
CHAPTER 312

INCOME TAX ACT

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AN ACT to amend and consolidate the law relating to income tax.

Commencement: 1st January 1979

Preliminary.

Short title.

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

Interpretation.

2. (1) In this Act, unless the context otherwise requires—
- “agent” includes any partnership, company or body of persons which is acting as an agent;
 - “Appeal Commissioners” means the Appeal Commissioners appointed under section 103;
 - “approved pension fund” means a pension fund approved for the purpose of this Act under section 65;
 - “assessable income” means assessable income as defined in section 8;
 - “assessment” in relation to any person, means a determination by the Comptroller—
 - (a) of the amount of chargeable income and the tax chargeable thereon;
 - (b) of the amount of any loss allowable as a deduction;
 - or
 - (c) that no tax is chargeable,
 and includes, where the context so requires, an additional assessment or a reduced assessment;
 - “basis period” means a basis period for a year of assessment adopted in accordance with section 11;

- “body of persons” means any association of persons, however described, but does not include an incorporated company or a partnership;
- “business” means any business, profession, trade, venture, or undertaking and includes the provision of personal services or technical and managerial skills and any adventure or concern in the nature of trade but does not include any employment;
- “chargeable income” means chargeable income as ascertained in accordance with Part V;
- “child”, in relation to an individual, includes a step child, a child born out of wedlock or an adopted child of that person;
- “Comptroller” means the Comptroller of Inland Revenue appointed under section 3;
- “company” means a body corporate, wherever incorporated, but does not include a partnership or an unincorporated body of persons;
- “controlled company” has the meaning given to it in section 41 (3);
- “disposition” means any settlement, trust, agreement, arrangement or gift whereby assets, including a right to income, are transferred from one person to another, whether beneficially or as a trustee, without consideration in money’s worth but does not include—
- (a) a transfer of assets by will or other testamentary disposition, except to the extent provided by section 15; or
- (b) the assignment of any income by a deed or assignment however, described;
- “dividend” means a dividend as defined in section 36;
- “earned income”, for the purpose of the allowances provided under sections 47 or 48 means income accruing directly from the carrying on of a business or accruing as employment income within the meaning of section 35;
- “employment” means any employment in which the relationship of master and servant subsists or an appointment or office whether public or not and whether or not that relationship subsists; and the terms “employee” and “employer” shall be construed accordingly;
- “estimated tax” means the estimate of tax payable as provided for by section 70 (2);

Act 21 of 1967

- “executor” means the executor, administrator or other person administering or managing the estate of a deceased person;
- “legally disabled person” means a minor, a mentally defective person or any other person under a legal disability;
- “management charges” means the charges made for the provision of management services and includes charges made for the provision of personal services and technical and managerial skills;
- “Minister” means the member of Cabinet to whom responsibility for finance has been assigned;
- “minor” means an individual who has not attained the age of eighteen;
- “notice of assessment” means a notice of assessment made and issued under section 98;
- “ordinarily resident”, in relation to an individual, means a person who is a resident within the meaning of paragraph (a)(i) of the definition of “resident in Saint Vincent and the Grenadines”;
- “person” includes an individual, a trust, the estate of a deceased person, a company, a partnership and every other juridical person;
- “previous Act” means the Income tax Act, 1967;
- “regulations” means regulations made under this Act;
- “representative taxpayer” means, in relation to—
- (a) the estate of a deceased person, a person under a legal disability, a trust or a settlement, the trustee of that person;
 - (b) a non-resident, any person appointed under section 22 to act as agent on his behalf; or
 - (c) tax due and payable—
 - (i) by a deceased person at the date of his death, the executor of the estate of that deceased person; or
 - (ii) at the commencement of liquidation by a company which is being wound up, the liquidator of that company;
- “resident in Saint Vincent and the Grenadines”, in relation to a year of assessment,
- (a) in the case of an individual, includes a person—
 - (i) whose permanent place of abode is in Saint Vincent and the Grenadines and that he is physically present therein for some period of time in

- the basis period for that year of assessment, unless the Comptroller is satisfied that his absence throughout the whole of the basis period was for the purpose of education, medical treatment, the performance of duties on behalf of the Government or under a Government sponsored labour scheme;
- (ii) who is physically present in Saint Vincent and the Grenadines for not less than one hundred and eighty three days in the basis period for that year of assessment; or
 - (iii) who is physically present in Saint Vincent and the Grenadines for some period of time in the basis period for that year of assessment and such period is continuous with a period of physical presence in the basis period for the immediately preceding or succeeding year of assessment of such duration as to qualify him for the status of a resident for such preceding or succeeding year under subparagraph (ii);
- (b) in the case of an estate of a deceased person, means that immediately prior to his death the deceased person qualified for the status of a resident under paragraph (a);
- (c) in the case of a trust or a body of persons, means that such trust or body of persons was established in Saint Vincent and the Grenadines; and
- (d) in the case of a company, means that such company was—
- (i) if incorporated outside Saint Vincent and the Grenadines, managed or controlled in Saint Vincent and the Grenadines; or
 - (ii) incorporated in Saint Vincent and the Grenadines,
- and the term “resident” and “non-resident”, in relation to a person, means that such person is resident or non-resident in Saint Vincent and the Grenadines as the case may be;
- “royalties” means amounts paid as consideration, however described—
- (a) for the use of, or the right to use —

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- (i) copyrights, artistic or scientific works, patents, trade marks, designs, plans, secret processes or formulae, motion picture films, tape or films for radio or television broadcasting for; or
 - (ii) information concerning industrial, commercial or scientific knowledge; or
- (b) in respect of the operation of a mine, quarry or other place of extraction of natural resources;
- “separated”, in relation to the marital status of an individual, means a person who is living apart from his or her spouse under—
- (a) an order of a court of competent jurisdiction;
 - (b) a written agreement of separation; or
 - (c) any other circumstances where the separation is likely to be permanent;
- “tax” means the tax charged under this Act, and for the purposes of recovery of tax includes any penalty, interest or other charge imposed under this Act but does not include any fine imposed by a court; and any reference to tax payable under the laws of another country means a tax of a substantially similar nature to the tax charged under this Act;
- “trading stock”, in relation to any business, means anything produced, manufactured, purchased or otherwise acquired for the purposes of manufacture, sale or exchange, including uncompleted work in hand or in progress, or the proceeds from the disposal of which form, or will form, part of the assessable income from such business, and in the case of a business of farming includes livestock and produce;
- “trustee” means a person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law and includes any person having or taking upon himself the administration or control of any property subject to a trust;
- “withholding tax” means any tax deducted or deductible pursuant to section 65 (13) or 66;
- “year of assessment” means the period of twelve months commencing on the 1st January in each year.
- (2) Any reference in this Act to “any person employed in carrying out the provisions of this Act” shall be deemed to include any person whose service under agreement with the Government are provided by any other Government or international agency to assist with the administration of the Act.

(3) Where gains or profits are ascertainable only by reference to the whole of a basis period for a year of assessment and, for the purposes of the charge to or exemption from tax, apportionment of such gains or profits to different periods of time is necessary, then such apportionment shall be made on a time basis according to the respective lengths of those periods of time.

PART I

Administration.

3. The responsibility for the administration of this Act shall be vested in the Comptroller of Inland Revenue who shall be appointed by the Governor-General after consultation with the Public Service Commission.

Comptroller
of Inland
Revenue.

4. (1) The Comptroller may, in relation to any matter or class of matter, delegate in writing to any other person employed in carrying out the provisions of this Act, any powers, functions or duties conferred or imposed on the Comptroller by this Act other than—

Delegation
by
Comptroller.

- (a) the power of delegation conferred by this section;
- (b) the power to sanction prosecutions conferred by section 129.

(2) Any delegation made under this section shall be revocable at any time by the Comptroller, and no delegation shall prevent the exercise of such powers, duties or functions by the Comptroller himself.

5. The Comptroller and any person employed in carrying out the provisions of this Act shall be indemnified against any liability for any acts done by or in the name of the Comptroller pursuant to any duty imposed by this Act.

Indemnity
against
liability for
acts done.

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

Secrecy.

(2) Nothing in this section shall apply to the disclosure of any confidential information—

- (a) to any person authorised by Cabinet or by any other written law to receive such information;

- (b) to any other person to whom such disclosure is necessary for the purposes of this Act; or
- (c) to any authorised officer of the government of a country with which an international agreement for the avoidance of double taxation exists, for the purposes of that agreement.

(3) Nothing in this section shall be construed to prevent the disclosure of information of a statistical nature, but any such information shall be supplied in such manner as not to disclose the identity of any person in relation to his income.

(4) Every person appointed under, or employed in carrying out the provisions of, this Act and every person to whom confidential information is disclosed under subsection (2) (a) or (b) shall make an oath or affirmation of secrecy in the manner and form approved by the Comptroller.

(5) Any oath or affirmation under subsection (4) may be taken before the Comptroller (who is hereby authorised to administer such oath or affirmation) or before a magistrate, and no fee shall be payable therefor.

(6) The obligation as to secrecy imposed by this section shall continue to apply in respect of any person notwithstanding that he ceases to be appointed under, or employed in carrying out the provisions of, this Act.

PART II

Chargeability to Tax.

Charge to
tax.

7. (1) Subject to subsection (5), tax shall be charged for each year of assessment on the chargeable income of every person for that year.

(2) The persons chargeable to tax shall be those persons specified in specified sections 12 to 24.

(3) Subject to Part VI, the chargeable income of any person shall be ascertained by deducting from the assessable income of such person any amounts which may be allowable under Part V.

(4) The tax payable by any person shall be calculated in accordance with Part VII.

(5) Where income ascertained in accordance with Part IV, accrues directly or indirectly to a non-resident person from any source other than from the carrying on of business or the exercise of employment, such income shall not form part of the assessable income of such person and such income shall be liable to withholding tax in accordance with section 66.

8. (1) The assessable income of a taxpayer shall be— Scope of charge.
- (a) where the taxpayer is a resident, subject to subsections (2) and (3), all amounts ascertained in accordance with Part IV, accrued directly or indirectly from all sources whether in or out of Saint Vincent and the Grenadines; and
 - (b) where the taxpayer is a non-resident, subject to section 7 (5), all amounts, ascertained in accordance with Part IV, accrued directly or indirectly from all sources in Saint Vincent and the Grenadines which is not exempt from tax under Part III.
- (2) Where an individual is a resident but—
- (a) is not ordinarily resident; or
 - (b) although ordinarily resident, is an officer or member of the crew of a ship engaged in international traffic,

his assessable income shall include income accrued from sources out of Saint Vincent and the Grenadines, but only to the extent that such income is received in Saint Vincent and the Grenadines.

(3) Where an individual, who is ordinarily resident in Saint Vincent and the Grenadines, is employed outside Saint Vincent and the Grenadines, under a Government sponsored contract labour scheme, his assessable income shall include the amount which under such scheme is compulsorily remitted.

9. (1) Subject to this section, income shall accrue to a person Income accruing. for the purposes of this Act—
- (a) in the case of income from employment, when it is earned;
 - (b) in the case of a business, in relation to which the Comptroller is satisfied that a commercially recognised system of accounting other than a cash received basis is regularly followed, when it is credited, or should be credited, in the books of account of such person;
 - (c) in the case of a business where, pursuant to subsection (2), the Comptroller has accepted the preparation by that person of his accounts on a cash received basis, when it is received by him;
 - (d) in the case of interest, when it is paid; and
 - (e) in any other case, when it becomes due and payable to him.

(2) Where any person regularly prepares the accounts of his business on a cash received basis the Comptroller may, on application and in his discretion, accept such method of accounting or may direct that accounts shall be prepared on an accruals basis and the income accrued to such person shall be ascertained accordingly.

(3) Nothing in subsection (2) shall be construed to prevent the Comptroller from directing the adoption of an accruals basis in respect of a particular person or class of persons for any year of assessment by reason only that a cash received basis had been accepted in respect of previous years.

(4) Where an amount that would otherwise have accrued to a person when it was received by him is not paid to him but is reinvested, accumulated, carried to any reserve or otherwise dealt with on his behalf or as he directs, it shall be deemed to have accrued to him on the date it is so dealt with.

(5) Income shall not cease to have accrued to any person within the meaning of this section by reason only of the cessation of a source of income prior to the receipt of any amount from such source.

Income deemed to have accrued from sources in Saint Vincent and the Grenadines.

10. (1) Any income accrued to any person shall be deemed to have accrued from a source situated in Saint Vincent and the Grenadines where it has accrued to that person in respect of—

- (a) any employment exercised in Saint Vincent and the Grenadines irrespective of where payment is made or the contract of employment is entered into;
- (b) any employment exercised out of Saint Vincent and the Grenadines in the performance of duties on behalf of the Government by such person being an individual who is ordinarily resident in Saint Vincent and the Grenadines;
- (c) any business carried out by a company resident in Saint Vincent and the Grenadines as owner or charterer of any ship or aircraft engaged in international traffic;
- (d) interest from any person being—
 - (i) an individual who is ordinarily resident in Saint Vincent and the Grenadines, where the indebtedness—
 - (a) was incurred in connection with the acquisition of; or

- (b) was charged against,
 - any property situate in, or to be brought into, Saint Vincent and the Grenadines; or
- (ii) any other person, whether resident or non-resident, who has a permanent establishment in Saint Vincent and the Grenadines in connection with which the indebtedness on which the interest accrued was incurred, where such interest is borne by such permanent establishment;
- (e) a dividend from a company which is resident in Saint Vincent and the Grenadines;
- (f) any property physically situate in Saint Vincent and the Grenadines;
- (g) the provision of management services in Saint Vincent and the Grenadines including personal services and technical and managerial skills, where such services are provided for the purposes of a business carried on in Saint Vincent and the Grenadines and the cost of such services is borne by that business, and irrespective of where the contract of such services was entered into;
- (h) a source of income which under any international agreement made under section 60, is deemed to be situate in Saint Vincent and the Grenadines.

(2) Where, under this Act or under any international agreement made under section 60, income is deemed to have accrued—

- (a) to some person;
- (b) from a source; or
- (c) in any basis period;

any reference to income accrued shall be construed as including income deemed to have accrued.

(3) In subsection (1) (d)—

“permanent establishment” includes—

- (a) a place of management;
- (b) a branch or office;
- (c) a factory or workshop;
- (d) premises used as a sales outlet;
- (e) a building site or construction or assembly project which exists for more than six months;
- (f) the maintenance of plant and machinery for rental for a period or periods in the aggregate of not less than six months.

Basis period
for a year of
assessment.

11. (1) Subject to this section, the assessable income of any person for a year of assessment shall be the whole of the income, ascertained in accordance with Part IV, which accrues to such person during the calendar year immediately preceding that year (in this Act referred to as "the basis period for a year of assessment").

(2) A company carrying on business may, with the approval of the Comptroller, make up the accounts of such business for a period of twelve months ending on a date other than 31st December in the calendar year immediately preceding the year of assessment, and its chargeable income in respect of the year of assessment shall be ascertained by reference to the accounts of such substituted period, which for the purpose of this Act shall be taken to be the basis period of that company for the year of assessment.

(3) Where, during the course of business, a company wishes to vary the basis period previously adopted by it under subsection (1) and (2) it may, with the approval of the Comptroller and subject to subsection (4), do so and its chargeable income in respect of succeeding years of assessment shall be ascertained by reference to such varied basis period, which for the purposes of this Act shall be taken to be the basis period of that company for a year of assessment.

(4) Where, as a result of a variation of basis period of any company under subsection (3)—

(a) two basis periods terminate within the same calendar year, its chargeable income of the relevant year of assessment shall be ascertained by reference to the assessable income of both such basis periods;

(b) the Comptroller is of the opinion that substantially less tax would be payable than would have been payable if the basis period of that company had not been varied, the Comptroller may require the payment of such additional amount as an advance payment of tax as he deems reasonable.

(5) Notwithstanding subsections (1), (2) and (3), in the year of cessation of a business, the basis period shall be the period from the end of the basis period ending in the previous calendar year to the date of cessation, irrespective of whether such period is greater or less than twelve months.

(6) Notwithstanding that the income of a company charged to tax pursuant to this section may be for a period greater or less than twelve months, any annual allowances shall

be deductible for a year of assessment only by reference to a twelve month period.

12. (1) Subject to this section and sections 13 to 24, the chargeable income of any person shall be charged to tax in the name of that person. Persons chargeable.

(2) Where, under this section or sections 13 to 24, any income which has accrued to one person is deemed to have accrued to some other person, such income shall be included in the assessable income of that other person and the chargeable income, if any, ascertained therefrom shall be charged to tax in the name of that other person.

13. Any income accrued to a married woman in the basis period for any year of assessment to which this Act applies shall be charged to tax in her own name except in the matter of allowance of deductions as provided in Part V. Married women.

14. (1) Where, by reason of any disposition made by any disponor for the benefit of a minor child, whether or not such child is related to the disponor, any income has accrued to that child, such income shall, during his minority or until the prior death of the disponor, be deemed to have accrued to the disponor and shall be included in his assessable income. Minor children.

(2) Where, during the basis period for a year of assessment, an individual ceases to be a minor, subsection (1) shall apply only in respect of income accrued prior to the date upon which he ceased to be a minor.

15. (1) Subject to subsection (3), any income accruing to a trust, where there is no beneficiary entitled to the immediate benefit thereof, shall be included in the assessable income of the trust and the chargeable income ascertained therefrom shall be charged to tax in the name of the trustee. Settlements and wills.

(2) Subject to section 14, any income accruing to a trust, where there is a beneficiary entitled to the immediate benefit thereof, shall be deemed to have accrued to the beneficiary and shall be included in his assessable income.

(3) Where, under a trust, a beneficiary may be entitled to the benefit of the income thereof at the discretion of the trustee, any income so applied for his benefit shall be deemed to have accrued to the beneficiary and shall be included in his assessable income.

(4) Where, in any will or other testamentary disposition, a stipulation has been made to the effect that the beneficiaries therein, or one or more of them, shall not receive any income accrued under such will or disposition until the happening of an event, whether fixed or contingent, any such income as would, but for the stipulation, have accrued to the beneficiaries shall, until the happening of that event be deemed to have accrued to the trust and shall be included in the assessable income of the trust and the chargeable income ascertained therefrom shall be charged to tax in the name of the trustee.

(5) Where any deed of donation, settlement or other disposition *inter vivos* (in this subsection referred to as "the disposition") made by any person (in this subsection referred to as "the disponor") contains a stipulation to the effect that the beneficiaries therein, or one or more of them, shall not receive any income accrued under the disposition until the happening of an event, whether fixed or contingent, any such income as would, but for the stipulation, have accrued to the beneficiaries shall, until the happening of that event or the prior death of the disponor, be deemed to have accrued to the disponor and shall be included in his assessable income.

(6) In subsections (1), (2) and (3)—

"trust" means a trust created—

- (a) by will or other testamentary disposition; or
- (b) by a deed or donation, settlement or other disposition *inter vivos*.

Revocable
dispositions.

16. (1) Where income accrues to any person under a revocable disposition such income shall be deemed to have accrued to the disponor and shall be charged to tax in his name.

(2) For the purposes of this section, a disposition shall be deemed to be revocable where the disponor—

- (a) has a right to reassume control, directly or indirectly, over, or have access to, the property or income of the disposition; or
- (b) has power to revoke or otherwise determine the disposition, whether immediately or in the future and whether with or without the consent of any other person, but only where, in the event of the exercise of such power the disponor will, or may, become beneficially entitled to the whole or any part of the property or income of the disposition.

(3) Where part only of a disposition is capable of revocation, subsection (1) shall apply only to such part of the disposition.

(4) Nothing in subsection (2) shall be construed to deem a disposition to be revocable by reason only of a power of revocation in such disposition in relation to the interest of any beneficiary therein where such power of revocation is limited to arise only in the event that such beneficiary should predecease the disponent.

17. Any income accrued to an individual and not included in any assessment made prior to his death shall be included in his assessable income, and the chargeable income ascertained therefrom shall be charged to tax in the name of his executor in the same amount as would have been charged if that person had not died. Deceased persons.

18. (1) Any income accruing to the estate of a deceased person before there is a beneficiary entitled to the immediate benefit thereof shall be included in the assessable income of the estate, and the chargeable income ascertained therefrom shall be charged to tax in the name of the executor. Estates of deceased persons.

(2) Any income accruing to the estate of a deceased person on or after the date on which there is a beneficiary entitled to the immediate benefit thereof, other than as a legatee, shall be deemed to have accrued to the beneficiary and shall be included in his assessable income.

(3) Where a beneficiary of the estate of a deceased person is a legatee, any income accruing in respect of the property of which he is the legatee, on or after the earlier of—

- (a) the date of the handing over of the property; or
- (b) the date of the completion of the administration of the estate,

shall accrue to, or be deemed to accrue to, such legatee and shall be included in his assessable income.

(4) For the purposes of this section—

- (a) a beneficiary shall be deemed to be entitled to the immediate benefit of any income accrued to the estate of a deceased person on or after the date of completion of the administration of the estate; and
- (b) the date of completion of the administration of the estate means the date upon which the whole of the debts relating to the estate of the deceased person have been ascertained and paid or provided for.

Legally
disabled
persons.

19. Subject to this Part, any income accrued to a legally disabled person shall be included in his assessable income, and the chargeable income ascertained therefrom shall be charged to tax in the name of the trustee in the same amount as would have been charged if that had person had not been legally disabled.

Insolvent
persons.

20. Where a person becomes bankrupt—

- (a) any income accrued to that person in his own right after the date of sequestration and prior to the date sequestration ceases (in this section referred to as “the period of insolvency”) shall be included in the assessable income of that person; and
- (b) any income accrued in respect of the estate of that person held by his trustees during the period of insolvency shall be included in the assessable income of the estate, and the chargeable income ascertained therefrom shall be charged to tax in the name of the trustee.

Partnerships.

21. (1) A partnership shall not be charged to tax in its own name, but all income accrued thereto in the basis period for any year of assessment shall be charged on the partners for such year of assessment in accordance with this section.

(2) The chargeable income of a partner for any year of assessment shall—

- (a) include an amount equal to that proportion of the partnership assessable income for that year of assessment which the amount of the net partnership profit or income to which he is entitled under the partnership agreement, ascertained under that agreement, bears to the net partnership profit or income; or
- (b) be calculated after deducting an amount equal to that proportion of the partnership assessed loss for that year of assessment which the amount of the net partnership loss for which he is responsible under the partnership agreement, ascertained under that agreement, bears to the net partnership loss.

(3) In this section—

“partnership assessed loss” means an assessed loss calculated in the same manner as partnership assessable income;

“partnership assessable income” means the assessable income of the partnership calculated as if the partnership were a person chargeable to tax.

22. (1) The chargeable income of a non-resident shall, where it is not charged to tax directly on him, be charged to tax on his agent in the same amount as would have been charged on the non-resident. Non-resident persons.

(2) For the purposes of this section—

“agent”, in relation to a non-resident, means a resident who—

- (a) has the management or control of property in Saint Vincent and the Grenadines of such non-resident;
- (b) is appointed by the non-resident to act on his behalf; or
- (c) carries on business with a non-resident in circumstances to which section 23 (2) (b) applies.

23. (1) Where any transaction, operation or scheme (hereinafter in this subsection referred to as “a transaction”) including a transaction involving the alienation of property, which has been entered into or carried out, whether before, on, or after the 1st January, 1979, has the effect of avoiding, reducing or postponing the liability to tax of any person for any year of assessment and the Comptroller is of the opinion that the transaction— Transactions designed to avoid liability to tax.

- (a) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction of the nature of the transaction in question; or
- (b) has created rights or obligations which would not normally be created between independent persons dealing at arm’s length under a transaction of the nature of the transaction in question,

the Comptroller shall determine the liability to tax as if the transaction had not been entered into, or in such other manner as he deems appropriate to counteract such avoidance, reduction or postponement of liability as would otherwise be effected by the transaction.

(2) Where a resident carries on business with a non-resident and, in the opinion of the Comptroller, by reason of the relationship between such persons, the course of business between them has been so arranged that the business done by the resident produces to him either more or less gains or profits

than those which would be expected to arise from that business if such relationship had not existed, the Comptroller may determine in such manner as appears to him to be reasonable—

- (a) whether any additional gains or profits should be deemed to be assessable income of the resident person; and
- (b) whether any part of the gains or profits of the non-resident person should be deemed to have accrued from a source in Saint Vincent and the Grenadines.

(3) Where a loan, including a constructive loan, is made by a resident person to a non-resident person, either free of interest or at a rate of interest lower than the commercial rate generally prevailing at the time the loan was made, and the Comptroller is of the opinion that the loan is not one between independent persons dealing at arm's length with each other, interest shall be deemed to have accrued to the resident person for each year of assessment after the loan is made at such commercial rate as the Comptroller deems reasonable in the circumstances.

(4) In subsection (3) a constructive loan means any indebtedness to a resident person arising from the carrying on of a business transaction between that person and a non-resident person which remains unpaid in circumstances which in the opinion of the Comptroller would not have operated as between independent persons dealing with each other at arm's length.

Responsibility of representative taxpayers.

24. (1) Any person in whose name the chargeable income of a deceased person, the estate of a deceased person, a person under a legal disability, a non-resident or any other person is chargeable, shall be responsible for doing all such things as are under this Act required to be done by a person chargeable to tax.

(2) Where any person is liable to furnish a return of income under section 80, whether or not chargeable to tax, the obligation imposed by subsection (1) shall apply to the representative tax payer acting on behalf of such person.

PART III

Exempt Income.

General exemption.

25. (1) There shall be exempt from income tax—

- (a) the official emoluments of the Governor-General, and of any acting Governor-General, any gratuity or pension payable to a former Governor-General upon his retirement, any gratuity payable to his

- legal personal representative upon the death of a Governor-General and any pension payable to the widow of a Governor-General upon his death;
- (b) the official emoluments payable in respect of their offices to—
 - (i) heads of diplomatic missions and consulates accredited to Saint Vincent and the Grenadines;
 - (ii) members of the staff of such missions and consulates, except such persons who are citizens of, or ordinarily resident in, Saint Vincent and the Grenadines;
 - (c) the official emoluments payable by—
 - (i) any international organisation of which Saint Vincent and the Grenadines and one or more other countries are members; or
 - (ii) any other government, in connection with the provision of any technical cooperation services, to the extent and subject to such conditions as maybe prescribed by any written law or in any agreement or memorandum of understanding entered into by the Government;
 - (d) any war pension (including any disability pension) or gratuity in respect of services during war;
 - (e) any amount accruing under a scholarship or similar educational grant to a person receiving full time education at a school, college, university or other educational establishment;
 - (f) any interest accrued on any loan charged on the public revenue, which is declared by the Minister to be exempt;
 - (g) any income accrued to any individual by way of interest on a deposit in any bank or building society in Saint Vincent and the Grenadines;
 - (h) any amount accrued by way of gratuity:
Provided that this exemption shall not apply (except in the case of a contract of employment with the Government) if the contract is renewed or replaced by a new contract with the same employer on substantially similar terms;
 - (i) the income of the National Insurance Fund established under the National Insurance Act;
 - (j) any income accrued to—
 - (i) an individual, from his office; or

-
- (ii) such an individual or his dependents by way of pension in respect of his past services.
as a minister of religion or other person in holy orders in the service of any religious body approved for this purpose by the Minister;
- (k) the income of any approved pension fund;
- (l) the income of any local authority;
- (m) the income of any trade union in so far as such income is not derived from a business carried on by it;
- (n) the income of any registered building society, friendly society or co-operative society;
- (o) the income of any religious, charitable, or educational institution of a public character in so far as such income is not derived from a business carried on by it for profit, other than a business carried on for the primary purpose of assisting disabled persons to learn or exercise a trade or skill;
- (p) the income of the Windward Islands Banana Growers Association;
- (q) the income of the Caribbean Investment Corporation and the Caribbean Development Bank;
- (r) the income of any statutory authority;
- (s) the income of the Mustique Company Limited, to the extent and subject to such conditions as are provided in the Mustique Company Limited Act;
- (t) the income of any international company registered under the International Companies Act, to the extent and subject to such conditions as are provided in that Act as for the time being in force;
- (u) the income on all pensions, including social security payments, whether earned locally or abroad with effect from the income year 1986:

Provided that—

- (i) in the case where the pensions, including social security payments, amount exceeds twenty thousand dollars per annum, the exemption from tax shall apply only in relation to twenty thousand dollars per annum;
- (ii) any balance of such pensions, including social security payments, or any balance of the aggregate of the pensions including social security payments and any other income, shall be sub-

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ject to tax (without any of the deductions prescribed under Part V).

(2) The exemptions specified in subsection (1) may be added to, deleted or otherwise varied by order made by Cabinet.

26. (1) Subject to this section, the income accruing from an hotel shall be exempt where the construction of such hotel or of any extensions to the residential accommodation therein commenced on or after the 1st January, 1979. Hotels.

(2) No exemption under subsection (1) shall apply unless approval of such exemption is given by Cabinet following application in writing made to the Minister prior to commencement of construction of the hotel or of the extensions thereto.

(3) Where approval has been given in respect of the construction of an hotel, there shall be exempt from tax for such period of time as may be determined by Cabinet, but not exceeding a maximum of ten years (hereinafter referred to as "the tax holiday period") all income accruing to the owner from the carrying on of the business of the hotel or by way of rental from the leasing of the hotel to a lessee.

(4) Where any hotel ceases to be used as a hotel by the owner or lessee thereof during the tax holiday period, the exemption provided by this section shall cease to apply from the date of cessation of such use.

(5) Where approval has been given in respect of any extensions to an existing hotel, there shall be exempt from tax for such period of time as may be determined by Cabinet, but not exceeding a maximum of five years (hereinafter referred to as "the tax holiday period"), all income, attributable to such extensions, accruing to the owner from the carrying on of the business of the hotel or by way of rental from the leasing of the hotel to a lessee.

(6) The income exempted under subsections (3) or (5) shall be ascertained after taking into account any allowances for capital expenditure to which the owner would have been entitled under the Second Schedule if such income had not been exempt from tax.

(7) For the purposes of subsection (5), income attributable to the extensions to an existing hotel shall be taken to be such proportion of the total income accruing from the hotel as the number of additional bedrooms in the extensions bears to the total number of bedrooms in the hotel.

(8) In this section—

“hotel” means a hotel or guest house containing not less than ten bedrooms for the accommodation of guests for reward.

(9) This section shall only apply to a hotel which, on the 1st of May, 1988, is licensed or provisionally licensed under the Hotels Aid (1969) Act.

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Certain residential accommodation.

27. (1) Subject to this section, the income accruing to a person from the construction by him, or on his behalf, of residential accommodation in Saint Vincent and the Grenadines where such construction commences after the 1st January, 1986, shall be exempt from tax.

(2) No exemption under subsection (1) shall apply unless such construction of residential accommodation has been undertaken in pursuance of an agreement with the Government.

(3) The income which shall be exempt under this section shall be—

(a) any gains or profits accruing from the sale by that person of such residential accommodation

(i) within a period of ten years after completion of construction and irrespective of whether or not such property has been leased to a tenant during such period;

(ii) where the cost per unit does not exceed one hundred thousand dollars;

(b) any rental income accruing to that person from the leasing of such residential accommodation during a period of ten years after completion of construction;

(c) any income accruing by way of interest on the mortgage loan advanced in connection with the sale of such residential accommodation.

(4) In ascertaining the income which is exempt under this section any capital allowances to which the owner would have been entitled under Part II of the Second Schedule shall be taken into account in the same manner as if the income were chargeable to tax.

Hotels Aid (1988) Act.

Cap. 340

28. The income of a hotel in respect of which an income tax exemption order has been granted under section 5 or 6 of the Hotels Aid (1988) Act shall, whilst such order is in force, be exempt from income tax for the period stated in such order and to the extent stated in that Act.

29. (1) Subject to this section, where any person, whether or not resident in Saint Vincent and the Grenadines, lends money to any other person by way of mortgage in connection with the purchase, construction or reconstruction of residential accommodation in Saint Vincent and the Grenadines, either for owner occupancy or for rental purposes, there shall be exempt from tax any income accruing to the mortgagee by way of interest on the loan secured by, and any service charge payable under, such mortgage.

Interest from housing mortgages.

(2) The mortgage referred to in subsection (1) shall be a mortgage in respect of which the rate of interest and service charge do not exceed twelve per centum:

Provided that in a case where the mortgage amount exceeds one hundred and fifty thousand dollars, the exemption from tax shall apply only in relation to the part of the mortgage limited to one hundred and fifty thousand dollars.

(3) Where income accrues to a resident company by way of interest or service charge which is exempt from tax under this section, such exempt income may be distributed by way of dividend to the shareholders, and any distribution so made, whether during the period of exemption or at any subsequent time, shall, subject to section 32, be exempt from tax in the hands of such shareholders.

(4) The rate of interest and service charge and the mortgage limit specified in subsection (2) may, by order made by the Minister, be varied.

(5) In this section—

“residential accommodation” means any place of accommodation used solely for residential purposes, and includes a shop with residential accommodation attached to it.

30. (1) Where a company carries on a business which consists of the lending of moneys in relation to mortgages, the interest from which is exempt under section 29, the Minister may, by order in the Gazette, exempt in the hands of the debenture holder the amount of any interest payable by that company in respect of debenture borrowing by it for the purpose of financing the purchase, construction or reconstruction of houses where he is satisfied as to the reasonableness of—

Interest paid on approved borrowings by mortgage companies.

(a) the period during which the debenture issue is to be repaid; and

(b) the rate of interest payable thereon by the company.

(2) Where an order is made under this section in respect of debenture borrowing, the company shall maintain such special account as the Comptroller may require showing—

- (a) the total borrowings; and
- (b) the amount loaned by the company under mortgage the interest from which is exempt under section 29.

(3) Any order made under this section may be revoked by a further order by the Minister from such date as he may specify therein, if he is of the opinion that such borrowings are being, or have been, applied other than under mortgages the interest from which is exempt under section 29; but nothing in this subsection shall be so construed as to prohibit the placing of such borrowings on short term Treasury bills investment or short term deposit with a recognised financial institution prior to the lending out under a programme of mortgage loans.

Pioneer enterprises and approved enterprises.

Act 5 of 1952.

Cap. 336

31. Where any person has been approved as a pioneer enterprise for the manufacture of a pioneer product under the Aid to Pioneer Industries Act, 1952, or has been approved as an approved enterprise under the Fiscal Incentives Act, such person shall be exempt from tax under this Act during the currency of the tax holiday period to the extent provided under the relevant Act.

Distribution of exempt income.

32. (1) Where, under this Act or any other written law, exemption from income tax is conferred upon a company, whether for a limited period of time or indefinitely, such company may declare dividends from its exempt income at any time if a special account is maintained by the company, to the satisfaction of the Comptroller, showing—

- (a) the amount of exempt income accrued; and
- (b) the amount of any dividends declared and paid therefrom,

and any dividends so declared shall be exempt in the hands of the shareholders.

(2) Where, under this Act or any other written law conferring exemption from income tax in respect of any dividend payable by a company that is itself exempt from tax, whether for a limited period of time or indefinitely, the recipient is another company, then that other company may at any time declare dividends equal to the exempt dividends received by it to its shareholders if a special account is maintained by the company, to the satisfaction of the Comptroller, showing—

- (a) the amount of exempt income accrued; and
 - (b) the amount of any dividends declared and paid therefrom,
- and any dividends so declared shall be exempt in the hands of its shareholders.

PART III

Ascertainment of Assessable Income.

33. (1) Subject to this Part, the assessable income of any person shall include the gains or profits from or by way of—

Assessable
income:
general.

- (a) any business;
- (b) any employment;
- (c) rentals and royalties;
- (d) interest or discounts;
- (e) premiums, commissions, fees and licence charges;
- (f) annuities and other periodic receipts;
- (g) dividends from companies; and
- (h) any other gains or profits accrued to that person which are not included under any other paragraph of this subsection.

(2) Nothing in subsection (1) shall be construed so as to bring within the meaning of assessable income, liable to assessment under Part IX, any amounts accrued to a non-resident (other than from carrying on of a business or the exercise of employment) which are liable to withholding tax under section 66.

34. (1) Subject to this Act, the assessable income of any person for any year of assessment, insofar as it is derived from a business, shall be the gains or profits accrued therefrom during the basis period for that year of assessment.

Business
income.

(2) In ascertaining the assessable income from a business the value of any trading stock held at the beginning and end of the basis period shall be taken into account in accordance with the First Schedule.

(3) The assessable income referred to in subsection (1) shall include—

- (a) any amount accrued under any contract of insurance against loss of profits or by way of compensation or damage for loss of profits;
- (b) any amount accrued by way of recovery of any bad or doubtful debt which has been allowed as a deduction for any previous year of assessment;

- (c) any amount accrued by way of recovery or reimbursement of any expenditure, or loss or by way of remission or other cessation, or indebtedness by a creditor, where such amount has been allowed as a deduction for a previous year of assessment;
 - (d) any amount accrued by way of subsidy for, or in relation to, the carrying on of a business.
 - (e) the market value of any benefit accruing in the course of business, whether or not convertible into money;
 - (f) the amount of any balancing charge ascertained under the Second Schedule.
- (4) Where a person carries on a business in and out of Saint Vincent and the Grenadines, the amount which shall be deemed to have accrued to him from a source situate in Saint Vincent and the Grenadines in respect of that business shall be such sum as appears to the Comptroller to be reasonable having regard to—
- (a) the nature of the operations carried on in and out of Saint Vincent and the Grenadines;
 - (b) the turnover of the business in and out of Saint Vincent and the Grenadines;
 - (c) the situation and value of the assets employed in the business;
 - (d) the market value of any trading stock imported into or exported from Saint Vincent and the Grenadines; and
 - (e) any other matters which appear to the Comptroller to be relevant.

Employment
income.

35. (1) Subject to this Act, the employment income of any person for any year of assessment shall include—
- (a) any amount accrued by way of wages, salary, leave pay, fee (including a director's fee), commission, bonus or gratuity;
 - (b) any travelling, entertainment or other allowance to the extent to which it does not represent a repayment to the employee of moneys wholly and exclusively expended by him in the performance of the duties of the employment;
 - (c) the rental value of any quarters or residence provided by the employer, but not including the official residence of the Prime Minister;

- (d) the value of any other benefit or advantage received or enjoyed by the employee in respect of his employment;
- (e) any pension payable to a former employee, or dependent of a former employee, either directly by the employer or indirectly by the trustee of a pension fund in respect of the employment.

(2) The employment income of any person shall not include the value of any leave passage to or from Saint Vincent and the Grenadines granted to—

- (a) any public officer;
- (b) any other person, at intervals of not less than three years,

where such leave passage is in fact used, but nothing in this subsection shall be so construed as to exclude from assessable income—

- (i) any money or other consideration received in lieu of the entitlement to a leave passage; or
- (ii) the value of any passage granted to any person at the termination of a contract of service, except at intervals of not less than three years, where such person returns to Saint Vincent and the Grenadines after leave to undertake employment under another contract of service with the same employer on substantially similar terms.

(3) Where an employment is exercised in Saint Vincent and the Grenadines on a visit or visits to Saint Vincent and the Grenadines by a non-resident in the performance of duties for a non-resident employer, and the Comptroller is satisfied that—

- (a) the visit or visits do not exceed thirty days in any basis period; and
- (b) the salary of the employee is not allowable as a deduction against the profits of a business carried on in Saint Vincent and the Grenadines,

such income shall not be charged to tax under this Act:

Provided that nothing in this subsection shall exclude from assessable income, any employment income accruing to—

- (i) public entertainers, including theatre, motion picture, radio or television artistes and musicians; or
- (ii) athletes.

(4) For the purposes of subsection (1) (c), the rental value of any quarters or residence provided shall be deemed to be—

- (a) where the property is not owned by the employer, the annual rental paid therefor; or
- (b) where the property is owned by the employer, such annual value as is assessed thereon under the relevant rating Act,

but limited in either case to the amount of four thousand eight hundred dollars, or such lesser amount as appears to the Comptroller to be reasonable, together with any other expenditure of a recurrent nature including electricity, water and telephone charges and other outgoings of a domestic nature borne by the employer, less any amount paid as rent by the employee.

Dividends.

36. (1) Subject to this section and section 77, the assessable income of every resident person shall include the actual amount of any dividend accrued to that person.

(2) Any dividend accrued to a non-resident person from a resident company shall not form part of the chargeable income of that person but shall be separately charged to withholding tax in accordance with section 66.

(3) For the purposes of this Act, "dividend" means any distribution of the assets of a company, whether in cash or otherwise, by the company to its shareholders in respect of shares of the company and includes—

- (a) any profit distributed whether of a capital nature or not;
- (b) in the event of the partial reduction of the capital of a company, any money, or the value of any property, which is distributed to the shareholders in excess of the amount by which the paid up value of the shares is reduced;
- (c) in the event of the reconstruction of a company, any money or the value of any property which is distributed to the shareholders in excess of the paid up value of the shares held by them before the reconstruction; and
- (d) in the event of the winding up of a company, any money, or the value of any property, which is distributed to the shareholders in excess of the paid up capital of the company, including any amount held in a share premium reserve.

(4) For the purposes of subsection (1), where a dividend consists of property other than money it shall be deemed to be of an amount equal to the market value of the property at the time of the distribution of the dividend.

(5) In this section—

“share premium reserve” means such amount as represents any premium which has arisen from an issue of shares where such amount has been capitalised.

37 The following amounts shall be charged to tax as rental Rental income.
income—

- (a) the gross rental payable by the lessee, tenant or occupier of any property;
- (b) any premium or other consideration, however described, payable for the right of use or occupancy of any property;
- (c) the value of any improvements which, pursuant of a lease agreement, the lessee has effected to property for the benefit of the lessor during the basis period for any year of assessment.

38. Without limiting the generality of section 33 (1) (h), such assessable income shall be deemed to include any other gross profits arising from property, but not including the annual value of land and improvements thereon, used by or on behalf of the owner or used rent free by the occupier for the purposes of residence or enjoyment and not used for the purposes of gain or profit. Income from other sources.

39. (1) The assessable income of every person for each year of assessment shall be ascertained after taking into account the deductions allowable under this section and sections 40 to 45. Deductions allowable: general.

(2) Subject to subsection (3), in ascertaining the assessable income of any person for any year of assessment from any source specified in section 33 there shall, upon due claim and subject to such evidence as the Comptroller may require, be allowed as a deduction, all expenditure wholly and exclusively and, in the case of employment income, necessarily incurred by that person during the basis period for that year of assessment for the purpose of producing his assessable income from that source.

(3) For the purposes of this Part, where income which has accrued to a person is deemed to have accrued to, and is included in the assessable income of, some other person, any expenditure incurred by either person in relation to such income shall be deemed to have been incurred by the person to whom such income is deemed to have accrued.

(4) Where expenditure is incurred partly for the purpose of producing assessable income and partly for purposes for

which no deduction is allowable, nothing in subsection (2) shall be construed to prevent the apportionment of such expenditure in such manner as appears to the Comptroller to be reasonable.

Deductions
allowable:
specific.

40. (1) Subject to sections 39 to 45 and without prejudice to section 39 (2), save to the extent that any provision of this section imposes a restriction on a deduction otherwise allowable, the deductions allowable in ascertaining the assessable income of any person for any year of assessment shall include—

- (a) any allowance to which that person is entitled under the Second Schedule in respect of capital expenditure;
- (b) any expenditure incurred by that person during the basis period for such year of assessment on the repair of premises, plant and machinery used by him in his business, or the replacement of any implement, utensil or similar articles for which no allowance is given under the Second Schedule;
- (c) any legal expenses incurred by that person during the basis period for the year of assessment in respect of any claim, dispute or action at law arising in the course, or by reason of, the ordinary operations undertaken by him in the carrying on of business;
- (d) any annually assessed rate or taxes imposed on any immovable property used by him for the purpose of producing assessable income;
- (e) any premiums incurred under a policy of insurance against damage to loss of property—
 - (i) where the property insured is used for the purpose of producing assessable income; and
 - (ii) the policy is entered into with an insurance company which carries on business in Saint Vincent and the Grenadines and is liable to include such premiums in its assessable income;
- (f) any premiums incurred under a policy of insurance against loss of profits:

Provided that—

- (i) no such deduction shall be allowable unless the policy is entered into with an insurance company which carries on business in Saint Vincent and the Grenadines and is liable to include such premiums in its assessable income; and

-
- (ii) where any policy against loss of profits arises under a policy of insurance on the life of an employee, including a director, a deduction shall only be allowable where the Comptroller is satisfied that—
- (a) any sums recoverable will constitute assessable income under section 34;
 - (b) the insurance is intended to meet a loss of profits arising from the loss of the employee's services;
 - (c) if the policy of insurance is against the death or permanent disablement of the employee, it is a policy providing only for a sum to be paid in the event of the death or permanent disablement of the employee within a specified number of years and while in the employment of the employer;
- (g) the amount of debts due to that person to the extent to which they are bad, and provided they have been brought to account in the ascertainment of his assessable income for any year of assessment;
- (h) such amount as the Comptroller deems reasonable in respect of any debts due to that person which he considers to be doubtful of recovery, and provided they have been brought to account in the ascertainment of his assessable income for any year of assessment;
- (i) any expenditure incurred during the basis period for a year of assessment by way of interest on any loan made to that person, including interest payable on debentures, to the extent to which the Comptroller is satisfied that the amount of such loan was used by that person for the purpose of producing assessable income;
- (j) any amount contributed under the National Insurance Fund by him in respect of persons employed in his business;
- (k) any amount contributed by him in respect of his employees by way of current annual contributions to an approved pension fund;
- (l) such amount as is specified in subsection (2) in respect of any contribution made by way of special

payment to an approved pension fund where such payment is made—

- (i) in relation to a period of service by any employee prior to the setting up of the approved pension fund; or
- (ii) to meet any actuarially ascertained insufficiency in the resources of the approved pension fund to meet its obligations to his employees;
- (m) any expenditure incurred by that person during the basis period for a year of assessment by way of audit fees, accountancy fees or, except in the case of an employee, in respect of the preparation of a return of income for the purposes of this Act or the previous Act;
- (n) any expenditure incurred by that person during the basis period for a year of assessment by way of subscription or donation to a professional institute approved by the Comptroller where he is satisfied that such body of persons is a non-profit body established with the object of maintaining and advancing the standards of such profession;
- (o) any expenditure incurred during the basis period for a year of assessment by way of levy imposed by the Interest Levy Act.

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(2) Where a special payment is made to an approved pension fund to which subsection (1) (l) applies, such amount shall be allowed as follows—

- (a) where the special payment does not exceed the current annual contribution it shall be wholly allowed for the year of assessment in the basis period for which payment is made;
- (b) where the special payment exceeds the current annual contribution, it shall be allowed in such years of assessment, not exceeding five in number, as in the opinion of the Comptroller is reasonable in the circumstances;
- (c) where under paragraph (b) annual deductions are allowable over a number of years of assessment, the first such deduction shall be allowable for the year of assessment in the basis period for which the special payment is made.

41. (1) Notwithstanding section 39, where a person carrying on business in Saint Vincent and the Grenadines incurs expenditure by way of management charges, being expenditure payable—

- (a) to a non-resident (such non-resident not being engaged in a business in Saint Vincent and the Grenadines giving rise to such management charges); or
- (b) by a branch of a non-resident company to its head office or to some other branch outside Saint Vincent and the Grenadines of such company,

a deduction shall be allowed of the lesser of—

- (i) the amount of such management charges; or
- (ii) one per centum of the deductions (exclusive of management charges) allowable under section 39 and the provisions of section 40 (1) other than paragraph (a) thereof:

Provided that where any of the allowable deductions under (ii) relate to the management charges incurred in the Caribbean region, that paragraph shall have effect in relation to those charges as if for the words "one per centum" the words "five per centum" were substituted. For the purposes of this subsection "Caribbean region" means the territories of the states in the Caribbean Community which, being parties to the Common Market Origin System, have adopted it.

(2) Notwithstanding section 39, in ascertaining the chargeable income of a controlled company for any year of assessment, the Comptroller may disallow any amount, otherwise deductible, which is paid or payable to a shareholder or any associate of a shareholder by way of—

- (a) employment income; or
- (b) interest on a loan by such person to the company, and which in the opinion of the Comptroller is excessive in amount, having regard to the duties performed or the rate of interest payable on such loan.

(3) For the purposes of subsection (2) —

- (a) "a controlled company" means a resident company which is owned and controlled by not more than five shareholders excluding the Government and any company which is not itself a controlled company;
- (b) "an associate of a shareholder" means, in relation to a shareholder, an individual who is—

Restrictions on deductions; management charges and certain payments by controlled companies to shareholders.

- (i) the spouse of the shareholder; or
- (ii) a lineal ancestor, child or other lineal descendant, brother, sister, uncle, aunt, nephew or niece of the shareholder or of his spouse;
- (c) a company shall be deemed to be owned and controlled by not more than five shareholders where five or less individual persons and any associates of such persons (within the meaning of paragraph (b)), beneficially own shares carrying between them, directly or indirectly—
 - (i) the right to exercise more than one half of the voting power in that company;
 - (ii) the right to receive more than one half of any dividends that might be paid by that company; and
 - (iii) the right to receive more than one half of any capital distribution in the event of the winding up or of a reduction in the share capital of that company.

Capital allowance.

42. For the purpose of ascertaining the assessable income of any person for any year of assessment, there shall be allowed as a deduction any amount to which that person is entitled under the Second Schedule in respect of capital expenditure incurred by him.

Deduction for losses.

43. (1) Subject to subsection (4), where deductions allowable to any person for any year of assessment under the provisions of sections 39 to 42 or 44 or 45, exceed the income from the source to which those deductions relate, the amount of such excess shall be allowed as a deduction against income accruing from other sources of income for that year of assessment.

(2) Subject to subsection (4), where, after the allowance of any deduction to which the person may be entitled under subsection (1), an excess still remains, the amount of such excess (hereinafter referred to as "the assessed loss from a source") shall be allowed as a deduction in ascertaining the assessable income of subsequent years of assessment to the extent provided in subsection (3).

(3) The deduction provided in subsection (2) in relation to an assessed loss from a source—

- (a) shall be allowed only against assessable income of subsequent years of assessment from the same source;

- (b) shall not exceed one-half of the assessable income of the next subsequent year of assessment accruing from the same source ascertained in accordance with the preceding provisions of this Act, including subsection (1) but not including subsection (2) of this section, (hereinafter referred to as "the relevant assessable income"); and
- (c) where such assessed loss exceeds one-half of the relevant assessable income or there is no such income of such year of assessment, the excess or the amount of such assessed loss, as the case may be, shall be carried forward and deducted in like manner until the assessed loss has been fully allowed.

(4) Where, during the last year of the tax holiday period of any person whose exemption relates to income accruing in respect of—

- (a) an hotel;
- (b) a pioneer enterprise,

the deductions which would have been allowable under the provisions of this Act, other than this section, exceed any amount which would have been assessable income, if that person had not been exempt from tax, then the amount of such excess shall be treated as an assessed loss allowable as a deduction in succeeding years in the manner provided in subsection (3).

(5) The net losses incurred by an approved enterprise, represented by the excess of all the losses over the holiday period, shall be carried forward and allowed as set-off in subsection (3) for a period of five years following the tax holiday period.

(6) Notwithstanding the provisions of this section, no deduction shall be allowable in respect of any loss arising from the carrying on of any business where, in the opinion of the Comptroller, such business was not carried on on a commercial basis and with a view to the realisation of gains or profits.

44. (1) No amount shall be deducted under any provision of this Act in respect of expenditure, or claim for an allowance, which has been, or will be, taken into account as a deduction or in calculating a deduction under any other provision of the Act or the previous Act.

(2) Where an amount qualifies for deduction under two or more provisions of this Act, nothing in subsection (1) shall prevent the person concerned claiming such of those deductions as is most advantageous to him.

Deductions not allowable under more than one provision.

Expenditure
for which no
deduction
allowable.

45. (1) Subject to any express provision in this Act authorising a specified deduction, in ascertaining the chargeable income of any person for any year of assessment, no deduction shall be allowed in respect of—

- (a) any expenditure to the extent to which it is not incurred for the purpose of producing assessable income;
- (b) any expenditure incurred for domestic or private purposes;
- (c) any expenditure incurred for the purpose of providing exempt income;
- (d) any capital withdrawn or any expenditure or loss of a capital nature;
- (e) any tax imposed under this Act or any previous enactment relating to tax imposed on income;
- (f) any income tax or tax of a similar nature charged in a country outside Saint Vincent and the Grenadines;
- (g) any contribution made to a pension fund which has not been approved under this Act;
- (h) any tax charged under the Insurance Business Tax Act.

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(2) Notwithstanding sections 39 and 40, in ascertaining the chargeable income of any person for any year of assessment, no deduction shall be allowed in respect of any amount paid, or payable, to a non-resident to which section 66 applies unless the Comptroller is satisfied that the withholding tax chargeable thereon has been paid.

PART V

Ascertainment of Chargeable Income

Concessional
deductions
general.

46. (1) In ascertaining the chargeable income for any year of assessment of any person who is a resident individual, there shall, upon due claim and subject to such evidence as the Comptroller may require, be allowed as a deduction from his assessable income any amount to which he is entitled under this Part.

(2) The deductions allowable under this Part shall be allowed after any deductions to which he is entitled under sections 39 to 45 and in the event of there being an insufficiency of assessable income to permit the allowance in full of any deductions under this Part then such concessional deductions shall be limited to the amount of the assessable income, if any, which remains.

47. (1) An individual to whom this Part applies shall be entitled to—

Personal allowances to individuals.

- (a) (i) irrespective of the nature of his income, an allowance of twelve hundred dollars; and
- (ii) in respect of earned income, an allowance of one tenth of the amount of such earned income or five hundred dollars, whichever is the lesser: or
- (b) (i) an allowance equivalent to the whole of his income if his income consists entirely of employment income or income derived entirely from agriculture or income derived entirely from fishing and does not exceed ten thousand dollars;
- (ii) an allowance of ten thousand dollars if his income consists entirely of employment income or income derived entirely from agriculture or income derived entirely from fishing and exceeds ten thousand dollars.

(3) Where the income consists not entirely of either employment income or income derived entirely from agriculture or income derived entirely from fishing, but such income does not include any income derived from trade, profession, manufacture, adventure or concern in the nature of trade, the benefit of deduction under subsection (1)(b) shall be available to the individual so long as the income other than employment income or income derived entirely from agriculture or income derived entirely from fishing does not exceed ten per centum of the total assessable income.

48. (1) An individual to whom this Part applies shall be entitled to seven hundred dollars in respect of his or her spouse if at any time during the basis period for the year of assessment the spouse is living with him or her, or is maintained by and not separated from him or her in circumstances in which he or she is entitled to a deduction under section 49

Allowance for spouse.

(2) The deduction allowable under this section shall be reduced where the spouse has assessable income in excess of seven hundred dollars by one dollar for every dollar of the excess.

49. (1) Subject to subsection (2) an individual to whom this Part applies, who, in the basis period for the year of assessment has paid—

Maintenance or alimony.

- (a) a maintenance or separation allowance (pursuant to a registered deed of separation or an order of court) to his wife from whom he is separated;
- (b) alimony, to a former wife from whom he is divorced (under a divorce recognised under the laws of Saint Vincent and the Grenadines,

shall be entitled to a deduction equal to the amount of such allowance or alimony.

(2) The deduction allowable under this section shall not apply unless the person receiving such maintenance or separation allowance or alimony is chargeable to tax thereon under this Act.

Allowance
for
child.

50. (1) Subject to this section, an individual to whom this Part applies who, during the basis period for the year of assessment, maintained a child who—

- (a) was born during the basis period;
- (b) at the commencement of the basis period has not attained the age of sixteen;
- (c) if over the age of sixteen, was a student child or an invalid child,

shall be entitled to a deduction of four hundred dollars in respect of each such child.

(2) The deduction allowable under this section shall be reduced, where the child has assessable income in excess of four hundred dollars, by one dollar for each dollar of the excess.

(3) The deduction in respect of any child allowable under this section shall be claimed by the father having custody of his child, and in any other case by the mother if she is having an earned income in respect of which she is liable to be assessed under this Act.

(4) Where two or more individuals are entitled to relief under subsection (1), the deduction allowable may be apportioned between such individuals in such manner as appears to the Comptroller to be reasonable.

(5) In this section—

“student child” means a child who at any time during the basis period for the year of assessment, was

- (a) receiving full time education at a school, college, university or other educational institution; or
- (b) serving full time as an apprentice or under articles or indentures with a view to qualifying in a trade or profession;

‘invalid child’ means a child of the person claiming the deduction provided by this section, who, by reason of permanent disability is dependent upon his parents for his maintenance.

51. (1) Subject to this section, an individual to whom this Part applies, who, during the basis period for the year of assessment, maintained a child of his who, during that basis period—

Education expenses overseas.

- (a) was a student child within the meaning of section 50 (5); and
- (b) resided away from Saint Vincent and the Grenadines in connection with his education or training,

shall be entitled to a deduction of seven hundred dollars in respect of the education or training of each such child.

(2) The provisions of section 50 (3) shall apply with equal force to any claim for deduction under this section.

52. (1) Subject to this section, where an individual to whom this Part applies, being a widower or widow, maintains a person who, during the basis period for the year of assessment, resided with him or her for the purpose of having the charge and care of any child of his or hers, within the meaning of section 50 (1), that individual shall be entitled to an allowance of two hundred dollars.

Allowance for housekeeper.

(2) The deduction allowable under this section shall be granted only—

- (a) in respect of one person for any year of assessment, and
- (b) where no deduction is allowed to any other person in respect of the maintenance of such person.

(3) Where a deduction is allowable under this section no deduction shall be allowed in respect of the same person under section 53.

53. (1) Subject to this section, where an individual to whom this Part applies, during the basis period for the year of assessment, maintains a dependent relative, he shall be entitled to an allowance of two hundred dollars, in respect of each such relative.

Allowance for dependent relative.

(2) The deduction allowable under this section—

- (a) shall not apply in relation to any child in respect of whom a deduction is allowed under section 50 or 51;

(b) shall not apply in respect of more than two dependent relatives in relation to a year of assessment; and

(c) shall be reduced, where such dependent relative has an income in excess of two hundred dollars, by one dollar for each dollar of the excess.

(3) Where two or more individuals are entitled to relief under subsection (1), the deduction allowable may be apportioned between such individuals in such manner as appears to the Comptroller to be reasonable.

(4) In this section—

“dependent relative”, means in relation to an individual, a person who is incapacitated by age or infirmity, or is unemployable by reason of old age, and is the parent or other lineal ancestor or brother or sister of that individual or of his wife.

Contribution
to life
assurance
approved
pension fund
or other
retirement
benefits.

54. (1) Subject to this section, where in the basis period for any year of assessment an individual to whom this Part applies makes payments for the future benefit of himself, his spouse, children or other dependents—

(a) as premiums for insurance on his life or the life of his spouse;

(b) as contributions to an approved pension fund approved under section 65; or

(c) as contributions pursuant to the National Insurance Act;

Provided that—

(i) nothing in this paragraph shall be construed as allowing any amount to be deducted from the income of any person in respect of any contribution paid by him on behalf of any person:

(ii) nothing in this paragraph shall apply to any employer's contribution which, apart from this paragraph, would be allowable as a deduction in computing the amount of any profit or gains:

(iii) a person who, by virtue of any provision of the National Insurance Act, suffers a deduction from his emoluments in respect of any contributions payable under that Act, shall be deemed for the purposes of this para-

graph to have paid a contribution equal to the amount of the deduction, he shall be entitled to a deduction in respect of the amount of such expenditure, subject to the limits imposed by subsection (2).

(2) Except as provided by subsection (4), the deduction allowable under this section shall not exceed the lesser of—

- (a) one sixth of his assessable income from all sources; or
- (b) three thousand six hundred dollars.

(3) For the purposes of this section, a policy of insurance means—

- (a) a policy providing lump sum benefits; and
- (b) a policy providing for periodical benefits, upon maturity,

but in either case a deduction under this section shall only be allowable where the policy is expressed to mature not earlier than ten years from the date it was effected or on death prior to maturity.

(4) In the case of an individual who holds a life policy of insurance with a foreign insurance company taken out after the 30th of July, 1985, that has an agent in Saint Vincent and the Grenadines, the deduction allowable under this section shall be one half.

55. (1) Subject to this section, where in the basis period for any year of assessment an individual to whom this Part applies, makes payments for medical expenses for treatment of himself or his wife or child for whom an allowance is given under section 48 (1), 50 or 51, he shall be entitled to a deduction in respect of the amount of such expenditure subject to the limits imposed by subsection (2).

Medical expenses.

(2) (a) No deduction shall be given under this section unless the treatment necessitated admittance to a hospital, nursing home or similar establishment for a continuous period of at least fortyeight hours;

(b) the deduction allowable under this section shall not exceed the lesser of—

- (i) the amount of the medical expenses; or
- (ii) five hundred dollars for all qualifying individuals taken together in any one basis period and then only to the extent that the expenses are borne by the individual and not recoverable by way of

insurance compensation or other reimbursement.

(3) Subject to section 46 (1), no deduction shall be allowable unless the claim is accompanied by a statement from the medical practitioner certifying—

- (a) the medical necessity for hospitalisation under subsection 2 (a) and the period for which the patient was admitted; and
- (b) the amount of the medical professional fees charged and paid.

(4) Where two or more individuals contribute towards the medical expenses, the deduction allowable under this section may be apportioned between such individuals in such manner as appears to the Comptroller to be reasonable.

(5) In this section “medical expenses” means the cost of medicines, professional medical fees and hospital accommodation charges.

Mortgage interest on owner occupied property.

56. (1) An individual to whom this Part applies shall be entitled to a deduction in respect of any amount paid during the basis period for a year of assessment by way of interest on a mortgage or loan on the acquisition of, or improvements to, an owner occupied property in Saint Vincent and the Grenadines, but the deduction allowable for any year of assessment in respect of such expenditure shall not exceed ten thousand dollars.

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(2) No deduction under this section shall be allowed unless the individual proves, to the satisfaction of the Comptroller, that he has satisfied his liabilities under the Land Tax Act.

(3) Where two or more individuals contribute towards the payment of such interest, the deductions allowable under this section may be apportioned between such individuals in such manner as appears to the Comptroller to be reasonable.

Avoidance of duplication.

57. Where a wife having an earned income is separately assessed in respect of any year of assessment, the Comptroller may disallow, in part or in whole, to the husband or to the wife, any deductions on account of premiums for insurance under section 54 (1), or of medical expenses under section 55, or of mortgage interest under section 56 in such manner and to such extent as appears to him to be reasonable so as to confine the benefit of permissible deductions either to the husband or to the wife or partly to the husband and partly to the wife.

58. (1) Subject to this section, a deduction shall be allowable in respect of any amount paid during the basis period for a year of assessment—

Payments made to public bodies.

(a) under a deed of covenant in favour of any approved religious, charitable or educational institution or fund of a public character where the Comptroller is satisfied that such deed is expressed to operate for a period of not less than five years;

(b) by way of a gift to the National Sports Council.

(2) The deduction authorised by subsection (1) shall be limited not to exceed five per centum of the assessable income of the person.

(3) In this section "approved" means approved by the Comptroller.

(4) Notwithstanding section 46 (1), the deduction allowable under this section shall be allowable to any person whether resident or non-resident and whether or not an individual.

59. (1) Subject to subsections (2) and (3), an individual to whom this Part applies who during the basis period for a year of assessment has saved with a registered credit union an amount of not less than six hundred dollars shall be entitled to a deduction of six hundred dollars.

Credit union savings.

(2) No deduction under this section shall be allowed unless the individual either—

(a) has been a member of a registered credit union for at least a two year period before the 1st of January in the income year for which the deduction is sought and has saved therewith an amount of not less than twelve hundred dollars; or

(b) has saved with a registered credit union over the two year period immediately preceding the year of assessment an amount of not less than twelve hundred dollars.

(3) Where an individual is allowed a deduction under this section and he withdraws from the credit union within two years of the allowance of the deduction an amount in respect of which the deduction was allowed, the amount so withdrawn shall be included in his assessable income in the basis period during which the amount was withdrawn.

(4) In this section "registered credit union" means a credit union registered under the Co-operative Societies Act or any similar legislation replacing the same.

Cap. 325

PART VI

Special Provisions Relating to Certain Taxpayers

International
agreements
for avoidance
of double
taxation.

60. (1) Notwithstanding any other provisions of this Act, the Minister may enter into an agreement with the government of any other country with a view to—

- (a) the provision of relief by way of the prevention, mitigation or discontinuance of the levying of tax under this Act or the income tax laws of that other country, or otherwise for the avoidance of double taxation;
- (b) determining the assessable income to be attributed to any agency, branch or other permanent establishment in Saint Vincent and the Grenadines, of a resident of that other country, or to any agency, branch or other permanent establishment in that country, of a resident of Saint Vincent and the Grenadines;
- (c) determining the assessable income to be attributed to a resident who enters into trading agreements with a resident of that other country with whom he is not dealing at arm's length;
- (d) determining the situation of the source of any assessable income derived by a resident of Saint Vincent and the Grenadines or that other country;
- (e) the rendering of reciprocal assistance to facilitate the administration of this Act and the income tax laws of that other country.

(2) The Minister may, at any time amend or cancel any agreement entered into under subsection (1).

(3) Any agreement entered into under subsection (1) or amendment or cancellation under subsection (2) shall be published by order in the Gazette.

Mercantile
insurance
companies
and
associations
of
underwriters.

61. (1) The assessable income for any year of assessment of any company carrying on a business of insurance other than life assurance (hereinafter referred to as "mercantile insurance") shall, subject to subsection (2), be ascertained in accordance with Part IV.

(2) To the balance so ascertained there shall be added a reserve for unexpired risks outstanding at the beginning of the basis period; and from the balance so ascertained there shall be deducted

- (a) a reserve for unexpired risks outstanding at the beginning of the basis period; and

- (b) where the company is a non-resident, but subject to section 41 (1), such proportion of the expenses of the head office as is attributable to the mercantile insurance business carried on in Saint Vincent and the Grenadines.

(3) The reserve for unexpired risks at the beginning and end of the basis period, referred to in subsection (2), shall be such percentage as is adopted by the whole company in relation to its operations as a whole for such risks at such times.

(4) The chargeable income for any year of assessment of an association of underwriters, within the meaning of that term as defined in section 2 of the Insurance Act, shall be deemed to be an amount equal to ten per centum of the gross premium arising in Saint Vincent and the Grenadines during the basis period for that year of assessment.

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(5) For the purposes of subsection (4), "gross premium" means the aggregate of all premiums collected by, or on behalf of, an association of underwriters from insured persons and includes premiums paid by an insurer to a re-insurer or premium received by an association of underwriters for re-insurance business.

(6) For the purposes of the charge to tax, an association of underwriters shall be deemed to be an individual.

62. (1) The assessable income for any year of assessment of any company carrying on a business of life assurance, whether mutual or proprietary, shall be deemed to be the gross investment income accruing in Saint Vincent and the Grenadines to the company during the basis period for that year of assessment less any deductions allowable under sections 39 to 45.

Life
assurance
companies.

(2) Where the company is a non-resident the deductions allowable shall, subject to section 41 (1), include such proportion of the expenses of the head office as is attributable to the business carried on in Saint Vincent and the Grenadines.

(3) For the purpose of subsection (1)—

(a) "the gross investment income accruing in Saint Vincent and the Grenadines" shall be deemed to be an amount equal to such part of the total investment income of the company as the premiums paid in Saint Vincent and the Grenadines bear to the total premiums paid;

(b) "the total investment income" means the aggregate of the investment income accruing in Saint Vincent and the Grenadines and elsewhere, including

income which would in the hands of any person be exempt;

- (c) no deduction or tax credit shall be given against the gross investment income accruing in Saint Vincent and the Grenadines (ascertained under paragraph (a)) in respect of any investment income accruing in Saint Vincent and the Grenadines which would in the hands of any other person be exempt under section 25.

(4) In this section "investment income" means the income accruing to a company from the investment of premium moneys paid to the company in respect of ordinary life assurance (including non-cancellable group life assurance), industrial life assurance and general annuity life insurance.

Non-resident
shipping and
airline
companies.

63. (1) Where any ship or aircraft owned or chartered by a non-resident person carries passengers or freight shipped in Saint Vincent and the Grenadines the assessable income of such person shall, subject to subsection (2), be ascertained in accordance with Part IV.

(2) Where a person to whom this section applies produces a certificate under subsection (3), the assessable income of such person for a year of assessment shall be deemed to be a sum equal to such part of the total gains or profits from such business for that year as the fares and freight charges for passengers and goods shipped in Saint Vincent and the Grenadines bears to the total fares and freight charges during the basis period for that year of assessment.

(3) The certificate referred to in subsection (2) shall be a certificate from the taxation authority of the country in which the principal place of business of the owner or charterer of the ship or aircraft is situated, and shall state—

- (a) that such person has furnished to the taxation authority full particulars of the whole of such business;
- (b) the proportion that the gains or profits of the business bears to the total fares and freight charges for the basis period.

(4) If a person to whom this section applies has been assessed under subsection (1) prior to production of a certificate, and a certificate is subsequently produced by him, the Comptroller may, subject to the limits as to time specified in section 97, make such adjustment to the assessment as is necessary to give effect to the certificate.

64. (1) Where any controlled company fails to make a sufficient distribution in relation to any year of assessment (hereinafter referred to as "a sufficient distribution") it shall be liable to pay tax on the undistributed profits of that year of assessment at the rate of fifteen per centum in respect of every dollar thereof.

Undistributed
profits of
controlled
companies.

(2) A controlled company shall have made a sufficient distribution for the purposes of this section if, within the time allowed for making such distribution, it has paid by way of dividend such proportion of the chargeable income remaining after deduction of the income tax payable by the company, as the Comptroller deems reasonable.

(3) Subject to this subsection, the time allowed for making a sufficient distribution is the period ending on the 31st December in the year of assessment; but where any controlled company proves to the satisfaction of the Comptroller that, by reason of special circumstances, the making of a sufficient distribution by such date would be detrimental to the business of the company, the Comptroller may waive the requirement to make a distribution.

(4) The undistributed profits of a year of assessment shall be the amount specified as a sufficient distribution for that year less the amount of the dividends, if any, made in relation to that year within the time allowed under subsection (3).

(5) Where, during the time allowed under subsection (3), a controlled company has made a distribution in excess of the distributable profits of that year of assessment, the amount of such excess shall be deemed to be a distribution made by the company within the time allowed for making a sufficient distribution in relation to the next succeeding year of assessment.

(6) Where liability to tax arises under subsection (1) in relation to a year of assessment any subsequent distribution of profits does not qualify the company for any relief therefrom, and such distribution shall be dealt with in accordance with section 36.

(7) Where liability to tax arises under this section, the Comptroller shall issue a separate notice of assessment in respect of such liability stating the amount of undistributed profits and the tax payable in respect thereof, but, save as provided, the provisions of this Act relating to the making of assessments, objections and appeals shall apply in respect of such liability.

65. (1) For the purposes of this Act, the Comptroller may approve a fund established for the provision of retirement bene-

Approved
pension
funds.

fits for employees and their dependents as an approved pension-fund in accordance with this section.

(2) The primary object of an approved pension fund shall be the provision of benefits by way of a pension—

(a) to its members upon retirement;

(b) to the spouse or child of a member upon his death, but any such fund may also make provision for other benefits not inconsistent with this object.

(3) A pension fund shall not be approved by the Comptroller where—

(a) the benefit provided on retirement or death is a lump sum; or

(b) where eligibility for membership in respect of members in permanent employment is not available to employees generally or to a class of employees generally.

(4) No pension fund shall be approved unless the Comptroller is satisfied that it provides—

(a) for a pension to be payable—

(i) on retirement of the member at his retirement date, which shall not be prior to him attaining the age of fifty;

(ii) on retirement of the member prior to his retirement prematurely as a result of mental or physical infirmity; or

(iii) on death of the member while still in employment, except where alternative provision is made for a death benefit to be payable in accordance with subsection (5);

(b) that any pension provided shall be payable in equal annual amounts (whether annually or at lesser periodic intervals) to—

(i) the member for his life;

(ii) the spouse of a deceased member, during her widowhood or for a guaranteed term of years;

(iii) any child of the member until such child attains an age of not less than sixteen years;

(c) that the maximum pension payable to a member shall not exceed seventy per centum of the maximum salary earned by him during any twelve month period of membership;

(d) that the maximum pension payable to the spouse and children of a deceased member shall not exceed fifty per centum of the pension payable to

the member at his death, or, where death occurred prior to his retirement, would have been payable to him had he retired on the date of his death;

- (e) that contributions by a member shall cease upon his retirement, death or withdrawal from the fund;
- (f) that the annual contribution by the employer in relation to every calendar year shall not be less than the total contribution paid by all members in relation to that year, except where the Comptroller is satisfied, upon certification by an actuary, that a lesser contribution is necessary to maintain solvency of the fund;
- (g) that no pension payable thereunder shall be capable of being surrendered, commuted or assigned either wholly or in part, except to the extent permitted by subsection (8);
- (h) that no benefit shall be payable to or in respect of a member prior to his retirement or death, except to the extent permitted by subsection (11) or (12);
- (i) for the constitution of the fund by a trust under which the property of the fund is irrevocably vested in—
 - (i) not less than three persons, where the trustees are individuals; or
 - (ii) a trust corporation.

(5) A pension fund may provide that, in lieu of widow's pension being payable in the event of the death of a member prior to retirement, a death benefit shall be payable equal to the aggregate of the joint contributions of the member and the employer together with compound interest thereon up to the date of his death.

(6) Where, pursuant to subsection (5), death benefits are payable in the event of the death of a member prior to his retirement, he may elect that such benefits shall be payable to his estate or any nominated beneficiary.

(7) A pension fund may provide for contributions to be made only by the employer, but no such fund shall be approved which provides for contributions to be made only by the member.

(8) A pension fund may provide for the commutation of pension benefits to the following extent—

- (a) where the annual amount payable does not exceed one thousand two hundred dollars, the full amount of the pension may be commuted;

(b) in any other case, the greater of one thousand two hundred dollars or twentyfive per centum of the pension may be commuted.

(9) The trustees of an approved pension fund shall not invest, lend or use the assets of the fund in any investment which is not an approved trustee investment.

(10) Notwithstanding subsection (4)(c) and (d) (which provides maximum limits in relation to pension entitlements), a pension fund may provide for increases in pensions to be payable to existing pensioners by reason of increased cost of living.

(11) A pension fund may provide for withdrawal from membership prior to resignation or death, but in any such case the rules of the plan shall provide that the maximum benefits to be paid to the member shall not exceed—

(a) where membership of the employee does not exceed five years, a cash payment equal to, or a paid up deferred pension determined by reference to, the employee's own contributions together with compound interest thereon up to the date of withdrawal;

(b) where membership of the employee exceeds five years, a paid up deferred pension determined by reference to the aggregate of the joint contributions of the member and the employer together with compound interest thereon up to the date of withdrawal;

or alternatively may provide for the transfer of such benefits to another pension fund.

(12) Notwithstanding subsection (11)(b), the rules of a pension fund may provide for the payment of a cash sum in lieu of a paid up deferred pension in the following circumstances—

(a) where the member is a married woman or an unmarried woman who is about to marry;

(b) where the member intends, upon withdrawal, to leave Saint Vincent and the Grenadines permanently; or

(c) where, in the opinion of the Comptroller, other special circumstances exist.

(13) Where cash benefits are payable to a member pursuant to subsections (11) or (12), upon withdrawal from a pension fund such moneys shall not form part of the chargeable income of the member but shall be separately charged to tax in the hands of the trustees who shall deduct, as tax, ten per cen-

tum of the moneys prior to payment of the balance to the member.

(14) The tax deducted by the trustees under subsection (13) shall be paid to the Comptroller within fifteen days after the end of the month in which it was deducted, and shall be accompanied by a statement setting out the names of all members to whom payments have been made, the amounts of such payments and the tax deducted therefrom.

(15) Where an approved pension plan is vested in—

- (a) individuals, at least one trustee shall be a representative of the employees, selected by them;
- (b) a trust corporation, a management committee shall be established, comprising not less than three individuals, at least one of whom shall be a representative of the employees, selected by them;

(16) No employer shall be capable of being a trustee of any pension fund established under this section, but nothing herein shall be construed as preventing an employer from appointing a representative either as a trustee or a member of the management committee as the case may be.

(17) Notwithstanding subsection (1), where a fund or scheme has been approved for the purposes of section 14 of the previous Act prior to the 1st January, 1979, such fund or scheme shall be deemed to have been approved under this section.

(18) In this section—

- “employer”, in the case of incorporated companies, includes a group of companies;
- “member” means any person employed in the service of another at a weekly, monthly or other periodic remuneration, but does not include a director of an incorporated company who is not actively engaged in the day to day management of the company;
- “retirement date” means the date upon which an employee reaches an age at which, in accordance with the customary practice of his employer, he may optionally, or must compulsorily, retire but not being an age less than fifty.

66. (1) Every person who makes any payments to a non-resident, shall deduct tax from such payments in accordance with and in the manner specified in the Third Schedule, and shall carry out such other obligations as are imposed by that Schedule.

Deduction
of tax from
payments to
non-
residents.

(2) For the purposes of this section, a person, including a partnership, to whom any payment is made to which this section applies shall be presumed, unless the contrary is proved, to be a non-resident if such payment is made to an address outside Saint Vincent and the Grenadines.

(3) Nothing in this section shall prevent the Comptroller from directing the deduction of a lesser amount than that provided in subsection (3) where he is satisfied that the person to whom the payment is made is a resident of a country with which an international agreement made under section 60 exists which provides for a lower rate of withholding tax than that provided in the Third Schedule.

(4) Where a foreign insurance company, carrying on mercantile or life insurance business, is not registered in Saint Vincent and the Grenadines, the insurance premium accruing or arising in Saint Vincent and the Grenadines shall be deemed to be income and shall be liable to withholding tax under this section.

Branch profits of non-resident company liable to withholding tax as dividends remitted.

67. (1) Every non-resident company in Saint Vincent and the Grenadines shall be liable to withholding tax under section 66 on the profits of such business for any year of assessment to the extent provided by this section in addition to its liability to income tax as if such profits were profits derived by a wholly owned subsidiary of a non-resident company which had accrued by way of dividend to the parent company three months after the end of the basis period for such year of assessment.

(2) The profits of a non-resident company which shall be liable to withholding tax by reason of this section, shall be the whole of the chargeable income, accrued from the carrying on of business in Saint Vincent and the Grenadines, remaining after the deduction of—

- (a) any income tax payable in respect of such chargeable income; and
- (b) any part of such chargeable income which has been reinvested in Saint Vincent and the Grenadines to the satisfaction of the Comptroller.

(3) For the purposes of subsection (2) (b)—
“reinvested in Saint Vincent and the Grenadines” means—

- (a) the acquisition by the company of land, buildings or plant and machinery as fixed assets, excluding plant and machinery acquired to replace existing plant and machinery;

- (b) the purchase of shares in, or securities issued by, companies, incorporated in and carrying on business in Saint Vincent and the Grenadines;
- (c) the lending of moneys by way of mortgage for the purpose of housing construction;
- (d) the purchase of long term securities issued by the Government;
- (e) any other investment which may be approved by the Minister for this purpose,

but, subject to subsection (4), does not include the placing of money on fixed deposit with a bank or other financial institution, or the purchase of short term Treasury notes or bills.

(4) No deduction shall be allowed under subsection (2) (b) in respect of any amount unless—

- (a) such amount has actually been reinvested, within the meaning of subsection (3), not later than three months after the end of the basis period for the year of assessment; or
- (b) the Comptroller is satisfied that the company intends to proceed with a reinvestment within a reasonable period of time thereafter, not being later than twelve months after the end of the basis period for the year of assessment;

and, in any case to which paragraph (b) applies, such moneys may be placed upon short term investment prior to such reinvestment.

(5) Where, in ascertaining the amount of profits upon which the liability created by this section is to be made, a deduction has been allowed for an amount claimed to have been reinvested and the Comptroller subsequently is of the opinion—

- (a) that the reinvestment or proposed investment has not been made within the time allowed; or
- (b) that any asset acquired as a reinvestment is subsequently disposed of within two years after the date on which the asset was acquired,

notwithstanding the time limits imposed by section 97, the Comptroller may disallow the deduction previously given and make an additional assessment accordingly.

(6) Nothing in subsection (5) shall be construed to treat as a disposal the sale of an asset where the sale is for the purpose of another investment which meets the requirements of subsection (3) and which is made within six months of such sale or within such further period as the Comptroller considers to be reasonable in the circumstances.

Deduction of
tax by
employers.

68. (1) Every employer who pays remuneration to his employees, shall deduct tax therefrom in accordance with and in the manner specified in the Fourth Schedule, and shall carry out such other obligations as are imposed by that Schedule.

(2) In this section "employer" and "remuneration" shall have the meaning given to them in the Fourth Schedule.

Indemnifi-
cation for
tax paid to
Comptroller.

69. Where any person liable to deduct tax under this Act accounts to the Comptroller therefor, he shall be acquitted and discharged of so much money as is represented by the tax so deducted and accounted for as if such sum had actually been paid to the person entitled thereto.

Payment of
estimated
tax.

70. (1) Subject to the exemption contained in section 72, the estimated tax computed on the basis provided in subsection (2) shall be payable by—

- (a) every resident company;
- (b) every other resident except an individual whose only source of income is employment;
- (c) every non-resident person carrying on business in Saint Vincent and the Grenadines, except a non-resident person providing independent personal services in respect of which there is a liability to withholding tax.

(2) The following shall constitute the estimated tax payable on the due dates specified in section 71:

- (a) in the case of a person already assessed to tax, the tax payable at the current rates on the chargeable income of the preceding year or the latest year for which the assessment has been completed as reduced by the tax deducted at source by the employer, if any; or
- (b) in the case of a person not previously assessed to tax, the tax payable on the basis of expected income in the current year as reduced by the tax deductible from employment income, if any.

When
estimated tax
due and
payable.

71. Subject to this Part, estimated tax is due and payable in three instalments as follows—

- (a) one instalment by the 30th September and another instalment by the 31st December both in the income year forming the basis period for the year of assessment; and

- (b) the third instalment by the 31st March in the year of assessment immediately following the basis period for that year of assessment.
- (2) The tax due and payable in respect of—
- (a) each instalment due and payable under subsection (1) (a) is an amount equal to one-third of the estimated tax payable;
- (b) the instalment due and payable under subsection (1) (b) is an amount equal to—
- (i) the remaining one-third of the estimated tax payable where the return is not filed by the 31st March; or
- (ii) the balance of the tax payable on the basis of the return of income in respect of the year of assessment for which the return of income is furnished in accordance with section 80 (1).

72. A person is exempt from paying estimated tax by instalment under section 70 where the tax chargeable on assessment, as reduced by tax deductible at source, is six hundred dollars or less. Exemption from instalment payment.

73. Where a person makes an application by the 30th November in the income year forming the basis period claiming that the chargeable income in the current year is liable to be less than the chargeable income in the preceding year, or the latest year for which the assessment has been made, the Comptroller may revise the estimated tax payable. Power of revision.

74. An instalment or part thereof due and payable under this Part which is not paid by the date upon which it becomes due and payable shall bear interest at the rate of one and a half per centum per month or part thereof for the period during which it remains unpaid in whole or in part. Interest on estimated tax.

PART VII

Ascertainment of Tax Payable

75. (1) Tax shall be charged for each year of assessment on the chargeable income for every person at the rates specified in the Fifth Schedule. Rates of tax.

(2) Withholding tax shall be charged—

- (a) in respect of cash benefits payable to a member on withdrawal from an approved pension fund at the rate specified in section 65 (13);
- (b) in respect of any other payments to non-residents at the rates specified in the Third Schedule.

Credit for tax deducted or paid.

76. Where, under section 68, any tax has been deducted from employment income accrued to any person, the tax so deducted shall be set off against the tax charged under section 75 for the year of assessment in relation to which such income accrued.

Credit in relation to dividends.

77. (1) Where a dividend accrues to a resident company from another resident company, there shall be allowed to the first mentioned company a tax credit equal to the amount by which the tax payable by that company has been increased by the inclusion of the dividend in its assessable income:

Provided that where, by reason of any loss allowable under section 43 (1), the chargeable income of the year of assessment is less than the net dividend, then credit shall continue to be given in succeeding years of assessment until credit has been given in respect of the full amount of the tax attributable to such dividend.

(2) Where a dividend accrues to a resident person, other than a company, there shall be allowed—

- (a) where the tax payable by reason of the inclusion of the dividend in the assessable income of that person is payable at a rate not more than twentyfive per centum, a tax credit equal to the whole amount of such tax;
- (b) where the tax payable by reason of the inclusion of the dividend in the assessable income of that person is payable at a rate greater than twentyfive per centum, a tax credit equal to twentyfive per centum of the net dividend.

(3) In this section—

“net dividend” means the actual dividend included under section 36 (1) reduced by the amount of any deductions allowed under section 39, 40, 41, 42, 44 or 45.

Credit for tax paid outside Saint Vincent and the Grenadines..

78. (1) Where an agreement which has effect under section 60 provides that tax payable under the laws of the country with which such agreement has been made shall be allowed as a credit

against tax charged in Saint Vincent and the Grenadines credit for such tax shall be given in the manner provided in such agreement and shall be set off against the tax charged under this Act.

(2) Where income has accrued to a resident and has been charged to tax under the laws of a country outside Saint Vincent and the Grenadines—

- (a) with which country there is no agreement under section 60; or
- (b) with which country there is an agreement under section 60 but is income to which such agreement does not relate,

and such income is charged to tax under this Act, credit for any tax payable under the laws of another country in which such income was charged to tax shall be calculated in the manner provided in section 79, and shall be set off against the tax charged under this Act.

(3) Where any assessment is made to give effect to the provisions of this section, it shall be subject to the limits as to time provided by section 97.

79. (1) The credit to be set off in respect of tax payable in another country on the income referred to in section 78 (2) shall be the lesser of—

Calculation
of tax credit
for foreign
tax.

- (a) the tax payable in the other country; or
- (b) the tax charged under this Act,

on such amount.

(2) Where liability to tax in Saint Vincent and the Grenadines arises in respect of income which is received in this country, for the purposes of calculating the tax charged under this Act, the amount of the assessable income charged to tax in the other country shall be taken as the aggregate of the amount remitted to this country and the amount of tax payable thereon in the other country.

(3) In this section—

“the tax payable in the other country” means the amount payable, either directly or by deduction, for which the resident person was personally liable and actually paid in that other country; and

“the tax charged under this Act” in relation to any year of assessment means that proportion of such tax which the assessable income charged to tax in the other country bears to the total assessable income for that year of assessment, but where the proportion is greater than the tax actually paid the tax charged shall be limited to the amount actually paid.

PART VIII

Returns and Information

Returns of
income:
general.

80. (1) Subject to section 92, every person liable to furnish a return of income in respect of any year of assessment, either personally or in a representative capacity, shall furnish a return, in such form, as may be approved by the Comptroller, on or before the 31st March in the year of assessment, and such form shall—

- (a) be signed by him, either personally or in such representative capacity;
- (b) contain a calculation of the chargeable income, if any, disclosed therein;
- (c) contain a calculation of the tax payable;
- (d) include the payment of the tax calculated in his return; and
- (e) contain an address for servi of notices.

(2) Where a person who furnished a return fails to pay tax, or any part thereof, in accordance with the provisions of subsection (1) (d), the Comptroller may direct that a sum equal to one and a half per centum of such tax, or part thereof, shall be recovered from him by way of penalty for every month during which the default continues.

(3) For the purposes of this section “every person liable to furnish a return of income” includes—

- (a) every person liable to pay tax under this Act;
- (b) every partnership;
- (c) every person who for that year, or any previous year of assessment, has made a loss in respect of which he may be entitled to claim a deduction for the year of assessment or any subsequent year of assessment;
- (d) subject to subsection (6), every person who derives any income from any source specified in section 33, irrespective of the amount of such income; and
- (e) every person who derives any income which would be charged to tax under this Act save for the provisions of sections 26 to 31 which has exempted such

income from the charge to tax for a limited period of time.

(4) The Comptroller shall give general notice in such manner as he deems fit of the obligations imposed by this section and shall in any such notice specify the place at which return forms may be obtained.

(5) Notwithstanding subsection (4), the Comptroller may cause forms to be delivered by hand or by post to any person, but failure to do so, or the non-receipt by any person of a return form, shall in no way relieve any person liable to furnish a return of income from his obligation to comply with subsection (1).

(6) Notwithstanding subsection (2)—

(a) a resident individual whose assessable income accrues from sources other than a business and whose assessable income from such sources does not exceed twelve hundred dollars;

(b) a non-resident person whose income accrues from sources situated in Saint Vincent and the Grenadines consists only of income to which the provisions of section 66 apply,

shall be relieved of the obligation of furnishing a return of income under subsection (1).

81. Where it appears to the Comptroller that—

(a) a person may leave Saint Vincent and the Grenadines during the basis period for any year of assessment or shortly after its expiry and that the absence from Saint Vincent and the Grenadines of such person is unlikely to be temporary only;

(b) a person has ceased to carry on business during the basis period for any year of assessment; or

(c) in the case of any other person, it is expedient to do so,

the Comptroller may, at any time, serve upon such person a notice in writing requiring him to furnish within such time as may be specified in the notice, not being less than seven days from the date of service of such notice, a return of income for any year of assessment.

Cessation of income during the basis period for any year of assessment.

82. (1) Where it appears to the Comptroller that any person is, or may be, liable to furnish a return of income for any year of assessment and has not done so, the Comptroller may, by notice in writing, require such person to furnish a return of income

Where no return furnished.

within such time as may be specified in the notice, not being less than seven days from date of service of such notice.

(2) Nothing in this section shall be construed as extending the time limit provided by section 80 for the furnishing of any return of income.

Further
returns:
production
of books, etc.

83. (1) For the purposes of the administration or the enforcement of this Act, including the obtaining of full information in respect of the income of any person who is or may be liable to tax, the Comptroller may, by notice in writing, require that person or any other person—

(a) to furnish to the Comptroller, at such time as may be specified in such notice, such further return of income, statement of assets and liabilities or other information as may be required by him;

(b) to produce, at such time and place as may be specified in such notice, for examination by the Comptroller or for retention by him for such period as may be reasonable for their examination, any accounts, books of account, statement of assets and liabilities or other documents which the Comptroller may consider necessary for such purpose and, if any such information is not available in the English language, to produce at the expense of the person who is, or may be, liable to tax a translation in English prepared and certified by an approved translator;

(c) to attend, at such time and place as may be specified in the notice, for the purpose of being examined by the Comptroller in respect of the assessable or chargeable income of himself or any other person or any transaction or matters appearing to the Comptroller to be relevant thereto.

(2) Without prejudice to the generality of subsection (1), the Comptroller may require any bank—

(a) to furnish to him any details of any banking account or other assets which may be held on behalf of any person, or to furnish a copy of bank statements of any such banking account;

(b) to permit the Comptroller or any officer authorised by him to inspect the records of the bank with respect to the banking account of any person,

or may require the attendance of any officer of a bank before him to give evidence respecting any bank account or other assets which may be held by the bank on behalf of any person.

(3) Subject to such modifications and adaptations as may be necessary, the provisions of subsection (1) shall extend to the supply of information, the production of documents and the giving of evidence to the Comptroller in relation to—

(a) the payment of income tax by any person to a non-resident to which the Third Schedule applies;

(b) the payment of remuneration by an employer to his employees to which the Fourth Schedule applies,

the deduction of tax therefrom and the accounting for any tax so deducted.

(4) Where any books of account or other documents are produced for the purposes of this section, the Comptroller may make copies of such books or documents or may retain them where such course of action appears to him to be necessary for the purposes of any prosecution or the substantiation of any assessment.

84. (1) Whether or not any person has been assessed to tax, the Comptroller may carry out an examination of the income tax affairs of such person, but subject to the limit as to time specified in section 97.

Examination
of business
records.

(2) For the purposes of subsection (1), the Comptroller, or any officer authorised by him, may at all reasonable times, and subject to prior notice, enter into any premises where any business is carried on or the records or books of account of such business are kept, and

(a) examine such records or books of account and examine any documents which relate to income accruing from such business;

(b) inspect any trading stock of the business in respect of which allowances or deductions have been, or may be, claimed under the Act;

(c) require the owner of the business, or any employee or agent, to give him such reasonable assistance in connection with the examination and inspection as may be necessary and to answer orally or in writing any questions relating thereto.

(3) Where, during the course of any examination or inspection, it appears to the Comptroller, or the officer, that there may not have been a correct disclosure of assessable income or allowable deductions, he may take possession of any books of account

or other documents for further examination at the office of the Comptroller, and after such examination may retain or make copies of, or take extracts from, such books or documents for the purposes of any prosecution or the substantiation of any assessment.

Powers of entry, inspection and removal of documents.

85. (1) The Comptroller, or any officer authorised by him, may, for the purpose of obtaining information which he considers necessary in relation to the liability of any person to tax, enter any premises at any time during the day, with or without previous notice, and search for any moneys or documents; and in carrying out any search he may —

- (a) open, or cause to be opened, any article in which he considers any money or documents may be contained;
- (b) seize any documents which he considers may afford material evidence of the liability of any person to tax;
- (c) retain any such documents for such period as may seem reasonable for their examination or for the purposes of a prosecution or the defence of any assessment
- (d) make copies of any such documents;
- (e) require the owner of the business, or any employee, to give him such reasonable assistance in connection with such search as may be necessary and to answer orally or in writing any questions relating to the assets found on the premises and as to the location of any books of account, documents, information or assets which should be on the premises.

(2) Any officer exercising any power under subsection (1) shall, upon demand, produce the authority furnished to him by the Comptroller.

(3) Where any documents are seized and retained under subsection (1), the person to whom such documents belong shall be entitled to examine and make copies or extracts from them at such time and place and under such supervision as the Comptroller may direct.

(4) No admission to any premises without previous notice to the owner shall be sought by any officer without specific authority of the Comptroller.

(5) In this section "documents" includes any books, records or accounts.

86. (1) Every person carrying on any business shall keep, in the English language, such records or books of accounts as are necessary to reflect the true and full nature of the transactions of the business, regard being had to the nature of the activities concerned and the scale on which they are carried out.

Maintenance of proper record of transactions, methods of accounting and preservation of books of account and records.

(2) Where the Comptroller is of the opinion that records and books are not being kept in accordance with subsection (1), or where no records or books of account are being kept, by any person carrying on business then, in addition to the proceedings which may be taken under section 131 the Comptroller may direct such person to keep such records or books of account as he may specify.

(3) The records or books of account required by this section shall be kept at the place of business of the person carrying on business, unless the Comptroller approves of them being kept at some other place.

(4) Subject to subsection (5) and (6), every person to whom this section applies shall preserve all books of account and other records which are essential to the explanation of any entry in such books of account of that business for a period of seven years after the end of the basis period to which such books of account or records relate.

(5) The Comptroller may, by notice in writing, require any person to retain such records as are referred to in subsection (4) for such further period of time as he deems necessary for their proper examination.

(6) Where—

- (a) a person has died;
- (b) a company has gone into liquidation;
- (c) a trust or body of persons has been terminated; or
- (d) in any other case where he is satisfied that it is reasonable to do so,

the Comptroller may, on application, approve of the disposal of any books of account or other records within such lesser period than seven years as he thinks fit.

(7) The Comptroller may, subject to such conditions and in respect of such books of account or other records as he may specify, authorise the retention of a microfilm copy of any books of accounts or other records in lieu of the original book of records.

(8) For the purposes of this section, the books of accounts and other records required to be preserved shall be deemed to include the record required to be kept under the Third or Fourth Schedule.

Submission of accounts with return of income and certificate relating to preparation of accounts.

87. (1) Where any person carries on a business in the basis period for any year of assessment, his return of income for such year shall be accompanied by a copy of the final accounts of the business together with a reconciliation of the income shown in the accounts with the chargeable income disclosed in the return in relation to the business.

(2) Where the accounts referred to in subsection (1) have been audited by a professionally qualified auditor, he shall provide on the face of the accounts a certificate giving his name, address and occupation and stating—

- (a) the extent of the examination made of the books of account and of the documents from which such books of account were prepared; and
- (b) whether or not, as far as he was able to ascertain from such examination, the entries in those books of account disclosed the true nature of every transaction, receipt, accrual, payment and debit.

(3) Where the accounts referred to in subsection (1) have been prepared by a person other than the person carrying on the business and have not been audited by a professionally qualified auditor, that other person shall provide on the face of the accounts a certificate giving his name, address and occupation and stating whether he has made any examination, and if so, the extent of the examination made, of the books of account and of the documents from which such books of account were prepared.

Principal officer of company.

88. (1) Every company carrying on business in Saint Vincent and the Grenadines shall at all times be represented for the purposes of this Act by a principal officer residing in Saint Vincent and the Grenadines and duly appointed by the company or its authorised agent or attorney.

(2) Every company shall appoint a principal officer and an address for service of notices—

- (a) if it is carrying on business on the 1st January, 1979, within two months after such date; or
- (b) in the case of a company which begins to carry on business in Saint Vincent and the Grenadines after the 1st January, 1979, within one month after the commencement of business,

and shall notify the Comptroller of such appointment and address within the periods specified.

(3) Every change of principal officer or of the address for service of notices on the company shall be notified to the

Comptroller by the company within fifteen days of such change occurring.

(4) The principal officer shall be answerable for the doing of all such things as are required under this Act to be done by the company of which he is the representative, and in case of default he shall be liable to the same penalties.

(5) Everything done by the principal officer, which he is required to do in his representative capacity, shall be deemed to have been done by the company and any notice given to the principal officer shall be deemed to be given to the company.

(6) The absence of, or failure to appoint, a principal officer shall not excuse a company from the necessity of complying with any of the provisions of this act and the company shall be subject to, and liable to comply with, its provisions as if there were no requirement to appoint a principal officer.

(7) Every notice, process or proceeding which under this Act may be given to, served on or taken against any company may be given to, served on or taken against the principal officer, and if at any time there is no principal officer, then any such notice, process or proceeding may be given to, served on or taken against any officer or person acting in the management of the business of the company or as an agent for the company, and such person shall have the same liability in respect of that notice, process or proceeding as the company or principal officer would have had if it had been given to, served on or taken against the company or principal officer.

(8) In the event of the company being placed in liquidation, the liquidator shall be required to exercise all the functions and assume all the responsibilities of a principal officer under this Act during the continuance of the liquidation, and any person previously appointed as principal officer of the company shall cease to be principal officer at such time.

89. (1) Every partnership carrying on business in Saint Vincent and the Grenadines shall at all times be represented by a resident individual who shall be —

Precedent
partner
of
partnership.

(a) the precedent partner; or

(b) if no acting partner is resident in Saint Vincent and the Grenadines, the agent of the partnership in Saint Vincent and the Grenadines,

(2) The precedent partner shall be the person who, being an acting partner resident in Saint Vincent and the Grenadines,

(a) is first named in the partnership agreement;

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

or, in any other case where neither paragraph (a) or (b) is applicable, such other partner as is specified by the partnership.

(3) Every partnership shall notify the Comptroller of the name of the precedent partner, or, if there is no acting partner resident in Saint Vincent and the Grenadines, shall appoint and notify the Comptroller of the name of its agent in Saint Vincent and the Grenadines—

(a) if it is carrying on business on the 1st January, 1979, within two months after such day or;

(b) if it begins to carry on business after the 1st January, 1979, within one month after the commencement of business.

(4) Every partnership shall, within the period specified in subsection (3), appoint an address for service of notices.

(5) Every change of precedent partner or agent of the partnership or of address for service of notices shall be notified to the Comptroller within fifteen days of such change.

(6) The precedent partner or agent, as the case may be, shall be answerable for the doing of all such things as are required under this Act to be done by the partnership of which he is the representative, and in case of default he shall be liable to the same penalties.

(7) Everything done by the precedent partner or his agent, as the case may be, which he is required to do in his representative capacity shall be deemed to have been done by the partnership, and any notice given to or request made upon the precedent partner or agent shall be deemed to have been given to or made upon the partnership.

Returns deemed to be furnished by due authority and in full knowledge of contents.

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

Method of furnishing returns.

91. Any return required to be furnished under this Act shall be delivered by hand or post to the address specified in the relevant form.

92. Where, under this Act, any return is required to be furnished by any person within a specified period, the Comptroller may, by notice in writing served on such person, extend the period within which such return is to be furnished.

Extension
of
time.

PART IX

Assessment of Tax

93. (1) Subject to section 97, the Comptroller—

Comptroller
to make
assessments.

(a) shall make an assessment of the chargeable income of and tax payable by every person chargeable with tax; and

(b) may make an assessment on any person where there is no chargeable income but there is an entitlement to a refund of tax.

(2) Where a person has furnished a return of income, the Comptroller may accept such return and make an assessment in accordance therewith.

(3) Where—

(a) a person fails to furnish a return of income; or

(b) the Comptroller is not satisfied that the return furnished by any person is true and correct,

he may make an assessment to the best of his judgment.

94. (1) Subject to section 97, where in relation to an assessment made on any person for any year of assessment, the Comptroller is of the opinion that—

Additional
assessment.

(a) the tax charged is less than the amount which should have been charged;

(b) any assessed loss is greater than at which it should have been assessed; or

(c) a refund has been made in excess of the amount which should have been refunded,

he shall make an additional assessment accordingly.

(2) Where, on the determination of an appeal made under Part X, the Appeal Commissioners or any subsequent appellate tribunal increase an assessment, the Comptroller shall increase the assessment accordingly, without limit as to time.

95. (1) Subject to this section, if, in relation to an assessment made on any person for any year of assessment, the Comptroller is satisfied upon a claim made within six years after the basis period for that year of assessment that there is a mistake in the assess-

Reduced
assessment.

ment apparent from the face of the return, the assessment or other records, as a result of which—

- (a) the tax charged is greater than the amount which should have been charged;
- (b) any assessed loss is less than at which it should have been assessed; or
- (c) a refund has been made which is less than the amount which should have been refunded,

the Comptroller shall make a reduced assessment accordingly.

(2) Where, on the determination of an appeal made under Part X, the Appeal Commissioners or any subsequent appellate tribunal order the reduction of an assessment, the Comptroller shall reduce the assessment accordingly, without limit as to time.

(3) Where for any year of assessment a person who has furnished a return of income for that year and has been assessed under section 93 or 94 notifies the Comptroller in writing within six years after the end of the basis period for that year of assessment that by reason of some error or mistake of fact in such return the assessment was excessive, the Comptroller, after taking into account all relevant circumstances and subject to subsection (4), may reduce the assessment to provide such relief as appears to him to be fair and reasonable.

(4) No relief shall be given under section (3) if the assessment was properly made in accordance with the practice generally prevailing at the time the return of income was made.

Determina-
tion of
assessed loss.

96. (1) Where, in relation to any year of assessment, the amount, as determined by the Comptroller, by which the deductions allowable to any person under sections 39 to 45 exceed the income against which such deductions may be allowed, the Comptroller shall make a determination of such excess (referred to in this Act as "the assessed loss").

(2) The determination of the assessed loss of any person under subsection (1) shall constitute the making of an assessment by the Comptroller and shall be notified in writing to the person assessed, and the provisions of this Act other than sections 98 and 99 shall apply as if such determination were the determination of the amount of the assessable income of such person for such year of assessment.

(3) Where any provision of this Act operates to prevent the allowance as a deduction against assessable income of the whole or part of any amount otherwise allowable, nothing in the Act shall prevent the Comptroller from making assessments by way of a determination of an amount of chargeable income and a

determination of an assessed loss in respect of the same year of assessment.

97. (1) Subject to this section, an assessment may be made in relation to any person at any time prior to the expiry of six years after the end of the year of assessment to which it relates. Time limits for assessments.

(2) Where a return of income is furnished after the end of the year of assessment, an assessment may be made at any time prior to the expiry of six years after the end of the year during which it is furnished.

(3) Where no return of income is furnished in relation to a year of assessment, an assessment may be made at any time.

(4) Where any fraud or wilful default has been committed in connection with tax for any year of assessment by or on behalf of any person, an assessment in relation to such year may be made at any time.

(5) Where a person is deceased, notwithstanding the provisions of subsections (1), (2), (3) and (4), no additional assessment shall be made at any time after the expiry of four years from the end of the year in which the person dies.

98. Subject to subsection (2), a notice of assessment in respect of every person chargeable with tax shall be made and issued to such person in such form as may be approved by the Comptroller. Notice of assessment.

(2) The Comptroller shall not be required to issue a notice of assessment to any person where—

- (a) no liability to tax arises and no tax has to be repaid;
- (b) liability to tax arises but the tax payable does not exceed five dollars,

unless the person makes a request for the issue of a notice of assessment.

(3) In this section—

“notice of assessment” includes a notice in respect of an additional assessment and a reduced assessment.

99. The Comptroller shall maintain, in such manner as he thinks fit, a record of all assessment made in respect of each year of assessment. Record of assessments.

100. (1) Subject to section 95, where, in relation to an assessment— Finality of assessments.

- (a) no valid notice of objection has been given under section 101;

- (b) subsequent to the determination of an objection, no valid notice of appeal has been given under section 104; or
- (c) an appeal has been determined and there is no further right of appeal,

such assessment shall be final and conclusive.

(2) Nothing in subsection (1) shall prevent the Comptroller from making an additional assessment, within such time limits as are permitted by section 97, for any year of assessment, which does not involve re-opening any matter which has been determined on appeal for such year.

(3) Notwithstanding subsections (1) and (2), where any fraud or wilful default has been committed by or on behalf of any person in relation to his liability to tax for any year of assessment, the Comptroller may make an additional assessment for such year even though it may involve re-opening a specific matter which has been determined on appeal, but only in respect of a matter upon which no finding of fact was in dispute.

PART X

Objections and Appeals

Objection to
assessment.

101. (1) Any person who is aggrieved by an assessment or a determination by the Comptroller made on him may, by notice in writing to the Comptroller within thirty days after the date of service of the notice of assessment or determination, or within such further time as the Comptroller may for good cause allow, object to the assessment or determination.

(2) Where the assessment is—

- (a) an additional assessment; or
- (b) a reduced assessment which imposes a fresh liability,

the person assessed shall have no further right of objection than he would have made if that assessment had not been made, except to the extent to which that assessment has imposed a fresh liability on him.

(3) An objection shall specify particulars of the grounds on which it is made.

(4) In this section

“aggrieved by an assessment” means aggrieved by—

- (a) the inclusion in an assessment of an amount as part of the assessable income;

- (b) the disallowance in an assessment of an amount claimed as a deduction in determining chargeable income;
- (c) the determination by the Comptroller of the amount of an assessed loss;
- (d) the amount of tax set off under section 76,77 or 78; or
- (e) the determination by the Comptroller of any matter affecting a person's liability to tax in circumstances where such determination has not involved the making of an assessment.

102. (1) The Comptroller shall consider any valid objection made under section 101 and may either disallow it or allow it either wholly or in part and shall, by notice in writing, inform the objector of his decision. Decision
by
Comptroller
on
objection.

(2) If a decision of the Comptroller in determining an objection requires a reduction of, or increase in, an assessment, the Comptroller shall issue a notice of the reduction or increase in the assessment to the person assessed, together with the notice of his decision as soon as practicable thereafter.

103. (1) For the purposes of this Part, there shall be a tribunal of Appeal Commissioners established and regulated in accordance with this section. Appeal
Commission-
ers.

(2) The Appeal Commissioners shall comprise such persons as may be appointed by Cabinet.

(3) Cabinet shall appoint one of the members to be chairman, and any meeting of the Appeal Commissioners shall comprise the chairman and two other members.

(4) Every decision of the Appeal Commissioners shall be given under the signature of the chairman presiding at the meeting.

(5) The Director of Finance and Planning shall appoint a secretary to the Appeal Commissioners, and any notice or correspondence, other than decisions of the Commissioners, may be issued and signed by the secretary.

(6) At any hearing by the Appeal Commissioners, in the event of a division of opinion, the decision of the majority shall prevail.

(7) The Appeal Commissioners shall have—

- (a) power to summon to attend at the hearing of an appeal any person who in its opinion is, or might be, able to give evidence respecting the appeal;

- (b) power, where any person is so summoned, to examine him on oath or otherwise;
- (c) power to require any person to produce any books or documents which are in his custody or under his control and which the Appeal Commissioners may consider necessary for the purpose of the appeal;
- (d) all the powers of a subordinate court with regard to the enforcement of attendance of witnesses, hearing evidence on oath and punishment for contempt;
- (e) power to admit or reject any evidence adduced, whether or not admissible under the provisions of any written law for the time being in force relating to the admissibility of evidence;
- (f) power to postpone or adjourn the hearing of an appeal where the Appeal Commissioners are satisfied that, for any reasonable cause, either party to the appeal has been prevented from attending on the date fixed for such hearing; and
- (g) power to determine the procedure to be followed in an appeal.

Appeal from
decision by
Comptroller.

104. (1) Any person (herein after referred to as the "appellant") who is aggrieved by a decision of the Comptroller may, by notice of appeal, appeal therefrom to the Appeal Commissioners.

(2) A notice of appeal shall be made in writing and shall be lodged with the Comptroller within thirty days of the service of—

- (a) the Comptroller's decision on the objection; or
- (b) the Comptroller's determination in relation to any other matter from which an appeal may be made,

or within such further time as the Appeal Commissioners may, for good cause, allow.

(3) The Comptroller shall refer all outstanding appeals to the Appeal Commissioners forthwith and, as soon as practicable thereafter, the Appeal Commissioners shall set a date for the hearing of such appeals.

(4) In this section

"aggrieved by a decision of the Comptroller" means aggrieved by a decision of the Comptroller upon an objection against—

- (a) the inclusion in an assessment of an amount as part of the assessable income;

- (b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the chargeable income;
- (c) the determination by the Comptroller of the amount of an assessed loss;
- (d) the amount of tax set off under section 76, 77 or 78;
- (e) the disallowance by the Comptroller of a claim for relief under section 95; or
- (f) any determination by the Comptroller of any matter affecting a person's liability to tax in circumstances not involving the making of an assessment.

105. (1) Upon every hearing of an appeal, the Appeal Commissioners may confirm, increase or order the reduction of any assessment or make such other order as they deem fit. Hearing by
Appeal
Commission-
ers.

(2) On any appeal to which this section relates both the appellant and the Comptroller shall bear their own costs.

(3) On any appeal the burden of proof shall lie upon the appellant.

(4) At least thirty days before the date fixed for the hearing of an appeal, the secretary to the Appeal Commissioners shall, by notice in writing, advise the appellant and the Comptroller of the date on, and the place at, which the appeal has been set down for the hearing.

(5) At every hearing by the Appeal Commissioners the appellant and the Comptroller shall be entitled to appear in person or by representation.

(6) The hearing of an appeal by the Appeal Commissioners shall not be public unless the chairman so directs on application by the appellant, and in any case where such direction is made the obligation as to secrecy imposed by section 6 shall cease to apply.

(7) The chairman may authorise the publication of the decision of any appeal but the publication shall be in such manner as not to disclose the identity of the appellant.

106. (1) The Comptroller or the appellant may appeal to the High Court from any decision of the Appeal Commissioners which involves a question of law, including a question of mixed fact and law. Right of
further
appeal.

(2) The Comptroller or the appellant may appeal to the Court of Appeal from any decision of the High Court (being a decision of the High Court on appeal from the Appeal

Commissioners) which involves a question of law, including a question of mixed fact and law.

(3) On any further appeal to which this section relates the High Court or the Court of Appeal, as the case may be—

- (a) may confirm, increase or order the reduction of any assessment
- (b) may make such other order as it deems fit; and
- (c) may make such order as to costs as it deems fit.

Payment of tax not suspended by objection or appeal.

107. The obligation to pay—

- (a) any tax chargeable under an assessment;
- (b) any penalty imposed in an assessment for failure to lodge a return or for failure to lodge a correct return; or
- (c) any interest imposed for late payment of any assessed tax,

shall not be suspended by reason of any notice of objection or appeal having been given against an assessment, and the tax, penalty or interest charged may be recovered as if no such objection or appeal had been given, or the Comptroller may in his discretion and subject to such terms and conditions as he deems fit to impose, suspend recovery pending determination of the objection or appeal.

PART XI

Payment, Recovery and Refund of Tax

When tax due and payable.

108. (1) Subject to this Part, any tax charged by notice of assessment is due and payable within thirty days of the date of the notice of assessment.

(2) On application by the person chargeable, the Comptroller may in any case grant such extension of time for payment or permit payments to be made by such instalments and within such time as he considers the circumstances warrant, and in such case the tax shall be due and payable accordingly, but nothing in this subsection shall be construed to extend the due date specified in subsection (1) in respect of any interest due and payable under section 109.

(3) Where, under subsection (2), any tax is permitted to be paid by instalments and there is default in payment of any instalment, the whole of the balance of tax outstanding shall become due and payable forthwith.

109. (1) Any tax due and payable by any person under section 108, not paid upon the date on which such tax becomes due and payable, shall bear interest at the rate of one and one half per centum per month or part thereof, for the period during which it remains unpaid in whole or in part.

Interest on unpaid tax.

(2) Notwithstanding subsection (1), the Comptroller may remit the whole or part of such interest where he is satisfied that it is appropriate to do so.

110. (1) Any tax deducted or deductible—

(a) from the remuneration paid to an employee pursuant to section 68; or

(b) from the payment of any income to which section 66 applies to a non-resident;

When tax deducted from remuneration or other payment to non-residents due and payable.

shall be due and payable within fifteen days after the end of the month during which that tax was deducted or deductible.

111. (1) Any tax deducted or deductible under section 66 or 68 and not paid by the time specified in section 110 shall bear interest at the rate of one and one half per centum per month or part thereof for the period during which it remains unpaid in whole or in part.

Interest on unpaid tax deductions.

(2) Any interest imposed on any person under subsection (1) shall be a debt due by that person and shall not be recoverable by him from the person in respect of whom the tax was deducted or should have been deducted.

112. (1) Tax shall, when it becomes due and payable, be a debt due to the Crown and payable to the Comptroller.

Recovery of tax by court action.

(2) Any tax unpaid may be sued for and recovered by the Comptroller in any court of competent jurisdiction.

(3) In any proceedings for the recovery of tax it shall not be competent for the defendant to enter a defence that—

(a) the chargeable income is incorrect;

(b) the tax charged is excessive

(c) the assessment is the subject of objection or appeal;

(4) In this section tax includes—

(a) tax payable under section 108; and

(b) tax deducted or deductible under section 65 (13), 66 or 68.

113. (1) Where any person fails to pay any tax when it becomes due and payable, whether—

Recovery of tax by distraint.

- (a) under an assessment made on him; or
- (b) which he was required to deduct from payments made to any other person,

the Comptroller may file with the bailiff a warrant, certified by the Comptroller as correct, of the tax due and payable and unpaid.

(2) A warrant filed under subsection (1) shall be treated by the bailiff as having the same effect as a civil judgment given by a court of competent jurisdiction in favour of the Comptroller for a debt of the amount specified in the warrant, and the bailiff shall proceed to levy on the property of the person named in the warrant to such extent as is necessary for the recovery of the unpaid tax and to meet any proper charges of the bailiff.

Recovery of moneys from persons leaving Saint Vincent and the Grenadines.

114. (1) Where the Comptroller has reason to believe that any person may leave Saint Vincent and the Grenadines owing moneys, or might upon assessment owe moneys, under this Act, the Comptroller may, by notice in writing served on that person, require that he pay the amount outstanding or give security to the satisfaction of the Comptroller for the payment thereof, or to secure the amount which might be owing, as the case may be, within the time specified in the notice.

(2) If any person fails to pay any money owing or give satisfactory security as required under subsection (1), no exit certificate shall be issued to such person under the subsidiary legislation for the time being in force in relation to income tax exit certificates.

Recovery of tax from wife, where income charged to husband.

115. (1) Where the tax charged on any person is attributable in whole or in part to chargeable income which would, but for the operation of section 13, have been charged to tax in the name of the wife of that person (in this section referred to as "the wife's income") then so much of the tax charged as is attributable to the wife's income may be recovered from her assets.

(2) For the purpose of subsection (1), the tax attributable to the wife's income means such part of the tax charged upon her husband as bears the same proportion as her income bears to the total income chargeable upon her husband.

Recovery of tax from assets of certain dispositions.

116. (1) So much of any tax due and payable by a disponor as is attributable to income accrued under a disposition but charged to tax in the name of the disponor under section 14, 15 (5) or 16 may be recovered from the assets of the disposition.

(2) For the purposes of subsection (1), the tax attributable to income deemed to have accrued to a disponor under section 14, 15 (5) or 16 means the amount by which the tax charged under section 7 has been increased by the inclusion of such income in the assessable income of the disponor.

(3) Where income is deemed to have accrued to the disponor under two or more dispositions, the amount ascertained under subsection (2) shall be apportioned between those dispositions in such proportions as the chargeable income of each such disposition bears to the total chargeable income of all such dispositions.

117. (1) Where any individual dies, then in respect of any tax payable under an assessment—

Recovery of
tax from
representative
taxpayer.

- (a) made upon him prior to his death;
- (b) made upon his executor under section 15 in respect of income accrued to his death; or
- (c) made upon his executor under section 16 in respect of income accrued after death to the estate of the deceased person,

the amount of tax unpaid by that person in his lifetime, or payable under an assessment made on his executor, shall be a debt due and payable out of the estate of the deceased person.

(2) Where a company is being wound up, then in respect of any tax payable under an assessment—

- (a) made upon the company, prior to and remaining unpaid at the commencement of the liquidation;
- (b) made upon the liquidator in respect of income accrued prior to commencement of the liquidation; or
- (c) made upon a liquidator in respect of income accrued during the winding up of the company

the amount of tax unpaid by the company or payable by the liquidator shall be a debt due and payable out of the assets of the company.

(3) Where any person is chargeable to tax under section 15 (1) as trustee of a trust to the income of which there is no beneficiary immediately entitled, then any tax payable by the trustee shall be due and payable out of the assets of the trust.

(4) Where any person is chargeable to tax under section 19 or 20 as trustee for an insolvent or other legally disabled person,

any tax payable by the trustee shall be due and payable out of the assets of that person.

(5) Where any person is chargeable to tax under section 22 as agent for a non-resident, any tax payable shall be due and payable out of the assets in Saint Vincent and the Grenadines of that non-resident.

Right of
representative
taxpayer to
indemnity.

118. Every person who, as a representative taxpayer, pays any tax shall be entitled to recover the amount paid from the person on whose behalf it was paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the amount paid.

Personal
liability of
representative
taxpayer.

119. (1) Every representative taxpayer shall be personally liable for any tax payable by him in his representative capacity if, while it remains unpaid—

- (a) he alienates, charges or disposes of any income in respect of which the tax is charged; or
- (b) he disposes of, or parts with, any assets or money which is in his possession or comes to him after the date on which the tax is due and payable if the tax could legally have been paid out of such income, assets or money.

(2) Every trustee, liquidator and executor shall be personally liable for the payment of any tax if, before distributing any assets under his control to the persons entitled thereto, he fails to obtain from the Comptroller a certificate showing that all tax which may be recovered from such assets has been paid.

Recovery of
tax from
person
holding
money for
another.

120. (1) For the purposes of recovery of any tax due and payable by any person, the Comptroller may, by notice in writing, declare any other person—

- (a) from whom any money is due or may become due to the first mentioned person;
- (b) who holds, or may subsequently hold, money for or on account of the first mentioned person;
- (c) who holds money on account of some other person for payment to the first mentioned person; or
- (d) who has authority from some other person to pay money to the first mentioned person,

to be the agent of that person and to pay to the Comptroller within fifteen days of the date of service of the notice, or, if on such date no money is due or held to which this subsection applies, within fifteen days of the date on which money becomes

due or is held in any of the circumstances referred to in this subsection, the amount specified in the notice or, if the money due or held is less than the amount specified, the whole amount of the money due or held.

(2) The payment of any money to the Comptroller by any person under subsection (1) shall, to the extent of such payment, constitute the discharge of the original liability of that person to the person from whom the tax was due and payable to the Comptroller.

(3) Where any person declared to be an agent under subsection (1), fails to make any payment within the time specified in a notice under that subsection, the provisions of this Act shall apply as if such amount were tax due and payable by the person declared to be an agent on the date by which he was required to make such payment to the Comptroller.

121. Notwithstanding anything contained in any other written law—

- (a) the trustee in bankruptcy of an individual; or
- (b) the liquidator of a company which is being wound up,

shall apply the assets of the bankrupt individual or the company, as the case may be, in payment of tax due under this Act or under the previous Act (whether assessed before or after the date of sequestration or commencement of winding up) in priority over other unsecured debts of that individual or company.

Priority of tax
debt upon
bankruptcy
or
liquidation.

122. (1) Where the Comptroller is satisfied that any person has paid tax for any year of assessment, by deduction or otherwise, in excess of the amount finally determined to be payable under this Act for such year of assessment, that person shall, subject to section 95, be entitled to have the amount of the excess refunded.

(2) Notwithstanding subsection (1), where any tax is due and payable and unpaid in respect of any other year of assessment, the Comptroller, instead of refunding the amount of the excess, may apply such excess towards such other unpaid tax and shall notify the person accordingly.

Refund of
tax
overpaid

123. (1) Cabinet may remit, wholly or in part, any tax payable by any person where it is satisfied that it is just and equitable to do so.

(2) Any decision made under subsection (1) shall be final and not subject to appeal.

Remission
of
tax.

(3) The Comptroller may remit any amount of tax unpaid by any person in respect of any year of assessment, whether before or after the 1st January, 1979, where he is satisfied that—

- (a) that such tax is irrecoverable by operation of law; or
- (b) that the cost of collection of such tax, not exceeding twenty dollars in relation to any year of assessment, would exceed the amount outstanding.

(4) In this section “tax” includes amounts of interest or penalty.

PART XII

Penalties, Offences and Proceedings

Penalties
additional.

124. The penalties imposed by sections 125, 126 and 127 shall be in addition to any right to institute criminal proceedings against any person for an offence under this Act, and any fine payable on conviction for an offence shall be in addition to the penalties provided herein.

Failure to
furnish
return
of income.

125. (1) Where any person who is required to furnish a return of income for any year of assessment fails to do so within the prescribed time, or any extended time allowed under section 92, he shall be liable to a penalty of a sum equal to one and a half per centum of the tax payable on assessment as reduced by the tax deducted at source or estimated tax paid, if any, for every month during which the default continues.

(2) Notwithstanding anything contained in subsection (1), the penalty shall be levied at a minimum figure of twenty dollars even where the penalty imposable works out to less than twenty dollars on the basis provided in subsection (1).

Failure to
furnish
correct
return.

126. (1) Where any person fails to furnish a correct return of income for any year of assessment by reason of—

- (a) his failure to disclose any assessable income accrued to him from any source;
- (b) the deduction or set off by him of any amount which is not allowable as a deduction or set off;
- (c) the claim by him of an expenditure or loss of an amount which was not expended or lost; or
- (d) his failure to disclose any fact, the disclosure of which would result in an increase in his liability to tax,

he shall be liable to a penalty in accordance with subsection (2) or (3).

(2) Where the incorrectness of the return of income or the information was attributable to—

- (a) neglect or carelessness, he shall be liable to a penalty not exceeding one half of the amount of tax which has been or would have been lost if he had been assessed on the basis of the incorrect return or information furnished by him;
- (b) fraud or wilful default, he shall be liable to a penalty not exceeding the amount of tax which has been or would have been lost if he had been assessed on the basis of the incorrect return or information furnished by him.

(3) If, for any year of assessment, determination of the chargeable income of any person results in an assessed loss, and the amount of such loss is less than it was or would be if it had been calculated on the basis of the return of income or information furnished by him by reason of any of the circumstances specified in subsection (1) and such incorrectness of the return or information was due to neglect, carelessness, fraud or wilful default, he shall be liable to a penalty not exceeding ten per centum of the difference between those two amounts.

127. Where any person fails within the specified time to comply with a notice issued under section 83 (1) requiring him to—

- (a) furnish returns or information under paragraph (a);
- (b) produce books of account or documents under paragraph (b); or
- (c) attend the Comptroller for examination under paragraph (c),

of that section, whether in relation to himself or any other person, he shall be liable to a penalty not exceeding five hundred dollars.

128. Where any penalty is contemplated under section 127, prior to the imposition thereof, the Comptroller shall notify the person concerned—

- (a) as to the nature of the breach of the Act which has occurred; and
- (b) as to the amount of penalty which it is proposed to impose,

and shall afford that person the opportunity of being heard thereon within such period as may be specified in the notice.

Failure to comply with notice to give information.

Notice of intention to impose penalty to be given.

Sanction
for
prosecution.

129. (1) Subject to the powers of the Director of Public Prosecutions under the Constitution, no criminal proceedings in respect of any offence under this Act shall be commenced except with the sanction of the Comptroller.

(2) Criminal proceedings under this Act shall be commenced in the name of the Comptroller.

Breach
of
security.

130. Any person appointed under or employed in carrying out the provisions of this Act who, in contravention of the oath or declaration of secrecy made by him under section 6,

- (a) discloses to any unauthorised person any document, information or confidential instruction which has come into his possession or to his knowledge in the course of his duties; or
 - (b) permits any unauthorised person to have access to any records in the possession of the Comptroller,
- is guilty of an offence and liable to a fine of fifteen hundred dollars and to imprisonment for one year.

Failure to
comply with
requirements
of Act.

131. (1) Any person who—

- (a) fails or neglects to furnish to the Comptroller any return or document as and when required under this Act;
- (b) fails to comply with the requirements of any notice in writing served on him under this Act;
- (c) refuses or neglects to answer truly and fully any questions put to him or to supply any information required from him in relation to his assessable income or the assessable income of any other person;
- (d) fails to keep a proper record of his transactions or to preserve any books of account or documents as required under section 86;
- (e) fails to disclose in any return of income made by him any assessable income accrued to him or any material facts which should have been disclosed;
- (f) signs any record or document rendered to the Comptroller without reasonable grounds for believing that return or document, or any part thereof, to be correct; or
- (g) obstructs or hinders any person appointed or employed under this Act in the discharge of his duties,

is guilty of an offence and liable to a fine of fifteen hundred dollars and to imprisonment for one year.

(2) Any person who, having been convicted under subsection (1) of failing to do anything required to be done under this Act, fails, within any further period specified by the Comptroller in a notice served on him, to comply with the requirements of that notice is guilty of a further offence and liable, for each day during which the offence continues, to a fine of seventyfive dollars and to imprisonment for one month.

132. (1) Any person who, wilfully and with intent to evade assessment or liability to tax —

Intent to evade liability to tax.

- (a) makes, causes or allows to be made any incorrect statement in any return lodged under this Act;
- (b) signs any document or any return lodged under this Act having reason to believe the contents of such document or return, or any part thereof, to be incorrect;
- (c) gives any incorrect answer, verbally or in writing, to any request for information made by the Comptroller;
- (d) prepares or maintains any incorrect books of account or other records, or falsifies any books of account or other records;
- (e) authorises the preparation or maintenance of any incorrect books of account or other records; or
- (f) makes use of or authorises the use of any fraud whatever,

is guilty of an offence and liable to a fine of three thousand dollars and to imprisonment for two years.

(2) In any proceedings under this section, if it is proved that any incorrect statement or entry is wilfully made in any return, document, answer, books of account or other records by any person, he shall be presumed, until the contrary is proved, to have made, caused or allowed to be made that incorrect statement or entry with intent to evade assessment or liability to tax.

133. Any person who—

- (a) fails to deduct any tax from any payment to a non-resident to which section 66 and the Third Schedule apply; or
- (b) within the prescribed time, fails to pay to the Comptroller any amount deducted under the Third Schedule,

Offences in connection with payments to non-residents.

is guilty of an offence and liable to a fine of fifteen hundred dollars and to imprisonment for one year.

Offences by employers or employees.

134. Any person who—

(a) being an employer—

- (i) within the prescribed time, fails to register as an employer, or to notify any change of address or to notify that he has ceased to be an employer;
- (ii) within the prescribed time, fails to deduct any amount of tax from remuneration paid to an employee;
- (iii) within the prescribed time fails to pay to the Comptroller any amount of tax deducted from remuneration paid to an employee;
- (iv) fails to comply with any direction issued by the Comptroller under the Fourth Schedule;
- (v) fails to maintain a record of remuneration paid to his employees and tax deducted therefrom;
- (vi) within the prescribed time, fails to deliver to any employee a certificate of tax deducted from remuneration;
- (vii) within the prescribed time, fails to furnish to the Comptroller an annual return of tax deductions and remittances; or

- (b) being an employee, within the prescribed time, fails to lodge the further declaration required by paragraph 3 (b) (c) of the Fourth Schedule upon ceasing to be entitled to any of the deductions or allowances claimed by him in a declaration previously furnished by him in respect of that year of assessment,

is guilty of an offence and liable to a fine of fifteen hundred dollars and to imprisonment for one year.

Evasion of tax in relation to deduction of tax by employer.

135. (1) Any person who wilfully with intent to evade assessment or liability to tax—

- (a) furnishes to his employer or to the Comptroller an incorrect declaration of personal particulars or other information in relation to any matter affecting the amount of tax to be deducted from his remuneration;
- (b) issues, uses or causes to be issued or used any certificate of remuneration and tax deducted which is incorrect;

- (c) alters any certificate of remuneration and tax deducted issued by any other person, pretends to be the employee named in any such certificate or in any other way to his own advantage or benefit obtains credit with respect to or payment of the whole or any part of any amount of tax deducted from remuneration received by any other person; or
- (d) not being an employer and without being authorised by any person who is an employer, issues or causes to be issued any document purporting to be a certificate of remuneration and tax deducted,

is guilty of an offence and liable to a fine of three thousand dollars and to imprisonment for two years.

(2) In any proceedings under this section, if it is proved that any incorrect statement or entry is wilfully made in any return, document, answer, books of account or other records by any person, he shall be presumed, until the contrary is proved, to have made, caused or allowed to be made that incorrect statement or entry with intent to evade assessment or liability to tax.

(3) In this section the words "employer", "remuneration" and "employee" shall have the meaning given to them in the Fourth Schedule.

136. (1) Where any person—

- (a) wilfully makes or furnishes on behalf of another person; or
- (b) aids or abets another person to make or deliver an incorrect return, document, statement or any incorrect information relating to any matter affecting the tax liability of that other person,

the first mentioned person is guilty of an offence and liable to a fine of fifteen hundred dollars and to imprisonment for one year.

(2) Any person who, wilfully and with intent to assist any other person to evade assessment or liability to tax, does any of the matters referred to in section 132 or 135, is guilty of an offence and liable to a fine of three thousand dollars and to imprisonment for two years.

(3) In any proceedings under this section, if it is proved that any incorrect statement or entry is wilfully made in any return, document, answer, books of account or other records by any person, he shall be presumed, until the contrary is proved,

Aiding
or
abetting.

to have made, caused or allowed to be made that incorrect statement or entry with intent to evade assessment or liability to tax.

Mitigation
and
compounding

137. (1) Where any person has committed a breach of the provisions of this Act for which a penalty is provided under sections 124 to 128, then in relation to such breach the Comptroller may mitigate any penalty either wholly or in part.

(2) Subject to the powers of the Director of Public Prosecutions under the Constitution, where any person has committed an offence against this Act for which criminal proceedings may be taken under sections 130 to 136, then in relation to such offence, the Comptroller may, at any time prior to the commencement of the hearing by any court of such proceedings, compound the offence and order the person to pay such sum of money as the Comptroller may think fit but not exceeding the maximum amount specified in those sections for such offence.

(3) The Comptroller shall not exercise his power to compound under subsection (2) unless the person who has committed the offence requests the Comptroller in writing to so deal with the offence.

(4) Where the Comptroller compounds any offence under this section and makes an order accordingly—

- (a) the order shall be made in writing and there shall be attached to it the request made under subsection (3);
- (b) the order shall specify the offence committed, the amount ordered to be paid and the date on which payment is to be made;
- (c) a copy of the order shall be given to the person who committed the offence, and the person shall not be liable to any criminal proceedings in respect of the offence;
- (d) the order shall be final and not subject to any appeal;
- (e) the amount ordered to be paid shall be recoverable as if it were tax due and payable.

Time limits
for
proceedings.

138. Proceedings under sections 129 to 137 may be commenced—

- (a) where the offence alleged has involved the doing of any act, within three years thereafter;

- (b) where the offence alleged has involved the failure to do any act, within three years after the Comptroller has become aware of such failure;
- (c) where the offence alleged has involved the non-disclosure or incorrect disclosure by any person of any income or information relating to that person's liability to tax, within three years after his correct liability to tax has become final in respect of the year of assessment to which the offence relates.

PART XIII

Miscellaneous

139. (1) Subject to the remaining provisions of this Act, the Comptroller may approve the form of any notice, return of income or other return required for the purposes of this Act, and where any form has been so approved such form of notice or return shall be used for such purposes. Forms of notices and returns.

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

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

140. (1) Where, under this Act, any notice or other document is required or authorised to be served on or given to any person by the Comptroller, such notice or other document shall be sufficiently served— Service of notices or documents.

- (a) in the case of a person other than a company or a partnership, if
 - (i) personally served on him;
 - (ii) left at his address for service of notices; or
 - (iii) sent by post to such address for service of notices;
- (b) in the case of a company, if—
 - (i) personally served on the principal officer of the company;
 - (ii) left at or sent by post to the company's address appointed under section 88 for service of notices under this Act; or

- (iii) where no address for service of notices has been appointed, left at or sent by post to any office or place of business of the company;
- (c) in the case of a partnership—
 - (i) personally served on the precedent partner or agent of the partnership;
 - (ii) left at or sent by post to the partnership's address appointed under section 89 for service of notices under this Act; or
 - (iii) where no address for service of notices has been appointed, left at or sent by post to any office or place of business of the partnership;
- (d) in the case of a body of persons if left at or sent by post to the address for services of notices of that body.
- (2) Where any notice is served on any person—
 - (a) requiring the personal attendance of that person before the Comptroller, pursuant to section 83; or
 - (b) appointing that person the agent of some other person for the payment of tax, pursuant to section 120;

the provisions of subsection (1) relating to service by post shall be construed as service by registered post.

Change
of address
for service
of notices.

141. (1) Every person who has been given an address for service of notices, whether in a return of income or otherwise, and who subsequently changes such address shall, within one month after such change, notify the Comptroller in writing of his new address for service of notices.

(2) The address for service of notices last given to the Comptroller by any person shall, for all purposes of the Act, be his address for service of notices.

(3) Where no address for service of notices has been given, or where the Comptroller's records disclose that any person has changed his address and has failed to notify the Comptroller of such change, then the address of such person as described in any record in the Comptroller's possession shall be a sufficient address for service of notices,

(4) In any criminal proceedings which may be taken for failure to furnish a return of income against any person liable to furnish such a return, it shall be no defence by such person that he has not received from the Comptroller—

- (a) a form for the return of income; or

(b) any notice calling upon him to furnish such return.

(5) In any criminal proceedings which may be taken against any person for failure to comply with any other request or notice by the Comptroller, it shall be no defence by such person (who has failed to notify the Comptroller of a change of address) that he has used a different address in any correspondence with or application to the Comptroller after such change of address has occurred.

142. Cabinet may make regulations for the better carrying out of the purposes of this Act and without prejudice to the generality of the foregoing such regulations— Regulations.

- (a) may prescribe all matters which are required or permitted to be prescribed
- (b) may provide for the imposition by a court of—
 - (i) a fine not exceeding seven hundred and fifty dollars; and
 - (ii) a term of imprisonment not exceeding three months;for any breach of regulations; and
- (c) may provide for appeals to the Appeal Commissioner against decisions of the Comptroller made under the regulations.

143. (1) The person appointed as Comptroller under the previous Act and serving on the date of the repeal thereof, shall be deemed to have been appointed under and for the purposes of this Act on such date Transitional.

(2) Any declaration of secrecy taken under the previous Act by any person appointed in relation to or employed in carrying out the provisions of that Act shall be deemed to have been taken under this Act.

(3) Any reference in this Act to a previous year of assessment shall, if the context so requires, include a reference to a year of assessment under the previous Act.

(4) Every international agreement for the avoidance of double taxation entered into under the previous Act and in force at the commencement of this Act for the purposes of any liability to or relief from tax in respect of the year of assessment 1979 and subsequent years of assessment and shall be read with such modifications and adaptations as may be necessary to bring it into conformity with this Act.

(5) Where, at the commencement of this Act, the tax holiday period of any hotel or pioneer enterprise had not expired,

exemption from tax shall continue under this Act for the remainder of the tax holiday period.

(6) Where, during the calendar year 1978, income accrues to a non-resident person by way of interest, rent annuity or other annual payment, then whether or not tax has been deducted therefrom under section 41 of the previous Act, he shall, in relation to year of assessment 1979, be liable to tax in respect of such income as if the previous Act had not been repealed; but nothing in this subsection shall be construed to remove from liability under the Third Schedule any income which accrues to that person from such source during the calendar year 1979.

(7) Where prior to the 1st January, 1979, any forms were in use for the purposes of the previous Act, such forms may continue to remain in use for the purposes of this Act until such time as the Comptroller approves new forms pursuant to section 139.

FIRST SCHEDULE

Section 34

Value of trading stock to be included in return of income.

1. Every person carrying on business shall include in his return of income for each year of assessment the value of all trading stock held and not disposed of (hereinafter referred to as "the value of trading stock held") at the beginning and ending of the basis period for that year of assessment.

Value of trading stock at beginning of basis period.

2. The value of trading stock held by any person at the beginning of the basis period shall be deemed to be—

- (a) where he carried on the business on the last day of the previous basis period, the value of the trading stock held on that date; or
- (b) where he commenced business during the basis period for a year of assessment, the cost price to him of any trading stock acquired prior to the commencement of the business.

Value of trading stock at end of basis period.

3. The value of trading stock held by any person at the end of the basis period shall be deemed to be the cost price to him, unless the Comptroller is satisfied that the estimated realisable value of such stock to such person is less than cost.

Value of trading stock on cessation of business.

4. Where any person ceases to carry on business but does not dispose of his trading stock at the time of cessation, the trading stock shall be brought to account at its estimated realisable value to him.

5. For the purposes of this Schedule, but subject to paragraph 6, the cost price of any trading stock shall be—

Cost price of trading stock.

- (a) the cost incurred in acquiring such trading stock; and
- (b) any further costs incurred in getting such trading stock into its then existing condition or location.

6. Where any trading stock has been acquired or disposed of by any person—

Deemed value of trading stock.

- (a) for consideration which cannot be valued;
- (b) not in the ordinary course of business; or
- (c) otherwise than by way of a transaction at arm's length;

such trading stock shall be deemed to have been acquired or disposed of at an amount equal to the price which, in the opinion of the Comptroller, was the current market price of such stock on the date of such acquisition or disposal.

7. Where, for any year of assessment, the Comptroller is of the opinion that the value of trading stock held does not comply with the basis of valuation specified in this section, the value of trading stock held—

Adjustments to be made where trading stock incorrectly valued.

- (a) at the beginning of the basis period, shall remain unaltered; and
- (b) at the end of that basis period, shall be adjusted to comply with paragraph 3.

SECOND SCHEDULE

Sections 26, 40 and 42

PART I

Buildings

1. (1) In ascertaining the chargeable income of any person for any year of assessment there shall be deducted an initial allowance in respect of expenditure incurred by that person on the erection or purchase of any building (within the meaning of paragraph 4) where that building was used solely in the carrying on of any business by that person or by a lessee from such person.

Initial allowances.

(2) The deduction allowed to any person under subparagraph (1) shall be an amount equal to ten per centum of the expenditure incurred by him on the erection or purchase of such building and shall be allowed in the year of assessment during the basis period for which such building was first used.

(3) Where a building has been used by the owner for some purpose other than the carrying on of any business, no initial allowance shall be granted under this paragraph.

Annual allowances.

2. (1) In ascertaining the chargeable income of any person for any year of assessment there shall be deducted in respect of any building (within the meaning of paragraph 4) used for the purposes of a business carried on by that person, or by a lessee from such person, an annual allowance of an amount equal to four per centum of the written down value of the building at the end of the immediately preceding basis period.

(2) For the purposes of this paragraph, the written down value of a building at the end of the basis period for a year of assessment means—

- (a) in the case of the basis period for the first year of assessment in which the building is used, the cost of such building less the aggregate of the initial allowance, if any, and the annual allowance allowed in respect of such building for that year of assessment; and
 - (b) in the case of subsequent years in which the building is used, the written down value at the end of the basis period for the immediately preceding year of assessment less the amount of the annual allowance allowed on such building for the year of assessment.
- (3) Where a building commences to be used for the first time in the basis period for a year of assessment, the written down value for that year of assessment for the purposes of this paragraph shall be—
- (a) where the building is a newly erected or purchased building, the cost of erection thereof;
 - (b) where the building is an existing building which has been used for purposes other than the carrying on of a business, the cost thereof less notional allowances calculated in accordance with paragraph 1 in respect of each year during which the building has been owned.
- (4) Where a building was in use on the last day of the basis period for the year of assessment 1978, the written down value ascertained in accordance with the provisions of the previous Act shall apply.
- (5) Where a building in respect of which deductions have been allowed under this paragraph ceases to be used for business purposes for one or more years of assessment but subsequently commences to be used for such purposes or is disposed of, notional annual allowances calculated in accordance with subparagraph (2) shall be calculated for each year during which the building was not used for business purposes in order to ascertain—
- (a) the written down value of the building in relation to subsequent years of assessment; or
 - (b) the adjusted cost of the building for the purposes of subparagraph (2).

3. (1) Where allowances have been granted to any person for previous years of assessment, whether before or after the coming into operation of this Act, in respect of a building and that building is disposed of in the basis period for any year of assessment, a balancing allowance or a balancing charge shall be made as provided in this paragraph. Disposal
of building.

(2) Where the cost, or the adjusted cost, of a building exceeds the aggregate of—

(a) the allowances granted for previous years of assessment; and;

(b) the disposal value;

the amount of such excess (referred to in this Act as “a balancing allowance”) shall be allowed as a deduction for the year of assessment in the basis period for which the building is disposed of.

(3) Where the disposal value of a building exceeds the difference between—

(a) the cost, or the adjusted cost, of such buildings; and

(b) the allowances granted for previous years of assessment;

the amount of such excess (referred to in this Act as “a balancing charge”) shall be included in the assessable income of the person disposing of the building for the year of assessment in the basis period for which the building is disposed of.

(4) For the purposes of this Part, the adjusted cost of a building means the cost of erection or purchase thereof less the amount of any notional allowances under paragraph 2 (3) or (5), in respect of the basis period for any year of assessment during which the building was used other than for business purposes.

(5) Where a person has been granted allowances in respect of a building, and such person ceases to carry on business prior to the disposal of such building, for the purposes of this paragraph, he shall be subject to the provisions of this paragraph in the event of the subsequent disposal of the building.

4. (1) For the purposes of this Part, a building means a building used for the purposes of carrying on any business, and includes a building provided by way of welfare facilities for employees, but does not include a building used for residential purposes or as a retail shop, showroom or office. Meaning of
building.

(2) Where part only of a building is to be used for business purposes, and the capital expenditure incurred on that part of the building which is not to be so used does not exceed ten percent of the total cost, the whole of the building shall be deemed to be used for business purposes.

PART II

*Plant And Machinery.*Initial
allowance.

1. (1) In ascertaining the chargeable income of any person for any year of assessment, there shall be deducted an initial allowance in respect of expenditure incurred during the basis period for that year of assessment by that person in the purchase of any plant and machinery acquired for the purpose of producing assessable income therefrom.

(2) The deduction allowed to any person under subparagraph (1) shall be an amount equal to twenty per centum of the expenditure incurred by him in the basis period for that year of assessment.

Annual
allowances.

2. (1) In ascertaining the chargeable income of any person for any year of assessment, there shall be deducted an annual allowance in respect of expenditure incurred, whether before or after the commencement of this Act, on the provision of plant and machinery acquired or brought into use by that person for the purpose of producing assessable income.

(2) The deduction allowable shall, subject to subparagraph (3), be an amount equal to the following percentages of—

(a) the cost of the plant and machinery, in the case of the year of assessment in the basis period for which the plant and machinery was first brought into use;

(b) the written down value of the plant and machinery at the end of the basis period for the immediately preceding year of assessment, in the case of subsequent years of assessment—

(i) office furniture and equipment, electrical appliances, light plant and machinery, professional instruments and equipment, electrical wiring, plumbing fixtures and air conditioning plant and ducting, and any other plant and machinery not specified in sub-clauses (ii) to (v); 15%

(ii) computers, lifts, elevators, escalators, ships, boats, tugs, barges and other vessels; 20%

(iii) motor vehicles, other than heavy vehicles 25%

(iv) all furniture, fittings and equipment in hotels, other than items falling within subclause (v) 25%

(v) refrigerators, coolers, freezers, ice-makers, air-conditioning units and controls, equipment for processing and storing food and drink $33\frac{1}{3}\%$

(vi) heavy motor vehicles, heavy plant and machinery and earth-moving equipment $33\frac{1}{3}\%$

(vii) aircraft and equipment 50%

(3) Where the Comptroller is satisfied that, by reason of the use of plant and machinery on multiple shift work or in other circumstances of abnormal wear and tear, he may authorise the deduction of such higher rate of allowance than is provided by subparagraph (2) as appears to him to be reasonable in the circumstances.

(4) For the purposes of this paragraph, the written down value of any plant and machinery at the end of the basis period for a year of assessment means—

- (a) in the case of the first year of assessment in the basis period for which the plant and machinery is acquired, the cost of such assets less the annual allowance allowed in respect of such assets for that year of assessment;
- (b) in the case of subsequent years, the written down value at the end of the basis period for the immediately preceding year of assessment less the annual allowance allowed in respect of such assets for that year of assessment.

(5) Where allowances have been incurred prior to 1st January, 1979, the written down value at the end of year of assessment 1978 ascertained in accordance with the previous Act shall apply for the purpose of subparagraph (4) (b).

3. (1) Where allowances have been granted to any person for previous years of assessment, whether before or after the coming into operation of this Act, in respect of plant and machinery and any such asset is disposed of in the basis period for any year of assessment, a balancing allowance or a balancing charge shall be made as provided in this paragraph.

Disposal
of plant
and
machinery.

(2) Where the cost of the asset exceeds the aggregate of—

- (a) the allowances granted for previous years of assessment; and
- (b) the disposal value,

the amount of such excess (referred to in this Act as “a balancing allowance”) shall be allowed as a deduction for the year of assessment in the basis period for which the asset is disposed of.

(3) Where the disposal value of the asset exceeds the difference between—

- (a) the cost of the asset; and
- (b) the allowances granted for previous years of assessment,

the amount of such excess referred to in this Act as “a balancing charge”) shall be included in the assessable income of the person disposing of the asset for the year of assessment in the basis period for which the asset is disposed of.

(4) Where a person has been granted allowances in respect of any plant and machinery and such person ceases to carry on business prior

to the disposal of such asset, for the purposes of this paragraph he shall be subject to the provisions of this paragraph in the event of the subsequent disposal of such plant and machinery.

Replacement
property.

4. (1) Where, but for this paragraph, the amount of any balancing charge would be taken into account in ascertaining the chargeable income of any person for a year of assessment, that person may elect, by notice in writing given to the Comptroller when furnishing his return of income for that year, that in lieu of the balancing charge being so taken into account it may be deducted, subject to subparagraphs (2) and (3), from expenditure incurred on any plant and machinery (hereinafter referred to as "the replacement property") acquired by him during the basis period for the year of assessment to replace the plant and machinery disposed of.

(2) Where an election is made under this paragraph, the expenditure incurred on the replacement property shall be reduced by the amount of the balancing charge referred to in subparagraph (1) for the purpose of determining the written down value of the replacement property and the annual allowances applicable thereto, but nothing herein shall affect the calculation of any balancing allowance or balancing charge by reference to the full amount of the expenditure incurred and the reduction of balancing charge made by subparagraph (1) in the event of the subsequent disposal of the replacement property.

(3) Where an election is made under this paragraph in relation to the disposal of an asset giving rise to a balancing charge which exceeds the cost of the replacement property—

- (a) no annual allowance shall be granted in respect of the replacement property; and
- (b) the amount of the excess shall be included in the assessable income of the person disposing of the asset for the year of assessment in the basis period for which the asset is disposed of.

PART III

Agricultural Expenditure.

Deduction
allowed.

1. Subject to this Part, where any person incurs capital expenditure on any agricultural works there shall be allowed as a deduction for the year of assessment in the basis period for which the expenditure was incurred and in the next succeeding four years of assessment an amount equal to one-fifth of such expenditure.

2. The deduction provided by this Part shall not be given until the person claiming such deduction furnishes to the Comptroller a certificate signed by the Chief Agricultural Officer stating that—

Certificate to be furnished.

- (a) the agricultural works for which the deduction is claimed have been carried out; and
- (b) the expenditure incurred is fair and reasonable.

3. Where any person, who has incurred capital expenditure to which this Part relates, disposes of such property prior to the grant of the full amount of the allowances to which he would have been entitled had the disposal not taken place, he shall cease to be entitled to any further deduction and the balance thereof shall be allowed to the person who has acquired the property.

Deduction allowable on disposal.

4. For the purposes of paragraph 3, where a property is disposed of on a date other than the end of a basis period, or where part only of a property is disposed of, the Comptroller may apportion the deduction allowable as between the parties in such manner as appears to him to be reasonable.

Apportionment of deduction.

5. In this Part "capital expenditure on agricultural works" means expenditure incurred in respect of the clearing, draining or planting of land for agricultural purposes, soil conservation works, the provision of drains, wells, boreholes or dipping tanks and the cutting of new access roads to areas of production.

Meaning of capital expenditure on agricultural works..

PART IV

Interpretation.

1. In this Schedule—

Definitions.

"allowance granted", in relation to previous years of assessment, means the sum of the annual allowances and any initial allowances granted under a Part of this Schedule or under the corresponding provision of the previous Act, or both;

"disposal" in relation to any asset means the scrapping, loss or destruction, sale, exchange, compulsory acquisition or gift of such asset;

"disposal value" means, in relation to—

- (a) the scrapping of an asset, the scrap value thereof;
- (b) the loss or destruction of an asset, any amount received for the remains thereof together with any amount accrued as compensation or indemnity for such loss or destruction;

- (c) the disposal of an asset, by way of—
- (i) sale, the net proceeds of sale;
 - (ii) exchange, the market value of any asset acquired through such exchange, adjusted to take account of any monetary consideration made;
 - (iii) compulsory acquisition, the amount for which it was so acquired;
 - (iv) gift, the market value thereof;
- but in any case where the amount accrued or the market value exceeds the cost, the disposal value shall be limited to the cost price or, in the case of a building, the adjusted cost price if applicable;

“expenditure incurred” by any person does not include such part of any expenditure as is reimbursed to that person by way of subsidy or grant by the Government or some other person unless such subsidy or grant has formed part of his assessable income.

Application
of Schedule
to hire
purchase

2. Where under a hire purchase agreement or similar transaction, the use and enjoyment of an asset is obtained by a person to whom this Schedule applies for a period of time at the end of which the property in the asset will or may pass for no consideration or a nominal consideration he shall be deemed to have—

- (a) acquired the asset at the time the agreement or transaction was entered into; and
- (b) incurred expenditure thereon of an amount equal to the total amounts, excluding interest, payable under the agreement or transaction at the time referred to in sub-clause (a).

Apportion-
ment of
consideration
where assets
sold for
consolidated
amount.

3. Where any property in respect of which allowances have been granted under this Schedule or the previous Act is disposed of together with other assets for a total consideration—

- (a) which does not allocate separate prices for the separate items; or
- (b) which allocates either a nominal consideration to some assets, or such consideration as, in the opinion of the Comptroller does not represent the true market value of those assets,

he may apportion the total consideration among the several assets in such manner as to arrive at a true market value of those assets in respect of which allowances have been granted and such value shall be taken to be the disposal value of such assets for the purposes of this Schedule.

4. (1) Where any assets in respect of which allowances have been granted under this Schedule or the previous Act or both, are disposed of by the owner to a purchaser other than by way of a transaction at arm's length, subject to subparagraph (2), the assets shall be deemed to have been disposed of at market value and such value shall apply both to the vendor and the purchaser.

Disposal of assets in certain transactions value to be adopted.

(2) Where—

- (a) pursuant to the amalgamation, reconstruction or merger of a company with another company and the transfer of assets to that other company; or
- (b) the transfer of assets from an individual to a company or to a relative,

there is a substantial identity between the former owner and the new owner, the assets shall in relation to both, be deemed to have been disposed of at their written down value.

(3) For the purposes of subparagraph (2) there shall be deemed to be a substantial identity between the former owner and the new owner—

- (a) in a case to which subparagraph (2) applies, where at the end of the basis period for the year of assessment in which the assets were transferred, shares in the company acquiring the assets, carrying—
 - (i) the right to exercise not less than eighty per centum of the voting power in the company;
 - (ii) the right to receive not less than eighty per centum of any dividends that might be paid by the company or
 - (iii) the right to receive not less than eighty per centum of any capital distribution in the event of a winding up or of a reduction in the share capital of the company,were beneficially held by persons or relatives of such persons who at the time the assets were transferred beneficially held in the disposing company shares carrying rights of those kinds;
- (b) in a case where subparagraph (2) (b) applies, where at the end of the year of assessment in the basis period for which the assets were transferred, in the case of a transfer to a company, shares carrying rights of the kind specified in subparagraph (a) of this paragraph were beneficially held by the vendor or relatives of the vendor.

(4) In subparagraphs (2) and (3), "a relative" in relation to any person means the spouse of that person or any relative of that person or of his spouse.

THIRD SCHEDULE

Section 66

Deduction Of Tax From Payments To Non-Residents.

Application. 1. (1) This Schedule applies to every person who makes any payment by way of—

- (a) a dividend;
- (b) interest or discounts;
- (c) rental, lease, premium or licence in respect of real property;
- (d) royalties and rentals of moveable property;
- (e) management charge;
- (f) commission or fee, not being in respect of an employment to which section 68 applies;
- (g) annuities or other periodic payments, including payments by way of alimony or maintenance;
- (h) the distribution of income of a trust, being income of the kind specified in (a) to (g);
- (i) insurance premiums;
- (j) any other payments of an income nature,

to a non-resident, and, subject to subparagraph (2), does not apply to any other payments to a non-resident carrying on business or exercising employment in Saint Vincent and the Grenadines.

(2) This Schedule also applies to any payment to a non-resident person in respect of independent personal services performed in Saint Vincent and the Grenadines other than by way of carrying on a business in Saint Vincent and the Grenadines through a permanent establishment in Saint Vincent and the Grenadines.

(3) Where the accounts of a business are maintained on an accruals basis, and during the basis period for a year of assessment any amount of the kind specified in subparagraph (1) is charged as an expense but payment is not made, tax shall be deducted and accounted for to the Comptroller as if payment had been made on the last day of such basis period.

(4) For the purposes of proviso (a) to paragraph 2, where the income accruing to a trust is of different kinds, it shall be treated as retaining such character for determining the rate of tax to be deducted therefrom by the trustee.

Deduction to be made by person making payment.

2. Where any payment is made to which this Schedule applies, then such amount shall not form chargeable income of the person to whom the payment is made, and the person making such payment shall deduct tax from the gross amount of the income from such source at the rate specified in paragraph 3:

Provided that—

- (a) where income accrues to a trust, and a non-resident beneficiary is entitled to the immediate benefit of the whole or part thereof, the trustee shall deduct and account for the tax required to be deducted under this Schedule;
- (b) where income which accrues to a non-resident is payable to a bank or other agent on his behalf, then for the purposes of collection, such bank or agent shall deduct and account for the tax required to be deducted under this Schedule;
- (c) where income which accrues to a non-resident is payable by another non-resident then, for the purposes of collection of the tax imposed by this section, the Comptroller may issue an assessment directly on the non-resident to whom the income accrues and the general provisions of Part XI relating to the recovery of tax shall apply.

3. Subject to section 60, tax shall be deducted from the actual amount paid by way of—

Rate of tax to be deducted.

- (a) real estate rentals, at the rate of ten per centum;
 - (b) intercorporate dividends, at the rate of fifteen per centum;
 - (c) any other payments, at the rate of twenty per centum,
- of every dollar of such payment and shall be the final liability in respect of such income.

4. (1) Every person who has deducted tax under this Schedule shall furnish to the person to whom payment is made a certificate showing the gross amount of the payment made and the tax deducted therefrom.

Certificate and record of any payments made and tax deducted.

(2) Every person making any payment to which this Schedule applies shall maintain a record showing in relation to each calendar year, the amounts of—

- (a) the gross payment made to each non-resident; and
- (b) the tax deducted therefrom;

and such record shall be kept available for examination by the Comptroller as and when required.

5. (1) Every person shall, when making any payment under section 110, furnish a return in such form as the Comptroller may approve showing the amount of tax deducted and remitted, together with a copy of all certificates issued under paragraph 4 in respect of such deductions of tax.

Returns of deduction and remittances of tax.

(2) Every person to whom this Schedule applies, shall, in respect of each calendar year, within two months after the end of such year or within such further time as the Comptroller may allow, furnish to the

Comptroller a return in such form as he may approve showing the total of tax deducted by that person during such year and the total payments of such tax which have been made to the Comptroller.

(3) In the event of there being any deficiency between the total amount of tax deducted in any year and the total payments of such tax made to the Comptroller, that person shall be required to account to the Comptroller for such deficiency.

Personal liability where failure to deduct tax.

6. (1) Where any person fails to deduct any tax under this Schedule he shall, in addition to any penalty for which he may be liable, be personally liable to pay to the Comptroller within the time specified in section 110 the amount which he has failed to deduct.

(2) Where any person pays to the Comptroller the amount of tax which he failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The person making any payment to the Comptroller under this paragraph shall be entitled to recover such amount from the person to whom payment was made.

(4) Where any person has failed to deduct tax as required under this Schedule but the Comptroller is satisfied that tax deducted from earlier or later payments is sufficient to meet the amount of tax which he has failed to deduct, the Comptroller may absolve such person from his liability under subparagraph (1).

FOURTH SCHEDULE

Section 68

Deduction Of Tax By Employers

Registration of employers.

1. (1) Every person who pays or becomes liable to pay remuneration to any employee shall register as an employer with the Comptroller.

(2) Every person who was an employer on the 1st January, 1979, but was not registered as an employer under the Income Tax (Employment) Rules 1965, shall register with the Comptroller in the prescribed form within thirty days after the 1st January, 1979, and every person who becomes an employer after the 1st January, 1979, shall so register within thirty days after the end of the month in which he becomes an employer.

(3) Every employer who changes his business address or ceases to be an employer shall notify the Comptroller accordingly within thirty days of such change of address or of his ceasing to be an employer, as the case may be.

2. (1) Every employer shall, unless the Comptroller otherwise directs, deduct tax in accordance with this Schedule. Deduction
of tax.

(2) Subject to this paragraph and paragraph 5, the amount of tax to be deducted shall be determined in accordance with tax deduction tables prescribed by the Comptroller under paragraph 4 (2) and taking into account the concessional deductions claimed by the employee in the declaration lodged by him under paragraph 3.

(3) Where, during any calendar year—

(a) an employee receives income from more than one source of employment at the same time; or

(b) both husband and wife received employment incomes, the amount of tax to be deducted shall be such amount as is directed by the Comptroller.

(4) Where during any calendar year an employee—

(a) is a non-resident individual; or

(b) being a resident individual, fails to lodge a declaration as required by paragraph 3,

the amount of tax to be deducted shall be determined in accordance with tax deduction tables prescribed by the Comptroller under paragraph 4.

3. (1) Subject to this paragraph, every employee chargeable to tax, to whom any remuneration accrues from employment on or after the 1st January, 1979, shall furnish a declaration in the prescribed form to the person specified in subparagraph (2) or (3). Declaration
by
employees.

(2) Where such remuneration is received from one employer only, such declaration shall be furnished to the employer, who shall take the particulars shown on such declaration into account in deducting tax under paragraph 2.

(3) Where such remuneration is received by that employee from more than one employer, or where husband and wife are both in employment, such declaration shall be furnished to the Comptroller who shall direct the respective employers as to the amount of tax to be deducted by them.

(4) A declaration under this paragraph shall not be furnished by any employee who is a non-resident.

(5) A declaration under this paragraph shall be furnished—

(a) where the employment is a continuing one, at the commencement of every calendar year;

(b) where an employment commences, within seven days of such commencement; and

(c) where the employee ceases to be entitled to the personal allowances or other deductions or allowances claimed in a declaration already furnished by him in respect of that year, within seven days of such change of circumstances.

(6) A declaration under this paragraph may be furnished at any time during the year where there is any change of circumstances whereby an employee becomes entitled to an increase in the concessional deductions or other deductions or allowances claimed in a declaration already furnished by him.

Tax
deduction
tables.

4. (1) The Comptroller shall prescribe tax deduction tables (hereinafter in this Schedule referred to as "the table") which shall come into force on the 1st January, 1979.

(2) The tax to be deducted in accordance with the tables prescribed under this paragraph shall take into account—

- (a) the rates of tax payable under section 75;
- (b) the concessional deductions allowable under Part V; and
- (c) such other deductions or allowances as the Comptroller may deem appropriate.

(3) The tables shall include a table prescribing the tax to be deducted in the case of a non-resident employee and an employee who has failed to furnish a declaration under paragraph 3.

(4) The tables shall specify the manner of calculation of the tax to be deducted from any payments of remuneration by way of—

- (a) annual or other bonuses
- (b) overtime; and
- (c) other payments of an abnormal nature.

(5) In the event of any variation of the tax payable or the concessional deductions allowable in relation to any year of assessment to which this Act applies, the Comptroller shall prescribe new tables to take into account such variation and shall, by notice in the Gazette, specify the date upon which such tables shall come into force.

Variations
from tax
deduction
tables.

5. (1) Every employer shall, at the written request of any employee, deduct from his remuneration an amount of tax greater than that required to be deducted under the tables.

(2) Where, in relation to any year of assessment any employee is of the opinion that the amount of tax required to be deducted by his employer under the tables will be substantially greater than the amount of tax which is likely to be charged for that year of assessment, he may apply in the prescribed form to the Comptroller for the issue of a direction, and, if the Comptroller is satisfied that it would be reasonable to do so, he may direct the employer by notice in writing to deduct either no tax or such amount as it appears to the Comptroller to be appropriate to the circumstances of that employee, and the employer shall comply with that direction.

(3) A request by an employee under subparagraph (1), or a direction by the Comptroller under subparagraph (2), may be withdrawn at any time by notice in writing given to the employer, and upon receipt of any such notice the employer shall deduct tax in accordance with the tables.

(4) Any request under subparagraph (1), direction under subparagraph (2) or notice of withdrawal under subparagraph (3) shall be complied with by the employer on and after the pay day next succeeding a period of seven days following the receipt by him of such request, direction or notice.

6. Any tax deducted under this Schedule shall—

Payment or
recovery by
Comptroller.

- (a) be due and payable within the time specified in section 110; and
- (b) when it becomes due and payable, be a debt due to the Crown and, if unpaid, shall be liable to interest at the rate specified in section 111,

and may be recovered in the manner provided in section 112 or 113.

7. (1) Any agreement between an employer and employee whereby the employer agrees to pay, as remuneration to the employee, an amount expressed to be free of tax, shall be deemed to be an agreement providing for payment to the employee of such an amount of remuneration as, after deduction of tax, would leave an amount equal to the remuneration paid.

Payment of
re-
muneration
free of tax.

(2) In any case to which subparagraph (1) applies—

- (a) the employer shall be liable to pay to the Comptroller an amount equal to the difference between the remuneration deemed to be paid and the amount of remuneration paid;
- (b) such amount shall be deemed to be tax to be deducted under this Schedule; and
- (c) the employee shall be deemed to have received as income from employment the amount deemed to have been paid by the employer.

8. (1) Every employer who has deducted any tax under this Schedule shall, within the time and in relation to the period specified in subparagraph (2), furnish to every employee to whom remuneration has been paid, a certificate in the prescribed form the contents of which shall include—

Certificate of
remunera-
tion and tax
deducted.

- (a) the total remuneration accrued to the employee; and
- (b) the total of the amounts of tax deducted from such remuneration.

(2) The certificate referred to in subparagraph (1) shall specify the period of employment to which it relates and shall be furnished to the employee or former employee—

- (a) where the employer has not ceased to be an employer in relation to that employee at the end of the calendar year, within one month after the end of that calendar year;
- (b) where the employer has ceased to be an employer in relation to that employee but has continued to be an employer in relation to other employees, on the date of cessation of the employment of that person; or
- (c) where the employer has not ceased to be an employer in relation to all employees, within one month after the date he ceased to be an employer.

(3) Any employee who has not received a certificate within the time specified in subparagraph (2) shall apply to the employer forthwith for such certificate to be furnished, and in the event of such certificate not being furnished within a further period of fifteen days he shall notify the Comptroller of such failure by the employer to furnish the certificate.

(4) Every employee, when furnishing his income for the year of assessment, shall attach to such return the certificate furnished to him under this paragraph.

(5) The certificate to be furnished under this paragraph by the employer to an employee may be delivered—

- (a) by hand to such employee or his authorised agent;
- (b) by registered letter addressed to that employee at his usual or last known postal address; or
- (c) where the chargeable income of that employee is not chargeable to tax in his name, by hand or registered letter addressed to the person chargeable;

Provided that in the event of inability to deliver a certificate in the manner provided by this subparagraph the employer shall retain such certificate and forward it to the Comptroller with the return required under paragraph 12.

(6) In addition to the annual certificate referred to in subparagraph (1), on every occasion during the calendar year upon which a payment of remuneration is made to an employee from which tax is deducted under this Schedule the employer shall furnish to him particulars of the total remuneration payable for the pay period and of the amount of tax deducted therefrom.

Personal
liability of
employer
and
employee.

9. (1) Where, in any calendar year, an employer fails to deduct any tax under paragraph 2 he shall, in addition to any penalty for which he may be liable, be personally liable to pay to the Comptroller, within the

time specified in section 110, the amount which he has failed to deduct.

(2) Where an employer pays to the Comptroller the amount of tax which he failed to deduct, such amount shall be deemed to have been deducted under this Schedule

(3) The employer shall be entitled to recover from the employee, any amount paid to the Comptroller under subparagraph (2).

(4) Where, in relation to any payment of remuneration, an employer has failed to deduct tax under paragraph 2, but the Comptroller is satisfied that tax deducted under this Schedule from earlier or later payments of remuneration is sufficient to meet the amount of tax which he has failed to deduct, the Comptroller may absolve the employer from his liability under subparagraph (1).

(5) Where the Comptroller is of the opinion that any amount of tax which has been set off under section 76 pursuant to a certificate under paragraph 8 has not been deducted by the employer, the employer and the employee shall be jointly and severally liable to pay the Comptroller the amount which has been set off, and such amount shall be recoverable under this Act:

Provided that where the Comptroller is satisfied that the employee alone was responsible for the incorrect amount being shown on his certificate under paragraph 8, the employer shall be absolved from liability under this subparagraph.

(6) Where it is proved to the satisfaction of the Comptroller that any amount of tax has been deducted from the remuneration of any employee, notwithstanding that the employer has failed to pay such amount to the Comptroller, no action shall be taken by the Comptroller for the recovery thereof from the employee.

10. Every employer shall, in respect of each of his employees, maintain a record showing in relation to each year of income, the amounts of—

Employer to keep records.

- (a) remuneration accrued to the employee;
- (b) tax deducted from such remuneration,

and such record shall be kept available for examination by the Comptroller as and when required.

11. Every employer shall, when making any payment under section 110 furnish a return showing the amount of tax deducted and remitted.

Employer's monthly return of tax deductions and remittances.

12. (1) Every employer shall, in respect of each calendar year—

- (a) within one month after the end of that year; or
- (b) where he ceased to be an employer during that year, within fifteen days after such cessation,

Employer's annual return of tax deductions and remittances.

or within such further time as the Comptroller may allow, furnish to the Comptroller a return showing the total amount of tax deducted by him in respect of all his employees during that year and the total payments of such tax made to the Comptroller.

(2) In the event of there being any deficiency between the total amount of tax deducted and the total payments of such tax made to the Comptroller, the employer shall be required to account to the Comptroller for such deficiency.

(3) The return referred to in subparagraph (1) shall be accompanied by a copy of all certificates issued under paragraph 8.

Duties and liabilities of representative employers.

13. (1) Every representative employer, in relation to any remuneration paid by him in his representative capacity to any employee, shall be subject to the same duties and liabilities under this Schedule as if such remuneration had been paid by him in his personal capacity.

(2) Any tax which should be deducted by a representative employer under this Schedule, any interest due by him under section 111, or fine imposed under section 134 or 135 on him shall be recoverable from him, but to the extent only of any assets of the person whom he represents which may be in his possession or may come to him while acting in his representative capacity.

(3) The executor of the estate of any deceased employer or the trustee of the estate of any bankrupt employer shall fulfill such obligations of that employer under this Schedule as were not fulfilled at the time of his death or bankruptcy.

Liability to deduct tax not abated by other rights and obligations.

14. The liability of an employer to deduct tax under this Schedule shall not be abated or extinguished by reason of—

- (a) the fact that the employer has a right or is, otherwise than in terms of any law, under an obligation to deduct any other amount from the employee's remuneration, and such right or obligation shall, notwithstanding any thing to the contrary contained in any other law, be deemed to refer only to the balance of remuneration remaining after tax has been deducted; and
- (b) the provisions of any law which may provide that the amount of remuneration shall not be reduced or be subjected to attachment.

Definitions.

15. In this Schedule—

“employee” means any person who, in respect of an employment, as defined in section 2, receives remuneration from an employer, and includes any person to whom remuneration accrues—

- (a) as a director of a company;

- (b) from a former employer or the trustee of a pension fund, as a consequence of a former employment; or
 - (c) as a dependent of a deceased person where such remuneration accrued to that dependent as a consequence of the former employment of that deceased person;
- “employer” means any person who pays remuneration to an employee, and includes
- (a) the Government;
 - (b) a representative employer; and
 - (c) the trustee of any pension fund.
- “remuneration” means any amount accrued to an employee by way of employment income within the meaning of section 35;
- “representative employer” means—
- (a) in the case of a company, the principal officer or, where such company is in liquidation, the liquidator;
 - (b) in the case of a partnership, the precedent partner;
 - (c) where the employer is the Government, a local authority, a corporation or other authority established by statute or a body corporate or unincorporate (not being a company or partnership), the person responsible for paying remuneration on behalf of such employer;
 - (d) in the case of an employer in respect of whose chargeable income a representative taxpayer is chargeable to tax, the representative taxpayer; or
 - (e) in the case of a non-resident employer, the agent having responsibility to pay remuneration on behalf of such employer,
- but nothing in this definition shall be construed as relieving any employer from any duty or liability imposed upon him by this Schedule.
-