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CHAPTER 123

INCOME TAX

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO
INCOME TAX

[1st January 1965]

PART I

PRELIMINARY

1. This Act may be cited as the Income Tax Act.

2.—(1) In this Act, unless the context otherwise requires—
“accounting period”, in relation to any person, means the period for which such person makes up the accounts of his business;
“approved annuity contract” means a contract approved by the Commissioner under section 27 (2);
“approved pension fund” means a scheme approved by the Minister under section 27 (1), or a scheme to which public officers or a class of public officers are required to contribute;
“assessment” includes an additional assessment;

9 of 1965
10 of 1966
14 of 1968
11 of 1970
22 of 1972
2 of 1976
LN 106 of 1976
LN 107 of 1976
5 of 1977
LN 33 of 1978
LN 46A of 1978
LN 88 of 1978
17 of 1979
LN 1 of 1980
LN 2 of 1980
LN 4 of 1980
LN 8 of 1980
LN 27 of 1980
LN 53 of 1980
LN 54 of 1980
9 of 1981
LN 36 of 1981
LN 61 of 1987
14 of 1989
5 of 1990
15 of 1990
16 of 1990
17 of 1990
LN 40 of 1990
LN 41 of 1990
LN 75 of 1990
6 of 1991
10 of 1991
12 of 1992
3 of 1993
15 of 1995*

Short title

Interpretation
10 of 1966, s. 2
14 of 1968, s. 2
22 of 1972, s. 2
20 of 1976, s. 2
5 of 1977, s. 2
LN 46A of 1977
17 of 1979, s. 2
14 of 1989, s. 2
5 of 1990, s. 2
6 of 1991, s. 2

*Not in operation on 1st March 1996.

- “body of persons” means any company, association, fellowship or society, whether incorporate or unincorporate, or any trustees, other than the trustees for an incapacitated person, but, for the purposes of sections 3 and 33, does not include a partnership;
- “business” includes any trade, profession or vocation, and any concern or adventure in the nature of trade;
- “chargeable income” means the total income of any person for any year, less any personal exemptions to which he is entitled under Part VI in respect of that year;
- “Commissioner” means the Commissioner of Inland Revenue appointed pursuant to section 106 and includes any Deputy Commissioner or any other officer authorised to exercise or perform all or any of the powers, duties or functions of the Commissioner;
- “company” means any company incorporated or registered under any law in force in Solomon Islands or elsewhere;
- “Deputy Commissioner” means a Deputy Commissioner of Inland Revenue appointed pursuant to section 106 and includes any other officer authorised to exercise or perform any of the powers, duties or functions of a Deputy Commissioner;
- “dividends” includes—
- (a) all sums and the value of any property distributed in any manner under any name among all or any of the shareholders;
 - (b) all amounts received by a shareholder in respect of his shares (whether in money or money’s worth) upon the winding up of a company in excess of the amount paid up on his shares;
 - (c) any expenditure that is not under this Act an allowable deduction of the company, the benefit of which is enjoyed by a shareholder or relative of a shareholder or spouse of a shareholder (the spouse not being a shareholder):
 Provided that where the benefit of that expenditure is shared between more than one shareholder and the benefit to each cannot be accurately determined then such benefit shall be apportioned between the shareholders in proportion to their paid-up capital; and
 - (d) any moneys lent or advanced by a company to or for the benefit of any of its shareholders, if in the opinion of the Commissioner the making of the loan

or advance was not a bona fide investment by the company, and such money shall be deemed to be paid by the company on the last day of the year of income of the company in which such loan or advance was made to the extent that such loan or advance remains unpaid on such day:

Provided that where such loan or advance is deemed to be a dividend and in a subsequent year such loan or advance is reduced or set off by a dividend payable to such shareholder then such dividend to the extent that it reduces such loan or advance shall be deemed not to be a dividend;

- “foreign tax”, in relation to income charged to tax in Solomon Islands, means any income tax or any tax of a similar nature charged under any law in force in any place with the Government of which arrangements under section 45 have been made by the Government and which is the subject of such arrangements;
- “incapacitated person” means any infant, idiot or insane person;
- “loss” in relation to gains or profits, means a loss computed in like manner as gains or profits;
- “Minister” means the Minister for the time being charged with responsibility for the imposition and collection of income tax;
- “overseas income tax” means any income tax, or any tax of a similar nature, charged under any law in force in any country other than Solomon Islands or a country declared by the Minister under section 45 to be a country with the Government of which special arrangements have been made;
- “person” includes any body of persons, any statutory authority or board, any corporation sole and any trustee, other than the trustee for an incapacitated person, but for the purposes of sections 3 and 33 does not include a partnership;
- “personal exemption” means any personal exemption granted by virtue of the provisions of Part VI;
- “resident in Solomon Islands”, when applied in relation to any year—
- (a) to an individual, means that such individual resides, except for such temporary absences as to the Commissioner may seem reasonable, in Solomon Islands; and an individual shall be deemed to reside in Solomon Islands if he—

- (i) was present in Solomon Islands for a period or periods exceeding in the aggregate six months in such year; or
- (ii) satisfies the Commissioner that he intends to reside in Solomon Islands for a period or periods exceeding in the aggregate six months in such year; or
- (iii) was present in Solomon Islands or satisfies the Commissioner that he will be present in Solomon Islands in such year in fulfilment of a contract of employment exercised or mainly exercised in Solomon Islands, which is specified to be of not less than six months' duration;

Provided that the Commissioner may, if he is satisfied taking into account the nature of the contract of employment and the method of payment for such services, treat such individual as non-resident, notwithstanding that at the relevant time such individual satisfies the requirements of this paragraph;

(b) to a body of persons, means a body of persons which is incorporated in Solomon Islands, or, in the case of a body of persons not incorporated in Solomon Islands, is a body of persons which carries on business in Solomon Islands and has either its central management and control in Solomon Islands or its voting power controlled by shareholders who are resident in Solomon Islands;

and references in this Act to "resident" or "non-resident" in relation to any person, mean that such person is resident in Solomon Islands or is not resident in Solomon Islands, as the case may be;

"tax" means the income tax imposed by this Act;

"total income" means the aggregate amount of the income, other than income exempted from tax under Part IV, of any person chargeable to tax under Part II as ascertained under Part V;

"world income" means the aggregate amount of income of a person from all sources, the income from each source being ascertained to the satisfaction of the Commissioner under the income tax legislation of the country in which such income accrued, or from which it was derived, whether or not such income accrued in or was derived from Solomon Islands;

"year" means the calendar year.

(2) References in this Act to "under", "subject to", or "notwithstanding", in relation to any enactment, rule, schedule, part, section, subsection, paragraph, sub-paragraph, proviso or item, mean under, subject to, or notwithstanding, as the case may be, the provisions of such enactment, rule, schedule, part, section, subsection, paragraph, sub-paragraph, proviso or item, as the case may be; and the references to "under" include references to "in accordance with", "by virtue of", and "in consequence of".

(3) Unless the context otherwise requires, references—

(a) in this Act, other than in any Schedule—

- (i) to a Schedule, Part, or section, denote a reference to a Schedule to, or Part or section of, as the case may be, this Act;
- (ii) to a subsection, paragraph, or sub-paragraph, denote a reference to a subsection of the section, to a paragraph of the subsection, or to a sub-paragraph of the paragraph, as the case may be, in which the word occurs;

(b) in any Schedule—

- (i) to a Schedule or section denote a reference to a Schedule to, or section of, as the case may be, this Act;
- (ii) to a Part, paragraph, sub-paragraph, or item, denote a reference to a Part or paragraph, as the case may be, of the Schedule in which the word occurs, or to a sub-paragraph of the paragraph, or to an item of the sub-paragraph, as the case may be, in which the word occurs.

PART II

CHARGE OF TAX

3. Tax shall, subject to this Act, be charged for each year upon the income for that year of any person which—

- (1) accrued in, was derived from or was received in Solomon Islands, in the case of a resident person;
- (2) accrued in or was derived from Solomon Islands in the case of a non-resident person,

Income in respect of which tax charged 22 of 1972, s. 3 LN 46A of 1978

in respect of—

(a) gains or profits from—

✓(i) any business, for whatever period of time carried on;

(ii) any employment or services rendered;

(iii) any right granted to any other person for the use or possession of any property;

(b) dividends, interest or discounts;

(c) any pension, charge or annuity;

(d) any amount received by way of alimony or allowance under a decree of divorce, a judicial order of separation or maintenance or a deed of separation or maintenance;

(e) any amount deemed to be his income under this Act.

Provisions
relating to
income from
business
LN 46A of 1978
17 of 1979, s. 3

✓ 4.—(1) For the purposes of section 3 (a) (i)—

(a) where any trade, profession or vocation is carried on or exercised partly within and partly outside Solomon Islands by a resident person, the whole of the gains or profits from such trade, profession or vocation shall be deemed to have accrued in or to have been derived from Solomon Islands;

(b) the gains or profits of a partner from a partnership shall be deemed to be the share to which he was entitled during the year from the partnership, ascertained under this Act;

(c) any sum received under any insurance against loss of profits, or received by way of damages or compensation for loss of profits, shall be deemed to be gains or profits for the year in respect of which it is received;

(d) where a sum has been allowed as a deduction and in a later year is recovered in whole or in part then such sum shall be deemed to be income of such later year to the extent that it is so recovered. For the purpose of this paragraph a sum recovered shall be deemed to include the release or reduction of any liability, reserve or provision;

(e) where under the Fourth Schedule it is provided that a balancing charge shall be made, or a sum shall be treated as a trading receipt, for any year, the amount thereof shall be deemed to be gains or profits for such year.

(2) Where any sum is received by any person after the cessation of his business which, if it had been received prior to such cessation would have been included in the gains or profits from

Fourth Schedule

such business, then, to the extent to which such sum has not already been included in such gains or profits, such sum shall be deemed to be income of such person for the year in which such sum is received.

5. For the purposes of section 3 (a) (ii)—

(1) gains or profits include—

(a) any wages, salary, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, gratuity, or any subsistence, travelling, entertainment or other allowances received in respect of employment or services rendered; and any amount so received in respect of employment or services rendered in a year earlier than the year in which it is received shall be deemed to be income for the year in which the taxpayer becomes entitled to receive it:

Provided that where the Commissioner is satisfied that any allowance so received represents solely the reimbursement of an amount expended wholly and exclusively in the production of the income of the recipient from the employment or services rendered, then the calculation of the gains or profits of the recipient shall exclude any such allowance and expenditure;

(b) the value of any benefit, advantage, or facility of whatsoever nature, granted in respect of employment or services rendered other than—

(i) the cost of passages within Solomon Islands or between Solomon Islands and any place outside Solomon Islands or of any medical services, provided by the employer to an employee; and

(ii) the amount paid by the employer as a contribution to any approved pension fund or the Solomon Islands National Provident Fund to the extent that such amount does not exceed fifteen *per centum* of his total income from such employment in the year;

and the value of premises provided by an employer for occupation by his employee for residential purposes shall be the annual value thereof;

(c) any amount received as compensation for the termination of any contract of service, whether or not provision is made in such contract for payment of such compensation:

Provisions
relating to
income from
employment, etc
14 of 1968, s. 3
2 of 1976, s. 2
5 of 1977, s. 5
LN 46A of 1978

Provided that such compensation shall be deemed to accrue evenly, from day to day, in such a period of years or fraction of years immediately following the date of termination as is determined by dividing the amount of such compensation by the rate per annum of the gains or profits from such contract of service, ascertained under this Act, for the period beginning on 1st January in the year in which such termination took place and ending on the date of such termination;

and an amount which is credited to an employee in the books of his employer in circumstances in which the employee may draw sums on account of such amount or otherwise utilise such credit in any way, shall be deemed to be received for the purposes of this Act;

(2) the gains or profits from any employment exercised or services rendered in Solomon Islands shall be deemed to be derived from Solomon Islands whether or not they are received in Solomon Islands.

6. For the purposes of section 3 (a) (iii), gains or profits include any premium or like consideration received for the use or possession of property.

7. For the purposes of section 3(b)—

(a) a dividend received by a shareholder in a resident company shall be deemed to be income of the year in which it is payable and to be of such gross amount as, after deduction of the tax which the company is required to deduct under section 36, is equal to the net amount received;

(b) any interest paid to a non-resident person shall be deemed to be derived from Solomon Islands.

8. For the purposes of this Act, any income chargeable to tax and received in any year by any person in his capacity as trustee, executor or administrator—

(a) to the extent to which it accrues to the credit of a beneficiary of the trust or estate, as the case may be, shall be deemed to be income of such beneficiary chargeable to tax for such year;

(b) to the extent to which it does not so accrue, shall be deemed to be income of such trustee, executor or administrator, as the case may be, and to be income of a person other than an individual.

Provisions relating to income from the use of property

Provisions relating to income from dividends
22 of 1972, s. 4
2 of 1976, s. 4

Trust income, etc., deemed income of trustee, beneficiary, etc.

9.—(1) Where the Minister is of the opinion that it would assist any business operations of a Solomon Islander or a Solomon Islands company successfully to become established, he may, subject to the other provisions of this section, declare the total income derived by, or accruing to, such person or company from such operations to be exempt from tax to such extent, and subject to such terms and conditions, as he may see fit to specify and such income shall be exempt accordingly:

Certain income from business operations to be exempted
6 of 1991, s. 3

Provided that this subsection shall not apply to any person or company that has been granted investment incentives under Part III.

(2) The total income of any person or company which may be exempt from tax by the Minister under this section shall not exceed twenty-five thousand dollars or such greater amount, not exceeding one hundred thousand dollars, as the Minister may, with the consent of the Cabinet, in any particular case decide.

(3) No exemption may be granted under this section in respect of income other than income accrued or derived during the period of five years commencing either—

(a) on the 1st day of February, 1990; or

(b) on such other date as the Minister may specify in respect of a particular person or company when granting such exemption,

whichever date be the later:

Provided, however, that the Minister may, in respect of the income of any particular person or company, with the approval of the Cabinet, extend any such five-year period by a further period not exceeding five years.

(4) Any person or company seeking an exemption under this section shall make application in that behalf on, or before 31st January 1993 or within six months of the commencement of the operations of the business in question, whichever be the later. Such application shall be in writing and shall be accompanied with full particulars of such operations, the source and amount of capital employed, or intended to be employed, in such operations, and, in the case of a company, the names and addresses of all persons having a beneficial interest in the shares of such company. If requested in writing by the Commissioner so to do, any such person or company shall also supply such further information as the Commissioner shall deem necessary to enable the application to receive proper consideration.

(5) A declaration under this section may be revoked by the Minister if at any time it appears to him that—

(a) the information supplied under subsection (4) in relation thereto was so incorrect as to be misleading; or

(b) in the case of any such declaration exempting the income of a Solomon Islands company, if at any time thereafter it ceases to be a Solomon Islands company within the meaning ascribed to that expression; or

(c) the business operations concerned have become successfully established; or

(d) the purpose for which the exemption was granted has for any reason become impossible to achieve; or

(e) such person or company has been granted investment incentives under Part III.

Any revocation under this subsection shall have effect for all the purposes of this Act from the commencement of the year in which the revocation is made:

Provided that in the case of any revocation made on the grounds set forth in paragraphs (a) or (e) the Minister may specify that the revocation shall have such effect from any date which he shall deem just.

(6) For the purposes of this section the expression "Solomon Islands company" shall mean a company incorporated in Solomon Islands and whose registered office and place of business is situated in Solomon Islands and whose shares are allotted in such manner that not less than 60 *per centum* of the equity of such company is owned beneficially by Solomon Islanders.

PART III

INVESTMENT INCENTIVES

10.—(1) The Commissioner on the recommendation of the Board may exempt from income tax the profits and income of any approved enterprise for the period specified in the certificate of approval.

(2) Subject to the provisions of section 15 of the Investment Act, the extent and the period of the tax exemption referred to in subsection (1) shall be to the extent and period calculated in accordance with the formula specified in the First Schedule.

(3) Where an approved enterprise referred to in subsection (1), satisfies the requirements specified in section 9 of

the Investment Act, the Board may recommend to the Commissioner to grant such approved enterprise a further tax exemption for a period not exceeding five years.

11. In addition to the tax exemption granted under section 10, the exemptions set out in the Second Schedule, as appropriate to the particular investment shall apply to an approved enterprise either in full or to such modified extent, and subject to such terms and conditions as the Commissioner may specify.

12.—(1) Any enterprise engaged in any prescribed undertaking approved under section 8 of the Investment Act, shall be entitled to claim the exemptions set out in the Second Schedule as appropriate to the particular investment.

(2) The Commissioner shall on the recommendation of the Board grant to any approved enterprise referred to in subsection (1), the exemptions set out in the Second Schedule as appropriate to the particular investment, either in full or to such modified extent upon such terms and conditions as the Board may recommend.

13. Any exemptions granted under this Part may be withdrawn by the Commissioner on the direction of the Board made in accordance with section 15 of the Investment Act.

14. Notwithstanding the provisions of sections 34, 36, 37, 38 and the Sixth Schedule—

(a) no withholding tax shall be payable on any dividend paid to any shareholder of any approved enterprise on accumulated profits during the period of the tax exemption and a further period of five years thereafter, provided that the total amount of dividends paid to such shareholders do not exceed the investment; and

(b) the interest paid by an approved enterprise in respect of any money borrowed from a financial institution and employed in the production of income and profits shall not be liable to tax during the period of the tax exemption.

15. In this Part and the Second Schedule—

"approved enterprise", "Board", "incentives" and "prescribed undertaking" have the meanings assigned to them respectively by section 2 of the Investment Act.

Cap. 142

Additional
exemptions
15 of 1990, s. 2

Enterprise
engaged in
prescribed
undertaking may
claim certain
exemptions
15 of 1990, s. 2

Second Schedule

Commissioner
may withdraw
exemptions
15 of 1990, s. 2

Exemptions from
withholding tax
15 of 1990, s. 2

Meanings of
certain
expressions
15 of 1990, s. 2

Exemptions from
income tax of
certain approved
enterprises
15 of 1990, s. 2

Cap. 142

First Schedule

PART IV

EXEMPTION FROM TAX

Certain income
exempted from
tax, etc
LN 46A of 1978
17 of 1979, s. 5

16.—(1) Notwithstanding anything in Part II, the income specified in the Third Schedule which accrues in, or is derived from Solomon Islands shall be exempt from tax to the extent specified.

(2) The Minister may provide by order—

(a) that any income or class of income which accrues in, or is derived from Solomon Islands shall be exempt from tax to the extent specified in such order;

(b) that the exemption from tax granted under subsection (1) in respect of any income shall cease to have effect either generally or to such extent as may be specified in such order;

and thereupon, in respect of such income or class of income so specified in any such order, this Act shall have effect as if such income or class of income were or were not, as the case may be, specified in the Third Schedule.

(3) Notwithstanding anything to the contrary in such Act, the Minister may by order remove or alter any provision contained in any Act of Parliament passed before 1st November 1979 which exempts any person from any tax charged under this Act and any such order shall have the effect that the person previously exempted from payment of tax shall be liable to pay income tax from the date specified in such order, being a date not earlier than the date of making such order.

17. Where an allowance granted in any respect is specified or deemed to be specified in the Third Schedule, no deduction shall be allowed under section 18 for any expenditure which, had such allowance not been so specified, would have been deductible in ascertaining the income, if any, derived from such allowance.

PART V

ASCERTAINMENT OF TOTAL INCOME

18.—(1) In ascertaining for any year the income of any person which is chargeable to tax in respect of any of the subjects of section 3 there shall be deducted all expenditure incurred in such year which is expenditure wholly and exclusively incurred by him in the production of such income and which is not expenditure in respect of which no deduction shall be

Deductions
under section 18
not allowed in
respect of
exempted
allowances

Third Schedule

Deductions
allowed

allowed under section 20; and where under section 26 any income of an accounting period ending on some day other than the last day of such year is, for the purpose of ascertaining total income for any year, deemed to be income for any year, then such expenditure incurred during such period shall be treated as having been incurred during such year.

(2) Without prejudice to the operation of subsection (1), in computing the gains or profits of any person for any year chargeable to tax under section 3 (a), the following amounts shall be deducted—

(a) bad debts incurred in the production of the income which are proved to the satisfaction of the Commissioner to have become bad during the year and to have been written off by such person;

(b) where he is an employer, any sum contributed by him in such year to an approved pension fund or the Solomon Islands National Provident Fund in respect of his employees:

Provided that where such contribution is not an ordinary annual contribution the Commissioner may, in his discretion, direct that the sum shall be spread and deducted over a number of years;

(c) any deductions provided for by the Fourth Schedule in respect of such year;

(d) any expenditure of a capital nature incurred by him during such year for the prevention of soil erosion;

(e) the amount considered by the Commissioner to be just and reasonable as representing the diminution in value of any article, not being machinery or plant in respect of which a deduction may be made under the Fourth Schedule, employed in the production of the income;

(f) such expenditure of a capital nature incurred by any person on experimentation, scientific or other research for the purposes of a business carried on by him as the Commissioner may consider to be just and reasonable;

(g) in the case of gains or profits of the owner of any land from the sale of, or the grant of the right to fell, standing timber which was growing on such land at the time such owner acquired such land—

(i) where such land was acquired for valuable consideration, so much of such consideration as the Commissioner may determine to be just and rea-

2 of 1976, s. 5

Fourth Schedule

2 of 1976, s. 5

sonable as representing the cost of such standing timber; or

- (ii) where no valuable consideration was given for the land, so much of such amount as the Commissioner may determine to be just and reasonable as representing the value of such standing timber at the time such owner acquired such land, as is attributable to such timber sold during that year;

(h) in the case of gains or profits from the sale of standing timber by a person who has purchased the right to fell such timber, so much of the price paid for such right as the Commissioner may determine to be just and reasonable as attributable to the timber sold during such year;

10 of 1966, s. 5
17 of 1979, s. 6

(i) any payment by way of premium, fine or payment for goodwill on the grant of a lease of premises used for the purposes of the production of the income the rent under which ranks as deductible expenditure under subsection (1), in the proportion that the period within which such rent ranks as deductible expenditure during such year bears to the full term of such lease, and for the purpose of this paragraph the value on acquisition of a perpetual estate or freehold interest in land that has been converted to leasehold land as at 31st December 1977 in accordance with Part VII of the Land and Titles Act shall be deemed to be a premium paid on the granting of such lease provided the Commissioner is satisfied that such land is developed, is being developed, or will be developed in accordance with a development plan approved by the Commissioner of Lands:

Cap. 133

Provided that in the case of any such payment made prior to the 1st January, 1966 in respect of a lease continuing after that date, no deduction shall be made in respect of the period preceding such date but in any year after such date there shall be deducted such amount as would have been deductible for such year if the provisions of this paragraph had been in operation at the date such payment was made and deductions had been made since that date in accordance therewith;

14 of 1968, s. 6
LN 46A of 1978

✓ (j) where expenditure is incurred by an employer in providing passages, allowances or remuneration during the period of training overseas of any employee who is domiciled in Solomon Islands and whom the employer sends outside Solomon Islands for training which is not

available in Solomon Islands, a sum equal to twice the total of such expenditure;

(k) any sum paid by way of fee fixed under the Land Surveys Act for surveys or work connected therewith in relation to any land which the Commissioner is satisfied is or is to be used in the production of the income;

14 of 1968, s. 6
Cap. 134

(l) any interest which the Commissioner is satisfied has been paid by such person on moneys borrowed by him for the purpose of acquiring or improving his principal place of residence in Solomon Islands:

9 of 1977, s. 5
17 of 1979, s. 6

Provided, however, that no deduction shall be allowed for any interest paid on any portion of such moneys which exceeds twenty thousand dollars;

(m) the amount of any dividends paid in any year by a company resident in Solomon Islands from which tax has been deducted in accordance with section 36;

17 of 1990, s. 2

(n) any expenditure incurred in connection with any business before the date of commencement of such business where such expenditure would have been deductible under this section if incurred after such date, so however, that such expenditure shall be deemed to have been incurred on the date on which such business commenced.

17 of 1979, s. 6

(3) In ascertaining the total income of any person for any year the following amounts shall be deducted—

(a) where a deduction is not allowable in respect thereof under subsection (1) in computing gains or profits, the amount of interest paid in respect of such year by such person upon any money borrowed by him and employed in the production of income chargeable to tax:

Provided that this paragraph shall not apply to interest paid upon any money borrowed for the purpose of acquiring a source of income outside Solomon Islands;

(b) the amount of any passage deduction to which he is entitled under subsection (5), for such year;

(c) the amount of any loss arrived at in computing gains or profits for such year which, if it had been a profit, would have been chargeable to tax under section 3 (a);

(d) any amount paid during such year by such person by way of alimony or allowance under a decree of divorce, a judicial order of separation or maintenance or a deed of separation or maintenance:

22 of 1972, s. 7

Provided that if such person was entitled during such

year to any income which is not charged to tax under this Act, the deduction under this paragraph shall be such proportion of such amount as his total income, ascertained before any deduction allowable under this paragraph, bears to his world income for such year.

(4) Where any sum is paid by any person after the cessation of his business which, if it had been paid prior to such cessation, would have been deductible in computing his gains or profits from such business, then, to the extent to which such sum has not already been deducted in computing such gains or profits, it shall be deducted in ascertaining his total income for the year in which it is paid, or, if he has no total income in such year, in ascertaining his total income for the year in which such business ceased.

(5) (a) Where a resident individual has incurred expenditure in any year for the transport of himself, his wife or any of his children on a journey from Solomon Islands to any place outside Solomon Islands or on a journey from such place to Solomon Islands he shall be granted a passage deduction in respect of each such person for each such journey—

(i) in the case of journeys made for the purpose of obtaining medical treatment which is subsequently received and which is certified by a medical practitioner to be necessary, of an amount not exceeding the cost of the transport of himself, his wife or child, as the case may be, between Solomon Islands and the place where such medical treatment is received;

(ii) in the case of journeys made by a child receiving full-time education outside Solomon Islands, in respect of not more than four such journeys made by such child in any year, of an amount not exceeding the cost of a single air fare for a journey between Solomon Islands and the country in which such child is receiving such education at the cheapest rate current at the date on which the expenditure on such journey was incurred by such individual or of the amount incurred by him, whichever is the less.

(b) Where the whole or part of the expenditure for the transport of a resident individual, his wife or any of his children on any journey referred to in paragraph (a) has been borne by any person other than such individual the amount of the passage deduction in relation thereto shall be reduced by the amount of the expenditure so borne by such other person; and where in any year such individual, his wife or child makes any such journey

14 of 1968, s. 6
LN 46A of 1978
17 of 1979, s. 6

from Solomon Islands to any place outside Solomon Islands and the expenditure in respect of such journey is borne in whole or part by such other person, such journey shall be deemed to comprise one of the journeys in respect of which under this subsection such individual is entitled in any year to a passage deduction.

(6) For the purpose of subsection (2) (c) the Minister may by order provide—

LN 46A of 1978

(a) that any class of capital expenditure specified in such order shall be the subject of relief under the Fourth Schedule and to the extent provided for in such order;

(b) that the amount of any deduction made under the Fourth Schedule shall be varied to such amount as may be prescribed in such order either generally, or in relation to any class of business, or in a particular instance.

19.—(1) For the purposes of this section any loss incurred by any person in any year shall be ascertained in accordance with the provisions of this Act relating to the calculation of total income.

Carrying forward
of losses
17 of 1979, s. 7

(2) Any person who satisfies the Commissioner that he has, in any year, incurred a loss shall, subject to the provisions of this section, be entitled to claim that the loss be carried forward and deducted from or set off against the total income derived in the first income year after the income year in which the loss was incurred, so far as that income extends, and, so far as it cannot then be deducted or set off, be deducted from or set off against the total income derived in the next income year, and so on.

(3) Where, if a profit, other than a profit exempt under section 9, had been made from the transaction in which the loss was incurred, the amount of the profit would not have been chargeable to tax, no relief shall be given under this section in respect of that loss.

(4) Notwithstanding anything in the foregoing provisions of this section, if any company claims to carry forward to any year any loss incurred by it in any previous year, the claim shall not be allowed unless the Commissioner is satisfied that the shareholders of the company on the last day of the first-mentioned income year were substantially the same as the shareholders of the company on the last day of the year in which the loss was incurred.

(5) For the purpose of subsection (4)—

(i) the shareholders of a company at any date shall be deemed not to be substantially the same as the shareholders on any other date unless, on both those dates, not less than fifty-one per cent of the voting power in and the right to receive dividends from the company was held by or on behalf of the same person, and, on both those dates, not less than fifty-one per cent of the nominal value of the allotted shares in the company was held by or on behalf of the same persons;

(ii) shares in a company held by or on behalf of another company shall be deemed to be held by the shareholders of the last-mentioned company and shares held by or on behalf of the trustee of the estate of a deceased shareholder, or by or on behalf of the persons entitled to those shares as beneficiaries in the estate of a deceased shareholder, shall be deemed to be held by that deceased shareholder.

Deductions not
allowed

20.—(1) Subject to subsections (2), (3) and (4) of section 18, for the purposes of ascertaining the total income of any person for any year, no deduction shall be allowed in respect of—

(a) any expenditure or loss which is not wholly and exclusively incurred by him in the production of the income;

(b) any capital expenditure, or any loss, diminution or exhaustion of capital.

(2) No deduction shall be allowed in respect of—

(a) any expenditure incurred by any person in the maintenance of himself, his family or establishment, or for any other personal or domestic purpose;

(b) any expenditure or loss which is recoverable under any insurance, contract or indemnity;

(c) any income tax or tax of a similar nature paid on income;

Provided that, save in the case of overseas income tax and foreign tax in respect of which a claim is made under section 44 or section 46, and subject to section 46 (3) proviso (ii), a deduction shall be allowed in respect of any such income tax or tax of a similar nature paid on income which is charged to such tax in a country outside Solomon Islands to the extent to which such tax is payable in respect of and is paid out of income received in, or deemed to have accrued in or to have been derived from Solomon Islands;

14 of 1968, s. 7
LN 46A of 1978

(d) subject to section 18 (2) any sums contributed to any pension, saving or provident scheme or fund;

(e) any expenditure incurred outside Solomon Islands other than expenditure in respect of which the Commissioner determines that adequate consideration has been given;

22 of 1972, s. 6
LN 46A of 1978

(f) any expenditure incurred in the production of income specified in section 38(3);

2 of 1976, s. 6

(g) any specific duty on the export of copra or rice which may be set off under section 42;

2 of 1976, s. 6

(h) any expenditure for which a set-off has been allowed under section 41.

5 of 1977, s. 10

21.—(1) Where a non-resident person carries on any business in Solomon Islands which consists of manufacturing, growing, mining, or producing, or of harvesting, or felling, whether from the land or from the water, any product or produce, and sells outside, or for delivery outside Solomon Islands such product or produce, whether or not the contract of sale is made within or without Solomon Islands, or utilises such product or produce in any business carried on by him outside Solomon Islands, then the gains or profits from such business carried on in Solomon Islands shall be deemed to be derived from Solomon Islands and to be gains or profits of such amount as would have accrued if such product or produce had been sold wholesale to the best advantage.

Ascertainment of
gains or profits
of business in
relation to
certain non-
resident persons
LN 46A of 1978

(2) Where a non-resident person carries on a business with a resident person with whom he is closely connected and the course of such business is so arranged that it produces to the resident person either no profits or less than the ordinary profits which might be expected to accrue from such business if there had been no such close connection, then the gains or profits of such resident person from such business shall be deemed to be of such an amount as might have been expected to accrue if the course of such business had been conducted by independent persons dealing at arm's length.

✓

22.—(1) Notwithstanding anything in this Act, this section shall apply for the purpose of ascertaining the gains or profits derived by any person from the carrying on of insurance business in Solomon Islands.

Determination of
total income
from insurance
business
LN 46A of 1978

(2) Where an insurance company carries on life insurance business in connection with insurance business of any other class, the life insurance business of the company shall be treated

as a business separate from any other class of insurance business carried on by the company.

LN 46A of 1978

(3) The gains or profits for any year derived from the insurance business, other than life insurance business, carried on in Solomon Islands by an insurance company, shall be the amount arrived at after —

(a) taking, for such year, the sum of —

- (i) the amount of the gross premiums (other than premiums in respect of life insurance business) received or accrued in respect of risks in Solomon Islands (less such premiums returned to the insured and such premiums paid on reinsurances as related to such business);
- (ii) the amount of other income from such business, not being income from investments, received or accrued in Solomon Islands, including any commission or expense allowance from re-insurers in connection with the reinsurance as risks in Solomon Islands;
- (iii) such proportion of its investment income as the amount referred to in sub-paragraph (i) bears to the total premiums received or accrued, and

(b) deducting from such sum a reserve for the unexpired risks of such business outstanding at the end of such year at the percentage adopted by the company in relation to its insurance business as a whole, other than life insurance, but adding to such sum the reserve deducted for similar unexpired risks at the end of the previous year, and

(c) deducting from the figure arrived at under paragraph (a) and paragraph (b) —

- (i) the amount of the claims admitted in such year in connection with such business, less any amount recovered in respect thereof under reinsurance; and
- (ii) the amount of branch and agency expenses incurred in such year in connection with such business; and
- (iii) such proportion of the expenses of the Head Office of such company, other than any life insurance expenses, as the Commissioner may determine to be just and reasonable.

(4) The gains or profits for any year derived from the life insurance business carried on in Solomon Islands by a life insurance company shall be the amount arrived at after —

17 of 1979, s. 8

(a) taking for such year, the sum of —

- (i) such proportion of its investment income as the life insurance premiums received or accrued in Solomon Islands bear to the total premiums received or accrued; and
- (ii) the amount of any interest paid by such company from its annuity fund on the surrender of policies the premiums in respect of which were received in Solomon Islands or on the return of premiums received in Solomon Islands; and

(b) deducting from the amount arrived at in accordance with paragraph (a) —

- (i) the amount of branch and agency expenses incurred in such year in connection with such business; and
- (ii) such proportion of the expenses of the Head Office of such company, other than any life insurance expenses, as the Commissioner may determine to be just and reasonable:

Provided that the Commissioner may, if he determines it to be just and reasonable, substitute some basis other than that set out in paragraph (a) for the purpose of ascertaining the portion of the income from investments to be charged as being income derived from business carried on in Solomon Islands.

23.—(1) Notwithstanding anything in this Act this section shall apply for the purpose of ascertaining the gains or profits of any co-operative society which shall be chargeable to tax.

Determination of total income of co-operative society
17 of 1979, s. 9

(2) The income of a co-operative society shall include all sums received by it including all sums received from its members, other than payments made in respect of membership of such society.

(3) Subject to subsection (4) in arriving at the income of a co-operative society a deduction shall be allowed for —

(a) any sum distributed among its members as rebates or bonuses based on their transactions with the co-operative society; and

(b) any sum distributed among its members as interest or dividends on shares.

(4) Where the co-operative society has entered into transactions with persons other than its members then the Commissioner may where he considers it just and reasonable restrict the deduction allowable under paragraph (a) of subsection (3) to a proportion of such deduction as the transactions with members bears to the total transactions.

(5) Any dividend or interest paid by a co-operative society shall for the purpose of this Act be deemed to be a dividend paid by a resident company and such co-operative society shall be required to deduct and pay to the Commissioner withholding tax in accordance with this Act.

(6) For the purpose of this section a co-operative society shall include any co-operative society or mutual association whether incorporated, unincorporated, registered or unregistered.

24. For the purposes of section 5 (1) (b) the annual value of premises provided by an employer shall be such amount as the Commissioner may consider to be just and reasonable, subject to such maximum amount as the Minister may by order prescribe for the purpose of this section.

25.—(1) Every arrangement made or entered into, whether before or after the commencement of this Act, shall be absolutely void as against the Commissioner, for income tax purposes, if and to the extent that, directly or indirectly —

(a) its purpose or effect is tax avoidance; or

(b) where it has two or more purposes or effects, one of its purposes or effects (not being merely an incidental purpose or effect) is tax avoidance, whether or not any other or others of its purposes or effects relates to, or are referable to, ordinary business or family dealings,

whether or not any person affected by that arrangement is a party thereto.

(2) Where an arrangement is void in accordance with subsection (1), the chargeable income of any person affected by that arrangement shall be adjusted in such manner as the Commissioner considers appropriate so as to counteract any tax advantage obtained by that person from or under that arrangement, and without limiting the generality of the foregoing provisions of this subsection, the Commissioner may have regard to such income as, in his opinion, either —

Annual value of premises provided by employer
14 of 1968, s. 8
2 of 1976, s. 7
5 of 1977, s. 11

Arrangements purporting to alter incidence of tax to be void.
16 of 1990, s. 2

(a) that person would have, or might be expected to have, or would in all likelihood have, derived if that arrangement had not been made or entered into; or

(b) that person would have derived if he had been entitled to the benefit of an income, or of such part thereof as the Commissioner considers proper, derived by any other person or persons as a result of that arrangement.

(3) Where any income is included in the chargeable income of any person pursuant to subsection (2), then for the purposes of this Act, that income shall be deemed not to have been derived by any other person.

(4) Without limiting the generality of the foregoing provisions of this section, where in any income year, any person sells or otherwise disposes of any shares in any company under an arrangement (being an arrangement of the kind referred to in subsection (1)) under which that person receives, or is credited with, or there is dealt with on his behalf, any consideration (whether in money or money's worth) for that sale or other disposal, being consideration, the whole or, as the case may be, a part of which, in the opinion of the Commissioner, represents, or is equivalent to, or is the substitution for, any amount which, if that arrangement had not been made or entered into, that person would have derived or would derive, or might be expected to have derived or to derive, or in all likelihood would have derived or would derive, as income by way of dividend in that income year, or in any subsequent income year or years, whether in one sum in any of those years or otherwise howsoever, an amount equal to the value of that part of that consideration shall be deemed to be dividend derived by that person in that first-mentioned income year:

Provided that the provisions of this section shall not apply to any arrangement where the main purpose was to effect the succession by a resident company incorporated for that purpose, to any business carried on by an individual or partnership, if such arrangement does not directly or indirectly effect tax avoidance or one of its purposes or effect (not being merely incidental) is not tax avoidance.

(5) For the purpose of this section —

“arrangement” means any contract, scheme, disposition, agreement, plan, or understanding (whether enforceable or unenforceable) including all steps and transactions by which it is carried into effect;

"liability" includes a potential or prospective liability in respect of future income;

"tax avoidance" includes —

(a) directly or indirectly altering the incidence of any income tax;

(b) directly or indirectly relieving any person from liability to pay income tax;

(c) directly or indirectly avoiding, reducing, or postponing any liability to income tax.

26.—(1) Where any person usually makes up the accounts of his business for a period of twelve months ending on some day other than 31st December, then, for the purposes of ascertaining his total income for any year, the income of any such accounting period ending on such other day shall, subject to such adjustment as the Commissioner may consider appropriate, in the case of a person other than an individual, as regards the income chargeable under section 3, and in the case of an individual, as regards the gains or profits from such business, be taken to be income —

(a) where such accounting period ends on 1st July or any day between 1st July and 31st December, of the year in which such accounting period ends;

(b) where such accounting period ends on any day before 1st July, of the year preceding that in which such accounting period ends.

(2) Where any person makes up the accounts of his business for a period greater or lesser than twelve months, the Commissioner may, subject to such adjustment as he may consider appropriate, including the assessment for any year which would have been assessed for such year, treat the income of any such accounting period as income of the year in which the accounting period ends, and tax shall be charged accordingly.

27.—(1) Where an employer has established any scheme for the payment, under regulations relating thereto, of pensions and other benefits to his employees in respect of services with him on the retirement of such employees from such service, or to the dependants of such employees on the death of such employees, then, subject to such conditions as he may impose as to the establishment of such scheme, the Minister may by order declare the fund established under such regulations to be an approved pension fund.

Accounting periods not coinciding with year of income, etc.

Special provisions relating to retirement benefits
LN 88 of 1978

(2) Where an individual has entered into a contract which the Commissioner is satisfied has as its principal object the provision for such individual, or for such individual and his wife jointly, of a life annuity in old age or upon retirement on the grounds of ill health, or of a lump sum by way of endowment assurance, he may, subject to such conditions as he may require to be included in such contract, declare it to be an approved annuity contract.

PART VI

PERSONAL EXEMPTIONS

28.—(1) Subject to subsection (2), a resident individual who for any year —

General
2 of 1976, s. 8
17 of 1979, s. 11

(a) makes a claim in that behalf on the specified form, containing such particulars and supported by such proof as the Commissioner may require; and

(b) has furnished a return of income in respect of such year,

shall, in respect of such year, be entitled to such personal exemptions and of such amounts as are specified in this Part.

(2) Notwithstanding the provisions of section 2, where a resident person is resident in Solomon Islands solely or mainly for the purpose of engaging in any employment or carrying on any business and he resides in Solomon Islands for only part of a year he shall in respect of that year be entitled to claim only such portion of the amounts of personal exemptions specified in this Part as the total period of his residence in Solomon Islands in that year bears to the whole of that year; and for the purposes of this section the total period of a person's residence in Solomon Islands in a year shall be deemed to be the whole of any period or periods during which he actually resides in Solomon Islands in that year or in respect of which he derives emoluments from his employment or business carried on in Solomon Islands whichever is more favourable to the taxpayer.

29. An individual shall be entitled to a personal exemption of five thousand one hundred dollars.

Basic personal exemption
12 of 1992, s. 2

30.—(1) A resident individual, who in any year has —

(a) paid a premium for an insurance made by him on his life, or on the life of his wife or child; or

Retirement benefit exemption.
9 of 1981, s. 3

✓ (b) contributed as an employee to an approved pension fund; or

(c) paid a premium under an approved annuity contract, shall, subject to subsection (2), be entitled to a personal exemption (referred to in this Act as a retirement benefit exemption) of the amount by which the total of such payments and contributions exceeds five per cent of the total income of the individual in that year.

(2) The exemption allowable under subsection (1) shall not exceed an amount calculated by subtracting from fifteen per cent of the total income of the individual in that year the amount contributed in the year by his employer to an approved pension fund or to the National Provident Fund to the extent that such amount is exempt from tax.

Medical and
education
exemptions
17 of 1979, s. 13

31.—(1) An individual who is entitled to a basic personal exemption shall be entitled to a further personal exemption of one hundred dollars in respect of expenses (whether actually incurred or not) for medical treatment of himself and his dependants, and education of any child.

(2) An individual who in any year has in respect of himself, his wife or any child incurred expenditure in respect of all or any of the matters set out in subsection (3) which in total exceeds one hundred dollars, shall, on furnishing the Commissioner with evidence of such expenditure, be entitled to an additional personal exemption of the amount of such expenditure, exceeding one hundred dollars unless the whole or part of such expenditure was borne by the employer of such individual and such individual is not chargeable to tax in respect thereof, in which case the allowance shall be reduced by the amount of the expenditure borne by the employer.

(3) The expenditure referred to in subsection (2) shall be in respect of—

5 of 1990, s. 5

(a) expenses incurred on medical treatment in Solomon Islands or outside Solomon Islands, to such extent and of such nature as the Minister may by Order from time to time prescribe;

(b) the payment of a premium on a policy of medical insurance to provide for the cost or part of the cost of medical treatment of himself, his wife or any child, or, where more than one type of benefit is provided by such policy, the amount of such proportion of the premium as relates to medical benefits;

(c) the payment of fees for the full-time education of any child, subject to such maximum amount and such conditions as the Minister may by Order prescribe.

(4) Any exemption granted in respect of medical expenses incurred by an individual or his family shall be reduced by the amount of any benefits paid to him under any policy of medical insurance.

(5) Any exemption granted in respect of the full-time education of a child as mentioned in paragraph (c) of subsection (3) shall be reduced by the amount of any sums paid in respect of such education to the individual which have been exempted from tax under the provisions of section 16.

(6) For the purposes of this section—

“child” means any child in respect of whom the individual has assumed responsibility for medical treatment and education;

“policy of medical insurance” means a policy of insurance providing medical benefits whether within or without Solomon Islands.

PART VII

RATES, DEDUCTION AND SET-OFF OF TAX AND DOUBLE TAXATION RELIEF

A—Rates of Tax

32. Subject to section 36 (which relates to tax paid on dividends), tax on the chargeable income, other than income specified in section 38 (3) (non-resident income), of an individual for any year shall be charged at the rates specified in the Fifth Schedule:

Individual rates
of tax
9 of 1981, s. 4
5 of 1990, s. 6

Fifth Schedule

Provided that where the tax owing to or by any individual for any year, after subtracting all tax paid by him by deduction or otherwise, is less than five dollars the amount of tax shall be increased or decreased respectively by such amount for the purpose of cancelling such tax.

33.—(1) Subject to section 36, tax upon the chargeable income, other than income specified in section 38 (3), of a person other than an individual or a company not incorporated in Solomon Islands, shall for any year be charged at the rate of thirty-five cents for every dollar of such chargeable income.

✓ Non-individual
rate of tax
17 of 1979, s. 16
9 of 1981, s. 5

- ✓ (2) Subject to section 36, tax upon the chargeable income, other than income specified in section 38(3) of a company not incorporated in Solomon Islands, shall be charged at the rate of fifty cents for every dollar of such chargeable income.

50
Rate of
withholding tax
2 of 1976, s. 16
14 of 1989, s. 3
Sixth Schedule

34. The rate of withholding tax upon the income specified in section 38(3) shall be the appropriate rate for the year specified in the Sixth Schedule, and the Minister may by order amend or substitute that Schedule.

Provisions
relating to
application of
certain sections
5 of 1990, s. 7
12 of 1992, s. 3

- ✓ 35.—(1) Subject to the provisions of subsections (2) and (3), the tax chargeable upon the total income in any year of any person to whom the provisions of section 19(1) apply shall be at the rate of 0.5 per cent for every dollar of income up to a maximum tax of ten thousand dollars.

(2) The provisions of subsection (1) shall not apply to —

(a) a non-resident person to whom the provisions of section 3(2)(a)(ii) apply; and

(b) a person to whom the provisions of section 33(1) and (2) apply and the tax chargeable under that section exceeds the tax chargeable under subsection (1); and

(c) any person granted incentives under the provisions of this Act.

(3) The Commissioner in determining the tax payable under the provisions of subsection (1) shall —

(a) where the provisions of section 19(1) apply take into consideration the quantum of dividend paid, the exemptions or incentives granted and the nature and extent of the losses incurred by such person; and

(b) in calculating the turnover tax of an individual who is in paid employment and is also in receipt of business income, exclude such person's income from employment from the total income, provided the tax due from such paid employment has been deducted and paid to the Commissioner.

B—Deduction of Tax

- ✓ 36.—(1) To the extent that any dividend is not exempt from tax, every company resident in Solomon Islands shall deduct from the amount of any dividend paid to any shareholder out of any profits, whether or not charged to tax under section 3, tax at the rate of twenty cents in the dollar for persons who are resident

Deduction of tax
from dividends
of a resident
company
17 of 1979, s. 17

in Solomon Islands and at the rate prescribed in section 33(1) for persons who are not resident in Solomon Islands. ✓

(2) Every such company shall upon payment of a dividend furnish each shareholder with a certificate in the form prescribed by the Commissioner setting forth the following information —

- (i) the name of the company;
- (ii) the name and address of the shareholder;
- (iii) the date on which the dividend was paid;
- (iv) the gross amount of the dividend;
- (v) the tax deducted from the dividend;
- (vi) the net amount received by the shareholder.

(3) The amount of tax deductible from the payment of dividends in accordance with subsection (1) shall be due and payable by the company to the Commissioner within fifteen days of the date on which the dividend was paid and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such amount so deductible as if it were tax which was due for payment on the fifteenth day next after the said date on which the dividend was paid.

(4) Where any company fails to deduct any tax in breach of subsection (3), the Commissioner shall have the right to collect such tax from either such company or the person to whom the dividend was payable and the Commissioner may take such steps as he thinks fit to recover that amount from both concurrently, or for recovering that amount wholly from one or partly from one and partly from the other.

(5) Notwithstanding anything to the contrary in this Act the tax deductible from dividends in accordance with this section shall be the final tax chargeable on such dividends in respect of any —

- (i) person who is not resident in Solomon Islands; and
- (ii) resident body of persons other than a company; and
- (iii) resident individual whose total income including such dividends, in any year is less than ten thousand dollars.

(6) For the purposes of this section, the word "paid", in relation to a dividend, includes the distribution, crediting, or dealing with such dividend in the interest of, or on behalf of, a shareholder, and the word "payment" shall be construed accordingly.

Withholding tax
on gross
payments made
to residents
5 of 1990, s. 8
Seventh
Schedule

37.—(1) To the extent that the income specified in subsection (2) is not exempt from tax, every person resident in Solomon Islands who makes a gross payment to any person or group of persons resident in Solomon Islands shall deduct therefrom tax at the appropriate withholding rate specified in the Seventh Schedule:

Provided that where the recipient of income specified in subsection (1) is an individual in secondary employment, the tax shall be deducted from such income paid to such individual at the rate prescribed in the Tax Deduction Rules, 1981:

Provided further that, where the Commissioner agrees with such person to accept an alternative arrangement for payment of the tax which may fall due under this section, he may declare such person exempt in part or in whole from the provisions of this section.

(2) For the purpose of subsection (1), income paid to a resident person as a gross payment and subject to resident withholding tax consists of—

- (a) income from contracting or subcontracting;
- (b) royalties;
- (c) income from fishing operations;
- (d) income from lease of property;
- (e) income from the sale of cocoa;
- (f) income from the sale of copra;
- (g) income from the sale of marine products.

(3) Upon payment of such income as specified in subsection (2), the payer shall furnish to the person to whom the gross payment is paid, a certificate in the Form prescribed by the Commissioner setting forth the following—

- (a) the name of the person making such gross payment;
- (b) the name of the person or group of persons receiving such gross payment;
- (c) the date on which the gross payment was made;
- (d) the gross amount paid;
- (e) the tax deducted from the gross payment; and
- (f) the net amount paid.

(4) The amount of tax deductible from the payment of income in accordance with subsection (1) shall be due and payable by the payer to the Commissioner by the 20th day of the month

following the month in which the gross payment was made, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such amount so deductible as if it were income tax which was due for payment on the twentieth day next after the said date on which the gross payment was made.

(5) Where any person in breach of subsection (1) fails to deduct any tax, the Commissioner shall have the right to collect such tax from either such person or the person who is chargeable with such tax and the Commissioner may take such steps as he thinks fit to recover that amount from both of those persons concurrently, or for recovering that amount wholly from one of those persons, or partly from one and partly from the other of those persons.

(6) Notwithstanding anything to the contrary in this Act, the tax deduction from the gross payments in accordance with this section shall be the final tax chargeable on such gross payments in respect of any—

- (i) resident body of persons other than a company; and
- (ii) resident individual whose total income including such gross payments, in any year is less than ten thousand dollars.

(7) In this section and the Seventh Schedule unless the context otherwise requires—

“gross payment” means in relation to an amount, the total amount without deduction whatsoever;

“income from fishing operations” means gross payments for operations relating directly to the taking or catching of fish, turtle, dugong, crustacea, oysters or other shellfish, within Solomon Islands;

“income from lease of property” means gross payments for a sub-lease and any licence, concession, permission, easement or other right granted to any person to use or over any land, and an agreement for such a concession; whether or not such a lease of property is effected by an oral or written agreement, and in the case of a written agreement, whether or not such document is required to be registered under the Land and Titles Act;

“income from the sale of copra” means all sales of copra within Solomon Islands;

“income from the sale of cocoa” means all sales of cocoa within Solomon Islands;

"income from the sale of marine products" means gross payments from all sales of beche-demer, marine shells, turtle shells and shark fins within the Solomon Islands;

"income from contracting and/or sub-contracting" means gross payments made for the business of installation, maintenance, construction, erection, clearing and draining;

"paid", includes distribution, crediting or dealing with gross payments in the interest of, or on behalf of a person or group of persons, and the word "payment" shall be construed accordingly;

"royalties" includes the extracting, removal or other exploitation or the right to extract, remove or otherwise exploit standing timber or any natural resource.

(8) The Minister may by Order alter the rates specified in the Seventh Schedule to such extent as he deems fit.

Deduction of tax from certain income paid to nonresidents
2 of 1976, s. 17
17 of 1979, s. 18

✓ 38.—(1) A person who pays non-resident income to a non-resident person shall deduct therefrom tax at the appropriate withholding rate specified in the Sixth Schedule in force at the date on which such income is payable and such income shall be deemed to be derived from Solomon Islands:

Provided that where the Commissioner agrees with such non-resident person to accept an alternative arrangement for payment of the tax which may fall due under this section he may declare such non-resident person exempt in part or in whole from the provisions of this section.

Sixth Schedule

5 of 1990, s. 9

(2) In this section and the Sixth Schedule unless the context otherwise requires —

"income from contracting" means the gross payments received from the business of installation, maintenance, construction, erection, clearing and draining,

"income from ships or aircraft" means the gross payments from the carriage of passengers who embark, or cargo or mail which is embarked, in Solomon Islands by any person who carries on the business of owner or charterer of ships or aircraft but shall not include the gross payments from the carriage of passengers who embark, or cargo or mail which is embarked in Solomon Islands solely as a result of transshipment, and where any ship or aircraft owned or chartered by a non-resident person calls at any place in Solomon

17 of 1979, s. 18
5 of 1990, s. 9

Islands for the purpose of embarking cargo purchased by or on behalf of such person which has been manufactured, grown, mined, produced, harvested or felled within Solomon Islands or surrounding waters, then for the purpose of this section such person shall be deemed to be carrying on the business of owner or charterer of such ship or aircraft and shall be deemed to have received such income as the Commissioner considers just and reasonable;

"insurance premiums" means the amount of the gross premiums (other than premiums in respect of life insurance) paid in respect of risks in Solomon Islands and from the carriage of cargo from Solomon Islands, and shall include any re-insurance premiums;

"interest" in relation to the deriving of income by a non-resident person shall mean income on any amount for a sum in the nature of interest where a person agrees or promises to pay a non-resident person a sum greater than the amount borrowed; the excess being deemed to be interest;

5 of 1990, s. 9

"lease income" means gross payments received from —

10 of 1991, s. 2

(a) leasing of any plant, equipment or machinery; or

(b) chartering or hiring of fishing vessels or related vessels for the purpose of fishing;

"paid", in relation to non-resident income, includes distributed, credited or dealt with in the interest of or on behalf of a person and "pay" and "payment" shall have corresponding meanings;

"permanent establishment" means a branch, management or other fixed place of business but shall not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such person or has a stock of merchandise from which he regularly fills orders on behalf of such person;

"person" includes Solomon Islands Government and any Provincial Government or public authority;

5 of 1990, s. 9

"professional services" means any payment for professional or technical services or services of an adviser or consultant on behalf of a person or entity resident in Solomon Islands (whether such services are rendered wholly or partly in Solomon Islands or

5 of 1990, s. 9
12 of 1992, s. 4

outside Solomon Islands) to the extent that such payments do not constitute —

- (i) emoluments which are liable to the deduction of tax within the Tax Deduction Rules; or
- (ii) reimbursement of travelling or accommodation expenses which are wholly and exclusively incurred in relation to such payment;

“resident”, in relation to any person, means a person who is a resident within the meaning of section 2 and also includes any person who is engaged in trade or business in Solomon Islands through a permanent establishment situated therein in relation to any income paid to such person or any payment made by such person which is an allowable deduction under this Act;

“royalties” mean payments of any kind to the extent of which it is derived as consideration for —

- (i) the use of or right to use any copyright, patent, design or model, plan, secret formula or process, trade mark or other like property or right;
- (ii) the supply of scientific, technical, industrial or commercial knowledge, information or assistance;
- (iii) the supply of assistance ancillary and subsidiary to and furnished as a means of enabling the application or enjoyment of any such property or right or any such knowledge or information or assistance as is mentioned in paragraphs (i) and (ii) of this definition.

(3) For the purposes of this section non-resident income includes any income that consists of —

- (a) interest;
- (b) professional services;
- (c) royalties or other like payments;
- (d) income from contracting;
- (e) income from ships or aircraft;
- (f) insurance premiums;
- (g) rent for the hiring of films; and
- (h) lease income.

5 of 1990, s. 9

17 of 1979, s. 18
10 of 1991, s. 2

(4) Upon payment of such income as is specified in subsection (1), the payer shall furnish the person to whom the income is paid with a certificate setting forth the amount of the income paid to him and the amount of tax deducted therefrom and shall also furnish the Commissioner with a copy of such certificate, by the 20th day of the month following date of payment of such income.

(5) An amount of tax deductible from a payment of such income under subsection (1) shall be due and payable by the payer of the income to the Commissioner within thirty days of the date on which the income was paid and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such amount so deductible as if it were tax which was due for payment on the thirtieth day next after the said date on which the income was paid.

(6) Where any person in breach of subsection (1) fails to deduct any tax, the Commissioner shall have the right to collect such tax from either such person or the person who is chargeable with such tax and the Commissioner may take such steps as he thinks fit to recover that amount from both of those persons concurrently, or for recovering that amount wholly from one of those persons, or partly from one and partly from the other of those persons.

(7) No officer of customs and excise shall grant clearance to any ship or aircraft to depart until he is satisfied that any tax that has been or may be chargeable in respect of the carriage of passengers or cargo or mail which is embarked in Solomon Islands, other than as a result of trans-shipment, has been paid, or that arrangements for its payment have been made to the satisfaction of the Commissioner.

39.—(1) Where a company resident in Solomon Islands makes a bonus issue and at any time thereafter such company makes a distribution of any amount (whether in money or money's worth) that in the opinion of the Commissioner is either directly or indirectly a distribution of any amount capitalised by such bonus issue then there shall be payable by the company at the time of the distribution a tax referred to in this Act as a bonus issue tax which shall be distinct from and in addition to any other income tax levied under this Act.

(2) Bonus issue tax shall be payable at the rate of twenty cents for every dollar of the amount distributed and shall be due and payable by the company to the Commissioner within fifteen days of the date on which the distribution was made and the provisions of this Act relating to the collection and recovery of tax

5 of 1990, s. 9

Distribution of a
capitalised
amount
17 of 1979 s. 19

shall apply to bonus issue tax as if it were income tax which was due for payment on the fifteenth day next after the date on which the distribution was made.

(3) For the purpose of this section "bonus issue" means a capitalisation of the whole or part of the amount for the time being standing to the credit of the company's reserve account or to the credit of the company's profit and loss account or the whole or part of the amount otherwise available for capitalisation, being in any such case a capitalisation subsequent to 31st December 1979 by way of allotting fully or partly paid-up shares in the company or by way of giving credit in respect of the whole or part of the amount unpaid on any shares in the company.

C — Set-off of Tax

Set-off of tax
deducted from
dividends
17 of 1979, s. 20

40. (1) Subject to subsection (2), the amount of tax which has been deducted under section 36(1) shall be deemed to have been paid by the person receiving or deemed to have received the dividend and shall be set off for the purpose of collection against the tax charged on such person in accordance with sections 32, 33 or 36(5), as the case may be.

(2) Where dividends are chargeable to tax in accordance with section 32 the set-off shall be limited to the tax so chargeable on such dividends and for the purpose of calculating such set-off the income from dividends shall be deemed to have been taxed at the highest rates of tax applicable to the person receiving them.

Licence fees paid
to Councils may
be allowed to be
set off
5 of 1977, s. 16
Cap. 117

41.— (1) If any person carrying on business proves to the satisfaction of the Commissioner that he paid during any year a licence fee for that year in respect of that business to a Council established under the Local Government Act, and if he makes a claim in that behalf to the Commissioner within the time allowed for furnishing a return under section 57 or such further time as the Commissioner may allow, the amount of such fee shall be set off for the purposes of collection against so much of the tax charged on such person for such year as is attributable to gains or profits derived from the carrying on of such business during such year:

Provided that, notwithstanding the provisions of section 90, such person shall not be entitled to any refund in the event of the amount to be set off exceeding such tax charged on him.

(2) The Minister may by Order prescribe the maximum amount that may be set off under this section in respect of any one business in any year.

42. If any person proves —

(a) that he has paid or is liable to pay for any year specific duty under the Customs and Excise Act in respect of copra or rice exported by him; or

(b) that any sum received by him from the sale in any year of copra or rice produced by him was determined after taking into account any specific duty payable under the Customs and Excise Act in respect of such copra or rice,

he shall be entitled, on a claim made within the time allowed for furnishing a return of income under section 57, or such longer period as the Commissioner may allow, to set off for the purposes of payment of tax under this Act such specific duty against so much of the tax charged on him for such year as is attributable to gains or profits derived from the production of such copra or rice; and for the purposes of this section "specific duty" means a duty levied upon a quantity of the commodity exported and does not include any duty levied *ad valorem*:

Provided that, notwithstanding the provisions of section 90, such person shall not be entitled to any refund in the event of the amount to be set off exceeding such tax charged on him, but any such excess shall be carried forward for set-off for the purposes of payment of tax under this Act against so much of the tax charged on him in any future year as is attributable to gains or profits derived from the production of such copra or rice for such future year.

43.— (1) Where in any year a person is entitled to receive a bonus or gratuity in respect of services rendered in a year prior to the year in which it is receivable, such person shall be entitled to an income tax rebate calculated by multiplying such bonus or gratuity by half the difference between his marginal rate of tax in the year the income was receivable and the marginal rate of tax in the immediately preceding year:

Provided that no rebate shall be calculated on such bonus or gratuity to the extent that such bonus or gratuity exceeds five thousand dollars or where the marginal rate in such immediately preceding year is greater than the marginal rate in the year in which it is receivable.

(2) For the purpose of this section "marginal rate" means the rate of tax chargeable on the last dollar of income.

Set-off of
specific export
duty on copra or
rice
2 of 1976, s. 18
Cap. 121

Rebate on
previous year's
bonus or gratuity
2 of 1976, s. 19

D—Double Taxation Relief

Relief in respect
of overseas
income tax
14 of 1968, s. 20
LN 46A of 1978

✓ 44.—(1) If any resident person chargeable to tax on any part of his income, proves that he has paid, by deduction or otherwise, or is liable to pay overseas income tax for such year in respect of the same part of his income, he shall be entitled to relief from tax so chargeable on such part of his income at the overseas rate of tax or Solomon Islands rate of tax, whichever is the less.

(2) For the purposes of this section, Solomon Islands rate of tax and the overseas rate of tax shall be computed by dividing the amount of tax paid or payable for the year (before deduction of any relief granted under this section) by the amount of the total income of such person for such year.

Special
arrangements for
relief from
double taxation
LN 46A of 1978

✓ 45.*—(1) If the Minister by order declares that arrangements specified in such order have been made with the Government of any territory outside Solomon Islands with a view to affording relief from double taxation in relation to income tax or any tax of a similar nature imposed by the laws of that territory and that it is expedient that those arrangements should have effect, then such arrangements shall, notwithstanding anything in this Act, so have effect as if such arrangements were contained in this Act.

(2) Except in so far as such arrangements otherwise provide, section 44 shall cease to have effect as respects any place with the Government of which arrangements have been made under this section for the year in respect of which such arrangements first have effect and for each succeeding year.

Computation of
income and
credits where
special
arrangements
apply
LN 46A of 1978

46.—(1) Where, under arrangements having effect under section 45, foreign tax payable in respect of any income is to be allowed as a credit against tax chargeable in respect of such income, this section shall have effect, notwithstanding the other provisions of this Act, as regards the computation of such income for the purposes of this Act and of the amount of credit to be allowed thereunder.

(2) The amount of the tax otherwise chargeable upon the income referred to in subsection (1) shall be reduced by the amount of the credit.

(3) Income arising out of but received in Solomon Islands shall be deemed to be income of such gross amount as would, after deduction of the foreign tax directly chargeable thereon or payable by deduction therefrom, be equal to the net amount received:

*For provisions relating to Continuance of Double Taxation Agreements, see Section 115

Provided that—

(i) where such income includes a dividend, and under the arrangements any other foreign tax not chargeable directly or by deduction in respect of such dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend, the income from such dividend shall be deemed to be such gross amount, increased by the amount of such other foreign tax appropriate to such dividend;

(ii) where the total of the foreign tax payable in respect of the income, including any taken into account under proviso (i), exceeds the amount of the credit to be allowed thereon, the income shall be reduced by the amount of the excess.

(4) The credit to be allowed for any year shall be the total of the foreign tax referred to in subsection (3) or, if less, the amount of tax which would be produced by charging to tax the income referred to in subsection (1), computed under subsection (3) before the operation of the provisos thereto, at a rate ascertained by dividing the tax which would be chargeable for the year (before allowance of any credit under arrangements having effect under section 45) in respect of the total income computed before the operation of the provisos to subsection (3), by the amount of the total income so computed.

(5) Where—

(a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if such dividend is paid to a company which controls, directly or indirectly, not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if such dividend were a dividend of a class in relation to which such arrangements so provide.

(6) Credit shall not be allowed under the arrangements against tax chargeable upon the income of any person for any year if he elects by notice in writing to the Commissioner that credit shall not be allowed in the case of his income for such year.

(7) Subject to subsection (8), any claim for an allowance by way of credit shall be made to the Commissioner within three years from the end of the year to which it relates.

(8) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any income tax, or tax of a similar nature, payable either in Solomon Islands or elsewhere, nothing in this Act limiting the time for making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than three years from the time when all such assessments, adjustments and other determinations have been made, whether in Solomon Islands or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

PART VIII

PERSONS ASSESSABLE: LIABILITIES ON BEHALF OF OTHER PERSONS

Income of a
person assessed
on him

47. Where, under this Act, the income of any person is chargeable to tax, then, subject to this Act, such income shall be assessed on, and the tax thereon charged on, such person.

Wife's income,
etc
5 of 1977, s. 18
10 of 1991, s. 4
12 of 1992, s. 5

48.— (1) The income of a married woman living with her husband shall be deemed to be the income of the husband for the purpose of ascertaining his total income, and shall be assessed on, and the tax thereon charged on, the husband:

Provided that —

- (i) where such married woman derives income —
 - (a) from a business, carried on by her apart from her husband; or
 - (b) from employment or services rendered, other than from employment with or services rendered to her husband; or
 - (c) from any other source other than business or employment,

of an amount which exceeds five thousand one hundred dollars, in any year the spouses shall, for the purposes of this Act, be treated for that year as if they were unmarried persons;

- (ii) such part of the total amount of tax charged on the

husband as bears the same proportion to such total amount of tax as the amount of the income of the wife so deemed bears to the amount of the total income of the husband may, if due and not paid, be collected from the wife or, if she is dead, from her executors or administrators, notwithstanding that no assessment has been made upon her; and the provisions of this Act relating to the collection and recovery of tax shall apply to such part of such tax as if it were tax the due date for the payment of which is a date thirty days after the date of a notice served on such wife, or her executors or administrators, as the case may be, requiring payment of such part of such tax.

(2) Where a married woman is not living with her husband, then each spouse shall, for the purposes of this Act, be treated as if he or she were unmarried.

(3) For the purposes of this Act, a married woman shall be treated as living with her husband unless —

- (a) they are separated under an order of a court of competent jurisdiction or under any written agreement of separation; or
- (b) they are separated in such circumstances that the separation is likely to be permanent; or
- (c) she is a resident person and her husband is a non-resident person.

49. The income of an incapacitated person shall be assessed on, and the tax thereon charged on, such person in the name of his trustee, guardian, curator, committee or receiver appointed by a court, in like manner and to the like amount as such incapacitated person would have been assessed and charged if he were not an incapacitated person.

Income of an
incapacitated
person.

50. The income of a non-resident person shall be assessed on, and the tax thereon charged on, such person either in his name or in the name of his trustee, guardian, curator, or committee or on any attorney, factor, agent, receiver, partner or manager.

Income of a non-
resident person
5 of 1990, s. 10

51.— (1) The income accrued to, or received prior to, the date of the death of a deceased person which would, but for his death, have been assessed and charged to tax on him for any year shall, subject to section 75 (1) (iii), be assessed on, and the tax charged on, his executors or administrators for such year.

Income of a
deceased person,
etc

(2) Any amount received by the executors or administrators of such deceased person which would, but for his death, have been his income for any year shall be deemed to be the income of such executors or administrators and shall be assessed on, and the tax charged on, such executors or administrators for such year.

Liability of and indemnification of person in whose name income of another person is assessed or paying tax on behalf of such other person

52.—(1) Any person in whose name the income of an incapacitated person or a non-resident person or of any other person is assessable and chargeable shall be responsible, in relation to the assessment of such income, for doing all such things as are under this Act required to be done by a person whose income is chargeable to tax under this Act and shall be responsible for the payment of any tax so charged on him to the extent of any assets of such incapacitated person, non-resident person or other person, as the case may be, which are in his possession on, or may come into his possession after, the date of the service of the notice of assessment on him.

(2) Every person responsible under this Act for the payment of tax on behalf of another person —

(a) may retain out of any money coming into his hands on behalf of such other person so much thereof as is sufficient to pay such tax; and such person shall be and is hereby indemnified against any person whatsoever for all payments so made by him under this Act;

(b) shall, before making any distribution of the assets of such other person for which he is responsible, obtain a certificate from the Commissioner that no tax, interest or penalties chargeable against such assets remain unpaid; and if such person fails to comply with this requirement and any tax, interest or penalties remain unpaid, the provisions of this Act relating to the collection and recovery of tax, interest or penalties, shall apply to such unpaid tax, interest or penalties as if they were tax due to be paid by such person on the date of distribution of such assets.

53. Where any obligation is imposed on any person under this Act and such person is a corporate body of persons, then the general manager or other principal officer thereof shall be responsible for performing such obligations.

Liability of manager, etc., of corporate body of persons

54.—(1) Every person who is a liquidator of any company which is being wound up, shall, within fourteen days after he has become liquidator of that company, give notice in writing to the Commissioner of his appointment as liquidator.

Notice within fourteen days and duties of liquidator
12 of 1992, s. 6

(2) The Commissioner shall, as soon as practicable thereafter, notify the liquidator the amount which appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company.

(3) Subject to subsection (4), the liquidator —

(a) shall not, without the leave of the Commissioner, part with any of the assets of the company until the liquidator has been so notified;

(b) shall set aside, out of the assets available for payment of ordinary debts of the company, assets to the value of an amount that bears to the value of the assets available for payment of ordinary debts of the company the same proportion as the amount notified by the Commissioner under subsection (2) bears to the sum of —

(i) the amount notified by the Commissioner under subsection (2);

(ii) the aggregate of the ordinary debts of the company; and

(c) is, to the extent of the value of the assets that the liquidator is so required to set aside, liable as trustee to pay the tax.

(4) Nothing in subsection (3)(a) prevents the liquidator parting with assets of the company for the purpose of paying debts of the company that are not ordinary debts of the company.

(5) For the purposes of subsections (3) and (4), a debt of the company is an ordinary debt if —

(a) the debt is an unsecured debt; and

(b) the debt is not required, under the laws of Solomon Islands to be paid in priority to some or all of the other debts of the company.

(6) If the liquidator refuses or fails to comply with any provision of this section or refuses or fails as trustee to pay the tax for which the liquidator is liable under subsection (3), the liquidator —

(a) is, to the extent of the value of the assets that the liquidator is required under subsection (3) to set aside, personally liable to pay the tax; and

(b) is guilty of an offence punishable on conviction by a fine not exceeding one thousand dollars.

(7) Where more persons than one are appointed as liquidators or required by law to carry out the winding up, the obligations and liabilities attaching to a liquidator under this section shall attach to each of such persons:

Provided that where any of the tax due in respect of the company being wound up, the other person or persons shall be liable to pay that person each his equal share of the amount of the tax so paid.

55.—(1) Where an agent for an absentee principal has been required by the principal to wind up the business of his principal he shall, before taking any steps to wind up the business, notify the Commissioner of his intention so to do, and shall set aside such sum out of the assets of the principal as appears to the Commissioner to be sufficient to provide for any tax that becomes payable.

(2) Any agent who refuses to give notice to the Commissioner or refuses or fails to provide for payment of the tax as required by this section shall be personally liable for any tax that becomes payable in respect of the business of the principal.

56. With respect to every agent and with respect also to every trustee, the following provisions shall apply —

(a) he shall be answerable as taxpayer for doing of all such things as are required to be done by virtue of this Act;

(b) he shall make returns and be chargeable with tax in his representative capacity;

(c) if he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make;

(d) where as agent or trustee he pays tax, he is hereby authorised to recover the amount so paid from the person on whose behalf he paid it, or to deduct it from any money in his hands belonging to that person;

(e) he is hereby authorised and required to retain from time to time out of any money which comes to him in his representative capacity so as much is sufficient to pay tax which is or will become due in respect of such sale value;

(f) he is hereby indemnified for all payments which he makes in pursuance of this Act or by the requirements to the Commissioner; and

Notice of
intention to
Wind up and
liability of agent
12 of 1992, s. 6

Obligations and
authority of
agents and
trustees
12 of 1992, s. 6

(g) for the purpose of ensuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other tax payment in respect of tax, and in as full and ample manner.

PART IX

RETURNS AND NOTICES

57.—(1) Subject to any rules made under section 114 (b), every person chargeable to tax for any year shall, notwithstanding that he may not have received a notice in writing from the Commissioner under subsections (2) or (3), make a return of income for that year on the prescribed form not later than 31st March following such year, or, where he is in receipt of gains or profits from a business the accounting period of which ends on a date later than 31st December in such year, not later than a date three months after the end of such accounting period.

Returns of
income, etc
14 of 1968, s. 21
17 of 1979, s. 22

(2) The Commissioner may, by notice in writing, require any person to furnish him, within such time as may be specified in such notice, with a return of income for any year or part of a year, containing a full and true statement of the income of such person, including income deemed to be his under this Act, liable to tax and of such particulars as may be required for the purposes of this Act; and such return shall include a declaration signed by such person, or by the person in whose name he is assessable and chargeable, that such return is a full and true statement.

(3) In the case of the executor or administrator of a deceased person, or of the liquidator of a resident company, or of a bankrupt, or of any person whom the Commissioner has reason to believe is about to leave Solomon Islands, the Commissioner may, by notice in writing, require him to furnish a return of income at any time whether before or after the end of the year to which such return relates.

(4) Where any business is carried on by two or more persons in partnership, the Commissioner may, by notice in writing, require the precedent resident partner, that is the partner who, of the resident partners —

(a) is first named in the agreement of partnership; or

(b) if there be no written agreement, is specified by name or initials singly, or with precedence to the other partners, in the usual name of the partnership; or

(c) is first named in any statement required under any law of Solomon Islands to register the name of the business;

to furnish him, within such time as may be specified in such notice, with a return of income of the partnership, ascertained under this Act as if the partnership were a person liable to tax, for any year prior to that in which the notice is served, containing a full and true statement of such income and of such particulars as may be required for the purposes of this Act, including the names and addresses of the partners together with the amount of the share of such income to which each partner was entitled for such year.

(5) The provisions of this section shall apply to any person who is assessable in respect of the income of another person, in whatever capacity, as they do to any person in respect of the income to which he is beneficially entitled.

(6) In every return furnished under this section the person making the return shall state an address to which all notices to be served under this Act may be sent.

(7) The Commissioner may at any time extend the period in which a return required under this section is to be made.

58.—(1) Where any person carrying on business in Solomon Islands—

(a) fails to make a return for any year in respect of his business as required under this Act; or

(b) fails to comply with a notice in writing given to him by the Commissioner under subsections (2), (3) or (4) of section 57, requiring such person to furnish a return of income, the Commissioner may by notice in writing—

(i) impose on such person a penalty of a sum of five hundred dollars; and

(ii) require such person to furnish such return within such period as may be specified in such notice.

(2) Where a person fails to furnish the Commissioner with a return within such period as specified in the notice issued under subsection (1), such person shall be liable to pay an additional penalty of fifty dollars in respect of each month such return remains outstanding.

(3) The Commissioner may waive the penalty or the additional penalty imposed on such person under this section, if such

Penalty for failure to furnish return under section 57
10 of 1991, s. 4

person proves to the satisfaction of the Commissioner, that his failure to furnish a return was due to circumstances beyond his control and that he has, after the imposition of the penalty furnished such return.

(4) Any penalty imposed under the provisions of this section shall not relieve any person from liability for which he may be liable to be prosecuted for an offence under section 96 or from the additional tax payable under section 69.

59. Every person who is required under this Act to deduct tax at the withholding rates from gross payments made, shall furnish quarterly returns to the Commissioner in respect of the payments made, within twenty days of the month following 30th March, 30th June, 30th September and 30th December.

Returns to be made by persons making gross payments
12 of 1992, s. 7

60. Where a person fails to furnish the Commissioner with a return as required under section 59, such person shall be liable—

(a) to a penalty of a sum of five hundred dollars; and

(b) to pay an additional penalty of fifty dollars in respect of each month such return remains outstanding.

Penalty for failure to furnish returns under section 59
12 of 1992, s. 7

61.—(1) Where any person who carries on any business makes a return of income for any year and accounts of his business for any accounting period relating to such year have been prepared by him, or prepared or examined by another person in a professional capacity, then such person shall furnish with such return of income a copy of such accounts signed by himself, and by any such other person, together with a certificate signed by himself or such other person, as the case may be, specifying the nature of the books of account and documents from which such accounts were prepared; and such certificate shall also state—

Accounts, books of account, etc

(a) if the accounts were prepared by himself, whether they reflect all the transactions of his business and present a true and fair view of the gains or profits from such business for such period;

(b) if the accounts were prepared by such other person, whether and subject to what reservations, if any, such other person considers that such accounts present a true and fair view of the gains or profits from such business for such period, and recording the extent of his verification of the books of account and the documents produced to him;

(c) if the accounts were examined by such other person, specifying the extent of the examination thereof.

In this subsection "accounts" means a balance sheet or statement of assets and liabilities, and a trading account, profit and loss account, receipts and payments account, or other similar account however named.

(2) Subject to subsection (3), every person carrying on a business shall keep such records in the English language as the Commissioner considers adequate for the purpose of ascertaining the receipts and expenditure of the business and the gains or profits which are chargeable to tax and such person shall retain all such records so kept after the 1st January, 1966, and all records relating to that business in existence at that date, for a period of at least seven years after the completion of the transactions, acts or operations to which they relate.

(3) Every person carrying on a business shall preserve every book of account and every document which is essential to the explanation of any entry in such book of account, relating to such business for a period of not less than seven years after the year to which such book of account or document relates:

Provided that, subject to section 62, this section shall not require the preservation of any document or book of account—

(a) in respect of which the Commissioner has notified that person in writing that its preservation is not required, or

(b) in the case of a company which has gone into liquidation and has been finally dissolved, or in the case of the cessation of a business other than one carried on by a company, for more than three months after the date on which the person having custody of the documents or books of account relating to such company or business, as the case may be, informs the Commissioner that he proposes to destroy them.

62. For the purposes of obtaining full information in respect of the income of any person or class of persons, the Commissioner may, by notice in writing require any person—

(a) to produce for examination by the Commissioner, at such time and place as may be specified in such notice, any accounts, books of account, statements of assets and liabilities, or other documents which the Commissioner may consider necessary for such purpose;

(b) not to destroy, damage or deface, on or after service of such notice, any of the accounts, books of account or other documents so specified without permission of the Commissioner in writing;

Production and preservation of books, attendances, etc

(c) to produce forthwith for retention by the Commissioner for such period as may be reasonable after examination any accounts, books of account or other documents which the Commissioner may specify in such notice;

(d) to attend at such time and place as may be specified in such notice, for the purpose of being examined respecting his income or the income of any other person or any transactions or matters appearing to be relevant thereto.

63.—(1) The Commissioner or any officer authorised in that behalf by him shall at all reasonable times have full and free access to any land, building, or place, and to any record, whether in custody or under control of a public officer, or a body corporate, or any other person whatsoever, for the purpose of inspecting any such record and any property, process or matter which the Commissioner or officer considers necessary or relevant for the purpose of collecting any tax under this Act, or for the purpose of carrying out any other function lawfully conferred on the Commissioner, or considers likely to provide any information otherwise required for the purposes of this Act or any of these functions, and may, without fee or reward, make extracts from or copies of any such record.

Power to obtain information and evidence
10 of 1991, s. 5

(2) The Commissioner or any other authorised officer may for the purposes of any investigation under this section, require the owner or manager of any property or business which is being investigated, or any other person employed or previously employed, in connection with the property or business, to give him all reasonable assistance in the investigation and to answer all proper questions relating to any such investigation either orally or, if the Commissioner or officer so requires, in writing, require the owner or manager or in the case of a company, any officer of the company, to attend at the premises with him.

(3) In this section "record" includes any book, account, deed, writing, document and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means.

12 of 1992, s. 8

64.—(1) Every employer shall furnish the Commissioner on or before the 28th February in each year, with a return for the preceding year and in such form as the Commissioner may prescribe containing—

Employer's return of salaries, etc

(a) the names and addresses of all persons employed by him, and the payments and allowances made to, or in respect of, each of such persons in respect of their employment; and

(b) the names and addresses of all persons to whom he has paid pensions in respect of past employment with him and the amount of the pension paid to each of such persons:

Provided that there may be excluded from such return such class of person or payment or allowance as the Commissioner may permit.

(2) The Commissioner may, at any time, extend the period in which such return is to be made.

(3) For the purposes of this section, references in subsection (1) —

(a) to payments and allowances, include all payments and all benefits, advantages and facilities, referred to in paragraphs (a), (b) and (c) of section 5 (1);

(b) to persons employed, include, in relation to a company, a director of that company.

65.— (1) The Commissioner may, by notice in writing, at any time require any resident company which pays any dividend to furnish him, within such time as may be specified in such notice, with a return giving the full name and address of each shareholder and, in respect of each shareholder, the information in relation to the matters referred to in section 36(2).

(2) The Commissioner may, at any time, extend the period in which such return is to be made.

66.— (1) The Commissioner may, by notice in writing, require any person who, in the course of business holds money and pays or credits interest thereon, to furnish him with a return of all interest so paid or credited during a period specified in such notice, giving the names and addresses of the persons to whom the interest was paid or credited and the amounts thereof.

(2) The Commissioner may, at any time, extend the period in which such return is to be made.

67.— (1) The Commissioner may, by notice in writing, require any person to furnish him, within such time as may be specified in such notice, with particulars or further returns in relation to any matter contained in a return made under this Act, or in relation to any transactions or matters appearing to the Commissioner to be relevant to the ascertaining of the income of such person, or of any other person in respect of whose income such person is assessable or of whose income such person is in receipt.

Return of
resident
company
dividends

Returns of
interest paid

Further returns
and extension of
time

(2) The Commissioner may, at any time, extend the period in which such return is to be made.

68. A return, statement or form, purporting to be furnished under this Act by or on behalf of any person shall, for all purposes, be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement, or form, shall be deemed to be cognisant of all matters contained therein.

Return deemed
to be furnished
with due
authority

69.— (1) In respect of any person who —

(a) fails to make a return of income for any year as required by section 57 (1); or

(b) omits from his return of income for any year any amount which ought to have been included therein, or claims any personal exemption to which he is not entitled;

the Commissioner may, where he is satisfied that such failure or omission was due to any fraud or to any gross neglect, charge such person for such year with an amount of tax not exceeding, in the case of failure to make a return of income, double the normal tax chargeable for such year, and in any other case, double the difference between —

(i) the normal tax chargeable on a correct amount of income after taking account of the correct personal exemptions, and

(ii) the normal tax chargeable on income included in the return after allowing the personal exemptions claimed therein;

and such person shall be required to pay such additional tax in addition to the normal tax chargeable on his total income.

(2) Any person who, in his return of income for any year, deducts or sets off any amount the deduction or set-off whereof is not allowed under this Act, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of subsection (1) (b) to have omitted such amount from his return of income.

(3) Where any failure, omission, claim or deduction, has been made in connection with a return of income required under this Act to be furnished by any person on behalf of another person, such other person shall be liable for any additional tax charged under this section.

Additional tax in
the event of
fraud, default or
omission

(4) The additional tax charged under this section shall be charged —

(a) in any assessment made under this Act; and

(b) whether or not any proceedings are commenced for any offence against this Act arising out of the same facts; and such additional tax shall be levied and collected as if it were normal tax:

Provided that such additional tax shall be deemed not to be tax paid or payable for the purposes of section 44 (2), section 45, section 46 and of calculating any fine under Part XIII.

(5) The Commissioner may in his discretion, where there is an appeal against an assessment which includes additional tax, remit the whole or part of such additional tax.

(6) In this section "tax" means tax charged under this Act apart from this section and "additional tax" means tax charged under this section in addition to the normal tax.

70.—(1) Where an employer —

(a) fails to make a deduction of tax as required under the provisions of this Act or any rules made under section 114; or

(b) makes a deduction for the purposes of this Act or rules, or purporting to be for those purposes, and fails to remit the amount so deducted to the Commissioner in whole or in part, or applies such deduction for any purpose other than remitting such deduction to the Commissioner, the Commissioner may, where he is satisfied that such failure or misapplication of such deduction, was not due to any cause beyond the control of the employer, charge such employer an additional amount, not exceeding double the amount payable or remaining outstanding, as the case may be, on the due date.

(2) The provisions of section 69(4), (5) and (6) shall, *mutatis mutandis*, apply in respect of any additional tax payable under the provisions of this section.

PART X

ASSESSMENTS

71.—(1) Subject to subsection (3) and to section 72 and to any rules made under section 114 (b), the Commissioner shall proceed to assess every person chargeable with tax as expedi-

Commissioner to make assessment
14 of 1968, s. 22

Failure to make deduction or misapplication of deduction
10 of 1991, s. 6

tiously as possible after the expiry of the time allowed to such person under section 57 and 67 for the delivery of a return of income.

(2) Where a person has furnished a return of income the Commissioner may —

(a) accept such return and assess him on the basis thereof; or

(b) if he has reasonable cause to believe that such return was not true and correct, estimate, according to the best of his judgment, the amount of the income of such person and assess him accordingly.

(3) Where a person has not delivered a return of income, whether or not he has been required by the Commissioner so to do, and the Commissioner considers that such person is liable to tax, he may, according to the best of his judgment, determine the amount of the income of such person and assess him accordingly; but such assessment shall not affect any liability otherwise incurred by such person under this Act.

72. Where —

(a) the Commissioner has reasonable cause to believe that any person —

(i) may leave Solomon Islands within a short time; or

(ii) has left Solomon Islands and his absence is unlikely to be only temporary; and

(b) such person has not been assessed to tax on income chargeable to tax for any year,

then the Commissioner may, according to the best of his judgment, determine the amount of the income of such person for such year and assess him accordingly; but such assessment shall not affect any liability otherwise incurred by such person under this Act.

73. Where the Commissioner considers that any person has been assessed at a less amount, either in relation to the income assessed or to the amount of tax payable, than that at which he ought to have been assessed, the Commissioner may, by an additional assessment, assess such person at such additional amount as, according to the best of his judgment, such person ought to have been assessed.

Assessment of persons about to leave or having left Solomon Islands
LN 46A of 1978

Making of additional assessments

Service of notice
of assessment

74. The Commissioner shall cause a notice of assessment to be served on each person assessed; and such notice shall state the amount of income assessed and the amount of tax payable, and shall inform such person of his rights under section 77.

Time limit for
making
assessments

75.— (1) An assessment may be made under this Act at any time prior to the expiry of seven years after the year to which the assessment relates:

Provided that —

(i) where any fraud or any gross or wilful neglect has been committed by or on behalf of any person in relation to tax for any year, an assessment in relation to such year may be made at any time;

(ii) in the case of income consisting of gains or profits from employment or services rendered, an assessment in relation thereto may be made at any time prior to the expiry of seven years after the year in which the gains or profits are received;

(iii) in the case of an assessment made upon the executors or administrators of a deceased person in respect of the income of such person, the assessment shall be made prior to the expiry of three years after the year in which such deceased person died.

(2) The question whether an assessment has been made after the time specified in this section for the making thereof shall be raised only on a valid objection made under section 77 and on any appeal consequent thereon.

Errors, etc., in
assessments or
notices

76.— (1) No assessment, warrant or other document purporting to be made, issued or executed under this Act shall be quashed, or deemed to be void or voidable for want of form, or be affected by reason of a mistake, defect or omission therein, if it is in substance and effect in conformity with or according to the intent and meaning of this Act and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected —

- (a) by reason of a mistake therein as to —
 - (i) the name of the person assessed; or
 - (ii) the description of any income; or
 - (iii) the amount of tax charged; or

(b) by reason of any variance between the assessment and the duly served notice thereof.

PART XI

OBJECTIONS AND APPEALS

77. Any person who disputes an assessment made upon him under this Act may, by notice in writing to the Commissioner in Form 1 in the Eighth Schedule, object to the assessment; and no such notice shall be valid unless it states precisely the grounds of the objection to the assessment and is received by the Commissioner within fifty days of the date upon which the notice was served or deemed to have been effected:

Notice of
objection to
assessment
2 of 1976, s. 21
LN 46A of 1978
Eighth Schedule
Form 1

Provided that if the Commissioner is satisfied that owing to absence from Solomon Islands or sickness or other reasonable cause, the person objecting to the assessment was prevented from giving such notice within such period, and that there has been no unreasonable delay on his part, the Commissioner may, upon application by the person objecting, and after deposit by him with the Commissioner of so much of the tax as is due under the assessment, or such part thereof as the Commissioner may require, and the payment of any penalty due under section 84, admit any such notice after the expiry of such period, whereupon such admitted notice shall be deemed to be a valid notice of objection.

78.— (1) Where a valid notice of objection has been received, the Commissioner may —

Power of
Commissioner
on notice of
objection

- (a) amend the assessment in accordance with the objection; or
- (b) amend the assessment in the light of the objection according to the best of his judgment; or
- (c) refuse to amend the assessment.

(2) Where the Commissioner either —

- (a) agrees to amend the assessment in accordance with the objection; or
- (b) proposes to amend the assessment in the light of the objection and the person objecting agrees with the Commissioner as to such proposed amendment,

the assessment shall be amended accordingly and the Commissioner shall cause a notice setting out such amendment and the amount of the tax payable to be served on such person.

(3) Where the Commissioner—

(a) proposes to amend the assessment in the light of the objection and the person objecting does not agree with the Commissioner as to such proposed amendment, the assessment shall be amended as proposed by the Commissioner and he shall cause a notice setting out such amendment and the amount of tax payable to be served on such person;

(b) refuses to amend the assessment, he shall cause a notice confirming the assessment to be served on such person.

79.—(1) Any person who has given a valid notice of objection to an assessment and, consequent thereon has been served with a notice under section 78(3) may, within sixty days after the date of service upon him of such notice, give notice to the Commissioner in Form 2 of the Eighth Schedule, that he intends to appeal to the Court, and stating the grounds of the appeal, and such application shall be heard and determined as hereinafter provided.

(2) Notice in writing of the appeal shall be lodged with the Registrar of the Court within sixty days after the date of service upon the appellant of the notice under section 78(3).

(3) The appeal shall be heard in chambers on such terms as to costs and otherwise as the Court may direct.

(4) The onus of proving that the assessment objected to is excessive shall be on the person assessed.

(5) In determining the appeal the Court may confirm, reduce, increase or annul the assessment or make such order thereon as may be thought fit, whereupon, subject to any appeal under section 80, the Commissioner shall make such adjustments thereto as are consequent upon such determination.

(6) The decree following the decision of the Court shall have effect, in relation to the amount of tax payable under the assessment as determined, as a decree for the payment of such amount, whether or not the amount of such tax is specified in the decree.

80. An appeal by either party from the judgment of the Court shall be to the Court of Appeal.

81.—(1) Where—

(a) no valid notice of objection to an assessment has been given under this Part; or

Right of appeal from Commissioner's determination of objection

Eighth Schedule Form 2

Appeals from judgment of Court
LN 46A of 1978

Finality of assessment

(b) a valid notice of objection has been given and —

(i) the assessment has been amended under section 78(2); or

(ii) a notice has been served under section 78 (3) but no application has been made under section 79; or

(iii) the assessment has been determined on appeal; the assessment as made, or so amended, or determined on appeal, as the case may be, shall be final and conclusive for the purposes of this Act.

(2) Nothing in this section shall prevent the Commissioner from making any additional assessment for any year which does not involve reopening any matter which has been determined on appeal for such year:

Provided that where any fraud or any gross or wilful neglect has been committed by or on behalf of any person in relation to tax for any year, the Commissioner may make an additional assessment on that person for such year even if it involves reopening a matter which has been determined on appeal.

82.—(1) Where for any year a person has made a return of income under section 57 and has been assessed to tax under section 71 (2) (a) and he alleges that the assessment was excessive by reason of some error or mistake of fact in such return, then he may, not later than two years after the expiry of such year, make an application to the Commissioner for relief.

(2) On receiving any such application the Commissioner shall enquire into the matter and, after taking into account all relevant circumstances, shall give such relief by way of repayment as is reasonable and just:

Provided that no relief shall be given in respect of an error or mistake as to the basis on which the liability of the applicant should have been computed where the return of income was in fact made on the basis of or in accordance with the practice generally prevailing at the time such return of income was made.

Relief in respect of error or mistake

PART XII

COLLECTION, RECOVERY AND REPAYMENT OF TAX

Time within
which payment
is to be made
14 of 1968, s. 23
5 of 1990, s. 12

83.—(1) Subject to this section and to section 87 and to any rules made under section 114 (b), the tax charged in each assessment shall be due and payable on or before 20th September following the year to which the assessment relates:

Provided that in the case of a business the accounting period of which ends on a date other than 31st December the due date for payment of tax charged shall be such date as may be specified in the assessment.

(2) In the case of a company which is being wound up, the due date for payment of tax on any income chargeable for any period ending on the date of the winding-up order or the resolution, special resolution, or extraordinary resolution, as the case may be, passed for the winding up of the company shall be deemed for the purposes of the priority of debts, but for that purpose only, to be the date of such winding-up order, resolution, special resolution or extraordinary resolution.

(3) The obligation to pay and the right to receive and recover any tax chargeable under this Act (including any interest, costs and penalties) shall not, unless the Commissioner so directs, be suspended by any objection or appeal or pending the decision of the Court but if any assessment is altered on objection or appeal or in conformity with any such decision, a due adjustment shall be made, amounts paid in excess being refunded and amounts short paid being recoverable.

(4) The Commissioner in his discretion may extend the period within which any tax is payable and may specify another due date for payment; and, in particular, at the request of the person assessed, the Commissioner may by notice in writing accept payment of tax by instalments with the addition of interest on the dates specified by him in such notice; and the Minister may by order prescribe the rate or rates of interest to be adopted for this purpose.

(5) A person who in the year 1973 or any subsequent year is carrying on a business shall make payments on account of the tax on the profits of the business for each such year in equal instalments on or before 20th March, 20th June, 20th September and 20th December during that year, each such payment being one-quarter of the tax charged on the profits of the business for the latest previous year for which the Commissioner has assessed that person under section 71:

22 of 1972, s. 19
LN 46A of 1978

22 of 1972, s. 19
17 of 1979, s. 23

Provided that —

(i) where the Commissioner has not assessed that person upon the profits of the said business for any such previous year that person shall estimate, according to the best of his judgment, the amount of tax which will be payable upon the profits of the year during which the instalments are to be paid, shall report that amount and the information upon which it is based to the Commissioner at least four weeks before the date when the first instalment is due or, where this is not practicable in the case of a business that has recently been commenced, within fourteen days from the date of such commencement, and the Commissioner shall determine the amount of the instalments;

(ii) where a person fails to provide an estimate in accordance with the previous proviso or where the Commissioner is of the opinion that the income has been underestimated he may for the purpose of this subsection determine the tax payable;

(iii) where a person required by this subsection to pay instalments on account of tax during a year can show that, for a specific and substantial reason, an instalment determined under the foregoing provisions is likely to be excessive, he may pay such smaller instalment as may be agreed by the Commissioner.

(6) In assessing any person the Commissioner shall credit against the tax chargeable any instalments paid for that year under subsection (5) and shall recover the balance or refund the excess as necessary.

(7) For the purposes of subsections (5) and (6) and of this subsection —

(a) where a business is carried on by a partnership, the subsections shall apply to a partner as they apply to a person carrying on a business alone;

(b) where a business is carried on by a married woman in such circumstances that the profits are deemed under section 48 to be the income of her husband, references in the subsections to a person carrying on the business shall be regarded as references to the husband;

(c) where the total income of a person includes other income in addition to the profits of a business, the profits of the business shall be regarded as constituting the higher part of that total income.

Penalty for non-payment of tax
5 of 1977, s. 19

84.—(1) Subject to subsection (3), if any tax is not paid on or before the due date an additional sum of ten dollars, or of an amount equivalent to ten *per centum* of the tax then payable, whichever is the greater, shall thereupon become payable by way of penalty:

Provided that where the amount of the tax unpaid is less than ten dollars the penalty shall not exceed the amount of such tax.

(2) The penalty imposed under this section shall not be regarded as tax for the purpose of this Act:

Provided that the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such penalty as if it were tax.

(3) The Commissioner may, in his discretion, remit the whole or any part of the penalty due under this section.

Power to declare agent

85.—(1) The Commissioner may in his discretion by notice in writing to any person declare him to be the agent of any other person for the purposes of the collection and recovery of tax due by such other person; and the person so declared agent shall pay any tax so due and specified in such notice from any moneys, including rent, pension, salary, wages or any other remuneration, which may, at any time within twelve months from the date of such notice, be held by him for, or be due and payable by him to, such other person.

(2) For the purpose of this section the Commissioner may, by notice in writing, at any time require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return showing any moneys which may be held by him for, or be due by him to, any other person from whom tax is due.

(3) Where any person declared an agent under subsection (1) fails to pay the Commissioner within thirty days of the date of service of the notice referred to in such subsection or of the date on which any moneys referred to in such subsection are held by him for, or due by him to, the person of whom he is so declared to be agent, whichever is the later, any amount which he is required to pay under such subsection, then the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such amount as if it were tax due by the person declared an agent the due date for the payment of which was the latest date upon which such person is due to pay such amount to the Commissioner under this subsection.

(4) Any person declared an agent by notice under subsection (1) who is aggrieved by such notice may appeal therefrom to the Court whereupon all the provisions of this Act relating to appeals against assessments, including the giving of notice of appeal and the time within which such notice is to be given shall, so far as they are applicable, have effect with respect to any such appeal as if such appeal were an appeal against an assessment.

(5) For the purposes of this section, the amount of any balance standing to the credit of any person at any bank shall be deemed to be moneys held by such bank for such person.

5 of 1977, s. 20

86.—(1) Where any person dies, then, to the extent to which —

Deceased persons

(a) any tax charged in an assessment made upon him has not been paid; or

(b) his executors or administrators are charged to tax in an assessment made under section 51,

the amount of tax unpaid or charged in any such assessment as finally determined shall be a debt due and payable out of his estate.

(2) Where, under this Act, any tax is payable by the executors or administrators of a deceased person, or by any person who is assessable in respect of income of another person, in whatever capacity, no distribution of the assets of such deceased person or other person shall be made before a certificate has been obtained from the Commissioner certifying that no amount of tax, interest or penalties remains outstanding against such assets; and if any distribution is made without such certificate having been obtained, the person making such distribution shall be personally liable for payment of any such amount, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such tax, interest or penalties, as if they were tax due to be paid by such person on the date of distribution.

87.—(1) Where the Commissioner has reason to believe that any person who has been assessed to tax may make default in payment of such tax then, notwithstanding any provision in section 83, he may, whether or not the due date for payment of such tax has arrived, by notice in writing served on such person, require that he pay such tax or give security, satisfactory to the Commissioner, for the payment thereof, within the time limited in such notice.

Collection of tax, and security in respect of persons leaving Solomon Islands
17 of 1979, s. 24

(2) Where any notice has been served on any person under subsection (1), then the amount of the tax assessed in respect of which payment or security is required shall, notwithstanding that a valid notice of objection against the assessment has been given, be deemed to be due on the date specified in such notice, and in default of compliance with such notice the Commissioner shall be entitled to sue forthwith for the recovery of the tax under section 88, or to distrain forthwith under section 89:

Provided that if subsequent to the commencement of any suit under section 88 compliance is made with such notice, then such suit shall be discontinued and no order for costs thereon shall be made.

2 of 1976, s. 23

(3) Where the Commissioner has reason to believe that any person may derive income from Solomon Islands and in his discretion deems it expedient so to do, he may by notice in writing served on such person require him to obtain a tax clearance certificate prior to his departure from Solomon Islands or to make a prepayment of tax of an amount as is specified in such notice.

(4) Upon the application of such person, if the Commissioner is satisfied —

(a) that such person is not liable to pay any tax;

(b) that all tax payable by such person has been paid; or

(c) that satisfactory arrangements have been or will be made for the payment of all tax that is or may become payable by such person,

the Commissioner shall issue a certificate to the effect that such person is not under any liability for tax required to be discharged before he leaves Solomon Islands.

2 of 1976, s. 23

(5) An immigration officer shall not permit any person on whom a notice has been served under subsection (3) to leave Solomon Islands unless such person can produce the relevant tax clearance certificate or prove that he has paid the amount of tax as is specified in such notice.

2 of 1976, s. 23

(6) For the purpose of securing the payment of any tax or the discharge of any liability to tax, the Commissioner may accept, register, deal and enforce a charge over any land not being customary land as defined in section 2(1) of the Land and Titles Act.

Cap. 133

Collection of tax
by suit

88.—(1) Where —

(a) payment of any tax has not been made on or before the due date; or

(b) a notice has been served on any person under section 87(1) and such person has failed to comply with such notice,

then the tax due by such person may be sued for and recovered as a Crown debt in a court of competent jurisdiction by the Commissioner, or any officer authorised by him in writing, in the official name of the Commissioner, with full costs of the suit from such person.

(2) In any suit under subsection (1), the production of a certificate signed by the Commissioner giving the name and address of the defendant and the amount of tax due by him shall be sufficient evidence that such amount of tax is due by such person and sufficient authority for the court to give judgment for such amount.

89.—(1) In any case in which tax is recoverable in the manner provided in section 88, the Commissioner may, instead of suing for such tax, authorise in writing any officer to distrain upon the goods and chattels of the person from whom such tax is recoverable:

Collection of tax
by distraint, etc

Provided that where the full amount of the tax due is not recovered by such distress the Commissioner may forthwith recover the deficiency in the manner provided by section 88.

(2) For the purposes of levying any such distress, the person authorised by the Commissioner, together with such servants or agents as such person may consider necessary, may break open in the day-time any premises; and the person so authorised may require any police officer to be present while such distress is being levied and any police officer so required shall comply with such requirement.

(3) A distress levied by the person authorised by the Commissioner shall be kept for ten days, either at the premises at which such distress was levied or at such other place as the person so authorised may consider appropriate, at the cost of the person from whom such tax is recoverable.

(4) If the person from whom such tax is recoverable does not pay the tax due together with the costs of the distress within such period of ten days, the goods and chattels distrained upon shall be sold by public auction for payment of the tax due and all such costs; and the proceeds of such sale shall be applied first towards the cost of taking, keeping and selling the goods and chattels distrained upon and then towards the tax due and thereafter any sur-

plus arising from such sale shall be restored to the owner of the goods and chattels distrained:

2 of 1976, s. 24

Provided that where the Commissioner considers sale by public auction impracticable or that disposal by some other means would realise higher net proceeds, the Commissioner may dispose of the goods or chattels in any other reasonable manner.

Repayment of
tax
2 of 1976, s. 25

90.—(1) If it is proved to the satisfaction of the Commissioner that any person has, in respect of any assessment for any year, paid tax, by deduction or otherwise, other than the tax deducted from a dividend paid to a non-resident person, in excess of the amount chargeable under this Act, such person shall be entitled to have the amount so paid in excess refunded:

Provided that where any tax is due and payable by such person in respect of any other assessment, the amount so paid in excess shall be applied towards the satisfaction of the amount so due and payable to the extent of such tax and the amount so applied shall not be refunded:

Provided further that where any liability under section 36 has yet to be determined in respect of the tax deducted from any dividend due or paid to such person, the Commissioner may withhold the repayment of any refund resulting from such dividend until the liability under section 36 is determined and secured to the satisfaction of the Commissioner.

(2) Every claim for repayment under this section shall be made within seven years after the expiry of the year to which the claim relates.

Repayment of
tax in respect of
income
accumulated
under trusts

91.—(1) Where under any will or settlement, any income (in this section referred to as the trust income) arising from any fund is accumulated for the benefit of any person contingently on his attaining some specified age or marrying, then, if such person proves to the satisfaction of the Commissioner that such contingency has happened, he shall, on making a claim for that purpose, be entitled to have repaid to him a sum equal to the amount by which the total amount of tax borne by the trust income during the period of accumulation, exceeds the total amount of additional tax which would have been borne by him during such period if such trust income and the income from any other fund subject to the like trust for accumulation had been included in his total income; but in calculating such sum a deduction shall be made in respect of any tax borne by the trust fund and already repaid.

(2) Every claim for repayment under this section shall be made in writing to the Commissioner within two years after the expiry of the year in which the contingency happened.

92.—(1) The Commissioner may remit, on the ground of poverty, in whole or in part, the tax payable by any person, and may also, for like reason, refund any tax paid by such person or any part thereof.

Remission of tax
LN 46A of 1978

(2) The Minister, if he is satisfied that it is just and equitable so to do, may remit, in whole or in part, the tax payable by any person, and may refund any tax paid by such person or any part thereof.

93. Where, on the winding up of a company resident in Solomon Islands, the company proves to the satisfaction of the Commissioner that it has paid income tax on all or part of the amount to be distributed to the shareholders, the Commissioner shall direct that such adjustment shall be made as regards such tax as he may determine to be just and reasonable for the purpose of affording relief to the shareholders from the imposition of double taxation in Solomon Islands on that distribution.

Relief on
winding up of a
company
17 of 1979, s. 25

PART XIII

OFFENCES AND PENALTIES

94. Any person guilty of an offence against this Act for which no other penalty is specifically provided, shall be liable on conviction to a fine of one thousand dollars, or to imprisonment for twelve months.

Penalty for
offences
10 of 1991, s. 7

95.—(1) Where any tax payable by any employer remains unpaid on and after the date it is required to be paid under the provisions of this Act or the Tax Deduction Rules, and any further time allowed (if any) by the Commissioner has expired, such employer shall in addition to the penalty payable under section 84 be liable to pay where —

Further penalty
in certain cases
10 of 1991, s. 8

(a) it is paid within one month after that date, a penalty at the rate of five *per centum* on the amount due; and

(b) it is not paid within one month, but is paid within six months after that date, a penalty at the rate of ten *per centum*;

(c) it is not paid as referred to in paragraphs (a) or (b) a penalty at the rate of fifteen *per centum* in respect of each further period of six months or part of such period.

(2) The Commissioner may reduce or waive any penalty under this section if it appears to the Commissioner that such reduction or waiver is just and equitable in all the circumstances of the case.

Penalty for
failure to comply
with notice, etc
2 of 1976, s. 26

96. Any person who —

- (a) fails to furnish within the required time any document which under this Act or under any notice served on him under this Act he is required so to furnish; or
- (b) fails to furnish a full and true return in accordance with any of the provisions of section 57; or
- (c) fails to keep any records, books or accounts in accordance with the requirements of section 61; or
- (d) fails to produce any accounts, books of account or other documents for the examination or retention by the Commissioner in accordance with the requirements of any notice served on him under section 62 (a) and (c); or
- (e) fails to attend at a time and place in accordance with the requirements of any notice served on him under section 62 (d); or
- (f) destroys, damages or defaces any accounts, books of account or other documents in contravention of any notice served on him under section 62 (b); or
- (g) fails to answer any question lawfully put to him, or to supply any information lawfully required from him under this Act,

shall be guilty of an offence against this Act:

Provided that —

- (i) where any such person proves that he had reasonable excuse for any such failure, destruction, damage or defacement, then he shall not be guilty of such offence;
- (ii) no complaint charging any such offence shall be brought at any time subsequent to six years after the date of the commission of the offence or in the case of the contravention of paragraphs (c) or (f), after the date on which the fact of the commission of such offence came to the knowledge of the Commissioner.

97. Where any employer who is required to make a tax deduction from any employee or person to whom a payment is made —

- (a) fails to make such deduction;

Penalty for
failure to make
deduction, mis-
application of

(b) having made such deduction applies such amount for any purpose other than remitting it to the Commissioner; deduction, etc
10 of 1991, s. 9

(c) fails to remit the amount due;

(d) makes a false tax code declaration;

(e) fails to furnish annual summaries as required under the Tax Deduction Rules;

(f) gives false information regarding tax deductions, or tax codes; or

(g) gives false information in relation to any matter or thing in the annual summary,

shall be guilty of an offence under this Act.

98. Any person who —

Penalty for
incorrect returns,
etc

(a) makes an incorrect return of income by omitting therefrom or understating therein any income which should have been stated therein; or

(b) makes an incorrect statement in any return made in compliance with a notice served on him under this Act; or

(c) gives any incorrect information in relation to any matter or thing, including any incorrect information in relation to any claim for a personal exemption, affecting his liability to tax; or

(d) gives any incorrect information in relation to any matter or thing affecting the liability to tax of any other person,

shall be guilty of an offence against this Act:

Provided that —

(i) where any such person proves that he had reasonable excuse for any such omission, understatement, incorrect statement or incorrect information, then he shall not be guilty of such offence;

(ii) no complaint charging any such offence shall be brought at any time subsequent to six years after the date of the commission of the offence.

99. — (1) Any person who, with intent to evade tax —

Penalty for
fraudulent
returns, etc

(a) makes a false return of income by omitting therefrom or understating therein any income which should have been stated therein; or

(b) makes any false statement in any return made in compliance with a notice served on him under this Act; or

(c) gives any false information in relation to any matter or thing, including any false information in relation to any claim for a personal exemption, affecting his liability to tax; or

(d) prepares or maintains, or authorises the preparation or maintenance of, any false books of account or other records, or falsifies, or authorises the falsification of, any books of account or records; or

(e) makes use of any fraud, or authorises the use of any fraud; or

(f) makes any fraudulent claim for the repayment of any tax,

shall be guilty of an offence against this Act and liable on conviction therefor to a fine of one thousand dollars or double the amount of tax for which he is liable under this Act for the year in respect of which the offence was committed, whichever is the greater, or to imprisonment for two years.

(2) Any person who, with intent to assist any other person to evade tax —

(a) omits from any return of income made by him on behalf of such other person or understates therein any income which should have been stated therein; or

(b) makes any false statement in any return made by him on behalf of such other person in compliance with a notice served on such other person under this Act; or

(c) gives any false information in relation to any matter or thing, including any false information in relation to a claim by such other person to a personal exemption, affecting the liability to tax of such other person; or

(d) prepares any false books of account or other records relating to such other person or falsifies any such books of account or other records; or

(e) does any other fraudulent act,

shall be guilty of an offence against this Act and liable on conviction therefor to a fine of one thousand dollars or to imprisonment for two years.

(3) Whenever in any proceedings under this section it is proved that any false statement or entry is made by any person on any return of income or other return furnished under this Act by such person or on behalf of any other person or in any books of account or other records prepared or maintained by such person or on behalf of any other person, the person making such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to evade tax or to assist or enable such other person to evade tax.

100. No prosecution in respect of any offence against this Act may be commenced except with the sanction of the Commissioner.

Sanction of
Commissioner
for prosecutions

101.—(1) Notwithstanding any provision to the contrary in any Act or law, a statement made or document produced by or on behalf of a person shall not be inadmissible in any proceedings to which this section applies by reason only that it has been drawn to his attention that —

Provisions as to
evidence in cases
of fraud, etc

(a) in relation to tax, the Commissioner may accept a pecuniary settlement instead of sanctioning the institution of a prosecution; and

(b) though no undertaking may be given as to whether or not the Commissioner will accept such a settlement in the case of any particular person, it is the practice of the Commissioner to be influenced by the fact that a person has made a full confession of any fraud or default to which he has been a party and has given full facilities for investigation,

and that he was or may have been induced thereby to make the statement or produce the documents.

(2) This section shall apply to —

(a) any criminal proceedings against the person in question for any form of fraud, including any default in connection with, or in relation to, tax; and

(b) any proceedings against him for the recovery of any sum due from him (including any additional tax charged under section 69, any penalty charged under section 84, and any amount due by reason of any offence being compounded under section 102) in connection with, or in relation to, tax.

Power of
Commissioner to
compound
offence

102.—(1) Where any person has committed any offence against this Act, other than an offence referred to in section 110, then the Commissioner may, at any time prior to the commencement of the hearing by any court of any charge in relation thereto, compound such offence and order such person to pay such sum of money, not exceeding the amount of the fine to which such person would have been liable if he had been convicted of such offence, as he may think fit:

Provided that the Commissioner shall not exercise his powers under this section unless such person in writing admits that he has committed such offence and requests the Commissioner to deal with such offence under this section.

(2) Where the Commissioner compounds any offence under this section —

(a) the order of the Commissioner shall be put into writing and there shall be attached to it the written admission referred to in the proviso to subsection (1); and

(b) such order shall specify the offence committed, the sum of money ordered to be paid, and the date or dates on which payment is to be made; and

(c) a copy of such order shall be given, if he so requests, to the person who committed the offence; and

(d) such person shall not be liable to any further prosecution on the strength of such offence, and if any such prosecution is brought it shall be a good defence for such person to prove that such an offence has been compounded under this section; and

(e) such order shall be final and shall not be subject to any appeal; and

(f) such order may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order; and

(g) such order shall, on production to any court, be treated as proof of the conviction of such person for such offence.

103. Any person charged with any offence against this Act may be proceeded against, tried and punished in any place in which he may be in custody for that offence as if the offence had been committed in such place and the offence shall for all purposes incidental to, or consequential upon, the prosecution, trial

Place of trial

or punishment thereof, be deemed to have been committed in that place:

Provided that nothing herein contained shall preclude the prosecution, trial and punishment of such person in any place in which, but for this section, such person might have been prosecuted, tried and punished.

104. Where any offence against this Act has been committed by a corporate body of persons, every person who at the time of the commission of the offence was a director, general manager, secretary, or other similar officer of such body corporate, or was acting or purporting to act in any such capacity, shall also be guilty of such offence unless he proves that such offence was committed without his consent or knowledge, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in such capacity and in all the circumstances.

Offences by
corporate bodies

105. The institution of any prosecution against any person for any offence against this Act, or the punishment of any such person consequent upon any such prosecution shall not relieve such person from liability for the payment of any tax for which he is or may be liable.

Tax charged to
be payable
notwithstanding
prosecution

PART XIV

ADMINISTRATION

106.—(1) For the due administration of this Act, there may be appointed —

(a) a Commissioner;

(b) one or more Deputy Commissioners;

(c) such other officers as may be necessary; and

(d) one or more agents within or outside Solomon Islands for the purpose of carrying out such duties under this Act as are specified in the instrument of appointment.

(2) Any appointment under subsection (1) shall, if the person appointed is to be a public officer, be made pursuant to the Constitution, but otherwise shall be made by the Minister.

(3) An agent appointed pursuant to subsection 1(d) shall be deemed to be an officer for the purpose of carrying out his duties.

Appointment of
Commissioner,
Deputy
Commissioner
and other
officers
6 of 1991, s. 5

Commissioner to
be responsible
for collection of
tax

107.—(1) The Commissioner shall be responsible for the administration of this Act, and the control and management of the collection of, and accounting for, tax levied thereunder and of all matters incidental thereto.

(2) The Commissioner may, subject to such limitations as he may think fit, authorise any officer to exercise any of the powers conferred by this Act upon the Commissioner other than the powers conferred by section 100 and section 102.

17 of 1990, s. 3

(3) Notwithstanding the provisions of subsection (2), where any vacancy in the office of the Commissioner occurs (whether by reason of death, resignation or otherwise) and in any case where the Commissioner is incapacitated by illness, absence or other cause from performing the duties of his office, and as long as any such vacancy or incapacity continues, a Deputy Commissioner shall have and may exercise or perform all the powers, duties and functions of the Commissioner.

17 of 1990, s. 3

(4) The fact that a Deputy Commissioner exercises or performs any power, duty or function of the Commissioner shall be conclusive of his authority to do so.

Audit
LN 88 of 1978

108.—(1) The accounts of the receipt of revenue under this Act shall be examined by the Auditor-General in order to ascertain that adequate rules and procedure have been framed to secure an effective check on the assessment, collection and proper allocation of revenue, and the Auditor-General shall satisfy himself that any such rules and procedure are being duly carried out.

(2) The Auditor-General shall make such examination as he thinks fit with regard to the correctness of the sums brought to account in respect of such revenue.

Official secrecy
5 of 1977, s. 21
LN 46A of 1978
LN 88 of 1978

109.—(1) Subject to this section, the Auditor-General and every officer employed in carrying out the provisions of this Act shall regard and deal with all documents and information relating to the income of any person and of confidential instructions in respect of the administration of this Act, which may come into his possession or to his knowledge in the course of his duties, as secret.

(2) The Auditor-General, the Commissioner, and such other officers as may be appointed under section 106, shall, before performing any duty under this Act, make and subscribe before a Magistrate appointed under the Magistrates' Courts Act, a declaration in Form 3 in the Eighth Schedule.

Cap. 20
Eighth Schedule
Form 3.

(3) No officer employed in carrying out the provisions of this Act shall be required to produce in any court any document, or to communicate to any court any information, which has come into his possession or to his knowledge in the performance of his duties under this Act, except as may be necessary for the purpose of carrying into effect the provisions of this Act or in order to bring, or assist in the course of, a prosecution for any offence in relation to tax.

(4) Nothing in this section shall prevent any officer employed in carrying out the provisions of this Act from revealing any document or information relating to the income of any person, or any confidential instructions in respect of the administration of this Act, to any other such officer in the course of his duties, or to any person authorised in that behalf by the Minister, or to any court or person for the purposes of this Act or for the purposes of the Stamp Duties Act.

Cap. 126

(5) Where, under any law in force in any country, or under any arrangements having effect under section 45, provision is made for the allowance of relief from income tax in respect of the payment of tax in Solomon Islands, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government of the place with which such arrangements were made of such facts as may be necessary for the obtaining of such relief or for the prevention or detection of fraud or for the administration of statutory provisions against legal avoidance in relation to such taxes.

110.—(1) Any officer employed in carrying out the provisions of this Act who—

Offences by or in
relation to
officers
LN 46A of 1978

(a) directly or indirectly asks for, or takes, or seeks for any other person, in connection with any of his duties, any payment, favour, or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment, favour or reward, not being a payment or reward which he is lawfully entitled to receive; or

(b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal or connive at, any act or thing whereby the tax revenue of Solomon Islands is or may be defrauded, or which is contrary to the provisions of this Act or to the proper execution of his duty thereunder; or

(c) in contravention of the provisions of section 109 or of the terms of his declaration of secrecy, and without law-

ful excuse, reveals to any person any document or information which has come into his possession or to his knowledge in the course of his official duties, or permits any other person to have access to any document in the possession or custody of the Commissioner in his official capacity,

shall be guilty of an offence against this Act and liable on conviction therefor to a fine of one thousand dollars or to imprisonment for three years.

(2) Any person who —

(a) directly or indirectly offers any officer or gives to any officer or person designated by such officer any payment, favour, or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment, favour, or reward; or

(b) proposes or enters into any agreement with any officer, in order to induce him to do, abstain from doing, permit, conceal or connive at, any act or thing whereby the tax revenue of Solomon Islands is or may be defrauded, or which is contrary to the provisions of this Act or to the proper execution of the duty of such officer under this Act,

shall be guilty of an offence against this Act and liable on conviction therefor to a fine of one thousand dollars or to imprisonment for three years.

Form of notices,
returns, etc

111.—(1) The Commissioner may specify the form of any notice, return of income, or other form or return, required for the purposes of this Act; and where any form has been so specified then such notice, return of income, or other form or return shall be in the form so specified.

(2) Notices given by the Commissioner under this Act may be signed by any officer authorised by him in that behalf, and any notice purporting to be signed by order of the Commissioner shall, unless the contrary is proved, be presumed to have been signed by an officer so authorised.

(3) Every form, notice, or other document issued, served, or given by the Commissioner under this Act shall be sufficiently authenticated if the name or title of the Commissioner, or of the officer authorised in that behalf, is printed, stamped or written thereon.

Service of
notices, etc

112.—(1) Where under this Act any notice or other document is required or authorised to be served on or given to any person

by the Commissioner, then such notice or other document may be so served or given by addressing it to such person or, where such person is a company, to the principal officer or secretary of such company, and—

(a) delivering it personally to him; or

(b) leaving it at his usual or last known place of address or the address shown on the latest return of income furnished by him or on his behalf to the Commissioner; or

(c) sending it by post addressed to his usual or last known place of address or to any Post Office Box rented in the name of such person or his employer, or to the address shown on the latest return of income furnished by him or on his behalf to the Commissioner.

(2) Where a notice or other document is served or given by ordinary or by registered post, then service shall, in the absence of proof to the contrary, be deemed to have been effected at the time at which such notice or other document would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the envelope containing the notice or other document was properly addressed and was posted:

Provided that where the person to whom a notice or other document has been sent by registered post is informed of the fact that there is a registered letter awaiting him at a Post Office, and such person refuses or neglects to take delivery of such letter, and such letter consists of such notice or other document, then service of such notice or other document shall be deemed to have been effected.

113. Notwithstanding any provision to the contrary in any Act or law, all correspondence relating to the assessment or collection of tax addressed to the Commissioner posted in Solomon Islands by any person may be sent free of postage to the Commissioner in envelopes which are marked "Income Tax".

Free postage
LN 46A of 1978

114. The Minister may make rules generally for carrying out the provisions of this Act, and, without prejudice to the generality of such power, may make rules providing —

(a) for the deduction and payment of tax from the emoluments and pensions payable out of the funds of Solomon Islands to persons in the service of, or in respect of past services with, the Government of Solomon Islands, whether or not such tax relates solely to tax charged on such persons in respect of such emoluments or pensions;

Rules
LN 46A of 1978

(b) for the deduction from the emoluments paid in respect of employment or services rendered, and from pensions, of sums on account of tax chargeable under this Act for the year during which such emoluments or pensions are paid and for the payment of such sums to the Commissioner;

(c) for matters relating to the approval by the Commissioner of anything which under this Act he may approve;

(d) for requiring and making such other returns as are not provided for in Part IX.

Continuation in force of double taxation agreements

Paragraph 8 of Sixth Schedule to Cap 61 (1969 revised Edition)

115. The Double Taxation Relief (British Solomon Islands Protectorate/ United Kingdom) Arrangements Proclamation, 1950*, the Double Taxation Relief (British Solomon Protectorate/ Sweden) Arrangements Proclamation, 1954+, the Double Taxation Relief (British Solomon Islands Protectorate/Denmark) Arrangements Proclamation, 1956**, and the Double Taxation Relief (British Solomon Islands Protectorate/Norway) Arrangements Proclamation, 1957++, and the Arrangements set out in such Proclamations shall continue to have full force and effect as if such Proclamations and Arrangements had been made under section 45.

15 of 1990, s. 6

FIRST SCHEDULE (Section 10)

PART I

TAX HOLIDAYS

<i>Enterprise</i>	<i>Tax holiday period</i>
1. Enterprises whose local value added in respect of the approved products amount to 75% or more of the value of ex-factory sales of the products.	6 years
2. Enterprises whose local value added in respect of the approved products amount to 50% or more but less than 75% of the value of ex-factory sales of the products.	5 years
3. Enterprises whose local value added in respect of the approved products amount to 40% but less than 50% of the value of ex-factory sales of the products.	4 years

* Proclamation No. 2 of 1950 (GN 57/1950), as amended by LN 113/1969 and LN 30/1974.

+ Proclamation No. 11 of 1954 (GN 10/1955)

** Proclamation No. 2 of 1956 (GN 143/1956)

++ Proclamation No. 5 of 1957 (GN 134/1957).

<i>Enterprise</i>	<i>Tax holiday period</i>
4. Enterprises whose local value added in respect of the approved products amount to 25% or more but less than 40% of the value of ex-factory sales of the products.	3 years
5. Enterprises which involve a capital investment of not less than \$10 million irrespective of their local value added.	5 to 10 years

PART II

LOCAL VALUE ADDED CALCULATION

<i>Total Ex-factory sales</i>	\$	(1)
(A) Payments made in respect of—		
1. Import cost of raw materials, fuel, components, imported content of locally produced components		
2. Salaries and wages to non-residents	\$	
3. Profits and dividends to non-residents	\$	
4. Loan interest	\$	
5. Management fees	\$	
6. Royalties	\$	
7. Licence	\$	
8. Professional fees	\$	
9. Other Payments (Specify)	\$	
	\$	(2)
(B) Depreciation of imported plant, machinery, equipment and spare parts	\$	(2)
Total Deductions (A+B)	\$	(3)
Balance (1-3)	\$	(4)
Local value added = $\frac{(4)}{(1)} \times 100$		

PART III

TAX RELIEF ON EXPORT PROFITS

<i>Local value added</i>	<i>Extent of Tax Relief on Export Profits</i>	<i>Years</i>
75% and over	100%	6
50% and under 75%	100%	5
40% and under 50%	100%	4
25% and under 40%	100%	3
100% export oriented enterprises irrespective of their local value added	100%	5

15 of 1990, s. 6

SECOND SCHEDULE
(Section 11)

PART I

TOURIST HOTELS, RESORTS AND OTHER TOURIST
ORIENTED PROJECTS

1.—(1) There shall be exempt from income tax, the profits and income for a period of five years, accruing to any approved enterprise operating —

- (a) tourist hotels of three hundred or more bedrooms;
- (b) tourist resorts of fifty or more bedrooms; or
- (c) other tourist oriented projects,

which are approved by the Board as qualifying for the grant of tax exemptions.

(2) The tax exemption of five years referred to in paragraph 1 shall be calculated from the date on which such approved enterprise commenced to trade.

2.—(1) In addition to the tax exemptions on the profits and income of an approved enterprise qualifying under sub-paragraph (1) of paragraph 1, such approved enterprise shall be entitled to —

- (a) a fifty per cent depreciation of capital expenditure (excluding land) against annual chargeable income until claimed in full;
- (b) a one hundred and fifty per cent tax deduction for expenses incurred in overseas promotion programmes conducted with the prior approval of the Commissioner.

(2) The benefits referred to in sub-paragraph (1) shall not be available to an approved enterprise in respect of which an order under section 18(6) has been made by the Minister.

3. Subject to the provisions of this Part, where any tourist hotel or resort in operation 1st February 1991, satisfies the Board that such tourist hotel or resort has on or after 1st January, 1989, incurred capital expenditure in respect of any expansion, additional construction or renovation, such tourist hotel or resort shall be entitled to claim from the Commissioner the exemptions set out in paragraphs 1 and 2(1)(a) of this Schedule.

4. Any approved enterprise engaged in the operation of tourist vessels built locally shall be entitled to write off fifty per cent of the cost of the vessel.

PART II

TAX RELIEF ON EXPORT PROFITS

5.—(1) Subject to the provision of sub-paragraph (2), there shall be exempt from income tax for a period of three to six years from the date on which a company made its first export of —

- (a) manufactured or processed goods;
- (b) fresh seafood; or
- (c) fresh agricultural produce,

such part of the profits and income of that company as consists of the export profits and income.

(2) The provisions of sub-paragraph (1) shall not be available to an approved enterprise granted tax exemptions under section 10 based on the local value added scheme.

6.—(1) An allowance equal to one hundred and fifty per cent of any sum expended by any company in the promotion and marketing of exports shall be deducted for the purpose of ascertaining the profits or income from exports, provided such promotion was conducted with the prior approval of the Commissioner.

(2) In ascertaining the sum expended in the promotion and marketing of exports, the Commissioner shall take into consideration the costs incurred in —

- (a) researching foreign markets;
- (b) marketing and testing of potential products in target markets abroad;
- (c) travelling overseas for the purpose of conducting promotion exercises;
- (d) testing of products by approved overseas agencies;
- (e) advertising in overseas markets and publications;
- (f) distributing promotional literature overseas;
- (g) participating in trade fairs, trade missions and missions of a similar character; and
- (h) providing free samples to clients overseas which are not returnable to Solomon Islands.

PART III

AGRICULTURE, FORESTRY, ANIMAL HUSBANDRY AND FISHERIES

7.—(1) Any approved enterprise engaged in the business of —

- (a) agricultural production or export of agricultural produce;
- (b) dairy farming;
- (c) goat farming;
- (d) beef production;
- (e) reforestation; or
- (f) fisheries, off-shore or deep-sea fishing,

shall be entitled to claim exemption from income tax in respect of its income and profits for a period of five years out of any ten years from the date of commencement of commercial production.

(2) Subject to the provisions of this Part, where any approved enterprise engaged in any business sector referred to in sub-paragraph (1) satisfies the Board, that such approved enterprise has on or after the 1st day of January, 1989, incurred capital expenditure in expanding its existing business or project, such approved enterprise shall be entitled to claim from the Commissioner the exemptions from income tax in respect of its income and profits for a period of five years out of any ten years.

PART IV

FACTORY CONSTRUCTION

- ✓ 8. Any approved enterprise that has on or after the 1st day of January, 1989, constructed or engaged in an expansion of its factory space by five per cent or over for its own use shall be entitled to write off as depreciation forty per cent in the first year and five per cent per annum thereafter.

PART V

OTHER INCENTIVES

9. An approved enterprise may in addition to the incentives provided for in Parts I, II, III and IV claim —

- (a) double deduction for tax purposes where the company incurs expenditure for bona fide sponsored apprentices attending Solomon Islands College of Higher Education courses and other approved trade, technical or supervisory training schemes;
- (b) double deduction for tax purposes where the company incurs expenditure on professional training for bona fide sponsored higher education courses locally and overseas; and
- (c) a one hundred and fifty per cent tax deduction of costs incurred by the producer in inter-province transport of raw materials and qualifying products.

THIRD SCHEDULE
(Section 16)Para-
graph

Exemptions

- LN 88/1978 1. The official emoluments of the Governor-General.
- LN 128/1967 2. Omitted
- LN 46A/1978 3. The education allowances paid to officers in the public service in respect of the education of their children.
- LN 107/1976 4. The income of any religious, charitable, benevolent or educational institution approved by the Minister.
5. Pensions granted in respect of wounds or disabilities suffered by members of Her Majesty's Forces.
6. — (1) Any amount received by way of compensation for death or injuries.
(2) All or any part of a lump sum payment by way of a bonus, gratuity or retiring allowance in respect of the full-time employment of a person on the occasion of his retirement from such employment which —
(a) is, in the opinion of the Commissioner, just and reasonable; and
(b) does not exceed a sum equivalent to half the total income of such person from that employment in respect of the two years immediately preceding his year of retirement reduced by one-tenth for every year by which the number of his completed years of contin-

Para-
graph

Exemptions

- uous service in such employment immediately preceding such retirement is less than fifteen.
7. The income of any fund declared by the Minister under section 27 (1) to be an approved pension fund. LN 46A/1978
8. The income of the South Pacific Commission and the income derived from funds of the Commission by persons employed thereby.
9. The gains or profits of a non-resident person from the business of an air transport operator to the extent that the Minister may direct. 22 of 1972, s. 22
10. The income of any co-operative society registered under the Co-operative Societies Act the principal objects of which are the acquisition or development of agricultural land, so far as that income is derived from agriculture. LN 53/1980
11. The income of any council established under the Local Government Act, to the extent to which such income is not derived from a business carried on by such council.
12. Any distribution by the North New Georgia Timber Corporation to a land owner in North New Georgia of royalties or other sums in respect of the grant of felling licences issued by it received from Lever's Pacific Timbers Limited in respect of timber extracted from land, being land specified in the First Schedule to the North New Georgia Timber Corporation Act, owned by such land owner. LN 54/1980
13. — (1) The emoluments of any member of the permanent consular services of any foreign country in respect of his office or in respect of services rendered by him in his official capacity. LN 88/1978
(2) The emoluments of any member of the consular service of any foreign country to the extent specified in any reciprocal arrangement for the exemption from income tax of consular emoluments concluded between the Government and such foreign country.
14. The emoluments — LN 46A/1978
(a) of any member of Her Majesty's Forces of a member country of the Commonwealth; or
(b) of any person in the public service of the Government of such member country in respect of his office under such Government where such person is resident in Solomon Islands solely for the purposes of performing the duties of his office,
where such emoluments are payable from the public funds of such member country and are subject to income tax in such member country.
15. Deleted 22 of 1972, s. 22
16. The emoluments payable out of overseas sources in respect of duties performed in Solomon Islands in connection with any technical assistance agreement to which the Government of Solomon Islands is a party to any non-resident person or to any person who is resident solely for the

Para-graph	Exemptions
	purpose of performing such duties, in any case where such agreement provides for the exemption of such emoluments.
LN 46A/1978	17. Any sum paid under an agreement made between Her Majesty's Government and the Solomon Islands' Government to an employee of the Solomon Islands' Government which is stated to represent compensation for loss of career.
LN 46A/1978	18. Interest paid on tax reserve certificates issued by the Government of Solomon Islands.
22 of 1972, s. 22	19. Deleted
14 of 1968, s. 24 LN 46A/1978 LN 41/1990	20. Interest on deposits made with any savings bank in Solomon Islands or on fixed deposit account with any bank in Solomon Islands up to five thousand dollars.
LN 27/1980 LN 41/1990	21. (a) The appointment grants, constituency allowances and terminal grants payable from public funds to or in respect of any elected member of Parliament in accordance with the Parliamentary Regulations. (b) The value of any benefit, advantage or facility from the provision of an official house, services and servants to the Prime Minister, Ministers and the Leader of the Opposition in accordance with the Parliamentary Regulations.
	22. The income of an association of persons established solely for the purpose of controlling or furthering any amateur sport or game if no part of the income or other funds of the society or association is used or available for the pecuniary profit of any proprietor, member or shareholder thereof.
	23. The income arising from a scholarship awarded to a person for the purpose of full-time instruction at a university, college, school or other educational establishment.
	24. The income of any trade union registered under the provisions of the Trade Unions Act in so far as such income is not derived from a trade or business carried on by such trade union.
	25. The income of any club, society or association, organised and operated exclusively for social welfare, civic improvement, pleasure or recreation, or for any other purposes except profit, no part of the income of which is payable to, or is otherwise available for the personal benefit of any proprietor, member or shareholder thereof in so far as such income is not derived from a trade or business carried on by such club, society or association.
LN 2/1980	26. Deleted
	27. The income of the Solomon Islands Ports Authority, in so far as such income is not derived from haulage, sea transport or from the provision of warehousing in a warehouse appointed as a private warehouse under section 2 of the Customs and Excise Act.
2 of 1976, s. 22	28. — (1) The income of the Solomon Islands National Provident Fund.

Para-graph	Exemptions
	(2) The interest credited to the account with the Solomon Islands National Provident Fund of any member thereof.
29.	Interest on development bonds issued by the Central Bank of Solomon Islands. LN 1/1980
30.	Reinsurance premiums; and premiums on insurance exempted under section 11 of the Insurance Act LN 61/1987
31.	Terminal grants paid to members of Provincial Assemblies. LN 48/1989 LN 39/1990
32.	The profits derived from the sale of electricity by the Solomon Islands Electricity Authority. LN 41/1990
33.	The profits made by broadcasting services provided by the Solomon Islands Broadcasting Corporation. LN 41/1990
34.	Interest on loans payable to the Commonwealth Development Corporation, to the extent that such interest is only exempt from withholding tax. LN 41/1990
35.	The income and revenue of the Investment Corporation of Solomon Islands. LN 41/1990

FOURTH SCHEDULE
(Section 18 (2) (c) and (6))

PART I

✓ DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE

1. — (1) Subject to this Part, where, during any year, any capital asset to which this Part relates is owned by any person and used by him for the purposes of his business, there shall be made in computing his gains or profits for that year a deduction, in this Part referred to as the wear and tear deduction.

Wear and tear deductions
LN 33 of 1978
LN 8 of 1980

(2) The amount of the wear and tear deduction for any year shall be the appropriate percentage of the written-down value of the capital asset at the end of such year, before making such deduction, as follows: —

	Per cent
(i) all buildings, building fixtures and fittings, bridges, wharves, slipways, boilers and oil storage tanks not otherwise specified	5
(ii) vehicles, vessels, aircraft and all plant and machinery not otherwise specified... ..	25
✓ (iii) all buildings and building fixtures owned and used in Solomon Islands by an employer for the purpose of providing accommodation for his employees where the capital cost of accommodation per employee including his family is ten thousand dollars or less and	

all assets in (i) and (ii) above owned and used by a timber concessionaire for the principal purpose of cutting, extracting and processing timber from within the boundaries of a timber concession

Per cent

35

(3) For the purposes of this paragraph the expression "used by him for the purposes of his business" shall be deemed to include the period from the date on which capital expenditure is first incurred on the provision of a capital asset to the date on which such asset is put into use by the person incurring such expenditure for the purposes of his business:

Provided that where such person makes a deduction in respect of such period but fails thereafter, other than by reason of the loss or destruction of the capital asset in respect of which such deduction was made, to use such asset for the purposes of his business, the Commissioner may make an additional assessment for the period in respect of which such deduction was made.

LN 33 of 1978

Ascertainment of written-down value

2. Deleted

3.—(1) The written-down value of each class of capital asset referred to in paragraph 1 (2) shall be calculated separately as at any time and shall be the diminished value of the capital assets of such class as calculated after the deduction of any allowance made under section 3 (1) (a) of the repealed enactment, with the addition of the cost of any capital asset of that class purchased and the deduction of the amount realised on the sale of any capital asset of that class sold in the year 1965 or any succeeding year, less any deductions made under this Part; and where the amount realised for the capital assets of any class sold in any year exceeds that which, but for the deduction of such amount, would be the written-down value of the capital assets of such class at the end of such year, the excess shall not be deducted but shall be treated as a trading receipt.

(2) Where an initial deduction is made under this paragraph in calculating the written-down value of any class of capital asset the wear and tear deduction shall be calculated upon the amount outstanding after deduction of such initial allowance.

Application to lessors

4. Where a capital asset is let upon such terms that the burden of the wear and tear thereof falls directly upon the lessor, this Part shall apply in relation to him as if the asset were, during the period of the letting, in use for the purposes of a business carried on by him.

Balancing deduction and balancing charge

5.—(1) Where wear and tear or initial deductions have been made in computing the gains or profits of any person and that person ceases to carry on the business for the purposes for which the capital assets were used and such assets cease to be owned by him, there shall be made in computing his gains or profits for the year in which such cessation occurs a deduction or charge, in this Part referred to as a balancing deduction or balancing charge:

Provided that —

(a) for the purposes of this paragraph a partnership shall be deemed not to have ceased to carry on a business unless all the partners who carried it on cease to carry it on;

(b) where capital assets are sold by the liquidator of a company which is in the course of being wound up, the balancing deduction or balancing charge shall be made in computing the gains or profits of such company for the year in which the winding up commenced and shall be computed on the sale moneys received by the liquidator;

(c) where, in the case of a balancing deduction, the total income for such year before taking account of such deduction is less than the amount of such deduction, the excess may be carried back and allowed in calculating the total income of the next preceding year, and so on, for as long as is necessary for such deduction to be absorbed by the total income of preceding years, not exceeding in all six in number.

(2) Subject to this Part, where on the cessation of a business a balancing deduction or a balancing charge is to be made under this paragraph and —

(a) no sale moneys are received by the person owning such capital assets, or the written-down value at the time of such cessation exceeds those moneys, the balancing deduction shall be the written-down value at the time of such cessation, or the excess thereof over such moneys, as the case may be;

(b) the sale moneys exceed the written-down value, if any, at the time of such cessation, the balancing charge shall be the amount of such excess or, where the written-down value is nil, the amount of such moneys, as the case may be.

(3) Notwithstanding the provisions of sub-paragraph (1), where a capital asset has ceased altogether to be used for the purposes of a business carried on by any person then, if such asset has been lost or destroyed or has been sold by such person, or is unlikely to be saleable for a price in excess of the cost of procuring its sale, the foregoing provisions of this paragraph shall apply in relation to such asset as though —

10 of 1966, s. 10

(a) such asset had been sold by such person, and

(b) such person had ceased to carry on the business for the purposes of which such asset had been used.

6. In this Part —

14 of 1966, s. 25

"timber concession" means the area over which a timber concessionaire has the right to cut timber by virtue of a valid licence, permit or other authority issued by or on behalf of the Government;

"timber concessionaire" means a person to whom a valid licence, permit or other authority to cut timber has been issued by or on behalf of the Government and who is exercising his rights under such licence, permit or other authority.

PART II

DEDUCTIONS IN RESPECT OF IMPROVEMENTS

7. Where in any year the owner or tenant of land incurs capital expenditure on improvements of the following nature —

Deduction for improvements to plantations

22 of 1972, s. 23

- (a) the purchase and planting, in a good and husbandlike manner, of the seeds or seedlings of coconut palms, oil palms or cocoa;
- (b) such clearing, draining, fencing and roadmaking as is necessary for the purposes of such planting;
- (c) the provision of yards, fences and water supplies for the better breeding, nurture and handling of livestock,

he shall, on delivering the return of income required by section 57 for such year, by notice in writing to the Commissioner elect either—

14 of 1968, s. 25

- (i) that the whole of such expenditure shall be deducted in computing his gains or profits for the year in which it is incurred, or
- (ii) (a) that in the case of coconut palms one-seventh of such expenditure shall be deducted in computing his gains or profits for such year and each of the six following years;
- (b) that in the case of oil-palms one-quarter of such expenditure shall be deducted in computing his gains or profits for such year and each of the following three years;
- (c) that in the case of cocoa one-fifth of such expenditure shall be deducted in computing his gains or profits for such year and each of the four following years;
- (d) that in the case of yards, fences and water supplies one-tenth of such expenditure shall be deducted in computing his gains and profits for such year and each of the nine following years;
- (e) that in the case of re-afforestation expenditure one-fifteenth of such expenditure shall be deducted in computing gains or profits for such year and each of the following fourteen years,

22 of 1972, s. 23

LN 39/1982

and any such election shall be binding upon him in relation to all such expenditure incurred in subsequent years:

Provided that if such person fails to make such election, he shall be deemed to have elected that the whole of such expenditure shall be deducted in the year in which it is incurred.

PART III

MINING

8. In this Part, unless the context otherwise requires—

Interpretation

"expenditure" means capital expenditure incurred in Solomon Islands by a person carrying on the business of mining—

- (a) in searching for or in discovering and testing deposits of minerals, or in winning access to those deposits, whether or not such search is, or such deposits are, in an area contiguous to any mine in relation to which such person carries on the business of mining;
- (b) in the acquisition of, or of rights in or over, such deposits, other than the acquisition from a person who has carried on a business of mining in relation to such deposits;
- (c) in the provision of machinery which would have little or no value to such person if the mine ceased to be worked on the termi-

nation of the year in respect of which any claim for a deduction has been made under this Part, and any premium, or consideration in the nature of a premium, paid for the use of such machinery;

(d) on the construction of any building or works which would have little or no value if the mine ceased to be worked on the termination of the year in respect of which any claim for a deduction has been made under this Part;

(e) on development, general administration and management prior to the commencement of production or during any period of non-production:

Provided that the expression "expenditure" shall not include any expenditure on the acquisition of the site of such deposits, or of the site of any buildings or works, or of rights in or over any such site;

"mineral" does not include any common clay, murram, sand, limestone, sandstone, brine, diatomite, gypsum, anhydrite, sulphur, dolomite, kaolin, bauxite, any sodium or potassium compounds, or any other commonly found mineral, unless it has been obtained by underground mining operations;

"mining" includes every method or process by which any mineral is won.

9. Subject to this Schedule, where a person carrying on the business of mining incurs expenditure in any year, there shall be made, in computing his gains or profits for such year and each of the four following years, a deduction equal to one-fifth of such expenditure.

Deductions

10.—(1) Notwithstanding anything contained in paragraph 9, where the Commissioner is satisfied that, having regard to the estimated ore reserves and to any other relevant information, a mine is likely to cease to be worked before the expiration of four years from the end of the year in which the expenditure was incurred, he may, upon the application of the person who incurred the expenditure, increase the amount of the deduction for any year to such amount as he may consider to be just and reasonable.

Increase of deductions

(2) Where the amount of a deduction under this Part has been in any manner varied for any year, the deductions for subsequent years shall be so adjusted that the sum of deductions for all years shall not exceed the amount of the expenditure.

11. Where separate and distinct mining operations are carried on by the same person in mines that are not contiguous, the mines shall be treated for the purposes of this Part as if separate businesses were carried on in relation thereto.

Operations of separate mines treated separately

12.—(1) Any expenditure incurred for the purposes of a business of mining by a person about to carry it on shall be treated for the purposes of this Part as if it had been incurred by that person on the first day on which he does carry it on.

Expenditure incurred by persons not engaged in trade of mining, etc

(2) Where a person incurs expenditure to which this Part applies on searching for or on discovering and testing any deposits of minerals, or winning access to those deposits and, without having carried on any business of mining, he sells any assets representing such expenditure in relation to those deposits,

then if the purchaser carries on a business of mining, such purchaser shall, for the purposes of such business, be deemed to have incurred expenditure to which this Part applies equal to the price paid by him for such assets.

PART IV

MISCELLANEOUS

Effect in certain successions, transfers, etc

13. Where a person succeeds to any business which until that time was carried on by another person, and any capital asset which, immediately before the succession was in use for the purposes of the business without being sold is, immediately after such succession, in use for the purposes of the business, such capital asset shall, for the purposes of this Schedule, be treated as if it had been sold at the date of the succession to the person or persons carrying on the business immediately thereafter and as if the net proceeds of the sale had been the written-down value of the capital asset.

Special provisions as to certain sales
LN 33 of 1978

14.—(1) Where, either before or after the commencement of this Act, a person has acquired any capital asset in respect of which a deduction has been lawfully allowed or is allowable under this Act or any previous Act or Regulations he shall not be entitled to any greater deduction under this Schedule than that which would have been allowed to the person from whom the asset was acquired if that person had retained it.

Provided that this sub-paragraph shall not apply where the Commissioner is of the opinion that the circumstances are such that a deduction based on the actual consideration given should be allowed.

(2) Where a company not being incorporated in the Solomon Islands, transfers assets to a company incorporated in the Solomon Islands, the Commissioner may on the application of both such companies, deem that such assets have been sold at the written-down value ascertained in accordance with this Schedule in those circumstances where the buyer is a company over whom the seller has control, or the seller is a company over whom the buyer has control or where the buyer and seller are both under the control of some other person.

Private use

15. Where any capital asset owned by a person is during any year used by him for the purposes of a business carried on by him and also used by him for other purposes, then in determining the amount of any wear and tear deduction, initial deduction, or any balancing deduction or balancing charge, or the written-down value of such machinery for any year, regard shall be had to all the relevant circumstances of the case and in particular to the extent of the use for such other purposes and the Commissioner shall make such adjustments as he may determine to be just and reasonable.

Application to employments

16. This Part shall, with any necessary adaptations, apply in relation to any employment as it applies in relation to a business.

Apportionment of consideration for sale of any asset

17.—(1) Any reference in this Schedule to the sale of any asset, of whatsoever nature, includes a reference to the sale of that asset together with any other assets; and, where an asset is sold together with other assets, so much of the net proceeds of the sale of the whole of the assets as the Commissioner may determine to be just and reasonable as properly attributable to the first-mentioned asset shall, for the purposes of this Schedule, be deemed to be the net proceeds

of the sale of the first-mentioned asset, and reference to expenditure incurred on the provision or the purchase of assets shall be construed accordingly.

(2) For the purposes of this paragraph all the assets which are sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are, or purport to be, agreed for separate assets or that there are, or purport to be, separate sales of separate assets.

18.—(1) Unless the context otherwise requires, references in this Schedule to capital expenditure and capital sums in relation to the person incurring such expenditure, or paying such sums, do not include any expenditure or sum which is deductible otherwise than under this Schedule for the purpose of ascertaining his total income.

Interpretation of certain references to expenditure, etc.

(2) Any reference in this Schedule to the date on which expenditure is incurred shall be construed as a reference to the date when the sum in question becomes payable.

19. Expenditure shall not be regarded for any of the purposes of this Schedule as having been incurred by any person in so far as it has been, or is to be, met directly or indirectly by any government or local authority, or by any person, whether in Solomon Islands or elsewhere, other than the first-mentioned person.

Subsidies

20. If a deduction is made under any Part in respect of any asset in computing the gains or profits of any person for any year then, to the extent to which such a deduction has been made, no further deduction shall be made under that Part or any other Part or under any other provision of this Act in respect of that asset in ascertaining the total income of that person for the same or any previous or subsequent year.

Prevention of double allowances

21.—(1) In this Schedule, except where the context otherwise requires —

Other provisions as to interpretation

(a) "machinery" includes plant;

(b) "sale moneys" means, in relation to —

(i) a sale of any property, the net proceeds of the sale;

(ii) the coming to an end of any interest in property, any compensation payable in respect of that property;

(iii) the demolition or destruction of any property, the net amount received for the remains of the property, together with any insurance or salvage moneys received in respect of the demolition or destruction and any other compensation of any description received in respect thereof, in so far as that compensation consists of capital sums;

(c) "control", in relation to a body corporate, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person and, in relation to a partnership, means the right to a share of more than one-half of the assets or of more than one-half of the income of the partnership;

(d) any references to any machinery, building works or capital asset shall be construed as including a reference to a part of any such machinery, building works or capital asset;

(e) any reference to the time of any sale shall be construed as a reference to the time of completion or the time that possession is given, whichever is the earlier;

(f) the price which any property would have fetched if sold in the open market shall be determined by the Commissioner.

(2) Where any income of an accounting period ending on some day other than the last day of any year is taken into account for the purpose of ascertaining total income for any year, then any reference in this Schedule to a year shall be construed as a reference to such accounting period:

Provided that where any deduction under this Schedule is related to a year and any income of an accounting period is so taken into account, then, if such accounting period is more or less within twelve months, the amount of such deduction shall be appropriately increased or decreased as the case may be.

12 of 1992, s. 9
3 of 1993, s. 2

FIFTH SCHEDULE (Section 32)

RATES OF INDIVIDUAL INCOME TAX

Income Bracket	Rate
\$1 to \$15,000.00	\$0.11
\$15,001.00 to \$30,000.00	\$0.23
\$30,001.00 to \$60,000.00	\$0.35
\$60,001.00 and over	\$0.47

SIXTH SCHEDULE (Section 34)

RATES OF NON-RESIDENT WITHHOLDING TAX

INCOME	RATE
(i) Interest	15¢ in the dollar
(ii) Professional Services	7½¢ in the dollar
(iii) Royalties	15¢ in the dollar
(iv) Income from contracting	7½¢ in the dollar
(v) Income from ships and aircraft	5¢ in the dollar
(vi) Insurance premiums	15¢ in the dollar
(vii) rent for the hiring of films	5¢ in the dollar.
(viii) the remuneration of foreign fishermen who are Pole and Line fishermen deemed to be non-resident for purposes of income tax as provided under section 2 of the Act	10¢ in the dollar
(ix) the remuneration of foreign fishermen who are Purse Seiners and deemed to be non-resident for purposes of income tax as provided under section 2 of the Act	15¢ in the dollar
(x) lease income	15¢ in the dollar.

2 of 1976, s. 28
LN 4 of 1980
5 of 1990, s. 13
10 of 1991, s. 10

SEVENTH SCHEDULE (Section 37)

5 of 1990, s. 14
LN 75 of 1990

RATES OF RESIDENT WITHHOLDING TAX

INCOME	RATE
(i) Income from contracting and/or sub-contracting	7½¢ in the dollar
(ii) Royalties	10¢ in the dollar
(iii) Income from fishing operations	10¢ in the dollar
(iv) Income from lease of property	10¢ in the dollar
(v) Income from the sale of cocoa	NIL
(vi) Income from the sale of copra	NIL
(vii) Income from the sale of marine products	10¢ in the dollar

EIGHTH SCHEDULE

FORM 1

THE INCOME TAX ACT (Section 77)

To the Commissioner of Inland Revenue.

In the matter of assessment of.....for the year.....

Assessment No.....

I hereby give notice that I object to the above assessment for the following reasons —

(State precisely the grounds of the objection.)

Dated this.....day of....., 19.....

(Signed).....

FORM 2

THE INCOME TAX ACT (Section 79)

To the Commissioner of Inland Revenue.

In the matter of assessment of.....for the year.....

Assessment No.....

I hereby give notice that I am dissatisfied with your decision, notice of which has been served upon me under section 78(3), for the following reasons —

(State precisely the grounds of appeal.)

and that I intend to appeal to the Court.

Dated this.....day of....., 19.....

(Signed).....

FORM 3

THE INCOME TAX ACT
(Section 109)

I,, make oath and swear that I will faithfully and honestly perform the duties which devolve upon me under the Income Tax Act and that I shall regard and deal with all documents and information relating to the income of any person and all confidential instructions in respect of the administration of the Act, which may come into my possession or to my knowledge in the course of my official duty, as secret, and that I shall not reveal any such document or information to any person, nor permit any person to have any access to such document, save in the circumstances in which I am permitted to do so under the Act.

(Signed).....

Made and subscribed before me this.....day of.....
19.....

.....
Magistrate.

CHAPTER 123

INCOME TAX

*Subsidiary Legislation*THE INCOME TAX (EXEMPTION) ORDER
(Section 16 (2))

LN 128/1967

[11th September 1967]

1. This Order may be cited as the Income Tax (Exemption) Order.

2.—(1) Inducement allowance paid to a designated officer in respect of any period commencing on or after the 1st day of April, 1967 and that part of any gratuity which accrues to any such officer by virtue of the addition to his emoluments of such allowances as aforesaid, shall be wholly exempt from tax.

(2) In this paragraph "designated officer" shall have the meaning ascribed to that expression in clause 1 of the Overseas Service (British Solomon Islands Protectorate) Agreement, 1961, set out in the Schedule to the Overseas Service Agreements (Ratification) Ordinance, and "inducement allowance" means the inducement allowance referred to in paragraph (a) of clause 3 of the said Overseas Service (British Solomon Islands Protectorate) Agreement, 1961.

Cap. 112
1969 Revised
Edition

THE INCOME TAX (SOLOMON ISLANDS TOURIST AUTHORITY)
(EXEMPTION) ORDER
(Section 16(2))

LN 23/1976

[1st January 1976]

1. This Order may be cited as the Income Tax (Solomon Islands Tourist Authority) (Exemption) Order.

2. The income of the Solomon Islands Tourist Authority derived from the discharge of its functions and the exercise of its powers under the Solomon Islands Tourist Authority Act shall be wholly exempt from tax.

LN 46/1976

THE INCOME TAX (CENTRAL BANK OF SOLOMON ISLANDS)
(EXEMPTION) ORDER
(Section 16(2))

[21st June 1976]

1. This order may be cited as the Income Tax (Central Bank of Solomon Islands) (Exemption) Order.

2. Any income or class of income of the Central Bank of Solomon Islands which accrues in or is derived from Solomon Islands shall be wholly exempt from tax.

LN 51/1981

THE INCOME TAX (REDUNDANCY PAYMENTS AND LONG SERVICE
BENEFITS) (EXEMPTION) ORDER
(Section 16(2))

[24th July 1981]

1. This Order may be cited as the Income Tax (Redundancy Payments and Long Service Benefits) (Exemption) Order.

2.—(1) Any sum or (if there is more than one) the aggregate of the sums paid to a person in any year under section 2(1) (redundancy payments) or 15(1) (long service benefit) of the Employment Act is exempt from tax except to the extent (if any) that the sum or, as the case may be, the aggregate of the sums exceeds \$500.

(2) In the case of an aggregate of more than \$500 consisting of sums paid under sections 2(1) and 15(1) of the Employment Act, sub-paragraph (1) above shall have effect first in respect of the sum paid under section 15(1).

3. This Order has effect for the year 1981 and subsequent years.

Cap. 72

THE INCOME TAX (INTEREST PAID TO CERTAIN NON-RESIDENT
PERSONS) (EXEMPTION) ORDER
(Section 16(2))

LN 3/1984

[6th January 1984]

1. This Order may be cited as the Income Tax (Interest Paid to Non-resident Persons) (Exemption) Order.

2. The following income which accrues in or is derived from Solomon Islands shall be exempt from tax: —

Interest paid to a non-resident person in respect of any loan which the Government has agreed to exempt from income tax.

LN 138/1990

THE INCOME TAX (NEW ZEALAND) (AIRCRAFT OPERATORS)
(EXEMPTION) ORDER
(Section 16(2))

[12th October 1990]

1. This Order may be cited as the Income Tax (New Zealand) (Aircraft Operators) (Exemption) Order.

2. The gains or profits derived from the business of air transport operation from Solomon Islands by any New Zealand aircraft operator, who is a non-resident person in Solomon Islands, shall in whole, be exempt from income tax. ✓

LN 136/1991

THE INCOME TAX (DIRECTOR OF FORUM FISHERIES AGENCY)
(EXEMPTION) ORDER
(Section 16(2))

[6th December 1991]

1. This Order may be cited as the Income Tax (Director of Forum Fisheries Agency) (Exemption) Order.

2. The income received in Solomon Islands by the Director of the Forum Fisheries Agency in that capacity as Director shall be exempt from tax.

LN 78/1993

THE INCOME TAX (AIR NIUGINI) (AIRCRAFT OPERATORS)
(EXEMPTION) ORDER
(Section 16(2))

[13th April 1993]

1. This Order may be cited as the Income Tax (Air Niugini) (Aircraft Operators) (Exemption) Order.
2. The gains and profits derived from the business of air transport operation from Solomon Islands by any Air Niugini Aircraft, shall in whole, be exempt from income tax.

LN 125/1970

THE INCOME TAX (DEDUCTION OF CAPITAL EXPENDITURE)
(MINING OF BAUXITE) ORDER
(Section 18(6))

[11th December 1970]

1. This Order may be cited as the Income Tax (Deduction of Capital Expenditure) (Mining of Bauxite) Order.
2. Capital expenditure incurred in Solomon Islands by a person carrying on the business of mining bauxite shall be subject to relief under Part III of the Fourth Schedule to the Act to the extent that such expenditure would have qualified for relief if the definition of "mineral" in that Part included bauxite howsoever obtained.

LN 39/1982

THE INCOME TAX (DEDUCTION OF CAPITAL EXPENDITURE ON
RE-AFFORESTATION) ORDER
(Section 18(6))

[13th August 1982]

1. This Order may be cited as the Income Tax (Deduction of Capital Expenditure on Re-afforestation) Order.
2. In this Order "capital expenditure on re-afforestation" means expenditure incurred on clearing and preparing land, purchasing, planting and maintaining trees and on rents, rates, insurance and interest in respect of a re-afforestation project.

3. Capital expenditure on re-afforestation shall be allowed as a deduction in respect of improvements as though in the Fourth Schedule to the Income Tax Act —

(a) there were added to paragraph 7 thereof the following additional sub-paragraph —

"(d) capital expenditure on re-afforestation;" and

(b) there were added to sub-paragraph (ii) of paragraph 7, the following additional clause: —

"(e) that in the case of re-afforestation expenditure one-fifteenth of such expenditure shall be deducted in computing gains or profits for such year and each of the following 14 years."

4. This Order shall have effect for the year 1982 and subsequent years.

THE INCOME TAX (DEDUCTION OF CAPITAL EXPENDITURE ON
SPECIAL DEVELOPMENT ASSETS) ORDER
(Section 18(6))

LN 40/1982

[13th August 1982]

1. This Order may be cited as the Income Tax (Deduction of Capital Expenditure on Special Development Assets) Order.

2. In this Order —

"special development activity" means an activity declared to be a special development activity by the Minister under paragraph 3 of this Order;

"special development asset" means any asset described in sub-paragraphs 1(2) (i), 1 (2) (ii) or 1 (2) (iii) of the Fourth Schedule to the Income Tax Act acquired by and used for the purposes of a special development activity and declared to be special development assets under paragraph 5 of this Order.

3. Where, having regard to the economic and other benefits likely to accrue to Solomon Islands, it is in the opinion of the Minister in the national interest so to do, he may by notice in the Gazette declare an activity of any person to be a special development activity for such period not exceeding 5 years as shall be specified in the notice.

4. Capital expenditure on special development assets may, subject to paragraph 5 of this Order, be allowed as a deduction as though sub-paragraph (2) of paragraph 1 of the Fourth Schedule to the Income Tax Act contained an additional sub-paragraph as follows: —

✓ “(iv) special development assets ... 100%”

5. A person engaged in a special development activity may in writing to the Commissioner elect to declare which assets of the business shall be special development assets provided that such election, which shall be irrevocable, shall be made within 3 months of the end of the year in which the expenditure was incurred or within such extended period as the Commissioner may allow.

6. This Order shall have effect for the year 1981 and subsequent years.

THE INCOME TAX (DEDUCTION OF CAPITAL EXPENDITURE ON SPECIAL DEVELOPMENT ASSETS) ORDER

DECLARATIONS OF SPECIAL DEVELOPMENT ACTIVITIES UNDER PARAGRAPHS 2 & 3

LN 84/1990

The forest and processing activity of the Kolombangara Forest Product Limited to be a special development activity for a period of five years from 20th June 1990.

LN 1/1994

The Honiara Factory Development of the Solomon Islands Tobacco Company Limited to be a special development activity for a period of five years from 4th January 1994.

LN 79/1994

The upgrading of the Tetere Palm Oil Mill to be a special development activity for a period of three years from 31st May 1994.

LN 77/1995

The Diploma in Banking course at the Solomon Islands College of Higher Education to be a special development activity for a period of three years from 17th July 1995.

THE INCOME TAX (ANNUAL VALUE OF PREMISES) ORDER
(Section 24)

LN 105/1985

[31st December 1995]

1. This Order may be cited as the Income Tax (Annual Value of Premises) Order and shall have effect for the year 1986 and subsequent years.

2. For the purpose of section 24 of the Income Tax Act the annual value of premises provided by an employer shall not exceed eleven thousand dollars.

APPROVED FUNDS
(Section 27)

Order dated

Union Overseas Provident Fund.

24-11-1949
(141/133/49)

Commonwealth Bank of Australia Officers' Superannuation Fund.

16-11-1951
(144/142/51)

Shell Australian Contributory Pension Fund.

11-9-1952
(124/243/52)

Federated Superannuation Scheme for Universities.

30-6-1956
(109/101/56)

Supernumerary Fund of the Methodist Church of New Zealand.

15-12-1956
(212/225/56)

Deaconess Retiring Fund of the Methodist Church of New Zealand.

15-12-1956
(212/225/56)

British Broadcasting Corporation Staff Pension Scheme.

4-2-1960
(5/5/60)

Uniac Pension Fund. (With effect from 1st January 1963.)

18/6/1963
LN 58/1963

Employees Provident Fund (Bank of New South Wales).
(With effect from 1st January 1964.)

24/2/1964
LN 41/1964

The fund established under the Commonwealth Development Corporation Pensions Scheme.

24-5-1980
LN 28/1980

Cable and Wireless Supplementary Superannuation Fund.

24-5-1980
LN 28/1980

Cable and Wireless Pension Fund.

24-5-1980
LN 28/1980

Cable and Wireless Staff Dependents Fund.

24-5-1980
LN 28/1980

Professionals Superannuation and Benefits, Group.

3-8-1986
LN 101/1986

A.M.P. Personal Superannuation (N.Z.) Fund.

10-8-1988
LN 82/1988

20-3-1989
LN 35/1989

Westpac Banking Corporation's Superannuation Scheme Fund.

19-12-1989
LN 6/1990

Burns Philip (Hong Kong) Retirement Fund.

12-2-1991
LN 24/1991

Galley Reach Holdings Pty Ltd Superannuation Fund (PNG).

12-3-1991
LN 34/1991

Asian Paints Factory Employee's Provident Fund.

23-8-1991
LN 111/1991

NSW Superannuation Fund.

25-2-1993
LN 36/1993

Solbrew Superannuation Fund.

1-7-1993
LN 150/1993

Australasian Conference Association Superannuation Trust.

31-5-1994
LN 77/1994

Hogg Robinson Australia Group Staff Superannuation Fund.

31-5-1994
LN 78/1994

QBE Group Staff Superannuation Plan.

LN 3/1980

THE INCOME TAX (PERSONAL EXEMPTION) ORDER
(Section 31)

[1st January, 1980]

1. This Order may be cited as the Income Tax Act (Personal Exemption) Order.

2. For the purpose of Section 31(3)(c) of the Income Tax Act the maximum fees which may be claimed in respect of any child shall be two thousand dollars.

LN 4/1984

THE INCOME TAX (INSTALMENT INTEREST RATES) ORDER
(Section 83)

[1st January 1984]

1. This Order may be cited as the Income Tax (Instalment Interest Rates) Order.

2. This Order shall apply to:

- (i) all instalment arrangements agreed upon by the Commissioner after 1st January 1984; and
- (ii) all previous instalment arrangements agreed upon by the Commissioner to the extent that tax, interest and penalties in relation to such previous arrangements remain unpaid on such date.

3. The rate of interest on any amount owing in respect of tax, interest and penalties payable by instalments under Section 83 (4) of the Income Tax Act shall be 1.25% per calendar month or part of a calendar month and such interest shall be compounded each calendar month.

APPOINTMENT OF UNITED KINGDOM AGENT
(Section 105(2))

LN 33/1972

[30th June, 1972]

The Official Representative, Overseas Territories Income Tax Office, has been appointed as agent in the United Kingdom for the purposes of the Act.

THE TAX DEDUCTION RULES
(Section 114)

LN 1/1982

[1st January 1982]

PRELIMINARY

1. These Rules may be cited as The Tax Deduction Rules

Short title

2. In these Rules unless the context otherwise requires—

Definitions

“annual summary” means an annual summary under rule 29;

“appropriate form” means a form approved by the Commissioner for use in any particular case;

“emoluments” includes —

- (i) income from any source specified under section 3(a)(ii) of the Act;
- (ii) director's fees or salary;
- (iii) extra emoluments being any payment made to any person in respect of or in relation to employment of that person (whether for a period of time or not), being a payment which is not regularly included in salary or wages payable to that person for a pay period, but not being over-time pay; and includes any such payment made by way of bonus, gratuity, retiring allowance, or share of profits;

- (iv) the value of any benefit, advantage, or facility of whatsoever nature, granted in respect of employment or services rendered;
 - (v) the grossed-up value of any tax paid by an employer which is not deducted from emoluments paid to an employee;
- "employee" means any person to whom emoluments are paid or payable;
- "employer" means any person paying emoluments whether on his own account or on behalf of any other person to an employee and includes —
- (i) the manager or other principal officer in the case of a body of persons;
 - (ii) each partner in the case of a partnership;
 - (iii) each person in whom the property has become vested or to whom the control of the property has passed in the case of the estate of a deceased person, a trust, a company in liquidation, or an assigned estate, or in any other case where property is vested or controlled in a fiduciary capacity;
 - (iv) an accounting officer being a public officer designated or appointed under section 17 of the Public Finance and Audit Act charged with the duty of accounting for any service for which moneys are appropriated under that Act;
 - (v) any officer designated or appointed as Clerk to, or Treasurer of, any Provincial Assembly or other local government body;
- "monthly remittance certificate" means a monthly remittance certificate under rule 18;
- "paid" in relation to emoluments includes distributed, credited or dealt with in the interest of or on behalf of an employee and "pay" and "payment" shall have corresponding meanings;
- "pay and tax record card" means a card required to be maintained by an employer under rule 34 or as an alternative to such card, any record approved by the Commissioner under that rule;
- "pay period" in relation to an employee receiving regular payments of emoluments means the period for which any such payment is made or payable;

Cap. 120

- "primary employer" shall have the meaning ascribed to that term in rule 22;
- "secondary employer" shall have the meaning ascribed to that term in rule 22;
- "secondary employment" means employment by a secondary employer;
- "special tax certificate" means a special tax certificate under rule 23;
- "tax code", in relation to an employee, means his tax code under rule 21;
- "tax code declaration" means a tax code declaration under rule 21;
- "tax deduction" means any tax deduction made or required to be made under these Rules;
- "tax deduction certificate" means a certificate under rules 25, 26, 27 or 28;
- "tax tables" means the tables prepared by the Commissioner under rule 8.

3. Every person who is an employer or carries on or is about to carry on any activity in respect of which he is or will be an employer, shall, if he has not already done so, within one month of the commencement of such activity, register with the Commissioner in the appropriate form.

Registration of employers

4. Where a trade, business, profession or vocation is carried on by two or more persons jointly, each person shall be jointly and severally liable for the performance of the duties required by the provisions of these Rules to be performed by an employer; and where a trade, business or profession is carried on by a body of persons the directors, general manager, accountant, secretary, or other principal officers of such body shall each jointly and severally, in addition to the body itself, be personally liable for the performance of the said duties:

Personal liability in cases of partnership, company etc.

Provided that where any person liable as aforesaid is not resident in Solomon Islands the attorney, agent, manager or factor of such person resident in Solomon Islands shall be personally liable for the performance of the duties.

5. If an employer dies, anything which he would have been liable to do under these Rules shall be done by his personal representative, or, in the case of an employer who paid emoluments on behalf of another person, by the person succeeding him, or, if no person succeeds him, by the person on whose behalf the emoluments were paid.

Passing of employer's liability on death

Employee to be
treated as
employer

6. Where for any reason an employer is exempt from complying with these Rules, or, in such other circumstances as the Commissioner shall from time to time direct, each employee of that employer shall for the purposes of these Rules be deemed to be an employer.

DEDUCTION AND ACCOUNTING FOR TAX

Tax deductions
to be made by
employers

7.—(1) Where any employer pays emoluments to any employee for any pay period, the employer shall, at the time of making the payment, subject to these Rules, deduct therefrom —

(a) in the case of an employee who has furnished his employer with a tax code declaration under rule 21, tax as prescribed in the tax tables for that pay period of such amount as is applicable to his emoluments and his tax code; or

(b) in the case of an employee in respect of whom there has been issued a special tax certificate, tax of such amount or at such rate as may be prescribed by the Commissioner; or

(c) in the case of a non-resident employee and any other employee in respect of whom tax is not deductible in accordance with sub-paragraphs (a) or (b), tax as prescribed in the tax tables for that pay period as applicable to his emoluments.

(2) Notwithstanding the provisions of paragraph (1), when an employer makes a payment of an extra emolument to an employee, tax shall be deducted at the rate of thirty cents in the dollar from the amount of such extra emolument or such other rate as the Commissioner shall prescribe:

Provided that where any extra emolument is paid together with the emoluments for any pay period such extra emolument and the emoluments shall be aggregated and a tax deduction made as if the aggregated amounts were the emoluments for that pay period.

Commissioner to
prepare tax
tables

8.—(1) The Commissioner shall prepare tables for the purpose of ensuring that the total tax payable in respect of any emoluments for any pay period can, so far as is practicable, be readily ascertained.

(2) Such tables shall make provision for such rates of emoluments and pay periods as the Commissioner shall think fit.

(3) For the purposes of this rule, reference to the total tax payable shall, in relation to the tables referred to in paragraph (1), be construed as a reference to the total tax estimated to be payable having regard only to the information declared by an employee under rule 21.

9.—(1) Where in the case of a regular full-time employment an employee receives emoluments from any one employer for part only of a pay period, those emoluments shall be deemed to be for the whole of the pay period.

Determination of
pay periods

(2) Where an employee's emoluments for any pay period are paid in two or more separate sums, all sums so paid shall, for the purpose of calculating the amount of the tax deduction, be aggregated, and the employer may, at his option, make the tax deduction wholly from one sum or in part from each of any two or more sums:

Provided that where, by reason of the size or nature of the employer's business or organisation, the dispersal of employees, or difficulty in assembling particulars, or for any other reason approved by the Commissioner, it is impracticable for an employer to pay overtime pay for a pay period at the same time as the other emoluments for the pay period, the overtime pay of any employee for the pay period may, for the purpose of calculating the amount of the tax deduction, be aggregated with the employee's emoluments (other than overtime pay) for a subsequent pay period.

10. For the purposes of these Rules, if any question shall arise as to —

Commissioner
may determine
questions on
emoluments

(a) the amount of tax to be deducted on payment of any emoluments; or

(b) whether or not any payment of emoluments is as to the whole or any part thereof subject to these Rules,

such question shall be determined by the Commissioner.

11.—(1) If any employee considers that any tax deducted by his employer is less than or in excess of the amount of tax which ought properly to be deducted from his emoluments in accordance with these Rules, he may, in writing, give notice of complaint, stating the grounds of his complaint, to the Commissioner.

Employee may
complain to
Commissioner in
respect of
deductions made
by employer

(2) In the event of the Commissioner being satisfied on the complaint of any employee made under this rule —

(a) that any tax in excess of the amount which ought properly to have been deducted in accordance with these Rules from the emoluments of the employee was deducted by the employer, he may cause the excess to be refunded to the employee;

(b) that less tax than the amount which ought properly to have been deducted in accordance with these Rules from the emoluments of the employee was deducted by the employer, he may cause the amount of the deficiency to be collected from the employee.

Emoluments
deemed to be
paid

12.—(1) For the purposes of these Rules every employer shall be deemed to make a payment of emoluments to an employee not only when an amount of emoluments is actually paid but also when emoluments are credited for the benefit of an employee to an account on which the employee can draw or over which he has control or are otherwise applied for his benefit or at his direction or are applied in reduction of a debt due by him to the employer unless such indebtedness arose from a payment in advance of or on account of remuneration from which tax was deducted at the time of payment.

(2) Where any emoluments though not actually paid, are credited to or applied on account of any employee as aforesaid a tax deduction in respect thereof shall be made accordingly.

Benefits and
other payments
deemed to be
emoluments

13.—(1) Where an employee receives or enjoys a benefit, advantage or facility (hereinafter called a benefit) referred to in section 5(b) of the Act, the value of the benefit (whether in money or otherwise) or, as the case may be, the amount of the payment, shall be deemed to accrue from day to day, and accordingly in each case the amount so accrued for any days in a pay period of the employee shall be deemed to be his emoluments for the pay period, or, as the case may be, part of his emoluments for the pay period.

(2) Where a benefit to which paragraph (1) applies is received or enjoyed by an employee otherwise than in money, the value of the benefit for a pay period shall be deemed to be paid to the employee at the time when his emoluments for the pay period are paid or deemed to be paid to him and shall be aggregated with his emoluments for the purpose of calculating the amount of the tax deduction:

Provided that, where the value of the benefit constitutes the only emoluments of the employee for the pay period, the value

of the benefit shall be deemed to be paid to the employee on the last day of the pay period.

(3) When, at the time when a payment of emoluments is made or deemed to be made, the amount of the emoluments available in money is less than the amount of the tax deduction, or there is no amount available in money, the employee shall forthwith pay to the employer the amount of the deficiency in the tax deduction or, as the case may be, the amount of the tax deduction, and every amount so paid on any date shall be deemed to be a tax deduction made by the employer on that date from his employee's emoluments.

14.—(1) For the purposes of these Rules a director of any company —

Company
directors deemed
to be employees

(a) shall be deemed to be an employee of that company and that company his employer; and

(b) any remuneration paid or credited to him by that company shall be deemed to be emoluments.

(2) Where any company makes any payment of emoluments to a director, not being of a regular amount for regular pay periods of one month or less, a tax deduction at the rate of twenty-five cents in the dollar, or at such other rate as the Commissioner may from time to time prescribe, shall be made from the amount of such payment to him.

(3) The tax required to be deducted under paragraph (2) shall be paid to the Commissioner on or before the fifteenth day of the month next following the month in which the emoluments were paid or credited.

(4) For the purposes of this rule a director's emoluments shall be deemed to have been paid or credited when he becomes entitled to receive such emoluments.

15. Where any amount has been deducted from a payment of emoluments by way of tax deduction under these Rules the amount so deducted —

Amount of tax
deductions
deemed to be
received by
employee

(a) as between the employer and the employee, shall be deemed to have been received by the employee at the time of the payment of emoluments;

(b) for the purposes of the Act, shall be deemed to have been derived by the employee at the same time and in the same way as the residue of the payment of emoluments;

(c) shall upon the amount being so deducted be deemed

to have been paid by the employee who shall thereupon cease to be liable for payment of tax to the extent of the amount so deducted.

Notification to
employee of total
emoluments and
tax deducted

16. When an employer makes any payment of emoluments to an employee from whom tax is deducted, he shall notify the employee in writing at the time the emoluments are paid of the total emoluments for the pay period and of the tax deducted from such emoluments.

Deductions in
case of death of
employee

17. If emoluments are paid by an employer in respect of an employee after the death of that employee, the employer shall on making such payment deduct the tax from such emoluments as if the deceased employee were still alive at the date of payment.

Payment of tax
deductions to
Commissioner

18.—(1) Every employer shall, on or before the fifteenth day of the month next succeeding the month in which the employer paid emoluments to his employees, pay to the Commissioner, or as the Commissioner may direct, the total amount of tax deducted or required to be deducted by him in compliance with the provisions of these Rules:

Provided that where such employer ceases to be an employer all amounts of tax deducted by him as required by these Rules shall be paid by him to the Commissioner within seven days of the day on which such employer ceases to be an employer.

(2) Every payment made as required by this rule shall be accompanied by a monthly remittance certificate made out in the appropriate form by or on behalf of the employer.

No action by
employee against
employer

19. No action shall lie by an employee against his employer for deducting any sum of money in compliance with the provisions of these Rules.

Agreements not
to make tax
deductions to be
void

20. Where a tax deduction is required to be made under the provisions of these Rules any provision in an agreement not to make the tax deduction in accordance with those provisions shall be void.

TAX CODE DECLARATIONS AND TAX DEDUCTION CERTIFICATES

Employee's tax
code declaration

21.—(1) Subject to these Rules every employee, other than an employee whose emoluments are exempt from tax under section 16 of the Act shall, for the purpose of enabling tax deductions to be made from his emoluments, furnish his employer not later

than the seventh January in each year or seven days after the commencement of employment, a tax code declaration in the appropriate form, signed by him, specifying one of the following codes:—

“S” signifying a person entitled to a basic personal exemption under section 29(1)* of the Act;

“M” signifying a person entitled to an increased basic personal exemption under section 29(3)* of the Act:

Provided that this paragraph shall not apply—

(a) to any employee, other than a married woman or a person in secondary employment, who does not or will not receive emoluments in excess of one thousand three hundred dollars in any year and a person, other than a married woman or a person in secondary employment, shall be deemed to be a person who will receive emoluments in excess of one thousand three hundred dollars in any year when the emoluments paid for any pay period multiplied by the number of pay periods in a year provides a sum in excess of one thousand three hundred dollars;

(b) to any employee in respect of whose emoluments the Commissioner has issued a special tax certificate;

(c) to any employee in respect of whose emoluments the Commissioner has approved some alternative means of payment of the tax payable thereon.

(2) An employee may furnish his employer with an amending tax code declaration if his entitlement to personal exemptions increases during any year.

(3) An employee shall furnish his employer with an amending tax code declaration if his entitlement to personal exemptions decreases during any year.

(4) No employee who engages in more than one employment at any time shall contemporaneously deliver or maintain a tax code declaration in respect of more than one employment:

Provided that, where in any pay period the employee has left one regular full-time employment, the employee may in the same pay period, after leaving that employment, deliver a tax code declaration in respect of any other regular full-time employment.

*Section 29 has since been replaced by a new section—Vide Section 2 of Act No. 12 of 1992.

(5) Where an employee has delivered a tax code declaration or a special tax certificate to his employer, the tax code shall, subject to the provisions of these Rules, apply to the employee in respect of all payments of emoluments made by the employer to the employee after the delivery of the declaration or certificate and before the tax code ceases in accordance with paragraph (6) to apply to the employee:

Provided that, except in the case of emoluments for the first pay period of a new employment of the employee, the tax code shall not apply in respect of the emoluments for any pay period commencing before the date of the delivery of the declaration or certificate to the employer.

(6) Where a tax code or special tax certificate applies to an employee on the last day of a year, the tax code or special tax certificate shall not apply to the employee in respect of any payment of emoluments made by the employer to the employee after that day, not being a payment of emoluments for a pay period current on that day:

Provided that where there is no change in the tax code of the employee and the employee delivers a further tax code declaration or special tax certificate to the employer not later than the seventh day of January in the next succeeding year, the tax code specified in that declaration or certificate shall be deemed to have commenced to apply to the employee immediately after the former tax code ceased to apply to him.

(7) A tax code declaration or a special tax certificate applying to an employee in respect of his employment by any employer shall not apply to the employee in respect of his employment by any other employer, not being a successor of the first-mentioned employer in the same employment.

(8) For the purposes of this rule a tax code declaration or special tax certificate which is delivered to an employer before the beginning of any year but is expressed to relate to that year shall be deemed to be delivered on the seventh day of January in that year.

22.—(1) If an employee has more than one employer he may submit a tax code declaration under rule 21 to one employer only, who shall be known as the primary employer. His other employers shall be known as secondary employers.

(2) Where any employee has a secondary employer he shall notify the Commissioner in the appropriate form giving the

names of his primary employer, his secondary employers and his estimated annual emoluments from each whereupon the Commissioner shall cause to be issued to his secondary employers a special tax certificate specifying the rate of tax to be deducted from his emoluments.

23.—(1) Where the Commissioner in any case thinks fit he may issue to an employee or his employer a special tax certificate under this rule.

Special tax certificates

(2) Where an employer makes a payment of emoluments in respect of which a tax deduction is required to be made in accordance with a special tax certificate, the provisions of the certificate in respect of the payment shall apply notwithstanding anything to the contrary in these Rules.

(3) The Commissioner may at any time cancel any special tax certificate and shall give notice thereof to the employee and his employer.

24.—(1) On receipt of an employee's declaration an employer shall record on the pay and tax record card of that employee —

Recording of tax codes by employer

(a) in the case of a non-resident employee, that the employee is a non-resident;

(b) in the case of a resident employee who is in secondary employment, the rate of tax to be deducted from the employee's emoluments;

(c) in the case of all other resident employees, the tax code declared by that employee on his tax code declaration and the frequency of his pay periods:

Provided that where no tax code declaration has been received from that employee the employer shall record on that employee's pay and tax record card that tax is required to be deducted at the rate of tax applicable to non-resident employees.

(2) An employer shall retain each employee's declaration until the end of the year or until such employee earlier leaves the employment of that employer.

(3) For the purposes of this rule the expression "tax code declaration" shall include a special tax certificate issued by the Commissioner.

25.—(1) On or before the thirty-first of January each year every employer shall, unless he has previously delivered or sent to his employees a tax deduction certificate under rules 26, 27 or 28, deliver or send by post to each of his employees from whom

Employer to furnish tax deduction certificates

Employee with more than one employer

he has or ought to have deducted tax, a tax deduction certificate in the appropriate form.

(2) Every tax deduction certificate required to be made out by any employer under these Rules shall be made out in triplicate—

(a) the original and duplicate of which shall be delivered or sent by post to the Commissioner as required by rule 29;

(b) the triplicate of which shall be delivered or sent by post to the employee as required by these Rules.

(3) The Commissioner may approve alternative forms of certificates under this rule provided he is satisfied that it would be reasonable and not inconsistent with these Rules so to do.

26.—(1) If an employer ceases to be an employer he shall, at the time of making the final payments of emoluments to his employees, deliver to each employee from whom he has or ought to have deducted tax during the year in which he so ceases, a tax deduction certificate made out in the appropriate form in respect of the period beginning with the first day of the year in which he ceases and ending on the day on which he ceases:

Provided that, where an employer ceases to be an employer in the year in which he started to be an employer the date of commencement of the period for or in respect of which the particulars of the certificate shall relate shall be the date on which he commenced to be an employer.

(2) A certificate made out under paragraph (1) shall be made out in triplicate by an employer—

(a) the original and duplicate of which shall be delivered or sent by post to the Commissioner as required by rule 29;

(b) the triplicate of which shall be given to his employee as required by paragraph (1).

27.—(1) Where an employee dies his employer shall, not later than one month after the death occurred, deliver or send to the personal representative or to the next of kin of the deceased employee if known to him, a tax deduction certificate made out in the appropriate form.

(2) A certificate made out under paragraph (1) shall be made out in triplicate by the employer—

(a) the original and duplicate of which shall be retained by the employer for submission to the Commissioner under rule 29;

Employer to
furnish tax
deduction
certificates when
ceasing to be an
employer

Employer to
furnish tax
deduction
certificate on
death of
employee

(b) the triplicate of which shall be given to the personal representative or next of kin of the deceased employee as required by paragraph (1).

28.—(1) Where during any year any employee ceases his employment his employer shall, at the time of making the final payment of emoluments in respect of that employment to the employee, deliver to the employee a tax deduction certificate made out in the appropriate form:

Employer to
furnish tax
deduction
certificate on
cessation of
employment

Provided that this rule shall not require an employer to deliver a tax deduction certificate to any resident male employee to whom he has not paid emoluments, including any benefit, facility or advantage, in excess of \$100 in any month at any time during the year unless such male employee is an employee in secondary employment.

(2) A certificate made out under paragraph (1) shall be made out in triplicate by the employer—

(a) the original and duplicate of which shall be retained by the employer for submission to the Commissioner under rule 29;

(b) the triplicate of which shall be given to the employee as required by paragraph (1).

(3) If an employee retires from the service of an employer and is granted a pension, annuity or allowance in respect of past services, such retirement shall not be treated as cessation of employment for the purposes of this rule if the emoluments are paid by or on behalf of the same person both before and after the retirement.

29.—(1) By thirty-first January of each year following a year in which emoluments were paid by him, each employer shall furnish to the Commissioner an annual summary in the appropriate form, signed by the employer, showing the total of all tax deductions paid to the Commissioner under these Rules in respect of the preceding year and the total amount of all tax deductions shown in any tax deduction certificate given to his employees under these Rules together with an explanation if the two totals do not agree.

Employer to
furnish annual
summary

(2) Each employer shall furnish together with his annual summary two copies of all tax deduction certificates issued under these Rules in respect of the preceding year.

(3) If an employer ceases to be an employer he shall, not later than one month after he ceases comply with the provisions of paragraphs (1) and (2) as if the period from the first of January to the date on which he ceased was the preceding year in respect of which he is required to furnish an annual summary and tax deduction certificates.

CREDITING TAX DEDUCTIONS

30.—(1) Every employee who furnishes to the Commissioner a return of income for any year shall forward with the return all tax deduction certificates delivered to him in respect of tax deductions made during the year from his emoluments.

(2) Where for any year the Commissioner received from or on account of an employee any tax deduction certificate or the amount of any tax deduction made and not included in a tax deduction certificate, and the Commissioner has made an assessment of income tax in respect of that year, the Commissioner shall credit the total of such tax deductions in payment of the income tax payable by the employee on such assessment.

(3) If the Commissioner has reason to believe that any tax deduction certificate received by him for the purposes of this rule is incorrect in any particular, he shall not deal with the certificate as required by the foregoing provisions of this rule until he is satisfied that the certificate is correct.

(4) Where the Commissioner has credited in payment of income tax, or made a refund in respect of, an amount shown in a tax deduction certificate which is in excess of the amount that the employer has deducted from a payment of emoluments to which the certificate relates, the employer and the employee shall be jointly and severally liable to pay to the Commissioner the amount of the excess, and that amount shall be deemed to have become due and payable on the fifteenth day of January in the year after the year to the whole or part of which the tax deduction certificate relates.

31. Where the Commissioner is satisfied that a tax deduction certificate has been lost or destroyed, and is satisfied as to the amount of the deductions shown in that certificate, the Commissioner may apply the provisions of rule 30 in the same manner as if the certificate had been received by the Commissioner.

Tax deductions
to be credited
against tax
charged

Lost tax
deduction
certificates

32. Where the Commissioner is satisfied that any employer has made any tax deduction from a payment of emoluments made to an employee, and has failed to deliver to the employee within the prescribed time a tax deduction certificate in respect of the deduction, the Commissioner may apply the provisions of rule 30 in the same manner as if a tax deduction certificate showing the tax deduction had been delivered to the employee and received by the Commissioner.

Tax deduction
for which no
certificate issued

33.—(1) The provisions of section 61(3) of the Act (relating to the duty of a person carrying on a business to preserve certain books of account and documents relating to such business) shall apply with the necessary changes to an employer and the documents and records referred to in these Rules.

Employer to
keep records

(2) Every employer shall take all reasonable precautions for the safe custody of all records that he is required to keep under these Rules and of all pay sheets and receipts for payments of emoluments, and shall retain all such records, pay sheets, and receipts for not less than seven years after the making of the payments to which they relate:

Provided that this paragraph shall not require the retention of any records, pay sheets, or receipts in respect of which the Commissioner has notified the employer that retention is not required.

34.—(1) Every employer shall maintain in every year in respect of each of his employees a pay and tax record card, in the appropriate form.

Pay and tax
record cards

(2) The Commissioner may, on the application of the employer concerned, approve as an alternative to a pay and tax record card any record which, in his opinion, shows substantially the same particulars as a pay and tax record card.

35. Every employer, when called upon to do so by the Commissioner, shall produce to the Commissioner for inspection all wage sheets and other documents and records whatsoever relating to the calculation or payment of emoluments to his employees or to the deduction of tax from such emoluments or to the accounting for any tax deducted therefrom.

Production of
records by
employer

RECOVERY OF TAX DEDUCTIONS

Recovery of tax
deductions from
employers

36.—(1) The amount of every tax deduction made under these Rules shall be held in trust for the Crown; and any amount so held in trust shall not be property of the employer liable to execution, and, in the event of the bankruptcy or liquidation of the employer or of an assignment for the benefit of the employer's creditors, shall remain apart, and form no part of the estate in bankruptcy, liquidation, or assignment.

(2) The total amount of tax which an employer is liable under rules 14 or 18 to pay to the Commissioner may for the purposes of recovery thereof be treated as a single debt notwithstanding that the employer is liable to pay separate amounts in respect of more than one employee, but nothing in this rule shall prevent the bringing of separate actions for the recovery of each of the several amounts which an employer is liable to pay within such time in respect of his several employees.

(3) The right of the Commissioner to recover from the employer the amount in respect of which default has been made shall be in addition to any right of the Commissioner to recover that amount from the employee under these Rules; and nothing in these Rules shall be construed as preventing the Commissioner from taking such steps as he thinks fit to recover that amount from the employer and from the employee concurrently, or from recovering that amount wholly from the employer or from the employee or partly from the employer and partly from the employee.

Employer failing
to make tax
deductions

37.—(1) Where an employer fails to make any tax deduction in accordance with his obligations under these Rules the amount in respect of which default has been made shall constitute a debt payable to the Commissioner, and shall be deemed to have become due and payable to the Commissioner on the fifteenth day of the month next after the month in which payment of the emoluments was made.

(2) If any employer fails or neglects to deduct tax under the provisions of these Rules and all reasonable efforts to recover such tax from the employee have failed then such employer shall be liable for the payment of the tax.

Application of
the Act to

38. Subject to the provisions of these Rules, the provisions of the Act shall apply with respect to every amount that any

employer, employee, or other person is liable to account for or pay to the Commissioner under these Rules as if the amount were income tax.

amounts payable
under these
Rules

39. Notwithstanding anything contained in these Rules, for the avoidance of doubt, the amount of income tax for which an employee is liable in respect of the income derived by him in any income year shall be determined in accordance with the provisions of the Act.

Assessment and
payment of
income tax

40. For the avoidance of doubt, it is hereby declared that, notwithstanding the provisions of these Rules, any employee shall make a return of income for any year in accordance with section 57(1) of the Act.

Returns of
income

41. The Commissioner may at any time extend the period in which anything required to be done by these Rules has to be done.

Extension of
time by
Commissioner

42. The Commissioner may, subject to section 106(2) of the Act, authorise any officer to exercise any of the powers conferred by these Rules upon the Commissioner, to such extent as he thinks fit.

Delegation of
powers

43. Non-resident employers and the employees of such employers shall be exempt from the provisions of these Rules upon their obtaining the agreement in writing of the Commissioner to any other arrangements for the payment of tax by such employees.

Exemption of
non-resident
employers and
their employees