

**ACT 592**  
**INTERNAL REVENUE ACT, 2000**

ARRANGEMENT OF SECTIONS

PART ONE

*Income Tax*

*Imposition of Income Tax*

1. Imposition of income tax.
2. Final taxes on income received by residents.
3. Final taxes on income received by non-residents.
4. General provisions relating to taxes imposed under sections 2 and 3.

*Chargeable Income*

5. Chargeable income.

*Assessable Income*

6. Assessable income.
7. Income from a business.
8. Income from an employment.
9. Income from an investment.

*Exempt Income*

10. Exempt income.
11. Industry concessions.
12. Derivative amounts.

*Deductions*

13. Deductions allowed.
14. Interest.
15. Rent.
16. Repairs.
17. Deductions in relation to the rental of premises.

18. Bad debts.
19. Research and development expenditure.
- 19A. Deduction in relation to Venture Capital Companies.
20. Capital allowances.
21. Foreign currency exchange losses.
22. Carry over of losses.
23. Deductions not allowed.

#### *Tax Accounting Principles*

24. Year of assessment and basis period.
25. Method of accounting.
26. Cash-basis accounting.
27. Accrual-basis accounting.
28. Pre-payments.
29. Claim of right.
30. Long-term contracts.
31. Trading stock.
32. Debt obligations with discount or premium.

#### *Miscellaneous Rules for Determining Income*

33. Jointly owned investment.
34. Leases.
35. Valuation.
36. Indirect payments and benefits.
37. Recouped expenditure.

#### *Taxation of Individuals*

38. Individual as tax unit.
39. Personal relief.

#### *Taxation of Entities*

##### *Taxation of Partnerships and Partners*

40. Principles of taxation for partnerships.
41. Ascertaining partnership income.
42. Taxation of partners.
43. Partnership obligations.

*Taxation of Companies and Shareholders*

- 44. Principles of taxation for companies.
- 45. Undistributed profits of companies.

*Taxation of Bodies of Persons and their Owners*

- 46. Principles of taxation for bodies of persons.
- 47. Calculation of the attributable income of a body of persons.
- 48. Deduction for amounts attributed to beneficiary.
- 49. Taxation of beneficiaries of bodies of persons.
- 50. Incapacitated persons.
- 51. Deceased individuals.

*General Provisions Applicable to Entities*

- 52. Roll-over relief.
- 53. Collateral benefits.
- 54. Change in control.
- 55. Profit or dividend stripping.

*Insurance and Retirement Savings*

*Short-term Insurance*

- 56. Short-term insurance business.

*Life Insurance*

- 57. Reductions for premiums paid.
- 58. Income from life insurance business.
- 59. Proceeds of a life insurance policy.

*Retirement Savings*

- 60. Contributions to a retirement fund.
- 61. Income of a retirement fund.
- 62. Payments made on retirement.

*International*

- 63. Geographic source of income.

- 64. Foreign income from a separate business or investment.
- 65. Income attributable to a permanent establishment.
- 66. Branch profits tax.
- 67. Taxation of non-residents providing shipping, air transport or telecommunications services.
- 68. Relief from double taxation.

*Anti-avoidance*

- 69. Income splitting.
- 70. Transfer pricing.
- 71. Thin capitalisation.

*Procedure relating to the Income Tax*

*Returns*

- 72. Furnishing of return of income.
- 73. Cases where return of income not required.
- 74. Extension of the time to furnish a return of income.
- 75. Definition.

*Assessments*

- 76. Provisional assessments.
- 77. Final assessments.
- 78. Self-assessment.
- 79. Additional assessments.

*Payment of Tax*

*Tax Instalments*

- 80. Payment of tax by instalments.

*Withholding of Tax at Source*

- 81. Withholding of tax by employers.
- 82. Payment of interest to resident persons.
- 83. Payment of dividends to resident shareholders.
- 84. Payment to residents for goods and services.
- 85. Payments to non-residents under section 3.
- 86. Payment to non-residents for goods and services.

- 87. Payment of tax withheld.
- 88. Failure to withhold tax.
- 89. Tax credit certificates.
- 90. Record of payments and tax withheld.
- 91. Priority of tax withheld.
- 92. Adjustment on assessment and withholding agent's indemnity.
- 93. Definitions.

*Interpretation*

- 94. Definitions.

PART TWO

*Capital Gains Tax*

*Imposition of Capital Gains Tax*

- 95. Imposition and rate of capital gains tax.

*Realisation*

- 96. Realisation.

*Chargeable Asset*

- 97. Chargeable asset.

*Calculation of Capital Gain*

- 98. Calculation of capital gain.
- 99. Cost base.
- 100. Consideration received.
- 101. Exemption from capital gain.

*Procedure relating to Capital Gains Tax*

- 102. Returns and payment of tax.
- 103. Assessments and application of income tax procedure.

*Interpretation*

104. Definitions.

### PART THREE

#### *Gift Tax*

#### *Imposition of Tax*

105. Imposition of tax.

#### *Taxable Gift*

106. Taxable gift.

#### *Valuation*

107. Valuation.

#### *Procedure relating to Gift Tax*

108. Returns and payment of tax.

109. Assessments and application of income tax procedure.

#### *Interpretation*

110. Definitions.

### PART FOUR

#### *General Provisions*

#### *International*

111. Double taxation arrangements.

#### *Anti-avoidance*

112. General anti-avoidance rule.

### PROCEDURE

*Administration*

*Commissioner of Internal Revenue*

113. Commissioner of Internal Revenue.

*Official Documentation*

114. Regulations.  
115. Practice notes.  
116. Private rulings.  
117. Forms and notices.  
118. Tax clearance certificate.  
119. Tax identification number.  
120. Service of notices and other documents.  
121. Document containing a mistake.

*Records and Information Collection*

122. Accounts and records.  
123. Currency conversion.  
124. Access to books, records, and computers.  
125. Notice to obtain information or evidence.  
126. Books and records not in English language.  
127. Official secrecy.

*Dispute Resolution*

*A: Objections and Appeals*

128. Objection to assessment.  
129. Appeal to the High Court.  
130. Appeal to the Court of Appeal and to the Supreme Court.  
131. Payment of tax.

*B: Proof*

132. Burden of proof.  
133. Documents.

*Compliance*

*A: Collection*

- 134. Due date and payment of tax.
- 135. Tax as a debt due to the Service.
- 136. Collection of tax by distress.
- 137. Security on landed property for unpaid tax.
- 138. Recovery of tax from person owing money to tax debtor.
- 139. Duties of receivers.
- 140. Recovery from agent of non-resident.

*B: Interest and Penalties*

- 141. Failure to maintain records.
- 142. Failure to furnish return.
- 143. Failure to pay tax on due date.
- 144. Understating estimated tax payable by instalment.
- 145. Making false or misleading statements.
- 146. Aiding and abetting.
- 147. Assessment of interest and penalties.

*C: Offences*

- 148. Failure to comply with Act.
- 149. Failure to pay tax.
- 150. Making false or misleading statements.
- 151. Impeding tax administration.
- 152. Offences by authorised and unauthorised persons.
- 153. Aiding or abetting.

*D: Entities*

- 154. Offences by entities.

*E: Proceedings*

- 155. Compounding offences.
- 156. Venue.
- 157. Amounts payable despite proceedings.

*F: Remission and Refund*

- 158. Remission.
- 159. Refunds and set-off.

*Interpretation*

*Residence*

- 160. Resident individual.
- 161. Resident company.
- 162. Resident body of persons.
- 163. Resident partnership.

*General Definitions*

- 164. Associates.
- 165. Calculation of amounts.
- 166. Underlying ownership.
- 167. Definitions.

*Repeals, Transitional Provisions and Commencement*

- 168. Repeal.
- 169. Transitional provisions.
- 170. Commencement.

SCHEDULES

First Schedule	Rates of Income Tax
Second Schedule	Accommodation and Vehicles
Third Schedule	Capital Allowances

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**ACT 592**  
**INTERNAL REVENUE ACT, 2000**

**AN ACT to amend and consolidate the law relating to Income Tax, Capital Gains Tax and Gift Tax and to provide for related matters.**

PART ONE

*Income Tax*

*Imposition of Income Tax*

## **1. Imposition of income tax**

(1) A person who has a chargeable income shall pay, subject to this Act, for each year of assessment income tax as calculated in accordance with this Act.

(2) The income tax payable under subsection (1) for a year of assessment shall be calculated by applying the rates of tax under the relevant Part of the First Schedule to the chargeable income of that person for the year, and from the resulting amount there shall be subtracted the tax credits allowed to that person for the year.

(3) Where a person is allowed more than one tax credit for a year of assessment, the credits shall be applied in the following order:

- (a) the foreign tax credit allowed under section 68 (relating to relief from double taxation), then
- (b) the tax credit allowed under section 80 (relating to instalments), then
- (c) the tax credit allowed under section 92 (relating to withholding).

(4) Where a rate referred to in subsection (2) changes during a year of assessment,

- (a) tentative taxes shall be computed by applying the rates in force before and after the effective date of the change to a person's chargeable income for the entire year; and
- (b) the income tax payable by that person for the year shall be the sum of that portion of each tentative tax which 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 entire basis year.

## **2. Final taxes on income received by residents**

(1) Subject to this Act, a tax shall be charged and shall be paid by a resident person who, or resident partnership which, is paid

- (a) a dividend by a resident company, other than a dividend exempt from tax under this Act, or
- (b) for services referred to in paragraphs (a) and (b) of subsection (1) of section 84.

(2) The tax payable under subsection (1) is calculated by applying the rate of tax prescribed,

- (a) in a case within paragraphs (a) and (b) of subsection (1), in paragraph 2, or
- (b) in a case within paragraph (b) of subsection (1), in paragraph 3,

of Part Four of the First Schedule to the gross amount paid to the resident person or the resident partnership.

(3) A dividend consisting of a capitalisation of profits or treated as distributed under subsection (1) of section 45 is treated as paid to each of the company's shareholders in proportion to their respective interests in the company.

(4) The Commissioner shall, in the case of capitalisation of profits, direct that appropriate tax be paid in accordance with this Act.

(5) The Commissioner shall, in issuing directives under subsection (4), consider the matters contained in paragraphs (a) and (b) of subsection (2) of section 45 with the necessary modifications to make that subsection applicable to capitalisation of profits.

(6) Subsections (3) and (4) shall not apply to a company during the first five years of commencement

of business.

### **3. Final taxes on income received by non-residents**

(1) Subject to this Act, a tax shall be charged and shall be paid by every non-resident person who, or non-resident partnership which, is paid a dividend, an interest, a royalty, natural resource payment, rent, an endorsement fee or management and technical service fee accruing in or derived from the Republic, other than a payment exempt from the Republic under this Act.

(2) The tax payable under subsection (1) is calculated by applying the rate of tax prescribed in Part Five of the First Schedule to the gross amount of the dividend, interest, royalty, natural resource payment, rent, or management and technical service fee received by that person or partnership.

(3) Subsection (3) of section 2 applies to this section.

(4) This section does not apply to a dividend, an interest, a royalty, natural resource payment, rent, or management and technical service fee attributable to a permanent establishment in the Republic of a non-resident person or non-resident partnership.

(5) Income to which subsection (4) applies shall be included in ascertaining assessable income of the non-resident person or non-resident partners in accordance with section 6.

### **4. General provisions relating to taxes imposed under sections 2 and 3**

Tax imposed under subsection (1) of section 2 and subsection (1) of section 3 is a final tax on the income on which the tax is imposed and

- (a) that income shall not be included in ascertaining the assessable income of the person who receives it;
- (b) a deduction shall not be allowed to the extent to which the deduction relates to the production of that income; and
- (c) the tax payable by a person or partnership under those subsections shall not be reduced by the tax credits allowed under this Act and the liability of a person or partnership under those subsections is satisfied if the tax payable has been withheld by a withholding agent under sections 81 to 93.

#### *Chargeable Income*

### **5. Chargeable income**

Subject to this Act, the chargeable income of a person for a year of assessment is the total of that person's assessable income for the year from each business, employment, and investment less the total amount of deductions allowed to that person for the year under sections 13 to 22 (relating to general and specific deductions), 39 (relating to personal reliefs), 57 (relating to life insurance), and 60 (relating to contributions to retirement funds).

#### *Assessable Income*

### **6. Assessable income**

(1) Subject to this Act, the assessable income of a person for a year of assessment from a business, an

employment or an investment is,

- (a) in the case of a resident person, the full amount of that person's income from the business, employment or investment accruing in, derived from, brought into, or received in the Republic during any basis period of the person ending within the year of assessment;
- (b) in the case of a non-resident person, the full amount of that person's income from the business, employment or investment accruing in or derived from the Republic during any basis period of that person ending within the year of assessment,

but does not include exempt income.

(2) The amounts described in the following paragraphs are income brought into or received in the Republic whether or not the source from which the income is derived has ceased:

- (a) an amount from an income accruing or derived from outside the Republic which is remitted to or transmitted into the Republic;
- (b) an amount from an income accruing or derived from outside the Republic which is applied in whole or partial satisfaction of a debt incurred in the Republic; or
- (c) an amount from an income accruing or derived from outside the Republic which is applied to purchase a movable property which is brought into the Republic.

## **7. Income from a business**

(1) A person's income from a business is that person's gains or profits from a business carried on for whatever period of time by that person.

(2) There shall be included in ascertaining the gains or profits from a business carried on by a person amounts accruing to or derived by that person that are attributable to the business and that would otherwise be included in calculating that person's income from an investment.

## **8. Income from an employment**

(1) A person's income from an employment is that person's gains or profits from that employment.

(2) The gains or profits from an employment of a person include the allowances or benefits paid in cash or given in kind to, or on behalf of, that person from that employment, other than

- (a) a reimbursement or discharge of a person's dental, medical or health insurance expenses where the benefit is available to all full-time employees on equal terms;
- (b) a passage to or from the Republic in respect of that person's appointment or termination of employment where that person
  - (i) is recruited or engaged outside the Republic,
  - (ii) is in the Republic solely for the purpose of serving the employer, and
  - (iii) is not a resident of the Republic;
- (c) the provision of accommodation by an employer carrying on a timber, mining, building, construction or farming business to that person at a place or site where the field operation of the business is carried on;
- (d) a discharge or reimbursement by an employer of an expenditure incurred by that person on behalf of the employer that serves the proper business purposes of the employer;

- (e) a severance pay; or
- (f) a night duty allowance.

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

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

(4) The amount of the allowance or benefit from an employment to be included in ascertaining a person's gains or profits under subsection (2) shall be determined in accordance with the Second Schedule and, in any case not referred to in that Schedule, as the value of the allowance or benefit to a reasonable person in the position of that person.

## **9. Income from an investment**

(1) A person's income from an investment is that person's gains or profits from an investment.

(2) The gains or profits of a person from an investment include the dividends from a non-resident company, interest, charge, annuity, royalties, rent, natural resource payment, or any other income accruing to or derived by that person from the investment other than an amount included in ascertaining that person's income from a business or employment.

### *Exempt Income*

## **10. Exempt income**

(1) The following incomes are exempt from tax:

- (a) the salary, allowances, pension and gratuity of the President;
- (b) the income of a local authority, other than income from activities which are only indirectly connected with the local authority's status as a local authority;
- (c) the income of a statutory or registered building society or statutory or registered friendly society, other than income from a business carried on by the society;
- (d) income accruing to or derived by an exempt organisation other than income from a business;
- (e) interest paid
  - (i) to an individual by a resident financial institution, or
  - (ii) to an individual on bonds issued by the Government;
- (f) capital sums of money paid to a person as compensation or a gratuity in relation to
  - (i) personal injuries suffered by that person, or
  - (ii) the death of another person;
- (ff) interest or dividend paid or credited to a person who has invested in a venture capital financing company;1a(1)

- (g) the interest, dividend or
  - (i) any other income of an approved unit trust scheme or mutual fund,
  - (ii) any other income payable under an approved unit trust scheme or mutual fund to a holder or member of that scheme;
- (gg) the dividend of a venture capital financing company that satisfies the eligibility requirements for funding under the Venture Capital Trust Fund Act, 2004 (Act 680) for a period of ten years of assessment commencing from and including the year in which the basis period of the company ends, being the period in which operations commenced;1b(2)
- (h) the income of a non-resident person from a business of operating ships or aircraft, provided the Commissioner is satisfied that an equivalent exemption is granted by that person's country of residence to persons resident in the Republic;
- (i) the income of a public corporation or institution exempted from tax under an enactment;
- (j) the income of a person receiving instruction at an educational institution from a scholarship, exhibition, bursary, or similar educational endowment;
- (k) the income of an individual entitled to privileges under the Diplomatic Relations Act, 1962 (Act 148) or a similar enactment to the extent provided in that Act or similar enactment or under Regulations made under that Act or similar enactment;
- (l) the income of an individual entitled to privileges under an enactment 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 to the extent provided in that enactment;
- (m) the income of an individual to the extent provided for in an agreement between the Government and a foreign government or a public international organisation for the provision of technical service to the Republic where
  - (i) the individual is a non-resident person or an individual who is resident solely by reason of performing that service, and
  - (ii) the President has concurred in writing with the tax provisions in the agreement, and
  - (iii) it is in accordance with the Constitution; or
- (n) the income of a person from an employment in the public service of the government of a foreign country provided
  - (i) that person is either a non-resident person or an individual who is resident solely by reason of performing that service,
  - (ii) that person does not exercise any other employment or carry on a business in the Republic,
  - (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.

(2) The Minister responsible for Finance in consultation with the Commissioner may, subject to the prior approval of Parliament by resolution in accordance with clause (2) of article 174 of the Constitution, grant a waiver or variation of tax imposed by this Act in favour of a person or an authority.

## 11. Industry concessions

(1) Subject to subsection (7), the income of a person from a farming business in the Republic is exempt from tax

- (a) in the case of farming tree crops, for the period of ten years of assessment commencing from and including the year in which the basis period of that person ends, being the period in which the first harvest of those crops by the business occurs;
- (b) in the case of farming livestock, other than cattle, fish or cash crops, for the period of five years of assessment commencing from and including the year in which the basis period of that person ends, being the period in which the business commences; or
- (c) in the case of farming cattle, for the period of ten years of assessment commencing from and including the year in which the basis period of that person ends, being the period in which the business commences.

(2) The income of a company from a processing business in the Republic is exempt from tax for the period of three years of assessment commencing from and including the year in which the basis period of the company ends, being the period in which commercial production commences.

(3) Where a company conducts both a farming and processing business, the company may elect to be treated as if the business were a farming business or a processing business and claim the exemption for which it is eligible under subsection (1) or (2).

(4) The income of a rural bank from a business of banking is exempt from tax for the period of ten years of assessment commencing from and including the year in which the basis period of the bank ends, being the period in which operations commence.

(5) The income of a venture capital financing company that satisfies the eligibility requirements for funding under the Venture Capital Trust Fund Act, 2004 (Act 680) is exempt from tax for the period of ten years of assessment commencing from and including the year in which the basis period of the company ends, being the period in which operation commenced.1c(3)

(6) The income of a company from a business of construction for sale or letting of residential premises is exempt from tax for the period of five years of assessment commencing from and including the year in which the basis period of that company ends, being the period in which operations are commenced.1d(4)

(7) The income from cocoa of a cocoa farmer is exempt from tax.

(8) The income of the Ghana Stock Exchange is exempt from tax for the period of twenty years of assessment commencing from and including the year in which the basis period of the Ghana Stock Exchange ends, being the period in which operations commenced.1e(5)

(9) For the purposes of this section, a business of a person of the type referred to in subsection (1), (2), (4), or (6) which is carried on by that person at a particular time is treated as the same business as one of a similar type carried on by that person or an associate of that person at a later time.

(10) For the purposes of this section,

**“cash crops”** includes cassava, maize, pineapple, rice, and yam;

**“farming business”** means the business of producing crops, fish, or livestock;

**“processing business”** means the business of converting crops, fish, or livestock produced in the

Republic into edible canned or any other packaged product other than in their raw state;

“tree crops” includes coconut, coffee, oil palm, rubber, and shea.

## **12. Derivative amounts**

Section 10 or 11 shall not be construed as exempting in the hands of the recipient, the amounts, including dividends, interest, or employment income, paid wholly or partly out of income exempt from tax.

### *Deductions*

## **13. Deductions allowed**

Subject to section 23, for the purposes of ascertaining the income of a person for a basis period from a business, an employment or investment there shall be deducted

- (a) the outgoings and expenses wholly, exclusively and necessarily incurred during that period by that person in the production of the income, and
- (b) any other deductions as may be prescribed by the Regulations made under section 114.

## **14. Interest<sup>1f(6)</sup>**

(1) Subject to this Act, for the purposes of ascertaining the income of a person for a basis period from a business or an investment, there shall be deducted the interest incurred during the period in respect of a borrowing employed by that person in the production of the income.

(2) For the purposes of ascertaining the income of an individual for a period from any business, employment or investment there shall be deducted any interest incurred during the period in respect of a borrowing employed in constructing or acquiring residential premises.

Subject to this Act, for the purposes of ascertaining the income of a person for a basis period from a business or an investment, there shall be deducted the interest incurred during the period in respect of a borrowing employed by that person in the production of the income.

## **15. Rent**

For the purposes of ascertaining the income of a person for a basis period from a business or an investment, there shall be deducted the rent incurred during the period in respect of a land or building occupied by that person to the extent that the land or building is occupied by that person for the purposes of producing the income.

## **16. Repairs**

For the purposes of ascertaining the income of a person for a basis period from a business or an investment, there shall be deducted the outgoing or expense incurred during the period in respect of,

- (a) the repair of premises, plant, machinery, or fixtures, or
- (b) the renewal, repair or alteration of an implement, a utensil or an article,

to the extent that the premises, plant, machinery, fixtures, implement, utensil, or article is employed by that person in the production of the income.

## **17. Deductions in relation to the rental of premises**

(1) Subject to subsection (2), where an individual receives a rent in respect of residential or commercial premises which is included in ascertaining that individual's income from an investment for a basis period, that individual shall be allowed the following deductions for the period in respect of the premises:

- (a) to the extent to which the premises are used in the production of the rent,
  - (i) the amount of the rates incurred by that individual during the period to a local, an urban, a city, or district council in respect of the premises, and
  - (ii) a mortgage interest incurred by that individual during the period in respect of a borrowing employed by that individual in constructing or acquiring the premises; and
- (b) a standard allowance equal to thirty percent of the aggregate rent received by that individual in respect of the premises during the period.

(2) Where, during a basis period, an individual has actually incurred necessary outgoings or expenses, other than those covered by paragraph (a) of subsection (1), in respect of the premises referred to in subsection (1) in excess of the amount of the standard allowance for those premises referred to in paragraph (b) of subsection (1), that individual shall also be allowed a deduction for that excess.

## **18. Bad debts**

(1) For the purposes of ascertaining the income of a person for a basis period from a business, there shall be deducted the debt claim that has become a bad debt of that person during the period where,

- (a) the amount of the debt claim is included in ascertaining the person's assessable income with respect to any prior basis period, or
- (b) the debt claim is in respect of advances made by that person in the normal course of business other than advances made on capital account.

(2) For the purposes of this section, "**bad debt**", in relation to a person, means a debt claim of that person in respect of which that person has taken the reasonable steps to pursue payment and which that person reasonably believes will not be satisfied.

## **19. Research and development expenditure**

(1) For the purposes of ascertaining the income of a person for a basis period from a business, there shall be deducted research and development expenditure incurred by that person during the period in the production of the income.

(2) For the purposes this section, "**research and development expenditure**" means the outgoing or expense incurred by a person for the purpose of developing that person's business and improving business products or process but does not include the outgoing or expense incurred for the acquisition of an asset in relation to which that person is entitled to a capital allowance under section 20.

## **19A. Deduction in relation to Venture Capital Companies<sup>1g(7)</sup>**

For the purposes of ascertaining the income of a person who invests in a venture capital financing company there shall be deducted an amount equal to the full amount of the investment in a year of assessment.

## 20. Capital allowances

For the purposes of ascertaining the income of a person for a basis period from a business, there shall be deducted the capital allowances for the business calculated in accordance with the Third Schedule.

## 21. Foreign currency exchange losses

(1) Subject to this section, for the purposes of ascertaining the income of a person for a basis period from a business, there shall be deducted the foreign currency exchange loss, other than a loss that is capital in nature, incurred in the production of income during the period in respect of the debt claim, debt obligation, or foreign currency holding of that person.

(2) A foreign exchange loss of a capital nature may be capitalised and capital allowance granted under section 20.

(3) A deduction is not allowed to a person for a foreign currency exchange loss incurred unless that person has notified the Commissioner in writing of the existence of the debt claim, debt obligation or foreign currency holding which gave rise to the loss by the due date for furnishing of that person's return of income for the year of assessment in which the basis period in which the debt arose or foreign currency was acquired ends, or by a later date which the Commissioner may allow.

(4) Subsection (3) does not apply to a financial institution.

(5) Where,

- (a) a person has incurred a foreign currency exchange loss under a transaction,
- (b) a foreign currency exchange gain has accrued to or has been derived by that person or an associate under another transaction, including a hedging contract, and
- (c) either
  - (i) the transaction giving rise to the loss would not have been entered into, or might reasonably be expected not to have been entered into, if the transaction giving rise to the gain had not been entered into, or
  - (ii) the transaction giving rise to the gain would not have been entered into, or might reasonably be expected not to have been entered into, if the transaction giving rise to the loss had not been entered into,

a deduction is not allowed to that person where the amount of the loss exceeds that part of the gain included in the assessable income of that person or associate.

(6) For the purposes of paragraph (b) of subsection (5), “**hedging contract**” means a contract entered into by a person in order to eliminate or reduce the risk of adverse financial consequences which might result for that person under another contract from currency exchange rate fluctuation.

## 22. Carry over of losses

(1) Subject to this Act, for the purposes of ascertaining the income of a person for a basis period from an agro processing, tourism, information and communication technology, farming, manufacturing or mining business,1ga(8)

- (a) there shall be deducted a loss of the previous five basis periods incurred by that person in carrying on that business, and

(b) where that person has incurred more than one of that loss, the losses shall be deducted in the order in which they were incurred.

(1) (a) A loss incurred by a venture capital financing company from the disposal of shares invested in a venture capital subsidiary company under the Venture Capital Trust Fund Act, 2004 (Act 684) during the period of tax exemption granted under section 11 (5) shall be carried forward for a period of 5 years of assessment following the end of the exemption period.1gb(9)

(1) (b) A loss incurred by a qualifying venture capital financing company from disposal of shares in any venture investment under section 17 of the Venture Capital Trust Fund Act, 2004 (Act 680) shall be carried forward for a period of five years after the date of disposal.1gc(10)

(2) A loss may only be deducted where the loss has not been deducted in ascertaining the income of that person for a previous basis period.

(3) The loss incurred by a person for a basis period in carrying on a business shall be calculated as the excess of amounts deductible under this Act in ascertaining a profit or gain from the business over the amounts required to be included in ascertaining the profit or gain.

(4) The aggregate deduction from the assessable income in respect of the loss shall not in any circumstance exceed the amount of the loss.1gd(11)

(5) No deduction under this section for any year of assessment shall exceed the amount, if any, of the assessable income (included in the total assessable income for that year of assessment) from the source of income in respect of which the loss which is the subject of the deduction was incurred.

(6) For the purpose of this section

- (a) **“manufacturing business”** means a business that manufactures mainly for export,
- (b) **“tourism business”** means an operator of a tourism business registered with the Ghana Tourist Board,
- (c) **“an information technology business”** means an ICT business that is engaged in software development.1ge(12)

### 23. Deductions not allowed

(1) A person shall not be allowed a deduction for

- (a) a domestic or private outgoing or expense incurred by that person;
- (b) an outgoing or expense of a capital nature incurred by that person;
- (c) an outgoing or expense incurred by that person during a basis period that is recoverable during the period under an insurance or a contract of indemnity;
- (d) an income tax, profits tax, or any other similar tax incurred by that person during the year in the Republic or elsewhere other than as provided for by subsection (1) of section 68; or
- (e) the depreciation of the fixed assets.

(2) For the purposes of paragraph (a) of subsection (1), **“domestic or private outgoing or expense”** incurred by a person includes outgoings or expenses incurred by that person

- (a) in travelling between that person’s home and place of business,
- (b) in the maintenance of that person, or that person’s family or home,

- (c) in acquiring clothing worn to work, other than clothing that is not suitable for wearing outside of work, and
- (d) in the education of that person not directly relevant to that person's business, and education leading to a degree, whether or not it is directly relevant to that person's business.

### *Tax Accounting Principles*

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

- (1) The year of assessment for a person shall be the calendar year from 1st January to 31st December.
- (2) The basis period of a person is,
  - (a) in the case of an individual or a partnership, the calendar year from 1st January to 31st December, and
  - (b) in the case of a company or a body of persons, the accounting year of the company or body.
- (3) A company or body of persons shall not change its accounting date unless it obtains prior approval in writing from the Commissioner and complies with a condition that may be attached to the approval.
- (4) The Commissioner may by notice in writing, revoke an approval granted a company or body of persons under subsection (3) if the company or body fails to comply with any of the conditions attached to the approval.

#### **25. Method of accounting**

- (1) Subject to this Act, for the purposes of ascertaining a person's income accruing or derived during a basis period, the timing of inclusions and deductions shall be made according to generally accepted accounting principles.
- (2) Subject to subsections (1) and (3), and unless the Commissioner prescribes otherwise in a particular case, a person shall account for tax purposes on a cash or accrual basis.
- (3) A company shall account for tax purposes on an accrual basis.
- (4) A person may apply in writing for a change in that person's method of accounting and the Commissioner may, by notice in writing, approve the application but only if satisfied that the change is necessary to clearly reflect that person's income.
- (5) If the person's method of accounting is changed, adjustments to items of income, deduction, or credit shall be made in the basis period following the change, so that an item is not omitted nor taken into account more than once.

#### **26. Cash-basis accounting**

- (1) A person who is accounting for tax purposes on a cash basis shall account for amounts to be included in calculating that person's income when they are received by, or made available to that person.
- (2) An outgoing or expense is incurred by a person who is accounting for tax purposes on a cash basis when it is paid by that person.

#### **27. Accrual-basis accounting**

(1) A person who is accounting for tax purposes on an accrual basis shall account for amounts to be included in ascertaining that person's income when they are receivable by that person.

(2) An outgoing or expense is incurred by a person who is accounting for tax purposes on an accrual basis when it is payable by that person.

(3) Subject to this Act, an amount is receivable by a person when that person becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is payable by instalments.

(4) Subject to this Act, an amount is treated as payable by a 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 with respect to that amount occurs.

(5) For the purposes of subsection (4), economic performance occurs

(a) with respect to the acquisition of services or property, at the time the services or property are provided,

(b) with respect to the use of property, at the time the property is used, or

(c) in any other case, at the time that person makes payment in full satisfaction of the liability.

## **28. Pre-payments**

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

## **29. Claim of right**

(1) A person who is accounting for tax purposes on a cash basis shall treat an amount as received and an outgoing or expense as paid even though that person is not legally entitled to receive the amount or liable to make the payment, if that person claims to be legally entitled to receive, or legally obliged to pay the amount.

(2) Where subsection (1) applies and that person later refunds the amount received or recovers the outgoing or expense paid, an appropriate adjustment shall be made to that person's income of the basis period during which the refund or recovery occurs.

(3) A person who is accounting for tax purposes on an accrual basis shall treat an amount as receivable and an outgoing or expense as payable even though that person is not legally entitled to receive the amount or liable to make the payment, if that person claims to be legally entitled to receive, or to be legally obliged to pay, the amount.

(4) Where subsection (3) applies and that person later ceases to claim the right to receive the amount or to claim an obligation to pay the outgoing or expense, an appropriate adjustment shall be made to that person's income of the basis period during which that person ceases to make the claim.

## **30. Long-term contracts**

(1) In the case of a person accounting for tax purposes on an accrual basis, the timing of inclusions in and deductions from income relating to a long-term contract of a business of that person shall be accounted for on the basis of the percentage of the contract completed during a basis period.

(2) The percentage of completion is determined by comparing the total costs allocated to the contract and incurred before the end of the basis period with the estimated total contract costs including variations or fluctuation.

(3) Where during the basis period in which a long-term contract of a business is completed, the person carrying on the business

- (a) incurs a loss, or
- (b) has an unrelieved loss available for carry forward under subsection (1) of section 22,

which is attributable to the long-term contract, the Commissioner may allow the loss to be

- (c) carried back to preceding basis periods, and
- (d) applied against an amount of income of a basis period not exceeding the amount by which inclusions in the income of the business relating to the long-term contract for that period exceed deductions that amount.

(4) A loss incurred by a person in carrying on a business during a basis period is attributable to a long-term contract of the business to the extent that deductions allowed in ascertaining the income from the business relating to the long-term contract for that period exceed inclusions in ascertaining that income.

(5) For the purposes of this section, “**long-term contract**” of a business of a person means a contract for manufacture, installation or construction, or, in relation to each, the performance of related services, which is not completed within the basis period in which work under the contract commenced, other than a contract estimated to be completed within twelve months of the date on which work under the contract commenced.

### **31. Trading stock**

(1) For the purposes of ascertaining the income of a person for a basis period from a business, there shall be deducted the cost of trading stock of the business disposed of by that person during that period.

(2) The cost of trading stock disposed of during a basis period is determined by adding to the opening value of trading stock for that period the cost of trading stock acquired during that period, and subtracting the closing value of trading stock for that period.

(3) The opening value of trading stock for a basis period is

- (a) the closing value of trading stock at the end of the previous basis period, or
- (b) where that person commenced to carry on the business during the basis period, the value of trading stock acquired prior to the commencement of the business.

(4) The closing value of trading stock is the lower of cost or market value of trading stock on hand at the end of the basis period.

(5) A person who is accounting for tax purposes on a cash basis may calculate the cost of trading stock on the prime-cost method or absorption-cost method; and a person who is accounting for tax purposes on an accrual basis shall calculate the cost of trading stock on the absorption-cost method.

(6) Where particular items of trading stock are not readily identifiable, a person may account for that trading stock on the first-in-first-out method or the average-cost method but, once chosen, a stock valuation method may be changed only with the written permission of the Commissioner.

(7) For the purposes of this section,

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

**“average-cost method”** means the generally accepted accounting principle under which trading stock valuation is based on a weighted average cost of units on hand;

**“direct labour costs”** means labour costs directly related to the production of trading stock;

**“direct material costs”** means the cost of materials that become an integral part of the trading stock produced;

**“factory overhead costs”** means the total costs of manufacturing except direct labour and direct material costs;

**“first-in-first-out method”** means the generally accepted accounting principle under which trading stock valuation is based on the assumption that trading stock is disposed of in the order of its receipt;

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

**“variable factory overhead costs”** means the factory overhead costs which vary directly with changes in volume.

### **32. Debt obligations with discount or premium**

(1) Subject to subsection (2), for the purposes of ascertaining the income of a person for a basis period from a business or an investment, interest in the form of a discount, premium or deferred interest shall be taken into account as it accrues.

(2) Where the interest referred to in subsection (1) is subject to withholding tax under section 82 on payment, the interest shall be taken into account when paid.

#### *Miscellaneous Rules for Determining Income*

### **33. Jointly owned investment**

For the purposes of ascertaining the income of a person from an investment which is jointly owned with another person, inclusions and deductions with respect to the investment shall be apportioned among the joint owners in proportion to their respective interests in the investment.

### **34. Leases**

(1) Subject to subsection (2), where a lessor leases a tangible asset to a lessee under an operating lease then for the purposes of this Act, the lessor is treated as the owner of the asset and the lease payments are treated as payment received from the lessee.

(2) Where a lessor leases a tangible asset to a lessee under a finance lease, and that asset is used by the lessee in the production of that lessee’s income, the lease rentals payable by the lessee shall be treated as an expense deductible under paragraph (a) of section 13.

(3) For the purposes of this Act, a lease of an asset is a finance lease where,

- (a) the lease agreement provides for transfer of ownership following the end of the lease term, or the lessee has an option to purchase the asset after expiry of the lease term for a fixed or agreed price,
- (b) the lease term exceeds seventy-five percent of the useful life of the leased asset,
- (c) the estimated residual value of the asset after expiry of the lease term is less than twenty percent of its market value at the commencement of the lease,
- (d) the present value of the minimum lease payments equals or exceeds ninety percent of the market value of the asset at the commencement of the lease term, or
- (e) the leased asset is custom-made for the lessee and after expiry of the lease term it will not be usable by anyone other than the lessee.

(4) Paragraph (d) of subsection (3) does not apply to leases that commence during the last twenty-five percent of the useful life of the asset.

(5) For the purposes of this section, the discount rate used to determine the present value of lease payments shall be the Bank of Ghana rediscount rate.

(6) For the purposes of this section, a lease term includes an additional period for which the lessee has an option to renew the lease.

(7) Where the lessor was the owner of the asset before commencement of the finance lease, then the lease agreement is treated as a sale by the lessor and a purchase by the lessee.

### **35. Valuation**

(1) For the purposes of sections 1 to 94, the value of a benefit in kind is the market value of the benefit on the date the benefit is taken into account for tax purposes.

(2) The market value of a benefit is determined without regard to a restriction on transfer or to the fact that it is not otherwise convertible to cash.

### **36. Indirect payments and benefits**

There shall be included, in ascertaining the income of a person,

- (a) a payment that directly or indirectly benefits that person, and
- (b) a payment dealt with as that person directs,

which would have been so included if the payment had been made directly to that person.

### **37. Recouped expenditure**

(1) Where a previously deducted outgoing, expense or bad debt is recovered by a person, the amount recovered is included in ascertaining the income of that person in the basis period in which it is recovered and takes the character of the income to which the deduction is related.

(2) For the purposes of subsection (1), a deduction is considered recovered on the occurrence of an event which is inconsistent with the basis for the deduction.

### **38. Individual as tax unit**

The assessable income of each individual is determined separately.<sup>1h(13)</sup>

### **39. Personal relief**

(1) The assessable income of an individual for a year of assessment shall be reduced by the following amounts:

- (a) in the case of an individual with a dependant spouse or at least two dependant children, thirty-five<sup>1i(14)</sup> currency points;
- (b) in the case of a disabled individual, twenty-five percent of that individual's assessable income from a business or an employment;
- (c) in the case of an individual who is sixty or more years of age and derives an assessable income during the year from an employment or business, the lesser of thirty-five<sup>1j(15)</sup> currency points or the total of that income;
- (d) in the case of an individual sponsoring the education of the individual's children or wards in a recognised registered educational institution in the Republic, thirty<sup>1k(16)</sup> currency points per child or ward, but that individual may only claim a relief in respect of three children or wards and, where two or more persons qualify in respect of the same child or ward, only one relief shall be granted;
- (e) in the case of an individual with a dependant relative, other than a child or spouse, who is sixty or more years of age, twenty-five<sup>1l(17)</sup> currency points, but that individual may only claim a relief in respect of two dependant relatives and, where two or more persons qualify in respect of the same relative, only one relief shall be granted; and
- (f) in the case of an individual, the cost of training if it is to update the professional, technical or vocational skills or knowledge of that individual, hundred<sup>1m(18)</sup> currency points.

(2) For the purpose of this section, “**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 and who does not have income for the year of assessment exceeding twenty currency points.

## *Taxation of Entities*

### *Taxation of Partnerships and Partners*

### **40. Principles of taxation for partnerships**

(1) Except as provided in this Act, a partnership is not liable to pay tax on the income of the partnership.

(2) The income of a partnership is taxed to the partners in the partnership in accordance with this section and sections 41, 42 and 43.

### **41. Ascertaining partnership income**

(1) Partnership income for a basis period of a resident or non-resident partnership is the assessable

income of the partnership for the year of assessment in which the basis period ends, calculated according to sections 5 and 6, without regard to section 39, 57, or 60, as if the partnership were a resident person.

(2) Losses of a partnership for a basis period are not allocated to the partners of the partnership, but are carried over and taken into account in ascertaining the partnership income of the partnership in subsequent basis periods of the partnership in accordance with section 22.

(3) Subject to section 54, where there is a change in the constitution of a partnership, the reconstituted partnership may claim a deduction for losses of the former partnership under section 22 as though the reconstituted partnership and the former partnership were the same partnership.

(4) In ascertaining partnership income,

(a) account shall only be taken of amounts which are accrued, derived or incurred on behalf of the partners in common, and

(b) property held on behalf of the partners in common is treated as if the partnership and not the partners owned it.

(5) Amounts included and deducted in ascertaining partnership income under subsection (4) are treated as if they were accrued, derived or incurred by the partnership and not the partners.

#### **42. Taxation of partners**

(1) For the purposes of ascertaining the income of a partner from a partnership for a basis period of the partner, there shall be included the partner's share of partnership income for a basis period of the partnership ending on the last day of or during the basis period of, the partner.

(2) Partnership income retains its character as to type and source, including geographic source, on allocation to partners under subsection (1), and is deemed to pass through the partnership proportionally to each partner's share of partnership income unless the Commissioner permits otherwise.

(3) Tax withheld under sections 81 to 93 from payments made to a partnership which are included in ascertaining partnership income and foreign income tax paid by a partnership are allocated among the partners according to each partner's share of partnership income at the end of the basis period of the partnership during which the tax is withheld.

(4) A partner is deemed to have paid the tax allocated to the partner by subsection (3) at the time of allocation and a credit may be available to the partner for the tax as provided by sections 68 or 92.

(5) Subject to subsection (6), a partner's share of partnership income shall be equal to the partner's percentage interest in the income of the partnership as set out in the partnership agreement.

(6) Where the allocation of income in the partnership agreement does not reflect the contribution of the partners to the partnership's operations, a partner's share of partnership income shall be equal to the partner's percentage interest in the capital of the partnership.

#### **43. Partnership obligations**

(1) A partnership shall file a return of partnership income in accordance with sections 72 to 75 where

(a) the partnership is a resident partnership, or

(b) the partnership has a permanent establishment situated in the Republic.

(2) An election, a notice or statement to be filed in relation to a partnership's activities shall be filed by the partnership.

## *Taxation of Companies and Shareholders*

### **44. Principles of taxation for companies**

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

(2) Subject to subsection (3), a dividend paid to a resident company by another resident company is exempt from tax where the company receiving the dividend controls, directly or indirectly, twenty-five percent or more of the voting power in the company paying the dividend.

(3) Subsection (2) does not apply to

- (a) a dividend paid to a company by virtue of its ownership of redeemable shares in the company paying the dividend, or
- (b) a dividend of the type referred to in paragraph (e) of subsection (3) of section 55.

### **45. Undistributed profits of companies**

(1) Where the Commissioner 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 its income from all sources for a basis period within a reasonable time after the end of the basis period, the Commissioner may, by notice in writing, treat that part of the company's income which the Commissioner determines as distributed as dividends paid to its shareholders during that period or any other period.

(2) In determining whether a company has distributed a reasonable part of its income from all sources for a basis period, the Commissioner shall consider

- (a) the current requirements of the company's business after accounting for the adjustments which the Commissioner may make under sections 70 or 112, and
- (b) any other requirements necessary or advisable for the maintenance and development of the business.

## *Taxation of Bodies of Persons and their Owners*

### **46. Principles of taxation for bodies of persons**

(1) A body of persons is liable to tax with respect to its chargeable income separately from its beneficiaries.

(2) The attributable income of a body of persons, ascertained in accordance with section 47, may be attributed to and taxed in the hands of that body's beneficiaries in the circumstances outlined in section 49 with credit for a tax paid by that body with respect to the attributed income.

(3) Separate calculations of the chargeable income of a body of persons shall be made for separate bodies of persons regardless of whether they have the same managers.

(4) Income accruing to, or derived by a body of persons other than as a bare agent, whether or not derived on behalf of another person and whether or not any other person is entitled to the income, is treated as the income of that body and not the income of any other person.

(5) Property of a body of persons is treated as if it were owned by that body and not the beneficiaries or managers of that body.

(6) Foreign income tax paid with respect to the income of a body of persons, whether paid by a manager or beneficiary, is treated as paid by that body.

#### **47. Calculation of the attributable income of a body of persons**

(1) The attributable income of a resident or non-resident body of persons for a basis period is the chargeable income of that body for the year of assessment in which the basis period ends, calculated according to sections 5 and 6, without regard to section 39, 57, or 60, as if the body were a resident person and determined without regard to subsection (1) of section 48.

(2) Losses of body of persons for a basis period are not allocated to the beneficiaries of that body, but are carried over and taken into account in ascertaining the income and attributable income of that body in subsequent basis periods of that body in accordance with section 22.

#### **48. Deduction for amounts attributed to beneficiary**

(1) Subject to this Act, where an ascertained resident beneficiary of a body of persons

- (a) acquires a vested right to an amount included in ascertaining the attributable income of that body during the basis period of that body in which the amount is included in ascertaining the income of the body, and
- (b) has the same basis period as that body,

the amount shall be deducted in ascertaining the income of that body for the basis period.

(2) Subsection (1) applies irrespective of whether the beneficiary acquires the vested right as a result of the exercise by a manager of a discretion vested in the manager or the happening of some other contingent event.

#### **49. Taxation of beneficiaries of bodies of persons**

(1) Despite subsection (4) of section 46, for the purposes of ascertaining the income of a beneficiary from a body of persons for a basis period of the beneficiary, there shall be included an amount whichever occurs first, included in ascertaining the attributable income of that body, whenever derived by that body

- (a) to which the beneficiary has a vested right and which is deductible in ascertaining the income of that body under subsection (1) of section 48,
- (b) to which the beneficiary is or has become entitled otherwise than in the manner referred to in paragraph (a), or
- (c) which is applied to the benefit of the beneficiary in cash or in kind.

(2) The attributable income of a body of persons retains its character as to type and source, including geographic source, on allocation to the beneficiaries under subsection (1).

(3) Subject to subsection (4), where subsection (1) applies, the beneficiary is treated as deriving the amount at the end of the basis period of the beneficiary in which the beneficiary becomes entitled to the amount or in which the amount is applied to the beneficiary's benefit.

(4) Where subsection (1) of section 48 applies, the beneficiary is treated as deriving the amount referred to in subsection (1) of this section at the time the amount is derived by that body.

(5) Subject to this Act, a beneficiary of a body of persons is allocated the tax paid by the body, whether by withholding under sections 81 to 93, as a result of subsection (6) of section 46, or otherwise,

with respect to an amount referred to in subsection (1) of this section at the time the beneficiary is treated as deriving the amount.

(6) A beneficiary is deemed to have paid the tax allocated to the beneficiary under subsection (5) at the time of allocation and a credit may be available to the beneficiary for that tax as provided by section 68 or 92, in the latter case, as though the tax were withheld from a payment to the beneficiary.

## **50. Incapacitated persons**

For the purposes of determining whether an amount vests in a beneficiary of a body of persons under subsection (1) of section 48 or whether a beneficiary of that body is entitled to an amount under subsection (1) of section 49, a lack of legal capacity of the beneficiary shall be ignored.

## **51. Deceased individuals**

For the purposes of subsection (1) of section 48 and subsection (1) of section 49, an ascertained successor or legatee of a deceased individual is treated as having a vested interest in an amount included in ascertaining the attributable income of the estate of the deceased which is derived by the executor of the estate for the immediate or future benefit of the successor or legatee.

### *General Provisions Applicable to Entities*

## **52. Roll-over relief**

(1) Subject to subsection (3), the transfer by a person of a business asset, other than a class 1, 2, 3, or 4 depreciable asset, to an associate is treated as a disposal for a consideration equal to

- (a) the cost of the asset to the person or, in the case of a class 5 or 6 depreciable asset, the asset's written down value, pursuant to paragraph 4 of the Third Schedule, where all of the following conditions are satisfied:
  - (i) the asset is a business asset of the associate or, in the case of a class 5 or 6 depreciable asset, a depreciable asset of the associate,
  - (ii) at the time of the transfer, that person and the associate are residents; and the associate is or, in the case of an associate partnership, its partners are not exempt from tax,
  - (iii) there is continuity of underlying ownership in the asset of at least twenty-five percent, and
  - (iv) an election for this paragraph to apply is made by both the person and the associate; or
- (b) in any other case, the market value of the asset at the date the transfer is made.

(2) Subject to subsection (3), the transfer by a person of class 1, 2, 3, or 4 depreciable assets to an associate is treated as a disposal for a consideration equal to

- (a) the written down value, pursuant to paragraph 3 of the Third Schedule, of the pool to which the depreciable assets of the person belong at the date of transfer where all of the following conditions are satisfied:
  - (i) the assets constitute all the assets in that pool of the person,
  - (ii) the assets constitute depreciable assets of the associate,
  - (iii) at the time of the transfer that person and the associate are residents, and the associate

is or, in the case of an associate partnership, its partners are not exempt from tax,

(iv) there is continuity of underlying ownership in the asset of at least twenty-five percent, and

(v) an election for this paragraph to apply is made by both the person and the associate, or

(b) in any other case, the market value of each asset at the date the transfer is made.

(3) The transfer of a business asset between individuals who are associates is treated as a disposal for a consideration equal to the market value of the asset at the time the transfer is made.

(4) For the purposes of this section,

“**business asset**” includes an asset which is used in, or held for the purposes of a business, an asset held for sale in a business and an asset of a partnership or company;

“**person**” includes a partnership.

### 53. Collateral benefits

(1) For the purposes of sections 1 to 94, a benefit conferred by an entity directly or indirectly on an eligible person, in any capacity, is treated as income of the person from an investment in respect of

(a) the use or transfer of property, money or rights of the entity,

(b) the creation or destruction of property,

(c) the creation or release of rights or obligations, or

(d) the provision of services.

(2) The amount of income referred to in subsection (1) is equivalent to the value of the benefit conferred, less the following amounts:

(a) a consideration provided by that person for the benefit,

(b) an amount in respect of the conferring of the benefit which otherwise is included in ascertaining the assessable income of that person,

(c) an amount which represents a return of capital by that entity, and

(d) an amount which represents a distribution of realised profits of that entity.

(3) The value of a benefit referred to in subsection (1) shall be determined in accordance with the Second Schedule and, in a case not referred to in that Schedule, as the value of the benefit to a reasonable person in the position of the first-mentioned person.

(4) For the purposes of this section, “**eligible person**” includes a partner of a partnership, a director or shareholder of a company, a manager or beneficiary of a body of persons and an associate of those persons.

### 54. Change in Control

(1) Despite sections 18 and 22, where there is a change of fifty percent or more in the underlying ownership of an entity as compared with its ownership one year previously, the entity is not permitted to

(a) deduct a debt claim arising prior to the change in ownership, which has become a bad debt after the change, or

(b) deduct a loss incurred prior to the change in ownership after the change.

(2) For the purposes of ascertaining a loss under subsection (1), the periods before and after the change in ownership are treated separately.

## **55. Profit or dividend stripping**

(1) A deduction is not allowed for a loss incurred on the disposal of shares or an interest in shares of a company or a disposal of an interest in a body of persons where the disposal forms part of a profit or dividend stripping arrangement.

(2) Subsection (1) of section 48 and subsection (5) of section 49 do not apply to a beneficiary of a body of persons who acquires a vested right or an entitlement to an amount included in ascertaining attributable income of that body as part of a profit or dividend stripping arrangement.

(3) For the purposes of this section, “**profit or dividend stripping arrangement**” means an arrangement under which

- (a) a company or body of persons (referred to as the “target”) has accumulated current or expected profits (referred to as the “profits”);
- (b) another person (referred to as the “acquirer”) acquires an interest, including shares in the target and makes a payment, whether or not in respect of the acquisition and whether or not the payment is at the time of acquisition;
- (c) the payment made by the acquirer reflects, in whole or in part, the profits of the target;
- (d) the payment made by the acquirer is not taxed in the hands of the recipient or is taxed at a rate below the tax rate applicable to resident companies;
- (e) after the acquirer acquires the interest in the target, the target makes a distribution, whether by way of dividend or otherwise, to the acquirer which represents, in whole or in part, the profits.

## *Insurance and Retirement Savings*

### *Short-term Insurance*

## **56. Short-term insurance business**

(1) The income of a person for a basis period from a short-term insurance business shall be determined according to this section.

(2) There shall be included in ascertaining the income of a person for a basis period from a short-term insurance business,

- (a) the amount of gross premiums, including premiums on re-insurance, accruing to or derived by that person during the basis period from carrying on that business in respect of the insurance of a risk, other than premiums returned to the insured,
- (b) amounts otherwise to be included in ascertaining the income of that person during the basis period from carrying on that business, including a commission or an expense allowance from re-insurers, and the amounts from investments held in connection with that business, and
- (c) the amount of the reserve deducted in the previous basis period under paragraph (c) of

subsection (3).

(3) For the purposes of ascertaining the income of a person for a basis period from a short-term insurance business, there shall be deducted

- (a) the amount of the claims admitted by that person during the basis period in the carrying on of that business, less the amount recovered or recoverable during the basis period under a contract of re-insurance, guarantee, security or indemnity;
- (b) amounts otherwise deductible in ascertaining the income of that person during the basis period in carrying on that business, other than amounts deductible under paragraph (a); and
- (c) the amount of the reserve for unexpired risks referable to that business as at the end of the basis period.

(4) Where, for a basis period, the total amount allowed to a person as deductions under subsection (3) exceeds the total amount included in income under subsection (2), the amount of the excess may not be deducted against any other income of that person but shall be carried forward and allowed as a deduction in ascertaining the income of that person from the short-term insurance business in accordance with section 22.

### *Life Insurance*

#### **57. Reductions for premiums paid**

(1) Subject to subsection (2), the assessable income of an individual for a year of assessment shall be reduced by the insurance premium paid by that individual in Ghana currency during a basis period ending within the year to a person carrying on a life insurance business in the Republic with respect to insurance on the individual's life.

(2) The reduction for premiums paid referred to in subsection (1) shall not exceed the lesser of

- (a) ten percent of the sum assured, or
- (b) the amount calculated as
  - (i) ten percent of the individual's total assessable income for the year from each business, employment, and investment, less
  - (ii) reductions in the individual's assessable income for the year under section 60.

#### **58. Income from life insurance business**

(1) The income of a person for a basis period from a life insurance business shall be determined according to this section.

(2) There shall only be included in ascertaining the income of a person for a basis period from a life insurance business amounts accruing to or derived by that person during the basis period from investments attributable to the business.

(3) There shall only be deducted in ascertaining the income of a person for a basis period from a life insurance business, management expenses, including commissions, to the extent incurred by that person during the basis period in carrying on the life insurance business.

(4) Where, for a basis period, the total amount allowed to a person as deductions under subsection (3) exceeds the total amount included in income under subsection (2), the amount of the excess may not be

deducted against any other income of that person but shall be carried forward and allowed as a deduction in ascertaining the income of that person from the life insurance business in accordance with section 22.

### **59. Proceeds of a life insurance policy**

The proceeds of a life insurance policy paid by a person in the course of carrying on a life insurance business are exempt from tax in the hands of the policy-holder to the extent to which they are attributable to

- (a) premiums paid in the Republic with respect to the policy, and
- (b) income of the business, for a basis period, included in the assessable income of that person.

### *Retirement Savings*

### **60. Contributions to a retirement fund**

(1) For the purposes of ascertaining the income of a person for a basis period from a business, that person

- (a) is entitled to a deduction for a contribution made to a retirement fund in respect of an employee only if the contribution is included in the income of the employee under subsection (2), and
- (b) is not entitled to a deduction for a payment made to an individual on retirement on account of old age, sickness, or any other infirmity.

(2) There shall be included in ascertaining the income of an employee from an employment for a basis period of the employee, a contribution made by an employer during the period to a retirement fund in respect of the employee and, to the extent that the contribution is attributable to employment producing income accruing in or derived from the Republic, the contribution shall be included in the employee's assessable income from the employment for the year of assessment in which the basis period ends.

(3) An employee's assessable income for a year of assessment shall be reduced by contributions made in respect of the employee by an employer during a basis period of the employee ending within the year to the Social Security Pension Scheme established under the Social Security Act, 19912(19) to the extent to which the contributions

- (a) are included in assessable income of the employee for the year under subsection (2), and
- (b) do not exceed eighteen and a half percent of the employee's assessable income from the employment.2a(20)

(4) Subject to subsection (5), and in addition to subsection (3), the assessable income of an individual for a year of assessment shall be reduced by a contribution made by the individual to the Social Security Pension Scheme established under the Social Security Act, 19913(21) during the year.

(5) The reduction for contributions referred to in subsection (4) shall not exceed the total

- (a) with respect to each employment of,
  - (i) eighteen and a half percent of the individual's income from the employment included in the individual's assessable income for the year, reduced by
  - (ii) the reduction in the individual's chargeable income for the year under subsection (3), and

- (b) eighteen and a half percent of the individual's income from each business included in the individual's assessable income for the year.3a(22)

### **61. Income of a retirement fund**

The income of a retirement fund exempted under an enactment is exempt from tax.

### **62. Payments made on retirement**

(1) A pension or lump sum paid by a resident person or a permanent establishment of a non-resident person in the Republic to an individual on retirement on account of old age, sickness or any other infirmity is exempt from tax.

(2) A pension or lump sum payment made by a retirement fund to a member or a nominated beneficiary of a member of the fund is exempt from tax.

### *International*

### **63. Geographic source of income**

(1) The gains or profits from an employment of a person shall be treated as accruing in or derived from the Republic to the extent to which the employment is exercised in the Republic, regardless of the place of payment.

(2) Subject to subsection (3), the gains or profits from a business of

- (a) a resident person shall be treated as accruing in or derived from the Republic, unless attributable to a permanent establishment of the resident person outside the Republic, or
- (b) a non-resident person shall be treated as accruing in or derived from the Republic to the extent that the gains or profits are attributable to a permanent establishment of the non-resident person in the Republic.

(3) The gross receipts of a non-resident person who carries on a business of ship operator, charterer or air transport operator from

- (a) the carriage of passengers who embark, or
- (b) mail, livestock or goods which are embarked,

in the Republic, other than as a result of transshipment, shall be treated as accruing in or derived from the Republic.

(4) The gross receipts of a non-resident person who carries on a business of transmitting messages by cable, radio, optical fibre or satellite communication from the transmission of messages by apparatus established in the Republic, whether or not the messages originated in the Republic, shall be treated as accruing in or derived from the Republic.

(5) A dividend is treated as accruing in or derived from the Republic where it is paid by a resident company.

(6) Interest is treated as accruing in or derived from the Republic where

- (a) the debt obligation giving rise to the interest is secured by real property located in the Republic,

- (b) the interest is paid by a resident person, or
- (c) the interest is borne by a permanent establishment of a non-resident person in the Republic.

(7) A charge, an annuity, a management and technical service fee, proceeds of a life insurance policy or pension or any other payment from a retirement fund is treated as accruing in or derived from the Republic where it is paid by a resident person or is borne by a permanent establishment of a non-resident person in the Republic.

(8) A royalty is treated as accruing in or derived from the Republic where the royalty arises from

- (a) the use of or right to use a copyright of literary, artistic or scientific work, including cinematograph films, or video or audio tapes, patent, trade mark, design or model, plan or secret formula or process in the Republic; or
- (b) the use of or the right to use an industrial, a commercial or a scientific equipment in the Republic; or
- (c) the use of or the right to use information concerning industrial, commercial, or scientific experience in the Republic; or
- (d) the rendering of, or the undertaking to render, assistance ancillary to a matter referred to in paragraph (a), (b) or (c); or
- (e) a total or partial forbearance with respect to a matter referred to in paragraph (a), (b), (c) or (d).

(9) A natural resource payment is treated as accruing in or derived from the Republic where the payment is made in respect of a natural resource taken from the Republic.

(10) Rent is treated as accruing in or derived from the Republic where the rent is paid for the use of personal property used or real property situated in the Republic.

(11) Gross premiums, including premiums on re-insurance, from carrying on a short-term insurance business in respect of the insurance of a risk in the Republic are treated as accruing in or derived from the Republic.

(12) An income or inclusion in ascertaining income, whether or not mentioned in this section is also treated as accruing in or derived from the Republic to the extent to which the income or inclusion arises from an activity undertaken in the Republic.

(13) An income or inclusion in ascertaining income that is not treated as accruing in or derived from sources in the Republic is treated as accruing or derived from outside the Republic.

#### **64. Foreign income from a separate business or investment**

Where the income of a person from a business or investment is partly accruing in or derived from the Republic and partly from outside the Republic, the part which is accruing in or derived from the Republic is treated as income from a separate business or investment from the part which is accruing or derived from outside the Republic.

#### **65. Income attributable to a permanent establishment**

(1) Subject to subsection (2), the gains or profits attributable to a permanent establishment of a non-resident person in the Republic shall be calculated as those which the permanent establishment might be expected to make if it were a distinct and separate person engaged in the same or similar activities

under the same or similar conditions and dealing wholly independently with that person of which it is a permanent establishment.

(2) In ascertaining the gains or profits attributable to a permanent establishment of a non-resident person in the Republic,

- (a) an account shall not be taken for amounts charged, otherwise than towards reimbursement of actual expenses, by the permanent establishment to the head office of the non-resident person or any of its other offices by way of
  - (i) royalties, fees or any other similar payments in return for the use of patents or any other rights;
  - (ii) commission for specific services performed or for management; or
  - (iii) except in the case of a banking business, interest on moneys lent to the head office of the non-resident person or any of its other offices; and
- (b) a deduction shall not be allowed in respect of amounts paid, otherwise than towards reimbursement of actual expenses, by the permanent establishment to the head office of the non-resident person or any of its other offices by way of
  - (i) royalties, fees or any other similar payments in return for the use of patents or any other rights,
  - (ii) commission for specific services performed or for management, or
  - (iii) except in the case of a banking business, interest on moneys lent to the permanent establishment.

## **66. Branch profits tax**

(1) A tax is hereby imposed, for each year of assessment, on a non-resident person carrying on business in the Republic through a permanent establishment which has repatriated profits for a basis period ending within the year.

(2) The tax payable by a non-resident person under subsection (1) is calculated by applying the rate prescribed in Part Six of the First Schedule to the repatriated profits referred to in that subsection.

(3) A person who makes payment in respect of profit or repatriates the profit referred to in subsection (1) shall withhold a final tax on the gross amount in accordance with the prescribed rate.<sup>3b(23)</sup>

## **67. Taxation of non-residents providing shipping, air transport or telecommunications services**

(1) The assessable income for a year of assessment of a non-resident person who carries on a business of ship operator, charterer or air transport operator includes the gross receipts derived during a basis period ending within the year from

- (a) the carriage of passengers who embark, or
- (b) mail, livestock or goods which are embarked,

in the Republic, other than as a result of transshipment.

(2) The assessable income for a year of assessment of a non-resident person who carries on a business of transmitting messages by cable, radio, optical fibre, or satellite communication includes the gross receipts derived during a basis period ending within the year from the transmission of messages by apparatus established in the Republic, whether or not the messages originated in the Republic.

(3) The gross receipts included in a non-resident person's assessable income under subsection (1) or (2) shall be taxed at the rate prescribed in Part Seven of the First Schedule and

- (a) the gross receipts shall be ignored in ascertaining the tax payable with respect to the remaining assessable income of that person;
- (b) a deduction shall not be allowed with respect to ascertaining that remaining assessable income to the extent to which the deduction relates to the production of the gross receipts; and
- (c) tax credits shall not be allowed to that person to reduce the tax payable by that person under this section with respect to the gross receipts.

(4) A person who makes payment to or for a non-resident person in respect of any business referred to in subsection (1) or (2) shall withhold a final tax on the gross amount in accordance with the prescribed rate.<sup>3c(24)</sup>

## **68. Relief from double taxation**

(1) For the purposes of ascertaining the income of a person for a basis period accruing or derived from outside the Republic, there shall be deducted the foreign income tax paid with respect to the income.

(2) A resident person is entitled to a credit for a year of assessment, in this section referred to as a **“foreign tax credit”**, for the foreign income tax paid by that person to the extent to which it is paid with respect to that person's taxable foreign income for the year.

(3) Foreign tax credits are calculated separately for taxable foreign income from each business, employment or investment, and shall not exceed the average rate of Ghanaian income tax of that person for the year of assessment applied to that person's taxable foreign income for the year from each business, employment or investment.

(4) A person's assessable income in respect of which that person is entitled to a foreign tax credit under subsection (2) is increased by the amount of the foreign tax credit.

(5) Where

- (a) the taxable foreign income of a person for a year of assessment includes a dividend, and
- (b) as a result of a double taxation arrangement referred to in section 111, credit is to be granted for foreign income tax paid with respect to the profits from which the dividend is distributed,

that person shall, for the purposes of this section, be treated as having paid with respect to the dividend the foreign income tax paid with respect to the profits from which the dividend is distributed,

(6) Subsections (2) and (4) do not apply where a person elects to relinquish a foreign tax credit.

(7) For the purposes of this section,

**“average rate of Ghanaian income tax”** of a person for a year of assessment means the percentage that the Ghanaian income tax payable by that person for the year, before the foreign tax credit, is of the chargeable income of that person for the year;

**“taxable foreign income”** of a person for a year of assessment means that person's income from a business, an employment or investment accruing or derived from outside the Republic and included in the assessable income of that person for the year increased by the amount referred to in subsection (4).

## *Anti-avoidance*

### **69. Income splitting**

(1) Where a person attempts to split income with another person, the Commissioner may adjust the chargeable income of both persons to prevent a reduction in the tax payable as a result of the splitting of income.

(2) A person is treated as having attempted to split income where

- (a) that person transfers income, directly or indirectly, to an associate, or
- (b) that person transfers property, including money, directly or indirectly, to an associate with the result that the associate receives or enjoys the income from that property,

and the reason or one of the reasons for the transfer is to lower the total tax payable on the income of that person and the associate.

(3) In determining whether a person is seeking to split income, the Commissioner shall consider the value given by the associate for the transfer.

(4) A transfer of income or property indirectly from a person to an associate of that person includes a transfer made through the interposition of one or more entities.

### **70. Transfer pricing**

(1) In a transaction between persons who are associates, the Commissioner may distribute, apportion or allocate inclusions in income, deductions, credits or personal reliefs between those persons as is necessary to reflect the chargeable income or tax payable which would have arisen for these persons if the transaction had been conducted at arm's length.

(2) Where,

- (a) in the case of an associated resident entity of a non-resident person, the Commissioner is satisfied that some adjustment is warranted under subsection (1) or section 69, or
- (b) in the case of a permanent establishment of a non-resident person in the Republic the Commissioner is not satisfied with a return of income of that person made under section 72,

the Commissioner may adjust the income of the permanent establishment or the entity for a basis period so that it reflects an amount calculated

- (c) by reference to the total consolidated income of the non-resident person and the associates of that non-resident person, other than individuals but irrespective of residence;
- (d) by taking into account the proportion which the turnover of the permanent establishment or entity bears to the total consolidated turnover of the non-resident person and those associates; and
- (e) by taking into account any other relevant considerations in determining the proportion of the total consolidated income which should be attributed to the permanent establishment or entity.

(3) In making an adjustment under subsection (1) or (2), the Commissioner may re-characterise the source of income and the nature of the payment or loss as revenue, capital or otherwise.

## 71. Thin capitalisation

(1) Where an exempt-controlled resident entity which is not a financial institution has an exempt debt-to-exempt equity ratio in excess of 2 to 1 at any time during a basis period, a deduction is disallowed for an interest paid or foreign currency exchange loss incurred by that entity during that period on that part of the debt which exceeds the 2 to 1, being a portion of the interest or loss otherwise deductible but for this subsection.

(2) For the purposes of this section,

**“exempt-controlled resident entity”** means a resident entity in which fifty percent or more of the underlying ownership or control of the entity is held by an exempt person, in this section referred to as the “exempt controller”, either alone or together with an associate or associates;

**“exempt debt”**, in relation to an exempt-controlled resident entity, means the greatest amount, at any time during a basis period, of the sum of

- (a) the balance outstanding at that time on a debt obligation owed by the exempt-controlled resident entity to an exempt controller or an exempt person who is an associate of the exempt controller with respect to which
  - (i) interest is paid which is, or
  - (ii) in the case of a debt obligation denominated in foreign currency, a foreign currency exchange loss incurred is, or if incurred would be, deductible to the exempt-controlled resident entity and the interest or foreign currency exchange gain is not or would not be included in ascertaining assessable income of the exempt controller or associate; and
- (b) the balance outstanding at that time on a debt obligation owed by the exempt-controlled resident entity to a person other than the exempt controller or an associate of the exempt controller where that person has a balance outstanding of a similar amount on a debt obligation owed by that person to the exempt controller or an exempt person who is an associate of the exempt controller;

**“exempt equity”**, in relation to an exempt-controlled resident entity and for a basis period, means the sum of the following amounts

- (a) so much of an amount standing to the credit of the capital accounts of the entity at the beginning of the period as the exempt controller or an exempt person who is an associate of the exempt controller is entitled to or would be entitled to if the entity were wound up at that time, and
- (b) so much of the accumulated profits and asset revaluation reserves of the entity at the beginning of the basis period as the exempt controller or an exempt person who is an associate of the exempt controller is entitled to or would be entitled to if the entity were wound up at that time;

reduced by the sum of

- (c) the balance outstanding at the beginning of the period on a debt obligation owed to the entity by the exempt controller or an exempt person who is an associate of the exempt controller, and
- (d) where the entity has accumulated losses at the beginning of the period, the amount by which

the return of capital to the exempt controller or an exempt person who is an associate of the exempt controller would be reduced by virtue of the losses if the entity were wound up at that time;

**“exempt person”** includes

- (a) a non-resident person, and
- (b) a resident person for whom interest paid to that exempt person by the exempt-controlled resident entity or for whom a foreign currency exchange gain realised with respect to a debt claim against the exempt-controlled resident entity
  - (i) constitutes exempt income, or
  - (ii) is not included in ascertaining the exempt person’s assessable income;

**“resident entity”** means a resident partnership, resident company, resident body of persons or a permanent establishment of a non-resident person in the Republic.

### *Procedure relating to the Income Tax*

#### *Returns*

#### **72. Furnishing of return of income**

(1) Subject to section 73, a person shall furnish a return of income for a year of assessment of that person not later than four months after the end of a basis period of that person ending within the year.

(2) A return of income shall be in the form prescribed by the Commissioner, shall state the information required, and shall be furnished in the manner prescribed by the Commissioner.

(3) A return of income shall include a declaration that the return is complete and accurate and shall be signed by the person making the return.

(4) A person carrying on a business shall furnish with that person’s return of income a separate statement of income and expenditure and a statement of assets and liabilities for each business undertaking carried on within that business by that person.

(5) A person who, for remuneration, prepares or assists in the preparation of a return of income, or a balance sheet, statement of income and expenditure, or any other document submitted in support of a return of another person, other than as employee of the other person, shall sign the return certifying

- (a) that the books of account and any other relevant documentation of the other person have been examined, and
- (b) that to the best of the examiner’s knowledge, the return or document correctly reflects the data and transactions to which it relates.

(6) Where a person refuses to sign a certificate referred to in subsection (5), that person shall furnish the other person with a statement in writing of the reasons for the refusal and the other person shall include that statement with the return of income to which the refusal relates.

(7) Where, during a basis period

- (a) a person dies, or
- (b) a person becomes bankrupt, is wound-up or goes into liquidation, or

- (c) a person is about to leave the Republic indefinitely, or
- (d) a person is otherwise about to cease activity in the Republic, or
- (e) the Commissioner otherwise considers it appropriate,

the Commissioner may, by notice in writing, require that person or that person's trustee, to furnish, by the date specified in the notice, a return of income for that person for a period less than the basis period.

(8) Where a person fails to furnish a return of income as required by this section, the Commissioner may, by notice in writing, appoint a person to prepare and furnish the return, and the return so furnished is, for the purposes of this Act, the return of the person originally required to furnish the return.

(9) The Commissioner may, by notice in writing, require the person who furnished the return to provide a fuller or further return of income.

### **73. Cases where return of income not required**

Unless requested by the Commissioner by notice in writing, a return of income shall not be furnished under this Act for a year of assessment

- (a) by a non-resident person who does not have an income accruing in or derived from the Republic during a basis period ending within the year or where section 85 applies to that person's income accruing in or derived from the Republic during that basis period; or
- (b) by a resident individual
  - (i) to whom subsection (7) of section 81 applies, or
  - (ii) who does not have a chargeable income for the year or whose chargeable income for the year is subject to the nil rate of tax under Part One of the First Schedule.

### **74. Extension of the time to furnish a return of income**

(1) A person required to furnish a return of income under section 72 may apply in writing to the Commissioner for an extension of time to furnish the return.

(2) An application under subsection (1) shall be made by the due date for furnishing of the return to which it relates.

(3) Where an application is made under subsection (1), the Commissioner, if satisfied as to the inability of that person to furnish the return by the due date because of absence from the Republic, sickness, or any other reasonable cause, may, by notice in writing, grant that person an extension of time for furnishing the return of a period not exceeding two months.

(4) A person dissatisfied with a decision under subsection (3) may only challenge the decision under the objection and appeal procedure in sections 128 to 133 as though a reference in those sections to an assessment were a reference to that decision.

(5) The granting of an extension of time under this section does not alter the due date for payment of tax under section 134.

### **75. Definition**

For the purpose of sections 72, 73 and 74, a reference to a person includes a reference to a partnership.

## *Assessments*

### **76. Provisional assessments**

(1) Subject to section 78, the Commissioner may as soon as may be after the commencement of each basis period of a person who pays tax by instalments, proceed to make a provisional assessment computed according to the Commissioner's best judgment on that person's chargeable income.

(2) A provisional assessment shall not affect a liability otherwise incurred by that person by reason of failure or neglect to deliver a return.

(3) Where a provisional assessment is made under this section, the Commissioner shall serve a notice of the assessment on that person stating

- (a) the estimated chargeable income,
- (b) the estimated tax payable,
- (c) the amount and timing of tax instalments to be paid in accordance with section 80, and
- (d) the time, place and manner of objecting to the assessment.

(4) Where the Commissioner discovers, or is of the opinion at any time, that a person liable to tax has not been assessed under subsection (1), the Commissioner may, within the year and as often as may be necessary assess that person at the amount that according to the best judgment of the Commissioner ought to have been charged, and subsections (2) and (3) together with the provisions of this Act as to notice of assessment, appeal and any other proceedings shall apply to that assessment and to the tax charged.

### **77. Final assessments**

(1) Subject to section 78, the Commissioner shall, based on a person's return of income and on any other information available, make a final assessment of the chargeable income of that person and the tax payable on that assessment.

(2) Where,

- (a) a person defaults in furnishing a return of income for a year of assessment, or
- (b) the Commissioner is not satisfied with a return of income for a year of assessment furnished by a person,

the Commissioner may, according to the Commissioner's best judgment, make a final assessment of the chargeable income of that person and the tax payable on that income for the year.

(3) The Commissioner shall, on making an assessment under paragraph (b) of subsection (2), include with the assessment a statement of reasons as to why the Commissioner is not satisfied with the return.

(4) In the circumstances specified in subsection (7) of section 72, in lieu of requiring a return of income, the Commissioner may, according to the Commissioner's best judgment, make a final assessment of the chargeable income of that person and the tax payable on that assessment for the year of assessment during which the basis period ends.

(5) The Commissioner shall not assess a person for a year of assessment who, as a result of the operation of section 73, is not required to furnish a return of income for the year.

(6) Where a final assessment is made under this section, the Commissioner shall serve a notice of the

assessment on that person stating

- (a) the amount of chargeable income,
- (b) the amount of tax payable,
- (c) the amount of tax paid, and
- (d) the time, place and manner of objecting to the assessment.

#### **78. Self-assessment**

(1) This section only applies to those persons specified in a notice published in the *Gazette* or in the print media by the Commissioner, as persons to which this section is to apply for a year of assessment.

(2) A person who pays tax by instalments shall furnish an estimate of

- (a) the chargeable income to be derived by that person for a year of assessment in respect of which tax is or may be payable by that person by instalments under section 80, and
- (b) the tax to be payable with respect to that chargeable income.

(3) The estimate under subsection (2) shall be in the form prescribed by the Commissioner and shall be furnished to the Commissioner on or before the commencement of a basis period of that person which will end within the year of assessment.

(4) The estimate under subsection (2) shall remain in force for the whole of the basis period to which it relates unless that person furnishes a revised estimate to the Commissioner together with a statement of reasons for the revision.

(5) The revised estimate under subsection (4) shall only apply to the calculation of the tax payable by that person by instalments after the date the revised estimate is furnished to the Commissioner.

(6) Subject to subsection (7), where a person

- (a) furnishes an estimate in accordance with subsection (2) or a revised estimate in accordance with subsection (4), or
- (b) furnishes a return of income for a year of assessment,

the Commissioner is deemed to have made a provisional assessment or final assessment, as the case requires, of the chargeable income of that person and the tax payable on that chargeable income for the year, shall be those respective amounts shown in the estimate or return.

(7) Where a person who pays tax by instalments fails to furnish an estimate as required by subsections (2) and (3) or the Commissioner is not satisfied with the estimate or revised estimate furnished, then subsection (6) of this section shall not apply to the estimate or revised estimate and the Commissioner may make a provisional assessment in accordance with section 76.

(8) Where subsection (6) applies, that person's estimate or return of income is treated as a notice of assessment served on that person by the Commissioner on the due date for furnishing of the estimate or return or on the actual date the estimate or return is furnished, whichever is the later.

#### **79. Additional assessments**

(1) Subject to subsections (2) and (3), the Commissioner may, within three years after service of a notice of assessment, make an additional assessment amending an assessment previously made.

(2) Where the need to make an additional assessment arises by reason of fraud or a gross or wilful

neglect by, or on behalf of, a person or the discovery of new information in relation to the tax payable for a year of assessment, the Commissioner may make an additional assessment for that year at any time.

(3) The Commissioner shall not make an additional assessment amending a previous assessment if the previous assessment has been amended or reduced pursuant to an order of the High Court unless that order is obtained by fraud.

(4) An additional assessment shall be treated as an assessment under this Act.

### *Payment of Tax*

### *Tax Instalments*

## **80. Payment of tax by instalments**

(1) Subject to subsection (4), a person who derives or expects to derive an assessable income for a year of assessment which is not or will not be subject to withholding of tax at source under sections 81 to 93 is liable to pay tax under this section by quarterly instalments.

(2) A person liable to pay tax under subsection (1) in respect of a basis period ending within the year of assessment, shall pay instalments of tax

- (a) in the case of a person whose basis period 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 the basis period and a final instalment on the last day of the period unless it coincides with the end of a three month period.

(3) For the purposes of subsection (2), the amount of each instalment of tax for a basis period is calculated according to the following formula:

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

where,

A is the estimated tax payable by the tax payer for the period at the time of the instalment under the most recent provisional assessment made under section 76 or 78; and

B is the amount of a tax paid during the period but prior to the due date for payment of the instalment

- (a) by prior instalment under this section, or
- (b) withheld under sections 81 to 93 from the amounts derived by that person during the period which will be included in ascertaining the assessable income of that person for the year of assessment in which the period ends;

C is the number of instalments remaining for the period including the current instalment.

(4) Regulations made under section 114 may prescribe that a particular class of persons shall pay tax by instalments otherwise than or in substitution for instalments payable under subsection (1).

(5) Regulations made under section 114 may provide

- (a) that a particular or particular class of organised association or recognised occupational group

shall collect from its members the tax payable by those members by instalment under subsection (4),

- (b) the terms and conditions which shall apply to the collection of that tax, and
- (c) the terms and conditions on which the association or group shall account to the Commissioner for that tax.

(6) A person who fails to make an instalment payment to an association or group as provided by Regulations made under subsection (5), shall be treated as having failed to pay the instalment by the due date.

(7) On a written application by a person who pays tax by instalments the Commissioner may, where good cause is shown, extend the due date for payment of an instalment of tax or allow for payment of the instalment in equal or varying amounts.

(8) An instalment of tax is due and payable on the date by which the instalment is to be paid.

(9) An instalment of tax shall be credited against the tax assessed to the person who pays tax by instalments for the year of assessment in which the basis period to which the instalment relates ends.

#### *Withholding of Tax at Source*

### **81. Withholding of tax by employers**

(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 as prescribed by Regulations made under section 114.

(2) The obligation of an employer to withhold tax under subsection (1) is not reduced or extinguished because the employer has a right, or is otherwise under an obligation, to deduct and withhold any other amount from those payments.

(3) The obligation of an employer to withhold tax under subsection (1) applies despite any other law which provides that the income from employment of an employee shall not be reduced or subject to attachment.

(4) An employer shall, not later than the 31st day of March following the end of every year of assessment, furnish a return with respect to each person employed by the employer who derives assessable income for the year from the employment.

(5) The return referred to in subsection (4) shall be in the form and furnished in the manner prescribed by the Commissioner and shall contain the following information:

- (a) the amount of assessable income derived by the employee from the employment,
- (b) the amount of tax withheld from that income under subsection (1) and the manner in which it is calculated, including the deductions under sections 39, 57, and 60 which are taken into account, and
- (c) in the case of an employee to whom subsection (7) applies, the employee's chargeable income and tax payable with respect to that income.

(6) At the time of the furnishing the return under subsection (4), an employer shall serve on each employee an extract of the return, in the form prescribed by the Commissioner, which extract shall also state, in the case of an employee to whom subsection (7) applies,

- (a) that the extract is an assessment; and

(b) the time, place and manner of objecting to the assessment.

(7) In the case of an employee whose assessable income for a year of assessment consists exclusively of income from an employment, the extract served under subsection (6) is treated as an assessment served on the employee by the Commissioner.

## **82. Payment of interest to resident persons**

(1) Subject to subsection (2), a resident person who pays interest to another resident person shall withhold tax on the gross amount of the payment at the rate prescribed in Part Four of the First Schedule.

(2) This section does not apply to

- (a) interest paid by an individual, and
- (b) interest paid which is exempt from tax.
- (c) interest due to a resident financial institution.<sup>3d(25)</sup>

## **83. Payment of dividends to resident shareholders**

(1) Subject to subsection (3), a resident company which pays a dividend to a resident shareholder shall withhold tax on the gross amount of the payment at the rate prescribed in Part Four of the First Schedule.

(2) Subsection (3) of section 2 applies to this section.

(3) This section does not apply where the dividend is exempt from tax.

## **84. Payment to residents for goods and services**

(1) Subject to section 81, where a resident person, other than an individual, pays

- (a) fees to a resident part-time teacher, lecturer, examiner, examinations invigilator or examinations supervisor,
- (b) fees, emoluments, and any other benefit, including a benefit referred to in section 53, to a resident director, manager or board member of a company or body of persons,
- (c) a commission to a resident insurance, sales or canvassing agent,
- (d) endorsement fees to a resident person, or
- (e) a commission to a resident lotto receiver or agent,

the person making the payment shall withhold tax on the gross amount of the payment at the rate prescribed in Part Four of the First Schedule.

(2) Subject to subsection (4), where a resident person pays a sum of money to another resident person which does not fall within subsection (1),

- (a) for the supply or use of goods or property of any kind, or
- (b) the supply of services,

in respect of a contract between the payee and a resident person other than an individual exceeding fifty currency points, the person making the payment shall withhold tax on the gross amount of the payment at the rate prescribed in Part Four of the First Schedule.

(3) For the purpose of determining under subsection (2) whether a contract exceeds fifty currency points, two or more contracts in respect of the same goods, property or services shall be treated as a single contract.

(4) Subsection (2) does not apply

(a) to payments under a contract for the sale of goods which constitute trading stock of both the vendor and the purchaser; or

(aa) to premiums paid to a registered insurance company under an insurance contract; or<sup>3e(26)</sup>

(b) where the Commissioner,

(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 on 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.

(5) A person provided with an exemption under paragraph (b) of subsection (4) shall, at the end of every calendar quarter, submit a list of particulars of the payments which would have fallen within subsection (2) but for the exemption.

### **85. Payments to non-residents under section 3**

(1) A person making a payment to a non-resident person of the kind referred to in subsection (1) of section 3 shall withhold tax on the gross amount of the payment at the appropriate rate prescribed in Part Five of the First Schedule.

(2) Subsection (3) of section 2 applies to this section.

(3) This section does not apply where the payment is exempt from tax.

(4) The tax imposed under subsection (2) is a final tax on the income on which the tax is imposed and the provisions of section 4 paragraphs (a) to (c) shall apply in respect of that income or tax.<sup>3f(27)</sup>

### **86. Payment to non-residents for goods and services**

(1) Subject to section 81, a person who enters into a contract with a non-resident person for

(a) the supply or use of goods or property of any kind, or

(b) the supply of services,

which contract gives rise to income accruing in or derived from the Republic, shall, within thirty days of the date of entering into the contract, notify the Commissioner in writing of,

(c) the nature of the contract,

(d) the likely duration of the contract,

(e) the name and postal address of the non-resident person to whom payments under the contract are to be made, and

(f) the total amount estimated to be payable under the contract to the non-resident person.

(2) The Commissioner may, by notice in writing served on the person who has notified the

Commissioner under subsection (1), require that person to withhold tax from a payment made under the contract at the rate specified in Part Eight of the First Schedule.

(3) Subsection (2) does not apply to a payment of the kind referred to in subsection (1) of section 3.

(4) The tax imposed under subsection (2) is a final tax on the income on which the tax is imposed and the provisions of section 4 paragraphs (a) to (c) shall apply in respect of that income or tax.<sup>3c(28)</sup>

#### **87. Payment of tax withheld**

(1) Subject to subsection (2), a withholding agent shall pay to the Commissioner a tax that has been withheld or that should have been withheld under sections 81 to 93 within fifteen days after the end of the month in which the payment subject to withholding tax is made by the withholding agent.

(2) Where a person is required to withhold tax from a payment under subsection (2) of section 86, the tax shall be paid to the Commissioner at the time specified in the Commissioner's notice.

(3) An amount withheld under sections 81 to 93 is treated as if it were tax due and payable on the date referred to in subsection (1) or (2).

(4) Subject to sections 10 (2) and 84 (4) a provision in an agreement which prohibits the deductions or withholding of a tax required to be deducted or withheld under this Act or any other enactment administered by the Commissioner, is void.

#### **88. Failure to withhold tax**

(1) A withholding agent who fails to withhold tax in accordance with sections 81 to 93 is personally liable to pay to the Commissioner the amount of tax which has not been withheld, but the withholding agent is entitled to recover this amount from the payee.

(2) The liability imposed by subsection (1) is treated as if it were tax due and payable on the date referred to in subsection (1) or (2) of section 87.

#### **89. Tax credit certificates**

(1) The Commissioner shall, on receipt of an amount paid under section 87, issue to the withholding agent in favour of the payee a tax credit certificate in the form prescribed by the Commissioner stating the amount deducted.

(2) A withholding agent shall deliver to the payee a tax credit certificate setting out the amount of tax withheld under sections 81 to 93 together with a statement of the amount of the payment from which tax has been withheld.

(3) A payee who is required to furnish a return of income shall attach to the return the tax credit certificate or certificates supplied to the payee for a basis period of the payee ending within the year of assessment for which the return is filed.

#### **90. Record of payments and tax withheld**

(1) A withholding agent shall maintain, and make available for inspection by the Commissioner, records showing, in relation to each year of assessment,

- (a) payments made to a payee, and
- (b) tax withheld from those payments.

(2) The records referred to in subsection (1) shall be kept by the withholding agent for five years of assessment after the end of the year of assessment to which the records relate.

(3) The Commissioner may require a withholding agent to submit a return of the records to be maintained under subsection (1) in the manner, form and at the intervals prescribed by the Commissioner.

### **91. Priority of tax withheld**

(1) Tax withheld by a withholding agent under sections 81 to 93

- (a) is held by the withholding agent in trust for the Service,
- (b) is not subject to attachment in respect of a debt or liability of the withholding agent, and
- (c) in the event of the liquidation or bankruptcy of the withholding agent, does not form a part of the estate in liquidation, assignment or bankruptcy and the Commissioner has a first claim before the distribution of property is made.

(2) An amount which a withholding agent is required under section 81 to 93 to withhold from a payment is

- (a) a first charge on that payment, and
- (b) withheld prior to any other deduction which the withholding agent may be required to make by virtue of an order of a Court or any other law.

### **92. Adjustment on assessment and withholding agent's indemnity**

(1) Tax withheld under sections 81 to 93 is included in ascertaining income of the payee.

(2) A withholding agent who has withheld tax under sections 81 to 93 and remitted the amount withheld to the Commissioner is treated as having paid the withheld amount to the payee for the purposes of a claim by the payee for payment of the amount withheld.

(3) Tax withheld from a payment under sections 81 to 93 is deemed to have been paid by the payee and, except in the case of a tax that is a final tax under sections 4 and 86, is credited against the tax assessed on the payee for the year of assessment in which the basis period of the person ends, being the period in which the payment is made.<sup>3g(29)</sup>

### **93. Definitions**

For the purpose of sections 81 to 92,

“**payee**” means a person receiving payments from which tax is required to be withheld under those sections;

“**person**” includes a partnership;

“**resident person**” includes a permanent establishment of a non-resident person in the Republic;

“**withholding agent**” means a person obliged to withhold tax under those sections.

### *Interpretation*

### **94. Definitions**

For the purpose of sections 1 to 93,

**“accruing in or derived from”** the Republic or outside the Republic with respect to income has the meaning in section 63;

**“basis period”** means the period by reference to which assessable income of a person is computed in accordance with this Act;

**“beneficiary”**, in relation to a body of persons, means a beneficiary, a member, an owner, or any other person who has a right, including a contingent right, to participate in the income or capital of that body;

**“debt claim”** means a right to receive a repayment of money from another person arising in the course of carrying on a business, including deposits with a financial institution, accounts receivable, promissory notes, bills of exchange or bonds;

**“dividends”** includes<sup>3e(30)</sup>

- (a) a capitalisation of profits, whether by way of a bonus share issue or increase in the amount paid-up on shares, or otherwise involving a credit of profits to the stated capital, or
- (b) an amount derived by a shareholder from a company
  - (i) in the course of liquidation or reconstruction, or
  - (ii) with respect to a reduction of stated capital or redeemable preference shares, but only to the extent that the amount is not debited to the company’s stated capital;

**“employee”** means an individual engaged in employment;

**“employer”** means a person who employs or remunerates an employee;

**“employment”** includes

- (a) the position of an individual in the employment of another person, and
- (b) the holding of or acting in an office or a position entitling the holder to a fixed or ascertainable remuneration other than an office or position as director of a company or manager of a body of persons;

**“exempt organisation”** includes a person

- (a) who or that is and functions as
  - (i) a religious, charitable or educational institution of a public character;
  - (ii) a body of persons formed for the purpose of promoting social or sporting amenities;
  - (iii) a trade union registered under the Trade Unions Act;<sup>4(31)</sup>
  - (iv) an institution or trust of a public character established by an enactment solely for the purposes of scientific research; and
  - (v) registered sporting club; and
- (b) who or that has been issued with a written ruling by the Commissioner currently in force stating that it is an exempt organisation; and
- (c) none of whose income or assets confers, or may confer, a private benefit, other than in pursuit of the organisation’s function referred to in paragraph (a);

**“financial institution”** includes

- (a) a bank regulated under the Banking Act, 2004 (Act 673),
- (b) a non-banking financial institution regulated under the Financial Institutions (Non-banking) Act, 1993;5(32) and
- (c) any other category of persons prescribed by Regulations made under section 114;

**“foreign income tax”** includes a foreign withholding tax, but does not include a foreign tax designed to raise the level of the tax on the income so that taxation by the country of residence is reduced;

**“insurance business”** means the business of, or in relation to the issue of, or the undertaking of liability under, life policies, or to make good or indemnify the insured against loss or damage, including liability to pay damages or compensation contingent on the happening of a specified event;

**“investment”** means a manner in which a person may derive gains, profits, or income, other than from a business of employment;

**“life insurance business”** includes the business of

- (a) effecting, carrying out and issuing policies on human life or contracts to pay annuities on human life;
- (b) effecting, carrying out, and issuing contracts of insurance against the risk of the person insured sustaining injury or dying as the result of an accident or of an accident of a specific class, or becoming incapacitated in consequence of disease or of diseases of specified classes, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time, and are not expressed to be terminable by the insurer before the expiry of five years from taking effect or are expressed to be so terminable before the expiry of that period only in special circumstances specified in the contract; and
- (c) effecting, carrying out and issuing of insurance whether effected by the issue of policies, bonds, endowment certificates or otherwise, whereby, in return for one or more premiums paid to the insurer, an amount or series of amounts is or are to become payable to the insured in the future, not being contracts as fall within paragraph (a) or (b) of the present definition;

**“management and technical services fee”** means a payment of a kind to a person, other than to an employee of the person making the payment, in consideration for the services of a managerial, technical or consultancy nature;

**“manager”**, in relation to a body of persons, means a member, councillor, director, manager, an officer, or any other person who participates in making, whether alone or jointly with other persons, managerial decisions on behalf of the body, and the trustee of a trust;

**“natural resource payment”** includes,

- (a) a payment, including a premium or like amount, for the right to take minerals or a living or non-living resource from real property or the sea, and
- (b) a payment calculated in whole or part by reference to the quantity or value of minerals or a living or non-living resource taken from real property or the sea;

**“rent”** means a payment, including a payment of a premium or like amount, for the use of, or right to use, property of any kind but does not include a natural resource payment or a royalty;

**“retirement fund”** means a pension, provident, retirement, superannuation or similar fund established as a permanent fund maintained solely for either or both of the following purposes:

- (a) the provision of benefits for members of the fund in the event of retirement;
  - (b) the provision of benefits for dependants of members in the event of the death of the member;
- and

the Social Security Pension Scheme established under the Social Security Act, 1991;6(33)

**“royalties”** includes a payment, including 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, or video or audio tapes 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 paragraphs (a), (b), (c) and (d), and
- (f) a total or partial forbearance with respect to a matter referred to in paragraphs (a), (b), (c), (d) and (e);

**“short-term insurance business”** means an insurance business which is not a life insurance business;

**“tax”** means tax levied under any of the sections 1 to 94;

**“trading stock”** includes anything produced, manufactured, purchased, or otherwise acquired for sale or exchange;

**“turnover”** means the total receipts in money or moneys’ worth from a business without deduction for customs duty or import duty or excise duty but not including vehicle purchase tax or value added tax paid directly to the Commissioner of Customs, Excise and Preventive Service or the Commissioner of Value Added Tax Service.

## PART TWO

### *Capital Gains Tax*

#### *Imposition of Capital Gains Tax*

#### **95. Imposition and rate of capital gains tax**

(1) Subject to subsection (2), capital gains tax is payable by a person at the rate of five6a(34) percent of capital gains accruing to or derived by that person from the realisation of a chargeable asset owned by that person.

(2) Capital gains tax is not payable on capital gains from the realisation of a chargeable asset falling within paragraph (b) of subsection (1) of section 97 unless and until those gains are brought into or received in the Republic.

### *Realisation*

#### **96. Realisation**

(1) Subject to subsection (2), a person who owns a chargeable asset is treated as realising the asset where

- (a) that person parts with ownership of the asset including where the asset is,
  - (i) sold, exchanged, surrendered, or distributed by the owner of the asset, or
  - (ii) redeemed, destroyed or lost;
- (b) that person begins to use the asset in a way that the asset ceases to be a chargeable asset; or
- (c) that person is a resident who becomes a non-resident but only with respect to chargeable assets referred to in paragraph (b) of subsection (1) of section 97.

(2) For the purposes of this Act, a realisation of a chargeable asset does not include a realisation by way of gift within the meaning of sections 108 to 110 or a realisation involving the disposal of shares in the course of the liquidation of a company.

### *Chargeable Asset*

#### **97. Chargeable asset**

(1) Subject to subsection (3), chargeable asset means

- (a) any of the following assets:
  - (i) buildings of a permanent or temporary nature situated in the Republic;
  - (ii) business and business assets, including goodwill, of a permanent establishment situated in the Republic;
  - (iii) land situated in the Republic;
  - (iv) shares of a resident company;
  - (v) part of, or a right or an interest in, to or over any of the assets referred to in subparagraphs (i) to (iv); and
- (b) to the extent that they are not chargeable assets as a result of paragraph (a), any of the following assets of a resident person:
  - (i) buildings of a permanent or temporary nature wherever situated,
  - (ii) business and business assets, including goodwill, wherever situated,
  - (iii) land wherever situated,
  - (iv) shares of a company,
  - (v) part of, or a right or an interest in, to or over any of the assets referred to in

subparagraphs (i) to (iv).

(2) Regulations made under section 114 may add to the categories of chargeable assets in paragraph (a) or (b) of subsection (1).

(3) A chargeable asset does not include

- (a) securities of a company listed on the Ghana Stock Exchange during the twenty6b(35) years after the establishment of the Ghana Stock Exchange,
- (b) agricultural land situated in the Republic, and
- (c) trading stock or a Class 1, 2, 3, or 4 depreciable asset.

### *Calculation of Capital Gain*

#### **98. Calculation of capital gain**

The amount of a capital gain accruing to or derived by a person from the realisation of a chargeable asset owned by that person is the excess of the consideration received by that person from the realisation over the cost base at the time of realisation.

#### **99. Cost base**

(1) The cost base of a chargeable asset owned by a person at a particular time equals the sum of

- (a) the costs, including incidental costs and, where relevant, the cost of construction or production, incurred by that person in acquiring ownership of the asset,
- (b) the costs incurred by that person on alteration and improvement of the asset between the date of its acquisition and the date of its realisation, and
- (c) the costs incurred by that person in realising the asset.

(2) For the purposes of subsection (1), where, as a result of a person acquiring ownership of a chargeable asset, that person is treated under sections 1 to 94 as deriving an amount of income, that person shall be treated as having incurred, in acquiring ownership of the asset, an additional cost equal to the amount of the income.

(3) A person who acquires ownership of a chargeable asset in a non-arm's length transaction is treated as having incurred in acquiring that ownership, a cost equal to the market value of the asset at the date of acquisition.

(4) Where a person who owns an asset, which is not a chargeable asset, begins to use the asset in a way that it becomes a chargeable asset, that person is treated as having incurred in acquiring ownership of the asset, a cost equal to the market value of the asset at the date that person begins to so use the asset.

(5) Where a non-resident person who owns one or more assets, which are not chargeable assets, becomes a resident and, as a result, the assets become chargeable assets, that person is treated as having incurred in acquiring ownership of each asset, a cost equal to the market value of the asset at the time of becoming a resident.

(6) Where a capital gain is exempt as a result of paragraph (b), (c), or (d) of subsection (1) of section 101, the person acquiring ownership of the asset is treated as having incurred in acquiring that ownership, a cost equal to the cost base of the asset of the former owner at the time of realisation.

(7) Where a capital gain, or part thereof, is exempt as a result of paragraph (e) or (f) of subsection (1)

of section 101, the person acquiring ownership of the replacement asset is treated as having incurred in acquiring that ownership, a cost equal to the cost base of the asset realised at the time of realisation.

(8) Where a part of a chargeable asset owned by a person is realised, the cost base of the asset is apportioned between the part of the asset retained and the part realised in accordance with their respective market values at the time of realisation, but the costs incurred in realisation shall not be so apportioned.

## **100. Consideration received**

(1) The consideration received or receivable by a person from the realisation of a chargeable asset owned by that person is equal to the sum of the amounts received or receivable by that person or an associate in respect of the realisation.

(2) Where a person who owns a chargeable asset realises it by way of transfer to an associate or in a non-arm's-length transaction, that person is treated as having received consideration from the realisation of an amount equal to the market value of the asset at the time of realisation.

(3) Where a resident person becomes a non-resident and, as a result, is treated as realising a chargeable asset in accordance with paragraph (c) of subsection (1) of section 96, that person shall be treated as receiving as consideration from the realisation the market value of the asset at that time.

(4) Where a chargeable asset and one or more other assets are realised in a single transaction and the consideration received for each asset is not specified, the total consideration received from the realisation is apportioned among the assets in proportion to their market values at the time of the transaction.

## **101. Exemption from capital gain**

(1) The following capital gains from the realisation of a chargeable asset are exempt:

- (a) capital gains of a person up to a total of fifty currency points per year of assessment;
- (b) capital gains 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 in the asset of at least twenty-five percent;
- (c) capital gains resulting from a transfer of ownership of the asset by a person to that person's spouse, child, parent, brother, sister, aunt, uncle, nephew or niece;
- (d) capital gains resulting from a transfer of ownership of the asset between former spouses as part of a divorce settlement or a genuine separation agreement;
- (e) capital gains where the amount received on realisation is, within one year of realisation, used to acquire a chargeable asset of the same nature (referred to as the "replacement asset"); and
- (f) where part only of the amount received on realisation is used in the manner referred to in paragraph (e), a part of the capital gain represented by the amount used to acquire the replacement asset less the cost base of the asset realised at the time of realisation.
- (g) capital gains accruing to or derived by a venture capital financing company that satisfies the eligibility requirements of the Venture Capital Trust Fund Act, 2004 (Act 684) for a period of ten years of assessment commencing from and including the year in which the basis period of the company ends, being the period in which operations of the subsidiary company commenced;6c(36)
- (h) capital gains accruing to or derived by a person from an eligible capital financing company.6d(37)

(2) The Commissioner may extend the period of one year for the purposes of paragraphs (e) and (f) of subsection (1) where, having regard to the circumstances of a particular case, it is fair and reasonable to do so.

### *Procedure relating to Capital Gains Tax*

#### **102. Returns and payment of tax**

(1) Subject to subsection (3), a person who accrues or derives a capital gain from the realisation of a chargeable asset shall, thirty days after the realisation, furnish the Commissioner with a return in writing containing the following information:

- (a) the description and location of the chargeable asset,
- (b) the cost base of the asset immediately prior to the realisation and how that cost base is calculated,
- (c) the consideration received by that person from the realisation,
- (d) the amount of a capital gain and tax payable with respect to that capital gain and tax,
- (e) the full name and address of the new owner of the asset, and
- (f) any other information prescribed by Regulations made under section 114.

(2) Subject to subsection (3), a person who brings into or receives in the Republic a capital gain of the type referred to in subsection (2) of section 95 shall, within thirty days, furnish the Commissioner with a return in writing containing the following information:

- (a) the amount of the capital gain brought into or received in the Republic and tax payable with respect to that amount, and
- (b) any other information prescribed by Regulations made under section 114.

(3) Subsections (1) and (2) do not apply where the capital gain referred to in those subsections together with any other capital gains from the realisation of chargeable assets referred to in

- (a) subsection (1) of section 95 accruing to or derived by, and
- (b) subsection (2) of section 95 brought into or received in the Republic by,

that person during the same year of assessment, does not exceed in total fifty currency points.

(4) Where a person is required to furnish a return under subsection (1) or (2), that person shall remit to the Commissioner the amount of tax calculated as payable and the payment of tax is due at that time.

#### **103. Assessments and application of income tax procedure**

(1) Subject to subsection (2), the Commissioner shall, based on a person's return furnished under section 102 and on any other information available, make an assessment of the amount of the capital gain of that person and the tax payable on that amount within one year from the date the return is furnished.

(2) Where section 78 applies to a person and that person furnishes a return under section 102, the Commissioner is deemed to have made an assessment of the capital gain of that person and the tax payable on that assessment, being those respective amounts shown in the return.

(3) Except to the extent that they are inconsistent with section 102 and subsections (1) and (2) of this

section, sections 72 to 79 apply, with the necessary modifications to give full effect to sections 95 to 104 to returns and assessments under that section and those subsections as though

- (a) references to a return of income were replaced with references to a return under section 102, and
- (b) references to chargeable income were replaced with references to capital gains liable to charge under section 95.

### *Interpretation*

#### **104. Definitions**

(1) For the purposes of sections 95 to 103,

**“amounts received or receivable”** from the realisation of a chargeable asset means money and the market value of a property received or to be received in respect of the realisation;

**“capital gain”** with respect to the realisation of a chargeable asset means the amount computed in accordance with section 98;

**“costs incurred”** in acquiring ownership of a chargeable asset means money paid and the market value of a given property;

**“owner”** with respect to a chargeable asset means,

- (a) in the case of an asset held by a partnership, the partners, and
- (b) in the case of an asset held by a company or body of persons, that company or that body only;

**“tax”** means tax levied under sections 95 to 103.

(2) Section 34 applies for the purposes of sections 95 to 103.

## PART THREE

### *Gift Tax*

#### *Imposition of Tax*

#### **105. Imposition of tax**

(1) Subject to subsection (2), gift tax at the rate specified in the Fourth Schedule is payable by a person on the total value of taxable gifts received by that person by way of a gift within a year of assessment.

(2) The total value referred to in subsection (1) does not include the value of a taxable gift received

- (a) by that person under a will or on an intestacy,
- (b) by that person from that person’s spouse, child, parent, aunt, uncle, nephew, or niece,
- (c) by a religious body which uses the gift for the benefit of the public or a section of the public, or

- (d) for charitable or educational purposes.

#### *Taxable Gift*

### **106. Taxable gift**

For the purposes of sections 105 to 110, “**taxable gift**” means any of the following assets situated in the Republic:

- (a) buildings of a permanent or temporary nature;
- (b) land;
- (c) shares, bonds and any other securities;
- (d) money, including foreign currency;
- (e) business and business assets; and
- (f) part of, or a right or an interest in, to, or over any of the assets referred to in paragraphs (a), (b), (c), (d) and (e).

#### *Valuation*

### **107. Valuation**

For the purposes of section 105, the value of a taxable gift is the market value of the gift at the time of the receipt.

#### *Procedure relating to Gift Tax*

### **108. Returns and payment of tax**

(1) Subject to subsection (2), a person who receives a taxable gift shall, within thirty days of receipt, furnish the Commissioner with a return in writing containing the following information:

- (a) the description and location of the taxable gift,
- (b) the total value of the gift, how it is calculated and tax payable with respect to that gift,
- (c) the full name and address of the donor of the gift, and
- (d) any other information required by the Commissioner.

(2) Subsection (1) does not apply where the gift referred to in that subsection together with any other taxable gifts received by that person during the same year of assessment does not exceed in total fifty currency points.

(3) Where a person is required to furnish a return under subsection (1), that person shall remit to the Commissioner the amount of tax calculated as payable and the payment of tax is due at that time.

### **109. Assessments and application of income tax procedure**

(1) Subject to subsection (2), the Commissioner shall, based on a person’s return furnished under section 108 and on any other information available, make an assessment of the value of the taxable gift

received by that person and the tax payable thereon within one year from the date the return is furnished.

(2) Where section 78 applies to a person and that person furnishes a return under section 108, the Commissioner is deemed to have made an assessment of the value of the taxable gift received by that person and the tax payable on that assessment are those respective amounts shown in the return.

(3) Except to the extent that they are inconsistent with section 108 and subsections (1) and (2) of this section, sections 72 to 79 shall apply, with the necessary modifications to give full effect to sections 105 to 110, to returns and assessments under that section and those subsections as though

- (a) references to a return of income were replaced with references to a return under section 108, and
- (b) references to chargeable income were replaced with references to gifts liable to charge under section 105.

### *Interpretation*

#### **110. Definitions**

(1) For the purposes of sections 107 to 109,

“**aunt**” means parent’s sister;

“**gift**” with respect to the receipt of a taxable gift means a receipt without consideration or for inadequate consideration;

“**nephew**” or “**niece**” means the child of a parent’s sister or brother;

“**tax**” means tax levied under sections 105 to 109;

“**taxable gifts**” has the meaning in section 106;

“**total value**” has the meaning in section 105;

“**uncle**” means a parent’s brother.

(2) For the purposes of sections 105 to 109, an unincorporated body of persons is treated as having legal personality and receiving the beneficial interest in the taxable gifts received by it by way of a gift.

## PART FOUR

### *General Provisions*

#### *International*

#### **111. Double taxation arrangements**

(1) To the extent that the terms of an international arrangement which has been ratified by Parliament under article 75 of the Constitution are inconsistent with the provisions of this Act, apart from section 34, sections 69 to 71, section 96, and subsection (4) of this section, the terms of the international arrangement shall prevail over the provisions of this Act.

(2) Where an international arrangement provides for reciprocal assistance in the collection of taxes and the Commissioner has received a request from the competent authority of another country pursuant to

that arrangement for the collection from a person in Ghana of an amount due by that person under the tax laws of that other country, the Commissioner may, by notice in writing, require that person to pay the amount to the Commissioner by the date specified in the notice for transmission to the competent authority of that other country.

(3) Where a person fails to comply with a notice under subsection (2), the amount in question may be recovered for transmission to the competent authority of that other country as if it were tax due and payable by that person under this Act.

(4) Where an international arrangement provides that income accruing in or derived from Ghana or some other amount is exempt from Ghanaian tax or is subject to a reduction in the rate of Ghanaian tax, the benefit of that exemption or reduction is not available to a person who, for the purposes of the arrangement, is a resident of the other contracting state where fifty percent or more of the underlying ownership of that person is held by an individual or individuals who are not residents of that other contracting state for the purposes of the arrangement.

(5) The Minister responsible for Finance may make Regulations which are consistent with an international arrangement under section 114 for carrying out the provisions of that international arrangement.

(6) In this section, “**international arrangement**” includes

- (a) an agreement with a foreign government providing for the relief of international double taxation and the prevention of fiscal evasion; and
- (b) an agreement with a foreign government providing for reciprocal administrative assistance in the enforcement of tax liabilities.

#### *Anti-avoidance*

### **112. General anti-avoidance rule**

(1) For the purposes of determining liability to tax under this Act, the Commissioner may 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,

- (a) fictitious or does not have a substantial economic effect, or
- (b) the form of which does not reflect its substance.

(2) For the purpose of subsection (1),

“**arrangement**” means an arrangement, action, agreement, a course of conduct, promise, transaction, an understanding, or undertaking, whether express or implied, whether or not enforceable by legal proceedings and whether unilateral or involving more than one person;

“**tax avoidance scheme**” includes an arrangement, one of the main purposes of which is the avoidance or reduction of liability to tax.

## PROCEDURE

### *Administration*

*Commissioner of Internal Revenue*

**113. Commissioner of Internal Revenue**

(1) For the purposes of this Act, the Commissioner means the Commissioner of Internal Revenue appointed under the Internal Revenue Service Act, 1986.7(38)

(2) The Commissioner is responsible for the administration of this Act and shall pay into the Consolidated Fund moneys due to the Service under this Act.

(3) Subject to subsection (4), the Commissioner may by notice in the *Gazette* or in writing authorise a person within or outside the Republic to perform or to assist in the performance of a function imposed on the Commissioner by this Act.

(4) The Commissioner shall not delegate the power to

- (a) determine a matter or do a thing required to be determined or done under subsection (4) of section 2 and subsection (2) of section 45;
- (b) exempt a person from the provisions of subsection (2) of section 84;
- (c) compound an offence under section 155, other than to the Solicitor of the Service; or
- (d) remit taxes, interest, or penalties under section 158.

(5) Subject to subsection (4), the Commissioner may delegate to

- (a) a Deputy Commissioner or an Assistant Commissioner of Internal Revenue and a Chief, Principal, or Senior Inspector of Taxes
  - (i) the power to extend the date for payment of or vary the amount of instalments under section 80;
  - (ii) this power of delegation other than with respect to matters referred to in subsection (4); and
  - (iii) the authorisation of an officer under section 124 or 125; and
- (b) an officer appointed by the Service, including an officer referred to in paragraph (a), any of the functions conferred or imposed on the Commissioner under this Act which is, or are not mentioned in subsection (4) or paragraph (a) of this subsection.

(6) Subject to the provisions of this Act and Regulations made under it, the Commissioner may in writing give administrative directives as he considers necessary for the administration and implementation of the provisions of this Act.7a(39)

*Official Documentation*

**114. Regulations**

(1) The Minister responsible for Finance may, by legislative instrument, make Regulations

- (a) for matters authorised to be made or prescribed under this Act;
- (b) exempting a person, class of persons or an income from tax;
- (c) amending a provision of the Schedules or a monetary amount set out in this Act; and

- (d) for the better carrying into effect of the provisions of this Act.
- (2) Without prejudice to the general effect of subsection (1), Regulations made under that subsection may
  - (a) require a person or class of persons to deduct from an amount payable by that person or class of persons to any other person an amount calculated at the prescribed rate, and pay that amount to the Commissioner;
  - (b) require a person or class of persons to pay tax to the Commissioner for a year of assessment in amounts calculated at the prescribed rate; and
  - (c) provide for the time of payment, manner of ascertaining, and recovery of the amounts referred to in paragraphs (a) and (b) and any other matter incidental to the matters referred to in those paragraphs.

### **115. Practice notes**

- (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 Internal Revenue Service, the Commissioner may issue practice notes setting out the Commissioner's interpretation of this Act.
- (2) A practice note is binding on the Commissioner until revoked.
- (3) A practice note is not binding on persons affected by this Act.

### **116. Private rulings**

- (1) The Commissioner may, on an application in writing by a person, issue to that person a private ruling setting out the Commissioner's position regarding the application of this Act to that person with respect to a transaction proposed or entered into by that person.
- (2) Where a person issued with a ruling under subsection (1) makes, prior to issue of the ruling,
  - (a) a full and true disclosure to the Commissioner of all aspects of the transaction relevant to the ruling, and
  - (b) the transaction proceeds in all material respects as described in that person's application for the ruling,

the ruling shall be binding on the Commissioner with respect to the application of this Act to that person with respect to the transaction.

- (3) Where there is an inconsistency between a practice note and a private ruling, priority is given to the terms of the private ruling.

### **117. Forms and notices**

- (1) The Commissioner may specify the form of claims, forms, notices, returns, statements, and any other documents required under this Act which shall contain the information required for the efficient administration of this Act.
- (2) The Commissioner shall make the documents referred to in subsection (1) available to the public at the offices of the Internal Revenue Service and at any other locations or by any other medium determined by the Commissioner.

### **118. Tax clearance certificate**

(1) An alien who has been resident in the Republic or who, not being a person so resident, has a tax liability due under this Act or has income which accrued in or was derived from the Republic with respect to which that alien is chargeable to tax under sections 1 to 94, shall not depart from the Republic unless that alien produces to the immigration officer at the port of departure a tax clearance certificate.

(2) The Commissioner of Customs, Excise and Preventive Service shall not permit an importer or any other person to clear goods in commercial quantities or meant for commercial purposes from a port or a factory in the Republic unless the importer or the other person produces to the Commissioner 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.

(3) Where an authority or a person is empowered by an enactment to effect the registration of a document conferring title to land, that authority or person shall not effect the registration of that 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.

(4) A tax clearance certificate issued under this section is valid for the period and for the purposes determined by the Commissioner.

(5) Persons who discharge their tax obligations 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 section, and the certificate is not for a specific purpose, the person enjoined to require the production shall first inspect the original certificate and thereafter demand and retain a copy of the certificate.

(7) For the purposes of this section,

“**immigration officer**” has the meaning assigned to it in the Aliens Act, 19637b(40) (Act 160);

“**tax clearance certificate**” means a certificate issued by the Commissioner to a person stating that a tax is not due under this Act by that person in respect of the periods stated in the certificate or that that person has made arrangements satisfactory to the Commissioner for the payment of the tax due.

### **119. Tax identification number**

(1) For the purpose of identifying persons subject to tax under this Act, the Commissioner may issue to a person a tax identification number.

(2) A person shall show the tax identification number in a return, notice or any other document used for the purposes of this Act.

### **120. Service of notices and other documents**

(1) Unless otherwise provided in this Act, a notice or any other document required or authorised by this Act to be served

(a) on a person being a resident individual, other than in a representative capacity, is considered sufficiently served if

(i) personally served on that person;

- (ii) left at that person's usual or last known place of abode, office, or place of business in the Republic; or
  - (iii) sent by registered post to that place of abode, office, or place of business, or to that person's usual or last known address in the Republic; or
- (b) on any other person, is considered sufficiently served if
  - (i) it is left at or sent by registered post to the registered office of that person or that persons address for service of notices under this Act; or
  - (ii) in the absence of that office or address, it is personally served on or sent by registered post to the usual or last known business or private address of a nominated officer of that person; or
  - (iii) in the absence of that office or address, it is left at or sent by registered post to the usual or last known business, office or other address of that person.

(2) Where a notice or any other document is served by registered post it shall be treated as served on the day after the day on which the addressee of the registered letter containing the notice would have been informed in the ordinary course that the letter is available.

(3) A notice or any other document issued, served or given by the Commissioner under this Act is sufficiently authenticated if the name or title of the Commissioner, or authorised officer, is signed or written on the notice or document.

(4) For the purpose of this section,

**“nominated officer”**,

- (a) in the case of a partnership, means a partner or manager of the partnership;
- (b) in the case of a company, means a director or manager of the company; and
- (c) in the case of a body of persons, means a manager of the body;

**“person”** includes a partnership.

## **121. Document containing a mistake**

(1) Where the Commissioner is satisfied that a document issued by the Commissioner contains a mistake that does not involve a dispute as to the interpretation of this Act or facts of a particular case, the Commissioner may, for the purposes of rectifying the mistake, amend the document any time before the expiry of two years from the date of issuing the document.

(2) For the purposes of this section, **“document”** includes an assessment, ruling, notice, or certificate.

### *Records and Information Collection*

## **122. Accounts and records**

(1) Unless otherwise authorised by the Commissioner, a person liable to tax under this Act other than an employee with respect to his employment income shall maintain in the Republic the necessary records to explain the information to be provided in a return or in any other document to be furnished to the Commissioner under this Act or to enable an accurate determination of the tax payable by that person.

(2) Where a person does not maintain records as required by subsection (1), the Commissioner may

adjust that person's liability to tax in a manner that is consistent with the intention of this Act.

(3) The records referred to in this section shall be retained for a period of not less than six years unless the Commissioner otherwise specifies in writing.

(4) For the purposes of this section, the records to be maintained by a business shall include a record of the receipts and payments, the revenue and expenditure, and the assets and liabilities of the business.

### **123. Currency conversion**

(1) Amounts taken into account under this Act shall be calculated in cedis.

(2) Where an amount taken into account under this Act is in a currency other than cedis, the amount shall be converted to cedis at the Bank of Ghana Inter-Bank Exchange rate applying between the currency and the cedi on the date that the amount is accrued, derived, incurred or otherwise taken into account for tax purposes.

### **124. Access to books, records, and computers**

(1) For the purposes of administering this Act, the Commissioner, or an officer authorised in writing by the Commissioner,

- (a) shall have at all times and without prior notice full and free access to the premises, place, property, book, record or computer;
- (b) may make an extract or copy from a book, record or computer-stored information to which access is obtained under paragraph (a);
- (c) may seize a book, record or any other document that, in the opinion of the Commissioner 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 a person's tax liability or for a proceeding under this Act;
- (e) may, where a hard copy or computer disk of information stored on a computer is not provided, seize and retain the computer for as long as is necessary to copy the information required,

and for the purposes of paragraphs (a) to (e), may search a person entering or leaving the premises or place.

(2) An officer shall not exercise the powers under subsection (1) without authorisation in writing from the Commissioner and the officer shall produce the authorisation to the occupier of the premises or place to which the exercise of powers relates.

(3) For the purposes of this section, the Commissioner 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 powers under subsection (1) relates shall provide reasonable facilities and assistance for the effective exercise of the powers.

(5) A person whose books, records or computer have been removed and retained under subsection (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.

(6) The records, books or computers removed and retained under subsection (1) shall be signed for by

the Commissioner or an authorised officer and the Commissioner shall return them to the owner as soon as is practicable after the Commissioner's investigation of that person's affairs and the related proceedings have been concluded.

(7) This section has effect despite a rule of law relating to privilege or the public interest with respect to the production of, or access to, the documents.

(8) For the purposes of this section, "**occupier**" in relation to premises or a place includes the owner, manager, or any other person on the premises or place.

## **125. Notice to obtain information or evidence**

(1) The Commissioner 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 or by an officer authorised by the Commissioner, concerning the tax affairs of that person or any other person and, for that purpose, the Commissioner or an authorised officer may require the person examined to produce a book, record or computer-stored information in the control of that person.

(2) Where the notice requires the production of a book, record or computer-stored information, it is sufficient if the book, record or computer-stored information is described with reasonable certainty in the notice.

(3) A person to be examined on oath under paragraph (b) of subsection (1) is entitled to legal or any other representation throughout the examination.

(4) A notice issued under this section shall be served by, or at the direction of, the Commissioner by a signed copy delivered by hand to the person to whom it is directed or left at that person's last and usual place of business or abode.

(5) This section has effect despite a rule of law or enactment in relation to the production of, or access to, the documents.

## **126. Books and records not in English language**

Where a book, record or computer-stored information referred to in section 122, 124, or 125 is not in English, the Commissioner may, by notice in writing, require the person keeping the book, record or computer-stored information to provide, at that person's expense, a translation into English by a translator approved by the Commissioner.

## **127. Official secrecy**

(1) A person appointed under, or employed in carrying out a provision of this Act shall regard and deal with the documents and information which come to that person's possession or knowledge in connection with the performance of functions under this Act as secret, and shall not disclose an information or a document except in accordance with this Act or under an order of a superior court.

(2) This section does not 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 duties;
- (c) the Auditor-General or a person authorised by the Auditor-General, where the disclosure is necessary for the performance of official duties; or
- (d) the competent authority of the government of another country with which Ghana 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 receiving a document and an information under subsection (1) or (2) shall keep them secret under the provisions of this section, except to the minimum extent necessary to achieve the purpose for which the disclosure is necessary. 7c(41)

### *Dispute Resolution*

#### *A: Objections and Appeals*

#### **128. Objection to assessment**

(1) A person who is dissatisfied with an assessment made under this Act may lodge an objection to the assessment with the Commissioner within thirty days of the service of the notice of assessment or, in the case of a provisional assessment under section 76, within nine months of the commencement of the basis period to which the provisional assessment relates.

(2) An objection to an assessment shall be in writing and state precisely the grounds on which it is made.

(3) The Commissioner may, on an application in writing by an objector, extend the time for lodging an objection where the Commissioner is satisfied that the delay in lodging the objection is due to the objector's absence from the Republic, sickness or any other reasonable cause.

(4) After the determination of the objection, the Commissioner may allow the objection in whole or part and amend the assessment accordingly, or disallow the objection.

(5) As soon as is practicable after allowing or disallowing an objection, the Commissioner shall serve the objector with notice of the decision.

(6) Where a decision has not been made by the Commissioner within ninety days after the objection was lodged with the Commissioner, the objector may, by notice in writing to the Commissioner, elect to treat the Commissioner as having made a decision to disallow the objection.

(7) Where an objector makes an election under subsection (6), the objector is treated as having been served with a notice of the disallowance on the date the objector's election is lodged with the Commissioner.

#### **129. Appeal to the High Court**

(1) A person dissatisfied with an objection decision may appeal against the decision to the High Court.

(2) An appeal under subsection (1) shall be made by lodging a notice of appeal 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 after the date specified in subsection (2) if that person proves to the satisfaction of the High Court that the delay in lodging the notice of appeal is due to that person's absence from the Republic, sickness or any other reasonable cause and that there has not been an unreasonable delay on that person's part.

(4) A person who has lodged a notice of appeal with the Registrar of the High Court under subsection (2) or (3) shall, within five working days of doing so, serve a copy of the notice of appeal on the Commissioner.

(5) The High Court may confirm, reduce, increase or annul the assessment on which the decision is based or make an appropriate order.

(6) An appeal against a decision of the Commissioner shall be instituted against the Attorney-General in accordance with article 88 (5) of the Constitution.

### **130. Appeal to the Court of Appeal and to the Supreme Court**

(1) The Commissioner or the appellant may appeal against the decision of the High Court made under subsection (5) of section 129 to the Court of Appeal on a matter of law only.

(2) An appeal against a decision of the Court of Appeal under subsection (1) lies as of right to the Supreme Court.

(3) An appeal under subsection (1) or (2) shall be made within thirty days after the decision to which it pertains.

### **131. Payment of tax**

(1) Where a person has lodged a notice of objection to a notice of assessment under section 128, an amount of thirty per centum of the amount payable as contained in the notice of assessment shall be paid pending the determination of the objection and an appeal.<sup>7d(42)</sup>

(2) An application, action or appeal shall not be entertained by a Court in respect of an objection under section 128 unless the person to whom the decision relates has paid the amount specified<sup>7e(43)</sup> under subsection (1) of this section.

(3) Where the payment of a tax has been held over pending an objection or appeal, a tax outstanding under the assessment as determined by the Commissioner or objection on appeal, shall be payable within thirty days from the date of service of the notice of the decision of the Commissioner or the date of the decision of the Court.

*B: Proof*

### **132. Burden of proof**

In an objection to an assessment or on an appeal, under section 129 or 130, the onus is on the person assessed to prove, on the balance of probabilities, the extent to which the assessment made by the Commissioner is excessive or erroneous.

### **133. Documents**

(1) A document purporting to be made, issued or executed under this Act,

(a) shall not be quashed or deemed to be void or voidable for want of form, or

(b) shall not be affected by reason of a mistake, defect or an omission in the document, if it is, in substance and effect, in conformity with this Act and the person assessed or intended to be assessed or affected by the document is designated in it according to common intent and understanding.

(2) For the purposes of subsection (1), “document” includes an assessment, a ruling, notice, or certificate.

(3) Where the Commissioner or an authorised officer makes a copy of a book, record or computer-stored information or part of it under paragraph (b) of subsection (1) of section 124 and the copy is certified by the Commissioner or the officer as a true copy, the copy shall be admissible in evidence before a Court and have the same probative value as the original book, record, or computer-stored information if it had been proved in the ordinary way.

### *Compliance*

#### *A: Collection*

### **134. Due date and payment of tax**

(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) Subject to this Act, tax due in an assessment shall be paid by the person assessed,

- (a) in the case of a person subject to section 78, on the due date for furnishing of the return of income to which the assessment relates;
- (b) in the circumstances specified in subsection (7) of section 72, on the date specified in the assessment;
- (c) in the case of tax payable by instalments or by withholding, at the time provided for in sections 80 to 94; or
- (d) in any other case, within thirty days from the date of service of the notice of assessment.

(3) On written application by the person assessed, the Commissioner may, where good cause is shown, allow for the payment of tax

- (a) due on assessment, or
- (b) due by way of payment under subsection (4) of section 102 or subsection (3) of section 108,

by instalments of equal or varying amounts as the Commissioner may determine having regard to the circumstances of the case.

(4) Where tax is permitted to be paid by instalments under subsection (3) and there is default in the payment of the instalment, the whole balance of the tax outstanding shall become immediately payable.

(5) Permission under subsection (3) to pay tax by instalments does not preclude liability for interest arising under section 143 on the unpaid balance of tax due.

### **135. Tax as debt due to the Service**

(1) Tax, when it becomes due and payable, is a debt due to the Service and is payable to the Commissioner in the manner and at the place prescribed.

(2) Tax that has not been paid when it is due and payable, may be sued for and recovered in a Court by the Commissioner with full costs of suit from the person sued.

### **136. Collection of tax by distress**

(1) The Commissioner may recover the unpaid tax by distress proceedings against the moveable property of a person liable to pay tax, referred to as the “tax debtor”, by issuing an order in writing specifying the person against whose property the proceedings are authorised, the location of the property, and the tax liability to which the proceedings relate; and may require a police officer to be present while distress is being executed.

(2) For the purposes of executing distress under subsection (1), the Commissioner may, at any time, enter any house or premises described in the order authorising the distress proceedings.

(3) The property on which distress is levied under this section, other than perishable goods, shall be kept for ten days either at the premises where the distress is levied or at any other place that the Commissioner may consider appropriate, at the cost of the tax debtor.

(4) Where the tax debtor does not pay the tax due, together with the cost of distress,

(a) in the case of perishable goods, within a period that the Commissioner considers reasonable having regard to the condition of the goods, or

(b) in any other case, within ten days after the distress is levied, the property distrained may be sold by public auction or in any other manner directed by the Commissioner.

(5) The proceeds of a disposal under subsection (4) shall be applied by the auctioneer or seller towards the cost of taking, keeping and selling the property distrained on, then towards the tax due and payable, and the remainder of the proceeds, shall be given to the tax debtor.

(6) This section does not preclude the Commissioner from proceeding under section 135 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.

(7) The costs incurred by the Commissioner in respect of a distress may be recovered by the Commissioner from the tax debtor and the provisions of sections 134 to 159 shall apply as if the costs were tax due and payable.

(8) A property distrained under this section shall be identified by the pasting or hanging of a piece of ribbon or cloth determined by the Commissioner to or on a conspicuous place of the property.

### **137. Security on landed property for unpaid tax**

(1) Where a person who is the owner of land or buildings situated in the Republic fails to pay tax when it is due and payable, the Commissioner may, by notice in writing, notify 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 section 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 subsection (1), the Commissioner may, by a notice of direction in writing, 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 subsection (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 a 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) On receipt of the whole of the amount of tax secured under subsection (3), the Commissioner shall serve notice on the Chief Registrar cancelling the notice of direction made under subsection (2), and the Chief Registrar shall, without fee, record the cancellation, at which time the direction shall cease to have effect.

### **138. Recovery of tax from person owing money to tax debtor**

(1) Subject to subsection (2), where a tax debtor, has not paid tax which is due, the Commissioner 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 on the date specified in the notice, up to the amount of tax due.

(2) The Commissioner may only issue a notice under subsection (1) with respect to tax which is due but not currently payable where the Commissioner reasonably believes that the tax debtor will not pay the tax by the date on which it becomes payable.

(3) The date specified in the notice under subsection (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 the notice is served under subsection (1), the Commissioner shall also serve a copy of the notice on the tax debtor.

(5) Where a person served with a notice under subsection (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 accordingly in writing stating the reasons for the inability to comply.

(6) Where a notice is served on the Commissioner under subsection (5), the Commissioner may, by notice in writing,

- (a) accept the notification and cancel or amend the notice issued under subsection (1), or
- (b) reject the notification.

(7) A person dissatisfied with a decision under subsection (6) may only challenge the decision under the objection and appeal procedure in sections 128 to 133.

(8) A person making a payment pursuant to a notice under subsection (1) is deemed to have been acting under the authority of the tax debtor and of any other persons concerned and is hereby indemnified in respect of the payment against proceedings, civil or criminal, and processes, judicial or extra-judicial, despite any provisions to the contrary in a written law, contract or agreement.

(9) The provisions of sections 113 to 159 apply to an amount due under this section as if it were tax due and payable.

### **139. Duties of receivers**

(1) A receiver shall, in writing, notify the Commissioner within thirty days of being appointed to the position of receiver or of taking possession of an asset situated in the Republic, whichever occurs first.

(2) The executor of a deceased individual's estate and the legal representative of an incapacitated person shall complete and submit the returns required under this Act of the deceased or incapacitated person whether or not the return is required with respect to matters occurring prior to the appointment of the executor or legal representative.

(3) The Commissioner may, in writing, notify a receiver of the amount which appears to the Commissioner to be sufficient to provide for a tax which is or will become payable by the person whose assets came into the possession of the receiver.

(4) A receiver

(a) shall realise out of the assets which come into the receiver's possession under the receivership sufficient moneys to set aside the amount notified by the Commissioner under subsection (3), or the lesser amount subsequently agreed to by the Commissioner, and

(b) is liable to the extent of the amount set aside for the tax of the person whose assets come into the possession of the receiver.

(5) A receiver is personally liable to the extent of the amount required to be set aside under subsection (4) for the tax referred to in subsection (3) if and to the extent that the receiver fails to comply with the requirements of this section.

(6) The amount of tax notified by the Commissioner under subsection (3) shall become a debt due to the Service within the meaning of this Act and shall have priority over any other debts of the tax debtor, despite anything contained in any other enactment.

(7) For the purposes of this section, "receiver" includes a person who, in respect to an asset situated in the Republic, is

(a) a liquidator of a company,

(b) a receiver appointed out of Court or by a Court,

(c) a trustee for a bankrupt,

(d) a mortgagee in possession,

(e) an executor of a deceased individual's estate, or

(f) a person conducting the affairs of an incapacitated person.

### **140. Recovery from agent of non-resident**

(1) The Commissioner 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 a 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 section.

(3) The tax payable in respect of an amount included in ascertaining the income of a non-resident partner under section 42 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 49 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 making a payment pursuant to a notice under subsection (1) is deemed to have been acting under the authority of the non-resident person and of any other persons concerned and is hereby indemnified in respect of the payment against proceedings, civil or criminal, and processes, judicial or extra-judicial, despite any provisions to the contrary in a written law, contract or agreement.

(6) The provisions of this Division apply to an amount due under this section as if it were tax due and payable.

### *B: Interest and Penalties*

#### **141. Failure to maintain records**

A person who deliberately fails to maintain proper records for a year of assessment in accordance with section 122 is liable to pay a penalty equal to five percent of the amount of tax payable by that person for the year.

#### **142. Failure to furnish return**

A person who fails to furnish a return within the time required under this Act is liable to pay a penalty equal to Bank of Ghana rediscount rate plus five percent applied to the tax outstanding if the return had been furnished in accordance with this Act calculated for the period the return is outstanding.

#### **143. Failure to pay tax on due date**

(1) A person who fails to pay a tax, including an amount treated by this Act as if it were tax, on or before the due date for payment, is liable to pay interest at the Bank of Ghana rediscount rate plus five percent on the amount unpaid calculated from the date on which the tax became payable until the date on which payment is made.

(2) Interest charged in respect of a failure to comply with sections 87 or 88 is borne personally by the withholding agent and a part of it is not recoverable from the person who received the payment from which tax was or should have been withheld.

#### **144. Understating estimated tax payable by instalment**

A person to whom section 78 applies and whose estimate or revised estimate of chargeable income for a year of assessment under that section is less than ninety percent of that person's actual chargeable income assessed for that year is liable to pay a penalty equal to thirty percent of the difference between the tax calculated in respect of that person's estimate or revised estimate of chargeable income and the tax calculated in respect of ninety percent of that person's actual chargeable income for the year.

#### **145. Making false or misleading statements**

(1) A person who

(a) makes a statement to an officer of the Service that is false or misleading in a material

particular, or

- (b) omits from a statement made to an officer of the Service a matter or thing without which the statement is misleading in a material particular,

is liable to pay a penalty equal to,

- (c) where the statement or omission is made without reasonable excuse, double the underpayment of tax which may result if the inaccuracy of the statement were undetected, and
- (d) where the statement or omission is made knowingly or recklessly, triple the underpayment of tax which may result if the inaccuracy of the statement were undetected.

(2) A reference in this section to a statement made to an officer of the Service 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, a certificate, declaration, notification, return, an objection, or any 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 Service otherwise than pursuant to this Act;
- (d) in answer to a question asked of a person by an officer of the Service; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to an officer of the Service.

#### **146. Aiding and abetting**

A person who aids or abets another person to commit an offence of a type referred to under sections 148 to 153 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.

#### **147. Assessment of interest and penalties**

(1) The Commissioner shall make an assessment of the interest and penalties for which a person is liable under sections 141 to 146.

(2) Liability for interest and penalties under sections 141 to 146 is calculated separately with respect to each of those sections.

(3) The imposition of interest and penalties under sections 141 to 146 is in addition to any other tax imposed by this Act or fine imposed as a result of conviction of an offence under sections 148 to 153 and shall not relieve a person from liability to criminal proceedings in respect of that offence.

(4) Where an assessment has been made under this section, the Commissioner 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 section

- (a) are due and payable within thirty days from the day on which the person liable is served with the notice of assessment under subsection (4), and
- (b) are treated for the purposes of this Act as though they were tax.

*C: Offences*

**148. Failure to comply with Act**

Except as otherwise provided in this Act, a person who fails to comply with a provision of this Act commits an offence and is liable on summary conviction,

- (a) where the failure results or, if undetected, may result in an underpayment of tax in an amount exceeding one hundred currency points, to a fine of not less than twelve and half penalty units and not more than fifty penalty units; and
- (b) in any other case, to a fine of not less than two and half penalty units and not more than twelve and half penalty units.

**149. Failure to pay tax**

A person who without reasonable excuse fails to pay a 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 one hundred currency points to a fine of not less than twenty-five penalty units and not more than one hundred 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 the imprisonment,
- (b) in any other case, to a fine of not less than five penalty units and not more than twenty-five 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 the imprisonment.

**150. Making false or misleading statements**

(1) A person who,

- (a) makes a statement to an officer of the Service that is false or misleading in a material particular, or
- (b) omits from a statement made to an officer of the Service a matter or thing without which the statement is misleading in a material particular,

commits an offence and is liable on summary conviction

- (c) where the statement or omission is made without reasonable excuse,
  - (i) and if the inaccuracy of the statement were undetected may result in an underpayment of tax in an amount exceeding one hundred currency points, to a fine of not less than twenty-five penalty units and not more than one hundred 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 the imprisonment, and
  - (ii) in any other case, to a fine of not less than five penalty units and not more than

twenty-five 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 the imprisonment, or

- (d) where the statement or omission is made knowingly or recklessly
  - (i) and if the inaccuracy of the statement were undetected may result in an underpayment of tax in an amount exceeding 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 the imprisonment, and
  - (ii) 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 to both the fine and the imprisonment.

(2) A reference in this section to a statement made to an officer of the Service has the same meaning as in subsection (2) of section 145.

### **151. Impeding tax administration**

A person who without reasonable excuse,

- (a) obstructs or attempts to obstruct an officer of the Service in the performance of a function under this Act, or
- (b) otherwise impedes or attempts to impede the administration of the Act,

commits an offence and is liable on summary conviction to a fine of not less than twenty-five penalty units and not more than two hundred penalty units or to a term of imprisonment of not more than two years, or to both the fine and the imprisonment.

### **152. Offences by authorised and unauthorised persons**

(1) A person who,

- (a) being an officer or a person employed in carrying out a provision of this Act
  - (i) directly or indirectly asks for, or receives in connection with any of the officer's functions, 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 an act or a thing whereby the tax revenue is or may be defrauded or which is contrary to a provision of this Act or to the proper performance of the officer's function, 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 or to a term of imprisonment of not less than one year and not more than three years, or to both the fine and the imprisonment.

(2) A person who contravenes section 127 commits an offence and is liable on summary conviction to a fine not exceeding one hundred penalty units or to a term of imprisonment not exceeding one year, or to

both the fine and the imprisonment.

### **153. Aiding or abetting**

A person who aids or abets another person to commit an 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 (a) or (b) of subsection (1) of section 150 and if the inaccuracy of the statement were undetected may result in an underpayment of tax in an amount exceeding 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 the 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 to both the fine and the imprisonment.

#### *D: Entities*

### **154. Offences by entities**

(1) Subject to subsection (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 subsection (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 for the amount.

(3) Subsections (1) and (2) do not apply where,

- (a) the offence is committed without that person's knowledge or consent, 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 with respect to a liability under subsection (2) shall be indemnified by that entity with respect to the payment and that person may retain out of the money or property of that entity coming into the possession of that person an amount not exceeding the payment and that entity shall not have a claim against that person with respect to the retention.

(5) For the purposes of subsections (1) and (2), “**manager**” means,

- (a) in the case of a partnership, a partner or manager of the partnership or a person purporting to act in either of those capacities,
- (b) in the case of a company, a director, manager or officer of the company or a person purporting to act in any of those capacities, and
- (c) in the case of a body of persons, a manager or a person purporting to act in that capacity.

#### *E: Proceedings*

### **155. Compounding offences**

(1) Where a person commits an offence under this Act, other than of a kind referred to in section 152, the Commissioner 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, not exceeding the amount of the fine prescribed for the offence.

(2) The Commissioner may only compound an offence under subsection (1) if the person concerned admits in writing to the commission of the offence.

(3) Where the Commissioner compounds an offence under subsection (1) the order referred to in subsection (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 subsection (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 compounds an offence under subsection (1), the person concerned is not liable for prosecution or a penalty under sections 141 to 147 or sections 148 to 153 in respect of that offence.

### **156. Venue**

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 that person's usual place of residence or at a Court exercising jurisdiction over the area in which the office of the Commissioner having primary responsibility for that person's affairs under this Act is situated.

### **157. Amounts payable despite proceedings**

(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 sections 134 to 159, the production of a certificate signed by the Commissioner 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.

### **158. Remission**

(1) Where the Commissioner is of an 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 may remit in whole or part the tax due by that person.

(2) Where good cause is shown by a person liable for interest or penalty under sections 141 to 147, the Commissioner may remit in whole or in part an interest or a penalty charged under any of these sections whether before or after the related proceedings for an offence under sections 148 to 153 are commenced or concluded.

(3) The President 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.

### **159. Refunds and set-off**

(1) Where the Commissioner is satisfied that tax has been paid by a person, whether by withholding, instalments or otherwise, in excess of the person's tax liability to which the payment or payments relate, the Commissioner shall

- (a) apply the overpaid tax in reduction of an 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 Service under this Act, and
- (b) refund the remainder to that person within three months of becoming satisfied.

(2) Interest paid by a person under section 143 shall be refunded to that person to the extent that the tax to which the interest relates is found not to have been due and payable.

(3) Where the Commissioner is required to refund an amount of tax to a person as a result of a decision of a Court under sections 128 to 131, the Commissioner shall pay interest at Bank of Ghana rediscount 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 subsection (1), a person may apply for a refund under this section and the application shall be made to the Commissioner in writing within six years of the later of

- (a) the date on which the Commissioner 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 shall, within forty-five days of making a decision on a refund application under subsection (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 subsection (5) may only challenge the decision under the objection and appeal procedure in sections 128 to 131 as though the decision were an assessment.

## *Interpretation*

### *Residence*

#### **160. Resident individual**

(1) Subject to subsections (2) and (3), an individual is a resident individual for a year of assessment if that individual is

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

(2) An individual who is a resident individual under subsection (1) for the current year of assessment, but who was not a resident individual for the preceding year of assessment is treated as a resident individual in the current year of assessment only for the period commencing on the day that individual was first present in the Republic.

(3) An individual who is a resident individual for the current year of assessment, but who is not a resident individual for the following year of assessment is treated as a resident individual in the current year of assessment only for the period ending on the last day on which the individual is present in the Republic during the current year.

#### **161. Resident company**

A company is a resident company for a year of assessment if it is

- (a) incorporated under the laws of Ghana, or
- (b) has its management and control exercised in the Republic at any time during the year of assessment.

#### **162. Resident body of persons**

A body of persons is a resident body of persons for a year of assessment if it

- (a) is established in the Republic,
- (b) has a resident person as a manager at any time during the year of assessment, or
- (c) is controlled directly or indirectly by a resident person or persons at any time during the year of assessment.

#### **163. Resident partnership**

A partnership is a resident partnership for a year of assessment if, at any time during the year of assessment, a partner in the partnership is a resident person.

### *General Definitions*

#### **164. Associates**

(1) For the purposes of this Act, where a person, who is not an employee, acts in accordance with the directions, requests, suggestions or wishes of another person whether or not they are in a business relationship and whether or not those directions, requests, suggestions or wishes are communicated to the first-mentioned person, both persons are treated as associates of each other.

(2) Without limiting the generality of subsection (1), the following are treated as associates of each other:

- (a) an individual and a relative of the individual, unless the Commissioner is satisfied that neither individual acts in accordance with the directions, requests, suggestions or wishes of the other individual;
- (b) a person and a partner of that person, unless the Commissioner is satisfied that neither person acts in accordance with the directions, requests, suggestions or wishes of the other person; and
- (c) a person who is an entity and
  - (i) a person who, either alone or together with an associate or associates under another application of this section, controls or may benefit from fifty percent or more of the rights to income or capital or voting power of the entity, as the case requires, either directly or through one or more interposed entities, or
  - (ii) a person who, under another application of this section, is an associate of a person to whom subparagraph (i) applies.

#### **165. Calculation of amounts**

(1) *Repealed.7f(44)*

(2) For the purposes of this Act, one currency point is equivalent to ten thousand cedis.

(3) In this Act a penalty unit has the meaning assigned to it under the Fines (Penalty Units) Act, 2000 (Act 572).

#### **166. Underlying ownership**

In this Act, “**underlying ownership**”,

- (a) in relation to an entity, means an interest held in or over the entity directly or indirectly through one or more interposed entities by an individual or by an entity not ultimately owned by individuals, 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.

## 167. Definitions

In this Act, unless the context otherwise requires,

“**asset**” includes any kind of property, a legal right, an equitable right and goodwill and a part of an asset;

“**associate**” has the meaning in section 164;

“**best judgment**” in relation to the assessment of a chargeable income by the Commissioner means the discretion of the Commissioner to make an assessment in the absence of returns or in cases where the returns are incomplete or are rejected by the Commissioner;

“**body of persons**” includes a body of persons corporate or unincorporated, whether created or recognised under a law in force in the Republic or elsewhere, and

- (a) a trust, including an estate of a deceased individual and an incapacitated person’s trust, but not including a unit trust,
- (b) a co-operative, and
- (c) a government, a political subdivision of a government, and a public international organisation,

but does not include a company or partnership;

“**business**” includes a trade, profession or vocation, but does not include employment;

“**chargeable asset**” has the meaning in section 97;

“**citizen**” means a citizen of Ghana;

“**Commissioner**” has the meaning in section 113;

“**company**” means a company or corporation incorporated in the Republic or elsewhere;

“**consideration received**”, in relation to the realisation of a chargeable or depreciable asset has the meaning in section 100;

“**cost base**”, in relation to a chargeable or depreciable asset, has the meaning in section 99;

“**Constitution**” means the Constitution of the Republic of Ghana;

“**Court**” means a Court of competent jurisdiction;

“**debt obligation**” means an obligation to make a repayment of money to another person, including accounts payable and the obligations arising under deposits, debentures, stocks, treasury bills, promissory notes, bills of exchanges and bonds;

“**depreciable asset**” means an asset of the kind and class referred to in paragraph 2 of the Third Schedule;

“**endorsement fee**” means a payment made to a person for recommending a product in an advertisement launched to promote the sales of a new product or to promote sales at the expense of a competing product whether in electronic, print media or otherwise;

“**entity**” means a company, body of persons or partnership;

“**executor**” includes an executor, administrator or any other person administering the estate of a deceased person;

**“functions”** includes powers and duties;

**“incapacitated person”** includes an individual under the age of eighteen years and an individual who by reason of mental illness or insanity is incapable of managing her or his affairs;

**“interest”** includes

- (a) a payment, including a discount or premium, made under a debt obligation which is not a return of capital;
- (b) a swap or any other payments functionally equivalent to interest;
- (c) a commitment, guarantee or service fee paid in respect of a debt obligation or swap agreement; or
- (d) a distribution by a building society;

**“mutual fund”** means a public or external company incorporated solely to hold and manage securities or any other financial assets and which has made satisfactory arrangements for ensuring that if an invitation is made to the public to subscribe for its shares the price at which the shares are offered shall be based on the net value of its assets at the time of the offer without an addition except for a reasonable charge subject to section 37 (1) (b) of the Securities Industry Act, 1993(45) and is willing at any time to repurchase any of its shares from the holder at a price based on the net value of its assets at the time of the repurchase without a deduction except for a reasonable service charge;

**“partnership”** means an association of two or more individuals carrying on business jointly for the purpose of making profit;

**“payment”** includes an amount paid or payable in cash or kind, and any other means of conferring value or benefit on a person;

**“permanent establishment”** includes a place where a person carries on business, and

- (a) a place where a person carries on business through an agent, other than a general agent of independent status acting in the ordinary course of business;
- (b) a place where a person has, is using, or is installing substantial equipment or machinery; or
- (c) a place 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 such project;

**“person”** includes an individual, a company and a body of persons;

**“realisation”**, in relation to a chargeable or depreciable asset, has the meaning in section 96;

**“resident body of persons”** has the meaning in section 162;

**“resident company”** has the meaning in section 161;

**“resident individual”** has the meaning in section 160;

**“resident partnership”** has the meaning in section 163;

**“resident person”** means a resident individual, resident company, resident body of persons, the Government or a political subdivision of the Government;

**“Service”** means the Internal Revenue Service established under the Internal Revenue Service Act, 1986;9(46)

**“tax”** means a tax imposed under this Act and

- (a) amounts payable under sections 80 to 93;
- (b) amounts payable under sections 141 to 154;
- (c) amounts payable under sections 67, 102, and 108;

**“trust”** means an arrangement affecting property in relation to which there is a trustee;

**“trustee”** includes

- (a) a person appointed or constituted as a trustee by act of parties, by will, by order or declaration of a Court, or by operation of the law;
- (b) an executor, administrator, a tutor or curator;
- (c) a liquidator, receiver, trustee in bankruptcy or judicial manager;
- (d) a person having the administration or control of property subject to a trust, usufruct, *fideicommissum* or any other limited interest;
- (e) a person acting in a fiduciary capacity;
- (f) a person having, either in a private or official capacity, the possession, direction, control or management of a property of an incapacitated person; or
- (g) a person who manages assets under a private foundation or any other similar arrangement;

**“underlying ownership”** has the meaning in section 166;

**“unit trust”** means an arrangement whereby securities or any other charge, other than a charge to secure the debentures of one body corporate are vested in trustees and the beneficial interest in it is divided into units, subunits, or any other interests by whatever name called with a view to an invitation being made to the public to acquire those units or any of them; and

**“year of assessment”** has the meaning in section 24.

### *Repeals, Transitional Provisions and Commencement*

#### **168. Repeals**

(1) The following enactments or parts of enactments and Regulations made under those enactments are repealed:

- (a) Income Tax Decree, 1975 (S.M.C.D. 5),
- (b) Capital Gains Tax Decree, 1975 (N.R.C.D. 347),
- (c) Gift Tax Decree, 1975 (N.R.C.D. 348),
- (d) section 23, section 26, and paragraph (b) of section 27 of the Minerals and Mining Law, 1986 (P.N.D.C.L. 153),
- (e) Additional Profit Tax Law, 1985 (P.N.D.C.L. 122),
- (f) section 32 of the Social Security Law, 1991 (P.N.D.C.L. 247).

(2) A right or privilege acquired by a person under a repealed enactment ceases to exist on the date this Act comes into effect unless it is expressly provided in section 169 or in the Regulations made under

section 114 that the right or privilege is to remain in existence.

### **169. Transitional provisions**

(1) The repealed enactments continue to apply to years of assessment prior to the year of assessment in which this Act comes into operation.

(2) The appointments and authorisations made under the repealed enactments and subsisting at the date of commencement of this Act are deemed to be appointments and authorisations made under this Act.

(3) An arrangement between the Government and the government of a foreign country with a view to affording relief from double taxation made under section 20 of the Income Tax Decree, 1975 (S.M.C.D. 5) or its predecessor and which is still in force at 1st January, 2001 continues to have effect under section 111 of this Act.

(4) The forms and documents used in relation to the repealed enactment may continue to be used under this Act, and the references in those forms and documents to provisions of and expressions appropriate to the repealed enactment are taken to refer to the corresponding provisions and expressions of this Act.

(5) 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 enactment, and

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

(6) Sections 122 to 127 (relating to records and information collection), sections 128 to 131 (relating to objections and appeals), and sections 134 to 140 (relating to collection) apply with respect to assessments made on or after 1st January, 2001.

(7) Sections 141 to 147 (relating to interest and penalties) sections 148 to 153 (relating to offences), and section 154 (relating to entities) apply to tax due and to offences committed on or after 1st January, 2001.

(8) A person who has been granted approval to change that person's accounting period to a period of twelve months other than the calendar year under subsection (6) of section 11 of the Income Tax Decree, 1975 (S.M.C.D. 5) may use that period as that person's basis period under this Act unless the Commissioner determines otherwise under subsection (4) of section 24 of this Act.

(9) The Minister responsible for Finance may make Regulations under section 114 with respect to transitional measures related to the implementation of this Act.

### **170. Commencement**

Subject to section 169 this Act shall come into force for years of assessment commencing on or after 1st January, 2001.

**First Schedule**  
**RATES OF INCOME TAX**

PART ONE  
**RATES OF INCOME TAX UPON INDIVIDUALS**

[Section 1 (2)]

1. The income tax rates applicable to resident individuals are:

<i>Chargeable Income</i>	<i>Rate of Tax</i>
Not exceeding ₵1,200,000	Nil
Exceeding ₵1,200,000 but not exceeding ₵2,400,000	5% of the amount by which chargeable income exceeds ₵1,200,000
Exceeding ₵2,400,000 but not exceeding ₵5,400,000	₵60,000 plus 10% of the amount by which chargeable income exceeds ₵2,400,000
Exceeding ₵5,400,000 but not exceeding ₵24,000,000	₵360,000 plus 15% of the amount by which chargeable income exceeds ₵5,400,000
Exceeding ₵24,000,000 but not exceeding ₵48,000,000	₵3,150,000 plus 20% of the amount by which chargeable income exceeds ₵24,000,000
Exceeding ₵48,000,000	₵7,950,000 plus 30% of the amount by which chargeable income exceeds ₵48,000,000

2. The income tax rate applicable to non-resident individuals is 20%.

PART TWO  
**RATES OF INCOME TAX UPON COMPANIES**

[Section 1 (2)]

1. Subject to paragraph 3, the income tax rate applicable to companies (other than a company principally engaged in the hotel industry) are:

<i>Nature of income</i>	<i>Rate of Income Tax (for every cedi)</i>
Income from the export of non-traditional goods	8%
Other income	32.5%

2. The income tax rate applicable to a company principally engaged in the hotel industry is 25%.
3. The income tax rate applicable to income derived by a financial institution from a loan granted to a farming enterprise for use by that enterprise in the production of its income is 20%.
4. The income tax rate applicable to income derived by a financial institution from a loan granted to a leasing company for the use by that company for the funding of acquisition of assets for lease is 20%.
5. The income tax rate applicable to a company listed on the Ghana Stock Exchange is 30%.

6. The income tax rate applicable to a company's chargeable income from a manufacturing business (other than manufacturing business located in Accra or Tema) is:

<i>Location</i>	<i>Rate of Income Tax</i>
Manufacturing business located in regional capitals of Ghana	75% of the rate of income tax determined under paragraph 1
Manufacturing business located elsewhere in Ghana	50% of the rate of income tax determined under paragraph 1

7. In this Part, “**non-traditional goods**” means

- (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.

### PART THREE RATE OF TAX APPLICABLE TO BODIES OF PERSONS

[Section 1 (2)]

The income tax rate applicable to bodies of persons is 32.5%.

### PART FOUR WITHHOLDING TAX RATES ON PAYMENTS TO RESIDENT PERSONS

[Sections 2, 82, 83, and 84]

1. The rate of withholding tax applicable to interest payments to a resident person under section 82 is 10%.
2. The rate of tax applicable to dividends paid to a resident person under paragraph (a) of subsection (1) of section 2 and the rate of withholding tax applicable to such dividends paid under section 83 is 10%.
3. The rate of withholding tax applicable to payments under paragraph (b) of subsection (1) of section 2 and section 84 is
  - (a) in a case in which paragraphs (a) to (d) of subsection (1) of section 84 apply, 15%;
  - (b) in a case in which paragraph (e) of subsection (1) of section 84 applies, 7.5%; and
  - (c) in a case in which subsection (2) of section 84 applies, 5%.

### PART FIVE RATE OF NON-RESIDENT TAX

[Sections 3 (2) and 85]

The rate of tax applicable to a payment to a non-resident person or partnership under subsection (2) of section 3 and the rate of withholding tax applicable to such a payment under section 85 is

- (a) in the case of dividends and interest, 10%;
- (b) in the case of royalties, natural resource payments, and rents, 15%;
- (c) in the case of management and technical service fees, 20%.



**Third Schedule**  
**CAPITAL ALLOWANCES**

[Section 20]

**1. Capital allowances granted**

A person shall be granted capital allowances for each year of assessment in respect of depreciable assets owned by that person at the end of a basis period ending within the year and used in carrying on a business during that period.

**2. Classes of depreciable assets**

(1) A depreciable asset is an asset to the extent to which it is used in carrying on a business, which asset is likely to lose value because of wear and tear, obsolescence, or the effluxion of time, but does not include trading stock; and depreciable assets are classified as follows:

<i>Class</i>	<i>Assets Included</i>
1.	Computers and data handling equipment.
2.	(a) 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. (b) Assets referred to in subparagraph (3) in respect of long term crop planting costs.
3.	(a) Mineral and petroleum exploration and production rights; assets referred to in subparagraph (4) in respect of mineral and petroleum prospecting, exploration, and development costs. (b) Buildings, structures and works of a permanent nature used in respect of assets referred to in item (a) which are likely to be of little or no value when the rights are exhausted or the prospecting, exploration, or development ends, as the case requires. (c) Plant and machinery used in mining or petroleum operations.
4.	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.
5.	Buildings, structures, and works of a permanent nature other than those mentioned in class 3.
6.	Intangible assets, other than those mentioned in class 3.

(2) For the purposes of subparagraph (1), an asset is treated as used by the person who owns it in carrying on a business where

- (a) the asset is acquired by that person for the purposes of a business which that person intends to carry on and, subsequently, the asset is first used by that person in that business;
- (b) the asset has been used in the business but is in temporary disuse; or

- (c) the person leases the asset on an operating lease to another person who uses it in carrying on a business of that other person.

(3) Costs of a capital nature incurred by a person in the production of income from a business which is a timber concern or a large scale rubber, oil palm, or any other long term crop plantation in respect of planting vegetation from which timber, rubber, oil palm, or any other crops are derived are treated as if they were incurred in securing the acquisition of an asset that is used by that person in that production.

(4) Costs incurred by a person in the production of income from a business in respect of mineral and petroleum prospecting, exploration, and development are treated as if they were incurred in securing the acquisition of an asset that is used by that person in that production.

### 3. Class 1, 2, 3 and 4 depreciable assets

(1) A person's depreciable assets in classes 1, 2, 3 and 4 shall be placed into separate pools for each class of asset, and a capital allowance granted for each pool for a year of assessment with respect to each basis period of that person ending within the year calculated according to the following formula:

$$\frac{A \times B \times C}{365}$$

where,

- A is the written down value of the pool at the end of a basis period;
- B is the depreciation rate applicable to the pool; and
- C is the number of days in the period.

(2) The depreciation rate applicable to the pools of depreciable assets referred to in subparagraph (1) is

<i>Class</i>	<i>Rate</i>
1.	40%.
2.	30%.
3.	80% of the cost base of assets added to the pool during the basis period and 50% of the balance of the pool, if any.
4.	20%.

(3) The written down value of the pool at the end of the basis period is the total of

- (a) the written down value of the pool at the end of the preceding basis period after allowing for the capital allowance granted under subparagraph (1) with respect to that preceding period;
- (b) with respect to a pool of class 3 depreciable assets, 5% of the cost base of assets added to the pool during the preceding basis period; and
- (c) the cost base of assets added to the pool during the period,

reduced, but not below zero, with respect to each asset from the pool realised during the period by the consideration received from the realisation of the asset.

(4) Where the amount of consideration received by a person from the realisation during a basis period of an asset or assets from a pool exceeds the written down value of the pool at the end of the period disregarding that amount, the excess is included in ascertaining the person's income from the business in

which the asset or assets were used for the year of assessment in which the period ends.

(5) If the written down value of a pool at the end of a basis period, after allowing for the deduction under subparagraph (1) in respect of that period, is less than €50,000, a capital allowance is granted for the year of assessment in which the period ends for the amount of that written down value and that written down value shall be reduced to zero.

(6) Where all the assets in a pool are realised before the end of a basis period, a capital allowance is granted for the year of assessment in which the period ends for the amount of the written down value of the pool as at the end of that period.

(7) The cost base of a depreciable asset is added to a pool in the basis period in which the asset is first used in carrying on the business.

(8) For the purposes of this Schedule only, the cost base of a road vehicle, other than a commercial vehicle, shall not exceed €150 million.

(9) In this paragraph, “**commercial vehicle**” means

- (a) a road vehicle designed to carry loads of more than half a tonne or more than thirteen passengers; or
- (b) a vehicle used in a transportation or vehicle rental business.

#### 4. Class 5 and 6 depreciable assets

(1) A person shall be granted for a year of assessment a capital allowance for each class 5 depreciable asset with respect to a basis period ending within the year calculated using the following formula:

$$\frac{A \times B \times C}{365}$$

where,

- A is the cost base of the asset;
- B is the rate of 10%; and
- C is the number of days in the basis period.

(2) A person shall be granted for a year of assessment a capital allowance for each class 6 depreciable asset with respect to a basis period ending within the year calculated using the following formula:

$$\frac{A}{D} \times \frac{C}{365}$$

where,

- A is the cost base of the asset;
  - C is the number of days in the basis period; and
  - D is the useful life of the asset in whole years calculated at the time the asset is acquired by the person.
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## Endnotes

### **1 (Popup - Footnote)**

1a. Inserted by section 1 (*a*) of the Internal Revenue (Amendment) Act, 2007 (Act 731).

### **2 (Popup - Footnote)**

1b. Inserted by section 1 of the Internal Revenue (Amendment) Act, 2006 (Act 700) and amended by section 1 (*b*) of the Internal Revenue (Amendment) Act, 2007 (Act 731).

### **3 (Popup - Footnote)**

1c. Substituted by section 2 (*a*) of the Internal Revenue (Amendment) Act, 2006 (Act 700) and amended by section 2 of the Internal Revenue (Amendment) Act, 2007 (Act 731).

### **4 (Popup - Footnote)**

1d. Amended by section 2 (*b*) of the Internal Revenue (Amendment) Act, 2006 (Act 700).

### **5 (Popup - Footnote)**

1e. Amended by section 2 (*c*) of the Internal Revenue (Amendment) Act, 2006 (Act 700).

### **6 (Popup - Footnote)**

1f. Amended by section 4 of Act 700.

### **7 (Popup - Footnote)**

1g. Inserted by section 3 of Act 700 and amended by section 3 of Act 731.

### **8 (Popup - Footnote)**

1ga. Subsection (1) is amended by the Internal Revenue (Amendment) Act, 2006 (Act 700).

### **9 (Popup - Footnote)**

1gb. Subsection (1) (*a*) is inserted by the Internal Revenue (Amendment) Act, 2006 (Act 700).

### **10 (Popup - Footnote)**

1gc. Inserted by section 4 of the Internal Revenue (Amendment) Act, 2006 (Act 700).

### **11 (Popup - Footnote)**

1gd. Subsections (4) to (6) are amended by the Internal Revenue (Amendment) Act, 2002 (Act 622).

### **12 (Popup - Footnote)**

1ge. Substituted by section 5 (*c*) of the Internal Revenue (Amendment) Act, 2006 (Act 700).

### **13 (Popup - Footnote)**

1h. Amended by section 6 of Act 700.

### **14 (Popup - Footnote)**

1i. Amended by section 5 (*a*) of the Internal Revenue (Amendment) Act, 2007 (Act 731).

### **15 (Popup - Footnote)**

1j. Amended by section 5 (*b*) of the Internal Revenue (Amendment) Act, 2007 (Act 731).

### **16 (Popup - Footnote)**

1k. Amended by section 5 (*c*) of the Internal Revenue (Amendment) Act, 2007 (Act 731).

### **17 (Popup - Footnote)**

1l. Amended by section 5 (*d*) of the Internal Revenue (Amendment) Act, 2007 (Act 731).

### **18 (Popup - Footnote)**

1m. Amended by section 5 (*e*) of the Internal Revenue (Amendment) Act, 2007 (Act 731).

### **19 (Popup - Footnote)**

2. [P.N.D.C.L. 247](#).

### **20 (Popup - Footnote)**

2a. Amended by section 210 of the National Pensions Act, 2008 (Act 766).

### **21 (Popup - Footnote)**

3. [P.N.D.C.L. 247](#).

### **22 (Popup - Footnote)**

3a. Amended by section 210 of the National Pensions Act, 2008 (Act 766).

### **23 (Popup - Footnote)**

- 3b. Added by section 1 of the Internal Revenue (Amendment) Act, 2008 (Act 757).
- 24 (Popup - Footnote)**
- 3c. Added by section 2 of the Internal Revenue (Amendment) Act, 2008 (Act 757).
- 25 (Popup - Footnote)**
- 3d. Added by section 6 of the Internal Revenue (Amendment) Act, 2007 (Act 731).
- 26 (Popup - Footnote)**
- 3e. Inserted by section 7 of the Internal Revenue (Amendment) Act, 2007 (Act 731).
- 27 (Popup - Footnote)**
- 3f. Added by section 8 of the Internal Revenue (Amendment) Act, 2007 (Act 731).
- 28 (Popup - Footnote)**
- 3c. Added by section 8 of the Internal Revenue (Amendment) Act, 2007 (Act 731).
- 29 (Popup - Footnote)**
- 3g. Amended by section 9 of the Internal Revenue (Amendment) Act, 2007 (Act 731).
- 30 (Popup - Footnote)**
- 3e. Amended by section 10 of Act 731.
- 31 (Popup - Footnote)**
4. Cap. 91 of the 1951 Edition.
- 32 (Popup - Footnote)**
5. [P.N.D.C.L. 328.](#)
- 33 (Popup - Footnote)**
6. [P.N.D.C.L. 247.](#)
- 34 (Popup - Footnote)**
- 6a. Amended by section 11 of the Internal Revenue (Amendment) Act, 2007 (Act 731).
- 35 (Popup - Footnote)**
- 6b. Amended by section 1 of the Internal Revenue (Amendment) (No. 2) Act, 2006 (Act 710).
- 36 (Popup - Footnote)**
- 6c. Added by section 7 of Act 700 and amended by section 12 (a) of Act 731.
- 37 (Popup - Footnote)**
- 6d. Added by section 12 (b) of Act 731.
- 38 (Popup - Footnote)**
7. [P.N.D.C.L. 143.](#)
- 39 (Popup - Footnote)**
- 7a. Added by section 13 of Act 731.
- 40 (Popup - Footnote)**
- 7b. Amended by section 8 of Act 700.
- 41 (Popup - Footnote)**
- 7c. Amended by section 9 of Act 700.
- 42 (Popup - Footnote)**
- 7d. Substituted by section 10 of Act 700.
- 43 (Popup - Footnote)**
- 7e. Amended by section 2 of the Internal Revenue (Amendment) (No. 2) Act, 2006 (Act 710).
- 44 (Popup - Footnote)**
- 7f. Repealed by paragraph (b) of the Internal Revenue (Amendment) (No. 2) Act, 2008 (Act 776). The section provides:
- (1) With respect to an amount of tax payable under this Act
- (a) a part of a cedi which is less than one-half of a cedi shall not be taken into account, and
- (b) a part of a cedi equal to or more than one-half of a cedi shall be reckoned as one cedi.
- 45 (Popup - Footnote)**
8. [P.N.D.C.L. 333.](#)

**46 (Popup - Footnote)**

9. [P.N.D.C.L. 143.](#)

**47 (Popup - Footnote)**

10. Amended by section 14 of Act 731.

**48 (Popup - Footnote)**

11. Amended by section 14 of Act 731.