

# LAWS OF COOK ISLANDS

## INCOME TAX ACT No. 12 of 1997

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**No. 12 of 1997**

An Act to consolidate the law relating to income tax



(10 June 1997)

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and commencement - (1) This Act may be cited as the Income Tax Act 1997.

(2) This Act shall come into force on 1 July 1997.

**PART I**  
**INTERPRETATION**

2. Interpretation - In this Act, unless the context otherwise requires -

"Additional tax" means additional tax charged under section 182;

"Agent" means any person declared by this Act to be an agent for the purposes of income tax;

"Annual rates" means the rates of income tax fixed for any year of assessment by operation of this Act or any amendment thereto;

"Annual taxing Act" means an Act by which the rates of income tax are determined for any year;

"Approved annuity" means an annuity issued by an insurance company approved by the Collector for the time being;

"Assessable income" means income of any kind which is not exempted from income tax otherwise than by way of a special exemption expressly authorised as such by this Act;

"Bank" means any person licensed to carry on banking business pursuant to the provisions of the Banking Act 1969;

"Banking company" means any company carrying on in the Cook Islands the business of banking;

"Basic rates" means the rates of income tax specified in the First Schedule;

"Basic tax deductions" means the amounts of tax deductions specified in the Second Schedule;

"Bonus Issue" has the meaning assigned to it by section 5;

"Book and document" and "book or document" include all books, accounts, rolls, records, registers, electronic information storage media, papers and other documents;

"Business" includes any profession, trade, manufacture or undertaking carried on for pecuniary profit;

"Charitable purpose" includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community;

"Comptroller of Customs" means the Comptroller of Customs appointed pursuant to the Customs Act 1913 or any Act passed in substitution for that Act;

"Collector of Inland Revenue" or "Collector" means the Treasurer of the Revenue Management Division (RMD) of the Ministry of Finance and Economic Management;

"Company" means any body corporate whether incorporated in the Cook Islands or elsewhere, but does not include a local or public authority;

"Cook Islands company" means a company incorporated in the Cook Islands;

"Debenture" means any promissory note, debenture stock, bill of exchange, bond or other negotiable instrument;

"Department" means the Revenue Management Division (RMD) of the Ministry of Finance and Economic Management;

"Dividends" has the meaning assigned by section 4;

"Employee" means a person who receives or is entitled to receive a source deduction payment;

"Employer" means a person who pays or is liable to pay a source deduction payment and includes -

(a) the manager or other principal officer in the case of an unincorporated body of persons other than a partnership;

(b) each partner in the case of a partnership;

(c) 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;

"Employment income" means income which consists of salary, wages, allowances, overtime pay, pension, annuity, directors' fees, bonuses, management fees, gratuities, retiring allowances, extra salary or any emolument of any other kind paid or payable in relation to the taxpayer's employment.

"Extra emolument" in relation to any person, means a payment in a lump sum (whether paid in one sum or in two or more instalments) made to that person in respect of or in relation to the employment of that person (whether regularly 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 overtime pay and includes any such payment made -

(a) by way of bonus, gratuity, redundancy payment or share of profits;

(b) by way of a retrospective increase in salary or wages, to the extent that the payment accrues from the commencement of the increase until the beginning of the first pay period for which the increase is incorporated in salary or wages, and to the extent that in respect of any week ending with a Saturday in that time the total of the increase for that week and of the salary or wages for that week exclusive of the increase, and of any other salary or wages earned by that person for that week, exceeds \$4;

(c) on the occasion of that person's retirement from employment, to the extent that the payment is deemed by section 46(2) (a) to be income, but does not include a payment of exempt income or a lump sum payment made on the occasion of that person's retirement from employment to the extent that the payment is not deemed by section 46(2) (a) to be income.

"Income from employment" means salary or wages or an extra emolument;

"Income tax" means income tax imposed under this Act;

"Income year" means, in respect of the income of any person, the year in which that income has been derived by that person;

"Interest" includes payments assimilated to interest and for the purpose of clarity is deemed to include discounts on bills of exchange, promissory notes and other negotiable instruments;

"Investment income" means interest and dividends;

"Lease" means any disposition whatever by which a leasehold estate is created;

"Leasehold estate" includes any estate however created other than a freehold estate;

"Local authority" means an Island Council, District or Vaka Council, or Village Committee, and includes any incorporated instrument of local government in the Cook Islands whether possessing rating powers or not;

"Minerals" includes all minerals, metals, coal, oil, clay, stone, gravel, sand and precious stones;

"Minister" means the Minister responsible for Finance and Economic Management;

"Monthly remittance certificate" means a monthly remittance certificate under section 155;

"Non-resident agent" means an agent within the meaning of this Act, who, being in the Cook Islands, has no fixed and permanent place of business or abode there;

"Non-resident trader" means any person who, being in the Cook Islands, carries on business there without having any fixed or permanent place of business or abode there;

"Notice" means a notice in writing given by causing the same to be delivered to any person or to be left at that person's usual or last known place of abode or business in the Cook Islands or elsewhere, or to be sent by post addressed to such usual or last known place of abode or business, or if there are several such places then to any of them;

"Officer" includes any person employed in the Department;

"Overseas company" means any company other than one incorporated in the Cook Islands;

"Paid" includes distributed, credited or dealt with in the interest of or on behalf of a person, and "pay" and "payment" have corresponding meanings;

"Patent rights" means the right to do or authorise the doing of any thing which would but for that right be an infringement of a patent;

"Pay-period" in relation to an employee receiving regular payments of salary or wages means the period for which any such payment is made or payable;

"Pay-period taxpayer" means a pay-period taxpayer under section 157(1);

"Penal tax" means penal tax charged under section 209;

"Person" includes a company, a corporation sole, and also a body of persons, whether incorporated or not, and a local or public authority;

"Prescribed" means prescribed by the Collector;

"Public authority" means every department or other instrument of the Executive Government of the Cook Islands;

"Reconciliation statement" means a reconciliation statement under section 155;

"Reduced deduction", in relation to an employee, means a tax deduction the amount of which is fixed at less than the maximum amount, in accordance with the employee's tax code;

"Salary or wages", in relation to any person, means salary, wages, or allowances (whether in cash or otherwise), including all sums received or receivable by way of overtime pay, bonus, gratuity, extra salary, commission, or remuneration of any kind, in respect of or in relation to the employment of that person; and includes the value of any benefits of the kinds referred to in section 46(2) (b), determined in case of dispute as provided in that section; and also includes a periodic payment by way of superannuation, pension, retiring allowance, or other allowance or annuity in respect of or in relation to the past employment of that person or of any person of whom that person is or has been the spouse or a child or dependent; but does not include -

(a) a payment of exempt income, or an extra emolument, or a withholding payment;  
or

(b) any payment which is declared by regulations under this Act not to be salary or wages.

"Source" means:

(a) Employment income derived from a payer:

Provided that all employment income derived from a payer which is, or is substantially funded by, the Government of the Cook Islands shall, with the exception of superannuation, be deemed to have been derived from one payer:

Provided also that, where a taxpayer derives employment income from more than one payer by reason of a change of payer, the taxpayer's employment income shall be deemed to have been derived from one payer, except in the case of part-time secondary employment undertaken by a taxpayer having regular full-time employment; or

(b) Other income, being income other than employment income.

"Source deduction payment" means a payment by way of salary or wages, an extra emolument, or a withholding payment;

"Shareholder" includes any member of a company whether the capital of that company is divided into shares or not and "share" includes any interest in the capital of a company;

"Superannuation fund" means the New Zealand Government Superannuation Fund and any superannuation fund established for the benefit of the employees of any employer and approved for the time being by the Collector for the purposes of this Act;

"Tax" means income tax;

"Tax code", in relation to an employee, means that employee's tax code under section 149;

"Tax deduction" means a tax deduction made or required to be made under Part IX;

"Tax deduction certificate" means a tax deduction certificate under section 155;

"Taxable income" means the residue of assessable income after deducting the amount of all special exemptions to which the taxpayer is entitled;

"Taxpayer" means a person chargeable with income tax, whether on that person's own account or as the agent or trustee of any other person, and includes the executor or administrator of a deceased taxpayer;

"Trustee" includes an executor and administrator;

"Withholding payment" means a payment which is declared by regulations under this Act to be a withholding payment for the purposes of Part IX;

"Year" means a year commencing on 1 January and ending with 31 December, both of those days being included;

"Year of assessment" means the year for which income tax is payable.

3. Defining when a company is under the control of any persons, and when two companies consist substantially of the same shareholders - (1) For the purposes of this Act a company shall be deemed to be under the control of the person or persons -

(a) by whom more than one-half of the shares, or more than one-half of the paid-up capital, or more than one-half of the voting power is held; or

(b) who has or have by any other means whatsoever control of the company; or

(c) who, by reason of the shareholding at the end of any income year, would be entitled to more than one-half of the profits for that year if those profits were distributed by way of dividend at the end of that year.

(2) For the purposes of this Act two companies shall be deemed to consist substantially of the same shareholders if not less than one half of the paid-up capital of each of those companies is held by shareholders in the other or if not less than one half in nominal value of the allotted shares in each of them is held by shareholders in the other. Shares in one company held by another company shall for this purpose be deemed to be held by the shareholders in the last mentioned company.

(3) Where a nominee of any person holds any shares, nominal capital, paid-up capital or voting power in a company, or has by any other means whatsoever any power of control of a company, or is entitled to a share of profits distributed by a company then, for the purposes of this section, those shares or that capital or that voting power or that power of control or that title to profits as the case may be, shall be deemed to be held by that person, and in every such case that person and the nominee or nominees of that person shall be deemed to be one person.

(4) In this section "nominee" in relation to any person, means any other person who may be required to exercise voting power in relation to any company in accordance with the direction of that person, or who holds shares or debentures directly or indirectly on behalf of that person; and includes the spouse of that person and any relative of that person by blood, marriage, or adoption.

4. Meaning of "dividends" - (1) For the purposes of this Act "dividends" in relation to any company, includes -

(a) all sums distributed in any manner and under any name among all or any of the shareholders of the company including amounts capitalised and distributed by way of a bonus issue;

(b) the value of any other property of any kind whatsoever distributed by the company to any of its shareholders as such;

(c) all amounts received by any shareholder in respect of shares (whether in money or money's worth) upon the winding up of the company in excess of the amount paid-up on those shares;

(d) where any property of the company is sold or otherwise disposed of to a shareholder without consideration or for a consideration which, in the opinion of the Collector, is less than its market price or its true value; the excess of the market price of that property on the day it was sold or disposed of over the price (if any) realised on the sale or disposition or, if there is no market price, the excess of the price deemed to have been realised pursuant to a determination of the Collector under section 60(5) (b) over the price (if any) realised on the sale or disposition;

and "dividend" has a corresponding meaning:

Provided that where any money advanced by a company to or for the benefit of any shareholder and deemed by virtue of this section to constitute a dividend is subsequently repaid to the company, the Collector may amend in such manner as may be thereby rendered necessary the assessment made in respect of income derived by that shareholder during the income year in which the advance was made, and may at any time notwithstanding anything in section 202 refund any tax found to have been paid in excess of the amount properly payable;

(2) Where any company that has reduced the amount of the paid-up capital of any shareholder by writing off losses incurred by the company is subsequently wound up and there is distributed to that shareholder upon the winding up an amount (whether in money or money's worth) in excess of the amount paid-up on that person's shares in the company, the expression "dividends" shall, for the purposes of this Act, be deemed not to include the amount so distributed to such extent as the Collector thinks just and reasonable, having regard to the amount of the paid-up capital lost by the shareholder and any other relevant considerations.

(3) Where -

(a) any capital asset of a company has been realised, whether voluntarily or involuntarily, and the Collector is satisfied that the whole or part of any profit arising from any such realisation in excess of the cost to the company of that asset (not being an amount that is required to be taken into account under any provision of this Act for the purpose of assessing income tax) is subsequently included in any payment or other transaction referred to in subsection (1); or

(b) the Collector is satisfied that a company has otherwise made a capital profit or a capital gain, including a capital gain by way of gift, and that the whole or part of any such profit or gain (not being an amount that is required to be taken into account under any provision of this Act for the purpose of assessing income tax) is subsequently included in any payment or other transaction referred to in subsection (1); then

the expression "dividends" shall, for the purposes of this Act, be deemed not to include that profit or gain to the extent to which that profit or gain exceeds any capital losses incurred in the income year (or, as the case may be, the accounting year of the company corresponding with that year) in which that profit or gain was made or in any subsequent year (being losses not already taken into account under this subsection or under section 5(3) or in calculating the assessable income of the company for any year):

Provided that where any amount, being the whole or part of any increase arising from the writing up of any asset, has been excluded from -

- (i) the expression "dividends" in accordance with the provisions of this subsection; or
- (ii) the expression "bonus issue" in accordance with the provisions of section 5(3);

the cost of that asset shall, for the purposes of this subsection, be deemed to be increased by that amount.

5. Meaning of "bonus issue" - (1) For the purposes of this Act the expression "bonus issue" in relation to a company, means a capitalisation of the whole or part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the company's profit and loss account or of the whole or part of any amount otherwise available for capitalisation, being in any such case a capitalisation by way of -

- (a) the allotment on or after the date of commencement of this Act, of fully paid-up or partly paid-up shares in the company; or

- (b) the giving on or after that date of credit in respect of the whole or part of the amount unpaid on any shares in the company.

(2) Where any company that has reduced the amount of the paid-up capital of any of its shareholders by writing off losses incurred by the company subsequently makes a capitalisation of the whole or part of any amount specified in subsection (1), being a capitalisation by way of -

- (a) the allotment to those shareholders of fully paid-up or partly paid-up shares in the company; or

- (b) the giving to those shareholders of credit in respect of the whole or part of the amount unpaid on any shares in the company;

the expression "bonus issue" shall, for the purposes of this Act, be deemed not to include the paid-up value of the shares so allotted or the credit so given, as the case may be, to such extent as the Collector thinks just and reasonable, having regard to the amount of the paid-up capital lost by those shareholders and any other relevant considerations.

(3) Where -

- (a) the Collector is satisfied that the whole or part of -

- (i) any profit (in excess of the cost to a company of an asset) as specified in section 4 (3) (a); or

- (ii) any capital profit or gain as specified in section 4(3) (b);

is subsequently included in any transaction referred to in subsection (1); or

- (b) a company has written up any capital asset (other than goodwill), and the Collector is satisfied that the whole or part of any increase arising from any such writing up in excess of the cost to the company of that asset (not being an amount that is required to be taken



into account under any provision of this Act for the purpose of assessing income tax) is subsequently included in any transaction referred to in subsection (1),

the expression "bonus issue" shall, for the purposes of this Act, be deemed not to include that profit or gain or increase to the extent to which that profit or gain or increase exceeds any capital losses incurred in the income year (or, as the case may be, the accounting year of the company corresponding with that year) in which that profit or gain or increase was made or in any subsequent year (being losses not already taken into account under this subsection or under section 4 (3) or in calculating the assessable income of the company for any year):

Provided that where any amount, being the whole or part of any increase arising from the writing up of any asset, has been excluded from -

(c) the expression "bonus issue" in accordance with the provisions of this subsection; or

(d) the expression "dividends" in accordance with the provisions of section 4(3);

the cost of that asset shall, for the purposes of this subsection, be deemed to be increased by that amount.

(4) To the extent to which the Collector is satisfied that any transaction referred to in subsection (1) includes any amount that constitutes premiums paid to a company in respect of the issue of share capital by the company, the transaction shall be deemed not to be included in the expression "bonus issue" for the purposes of this Act.

## **PART II** **ADMINISTRATION**

6. Revenue Management Division - (1) There shall be a Division of the Ministry of Finance and Economic Management responsible for the administration of this Act to be called the Revenue Management Division.

(2) There shall be an official seal of the Revenue Management Division which shall be in the custody of the Collector.

(3) Any certificate, notice, or other document bearing the written, stamped, or printed signature of the Collector shall, until the contrary is proved, be deemed to have been duly signed by the person by whom it purports to have been signed.

(4) Judicial notice shall be taken of every such signature and of the fact that the person whose signature it purports to be holds or held the office of Collector.

7. Officers to maintain secrecy - (1) The Collector and every other officer of the Department -

(a) shall maintain and aid in maintaining the secrecy of all matters relating to this Act which come to the knowledge of the officer and shall not communicate any such matters to any person, except for the purpose of giving effect to this Act or any other enactment imposing taxes or duties payable to the Crown; and

(b) shall, before beginning to perform any official duty under this Act, take and subscribe to an oath of fidelity and secrecy to maintain secrecy in conformity with this section.

(2) Without limiting the generality of paragraph (a) of subsection (1), it is hereby declared that no officer of the Department shall be required to produce in any Court any book or document or to divulge or communicate to any Court any matter or thing coming under the notice of the officer in the performance of duties as an officer of the Department, except when it is necessary to do so for the purpose of giving effect to any provision of this Act or any other enactment imposing taxes or duties payable to the Crown.

(3) Every person who wilfully acts in contravention of the provisions of this section or in contravention of the true intent of any such oath shall be liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$500.

### **PART III** **RETURNS AND ASSESSMENTS**

8. Annual returns - Subject to the provisions of this Act and of any regulations under this Act, every taxpayer shall for the purposes of the assessment and levy of income tax furnish to the Collector in each year a return or returns in the prescribed form or forms setting forth a complete statement of all assessable and non-assessable income derived by that taxpayer during the preceding year, together with such other particulars as may be prescribed.

9. Returns to annual balance date - (1) Instead of furnishing a return in accordance with the provisions of section 8 for any year ending with 31 December, any taxpayer may, with the consent of the Collector, elect to furnish a return for the year ending with the date of the annual balance of the accounts of the taxpayer, and in any such case the income derived during that year shall for the purposes of this Act be deemed to have been derived during the year ending with the 31 December nearest to that date.

(2) For the purposes of this section and of section 10, 30 June in any year shall be deemed to be nearer to the last preceding 31 December than to the next succeeding 31 December.

(3) Any election made by a taxpayer for the purposes of this section shall continue in force unless and until the taxpayer alters it with the prior approval in writing of the Collector.

10. Adjustments consequential on change in return date - (1) In this section -

"the return date" means the last day of the period for which a return of income is required to be made;

"the original return date" means, in the case of a taxpayer who has changed return date, whether before or after the coming into force of this Act, the return date immediately prior to the new return date;

"the new return date" means, in the case of a taxpayer who has changed return date, whether before or after the coming into force of this Act, the date to which the change was made or, if there has been more than one change, means the date to which the last change was made.

(2) If in any case the new return date is an earlier date than the original return date, the taxpayer shall furnish a return for the period from the original return date up to and including the new return date in the succeeding year, and if the new return date is a later date than the original return date, the taxpayer shall furnish a return for the period from the original return date up to and including the new return date in the same year.

(3) All returns of income made in accordance with subsection (2) shall be deemed to be returns of income derived during the year ending with the 31 December nearest to the new return date, and the income derived by a taxpayer during that period shall, for the purposes of assessment, be added to any other income derived for the same year, and that taxpayer shall be assessed and liable for income tax accordingly.

(4) Where, for the purposes of this section, a taxpayer is assessed for income tax on a return made for a period of less than a year, that taxpayer shall be entitled, by way of special exemptions, only to an amount bearing the same proportion to the total exemption to which that taxpayer would be entitled for a full year as the number of days in that period bears to the number of days in a year, and where a taxpayer is assessed on a return or returns for a period of more than a year, the deduction to which that taxpayer shall be entitled by way of special exemptions shall be proportionately increased.

(5) Where, for the purposes of this section, a taxpayer is assessed for income tax on a return made for a period of less than a year, that taxpayer shall be entitled, by way of rebates from income tax under this Act, only to an amount bearing the same proportion to the total rebates to which that taxpayer would be entitled apart from this section as the number of days in that period bears to the number of days in a year and where a taxpayer is assessed on a return or returns for more than a year, the rebates to which that taxpayer would otherwise be entitled shall be proportionately increased.

(6) Where, for the purposes of this section, a taxpayer is assessed for income tax on a return made for a period that is less or greater than a year, the rate of tax shall be determined as for a year, and for the purposes of this subsection the taxable income of a taxpayer shall be deemed to have been derived at a uniform daily rate throughout the period for which the return has been made and where that period is less than a year that daily rate shall be deemed to have been continued for a year.

(7) Where a taxpayer has been assessed for income tax on a return made to any date other than 31 December in any year, the income derived by that taxpayer shall be deemed to have been assessed for tax to that date, and not to the 31 December nearest to that date.

(8) For the purpose of giving effect to the provisions of this section and section 9, the Collector may for any year or years of assessment make all such assessments or additional assessments as the Collector may deem necessary, notwithstanding anything in this Act.

11. Returns by partners, co-trustees and joint venturers - (1) When income is derived by two or more persons as partners, co-trustees or otherwise the following provisions shall apply -

(a) in the case of trustees, they shall make a return of that income, and shall be jointly assessable thereon and jointly and severally liable for the tax so assessed;

(b) in the case of partners -

(i) they shall make a joint return of the income of the partnership, setting forth the amount of that income and the shares of the several partners therein;

(ii) each partner shall make a separate return of all income derived by that partner and not included in any such joint return;

(iii) there shall be no joint assessment but each partner shall be separately assessed and liable for the tax payable on the person's total income, including the person's share of the income of any partnership in which the person is a partner;

(c) in any case other than that of co-trustees or partners, each person by whom income is so derived shall include in that person's return the amount of that person's share of the joint income, and shall be assessed and liable accordingly.

(2) For the purposes of this Act a husband and wife carrying on business together or deriving income jointly shall be deemed not to be carrying on business as partners or deriving income jointly and the whole of the income derived from the business or jointly shall be deemed to be that of the husband, unless in fact they are carrying on a business or deriving the income jointly under a bona fide deed of partnership.

12. Returns by executors or administrators - (1) The executor or administrator of a deceased taxpayer shall in respect of all income derived from that taxpayer in that taxpayer's lifetime make the same returns as the taxpayer ought to have made or would have been bound to make if the taxpayer had remained alive; and the Collector may, from time to time, require the executor or administrator to make such further returns relative to that income as the Collector thinks necessary, and may assess the executor or administrator for income tax on that income in the same manner in which the Collector may have assessed the taxpayer had the taxpayer remained alive.

(2) The tax so assessed shall be deemed to be a liability incurred by the deceased taxpayer in the lifetime of the deceased taxpayer, and the deceased taxpayer's executor or administrator shall be liable for the same accordingly.

13. Collector may in certain cases demand special returns and make special assessments - (1) This section applied to the following persons -

(a) an agent;

(b) a non-resident trader;

(c) a person who is believed by the Collector to be about to leave the Cook Islands or to be about to discontinue the carrying on of business in the Cook Islands;

(d) a person who has ceased to carry on business in the Cook Islands or to derive assessable income;

(e) the executors or administrators of a deceased taxpayer in respect of income derived by that taxpayer in that taxpayer's lifetime;

(f) a person who has become bankrupt, or a company which is in the course of being wound up.

(2) The Collector may at any time during the income year, require any person to whom this section applies to make a return of income derived from any specified transaction or transactions, or during any specific period, and may assess the person for income tax on the income so returned, or when default is made in making such a return, or the Collector is dissatisfied therewith, then on such sums as the Collector thinks reasonable, and shall give notice of the assessment to the person so assessed.

(3) Any person so assessed shall have the same right of objection as if the person had been assessed in the ordinary course.

(4) Tax so assessed shall be payable on demand, which may be made in and by the notice of assessment, or at any later date, and the tax shall be recoverable in the same manner as income tax assessed in the ordinary course and assessed.

(5) Tax so assessed shall be calculated at the rate applicable to the income year in respect of which the assessment is made.

(6) No assessment made under this section shall in any manner preclude a subsequent assessment of the same person in the ordinary course in respect of the whole of the income derived by the person during the income year with respect to which the assessment under this section was made, but in such case the tax paid under the earlier assessment shall be credited in the subsequent assessment.

14. Other annual returns - In addition to the foregoing returns every person, whether a taxpayer or not, shall make to the Collector such annual returns as may from time to time be prescribed for the purposes of this Act.

15. Date by which returns to be furnished - (1) The annual return of income required under this Act to be furnished in any year by any taxpayer in respect of income derived by the taxpayer in the preceding year shall be furnished to the Collector not later than 1 March in that first-mentioned year, where -

(a) the taxpayer is not authorised to furnish the return under section 9 for all accounting year ending with a balance date other than 31 December in the preceding year; and

(b) the taxpayer is not required to pay provisional tax on the taxpayer's income under Part X.

(2) The annual return of income required under this Act to be furnished in any year by any taxpayer to whom subsection (1) does not apply shall be furnished to the Collector in that year not later than the date specified in clause 1 of the Third Schedule.

(3) Where the income of a taxpayer for the preceding year consisted exclusively or principally of income other than income from employment or withholding income and the taxpayer satisfies the Collector that the taxpayer is unable to furnish the required return by the due date thereof, the Collector, upon application in that behalf in writing by or on behalf of the taxpayer on or before

that date, or within such further period as the Collector may allow in any case or class of case, may extend the time for furnishing the required return to such date as the Collector thinks proper.

16. Collector may require other returns to be made - In addition to the foregoing returns every person, whether a taxpayer or not, shall, as and when required by the Collector, make such further or other returns as the Collector requires for the purposes of this Act.

17. Presumption as to authority - A return purporting to be made by or on behalf of any person shall for all purposes be deemed to have been made by that person or by that person's authority, as the case may be, unless the contrary is proved.

18. Collector to make assessments - (1) From the returns made as aforesaid and from any other information in the Collector's possession the Collector shall in and for every year, and from time to time and at any time thereafter as may be necessary, make assessments in respect of every taxpayer, setting forth the amount upon which tax is payable and the amount of the tax.

(2) Every such assessment shall be made in such form and manner as the Collector thinks fit, and shall be signed by the Collector.

19. Basic rates of income tax - (1) The Collector shall in any year of assessment assess the income tax of any taxpayer at the basic rate set out in the First Schedule.

(2) If the basic rate for any year of assessment is higher or lower than the basic rate applicable to that year as a consequence of any amendment to the First Schedule made after the date of the assessment, the amount of every assessment of income tax made under this section in respect of that year shall be adjusted accordingly, and every such assessment shall have the same effect as if the amount thereof as so adjusted had been specified in that assessment.

20. Arbitrary assessment where business controlled by non-residents appears to produce insufficient taxable income - (1) Where any business carried on in the Cook Islands -

(a) is controlled exclusively or principally by persons not resident in the Cook Islands; or

(b) is carried on by a company not resident in the Cook Islands or by a company in which more than one half of the shares are held by persons not residing in the Cook Islands; or

(c) is carried on by a company which holds or on behalf of which other persons hold more than one half of the shares in a company not resident in the Cook Islands,

and it appears from the returns made to the Collector that the business produces no taxable income or less than the amount of taxable income which in the opinion of the Collector might be expected to arise from that business, the person carrying on the business in the Cook Islands shall, notwithstanding anything in this Act, be assessable for and liable to pay income tax on a taxable income of such amount as the Collector determines, being either -

(e) such proportion as the Collector determines of the total receipts (whether cash or credit) of the business; or

(f) such proportion as the Collector determines of the total purchase money paid or payable (whether in cash or by the granting of credit) in the conduct of the business.

(2) For the purposes of this section the place of residence of any person other than a company, and the place of residence of any company, shall be determined in accordance with the provisions of section 82.

21. Assessment where default made in furnishing returns - If any person makes default in furnishing any return, or if the Collector is not satisfied with the return made by any person, or if the Collector has reason to suppose that any person, although that person has not made a return, is a taxpayer, the Collector may make an assessment of the amount on which, in the Collector's judgment, tax ought to be levied and of the amount of that tax, and that person shall be liable to pay the tax so assessed, save in so far as that person establishes on objection that the assessment is excessive or that the person is not chargeable with tax.

22. Amendment of assessments - (1) The Collector may from time to time and at any time make all such alterations in or additions to an assessment as the Collector thinks necessary in order to ensure the correctness thereof, notwithstanding that the tax already assessed may have been paid.

(2) If any such alteration or addition has the effect of imposing any fresh liability or increasing any existing liability, notice thereof shall be given by the Collector to the taxpayer affected.

23. Limitation of time for amendment of assessment - When any person has made a return and has been assessed for income tax for any year, it shall not be lawful for the Collector to alter the assessment so as to increase the amount thereof after the expiration of 4 years from the end of the year in which the assessment was made or, in any case where in the opinion of the Collector the return so made is fraudulent or wilfully misleading or omits all mention of income which is of a particular nature or was derived from a particular source in respect of which a return is required to be made, after the expiration of 10 years from the end of the year in which the assessment was made.

24. Validity of assessment not affected by failure to comply with Act - The validity of an assessment shall not be affected by reason that any of the provisions of this Act have not been complied with.

25. Except in proceedings on objection assessments deemed correct - Except in proceedings on objection to an assessment under Part IV, no assessment made by the Collector shall be disputed in any Court or in any proceedings either on the ground that the person so assessed is not a taxpayer or on any other ground, and except as aforesaid, every assessment and all the particulars thereof shall be conclusively deemed and taken to be correct, and the liability of the person so assessed shall be determined accordingly.

26. Evidence of returns and assessments - The production of any document under the hand of the Collector purporting to be a copy of or extract from any return or assessment shall in all Courts and in all proceedings be sufficient evidence of the original, and the production of the original shall not be necessary, and all Courts shall in all proceedings take judicial notice of the signature of the Collector either to the original or to any such copy or extract.

27. Notice of assessment to taxpayer - (1) As soon as conveniently may be after an assessment is made the Collector shall cause notice of the assessment to be given to the taxpayer.

(2) The omission to give any such notice shall not invalidate the assessment or in any manner affect the operation thereof.

**PART IV**  
**OBJECTIONS TO ASSESSMENTS**

28. Objections to assessments, how originated - (1) Any person who has been assessed for income tax may object to the assessment by delivering or posting to the Collector a written notice of objection stating shortly the grounds of that person's objection so that it reaches the Collector within the time specified in that behalf in the notice of assessment, not being less than six weeks after the date on which that notice of assessment is given.

(2) If the Collector is satisfied that there is no suitable mail or means of delivery by which a written notice of objection can reach the Collector within the time so specified, then advice to the Collector by radio, telephone, facsimile or other electronic means that the taxpayer objects to an assessment will constitute an effective notice of objection if -

(a) the advice is received by the Collector within the time so specified; and

(b) the taxpayer posts to the Collector by the next available mail a written statement setting out shortly the grounds of the objection.

(3) No notice of objection given after the time so specified shall be of any force or effect unless the Collector accepts the same and gives notice to the objector accordingly.

29. Collector may amend assessment, or objection may be submitted to High Court - (1) The Collector shall consider every objection and may alter the assessment pursuant thereto.

(2) If an objection is not allowed by the Collector, the objector may, within three months after the date on which notice of the disallowance is given to the objector by or on behalf of the Collector, by notice in writing to the Collector require that the objection be heard and determined by the High Court before a Judge thereof, and in that event the objection shall be heard and determined in the High Court and the High Court shall for the purpose of hearing and determining the objection, whatever the amount involved, have all the powers vested in it in its ordinary civil jurisdiction as if in an action between the objecting taxpayer and the Collector.

(3) If the Collector, after considering the objection, has allowed the objection in part and has reduced the assessment, the reduced assessment shall be the assessment to be dealt with by the High Court.

30. Hearing of objections by High Court - (1) The procedure for the institution, hearing, and determination of such proceedings in the High Court shall be in accordance with the ordinary practice of that Court.

(2) No objection to an assessment of income tax shall be heard by a Judge in open Court.

31. Burden of proof on objector - On the hearing and determination of all objections to assessments of income tax the burden of proof shall be on the objector, and the Court may receive such evidence as it thinks fit, whether receivable in accordance with law in other proceedings or not.



32. Costs - On the determination of any objection the High Court may award against the Collector or against the objector such costs as it deems just (including interest on tax payable or received).

33. Court may confirm, cancel or alter the assessment - On the determination of any such objection the High Court may either confirm or cancel the assessment, or increase or reduce the amount thereof, and the assessment shall be altered by the Collector, if necessary, so as to conform to that determination.

34. Appeals to Court of Appeal - The determination of the High Court on any such objection shall be subject to appeal to the Court of Appeal of the Cook Islands.

35. Appeals from assessments - (1) In this Act the term "appeal" means a proceeding in the High Court under this Part for the determination of an objection made under this Act to an assessment of income tax, and the term "appellant" means the person by whom any such objection has been made.

(2) The parties to the appeal shall be the appellant, and the Collector as respondent.

(3) For the purpose of every appeal -

(a) the Collector shall state and sign a case setting forth the facts as alleged by the Collector, the nature of the assessment made by the Collector, the ground of objection thereto, and the question for the determination, of the Court;

(b) the case, so stated and signed, shall be filed by the Collector in the High Court, and the filing of the case shall be deemed to be the institution of the appeal;

(c) a copy of the case so filed shall be sent by the Collector to the appellant.

(4) Within 14 days after the filing of the case by the Collector or within such further time as the Collector may allow, the appellant may, if the appellant thinks fit, file an answer to the case. The answer shall set forth the facts as alleged by the appellant and the grounds of the appeal.

(5) The case as stated and filed by the Collector shall not be conclusive as to the matters set forth therein, either against the appellant or the Collector except so far as agreed to in writing by or on behalf of the Collector and the appellant.

(6) After the filing of the case by the Collector, the Registrar of the Court shall on the application of the Collector or of the appellant, appoint a time and place for the hearing of the appeal, that time not being earlier (except with the consent of the Collector and the appellant) than 21 days after the date of the filing of the case.

(7) Reasonable notice by post or otherwise of the time and place so appointed shall be given by the person on whose application the appointment has been made to the other party to the appeal.

(8) At the time and place so appointed, a Judge of the High Court or, in the absence of a Judge, the Registrar of the Court may adjourn the hearing to any other time or place, and so on from time to time.

(9) If either party fails to appear at the hearing, the Court shall in its discretion either adjourn the hearing or determine the appeal in the same manner as if both parties were present.

(10) The procedure at the hearing of the appeal shall be the same, with all necessary modifications, as if the appeal were an action in which the appellant is the plaintiff and the Collector is the defendant.

36. Obligation to pay tax not suspended by objection or appeal - The obligation to pay and the right to receive and recover any tax shall not be suspended by any objection or appeal, but if the objector succeeds the amount (if any) of the tax received by the Collector in excess of the amount which, according to the decision on the hearing of the objection or appeal, was properly payable shall forthwith be refunded to the objector by the Collector.

37. Determination of objection not to affect other income - The determination of an objection under any of the foregoing provisions shall relate solely to the income which is the subject of the assessment objected to, and shall not affect the right of the Collector to assess tax on any other income of the objector, or to amend the assessment objected to in any manner rendered necessary by the assessment of tax on other such income.

## **PART V** **INCOME TAX**

38. Meaning of "absentee" - "Absentee" means, in this Part, a person whose home has not been in the Cook Islands during any part of the income year:

Provided that a taxpayer shall not be deemed to be an absentee within the meaning of this Part if the Collector is satisfied that the absence of the taxpayer from the Cook Islands during the income year has been for the sake of the taxpayer's health, or of the health of the spouse or of any child of the taxpayer; and

Provided further that no person who is absent from the Cook Islands in the service in any capacity of the Government of the Cook Islands, nor the spouse of any such person if the spouse is also absent from the Cook Islands with that person, shall by reason of such absence be deemed to be an absentee within the meaning of this Part.

39. Income tax imposed - (1) Subject to the provisions of this Act, there shall be levied and paid for the use of the Crown for the year commencing on 1 January in each year, tax herein referred to as income tax.

(2) Subject to the provisions of this Act, income tax shall be payable by every person deriving income on all such income derived by that person during the year for which the tax is payable.

(3) The year in which income is so derived is in this Act referred to as the income year and the year for which income tax is payable is in this Act referred to as the year of assessment.

39A. Taxation of income from more than one source - (1) For the purposes of assessing income tax, every taxpayer who is an individual natural person resident in the Cook Islands (not merely acting as a trustee) who derives income from more than one source shall be assessed and liable for income tax in accordance with section 40.

40. Rates to be fixed - Income tax shall be assessed and levied on the taxable income of every taxpayer at the basic rates set out in the First Schedule.

41. Special exemption for savings or deposits with Banks - (1) For the purposes of assessing income tax for any income year that ends on or before 31 December 2001, every taxpayer who is an individual natural person resident in the Cook Islands (not merely acting as a trustee) and who earns income by way of interest on deposits or savings with any Bank shall not be liable for income tax (other than withholding tax) in respect of all such income derived by that taxpayer in any such income year.

(2) Notwithstanding subsection (1), the amount of income which a taxpayer may claim as exempt from income tax under subsection (1) in any income year will be reduced, to not less than nil, by the amount (if any) claimed under subsection (1) in that income year as being exempt by -

(a) any spouse of the taxpayer; or

(b) any child of the taxpayer who is under the age of 19 years at any time during the income year.

### **Exempt Income**

42. Incomes wholly exempt from taxation - (1) The following incomes shall be exempt from taxation:

(a) the income, other than income received in trust, of a local authority or of a public authority;

(b) income derived from sinking funds in respect of any public debt or of the debt of any local authority;

(c) income derived by any person from any pension or allowance in respect of any war or in respect of any disability or disablement attributable to or aggravated by service in any naval, military, air or police forces granted by the Government of the Cook Islands or by any other Government;

(d) income derived by a person who is not resident (within the meaning of this Part of this Act) in the Cook Islands, from personal (including professional) services performed by that person within the Cook Islands during a visit to the Cook Islands if -

(i) that visit does not exceed a period of 30 days; and

(ii) in the country or territory in which that person is resident that income, being exempt from income tax in the Cook Islands, is chargeable with any tax which in the opinion of the Collector is substantially of the same nature as income tax under this Act and;

(iii) those services are performed for or on behalf of a person who is not resident (within the meaning of this Part) in the Cook Islands:

Provided that this paragraph shall not apply to the income derived in any income year by a person who is present within the Cook Islands for a period or periods exceeding in the aggregate 30 days during that year;

(e) income derived in the form of payments in the nature of alimony or maintenance made to a person by that person's spouse or former spouse out of income belonging to that spouse or former spouse;

(f) income from a superannuation fund or approved annuity, and income derived by the trustees of a superannuation fund;

(g) income (not being income of the kind referred to in paragraph (h)) derived by trustees in trust for charitable purposes or derived by any society or institution established exclusively for such purposes and not carried on for the private pecuniary profit of any individual;

(h) income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of trustees in trust for charitable purposes within the Cook Islands, or derived directly or indirectly from any business carried on by or on behalf of or for the benefit of any society or institution established exclusively for such purposes and not carried on for the private pecuniary profit of any individual:

Provided that if the aforesaid purposes are not limited to the Cook Islands the Collector may apportion the income between such persons within the Cook Islands and the like purposes out of the Cook Islands, and may allow to the trustees, society, or institution a partial exemption accordingly;

(i) income derived by any society or association, whether incorporated or not, which is, in the opinion of the Collector, established substantially or primarily for the purpose of promoting any amateur game or sport if that game or sport is conducted for the recreation or entertainment of the general public, and if no part of the income or other funds of the society or association is used or available to be used for the private pecuniary profit of any proprietor, member, or shareholder thereof;

(j) income derived by any society or association whether incorporated or not, which is in the opinion of the Collector, established substantially or primarily for the purpose of advertising, beautifying, or developing any island, village, or other district so as to attract trade, tourists, visitors, or population, or to create, increase, expand, or develop amenities for the general public, if no part of the income or other funds of the society or association is used or is or may become available to be used for any other purpose, not being a charitable purpose;

(k) income derived by any person from any maintenance or allowance provided for or paid to that person in respect of attendance at an educational institution in terms of a scholarship or bursary;

(l) income derived by any trustee in trust for any sick, accident, or death benefit fund, not being income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of that trustee;

(m) income derived by any person from any compensation received by that person under the Cook Islands Workers Compensation Ordinance 1964, whether as a lump sums or by weekly payments;

(n) income of the South Pacific Commission regional or international organisations and the income so far as it is derived from the funds of those organisations of persons who are not ordinarily resident in the Cook Islands employed by those organisations;

(o) income of the United Nations or of any specialised agency of the United Nations and the income in so far as it is derived from the funds of the United Nations or any such agency of persons who are not ordinarily resident in the Cook Islands employed by the United Nations or any such agency;

(p) income derived by any person pursuant to the Welfare Act 1989;

(q) income presently exempted from income tax by any other Act or Ordinance to the extent of the exemption so provided;

(r) income derived directly from a foreign source of funds given or exceeded in the context of international foreign aid to any employer resident outside the Cook Islands (including any government) by any person who is not ordinarily resident in the Cook Islands employed by any such employer pursuant to any agreement or agreements between the Cook Islands Government and the employer or donor in connection with any development project in the Cook Islands or the provision of specialised services to any public authority within the meaning of this Act; in which the case the Minister shall supply to the Collector a certificate in respect of each such agreement or agreements;

(s) income derived pursuant to a contract of employment between a foreign government a regional or international organisation, or an employee, and the Government under a supplementation or similar scheme or any public authority as defined in section 2;

(t) Income derived by consular and diplomatic personnel as may by regulation be exempted.

(2) For the purposes of this section the expression "sick, accident, or death benefit fund" means any fund established for the benefit of the employees of any employer, or of the members of any incorporated society or for the benefit of the widows and dependents of any deceased employees of any employer, or of any deceased members of any incorporated society, and approved for the time being by the Collector.

43. Concessions for contributing to economic development and development industries - (1) Any tax variation certificate previously granted pursuant to sections 49 and 49A of the Income Tax Act 1972 and its amendments shall continue to take effect according to its terms.

(2) The Minister may not make any declaration under sections 49 and 49A of the Income Tax Act 1972 unless an application for the declaration had been received by the Minister before 28 May 1997 but any declaration made under those sections in respect of an application received before that date will continue to take effect according to its terms.

44. Standard supplemental deduction for individuals - In calculating the assessable income for any income year of any person who is an individual natural person resident in the Cook Islands (not merely acting as a trustee), a deduction will be allowed, in addition to any other deduction allowed under this Act, for the amount calculated under the following formula:

### **Income - Deduction**

where -

"Income" is the person's aggregate assessable income from all sources for the income year, before allowing for any deductions for the income year, excluding:

- (a) Interest, other than interest on deposits or savings with any Bank;
- (b) Dividends that a company elects to deduct under section 59(k) of this Act;
- (c) Income derived as a beneficiary under a trust.

"Deduction" is the aggregate of the amounts which the person may deduct in calculating the persons assessable income for the income year, excluding any amount deductible under this section:

Provided that the amount allowed as a deduction under this section shall not be less than nil nor more than -

- (a) \$3,000 in respect of the income year ending 31 December 1997, or
- (b) \$6,000 in respect of any other income year.

45. 100% depreciation rate for new property - (1) Notwithstanding the actual useful life of the asset, in calculating the deduction which the Collector allows under the first proviso to section 60(1) on account of depreciation of an asset used in the production of income, the annual rate of depreciation will be one hundred per cent (100%) if the asset is acquired by the taxpayer on or after 1 April 1997 and has not been used or held for use in the Cook Islands, other than as trading stock, by any person before the date upon which the taxpayer acquired it.

(2) Subsection (1) will not apply in respect of assets -

- (a) listed in the Fifth Schedule; or
- (b) used or held for use by the taxpayer as part of a business if, in respect of the income derived by the taxpayer from the business in the year in which the asset is acquired, the taxpayer is entitled to an income tax concession under -

- (i) Section 43; or
- (ii) Part VII of the Development Investment Board Act 1996.

### **Assessable Income**

46. Items included in assessable income - (1) Without in any way limiting the meaning of the term, the assessable income of any person shall include, unless otherwise provided in this Act -

(a) all profits or gains derived from any business (including any increase in the value of stock in hand at the time of the transfer or sale of the business, or on the reconstruction of a company);

(b) all salaries, wages, or allowances (whether in cash or otherwise), and all sums received or receivable by way of bonus, gratuity, extra salary, or emolument of any kind in respect of or in relation to the employment or service of the taxpayer;

(c) all profits or gains derived from the sale or other disposition of any real or personal property or any interest therein, if the business of the taxpayer comprises dealing in such property, or if the property was acquired for the purpose of selling or otherwise disposing of it, and all profits or gains derived from the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit;

(d) all rents, fines, premiums, or other revenues (including payments for or in respect of the goodwill of any business, or the benefit of any statutory licence or privilege) derived by the owner of land from any lease, licence, or easement affecting the land or from the grant of any right of taking the profits thereof;

(e) all royalties or other like payments dependent upon production from or the use of any real or personal property, whether or not they are instalments of the purchase price of any property;

(f) all payments for the supply, in connection with the carrying on of a business, of scientific, technical, industrial or commercial knowledge, information, assistance, or services:

(g) all dividends and annuities, other than an approved annuity;

(h) income derived from any other source whatsoever.

(2) For the purposes of paragraph (b) of subsection (1) -

(a) Where any bonus, gratuity, or retiring allowance (not being money paid to any director of a company pursuant to its articles of association) is paid in a lump sum in respect of the employment or service of the taxpayer on the occasion of the taxpayer's retirement from such employment or service only 5 percent of that lump sum shall be deemed to be income;

(b) without limiting the meaning of the term "allowances" as used in that paragraph the said term shall be deemed to include (in the case of a taxpayer who in any income year has been provided in respect of any office or position held by the taxpayer with board or lodging, or the use of house or quarters, or has been paid an allowance in lieu of being so provided with board or lodging or with the use of a house or quarters) the value of such benefits, such value to be determined in case of dispute by the Collector;

(c) the Collector may from time to time determine whether and to what extent any allowance in respect of or in relation to the employment or service of any person constitutes a reimbursement of expenditure exclusively incurred by that person in the production of assessable income, and the allowance, to the extent so determined, shall be exempt from income tax.

(3) For the purposes of paragraph (g) of subsection (1) where any securities have been acquired by purchase or otherwise during the income year, the Collector may apportion between the transferor and the transferee any interest due or accruing due at the date of the transfer and not then paid.

47. Income derived from use or occupation of land - (1) The assessable income of any person shall, for the purposes of this Act, be deemed to include -

(a) all profits or gains derived from the use or occupation of any land; and

(b) all profits or gains derived in any income year from the extraction, removal, or sale of any minerals or timber, whether by the owner of the land from which they are obtained or by any other person, reduced by an amount equal to the cost of those minerals or that timber:

Provided that in any case where profits or gains from any minerals or timber are derived in two or more income years and an estimated proportion of the total cost thereof is claimed as a deduction in respect of each of those years the total amount of those deductions in respect of all those years shall not exceed the total cost of the minerals or timber.

(2) For the purposes of paragraph (b) of subsection (1) "timber" shall be deemed to include standing timber and "sale" shall be deemed to include any disposition by way of a licence or easement, or the grant of any right of taking any profits or produce from land.

48. Income credited in account or otherwise dealt with - For the purposes of this Act every person shall be deemed to have derived income although it has not been actually paid to or received by that person, or has already become due or receivable, but has been credited in account or reinvested, or accumulated or capitalised or carried to any reserve, sinking or insurance fund or otherwise dealt with in the interest or on the behalf of that person.

49. Amounts remitted to be taken into account in computing income - (1) Where the amount of any expenditure or loss incurred by a taxpayer has been taken into account in calculating that assessable income for any income year and subsequently the liability of the taxpayer in respect of that amount is remitted in whole or in part, the assessable income derived by the taxpayer during that year shall be deemed to be increased by the amount so remitted and the taxpayer shall be assessable and liable for income tax accordingly.

(2) Where the amount of any expenditure or fees incurred by a taxpayer has been taken into account in calculating for the purposes of section 69 the amount of any loss incurred by the taxpayer in any income year and subsequently the liability of the taxpayer in respect of that amount has been remitted in whole or in part, the amount of the loss that may be carried forward under section 69 shall be deemed to be reduced by the amount so remitted.



(3) For the purposes of this section a liability in respect of any expenditure or loss shall be deemed to have been remitted to the extent to which the taxpayer has been discharged from that liability without fully adequate consideration in money or money's worth.

(4) For the purposes of giving effect to the provisions of this section the Collector may at any time alter any assessment notwithstanding anything to the contrary in section 23.

50. Apportionment of income received in anticipation - (1) When income is derived by any person in any year by way of fines premiums or payment for goodwill on the grant of a lease or in any other like manner by way of anticipation the Collector at the request of that person during the next succeeding year may apportion that income between the income year and any number of subsequent years not exceeding five, and the part so apportioned to each of those years shall be deemed to have been derived in that year and shall be assessable for income tax accordingly.

(2) Any such apportionment may be at any time cancelled by the Collector and thereupon the income so apportioned or the part thereof on which income tax has not yet been paid shall become assessable for income tax as if derived during the year preceding that in which the apportionment was so cancelled.

51. Valuation of trading stock including livestock - (1) For the purposes of this section "trading stock" includes anything produced or manufactured and anything acquired or purchased for purposes of manufacture, sale or exchange, and also includes livestock but does not include land.

(2) Where any taxpayer owns or carries on any business, the value of that taxpayer's trading stock at the beginning and at the end of every income year shall be taken into account in ascertaining whether or not the taxpayer has derived assessable income during that year.

(3) The value of the trading stock of any taxpayer to be taken into account at the beginning of any income year shall be its value as at the end of the last preceding income year:

Provided that where the taxpayer's business is commenced and the trading stock is acquired during the income year the value of the trading stock as at the beginning of the income year shall be deemed to be an amount equal to its cost price.

(4) The value of the trading stock of any taxpayer to be taken into account at the end of any income year shall be at the option of the taxpayer its cost price, its market selling value, or the price at which it can be replaced.

(5) Where the value of the trading stock of any taxpayer at the end of any income year exceeds the value of the taxpayer's trading stock at the beginning of that year, the amount of the excess shall be included in the taxpayer's assessable income for that year.

(6) Where the value of the trading stock of any taxpayer at the beginning of any income year exceeds the value of the taxpayer's trading stock at the end of that year the amount of the excess shall be allowed as a deduction in calculating the assessable income of the taxpayer for that year.

(7) Where in any income year the whole or any part of the assets of a business owned or carried on by any taxpayer is sold or otherwise disposed of (whether by way of exchange or gift or distribution in terms of will or on an intestacy or otherwise howsoever and whether or not in the ordinary course of the business of the taxpayer or for the purpose of putting an end to that business

or any part thereof) and the assets sold or otherwise disposed of consist of or include any trading stock, the consideration received or receivable for the trading stock, or as the case may be the price which under this Act the trading stock is deemed to have realised, shall be taken into account in calculating the taxpayer's assessable income for that year and for the purpose of calculating the taxpayer's assessable income for that year or for any subsequent income year the person acquiring the trading stock shall be deemed to have purchased it at the amount of that consideration or price. The foregoing provisions of this subsection shall with the necessary modifications, apply in any case where a share or interest in any trading stock is sold or otherwise disposed of by any taxpayer.

(8) Subject to the provisions of sections 52 and 53 the price specified in any contract of sale or arrangement as the price at which any trading stock is sold or otherwise disposed of as aforesaid shall be deemed for the purposes of this section to be the consideration received or receivable for the trading stock.

52. Income derived from disposal of trading stock - (1) Where any trading stock is sold together with other assets of a business the part of the consideration attributable to the trading stock shall be determined by the Collector and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser.

(2) For the purposes of this section any trading stock which has been disposed of otherwise than by sale shall be deemed to have been sold and any trading stock so disposed of and any trading stock which has been sold for a consideration other than cash shall be deemed to have realised the market price thereof at the date of the disposition or sale but where there is no market price trading stock shall be deemed to have realised such price as the Collector determines.

(3) The foregoing provisions of this section shall with the necessary modifications apply in any case where a share or interest in any trading stock is sold or otherwise disposed of together with other assets of a business or with a share or interest in other assets of a business.

(4) For the purposes of this section "trading stock" includes anything produced or manufactured and anything acquired or purchased for purposes of manufacture sale or exchange and also includes any other real or personal property sold or disposed of by the taxpayer where the business of the taxpayer comprises dealing in such property or the taxpayer acquired the property for the purpose of sale or other disposal, and also includes livestock.

53. Sale of trading stock for inadequate consideration - (1) Where any trading stock is sold or otherwise disposed of without consideration in money or money's worth or for a consideration that is less than the market price or the true value thereof at the date of the sale or other disposition, the following provisions shall apply:

(a) the trading stock shall be deemed to have been sold at and to have realised the market price thereof at the date of the sale or other disposition but where there is no market price shall be deemed to have been sold at and to have realised such price as the Collector determines;

(b) the price which under this section the trading stock is deemed to have realised shall be taken into account in calculating the assessable income of the person selling or otherwise disposing of the trading stock;

(c) the person acquiring the trading stock shall for the purpose of calculating that person's assessable income be deemed to have purchased the trading stock at the price which under this section the trading stock is deemed to have realised.

(2) The foregoing provisions of this section shall with the necessary modifications apply in any case where a share or interest in any trading stock is sold or otherwise disposed of without consideration in money or money's worth or for a consideration that is less than the true value of the share or interest at the date of the sale or other disposition.

(3) For the purposes of this section "trading stock" includes anything produced or manufactured, and anything acquired or purchased for purposes of manufacture sale or exchange and also includes livestock and any other real or personal property where the business of the person by whom it is sold or disposed of comprises dealing in such property or the property was acquired by that person for the purpose of sale or other disposal.

54. Sum received from sale of patent rights - (1) Where any taxpayer sells any patent rights, any sum received by that person or owing to that person in respect of the sale, after deducting the appropriate amount specified in subsection (2) (so far as that amount has not been otherwise allowed as a deduction from the taxpayer's assessable income for that or any other income year), shall be deemed to be assessable income and shall be deemed to be derived by the taxpayer during the income year in which the sum is received by or becomes owing to the taxpayer.

(2) The total amount that may be deducted from any such sum shall be -

(a) where the taxpayer actually devised the invention to which the patent relates, the amount of the expenditure incurred by the taxpayer in connection with the devising of the invention or (where the sale does not include the whole of the patent rights in respect of the invention) such proportion of that expenditure as the Collector thinks just;

(b) where the taxpayer acquired the patent rights, an amount bearing the same proportion to the total cost of the patent rights to the taxpayer as the unexpired term of the patent rights at the date of the sale bears to the unexpired term thereof at the date of their acquisition by the taxpayer.

(3) For the purpose of this section the sum received by or owing to any taxpayer in respect of the sale of any patent rights shall be deemed to include the value of any consideration (otherwise than in cash) received or owing in respect of the sale and the value of that consideration shall be determined in case of dispute by the Collector.

(4) The foregoing provisions of this section shall, so far as they are applicable and with the necessary modifications, apply in any case where the sale is in respect of a share or interest in any patent rights.

55. Payment of excessive remuneration or share of profits to relatives - (1) Where -

(a) any taxpayer carries on any business or undertaking and employs or engages any relative of a director or shareholder of the company to perform services in connection with that business or undertaking; or

(b) any taxpayer carries on business in partnership with any person whether or not any other person is a member of the partnership; and

(i) any relative of the taxpayer is employed or engaged by the partnership to perform services in connection with the business; or

(ii) (where one of the partners is a company) any relative of a director or shareholder of that company is employed or engaged by the partnership to perform services in connection with the business; or

(c) any taxpayer carries on business in partnership with any relative or with any company a director or shareholder of which is a relative of the taxpayer or, being a company, carries on business in partnership with any relative of a director or shareholder of the company whether or not any other person is a member of the partnership, and the Collector is of the opinion that the remuneration salary share of profits or other income payable to or for the benefit of that relative or company under the contract of employment or engagement or the terms of the partnership exceeds such an amount as is reasonable having regard to the nature and extent of the services rendered, the value of the contributions made by the respective partners by way of services or capital or otherwise and any other relevant matters, the Collector may allocate the total profits or income of the business or undertaking before deduction of any amount payable to that relative or company between the parties to the contract or the partners or any of them in such shares and proportions as the Collector considers reasonable and the amounts so allocated shall be deemed to be income derived by the persons to whom those amounts are so allocated and by no other person.

(2) Where any sum paid or credited by a company being or purporting to be remuneration for services rendered by any person who is a relative of a director or shareholder of the company is allocated to that company in accordance with subsection (1) the amount so allocated to the company shall be deemed to be a dividend paid by the company to that person and received by that person as a shareholder of the company.

(3) For the purposes of this section the term "relative" means a husband or wife or a relative by blood within the fourth degree of relationship (whether legitimate or illegitimate) or a relative by marriage or adoption and includes a trustee for a relative.

(4) This section shall apply whether the contract of service or employment or the partnership was entered into before or after the coming into force of this Act.

(5) This section shall not apply to a bona fide contract of employment or to a bona fide contract of partnership. For the purposes of this section a contract of employment or a contract of partnership shall be deemed to be bona fide if it complies with the following conditions -

(a) the contract is in writing or by deed signed by all the parties thereto; and

(b) no partner and no person employed or engaged under the contract was under the age of 21 years at the date on which the contract was signed; and

(c) the contract is binding on the parties thereto for a term of not less than 3 years and is not capable of being terminated by any party thereto before the expiry of that term; and

(d) each party to the contract has a real and effective control of the remuneration, salary, share of profits, or other income to which that party is entitled under the contract.

56. Agreements purporting to alter incidence of taxation to be void - Every contract, agreement, or arrangement made or entered into, whether before or after the coming into force of this Act, shall be absolutely void in so far as, directly or indirectly, it has or purports to have the purpose or effect of in any way altering the incidence of income tax, or relieving any person from liability to pay income tax.

### **Deductions in calculating Assessable Income**

57. No deductions unless expressly provided - Except as expressly provided in this Act no deduction shall be made in respect of any expenditure or loss of any kind for the purpose of calculating the assessable income of any taxpayer.

58. Expenditure or loss incurred in the production of assessable income - In calculating the assessable income of any taxpayer, any expenditure or loss may, except as otherwise provided in this Act, be deducted from the total income derived by the taxpayer in the income year in which the expenditure or loss is incurred, to the extent the expenditure or loss is -

(a) incurred in gaining or producing the assessable income for any income year; or

(b) necessarily incurred in carrying on a business for the purpose of gaining or producing the assessable income for any income year.

59. Certain deductions not permitted - Notwithstanding anything to the contrary in section 58, in calculating the assessable income derived by any person no deduction, except as expressly provided in this Act, shall be made in respect of any of the following sums or matters -

(a) investment, expenditure, loss or withdrawal of capital; money used or intended to be used as capital; money used in the improvement of premises occupied; or interest which might have been made on any such capital or money if laid out at interest:

Provided that nothing in this paragraph will prevent any deduction for dividends;

(b) bad debts except debts which are proved to the satisfaction of the Collector to be in fact bad and to have been actually written off as bad debts by the taxpayer in the income year:

Provided that all amounts at any time received on account of any such bad debts shall be credited as income in the year in which they are received, and shall be subject to tax accordingly;

Provided further that, if, in the opinion of the Collector, the amount of debts written off as bad in any income year is excessive the Collector may, notwithstanding anything in section 23, reopen any assessment made in respect of any previous year being a year in which the Collector considers that the debts had in fact become bad;

(c) any expenditure or loss recoverable under any insurance or right of indemnity;

(d) payments of any kind made by a husband to his wife or by a wife to her husband;

Provided that with the consent of the Collector granted before the deduction is claimed by the taxpayer and subject to section 55 a deduction may be made in respect of a payment by a husband to his wife or by a wife to her husband where the Collector is satisfied that the payment is for services rendered (not being domestic services or services performed at or in connection with the home or services performed at the home in connection with any business carried on wholly or partly at the home) or is otherwise a bona fide payment and that the payment was exclusively incurred in the production of assessable income of the husband or wife as the case may be for the income year;

(e) rent of any dwelling house or domestic offices, save that, so far as any such dwelling house or offices are used in the production of the assessable income, the Collector may allow a deduction of such proportion of the rent as the Collector may think just and reasonable;

(f) income tax, additional tax, penal tax and tax imposed in any country outside the Cook Islands being a tax which in the opinion of the Collector, is substantially of the same nature as income tax imposed under this Act, and any additional tax for late payment of tax, any interest, any penalty and any additional tax imposed under the penal provisions of the laws of that country or territory;

(g) interest and dividends, except in so far as the Collector is satisfied that they are payable on capital employed in the production of the assessable income;

(h) any expenditure or loss incurred by any taxpayer in gaining or producing assessable income which consists of income from employment;

(i) any expenditure or loss to the extent to which it is of a private or domestic nature;

(j) any expenditure or loss to the extent to which it is incurred in gaining or producing income which is exempt from income tax.

(k) dividends except to the extent that -

(i) the company elects to deduct the dividends; and

(ii) the dividends are included in the assessable income of a person under section 46(1)(g) of this Act; and

(iii) the company that pays the dividends notifies the recipient that the dividends are included in the assessable income of any person under this Act and that the dividends are excluded from the definition of income for the purposes of section 44.

**60. Deductions for repair, maintenance and depreciation**- (1) Notwithstanding anything to the contrary in section 58, in calculating the assessable income derived by any person from any source no deduction shall, except as expressly provided in this Act, be made in respect of any of the following sums or matters: namely, the repair of premises, or the repair of plant, machinery, or equipment used in the production of income beyond the amount usually expended in any year for those purposes:

Provided that in cases where depreciation of any asset, whether caused by fair wear and tear or by the fact of such asset becoming obsolete or useless, cannot be made good by repair, the Collector may allow such deduction as the Collector thinks just; and

Provided further that where the Collector is satisfied that any repairs of any such asset do not increase the capital value of the asset, or that the repairs increase that value by an amount less than the cost of the repairs or alterations, the Collector may allow such deduction as the Collector thinks just.

(2) Without limiting the discretion of the Collector under subsection (1), the Collector may refuse in whole or in part to allow any deduction under that subsection in any case where the Collector is not satisfied that complete and satisfactory accounts have been kept by or on behalf of the taxpayer.

(3) Where the Collector has, for any year of assessment (whether before or after the commencement of this Act), allowed a deduction in respect of the depreciation of any asset and the taxpayer at any time afterwards sells or otherwise disposes of that asset at a price or for a consideration in excess of the amount to which the value of the asset has been reduced by that allowance, the Collector may make a revised assessment for that or any subsequent year without allowing such deduction or without allowing such portion thereof as the Collector thinks fit, and may recover the additional amount of income tax accordingly.

(4) For the purpose of giving effect to subsection (3), the Collector may at any time alter any assessments, notwithstanding anything to the contrary in section 23.

(5) For the purposes of subsection (3) -

(a) where any asset has been sold together with other assets of a business, the part of the consideration attributable to that asset shall be determined by the Collector, and the part of the consideration so determined shall be deemed to be the price at which that asset was sold by the vendor and purchased by the purchaser;

(b) where any property is sold, distributed, or otherwise disposed of without consideration or for a consideration which, in the opinion of the Collector, is less than the market price or the true value of the property at the date of the sale, distribution, or other disposition, that property shall be deemed to have been sold at and to have realised that market price or, if there is no market price, shall be deemed to have been sold at and to have realised such price as the Collector determines.

61. Deductions in respect of buildings on native leaseholds - (1) The Collector, in calculating the assessable income derived by any taxpayer during any income year, may allow such deduction as the Collector thinks fit in respect of any sum expended by the taxpayer -

(a) in acquiring or erecting any building on any native freehold land which the taxpayer holds on lease; or

(b) in purchasing the unexpired period of any lease of native freehold land.

(2) In ascertaining the amount that may be deducted under this section in respect of any income year, the amount expended by the taxpayer in respect of the acquisition or erection of the building or in respect of the purchase of the lease shall be apportioned by the Collector over the unexpired period of the lease (including any period in respect of which a right of renewal exists) calculated from the date of the acquisition or erection or purchase as the case may be (whether that date falls before or after the coming into force of this Act), and the amount deducted in respect of any income year shall not in any case exceed the amount apportioned to that year:

Provided however that in ascertaining the amount to be deducted the Collector shall take into account the amount by which the value of any building has already been reduced by the allowance of depreciation under the provisions of any previous legislation relating to the payment of income tax: and

Provided further that where the unexpired portion of a lease is sold to any company over which the vendor has control, as defined in section 3, or to any partnership over which the vendor has control, the amount of the annual deductions shall be limited to the amount to which the vendor would have been entitled had the sale not taken place.

(3) Where the Collector has for any year of assessment allowed a deduction under the provisions of this section and the taxpayer at any time afterwards sells the unexpired period of the lease, the Collector may make a revised assessment in respect of that year of assessment without allowing that deduction or without allowing such portion thereof as the Collector thinks fit, and may recover the additional amount of income tax accordingly.

(4) For the purpose of giving effect to subsection (3) the Collector may at any time alter any assessment notwithstanding anything in section 23.

(5) Where the unexpired period of the lease has been sold together with other assets of a business the consideration attributable to the sale of the lease and of any buildings erected on the demised land shall be determined by the Collector and the part of the consideration so determined shall be deemed to be the price at which the lease and buildings were sold by the vendor and purchased by the purchaser.

(6) A taxpayer to whom this section applies may elect whether to claim a deduction hereunder or to claim a deduction for depreciation under section 60, but any deduction made under this section shall be in substitution for any deduction for depreciation which may be allowable under section 60.

62. Expenditure incurred in borrowing money or obtaining lease - The Collector may, in calculating the assessable income of any taxpayer, allow such deduction as the Collector thinks fit in respect of expenditure incurred by the taxpayer during the income year for the preparation, stamping, and registration of any lease of property used in the production of the taxpayer's assessable income or of any renewal of such lease, or in the borrowing of money employed by the taxpayer as capital in the production of assessable income.

63. Deduction in respect of premium on account of leased machinery - (1) The Collector may, in the calculation of the assessable income of any taxpayer, allow such deduction as the Collector thinks fit in respect of any premium or fine, or any consideration in the nature of a premium or fine paid by the taxpayer in respect of the lease of any machinery used by the taxpayer in the



production of income, or in respect of the renewal of any such lease, or in respect of the assignment or transfer of any such lease.

(2) In ascertaining the amount that may be deducted in any year under this section the total amount paid by the taxpayer as aforesaid shall be apportioned by the Collector over the period of the lease unexpired at the date of payment, and the amount deducted for any year shall not in any case exceed the amount apportioned to that year.

64. Deduction for sums expended on purchase of patent rights - (1) The Collector, in calculating the assessable income derived by any taxpayer during any income year, may allow such deduction as the Collector thinks fit in respect of any sum expended by the taxpayer on the purchase of any patent rights used by the taxpayer in the production of assessable income for that income year.

(2) In ascertaining the amount that may be deducted under this section in respect of any income year the total amount payable by the taxpayer in respect of the purchase of any patent rights shall be apportioned by the Collector over the term of the patent rights unexpired at the date of the purchase, and the amount deducted in respect of any income year shall not in any case exceed the amount apportioned to that year.

(3) Where, at any time before the expiry of any patent rights purchased by a taxpayer, the patent rights have come to an end without being subsequently revived or have been sold by the taxpayer, an amount bearing the same proportion to the total sum expended by the taxpayer on the purchase of the patent rights as the unexpired term of the patent; rights at the date of their so coming to an end or being sold bears to the unexpired term at the date of their purchase by the taxpayer (so far as that amount has not been otherwise allowed as a deduction from the taxpayer's assessable income for that or any other income year) shall be allowed as a deduction from the assessable income derived by the taxpayer during the income year in which the patent rights have so come to an end or been sold.

(4) All references in this section to "the taxpayer", in relation to any taxpayer who has died after expending any sum on the purchase of any patent rights, shall be deemed to be references to that taxpayer's personal representatives and to the trustees of the taxpayer's estate and (so far as the Collector thinks just and equitable) to the beneficiaries of the taxpayer's estate.

65. Deduction for patent expenses - (1) In calculating the assessable income derived by any taxpayer during any income year, the Collector may allow a deduction in respect of any expenditure incurred by the taxpayer during that year in connection with the grant, maintenance, or extension of a patent used by the taxpayer in the production of assessable income for that year.

(2) Where a patent has been granted in respect of any invention, the Collector, in calculating the assessable income derived during any income year by any taxpayer who has used the patent in the production of assessable income for that year and who, whether alone or in conjunction with any other person, actually devised the invention, may allow such deduction as the Collector thinks fit in respect of any expenditure incurred by the taxpayer in connection with the devising of the invention (not being expenditure in respect of which, or of assets representing which, a deduction is otherwise allowable).

66. Deduction for scientific research - In calculating the assessable income derived by any taxpayer during any income year, the Collector may allow a deduction in respect of any expenditure incurred by the taxpayer during that year in connection with scientific research

directly relating to the trade or business carried on by the taxpayer, except so far as the expenditure relates to an asset in respect of which a deduction for depreciation is allowable under this Act.

67. Deduction of testamentary annuities charged on property - (1) Notwithstanding anything to the contrary in this Act, where property has been devised or bequeathed by will subject to the payment of an annuity or has been made subject to the payment of an annuity by order of the High Court or by a deed of family arrangement and that property or any property substituted therefore has been transferred to a beneficiary and is charged with payment of the annuity or any part thereof, any amount paid in any income year on account of that annuity by the owner of that property or substituted property shall be allowed as a deduction in calculating the income derived by the owner from that property or substituted property in that income year, so far as that income extends:

Provided that no deduction shall be allowed under this section where the owner for the time being of the property or substituted property (not being a beneficiary) is a person who has acquired the same by purchase subject to the condition that the person assumes the liability for the whole or any part of the annuity charged thereon; and

Provided also that, to the extent that an annuity payable by the owner of the property or substituted property under a deed of family arrangement represents, in the opinion of the Collector, consideration for the purchase of the property or substituted property by the owner, the annuity shall not be allowed as a deduction under this section.

(2) In this section the term "beneficiary" in relation to any property, means a person to whom that property has been devised or bequeathed by will, or a person who is entitled pursuant to a provision in a will to purchase, subject to payment of an annuity, that property, being property that forms part of the estate of the testator; and includes a person who is entitled to the property pursuant to an order of the High Court or pursuant to a deed of family arrangement.

68. Contributions to employees' superannuation fund - (1) In calculating the taxable income of any employer the Collector may allow a deduction of any amount set aside or paid by the employer as or to a fund to provide individual personal benefits, pensions, or retiring allowances to employees of that employer:

Provided that a deduction shall not be allowed under this section unless the Collector is satisfied that the fund has been established or the payment made in such a manner that the rights of the employees to receive the benefits, pensions or retiring allowances have been fully secured.

(2) The Collector shall have an absolute discretion as to whether or not a deduction should be allowed under this section of the whole or any part of any amount set aside or paid as aforesaid and there shall be no right of objection to any determination of the Collector under this section.

69. Losses incurred may be set off against future profits - (1) For the purposes of this section any loss incurred by a taxpayer shall be ascertained in accordance with the provisions of this Act for the calculation of assessable income.

(2) Any taxpayer who satisfies the Collector that the taxpayer has, in any income year, whether before or after the coming into force of this Act, incurred a loss shall, subject to this section, be entitled to claim that such loss be carried forward and, so far as may be, deducted from or set off against the taxpayer's assessable income for a subsequent year:

Provided that no claim to a deduction or set off will be allowed under this section in respect of any loss which has been deducted from or set off against the assessable income of the taxpayer under the provisions of any previous legislation relating to income tax; and

Provided also that any relief under this section shall be given so far as possible from the first succeeding assessment, and so far as it cannot then be given, shall be given from the next succeeding assessment, and so far as it cannot then be given, shall be given from the next succeeding assessment, and so on; and

Provided also that -

(a) where, if a profit had been made from the transaction in which the loss was incurred, the amount of the profit would not have been assessable income, no " relief shall be given under this section in respect of that loss; and

(b) where, if a profit had been made as aforesaid, and the amount of the profit would have been assessable income, the amount of the loss carried forward to any year shall be deducted from or set off against the taxpayer's assessable income for that year as far as that income extends.

(3) Notwithstanding anything in the foregoing provisions of this section, if in respect of any year of assessment any taxpayer, being a company, claims to carry forward any loss made by it in any former income year, the claim shall not be allowed unless the Collector is satisfied that the shareholders of the company on the balance date of the company for the year to which the loss claimed is to be carried forward were substantially the same as the shareholders of the company on the balance date of the company for the year in which the loss was incurred.

(4) For the purposes of subsection (3), the shareholders of a company at any date shall not be deemed to be substantially the same as the shareholders on any other date unless, on both such dates, not less than 40 percent of the paid-up capital of the company was held by or on behalf of the same persons, nor unless, on both such dates, not less than 40 per cent in nominal value of the allotted shares in such company were held by or on behalf of the same persons.

(5) For the purposes of subsection (4), shares in a company held by or on behalf of another company shall be deemed to be held by the shareholders of such 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 under the will or intestacy of a deceased shareholder, shall be deemed to be held by that deceased shareholder.

70. Special exemption in respect of gifts of money to charitable organisations - (1) For the purpose of assessing income tax, every taxpayer shall, subject to this section, be entitled to a deduction of any gift or gifts of money made to a charitable organisation in the income year.

(2) Where a deduction is claimed pursuant to subsection (1) that claim shall be:

not less than \$200 and not greater than \$5,000;

(3) No exemption shall be allowed under this section unless the taxpayer furnishes to the Collector sufficient documentary evidence, such as receipts, evidencing the payment of donations.

(4) For the purposes of this section the term "gift" includes a subscription paid to a society, institution, association, organisation, trust, or fund only if the Collector is satisfied that the subscription does not confer any rights arising from membership in that or from any other society, institution, association, organisation, trust or fund.

(5) For the purpose of this section "charitable organisation" includes a society, institution, association, organisation or trust declared to be a charitable organisation pursuant to subsection (6) and which is not carried out for the private pecuniary profit of any individual and the funds of which are applied wholly or principally to any charitable, religious, benevolent, philanthropic or cultural purposes within the Cook Islands.

(6) The Minister may by public notice declare that a society, institution, association, organisation or trust is a charitable organisation for the purpose of this section and such notice shall take effect from the date specified in the notice.

71. Losses incurred in subsistence food production activities - (1) This section applies if and to the extent that -

(a) A natural person engages in one or more agricultural, horticultural, aquaculture or fishing activities (referred to in this section as "specified activities", including without limitation -

(i) All forms of animal husbandry, including poultry-keeping and bee keeping; and

(ii) Growing and managing trees or plants for the production of fruit, vegetables or other edible crops; and

(iii) Any form of cultivation or gathering of shellfish; and

(iv) Any form of fishing; and

(b) the natural person primarily engages in the specified activity or activities for the purposes of the production and gathering of food for consumption by the natural person, consumption by the natural person's dependents or barter transactions involving the acquisition of food or other goods for home consumption; and

(c) the natural person nevertheless derives some assessable income from the activities; and

(d) the natural person incurs expenditure or loss in carrying on the specified activities which is deductible in calculating the natural person's assessable income.

(2) In any case to which this section applies, the expenditure or loss incurred by the natural person may be deducted, notwithstanding any other provision in this Act, only to the extent to which the natural person derives assessable income from any of the specified activities.

(3) To the extent to which the expenditure or loss cannot be deducted in the year in which it is incurred because insufficient assessable income is derived from the specified activities in that year, the expenditure or loss can be carried forward and treated for the purposes of this Act as if it were expenditure or loss incurred by the natural person in carrying on the specified activities in the immediately succeeding income year and, subject to this section, deducted accordingly.

## **Companies and Associations**

72. Profits of mutual associations in respect of transactions with members - (1) Where an association enters into transactions with its members, or with its members and others, any profit or surplus arising from those transactions which would be included in the profits or gains of the association if the transactions were not of a mutual character shall be deemed to be profits or gains arising from those transactions and to be assessable income of the association except that, in calculating the assessable income of the association, the Collector shall allow as expenses any sums which -

(a) represent a discount rebate dividend or bonus granted or paid by the association to members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the association, being transactions which are taken into account in calculating the assessable income; and

(b) are calculated by reference to the said amounts or to the magnitude of the said transactions and not by reference to any share or interest in the capital of the association.

(2) Where any discount, rebate, dividend or bonus is granted or paid to any person by an association, it shall form part of the assessable income of that person if the transaction from which it arises is of such a nature that any payment in respect thereof by that person to the association would be allowed as a deduction in calculating the assessable income of that person.

(3) For the purposes of this section, a discount, rebate, dividend, or bonus shall be deemed to have been granted or paid to a person when it has been credited in account or otherwise dealt with in the interest or on the behalf of that person.

(4) In this section "association" includes any body or association of persons, whether incorporated or not.

73. Assessment of banking companies - Every banking company shall be assessable and liable for income tax in the same manner as if it were a company other than a banking company.

74. Overseas insurance companies other than life insurance companies - (1) For the purposes of this Act the assessable income of an overseas insurance company shall include the amount of gross premiums derived by the company in respect of business (other than life assurance business) transacted in the Cook Islands.

(2) Income tax on the assessable income of an overseas insurance company determined in accordance with subsection (1) shall be assessed at the rate set out in the First Schedule.

(3) For the purposes of this section "overseas insurance company" means a company mainly carrying on the business of insurance or guarantee against loss, damage, or risk of any kind whatever, and whose main place of business is situated outside the Cook Islands.

75. Overseas shipping freight and passage money - (1) Notwithstanding anything to the contrary in this Act, where a ship or aircraft belonging to or chartered by any person being resident in a country or territory outside the Cook Islands and not being resident in the Cook Islands, carries outside the Cook Islands merchandise, goods, livestock, mail or passengers shipped or embarked

in the Cook Islands, 5 percent of the gross amount paid or payable to that person in respect of that carriage, whether that amount is payable in or outside the Cook Islands, shall be deemed to be taxable income derived by that person from the Cook Islands. No person to whom this subsection applies shall, in respect of carriage as aforesaid, be assessable for income tax otherwise than as provided in this subsection.

(2) For the purposes of this section merchandise, goods, livestock, snail, or passengers shipped or embarked on any ship or aircraft at any port in the Cook Islands for carriage outside the Cook Islands shall be deemed to be carried outside the Cook Islands from that port notwithstanding that the ship or aircraft calls at one or more other ports in the Cook Islands before finally leaving the Cook Islands on the voyage.

### **Non-resident film renters**

76. Assessment of film renters for income tax - (1) In this section, unless the context otherwise requires, "renting", in relation to films, means renting or otherwise issuing films (including trailers) to exhibitors at a rent or for any other consideration, or making other arrangements with exhibitors for the exhibition thereof. "Rents" has a meaning corresponding to the term "renting" as defined above, but does not include -

- (a) any receipts from the sale or hire of film containers;
- (b) any receipts from the sale or hire of cinematograph or photographic materials or accessories other than films or trailers;
- (c) Any receipts from the sale or hire of advertising materials (other than trailers) relating to any film.

"Trailer" means a film or part of a film used for advertising purposes.

(2) Notwithstanding anything to the contrary in this Act, for the purpose of assessing income tax the income derived by any person not resident in the Cook Islands from the business of renting films shall be calculated in accordance with this section.

(3) Where rents are derived from the Cook Islands by any person not resident in the Cook Islands from the business of renting films, whether derived by that person as principal or as agent or trustee for any other person, an amount equal to 10 percent of the gross rents so derived shall be deemed to be assessable income of that person, and, subject to this section, that person shall be assessable and liable for income tax accordingly.

(4) Where any person who carries on the business of renting films is liable for income tax under this section and is required under an agreement with any other person, whether resident in the Cook Islands or elsewhere, to pay to that other person any portion of the film rents, or any royalty, commission, or other amount in respect of the films rented, that other person shall not be liable for income tax on any such amount so paid to that person.

(5) In calculating the taxable income of any person who carries on the business of renting films, no deduction shall be allowed except as expressly provided in this section.

(6) Where a person who carries on the business of renting films incurs a loss in any income year in any other business or in connection with any other source of income, that loss may be deducted from the assessable income deemed to be derived in that income year from the business of renting films, except to the extent that the loss is deducted from any other income derived in that year by the taxpayer, and any loss not allowed as a deduction in that year may be carried forward in accordance with section 69. For the purposes of this section, any expenditure or loss incurred by a taxpayer in connection with -

- (a) the sale or hire of film containers; or
- (b) the sale or hire of cinematography or photographic materials or accessories; or
- (c) the sale or hire of advertising materials relating to any film;

shall be deemed to be incurred in the business of renting films and shall not be deductible in calculating the assessable income of the taxpayer.

### **Income derived by Trustees**

77. Income derived by trusts - (1) Subject to the provisions of section 42(1) (h) every trust shall be liable for income tax on assessable income derived in each year in accordance with clause 5 of Part A of the First Schedule.

(2) Nothing in this section shall affect the liability of any trust to pay income tax at the rate then applicable for any year prior to the coming into force of this Act.

78. Income received by trustee after death of deceased person - It is hereby declared that any amount received in any income year by the trustee of the estate of a deceased person shall be deemed to be assessable income derived by the trustee in that year if it does not represent assessable income derived by the deceased person during that person's lifetime, but would have been included in assessable income if the person had been alive when it was received.

79. Deduction from estate income of irrecoverable book debts of deceased taxpayer - Where the amount of any debt owing to a deceased taxpayer at the date of death has been included in the assessable income of the taxpayer or of the trustee of the taxpayer's estate for any income year, and the debt or any part of it is proved to the satisfaction of the Collector to be irrecoverable and to have been actually written off by the trustee as a bad debt, the amount so written off shall be deemed to be a loss incurred by the trustee in the income year in which the amount was written off, and shall be allowable as a deduction, first against any income derived by the trustee in that income year which is assessable to the trustee as income not derived by a beneficiary entitled in possession to the receipt thereof under the trust during that year, and then, as to any balance, against any income derived in that year by or in trust for a beneficiary who has a vested interest in the capital of the estate to the extent that the loss is chargeable against the capital of that beneficiary; and any balance not allowed as a deduction in that year shall, so far as it extends, be allowable as a deduction in the same manner successively in subsequent years.

### **Country of Derivation of Income**

80. Liability for assessment of income derived from the Cook Islands and abroad - (1) Subject to the provisions of this Act, all income derived by any person who is resident in the Cook Islands at

the time when the person derives that income shall be assessable for income tax, whether it is derived from the Cook Islands or from elsewhere.

(2) Subject to the provisions of this Act, all income derived from the Cook Islands shall be assessable for income tax, whether the person deriving that income is resident in the Cook Islands or elsewhere.

(3) Subject to the provisions of this Act, no income which is neither derived from the Cook Islands nor derived by a person then resident in the Cook Islands shall be assessable for income tax.

81. Taxation of salary or wages earned outside the Cook Islands - (1) Notwithstanding anything to the contrary in this Act, where a taxpayer earns income, being income from salary or wages, in a country or territory outside the Cook Islands, and that income has been subjected in the country or territory in which it was earned to a tax which in the opinion of the Collector, is substantially of the same nature as income tax under this Act, then the Collector may determine that that income is not assessable income, and will not be subjected to any further taxation under this Act in the Cook Islands.

(2) For the purposes of this section the term "salary or wages" shall be taken to mean income from an employment source only, being income which is derived from personal exertion.

82. Place of residence, how determined - (1) A person other than a company shall be deemed to be resident in the Cook Islands within the meaning of this Part if the person's home is in the Cook Islands.

(2) A company shall be deemed to be resident in the Cook Islands within the meaning of this Part if the company -

- (a) is incorporated in the Cook Islands, or
- (b) has its head office in the Cook Islands.

(3) For the purposes of this Act the head office of a company means the centre of its administrative management.

83. Classes of income deemed to be derived from the Cook Islands - (1) Subject to the provisions of section 84, the following classes of income shall be deemed to be derived from the Cook Islands

-

- (a) income derived from any business carried on in the Cook Islands;
- (b) all salaries, wages allowances and emoluments of any kind earned in the Cook Islands in the service of any employer or principal, whether resident in the Cook Islands or elsewhere;
- (c) income derived by any person as the owner of land in the Cook Islands;
- (d) income derived by any person from money lent or used in the Cook Islands (whether on security or otherwise);



- (e) income derived from shares in or membership of a Cook Islands company, or from debentures issued by a Cook Islands company or by a local or public authority;
- (f) income derived from debentures or other securities issued by the Government of the Cook Islands, or from any contract made with the Government of the Cook Islands;
- (g) any pension or annuity payable by the Government of the Cook Islands, or out of any superannuation fund established in the Cook Islands;
- (h) income derived from the sale or other disposition of any property, corporeal or incorporeal, situated in the Cook Islands;
- (i) income derived by a beneficiary under any trust, so far as the income of the trust fund is derived from the Cook Islands;
- (j) income derived from contracts made or wholly or partly performed in the Cook Islands;
- (k) income derived from the carriage by sea or by air of merchandise, goods, livestock, mail, or passengers shipped or embarked in the Cook Islands;
- (l) royalties and other like payments of any of the kinds referred to in section 46(1) (e) and payments of any of the kinds referred to in section 46(1) (f) being royalties or payments -
  - (i) that are paid by a person who is resident in the Cook Islands and are not paid in respect of a business carried on by the person outside the Cook Islands through a fixed establishment outside the Cook Islands; or
  - (ii) that are paid by a person who is not resident in the Cook Islands and are deductible by the person in calculating the person's assessable income for the purposes of taxation in the Cook Islands,
- (m) income derived directly or indirectly from any other source in the Cook Islands.

(2) For the purposes of paragraph (d) of subsection (1) of this section "money lent" includes -

- (a) money advanced, deposited, or otherwise let out, whether on current account or otherwise;
- (b) any credit given (including the forbearance of any debt), whether on current account or otherwise.

84. Apportionment where income derived partly in the Cook Islands and partly elsewhere -

Whenever by reason of the manufacture, production, or purchase of goods in one country and their sale in another, or by reason of successive steps of production or manufacture in different countries, or by reason of the making of contracts in one country and their performance in another, or for any other reason whatever, the source of any income is not exclusively in the Cook Islands, that income shall be apportioned between its source in the Cook Islands and its source elsewhere, or attributed to one of such sources to the exclusion of the other, in such manner as the Collector thinks just and reasonable, having regard to the nature and relative importance of the sources of that income; and the income, so far as so apportioned or attributed to a source in the Cook Islands,

shall be deemed to be derived from the Cook Islands and shall be assessable for income tax accordingly.

85. Credits in respect of income tax paid in a country or territory outside the Cook Islands - (1) For the purposes of this section the term "income tax" means -

(a) in respect of any country or territory outside the Cook Islands, any tax which, in the opinion of the Collector, is substantially of the same nature as income tax imposed under this Part; but does not include -

(i) any additional tax for late payment of tax or any interest or any penalty or additional tax imposed under the penal provisions of the laws of that country or territory;

(ii) any amount in respect of tax which under the law of that country or territory a company paying a dividend has deducted, or was authorised to deduct, from the dividend and which the person deriving the dividend was not personally liable to pay;

(b) in respect of the Cook Islands, income tax imposed under this Part;

but does not include any additional tax for late payment of tax or any interest or any penalty or additional tax imposed under this Act.

(2) Subject to the provisions of this section, where a person who is resident in the Cook Islands derives income from a country or territory outside the Cook Islands, income tax paid in that country or territory in respect of that income shall be allowed as a credit against income tax payable in the Cook Islands in respect of that income.

(3) The provisions of Part VI, as far as they are applicable and with the necessary modifications, shall, for the purposes of subsection (2) of this section apply as if the provisions of that subsection were an agreement as defined in section 87 (1) made between the Government of the country or territory outside the Cook Islands and the Government of the Cook Islands.

86. Arrangements for relief from double taxation - (1) The Minister may from time to time enter into arrangements with the Government of any country or territory outside the Cook Islands with a view to affording relief from double taxation in relation to income tax and any taxes of a similar character imposed by the laws of that country or territory, and such arrangements shall, notwithstanding anything to the contrary in this Act or any other enactment, have effect in relation to income tax and every such arrangement shall, subject to the provisions of this section, have effect according to its tenor.

(2) Without limiting the generality of the foregoing provisions it is hereby declared that any arrangements to which effect is given under this section may contain provision, in relation to any of those taxes -

(a) for relief from tax;

(b) for charging the income derived from any sources in the Cook Islands to persons not resident in the Cook Islands;

(c) for determining the income to be attributed to persons not resident in the Cook Islands and their agencies, branches, or establishments in the Cook Islands;

(d) for determining the income to be attributed to persons resident in the Cook Islands who have special relationships with persons not so resident.

(3) Any such arrangements may include provision for relief from tax for periods before the commencement of this Act or before the making of the arrangements, and provisions as to income which is not itself subject to double taxation.

(4) Any such arrangements under this section may be at any time amended or revoked by a subsequent arrangement; and any such amending or revoking arrangement may contain such transitional provisions as appear to the Minister to be necessary or expedient.

(5) Where any arrangements are made under this section the obligation as to secrecy imposed by this Act shall not prevent the Collector from disclosing to any authorised officer of the Government with which the arrangements are made such information as is required to be disclosed under the arrangements.

**PART VI**  
**IMPLEMENTATION OF ARRANGEMENTS FOR RELIEF FROM DOUBLE**  
**TAXATION**

87. Interpretation - (1) In this Part, unless the context otherwise requires:

"Agreement" means a convention or agreement made between the Government of a territory outside the Cook Islands and the Government of the Cook Islands, with a view to affording relief from double taxation in relation to foreign tax imposed by the laws of that territory and Cook Islands tax, being an arrangement made under section 86;

"determination" means a determination of the Collector made pursuant to section 88; and includes an amended determination;

"foreign tax" means tax, other than Cook Islands tax, that is the subject of an agreement;

"Cook Islands tax" means income tax imposed as such by this Act.

(2) For the purposes of this Act, a reference in an agreement to profits of an activity or business shall, in relation to Cook Islands tax, be read, where the context so permits, as a reference to taxable income derived from that activity or business.

**Credits for Foreign Tax**

88. Determination of claims for credits - (1) Where a taxpayer claims a credit for foreign tax in accordance with the provisions of an agreement, the Collector shall determine whether a credit is allowable and, if so, the amount of the credit.

(2) The Collector may from time to time and at any time amend a determination as the Collector thinks necessary in order to ensure the correctness thereof.

(3) A determination shall not form part of an assessment of Cook Islands tax.

89. Notice of determination to taxpayer - (1) As soon as conveniently may be after a determination is made, the Collector shall cause notice of the determination to be given to the taxpayer.

(2) The notice under this section may be included in a notice of assessment given to the taxpayer pursuant to section 27.

90. Except in proceedings on objection, determination deemed correct - Except in proceedings on objection thereto under Part IV, no determination shall be disputed in any Court or in any proceedings and, except as aforesaid, every such determination shall conclusively be deemed to be correct.

91. Evidence of determination - The production of any document signed by the Collector purporting to be a copy of or an extract from a notice of a determination shall in all Courts and in all proceedings be sufficient evidence of the original, and the production of the original shall not be necessary; and all Courts shall in all proceedings take judicial notice of the signature of the Collector either to the original or to any such copy or extract.

92. Objections to determinations - (1) Any taxpayer affected by a determination may object to the determination by delivering or posting to the Collector a written notice of objection stating shortly the grounds of the objection, within one month after the date on which notice of the determination is given to the taxpayer by or on behalf of the Collector:

Provided that where the determination is an amended determination the taxpayer shall have no further right of objection than the taxpayer would have had if the amendment had not been made, except to the extent to which, by reason of the amendment, the amount of the credit for foreign tax is reduced.

(2) No notice of objection given after the time prescribed by subsection (1) shall be of any force or effect unless the Collector accepts the objection and gives notice to the objector accordingly.

93. Application of Part IV to objections to determinations - Subject to the provisions of this Part, the provisions of Part IV, as far as they are applicable and with the necessary modifications, shall apply to every objection to a determination, as if -

(a) references in Part IV to an assessment were references to a determination, unless the context otherwise requires; and

(b) references in section 29 (3) to a reduction of an assessment and to the reduced assessment were references to the amendment of a determination and to the amended determination respectively; and

(c) references in section 33 to an increase or reduction of the amount of an assessment were references to an increase or reduction of the amount of the credit for foreign tax.

94. Information for credit to be furnished within four years - A credit for foreign tax shall not be allowed unless, within four years after the end of the income year in which the taxpayer derived the income against the Cook Islands tax on which the credit is claimed, or within such further

period, not exceeding two years, as the Collector allows in any case or class of cases, the taxpayer claiming the credit -

(a) makes application in writing to the Collector for the credit; and

(b) furnishes to the Collector all information (including information in relation to any amount to which the taxpayer is entitled in respect of any relief or repayment of the foreign tax) necessary for determining the amount of the credit.

95. Maximum credits - Where, under the provisions of an agreement, a credit for foreign tax is allowable in respect of any income, the amount of that credit shall not exceed the amount of Cook Islands tax payable in respect of that income.

96. Recovery of excess credit allowed through not taking into account refund of foreign tax - Where -

(a) a credit for foreign tax payable either directly or by deduction, being a tax which a taxpayer is personally liable to pay, has been allowed against Cook Islands tax payable by the taxpayer in respect of the same income; and

(b) that credit has not taken into account any refund or repayment of the foreign tax received by the taxpayer, whether before or after that credit was allowed; and

(c) the amount of that credit was in excess of the amount that would have been allowed if only the amount of the foreign tax not refunded or repaid to the taxpayer had been taken into account in calculating the credit,

the amount of that excess shall be deemed to be income tax due and payable to the Collector on the 30th day after the date of the notice of determination of the credit or the date of the receipt by the taxpayer of that refund or repayment, whichever date is the later, and the provisions of this Act shall apply accordingly.

### **Miscellaneous**

97. Ascertainment of Cook Islands tax on income - Where for the purpose of the application of the provisions of an agreement or for any other purposes of this Act, it is necessary to ascertain the amount of Cook Islands tax payable by a taxpayer in respect of any income of a particular nature or from a particular source derived by the taxpayer in an income year, the amount of tax shall be ascertained in accordance with the following formula:

$$\frac{a}{b} \times c$$

where -

a is the income in respect of which it is necessary to ascertain the amount of Cook Islands tax; and

b is the amount of the assessable income that was taken into account in calculating item c; and

- c is the amount of income tax payable by the taxpayer (before allowing any credit for foreign tax from that income tax) in respect of the income derived by the taxpayer in that income year.

**PART VII**  
**WITHHOLDING TAX ON DIVIDENDS, INTEREST AND ROYALTIES**

98. Interpretation - In this Part, unless the context otherwise requires, -

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

"person" includes the Crown in right of the Government of the Cook Islands and every instrumentality or agency of the Government and includes any other person resident in the Cook Islands for the purposes of section 82;

"received", in relation to withholding income, includes credited or dealt with in the interest or on behalf of a person; and "receive" and "receipt" have corresponding meanings;

"resident in the Cook Islands" means deemed to be resident in the Cook Islands within the meaning of Part V;

"royalties" means payment of any of the kinds referred to section 46 (1) (e) and (f).

99. Application of this Part - (1) This Part shall apply notwithstanding anything to the contrary in any other Part.

(2) This Part shall apply to income (in this Act referred to as withholding income) being income that is deemed under this Act to be derived from the Cook Islands and which consists of dividends and interest, or royalties paid to a non-resident of the Cook Islands on or after 1 January 1973 but does not include -

(a) income that consists of dividends derived by a company that is resident in the Cook Islands; or

(b) any other income that is exempt from income tax.

(3) Without limiting the generality of subsection (2) all interest and royalties paid to any person by the Crown in right of the Government of the Cook Islands and every instrumentality or agency of the Government shall be deemed to be income derived in the Cook Islands.

100. Withholding tax imposed - Every person who derives withholding income shall be liable to pay withholding tax upon that income and, where dividends, interest or royalties are paid by any person who is not resident in the Cook Islands, the amount of the withholding tax shall be fifteen per cent (15%) of the dividends, interest or royalties so paid.

101. Deduction of withholding tax - (1) Any person who makes a payment of withholding income, shall, at the time of making the payment, make a deduction of withholding tax there from of an amount determined in accordance with section 100.

(2) Where -

(a) a payment consisting of withholding income has been made to an agent or other person in the Cook Islands for or on behalf of the person entitled to the payment; and

(b) the withholding tax payable in respect of that withholding income has not been deducted, or has not been deducted in full under subsection (1), the agent or other person shall at the time of receiving the payment, make deduction therefrom of the amount of the withholding tax or, as the case maybe, of the amount of the deficiency in that tax.

(3) Where a person (referred to in this subsection as "the payer") makes a deduction of withholding tax under subsection (1) from a payment of withholding income, the payer shall, at the time of making the payment, advise the person to whom the payment is made (whether or not that person is the person entitled to the payment), in writing, of the amount of the deduction made by the payer from the payment.

(4) This section shall not apply where the withholding income consists of a dividend of any of the kinds referred to in section 4 (1) (b) or (d).

102. Withholding tax on dividends not paid in money - (1) Where -

(a) any withholding income that consists of a dividend of any of the kinds referred to in section 4 (1) (b) or (d) is to be paid by a company to any person; and

(b) the company would, but for section 101 (4), be required to make a deduction of withholding tax under that section from the dividend,

that company shall not pay the dividend to or in the interest of or on behalf of any person until an amount equal to the amount of the withholding tax that but for section 101 (4) would have been required to be deducted has been paid to the Collector in respect of the dividend.

(2) Where -

(a) any withholding income that consists of a dividend of any of the kinds referred to in subsection (1) is paid to an agent or other person in the Cook Islands for or on behalf of the person entitled to the dividend; and

(b) that agent or other person would, but for section 101 (4), be required to make a deduction of withholding tax under that section from the dividend, -

that agent or other person shall not pay the dividend to or in the interest of or on behalf of any person until an amount equal to the amount of the withholding tax that (but for section 101 (4)) would have been required to be deducted has been paid to the Collector in respect of that dividend.

(3) A person who has paid to the Collector an amount equal to the withholding tax in relation to any dividend in accordance with this section may, in writing, request the Collector to inform the company by which the dividend is to be paid, or any person to whom the dividend has been paid, that that amount has been so paid in respect of that dividend, and, upon receipt of such a request, the Collector shall, in writing, inform that other person accordingly.

## **Payment and Assessment of Withholding Tax**

103. Payment of deductions of withholding tax to Collector - (1) Every person who makes deductions of withholding tax from, or is liable to pay withholding tax in respect of, payments that consist of withholding income shall, not later than the 20th day of the month next after the month in which the person has made any such deductions or, as the case may be, become liable to withholding tax, pay to the Collector the amount of the deductions or, as the case may be, the amount of the withholding tax for which the person has become liable.

(2) The Collector may extend the time for payment of any amount of withholding tax in such cases and to such extent as the Collector thinks fit.

(3) Every person who pays money to the Collector in accordance with subsection (1) shall, at the time of such payment, advise the Collector, in writing, of the name and address of the person whose liability pursuant to section 100 to pay withholding tax is thereby met either in whole or in part.

104. Statement to be delivered to Collector - Every person who in any year makes any deduction of withholding tax from any payment of withholding income, or pays to the Collector any amount in respect of withholding tax in accordance with section 103, shall, not later than 15 February next after the end of that year, deliver to the Collector a statement showing particulars of the withholding income, the persons entitled to receive that income, and the withholding tax relating thereto.

105. Withholding tax to be final in certain cases - Notwithstanding anything in this Act, withholding income that consists of dividends or interest or royalties derived by a person who is not resident in the Cook Islands shall not be included in the assessable income of the person by whom that withholding income is derived, and the amount of income tax for which that person is liable in respect of the amount of that withholding income in any income year shall be determined exclusively and finally by the total amount of tax for which that person is liable in accordance with section 100 in respect of that income.

106. Annual tax on withholding income in certain cases - Withholding income (not being dividends, interest, or royalties derived by a person who is not resident in the Cook Islands) derived by any person in any income year shall be included in the assessable income of that person for that year, and against the income tax assessed in respect of that assessable income for that income year there shall be allowed a credit equal to the withholding tax (but not including any additional tax or penal tax) deducted or paid to the Collector in respect of that withholding income.

107. Person deriving withholding income to pay withholding tax to Collector - Where for any reason -

(a) a deduction of withholding tax is not made or is not made in full in accordance with this Part from any payment consisting of withholding income; or

(b) a payment that is required to be made to the Collector in accordance with section 102 of an amount equal to the withholding tax in respect of a dividend to which that section relates has, in contravention of that section, not been made or not been made in full to the Collector -



the person who derives the withholding income shall pay to the Collector an amount equal to the amount of the deduction or, as the case may be, the payment that should have been made and was not made, and that amount shall be due and payable to the Collector on the 20th day of the month next after the month in which the deduction was required to be made, or, as the case may be, the dividend was paid, or in either case on such later date as the Collector may in any case allow.

108. Failure to make deductions of withholding tax or to make payments to Collector - (1) Where a person fails to make any deduction of withholding tax from any withholding income in accordance with that person's obligations under section 101, the amount in respect of which default has been made shall constitute a debt payable by that person to the Collector, and shall be deemed to have become due and payable to the Collector on the 20th day of the month next after the month in which the payment of that withholding income was made.

(2) Where a person has, in contravention of section 102, paid a dividend without payment to the Collector of an amount equal to the withholding tax in relation to that dividend, that amount or, as the case may be, so much thereof as has not been paid to the Collector shall constitute a debt payable by that person to the Collector, and shall be deemed to have become due and payable to the Collector on the day on which that dividend was paid.

(3) The right of the Collector to recover the amount in respect of which default has been made in the manner referred to in subsection (1) or subsection (2) from a person who has made default shall be in addition to any right of the Collector to recover that amount from the person chargeable with withholding tax to which that amount relates and nothing in this Part shall be construed as preventing the Collector from taking such steps as the Collector thinks fit to recover that amount from both of those persons concurrently, or from recovering that amount wholly from one of those persons, or partly from one and partly from the other of those persons.

(4) Where any amount recoverable in accordance with this Part from the person chargeable with the withholding tax to which that amount relates is in fact paid by another person, the amount so paid may be recovered by that other person from that first-mentioned person.

(5) Every person who receives withholding income shall, subject to section 109, remain liable for the payment of withholding tax thereon until such withholding tax is paid by or on behalf of that person.

(6) Where any person makes a deduction pursuant to section 101 and fails to make a payment to the Collector equal to the amount so deducted, the person from whose withholding income such deduction is made shall be entitled to recover from the person first mentioned the difference between the amount deducted and the amount paid to the Collector.

109. Assessment of withholding tax and of amounts to be accounted for or paid under this Part -

(1) The Collector may, in respect of any person who is chargeable with withholding tax, make an assessment of the amount of withholding income on which in the Collector's judgment withholding tax ought to be levied and of the amount of that tax, and that person shall be liable to pay the tax so assessed, except so far as the person establishes on objection that the assessment is excessive or that the person is not chargeable with the tax so assessed.

(2) The Collector may make an assessment of any amount which in the Collector's judgment any person is liable to account for or pay to the Collector under this Part, and any person who is so

assessed shall be liable to pay the amount so assessed, except so far as that person establishes on objection that the assessment is excessive or that the person is not liable to account for or pay the amount so assessed.

(3) Sections 22, 24, 25, 26, and 27 shall apply, so far as may be, with respect to every assessment made under subsection (1) or subsection (2) as if -

(a) the expression "tax already assessed" used in section 22 included withholding tax already assessed under subsection (1) of this section or, as the case may be, an amount already assessed under subsection (2) of this section; and

(b) the term "taxpayer" used in sections 22, 25 and 27 included a person who is chargeable with withholding tax or, as the case may be, a person who is assessed or is liable to be assessed under subsection (2) of this section.

(4) An assessment made under this section shall be subject to objection in the same manner as an assessment of income tax levied under section 39, and the provisions of Part IV shall apply, so far as may be, to an objection to an assessment made under this section as if the terms "income tax" and "tax" used in Part IV included withholding tax or, as the case may be, an amount assessed under subsection (2).

### **Penalties and Offences**

110. Additional tax for default in making or paying deductions of withholding tax - (1) Where -

(a) any person, being a person under an obligation under this Part to make a deduction of withholding tax from withholding income, fails wholly or in part to make the deduction; or

(b) any person who has made a deduction of withholding tax fails wholly or in part within the prescribed time to pay the amount of the deduction to the Collector; or

(c) any person who is liable to pay any amount to the Collector under this Part fails to pay the amount on the due date for payment thereof; -

then unless the Collector is satisfied that the person has not been guilty of wilful neglect or default, that person shall be liable, without conviction, in addition to any other penalty to which the person may be liable, to a penalty equal to 5 percent of the amount in respect of which default has been made and a further 1 percent of the amount for each complete month in which the default continues.

(2) For the purposes of paragraph (b) of subsection (1), a deduction of withholding tax shall be deemed to have been made if and when payment is made of the net amount of withholding income.

(3) A penalty imposed under this section shall for all purposes be deemed to be of the same nature as the amount or part thereof in respect of which it is imposed, and shall be recoverable accordingly.

(4) Subject to the provisions of this Part, the provisions of the other Parts, as far as they are applicable and with the necessary modifications, shall apply with respect to the amount of every

penalty imposed under this section as if it were additional tax under section 190 and as if the person liable to the penalty were the taxpayer.

111. Penal tax for default in making or paying deductions of withholding tax - (1) Where -

(a) any person, being a person under an obligation under this Part to make a deduction of withholding tax from a payment of withholding income, fails wholly or in part to make the deduction; or

(b) any person knowingly applies or permits to be applied the amount of any withholding tax or any part thereof for any purpose other than the payment thereof to the Collector, -

that person shall be chargeable by way of penalty, in addition to any other penalty to which that person may be liable, with an additional amount (hereinafter referred to as penal tax) not exceeding an amount equal to treble the amount in respect of which default has been made (herein after referred to as the deficient deduction).

(2) For the purposes of paragraph (b) of subsection (1), a deduction of withholding tax shall be deemed to have been made if and when payment is made of the net amount of any withholding income, and the amount of any tax shall be deemed to have been applied for a purpose other than the payment thereof if that amount is not duly paid to the Collector:

Provided that no person shall be chargeable with penal tax under paragraph (b) of subsection (1) if that person satisfies the Collector that the amount of the withholding tax has been accounted for, and that the person's failure to account for it within the prescribed time was due to illness, accident, or other cause beyond the person's control.

(3) Penal tax imposed by this section shall for all purposes be deemed to be of the same nature as the deficient deduction, and shall be recoverable accordingly.

(4) Subject to the provisions of this Part, the provisions of the other Parts, as far as they are applicable and with the necessary modifications, shall apply with respect to all penal tax imposed under this section as if -

(a) it were penal tax under section 209; and

(b) the person chargeable with the penal tax imposed under this section were the taxpayer; and

(c) the deficient deduction were deficient tax payable for the same year of assessment as that in which the deficient deduction became due and payable to the Collector.

112. Offences - (1) Without limiting the application of section 206, it is hereby declared that every person commits an offence against this Act who;

(a) being a person under an obligation under this Part to make a deduction of withholding tax from a payment of withholding income, fails wholly or in part to make the deduction; or

(b) knowingly applies or permits to be applied the amount of any withholding tax or any part thereof for any purpose other than the payment thereof to the Collector.

(2) For the purposes of paragraph (b) of subsection (1), a deduction of withholding tax shall be deemed to have been made if and when payment is made of the net amount of any payment of withholding income, and the amount of any withholding tax shall be deemed to have been applied for a purpose other than the payment thereof if that amount is not duly paid to the Collector:

Provided that no person shall be convicted of an offence under paragraph (b) of subsection (1) if the person satisfies the Court that the amount of the withholding tax has been accounted for, and that the person's failure to account for it within the prescribed time was due to illness, accident, or other cause beyond the person's control.

### **Miscellaneous Provisions**

113. Withholding tax on dividends paid to company under control of non-resident - Where -

(a) shares in a company that is resident in the Cook Islands were formerly held by a person not resident in the Cook Islands and while those shares were so held the company was under the control of that person or was deemed under this Act to be under the control of persons of whom that person was one; and

(b) that person has sold or otherwise disposed of those shares to another company that is resident in the Cook Islands and is under the control of that person or is deemed under this Act to be under the control of persons of whom that person is one; and

(c) any part of the price at which that other company acquired those shares remained unpaid after the acquisition by that other company of those shares or thereafter remained owing in any way directly or indirectly to that person and whether or not secured by mortgage or otherwise -

any dividends paid in respect of those shares to that other company while any part of that price remains unpaid or owing as aforesaid shall, to the extent to which that price is unpaid or owing at the time when the dividends are paid to that other company, be deemed to have been paid to that person and to have been derived as dividends by that person at that time, and the provisions of this Act (including this Part) shall apply accordingly.

114. Deductions of withholding tax deemed to be received and derived by person entitled to payment - Where any withholding tax has been deducted from a payment consisting of withholding income, the amount so deducted -

(a) as between the person by whom the deduction was made and the person entitled to the payment consisting of the withholding income from which the deduction was made, shall be deemed to have been received by the person entitled to that payment -

(i) in any case where the deduction was made under section 101 (1), at the time at which the payment consisting of the withholding income was made;

(ii) in any case where the deduction was made under section 101 (2), at the time at which the payment consisting of the withholding income was received, for or on

behalf of the person entitled to that payment, by an agent or other person in the Cook Islands;

(b) for the purposes of this Act (including this Part), shall be deemed to have been derived by the person entitled to the payment consisting of the withholding income at the same time and in the same manner as the residue of that payment.

115. Application of other Parts of this Act - Subject to the provisions of this Part, the provisions of the other Parts, as far as they are applicable and with the necessary modifications shall apply with respect to withholding tax as if it were income tax levied under section 39.

116. Distribution of capitalised amount - Where a company to which this Part applies makes a bonus issue, and -

(a) at any time within 3 years of making the bonus issue the company makes a distribution of any amount (whether in money or money's worth) that in the opinion of the Collector is either directly or indirectly a distribution of any amount capitalised by the bonus issue; and

(b) the Collector was not satisfied that the distribution was not pursuant to any arrangement, scheme, or intention in existence at the time when the bonus issue was made,

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this distribution shall be deemed to be a further bonus issue made by the company at the time of the distribution and the provisions of this Part shall apply accordingly.

## **PART VIII** **AGENTS AND NON-RESIDENTS**

### **Interpretation**

117. "Absentee" defined - In this Part "absentee" means -

(a) any person (other than a company) who is for the time being out of the Cook Islands;

(b) any overseas company unless it has a fixed and permanent place of business in the Cook Islands at which it carries on business in its own name;

(c) any overseas company which is declared by the Collector to be an absentee for the purposes of this Act by notice given to that company or to its agent or attorney in the Cook Islands, so long as that declaration remains unrevoked.

### **Agents Generally**

118. Agent to make returns and be assessed as principal - (1) Every agent shall make returns of the income in respect of which that person is an agent, and shall be assessed thereon in the same manner as if that person were the principal, save that the agent shall be entitled to no special exemption or rebates from income tax other than such exemption or rebates (if any) as the principal may be entitled to.

(2) Every person liable to furnish a return as agent for any person shall furnish a separate return for each person for whom that person is agent, in addition to that person's own individual return.

119. Rate and amount of tax payable by agent - Except where otherwise expressly provided by this Act the rate of tax for which an agent shall be so assessed and liable shall be determined by reference to the total taxable income of the principal, but it shall be charged and payable only on the income in respect of which the agency exists, and in the same proportion which that income bears to the total income of the principal.

120. Liability of principal not affected - (1) Nothing in this Act relating to an agent shall be so construed as to release the principal from liability to make returns and to be assessed and chargeable with tax.

(2) No assessment of the agent shall preclude an assessment of the principal for the same tax, nor shall an assessment of the principal preclude an assessment of the agent for the same tax, and the principal and agent shall be jointly and severally liable for all tax for which the agent is liable.

(3) When two or more persons are liable to be assessed as agents in respect of the same tax, they shall be jointly and severally liable therefor.

121. Agent may recover tax from principal - Any agent who pays any tax on behalf of a principal may recover the amount so paid from that principal, or may deduct the amount from any money belonging or payable to the principal which is in the agent's possession or control.

122. Agent may retain from money of principal amount required for tax - An agent may from time to time during the income year, or at any later time, retain out of any money belonging or payable to the principal such sums as may reasonably be deemed sufficient to pay the tax for which the agent is or may become liable.

123. Assessment deemed authority for payment of tax by agent - An assessment made by the Collector shall as between an agent and the principal, be a sufficient authority for the payment by the agent of the tax so assessed, and the agent shall be entitled as against the principal to reimbursement accordingly.

124. Agent to be personally liable for payment of tax - (1) Every agent shall be personally liable for the tax on income in respect of which that person is an agent.

(2) When the Collector is satisfied that an agent has no money of the principal with which the agent can pay the tax, and that the agent has not paid away any such money after notice of the assessment of the tax, and that immediate enforcement of payment by the agent would be a cause of hardship, the Collector may allow the agent such further period for the payment thereof, not exceeding six months after the date of the notice of assessment, as the Collector thinks necessary, and the additional tax imposed by section 190 on taxpayers in default shall not accrue until the expiry of the period so allowed.

125. Relation of principal and agent arising in effect - When the Collector is satisfied that any person carrying on business in the Cook Islands (in this section called "the resident") is so far under the control of any other person carrying on business in the Cook Islands or elsewhere (in this section called "the controller") that the relation between them is in effect that of agent and principal, the Collector may treat the resident's business as that of the controller, and as being

carried on by the resident on the controller's behalf, and may require returns to be made, and may make assessments accordingly, and the controller and the resident shall accordingly be liable for income tax as principal and agent in terms of this Part.

### **Special Cases of Agency**

126. Liability of mortgagee in possession - For the purposes of this Act, a mortgagee in possession of any land or other property shall be deemed to be the agent of the mortgagor in respect of any income derived by that mortgagee from that land or other property on behalf of or for the benefit of the mortgagor, and the mortgagee shall make returns and be assessable and liable for tax on that income accordingly.

127. Guardian of person under disability to be agent - Every person who, as guardian, committee, or otherwise, has the receipt, control, or disposition of any income derived by a person under any legal disability shall for the purposes of this Act be the agent of that person in respect of that income, and shall make returns and be assessable and liable for income tax accordingly.

128. Person having control of land or of rents and profits to be agent of absentee or person under disability - Every person who on 31 December in any year has the control or management of any land, or the receipt, control, or disposal of the rents or profits thereof, on behalf of an owner of that land who is an absentee or is under any legal disability, shall for the purposes of this Act be the agent of the owner and shall make returns of those rents or profits received and be assessable and liable for income tax on those rents or profits accordingly.

129. Liability of new companies for tax payable by former companies with substantially the same shareholders or under the same control - (1) In this section -

"company" means a Cook Islands company or an overseas company within the meaning of this Act:

"new company" means a company carrying on business in the Cook Islands and consisting substantially of the same shareholders as an original company or being under the control of the same persons as an original company:

"original company" means a company which, having at any time carried on business in the Cook Islands, has, whether before or after the passing of this Act, ceased to carry on business in the Cook Islands; and includes any such company that has been wound up.

(2) Where an original company has been wound up, its shareholders and directors at the commencement of its winding up shall respectively be deemed to be the shareholders and the persons having the control of the company for the purposes of this section.

(3) Where an original company was, when it ceased to carry on business in the Cook Islands, liable under this Act for any income tax or was liable to be assessed for any such tax, and that tax has not been paid, the new company shall, for the purposes of this Act, be deemed to be the agent of the original company and shall be liable for all tax payable by the original company.

(4) The new company shall be liable for all tax for which the original company would have been liable if it had continued to carry on business in the Cook Islands.

130 Companies deemed agent of debenture holders - Save as otherwise provided in section 131, every company which has issued debentures, whether charged on the property of the company or not, shall for the purposes of this Act be the agent of all debenture holders whether absentees or not, in respect of all income derived by them from those debentures, and shall make returns and be assessable and liable for income tax on that income accordingly.

131. Modification of agency provisions in respect of income from company debentures - (1) The duty to act as the agents of debenture holders imposed on companies by section 130 shall not apply with respect to debentures issued to any person resident in the Cook Islands if the company that has issued the debentures has supplied to the Collector, before it has been assessed in any year for income tax in respect of the income derived from those debentures, a certified list specifying the number of the debentures or other particulars sufficient to identify them, the names, addresses, and descriptions of the persons to whom the debentures have been issued, the interest derived or derivable therefrom, and such other particulars as may be prescribed.

(2) Where any such list is supplied the person named therein as the holder of any debentures shall be personally responsible for the making of returns, and shall be assessable and liable for income tax (though not to the exclusion of any other person) in respect of the income derived from those debentures at the rate fixed in respect thereof, unless and until that person satisfies the Collector, before the person has been assessed for income tax in any year, that the person has transferred or assigned the debentures, and has given notice to the Collector in the prescribed form of the name, address, and description of the transferee or assignee.

(3) Every person, being the transferee or assignee of any debentures, shall in like manner remain personally liable in respect thereof (though not to the exclusion of any other person) unless and until the person has given notice to the Collector in the prescribed form of the transfer or assignment of the debentures.

(4) Any tax paid by the former holder of any debentures in respect of the income derived therefrom by a subsequent holder shall be deemed to be paid on behalf of that subsequent holder as far as it does not exceed the tax to which the subsequent holder might have been liable in respect of those debentures, and may be recovered by the former holder from the subsequent holder accordingly.

132. Recovery of income tax payable in respect of alimony or maintenance - (1) This section applies with respect to any income tax that may become payable in respect of income received by or on behalf of any person as alimony or maintenance, pursuant to the order of any Court or pursuant to any deed or agreement (whether the order, deed, or agreement has been made or entered into before or after the coming into force of this Act).

(2) In any case to which this section applies the person bound by any such order, deed or agreement to pay any money as alimony or as maintenance as aforesaid, shall, for the purpose of the payment of the income tax thereon, be deemed to be the agent of the person to whom or on whose behalf the money has been paid or is payable, and all the provisions of this Act as to the liability of agents shall apply with respect to that person accordingly.

(3) It shall be no defence in any proceedings against an agent for the recovery of any income tax to which this section relates that any amount in respect of income tax has been paid by that agent to the person entitled to receive any money as alimony or maintenance.

### **Agents of Absentees and Non-residents**



133. Liability of agent of absentee principal for returns and tax - Every person who in the Cook Islands carries on any business for and on behalf of a principal who is an absentee shall for the purposes of this Act be the agent of that principal in respect of all income derived by the principal through the business so carried on in the Cook Islands by means of that agent, and the agent shall make returns and be assessable and liable for income tax on that income accordingly, whether the income comes into the possession or control of the agent or not.

134. Partner of absentee deemed agent - Every person who in the Cook Islands carries on business in partnership with an absentee shall for the purposes of this Act be the agent of that absentee in respect of the absentee's share of the income of the business, and shall make returns and be assessable and liable for income tax accordingly.

135. Master of ship or captain of aircraft deemed agent of absentee owner - (1) When an absentee, by means of any ship or aircraft owned by or under charter to the absentee, carries on the business of the carriage of merchandise, mail, or passengers, the master of that ship, or the captain of that aircraft, as the case may be, shall (though not to the exclusion of any other agent) be the agent of that absentee for the purposes of this Act in respect of all assessable income so derived by the absentee, and shall be assessable and liable for income tax accordingly.

(2) Pending the payment of any tax assessed against such an absentee or against any person who is the absentee's agent for the purposes of this Act, the Comptroller of Customs shall withhold the clearance of the ship or aircraft in respect of which the tax is payable.

136. Tenant, mortgagor, or other debtor to be agent of absentee landlord, mortgagee, or other creditor - (1) Any tenant, mortgagor, or other person who transmits from the Cook Islands to any landlord, mortgagee, or other creditor, being an absentee, any rent, interest, or other money being income derived by that absentee from the Cook Islands, shall for the purposes of this Act be the agent of that absentee in respect of all money so transmitted at any time, and the agent shall in respect of all such money make returns and be assessable and liable for income tax accordingly.

(2) For the purposes of this section any money paid by or on account of a person resident in the Cook Islands from a fund situated out of the Cook Islands shall be deemed to be money transmitted by that person from the Cook Islands.

137. Person having disposal of income deemed agent - Every person who in the Cook Islands has the receipt, control, or disposal of any income derived by a principal who is an absentee shall for the purposes of this Act be the agent of the principal in respect of that income, and shall make returns and be assessable and liable for income tax on that income accordingly.

138. Company to be agent of absentee shareholders - A Cook Islands company shall be the agent of all absentee shareholders and of all absentee holders of debentures and the company shall make returns and be assessable accordingly on all income paid or credited by the company to any such shareholder or debenture holder while that shareholder or debenture holder is an absentee.

139. Banking company to be agent of absentee depositors - Every banking company, and every other company, local or public authority, or other person, who in the course of business receives or holds money by way of deposit and pays or credits interest thereon shall for the purposes of this Act be the agent of all depositors who are absentees, and shall make returns and be assessable and

liable for income tax accordingly on any interest which is paid to a depositor while that depositor is an absentee.

140. Premiums on insurance effected with persons not carrying on business in the Cook Islands -

(1) Where any person in the Cook Islands enters into a contract of insurance or guarantee against loss, damage, or risk of any kind whatever (not being a contract of life insurance) with any insurer and the insurer does not carry on business in the Cook Islands the insurer shall be liable to income tax, at the rate set out in the First Schedule as being applicable to overseas insurance companies, on the amount of premium paid or payable by insured in respect of the contract.

(2) Where the amount of premium paid or payable in respect of any such contract is not disclosed, the amount shall be deemed to be the same amount as would be chargeable in respect of a similar contract of insurance or guarantee effected with a company carrying on business in the Cook Islands.

(3) Every insured person shall be deemed to be the agent of the insurer with whom such contract is made, and shall make returns and be assessable and liable for income tax accordingly.

(4) Every person who exports any goods from the Cook Islands shall notify the Collector if the goods are insured, and, if so, the name and description of the person or company with whom the goods are insured, and the amount of the premium payable in respect thereof.

141. Liability as agent of employer of non-resident taxpayer - (1) The employer or the agent of the employer of every non-resident taxpayer shall, for the purposes of this Act, be the agent of such non-resident taxpayer in respect of the salary, wages, or other emoluments received by the non-resident taxpayer, and shall make returns and be assessable and liable for income tax thereon accordingly.

(2) Where any non-resident taxpayer has made default in the payment of any income tax payable by the non-resident taxpayer, in respect of salary, wages, or other emoluments, the amount of that tax shall, on application by the Collector, be deducted by the employer or the employer's agent from any salary, wages, or other emoluments thereafter to be paid, and shall be paid to the Collector on behalf of the non-resident taxpayer.

(3) Where any non-resident taxpayer is in receipt of any pension or annuity payable out of any superannuation fund established in the Cook Islands, any income tax that may become payable by the non-resident payer in respect of the pension or annuity shall, on application by the Collector, be deducted from any instalment or instalments of the pension or annuity thereafter to be paid, and shall be paid to the Collector on behalf of the taxpayer.

(4) For the purposes of this section the term "non-resident taxpayer" means any person who, being liable for income tax in respect of salary, wages, or other emoluments derived from the Cook Islands, or in respect of any annuity or pension derived from the Cook Islands, has no fixed or permanent residence or place of abode in the Cook Islands.

142. Non-resident trader to be agent of employees in the Cook Islands - (1) Every non-resident trader shall be the agent of all persons in that trader's employment in the Cook Islands in respect of the salary, wages, or other emoluments received by them, and shall make returns and be assessable and liable for income tax thereon accordingly.

(2) The agent in the Cook Islands of a non-resident trader shall, for the purposes of this section, be under the same obligations as the non-resident trader.

143. Agents in the Cook Islands of principals resident abroad - When any person in the Cook Islands, as agent for a principal who is resident in a country or territory outside the Cook Islands and is not resident in the Cook Islands, is instrumental in procuring the purchase from that principal of goods or merchandise which are in the Cook Islands or are to be imported into the Cook Islands in pursuance of or in consequence of that purchase, whether the contract of purchase is made in the Cook Islands or elsewhere, the principal shall in respect of the sale by the principal of the goods or merchandise be deemed to be carrying on business in the Cook Islands through the agent; and the income derived from that business shall be deemed to be derived from the Cook Islands, in the same manner and to the same extent as if the contract had been made in the Cook Islands, and shall be assessable for income tax accordingly, and the agent shall make returns to pay tax accordingly.

**PART IX**  
**TAX DEDUCTIONS BY EMPLOYERS FROM SALARY, WAGES AND OTHER**  
**SOURCE DEDUCTION PAYMENTS**

144. Application of this Part - (1) This Part of this Act shall apply notwithstanding anything in any other Part.

(2) This Part shall apply to salary or wages for any period on or after 1 July 1997, and to other source deduction payments which are paid or would normally be paid on or after that date, notwithstanding that any such other source deduction payment may as to the whole or any part thereof be for a period before that date.

(3) If any question is raised as to whether or not a source deduction payment is as to the whole or any part thereof subject to this Part, it shall, subject to any regulations made for the purposes of this Part, be determined by the Collector.

(4) It shall be a ground for objection under Part IV to an assessment of the amount of any tax deduction that any determination of the Collector made for the purposes of this section is erroneous in fact.

145. Tax deductions to be made by employers - (1) For the purpose of enabling the collection of income tax from employees by instalments, where an employee receives a source deduction payment from an employer, the employer or other person by whom the payment is made shall, at the time of making the payment, make a tax deduction therefrom in accordance with this Part and by reference to the basic tax deductions set out in the Second Schedule:

Provided that if a tax deduction is not made by the employer in any such case section 156 shall apply to the employee.

(2) Where in the case of a regular full-time employment an employee receives salary or wages from any one employer for part only of the pay period, that salary or wages shall be deemed to be for the whole of the pay period.

(3) For the purposes of this section, where an employee receives salary of wages in respect of work performed by the employee as a piece worker or out-worker and the employee is paid on a

production basis, that salary or wages shall be deemed to be for the period from the commencement of the performance of the work until the completion of the work.

(4) Where a source deduction payment for any pay period is 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 the employer's 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 Collector, it is impracticable for an employer to pay overtime pay for a pay period at the same time as the other salary or wages 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 salary or wages (other than overtime pay) for a subsequent pay period in respect of both pay periods,

(a) the amounts of the employee's salary or wages (other than overtime pay) are substantially the same; and

(b) the amounts of the tax deductions applicable to the employee's salary or wages are the same; and

(c) the tax code applicable to the employee is the same:

Provided also that, where it is the practice of an employer to pay overtime pay for an interval of time which is of the same length as a pay period of an employee but does not coincide with any such pay period, the overtime pay of the employee for any such interval may, for the purposes of the first proviso to this subsection, be deemed to be overtime pay for the pay period during which that interval ends, if the amounts of the employee's salary or wages (other than overtime pay) for that interval and for that pay period are substantially the same.

146. Tax deductions from amounts credited to or applied for employees - Where a source deduction payment, though not actually paid, is credited to or applied on account of any employee entitled thereto, the amount so credited or applied shall, for the purposes of this Part, be deemed to be paid when it is so credited or applied, and a tax deduction in respect thereof shall be made accordingly.

147. Benefits and superannuation and other payments deemed to be salary or wages. Where in respect of employment an employee receives or enjoys a benefit referred to in section 46(2)(b), or any other benefit in kind which is included in salary or wages, or receives a payment by way of superannuation, pension, retiring allowance, or other allowances, or annuity which is included in salary or wages as defined in section 2, the value of the benefit (whether in money or otherwise) or, as the case 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 that employee's salary or wages for the pay period, or, as the case may be, part of that employee's salary or wages for the pay period.

148. Payment to be made by employee where tax deduction exceeds source deduction payment -

(1) Where, at the time when a source deduction payment is made or deemed to be made, the

amount of the source deduction payment 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 the source deduction payment made or deemed to be made to the employee.

(2) If an employee makes default in paying to the employer any amount payable under this section, or any of any such amount, the amount in respect of which default has been made shall be deemed for the purposes of section 156 to be a tax deduction that should have been made and was not made, and the provisions of that section shall apply accordingly.

149. Tax Codes - (1) For the purposes of this Part, the tax code of any employee in relation to any source deduction payment (not being a source deduction payment that is an extra emolument and not being a source deduction payment that is a withholding payment) shall be such one of the following codes as applies to the employee in respect of that source deduction payment in accordance with this section; namely -

(a) "No declaration", signifying an employee who has not delivered to the employer a tax code declaration in the form authorised by the Collector and containing such particulars as the Collector requires, nor a tax code certificate;

(b) "P", signifying an employee in relation to whom the source deduction payment is a payment that exceeds a source deduction payment from any other employer;

(c) "S", signifying an employee in relation to whom the source deduction payment is a payment that is less than a source deduction payment from any other employer.

(2) Subject to this Act, where any employee desires that a reduced deduction shall apply to the employee (whether or not the same or any other reduced deduction has previously applied), the employee may deliver to the employee's employer a tax code declaration in a form authorised by the Collector, and containing such particulars as the Collector requires, and specifying the employee's tax code as determined by those particulars, and that tax code shall apply to the employee in accordance with this section.

(3) Where any employee considers that it is or will be undesirable or impracticable for the employee to deliver a tax code declaration to the employee's employer, the employee may deliver the declaration to the Collector, and in any such case the Collector shall issue to the employee a tax code certificate addressed to the employer and specifying the employee's tax code as determined by the particulars contained in the declaration. The employee may deliver that certificate to the employee's employer, and that tax code shall apply to the employee in accordance with this section.

(4) When an employee has delivered a tax code declaration or a tax code certificate to the employee's employer, the tax code shall, subject to this Act, apply to the employee in respect of all source deduction payments made by the employer to the employee after the delivery of the declaration or certificate and before the tax code ceases in accordance with subsection (5) or subsection (6) to apply to the employee:

Provided that, except in the case of salary or wages for the first pay period of a new employment of the employee, the tax code shall not apply in respect of the salary or wages for any pay period commencing before the date of the delivery of the declaration or certificate to the employer.

(5) Where a tax code applies to an employee on the last day of a year, the tax code shall not apply to the employee in respect of any source deduction payment made by the employer to the employee after that day, not being a payment of salary or wages 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 tax code certificate to the employer not later than 10 days after 1 January in the next 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 the employee.

(6) Where an employee, being an employee to whom a "P" or "S" tax code previously applied, ceases to be entitled to the use of that tax code, the tax code shall not apply to the employee in respect of any such deduction payment made by the employer to the employee after the date on which that entitlement ceased, not being a payment of salary or wages for a pay period current on that date:

Provided that where the employee delivers a further tax code declaration or tax code certificate to the employer not later than three days after the date of giving the notice required by subsection (7), 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 the employee.

(7) Where a tax code ceases under subsection (6) to apply to an employee by reason of the employee, being an employee to whom a "P" or "S" tax code previously applied, ceasing to be entitled to the use of that code, the employee shall not later than four days after the date on which the employee became aware that the tax code ceased to apply, give notice in writing of that fact to the employer or (where the tax code declaration was delivered to the Collector) to the Collector, stating the reason why a "P" or "S" tax code, as the case may be, ceased to apply and the date it ceased to apply. No employer or other person making a source deduction payment shall be liable for making a reduced deduction according to a tax code after it has ceased under subsection (6) to apply to the employee but before the employer has received notice (whether under this subsection or otherwise) that the "P" or "S" tax code has ceased to apply to the employee.

(8) A reduced deduction applying to an employee in respect of the employee's employment by any employer shall not apply to the employee in respect of the employee's employment by any other employer, not being a successor of the first-mentioned employer in the same employment.

(9) The Collector may vary any of the requirements of this section in relation to any employee or class of employees in such cases and to such extent as the Collector thinks fit, and in every such case this section shall apply as so varied.

(10) For the purposes of this Act a tax code declaration or tax code 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 1 January in that year.

150. Amount of total tax deduction where several deductions are made for one week - Except as otherwise provided in this Act, where during any week ending with a Saturday an employee has engaged in more than one employment (whether with the same employer or with two or more employers) the amount of the total tax deduction required to be made in respect of all payments of salary or wages made to the employee for that week or any part thereof shall be deemed to be the amount of the tax deduction that would have been required to be made if all those payments had been one payment made by one employer for that week, and where that total tax deduction is not made in full section 156 shall apply accordingly:

Provided that, where the employee left one regular full-time employment before engaging in another regular full-time employment, the employee shall not be deemed for the purposes of this section to have been engaged in both those employments in the one week.

151. Increased deductions to cover deficiency in deductions from advance payments - (1) Where the amount of the tax deduction to be made from any salary or wages is increased, and before the date of the increase an employee has received from an employer a payment of salary or wages to the whole, or a part of which the increase applies, and the proper tax deduction, taking the increase into account as far as it applies, has not been made in full at the time of the payment, the amount of the deficiency shall be added to the tax deduction required to be made from the next payment of salary or wages made to the employee in the same employment, and the amount of the tax deduction so required to be made shall be deemed to be increased accordingly.

(2) Where any salary or wages become subject to tax deductions under this Part, and before the date of their becoming so subject an employee has received from an employer a payment of salary or wages of which the whole or a part is so subject, and the proper tax deduction has not been made in full at the time of the payment, the amount of the deficiency shall be added to the tax deduction required to be made from the next payment of salary or wages made to the employee in the same employment, and the amount of the tax deduction so required to be made shall be deemed to be increased accordingly.

152. Amount of tax deductions for pay period current when tax altered - (1) Notwithstanding anything to the contrary in this Part, this section shall apply where the amount of the tax deduction for the time being in force in relation to any payment of salary or wages is reduced or increased by an amendment made to the basic tax deductions.

(2) Where this section applies, the amount of the tax deduction to be made from a payment of salary or wages to an employee for a pay period current on the date on which an altered tax deduction commences to apply shall be as follows:

(a) where the pay period does not exceed a month, the tax deduction in respect of the whole of the payment for the pay period shall be the amount of the altered tax deduction;

(b) where the pay period exceeds a month, the tax deduction shall be ascertained -

(i) by calculating, on the basis specified in clause 2 (a) of the Second Schedule, parts of the payment for the pay period that are for the respective portions of the pay period before and after the altered tax deduction commences to apply; and

(ii) by calculating in respect of each such part of the payment, the amount of the tax deduction that would be required to be made from a payment of salary or wages

equal to that part for a pay period equal to the portion of the pay period to which that part relates; such calculation to be made according to the tax deduction in force in that portion of the pay period and in the manner provided in clause 2 (b) and (c) of the Second Schedule; -

and the total of the amounts of the tax deductions calculated under subparagraph (ii) of this paragraph shall be the amount of the tax deduction to be made from the payment of salary or wages for the pay period.

(3) Where this section applies and section 150 also applies, the amount of the total tax deduction required to be made in accordance with section 150 in respect of all payments of salary or wages made to an employee for a week current on the date on which an altered tax deduction commences to apply shall be made in accordance with the altered tax deduction:

Provided that where all the payments made to any employee for that week are for services rendered to that date, the amount of that total tax deduction shall be calculated in accordance with the tax deductions in force in the portion of the week in which the services are rendered.

(4) Where this section applies, and on or after the date on which an altered tax deduction commences, if a payment of salary or wages is made to an employee;

(a) For a pay period that ended before that date; or

(b) Where section 150 applies, for services rendered in a week that ended before that date, -

the amount the tax deduction to be made or, as the case may be, the amount of the total tax deduction required to be made, shall be calculated in accordance with the tax deduction in force in that pay period or week.

153. Power of Collector to reduce tax deductions - (1) Notwithstanding anything in the foregoing provisions of this Part, the Collector may, in such circumstances and to such extent as the Collector thinks fit, reduce the amount of the tax deduction required to be made from any source deduction payment that has been or will be made to any employee or class of employees, or may make such adjustment as in the Collector's opinion is equitable, for the purpose in either case of meeting the special circumstances of any case or class of employees upon or subject to such terms and conditions as the Collector requires.

(2) In every such case the provisions of this Part shall apply as if they had been amended in accordance with the decisions or requirements of the Collector for the time being in force under this section.

### **Duties of Employer as to Making Deductions**

154. Records to be kept by employer - (1) Every employer who makes a source deduction payment to an employee shall keep a record in respect of the employee, showing the amount of the source deduction payment before making any tax deduction, and the amount of the tax deduction (if any) made thereon, and shall enter those amount in the record at the time of making the source deduction payment.



(2) Every employer shall take all reasonable precautions for the safe custody of all records that the employer is required to keep under this section and of all pay sheets and receipts for source deduction payments, and shall retain all such records, pay sheets, and receipts for not less than five years after the making of the payments to which they relate:

Provided that this subsection shall not require the retention of any records, pay sheets, or receipts in respect of which the Collector has notified the employer that retention is not required.

155. Payment of tax deductions to Collector - (1) Every employer who makes tax deductions from source deduction payments made to employees shall -

(a) not later than the 20th day of the month next after the month in which the employer has made any such deductions, pay to the Collector the amount of the tax deductions, and deliver to the Collector a monthly remittance, certificate signed by the employer, being a certificate in a form authorised armed by the Collector and showing the total amount of all source deduction payments made by the employer to employees in the month before making any tax deductions, and the total amount of all tax deductions made from those payments;

(b) not later than 20 January in each succeeding year, deliver to each employee a .tax deduction certificate signed by the employer, being a certificate in a form authorised by the Collector and showing the total amount of all source deduction payments made by the employer to the employee in the preceding year (not including payments included in a tax deduction certificate previously delivered to the employee), and the total amount of the tax deductions made from those payments;

(c) within 7 days after the employment of any employee ceases, deliver to the employee a tax deduction certificate signed by the employer, being a certificate in a form authorised by the Collector and showing the total amount of all source deduction payments made by the employer to the employee in the period of employment (not including payments included in a tax deduction certificate previously delivered to the employee) and the total amount of the tax deductions made from those payments;

(d) within 7 days after making any withholding payment to an employee or group of employees which is the final or only payment in respect of the services, contract, arrangement, dealing, or matter to which it relates, deliver to the employee, or, in the case of a group of employees, to one of the group, a tax deduction certificate signed by the employer, being a certificate in a form authorised by the Collector and showing the total amount of that payment or of all those payments (not including payments included in a tax deduction certificate previously delivered to the employee or group), and the total amount of the tax deductions made from that payment or from those payments;

(e) not later than 15 February in each succeeding year (except in cases to which subsection (2) applies), deliver to the Collector a reconciliation statement signed by the employer, being a certificate in a form authorised by the Collector and showing the total amount of all tax deductions, paid to the Collector by the employer in respect of source deduction payments made in the preceding year, and the total amount of all tax deductions shown in tax deduction certificates delivered to employees in respect of those source deduction payments, together with an explanation if the two totals do not agree, and accompanied by signed copies of all those tax deduction certificates and by all tax code declarations and tax

code certificates delivered to the Collector in the preceding year; and by all notices cancelling reduced deductions given to the taxpayer in that year under section 149(6);

(f) not later than the 15th day of the second month after the month in any year in which the employer disposes of or otherwise ceases to carry on any business in respect of which the employer has made any such tax deductions, comply with paragraph (e) in respect of those deductions as if the period from the beginning of that year to the date of the last of those tax deductions were a preceding year.

(2) Paragraph (e) of subsection (1) shall not apply to any employer in respect of any tax deduction made otherwise than in the course of a business carried on by the employer from a source deduction payment for which there is no pay period or from a withholding payment. In every such case the employee shall not later than the 20th day of the month next after the month in which the payment (if only one) (illegible) payment (in the case of two or more payments relating to the same services, contract, arrangement (illegible) or matter) is made, deliver to the Collector a signed copy of the tax deduction certificate signed by the employer to the employee, and of any tax code declaration or tax code certificate delivered to the employer by the employee, and shall also indicate on that copy of the tax deduction certificate the date delivered under this subsection.

(3) The Collector may vary any of the requirements of this section in relation to any employer or class of employers in such cases and to such extent as the Collector thinks fit, and in every such case this section shall apply as so varied.

(4) The executor or administrator of a deceased employer shall fulfil such of the obligations of the employer under this section as have not been fulfilled by the employer before the employer's death.

### **Employee's Duties where Deductions are not made**

156. Employee to pay deductions to Collector - Where for any reason a tax deduction is not, made or is not in full at the time of the making of any source deduction payment or payments, the employee shall;

(a) not later than the 20th day of the month next after the month in which payment of the source deduction payment or payments was made, furnish to the Collector a return in the prescribed form of the source deduction payment or payments; and

(b) unless the employee is exempted from liability to pay the same or is not liable to pay the same, pay to the Collector an amount equal to the total of the tax deductions that should have been made and were not made, and that amount shall be due and payable to the Collector on the 20th day of the month, next after the month in which the source deduction payment or payments was or were made.

### **Pay-period Taxpayers**

157. Interpretation - (1) For the purposes of this Act an employee shall, subject to subsections (2), be deemed to be a pay-period taxpayer in respect of any year if in that year;

(a) the employee did not derive any income except -

(i) income from employment not exceeding in the aggregate \$10,000; and

(ii) interest not exceeding in the aggregate \$1000; and

(iii) assessable income from any other source (before any deductions allowed under this Act) not exceeding \$500; and

(b) the employee is not an absentee as defined in section 38.

(2) Notwithstanding anything in subsection (1), any employee shall be deemed not to a pay-period in respect of any year, if the Collector so decides upon the grounds that subsection (1) would not have applied to the employee for that year had not the income of the employee from source deduction payments been diminished by reason of the occurrence in the year of the employee's retirement of the employee from employment or of some other event, including the employee's death, disability, or absence from the Cook Islands, causing the termination or suspension of the employee's employment, and that -

(a) the employee is not a person to whom subsection (1) would normally apply; or

(b) it appeared at any time during the year that subsection (1) would not apply to the employee for the year.

158. Tax of pay-period taxpayers to be determined by amount of tax deductions or by assessment -

(1) Notwithstanding anything in this Act, the amount of income tax for which a pay-period taxpayer is liable in respect of the income derived by the taxpayer in any year shall be determined exclusively and finally by the total amount of the tax deductions required under this Part to be made from that income, except where the taxpayer has not later than the end of the next succeeding year or within such further period as the Collector may allow in any case or class of cases, furnished to the Collector a return of that income, in which case the amount of that income tax shall be the smaller of the following amounts:-

(a) the total amount of those tax deductions;

(b) the amount of the income tax that would be payable in respect of that income under an assessment made in accordance with Part V.

(2) Except where a return of income is furnished for the purpose of having the amount of income tax in respect of the income for the year assessed in accordance with Part V a pay-period taxpayer to whom this section applies shall not furnish a return of income for the year unless the Collector requires the taxpayer to do so.

159. Adjustment of excessive tax deductions - In any case where -

(a) the amount of income tax for which a pay-period taxpayer is liable in respect of the income derived by the taxpayer in any year is determined exclusively and finally, pursuant to section 158(1), by the total amount of the tax deductions required under this Part to be made from that income; and

(b) the Collector is satisfied that the total amount of the tax deductions made from payments of that income to the taxpayer is in excess of the total amount of the tax deductions required under this Part to be made from that income, the Collector shall pay to

the taxpayer the amount of that excess, or, at the option of the Collector, credit that amount in payment of any tax due, by the taxpayer and unpaid:

Provided that no payment shall be made or credit given under this section after the expiration of the period of 6 years immediately after the end of the year in which that income was derived, except where written application for the payment or credit is made by or on behalf of the taxpayer before the expiration of that period.

### **Assessment and Payment of Income Tax**

160. Assessment and payment of income tax - (1) Subject to section 158, 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 assessed under Part V.

(2) All income tax payable under any assessment made in accordance with subsection (1) and not previously due and payable shall be due and payable on 1 October in the year next succeeding the income year, or on such earlier date as specified in that behalf in the notice of assessment given to the employee, not being less than 30 days after the date of the notice.

### Crediting Tax Deductions

161. Tax deductions to be credited against tax assessed - (1) Every employee who is to furnish or who furnishes to the Collector a return of any assessable income derived by that employee in any income year shall, except where the Collector otherwise directs, forward to the Collector with the return all tax deduction certificates delivered to the employee in respect of tax deductions made in the income year from source deduction payments made to the employee.

(2) Where the Collector receives from an employee any tax deduction certificates in respect of tax deductions made in the income year from source deduction payments made to the employee, or receives the amount of any tax deduction so made and not included in any tax deduction certificate, and the Collector has made an assessment of income tax in respect of the income derived by the employee in the income year or is satisfied that no income tax is payable in respect of that income, the Collector shall credit the total of the amounts of the tax deductions (but not including any additional tax or penal tax) shown in the certificate or received as aforesaid, in payment successively of:

- (a) the income tax (if any) payable by the employee in respect of the employee's taxable income for the income year;
- (b) the income tax (if any) due by the employee and unpaid in respect of any year before that income year;
- (c) the income tax (including provisional tax) (if any) due by the employee and unpaid in respect of any year after that income year and, if more than one, in the order of those years;

and shall refund to the employee an amount equal to the amount of the tax deductions not so credited.

(3) If the amount credited by the Collector under paragraph (b) of subsection (2) is less than the total of the income tax referred to in that paragraph, the Collector shall apply the amount so credited, so far as the in payment of such income tax as the Collector determines.

(4) If the Collector has reason to believe that any tax deduction certificate received by the Collector for the purposes of this section is incorrect in any particular, the Collector may retain the certificate for such period as the Collector thinks fit, and shall not deal with the certificate as required by the foregoing provisions of this section until the Collector is satisfied that the certificate is correct.

(5) Where the Collector 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 source deduction payment to which the certificate relates, the employer and the employee shall be jointly and severally liable to pay to the Collector the amount of the excess, and that amount shall be deemed to have become due and payable on 15 February in the year after the year to the whole or part of which the tax deduction action certificate relates.

162. Lost tax deduction certificates - Where the Collector is satisfied that a tax deduction certificate (illegible) lost or destroyed, and is satisfied as to the amount of the deductions shown in that certificate, the Collector shall apply section 161 in the same manner as if the certificate had been received by the Collector.

163. Tax deductions for which no certificate issued - Where the Collector is satisfied that any employer has made any tax deduction from a source deduction payment 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 Collector shall apply section 161 in the same manner as if a tax deduction certificate showing the tax deduction had been delivered to the employee and received by the Collector.

### **Recovery of Tax Deductions**

164. Recovery of tax deductions from employers - (1) The amount of every tax deduction made under this Part 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) Where a tax deduction has been made under this Part and the employer has failed to deal with the amount of the tax deduction or any part thereof in the manner required by subsection (1) or the other provisions of this Part, the amount of the tax deduction for the time being unpaid to the Collector shall, in the (illegible) of the assets of the employer upon the bankruptcy or liquidation of the employer or upon an assignment for the benefit of the employer's creditors rank, without limitation in amount and notwithstanding anything in any other Act, in order of priority immediately after preferential claims for wages or other sums payable to or on account of any employee, and in priority to all other claims.

165. Employer failing to make tax deductions - (1) Where an employer fails to make any tax deduction in accordance with the employer's obligations under this Part, the amount in respect of which default has been made shall constitute a debt payable by the employer to the Collector, and

shall be deemed to have become due and payable to the Collector on the 20th day of the month next after the month in which payment of the source deduction payment was made.

(2) The right of the Collector to recover from the employer the amount in respect of which default has been made shall be in addition to any right of the Collector to recover that amount from the employee under this Part; and nothing in this Part shall be construed as preventing the Collector from taking such steps as the Collector 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 or partly from the employer and partly from the employee.

(3) Where any amount, including a penalty, recoverable in accordance with this Part from the employee is in fact paid by the employer, the amount so paid may be recovered by the, employer from the employee.

166. Unpaid tax deductions, etc to constitute a charge on employer's property - (1) Where an employer fails wholly or in part to make any tax deduction in accordance with the employer's obligations under this Part, or is liable to pay any sum to the Collector under this Part, an amount equal to the total for the time being unpaid to the Collector in respect of that tax deduction or sum (including any additional tax or penal tax), and in respect of any judgment obtained therefor (including any costs, fees, or expenses included in the judgment or otherwise payable by the employer to the Collector in respect thereof) shall be a charge on all the real and personal property of the employer.

(2) Every charge created by this section shall be subject to all mortgages, charges, or encumbrances existing at the time of the creation of the charge, but, subject to the provisions, of this section, shall have priority over all other mortgages, charges, or encumbrances. Notwithstanding anything in any other Act, if any property subject to the charge created by this section is also subject to a charge created by that other Act, the charges shall rank equally with each other unless by virtue of that other Act the charge created thereby would be deferred to the charge created by this section.

(3) The Collector may register any charge on any property created by this section under any registration Act to which the property is subject by depositing with the appropriate Registrar a certificate signed by the Collector stating the description of the property charged and the amount payable; and in every such case the Registrar shall, without payment of any fee, register the certificate as if it were an instrument registrable under the registration Act.

(4) Upon the registration of any such certificate under any registration Act it shall be deemed to be actual notice to all persons of the existence and amount of the charge, and the charge shall have operation and priority accordingly in relation to the property that is subject to the charge and to the registration Act:

Provided that in so far as any mortgagee that is registered in respect of that property before the registration of the charge secures any money that is advanced after written notice of the charge or of the registration of the charge has been given to the mortgagee, or to any solicitor for the time being acting for the mortgagee in respect of the mortgage, the charge shall have priority over the mortgage.

(5) When any registered charge has been satisfied, the Collector shall deposit with the appropriate Registrar a release of the charge, and the Registrar shall, without payment of any fee, register the release as if it were an instrument registrable under the registration Act.

(6) Any charge created by this section which is registered against any property shall operate to secure any amount secured by any prior unregistered charge and unpaid at the time of the registration of the charge, and also to secure any amount secured by any charge coming into existence after the registration of the charge, to the intent that the registered charge shall operate to secure the total of all amounts for the time being owing by the employer under all charges created by this section.

(7) If any amount constitutes by virtue of this section a charge on any property the High Court may make such order as it thinks fit, either for the sale of that property or any part thereof, or for the appointment of a receiver of the rents, profits, or income thereof, and for the payment of the amount of the charge and the costs of the Collector out of the proceeds of the sale or out of the rents, profits, or income.

(8) Where any property has been sold under any such order, the High Court may, on the application of the purchaser or the Collector, make an order vesting the property in the purchaser.

(9) Every such vesting order shall have the same effect as if all persons entitled to the property had been free from all disability and had duly executed all proper conveyances, transfers, and assignments of the property for such estate or interest as is specified in the order.

(10) This section shall apply subject to section 164.

### **Offences and Penalties**

167. Offences - (1) Without limiting the application of section 206, it is hereby declared that every person commits an offence against this Act who -

(a) being an employer or other person by whom a source deduction payment is made to an employee, fails wholly or in part to make a tax deduction therefrom in accordance with that person's obligations under this Part; or

(b) knowingly applies or permits to be applied the amount of any tax deduction or any part thereof for any purpose other than the payment of the tax deduction to the Collector; or

(c) makes a false or misleading tax code declaration, or gives any false information, or misleads or attempts to mislead the Collector or any other officer, or any employer or other person, in relation to any matter or thing affecting a tax deduction or a reduced deduction; or

(d) delivers or maintains or attempts to deliver or maintain in contravention of this Part, a tax code declaration or a tax code certificate in respect of more than one employment, or otherwise obtains or attempts to obtain, in contravention of this Part, the benefit of a reduced deduction in respect of more than one employment; or

(e) alters any tax code certificate issued by the Collector, or falsely pretends to be the employee named in any such certificate, or possesses without lawful justification or excuse,

a colourable imitation of any such certificate, or, in contravention of this Act, causes or attempts to cause any employer or other person to refrain from making a tax deduction, or to make a reduced deduction, by the production of any document other than a tax code certificate issued by the Collector and for the time being in force; or

(f) alters any tax deduction certificate, or falsely pretends to be the employee named in any such certificate, or, in contravention of this Act, obtains or attempts to obtain for the person's own advantage or benefit credit with respect to, or a payment of, the whole or any part of the amount of a tax deduction made from a source deduction payment received by another person.

(2) Every person who commits an offence against paragraph (b) of subsection (1) shall be liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000 or to both.

(3) For the purposes of paragraph (b) of subsection (1) a tax deduction shall be deemed to have been (illegible) and when payment is made of the net amount of any source deduction payment, and the amount deduction shall be deemed to have been applied for a purpose other than the payment thereof (illegible) of the tax deduction is not duly paid to the Collector:

Provided that no person shall be convicted of an offence under paragraph (b) of subsection (1) if that person satisfies the Court that the amount of the tax deduction has been accounted for, and that failure to account for it within the prescribed time was due to illness, accident, or other cause beyond the control of that person.

168. Penal tax for default in making or paying tax deduction - (1) Where:

(a) any employer or other person by whom any source deduction payment is made fails wholly or in part to make a tax deduction therefrom in accordance with that person's obligations under this Part; or

(b) any person knowingly applies or permits to be applied the amount of any tax deduction or any part thereof for any purpose other than the payment of the tax deduction to the Collector;

that employer or other person shall be chargeable by way of penalty, in addition to any other penalty to which that person may be liable, with an additional amount (hereinafter referred to as penal tax) not exceeding an amount equal to treble the amount in respect of which default has been made (hereinafter referred to as the deficient deduction).

(2) For the purposes of paragraph (b) of subsection (1) a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any source deduction payment, and the amount of the tax deduction shall be deemed to have been applied for a purpose other than the payment thereof if the amount of the tax deduction is not duly paid to the Collector:

Provided that no person shall be chargeable with penal tax under paragraph (b) of subsection (1) if that person satisfies the Collector that the amount of the tax deduction has been accounted for, and that failure to account for it within the prescribed time was due to illness, accident, or other cause beyond the control of that person.



(3) Penal tax imposed by this section shall for all purposes be deemed to be of the same nature as the deficient deduction, and shall be recoverable accordingly.

(4) Subject to the provisions of this Part, the provisions of the other Parts, as far as they are applicable and with the necessary modifications, shall apply with respect to all penal tax imposed under this section as if -

(a) it were penal tax under section 209; and

(b) the person chargeable with the penal tax imposed under this section were the taxpayer; and

(c) the deficient deduction were deficient tax payable for the same year of assessment as that in which the deficient deduction became due and payable to the Collector.

169. Additional tax for default in making tax deduction or in paying any amount due to Collector -

(1) Where -

(a) any employer or other person by whom any source deduction payment is made fails wholly or in part to make a tax deduction therefrom in accordance with obligations under this Part; or

(b) any person who has made a tax deduction fails wholly or in part within the prescribed time and in the prescribed manner to pay the amount of the tax deduction to the Collector; or

(c) any person who is liable to pay any amount to the Collector under this Part fails to pay the amount on the due date for payment thereof,

that employer or other person shall, unless the Collector is satisfied that the person has not been guilty of wilful neglect or default, be liable without conviction, in addition to any other penalty to which the person may be liable, to a penalty equal to 5 per cent of the amount in respect of which default has been made and, for each complete month during which the default continues, a further 1% of that amount.

(2) For the purposes of paragraph (b) of subsection (1) a tax deduction shall be deemed to have been made if and when payment is made of the net amount of any source deduction payment.

(3) A penalty imposed under this section shall for all purposes be deemed to be of the same nature as the amount or part thereof in respect of which it is imposed, and shall be recoverable accordingly.

(4) Subject to the provisions of this Part, the provisions of the other Parts of this Act shall apply with respect to the amount of every penalty imposed under this section as if it were additional tax under section 190 and as if the person liable to the penalty were the taxpayer.

### **Miscellaneous Provisions**

170. Agreements not to make tax deductions to be void - Where a tax deduction is required to be made under the provisions of this Part, any agreement not to make the tax deduction in accordance with those provisions shall be void.

171. Amount of tax deductions deemed to be received by employee - Where any amount has been deducted from a source deduction payment by way of tax deduction under this Part, the amount so deducted:-

(a) as between the employer and the employee, shall be deemed to have been received by the employee at the time of the source deduction payment;

(b) for the purposes of the other Parts, shall be deemed to have been derived by the employee at the same time and in the same way as the residue of the source deduction payment.

172. Application of other Parts to amounts payable under this Part - Subject to the provisions of this Part, the provisions of the other Parts of this Act shall apply with respect to every amount that any employer, employee, or other person is liable to account for or pay to the Collector under this Part as if the amount were income tax.

## **PART X**

### **PROVISIONAL TAX ON INCOME OTHER THAN SOURCE DEDUCTION PAYMENTS**

173. Application of this Part - (1) Notwithstanding anything in any other Part, provisional tax shall be payable by all provisional taxpayers in accordance with this Part.

(2) For the purposes of this Act every person who in any income year derives assessable income otherwise than from source deduction payments shall be deemed to be a provisional taxpayer in respect of that year;

Provided that a provisional taxpayer shall be relieved from an obligation to pay provisional tax in respect of the income of any income year in any case where the taxpayer did not derive in the income year preceding that income year any assessable income other than -

(a) source deduction payments; or

(b) withholding income; or

(c) rents not exceeding in the aggregate \$100; or

(d) interest not exceeding \$1,500.

(3) Subsections (1) and (2) shall not apply in the case where the provisional tax to be paid by a taxpayer does not exceed \$200.

174. Certain income derived by non-residents not to be included in provisional income - Every reference in this Part, other than in this section, to assessable income, or to income, or to income other than source deduction payments, shall be read as not including income to which section 105 applies.

175 Amount of provisional tax - (1) Subject to this Part, the amount of provisional tax payable in respect of any income year by a provisional taxpayer shall be the amount of income tax assessable in respect of the income derived by the taxpayer in the base year in relation to that income year, after deducting from that income the amount (if any) of any tax deductions or withholding tax made from any source deduction ants or withholding income included in the income derived in that base year.

(2) In any case where a provisional taxpayer in respect of any income year commenced during the income year in relation to that income year (or the accounting year of the taxpayer corresponding with the income year, where the taxpayer furnishes an annual return of income under section 9 for an accounting ending with an annual balance date other than 31 December) to derive income from any source, the amount of provisional tax payable in respect of the income derived in the income year shall be such amount as the Collector estimates would have been the income tax assessable in respect of the income derived in an income year of the taxpayer had commenced at the beginning of the base year to derive income from that source.

(3) In this section the expression "base year", in relation to any income year, means the income year immediately preceding that first mentioned income year.

176. Adjustments for variations in exemptions or rebates - Where in relation to any provisional taxpayer and to any income year it appears to the Collector that -

(a) the amount of the taxpayer's entitlement to any special exemption or rebate for the income year will differ for any reason from the amount of that taxpayer's entitlement for the preceding year; or

(b) the taxpayer is entitled to have a loss carried forward;

the Collector may increase or reduce the amount of any provisional tax otherwise payable by the taxpayer or may make such adjustment as is in the Collector's opinion equitable, for the purpose in either case of meeting the special circumstances of any case or class of cases, upon and subject to such terms and conditions as the Collector requires.

177. Allowance for provisional tax paid by agent - Where an agent is liable to pay any amount of provisional tax in respect of the income of a principal, the provisional tax payable by the principal shall be reduced by that amount.

178. Taxpayer to estimate amount of provisional tax subject to adjustments Collector - (1) The amount of provisional tax payable by a taxpayer in respect of the income or an income year shall, subject to adjustment by the Collector, be ascertained in the first instance by the taxpayer to such extent in such manner as may be prescribed in the annual return that the taxpayer is required to furnish in it of the income of the preceding year, or as may be prescribed by the Collector in such other manner as the Collector thinks fit.

(2) If any provisional taxpayer makes default in furnishing the annual return that the taxpayer is required to furnish in an income year of the income of the preceding year, or if the Collector is not satisfied with the return made by any provisional taxpayer, or if the Collector has reason to suppose that any person, although that person has not made a return, is a provisional taxpayer, the Collector, may estimate the amount that ought to be the amount of the provisional tax for the income year and, save in so far as the taxpayer establishes by reason of the amendment of any

assessment of income tax that the provisional tax as ascertained is excessive or that the taxpayer is not chargeable with the provisional tax, the provisional tax so ascertained shall be the provisional tax payable by the taxpayer in respect of the income of the income year, and the taxpayer shall be liable, or deemed to have been liable, to pay the provisional tax as ascertained in the manner and at the time or times (whether before or after the provisional tax is so ascertained) specified in a notice given to the taxpayer by the Collector under subsection (3) having regard to the manner and time or times of payment and the amounts of the instalments (if any) that would be applicable if the taxpayer had furnished an annual return within the time fixed therefor under section 15 or, as the case may be, if the Collector had been satisfied with the return furnished by the taxpayer.

(3) After the Collector has ascertained the amount of the provisional tax the Collector may, where the Collector considers it necessary or advisable to do so, give notice to the taxpayer of the amount of the provisional tax and of the amount of any instalment thereafter to be paid, but the omission to give any such notice shall not relieve the taxpayer from liability to pay on the due date thereof any instalment of the provisional tax required to be ascertained by the taxpayer under subsection (1).

(4) The ascertainment of the amount of any provisional tax by the Collector shall not be open to objection by the taxpayer under Part IV.

179. Payment of provisional tax by instalments - (1) Subject to this section, provisional tax payable by any taxpayer in respect of the income derived by the taxpayer in any income year shall be payable in two equal instalments as follows:

(a) the first instalment shall be due and payable in that income year on the date by which that taxpayer is required under section 15(2) to furnish a return of the income derived by the taxpayer in the preceding year;

(b) the second instalment shall be due and payable on the date six months after the date on which that first instalment of provisional tax is due and payable.

(2) In any case where the Collector gives a notice to any taxpayer under section 178(3), the amount of any instalment of provisional tax that is payable after the Collector has given such notice shall be the amount specified in that behalf in the notice.

180. Interim returns - (1) The provisions of subsection (2) of this section shall apply in every case where a provisional taxpayer is liable in an income year to furnish a return of the income derived by that taxpayer in the preceding year (in this section referred to as "the required return") and to pay instalments of provisional tax in respect of the income of the income year, and pursuant to an extension of time granted under section 15(3) for furnishing the required return, the taxpayer is not required to furnish, and does not furnish, the required return by the due date for payment of the first instalment of the provisional tax.

(2) The taxpayer, not later than the due date for payment of the first instalment of the provisional tax in respect of income derived in the income year, or within such further period as the Collector may allow in any case or class of cases, shall furnish a return marked "Interim" in the prescribed form showing the estimated assessable income of the taxpayer for the preceding year and the taxpayer's calculation amount of the provisional tax which the taxpayer would be liable to pay in respect of the taxpayer's income for that income year if that estimated amount of assessable income had been the actual assessable income of the taxpayer for that preceding year and until the

required return is furnished that amount of provisional tax so calculated shall be deemed to be the provisional tax payable by the taxpayer for that income year.

181. Estimated assessable income - (1) Where any taxpayer believes that the income derived by that taxpayer otherwise than from source deduction payments in the income year will be less than the income so derived by the taxpayer in the preceding year, the taxpayer may, before the expiration of one month after the due date for payment of any instalment of provisional tax, make an estimate of the amount of the taxpayer's assessable income for the income year and furnish to the Collector a statement showing the amount so estimated and the amount of the provisional tax payable in accordance with subsection (2):

Provided that the taxpayer may, at any time before the expiration of one month after the due date for payment of the final instalment of provisional tax, make one or more revised estimates of those amounts and furnish to the Collector an amended statement or, as the case may be, amended statements accordingly.

(2) Subject to subsection (3), where a taxpayer duly furnishes to the Collector, in accordance with subsection (1), a statement or, as the case may be, an amended or a further amended statement, the amount of assessable income estimated or, as the case may be, last re-estimated by the taxpayer under that subsection, shall for the purposes of calculating the amount of provisional tax payable in respect of the income derived in the income year, be deemed to be the assessable income derived by that taxpayer in the preceding year and the amount of provisional tax payable for that income year shall be ascertained accordingly.

(3) Subject to the right of the taxpayer to re-estimate in accordance with the foregoing provisions where the Collector has reason to believe that the amount of any kind of income that will be or has been derived by the taxpayer in the income year is greater than the amount of that kind of income estimated by the taxpayer, the Collector (whose decision shall be final and conclusive) -

(a) may estimate the respective amounts that, in the opinion of the Collector, should have been the amounts estimated by the taxpayer under subsection (1) and shown in the statement furnished under that subsection; and

(b) may calculate the amount of the provisional tax that would have been payable if the amounts so estimated by the Collector had been shown in the statement,

and the amounts calculated shall be the amount of provisional tax payable by the taxpayer in respect of the income of that income year.

(4) The respective amounts of income as estimated by the Collector under subsection (3) shall not be greater than the corresponding amounts derived by the taxpayer in the year preceding the income year.

182. Additional tax where income underestimated - (1) Where, in respect of the income of any income year and a taxpayer has furnished -

(a) a statement in accordance with the provisions of section 181(1), and the Collector has not, in consequence thereof, made an estimate under section 181(3); or

(b) an amended or a further amended statement in accordance with the provisions of section 181(1), and the Collector has not, in consequence of the amended statement last furnished, made an estimate under section 181(3),

the taxpayer shall, subject to subsection (3) of this section, be liable to pay to the Collector, by way of additional tax, an amount calculated in accordance with subsection (2) of this section, if the amount of assessable income estimated or, as the case may be, last re-estimated by the taxpayer under section 181(1) is less than the assessable income derived by the taxpayer in the preceding year and is also less than 80 percent of the assessable income actually derived by the taxpayer in the income year.

(2) The amount of additional tax payable under this section shall be an amount equal to 10 percent of the amount by which the amount of income tax assessable in respect of the assessable income derived by the taxpayer in the income year exceeds; the amount of provisional tax calculated, under section 181(2) on the basis of -

(a) the amounts set forth in the statement furnished by the taxpayer under section 181(1); or

(b) where the taxpayer has furnished an amended or a further amended statement under that subsection, the amounts set forth in the amended statement last furnished under that subsection.

(3) Where the Collector is satisfied that the taxpayer has become liable to pay additional tax under this section by reason of the taxpayer's income for any income year being affected by, circumstances of which the taxpayer was not aware when furnishing to the Collector a statement under section 181(1), or (where the taxpayer furnished one or more amended statements) the last amended statement of the Collector may remit the additional tax or any part thereof.

(4) Additional tax payable under this section shall for all purposes be deemed to be of the same nature as the income tax that is assessed to the taxpayer in respect of the income of the income year, and shall be recoverable accordingly.

(5) The Collector may, in respect of any person who is chargeable with additional tax under this section, make an assessment of that additional tax, and that person shall be liable to pay the additional tax so assessed, except so far as that person establishes on objection that the assessment is excessive or that the person is not chargeable with the additional tax so assessed.

(6) An assessment made under this section shall be subject to objection in the same manner as an assessment of income tax levied under section 39, and the provisions of Part IV shall apply, so far as may be, to an objection to an assessment made under this section as if the terms "income tax" and "tax" used in that Part included additional tax under this section.

(7) Subject to subsections (5) and (6), the other provisions of this Act shall apply with respect to all additional tax payable under this section as if it were additional tax under section 190.

183. Alteration of provisional tax by Collector - (1) Where an alteration of the amount of provisional tax payable by any taxpayer is necessary, in the opinion of the Collector, whether by reason of the amendment of any assessment of income tax or by the operation of section 181(3) or otherwise, the Collector may make the necessary alteration and shall give to the taxpayer notice in writing of the altered amount.

(2) If the amount of the provisional tax is increased the additional amount payable in respect of any instalment of the provisional tax that became payable before the date of the notice shall become due and payable on a date to be specified in the notice, not being less than 30 days after the date of the notice.

(3) If the amount of the provisional tax is reduced the Collector shall credit the amount overpaid in respect of any instalment of the provisional tax in payment successively of -

(a) any other instalment of the provisional tax due and unpaid at the date of the notice;

(b) the income tax (if any) due by the taxpayer and unpaid in respect of the income of any year before the income year and for which the provisional tax is payable,

and shall refund to the taxpayer an amount equal to the amount of the overpayment not so credited.

(4) If the amount credited by the Collector under paragraph (b) of subsection (3) is less than the income tax referred to in that paragraph, the Collector shall apply the amount so credited in payment, so far as the amount extends, of such income tax as the Collector determines.

184. Voluntary payments of additional provisional tax - (1) Any taxpayer may at the taxpayer's option, at such time or times as the taxpayer thinks fit, make voluntary payments to the Collector of such amounts as the taxpayer thinks fit by way of additional provisional tax, being either -

(a) tax in excess of the provisional tax payable by the taxpayer in respect of the income of the income year; or

(b) tax in respect of an income year where no provisional tax is payable by the taxpayer in respect of the income of that income year.

(2) The penal provisions of this Act shall not apply to any additional provisional tax paid under this section.

### **Terminal Tax**

185. Assessment and payment of terminal tax - (1) The amount of income tax for which a provisional taxpayer is liable in respect of the income derived by that taxpayer in any income year shall be assessed under Part V.

(2) All income tax payable under any assessment made in accordance with subsection, (1), and not previously due and payable shall be due and payable on 1 October in the year next succeeding the income year or on such earlier date as is specified in the notice of assessment given to the taxpayer, not being less than 30 days after the date of the notice.

186. Provisional tax to be credited against tax assessed - (1) Where any provisional taxpayer has paid provisional tax in respect of any income year, and the Collector has made an assessment of income tax in respect of the income derived by the taxpayer in the income year or is satisfied that no income tax is payable in respect of that income, the Collector shall credit the amount of the provisional tax paid by the taxpayer (not including any additional tax or penal tax) in payment successively of -

(a) the income tax (if any) payable by the taxpayer in respect of the income for the income year;

(b) the income tax (if any) due by the taxpayer and unpaid in respect of the income of any year before that income year;

(c) the income tax (including provisional tax) (if any) due by the taxpayer and unpaid in respect of the income of any year after that income year and, if more than one, in the order of those years,

and shall refund to the taxpayer an amount equal to the amount of the provisional tax not so credited.

(2) If the amount credited by the Collector under paragraph (b) of subsection (1) is less than the income tax referred to in that paragraph, the Collector shall apply the amount so credited in payment, so far as the amount extends, of such income tax as the Collector determines.

### **Application of Other Parts**

187. Application of other Parts of this Act to provisional tax - Subject to the provisions of this Part, the same provisions of this Act shall apply with respect to every amount that any person is liable to pay to the Collector under this Part, whether as provisional tax or otherwise, as if the amount were income tax.

## **PART XI** **PAYMENT AND RECOVERY OF TAX**

188. Due date for payment of tax - (1) Income tax shall, except where otherwise expressly made payable by such provision of this Act, be due and payable on 1 October in the year for which the tax is payable or such later date as may be fixed by the Collector in the notice of assessment.

(2) In any case where a notice of assessment in respect of any year has not been issued, and the delay is, in the opinion of the Collector, due to any neglect, default, or omission of the taxpayer, then the Collector shall fix a date when issuing the notice of assessment, which may be before the date of issue of the assessment, which date shall be considered to be the date on which the tax payable under that assessment became due and payable.

189. Payment of tax - Payment of taxes and other money payable under this Act shall be effected at the Revenue Management Division of the Ministry of Finance and Economic Management or at any nominated agency.

190. If default made in payment of tax, additional tax to be charged - (1) Subject to this section, if any tax remains unpaid at the expiration of 1 month after the due date thereof, (whether assessed or not) or after the date of demand, as the case may be, 5 percent of the amount of the tax unpaid, and a further 1 percent of the amount for each complete month during which the default continues, shall be added thereto by way of additional tax, and shall be payable accordingly.

(2) In any case in which an assessment is increased after the due date for payment of the tax and the Collector is satisfied that the taxpayer has not been guilty of wilful neglect or



default in making due and complete returns for the purposes of that tax, the Collector shall, by notice to the taxpayer of the assessment or amended assessment, or in any subsequent notice, fix a new date for the payment of the tax, or of the increase, and the date so fixed shall be deemed to be the due date for payment of that tax or increase for the purposes of subsection (1).

(3) Where the taxpayer is resident outside the Cook Islands and has no agent in the Cook Islands the Collector shall, before charging the additional tax as aforesaid, grant such further time, not exceeding 6 months after the due date of the tax, as the Collector may deem necessary.

191. Mode of recovery of unpaid tax - All unpaid tax shall be recoverable by the Collector on behalf of the Crown by suit in the Collector's official name as a debt, whatsoever the amount involved, in the High Court:

Provided that where the Collector is satisfied that the unpaid tax is in fact irrecoverable, the Collector may write off the unpaid tax.

192. Deduction of income tax from payment due to defaulters - (1) Where any taxpayer has made default in the payment of any income tax payable by the taxpayer for any year of assessment, the Collector may from time to time by notice in writing require any person to deduct from any amount payable or to become payable by that person to the taxpayer such sum as may be specified in the notice, and to pay every sum so deducted to the Collector to the credit of the taxpayer within such time as may be specified in the notice.

(2) This section shall bind the Crown.

(3) Where any notice under this section relates to any wages or salary, the sums required to be deducted therefrom shall be computed so as not to exceed a deduction each week greater than 10 percent of the tax due and payable by the taxpayer at the date of the notice, or an amount equal to 20 percent of the wages or salary, whichever is the lesser.

(4) Any notice under this section may be at any time revoked by the Collector by a subsequent notice to the person to whom the original notice was given (hereinafter in this section referred to as "the debtor"), and shall be so revoked at the request of the taxpayer at any time when the Collector is satisfied that all income tax then due and payable by the taxpayer has been paid, and that the Collector holds to the credit of the taxpayer an amount not less than the amount of the income tax (if any) to become due and payable by the taxpayer during the current year of assessment.

(5) A copy of every notice given under this section in respect of any taxpayer and of the revocation of any such notice shall be given to the taxpayer by the Collector.

(6) Whenever pursuant to a notice under this section any deduction is made from any amount payable to any taxpayer, the taxpayer shall be entitled to receive from the debtor a statement in writing of the fact of the deduction and of the purpose for which it was made.

(7) The sum deducted from any amount pursuant to a notice under this section shall be deemed to be held in trust for the Crown, and, without prejudice to any other remedies against the debtor or any other person, shall be recoverable in the same manner in all respects as if it were income tax payable by the debtor.

(8) Every person commits an offence and shall be liable on conviction to a fine not exceeding \$10,000 who -

(a) fails to make any deduction required by a notice under this section to be made from any amount payable by him to a taxpayer:

(b) fails after making any such deduction to pay the sum deducted to the Collector within the time specified in the notice.

193. Procedure in High Court where defendant absent from Cook Islands or not traced - In any action High Court for the recovery of tax, if the defendant is absent from the Cook Islands or cannot after reasonable inquiry be found, service of the summons may with the leave of a Judge be effected by posting a duplicate or sealed copy thereof in a letter addressed to the defendant at the defendant's present or last known place of abode or business, whether in the Cook Islands or elsewhere.

194. Particulars of claim or demand - In an action in any Court for the recovery of tax it shall be sufficient if the particulars of claim or demand state the amount sought to be recovered and the date on which the same became payable, and such further particulars (if any) as the Collector thinks necessary in order to fully inform the defendant of the nature of the claim.

195. Collector may appear in legal proceedings by officer of the Public Service - In any action in the High Court for the recovery of tax, the Collector may be represented by some officer in the Cook Islands Public Service, and the certificate in writing of the Collector stating that any person so appearing is such an officer and that person appears for the Collector shall be sufficient evidence of the facts so stated and of that person's authority in that behalf.

196. Costs against Collector - In all proceedings in any Court for the recovery of tax, costs may be awarded to or against the Collector in the same manner as in other cases, but all costs so awarded against the Collector shall be payable out of money appropriated by Parliament and not otherwise.

197. Proceedings not affected by vacancy or change in office of Collector - No action instituted by the Collector for the recovery of tax, and no proceedings on objection to an assessment of tax, shall abate by reason of the vacancy in the office of Collector, or shall be deemed defectively constituted by reason of any change in the holder of that office, and every such action or proceeding shall be continued in the ordinary course as of the Collector and the Collector's successors in office were a corporation sole.

198. Statute of Limitation - No statute of limitation shall bar or effect any action or remedy for the recovery of tax.

199. Crown Proceedings Act not affected - Nothing in this Act shall be so construed as to limit or affect the application of the Crown Proceedings Act 1950, and all rights and remedies conferred upon the Crown in that Act and by this Act shall coexist and may be exercised independently of one another and tax may be recovered accordingly.

200. Recovery of tax paid by one person on behalf of another - Every person (in this section called "the agent") who in pursuance of this Act pays any tax for or on behalf of any other person shall be entitled to recover the amount so paid from that other person as a debt, or to retain or deduct that

amount out of or from any money which is or becomes payable by the agent to that other person, and if the agent has paid the tax as mortgagee, then, until repaid, it shall be deemed to form part of the money secured by the mortgage, and shall bear interest accordingly.

201. Payment of income tax by persons leaving the Cook Islands - (1) Upon the application of any person about to leave the Cook Islands, if the Collector is satisfied -

- (a) that the person is not liable to pay any income tax or
- (b) that all income tax payable by the person has been paid; or
- (c) that satisfactory arrangements have been or will be made for the payment of all income tax that is or may become payable by the person,

the Collector shall issue a certificate to the effect that the person is not under any liability for income tax requiring to be discharged before the person leaves the Cook Islands.

(2) Every certificate under this section shall remain in force for such period or until such date as may be specified in that behalf in the certificate.

(3) No ticket or other authority to travel from the Cook Islands by any ship or aircraft shall be issued to or in respect of any person by the owner or charterer, or by any representative, or employee of the owner or charterer of the ship or aircraft, nor shall any person be permitted to sign on or be engaged as a member of the crew of any ship or aircraft leaving the Cook Islands, unless and until a Certificate issued under this section in respect of that person, and not expiring before the date of the departure of the ship or aircraft from the Cook Islands, is presented to the owner or charterer or to the representative, or employee of the owner or charterer.

(4) On the first working day after the departure of any ship or aircraft from any port or place at which it takes on board passengers or crew for any destination beyond the Cook Islands, the owner or charterer of the ship or aircraft or the representative or employee of the owner or charterer at that port or place shall deliver or forward by post to the Collector all certificates so presented by persons travelling by the ship or aircraft, together with a list showing the name and last known address in the Cook Islands of every person who so travelled (not including, unless the Collector in any case otherwise requires, any member of the crew of or staff of the ship or aircraft not signing on or being engaged as a member of the crew at that port or place).

(5) If any person travels from the Cook Islands by any ship or aircraft pursuant to a ticket or other authority issued at any port or place or signs on or is engaged as a member of the crew in contravention of this section, the owner or charterer and the representative or employee (if any of the owner or charterer at that port or place shall be personally liable, jointly and severally, to pay the amount of income tax (if any) that is or may become due and payable by that person in respect of income derived in the income year in which the person leaves the Cook Islands or in any earlier year.

(6) Every person who acts in contravention of or fails to comply with the provisions of this section or who makes a false declaration or furnishes false information for the purpose of obtaining a certificate or who having obtained a certificate transfers it to any other person commits an offence against this Act.

(7) Notwithstanding any other provision of this section the Minister may by public notice declare that a person or class of persons is not under any liability for income tax requiring to be discharged before the person or class of persons leaves the Cook Islands.

**PART XII**  
**REFUNDS AND RELIEF FROM TAX**

202. Refund of excess tax - (1) In any case where the Collector is satisfied that tax has been paid in excess of the amount properly payable the Collector shall advise the taxpayer concerned of the excess payment and shall refund the amount paid in excess if written application for the refund is made by or on behalf of the taxpayer -

(a) in any case where the assessment of that tax has not been altered, within six years immediately after the end of the year in which the assessment was made;

(b) in any case where the original assessment has been altered (whether once or more than once), within six years after the end of the year in which the original assessment was made.

(2) In any case where an assessment has been altered so as to reduce the amount of tax payable and the Collector is satisfied that by reason of that alteration tax has been paid in excess of the amount properly payable, the Collector shall advise the taxpayer concerned of the excess payment and shall refund the amount so paid in excess by reason of that alteration if written application for the refund is made by or on behalf of the taxpayer within six years after the end of the year in which the alteration was made, notwithstanding that the application may be made after the time allowed by subsection (1).

203. Power of Collector in respect of small amounts - Notwithstanding anything in this Act, the Collector may refrain from either issuing a notice of assessment or collecting or refunding tax in any case where, as the case may be -

(a) the balance of any tax payable does not exceed \$5; or

(b) the tax paid exceeds the amount of the tax for which the taxpayer is liable by an amount not exceeding \$2.

204. Relief from additional tax - (1) On application for relief made in writing by or on behalf of any taxpayer who (whether before or after the commencement of this Act) has become liable for the payment of any additional tax under section 190, the Collector may, subject to the provisions of this section, grant relief to the taxpayer -

(a) by the remission of the whole or part of the additional tax; or

(b) where the additional tax has been paid in whole or in part, by the refund to the taxpayer of the whole or any part of that tax which has been paid, with or without the remission of any part of the additional tax which has not been paid.

(2) No amount of tax in excess of \$1,000 shall be remitted or refunded under this section except with the approval of the Minister.

205. Relief in cases of serious hardship - (1) In any case where it is shown to the satisfaction of the Collector -

(a) that any taxpayer has suffered such loss or is in such circumstances that the payment of the full amount of the tax has entailed or would entail serious hardship; or

(b) that, owing to the death of any person who if the person had not died would have been liable to pay tax, the dependents of that person are in such circumstances that the payment of the full amount of the tax has entailed or would entail serious hardship,

the Collector or may, subject to the provisions of this section, release the taxpayer or the executor or administrator of the deceased taxpayer, as the case may be, wholly or in part from liability to pay tax, and may make such alterations in the assessment as are necessary for that purpose; and may, if the tax as previously assessed or any part thereof has been already paid, refund any tax paid in excess of the amount of the assessment as altered pursuant to this section.

(2) No amount of tax in excess of \$500 shall be remitted or refunded under this section except with the approval of the Minister.

### **PART XIII** **PENALTIES**

206. Penalty for failure to furnish returns. etc. - (1) Every person commits an offence against this Act, who -

(a) refuses or fails to furnish any return or information as and when required by this Act, or any regulation made under this Act, or by the Collector; or

(b) wilfully or negligently makes any false return, or gives false information, or misleads or attempts to mislead the Collector or any other officer in relation to any matter or thing affecting any person's liability to taxation; or

(c) refuses or fails without lawful jurisdiction to duly attend and give evidence to the person, or to produce any book or paper required; or

(d) obstructs any officer acting in the discharge of the officer's duties or in the exercise of the officer's powers under this Act;

(e) commits any other breach of this Act for which no other penalty is expressly provided; or

(f) aids, abets, or incites any other person to commit any offence against this Act or against any regulation made under this Act.

(2) Every person who commits an offence against this Act for which no other penalty is prescribed shall be liable to a fine not exceeding \$10,000, and not less than \$500:

Provided that if the person is a company that person shall be liable to a fine not exceeding \$10,000, and not less than \$1000.

(3) In any proceedings against a person for refusing or failing to furnish any return or information as and when required by this Act or by the Collector, a certificate in writing signed by the Collector certifying that the return or information as required has not been received from that person at the place where or by the person to whom the return or information should have been furnished shall, in the absence of proof to the contrary, be sufficient evidence that the defendant has refused or failed to furnish the return or information.

207. Proceedings for offences - All proceedings for offences against this Act shall be taken by way of prosecution in the High Court and only upon the information of the Collector, or of some person authorised in writing by the Collector in that behalf, and the signature of the Collector to any warrant of authority under this section shall be judicially noted.

208. Information may be laid within 10 years - Notwithstanding anything in, any other Act or Ordinance any information in respect of any offence against this Act may be laid at any time within ten years after the termination of the year in which the offence was committed.

209. Penal tax in case of evasion - If any taxpayer evades or attempts to evade, or does any act with intent to evade, or makes default in the performance of any duty imposed by this Act or any regulations thereunder with intent to evade, the assessment or payment of any sum which is or may become chargeable by way of tax (which sum is hereinafter referred to as the deficient tax) the taxpayer shall be able, by way of penalty for that offence, with additional tax (hereinafter called penal tax) not exceeding an amount equal to treble the amount of the deficient tax.

210. Nature of penal tax - Subject to the provisions of this Part penal tax shall for all purposes be deemed to be tax of the same nature as the deficient tax, and shall be deemed to be payable in and for the same year of assessment as the deficient tax.

211. Assessment of penal tax - (1) The penal tax shall be assessed by the Collector in the same manner, so far as may be, as the deficient tax, but separately therefrom.

(2) An assessment of penal tax may be amended from time to time in the same manner as any other assessment.

(3) No assessment of penal tax shall be made or increased at any time after the expiration of 10 years after the year of assessment of the deficient tax.

212. Objections to penal tax - (1) Any assessment of penal tax shall be subject, in the same manner as any other assessment of tax, to objection on the ground that the person so assessed is not chargeable with penal tax, or on the ground that the amount so assessed is excessive having regard to the nature and degree of the offence or to the reason for the imposition of the penal tax, and notwithstanding that the amount so assessed is not in excess of treble the amount of the deficient tax.

213. Recovery of penal tax - An assessment of penal tax may be made and the tax so assessed shall be recoverable at any time, whether before or after the deficient tax has been assessed or has become assessable or payable or has been paid.

214. Recovery of penal tax from executors or administrators - (1) Penal tax shall be assessable against and recoverable from the executors or administrators of a deceased taxpayer, but, if so

assessed, the amount thereof shall be recoverable only as a debt incurred by the deceased taxpayer in the deceased taxpayer's lifetime.

(2) No penal tax shall be recoverable from any person other than the taxpayer or the taxpayer's executors or administrators.

215. Recovery of penal tax not affected by conviction of taxpayer - The assessment or recovery of penal tax in respect of any offence shall not be in any manner barred or affected by the fact that the taxpayer has been convicted under this Act of the same or any other offence; but no person who has paid the penal tax assessed against that person for any offence shall be thereafter convicted of the same offence.

216. Publication of names of tax evaders - (1) The Collector shall make public a list of names of persons who -

(a) have been convicted under section 206(1)(b) of wilfully making any false return, or of giving false information, or misleading or attempting to mislead the Collector, in relation to any matter or thing affecting their own or any other person's liability to tax; or

(b) have been convicted under section 206 (1) (f) of aiding, abetting or inciting any person to commit any offence referred to in paragraph (a) of this subsection or;

(c) have been convicted of any offence under section 167 (1) (a) or (b); or

(d) have been charged with penal tax under section 168 or section 209.

(2) The Collector may omit from any list published under this section reference to any taxpayer to whom subsection (1) applies if the Collector is satisfied that, before any investigation or inquiry has been commenced in respect of the offence or evasion of which the taxpayer was convicted, the taxpayer voluntarily disclosed to the Collector or to any officer authorised by the Collector complete information and full particulars as to the offence or evasion.

(3) Every list published under this section shall include -

(a) the name, address and occupation or description of the taxpayer;

(b) such particulars of the offence or evasion as the Collector thinks fit;

(c) the year or years in which the offence or evasion occurred;

(d) the amount or estimated amount of the income not disclosed or of the tax evaded;

(e) the amount (if any) of the penal tax imposed.

(4) A copy of every list published under this section shall be laid before Parliament.

PART XIV  
GENERAL PROVISIONS

217. Keeping of business records - (1) Subject to subsection (2) every person carrying on business or receiving income other than salary or wages shall .keep sufficient records in the English or Maori language to enable that person's assessable income and allowable deductions to be readily ascertained by the Collector or any officer authorised by the Collector in that behalf, and shall retain all such records so kept and all matters relating to the business in existence at the date of the passing of this Act for a period of at least five years after the completion of the transactions, acts, or operations to which they relate.

(2) This section shall not require the retention of any records -

(a) in respect of which the Collector has notified the taxpayer in writing that retention is not required;

(b) of a company which has been wound up and finally dissolved.

(3) For the purposes of this section the term "records" includes books of account, recording receipts documents or income or expenditure or purchases or sales, and also includes vouchers, invoices, receipts, and such other documents as are necessary to verify the entries in any such books of account and, in the case of an agent, records of all transactions carried out on behalf of that agent's principal.

(4) Every person who fails to comply with this section commits an offence against this Act.

218. Taxpayer identification number - A taxpayer identification number may be allocated to a taxpayer by the Collector, such number to be used in all taxation matters concerning the taxpayer.

219. Collector to have power to inspect books and documents - (1) Notwithstanding anything in any other Act, the Collector or any officer of the Department authorised in that behalf shall at all times have full and free access to all books and documents, whether in the custody or under the control of a public officer or a body corporate or any other person, for the purpose of inspecting any books and documents which the Collector or officer of the Department considers necessary or relevant for the purpose of collecting any tax or duty which the Collector is authorised to collect, or considers likely to provide any information otherwise required for any such purpose, and may, without fee or reward, make extracts from or copies of any such books or documents.

(2) The Collector or any officer of the Department authorised in that behalf, may for the purpose of any investigation under this section require the owner or manager of any property or business to give all reasonable assistance in the investigation, and to answer all proper questions relating to any such investigation either orally, or, if the Collector or officer so requires, in writing, or by statutory declaration, and for that purpose may require the owner or manager or, in the case of a company, any officer of the company to attend at the premises with the Collector or officer.

220. Information to be furnished on request of Collector - (1) Every person (including any officer employed in or in connection with any department of the Government or by any public authority, and any other public officer) shall, if required by the Collector or by any officer of the Department authorised in that behalf, furnish in writing any information and produce any books and documents which the Collector or officer considers necessary or relevant for any purpose relating to the enforcement of this Act or any other Act administered by the Collector, and which may be in the knowledge, possession, or control of that person.



(2) Without limiting the foregoing provisions of this section it is hereby declared that the information in writing which may be required under this section shall include lists of shareholders or companies, with the amount of capital contributed by and dividends paid to each shareholder, copies of balance sheets and of profit and loss accounts, and other accounts and statements of assets and liabilities of any person.

(3) The Collector or any officer of the Department authorised in that behalf may require any written information or particulars furnished under this section to be verified by statutory declaration or otherwise.

221. Inquiry before a Judge of the High Court - (1) In any case in which the Collector deems it necessary to hold an inquiry for the purpose of obtaining any information with respect to liability of any person for any tax or duty which the Collector is authorised to collect or any other information required for the purposes of the administration or enforcement of this Act or any other Act administered by the Collector, the Collector may apply in writing to a Judge of the High Court to hold an inquiry under this section.

(2) For the purposes of any such inquiry, the Judge may summon, and examine on oath touching any matter relevant to the subject matter of the inquiry, all persons whom the Collector or any other interested person requires to be so called and examined.

(3) The Judge shall have all such jurisdiction and authority touching the, summoning and examination of any such person as the Judge would have in respect of a witness in a civil action within the Judge's ordinary jurisdiction and the person so summoned and examined shall, subject to this Act, have all such rights and be subject to all such liabilities as that person would have and be subject to if the person were such a witness as aforesaid.

(4) The Collector and every person who is interested in the subject matter of flit inquiry may be represented by a barrister or solicitor, or, with the leave of the Court, by any other person who may examine, cross-examine, and re-examine, in accordance with the ordinary practice, any person so summoned:

Provided that every person so summoned may be cross-examined by the Collector or by the Collector's barrister or solicitor.

(5) Every examination under this section shall take place in Chambers.

(6) The statement of every person so examined shall be taken down in writing, and signed by that person in the presence of the Judge or Registrar of the High Court, and delivered to the Collector, and shall not form part of the records of the Court.

(7) No person summoned or examined under this section shall be excused from answering any question on the ground that the answer may incriminate that person or render that person liable to any penalty or forfeiture.

(8) No statement made by any such person in answer to any question put to that person shall in criminal proceedings be admissible in evidence against that person, except upon a charge of perjury against that person in respect of testimony upon that examination.

(9) A person summoned under this section may receive such sum on account of travelling expense and loss of time as the Judge or Registrar of the High Court thinks reasonable and orders accordingly.

222. Inquiry by Collector - (1) The Collector may, for the purpose of obtaining any information with respect to the liability of any person for any tax or duty which the Collector is authorised to collect or any other information required for the purposes of the administration or enforcement of any Act administered by the Collector, by notice in writing require any person to attend and give evidence before the Collector or before any officer of the Department authorised in that behalf and to produce all books and documents in the custody or under the control of that person which contain or which the Collector or the authorising officer considers likely to contain any such information.

(2) The Collector may require any such evidence to be given on oath and either orally or in writing or for that purpose the Collector or the officer authorised as aforesaid may administer an oath.

(3) If any person required to give evidence under this section refuses or wilfully neglects to appear before the Collector or authorised officer or to take an oath as witness or if any person being sworn as a witness at any such inquiry refuses or wilfully neglects to answer any question touching the subject matter of the inquiry or to produce to the Collector or authorised officer any such document as aforesaid, that person shall be liable on conviction to a fine not exceeding \$500.

(4) Every person who wilfully gives false evidence at any inquiry under this section shall be guilty within the meaning of the Crimes Act 1969.

(5) A person required to attend before the Collector or an authorised officer may receive such sum on account of travelling expenses and loss of time as the Collector thinks reasonable and orders accordingly.

223. Offences - (1) Every person commits an offence who, in relation to sections 219 to 222 -

(a) acts in contravention of or, without lawful justification or excuse, fails to comply in any respect with any provision of any of those sections or any requirement imposed thereunder;

(b) wilfully deceives or attempts to deceive the Collector or any officer of the Department in the exercise of any powers or functions under any of those sections;

(c) with intent to deceive, makes any false or misleading statement or any material omission in any information given to the Collector or any officer of the Department for the purposes of any of those sections;

(d) resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under any of those sections.

(2) Every person who commits an offence under subsection (1) for which no other penalty is prescribed shall be liable on conviction to a fine not exceeding \$1000.

224. Employers to make returns as to employees - Every person shall from time to time, as required by the Collector, make a return of all persons employed by that person during any year,

and of all salaries or allowances and other emoluments received during that year by each person so employed.

225. Return of interest paid on deposits - Every bank, local or public authority, or other company or person who in the course of business holds money by way of deposit and pays interest thereon shall from time to time as required by the Collector, make a return of all interest so paid during the year or other period to whom the requisition of the Collector relates, together with the names, addresses, and occupations of the persons to whom such interest has been paid.

226. Returns as to debentures and interest thereon - Every company or local or public authority shall from time to time, as required by the Collector, make a return giving such particulars as the Collector requires relative to debentures issued by that company or local or public authority, the holders thereof, and the interest paid or payable thereon.

227. Power to extend time - Notwithstanding anything elsewhere in this Act, where any person within the Cook Islands is residing temporarily or permanently on some other island other than the island of Rarotonga, and by reason of a lack of or a delay in air and sea communication between that island and the island of Rarotonga, is unable to assert the person's rights or to fulfil the person's obligations under this Act within the proper time, then the Collector shall have power to grant that person such further extension or extensions of time as the Collector may deem necessary.

228. Annual Report - (1) The Collector shall as soon as practicable after 31 December in each year furnish to the Minister a report on the administration of this Act for the year ending on that date.

(2) A copy of the report shall be laid before Parliament within 28 days after it has been furnished to the Minister if Parliament is then in session and, if not, shall be laid before Parliament within 28 days after the commencement of the next ensuing session.

229. Regulations - (1) The Queen's Representative may from time to time, by Order in Executive Council, make all such regulations as the Queen's Representative may deem necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power to make regulations conferred by subsection (1), it is hereby declared that regulations may be made under this section for all or any of the following purposes:

(a) declaring any specified payment or payments of any specified class -

(i) to be included in or excluded from the definition of the term "extra emolument" in section 2; or

(ii) to be included in or excluded from the definition of the term "salary or wages" in section 2; or

(iii) to be a withholding payment or payments, or not to be a withholding payment or payments, for the purposes of Part VII;

(b) prescribing the amounts of the tax deductions to be made from withholding payments or from any specified withholding payment or from withholding payments of any specified class;

(c) providing, in relation to any specified withholding payment, or withholding payments of any specified class, or withholding payments not exceeding any specified amount, that, subject to any provisions of the regulations, the amount of income tax for which the person receiving the payment or payments is liable in respect of the payment or payments shall be determined exclusively and finally by the total amount of the tax deductions required under Part IX to be made from the payment; or

(d) providing that a tax deduction may be made from a withholding payment, notwithstanding that the payment may be protected against assignment; or

(e) providing that a tax deduction may be made from the gross amount of a withholding payment, whether or not it consists wholly or partly of income, or from so much of a withholding payment as remains after the subtraction therefrom of any part thereof regarded as expenditure incurred in the production of the payment;

(f) providing that the Collector may determine what amount or proportion of any specified withholding payment or withholding payments of any specified class shall be regarded as expenditure incurred in the production of the payment or payments, and for the determination of the Collector to be final and conclusive, subject to any revocation or variation thereof by the Collector;

(g) providing that a tax deduction may be made from a withholding payment, whether the amount of the deduction relates exclusively to the income tax payable by the person receiving the payment or relates partly to that income tax and partly to income tax payable by any employee or subcontractor of that person; and providing in the latter case for that person to recover from the employee or subcontractor a part of the tax deduction and to retain that part but otherwise to comply with the provisions of Part IX in respect of any tax deduction made by that person from any payment to the employee or subcontractor;

(h) providing that the regulations or any of them shall not apply in respect of payments made to any specified person, or to persons of any specified class, to whom the Collector gives notice to that effect.

(3) All regulations made under this section shall be laid before Parliament within 28 days after the making thereof, if Parliament is then in session, and if not, shall be laid before the Parliament within 28 days after the commencement of the next ensuing session.

230. Application of Act - Except as otherwise provided herein, this Act shall apply with respect to the tax for the income year commencing on 1 January 1997 and for every subsequent year.

231. Repeals and savings - (1) The enactments and any sections enactments specified in the Fourth Schedule are hereby repealed and amended as stated in that Schedule.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or anything whatsoever done under the provision so repealed or under any corresponding former provision and every such

document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

(3) For all purposes whatsoever in respect of any tax or duty which at the coming into force of this Act has been already assessed or paid or is still assessable or payable in or for the year ending with 31 December 1996 or in or for any previous year, in accordance with the provisions of any enactment hereby repealed or regulation hereby revoked, that enactment or, as the case may be, that regulation, and all the provisions thereof, including its penal provisions, and other acts of authority originating thereunder, shall, notwithstanding the repeal or, as the case may be, revocation thereof, be deemed to remain in full force and effect; and all proceedings under any such enactment or regulation, including proceedings for the recovery of any fine or penalty in respect of any offence committed, whether before or after the commencement of this Act, may be instituted or continued accordingly as if the enactment concerned had not been repealed or, as the case may be, that regulation had not been revoked.

(4) All proceedings in respect of offences committed or alleged to be committed before the commencement of this Act against any enactment hereby repealed or regulation hereby revoked may be instituted or continued as if this Act had not been passed.

#### **PART XV** **TERMINATING PROVISIONS**

232. Provisions continuing to apply as amended - The following provisions of the Income Tax Act 1972 shall apply in respect of the income year ending 31 December 1997 (but not in respect of any subsequent income year), notwithstanding the coming into force of this Act, but with the amounts referred to in those provisions in all cases being divided by two -

s.74A relating to special exemptions for gifts of money to charitable organisations;

s.44 relating to rebates for dependant spouses;

s.45 relating to rebates for other dependants;

s.46 relating to special exemption for life insurance contributions;

s.46A relating to special exemption for dependants of taxpayer.

233. Section 47 Income Tax Act 1972 - Section 47 of the Income Tax Act 1972 shall apply in respect of the income year ending 31 December 1997 (but not in respect of any subsequent income year) notwithstanding the coming into force of this Act.

234. Rebate in respect of low income earners - (1) Where in the income year ending 31 December 1997 a taxpayer has an assessable income of \$2,500 or less, there shall be allowed from the income tax payable, a rebate equal to the amount of such income tax.

(2) Where in any income year a taxpayer has an assessable income greater than \$2,500 and less than \$2,750 there shall be allowed from the income tax payable a rebate of \$250 diminished by \$0.78 for each complete dollar of taxable income which exceeds \$2,500.

(3) The provisions of this section shall not apply to -

(a) an absentee; or

(b) any company, body corporate or trust.

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This Act is administered by the Revenue Management Division

**FIRST SCHEDULE**

**PART A**

**Basic Rates of Income Tax and Bonus**

**Issue Tax**

1. Interpretation -

For the purposes of clauses 2 to 5 of this Part of this Schedule "taxable income" means income on which income tax is payable.

2. Overseas insurance companies -

On all income assessable to an overseas insurance company under sections 74 and 140 the basic rate of income tax for every \$1 of that income shall be 3c.

3. Companies -

The basic rate of tax on all income assessable to a company (not being income included in any other clause of this Part of this Schedule) shall be -

(a) in respect of the income year commencing on 1 January 1997 -

(i) in the case of a company that is deemed to be resident in the Cook Islands within the meaning of Part V, a rate of 20c for every \$1 of that income:

(ii) in the case of a company that is not deemed to be resident in the Cook Islands within the meaning of Part V, a rate of 24c for every \$1 of that income.

(b) in respect of each subsequent income year a rate of 20c for every \$1 of that income.

4. Natural Persons Resident in the Cook Islands - In the case of any taxpayer who is an individual natural person resident in the Cook Islands (not merely acting as a trustee), the basic rate of tax for every \$1 of taxable income shall be

(a) in respect of the income year which commenced on 1 January 1997 the effective rate of tax ascertained by calculating tax on that taxable income from all sources in

accordance with the following formula:

'tax payable on first-half year earnings' + 'tax payable on second-half year earnings'

taxable income

where:

'tax payable on first-half year earnings' is the aggregate of tax payable in respect of each source of taxable income calculated in accordance with the following formula:

a x b 2

where:

a is an amount (referred to in this Schedule as 'first-half year income') obtained by multiplying by two the taxable income of the taxpayer from each source earned in the period 1 January to 30 June 1997, where such taxable income

(i) excludes any standard supplemental deduction permitted under section 44; and

(ii) takes account only once of any deductions permitted under section 232 or one half of any deduction permitted under section 70; and

b is tax in respect of each source of first-half year income referred to in item 'a' of this formula ascertained in accordance with the rates of tax specified in Part B of this Schedule and calculated as if the taxpayer's income from that source were the only source of income of the taxpayer;

'tax payable on second-half year earnings' is an amount calculated in accordance with the following formula:

c x d 2

where:

is the amount obtained by multiplying by two the taxable income of the taxpayer (before any deductions permitted under sections 44, 70 and 232) earned in the period 1 July 1997 to 31 December 1997 and deducting from the amount so calculated:

(i) \$6,000 (being the standard supplemental deduction permitted under section 44 in respect of the income year which commenced on 1 January 1997, multiplied by 2); and

(ii) any deduction permitted under section 70; and

d is tax on 'c' of this formula ascertained in accordance with the rates of tax specified in Part C of this Schedule. Provided that for the purposes of calculating the effective rate of tax on taxable income from all sources in respect of the income year which commenced on 1 January 1997, taxable income shall be deemed to be derived evenly throughout the year except for:

(i) income from employment, which income shall be deemed to be derived when it is paid to or credited to or applied on account of any employee entitled thereto; and

(ii) taxable income from farming, fishing and other activities that were formerly exempt from income tax under section 49B of the Income Tax Act 1972, which income shall have been deemed to be derived after 1 July 1997.

(b) in respect of each subsequent income year, the effective rate of tax ascertained by calculating tax on that income in accordance with the rates of tax specified in Part C of this Schedule and dividing the tax so calculated by the numbers of dollars included in that taxable income.

5. Other taxpayers -In the case of all taxpayers other than those dealt with under clauses 2 to 4 of this Schedule, the basic rate of tax for every \$1 of taxable income shall be:

(a) in respect of the income year which commenced on 1 January 1997, the effective rate of tax ascertained by calculating tax on that taxable income from all sources in accordance with the following formula:

$$\frac{(a + b)}{2}$$

where:

a is the effective rate of tax ascertained by calculating tax on that taxable income in accordance with the rates of tax specified in Part B of this Schedule and dividing the tax so calculated by the number of dollars included in that taxable income; and

b is the effective rate of tax ascertained by calculating tax on that taxable income in accordance with the rates of tax specified in Part C of this Schedule and dividing the tax so calculated by the number of dollars included in that taxable income.

(b) in respect of each subsequent income year, the effective rate of tax ascertained by calculating tax on that income in accordance with the rates of tax specified in Part C of this Schedule and dividing the tax so calculated by the number of dollars included in that taxable income.

History: Part A of First Schedule amended by No.2 of 1997 with application from 1 December 1997

## PART B

### Rates referred to in clauses 4 and 5 of Part A

Taxable	Rate	Taxable	Rate	Taxable	Rate	Taxable	Rate	Taxable	Rate					
Income Range	%	Income Range	%	Income Range	%	Income Range	%	Income Range	%					
0	4000	7.0	6227	6272	13.1	9563	9634	19.2	14893	15003	25.3	22999	23165	31.4
4001	4030	7.1	6273	6318	13.2	9635	9706	19.3	15004	15114	25.4	23166	23332	31.5
4031	4060	7.2	6319	6364	13.3	97097	9778	19.4	15115	15225	25.5	23333	23499	31.6
4061	4090	7.3	6365	6410	13.4	9779	9850	19.5	15226	15336	25.6	23500	23666	31.7
4091	4120	7.4	6411	6456	13.5	9851	9922	19.6	15337	15447	25.7	23667	23833	31.8
4121	4150	7.5	6457	6502	13.6	9923	9994	19.7	15448	15558	25.8	23834	24000	31.9
4151	4180	7.6	6503	6552	13.7	9995	10066	19.8	15559	15669	25.9	24001	24181	32.0
4181	4210	7.7	6553	6602	13.8	10067	10138	19.9	15670	15780	26.0	24182	24362	32.1
4211	4240	7.8	6603	6652	13.9	10139	10210	20.0	15781	15891	26.1	24363	24544	32.2
4241	4270	7.9	6653	6702	14.0	10211	10282	20.1	15892	16002	26.2	24545	24726	32.3
4271	4300	8.0	6703	6752	14.1	10283	10354	20.2	16003	16122	26.3	24727	24908	32.4
4301	4335	8.1	6753	6802	14.2	10355	10426	20.3	16123	16242	26.4	24909	25090	32.5
4336	4370	8.2	6803	6852	14.3	10427	10498	20.4	16243	16362	26.5	25091	25272	32.6



4371	4405	8.3	7853	6902	14.4	10499	10582	20.5	16363	16482	26.6	25273	25454	32.7
4406	4440	8.4	6903	6952	14.5	10583	10666	20.6	16483	16602	26.7	25455	25636	32.8
4441	4475	8.5	6953	7002	14.6	10667	10750	20.7	16603	16722	26.8	25637	25818	32.9
4476	4510	8.6	7003	7052	14.7	10751	10834	20.8	16723	16842	26.9	25819	26000	33.0
4511	4545	8.7	7053	7102	14.8	10835	10918	20.9	16843	16962	27.0	26001	26200	33.1
4546	4580	8.8	7103	7152	14.9	10919	11002	21.0	16963	17082	27.1	26201	26400	33.2
4581	4615	8.9	7153	7202	15.0	11003	11086	21.1	17083	17202	27.2	26401	26600	33.3
4616	4650	9.0	7203	7252	15.1	11087	11170	21.2	17203	17322	27.3	26601	26800	33.4
4651	4685	9.1	7253	7302	15.2	11171	11254	21.3	17323	17442	27.4	26801	27000	33.5
4686	4720	9.2	7303	7352	15.3	11255	11338	21.4	17443	17562	27.5	27001	27200	33.6
4721	4755	9.3	7353	7402	15.4	11339	11422	21.5	17563	17682	27.6	27201	27400	33.7
4756	4790	9.4	7403	7452	15.5	11423	11506	21.6	17683	17802	27.7	27401	27600	33.8
4791	4825	9.5	7453	7502	15.6	11507	11590	21.7	17803	17922	27.8	27601	27800	33.9
4826	4860	9.6	7503	7552	15.7	11591	11674	21.8	17923	18042	27.9	27801	28000	34.0
4861	4895	9.7	7553	7602	15.8	11675	11758	21.9	18043	18162	28.0	28001	28200	34.1
4896	4930	9.8	7603	7652	15.9	11759	11842	22.0	18163	18282	28.1	28201	28400	34.2
4931	4965	9.9	7653	7702	16.0	11843	11926	22.1	18283	18425	28.2	28401	28600	34.3
4966	5000	10.0	7703	7752	16.1	11927	12010	22.2	18426	18568	28.3	28601	28800	34.4
5001	5035	10.1	7753	7802	16.2	12011	12094	22.3	18569	18711	28.4	28801	29000	34.5
5036	5070	10.2	7803	7852	16.3	12095	12178	22.4	18712	18854	28.5	29001	29200	34.6
5071	5105	10.3	7853	7902	16.4	12179	12262	22.5	18855	18997	28.6	29201	29400	34.7
5106	5140	10.4	7903	7952	16.5	12263	12346	22.6	18998	19140	28.7	29401	29600	34.8
5141	5175	10.5	7953	8002	16.5	12347	12430	22.7	19141	19283	28.8	29601	29800	34.9
5176	5210	10.6	8003	8064	16.7	12431	12514	22.8	19284	19426	28.9	29801	30000	35.0
5211	5245	10.7	8065	8126	16.8	12515	12604	22.9	19427	19569	29.0	30001	30250	35.1
5246	5280	10.8	8127	8188	16.9	12605	12694	23.0	19570	19712	29.1	30251	30500	35.2
5281	5315	10.9	8189	8250	17.0	12695	12784	23.1	19713	19855	29.2	30501	30750	35.3
5316	5350	11.0	8251	8312	17.1	12785	12874	23.2	19856	19998	29.3	30751	31000	35.4
5351	5385	11.1	8313	8374	17.2	12875	12964	23.3	19999	20148	29.4	31001	31250	35.5
5386	6420	11.2	8375	8436	17.3	12965	13054	23.4	20149	20298	29.5	31251	31500	35.6
5421	5455	11.3	8437	8498	17.4	13055	13144	23.5	20299	20448	29.6	31501	31750	35.7
5456	5490	11.4	8499	8560	17.5	13145	13234	23.6	20449	20598	29.7	31751	32000	35.8
5491	5536	11.5	8561	8622	17.6	13235	13324	23.7	20599	20748	29.8	32001	32250	35.9
5537	5582	11.6	8623	8684	17.7	13325	13414	23.8	20749	20898	29.9	32251	32500	36.0
5583	5628	11.7	8685	8746	17.8	13415	13504	23.9	20899	21048	30.0	32501	32750	36.1
5629	5674	11.8	8747	8808	17.9	13505	13604	24.0	21049	21198	30.1	32751	33000	36.2
5675	5720	11.9	8809	8870	18.0	13605	13704	24.1	21199	21348	30.2	33001	33250	36.3
5721	5766	12.0	8871	8932	18.1	13705	13804	24.2	21349	21498	30.3	33251	33500	36.4
5767	5812	12.1	8933	8994	18.2	13805	13904	24.3	21499	21648	30.4	33501	33750	36.5
5813	5858	12.2	8995	9056	18.3	13905	14004	24.4	21649	21798	30.5	33751	34000	36.6
5859	5904	12.3	9057	9118	18.4	14005	14115	24.5	21799	21948	30.6	34001	34333	36.7
5905	5950	12.4	9119	9180	18.5	14116	14226	24.6	21949	22098	30.7	34334	34666	36.8
5951	5996	12.5	9181	9242	18.6	14227	14337	24.7	22099	22248	30.8	34667	34999	36.9
5997	6042	12.6	9243	9304	18.7	14338	14448	24.8	22249	22398	30.9	35000		37.0
6043	6088	12.7	9305	9366	18.8	14449	14559	24.9	22399	22548	31.0			
6089	6134	12.8	9367	9428	18.9	14560	14670	25.0	22549	22698	31.1			
6135	6180	12.9	9429	9490	19.0	14671	14781	25.1	22699	22848	31.2			
6181	6226	13.0	9491	9562	19.1	14782	14892	25.2	22849	22998	31.3			

### PART C:

#### Rates referred to in clauses 4 and 5 of part of this schedule

On so much of the taxable income as-	The rate of tax for every dollar shall be
Does not exceed \$4,000.....	20 cents
Exceeds \$4,000 and does not exceed \$24,000.....	25 cents
Exceeds \$24,000.....	30 cents

Provided that in respect of a taxpayer who is an individual natural person resident in the Cook Islands (not merely acting as a trustee), the rate of tax for every dollar shall be 15 cents on the

person's secondary income, being so much of the person's taxable income that is equal to the greater of zero or an amount calculated using the following formula:

a-b

Where:

- a is \$24,000; and
- b is the amount of the person's primary source of income

1. For the purposes of this Part C, for each person who earns income from more than one source, the primary source of income shall be the total of:

- (a) investment income (if any) for the income year;
- (b) income from commercial and residential rentals (if any) for the income year; and
- (c) majority income.

2. Majority income is determined by reference to a person's total non-investment income (being income from all sources excluding rental income and investment income), and is either -

- (a) a person's largest source of income (if that largest source is more than 50% of that person's total non-investment income); or
- (b) a person's income from all sources other than the largest source of income (if the largest source is less than 50% of that person's total non-investment income).

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## **SECOND SCHEDULE**

### **PART A**

#### **Basic Tax Deductions**

##### **Salary or Wages**

1. Payments for weekly pay periods -

From every payment of salary or wages, where the payment is for a weekly pay period, the basic tax deduction shall be the appropriate amount specified in Part B of this Schedule according to the amount of the payment and the employee's tax code.

2. Payments for pay periods longer than a week -

From every payment of salary or wages, where the payment is for a pay period longer than a week, the basic tax deduction shall be the amount that is ascertained -

(a) By calculating the part of the payment that is for a week, on the basis that the overtime pay (if any) included in the payment and the balance of the payment, respectively, accrued at a uniform daily rate throughout the pay period; and

(b) By calculating the amount of the tax deduction that would be made under clause 1 of this Schedule from the part of the payment that is for a week; and

(c) By increasing the amount of the tax deduction so calculated by the proportion that the total payment bears to the part of the payment that is for a week.

### 3. Payments in other cases -

From every payment of salary or wages, where neither clause 1 nor clause 2 of this Schedule applies, the basic tax deduction shall, in respect of so much of the payment as is for the services of the employee during any week ending with a Saturday (calculated in accordance with section 150 where that section applies), be the amount of the tax deduction that would be made under clause 1 of this Schedule if the payment or, as the case may be, the part of the payment were for a weekly pay period ending with that Saturday.

### 4. Payments for employees with "no declaration" tax code -

From every payment of salary or wages to an employee to whom a "no declaration" tax code applies, the basic tax deduction shall be an amount calculated on the amount of the payment at the rate of 30 cents for every \$1 or part thereof.

### 5. Extra emoluments -

From every payment of an extra emolument the basic tax deduction shall be an amount calculated on the amount of the payment at the rate of 25c for every \$1 or part thereof.

## PART B

### PAYE Tax Table from 1 July 1997

Weekly P Income Tax S	Weekly P Income Tax S	Weekly P Income Tax S	Weekly P Income Tax S	Weekly P Income Tax S	Weekly P Income Tax S	Weekly P Income Tax S
1 0 0.20	99 0 19.80	197 16.56 39.40	295 41.06 59.00	393 65.56 78.60	491 90.06 98.20	589 115.16 117.80
2 0 0.40	100 0 20.00	191 16.11 39.60	296 41.31 59.20	394 65.81 78.80	492 90.31 98.40	590 115.46 118.00
3 0 0.60	101 0 20.20	199 17.06 39.10	297 41.36 59.40	395 66.06 79.00	493 90.56 98.60	591 115.76 118.20
4 0 0.10	102 0 20.40	200 17.31 40.00	298 41.11 59.60	396 66.31 79.20	494 90.81 98.80	592 116.06 118.40
5 0 1.00	103 0 20.60	201 17.56 40.70	299 42.06 59.10	397 66.56 79.40	495 91.06 99.00	593 116.36 118.60
6 0 1.20	104 0 20.80	202 17.81 40.40	300 42.31 60.00	398 66.81 79.60	496 91.31 99.20	594 116.66 118.80
7 0 1.40	105 0 21.00	203 18.06 40.60	301 42.56 60.20	399 67.06 79.10	497 91.56 99.40	595 116.96 119.00
8 0 1.60	106 0 21.20	204 18.31 40.80	302 42.81 60.40	400 67.31 80.00	498 91.81 99.60	596 117.26 119.20
9 0 1.10	107 0 21.40	205 18.56 41.00	303 43.06 60.60	401 67.56 80.20	499 92.06 99.80	597 117.56 119.40
10 0 2.00	101 0 21.60	206 18.81 41.20	304 43.31 60.80	402 67.81 80.40	500 92.31 100.00	598 117.86 119.60
11 0 2.20	109 0 21.80	207 19.06 41.40	305 43.36 61.00	403 68.06 80.60	501 92.56 100.20	599 118.16 119.80
12 0 2.40	110 0 22.00	208 19.31 41.60	306 43.81 61.20	404 68.31 80.80	502 92.81 100.40	600 118.46 120.00
11 0 2.60	111 0 22.20	209 19.56 41.80	307 44.06 61.40	405 68.56 81.00	503 93.06 100.60	601 118.76 120.20
14 0 2.80	112 0 22.40	210 19.81 42.00	308 44.31 61.60	406 68.81 81.20	504 93.31 100.80	602 119.06 120.40
15 0 3.00	113 0 22.60	211 20.06 42.20	309 44.56 61.80	407 69.06 81.40	505 93.56 101.00	603 119.36 120.60
16 0 3.20	114 0 22.80	212 20.31 42.40	310 44.81 62.00	408 69.31 81.60	506 93.81 101.20	604 119.66 120.80
17 0 3.40	115 0 23.00	213 20.56 42.60	311 45.06 62.20	409 69.56 81.80	507 94.06 101.40	605 119.96 121.00
18 0 3.60	116 0.12 23.20	214 20.81 42.80	112 45.31 62.40	410 69.81 82.00	506 94.31 101.60	606 120.26 121.20
19 0 3.80	117 0.32 23.40	215 21.06 43.00	313 45.56 62.60	411 70.06 82.20	509 94.56 101.80	607 120.56 121.40







1359	346.16	271.80	1452	374.06	290.40	1545	401.96	309.00
1360	346.46	272.00	1453	374.36	290.60	1546	402.26	309.20
1361	346.76	272.20	1454	374.66	290.80	1547	402.56	309.40
1362	347.06	272.40	1455	374.96	291.00	1548	402.86	309.60
1363	347.36	272.60	1456	375.26	291.20	1549	403.16	309.80
1364	347.66	272.80	1457	375.56	291.40	1550	403.46	310.00
1365	347.96	273.00	1458	375.86	291.60	1551	403.76	310.20
1366	348.26	273.20	1459	376.16	291.80	1552	404.06	310.40
1367	348.56	273.40	1460	376.46	292.00	1553	404.36	310.60
1368	348.86	273.60	1461	376.76	292.20	1554	404.66	310.80
1369	349.16	273.80	1462	377.06	292.40	1555	404.96	311.00
1370	349.46	274.00	1463	377.36	292.60	1556	405.26	311.20
1371	349.76	274.20	1464	377.66	292.80	1557	405.56	311.40
1372	350.06	274.40	1465	377.96	293.00	1558	405.86	311.60
1373	350.36	274.60	1466	378.26	293.20	1559	406.16	311.80
1374	350.66	274.80	1467	378.56	293.40	1560	406.46	312.00
1375	350.96	275.00	1468	378.86	293.60	1561	406.76	312.20
1376	351.26	275.20	1469	379.16	293.80	1562	407.06	312.40
1377	351.56	275.40	1470	379.46	294.00	1563	407.36	312.60
1378	351.86	275.60	1471	379.76	294.20	1564	407.56	312.80
1379	352.16	275.80	1472	380.06	294.40	1565	407.96	313.00
1380	352.46	276.00	1473	380.36	294.60	1566	408.26	313.20
1381	352.76	276.20	1474	380.66	294.80	1567	408.56	313.40
1382	353.06	276.40	1475	380.96	295.00	1568	408.86	313.60
1383	353.36	276.60	1476	381.26	295.20	1569	409.16	313.80
1384	353.66	276.80	1477	381.58	295.40	1570	409.46	314.00
1345	353.96	277.00	1478	381.86	295.60	1571	409.76	314.20
1386	354.26	277.20	1479	382.16	295.80	1572	410.06	314.40
1367	354.56	277.40	1480	382.46	296.00	1573	410.36	314.60
1348	354.86	277.60	1481	382.76	296.20	1574	410.66	314.80
1389	355.16	277.80	1482	383.06	296.40	1575	410.96	315.00
1390	355.46	278.00	1483	383.36	296.60	1576	411.26	315.20
1391	355.76	278.20	1484	383.66	296.80	1577	411.56	315.40
1392	356.06	278.40	1485	383.96	297.00	1578	411.86	315.60
1393	356.36	278.60	1486	384.26	297.20	1579	412.16	315.80
1394	356.66	278.80	1487	384.56	297.40	1580	412.46	316.00
1395	356.96	279.00	1488	384.86	297.60	1581	412.76	316.20
1396	357.26	279.20	1489	385.16	297.80	1582	413.06	316.40
1397	357.58	279.40	1490	385.46	298.00	1583	413.36	316.60
1398	357.88	279.60	1491	385.76	298.20	1584	413.66	316.80
1399	358.16	279.80	1492	386.06	298.40	1585	413.96	317.00
1400	358.46	280.00	1493	386.36	298.60	1586	414.26	317.20
1401	358.76	280.20	1494	386.66	298.80	1587	414.56	317.40
1402	359.06	280.40	1495	386.96	299.00	1588	414.86	317.60
1403	359.36	280.60	1496	387.26	299.20	1589	415.16	317.80
1404	359.66	280.80	1497	387.56	299.40	1590	415.46	318.00
1405	359.96	281.00	1498	387.86	299.60	1591	415.76	318.20
1406	360.26	281.20	1499	388.16	299.80	1592	416.06	318.40
1407	360.56	281.40	1500	388.46	300.00	1593	416.36	318.60
1408	360.86	281.60	1501	388.76	300.20	1594	416.66	318.80
1409	361.16	281.80	1502	389.06	300.40	1595	416.96	319.00
1410	361.46	282.00	1503	389.36	300.60	1596	417.26	319.20
1411	361.76	282.20	1504	389.66	300.80	1597	417.56	319.40
1412	362.06	282.40	1505	389.96	301.00	1598	417.86	319.60
1413	362.36	282.60	1506	390.26	301.20	1599	418.16	319.80
1414	362.66	282.80	1507	390.56	301.40	1600	418.46	320.00
1415	362.96	283.00	1508	390.86	301.60			
1416	363.26	283.20	1509	391.16	301.80			
1417	363.56	283.40	1510	391.46	302.00			
1418	363.86	283.60	1511	391.76	302.20			
1419	364.16	283.80	1512	392.06	302.40			
1420	364.46	284.00	1513	392.36	302.60			
1421	364.76	284.20	1514	392.66	302.80			
1422	345.06	284.40	1515	392.96	303.00			
1423	365.360	284.60	1516	393.26	303.20			
1424	365.66	284.80	1517	393.56	303.40			
1425	365.96	285.00	1518	393.86	303.60			
1426	366.26	285.20	1519	394.16	303.80			
1427	366.56	285.40	1520	394.46	304.00			
1428	366.86	285.60	1521	394.76	304.20			
1429	367.16	285.80	1522	395.06	304.40			
1430	367.46	286.00	1523	395.36	304.60			

**THIRD SCHEDULE****DATES FOR FURNISHING RETURNS OF INCOME BY CERTAIN TAXPAYERS**

1. Dates by which taxpayers to whom section 15(2) of this Act applies are required to furnish annual of income

Month of Balance Date	Date by which annual return of income to be furnished (being the date next succeeding the balance date)
January	1 <sup>st</sup> day of June
February	1 <sup>st</sup> " " of July
March	1 <sup>st</sup> " " of August
April	1 <sup>st</sup> " " of September
May	1 <sup>st</sup> " " of October
June	1 <sup>st</sup> " " of November
July	1 <sup>st</sup> " " of December
August	1 <sup>st</sup> " " of January
September	1 <sup>st</sup> " " of February
October	1 <sup>st</sup> " " of March
November	1 <sup>st</sup> " " of April
December	1 <sup>st</sup> " " of May

2. Interpretation - For the purpose of clause 1 of this Schedule the expression "balance date", in relation to income tax on income derived by any taxpayer in any year or other period, means the date of the annual balance of the taxpayer's accounts for that year or other period, being a year or other period in respect of which the taxpayer is required by this Act to furnish a return of income.

**FOURTH SCHEDULE****ENACTMENTS REPEALED AND AMENDED**

1. Repeal and Savings

(i) The Income Tax Act 1972 is repealed.

(ii) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of the Income Tax Act 1972 ("the 1972 Act") shall not (except as otherwise provided in this Act) affect the validity of any document made or anything done under the provisions of the 1972 Act, and every such document or thing so far as it is subsisting or in force at die time of the repeal of the 1972 Act and could have been made or done under this Act shall continue and have effect as if it shall have been made or done



under the corresponding provisions of this Act and as if that provision were in force when die document was made or the thing done.

## 2. Consequential repeal of certain sections

(i) Section 72 of the Ports Authority Act 1994-95 is repealed with effect from 1 July 1997,

(ii) Section 35 of the Te Aponga Uira o Tumu-Te-Varovaro Act 1991 is repealed with effect from 1 July 1997, and the following section substituted:

"35. Exemption from taxation - (1) The Authority shall be liable to income tax and value added tax but shall be exempt from imposts duties levies and fees of whatsoever kind in respect of die following approved purposes:

(a) the importation of all fuel, plant, machinery, tools and equipment necessary for the purpose of generating energy to be supplied to consumers;

(b) the importation of plant, machinery, motor vehicle, tools and equipment necessary for maintaining the generation and transmission of energy to consumers by way of an electric supply line owned by the Authority.

(2) No exemption shall be allowed pursuant to subsection (1), unless the General Manager has first provided a declaration to the Comptroller of Customs stating that the item is to be used only for one or more of such approved purposes."

(iii) Section 24 of the Airport Authority Act 1985 is repealed with effect from 1 July 1997

(iv) Sections 41 and 41A of the Cook Islands Development Bank Act 1978 are repealed with effect from 1 July 1997.

## 3. Consequential amendments to the Development Investment Act 1995-96 - (1) The Development Investment Act 1995-96 is amended by adding the following section:

"27A. Investment incentives and concessions established - (1) Incentives and concessions as specified in the Schedule to the Development Investment Act 1977 are hereby established and shall, notwithstanding any other legislation, override and supersede the effects of any provision therein where and when any or all of these have been granted by Cabinet and, where -necessary approved by the Executive Council to any enterprise.

(2) Cabinet may decide from time to time what specific enterprise or activity set out in the Investment Code shall be eligible for any of the incentives and concessions specified in the Schedule to the Development Investment Act 1977.

(3) Except where an application for the incentive or concession relating to the assessment or payment of tax under the Income Tax Act 1997 or the Value Added Tax Act 1997 has been made to the Development Investment Board and received before 28 May 1997, the Development Investment Board may not grant any incentive or concession which would reduce any amount of income tax or value added tax but any grant made by the Board of an incentive or concession in respect of an application made before that date, will continue to take effect according to its terms."

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**FIFTH SCHEDULE**

Assets not eligible for 100% depreciation rate

1. Buildings principally used for private residential or ancillary purposes.
2. Motor cars, except when acquired for use principally in the business of renting cars.
3. Furniture and fittings of any dwelling, except when acquired for use principally in the business of operating a hotel, motel or other premises for hire of accommodation.

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