the year from the business; and

- (b) exclude from the calculation,
  - (i) an amount specified in respect of an exemption under section 7;
  - (ii) an amount specified in respect of a final withholding payment; and
  - (iii) an amount that is included in calculating the income of the person from an employment.

**Income from investment**

6. (1) The income of a person from an investment for a year of assessment is the gains and profits of that person from conducting the investment for the year or a part of the year.

(2) A person who is ascertaining the profits and gains of that person or of another person from an investment for a year of assessment or for a part of the year shall

- (a) include in the calculation, an amount specified in respect of
  - of
    - (i) dividends, interest, annuity, natural resource payment, rent, and royalty;
    - (ii) a gain from the realisation of an investment asset as calculated under Part IV;
    - (iii) an amount derived as consideration for accepting a restriction on the capacity of the individual to conduct the investment;
    - (iv) winnings from lottery;
    - (v) a gift received by the person in respect of the investment; and
    - (vi) any other amount required to be included under section 59, Part III or Part VI if the amount is derived by the person during the year from the investment; and
- (b) exclude from the calculation,
  - (i) an amount specified in respect of an exemption under section 7;
  - (ii) a final withholding payment; and
  - (iii) an amount that is included in calculating the income of the person from an employment or business.

*Division III: Exempt amounts***Exempt amounts**

7. (1) The following are exempt from tax:
- (a) the salary, allowances, facilities, pension and gratuity of the President in accordance with Article 68 (5) of the Constitution;
  - (b) the income of the Government of Ghana or a local authority, other than income from activities which are only indirectly connected with the Government or status of the local authority;
  - (c) the income of a public corporation, where
    - (i) that public corporation is not set up as a commercial venture; and
    - (ii) the income is from an activity that is directly connected with the status of that public corporation;
  - (d) pension;
  - (e) a capital sum paid to a person as compensation or a gratuity in relation to
    - (i) a personal injury suffered by that person; or
    - (ii) the death of another person;
  - (f) the income of a non-resident person from a business of operating ships or aircrafts, where the Commissioner-General is satisfied that an equivalent exemption is granted by the country of residence of that person to persons resident in this country;
  - (g) the income from cocoa of a cocoa farmer;
  - (h) the income of a person receiving instruction at an educational institution from a scholarship, exhibition, bursary or similar educational endowment;
  - (i) the income of an individual entitled to privileges to the extent provided for by
    - (i) the Diplomatic Immunities Act, 1962 (Act 148) or a similar enactment;
    - (ii) an Act giving effect to the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialised Agencies of the United Nations;

- (iii) an Act giving effect to a Convention, treaty or protocol conferring privileges and immunities on an officer of an African Union or Economic Community of West African States office or secretariat or an agency of the two institutions; or
  - (iv) Regulations made under an Act referred to in subparagraph (i), (ii) or (iii);
- (j) the income of an individual to the extent provided for in an agreement between the Government of Ghana and a foreign government or a public international organisation for the provision of technical services to Ghana where
  - (i) the individual is a non-resident person or an individual who is resident in the country solely by reason of performing that service; and
  - (ii) the agreement has been ratified by Parliament in accordance with article 75 of the Constitution;
- (k) a cost of living allowance, other than training allowance paid in place of salary for services rendered abroad by members of the Ministry of Foreign Affairs, and officers attached to official Ghanaian diplomatic or consular missions abroad;
- (l) income from a temporary employment of an individual with the Government of Ghana, where
  - (i) that individual is not a citizen of the country;
  - (ii) the income is expressly exempt under the employment contract; and
  - (iii) the income is paid out of the Consolidated Fund;
- (m) the income of an individual from employment in the public service of the government of a foreign country, where
  - (i) the individual is either a non-resident, or is resident in the country solely by reason of performing that employment;
  - (ii) the individual does not exercise any other employment or carry on a business in the country;
  - (iii) the income is payable from the public funds of the foreign country; and
  - (iv) the income is subject to tax in the foreign country;

- (n) a state-owned or state-sponsored educational institution; and
- (o) an institution or trust of a public character established by an enactment solely for the purpose of scientific research.

(2) The Minister may, by legislative instrument, make Regulations to exempt a person, class of persons or income from tax.

(3) Subject to article 174 (2) of the Constitution, the Minister may grant a waiver or variation of tax imposed by this Act in favour of a person.

(4) Subsection (3) shall apply only where the tax liability of the person has already been ascertained.

(5) Despite any law to the contrary, an exemption shall not be provided from tax imposed by this Act and an agreement shall not be entered into that affects or purports to affect the application of this Act, except as provided for by this Act.

#### *Division IV: Deductions*

#### **General principles**

8. (1) Subject to the Sixth Schedule, the Commissioner-General shall not allow a deduction for the purpose of ascertaining the income of a person from employment.

(2) The Commissioner-General shall not allow a deduction in respect of domestic or excluded expenses incurred by a person.

(3) A specific deduction rule shall take precedence where more than one deduction rule applies.

#### **Residual deduction rule**

9. (1) A person who is ascertaining the income of that person or of another person from an investment or business conducted for a year of assessment or for a part of that year shall deduct from the income, an expense to the extent that that expense is wholly, exclusively and necessarily incurred by the person in the production of the income from the investment or business during the year.

(2) A deduction shall not be allowed under subsection (1) for an expense that is of a capital nature.

(3) For purposes of this section, “expense that is of a capital nature” includes an expense that secures a benefit that lasts for more than twelve months.

### **Interest**

**10.** For the purpose of section 9, interest incurred by a person during a year of assessment under a debt obligation of the person is incurred in the production of income to the extent that

- (a) where the debt obligation was incurred in borrowing money, the money is used during the year or was used to acquire an asset that is used during the year in the production of the income; and
- (b) the debt obligation was incurred in the production of income in any other case.

### **Trading stock**

**11.** (1) A person who is ascertaining the income of that person or of another person from a business for a year of assessment shall deduct in respect of trading stock of the business, the allowance calculated under subsection (2).

(2) The allowance is calculated by

- (a) adding the opening value of the trading stock of the business for the year of assessment to the expenses incurred by the person during the year and included in the cost of trading stock of the business; and
- (b) deducting from the sum obtained in paragraph (a) the closing value of trading stock of the business for the year.

(3) The opening value of trading stock of a business for a year of assessment is the closing value of trading stock of the business at the end of the previous year of assessment.

(4) The closing value of trading stock of a business for a year of assessment is the lower of

- (a) the cost of the trading stock of the business at the end of the year; or
- (b) the market value of the trading stock of the business at the end of the year.

(5) Where the closing value of trading stock is determined in accordance with subsection (4)(b), the person ascertaining the income shall reset the trading stock to that value.

### **Repairs and improvements**

**12.** (1) A person who is calculating the income of a person shall deduct from that income, any expense that is incurred by that person for the repair or improvement of a depreciable asset of that person, where the repair or improvement meets the requirements of section 9(1) irrespective of whether the expense is of a capital nature.

(2) Despite subsection (1), a deduction granted for a year of assessment with respect to a depreciable asset in a particular pool of depreciable assets of a person

(a) shall not exceed five percent of the written down value of the pool at the end of the year; and

(b) is allowed in the order in which the expense was incurred.

(3) An excess expense for which a deduction is not allowed as a result of the limitation in subsection (2) shall be added to the depreciation basis of the pool to which it relates.

### **Research and development expenses**

**13.** (1) A research and development expense that meets the requirements of section 9(1) may be deducted irrespective of whether the expense is of a capital nature.

(2) For purposes of this section, “research and development expense”

(a) includes an expense incurred by a person in the process of developing the business of that person and improving business products or processes; and

(b) excludes an expense incurred that is otherwise included in the cost of an asset used in the process referred to in paragraph (a).

### **Capital allowances**

**14.** (1) For the purposes of ascertaining the income of a person from a business for a year of assessment, the capital allowances referred to in subsection (2) are to be deducted.

(2) A capital allowance is

(a) granted in respect of a depreciable asset owned and used by a person during a year of assessment in the production of the income of that person from a business; and

(b) calculated in accordance with provisions specified in the Third Schedule.

(3) A person to whom capital allowance with respect to a particular year of assessment is granted shall take the capital allowance in that year and shall not defer that capital allowance.

#### **Losses on realisation of assets and liabilities**

**15.** (1) A person who is ascertaining the income of that person or of another person from an investment or business for a year of assessment shall, deduct

- (a) a loss of the person from the realisation of assets; and
- (b) liabilities referred to in subsection (2) during the year and calculated under Part IV.

(2) The losses required to be deducted under subsection (1) are losses from the realisation of

- (a) a capital asset of a business to the extent to which the asset is used in the production of income from the business;
- (b) a liability of a business to the extent to which
  - (i) in the case of a liability that is a debt obligation incurred in borrowing money, the money is used or an asset purchased with the money is used in the production of income from the business; and
  - (ii) the liability is wholly, exclusively and necessarily incurred in the production of income from the business in the case of any other liability; and
- (c) a capital asset of an investment to the extent to which the asset is used wholly, exclusively and necessarily in the production of income from the investment.

#### **Limit on deduction of financial costs**

**16.** (1) The amount of financial cost other than interest deducted in calculating the income of a person from an investment or a business conducted for a year of assessment shall not exceed the sum of

- (a) a financial gain derived by the person that is to be included in calculating the income of the person from the investment or business for the year of assessment; and

- (b) fifty percent of the income of the person for the year from the business or investment calculated without
  - (i) including a financial gain derived by the person, or
  - (ii) deducting a financial cost incurred by the person.

(2) A financial cost for which a deduction is denied as a result of subsection (1) may be carried forward in the order in which it is incurred and treated as incurred during any of the following five years of assessment, but only to the extent of an unused limitation in subsection (1) for the year.

(3) A financial cost which is carried forward shall be used in the order in which the financial cost is incurred.

(4) The Minister may, by legislative instrument, make Regulations to prescribe the circumstances under which a loss on a financial instrument may be set off against a gain on a financial instrument.

#### **Losses from business or investment**

17. (1) A person who is ascertaining the income of that person or of another person from a business for a year of assessment shall deduct

- (a) an unrelieved loss of the person in a specified priority sector for any of the previous five years of assessment from the business; or
- (b) an unrelieved loss of the person in all other sectors for any of the previous three years of assessment from the business.

(2) Despite subsection (1), where a person makes a loss and if the loss were a profit

- (a) the profit would be taxed at a reduced rate the loss shall be deducted only in calculating income taxed at the same reduced rate, a lower reduced rate or exempt amounts; or
- (b) the profit would be exempt, the loss shall be deducted only in calculating exempt amounts.

(3) Subsections (1) and (2) apply to the calculation of income from an investment and an unrelieved loss from an investment subject to subsection (4).

(4) An unrelieved loss from a business may be deducted in calculating income from an investment, but an unrelieved loss from an investment shall be deducted only in calculating income from an investment.

(5) For purposes of this section, unless the context otherwise requires, “loss” of a person for a year of assessment from a business or investment is calculated as the excess of amounts deducted in calculating the income of that person from the investment or business over amounts included in calculating that income; and

“unrelieved loss” means the amount of a loss that has not been deducted in calculating the income of the person under this section or section 23(5).

### PART III RULES GOVERNING AMOUNTS USED IN CALCULATING THE INCOME TAX BASE

#### *Division I: Tax accounting and timing*

#### **Year of assessment and basis period**

18. (1) The year of assessment for a person is the calendar year.

(2) The basis period of a person is,

(a) in the case of an individual or a partnership, the calendar year; and

(b) in the case of a company or a trust, the accounting year of the company or the trust.

(3) The Commissioner-General may, on application by a trust or company, approve a change of the accounting year of the trust or company on the terms and conditions that the Commissioner-General may approve.

(4) The Commissioner-General may revoke an approval granted under subsection (3) if the trust or company fails to comply with a condition attached to the approval.

(5) A change in the accounting year of a trust or company alters the time at which the trust or company is required to pay tax by instalments and on assessment under Part VIII.

**Method of accounting**

19. (1) Subject to this Act, the timing of inclusions and deductions in calculating the income of a person during a basis period shall be made in accordance with generally accepted accounting principles.

(2) For the purpose of ascertaining the income of an individual for income tax purposes from an employment or investment, an individual shall account on a cash basis.

(3) A company shall account for income tax purposes on an accrual basis.

(4) A person, other than a company, shall account for income tax purposes on either a cash or accrual basis, whichever most clearly reflects the income of that person.

(5) Subject to subsections (2), (3) and (4), where the Commissioner-General is satisfied that a particular method of accounting reflects the income of a person, the Commissioner-General may, by written notice,

(a) require that person to use a particular method of accounting;

or

(b) approve an application by a person to change the method of accounting of that person.

(6) Where the method of accounting of a person changes, an adjustment shall be made in the basis period following the change to ensure that an item is not omitted or taken into account more than once.

**Cash basis accounting**

20. For the purpose of cash basis accounting, a person

(a) derives an amount when a payment is received by, or made available to or in favour of that person; and

(b) incurs an expense or other amount when the expense or other amount is paid by that person.

**Accrual basis accounting**

21. (1) For the purpose of accrual basis accounting, a person

(a) derives an amount when the amount is receivable by the person; and

(b) incurs an expense or other amount when the expense or other amount is payable by the person.

(2) For the purpose of subsection (1)(a), an amount is receivable by a person when the person becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is payable by instalments.

(3) For the purpose of subsection (1)(b), an amount is treated as payable by the person when the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance occurs with respect to that amount.

(4) For the purpose of subsection (3), economic performance occurs

- (a) with respect to the acquisition of services or assets, at the time the service or asset is provided;
- (b) with respect to the use of an asset, at the time the asset is used; and
- (c) in any other case, at the time the person makes payment in full satisfaction of the liability.

(5) Where in calculating income on an accrual basis an inaccuracy occurs, appropriate adjustments shall be made at the time the payment is received or made in order to remedy the inaccuracy.

(6) For the purpose of subsection (5), an inaccuracy occurs where

- (a) a person accounts for a payment of a particular quantity to which the person is entitled or that the person is obliged to make; and
- (b) that entitlement or obligation is satisfied by a payment received or made by the person, of a different quantity.

(7) Where a person is allowed a deduction for an amount or an expense incurred on a service or other benefit which extends beyond twelve months, that person is allowed a deduction proportionately over the basis periods to which the service or other benefit relates.

### **Claim of right**

22. (1) A person is treated as deriving an amount if that person claims to be entitled to receive the amount, even though the person may not be legally entitled to receive that amount.

(2) A person is treated as incurring an amount if that person claims to be entitled to pay the amount, even though the person may not be legally obliged to pay that amount.

(3) The time at which the person is treated as deriving or incurring an amount referred to in subsection (1) or (2) shall be determined in accordance with sections 20 and 21.

**Reversal of amounts including bad debt**

23. (1) Where a person deducts an expense in calculating the income of that person and that person later recovers the expense, the person shall, at the time of recovery, include the amount recovered in calculating the income of that person.

(2) Where a person includes an amount in calculating the income of that person and that person later refunds the amount because of a legal obligation to refund, the person may, at the time of refund, deduct the amount refunded in calculating the income of that person.

(3) Where, in calculating income on an accrual basis, a person deducts an expense that that person is obliged to make and that person later disclaims an obligation to incur the expense, the person shall, at the time of the disclaimer, include the amount disclaimed in calculating the income of that person.

(4) Subsection (5) applies where, in calculating income on an accrual basis, a person includes an amount to which the person is entitled and the person later

(a) disclaims an entitlement to receive the amount; or

(b) in the case where the amount constitutes a debt claim of the person, the person writes off the debt claim as bad debt.

(5) Subject to subsections (6) and (7), the person may, at the time of the disclaimer or write off, deduct the amount disclaimed or written off in calculating the income of the person.

(6) Where a person has incurred a liability and the person includes the amount in calculating the income of the person and the liability ceases to exist in part or wholly because of the disclaimer on the

part of the person to whom the liability is owed, the person who incurred the liability shall bring to account at the time of the disclaimer an amount equivalent to the disclaimer in calculating the income of that person.

(7) Subject to section 87, a person shall not disclaim an entitlement to receive an amount or write off a debt claim as bad debt unless the Commissioner-General is satisfied that

- (a) the person has taken reasonable steps in pursuing payment; and
- (b) the entitlement or debt claim cannot be satisfied.

#### **Long-term contracts**

**24.** (1) This section applies to a person who

- (a) conducts a business;
- (b) accounts for income tax purposes on an accrual basis with respect to that business; and
- (c) is a party to a long-term contract.

(2) For the purpose of calculating the income of a person with respect to a long-term contract, an amount which is required to be included or deducted shall be taken into account on the basis of the percentage of the contract completed during each basis period.

(3) The percentage of completion shall be determined by comparing the total expenses allocated to the contract and incurred before the end of a basis period with the estimated total contract expenses as determined at the time of commencement of the contract.

(4) Subsection (6) applies where a long-term contract is completed and the person has an unrelieved loss attributable to that contract for the basis period in which the contract ended or an earlier basis period.

(5) An unrelieved loss of a business for a basis period is attributable to a long-term contract to the extent that there is a loss from the contract for the period.

(6) The Commissioner-General may allow an unrelieved loss to be carried back and treated as an unrelieved loss of an earlier basis period for the purposes of section 17.

(7) For the purpose of subsection (6), the amount carried back shall be limited to the profit from the contract for the basis period to which the loss is carried back.

(8) A profit or a loss from a long-term contract for a basis period is determined by comparing the amounts included in income under the contract with deductions under the contract for that period.

(9) For purposes of this section,

“long-term contract” means a contract

(a) for manufacture, installation, construction or, in relation to each, the performance of related services; and

(b) which is not completed within twelve months of the date on which work under the contract commences; and

“unrelieved loss” with respect to a business, has the meaning given in section 17.

#### **Foreign currency and financial instruments**

**25.** (1) This section applies where, under the rules in Divisions II or IV of Part II, a person is required to include an amount or may deduct an amount in relation to a financial instrument in calculating income from a business or investment.

(2) The determination of

(a) the time at which an amount is to be included or deducted,

(b) the person to whom the amount shall be allocated,

(c) the quantum of the amount, and

(d) the character of the amount

shall be in accordance with generally accepted accounting principles.

(3) Without limiting subsection (2), the generally accepted accounting principles apply even if the application of the principles requires the inclusion or deduction of an amount on a fair value accounting basis irrespective of

(a) the other provisions of this Division;

(b) whether or not the amounts have been derived, incurred or realised; and

(c) whether or not the amount is of a capital or revenue nature.

#### *Division II: Quantification, allocation and characterisation of amounts*

#### **Quantification according to market value**

**26.** (1) A payment or an amount to be included in income or deducted

from income is quantified in the amount

- (a) specified in the Fourth Schedule;
- (b) prescribed by Regulations; or
- (c) in any other case, according to the market value.

(2) The amount of a payment is quantified without reduction for any tax withheld from the payment under Division II of Part VIII.

(3) The market value is determined

- (a) with due regard for the arm's length standard referred to in section 31; or
- (b) in the case of an asset, without regard to any restriction on transfer of the asset or the fact that the asset is not otherwise convertible into a payment of money or money's worth.

#### **Indirect payments**

27. (1) Subsection (2) applies where a person

- (a) indirectly benefits from a payment; or
- (b) directs that another person is to be the payee of a payment and the payer intends the payment to benefit the person who gave the directive.

(2) Where subsection (1) applies, the Commissioner-General may, by practice note or by notice in writing served on the person,

- (a) treat that person as the payee of the payment;
- (b) treat that person as the payer of the payment; or
- (c) treat the person as the payee of the payment and as making an equal payment to the person who would be considered the payee of the payment if this subsection were ignored.

(3) In this section, an intention of the payer of a payment includes

- (a) an intention of an associate of the payer; or
- (b) a third person under an arrangement
  - (i) with the payer; or
  - (ii) with an associate of the payer.

#### **Jointly owned investment**

28. (1) In calculating the income of a person from an investment which is jointly owned with another person, the amounts to be included in the income and deducted from the income shall be apportioned among the joint owners in proportion to their interests in the investment.

(2) Where the interests of joint owners cannot be ascertained, the interests of the joint owners shall be treated as equal.

#### **Compensation and recovery payments**

29. (1) Subsection (2) applies where a person or an associate of a person derives an amount as compensation for the recovery of

- (a) income or an amount to be included in calculating income, which the person expects or is expected to derive; or
- (b) a loss or an amount to be deducted in calculating income, which the person has incurred or which the person expects or is expected to incur.

(2) Subject to section 23, the compensation amount is included in calculating income of the person and takes its character from the amount compensated for.

#### **Annuities, instalment sales and finance leases**

30. (1) In calculating the income of a person, any payment made by that person under a finance lease or in acquiring an asset under an instalment sale shall be treated as interest and a repayment of capital under a loan made by the lessor or seller to the lessee or buyer.

(2) In calculating the income of a person, any payment made to that person under an annuity shall be treated as interest and a repayment of capital under a loan made by that person to the payer of the annuity.

(3) The interest and repayment of capital under subsections (1) and (2) are calculated as if the loan were a blended loan with interest compounded on a six-month basis or any other period prescribed by Regulations.

(4) For purposes of this section,

“blended loan” means a loan

- (a) under which payments by the borrower represent in part a payment of interest and in part a repayment of capital;
- (b) in respect of which interest is calculated on capital outstanding at the time of each payment; and
- (c) in respect of which the rate of interest is uniform over the term of the loan;

“finance lease” means

- (a) a lease agreement that provides for transfer of ownership at the end of the lease term or where the lessee has an option to acquire the asset for a fixed or presupposed price after the expiry of the lease term;

- (b) a lease agreement in which the lease term exceeds seventy-five percent of the useful life of the asset;
  - (c) a lease agreement in which the estimated market value of the asset after expiry of the lease term is less than twenty percent of the market value of that lease agreement at the start of the lease;
  - (d) in the case of a lease that commences before the last twenty-five percent of the useful life of the asset, the present value of the minimum lease payments equals or exceeds ninety percent of the market value of the asset at the start of the lease term; or
  - (e) a lease agreement in which the asset is custom-made for the lessee and after expiry of the lease term the asset will not be of practical use to any person other than the lessee;
- “instalment sale” excludes a sale that provides for commercial periodic interest payable on sales proceeds outstanding; and  
“lease term” includes an additional period for which a lessee has an option to renew a lease.

**Arm’s length standard and arrangements between associates**

31. (1) Where an arrangement exists between persons who are in a controlled relationship, the persons shall calculate their income, and tax payable, according to the arm’s length standard.

(2) The arm’s length standard requires persons who are in a controlled relationship, to quantify, characterise, apportion and allocate amounts to be included in or deducted from income to reflect an arrangement that would have been made between independent persons.

(3) The Minister may, by legislative instrument, make Regulations on matters relating to transfer pricing and the application of the arm’s length standard.

(4) Where in the opinion of the Commissioner-General, a person has failed to comply with subsection (1), the Commissioner-General may make adjustments consistent with subsection (2).

(5) The Commissioner-General may, in carrying out an adjustment in subsection (4),

- (a) re-characterise an arrangement made between persons who are in a controlled relationship, including re-characterising debt financing as equity financing;

- (b) re-characterise the source and type of any income, loss, amount or payment; and
- (c) apportion and allocate expenditure, including the activities specified in section 107 (2) based on turnover.

**Income splitting**

32. (1) Where a person attempts to split income with another person, the Commissioner-General may, by notice in writing to that person, prevent a reduction in tax payable.

(2) The Commissioner-General may, in the notice referred to in subsection (1),

- (a) adjust the amount to be included in or deducted from income for the purpose of calculating the income of each person; or
- (b) re-characterise the source and type of any income, loss, amount or payment.

(3) A reference to a person attempting to split income includes a reference to an arrangement between associated persons,

- (a) for the transfer of an asset, directly or indirectly, including the transfer of an amount derived;
- (b) where the transferor retains legal or implicit right to benefit from the asset currently or in the future; and
- (c) where one of the reasons for the transfer is to lower the tax payable by an associated person.

**Thin capitalisation**

33. (1) Where a resident entity which is not a financial institution and in which fifty percent or more of the underlying ownership or control is held by an exempt person either alone or together with an associate has a debt-to-equity ratio in excess of three-to-one at any time during a basis period, a deduction is disallowed for any interest paid or foreign currency exchange loss incurred by that entity during that period on that part of the debt which exceeds the three-to-one ratio, being a portion of the interest or loss otherwise deductible but for this subsection.

- (2) For purposes of this section,  
“exempt person” means
- (a) a non-resident person;
  - (b) a resident person for whom interest is paid to an exempt person by a resident entity or for whom a foreign exchange gain realised with respect to a debt claim against the resident entity
    - (i) constitutes exempt income; or
    - (ii) is not included in ascertaining the exempt assessable income of that person; and
  - (c) “resident entity” means a resident partnership, resident company, resident trust or permanent establishment of a non-resident person in the country.

#### **General anti-avoidance rule**

**34.** (1) For purposes of determining a tax liability under this Act, the Commissioner-General may re-characterise or disregard an arrangement that is entered into or carried out as part of a tax avoidance scheme

- (a) which is fictitious or does not have a substantial economic effect; or
- (b) whose form does not reflect its substance.

- (2) For purposes of this section,  
“arrangement” includes an action, agreement, course of conduct, promise, transaction, understanding or undertaking, which is
- (a) express or implied;
  - (b) enforceable by legal proceedings or not; and
  - (c) unilateral or involves two or more persons; and
- “tax avoidance” includes an arrangement, the main purpose of which is to avoid or reduce tax liability.

**PART IV****ASSETS AND LIABILITIES***Division I: Central concepts***Calculation of gains and losses**

**35.** (1) A gain made by a person from the realisation of an asset or liability is the amount by which

- (a) the sum of the consideration received for the asset exceeds the cost of the asset at the time of realisation; or
- (b) the sum of the consideration offered for the liability is less than the amount outstanding at the time of realisation.

(2) A loss of a person from the realisation of an asset or liability is the amount by which

- (a) the cost of the asset exceeds the sum of the consideration received for the asset at the time of realisation; or
- (b) the sum of the consideration offered for the liability is more than the amount outstanding at the time of realisation.

**Cost of an asset**

**36.** (1) Subject to this Act, the cost of an asset of a person is the sum of

- (a) expenditure incurred by the person in the acquisition of the asset and includes where relevant, expenditure of construction, manufacture or production of the asset;
- (b) expenditure incurred by the person in altering, improving, maintaining or repairing the asset;
- (c) incidental expenditure incurred by the person in acquiring and realising the asset; and
- (d) income amounts referred to in subsection (2).

(2) An income amount is

- (a) an amount
  - (i) required by Division II of Part II to be directly included in calculating the income of a person; or
  - (ii) that is an exempt amount or final withholding payment of that person; or
- (b) the amount referred to in paragraph (a), which is derived from the sale of an asset or any other expenditure of the type mentioned in subsection (1)(b) or (c) as incurred by the purchase in respect of that asset.

- (3) The cost of an asset does not include
  - (a) consumption expenditure incurred by the owner of the asset;
  - (b) excluded expenditure and expenditure that is directly deducted from the income of the owner of the asset; or
  - (c) expenditure included in the cost of another asset.
- (4) In this section, incidental expenditure incurred by a person in acquiring or realising an asset includes
  - (a) advertising expenditure, transfer taxes, duties and other expenditure incurred as a result of a transfer of the asset;
  - (b) expenditure incurred in establishing, preserving or defending ownership of the asset; and
  - (c) remuneration for the services of an accountant, agent, auctioneer, broker, consultant, legal advisor, surveyor or valuer in relation to an expenditure referred to in paragraph (a) or (b).

**Consideration received**

37. (1) Subject to this Act, consideration received for an asset of a person at a particular time means
- (a) an amount derived by that person for owning that asset, which includes an amount
    - (i) derived from altering the value of that asset; and
    - (ii) in the nature of a covenant to repair that asset or otherwise; and
  - (b) an amount derived by that person or an entitlement for that person to derive an amount in the future in respect of realising that asset.
- (2) The consideration received by a person for an asset does not include
- (a) an exempt amount;
  - (b) a final withholding payment; or
  - (c) an amount to be directly included in calculating the income of that person under Division II of Part II.
- (3) Subsection (2)(b) does not apply to trading stock.

**Realisation**

**38.** (1) Subject to this Act, a person who owns an asset realises the asset,

- (a) if that person parts with the ownership of that asset, including when that asset is sold, exchanged, transferred, distributed, redeemed, destroyed, lost, expired or surrendered;
- (b) in the case of an asset of a person who ceases to exist, including by reason of death, immediately before that person ceased to exist;
- (c) in the case of an asset other than trading stock or a depreciable asset, if the sum of consideration received by that person from the sale of the asset exceeds the cost of that asset;
- (d) in the case of an asset that is a debt claim owned by a person other than a financial institution, if that person
  - (i) reasonably believes that the debt claim will not be satisfied;
  - (ii) has taken reasonable steps in pursuing the debt claim; and
  - (iii) has written off the debt claim as a bad debt;
- (e) if that person uses trading stock, a depreciable asset, a capital asset of a business or an investment asset in a way that changes the original characterisation of that asset; or
- (f) in the circumstances specified in sections 62 and 102.

(2) Subsection (1) does not apply to the realisation of an asset accruing to or derived by a company arising out of a merger, amalgamation or re-organisation of the company where there is continuity of underlying ownership of the asset of at least fifty percent.

**Application of this Division to liabilities**

**39.** (1) The cost of and consideration received for a liability of a person are determined consistently with sections 37 and 38 as if a reference to an asset is a reference to a liability, and includes the following:

- (a) in terms of the cost, the expenditure incurred in realising the liability; and
- (b) in terms of consideration received, the amounts derived in incurring the liability.

(2) Subject to this Act, a person who owes a liability realises that liability

- (a) when that person ceases to owe that liability and includes where that liability is transferred, satisfied, cancelled, released or expired;
- (b) immediately before that person ceases to exist, including by reason of death, in the case of the liability of a person who ceases to exist; and
- (c) in the circumstances specified in sections 62(1) and 102.

(3) Subject to Regulations made under this Act, the provisions of Division II apply, with the necessary modifications, to a liability or an asset.

#### **Reverse, quantification and compensation of amounts**

**40.** (1) Subject to section 23, where a person includes expenditure in a liability or in the cost of an asset and later recovers that expenditure, that person shall include the amount recovered in the consideration received for the asset or liability.

(2) Subject to section 23, where an amount that is included in the consideration received by a person for an asset or is refunded due to a legal obligation to do so, that person may include the amount refunded in the cost of the asset.

(3) Subsection (4) applies where a person or an associate of a person derives a compensation amount for

- (a) the recovery of actual or expected costs, or expected consideration for an asset or a liability; or
- (b) a loss in value of an asset or increase in a liability.

(4) Subject to any other adjustment made under this Act, the compensation amount includes the consideration received for the asset or liability.

#### *Division II: Special rules*

#### **Cost of trading stock and other fungible assets**

**41.** (1) For purposes of determining the cost of trading stock of a business of a person

- (a) an amount incurred in respect of the repair, improvement or depreciation of a depreciable asset is not to be included; and

(b) subject to paragraph (a), a person making a determination of the cost of trading stock shall use the absorption-cost method for an amount that is eligible for inclusion in the cost of the trading stock.

(2) The owner of trading stock or any other type of asset prescribed by Regulations to be fungible and not readily identifiable, may determine the cost of that asset by using the first-in-first-out method or the average-cost method.

(3) The method opted for under subsection (2) may be changed by the owner with the written permission of the Commissioner-General.

(4) For purposes of this section, unless the context otherwise requires,

“absorption-cost method” means the generally accepted accounting principle under which the cost of trading stock is the sum of direct asset costs, direct labour costs and factory overhead costs;

“average-cost method” means the generally accepted accounting principle under which costs are allocated to fungible assets of a particular type owned by a person based on a weighted average cost of all assets of that type owned by the person;

“direct asset cost” means an expenditure incurred by a person in acquiring an asset that constitutes trading stock or has become an integral part of trading stock produced;

“direct labour costs” means expenditure incurred by a person on labour that directly relates to the production of trading stock;

“factory overhead cost” means an expenditure other than direct labour and direct asset cost incurred by a person in the production of trading stock; and

“first-in-first-out method” means the generally accepted accounting principle under which costs are allocated to a fungible asset of a particular type owned by a person based on the assumption that assets of that type owned by that person are realised in the order of their acquisition.

**Realisation with retention of asset**

42. Where a person realises an asset in any of the manners described in section 38(d) to (f)

- (a) that person is treated as having parted with the ownership of the asset, and has derived an amount that is equal to the market value of the asset at the time of the realisation; and
- (b) that person is treated as re-acquiring that asset and in the re-acquisition incurred expenditure of the amount referred to in paragraph (a).

**Transfer of asset to spouse or former spouse**

43. Where on the death or as part of a divorce settlement or *bona fide* separation agreement, an individual transfers an asset to a spouse or former spouse,

- (a) that individual is treated as having derived an amount in respect of the realisation equal to the net cost of the asset immediately before the realisation; and
- (b) the spouse or former spouse is treated as incurring expenditure of the amount specified in paragraph (a) in acquiring the asset.

**Transfer of asset on death**

44. Subject to section 43, where an individual realises an asset on death, by way of transfer of ownership of the asset to another person

- (a) that individual is treated as deriving an amount in respect of the realisation equal to the market value of the asset at the time of realisation; and
- (b) the person who acquires the asset is treated as incurring an expenditure of the amount specified in paragraph (a) in acquiring the asset.

**Transfer of asset for no consideration**

45. (1) Subject to sections 43 and 44, where a person realises an asset

- (a) by way of transfer of ownership of the asset to a person who is in a controlled relationship with that person,
- (b) by way of transfer to any other person,
- (c) by way of gift other than under a will,
- (d) upon intestacy, or
- (e) by way of transfer to the spouse, child or parent of that person,

that person is treated as having derived an amount in respect of that realisation equal to the greater of the market value of the asset or the net cost of the asset immediately before the realisation.

(2) A person who acquires ownership of an asset realised in accordance with subsection (1) is treated as incurring expenditure of the amount equal to the market value or the net cost of the asset immediately before the acquisition.

(3) Where a person realises by way of transfer of ownership of the asset to an associate of the person, an asset which is a trading stock, a depreciable asset or a capital asset of a business, and the requirements of subsection (4) are met,

- (a) the person, in respect of the realisation, is treated as having derived an amount equal to the net cost of the asset immediately before the realisation; and
- (b) the associate of that person is treated as incurring expenditure of an amount equal to the net cost of the asset immediately before the realisation.

(4) The requirements referred to in subsection (3) are,

- (a) either the person or the associate is an entity;
- (b) that the asset is a trading stock, depreciable asset or capital asset of a business of the associate immediately after transfer by that person;
- (c) that at the time of the transfer
  - (i) the person and the associate are residents; and
  - (ii) the associate, or in the case of an associate partnership, none of its partners is exempt from income tax; and
- (d) that there is at least fifty percent continuity of the underlying ownership in the asset.

#### **Realisation of asset with replacement asset**

46. (1) This section applies where a person
- (a) realises an asset in a manner specified in section 38(a); and
  - (b) acquires an asset of the same type to replace the asset to be realised and the acquisition was done within six months before the date of realisation of the asset; or
  - (c) acquires an asset of the same type to replace the asset realised within one year after the realisation of the asset.

- (2) Where this section applies, the person is,
- (a) in respect of the realisation treated as deriving an amount equal to
    - (i) the net cost of the asset immediately before the realisation; and
    - (ii) the amount, if any, by which the amount derived in respect of the realisation exceeds the expenditure incurred in acquiring the replacement asset; and
  - (b) treated as incurring expenditure in acquiring the replacement asset, an amount equal to
    - (i) the amount referred to in paragraph (a)(i); and
    - (ii) the amount, if any, by which expenditure incurred in acquiring the replacement asset exceeds the amount derived in respect of the realisation.

**Realisation of asset by way of merger, amalgamation or re-organisation**

47. The gains on realisation of an asset accruing to or derived by a company arising out of a merger, amalgamation or re-organisation of a company is exempt from tax where there is continuity of at least fifty per cent of the underlying ownership in the asset.

**Transfer by way of security, finance lease or instalment sale**

48. (1) Where a person grants a legal or equitable mortgage or a similar form of security over an asset to secure a debt owed by that person to another person,

- (a) the mortgagor shall not be treated as realising the asset or any part of it, but as still owning the asset and as having incurred a liability which is a secured debt; and
- (b) the mortgagee shall not be treated as having acquired the asset or any part of it, but as owning the secured debt.

(2) Where an asset is leased under a finance lease, the lessor is treated as transferring ownership of the asset to the lessee.

(3) Subject to section 45, where a person transfers an asset under an instalment sale or under a finance lease as specified in subsection (2),

- (a) that person is treated as deriving an amount in respect of the transfer equal to the market value of the asset immediately before the transfer; and

(b) the person who acquires the asset is treated as incurring expenditure of an amount equal to the amount referred to in paragraph (a) in acquiring the asset.

(4) Where the lessee under a finance lease returns the asset to the lessor before ownership passes to the lessee, other than by reason of subsection (2), the Commissioner-General shall treat the lessee as transferring ownership of the asset to the lessor.

(5) For purposes of this section, “finance lease” and “instalment sale” have the meaning assigned in section 30.

#### **Realisation by separation**

**49.** (1) Subject to section 48, where a right or an obligation with respect to an asset owned by a person is created in another person, including the lease of an asset or part of the asset, if the right or obligation

(a) is permanent, that person is treated as realising part of the asset, but is not treated as acquiring any new asset or liability; or

(b) is temporary or contingent, that person is not treated as realising part of the asset or liability, but as acquiring a new asset or incurring a new liability, as the case requires.

(2) A right or an obligation is considered permanent where the right or obligation is to last for more than fifty years.

#### **Apportionment of costs and consideration received**

**50.** (1) Where a person acquires more than one asset at the same time by way of transfer or as part of the same arrangement, the expenditure incurred in acquiring each asset is apportioned between the assets according to the market value of each of the assets at the time of acquisition.

(2) Where a person realises more than one asset at the same time by way of transfer or as part of the same arrangement, the amounts derived in realising each asset is apportioned between the assets according to the market value of each of the assets at the time of realisation.

(3) Where a person who owns an asset realises part of the asset, the net cost of the asset immediately before the realisation is apportioned between the part of the asset realised and the part retained according to the market value of the asset on the date of realisation.

**PART V**  
**RULES GOVERNING TYPES OF PERSONS**

*Division I: Individuals*

**Personal reliefs**

**51.** In arriving at the chargeable income of a resident individual for a year of assessment under section 2, deduct the personal reliefs specified in the Fifth Schedule.

*Division II: Partnerships*

**Principles of Taxation**

**52.** (1) A partnership is not liable to pay income tax with respect to the chargeable income of the partnership and is not entitled to any tax credit with respect to that income, but the partnership is liable to pay income tax with respect to final withholding payments.

(2) The income of a partnership or a loss of a partnership is to be allocated to the partners in accordance with this Division.

(3) An amount derived and expenditure incurred by a partner for and on behalf of the partnership in common is treated as an amount derived or expenditure incurred by the partnership and not the individual partners.

(4) An asset owned or a liability owed by a partner for and on behalf of the partnership in common is treated as an asset or a liability of the partnership and not the individual partners, and is treated

(a) in the case of an asset acquired, when the asset begins to be owned in that way;

(b) in the case of a liability incurred, when the liability begins to be owed in that way; and

(c) as realised, when the asset ceases to be owned or the liability ceases to be owed in that way.

(5) Subject to this Act, the activities of a partnership are treated as conducted in the course of a single partnership business.

(6) Subject to this Act, an arrangement between a partnership and its partners is recognised and taken into account in determining the share of an individual partner under section 54(5).

- (7) Subsection (6) does not apply to the following:
- (a) a loan made by a partner to the partnership and any interest paid on the loan; and
  - (b) a service provided by a partner to the partnership, including the employment of that partner and any service fee or income from employment payable in relation to the service provided.

(8) Subject to section 59, where there is a change of partners in a partnership and at least two existing partners continue, the partnership is treated as the same entity before and after the change.

#### **Partnership income or loss**

**53.** (1) The income of a partnership for a year of assessment is the income of the partnership from the business of the partnership for that year.

(2) A loss incurred by a partnership for a year of assessment is the loss incurred by the partnership from the business of the partnership for that year.

#### **Taxation of partners**

**54.** (1) For purposes of calculating the income of a partner from a partnership for a year of assessment, the person who is doing the calculation shall include the share of a partner of any partnership income or deduct the share of that partner in any loss incurred by the partnership for the relevant partnership year.

(2) The relevant partnership year for the purpose of subsection (1) is the year of assessment of the partnership ending on the last day of assessment of the partner or during the year of assessment of the partner.

(3) A person who calculates the income of a partner shall treat a gain on the disposal of an interest of that partner in the partnership as income from a business and shall include that income in the calculation of the income of that partner.

(4) Subject to the adjustments in section 55, a gain specified in subsection (3) is calculated under Part IV.

(5) Income of a partnership or a loss incurred by a partnership and allocated to partners under subsection (1)

- (a) retains its character as to type and source;

- (b) is treated as an amount derived or expenditure incurred, respectively, by a partner at the end of the year of assessment of the partnership; and
  - (c) is allocated to the partners in proportion to the share of each partner, unless the Commissioner-General, by notice in writing and for good cause, orders otherwise.
- (6) Tax paid under this Act and foreign income tax paid or treated as paid by a partnership in relation to the income of the partnership is
  - (a) allocated to the partners, in proportion to the share of each partner; and
  - (b) treated as paid by the partners.
- (7) An allocation in subsection (6) (a) occurs at the time partnership income is treated as derived by the partners under paragraph (b) of subsection (5).
- (8) For purposes of this section and subject to section 52(6), the share of a partner is equal to the percentage interest of that partner in any income of the partnership as set out in the partnership arrangement.

**Cost of and consideration received for partnership interest**

- 55.** (1) The following are included in calculating the cost of a membership interest of a partner in a partnership:
- (a) the amount included in calculating the income of that partner under section 52(1), at the time of the inclusion of the amount; and
  - (b) the share of exempt amounts and final withholding payments of the partner derived by the partnership, at the time the amount or payment is derived.
- (2) The following are included in calculating the consideration received for a membership interest of a partner in a partnership:
- (a) the amount deducted in calculating the income of the partner under section 52(1), at the time of deduction of the amount;
  - (b) a distribution made by the partnership to the partner, at the time of distribution; and
  - (c) the share of domestic or excluded expenditure of the partner incurred by the partnership at the time the expenditure is incurred.

*Division III: Trusts***Taxation of trusts**

56. (1) A trust is liable to tax separately from the beneficiaries of the trust.

(2) Where a group of persons are trustees for more than one trust, the income of each trust shall be calculated separately regardless of the fact that the trusts have the same trustees.

(3) A person who calculates the tax liability of a trust shall treat the trust as an entity.

(4) Subsection (3) does not apply to a trust of an incapacitated individual.

(5) A person who calculates the tax liability of a trust referred to in subsection (4) shall treat the trust as though it were an individual.

(6) A person shall treat an amount derived and expenditure incurred by a trust or a trustee, as an amount derived or an expenditure incurred by the trust.

(7) Subsection (6) applies

(a) whether or not the amount is derived or incurred on behalf of another person; and

(b) whether or not any other person is entitled to that amount or income constituted by that amount.

(8) A person shall treat an asset owned or liability owed by a trust or a trustee as an asset or a liability of the trust.

(9) Subsections (6) and (8) do not apply if the trustee acts as an agent.

(10) Subject to this Act, a person shall give effect to an arrangement between a trust and its trustees or beneficiaries.

**Taxation of a beneficiary of a trust**

57. (1) A distribution

(a) of a resident trust is exempt from taxation if the distribution is in the hands of the beneficiary of the trust; and

(b) of a non-resident trust is included in calculating the income of the beneficiary of the trust.

(2) A gain on the disposal of the interest of a beneficiary in a trust is included in calculating the income of the beneficiary.

*Division IV: Companies***Taxation of companies**

**58.** (1) A company is liable to tax separately from its shareholders.

(2) An amount derived and an expenditure incurred jointly or severally by the managers or shareholders for the purpose of a company is deemed to be derived or incurred by that company even when that company lacks the legal capacity to derive that amount or incur that expenditure.

(3) An asset owned and a liability owed jointly or severally by the managers or shareholders for the purpose of a company is deemed to be owned or owed by that company even when that company lacks the legal capacity to own that asset or owe that liability.

(4) Subject to this Act, all activities of a company are treated as conducted in the course of a single business of that company.

(5) Subject to this Act, a person shall give effect to an arrangement between a company and a manager or shareholder of that company.

**Taxation of shareholders**

**59.** (1) Subject to subsection (3), a resident company which pays a dividend to a shareholder shall withhold tax on the amount of the dividend.

(2) For the purpose of ascertaining the income of a shareholder, the person who does the calculation shall include in the calculation

(a) a dividend paid by a non-resident company to the shareholder; and

(b) a gain made on the disposal of the shares, where a shareholder disposes of shares in a company.

(3) A dividend paid to a resident company by another resident company is exempt from tax where the company that received the dividend controls indirectly or directly, at least twenty-five percent of the voting power of the company which paid the dividend.

(4) Subsection (3) does not apply to

(a) a dividend paid to a company by virtue of its ownership of redeemable shares in the company that paid the dividend;  
or

(b) a dividend that is the result of recharacterisation under sections 31(5) and 32(2).

(5) A dividend is deemed to be paid to each shareholder of a company in proportion to the respective interest of the shareholder, if

- (a) the dividend consists of profits which are capitalised; or
- (b) the dividend falls under subsection (8).

(6) The Commissioner-General shall, in the case of capitalisation of profits, direct the company to pay appropriate tax in accordance with this Act.

(7) The Commissioner-General shall, in issuing directives under subsection (6), consider the matters contained in subsection (9) with the necessary modifications to make that subsection applicable to subsection (6).

(8) Where the Commissioner-General is satisfied that a company controlled by not more than five persons and their associates does not distribute to its shareholders as dividends, a reasonable part of the income of the company from all sources for a basis period within a reasonable time after the end of the basis period, the Commissioner-General may, by notice in writing treat as dividend, that part of the income of that company which the Commissioner-General determines to be dividend paid to its shareholders during that period or any other period.

(9) The Commissioner-General shall, in determining whether a company has distributed a reasonable part of its income from all sources for a basis period, consider

- (a) the current requirement of the business of the company after accounting for any adjustment which the Commissioner-General may make under section 31 and paragraph 53 of the Seventh Schedule; and
- (b) any other requirement necessary for the maintenance and development of the business.

#### **Branch profit tax**

**60.** (1) A non-resident person who carries on business in Ghana through a permanent establishment and who earns repatriated profits shall pay tax on the repatriated profits earned for a basis period ending within the year of assessment.

(2) A non-resident person who has earned repatriated profits under subsection (1) shall pay a final tax on the gross amount of the earned repatriated profits to the Commissioner-General in accordance with the prescribed rate within thirty days after the end of the basis period.

(3) For purposes of subsections (1) and (2), a person shall treat the portion of the net profit of the resident person which corresponds to the interest of the non-resident shareholders as repatriated profits and as dividends distributed in accordance with the respective shares of the non-resident person in the company.

*Division V: General provisions applicable to entities*

**Asset dealing between entities and members**

**61.** Subject to section 45(2), where an asset is realised by way of transfer of ownership of that asset between an entity and one of its members

- (a) the transferor is considered to have received, in respect of the asset realised, an amount equal to the market value of the asset immediately before the realisation; and
- (b) the transferee is considered to have incurred an expenditure equal to the amount referred to in paragraph (a).

**Change in ownership**

**62.** (1) Where the underlying ownership of an entity changes by more than fifty percent at any time within a period of three years, the assets and liabilities of that entity immediately before the change is deemed to be realised.

(2) An entity that changes ownership in the manner referred to in subsection (1), shall not

- (a) deduct financial costs carried forward under section 16(3) that were incurred by the entity before the change;
- (b) deduct a loss under section 17(1) that was incurred by the entity before the change;
- (c) claim a deduction under section 23 (2), (4) or (5) after the change, in a case where the entity has included an amount in calculating income under those provisions before the change; or
- (d) carry back a loss under section 24(6) that was incurred after the change to a year of assessment before the change.

(3) Where a change in ownership of the type referred to in subsection (1) occurs during a year of assessment of an entity, the period before the change and the period after the change shall be treated as separate years of assessment.

**PART VI**  
**SPECIAL INDUSTRIES**

*Division I: Petroleum operations*

**Principles of taxation**

63. (1) There is imposed a tax on the income of a person from petroleum operations, referred to in this Act as the petroleum income tax.

(2) The petroleum income tax payable under subsection (1) shall be calculated for each year of assessment, by applying the rate of tax specified in the First Schedule to the chargeable income of that person from petroleum operations.

(3) Where a person has chargeable income other than income derived from petroleum operations that income shall be charged in accordance with section 1.

(4) For the purpose of ascertaining the assessable income of a person from petroleum operations, the person who is calculating the assessable income

- (a) shall treat each separate petroleum operation as an independent business; and
- (b) shall calculate the tax liability of each independent business for each year of assessment.

(5) Section 31 applies

- (a) to an arrangement between a separate petroleum operation and any other activity of the person conducting the petroleum operation as if the arrangement was conducted between persons who are in a controlled relationship; and
- (b) to an arrangement which is subject to subsection (7)

(6) For the purpose of subsection (5), the transfer of an asset to or from a separate petroleum operation shall, for purposes of this Act, be treated as an acquisition or disposal of the asset.

(7) Where two or more persons hold a petroleum right under an arrangement other than a partnership, a person who calculates the assessable income from the petroleum operations shall

- (a) calculate the assessable income of each person from the petroleum operations separately; and
- (b) calculate the assessable income of each person as if the persons were in a controlled relationship.

(8) A person who is liable to pay petroleum income tax, including interest, fines and penalties imposed under this Act or the Petroleum Revenue Management Act, 2011 (Act 815) shall pay the tax

- (a) in the currency provided for in the applicable petroleum agreement; and
- (b) in the absence of any express agreement, in Cedis.

#### **Separate petroleum operations**

64. (1) Subject to subsection (2), a petroleum operation pertaining to a petroleum right shall constitute a separate petroleum operation.

(2) The following rules shall apply where a development plan for a petroleum agreement area is approved:

- (a) a petroleum operation conducted
  - (i) with respect to the petroleum right before the date of approval of the development plan; and
  - (ii) with respect to the development and production area after the date of approval of the development plan

shall be treated as conducted with respect to the same separate petroleum operation; and

- (b) from the date of approval of the development plan, a petroleum operation conducted with respect to the petroleum right that is not in respect of the development and production area shall, be considered as a new separate petroleum operation.

#### **Exploration and development operations**

65. (1) This section applies to exploration and development operations conducted by a person as part of a separate petroleum operation before the commencement of production.

(2) A person who incurs a revenue expenditure or a capital expenditure in the course of exploration and development operations shall place the expenditure in a single pool and

- (a) a deduction or capital allowance shall not be granted by the Commissioner-General with respect to the expenditure; and
- (b) the expenditure shall not form part of the cost of an asset.

(3) A person shall not include an expenditure in the pool referred to in subsection (2) if that expenditure

- (a) is a domestic or an excluded expenditure; or
- (b) fails to meet the requirements of section 67(2)(b)(i) or (ii).

(4) Except for an amount that will be included to reduce the pool referred to in subsection (2), a person, shall not include in the pool referred to in that subsection

- (a) an amount which is included in calculating the income of the person from the separate petroleum operation; or
- (b) a consideration received in respect of a depreciable asset or capital asset of the operation.

(5) A person shall carry forward the balance in the pool referred to in subsection (2) from year to year until production commences.

(6) Where at the end of a year of assessment the balance in the pool is negative by reason of a reduction in subsection (4)

- (a) the negative amount shall be included in calculating the income of that person from the separate petroleum operation for the year; and
- (b) the balance shall not be carried forward to the next year of assessment.

(7) Where a person commences production with respect to a separate petroleum operation, the balance in the pool of exploration and development expenditure at that time shall be capitalised by that person and the Commissioner-General shall grant capital allowances in respect of that expenditure.

### **Income from petroleum operations**

**66.** (1) Subject to section 65, the income of a person from petroleum operations for a year of assessment includes:

- (a) the market value of petroleum obtained from the petroleum agreement area that is disposed of during the year or that is treated as disposed of during the year;
- (b) a compensation derived, whether under a policy of insurance or otherwise, in respect of loss or destruction of petroleum from the petroleum agreement area;
- (c) an amount derived in respect of the sale of information pertaining to the operations or petroleum reserves;

- (d) a gain from the assignment or other disposal of an interest in the petroleum right with respect to which the operation is conducted;
  - (e) an amount required to be included under section 70 in respect of a surplus in a decommissioning fund;
  - (f) an amount received after production commenced as reimbursement of cost and premium to a sole risk party under the sole risk terms of a joint operating agreement; and
  - (g) any other amount derived by the person during the year from or incidental to the operation that are included in calculating income under other provisions of this Act.
- (2) For the purpose of subsection (1)(a), the market value of petroleum
- (a) is determined in accordance with the method prescribed in the petroleum agreement; and
  - (b) shall not be less than the value receivable in a transaction that satisfies the requirements of section 31 without any discount, commission or deduction.

#### **Deductions for petroleum operations**

**67.** (1) Subject to sections 8, 65 and this section, a person who calculates the income of another person from a separate petroleum operation for a year of assessment shall deduct the following from the assessable income:

- (a) annual rental charges and royalties paid by the person under the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84) with respect to the petroleum operation;
- (b) capital allowances granted with respect to the petroleum operation and calculated in accordance with Part II of the Third Schedule;
- (c) contributions to and other expenses incurred in respect of a decommissioning fund for the petroleum operation in accordance with the rules established for that fund;
- (d) expenses incurred by that person in the course of closure of the petroleum operation, where funds in the relevant decommissioning fund are not yet available or are inadequate; and

- (e) any other amount incurred directly by that person in the course of the petroleum operation, which amount may be deducted under other provisions of this Act.
- (2) In calculating income from a separate petroleum operation, the Commissioner-General shall not allow a deduction
  - (a) for research and development expenditure;
  - (b) for an amount, unless the amount
    - (i) is wholly, exclusively and necessarily incurred in the acquisition or improvement of a valuable asset used in the operation; or
    - (ii) is wholly, exclusively and necessarily incurred in acquiring services or facilities for the operation;and is income of the recipient which has a source in Ghana;
  - (c) if the amount contravenes section 31;
  - (d) for a bonus payment made in respect of the grant of the petroleum right; or
  - (e) for expenditure incurred as a consequence of a breach of a petroleum agreement.
- (3) For the purpose of the application of section 14,
  - (a) “written down value” of a pool of depreciable assets means the written down value of all assets in that pool as determined under Part II of the Third Schedule; and
  - (b) excess expense referred to in section 12(3) shall be added to the pool of depreciable assets of the year in which the expense is incurred.
- (4) In ascertaining the income of a person from a separate petroleum operation for a year of assessment, relevant financial costs incurred during the year may be deducted only to the extent that relevant financial gains are included in calculating that income.
- (5) Without limiting section 16, a person may set off a loss in respect of a financial instrument against a gain in respect of a financial instrument only.

(6) A financial cost for which a deduction is not available under subsection (4) may be carried forward by the person and treated as incurred during any of the subsequent five years of assessment.

(7) Where a person carries forward a financial cost under subsection (6), that cost shall be deducted by that person from the income of that person in the order in which the cost was incurred.

(8) Where there is a change in ownership of an entity in the manner referred to in section 62, a carry forward of financial cost under subsection (6) is subject to section 62.

(9) Subject to section 65 and for the purpose of granting a capital allowance, the cost of a depreciable asset with respect to a separate petroleum operation includes

- (a) the cost of the petroleum right;
- (b) the balance in the pool of exploration and development expenditure at the time production commences;
- (c) expenditure incurred in developing petroleum operations and infrastructure, including expenditure which
  - (i) is capitalised in accordance with generally accepted accounting principles; and
  - (ii) does not otherwise qualify to be included in the cost of an asset; and
- (d) bonus payments made in respect of the grant of the petroleum right.

(10) The Minister may, by legislative instrument, make Regulations to prescribe other deductions that may be allowed in calculating the income of a person from petroleum operations.

#### **Losses from petroleum operations**

**68.** Section 17 applies to unrelieved losses of a person from a separate petroleum operation subject to the following:

- (a) an unrelieved loss shall be deducted by the person in the order in which the loss is incurred; and
- (b) an unrelieved loss from a separate petroleum operation may be deducted by the person only in calculating future income from that separate petroleum operation and not income from any other activity.

**Disposal of petroleum rights**

**69.** (1) Where a person holds a direct or indirect interest in an entity that holds a petroleum right, the person is treated as holding the interest as a capital asset employed in the business of that entity.

(2) Where the underlying ownership of an entity that holds a petroleum right changes by five percent or more, the entity is considered to have

- (a) disposed of a proportionate interest in its petroleum right and immediately re-acquired that interest by incurring an expenditure that is equal to the amount received for the right disposed off; and
- (b) received for the disposal, consideration equal to
  - (i) the amount received or receivable as consideration that has arisen out of the change in ownership; or
  - (ii) the market value of the proportion of the right treated as disposed off,

whichever is higher.

(3) Where the ownership of an entity changes in the manner referred to in subsection (2), the entity shall notify the Commissioner-General within thirty days from the date of the change.

(4) An entity that fails to comply with subsection (3) commits an offence and is liable on summary conviction to a fine of not more than two hundred penalty units for each failure.

(5) This section does not affect

- (a) the tax treatment of actual disposals of petroleum rights; and
- (b) the application of section 62 to an entity that holds a petroleum right.

**Decommissioning fund**

**70.** (1) An amount accumulated in or withdrawn from a decommissioning fund for decommissioning purposes is exempt from tax.

- (2) Where there is a surplus in the relevant decommissioning fund,
- (a) after a person completes decommissioning of a separate petroleum operation conducted by that person, or
  - (b) at the time the person breaches an approved decommissioning plan,

that surplus shall be included in calculating the income of that person from the separate petroleum operation for that year of assessment.

**Withholding tax for petroleum operations**

- 71.** (1) Section 59 (3) does not apply to a dividend paid by a company that
- (a) conducts petroleum operations or that has conducted petroleum operations; or
  - (b) is a partner in a partnership that conducts petroleum operations or that has conducted petroleum operations.
- (2) A dividend paid in circumstances where subsection (1) applies is subject to withholding tax in accordance with the relevant provisions of this Act.
- (3) Without prejudice to the provisions of a petroleum agreement, the gains or profit of an expatriate employee who is employed by a contractor or subcontractor who conducts petroleum operations exclusively, is liable to tax and withholding tax under this Act.
- (4) Where under the terms of a contract, an amount is due to a subcontractor in respect of work or services for or in connection with a petroleum agreement, the person liable under that contract to make payment to the subcontractor shall withhold tax at the rates specified in the First Schedule and pay the amount of tax withheld to the Commissioner-General.
- (5) A tax withheld under subsection (4) is, in the case of a non-resident person, a final tax.

**Furnishing of quarterly return of income**

- 72.** A person who is engaged in a petroleum operation shall, not later than thirty days after the end of a quarterly period, furnish the Commissioner-General with,
- (a) a return containing an estimate of the chargeable income of the person resulting from the operations during the quarterly period; and
  - (b) an estimate of the tax due on the chargeable income of the person and a remittance in settlement of the estimated tax.

**Furnishing of annual return of income**

- 73.** (1) A person who is engaged in a petroleum operation shall, not later than four months after the end of the year of assessment, furnish the Commissioner-General with a return for each separate petroleum operation for a year of assessment.

- (2) The annual return shall include
- (a) a statement containing the full names, addresses, nationality, salaries, wages, fees and allowances of the persons employed in the country;
  - (b) a statement of the amount of production during the year of assessment and the share of that person in the production;
  - (c) a statement of the price paid for the sale or export without sale of the person's share of the petroleum produced;
  - (d) information relating to matters referred to in this section that is provided under the petroleum agreement; and
  - (e) any other statement or information required to be provided under this Act.

(3) For the purpose of subsection (2)(c), where there is a dispute regarding the price applicable in respect of that person's share of the petroleum produced in the year of assessment, the chargeable income of that person shall be calculated on the basis of the price proposed by that person.

(4) Where a final determination of the price is made in accordance with the terms of a petroleum agreement, the person shall submit a fresh return indicating

- (a) the determined price;
- (b) any adjustment required to be made on account of the determined price; and
- (c) tax due where applicable.

(5) The returns shall be submitted within thirty days of the final determination of the price.

#### **Request for further information by Commissioner-General**

74. The Commissioner-General may, where the Commissioner-General thinks necessary, give notice in writing to a person who is engaged in petroleum operations requiring that person to furnish within the time specified in the notice

- (a) further information as to the matters in connection with the quarterly returns and annual returns; or
- (b) any matter which the Commissioner-General considers necessary for determining the assessment of the person.

**Payment of tax by quarterly instalment for petroleum operations**

75. Tax for a quarterly period is due and payable thirty days after the end of the quarter to which the tax relates.

**Interpretation**

76. In this Division, unless the context otherwise require,
- “approved development plan” means a development plan approved under section 10 of the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84);
  - “approved decommissioning plan” means a plan approved by the Minister responsible for petroleum for decommissioning the facilities used in petroleum operations upon cessation of those operations;
  - “basis period” means the calendar year from 1<sup>st</sup> January to 31<sup>st</sup> December;
  - “decommissioning fund” means a fund established by a contractor of a petroleum agreement in accordance with an approved decommissioning plan;
  - “development” includes the building and installation of facilities for the production of petroleum and the drilling of development wells;
  - “development and production area” means the area subject to an approved development plan;
  - “expatriate employee” means a person who is not a citizen of the country and who is employed for or in connection with the conduct of petroleum operations by a contractor or subcontractor under an express or implied contract of employment which provides for the passage to and from the country and in respect of whom approval has been obtained from the Ghana Immigration Service;
  - “exploration” means the search for petroleum by geological, geophysical and any other means, and drilling of exploration wells, including appraisal wells, and activities connected with them;

- “petroleum” has the meaning assigned in the Petroleum Revenue Management Act, 2011 (Act 815);
- “petroleum agreement” has the meaning assigned in the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84);
- “petroleum agreement area” means the area subject to a petroleum agreement;
- “petroleum agreement contractor” means a contractor as defined in the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84);
- “petroleum operations” has the meaning assigned in the Petroleum Revenue Management Act, 2011 (Act 815);
- “petroleum right” means the right to conduct petroleum operations under a petroleum agreement;
- “production” means the extraction and disposal of petroleum, including development operations and all other works and services connected with the extraction and disposal;
- “production activity” means an activity that constitutes production within the meaning of the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84);
- “quarterly period” means the period from 1st January to 31st March, 1st April to 30th June, 1st July to 30th September, or 1st October to 31<sup>st</sup> December; and
- “subcontractor” includes a person who enters into a contract with a contractor for the supply of works or services including rental of plants and equipment in the country for or in connection with the petroleum agreement to which the contractor is a party and where specified in a petroleum agreement, a non-resident person who provides work or supplies that service under the terms of a contract.

*Division II: Minerals and Mining operations***Principles of taxation**

77. (1) There is imposed a tax on the income of a person derived from mining operations, referred to in this Act as the “mineral income tax”.

(2) The mineral income tax payable under subsection (1) shall be calculated for each year of assessment, by applying the rate of tax specified in the First Schedule to the chargeable income of that person from mineral operations.

(3) Where a person has chargeable income other than income derived from mineral operations, that income shall be charged in accordance with section 1.

(4) For the purpose of ascertaining the assessable income from mineral operations of a person

- (a) each separate mineral operation is treated as an independent business; and
- (b) the tax liability for the business shall be calculated independently for each year of assessment.

(5) Section 31 applies

- (a) to an arrangement between a separate mineral operation and any other activity of the person conducting the mineral operation as though the arrangement was conducted between persons who are in a controlled relationship; and
- (b) to an arrangement which is subject to subsection (7).

(6) For the purpose of subsection (5), the transfer of an asset to or from a separate mineral operation is treated as an acquisition or disposal of the asset.

(7) Where two or more persons hold a mineral right under an arrangement other than a partnership, the assessable income from mineral operations of each person shall

- (a) be calculated separately; and
- (b) be calculated as if they were persons in a controlled relationship.

**Separate mineral operations**

78. (1) Subject to this section, the following shall constitute a separate mineral operation:

- (a) a mineral operation pertaining to each mine; and
- (b) a mineral operation with a shared processing facility.

(2) Where a person holds a reconnaissance licence and is subsequently granted a prospecting licence,

- (a) a mineral operation conducted with respect to the reconnaissance licence before the grant of the prospecting licence is
  - (i) conducted with respect to the prospecting licence; and
  - (ii) conducted with respect to the same separate mineral operation; and
- (b) subsection (3) applies.

(3) Where a person holds a prospecting licence and is subsequently granted a mining lease and the area which is the subject of that mining lease falls wholly within the prospecting area,

- (a) a mineral operation conducted with respect to the prospecting licence before the grant of the mining lease is
  - (i) conducted with respect to the mining lease; and
  - (ii) conducted with respect to the same separate mineral operation; and
- (b) subsection (4) applies.

(4) Where a person holds a mining lease and is subsequently granted approval for a mining area within the area which is the subject of that mining lease,

- (a) a mineral operation conducted with respect to the mining lease before the approval of the mining area is
  - (i) conducted with respect to the mining area; and
  - (ii) conducted with respect to the same mineral operation; and
- (b) from the date of approval of the mining area, a mineral operation conducted with respect to the rest of the mining lease is a separate mineral operation.

**Reconnaissance and prospecting operations**

79. (1) This section applies to reconnaissance and prospecting operations conducted by a person as part of a separate mineral operation before the commencement of production of a commercial find.

(2) A person who incurs a revenue expenditure or a capital expenditure in the course of reconnaissance or prospecting operations shall place the expenditure in a single pool and

(a) a deduction or capital allowance shall not be granted by the Commissioner-General with respect to the expenditure; and

(b) the expenditure shall not form part of the cost of an asset.

(3) An expenditure shall not be included in the pool referred to in subsection (2) if the expenditure

(a) is a domestic or an excluded expenditure; or

(b) fails to meet the requirements of section 81(2)(b)(i) or (ii).

(4) Except for an amount that will be included to reduce the pool referred to in subsection (2), a person shall not include in the pool referred to in that subsection

(a) an amount which is included in calculating the income of the person from the separate mineral operation; or

(b) a consideration received in respect of a depreciable asset or capital asset of the operation.

(5) A person who places the balance of an expenditure in the pool referred to in subsection (2) shall carry that balance forward from year to year until the commencement of production.

(6) Where at the end of a year of assessment the balance in the pool is negative by reason of a reduction in subsection (4)

(a) the person shall include the negative amount in calculating the income of that person from the separate mineral operation for the year; and

(b) a balance shall not be carried forward to the next year of assessment.

(7) Where a person commences production of a commercial find with respect to a separate mineral operation, the balance in the pool of reconnaissance and prospecting expenditure at the time of production shall be capitalised and capital allowances shall be granted by the Commissioner-General in respect of those expenditures.

**Income from mineral operations**

**80.** Subject to section 79, the following shall be included for the purpose of ascertaining the income of a person from a mineral operation for a year of assessment:

- (a) an amount derived or treated in section 31 as derived from the disposal of minerals obtained from the lease or licensed area during the year;
- (b) a compensation derived, whether under a policy of insurance or otherwise, in respect of loss or destruction of minerals from the lease or licensed area;
- (c) an amount derived in respect of the sale of information pertaining to the mineral operations or mineral reserves;
- (d) a gain from the assignment or other disposal of an interest in the mineral right with respect to which the operation is conducted;
- (e) an amount required to be included under section 84 in respect of a surplus in an approved rehabilitation fund; and
- (f) any other amount derived by the person during the year from or incidental to the operation that is included in calculating income under other provisions of this Act.

**Deductions for mineral operations**

**81.** (1) Subject to sections 8, 79 and this section, for the purpose of ascertaining the income of a person from a separate mineral operation for a year of assessment, the following shall be deducted:

- (a) ground rents and royalties paid by the person under the Minerals and Mining Act, 2006 (Act 703) with respect to the mineral operation;
- (b) capital allowances granted with respect to the mineral operation and calculated in accordance with Part III of the Third Schedule;
- (c) contributions to and other expenses incurred in respect of an approved rehabilitation fund for the mineral operation;
- (d) expenses incurred by the person in the course of reclamation, rehabilitation and closure of the mineral operation, where funds in the relevant approved rehabilitation fund are not yet available or are inadequate; and
- (e) any other expenses incurred by that person during the year for the purpose of the mineral operation that may be deducted under other provisions of this Act.

(2) In calculating income from a separate mineral operation, the Commissioner-General shall not allow a deduction

- (a) for research and development expenditure;
- (b) for an amount unless the amount
  - (i) is wholly, exclusively and necessarily incurred in the acquisition or improvement of a valuable asset used in the mineral operation; or
  - (ii) is wholly, exclusively and necessarily incurred in acquiring services or facilities for the mineral operation; and is income of the recipient which has a source in Ghana;
- (c) where the amount does not comply with section 31;
- (d) for a bonus payment made in respect of the grant of the mineral right; or
- (e) for expenditure incurred as a consequence of a breach of an applicable mineral agreement.

(3) For the purpose of the application of section 14 to mineral operations

- (a) “written down value” of a pool of depreciable assets means the written down value of assets in that pool as determined under Part III of the Third Schedule; and
- (b) excess expense referred to in section 12(3) shall be added to the pool of depreciable assets of the year in which the expense is incurred.

(4) In ascertaining the income of a person from a separate mineral operation for a year of assessment, a relevant financial cost incurred during the year may be deducted only to the extent that a relevant financial gain has been included in calculating the income of that person.

(5) Without limiting section 16, a person may set off a loss in respect of a financial instrument against a gain in respect of a financial instrument only.

(6) A financial cost for which a deduction is not available under subsection (4) may be carried forward and treated as incurred during any of the subsequent five years of assessment.

(7) Where a person carries forward a financial cost under subsection (6), that cost shall be deducted by that person from the income of that person in the order in which the cost was incurred.

(8) Where there is a change in the ownership of an entity in the manner referred to in section 62, a carry forward of financial cost shall be subject to section 62.

(9) Subject to section 79 and for the purpose of granting capital allowance, the cost of a depreciable asset with respect to a separate mineral operation includes

- (a) the cost of the mineral right;
- (b) the balance in the pool of reconnaissance and prospecting expenditure at the time of commencement of production of a commercial find;
- (c) expenditure incurred in respect of the mineral operation on waste removal, overburden stripping, shaft sinking and other activities, that
  - (i) is capitalised in accordance with generally accepted accounting principles; and
  - (ii) does not otherwise qualify to be included in the cost of an asset; and
- (d) bonus payments made in respect of the grant of the mineral right.

(10) The Minister may, by legislative instrument, make Regulations to provide for

- (a) other deductions that may be allowed in ascertaining the income of a person derived from a mineral operation; and
- (b) the application of subsection (4) to small scale mining.

#### **Losses from mineral operations**

**82.** Subject to the following, section 17 applies to unrelieved losses of a person from a separate mineral operation:

- (a) the person shall deduct unrelieved losses in the order in which the losses are incurred; and
- (b) losses from the separate mineral operation may be deducted only in calculating future income from that operation and not income from any other activity.

#### **Disposal of mineral rights**

**83.** (1) Where a person holds a direct or indirect interest in an entity that holds a mineral right, the person is treated as holding the interest as a capital asset employed in the business of that entity.

(2) Where the underlying ownership of an entity that holds a mineral right changes by five percent or more, the entity is considered to have

- (a) disposed of a proportionate interest in its mineral right and immediately reacquired that interest by incurring an expenditure that is equal to the amount received for the right disposed off; and
- (b) received for the disposal,
  - (i) consideration equal to the amount received or receivable as consideration arising out of the change in ownership; or
  - (ii) the market value of the proportion of the right treated as disposed off, whichever is higher.

(3) Where the ownership of an entity changes in the manner referred to in subsection (2), the entity shall notify the Commissioner-General within thirty days from the date of the change.

(4) An entity that fails to comply with subsection (3) commits an offence and is liable on summary conviction to a fine of not more than two hundred penalty units for each failure.

(5) This section does not affect

- (a) the tax treatment of actual disposals of mineral rights; and
- (b) the application of section 62 to an entity that holds a mineral right.

#### **Approved rehabilitation funds**

**84.** (1) An amount accumulated in or withdrawn from an approved rehabilitation fund by a person who holds a mineral right for the purpose of rehabilitation of the area which is the subject of the mining lease, is exempt from tax.

(2) Where there is a surplus in the approved rehabilitation fund

- (a) after a person completes rehabilitation of a separate mineral operation conducted by that person, or
- (b) at the time the person breaches an approved rehabilitation plan

the surplus shall be included in calculating the income of the person from the separate mineral operation for that year of assessment.

**Withholding tax**

85. (1) Despite section 59(3), dividend paid to a resident company by
- (a) a resident company that conducts or that has conducted a mineral operation; or
  - (b) a resident company that is a partner in a partnership that conducts or that has conducted a mineral operation.

is subject to withholding tax in accordance with this Act.

(2) Subject to subsection (3), a resident person shall withhold tax at the rate provided for in paragraph 6 of the First Schedule when the person pays for unprocessed precious minerals located in the country or won from the country.

(3) This section does not apply to

- (a) a payment made by an individual, unless the payment is made in the course of conducting a business;
- (b) a payment made by the holder of a small scale mining licence to a labourer with respect to winnings from the area covered by the licence; or
- (c) a payment received by a holder of a large scale mining lease.

(4) Division II of Part VIII applies to tax required to be withheld under this section.

(5) For purposes of this section, unless the context otherwise requires,

“large scale mining lease” means a mining lease that is not the subject of a small scale mining licence;

“small scale mining” has the meaning given in the Minerals and Mining Act, 2006 (Act 703);

“small scale mining licence” means a small scale mining licence granted under section 82 of the Minerals and Mining Act, 2006 (Act 703); and

“unprocessed precious mineral” means unprocessed gold and rough diamonds within the meaning given in the Minerals and Mining Act, 2006 (Act 703) and other minerals as may be prescribed by Regulations.

**Interpretation**

86. In this Division, unless the context otherwise requires,
- “approved rehabilitation fund”, in respect of mineral operations, means a fund established as required under any applicable mineral agreement or approved rehabilitation plan;
  - “approved rehabilitation plan”, in respect of mineral operations, means a plan for reclamation, rehabilitation and closure of the operations approved by the Minister responsible for Mines;
  - “mineral” means a substance in solid or liquid form that occurs naturally in the earth or on the earth, or on the seabed or under the seabed, formed by or subject to geological process, including industrial minerals, but does not include petroleum as defined in the Petroleum Revenue Management Act, 2011 (Act 815) or water;
  - “mineral agreement” means an agreement concluded with the Government of Ghana in respect of a mineral right and includes the terms and conditions on which a mineral right is granted;
  - “mineral operations” means reconnaissance, prospecting or mining for minerals or mining of minerals;
  - “mineral right” means a reconnaissance licence, a prospecting licence, a mining lease, a restricted reconnaissance licence, a restricted prospecting licence or a restricted mining lease;
  - “mining area” means the area designated from time to time by the holder of a mining lease with the approval of the Minerals Commission;
  - “mining lease” means a mining lease granted under section 39 or 44 of the Minerals and Mining Act, 2006 (Act 703);
  - “mining lease area” means the area covered by a mining lease;
  - “mining operations” means the mining of minerals under a mining lease or restricted mining lease;

- “prospect” means to intentionally search for minerals and includes reconnaissance and operations to determine the extent and economic value of a mineral deposit;
- “prospecting area” means the land subject to a prospecting licence;
- “prospecting licence” means a prospecting licence granted under section 34 of the Minerals and Mining Act, 2006 (Act 703);
- “reconnaissance” means the search for minerals by geophysical, geochemical and photo-geological surveys or other remote sensing techniques and surface geology in connection with it including collection of necessary environmental data but does not include drilling or excavation; and
- “reconnaissance licence” means a reconnaissance licence granted under section 31 of the Minerals and Mining Act, 2006 (Act 703).

*Division III: Financial institutions*

**Banking business**

87. (1) For purposes of this Act, any other business activity of a person who engages in a banking business is a separate business activity from the banking business engaged in by that person and the person shall keep the books of account of each business activity separate.

(2) Where the income of a person who engages in both a banking business and another business activity is to be ascertained, the person doing the computation shall compute the income or loss from the banking business for a year of assessment separate from the income or loss from the other business activity for that year.

(3) The Minister may, by legislative instrument, make Regulations to require financial institutions to obtain from a specified person details of the place of residence of that person for tax purposes.

**Provision for a debt claim**

88. (1) Where a person conducting a banking business makes a specific provision for a debt claim which the Commissioner-General is satisfied is a bad debt,

- (a) in the case of a debt claim that has been previously included in calculating income from the business, the provision is deductible; and

- (b) in the case of a debt claim that constitutes the advance of a principal sum, the provision is deductible and the cost of the debt claim is reduced by an equal amount.
- (2) Where a person makes a provision referred to in subsection (1) and the person later reverses that provision,
  - (a) in a case referred to in subsection (1)(a), the amount reversed is included in computing income; and
  - (b) in a case referred to in subsection (1)(b), the amount in respect of the provision reversed is included in computing income and the cost of the debt claim is increased.
- (3) Section 23 does not apply to a debt claim to which subsection (1) applies.
- (4) For purposes of this section, “banking business” means the banking business of a financial institution licensed under the Banking Act, 2004 (Act 673) or the Non-Bank Financial Institution Act, 2008 (Act 774).

#### **General insurance business**

- 89.** (1) For purposes of this Act, any other business activity of a person who conducts a general insurance business is a separate business from the general insurance business and the income or loss of that person from each of the businesses for a year of assessment is to be computed separately.
- (2) Where the income derived by a person from general insurance business for a year of assessment is to be ascertained, the person doing the calculation shall include
- (a) premiums derived by the person in conducting the business during the year as an insurer, or a re-insurer; and
  - (b) proceeds derived by the person under a contract of re- insurance in respect of proceeds referred to in subsection (4)(a) during the year.
- (3) Subject to section 8, a person shall, in calculating income from general insurance business derived by a person for a year of assessment, deduct
- (a) proceeds incurred in conducting the business by the person as an insurer or as a re-insurer, during the year;
  - (b) premiums incurred by the person under a contract of re-insurance in respect of proceeds referred to in paragraph (a) during the year; and

(c) the amount of any reserve for unexpired risk in respect of that business as at the end of the basis period.

(4) For purposes of section 23(3), proceeds incurred by a person as a general insurer are payable and may be deductible under subsection (3)(a) where

- (a) the events that determine liability have occurred; and
- (b) the proceeds can be deducted in accordance with generally accepted accounting principles.

#### **Life insurance business**

**90.** (1) For purposes of this Act, any other business activity of a person who conducts a life insurance business is a separate business from the life insurance business and the income or loss of that person from each of the businesses for a year of assessment is to be calculated separately.

(2) Where the income derived by a person from a life insurance business for a year of assessment is to be ascertained, the person doing the calculation shall

- (a) exclude from the income the following items and the items excluded shall not be regarded as consideration received for an asset or liability:
  - (i) premiums derived by the person as an insurer or a re-insurer; and
  - (ii) proceeds derived by the person under a contract of re-insurance in respect of proceeds referred to in paragraph (b)(i); and
- (b) not deduct from the income the following items which are not to be included in the cost of an asset or liability:
  - (i) proceeds incurred by the person as an insurer or a re-insurer; and
  - (ii) premiums incurred by the person under a contract of re-insurance in respect of proceeds referred to in subparagraph (i).

#### **Proceeds from insurance**

**91.** (1) Subject to subsection (2) and sections 89 and 90, for the purposes of calculating the income of a person, the proceeds derived by that person from insurance is determined in accordance with section 29.

(2) Subject to section 90, a gain of an insured person from life insurance is

- (a) exempt from tax when the proceeds are paid to the insured person, where the proceeds are paid by a resident insurer; and
- (b) included in calculating the income of the insured person, where the proceeds are paid by a non-resident insurer.

(3) For purposes of this section, “gains of an insured person from a life insurance” means the extent to which proceeds from the life insurance paid by an insurer exceed premiums paid to that insurer with respect to the insurance.

#### **Interpretation**

**92.** In this Division, unless the context otherwise requires,

“general insurance” means an insurance that is not life insurance; and

“life insurance” means insurance of any of the following classes:

- (a) insurance where the specified event is the death of an individual who is the insured or an associate of the insured;
- (b) insurance where
  - (i) the specified event is a personal injury sustained by the insured or an associate of the insured, or the incapacitation of an individual who is the insured or an associate of the insured; and
  - (ii) the insurance agreement is expressed to be in effect for at least five years and is not terminable by the insurer before the expiry of five years except in circumstances prescribed by Regulations;
- (c) insurance under which an amount or series of amounts is to become payable to the insured in the future; and
- (d) re-insurance of insurance referred to in paragraph (a) to (c).

#### *Division IV: Retirement savings*

#### **Application of Act 766**

**93.** The provisions of this Division are subject to the National Pensions Act, 2008 (Act 766).

**Taxation of retirement funds**

94. (1) Subject to section 93 the standard rules for calculation of income and taxation apply to the income of a retirement fund.

- (2) Retirement contributions received by a retirement fund are
  - (a) exempt from tax; and
  - (b) not to be treated as consideration received for an asset or liability of the fund.
- (3) Retirement payments are not
  - (a) deductible by a retirement fund; and
  - (b) to be included in the cost of an asset or a liability of the fund.

**Retirement payments from retirement funds**

95. (1) Where the income derived by a person from an interest in a retirement fund for a year of assessment is to be ascertained, the person doing the calculation shall,

- (a) exclude from the income, a retirement payment made by a resident fund in respect of that interest and the payments excluded shall not be regarded as consideration received for that interest; and
- (b) include in the income, a gain from an interest in a non-resident retirement fund.

(2) For purposes of this section, “gain from an interest in a non-retirement fund” means the extent to which the retirement payments made by the fund to a beneficiary in respect of an interest in the fund exceed the retirement contributions paid to the fund by the contributor or on behalf of the contributor in respect of the interest.

**Interpretation**

96. In this Division, unless the context otherwise requires,

“approved retirement fund” means

- (a) the Social Security and National Insurance Trust established under the National Pensions Act, 2008 (Act 766); and
- (b) an occupational pension scheme, provident fund or personal pension scheme registered under that Act;

- “retirement contribution” means a payment made to a retirement fund for the provision or future provision of retirement payments;
- “retirement fund” means an entity established and maintained solely for the purposes of accepting and investing retirement contributions in order to provide retirement payments to an individual who is a beneficiary of the entity or a nominated beneficiary of that individual; and
- “retirement payment” means a payment, in the nature of a lump sum, pension or commuted pension, made by a person to
- (a) an individual in the event of the retirement of that individual; or
  - (b) a nominated beneficiary of an individual in the event of the death of that individual.

*Division V: Public, mutual and non-profit causes*

**Approval of charitable organisation**

**97.** (1) The Commissioner-General may approve an entity as a charitable organisation for the purposes of this Act.

(2) The Commissioner-General shall, before approving an entity under subsection (1), ensure that

- (a) the entity is established to operate as
  - (i) charitable institution which is of a public nature;
  - (ii) a religious institution which is of a public nature;
  - (iii) a body of persons formed for the purpose of promoting social activities or sporting activities; or
  - (iv) a registered sporting club; and
- (b) the entity has a written constitution that prohibits that entity from
  - (i) engaging in a party political activity, supporting a political party or using its platform to engage in party politics;
  - (ii) any function other than those specified in paragraph (a); and
  - (iii) conferring a private benefit, other than in pursuit of a function of the entity specified in paragraph (a).

(3) The Commissioner-General may for good cause or for the contravention of a requirement specified in subsection (2), revoke an approval granted under subsection (1).

(4) The income accruing to or derived by a charitable organisation is exempt from tax.

(5) Subsection (4) does not apply to the business income of the charitable organisation.

(6) The Minister may, by legislative instrument, make Regulations for the effective implementation of this section.

### **Clubs and trade associations**

**98.** (1) For purposes of this Act, a club, a trade association and any similar institution is a company and any activity engaged in by each of these institutions is considered as conducted in the course of a single business.

(2) Where the income of a club, trade association or similar institution from its business for a year of assessment is to be ascertained, the person doing the calculation shall include in the income, any entrance fees, subscriptions and other amounts derived by that person from members of the club, trade association or similar institution during that year.

(3) The income accruing to or derived by the club, trade association or similar institution is exempt from tax.

(4) Subsection (3) does not apply to the business income of the club, trade association or similar institution.

(5) For purposes of this section,

“member” means

- (a) in the case of a club or similar institution, a person who
  - (i) while a member, is entitled to an interest in the assets of the club or institution in the event of its liquidation; or
  - (ii) is entitled to vote at a general meeting of the club or institution; and
- (b) in the case of a trade association or similar institution, a person who is entitled to vote at a general meeting of the association or institution;

“members’ club” means a club or similar institution in respect of which the assets of the club or similar institution are owned in common by members of that club or institution or held in trust for members of that club or institution, despite section 56(3); and

“trade association” includes

- (a) an association of persons
  - (i) who are separately engaged in a particular type of business; and
  - (ii) formed with the main object of safeguarding or promoting the business interests of the persons; and
- (b) a trade union registered under the Labour Act, 2003 (Act 651).

#### **Building societies and friendly societies**

**99.** (1) For purposes of this Act, a building society or a friendly society is a company.

(2) The income of a statutory building society or a registered building society, or a statutory friendly society or a registered friendly society is exempt from tax in a year of assessment if

- (a) only individuals are eligible to be members of that society and make contributions to that society;
- (b) the organisation does not engage in party political activities, or support any political party or use its platform to engage in party politics; and
- (c) the Commissioner-General has given a ruling that the society complies with paragraphs (a) and (b).

(3) The Commissioner-General may

- (a) revoke a ruling or refuse to give a ruling as required under subsection (2)(c) where a society breaches a requirement in subsection (2)(a) or (b); or
- (b) amend a ruling or give a ruling on terms and conditions as the Commissioner-General considers appropriate.

**Contributions and donations to a worthwhile cause**

**100.** (1) Where the income for a year of assessment in respect of a person who has made a donation or contributed to a worthwhile cause is to be ascertained under section 2, the person may claim a deduction that is equal to the contribution and donation made by that person during that year for a worthwhile cause approved by Government under subsection (2).

(2) The following causes are worthwhile causes approved by Government:

- (a) a charitable organisation which meet the requirements of section 97;
- (b) a scheme of scholarship for an academic, technical, professional or other course of study;
- (c) development of any rural area or urban area;
- (d) sports development or sports promotion; and
- (e) any other worthwhile cause approved by the Commissioner-General.

**PART VII**  
**INTERNATIONAL**

*Division I: Residence and source*

**Resident person**

**101.** (1) An individual is resident in the country for a year of assessment if that individual is

- (a) a citizen, other than a citizen who has a permanent home outside of the country and lives in that home for the whole of that year;
- (b) present in the country during that year for an aggregate period of one hundred and eighty-three days or more in any twelve month period that commences or ends during that year;
- (c) an employee or an official of the Government of Ghana posted abroad during that year; or
- (d) a citizen who is temporarily absent from the country for a period of not more than three hundred and sixty-five continuous days, where that citizen has a permanent home in Ghana.

(2) For purposes of this Act, a partnership is resident in the country for a year of assessment if any of the partners resided in the country at any time during that year.

(3) A trust is resident in the country for a year of assessment if

(a) that trust is established in the country;

(b) a trustee of the trust is resident in the country at any time during that year; or

(c) a person resident in the country directs or may direct senior managerial decisions of the trust at any time during the year, whether the directive is given

(i) alone or jointly with other persons; or

(ii) directly or through one or more interposed entities.

(4) A company is resident in the country for a year of assessment if

(a) that company is incorporated under the Companies Act, 1963 (Act 179); or

(b) the management and control of the affairs of that company are exercised in the country at any time during that year.

### **Change of residence**

**102.** (1) A person who is resident in the country during a year of assessment is deemed to be resident for the whole of that year.

(2) Despite subsection (1), an individual who is resident in the country by reason of section 101(1)(b), is resident from the start of the one hundred and eighty-three day period.

(3) Subject to subsection (6), where a non-resident person becomes resident in the country, the net cost of any asset held by that person immediately before becoming resident, is equal to the market value of that asset at the time the person became resident.

(4) Subject to subsection (6), where a person resident in the country ceases to be resident, an asset owned by that person immediately before that person became non-resident is considered as realised by that person on the date the person became non-resident.

(5) A person who realises an asset under subsection (4) is considered as having derived in respect of that asset, an amount that is equal to the market value of that asset at the time of the realisation.

(6) Subsections (3) and (4) do not apply to an asset that is a domestic asset of the person immediately before that person became resident or immediately after that person ceased to be resident, respectively.

**Source of income and quarantining of foreign losses**

103. (1) Where the income of a person employed is derived from a source outside of the country and a source that is in the country, the income of that person derived from the source in the country shall, be calculated separately from the income of that person derived from the source outside of the country.

(2) A person shall calculate income earned that has a source in the country and derived by a person from any business or investment separately from income earned from any business or investment that has a source outside of the country.

(3) A person shall calculate a loss that has a source in the country and incurred by a person from any business or investment separately from a loss that has a source outside of the country incurred by that person from any business or investment.

(4) Income earned by a person from an employment, business or investment has a source in the country to the extent by which the amounts directly included in calculating that income exceed the amounts directly deducted in calculating that income.

(5) A loss incurred by a person from an employment, business or investment has a source in the country to the extent by which the amounts directly deducted in computing that income exceed the amounts directly included in computing that income.

(6) Despite subsection (1), where the income of a person employed is derived primarily from a source outside of the country, that income shall be computed as the worldwide income of that person from that employment and any income of that person derived from a source in the country shall, be deducted from the worldwide income.

(7) Despite subsections (2) and (3), the income from any business or investment of a person that is derived primarily from a source outside of the country or any loss incurred by that person from that business or investment shall, be calculated as the worldwide income or loss of that person from that business or investment and

(a) any income of that person from that business or investment, derived from a source in the country shall, be deducted from that worldwide income; and

- (b) any loss incurred by that person from that business or investment, derived from a source in the country shall, be added to that worldwide income.
- (8) For purposes of section 17, a person may,
- (a) in calculating the loss of a person from an investment, in the case of a loss derived from a source outside of the country; and
  - (b) in calculating the loss of a person from a business, in the case of a loss derived from a source outside of the country
- deduct an unrelieved loss.

**Source of amounts directly included and directly deducted**

**104.** (1) An amount that is directly included in the calculation of income has a source in the country if it is

- (a) consideration received, a gain or an amount referred to in section 5(2)(a) (ii), (iii) or (iv) or section 6(2)(a) (ii) to the extent that a domestic asset or domestic liability is involved; or
- (b) a payment that has a source in the country.

(2) An amount that is directly deducted in the calculation of income has a source in the country if

- (a) it is
  - (i) an allowance referred to in section 11(1) or 14, or
  - (ii) an expenditure referred to in section 13(1), to the extent that the allowance or expenditure relates to domestic assets;
- (b) it is a loss from the realisation of
  - (i) a capital asset of a business;
  - (ii) a liability of a business;
  - (iii) an investment asset, where the asset involved is a domestic asset; or
  - (iv) an investment liability, where the liability involved is a domestic liability; and
- (c) subject to paragraphs (a) and (b), it is a payment that has a source in the country.

**Payments sourced from the country**

**105.** The following payments have a source in the country:

- (a) dividends paid by a resident company;
- (b) interest paid

- (i) where the debt obligation giving rise to the interest is secured by real property located in the country;
  - (ii) by a resident person; or
  - (iii) by a Ghanaian permanent establishment;
- (c) payments
  - (i) made in respect of a natural resource situated within the country or its territorial waters and taken from land or the sea; or
  - (ii) computed by reference to a natural resource situated within the country or its territorial waters taken from land or the sea;
- (d) rent paid for the use of an asset situate in the country or the right to use an asset situate in the country or forbearance from using an asset situate in the country;
- (e) royalties paid for the use of an asset in the country, right to use an asset in the country or forbearance from using an asset in the country;
- (f) premiums for general insurance paid to a person in respect of the insurance of a risk in the country and proceeds from general insurance paid by a person to an insured person in respect of the insurance of a risk in the country;
- (g) payments received by a person who conducts a relevant transport business as payment for
  - (i) carrying passengers, cargo, mail or other movable tangible assets that are embarked in the country, other than as a result of transshipment; or
  - (ii) renting containers and related equipment which are supplementary or incidental to the business referred to in subparagraph (i);
- (h) payments received by a person who conducts a business of transmitting or receiving messages by cable, radio, optical fibre or satellite or electronic communication in respect of the transmission, reception or emission of messages by an apparatus located in the country, whether or not the messages originate, terminate or are used in the country;
- (i) payments for or attributable to employment, service rendered or a forbearance from exercising employment or rendering a service

- (i) in the country, regardless of the place of payment, or
  - (ii) where the payer is the Government of Ghana, regardless of the place of employment, rendering of service or a forbearance of that service, including service fees of a type not mentioned in paragraph (g) or (h);
- (j) a return by way of proceeds of life insurance and retirement payments not falling within paragraph (i), paid by a resident person or a permanent establishment in the country, and any premium or retirement contribution paid to a resident person or a permanent establishment in the country to secure the return;
- (k) gifts and other gratuitous payments in respect of business or investment conducted with domestic assets and received by a person;
- (l) gifts or other gratuitous payments in respect of employment or otherwise, and received by a person;
- (m) payments made in respect of
- (i) the acquisition of a domestic asset, incurring a domestic liability or the realisation of that asset or liability; or
  - (ii) activity conducted or a forbearance from conducting an activity in the country; and
- (n) any other payments brought into or received in the country by a resident person.

**Interpretation**

**106.** In this Division, unless the context otherwise requires, “domestic asset” means

- (a) an asset owned by a resident person other than foreign land or buildings, or an asset held by a foreign permanent establishment of that person or held by a permanent establishment operating in the country;
- (b) an interest in land or a building situated in the country;
- (c) shares in a resident company where

- (i) the owner of the shares together with other persons with whom the owner has a controlled relationship,
  - (A) controls twenty-five percent or more of the voting power in the company, or
  - (B) within the previous five years controlled either directly or indirectly, twenty-five percent or more of the voting power in the company; or
- (ii) the property of the company consists, directly or indirectly through one or more interposed entities, principally of immovable property or interests in land or buildings situated in the country;

“domestic liability” means

- (a) liability owed by a resident person other than a liability attributable to a permanent establishment that is outside of the country and which belongs to that person; or
- (b) a liability attributable to a permanent establishment in the country; and

“relevant transport business” means a business of land, sea or air transport operator or charterer carrying passengers, cargo, mail or other moveable tangible assets.

*Division II: Permanent establishment*

**Principles of taxation**

**107.** (1) A permanent establishment is an entity separate from its owner and

- (a) is subject to tax under section 1 in the same manner as a resident company, if the permanent establishment is a Ghanaian permanent establishment; and
  - (b) in accordance with section 111(2), is exempt from tax if that permanent establishment is situate outside of the country.
- (2) In accordance with subsection (1),
- (a) the income of a permanent establishment and any tax liability is computed as if
    - (i) that permanent establishment and its owner were separate but are persons in a controlled relationship; and

- (ii) that permanent establishment is a person resident in the country in which it is situated;
  - (b) Part VIII applies directly to a Ghanaian permanent establishment, separate from its owner; and
  - (c) arrangements between a permanent establishment and its owner are recognised.
- (3) A Ghanaian permanent establishment shall, in compliance with Part VIII,
- (a) withhold tax from a payment made by that permanent establishment in the same way as a resident company making a payment will do in a similar circumstance;
  - (b) pay withholding tax on a payment received by that permanent establishment in the same way as a resident company receiving that payment will do in a similar circumstance; and
  - (c) pay tax by instalments after assessment, in the same circumstances as a resident company.
- (4) The arrangements specified in section 109(3) as between a Ghanaian permanent establishment and its non-resident owner are recognised under this Act.
- (5) Subject to Part III, where this subsection applies, the following entries are recognised if shown in the same manner in the accounts of the owner and the permanent establishment:

- (a) a debt owed by the owner to the permanent establishment or a debt owed by the permanent establishment to the owner; and
- (b) interest derived or incurred with respect to a debt obligation referred to in paragraph (a)

but a debt owed by the owner to a third party is not attributed to the permanent establishment.

#### **Activities, assets and liabilities of a permanent establishment**

**108.** (1) An activity of a permanent establishment is treated as conducted in the course of a single business.

(2) An activity of a permanent establishment is that activity conducted by the owner through the permanent establishment.

(3) Without limiting the effect of subsections (1) and (2), the following activities are treated as conducted by a Ghanaian permanent establishment:

- (a) when the owner employs an individual who is resident in the country;
  - (b) when the owner makes a sale of trading stock of the same or a similar kind as those sold through the permanent establishment; and
  - (c) other business activity of the owner which is of the same or a similar kind as that effected through the permanent establishment, conducted with a person resident in the country.
- (4) The asset or liability of a permanent establishment is
- (a) an asset held by or to the extent employed in an activity of the permanent establishment;
  - (b) an intangible asset created by or through the permanent establishment;
  - (c) in the case of a Ghanaian permanent establishment, an intangible asset, to the extent that they may be exploited in the country;
  - (d) subject to section 107(5), a debt obligation incurred in borrowing money, to the extent that the money is employed in an activity of the permanent establishment or used to acquire an asset referred to in paragraph (a); and
  - (e) other liabilities arising directly out of an activity of the permanent establishment.

**Income or loss of a permanent establishment**

**109.** (1) A person calculating the income of a permanent establishment from its business, shall attribute to the income of the permanent establishment

- (a) an amount derived by that permanent establishment in respect of an asset held by that permanent establishment, a liability owed by that permanent establishment or any other activity of that permanent establishment;
- (b) a payment received by that permanent establishment in respect of an asset held by that permanent establishment, a

liability owed by that permanent establishment or any other activity of that permanent establishment; and

- (c) expenditure incurred and payments made for the purposes of
  - (i) assets held by that permanent establishment;
  - (ii) liabilities owed by that permanent establishment; or
  - (iii) any other activity of that permanent establishment, to the extent that the expenditure is properly recorded in the accounts of the permanent establishment.
- (2) A permanent establishment
  - (a) acquires an asset when the ownership rights of the asset is transferred by the previous owner, to that permanent establishment; or
  - (b) incurs a liability when the liability is a liability of the permanent establishment.

(3) In addition to the circumstances specified in sections 38 and 39, a permanent establishment is considered as having realised an asset held by that permanent establishment or a liability owed by that permanent establishment when the asset or liability ceases to be an asset or liability of that permanent establishment.

### **Interpretation**

**110.** In this Part, unless the context otherwise requires,

“foreign permanent establishment” means a fixed place of business of a resident person situated in a foreign country where the business is conducted continuously for at least six months, but excludes any place at which only activities of a preparatory or auxiliary nature are conducted;

“Ghanaian permanent establishment” includes

- (a) a place in the country where a non-resident person carries on business or that is at the disposal of the person for that purpose;

- (b) a place in the country where a person has, is using or is installing substantial equipment or substantial machinery; and
- (c) a place in the country where a person is engaged in a construction, assembly or installation project for ninety days or more, including a place where a person is conducting supervisory activities in relation to that project;
- (d) the provision of services in the country;
- (e) a place in the country where an agent performs any function on behalf of the business of a non-resident person
  - (i) including, in the case of an insurance business, the collection of premiums or the insurance of risks situated in the country, but
  - (ii) excluding a case involving a general agent of independent status with its own legal personality acting in the ordinary course of business; and

“owner” means a person who owns a permanent establishment.

*Division III: Foreign source of income of a resident*

**Principles of taxation**

111. (1) The income of a resident person derived from a foreign source is taxable.

(2) Despite subsection (1), the income of a resident individual from employment exercised in a foreign country

- (a) with a non-resident employer, or
- (b) with a resident employer where the individual is present in the foreign country for one hundred and eighty-three continuous days or more during the year of assessment is exempt from tax.

(3) The Minister may, by legislative instrument, make Regulations to prescribe

- (a) the criteria for exempting from tax, the income of a foreign permanent establishment and the foreign income of a resident person;

- (b) circumstances in which the income of a foreign permanent establishment is not exempt, but is taxable in the hands of the resident owner with a foreign tax credit; and
- (c) circumstances in which the income of a foreign trust or company that is controlled by residents is attributed and taxed to the members of the trust or company.

**Foreign tax credit**

**112.** (1) A resident person other than a partnership may claim a foreign tax credit for a year of assessment for any income tax paid by that person to a foreign country and to the extent to which that income tax is paid with respect to the assessable foreign income of that person for the year.

(2) A foreign tax credit claimed under subsection (1)

- (a) is to be calculated separately for each year of assessment and separately for assessable foreign income from each employment, business or investment; and
- (b) with respect to each calculation, may not exceed the average rate of Ghanaian income tax of the person for the year applied to the assessable foreign income of that person.

(3) A person may elect to relinquish a foreign tax credit available for a year of assessment and claim a deduction for the amount of the income tax paid to the foreign country, but otherwise a deduction is not available for income tax paid to a foreign country.

(4) For purposes of this section,

“average rate of Ghanaian income tax” of a resident person for a year of assessment means the percentage that tax payable by the person under section 1(1)(a) calculated under section 1(3) without subtraction for any foreign tax credit, is of the chargeable income of the person for the year; and

“assessable foreign income” means foreign source income included in the assessable income of a resident person for a year of assessment from the employment, business or investment of the resident person as the case requires.

**PART VIII**  
**TAX PAYMENT PROCEDURE**

*Division I: General obligations*

**Methods and time for payment**

113. (1) Tax imposed under section 1 is payable
- (a) by withholding under Division II;
  - (b) by instalment under Division III; or
  - (c) on assessment under Division IV.
- (2) Tax is payable
- (a) in the case of tax payable by withholding, at the time provided for in section 117;
  - (b) in the case of tax payable by instalment, on the date by which the instalment is to be paid under section 121;
  - (c) in the case of tax payable on assessment, on the date by which the return of income is filed under section 124; and
  - (d) in any other case not stated in subsection (1), on the date stated in a notice for payment.

*Division II: Tax payable by withholding*

**Withholding by employer**

114. (1) An employer shall withhold tax from the payment of an amount to be included in ascertaining the income of an employee from the employment.

(2) The Minister may, by legislative instrument, make Regulations to prescribe the circumstances in which a resident employer shall withhold tax from a payment that is to be included in calculating the chargeable income of an employee.

(3) The obligation of an employer to withhold tax under subsection (1) is not reduced or extinguished because

- (a) the employer has a right or is under an obligation to deduct and withhold any other amount from the payment; or
- (b) any other law provides that the income of an employee from employment shall not be reduced or subject to attachment.

**Withholding from investment returns**

**115.** (1) Subject to subsection (2), a resident person shall withhold tax at the rate specified in paragraph 8 of the First Schedule where that person

- (a) pays any dividend, lottery winning, interest, natural resource payment, rent or royalty to another person; and
- (b) the payment has a source in the country.

(2) This section does not apply to

- (a) payments subject to withholding under section 114;
- (b) payments made by an individual, unless made in conducting a business;
- (c) interest paid to a resident financial institution; or
- (d) a payment that is an exempt amount.

**Withholding from supply of goods, service fees and contract payments**

**116.** (1) Subject to subsection (3), a resident person shall withhold tax at the rate provided for in paragraph 8 of the First Schedule where that person

- (a) pays a service fee with a source in the country to a resident individual
  - (i) as fees or allowances, to a resident director, manager, trustee or board member of a company or trust,
  - (ii) for examining, invigilating, supervising an examination, or part time teaching or lecturing;
  - (iii) as an endorsement fee;
  - (iv) as a commission to a resident lotto receiver or agent
  - (v) as a commission to a sales agent;
  - (vi) as a commission to a resident insurance sales or canvassing agent;
  - (vii) for any other supply of services; or
  - (viii) for any other matter prescribed by Regulations; or
- (b) pays a service fee or an insurance premium with a source in the country to a non-resident person.

(2) A resident person, other than an individual, shall withhold tax on the gross amount of the payment at the rate specified in the First Schedule when the person makes a payment to another resident person who does not fall within subsection (1) or section 114 for

- (a) the supply or use of goods,
- (b) the supply of any works, or
- (c) the supply of services,

in respect of a contract between the payee and the resident person.

(3) Subsection (2) applies to a contract between the payee and a resident person, where the amount of the contract exceeds two thousand currency points.

(4) For the purpose of determining whether a contract qualifies under subsection (3), two or more contracts in respect of the same goods, works or services shall, be treated as a single contract.

(5) Subsection (2) does not apply

- (a) to a premium paid to a resident insurance company;
- (b) to payments under a contract for the sale of goods which constitute trading stock of both the vendor and the purchaser;

(c) where the Commissioner-General,

- (i) for a good cause shown, exempts in writing a person from deducting tax under that subsection in respect of an institution or a specific contract entered into by an institution upon an application made by the institution; or
- (ii) is satisfied that a person has a satisfactory tax record and exempts in writing that person from the application of that subsection or exempts specific contracts entered into by that person from that application.

(6) A person who is granted an exemption under paragraph (b) of subsection (5) shall, at the end of every calendar quarter, submit a list of particulars of all payments which would have fallen within subsection (2) but for the exemption.

(7) Subject to subsection (8), the Minister may by legislative instrument, make Regulations to prescribe

- (a) that a resident person shall withhold tax when the person makes a payment to a non-resident person of a type referred to in section 105 (g) or (h) in respect of land, sea or air transport or telecommunications services; and
- (b) the rate at which the tax referred to in paragraph (a) shall be withheld.

- (8) This section does not apply to
- (a) a payment subject to withholding under section 114;
  - (b) a payment made by an individual; or
  - (c) a payment that is an exempt amount.

(9) A resident person shall withhold tax at the rate specified in the First Schedule when the person makes a payment to a non-resident person for the rendering of management and technical services.

(10) A resident person shall withhold tax at the rate specified in the First Schedule from a payment made under a contract with a non-resident person for

- (a) the supply of goods or works, or
- (b) the supply of any services

where the contract gives rise to income from the country.

(11) Where subsection (10) applies, the resident person shall within thirty days of the date of entering into the contract, give notice to the Commissioner-General in writing of

- (a) the nature of the contract;
- (b) the likely duration of the contract;
- (c) the name and postal address of the non-resident person to whom payments under the contract are to be made; and
- (d) the total sum estimated to be payable under the contract to the non-resident person.

(12) Subsection (10) does not apply to other payments which are subject to final withholding tax applicable to non-residents under this Act.

#### **Statement and payment of tax withheld or treated as withheld**

117. (1) A withholding agent shall pay to the Commissioner-General within fifteen days after the end of each calendar month a tax that has been withheld in accordance with this Division during the month.

(2) A withholding agent shall file with the Commissioner-General within fifteen days after the end of each calendar month a statement in the form prescribed, specifying

- (a) payments made by the agent during the period that are subject to withholding under this Division;

- (b) the name, address and tax identification number of the withholdee;
- (c) tax withheld from each payment; and
- (d) any other information that the Commissioner-General may prescribe.

(3) A withholding agent who fails to withhold tax in accordance with this Division shall pay the tax that should have been withheld in the same manner and at the same time as tax that is withheld.

(4) A withholding agent who withholds tax under this Division and pays the tax to the Commissioner-General is treated as having paid the amount withheld to the withholdee for the purposes of any claim by the withholdee for payment of the amount withheld.

(5) A withholding agent who fails to withhold tax under this Division but pays the tax that should have been withheld to the Commissioner-General in accordance with subsection (1) is entitled to recover an equal amount from the withholdee.

(6) Subject to this Act and except where an agreement is ratified by Parliament a provision in an agreement which prohibits the deduction or withholding of a tax required to be deducted or withheld under this Act or any other enactment administered by the Commissioner-General is void.

#### **Withholding certificate**

**118.** (1) A withholding agent shall prepare and serve on a withholdee a withholding certificate, in the prescribed form,

- (a) separately for each period referred to in subsections (3) and (4); and
- (b) at the time specified in subsections (3) and (4).

(2) A withholding certificate shall specify

- (a) the amount of payments made to the withholdee during the period, and
- (b) the tax withheld by the withholding agent from the payments under this Division.

(3) Subject to subsection (4), a withholding certificate shall cover a calendar month and shall be served on the withholdee within thirty days after the end of the month.

(4) Where a tax is withheld under section 114, a withholding certificate

- (a) shall cover the part of the calendar year during which the employee is employed; and
- (b) shall be served on the employee by the 30th of January after the end of the year or, where the employee has ceased employment with the withholding agent during the year, not more than thirty days from the date on which the employment ceased.

#### **Final withholding payment**

**119.** (1) For the purposes of this Act, the following are final withholding payments:

- (a) dividends paid by a resident company;
- (b) rent paid to a resident individual under a lease of land or a building, with or without associated fittings and fixtures, situate in the country, other than rent received by an individual in conducting a business, sale or letting;
- (c) rent other than rent received in conducting a business of sale or letting, paid to a person other than an individual under a lease of land or a building situate in Ghana, with or without associated fittings and fixtures;
- (d) payments made to non-resident persons that are subject to withholding under this Division or would be subject to withholding if sections 115(2)(b) and 116(8)(b) were ignored, other than payments derived through a Ghanaian permanent establishment.
- (e) payments made to a subcontractor under section 71(4);
- (f) payments made to a person under section 116(1)(a)(ii) and (iii); and
- (g) lottery winnings.

(2) The following satisfy the tax liability of a withholder under section 1(1)(b):

- (a) tax withheld from a final withholding payment under this Division; and
- (b) tax paid with respect to a final withholding payment in accordance with section 117(3).

(3) Where a final payment is not subject to withholding, by reason of the fact that the payer is a non-resident, the tax liability of the recipient under section 1(1)(b) with respect to the payment is payable by way of instalment and assessment.

(4) For the purposes of applying Divisions III and IV, the liability is treated as a liability under section 1(1)(a).

#### **Credit for non-final withholding tax**

**120.** (1) A withholder of a payment which is not a final withholding payment is treated as having paid the tax

- (a) withheld from the payment under this Division; or
- (b) with respect to a payment in accordance with section 117(3).

(2) A withholder is entitled to a tax credit in an amount equal to the tax treated as paid under subsection (1) for the year of assessment in which the payment is derived.

#### *Division III: Tax payable by instalment*

#### **Payment of tax by quarterly instalment**

**121.** (1) An instalment payer shall pay tax by quarterly instalments if the person derives or expects to derive assessable income during a year of assessment

- (a) from a business or investment, or
- (b) from an employment where the employer is not required to withhold tax under section 114.

(2) An instalment payer shall pay tax in instalments

- (a) where the basis period of that instalment payer is a twelve month period beginning at the start of a calendar month, on or before the last day of the third, sixth, ninth and twelfth months of the basis period; or
- (b) in any other case, at the end of each three-month period commencing at the beginning of each year of assessment and a final instalment on the last day of each year of assessment, unless it coincides with the end of one of the three-month periods.

(3) Subject to subsections (4) and (5), the amount of each instalment of tax payable by an instalment payer for a year of assessment is calculated according to the following formula:

$$\frac{[A - B]}{C}$$

where-

- A** is the current estimated tax payable under this section or section 122 by the instalment payer for the year of assessment;
- B** is the sum of
- (a) tax paid during the year of assessment, but prior to the due date for payment of the instalment, by the person by previous instalment under this section;
  - (b) tax withheld under Division II during the year, but prior to the due date for payment of the instalment, from payments received by the person that are included in calculating the income for the year of that person; and
  - (c) tax paid in accordance with section 117 (1) that is paid to the Commissioner-General by a withholding agent or the person as withholdee during the year but prior to the due date for payment of the instalment; and
- C** is the number of instalments remaining for the year of assessment including the current instalment.

(4) The Minister may, by legislative instrument, make Regulations to prescribe for a particular class of persons to pay tax by instalments otherwise than or in substitution for instalments payable under this section.

- (5) The Regulations under subsection (4) may prescribe
- (a) that a particular or particular class of organised association or recognized occupational group collect from members of the organised association or recognised occupational group, tax payable by those members by instalment under this section;
  - (b) the terms and conditions under which the tax is to be collected; and

(c) the terms and conditions under which the association or recognised occupational group is to account to the Commissioner-General for the tax.

(6) An instalment payer is entitled to a tax credit for a year of assessment in an amount equal to the tax paid by way of instalment for the year.

(7) For the purposes of this section, “instalment payer” means a person who pays tax in quarterly instalments.

**Statement of estimated tax payable**

122. (1) A person who is an instalment payer for a year of assessment under section 121 shall file with the Commissioner-General by the date for payment of the first tax instalment an estimate of tax payable for the year.

(2) An estimate under subsection (1) shall, subject to any instructions by the Commissioner-General to the contrary,

(a) be in the form prescribed indicating an estimate of

(i) the assessable income of the person for the year of assessment from each employment, business and investment and the source of that income; and

(ii) the chargeable income of the person for the year and the tax to become payable with respect to that income under section 1(1)(a); and

(b) attach any other information that the Commissioner-General may require.

(3) Subject to subsection (6) and section 123(3), the tax referred to in subsection (2)(a)(ii) is the estimated tax payable by the person for the year of assessment.

(4) In estimating tax payable for a year of assessment under subsection (2)(a)(ii), a person may take into account

(a) a foreign tax credit to be claimed under section 112; and

(b) foreign income tax, only if the person has paid the tax or the person reasonably estimates that the tax will be paid during the year.

(5) The estimate of an instalment payer under subsection (1) remains in force for the whole of the basis period unless the person files a revised estimate with the Commissioner-General together with a statement of reasons for the revision.

(6) A revised estimate filed by a person under subsection (5) is the estimated tax payable by that person for the year of assessment, but only for the purposes of calculating instalments payable under section 121 after the date the revised estimate is filed with the Commissioner-General.

**Statement of estimated tax payable not required**

123. (1) The Commissioner-General may, by notice in writing, specify that an instalment payer or class of instalment payers is not required to submit an estimate under section 122.

(2) Where an instalment payer is not required to submit an estimate by reason of subsection (1), the Commissioner-General shall

- (a) make an estimate of the estimated tax payable by that person for the year of assessment, which may be based on the tax payable for the previous year of assessment with an upward adjustment; and
- (b) serve on the instalment payer a written notice stating the estimate of the Commissioner-General and the manner in which the estimate is calculated.

(3) For the purposes of section 121, where the Commissioner-General serves a notice under subsection (2), the estimated tax payable by the person for the year of assessment is the amount estimated by the Commissioner-General.

*Division IV: Tax payable on assessment*

**Return of income**

124. (1) Subject to section 125, a person shall file with the Commissioner-General not later than four months after the end of each year of assessment a return of income for the year.

(2) A return of income of a person for a year of assessment shall, subject to any instructions by the Commissioner-General to the contrary

- (a) be in the prescribed form and specify
  - (i) the assessable income of the person for the year from each employment, business and investment and the source of that income;

- (ii) the chargeable income of the person for the year and the tax payable with respect to that income under section 1(1)(a);
  - (iii) tax paid by the person for the year by withholding, instalment or assessment for which a tax credit is available under section 120 or 121; and
  - (iv) the remainder of the tax to be paid for the year calculated as the sum of the tax referred to in subparagraph (ii) less the tax already paid under subparagraph (iii);
- (b) have attached
- (i) any withholding certificates supplied to the person under section 118 with respect to payments derived by the person during the year; and
  - (ii) any other information that the Commissioner-General may require.

#### **Return of income not required**

**125.** (1) Subject to subsection (2), a return of income for a year of assessment is not required under section 124 from

- (a) a resident individual
  - (i) who has no tax payable for the year under section 1(1)(a); or
  - (ii) whose tax payable for the year under section 1(1)(a) relates exclusively to income from employment subject to withholding under section 114; or
- (b) a non-resident person who has no tax payable for the year under section 1(1)(a).

(2) Despite subsection (1), the Commissioner-General may serve a notice in writing on a person specified in subsection (1) requiring that person to file a return of income.

(3) Despite subsection (1), a person may elect to file a return of income even though the person is not required to do so.

#### **Assessment**

**126.** A return of income filed under section 124 shall result in a self-assessment.

#### **Regulations**

- 127.** (1) The Minister may, by legislative instrument, make Regulations
- (a) for matters authorised to be made or prescribed under this Act;

- (b) amending a Schedule to this Act or any monetary amount set out in this Act;
  - (c) for, or in connection with, giving effect to or enabling effect to be given to
    - (i) any Competent Authority Agreement or other agreement signed between the Government of the Republic of Ghana and the government of another country which makes provision corresponding, or substantially similar, to the common reporting standards; and
    - (ii) any arrangement for the exchange of tax information in relation to the Republic of Ghana and any other country which makes provision corresponding, or substantially similar, to the common reporting standards; and
  - (d) for the better carrying into effect of the provisions of this Act.
- (2) Without limiting paragraph (c) of subsection (1), the Minister may, in particular,
- (a) authorise the Commissioner-General to require persons specified for the purposes of paragraph (c) of subsection (1) to provide the Commissioner-General with information of specified descriptions;
  - (b) require that information be provided at a time and in a form and manner specified;
  - (c) impose obligations on relevant entities, including obligations to obtain from specified persons details of their place of residence for tax purposes;
  - (d) make provision, including provision imposing penalties, for the contravention of, or non-compliance with, the Regulations; and
  - (e) make provision for appeals in relation to the imposition of a penalty.
- (3) In this section, “specified” means specified in Regulations made under this section.

**PART IX**  
**INTERPRETATION**

**Persons in a controlled relationship**

128. (1) For the purposes of this Act, two or more persons are in a controlled relationship where the relationship between the persons is

- (a) that of an individual and a relative of the individual;
- (b) that of partners in the same partnership;
- (c) that of an entity and a person referred to in subsection (2);
- (d) that of a settlor, trustee and beneficiary; or
- (e) in a case not covered by paragraph (a) to (d), such that a person, not being an employee, acts in accordance with the directions, requests, suggestions, or wishes of another person whether or not the persons are in a business relationship and whether or not those directions, requests, suggestions, or wishes are communicated to that other person.

(2) A person and an entity are in a controlled relationship where

- (a) the person controls the entity or may benefit from fifty percent or more of the voting power or rights to income or capital of the entity,
  - (i) either alone or together with persons who, under another application of this section, are associated with the person; and
  - (ii) whether directly or through one or more interposed entities; or
- (b) the person, under another application of this section, is an associate of a person referred to in paragraph (a).

(3) Two persons are not associated persons under subsection (1)(a) or (b) where the Commissioner-General is satisfied that, having regard to the prevailing circumstances, it is not reasonable to expect that either person will act in accordance with the intentions of the other.

(4) For purposes of this section, “relative” in relation to an individual, means the individual’s child, spouse, parent, grandparent, grandchild, sibling, aunt, uncle, nephew, niece or first cousin, including by way of marriage or adoption.

**Company**

**129.** Despite the definition of a company in section 133, each of the following is treated as a company for the purposes of this Act,

- (a) a partnership in which at least twenty of the partners have limited liability for the debts of the partnership; and
- (b) a trust with at least twenty beneficiaries whose entitlements to participate in the income or capital of the trust are divided into units such that the entitlements are determined by the number of units owned.

**Domestic and excluded expenditure**

**130.** (1) Where an individual incurs expenditure in respect of that individual, the expenditure is domestic expenditure to the extent that it is incurred

- (a) in maintaining the individual, including the provision of shelter, meals, refreshment, entertainment or other leisure activities;
- (b) by the individual in commuting from home;
- (c) in acquiring clothing for the individual, other than clothing that is not suitable for wearing outside of work; or
- (d) in educating the individual, other than education that is directly relevant to a business conducted by the individual and that does not lead to a degree or diploma.

(2) Where another person incurs expenditure in making a payment to or providing any other benefit for an individual, the expenditure is domestic expenditure except to the extent that

- (a) the payment or benefit is included in the calculation of the income of the individual;
- (b) the individual provides consideration of an equal market value for the payment or benefit; or
- (c) the amount of the expenditure is so small as to make it unreasonable or administratively impracticable to account for.

(3) Expenditures referred to in subsections (1) and (2) include interest incurred on the amount borrowed that is used in a manner referred to in subsections (1) and (2).

(4) For the purposes of this Act, unless the context otherwise requires

“excluded expenditure” means

- (a) tax payable under this Act;
- (b) bribes and expenditure incurred in corrupt practices;
- (c) interest, penalties and fines paid or payable to a government or a political subdivision of a government of any country for breach of any legislation;
- (d) expenditure to the extent incurred by a person in deriving exempt amounts or final withholding payments;
- (e) retirement contributions, unless they are included in calculating the income of an employee under section 4(2)(a)(vi); and
- (f) dividends of a company.

#### **Financial instruments**

131. (1) In this Act, unless the context otherwise requires, “financial instrument”

- (a) means
  - (i) a debt claim or debt obligation;
  - (ii) a derivative instrument;
  - (iii) a foreign currency instrument; and
  - (iv) any other instrument prescribed by Regulations or, in the absence of Regulations, treated as a financial instrument by generally accepted accounting principles;
- (b) except to the extent specified in Regulations, excludes a membership interest in an entity.

(2) For the purposes of this Act, unless the context otherwise requires.

- (a) “debt claim” means a right to receive a payment under a debt obligation;
- (b) “debt obligation” means an obligation to make a payment to another person that is denominated in money and is in the nature of accounts payable and the obligations arising under deposits, debentures, stocks, shares, treasury bills, promissory notes, bills of exchange and bonds;

- (c) “derivative instrument” has the meaning prescribed by Regulations and, in the absence of Regulations, takes its meaning from generally accepted accounting principles; and
  - (d) “foreign currency instrument” has the meaning prescribed by Regulations and, in the absence of Regulations, takes its meaning from generally accepted accounting principles.
- (3) For the purposes of this Act, a person
- (a) derives a financial gain when the person derives interest from a financial instrument; and
  - (b) incurs a financial cost when the person incurs losses with respect to a financial instrument.
- (4) For the purposes of this Act, a person
- (a) derives a relevant financial gain when the person derives a financial gain from a derivative or foreign currency instrument; and
  - (b) incurs a relevant financial cost when the person incurs a financial cost with respect to a derivative or foreign currency instrument.

**Derivative amount**

132. (1) The provisions of this Act shall not be construed as subjecting an amount to a particular treatment just because it is paid, in whole or in part, out of an amount that is subject to a particular treatment.

(2) For purposes of this section, “subjecting an amount to a particular treatment” includes exempting the amount or providing a concession with respect to the amount.

**Interpretation**

133. (1) In this Act, unless the context otherwise requires-

“annuity” includes a series of payments of a recurring nature made pursuant to a contractual obligation, other than payments of rent or royalties;

“arrangement” means

- (a) an action, agreement, course of conduct, dealing, promise, transaction, understanding or undertaking, whether express or implied, whether or not enforceable by legal proceedings and whether unilateral or involving more than one person; or
- (b) a part of an item described in paragraph (a);

“asset” includes property of any kind whether tangible or intangible, currency, goodwill, know-how, a right to income or future income, a benefit that lasts longer than twelve months, a part of or any right or interest in, to or over an asset;

“associate” means a person who is in a controlled relationship with another person and has the meaning assigned in section 128;

“business”

(a) includes

- (i) a trade, profession, vocation or isolated arrangement with a business character; and
- (ii) a past, present or prospective business; but

(b) excludes an employment;

“capital asset”

(a) includes an asset to the extent to which it is employed in a business or investment; but

(b) excludes trading stock or a depreciable asset;

“close company” means a company owned by not more than five persons;

“Commissioner-General” means the Commissioner-General appointed under section 13 of the Ghana Revenue Authority Act, 2009 (Act 791);

“company” means a company incorporated under the laws of Ghana or elsewhere and includes

(a) a friendly society, building society or similar society;

(b) a pension fund, provident fund, retirement fund, superannuation fund or similar fund; and

(c) a government, a political subdivision of a government, or a public international organisation;

but does not include a partnership or a trust;

“consideration received” for an asset has the meaning assigned in section 37;

“cost” in relation to an asset has the meaning assigned in section 36;

“currency point” means one Cedi;

“debt claim” has the meaning assigned in section 131;

“debt obligation” has the meaning assigned in section 131;

“depreciable asset”

(a) means an asset to the extent to which it is employed in the production of income from a business and which is likely to lose value because of wear and tear, obsolescence or the effluxion of time; and

(b) does not include goodwill, an interest in land, a membership interest in an entity and trading stock;

“derived”, with respect to income or an amount, includes accrued;

“dividend” means

(a) a payment derived by a member from a company, whether received as a division of profits, in the course of a liquidation or reconstruction, in a reduction of capital or redeemable preference shares or otherwise;

(b) an amount treated as dividends in a situation where the Commissioner-General makes a deemed distribution of dividends in the case of a close company;

and includes a capitalisation of profits

(c) whether by way of a bonus share issue, increase in the amount paid-up on shares or otherwise; and

(d) whether an amount is distributed or not;

but does not include a payment to the extent to which it is

(e) matched by a payment made by the member to the company;

(f) debited to a capital, share premium or similar account; or

(g) otherwise constitutes a final withholding payment or is included in computing the income of the member;

“domestic expenditure” has the meaning assigned in section 130;

“employee” means an individual engaged in employment;

“employer” means the person who engages or remunerates an employee in employment;

“employment” means

(a) a position of an individual in the employ of another person;

- (b) a position of an individual as manager of an entity other than as partner of a partnership;
  - (c) a position of an individual entitling the individual to a fixed or ascertainable remuneration in respect of services performed; and
  - (d) a public office held by an individual;
- “entity” means a company, partnership or trust, but does not include an individual;
- “excluded expenditure” has the meaning assigned in section 130;
- “exempt amount” means an amount exempt by reason of section 7, 57, 59 or 111 or the Sixth Schedule;
- “expense” means a payment made that reduces the assets of the person making the payment;
- “final withholding payment” has the meaning assigned in section 119;
- “financial institution” means
- (a) a bank regulated under the Banking Act, 2004 (Act 673);
  - (b) a non-banking financial institution regulated under the Non-Banking Financial Institutions Act, 2008 (Act 774); or
  - (c) any other category of person prescribed by Regulations;
- “financial cost” has the meaning assigned in section 131;
- “financial gain” has the meaning assigned in section 131;
- “financial instrument” has the meaning assigned in section 131;
- “gain” in relation to the realisation of an asset or liability has the meaning assigned in section 35;
- “generally accepted accounting principles” means the generally accepted accounting principles that the Institute of Chartered Accountants (Ghana) may adopt;
- “interest” includes
- (a) a payment, in the nature of a discount or premium, made under a debt obligation that is not a return of capital;

- (b) a swap or other payment functionally equivalent to interest;
  - (c) a commitment, guarantee or service fee paid in respect of a debt obligation or swap agreement; and
  - (d) a distribution by a building society;
- “investment” includes
- (a) the owning of one or more assets of a similar nature or that are used in an integrated fashion; or
  - (b) a present, past or prospective investment; but does not include business or employment;
- “investment asset”
- (a) includes a capital asset held as part of an investment being shares or securities in a company, a beneficial interest in a trust or an interest in land or buildings, but
  - (b) excludes the primary private residence of an individual, provided the residence has been owned by the individual continuously for the three years before disposal and lived in on a daily basis for at least two of those three years;
- “lease” means an arrangement providing a person with a temporary right in respect of an asset of another person, other than money, and is in the nature of a licence, profit-a-prendre, option, rental agreement, royalty agreement or tenancy;
- “manager”, in relation to an entity
- (a) means a councillor, director, manager, member, officer or other person who participates or may participate, whether alone or jointly with other persons, in making senior management decisions on behalf of the entity; and
  - (b) includes
    - (i) a partner of a partnership and a trustee of a trust;
    - (ii) a person treated as a manager of an entity by another tax law;
    - (iii) a person in accordance with whose directions and instructions the entity or a person described in the rest of this definition is required or accustomed to act; and

- (iv) a non-resident person with respect to a Ghanaian permanent establishment owned by the person under section 106;
- “market value” of a payment, asset or liability is determined in accordance with section 26;
- “member” in relation to an entity means a person who owns a membership interest in the entity;
- “membership interest” in an entity means a right, whether of a legal or equitable nature, and is in the nature of a contingent right to participate in income or capital of the entity, the interest of a partner in a partnership, the interest of a beneficiary in a trust and shares in a company;
- “Minister” means the Minister responsible for Finance;
- “natural resource” means minerals, petroleum, water or any other non-living or living resource that may be taken from land or the sea;
- “natural resource payment” means a payment in the nature of a premium or like amount, for the right to take natural resources from land or the sea or calculated in whole or part by reference to the quantity or value of natural resources taken from the land or the sea;
- “net cost” for an asset or liability at a particular time is
  - (a) in the case of a depreciable asset, the share of the written down value of the pool to which it belongs at that time apportioned according to the market value of all the assets in the pool; and
  - (b) in the case of any other asset or a liability, the amount by which cumulative costs for the asset or liability exceed cumulative consideration received for the asset or liability to the time;
- “partnership” means an association of two or more individuals or corporations carrying on business jointly for the purpose of making profit, irrespective of whether the association is recorded in writing;
- “payment” includes an amount paid or payable in cash or kind, and the conferring of value or a benefit in any form by one person on another person and is in the nature of
  - (a) the transfer by one person of an asset or money to another person or the transfer by another person of a liability to the one person;

- (b) the creation by one person of an asset that on creation is owned by another person or the decrease by one person of a liability owed by another person;
  - (c) the supply of services by one person to another; and
  - (d) the making available of an asset or money owned by one person for use by another person or the granting of use of an asset or money to another person;
- “permanent establishment” means a Ghanaian permanent establishment or foreign permanent establishment within the meanings assigned in section 107;
- “person” means an individual or entity;
- “redundancy pay” has the meaning assigned in section 65 of the Labour Act, 2003 (Act 651);
- “relative” has the meaning assigned in section 128;
- “relevant financial cost” has the meaning assigned in section 131;
- “relevant financial gain” has the meaning assigned in section 131;
- “rent” includes
- (a) a payment, including a payment of a premium or like amount, for the use of or right to use property including equipment of any kind; and
  - (b) a payment for the rendering of, or the undertaking to render, assistance ancillary to a use or a right referred to in paragraph (a);
- but excludes a natural resource payment or a royalty;
- “residence” or “resident” with respect to a person is determined in accordance with section 101;
- “retirement contribution” has the meaning assigned in section 96;
- “retirement fund” has the meaning assigned in section 96;
- “retirement payment” has the meaning assigned in section 96;
- “royalty” includes a payment of a premium or like amount, derived as consideration for
- (a) the use of or right to use a copyright of literary, artistic or scientific work, including cinematograph films, software or video or audio recordings, whether the work is in electronic format or otherwise;

- (b) the use of or right to use a patent, trade mark, design or model, plan, or secret formula or process;
- (c) the use of or right to use any industrial, commercial, or scientific equipment;
- (d) the use of or right to use information concerning industrial, commercial, or scientific experience;
- (e) the rendering of or the undertaking to render assistance ancillary to a matter referred to in paragraph (a), (b), (c) or (d); or
- (f) a total or partial forbearance with respect to a matter referred to in paragraph (a), (b), (c), (d) or (e);

“service fee” means a payment to the extent to which, based on market values, it is reasonably attributable to services rendered by a business of a person, but excludes interest, rent or a royalty;

“shareholder” means a person who is a member of a company;

“small scale mining” has the meaning assigned in the Minerals and Mining Act, 2006 (Act 703);

“state owned or state sponsored educational institution” means an educational institution

- (a) established by the Government of Ghana or any political division of the Government, whether district, municipal or metropolitan authority, and usually regulated in matters of detail by the government or that division and maintained at public expense by taxation and open, usually without charge or with minimal charge, to the children of all the residents of that division or other divisions; or
- (b) belonging to the public and established, conducted or managed under public authority by the central government or a political division of the central government;

“trading stock” means assets owned by a person that are sold or intended to be sold in the ordinary course of a business of the person, work in progress on the assets, inventories of materials to be incorporated into the assets and consumable stores;

“trust” means an arrangement under which a trustee holds assets;

“trustee” means an individual or body corporate holding assets in a fiduciary capacity for the benefit of identifiable persons or for some object permitted by law and whether or not

- (a) the assets are held alone or jointly with other individuals or bodies corporate; or
- (b) the individual or body corporate is appointed or constituted trustee by personal acts, by will, by order or declaration of a court or by other operation of the law; and
- (c) includes
  - (i) an executor, administrator, tutor or curator;
  - (ii) a liquidator, receiver, trustee in bankruptcy or judicial manager;
  - (iii) a person having the administration or control of assets subject to a usufruct, fideicommissum or other limited interest;
  - (iv) a person who manages the assets of an incapacitated individual; and
  - (v) a person who manages assets under a private foundation or other similar arrangement;

“underlying ownership”

- (a) in relation to an entity, means membership interests owned in the entity, directly or indirectly through one or more interposed entities, by individuals or by entities in which no person has a membership interest; or
- (b) in relation to an asset owned by an entity, is determined as though the asset is owned by the persons having underlying ownership of the entity in proportion to that ownership of the entity;

“withholdee” means a person receiving or entitled to receive a payment from which tax is required to be withheld under Division II of Part VIII;

“withholding agent” means a person required to withhold tax from a payment under Division II of Part VIII; and

“year of assessment” has the meaning assigned in section 18.

**PART X**  
**TEMPORARY AND TRANSITIONAL PROVISIONS**

*Division I: Temporary provisions*

**Temporary concession**

**134.** (1) The provisions of the Sixth Schedule provide for concessions of a temporary nature.

(2) Unless expressly stated to the contrary, the provisions of the Sixth Schedule apply strictly and only in accordance with their clear wording.

(3) A person is not entitled to a concession in the Sixth Schedule if an associated person has benefited or is benefiting from that concession.

(4) This section does not apply as between two associated individuals who are residents.

(5) For the purposes of this Act, where a provision of the Sixth Schedule applies to grant a concession to a person with respect to a particular type of business

(a) the business is construed narrowly and only the person's activities devoted wholly, exclusively and necessarily to that business are treated as part of the business;

(b) the income gained by a person or loss incurred by a person from the business for a year of assessment is calculated separately from any other activity of the person; and

(c) an unexpired period granted under the concession shall be treated as having been transferred to a new owner of the business in case of transfer of ownership of the business and that concession shall not commence with the new ownership.

(6) Unless expressly stated to the contrary the income of a person entitled to a concession in the Sixth Schedule is subject to tax at the rate provided for in the First Schedule

**Agreements affecting tax**

**135.** (1) Subsections (2) and (3) apply where the Government of Ghana has concluded, whether before or after the commencement of this Act, a binding agreement with a person that purports to modify the manner in which tax is imposed, including by reason of a fiscal stability clause.

(2) Where this subsection applies, the provisions of the old tax law that are modified or protected by the agreement continue to apply until the earlier of

- (a) the end of the agreement or relevant clauses in the agreement;
- (b) the first alteration of the agreement after the commencement of this Act; and
- (c) the relinquishment by the person of the person's right to modified tax treatment.

(3) Where this subsection applies, the Commissioner-General may, in calculating the tax liability of the person during the application period referred to in subsection (2),

- (a) continue to apply other provisions of the old tax law,
  - (i) that the Commissioner-General considers are associated with or that have an application that is consequential upon the provisions mentioned in subsection (2); and
  - (ii) instead of applying the corresponding provisions under the new tax law; and
- (b) not apply any provisions in the new tax law that have no corresponding provision in the old tax law.

(5) For purposes of this section,

“fiscal stability clause” refers to a clause in an agreement that provides that certain provisions of a tax law at the time of the agreement will continue to apply or not be altered to the detriment of a contracting party;

“new tax law” means a tax law after it has been modified or excluded by an agreement referred to in subsection (1), but without considering any such modification or exclusion; and

“old tax law” means a tax law as applicable immediately before it is modified or protected by an agreement referred to in subsection (1).”

*Division II: Repeals, savings, transitional provisions and commencement***Repeals and savings**

136. (1) The following enactments are repealed:

- (a) subject to section 138, the Internal Revenue Act, 2000 (Act 592); and
- (b) any other laws to the extent that they are inconsistent with the provisions of this Act.

(2) Despite the repeal of the enactments in subsection (1), the Regulations, notices, orders, directions, appointments or any other act lawfully made or done under the repealed enactments and in force immediately before the commencement of this Act shall, with such modifications as are made by this Act, be considered to have been made or done under this Act and shall continue to have effect until reviewed, cancelled or terminated

(3) Any right or privilege acquired by a person under the repealed legislation ceases to exist on the date this Act comes into effect under section 139, unless it is expressly provided in this Part or in the Regulations that the right or privilege is to remain in existence.

**Consequential amendments**

137. The Banking Act, 2004 (Act 673) is amended in section 84(3) by the substitution for paragraph (i) of

“(i) the bank is required to do either or both of the following:

- (i) provide information on the bank records of a client of that bank to the Ghana Revenue Authority
  - (A) upon the request of the Ghana Revenue Authority acting in accordance with paragraphs 19 and 20 of the Seventh Schedule of the Income Tax Act, 2015 (Act .....); or
  - (B) in accordance with Regulations made under the Income Tax Act, 2015 (Act .....) for the automatic exchange of financial information for tax purposes with the competent authority of another jurisdiction;
- (ii) make a report or provide additional information on a suspicious transaction to the Financial Intelligence Centre set up under the Anti-Money Laundering Law in force.”.

**Transitional provisions**

138. (1) The repealed legislation continues to apply for years of assessment commencing prior to the date on which this Act comes into effect

(2) A reference in this Act to

(a) a previous year of assessment includes, where the context requires, a reference to a year of assessment under the repealed legislation; or

(b) this Act or to a provision of this Act includes, where the context requires, a reference to the repealed legislation or to a corresponding provision of the repealed legislation, respectively.

(3) The Minister may, by legislative instrument, make Regulations to prescribe transitional measures for the implementation of this Act.

**Provisions for tax administration**

139. Until the date the Revenue Administration law administered by the Ghana Revenue Authority comes into force, the Seventh Schedule shall, in addition to the Ghana Revenue Authority Act 2009 (Act 791) be used to administer this Act.

**FIRST SCHEDULE**

## Tax Rates

*(Sections 1, 63, 71, 77, 85, 115 and 116)***Rates of income tax for individuals**

1. (1) Subject to subparagraph (3) and the Second Schedule, the chargeable income of a resident individual for a year of assessment is taxed at the following rates:

NO.	CHARGEABLE INCOME	RATE OF TAX
1.	First GH¢1,584	NIL
2.	Next GH¢ 792	5 percent
3.	Next GH¢ 1,104	10 percent
4.	Next GH¢ 28,200	17.5 percent
5.	Exceeding GH¢ 31,680	25 percent

(2) Subject to subparagraph (3), the chargeable income of a non-resident individual for a year of assessment is taxed at the rate of twenty percent.

(3) Where the chargeable income of an individual includes a gain from the realisation of an investment asset not charged elsewhere, the individual may elect that

- (a) the gain from the realisation of the investment asset, less any loss from the realisation of that asset is taxed at the rate of fifteen percent; and
- (b) the remainder of the chargeable income of the individual be taxed at the rates referred to in subparagraph (1) or (2) as the case requires.

**Rate of income tax for trusts**

2. The chargeable income of a trust for a year of assessment is taxed at the rate of twenty-five percent.

**Rates of income tax for companies**

3. (1) The chargeable income of a company other than a company principally engaged in the hotel industry and income from goods and services provided to the domestic market by a Free Zone Enterprise after its concessionary period for a year of assessment is taxed at the rate of twenty-five percent.

(2) The chargeable income of a company principally engaged in the hotel industry for a year of assessment is taxed at the rate of twenty-two percent.

(3) The chargeable income of a company from the export of non-traditional goods for a year of assessment is taxed at the rate of eight percent.

(4) The chargeable income derived by a financial institution from a loan granted to a farming enterprise for use by that enterprise in the production of income is taxed at the rate of twenty percent.

(5) The chargeable income derived by a financial institution from a loan granted to a leasing company for the use by that company for the funding or acquisition of assets for lease is taxed at the rate of twenty percent.

(6) The chargeable income of a company from a manufacturing business not included in subparagraphs (1) and (3) for a year of assessment is taxed at the rates indicated below:

<b>Location</b>	<b>Rate of income tax</b>
(a) Manufacturing business located in the regional capitals of the country	75 percent of the rate of income tax applicable to other income under subparagraph (1)
(b) Manufacturing business located elsewhere in the country	50 percent of the rate of income tax applicable to other income under subparagraph (1)

- (7) In this paragraph, “non-traditional goods” include
- (a) horticultural products;
  - (b) processed and raw agricultural products grown in Ghana, other than cocoa beans;
  - (c) wood products, other than lumber and logs;
  - (d) handicrafts; and
  - (e) locally manufactured goods.

**Rates of income tax for Free Zone Enterprises**

4. The chargeable income of a Free Zone Enterprise after the concessional period from the export of goods and services outside of the national customs territory for a year of assessment is taxed at the rate of fifteen percent.

**Rate of Petroleum Income Tax**

5. The chargeable income of a person from petroleum operations for a year of assessment is taxed at the rate of thirty-five percent.

**Rate of Mineral Income Tax**

6. The chargeable income of a person from mineral operations for a year of assessment is taxed at the rate of thirty-five percent.

**Rate of tax on persons entitled to concessions under the Sixth Schedule**

7. The income of a person entitled to a concession in the Sixth Schedule is subject to tax at the rate of one percent of chargeable income.

**Rates of withholding tax**

8. (1) The rates of tax to be withheld from payments under Division II of Part VIII are:

- (a) a payment to which section 114 applies
  - (i) in the case of a resident withholder, at the rates specified in paragraph 1(1) of this Schedule or as amended by Regulations; and
  - (ii) in the case of a non-resident withholder, twenty percent;
- (b) a payment to which section 115 applies
  - (i) in the case of dividends, eight percent;
  - (ii) in the case of interest paid to individuals, one percent;

- (iii) in the case of any other interest, eight percent;
  - (iv) in the case of rent paid to an individual for residential property, eight percent;
  - (v) in the case of rent paid to an individual for non-residential property, fifteen percent;
  - (vi) in the case of rent paid to a person other than an individual for residential property, eight percent;
  - (vii) in the case of rent paid to a person other than an individual for non-residential property, fifteen percent;
  - (viii) in the case of lottery winnings, five percent of the amount; and
  - (ix) in the case of natural resource payments and royalties, fifteen percent; and
- (c) a payment to which section 116 applies
- (i) in the case of service fees referred to in section 116(1)(a)(i), twenty percent;
  - (ii) in the case of service fees referred to in section 116(1)(a)(ii) – (vi), ten percent;
  - (iii) in the case of service fees referred to in section 116(1)(b), twenty percent;
  - (iv) in the case of insurance premiums referred to in section 116(1)(b), five percent;
  - (v) in the case of goods referred to in section 116(2)(a), three percent;
  - (vi) in the case of works and service fees referred to in section 116(2)(b) five percent;
  - (vii) in the case of service fees referred to in section 116(2)(c) fifteen percent;
  - (viii) in the case of management and technical service fees referred to in section 116(9), twenty percent; and
  - (ix) in the case of goods and works referred to in section 116(10), twenty percent.

(2) The rate of tax to be withheld from a payment to which section 71(4) applies is fifteen percent of the amount.

(3) The rate of tax to be withheld from a payment under section 85(3) is ten percent of the amount.

(4) The rate of tax to be withheld from a payment under section 105(g) and (h) is fifteen percent of the amount.

**Change of rate**

9. Where a rate referred to in paragraph 1 to 7 changes during a year of assessment

- (a) a tentative tax shall be computed by applying the rate in force before and after the effective date of the change to the chargeable income of the person for the entire year; and
- (b) the income tax payable by the person for the year is the sum of the portion of the tentative tax that the number of months in each part of the year during which the attributable rate is in force bears to the number of months in the year of assessment.

**SECOND SCHEDULE**  
Modified Taxation  
(Section 1(5))

**Principles of modified taxation**

1. This Schedule modifies the taxation of eligible resident individuals by
  - (a) imposing a presumptive tax on individuals that only have income from the businesses specified in paragraphs 3 and 4; and
  - (b) applying a modified cash basis in calculating income from the businesses specified in paragraph 5.

**Presumptive taxation**

2. (1) Presumptive taxation applies where
  - (a) the chargeable income of a resident individual for a year of assessment consists exclusively of income from a business;
  - (b) the income is exclusively from sources within Ghana; and
  - (c) the individual
    - (i) is not registered for value added tax purposes and has an annual turnover of not more than twenty thousand Cedis from the business, computed as an average of the turnover for three consecutive years ending in the year of assessment; or
    - (ii) has an annual turnover of more than twenty thousand Cedis from the business and is not required to register for value added tax purposes.

(2) For purposes of subparagraph (1)(c), where the average turnover of an individual is not available for the period specified, the Commissioner-General may determine how the turnover is to be calculated.

**Exclusions from presumptive tax**

3. (1) The following individuals are excluded from presumptive taxation under paragraphs 4 and 5, even if they meet the requirements of paragraph 2:
  - (a) an individual who has a professional qualification;
  - (b) an individual who is engaged in a business prescribed by regulations that has a high profit to turnover ratio;
  - (c) an individual who has more than one business
  - (d) an individual who has a business with more than one business outlet
  - (e) an individual in a partnership; and

(f) an individual who elects to disapply paragraphs 4 and 5 for a year of assessment.

(2) Where an individual elects to disapply paragraphs 4 and 5, paragraphs 4 and 5 shall not apply to that individual for that year of assessment and the following five years of assessment, but that individual may qualify for modified cash basis taxation under paragraph 6.

#### **Presumptive tax based on instalments**

4. Where presumptive taxation applies to an individual as referred to in paragraph 2(1)(c)(i), the tax payable by that individual for a year of assessment under section 1(1)(a) is the total of instalments payable by that individual for a year of assessment under section 121.

#### **Presumptive tax based on turnover**

5. Where presumptive taxation applies to an individual as referred to in paragraph 2(1)(c)(ii), the tax payable by that individual for a year of assessment under section 1(1)(a) is three percent of the turnover of the business, where the turnover is more than twenty thousand cedis but does not exceed one hundred and twenty thousand cedis.

#### **Modified cash basis**

6. (1) The modified cash basis under subparagraph (2) applies where
- (a) the assessable income of a resident individual for a year of assessment from all businesses conducted by that individual consists exclusively of income from sources in the country; and
  - (b) the turnover of that individual does not exceed one hundred and twenty thousand cedis, calculated using the modified cash basis.

(2) Where the modified cash basis applies as referred to in subparagraph (1) the income of an individual from a business for a year of assessment shall be calculated

- (a) according to the standard rules for calculating income from a business; and
- (b) using the modified cash basis of accounting.

(3) For the purpose of subparagraph (2)(b), sections 17, 21(4), 25, 26 and 31 do not apply to the calculation of the income of an individual from a business for a year of assessment.

(4) In this Schedule, “turnover of a business for a year” means the amount derived from the business during the year that is required to be included in calculating income from the business under section 5(2)(a), (i)(ii) and (vii) only.

**THIRD SCHEDULE**  
Capital Allowances  
(Sections 5, 14, 67 and 81)

**Part I: General**

**Classification and pooling of depreciable assets**

1. (1) Depreciable assets are classified as follows:

CLASS	DEPRECIABLE ASSETS
1	Computers and data handling equipment together with peripheral devices.
2	(i) Automobiles, buses and minibuses, goods vehicles; construction and earth-moving equipment, heavy general purpose or specialised trucks, trailers and trailer-mounted containers; plant and machinery used in manufacturing.  (ii) Assets resulting from expenses referred to in subparagraph (4) in respect of long term crop planting costs
3	Railroad cars, locomotives and equipment; vessels, barges, tugs and similar water transportation equipment; aircraft; specialised public utility plant, equipment and machinery; office furniture, fixtures and equipment; any depreciable asset not included in another class.
4	Buildings, structures and similar works of a permanent nature
5	Intangible assets

(2) A Class 1, 2 or 3 depreciable asset owned and employed by a person during a year of assessment in the production of income from a particular business shall, at the time the asset is first owned and employed by that person, be placed in a pool with all other assets of the same Class owned and employed by that person in the business.

(3) A Class 4 or 5 depreciable asset owned and employed by a person during a year of assessment in the production of income from a particular business shall, at the time the asset is first owned and employed by the person, be placed in a pool of its own separately from other assets of that Class or any other Class.

(4) Where a depreciable asset owned by a person is partly used in the production of income from a business, only that part of the asset which is used in the production of the income shall be placed in the pool of depreciable assets.

(5) Subparagraph (6) applies to expenses incurred by a person wholly, exclusively and necessarily in the production of the income of that person from a business

- (a) in respect of planting vegetation from which timber, rubber, oil palm or other crops are derived; and
- (b) where the business is a timber concern or a large scale rubber, oil palm or other long term crop plantation.

(6) Unless otherwise provided, an expense referred to in subparagraph (5) shall be treated as if the expense was incurred in securing the acquisition of a depreciable asset that is used by the person in the production of income.

### **Depreciation Allowance**

2. (1) Subject to this paragraph and with respect to each basis period of a person ending in the year of assessment, the Commissioner-General shall grant an allowance to that person for a year of assessment for each pool of depreciable assets.

(2) The allowance referred to under subparagraph (1) shall be equal to the depreciation for the period of each pool of depreciable assets and computed in accordance with subparagraphs (3) and (6).

(3) Depreciation for a year of assessment for each pool of depreciable assets is computed

- (a) in the case of Class 1, 2 and 3 pools, in accordance with the reducing balance method; and
- (b) in the case of Class 4 and 5 pools, in accordance with the straight line method.

(4) Depreciation is calculated using the following formula:

$$\frac{A \times B \times C}{365}$$

where

A is the depreciation basis of the pool of depreciable assets at the end of the basis period;

B is the depreciation rate applicable to the pool of depreciable assets; and

C is the number of days in the basis period of the person.

(5) The depreciation rates applicable to each pool of depreciable assets referred to in subparagraph (3) are

NO.	CLASS	RATE
1.	1	40 percent
2.	2	30 percent
3.	3	20 percent
4.	4	10 percent
5.	5	1 divided by the useful life of the asset in the pool

(6) Where at the end of a year of assessment, the depreciation basis of a pool of depreciable assets, reduced by depreciation calculated under subparagraph (3), produces an amount that is less than five hundred Cedis, additional depreciation of that pool is computed as equal to that amount.

(7) The allowance granted to a person under subparagraph (1) for a year of assessment with respect to a Class 4 or 5 pool of depreciable assets shall not exceed the depreciation basis of the pool at the end of the basis period, reduced by all other allowances granted to the person in any previous basis period in respect of that pool.

**Depreciation basis of a pool of depreciable assets**

3. (1) The depreciation basis of a pool of depreciable assets at the end of a basis period in respect of a Class 1, 2 or 3 asset is

- (a) the total of
  - (i) the depreciation basis of the pool at the end of the previous basis period, if any, after deducting depreciation for that pool calculated under paragraph 2 for that previous period; and
  - (ii) amounts added to the depreciation basis of that pool during the basis period in respect of additions to the cost of assets in or added to that pool; and
- (b) reduced, but not below zero, by consideration received for the assets in that pool or that have been in the pool during the basis period.

(2) The depreciation basis of a pool of depreciable assets at the end of a basis period in respect of a Class 4 or 5 asset is

- (a) the total of
  - (i) the depreciation basis of that pool at the end of the previous basis period; and
  - (ii) amounts added to the depreciation basis of that pool during the basis period in respect of additions to the cost of assets in or added to the pool; and
- (b) reduced, but not below zero, by the consideration received for the assets in that pool during the basis period.

(3) Where by reason of subparagraph (3) of paragraph 1, only part of an asset is placed in a pool of depreciable assets, the Commissioner-General shall apportion the cost of that asset and the consideration received for that asset according to the market value of the part of the asset which has been included in the pool and the part which is not placed in the pool.

(4) For the purpose of this Schedule, the cost of a road vehicle other than a commercial vehicle, is not recognised to the extent that the cost exceeds seventy-five thousand Cedis.

(5) For the purpose of this paragraph, “commercial vehicle” means

- (a) a road vehicle designed to carry a load of more than half a tonne or more than thirteen passengers; or
- (b) a vehicle used in a transportation or a vehicle rental business.

**Realisation of depreciable assets**

4. (1) For the purpose of computing the income of a person for a year of assessment from a business in which a depreciable asset of a particular Class was employed, the Commissioner-General shall include the excess of the following two amounts:

- (a) the consideration received by the person during the year for any asset that was in a particular pool of depreciable assets of the person during the year; reduced by
- (b) subparagraph (i) or (ii), as appropriate
  - (i) in the case of a Class 1, 2 or 3 pool of depreciable assets, the depreciation basis of each pool at the end of the year, but disregarding the consideration received referred to in paragraph (a); or
  - (ii) in the case of a Class 4 or 5 pool, the written down value of the pool at the end of the year calculated under subparagraph (3), but disregarding the consideration received referred to in paragraph (a).

(2) Where the assets in a pool of depreciable assets of a person are all realised by the person before the end of a year of assessment, the person shall dissolve the pool of depreciable assets and

- (a) include in the income of that person for the year, an amount that is calculated using the formula  $A - B$ ; or
- (b) be granted an allowance for the year, calculated using the formula  $B - A$ ;

where

A - is the consideration received by the person during the year of assessment for the asset; and

B - is the sum of

- (i) the written down value of that pool of depreciable assets at the end of the previous year of assessment; and
- (ii) amounts added to the depreciation basis of that pool of depreciable assets during the year of assessment.

(3) For the purpose of this paragraph, “written down value” of a pool of depreciable assets at the end of a year of assessment means

- (a) in the case of a Class 1, 2 or 3 pool of depreciable assets, the depreciation basis of that pool at the end of the year, if any, after deducting depreciation for that pool for the year as calculated under paragraph 2; or
- (b) in the case of a Class 4 or 5 pool of depreciable assets, the depreciation basis of that pool at the end of the year reduced by all allowances granted to the person under paragraph 2 in respect of that pool for that year and any previous year.

(4) For the purpose of this paragraph, a person realises a depreciable asset referred to in paragraph 1(5) only if that person sells to another person who is not an associate the business in respect of which the expense was incurred.

*Part II: Petroleum Operations*

**Modification of Part I**

5. (1) A person who incurs a capital allowance expenditure in respect of a separate petroleum operation during a year of assessment shall place that expenditure in a separate pool of depreciable assets.

(2) The Commissioner-General shall grant to that person a capital allowance with respect to each year at the rate of twenty percent using the straight line method.

(3) Where an asset for which capital allowance expenditure has been incurred under this paragraph is disposed of or treated as disposed of during a year of assessment, the Commissioner-General shall, in computing assessable income from the separate petroleum operation for the year, include consideration received for the disposal.

(4) Where in a year of assessment an asset is partly used in a separate petroleum operation and partly used in another separate petroleum operation the Commissioner-General shall apportion the capital allowance of that asset in that year between the two separate petroleum operations in proportion to the use of the asset in each separate petroleum operation.

(5) Where in a year of assessment a person assigns a petroleum right of that person, the written down value of any capital allowance expenditure of that person at the beginning of that year is transferred to the assignee.

(6) Where in a year of assessment a person assigns part of the petroleum right of that person, the Commissioner-General shall apportion the written down value of the capital allowance expenditure of the person between that person and the assignee in proportion to the percentage of the interest retained and the percentage of the interest assigned.

(7) Where, for the purpose of calculating the income of a person, a deduction is made in respect of capital allowance expenditure, a further deduction shall not be made in respect of the same capital allowance expenditure under any other provision of this Act.

- (8) In this paragraph, unless the context otherwise requires,  
“capital allowance expenditure” means expenditure for which capital allowances are available under this Schedule, including by reason of Division I of Part VI but subject to section 67; and  
“written down value” of an asset means the cost of the asset less all capital allowances granted with respect to expenditure included in that cost.

### *Part III: Minerals and Mining*

#### **Modification of Part I**

6. (1) A person who incurs a capital allowance expenditure in respect of a separate mineral operation during a year of assessment shall place that expenditure in a separate pool of depreciable assets.

(2) The Commissioner-General shall grant to that person a capital allowance with respect to each year at the rate of twenty percent using the straight line method.

(3) Where an asset for which capital allowance has been granted under this paragraph is disposed of or treated as disposed of during a year of assessment, the Commissioner-General shall,

- (a) if the consideration received for the disposal exceeds the written down value of the asset, include the excess in computing the assessable income of that person from the separate mineral operation for the year;

- (b) if the written down value of the asset exceeds the consideration received for the disposal, grant an additional capital allowance for the year in an amount equal to the excess; and
- (c) reduce the pool of depreciable assets referred to in subparagraph (1) by the written down value of the asset.

(4) Where in a year of assessment an asset is partly used in a separate mineral operation and partly used in another separate mineral operation, the Commissioner-General shall apportion the capital allowance of that asset in that year between the two separate mineral operations in proportion to the use of the asset in each separate mineral operation.

(5) Where in a year of assessment a person assigns a mineral right of that person, the written down value of any capital allowance expenditure of that person at the beginning of that year is transferred to the assignee.

(6) Where in a year of assessment a person assigns part of the mineral right of that person, the Commissioner-General shall apportion the written down value of the capital allowance expenditure of the person between that person and the assignee in proportion to the percentage of the interest retained and the percentage of the interest assigned.

(7) Where, for the purpose of calculating the income of a person, a deduction is made in respect of capital allowance expenditure, a further deduction shall not be made in respect of the same capital allowance expenditure under any other provision of this Act.

(8) In this paragraph

“capital allowance expenditure” means expenditure for which capital allowances are available under this Schedule, including by reason of Division II of Part VI but subject to section 75; and

“written down value” of an asset means the cost of the asset less any capital allowances granted with respect to expenditure included in that cost.

**FOURTH SCHEDULE**  
Quantification of benefits  
(Section 26)

**Motor vehicle benefits**

1. A benefit consisting of the availability for use or use of a motor vehicle provided by an employer to an employee or an entity to a member or manager during a year of assessment is quantified according to the following rates:

NO	BENEFIT	RATE
1.	Driver and vehicle with fuel	12.5 percent of the total cash emoluments of the person up to a maximum of GH¢ 600.00 per month
2.	Vehicle with fuel	10 percent of the total cash emoluments of the person up to a maximum of GH¢500.00 per month
3.	Vehicle only	5 percent of the total cash emoluments of the person up to a maximum of GH¢250.00 per month
4.	Fuel only	5 percent of the total cash emoluments of the person up to a maximum of GH¢250.00 per month

**Accommodation benefits**

2. A benefit consisting of the provision of premises by an employer for residential occupation of an employee during a year of assessment is quantified as follows:

NO	BENEFIT	RATE
1.	Accommodation with furnishing	10 percent of the total cash emoluments of the person
2.	Accommodation only	7.5 percent of the total cash emoluments of the person
3.	Furnishing only	2.5 percent of the total cash emoluments of the person
4.	Shared accommodation	2.5 percent of the total cash emoluments of the person

**Loan benefits**

3. (1) A benefit consisting of a loan provided for a year of assessment in return for services, whether by way of employment or otherwise, or by an entity to a member or manager of the entity is quantified as

(a) where

- (i) the loan is from an employer to an employee,
- (ii) the term of the loan does not exceed twelve months, and
- (iii) the aggregate amount of the loan and any similar loan outstanding at any time during the previous twelve months does not exceed three months basic salary,

the quantity of the payment is nil; and

(b) in any other case, a quarter of the amount by which

- (i) if interest were payable under the loan at the statutory rate for the year of assessment, the interest that would have been paid by the payee during the year of assessment in which the payment is made, exceeds
- (ii) the interest paid by the payee during the year of assessment under the loan, if any.

(2) In this paragraph, “statutory rate”, means the Bank of Ghana rediscount rate.

**FIFTH SCHEDULE**

## Personal reliefs

*(Section 51)*

1. The personal reliefs referred to in section 51 are as follows:
  - (a) in the case of an individual who has a dependant spouse or at least two dependant children, that individual is entitled to a personal relief of two hundred currency points;
  - (b) in the case of an individual who has a disability, that individual is entitled to a personal relief of twenty-five percent of the assessable income of that individual from a business or employment;
  - (c) in the case of an individual who is sixty years of age and above, that individual is entitled to a personal relief of two hundred currency points;
  - (d) in the case of an individual who is sponsoring the education of the child or ward of that individual in a recognised registered educational institution in the country, that individual is entitled to a personal relief of two hundred currency points per child or ward up to a maximum of three children or wards;
  - (e) in the case of an individual who has a dependant relative, other than a child or spouse, who is sixty years of age or more, that individual is entitled to a personal relief of one hundred currency points but that individual may only claim relief in respect of two dependant relatives; and
  - (f) in the case of an individual who has undergone training to update the professional, technical or vocational skills or knowledge of the individual, that individual is entitled to a personal relief which is equivalent to the cost of the training of not more than four hundred currency points.
2. Where two or more persons qualify in respect of the same child, ward or relative under paragraph 1 (d) or (e), the Commissioner-General shall grant only one relief.
3. For the purpose of this Schedule, “dependant child, spouse or relative” in respect of an individual, means a child, spouse or relative of the individual for whom that individual provides the necessities of life.

**SIXTH SCHEDULE**  
Temporary concessions  
(Section 134)

**Agriculture**

1. (1) Where an individual conducts a farming business wholly within the country, that individual is subject to tax at the rate provided for in the First Schedule

- (a) in the case of farming tree crops, income of that individual from the business for a period of ten years of assessment commencing from the year during which the first harvest of crops occurs;
- (b) in the case of cash crops or farming livestock, other than cattle or fish, income of that individual from the business for a period of five years of assessment commencing from the year during which the business commences; and
- (c) in the case of cattle, income from the business for the period of ten years of assessment commencing from the year during which the business commences.

(2) The income of a person from an agro processing business conducted wholly in the country is subject to tax at the rate provided for in the First Schedule for a period of five years of assessment commencing from the year in which commercial production commences.

(3) The income of a person from a cocoa by-product business conducted wholly in the country is subject to tax at the rate provided for in the First Schedule for a period of five years of assessment commencing from the year in which commercial production commences.

- (4) In this paragraph, unless context otherwise requires,
- “cash crops” include cassava, maize, pineapple, rice, and yam;
  - “cocoa by-product business” means a business that uses on a commercial basis cocoa by-products using as its main raw material substandard cocoa beans, cocoa husks and other cocoa waste;
  - “farming business” means the business of producing crops, fish or livestock;
  - “agro processing business” means the business of processing crops, fish or livestock produced, caught or raised in the country from their raw state into an edible canned or packaged product; and
  - “tree crops” include coconut, coffee, oil palm, rubber, and shea nut.

**Rural banking**

2. (1) The income of a person from a rural banking business is subject to tax at the rate provided for in the First Schedule for a period of ten years of assessment commencing from the year in which the business is established.

(2) In this paragraph, “rural banking business” means a business designated as a rural banking business under the Banking Act, 2004 (Act 673).

**Waste processing**

3. (1) The income of a company from a waste processing business is subject to tax at the rate provided for in the First Schedule for a period of seven years of assessment.

(2) The period specified in subparagraph (1) commences from the year in which the business is commenced.

(3) In this paragraph, “waste processing business” means a business where the principal activity is the processing of waste, including recycling of plastic and polythene material for agricultural or commercial purposes.

**Residential premises**

4. (1) The income of a certified company from a low cost housing business is subject to tax at the rate provided for in the First Schedule for a period of five years of assessment.

(2) The period specified in subparagraph (1) commences from the year in which operations commenced.

(3) Despite sections 8 and 9 of this Act, in calculating the income of the individual from conducting an employment, business or investment for a year of assessment, deduct mortgage interest incurred during the year.

(4) An individual may deduct mortgage interest in respect of only one residential premises during the lifetime of that individual.

(5) In this paragraph, unless the context otherwise requires, “certified company” means a company issued with a certificate from the Minister responsible for Works and Housing stating that it is engaged in a low cost housing business;

“low cost housing business” means the business of construction for sale or letting of low cost affordable residential premises; and

“mortgage interest” means interest incurred by an individual in respect of a borrowing employed in constructing or acquiring the individual’s only place of residence.

#### **Approved unit trust scheme and mutual fund**

6. (1) The income of an approved unit trust scheme or mutual fund is subject to tax at the rate provided for in the First Schedule for a period of ten years of assessment.

(2) The period specified in subparagraph (1) commences from the period in which the operations of the approved unit trust scheme or mutual fund commenced and includes the year in which the basis period of the trust or scheme ends.

(3) The interest and dividends paid or credited to a holder or member on an investment in an approved unit trust scheme or mutual fund is subject to tax at the rate provided for in the First Schedule.

(4) For the purpose of this paragraph, “approved unit trust scheme or mutual fund” means a scheme or fund approved under the Securities Industry Act, 1993 (PNDCL 333).

#### **Venture capital financing company**

7. (1) The income of a qualifying venture capital financing company is subject to tax at the rate provided for in the First Schedule for a period of ten years of assessment.

(2) The period specified in subparagraph (1) commences from the year in which the company first qualifies.

(3) A loss incurred by a qualifying venture capital financing company may be carried forward for five years of assessment following the end of the period specified in subparagraph (1).

(4) Subparagraph (3) applies to a loss incurred by a venture capital financing company on the disposal of an investment in a venture capital

subsidiary company under the Venture Capital Trust Fund Act, 2004 (Act 680) during the period referred to in subparagraph (1).

(5) A loss incurred by a qualifying venture capital financing company may be carried forward for five years of assessment after the year of disposal.

(6) Subparagraph (5) applies to a loss incurred by a venture capital financing company from the disposal of shares in a venture investment under section 17 of the Venture Capital Trust Fund Act, 2004 (Act 680) during a year of assessment.

(7) The interest and dividends paid or credited to a person on a qualifying investment in the company are subject to tax at the rate charged to that company under the first schedule for the period specified in subparagraph (1).

(8) For the purpose of this paragraph,

“qualifying investment” means an investment by way of funding a qualifying venture capital financing company in accordance with the Venture Capital Trust Fund Act, 2004 (Act 680); and

“qualifying venture capital financing company” means a company that satisfies the eligibility criteria for funding under the Venture Capital Trust Fund Act, 2004 (Act 680).

### **Employment of graduate**

8. (1) In calculating the income of a company from conducting a business for a year of assessment, the company is entitled to an additional deduction as provided in subparagraph (2) for salary and wages paid during the year to a fresh graduate from a recognised Ghanaian tertiary institution.

(2) The additional deduction specified in subparagraph (1) is as follows:

NO.	PERCENTAGE OF FRESH GRADUATES IN WORKFORCE	ADDITIONAL DEDUCTION
1.	Up to 1 percent	10 percent of salaries and wages
2.	Above 1 percent but not more than 5 percent	30 percent of salaries and wages
3.	Above 5 percent	50 percent of salaries and wages

(3) For the purpose of this paragraph “fresh graduate” means a person who has graduated from a tertiary institution for the first time, whether or not that person was previously employed.

**Free Zone company**

9. (1) A Free Zone developer or an enterprise granted a licence under the Free Zones Act, 1995 (Act 504) is exempt from the payment of income tax on profits for the first ten years.

(2) The period specified in subparagraph (1) commences from the date of commencement of operation.

**SEVENTH SCHEDULE**

## Tax Administration

*(Section 139)**Responsibility for the administration of this Act***Administration of this Act**

1. (1) The Commissioner-General is responsible for the administration of this Act.

(2) Subject to subparagraph (3), the Commissioner-General may by notice in the *Gazette* or in writing authorise a person within or outside Ghana to perform or to assist in the performance of a function imposed on the Commissioner-General by this Act.

- (3) The Commissioner-General shall not delegate the power to
- (a) determine any matter or do anything required to be determined or done under subsections (5), (6), (7) and (8) of section 59;
  - (b) exempt a person from the provisions of section 116 (5) (b) other than to the Commissioner responsible for the Domestic Tax Revenue Division;
  - (c) compound an offence, other than to the Commissioner responsible for the Domestic Tax Revenue Division and Solicitor of the Authority; or
  - (d) remit taxes, interest, or penalties provided in this Schedule.

(4) Subject to this Act and Regulations made under it, the Commissioner-General may in writing give administrative directives as the Commissioner-General considers necessary for the administration and implementation of this Act.

*Official communication and documentation***Practice note**

2. (1) To achieve consistency in the administration of this Act and to provide guidance to persons affected by this Act and the officers of the Authority, the Commissioner-General may issue practice notes setting out the interpretation placed on provisions of this Act by the Commissioner-General.

(2) A practice note is binding on the Commissioner-General until revoked.

(3) A practice note is not binding on persons affected by this Act.

**Amendment and revocation of practice note**

3. (1) The Commissioner-General may amend or revoke a practice note, in whole or part, by publishing a notice of the amendment or revocation in the *Gazette* and in a daily newspaper of national circulation.

(2) The subsequent enactment of legislation or issue of a practice note that is inconsistent with an existing practice note revokes the existing practice note to the extent of the inconsistency.

(3) The amendment or revocation of a practice note, in whole or part, has effect

(a) if subparagraph (1) applies, from the date specified in the notice of amendment or revocation and if a date is not specified, from the date notice of the amendment or revocation is published in the *Gazette* and in a daily newspaper of national circulation; or

(b) if subparagraph (2) applies, from the date the inconsistent legislation or practice note applies.

(4) The amended or revoked part of a practice note

(a) continues to apply to arrangements commenced before the amendment or revocation; and

(b) does not apply to arrangements commenced after the amendment or revocation.

**Private ruling**

4. (1) The Commissioner-General may, on an application in writing made by a person, issue to that person a private ruling setting out the position of the Commissioner-General regarding the application of this Act to that person with respect to a transaction proposed or entered into by that person.

(2) Where prior to issuing a ruling under subparagraph (1),

(a) the person in respect of whom the ruling is issued makes, a full and true disclosure of all aspects of the transaction relevant to the ruling to the Commissioner-General, and

(b) the transaction proceeds in all material respects as described in the application of that person for the ruling,

the ruling is binding

(c) on the Commissioner-General with respect to the application of this Act at the time of the ruling, and

(d) on that person with respect to the transaction.

(3) Where there is an inconsistency between a practice note and a private ruling, priority is to be given to the terms of the private ruling.

(4) The Commissioner-General shall

- (a) specify the matters ruled on in a private ruling, identifying the tax laws, periods and arrangements to which the ruling applies as well as assumptions that affect the ruling; and
- (b) identify the applicant and the Tax Identification Number of the applicant.

#### **Amendment and revocation of private ruling**

5. (1) For reasonable cause, the Commissioner-General may by notice in writing served on the applicant, amend or revoke a private ruling, in whole or in part.

(2) An amendment made under subparagraph (1) shall accord with the requirements of subparagraph (4) of paragraph 4.

(3) Legislation enacted subsequent to a private ruling revokes the private ruling to the extent of its inconsistency with that legislation.

(4) The amendment or revocation of a private ruling, in whole or in part, has effect

- (a) from the date specified in the notice of the amendment or revocation, issued under subparagraph (1); or
- (b) from the date of commencement of the legislation, in the case of legislation referred to in subparagraph (3).

(5) The amended or revoked part of a private ruling

- (a) continues to apply to arrangements commenced before the amendment or revocation; and
- (b) does not apply to arrangements commenced after the amendment or revocation.

#### **Tax Clearance Certificate**

6. (1) The Commissioner-General shall not permit an importer or any other person to

- (a) clear goods in commercial quantities, or
- (b) clear goods meant for commercial purposes from a port or a factory in the country,

unless the importer or other person produces to the Commissioner-General, a Tax Clearance Certificate issued in respect of the importer or that other person in the year of assessment in which the goods are to be cleared.

(2) Where any authority or person is empowered by an enactment to effect the registration of

(a) title to land, or

(b) a document conferring title to land,

that authority or person shall not effect the registration of that title or document unless there is produced to that authority or person, a Tax Clearance Certificate issued in the year of assessment in which the registration is to be effected and in respect of the person applying for the registration or in respect of the person on behalf of whom the application is made.

(3) A contract shall not be awarded by any agency or body in which public funds are vested to a person for the provision of services including consultancy services, unless that person produces to the agency or body a Tax Clearance Certificate issued by the Commissioner-General in respect of that person in the year of assessment in which the contract is to be awarded.

(4) A Tax Clearance Certificate issued under this paragraph is valid for the period and for the purposes determined by the Commissioner-General.

(5) A person who discharges the tax obligation of that person up to the end of the preceding year of assessment or the relevant quarter of the current year may be granted an all purpose Tax Clearance Certificate valid for a period of not less than three months or valid for the subsequent quarter.

(6) Where a person is required to produce a Tax Clearance Certificate under this paragraph, and the certificate is not for a specific purpose, the person making the requisition shall first inspect the original certificate and thereafter demand and retain a copy of that certificate.

(7) In this paragraph,

“Tax Clearance Certificate” means a certificate issued by the Commissioner-General to a person, stating

(a) that tax is not due under this Act by that person in respect of the periods stated in the certificate; or

(b) that the person has made arrangements satisfactory to the Commissioner-General for the payment of the tax due.

**Tax Identification Number**

7. (1) For the purpose of identifying persons who are subject to tax under this Act, the Commissioner-General may issue a Tax Identification Number to a person.

(2) A person shall show the Tax Identification Number in any return, notice, or other document used for the purposes of this Act.

**Official language**

8. (1) English is the official language of this country and the Authority may refuse to recognise a communication or document that is not in the official language.

(2) Where a communication or document that is not in the official language is relevant in applying this Act to a taxpayer, the Commissioner-General may, in writing, require the taxpayer to provide a translation of the communication or document into the official language.

(3) The Commissioner-General shall serve the correspondence making the requisition under subparagraph (2) on the taxpayer.

(4) A taxpayer shall use a translator approved by the Commissioner-General and shall bear the expense of the translation.

(5) If a taxpayer fails to comply with subparagraph (2), the Commissioner-General may have the communication or document translated at the expense of the taxpayer.

**Official currency**

9. (1) The Cedi is the official currency of this country and, subject to any provision in this Act to the contrary, an amount taken into account under this Act is to be denominated in or converted into Cedis.

(2) A person shall convert a foreign currency into Cedis at the Bank of Ghana inter-bank exchange rate applying on the date the amount is to be taken into account.

(3) The Commissioner-General may, on a written application by a person, require that person in writing, to take a foreign currency amount into account for purposes of this Act.

(4) A requirement of the Commissioner-General under subparagraph (3)

- (a) may be by way of practice note;
- (b) may apply for one or more periods;
- (c) may be subject to conditions as the Commissioner-General determines; and
- (d) has effect despite subparagraph (1).

(5) In exercising the discretion under subparagraph (3), the Commissioner-General shall take into consideration the volume of foreign currency activities conducted by the person.

(6) The Commissioner-General may, by notice in writing and for reasonable cause, revoke a requirement under subparagraph (3).

(7) In this paragraph, an amount is to be taken into account on the date the amount accrues, or is received, derived, incurred, paid or otherwise to be taken into account for the purposes of this Act.

### **Forms and notices**

**10.** (1) The Commissioner-General may specify the form of claims, forms, notices, returns, statements, and other documents required under this Act which shall contain the information required for the efficient administration of this Act.

(2) A person shall use a prescribed form when filing a document with the Commissioner-General or when a form is otherwise required for the purposes of this Act.

(3) The Commissioner-General shall make the prescribed forms available to the public at offices of the Authority and at other locations or by other medium as the Commissioner-General may determine.

### **Authorised and defective documents**

**11.** (1) A document issued by the Commissioner-General under this Act is sufficiently authenticated if the name or title of the Commissioner-General, or authorised tax officer, is

- (a) in the case of a paper document, signed, printed, stamped or written on the document; or
- (b) in the case of an electronic document, imbedded in the document by way of electronic signature or if the name or title of the Commissioner-General or authorised officer, is signed or written on the notice or document.

(2) A document issued under this Act is not invalid or defective, if

- (a) it is in substance and effect, in conformity with the law; and
- (b) the person to whom the document is addressed or to whom it applies is designated in the document according to common understanding.

(3) Subject to subparagraph (5), the Commissioner-General may amend a document issued by the Commissioner-General under this Act for purposes of rectifying a defect in the document.

(4) Subparagraph (3) applies where

- (a) a document issued by the Commissioner-General under this Act contains a defect; and
- (b) that defect involves a dispute as to the interpretation of this Act or facts involving a particular person.

(5) Where subparagraph (4) applies, the Commissioner-General may dispute the defect, but may not amend that part of the document that contains the defect.

(6) The Commissioner-General may amend a practice note or private ruling, but only in accordance with paragraph 3 or 5, as the case requires.

#### **Paper documents filed with Commissioner-General**

**12.** (1) A paper document is filed with the Commissioner-General under this Act if that document is

- (a) delivered to an office of the Authority; or
- (b) sent by post to an office of the Authority.

(2) A document referred to in subparagraph (1) is treated as received by the Commissioner-General

- (a) when the document is posted, as long as it is received in an office of the Authority within a reasonable time; or
- (b) in any other case, when the Authority acknowledges it by stamping.

#### **Service of paper documents**

**13.** (1) The Commissioner-General or a tax officer sufficiently serves a paper document on a person under this Act if the document is

- (a) handed to that person or, in the case of an entity, a manager of the entity;
- (b) left at or sent by post to the usual or last known place of abode, business, office, post office box or other address of the person; or
- (c) sent by registered post addressed to the usual or last known place of abode, business, office, post office box or other address of the person.

(2) For purposes of subparagraph (1), the address of a person includes

- (a) the address specified on the Tax Clearance Certificate of that person; and
  - (b) any ship to which the person belongs or has lately belonged.
- (3) A document is considered served at the following time:
- (a) in the case of service by handing to a person or leaving at a place, at the time of handing or leaving;
  - (b) in the case of service by registered post, at the time the document is delivered or the person is informed that the document awaits collection by the person;
  - (c) in the case of other service by post to an address within the country, seven days after posting; and
  - (d) in the case of other service by post to an address outside of the country, the time at which the document would normally be delivered in the ordinary course of post.

#### **Electronic document system**

14. (1) The Commissioner-General may establish and operate a system for

- (a) electronic filing of documents with the Commissioner-General;
- (b) electronic service of documents by the Commissioner-General; and
- (c) electronic payments by persons.

(2) For this purpose, the Commissioner-General may prescribe rules concerning

- (a) registration of persons who wish to participate in the system, including issue and cancellation of authentication codes;
- (b) types of documents that may be transmitted through the system, including format and manner of transmission and the issue and cancellation of document registration numbers;
- (c) resolution of difficulties, including correction of errors, amendment of documents and procedure on breakdown or interruption of the system;
- (d) secrecy to be maintained, whether by persons using the system on their own behalf or using the system on behalf of other persons; and
- (e) any other matter for the better administration of the system, including those referred to in section 26(2) of the Electronic Transactions Act, 2008 (Act 772).

(3) An electronic document is considered filed by a person and received by the Commissioner-General under this Act when a document registration number is created using the authentication code of that person.

(4) Subparagraph (3) does not apply where the person proves to the satisfaction of the Commissioner-General that the person did not send the document and the document was not sent with the authority of that person.

(5) An electronic document is considered served on a person by the Commissioner-General under this Act when a document registration number is created and the document can be accessed using the authentication code of that person.

(6) The Commissioner-General may authorise a printed document as a copy of an electronic document filed under subparagraph (3) or served under subparagraph (5).

(7) A court or tribunal shall accept a copy authorised under subparagraph (6) as conclusive evidence of the nature and contents of an electronic document, unless the contrary is proved.

### **Interpretation**

15. In paragraph 2 to 14, unless the context otherwise requires, “document” includes an assessment, ruling, notice, or certificate.

#### *Records and information collection*

### **Accounts and records**

16. (1) Unless otherwise authorised by the Commissioner-General, a person required to be registered with the Commissioner-General under this Act other than an employee with respect to the employment income of that person shall, maintain in the country, the necessary records to explain the information to be provided in a return or in any other document to be furnished to the Commissioner-General under this Act or to enable an accurate determination of the tax payable or income earned by that person.

(2) The necessary records required to be maintained by a person includes all underlying documents however described in the nature of receipts, invoices, vouchers, contracts or any electronic data from which information can be extracted.

(3) Where a person does not maintain records as required by subparagraph (1), the Commissioner-General may adjust the liability of that person to tax, in a manner that is consistent with the intention of this Act.

(4) The person shall retain the records referred to in this paragraph for a period of not less than six years, unless the Commissioner-General otherwise specifies in writing.

(5) For the purposes of this paragraph, the records to be maintained by a business include a record of all receipts and payments, all revenue and expenditure, and all assets and liabilities of the business.

#### **Record of shareholders of company**

17. A company which is incorporated under the laws of Ghana or has its management and control exercised in the country at any time during the year of assessment, shall

- (a) maintain a register of members reflecting the names and addresses of the members available in the country; and
- (b) in the case of a company having shares, maintain
  - (i) a statement of the shares held by each member distinguishing each share by a number where the share has a number, and the amount paid or agreed to be considered as paid on the shares of each member and the amount remaining payable on the shares;
  - (ii) the date on which the person was entered in the register as a member; and
  - (iii) the date on which that person ceased to be a member.

#### **Access to books, records, computers and other electronic device**

18. (1) For purposes of administering this Act, the Commissioner-General, or an officer authorised in writing by the Commissioner-General,

- (a) shall have at all times and without any prior notice full and free access to any premises, place, property, book, record, computer or other electronic storage device;
- (b) may make an extract or copy from any book, record, or computer-stored information to which access is obtained under sub- subparagraph (a);

- (c) may seize any book, record, other document, computer or other electronic storage device that, in the opinion of the Commissioner-General or authorised officer, affords evidence which may be material in determining the liability of a person to tax, interest, or penalty under this Act;
- (d) may retain a book or record for as long as it may be required for determining the tax liability of a person or for any proceeding under this Act;
- (e) may, where a hard copy or information stored on a computer or electronic storage device is not provided, seize and retain the computer or device for as long as is necessary to copy the information required; and
- (f) for the purposes of sub-subparagraph (a) to (e), may search a person entering or leaving any premises or place.

(2) An officer shall not exercise a power under subparagraph (1) without authorisation in writing from the Commissioner-General and the officer shall produce the authorisation to the occupier of the premises or place to which the exercise of the power relates.

(3) For the purposes of this paragraph, the Commissioner-General may request the Inspector-General of Police for the requisite assistance for a specific assignment.

(4) The occupier of the premises or place to which an exercise of a power under subparagraph (1) relates shall provide all reasonable facilities and assistance for the effective exercise of the power.

(5) A person whose books, records, computer or electronic storage device have been removed and retained under subparagraph (1) may examine them and make copies or extracts from them, at that person's expense, during regular office hours under the supervision determined by the Commissioner-General.

(6) All records, books, computers or electronic storage device removed and retained under subparagraph (1) shall be signed for by the Commissioner-General or an authorised officer and the Commissioner-General shall return them to the owner as soon as is practicable after the investigation by the Commissioner-General of the affairs of that person and any related proceedings have been concluded.

(7) This paragraph has effect despite any rule of law relating to privilege or the public interest with respect to the production of, or access to, the documents.

(8) In this paragraph, “occupier” in relation to premises or a place includes the owner, manager, or any other person on the premises or place.

**Notice to obtain information or evidence**

**19.** (1) The Commissioner-General may, by notice in writing, require a person, whether or not liable to tax under this Act,

(a) to furnish, including by way of creation of a document, within the time specified in the notice, information that may be required by the notice; or

(b) to attend at the time and place designated in the notice for the purpose of being examined on oath by the Commissioner-General or by an officer authorised by the Commissioner-General, concerning the tax affairs of that person or any other person and, for that purpose, the Commissioner-General or an authorised officer may require the person examined to produce any book, record, or computer-stored information in the control of that person.

(2) Where the notice requires the production of a book, record, or electronically-stored information, it is sufficient if the book, record, or electronically -stored information is described with reasonable certainty in the notice.

(3) A person to be examined on oath under subparagraph (1) (b) is entitled to legal or other representation throughout the examination.

(4) A notice issued under this paragraph shall be served by, or at the direction of, the Commissioner-General by a signed copy delivered by hand to the person to whom it is directed or left at the last and usual place of business or abode of that person.

(5) This paragraph has effect notwithstanding any rule of law or enactment in relation to the production of, or access to, the documents or information.

**Official secrecy**

**20.** (1) A person appointed under, or employed in carrying out the provisions of this Act

- (a) shall regard and deal with all documents and information which may come to the possession or knowledge of that person in connection with the performance of functions under this Act as secret, and
- (b) shall not disclose any document or information except in accordance with this Act or under an order of a superior court.

(2) Nothing in this paragraph shall prevent the disclosure of information or documents to

- (a) the Minister responsible for Finance or any other person where the disclosure is necessary for the purposes of this Act or any other fiscal law;
- (b) a person in the service of the Government in a revenue or statistical department where the disclosure is necessary for the performance of official duty;
- (c) the Auditor-General or a person authorised by the Auditor-General where the disclosure is necessary for the performance of official duty; or
- (d) the competent authority of the Government of another country with which the country has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under that agreement.

(3) A person who receives documents and information under subparagraph (1) or (2) shall keep the documents and information secret under this paragraph, except to the minimum extent necessary to achieve the purpose for which the disclosure is necessary.

*Objections and appeals***Objection to assessment**

**21.** (1) A person who is dissatisfied with an assessment made under this Act may lodge an objection to the assessment with the Commissioner-General

- (a) within thirty days of the service of the notice of assessment; or

(b) in the case of an estimate under section 123, within nine months of the commencement of the basis period to which the estimate relates.

(2) An objection to an assessment shall, be in writing and state precisely the grounds upon which the objection is made.

(3) The Commissioner-General may, on an application in writing by an objector, extend the time for lodging an objection where the Commissioner-General is satisfied that the delay in lodging the objection is due to

- (a) the fact that the objector is absent from the country;
- (b) sickness; or
- (c) other reasonable cause.

(4) After the determination of the objection, the Commissioner-General may allow the objection in whole or in part and amend the assessment accordingly, or disallow the objection.

(5) As soon as is practicable after allowing or disallowing an objection, the Commissioner-General shall serve the objector with notice of the decision.

(6) Where a decision has not been made by the Commissioner-General within ninety days after the objection was lodged with the Commissioner-General, the objector may, by notice in writing to the Commissioner-General, elect to treat the Commissioner-General as having made a decision to disallow the objection.

(7) Where an objector makes an election under subparagraph (6), the objector is treated as having been served with a notice of the disallowance on the date the objector lodges an election with the Commissioner-General.

### **Appeal to Court**

22. (1) A person who is dissatisfied with a decision on an objection lodged with the Commissioner-General may appeal against the decision to the High Court.

(2) An appeal under subparagraph (1) shall be made by lodging five copies of the notice of appeal together with five copies of all relevant documents with the Registrar of the High Court within thirty days after service of the notice of the decision.

(3) A person may lodge a notice of appeal within three months after the date specified in subparagraph (2) if that person proves to the satisfaction of the Court that the delay in lodging the notice of appeal is due to

- (a) absence of that person from the country,
- (b) sickness, or
- (c) other reasonable cause

and that there has not been an unreasonable delay on the part of that person.

(4) A person who has lodged a notice of appeal with the Registrar of the High Court under subparagraph (2) or (3) shall, within five working days of doing so, serve a copy of the notice of appeal on the Commissioner-General.

(5) The High Court may confirm, reduce, increase or annul the assessment on which the decision is based or make an appropriate order.

#### **Appeal to Court of Appeal and Supreme Court**

**23.** (1) The Commissioner-General or the appellant may appeal against the decision of the High Court made under subparagraph (5) of paragraph 22 to the Court of Appeal on a matter of law only.

(2) An appeal against a decision of the Court of Appeal under subparagraph (1) shall lie as of right to the Supreme Court.

(3) An appeal under subparagraph (1) or (2) shall be made within thirty days after the decision to which it relates.

#### **Payment of tax**

**24.** (1) Where a person has lodged a notice of objection to a notice of assessment under paragraph 21, an amount of thirty percent of the amount payable as contained in the notice of assessment shall be paid pending the determination of the objection.

(2) An application, action, or appeal shall not be entertained by a court in respect of an objection under paragraph 21 unless the person to whom the decision relates has paid the amount specified under subparagraph (1).

(3) Where the payment of tax has been held over pending an objection or appeal, any tax outstanding under the assessment as determined by the Commissioner-General is payable within thirty days from the date of service of the notice of the decision of the Commissioner-General or where the decision has been appealed against, within thirty days from the date of the decision of the Court.

(4) Where a person is required to pay tax as a result of a decision taken by the Commissioner-General in respect of an objection under paragraph 21 or as a result of a court decision under paragraphs 22 and 23, the person shall pay, in addition to the tax payable, interest at the minimum prevailing bank rate on the tax payable from the date of the service of the notice of assessment to the date the person pays the amount determined on objection or on appeal.

*Proof*

**Burden of proof**

25. In an objection to an assessment under paragraph 21 or on an appeal under paragraph 22, the onus is on the person assessed to prove, on the balance of probabilities, the extent to which the assessment made by the Commissioner-General is excessive or erroneous.

*Tax returns*

**Tax returns**

26. (1) An individual or the authorised agent of that individual shall sign a tax return to be filed by that individual and declare in that return that the return is complete and accurate.

(2) A duly authorised manager of an entity shall sign a tax return to be filed by that entity and declare in that return that the return is complete and accurate.

(3) If any of the circumstances specified in subparagraph (6) exist before the date for filing a tax return, the Commissioner-General may, in writing, require a person to file a tax return.

(4) The Commissioner-General shall specify in the requisition made under subparagraph (3), the period, part of a period or other events to be covered by the tax return, and the date by which the return is to be filed.

(5) The Commissioner-General shall serve a copy of the requisition made under subparagraph (3) on the person.

(6) Revenue is at risk in the following circumstances:

- (a) where the person becomes bankrupt, is wound-up or goes into liquidation;
- (b) where the Commissioner-General believes on reasonable grounds that the person

- (i) is about to leave the country indefinitely;
  - (ii) is otherwise about to cease activity in the country;
  - or
  - (iii) has committed an offence under this Act; or
- (c) where the Commissioner-General otherwise considers it appropriate, including where the person fails to maintain adequate documentation as required by paragraphs 18 and 19.

**Assistance in preparing tax return**

27. (1) A person who, for remuneration, prepares or assists in the preparation of a tax return or an attachment to a tax return of another person, shall sign the return

- (a) specifying the extent to which the person has examined the relevant documents of the other person maintained under paragraphs 17 and 18 and the nature of the documents examined, and
- (b) certifying that, to the best of knowledge of that person, the return or attachment presents a true and fair view of the circumstances to which it relates.

(2) Subparagraph (1) does not apply to an employee of the person who is obliged to file the tax return.

(3) Where a person objects to signing a tax return as required by subparagraph (1), that person shall

- (a) submit to the other person a statement of the reasons for the refusal, in writing; and
- (b) sign the return, and emboss a caveat on that return that the signature is subject to the statement referred to under sub-subparagraph (a).

(4) Where a person submits a statement under subparagraph (3) (a), the other person for whom the return is prepared shall, attach that statement to the return when filing the return.

**Extension of time to file tax return**

28. (1) A person who is required to file a tax return under this Act may apply to the Commissioner-General for an extension of the time to file the return.

(2) The person shall, in writing, make the application by the due date for filing the return.

(3) Where a person makes an application under subparagraph (1), the Commissioner-General may extend the date by which the return is to be filed if the Commissioner-General is of the opinion that that person has shown reasonable cause.

(4) The extension may be subject to terms and conditions as the Commissioner-General thinks appropriate, including the payment of security.

(5) The Commissioner-General shall serve the person with written notice of the decision of the Commissioner-General on an application under subparagraph (1).

(6) The Commissioner-General may grant multiple extensions, but the extensions shall not in total exceed sixty days from the date the return was originally to be filed.

(7) The grant of an extension under this paragraph does not alter the date for payment of tax as specified in this Act.

**Failure to file tax return on time**

**29.** (1) This paragraph applies where a person fails to file a tax return by the due date required by this Act.

(2) The Commissioner-General may use the power in paragraph 19 to appoint another person to prepare and file any information as the Commissioner-General may require, including information required by the return.

(3) The Commissioner-General shall make an assessment of the tax liability of the person as required by this Act, including by way of adjusted assessment.

(4) For the purpose of subparagraph (3), the Commissioner-General may use any information in the possession of the Commissioner-General including information obtained in accordance with subparagraph (2).

(5) A tax return filed after the due date or in a manner other than that specified in this Act does not have effect on a tax decision of the Commissioner-General, including an assessment made under subparagraph (3), but the Commissioner-General shall take the tax return into account in deciding whether or not to issue an adjusted assessment.

**Correction of tax returns and other information**

30. (1) If the Commissioner-General is not satisfied with a tax return filed under this Act the Commissioner-General shall use appropriate powers, including those specified in paragraphs 18 and 19 to gather further information as is necessary to make an assessment.

(2) A person may not amend or correct a tax return without the permission of the Commissioner-General after the due date for filing that return.

(3) A person shall file further information with the Commissioner-General when the person discovers that any information filed with the Commissioner-General in a tax return or otherwise is incorrect or misleading in a material particular.

(4) The Commissioner-General may take into account any information received under subparagraph (3) in making an assessment or adjusted assessment.

*Assessment***Assessment**

31. (1) Assessment of tax is made by way of

(a) self-assessment, where the person is obliged to file a tax return; and

(b) the Commissioner-General making an assessment in other cases, including where a self-assessment is adjusted.

(2) Where a person files a self-assessed tax return, the assessment is treated as

(a) made on the due date for filing the tax return; and

(b) an amount equal to the net amount of tax due as shown in the tax return.

(3) The Commissioner-General may adjust an assessment.

(4) The Commissioner-General may make an assessment at any time, including an adjusted assessment in the case of discovery of new information, fraud, wilful default or serious omission by or on behalf of the taxpayer.

(5) Subject to subparagraph (4), the power of the Commissioner-General to make an original assessment expires six years from the date on which the Commissioner-General was first entitled to make the assessment.

(6) Subject to subparagraph (4), the power of the Commissioner-General to make an adjusted assessment expires six years from

- (a) the due date for filing the tax return that gives rise to the assessment or, if later, the date the tax return is filed, where a self-assessment is adjusted;
- (b) the date on which the Commissioner-General serves the notice of assessment on the taxpayer, where any other original assessment is adjusted; or
- (c) the date referred to in sub-subparagraph (a) or (b) in respect of the original assessment that is adjusted where an adjusted assessment is adjusted.

(7) An assessment made under this paragraph is treated as made under the relevant provision that charges the person or subject matter assessed.

#### **Pre-emptive assessment and security**

32. (1) In the circumstances specified in paragraph 26(6), the Commissioner-General may make a pre-emptive assessment of tax payable or to become payable by a person under this Act, whether or not the person is required to file a tax return.

(2) The Commissioner-General may, instead of making a pre-emptive assessment, accept from a person, security for outstanding and future tax liabilities as the Commissioner-General thinks appropriate.

(3) The Commissioner-General shall use best judgement and information reasonably available in making a pre-emptive assessment or fixing the amount of security.

(4) A pre-emptive assessment may be for a period or with respect to an event or subject matter as the Commissioner-General may specify in the notice of assessment.

(5) Unless the Commissioner-General specifies otherwise in the notice of assessment, a pre-emptive assessment does not relieve a person of the obligation to file a tax return or otherwise report a taxable event as required by this Act.

(6) The filing of a tax return, including where the filing of the return results in a self-assessment, does not affect a pre-emptive assessment.

(7) Any tax paid with respect to a pre-emptive assessment is credited against tax payable with respect to a self-assessment that covers the same period, events and tax.

#### **Adjusted assessment**

33. (1) The Commissioner-General may adjust an assessment in a manner as to ensure the taxpayer is liable for the correct amount of tax in the circumstances to which the assessment relates.

(2) The Commissioner-General shall use best judgement and information reasonably available in making an adjusted assessment.

(3) The Commissioner-General shall not adjust an assessment that has been adjusted pursuant to a decision of a court of competent jurisdiction, unless the decision is vacated.

(4) An assessment ceases to have effect to the extent to which it is adjusted.

#### **Notice of assessment**

34. (1) Where the Commissioner-General makes an assessment under this Act, the Commissioner-General shall serve a written notice of the assessment on the taxpayer.

(2) In addition to any requirement of this Act, the Commissioner-General shall state in the notice of assessment,

- (a) the name and the tax identification number of the taxpayer;
- (b) the tax assessed by the Commissioner-General to be payable by the taxpayer for the period, event or matter to which the assessment relates;
- (c) the amount of that tax remaining to be paid after any relevant credits, reductions or pre-payments;
- (d) the manner in which the assessment is calculated;
- (e) the reasons why the Commissioner-General has made the assessment;
- (f) the date by which the tax is to be paid; and
- (g) the time, place and manner of objecting to the assessment.

#### *Payment and recovery of tax*

#### **Time for paying tax**

35. (1) Subject to this Act, tax assessed is due on the date on which the person assessed is served with a notice of assessment.

- (2) Despite subparagraph (1), tax is payable
- (a) in the case of tax assessed under paragraph 31 or 33, on the date specified in the notice of assessment served under paragraph 34;
  - (b) in the case of an adjusted assessment of tax under paragraph 33, thirty days from the date on which the person assessed is served with a notice of assessment under paragraph 34;
  - (c) in the case of interest and penalties under paragraph 54, on the date specified in the notice of assessment served under paragraph 34;
  - (d) with respect to amounts required to be paid to the Commissioner-General by foreign tax debtors, as costs of charge and sale, by third party debtors or by agents of non-residents, on the date set out in the relevant notice;
  - (e) with respect to a liability under paragraph 45, at the same time as the tax is payable by the entity; or
  - (f) with respect to amounts required to be paid to the Commissioner-General under paragraph 46, seven days after the sale from which the amount is set aside or the failure to set aside, respectively.

(3) Subject to paragraphs 22 and 23, tax remains payable despite any dispute or review proceedings, irrespective of whether the proceedings are administrative, judicial, quasi-judicial or appellate in nature.

#### **Extension of time for paying tax**

**36.** (1) A taxpayer may apply, in writing, to the Commissioner-General for an extension of time to pay tax under this Act.

(2) On the receipt of an application under subparagraph (1), the Commissioner-General may, where good cause is shown, extend the date on which the tax or part of the tax is payable on terms and conditions determined by the Commissioner-General.

(3) An extension of time to pay shall not exceed six months, but a taxpayer may re-apply to the Commissioner-General before the end of an extension.

(4) The Commissioner-General shall serve the applicant with a written notice of the decision of the Commissioner-General on the application.

(5) Where an extension is granted by permitting the taxpayer to pay by instalments and the taxpayer defaults in paying any of the instalments, the whole balance of the tax outstanding becomes payable immediately.

**Manner of paying tax**

37. (1) The Minister may, by legislative instrument, make Regulations to prescribe

- (a) the manner and form in which tax is to be paid;
- (b) for the procedure by which the Commissioner-General may approve banks to accept payment of tax and related matters, including
  - (i) the form of payments that approved banks may accept; and
  - (ii) the manner in which approved banks shall account to the Commissioner-General for tax received; and
- (c) limits on the quantum of tax that may be paid and the form of payment that may be accepted at particular offices of the Authority.

(2) Where a cheque tendered in payment of tax is dishonoured, the payment is ineffective and the Commissioner-General may use all available powers to recover the tax.

**Order of tax payment**

38. (1) This paragraph applies where a taxpayer has more than one amount of tax payable, whether under one or more tax laws, and the taxpayer makes payment that is less than the total amount outstanding.

(2) Despite paragraph 39, where this paragraph applies, the Commissioner-General may, determine which amount of tax is considered paid.

**Electronic tax accounts**

39. (1) The Commissioner-General may establish and operate an electronic system of taxpayer tax accounts.

(2) The system may be established and operated separately or as part of the electronic document system established under paragraph 14.

(3) For this purpose, the Commissioner-General may prescribe and publish in the *Gazette*, rules concerning

- (a) debiting of tax when it becomes payable;
- (b) crediting of tax paid;
- (c) allocation of tax paid against tax payable; and
- (d) other matters of the type described in paragraph 14.

**Tax as a debt due to the Authority**

**40.** (1) Tax which has become due and payable to the Authority, is a debt owed to the Authority and is payable to the Commissioner-General in the manner and at the place prescribed by the Minister.

(2) The Commissioner-General may sue in a court for tax that has not been paid when it is due and payable and recover the costs of suit.

**Collection of tax by distress**

**41.** (1) The Commissioner-General may recover an unpaid tax by distress proceedings against the movable property of a person liable to pay tax.

(2) The Commissioner-General may commence the distress proceedings by issuing an order in writing specifying

- (a) the person against whose property the proceedings are authorised;
- (b) the location of the property; and
- (c) the tax liability to which the proceedings relate.

(3) The Commissioner-General may require a police officer to be present while distress is being executed.

(4) For the purposes of executing distress under subparagraph (1), the Commissioner-General may, at any time, enter any house or premises described in the order authorising the distress proceedings.

(5) The property upon which distress is levied under this paragraph other than perishable goods, shall be kept for ten days at the cost of the tax debtor at

- (a) the premises where the distress is levied; or
- (b) at any other place that the Commissioner-General considers appropriate.

(6) Where the tax debtor does not pay the tax due, together with the costs of the distress,

- (a) in the case of perishable goods, within a period that the Commissioner-General considers reasonable having regard to the condition of the goods; or
- (b) in any other case, within fourteen days after the distress is levied,

the property distrained may be sold by public auction or in any other manner directed by the Commissioner-General.

(7) The auctioneer or seller shall apply the proceeds of a disposal under subparagraph (6) in the following order:

- (a) the tax due and payable; and
- (b) the cost of taking, keeping and selling the property distrained and the remainder of the proceeds, shall be given to the tax debtor.

(8) This paragraph shall not preclude the Commissioner-General from other proceedings under this Act with respect to the balance owed if the proceeds of the distress are not sufficient to meet the costs of the distress and the tax due.

(9) The Commissioner-General may recover all costs incurred by the Commissioner-General in respect of any distress from the tax debtor and this Schedule shall apply as if the costs were tax due and payable.

(10) A property distrained under this paragraph shall be identified by the posting or hanging of a piece of ribbon or cloth determined by the Commissioner-General to or on a conspicuous place of the property.

#### **Security on landed property for unpaid tax**

42. (1) Where a person, who is the owner of land or buildings situated in the country, fails to pay tax when it is due and payable, the Commissioner-General may, by notice in writing, give notice to that person of the intention to apply to the Chief Registrar of Lands, for the land or buildings to be the subject of security for tax as specified in the notice.

(2) If a person on whom a notice has been served under this paragraph fails to make payment of the whole of the amount of the tax specified in the notice within thirty days of the date of service of the notice under subparagraph (1), the Commissioner-General may, by notice in writing, in this paragraph referred to as a “notice of direction”, direct the Chief Registrar that the land or buildings of that person, to the extent of the interest of that person in the land or buildings, be the subject of security for unpaid tax in the amount specified in the notice.

(3) Where a notice of direction is served on the Chief Registrar under subparagraph (2), the Chief Registrar shall, without fee, register the direction as if it were an instrument or mortgage over, or charge on, the land or buildings and the registration shall, subject to any prior mortgage or charge, operate in all respects as a legal mortgage over or charge on the land or building to secure the amount of the unpaid tax.

(4) Where the Commissioner-General receives the whole of the amount of tax secured under subparagraph (3), the Commissioner-General shall serve notice on the Chief Registrar cancelling the direction made under subparagraph (2) and the Chief Registrar shall, without fee, record the cancellation at which time the notice of direction shall cease to have effect.

**Recovery of tax from person owing money to tax debtor**

43. (1) Subject to subparagraph (2), where a tax debtor has not paid tax which is due, the Commissioner-General may, by notice in writing, require any other person

- (a) owing or who may owe money to the tax debtor,
- (b) holding or who may subsequently hold money for, or on account of, the tax debtor,
- (c) holding or who may subsequently hold money on account of a third person for payment to the tax debtor, or
- (d) having authority from a third person to pay money to the tax debtor,

to pay the money to the Commissioner-General on the date set out in the notice, up to the amount of tax due.

(2) The Commissioner-General may only issue a notice under subparagraph (1) with respect to tax which is due but not currently payable where the Commissioner-General reasonably believes that the tax debtor will not pay the tax by the date on which the tax becomes payable.

(3) The date specified in the notice under subparagraph (1) shall not be a date before the money becomes due to the tax debtor, or is held on behalf of the tax debtor.

(4) At the same time that notice is served under subparagraph (1), the Commissioner-General shall also serve a copy of the notice on the tax debtor.

(5) Where a person served with a notice under subparagraph (1) is unable to comply with the notice by reason of lack of moneys owing to or held for the tax debtor, that person shall, as soon as is practicable and in any event not later than the payment date specified in the notice, notify the Commissioner-General accordingly in writing setting out the reasons for the inability to comply.

(6) Where a notice is served on the Commissioner-General under subparagraph (5), the Commissioner-General may, by notice in writing,

- (a) accept the notification and cancel or amend the notice issued under subparagraph (1); or
- (b) reject the notification.

(7) A person who is dissatisfied with a decision under subparagraph (6) may only challenge the decision under the objection and appeal procedure under paragraph 21 to 23.

(8) A person making a payment under a notice under subparagraph (1) is considered to have been acting under the authority of the tax debtor and of all other persons concerned and is indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extra-judicial, despite any provisions to the contrary in any law, contract, or agreement.

(9) This Schedule applies to any amount due under this paragraph as if it were tax due and payable.

#### **Restraint of person**

44. (1) Where a person other than a citizen fails to pay tax on due date, the Commissioner-General may, by notice in writing to the Director of Immigration, require the Director of Immigration to prevent the person from leaving the country.

(2) The Director of Immigration shall, on receipt of a notice under subparagraph (1), prevent the person from leaving the country for a period of seven days from the time the notice is served on the Director of Immigration.

(3) The Commissioner-General shall withdraw a notice under subparagraph (1), where the person pays the tax or arranges for payment of the tax in a manner satisfactory to the Commissioner-General.

(4) The High Court may extend the period referred to in subparagraph (2), on an application by the Commissioner-General.

#### **Manager of an entity**

45. (1) Where an entity fails to pay tax on time, a person who is or has been a manager of that entity during the relevant time is jointly and severally liable with the entity for payment of the tax.

(2) Subparagraph (1) applies irrespective of whether the entity ceases to exist.

(3) Subparagraph (1) does not apply to a manager who has exercised the degree of care, diligence, and skill that a reasonably prudent person in the position of the manager would have exercised in preventing the initial and continuing failure to pay tax.

(4) The defence in subparagraph (3) is not available in the case of a manager who is a current partner of a registered partnership.

(5) An amount payable to the Commissioner-General by a manager under this paragraph is a personal tax liability of the manager.

(6) Where a manager pays tax by reason of a liability under subparagraph (1), the manager may recover the payment from the entity as a debt due.

(7) In this paragraph,

“manager” of an entity includes a person purporting to act as a manager of that entity; and

“relevant time” means six months before the events that give rise to the tax liability of the entity.

#### **Duties of a Receiver**

**46.** (1) A person appointed to the position of a receiver of an asset situated in the country shall, in writing, give notice to the Commissioner-General of that appointment

(a) within fourteen days from the date of the appointment, or

(b) on the date the person takes possession of that asset,

whichever occurs first.

(2) A receiver shall not distribute assets unless the receiver has accounted for the assets to the Commissioner-General.

(3) The executor of an estate of a deceased individual or the legal representative of a person who is incapacitated shall complete and submit returns required under this Act on behalf of the deceased or incapacitated person with respect to matters occurring prior to the appointment of the executor or legal representative.

(4) The Commissioner-General shall, within fourteen days of receiving a notice under subparagraph (1), serve the receiver with a notice in writing specifying an amount that appears to the Commissioner-

General to be sufficient to provide for tax due by the taxpayer or that will become due by the taxpayer.

(5) A receiver shall, after receiving a notice under subparagraph (4),

- (a) sell sufficient assets to raise the amount of outstanding tax liability referred to in the notice, after payment of any debts that has priority; and
- (b) from the proceeds of the sale pay to the Commissioner-General the outstanding tax liability of the taxpayer.

(6) In making payment out of the proceeds of the sale of assets, a receiver shall give priority to unpaid value added tax and withholding tax over all other debts of the taxpayer.

(7) Subparagraph (6) does not apply to a secured debt.

(8) To the extent that a receiver fails to raise an amount as required by subparagraph (5) that receiver is personally liable to pay to the Commissioner-General on account of the tax liability of the taxpayer, the amount that should have been raised.

(9) An amount payable to the Commissioner-General by a receiver under this paragraph is a personal tax liability of the receiver.

(10) In this paragraph,

“receiver” means a person who, with respect to an asset situated in the country, is

- (a) a liquidator of an entity;
  - (b) a receiver appointed out of court or by a court in respect of an asset or entity;
  - (c) a trustee for a bankrupt person;
  - (d) a mortgagee in possession;
  - (e) an executor, administrator or heir of the estate of a deceased individual;
  - (f) conducting the affairs of an incapacitated individual;
- or
- (g) a successor in a corporate reorganisation;

“relevant assets” means assets held in the capacity of a person as receiver; and

“taxpayer” means the person whose assets come into the possession of the receiver and includes a deceased individual and an entity that is reorganised.

#### **Recovery from agent of non-resident**

47. (1) The Commissioner-General may, by notice in writing, require a person who is in possession of an asset, including money, belonging to a non-resident person to pay tax on behalf of the non-resident person, up to the market value of the asset but not exceeding the amount of tax due.

(2) The captain of an aircraft or ship owned or chartered by a non-resident person is deemed to be in possession of the aircraft or ship for the purposes of this paragraph.

(3) The tax payable in respect of an amount included in ascertaining the income of a non-resident partner under section 54 is assessable in the name of the partnership or of a resident partner of the partnership and may be recovered out of the assets of the partnership or from a resident partner personally.

(4) The tax payable in respect of an amount included in ascertaining the income of a non-resident beneficiary under section 57 is assessable in the name of the trustee and may be recovered out of the assets of the trust or from the trustee personally.

(5) A person who makes a payment pursuant to a notice under subparagraph (1) is considered to have been acting under the authority of the non-resident person and of all other persons concerned and is indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extra-judicial, despite any provision to the contrary in any law, contract, or agreement.

(6) The provisions of this paragraph apply to an amount due under this paragraph as if it were tax due and payable.

#### *Interest and penalties*

#### **Failure to maintain records**

48. (1) A person who fails to maintain proper documents as required by this Act is liable to pay a penalty for the period during which the failure continues.

- (2) The penalty is
  - (a) where the failure is deliberate or reckless, seventy-five percent of the tax attributable to that period; or
  - (b) the lesser of the amount referred to in sub-subparagraph (a) or two hundred and fifty currency points, in any other case.
- (3) The Commissioner-General shall determine tax attributable to a period on a just and reasonable basis including
  - (a) apportioning the tax assessed with respect to a larger period; or
  - (b) by reference to taxable events happening within that period.

**Failure to furnish return**

**49.** (1) A company or a self-employed person that fails to submit to the Commissioner-General, an estimate or return of income, or any other return required by the Commissioner-General within the time required under this Act is liable to pay

- (a) a penalty of four currency points in the case of entities, and
- (b) a penalty of two currency points, in the case of an individual for each day that the return remains outstanding.

(2) The penalty applies separately to a failure to file an estimate and a failure to file a tax return incorporating the final amount.

(3) Where the person does not submit the return four months after the imposition of the penalty for non-submission, the Commissioner-General shall, in addition, prosecute the person to compel the person to submit the return.

**Failure to pay tax on due date**

**50.** (1) A person who fails to pay tax on or before the date on which the tax is payable is liable to pay an interest on the tax amount due for the period for which any of the tax is outstanding.

(2) The interest is calculated as one hundred and twenty-five percent of the statutory rate, compounded monthly, and applied to the amount outstanding at the start of the period.

- (3) For the purposes of calculating interest under subparagraph (1),
  - (a) tax is payable

- (i) in the case of an adjusted assessment, on the date on which tax is payable under the original assessment; and
  - (ii) otherwise, on the date specified in paragraph 35; and
- (b) any suspension granted under paragraph 24 or extension granted under paragraph 28 or 36 is ignored.
- (4) Where a withholding agent is liable for interest for failing to pay withholding tax in respect of a payment made by the agent, the agent shall not recover the interest from the person subject to withholding tax.

**Understating estimated tax payable by instalment**

51. (1) This paragraph applies where the estimate or revised estimate of tax payable by a taxpayer with respect to chargeable income tax for a year of assessment under section 122 is less than ninety percent of the correct amount.

(2) Where this paragraph applies, the taxpayer is liable to pay interest on the tax due for the period, from the date the first instalment for the year of assessment is payable until the date by which the person files a return of income for the year of assessment under section 124.

(3) The amount of interest that a taxpayer shall pay for each period under subparagraph (2) is calculated as one hundred and twenty-five percent of the statutory rate, compounded monthly, and applied to the difference between

- (a) ninety percent of the total amount that would have been paid by way of instalments during the year of assessment to the start of the period had the estimate of the person equalled the correct amount; and
- (b) the amount of income tax paid by instalments during the year of assessment to the start of the period.

(4) For purposes of calculating interest payable under subparagraph (3), an extension granted under paragraph 21, 28 or 36 is to be ignored.

**Making false or misleading statements**

52. (1) A person who,
- (a) makes a statement that is false or misleading in a material particular to an officer of the Authority; or

- (b) omits from a statement made to an officer of the Authority, any thing or matter without which the statement is misleading in a material particular
- is liable to pay a penalty,
- (c) equal to double the underpayment of tax which may result if the inaccuracy of the statement were undetected, where the statement or omission is made without reasonable excuse; and
  - (d) triple the underpayment of tax which may result if the inaccuracy of the statement were undetected, where the statement or omission is made knowingly or recklessly.
- (2) A reference in this paragraph to a statement made to an officer of the Authority is a reference to a statement made in writing to that officer acting in the performance of functions under this Act, and includes a statement made
- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, or furnished under this Act;
  - (b) in information required to be furnished under this Act;
  - (c) in a document furnished to an officer of the Authority otherwise than pursuant to this Act; and
  - (d) in answer to a question asked of a person by an officer of the Authority or to another person with the knowledge or reasonable expectation that the statement would be conveyed to an officer of the Authority.

**Aiding or abetting**

53. A person who knowingly or recklessly aids or abets another person to commit any of the offences referred to under paragraph 48 to 52, or counsels or induces another person to commit that offence is liable to a penalty equal to triple the underpayment of tax which may result if the offence were committed and went unnoticed.

**Assessment of interest and penalties**

54. (1) The Commissioner-General shall make an assessment of the interest and penalties for which a person is liable under paragraph 48 to 53.

(2) Liability for interest and penalties under paragraph 48 to 53 is calculated separately with respect to each paragraph under paragraph 48 to 53.

- (3) The imposition of interest and penalties under paragraph 48 to 53,
- (a) is in addition to any other tax imposed by this Act or fine imposed as a result of conviction of an offence under paragraph 55 to 60; and
  - (b) shall not relieve any person from liability to criminal proceedings in respect of that offence.
- (4) Where an assessment has been made under this paragraph, the Commissioner-General shall serve a notice of assessment on that person stating
- (a) the amount of interest or penalties payable;
  - (b) how the amount is calculated; and
  - (c) the time, place, and manner of objecting to the assessment.
- (5) Interest and penalties assessed under this paragraph
- (a) are due and payable within thirty days from the day on which the person liable is served with the notice of assessment under subparagraph (4); and
  - (b) are treated for the purposes of this Act as though they were tax.

#### *Offences*

##### **Failure to comply with this Act**

**55.** (1) Except as otherwise provided in this Act, a person who contravenes a provision of this Act commits an offence and is liable on summary conviction,

- (a) where the failure results, or may result if undetected, in an underpayment of tax in an amount of not less than two hundred currency points, to a fine of not less than two hundred penalty units and not more than four hundred penalty units; and
- (b) in any other case, to a fine of not less than ten penalty units and not more than two hundred penalty units.

##### **Failure to pay tax**

**56.** A person who without reasonable excuse fails to pay tax, including an amount treated by this Act as if it were tax, on or before the due date for payment commits an offence and is liable on summary conviction,

- (a) where the failure is to pay an amount in excess of two thousand currency points, to a fine of not less than two hundred

penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than three months and not more than one year, or to both the fine and imprisonment; and

- (b) in any other case, to a fine of not less than fifty penalty units and not more than two hundred penalty units or to a term of imprisonment of not less than one month and not more than three months, or to both the fine and imprisonment.

### **Making false or misleading statements**

57. (1) A person who,

- (a) makes a statement that is false or misleading in a material particular to an officer of the Authority, or  
(b) omits from a statement made to an officer of the Authority, any matter or thing without which the statement is misleading in a material particular,

commits an offence and is liable on summary conviction

- (c) to a fine of double the amount of tax underpayment that may result, where the statement or omission is made without reasonable excuse, and the inaccuracy of the statement had gone undetected;  
(d) to a fine of not less than fifty penalty units and not more than two hundred penalty units or to a term of imprisonment of not less than one month and not more than three months, or both the fine and imprisonment, in any other case;  
(e) to a fine of triple the amount of tax underpayment that may result where the statement or omission is made knowingly or recklessly and the inaccuracy of the statement had gone undetected; or  
(f) to a fine of not less than fifty penalty units and not more than two hundred penalty units or to a term of imprisonment of not less than six months and not more than one year, or both the fine and imprisonment, in any other case.

(2) A reference in this paragraph to a statement made to an officer of the Authority is a statement made in writing to that officer

acting in the performance of functions under this Act and includes a statement made

- (a) in an application, certificate, declaration, notification, return, objection or other documents made, prepared, given, filed or furnished under this Act;
- (b) in information required to be furnished under this Act;
- (c) in a document furnished to an officer of the Authority otherwise than pursuant to this Act;
- (d) in an answer to a question asked of a person by an officer of the Authority or to another person with the knowledge or reasonable expectation that the statement would be conveyed to an officer of the Authority.

#### **Impeding tax administration**

58. (1) A person who without reasonable excuse,

- (a) obstructs or attempts to obstruct an officer of the Authority in the performance of duties under this Act, or
- (b) otherwise impedes or attempts to impede the administration of this Act,

commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than six months and not more than two years, or to both the fine and imprisonment.

(2) In addition to the punishment under subparagraph (1), any goods used by the offender in the commission of the offence shall be forfeited.

(3) In this paragraph, “impeding administration of this Act” includes

- (a) with respect to a tax officer, performing duties under this Act or a person assisting the tax officer
  - (i) assaulting, abusing, interfering with or obstructing the tax officer or assistant or attempting to do so;
  - (ii) interfering with an asset used by the tax officer or assistant or attempting to do so; or

- (iii) refusing to grant access to a premises, place, document or other asset as required by paragraph 18;
- (b) failing to comply with a notice under paragraph 19;
- (c) falsely making or altering a document or a mark on the document with the intention that any person will wrongly believe or act on the basis that the document is correctly required by or issued under this Act or correctly stamped;
- (d) with the intention of evading an obligation under this Act, knowingly dealing with or using a document or asset
  - (i) that is false or misleading in a material particular;
  - (ii) in a way that makes the document or asset false or misleading in a material particular; or
  - (iii) so that the document or asset contains or produces information, including by way of measurement, that is false or misleading in a material particular;
- (e) evading tax or knowingly being concerned in or taking steps with a view to evading tax, including-
  - (i) accepting goods knowing or believing that tax due with respect to the goods has not and will not be paid or will be falsely reclaimed;
  - (ii) dealing with an asset charged under paragraph 42 so as to prevent seizure;
  - (iii) dealing with an asset liable for seizure under this Act so as to prevent seizure;
  - (iv) dealing with an adhesive stamp that has been previously used;
- (f) recovering tax, including recovering or rescuing an asset seized under paragraph 18, taking possession of charged assets under paragraph 42, taking possession of distrained asset under paragraph 41 or any other tax law;
- (g) interfering with any lock, seal, mark, fastening or other security used to restrain an asset under paragraph 41;
- (h) disguising, warning, hiding or rescuing a person with the intent that any liability, obligation or arrest of that person under this Act is evaded, disguised or hidden; and

- (i) committing an offence under this Act where the person has already been convicted of an offence under this Act or had an offence compounded under paragraph 62.

**Offences by authorised and unauthorised persons**

59. (1) Any person who,

- (a) being an officer or a person employed in carrying out the provisions of this Act,
  - (i) directly or indirectly asks for, or receives in connection with any of the duties of that officer or person, a payment or reward, whether pecuniary or otherwise, or promise or security for that payment or reward, not being a payment or reward which the officer is lawfully entitled to receive, or
  - (ii) enters into or acquiesces in an agreement to do or to abstain from doing, permit, conceal, or connive at any act or thing whereby the tax revenue is or may be defrauded or which is contrary to the provisions of this Act or to the proper execution of the duty of the officer, or
- (b) not being authorised under this Act, collects or attempts to collect an amount of tax levied under this Act or an amount which that person describes as tax,

commits an offence and is liable on summary conviction to a fine of not less than fifty penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than one year and not more than three years, or to both.

(2) A person who contravenes paragraph 20 commits an offence and is liable on summary conviction to a fine of not less than fifty penalty units and not more than one hundred penalty units or to a term of imprisonment of not less than six months and not more than one year, or to both.

**Aiding or abetting**

60. A person who aids or abets another person to commit an offence, referred to as the “original offence”, under this Act, or counsels or

induces another person to commit that offence, commits an offence and is liable on summary conviction,

- (a) where the original offence involves a statement of the kind mentioned in paragraph 57 and if the inaccuracy of the statement were undetected may result in an underpayment of tax in an amount more than one hundred currency points, to a fine of not less than fifty penalty units and not more than two hundred penalty units or to a term of imprisonment of not less than one year and not more than two years, or to both the fine and imprisonment; and
- (b) in any other case, to a fine of not less than ten penalty units and not more than fifty penalty units or to a term of imprisonment of not less than six months and not more than one year, or both.

*Entities*

**Offences by entities**

61. (1) Subject to subparagraph (3), where an entity commits an offence, every person who is a manager of that entity at that time is treated as also having committed the same offence.

(2) Subject to subparagraph (3), where an entity commits an offence by failing to pay an amount of tax, including an amount treated by this Act as though it were tax, every person who is a manager of that entity at that time or was a manager within the previous six months is jointly and severally liable with that entity and that other person to the Commissioner-General for the amount.

(3) Subparagraphs (1) and (2) do not apply where

- (a) the offence is committed without the knowledge or consent of that person; and
- (b) that person has exercised the degree of care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances to prevent the commission of the offence.

(4) A person who makes a payment to the Commissioner-General with respect to a liability under subparagraph (2),

(a) shall be indemnified by that entity with respect to the payment; and

(b) may retain out of any money or property of that entity coming into the possession of that person an amount not exceeding the payment.

(5) An entity under this paragraph shall not have a claim against that person with respect to retention of money or property under subparagraph (a) of subparagraph (4).

*Proceedings*

**Compounding offences**

62. (1) Where a person commits an offence under this Act, other than of a kind referred to in paragraph 59, the Commissioner-General may, at any time prior to the commencement of court proceedings, compound the offence and order that person to pay a sum of money specified by the Commissioner-General, not exceeding the amount of the fine prescribed for the offence.

(2) The Commissioner-General may only compound an offence under this paragraph if the person concerned admits in writing to the commission of the offence.

(3) Where the Commissioner-General compounds an offence under this paragraph, the order referred to in subparagraph (1),

(a) shall be in writing and specify the offence committed, the sum of money to be paid, and the due date for payment, and shall have attached the written admission referred to in subparagraph (2);

(b) shall be served on the person who committed the offence;

(c) shall be final and not subject to an appeal; and

(d) may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order or by the provisions of this Act.

(4) Where the Commissioner-General compounds an offence under this paragraph, the person concerned is not liable for prosecution or a penalty under paragraph 55 to 60 in respect of that offence.

**Venue****63. Any**

(a) offence committed by a person under this Act, or

(b) civil proceedings under this Act in relation to a person,

shall be instituted, tried, heard, disposed of and the person punished, as the case requires, at the Court nearest to the usual place of residence of that person or at a Court exercising jurisdiction over the area in which the office of the Commissioner-General having primary responsibility for the affairs of that person under this Act is situated.

**Amounts payable notwithstanding**

**64.** (1) The institution of proceedings for, or the imposition of, a penalty, fine or term of imprisonment under this Act shall not relieve a person from liability to pay a tax, including an amount treated by this Act as though it were tax, for which that person is or may become liable under this Act.

(2) In proceedings under this Act, the production of a certificate signed by the Commissioner-General stating the name and address of the person liable and the amount of tax due or due and payable by that person shall be sufficient evidence of the amount of tax due or due and payable by that person.

*Remission and refund***Remission**

**65.** (1) Where the Commissioner-General is of the opinion that the whole or a part of the tax which is due by a person, including an amount treated by this Act as though it were tax, cannot be effectively recovered by reason of,

(a) considerations of poverty, or

(b) impossibility, undue difficulty, or the excessive cost of recovery,

the Commissioner-General may remit in whole or in part the tax due by that person.

(2) Where good cause is shown by a person liable for interest or penalty under paragraph 48 to 53, the Commissioner-General may remit in whole or in part any interest or penalty charged under that Subdivision whether before or after any related proceedings for an offence under paragraph 55 to 60 are commenced or concluded.

(3) The Commissioner-General may, if satisfied that it is just and equitable to do so, remit in whole or in part a tax due by a person under this Act.

**Refunds and set-off**

**66.** (1) Where the Commissioner-General is satisfied that tax has been paid by a person in excess of the tax liability of that person to which the payment relates, the Commissioner-General shall

- (a) apply the overpaid tax in reduction of any amount due by that person in respect of
  - (i) other taxes under this Act;
  - (ii) instalments of tax or withholding of tax under this Act; or
  - (iii) any other amount due to the Authority under this Act; and
- (b) refund the remainder to that person within three months of becoming satisfied.

(2) Interest or penalty paid by a person under paragraph 50 shall be refunded to that person to the extent that the tax to which the interest or penalty relates is found not to have been due and payable.

(3) Where the Commissioner-General is required to refund an amount of tax to a person as a result of a decision of a court under paragraph 22, the Commissioner-General shall pay interest at the prevailing bank rate, for the period commencing on the date that person paid the tax refunded and ending on the day on which the refund is made.

(4) Without limiting subparagraph (1), a person may apply for a refund under this paragraph and the application shall be made to the Commissioner-General in writing within six years of the later of

- (a) the date on which the Commissioner-General has served the notice of assessment to which the refund application relates; or
- (b) the date on which the tax or interest was paid.

(5) The Commissioner-General shall, within forty-five days of making a decision on a refund application under subparagraph (1) or (2), serve on the person applying for the refund a notice in writing of the decision.

(6) A person dissatisfied with a decision referred to in subparagraph (5) may only challenge the decision under the objection and appeal procedure in paragraph 21 as though the decision were an assessment.

(7) For the purpose of this paragraph, refunds due under this Act shall be paid out of the Ghana Revenue Authority General Refund Account after certification by the Commissioner-General.

**Interpretation**

67. In this Schedule, unless the context otherwise requires,  
“correct amount” means the actual income tax payable under this Act by the taxpayer, for the year of assessment; and  
“underpayment” is the amount of tax assessable with respect to the tax return less tax paid by the start of the period towards that amount.

Date of *Gazette* notification: 1st September, 2015.





**Act 896**

*INCOME TAX ACT, 2015*

**MEMORANDUM**

The passage of the Ghana Revenue Authority Act, 2009 (Act 791) integrated the erstwhile three main revenue agencies namely the Internal Revenue Service (IRS), Value Added Tax Service (VATS) and Customs, Excise and Preventive Service (CEPS) to form the Ghana Revenue Authority (GRA).

Prior to the passage of Act 791, the erstwhile revenue agencies had their respective tax laws made up of both the charging provisions and administrative provisions. Some of the administrative provisions were common to the respective tax laws while other provisions were inconsistent with similar ones in these tax laws. In pursuance of harmonisation, all the common administrative provisions in the previous tax laws have been pooled together into a single legislation, the proposed Revenue Administration Bill. There is therefore the need to reorganise the residual provisions in the respective revenue Acts.

The Income Tax Bill therefore seeks to reorganise the rest of the income tax law provisions to simplify the provisions and make it more user friendly. Provisions that are peculiar to income tax administration have been retained in the Bill. The provisions which specifically guide the different methods and time for payment including tax payable by withholding, tax payable by instalment and tax payable by assessment have also been retained and improved to enhance efficiency and facilitate compliance.

One striking feature of the Internal Revenue Act, 2000 (Act 592), after fourteen years of implementation, is how narrow and distorted the tax base is. In an era when many countries have broadened their tax base and lowered tax rates, the Ghanaian tax base seems to have been narrowed although tax rates have also come down. This was one of the rationales for the reforms carried out in the years 1999 and 2000. The reforms were aimed at restricting and phasing out tax concessions. It was anticipated that in time more concessions would be removed. However, the opposite happened; Act 592 is littered with ill-targeted erosions of the tax base. The subjects of these erosions are typically

immobile factors such as land and domestic labour. As globalisation makes it increasingly difficult to tax mobile factors, the very subjects of tax base erosion are those that will increasingly be relied on to generate revenue.

These tax base erosions take various forms. Some are exclusions from employment income, such as the exclusion for severance pay or income reductions for night duty allowance, or overly generous methods of valuing fringe benefits, in particular cars and accommodation. There are no provisions directly dealing with fringe benefits received in the context of a business, putting pressure on the poorly structured gift tax. Another tax base erosion with potentially destructive consequences is the deduction of interest paid on residential mortgages. The tax base does not include notional income from owner occupied housing so it is not clear why interest should be deductible.

The current treatment of retirement savings also seems extraordinarily generous. With the recent addition of beneficial tax treatment of contributions to an approved provident fund, it now seems possible for an individual to put up to thirty-five percent of their income into tax protected funds. There is no absolute limit, only a limit by reference to income. This must be understood in light of the tax treatment of these contributions. They are paid from exempt income (deductible), exempt in the fund and totally exempt on the way out, that is, an exempt-exempt-exempt system. Historically, only contributions to life insurance were tax-preferred. Despite the move to a very generous approved retirement treatment, the special treatment of life insurance on an exempt-taxed-exempt basis continues. This is in addition to contributions to the social security scheme and approved provident funds and also in addition to a general exemption for individuals with respect to interest received on bank deposits despite the deduction for mortgage interest.

There are many more targeted concessions in Act 592. A recent one is for venture capital trusts. An investment in such a scheme is from exempt funds (deductible), the scheme is largely exempt on its income for ten years and payouts are exempt, that is, an exempt-exempt-exempt system. In addition, losses incurred on disposal of investments in those funds are deductible against ordinary income, despite the fact that the

investment was deducted in the first place. Any gains are not taxed. This system seems particularly prone to abuse if it is possible to purchase and dispose of interests on a rolling basis.

The object of this Bill is to revise and consolidate the law relating to income tax and to provide for related matters.

*Clause 1* specifies the persons required by law to pay income tax for each year of assessment and the mode of calculation in respect of the income tax payable while *clause 2* provides for the chargeable income of a person for a year of assessment.

*Clause 3 to 6* deals with assessable income.

*Clause 3* provides that the assessable income of a person for each year of assessment is the income of that person from an employment, business or investment less the total amount of deduction allowed that person under this Bill. The clause further provides that the income from an employment, business or investment has a source in Ghana if the income accrues in or is derived from Ghana.

*Clauses 4, 5 and 6* relate to income from employment, business and investment respectively. The clauses provide for what constitutes an income of an individual from an employment, business or investment for a year of assessment.

The clauses further stipulate amounts to be included and excluded in ascertaining the profits and gains of an individual from an employment, business and investment respectively for a year of assessment or for a part of that year.

*Clause 7* enumerates income exempt from tax. These include, among others, the salary, allowances, facilities, pension and gratuity of the President in accordance with article 68 (5) of the Constitution, the income from cocoa of a cocoa farmer and the income of a person receiving instruction at an educational institution from a scholarship, exhibition, bursary or similar educational endowment.

*Clause 8 to 17* deals with deductions allowed in ascertaining the income of a person.

Under *clause 8*, the Commissioner-General is mandated to disallow a deduction for the purpose of ascertaining the income of a person from employment or a deduction in respect of domestic or excluded expenses incurred by a person.

A person who is ascertaining the income of that person or of another person from an investment or business conducted for a year of assessment or for a part of that year is obliged to deduct from the income, an expense other than an expense that is of a capital nature to the extent that that expense is wholly, exclusively and necessarily incurred by the person in the production of the income from the investment or business during the year, *clause 9*.

Interest is dealt with under *clause 10*. The clause expressly states that for the purpose of *clause 9*, interest incurred by a person during a year of assessment under a debt obligation of the person is incurred in the production of income. The interest is incurred in the production of income to the extent that where the debt obligation was incurred in borrowing money, the money is used during the year or is used to acquire an asset that is used during the year in the production of the income and in any other case the debt obligation was incurred in the production of income.

*Clause 11* requires a person who is ascertaining the income of that person or of another person from a business for a year of assessment to deduct in respect of trading stock of the business, the allowance calculated in accordance with the procedure specified in subclause (2). Under subclause (2), the allowance is calculated as the opening value of trading stock of the business for the year of assessment plus the expenses incurred by the person during the year and included in the cost of trading stock of the business less the closing value of trading stock of the business for the year.

*Clause 12* relates to deductions in respect of repairs and improvements. Under *clause 12*, an expense incurred for the repair or improvement of a depreciable asset is allowed as a deduction when calculating the income of a person provided the repair or improvement meets the requirements of clause 9(1).

*Clause 13* permits the deduction of a research and development expense that meets the requirements of clause 9(1) irrespective of whether the expense is of a capital nature. A research and development expense is defined under the clause to include an expense incurred by the person in the process of developing the business of that person and improving business products or processes but excludes an expense incurred that is otherwise included in the cost of an asset used in the process of developing the business of that person and improving business products or processes.

Capital allowances is dealt with under *clause 14*. The clause allows capital allowances to be deducted for purposes of ascertaining the income of a person from a business for a year of assessment.

*Clause 15* is on losses on realisation of assets and liabilities.

*Clause 16* sets out the limits on deductions in respect of financial costs. The Minister is empowered to make Regulations to prescribe the circumstances under which a loss on a financial instrument may be set off against a gain on a financial instrument.

Losses from business or investment are allowed as deductions under *clause 17*.

Rules governing amounts used in calculating the income tax base are provided for in *clause 18 to 25*.

*Clause 18* defines a year of assessment and the basis period of a person. On application by a trust or company as regards a change in the accounting year of the trust or company, the Commissioner-General has the discretion to approve the change on the terms and conditions approved by the Commissioner-General.

Under *clause 19*, provision is made for the usage of generally accepted accounting principles as regards the timing of inclusions and deductions in calculating the income of a person during a basis period subject to the provisions of this Bill.

*Clauses 20 and 21* provide for the usage of the cash basis or accrual basis of accounting in calculating the tax base of an individual depending on the method which clearly reflects the income of that individual.

*Clause 22* deals with claim of right. A person is required to be treated as deriving an amount or incurring an amount even though that person is not legally entitled to receive the amount or obliged to pay the amount if the person claims to be legally entitled to receive the amount or legally obliged to pay the amount.

Where a person deducts an expense or includes an amount in calculating the income of that person and that person later recovers the expense or refunds the amount, that person is required to include the amount recovered or deduct the amount refunded in calculating the income of that person, *clause 23*.

*Clause 24* is on long-term contracts. For purposes of calculating the income of a person with respect to a long-term contract, an amount to be included or deducted is required to be taken into account on the basis of the percentage of the contract completed during each basis period. A long-term contract is defined as a contract for manufacture, installation, construction or, in relation to each, the performance of related services which is not completed within twelve months of the date on which work under the contract commences.

Foreign currency and financial instruments are dealt with under *clause 25*. The clause is applicable in circumstances where a person is required to include an amount or permitted to deduct an amount in relation to a financial instrument in calculating income from a business or investment.

The clause also makes provision for the usage of generally accepted accounting principles as regards determination of the time at which the amount is to be included or deducted, who the amount is to be allocated to, the quantum of the amount and the character of the amount.

*Clause 26 to 34* addresses issues of quantification, allocation and characterisation of amounts used in the calculation of a tax base.

*Clause 26* provides that a payment or an amount to be included in income or deducted from income is quantified in accordance with the amount specified in the Fourth Schedule or prescribed by Regulations or in any other case, in accordance with the market value.

*Clause 27* deals with indirect payments.

*Clause 28* provides for jointly owned investments. The amounts to be included in the income of a person from an investment which is jointly owned with another person, is required to be apportioned among the joint owners in proportion to their interests in the investment. The interests of joint owners are, however, required to be treated as equal where their interests can not be ascertained.

Where a person or an associate of a person derives an amount as compensation for the recovery of income or loss, the compensation amount is, subject to clause 23, required to be included in calculating the income of that person, *clause 29*.

*Clause 30* makes provision for a payment made by a person under a finance lease or in the acquisition of an asset under an instalment sale to be treated as interest and a repayment of capital under a loan made by the lessor or seller to the lessee or buyer in calculating the income of that person.

*Clause 31* provides for dealings at arm's length and arrangements between persons who are in a controlled relationship. The clause mandates persons who are in a controlled relationship to calculate their income and tax payable in accordance with the arm's length standard where an arrangement exists between those persons. The arm's length standard requires persons who are in a controlled relationship to quantify, characterise, apportion and allocate amounts to be included in or deducted from income to reflect an arrangement that would have been made between independent persons.

*Clause 32* deals with income splitting. The Commissioner-General is permitted to prevent a reduction in tax payable in cases where a person attempts to split income with another person.

*Clauses 33 and 34* deal with thin capitalisation and general anti-avoidance rule respectively. Under *clause 34*, the Commissioner-General has the discretion to re-characterise or disregard an arrangement or part of an arrangement that is entered into or carried out as part of a tax avoidance scheme which is fictitious or does not have a substantial economic effect or the form of which does not reflect its substance.

The calculation of tax on assets and liabilities is dealt with under *clause 35 to 50*.

*Clause 35* is on the mode of calculating a gain or loss made by a person from the realisation of an asset or liability.

*Clauses 36 and 37* outline what constitutes the cost of an asset and consideration received in respect of an asset of a person.

*Clause 38* provides for the circumstances under which a person who owns an asset is considered to have realised the asset. These include where a person parts with the ownership of that asset, including when that asset is sold, exchanged, transferred, distributed, redeemed, destroyed, lost, expired or surrendered, and in the case of an asset other than trading stock or a depreciable asset, if the sum of consideration received by that person from the sale of the asset exceeds the cost of that asset.

*Clause 39* applies the provisions of *clauses 37 and 38* of the Bill to the cost of and consideration received for a liability of a person.

Where a person includes expenditure in a liability or in the cost of an asset and that person later recovers that expenditure, that person is required under *clause 40* to include the amount recovered in the consideration received for the asset or liability. The clause also permits a person to include an amount refunded in the cost of an asset, where the amount is included in the consideration received by a person for an asset or is refunded due to a legal obligation to do so.

The owner of trading stock or any other type of asset, prescribed by Regulations to be fungible and not readily identifiable, is permitted to either use the first-in-first-out method or the average-cost method in determining the cost of that asset. The owner is further permitted to change a method opted for subject to the written permission of the Commissioner-General, *clause 41*.

*Clause 42* deals with realisation with retention of asset.

*Clause 43* provides that where upon the death of an individual or as part of a divorce settlement or bona fide separation agreement, an individual transfers an asset to a spouse or former spouse, that individual is required to be treated as having derived an amount in respect of the realisation equal to the net cost of the asset immediately before the

realisation. In the same vein, the spouse or former spouse is treated as incurring expenditure of the relevant amount in acquiring the asset.

Under *clause 44*, an individual who realises an asset on death, by way of transfer of ownership of the asset to another person is treated as deriving an amount in respect of the realisation equal to the market value of the asset at the time of realisation. The clause also provides that the person who acquires the asset is to be treated as incurring an expenditure of the relevant amount in acquiring the asset.

*Clause 45* provides that a person is required to be treated as having derived an amount in respect of the realisation of an asset equal to the greater of the market value of the asset or the net cost of the asset immediately before the realisation. The clause further spells out the modes of realisation of an asset. These include by way of transfer of ownership of the asset to a person who is in a controlled relationship with that person, by way of gift other than under a will, upon intestacy or by way of transfer to the spouse, child or parent of that person.

*Clause 46* enumerates the circumstances under which realisation of asset with replacement asset applies. These include acquisition of an asset of the same type to replace the asset to be realised where the acquisition was done within six months before the date of realisation of the asset or acquisition of an asset of the same type to replace the asset realised within one year after the realisation of the asset.

The gains on realisation of an asset accruing to or derived by a company arising out of a merger, amalgamation or re-organisation of a company is exempt from tax where there is continuity of at least twenty-five per cent of the underlying ownership in the asset, *clause 47*.

*Clause 48* prohibits a person from treating a mortgagor as realising an asset or any part of the asset or as having acquired an asset or any part of the asset where that person grants a legal or equitable mortgage or a similar form of security over an asset to secure a debt owed by that person to another person.

*Clause 49* relates to realisation by separation. The clause provides that where a right or an obligation with respect to an asset owned by a person is created in another person, that person is required to be treated as realising part of the asset if the right or obligation is permanent. However, in cases where the right or obligation is temporary or contingent, that person is not required to be treated as realising part of the asset or liability.

*Clause 50* provides for apportionment of cost and consideration received in instances where a person acquires or realises more than one asset at the same time by way of transfer or as part of the same arrangement. With respect to acquisition of more than one asset, the expenditure incurred in acquiring each asset is apportioned between the assets according to the market value of each of the assets at the time of acquisition. On the other hand, the amounts derived in realising each asset is apportioned between the assets according to the market value of each of the assets at the time of realisation in cases of realisation of more than one asset.

*Clause 51 to 62* deals with rules governing types of persons.

*Clause 51* is on personal reliefs. The clause disallows personal reliefs in ascertaining the chargeable income of a resident individual for a year of assessment.

Under *clause 52*, a partnership is neither liable to pay income tax with respect to the chargeable income of the partnership nor entitled to any tax credit with respect to that income. However, the partnership is liable to pay income tax with respect to final withholding payments.

*Clause 53* provides that the income of a partnership for a year of assessment is the income of the partnership from the business of the partnership for that year and a loss incurred by a partnership for a year of assessment is the loss incurred by the partnership from the business of the partnership for that year.

Under *clause 54*, a person ascertaining the income of a partner from a partnership for a year of assessment is mandated to include the share of a partner of any partnership income or deduct the share of that partner in any loss incurred by the partnership for the relevant partnership year. The relevant partnership year is defined as the year of assessment of the

partnership ending on the last day of assessment of the partner or during the year of assessment of the partner.

*Clause 55* enumerates the amounts required to be included in calculating the cost of a membership interest of a partner in a partnership and the amount required to be included in calculating the consideration received for a membership interest of a partner in a partnership.

Under *clause 56*, a trust is liable to tax separately from the beneficiaries of the trust. The clause also provides that where a group of persons are trustees for more than one trust, the income of each trust is required to be calculated separately regardless of the fact that the trusts have the same trustees.

*Clause 57* is on taxation of a beneficiary of a trust. The clause expressly states that a distribution of a resident trust is exempt from taxation if the distribution is in the hands of the beneficiary of the trust. However, a distribution of a non-resident trust is included in calculating the income of the beneficiary of the trust.

*Clause 58* provides that a company is liable to tax separately from its shareholders. The clause further makes provision for an amount derived and an expenditure incurred jointly or severally by the managers or shareholders for the purpose of a company to be considered as derived or incurred by that company even when that company lacks the legal capacity to derive that amount or incur that expenditure.

Taxation of shareholders is provided for under *clause 59*. A resident company which pays a dividend to a shareholder is mandated to withhold tax on the amount of the dividend. A person ascertaining the income of a shareholder is also obliged under the clause to include in the calculation, a dividend paid by a non-resident company to the shareholder and a gain made on the disposal of the shares where a shareholder disposes of shares in a company.

Branch profit tax is dealt with under *clause 60*. A non-resident person who carries on business in Ghana through a permanent establishment and earns repatriated profits is required to pay tax on the repatriated profits for a basis period and in addition required to pay final tax on the gross amount of the earned repatriated profits to the Commissioner-General in accordance with the prescribed rate within thirty days after the end of the basis period.

*Clauses 61 and 62* address the issues of tax dealings between entities and members of the entities and change in control of entities respectively. *Clause 61* clearly states the position as regards the realisation of an asset by way of transfer of ownership between an entity and one of its members while *clause 62* indicates that the assets and liabilities of an entity is considered to be realised immediately before there is a change in ownership of an entity by more than fifty percent at any time within a period of three years.

*Clause 63 to 100* deals with special industries.

*Clause 63* imposes a petroleum income tax on the income of a person with respect to petroleum operations.

The applicable rules where a development plan for a petroleum agreement area is approved are spelt out in *clause 64*. The clause also requires a petroleum operation pertaining to a petroleum right to constitute a separate petroleum operation subject to the provisions of *subclause (2)*.

*Clause 65* relates to the exploration and development operations conducted by a person as part of a separate petroleum operation before the commencement of petroleum production.

*Clause 66* outlines what constitutes the income of a person from petroleum operations for a year of assessment. These include, among others, the market value of petroleum obtained from the petroleum agreement area that is disposed of during the year or that is treated as disposed of during the year and a compensation derived, whether under a policy of insurance or otherwise, in respect of loss or destruction of petroleum from the petroleum agreement area.

Deductions allowed in determining income derived from petroleum operations are contained in *clause 67*. The deductions include annual rental charges and royalties paid by the person under the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84) with respect to the petroleum operation and contributions to and other expenses incurred in respect of a decommissioning fund for the petroleum operation in accordance with the rules established for that fund.

By virtue of *clause 68*, an unrelieved loss of a person from a separate petroleum operation is allowed as a deduction provided the unrelieved loss is deducted only in calculating future income from that separate petroleum operation and not income from any other activity. A loss is deducted in the order in which the loss is incurred.

*Clause 69* relates to disposal of petroleum rights and *clause 70* deals with decommissioning fund. Under *clause 70*, an amount accumulated in or withdrawn from a decommissioning fund for decommissioning purposes is exempt from tax.

*Clause 71* deals with withholding tax for petroleum operations. *Clause 71* exempts *clause 59(3)* from applying to a dividend paid by a company that conducts petroleum operations or that has conducted petroleum operations or a company that is a partner in a partnership that conducts petroleum operations or that has conducted petroleum operations.

Under *clause 72*, a person who is engaged in a petroleum operation is to ensure that not later than thirty days after the end of a quarterly period, the person furnishes the Commissioner-General with a return containing an estimate of the chargeable income of the person resulting from the operations during the quarterly period and an estimate of the tax due on the chargeable income of the person and a remittance in settlement of the estimated tax.

*Clause 73* is on furnishing of annual return of income. A person who is engaged in a petroleum operation is to ensure that not later than four months after the end of the year of assessment, the person furnishes the Commissioner-General with a return for each separate petroleum operation for a year of assessment.

On the other hand, *clause 74* empowers the Commissioner-General where the Commissioner-General thinks necessary, to give notice in writing to a person who is engaged in petroleum operations requiring that person to furnish within the time specified in the notice further information as to the matters in connection with the quarterly returns and annual returns or any other matter that the Commissioner-General considers necessary for determining the assessment of that person.

It is expedient to mention that tax for a quarterly period is due and payable thirty days after the end of the quarter to which the tax relates, *clause 75*. *Clause 76* provides for the interpretation of words used in Division I of Part VI of the Bill.

*Clause 77 to 86* deals with mining operations. *Clause 77* imposes tax on the income of a person where the income of that person is derived from mining operations. The mining income tax payable under this clause is to be calculated by applying the rate of tax specified in the First Schedule to the chargeable income of that person from mineral operations. However, where a person has chargeable income other than income derived from mineral operations, that income is to be charged in accordance with section 1 of the Bill.

*Clause 78* provides for separate mineral operations which are made up of a mineral operation pertaining to each mine and a mineral operation with a shared processing facility.

*Clause 79* applies to reconnaissance and prospecting operations conducted by a person as part of a separate mineral operation before the commencement of production of a commercial find. The clause requires that a person who incurs a revenue expenditure or a capital expenditure in the course of reconnaissance or prospecting operations to place the expenditure in a single pool and the Commissioner-General is not to allow a deduction or capital allowance with respect to the expenditure and that expenditure does not form part of the cost of an asset.

*Clause 80* is subject to *clause 79* with respect to income from mineral operations. *Clause 80* identifies other revenues that should be included in ascertaining the income of a person from a mineral operation for a year of assessment.

On the other hand, subject to *clauses 8, 79 and 81*, *clause 81* identifies the income that should be deducted in ascertaining the income of a person from a separate mineral operation for a year of assessment. The clause also indicates the circumstances under which the Commissioner-General is not to allow a deduction.

*Clause 82* places *clause 17* in a clearer perspective by indicating that *clause 17* applies to unrelieved losses of a person from a separate mineral operation. However, the application of *clause 17* to unrelieved losses is subject to instances where the person is to deduct unrelieved losses in the order in which the losses are incurred and the losses from a separate mineral operation can be deducted only in calculating future income from that operation and not income from any other activity.

Furthermore, where a person holds a direct or indirect interest in an entity that holds a petroleum right, the person is to be treated as holding the interest as a capital asset employed in the business of that entity, *clause 83*.

*Clause 84* exempts from tax an amount accumulated in or withdrawn from an approved rehabilitation fund by a person who holds a mineral right for the purpose of rehabilitation of the area which is the subject of the mining lease.

Despite *clause 59(3)*, dividend paid to a resident company by a resident company that conducts or that has conducted a mineral operation or a resident company that is a partner in a partnership that conducts or that has conducted a mineral operation is subject to withholding tax in accordance with the Bill, *clause 85*. *Clause 86* deals with interpretation with respect to words used in *clause 77* to *86*.

Division III of Part VI which relate to financial institutions consists of *clause 87* to *92* of the Bill. *Clause 87* clarifies that any other business activity of a person who engages in a banking business is a separate business activity from the banking business engaged in by the person and that person is to keep the books of account of each business activity separately.

*Clause 88* deals with provision for a debt claim. The provision allows the Commissioner-General to deduct a bad debt in the calculation of chargeable income where a person conducting a banking business makes a specific provision for a debt claim and the debt was previously included in calculating income from the business and the Commissioner-General is satisfied that the debt is a bad debt. On the other hand, the Commissioner-General may deduct where the Commissioner-General is satisfied that the debt is a bad debt and the debt claim constitutes the advance of a

principal sum, in the case where the cost of the debt claim is reduced by an equal amount.

Matters of general insurance business are provided for under *clause 89*. For purposes of the Bill, any other business activity of a person who conducts a general insurance business is a separate business from the general insurance business and the income or loss of that person from each of the businesses for a year of assessment is to be computed separately.

*Clauses 90 and 91* provide for life insurance business and proceeds from insurance respectively. *Clause 92* deals with interpretation in respect of Division III of Part VI of the Bill.

Division IV of Part VI of the Bill which is made up of *clause 93 to 96* deals with retirement savings. *Clause 93* clarifies the relationship between this Division of the Bill and the National Pensions Act, 2008 (Act 766). Division IV of this Part is subject to Act 766, *clause 93*.

*Clause 94* exempts from tax, retirement contributions received by a retirement fund and those retirement contributions are not consideration received for an asset or liability of the fund.

*Clauses 95 and 96* provide for retirement payments from retirement funds and interpretation of words used in Division IV of Part VI of the Bill respectively.

Public, mutual and non-profit causes are provided for in Division V of Part VI of the Bill. The Commissioner-General is empowered under *clause 97* to approve an entity as a charitable organisation for purposes of the Bill. Indeed the Commissioner-General is also empowered to revoke the approval for a good clause or for the contravention of a requirement specified under *clause 97*. The clause further identifies the considerations that should form the basis for the approval by the Commissioner-General.

*Clauses 98, 99 and 100* provide for clubs and trade associations, building societies and friendly societies, and contributions and donations to a worthwhile cause respectively.

Part VII of the Bill is made up of three Divisions, namely, residence and source (Division I), permanent establishment (Division II) and foreign source of income of a resident (Division III). The circumstances under which a person, that is an individual, a partnership, a trust and a company, may be considered as a resident in the country for a year of assessment are indicated under *clause 101* of the Bill.

A person who is resident in the country during a year of assessment is considered to be resident for the whole of that year, *clause 102*.

Where the income of a person employed is derived from a source outside of the country and a source that is in the country, the income of that person derived from the source in the country is to be calculated separately from the income derived from the source outside of the country, *clause 103*.

*Clause 104* provides for the determination of income that has its source in the country. *Clauses 105 and 106* provide for payments sourced from the country and interpretation of words used in Division I of Part VII respectively.

*Clause 107* exempts a permanent establishment from tax if that permanent establishment is situated outside of the country. However, the permanent establishment is subject to tax in the same manner as a resident company, if the permanent establishment is a Ghanaian permanent establishment. An activity of a permanent establishment is treated as conducted in the course of a single business and that activity is the activity conducted by the owner through the permanent establishment.

*Clause 109* provides for the income or loss of a permanent establishment. Under *clause 110* the words used in Division II of Part VII have been interpreted.

The income of a resident person derived from a foreign source is taxable under *clause 111*. However, the income of a resident individual from employment exercised in a foreign country with a non-resident employer, or with a resident employer where the individual is present in

the foreign country for one hundred and eighty-three continuous days or more during the year of assessment is exempt from tax. The power of the Minister to make Regulations in respect of principles of taxation is also set out under *clause 111*.

Furthermore, a resident person other than a partnership may claim a foreign tax credit for a year of assessment for any income tax paid by that person to a foreign country and to the extent to which that income tax is paid with respect to the assessable foreign income of that person for the year, *clause 112*.

Part VIII which is on tax payment procedure is also made up of four Divisions. Division I is in respect of general obligations, Division two is on tax payable by withholding, Divisions three and four deal with tax payable by instalment and tax payable on assessment respectively. The method for the payment of tax imposed under section 1 of the Bill are payment by withholding, payment by instalment, and payment on assessment, *clause 113*.

*Clauses 114, 115 and 116* provide for withholding of tax by employer, withholding of tax from investment returns and withholding of tax from the supply of goods, service and fees and contract payments respectively.

In accordance with Division II of Part VIII, a withholding agent is obliged under *clause 117* to pay to the Commissioner-General, within fifteen days after the end of each calendar month, a tax that has been withheld during the month.

A withholding agent is required to prepare and serve on a withholdee a withholding certificate covering a calendar month and the certificate is to be served on the withholdee within thirty days after the end of the month, *clause 118*.

*Clause 121* permits an instalment payer to pay by quarterly instalments if the person derives or expects to derive assessable income during a year of assessment from a business or investment, or from an employment where the employer is not required to withhold tax.

A person who is an instalment payer for a year of assessment under *clause 121* is to file with the Commissioner-General by the date for payment of the first tax instalment, an estimate of tax payable for the year, *clause 122*.

*Clause 123* empowers the Commissioner-General to, by notice, specify that an instalment payer or class of instalment payers are not required to submit an estimate under *clause 122*. A person is required under *clause 124* to file with the Commissioner-General, not later than four months after the end of each year of assessment a return of income for the year.

*Clause 125* provides for return of income not required, and under *clause 126* a return of income filed under *clause 124* of the Bill should result in a self-assessment. The power of the Minister to make Regulations in respect of matters under Part VIII of the Bill is set out in *clause 127*.

Part IX of the Bill comprises *clause 128 to 133*. *Clause 128* provide for the circumstances under which two or more persons may be considered as persons in a controlled relationship. For purposes of the Bill a partnership in which at least twenty of the partners have limited liability for the debts of the partnership, and a trust with at least twenty beneficiaries whose entitlements to participate in the income or capital of the trust are divided into units such that the entitlements are determined by the number of units owned may be considered as a company, *clause 129*.

*Clauses 130, 131 and 132* are in respect of domestic and excluded expenditure, financial instruments and derivative amount respectively. Words used generally in the Bill are interpreted under *clause 133*.

Part X of the Bill deals with temporary and transitional provisions. Under *clause 134*, the Sixth Schedule provides for concessions of a temporary nature. However, a person is not entitled to a concession in the Sixth Schedule if an associated person has benefited or is benefiting from that concession. The second Division of Part X provides for repeals, savings, transitional provisions and commencement.

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*Clause 136* repeals the Internal Revenue Act, 2000 (Act 592) and any other law to the extent that that other law is inconsistent with the provisions of the Bill. Consequential amendments are set out in *clause 137*.

The transitional provisions are indicated in *clause 138* and the Minister is empowered to make Regulations to prescribe transitional measures for the implementation of the provisions on their enactment. Finally, until the date a Tax Administration law is enacted, the Seventh Schedule to the Bill is, in addition to the Ghana Revenue Authority Act, 2009 (Act 791), to be used to administer the provisions of the Bill on its enactment.

**HON. SETH TERKPER**  
*Minister responsible for Finance*

Date: 25th March, 2015.