

# REPRINT

## INCOME TAX ACT (CAP. 123)

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For list of amendments see Endnotes

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

## **INCOME TAX ACT (CAP. 123)**

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# INCOME TAX ACT (Cap. 123)

As in force at: 1 March 2018

## PART I PRELIMINARY

### 1 Short title

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

### 2 Interpretation

(1) In this Act, unless the context otherwise requires:

**“accounting period”**, in relation to any person, means the period for which such person makes up the account of his business;

**“approved annuity contract”** means a contract approved by the Commissioner under section 27(2);

**“approved form”** means a form approved by the Commissioner for the purposes of any application, notice, or other document to be furnished under the Act or any rules made under the Act;

**“approved infrastructure”** has the meaning in section 36A of the *Mines and Minerals Act*;

**“approved mining company”** means a company that:

- (a) is authorised to carry out mining under a mineral licence acquired under the *Mines and Minerals Act*; or
- (b) has entered into a mining agreement with the Government in accordance with the provisions of section 30(6) of the *Mines and Minerals Act*;

**“approved pension fund”** means a scheme approved by the Minister under section 27(1), or a scheme to which public officers or a class of public officers are required to contribute;

**“assessment”** includes an additional assessment;

**“body of persons”** means any company, association, fellowship or society, whether incorporate or unincorporate, or any trustees, other than the trustees for an incapacitated person, but, for the purposes of sections 3 and 33, does not include a partnership;

**“business”** includes any trade, or profession, vocation, or other services of an independent nature, and any concern or adventure in the nature of trade, but does not include employment;

**“chargeable income”** means the total income of any person for any year, less any personal exemptions to which he is entitled under Part VI in respect of that year;

**“Commissioner”** means the Commissioner of Inland Revenue appointed pursuant to section 106 and includes any Deputy Commissioner or any other officer authorised to exercise or perform all or any of the powers, duties or functions of the Commissioner;

**“company”** means any company incorporated or registered under any law in force in Solomon Islands or elsewhere;

**“Deputy Commissioner”** means a Deputy Commissioner of Inland Revenue appointed pursuant to section 106 and includes any other officer authorised to exercise or perform any of the powers, duties or functions of a Deputy Commissioner;

**“dividends”** includes:

- (a) all sums and the value of any property distributed in any manner under any name among all or any of the shareholders;
- (b) all amounts received by a shareholder in respect of his shares (whether in money or money’s worth) upon the winding up of a company in excess of the amount paid up on his shares;
- (c) any expenditure that is not under this Act an allowable deduction of the company, the benefit of which is enjoyed by a shareholder or relative of a shareholder or spouse of a shareholder (the spouse not being a shareholder):

Provided that where the benefit of that expenditure is shared between more than one shareholder and the benefit to each



cannot be accurately determined then such benefit shall be apportioned between the shareholders in proportion to their paid-up capital; and

- (d) any moneys lent or advanced by a company to or for the benefit of any of its shareholders, if in the opinion of the Commissioner the making of the loan or advance was not a *bona fide* investment by the company, and such money shall be deemed to be paid by the company on the last day of the year of income of the company in which such loan or advance was made to the extent that such loan or advance remains unpaid on such day:

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

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

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

**“employment”** includes:

- (a) a directorship or other office in the management of a company or body of persons;
- (b) a position entitling the holder to a fixed or ascertainable remuneration;
- (c) the holding or acting in any public office;
- (d) performance under a contract principally for work or services where the Minister provides by Order that the relationship will be regarded as one of employment for the purpose of the tax deduction provision; or
- (e) performance under a contract principally for work or services where the parties voluntarily agree with the Commissioner that the relationship will be regarded as one of employment for the

purpose of the tax deduction provision;

**“employment income”** means gains or profits from employment as determined under section 5 of the Act;

**“Exemption Committee”** means the Revenue and Customs Exemption Committee established under section 8A of the *Customs and Excise Act* (Cap. 121);

**“foreign tax”**, in relation to income charged to tax in Solomon Islands, means any income tax or any tax of a similar nature charged under any law in force in any place with the Government of which arrangements under section 45 have been made by the Government and which is the subject of such arrangements;

**“incapacitated person”** means any infant, idiot, insane person or person of unsound mind;

**“interest”** means:

- (a) an amount, whether described as interest, discount, premium or otherwise, whether periodical or a lump sum, as consideration for the use of money or being given time to pay;
- (b) an amount that is functionally equivalent to an amount referred to in paragraph (a); or
- (c) a commitment, guarantee, service, or similar fee payable in respect of a debt or other instrument or agreement giving rise to interest under paragraphs (a) or (b);

**“loss”** in relation to gains or profits, means a loss computed in like manner as gains or profits;

**“mineral licence”** means a prospecting licence or a mining lease or both issued pursuant to the *Mines and Minerals Act*;

**“Minister”** means the Minister for the time being charged with responsibility for the imposition and collection of income tax;

**“overseas income tax”** means any income tax, or any tax of a similar nature, charged under any law in force in any country other than Solomon Islands or a country declared by the Minister under

section 45 to be a country with the Government of which special arrangements have been made;

**“paid”** includes:

- (a) applied on behalf of a person either at the instruction of the person or under any law;
- (b) distributed, reinvested, accumulated, or capitalised;
- (c) credited to an account; or
- (d) made available to a person;

**“person”** includes any body of persons, any statutory authority or board, any corporation sole and any trustee, other than the trustee for an incapacitated person, but for the purposes of sections 3 and 33 does not include a partnership;

**“personal exemption”** means any personal exemption granted by virtue of the provisions of Part VI;

**“resident in Solomon Islands”**, when applied in relation to any year:

- (a) to an individual, means that such individual resides, except for such temporary absences as to the Commissioner may seem reasonable, in Solomon Islands; and an individual shall be deemed to reside in Solomon Islands if he:
  - (i) was present in Solomon Islands for a period or periods exceeding in the aggregate six months in such year; or
  - (ii) satisfies the Commissioner that he intends to reside in Solomon Islands for a period or periods exceeding in the aggregate six months in such year; or
  - (iii) was present in Solomon Islands or satisfies the Commissioner that he will be present in Solomon Islands in such year in fulfilment of a contract of employment exercised or mainly exercised in Solomon Islands, which is specified to be of not less than six months' duration;

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

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

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

“**Secretary**” means the Secretary of the Exemption Committee designated under section 8A(3) of the *Customs and Excise Act* (Cap. 121);

“**special benefits**” mean benefits or incentives granted to an approved mining company;

“**tax**” means the income tax imposed by this Act;

“**tax deduction provision**” means sectiond 36, 36A, 36B, 37 or 38;

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

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

“**year**” means the calendar year.

- (2) References in this Act to **“under”**, **“subject to”**, or **“notwithstanding”**, in relation to any enactment, rule, schedule, part, section, subsection, paragraph, sub-paragraph, proviso or item, mean under, subject to, or notwithstanding, as the case may be, the provisions of such enactment, rule, schedule, part, section, subsection, paragraph, sub-paragraph, proviso or item, as the case may be; and the references to **“under”** include references to **“in accordance with”**, **“by virtue of”**, and **“in consequence of”**.
- (3) Unless the context otherwise requires, references:
- (a) in this Act, other than in any Schedule:
    - (i) to a Schedule, Part, or section, denote a reference to a Schedule to, or Part or section of, as the case may be, this Act;
    - (ii) to a subsection, paragraph, or sub-paragraph, denote a reference to a subsection of the section, to a paragraph of the subsection, or to a sub-paragraph of the paragraph, as the case may be, in which the word occurs;
  - (b) in any Schedule:
    - (i) to a Schedule or section denote a reference to a Schedule to, or section of, as the case may be, this Act;
    - (ii) to a Part, paragraph, sub-paragraph, or item, denote a reference to a Part or paragraph, as the case may be, of the Schedule in which the word occurs, or to a sub-paragraph of the paragraph, or to an item of the sub-paragraph, as the case may be, in which the word occurs.
- (4) Unless the context otherwise requires, where any expression defined in paragraph 1 of the Twelfth Schedule appears in any provisions of this Act, such expression shall in relation to an approved mining company have the same meaning assigned to it in the aforesaid Schedule.
- (5) In the event of any general provision in the Act being inconsistent or in conflict with a specific provision in the Fourth Schedule, the specific provision shall prevail.

## **PART II            CHARGE OF TAX**

### **3            Income in respect of which tax charged**

- (1) Subject to this Act, tax shall be charged for each year upon the income for that year of any person in respect of:
  - (a) gains or profits from:
    - (i) any business, for whatever period of time carried on;
    - (ii) employment;
    - (iii) any right granted to any other person for the use or possession of any property; or
    - (iv) the transfer of any rights relating to a mining lease or to land to which a mining lease applies;
  - (b) dividends, interest or discounts;
  - (c) any pension, charge or annuity;
  - (d) any amount received by way of alimony or allowance under a decree of divorce, a judicial order of separation or maintenance, or a deed of separation or maintenance;
  - (e) income from any other source whatsoever; or
  - (f) any amount deemed to be income under this Act.
- (2) For the purposes of subsection (1):
  - (a) the income of a resident person includes income accrued in, was derived from or was received in Solomon Islands, or elsewhere; and
  - (b) the income of a non-resident person includes income accrued in or was derived from Solomon Islands.
- (3) Income that is gain or profit from the transfer of any rights described in subparagraph 3(1)(a)(iv) is derived from Solomon Islands where the lease applies to land located in Solomon Islands.

#### **4 Provisions relating to income from business**

- (1) For the purposes of section 3(1)(a)(i):
- (a) where any trade, profession or vocation is carried on or exercised partly within and partly outside Solomon Islands by a resident person, the whole of the gains or profits from such trade, profession or vocation shall be deemed to have accrued in or to have been derived from Solomon Islands;
  - (b) the gains or profits of a partner from a partnership shall be deemed to be the share to which he was entitled during the year from the partnership, ascertained under this Act;
  - (bb) business in the case of a non-resident person includes business transacted directly or through an agent;
  - (c) any sum received under any insurance against loss of profits, or received by way of damages or compensation for loss of profits, shall be deemed to be gains or profits for the year in respect of which it is received;
  - (d) where a sum has been allowed as a deduction and in a later year is recovered in whole or in part then such sum shall be deemed to be income of such later year to the extent that it is so recovered. For the purpose of this paragraph a sum recovered shall be deemed to include the release or reduction of any liability, reserve or provision;
  - (e) where under the Fourth Schedule it is provided that a balancing charge shall be made, or a sum shall be treated as a trading receipt, for any year, the amount thereof shall be deemed to be gains or profits for such year.
- (2) Where any sum is received by any person after the cessation of his business which, if it had been received prior to such cessation would have been included in the gains or profits from such business, then, to the extent to which such sum has not already been included in such gains or profits, such sum shall be deemed to be income of such person for the year in which such sum is received.

**4A      Income derived from foreign currency chargeable to tax in Solomon Islands**

- (1) Subject to the provisions of subsection (2), any income derived from moneys retained outside Solomon Islands by an approved mining company for the purposes of meeting foreign currency requirements for procuring supplies and services in connection with mining operations shall be deemed to be income derived in Solomon Islands and chargeable to tax.
- (2) In computing the income chargeable to tax under the provisions of subsection (1), the tax paid on such income in any foreign country shall not be creditable against income tax or any other tax in Solomon Islands but shall be deductible.

**5          Provisions relating to income from employment**

- (1) For the purposes of section 3(1)(a)(ii) and subject to subsection (2), gains or profits from employment means any amount, whether of a revenue or capital nature, arising from employment, including:
  - (a) any wages, salary, leave pay, payment lieu of leave, overtime pay, bonus, commission, fees, gratuity, or work condition supplements, and including any remuneration paid to the holder of an office;
  - (b) the value of any benefit-in-kind, whether convertible to money or not;
  - (c) the amount of any allowance provided by an employer to an employee, including a cost of living, subsistence, rent, utilities, education, entertainment, meeting, or travel allowance, but not including any allowance expended wholly and exclusively in the performance of the employee's duties of employment;
  - (d) the amount of any expenditure incurred by an employee that is paid or reimbursed by the employer, other than expenditure incurred on behalf of the employer wholly and exclusively in the performance of the employee's duties of employment;
  - (e) amount as consideration for the agreement by a person to:



- (i) enter into employment;
  - (ii) any conditions of employment or any changes to the employee's conditions of employment; or
  - (iii) a restrictive covenant in respect of any past, present, or prospective employment:
- (f) any amount received on termination of employment, whether paid voluntarily or under an agreement, including any compensation for redundancy or loss of employment and golden handshake payments; or
  - (g) any pension, annuity, or supplement to a pension or annuity received in relation to employment.
- (2) The following amounts are not included in gains or profits from employment:
- (a) the cost of passages paid by an employer for passage of an employee within Solomon Islands or between Solomon Islands and any place outside Solomon Islands;
  - (b) the cost of any medical services paid by the employer; or
  - (c) the amount paid by an employer as a contribution to any approved pension fund or the Solomon Islands National Provident Fund to the extent that such amount does not exceed fifteen *per centum* of the employee's employment income for the year in which the contribution is made.
- (3) The rate of tax payable by an employee on an amount paid by a terminating employer and included in employment income of the employee under subsection (1)(f) shall be computed according to the following formula:

$$A/B$$

where:

- A is the total tax paid by the employee on employment income paid to the employee by the terminating employer in the termination period; and

B is the total employment income paid to the employee by the terminating employer in the termination period.

(4) Any gains or profits from employment exercised in the Solomon Islands shall be deemed to be derived from the Solomon Islands whether or not they are received in the Solomon Islands.

(5) In this section:

**“terminating employer”** means an employer who has paid an amount to an employee referred to in subsection (1)(f); and

**“termination period”** means the lesser of:

- (a) the current year prior to the date of termination of employment and the previous two years; or
- (b) the actual period of employment with the terminating employer prior to the date of termination.

## **6 Provisions relating to income from the use of property**

For the purposes of section 3(1)(a)(iii), gains or profits include any premium or like consideration received for the use or possession of property.

## **7 Provisions relating to income from dividends**

For the purposes of section 3:

- (a) a dividend received by a shareholder in a resident company shall be deemed to be income of the year in which it is payable and to be of such gross amount as, after deduction of the tax which the company is required to deduct under section 36, is equal to the net amount received;
- (b) any interest paid to a non-resident person shall be deemed to be derived from Solomon Islands.

## **8 Trust income, etc., deemed income of trustee, beneficiary, etc.**

For the purposes of this Act, any income chargeable to tax and received in any year by any person in his capacity as trustee,

executor or administrator:

- (a) to the extent to which it accrues to the credit of a beneficiary of the trust or estate, as the case may be, shall be deemed to be income of such beneficiary chargeable to tax for such year;
- (b) to the extent to which it does not so accrue, shall be deemed to be income of such trustee, executor or administrator, as the case may be, and to be income of a person other than an individual.

## **9 Certain income from business operations to be exempted**

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

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

- (2) The total income of any person or company which may be exempt from tax by the Minister under this section shall not exceed twenty-five thousand dollars or such greater amount, not exceeding one hundred thousand dollars, as the Minister may, with the consent of the Cabinet, in any particular case decide.
- (3) No exemption may be granted under this section in respect of income other than income accrued or derived during the period of five years commencing either:
  - (a) on the 1st day of February, 1990; or
  - (b) on such other date as the Minister may specify in respect of a particular person or company when granting such exemption,

whichever date be the later:

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

- (4) Any person or company seeking an exemption under this section shall make application in that behalf on, or before 31st January 1993 or within six months of the commencement of the operations of the business in question, whichever be the later. Such application shall be in writing and shall be accompanied with full particulars of such operations, the source and amount of capital employed, or intended to be employed, in such operations, and, in the case of a company, the names and addresses of all persons having a beneficial interest in the shares of such company. If requested in writing by the Secretary so to do, any such person or company shall also supply such further information as the Secretary shall deem necessary to enable the application to receive proper consideration.
- (5) A declaration under this section may be revoked by the Minister, on the recommendation of the Exemption Committee, if at any time it appears to him that:
  - (a) the information supplied under subsection (4) in relation thereto was so incorrect as to be misleading; or
  - (b) in the case of any such declaration exempting the income of a Solomon Islands company, if at any time thereafter it ceases to be a Solomon Islands company within the meaning ascribed to that expression; or
  - (c) the business operations concerned have become successfully established; or
  - (d) the purpose for which the exemption was granted has for any reason become impossible to achieve; or
  - (e) such person or company has been granted investment incentives under Part III.

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

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

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

## **PART III INCENTIVES**

### **10 Definitions**

In this Part and the relevant Schedules applicable to this Part:

**‘certificate of registration’** has the same meaning as in the *Foreign Investment Act 2005*.

**‘investment activity’** means a commercial, economic, industrial or professional activity carried on in Solomon Islands as a business or part of a business;

**‘investor’** includes a foreign investor within the meaning of the *Foreign Investment Act 2005* who holds a certificate of registration for an investment activity or investment activities he conducts or intends to conduct;

**‘Registrar’** has the same meaning as in the *Foreign Investment Act 2005*.

### **11 Commissioner may grant exemption from income tax**

- (1) An investor may apply to the Exemption Committee to exempt the profits and income of the investor derived from conducting an investment activity.
- (2) If an investor makes an application under subsection (1), the Minister may, on the recommendation of the Exemption Committee, exempt from income tax the profits and income of the investor that are

derived from conducting the investment activity.

- (3) The extent and period of a tax exemption granted under this Part shall be calculated in accordance with the formula specified in the First Schedule.
- (4) Where an investor proposes an additional investment to the value of ten million dollars or more, and has satisfied the conditions stipulated in relation to the original investment, the Minister may, on the recommendation of the Exemption Committee, grant a further tax exemption for a period not exceeding five years.

## **12 Exemptions under the Second Schedule**

- (1) The exemptions under this section are in addition to those granted under section 11.
- (2) An investor may apply to the Exemption Committee to claim the exemptions set out in the Second Schedule that are appropriate to the investment activity or investment activities he conducts or intends to conduct.
- (3) If an investor makes an application under subsection (2), the Minister may, on the recommendation of the Exemption Committee, subject to subsection (4), grant the exemptions set out in the Second Schedule that are appropriate to the investment activity or investment activities the investor conducts or intends to conduct.
- (4) In granting an exemption under subsection (3), the Minister may, on the recommendation of the Exemption Committee:
  - (a) grant the exemption in full or to a modified extent, as he considers appropriate; or
  - (b) grant the exemption on the terms and subject to the conditions he considers appropriate.

## **13 Withdrawal of exemptions granted under section 11 or 12**

- (1) Subject to this section, the Minister may, on the recommendation of the Exemption Committee, withdraw an exemption granted under section 11 or 12 if the investor to whom it is granted contravenes this

Act, the *Foreign Investment Act* or his authorization under the law of Solomon Islands to conduct the investment to which the exemption relates in Solomon Islands.

- (2) Before the Minister withdraws an exemption under subsection (1), the Minister shall refer the reasons for a proposed withdrawal of the exemption to the Exemption Committee.
- (2A) The Exemption Committee shall, upon receiving the reasons from the Minister, in writing inform the investor of the reasons for the proposed withdrawal of the exemption and ask the investor to give written reasons to the Exemption Committee why the exemption should not be withdrawn.
- (3) The investor shall, within 28 days after receiving the Exemption Committee's request for reasons under subsection (2), give his written reasons to the Exemption Committee.
- (4) On receiving the investor's reasons (if any), the Exemption Committee shall consider the reasons and make recommendation to the Minister on the following:
  - (a) whether or not the exemption should be withdrawn;
  - (b) whether or not to allow the investor an opportunity to correct the contravention within a specified period and, if the investor does not correct the contravention to the Minister's satisfaction within that period, withdraw the exemption on the expiry of that period.
- (5) The Secretary shall advise the investor of the decision, and the reasons for the decision, in writing.
- (6) If the Registrar cancels a certificate of registration under section 23 of the *Foreign Investment Act*, the exemptions granted under section 11 or 12 that apply to the investment activity or activities for which the certificate was issued are withdrawn on the cancellation taking effect.

### **13A Certain provisions of Customs and Excise Act to apply**

Sections 8(3) to (10), 8A, 8B and 8C of the *Customs and Excise Act*

(Cap. 121) apply to this Part, with necessary modifications.

**13B Matters to be taken into account by Exemption Committee**

When considering any exemption under this Part, the Exemption Committee shall take into account the following matters:

- (a) the requirements of this Act and the effect of the proposed exemption on the national economy;
- (b) any guidelines prescribed by regulation.

**14 Exemptions from withholding tax**

- (1) This section applies notwithstanding sections 34, 36, 37 and 38 and the Sixth and Seventh Schedules.
- (2) Subject to subsection (3), withholding tax shall not be payable on a dividend paid to a shareholder of an investor on profits accumulated during the period for which a tax exemption granted under section 11 has effect.
- (3) The exemption from payment of withholding tax under subsection (2) applies only to the extent that the total amount of dividend paid to the shareholders of the investor does not exceed the value of the investor's original investment.
- (4) The interest paid by an investor in respect of money borrowed from a financial institution and employed in the production of income and profits shall not be liable to withholding tax during the period for which a tax exemption granted under section 11 has effect.

**15 Tax credit for expenditure incurred in approved infrastructure development of an approved mining company**

- (1) An approved mining company that has incurred expenditure in the course of constructing approved infrastructure is entitled to a credit against the income tax payable in a year equal to the expenditure incurred in that year for the construction.
- (2) If the credit available under subsection (1) exceeds the income tax payable in the year in which the expenses have been incurred, the lower of the excess and the income tax payable in the following year



is allowed as a credit against the income tax payable in the following year. This credit can be carried forward indefinitely.

**15A      Certain restrictions on special benefits granted to approved mining companies**

An approved mining company is not eligible or qualified for an exemption that may be granted to an investor under section 9, 11, 12 or 14.

**PART IV                      EXEMPTION FROM TAX**

**16              Certain income exempted from tax, etc.**

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

(2) The Minister may provide by order:

- (a) that any income or class of income which accrues in, or is derived from Solomon Islands shall be exempt from tax to the extent specified in such order;
- (b) that the exemption from tax granted under subsection (1) in respect of any income shall cease to have effect either generally or to such extent as may be specified in such order;

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

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

(4) Before the Minister makes an order under subsection (2) or (3), the

Minister shall first refer the proposed order to the Exemption Committee to make recommendations to the Minister on the proposed order.

- (5) When considering any exemption under this Part, the Exemption Committee shall take into account the following matters:
  - (a) the requirements of this Act and the effect of the proposed order on the national economy;
  - (b) any guidelines prescribed by regulation.
- (6) Sections 8(3) to (10), 8A, 8B, and 8C of the *Customs and Excise Act* (Cap. 121) apply to this section, with necessary modifications.

**17        Deductions under section 18 not allowed in respect of exempted allowances**

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

**PART V                    ASCERTAINMENT OF TOTAL INCOME**

**18        Deductions allowed**

- (1) In ascertaining for any year the income of any person which is chargeable to tax in respect of any of the subjects of section 3 there shall be deducted all expenditure incurred in such year which is expenditure wholly and exclusively incurred by him in the production of such income and which is not expenditure in respect of which no deduction shall be allowed under section 20; and where under section 26 any income of an accounting period ending on some day other than the last day of such year is, for the purpose of ascertaining total income for any year, deemed to be income for any year, then such expenditure incurred during such period shall be treated as having been incurred during such year.
- (2) Without prejudice to the operation of subsection (1), in computing the gains or profits of any person for any year chargeable to tax under

section 3(a), the following amounts shall be deducted:

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

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

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

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

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

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

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

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

(i) where such land was acquired for valuable consideration, so much of such consideration as the Commissioner may determine to be just and reasonable as representing the cost of such standing timber; or

- (ii) where no valuable consideration was given for the land, so much of such amount as the Commissioner may determine to be just and reasonable as representing the value of such standing timber at the time such owner acquired such land, as is attributable to such timber sold during that year;
- (h) in the case of gains or profits from the sale of standing timber by a person who has purchased the right to fell such timber, so much of the price paid for such right as the Commissioner may determine to be just and reasonable as attributable to the timber sold during such year;
- (i) any payment by way of premium, fine or payment for goodwill on the grant of a lease of premises used for the purposes of the production of the income the rent under which ranks as deductible expenditure under subsection (1), in the proportion that the period within which such rent ranks as deductible expenditure during such year bears to the full term of such lease, and for the purpose of this paragraph the value on acquisition of a perpetual estate or freehold interest in land that has been converted to leasehold land as at 31st December 1977 in accordance with Part VII of the *Land and Titles Act* shall be deemed to be a premium paid on the granting of such lease provided the Commissioner is satisfied that such land is developed, is being developed, or will be developed in accordance with a development plan approved by the Commissioner of Lands:

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

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

- (m) the amount of any dividends paid in any year by a company resident in Solomon Islands from which tax has been deducted in accordance with section 36 and at a rate of not less than twenty percent;
  - (n) any expenditure incurred in connection with any business before the date of commencement of such business where such expenditure would have been deductible under this section if incurred after such date, so however, that such expenditure shall be deemed to have been incurred on the date on which such business commenced.
  - (o) amounts allocated by an approved mining company in the year for future application towards the cost of environmental rehabilitation, restoration or reclamation as required by a mining licence, the *Mines and Minerals Act*, the *Environment Act 1998*, or a relevant agreement, provided the approved mining company holds written confirmation from the Minister of Mines and Minerals and the Minister of Environment that:
    - (i) the amounts allocated in the year are authorised or required by the *Mines and Minerals Act*, The *Environment Act 1998*, or a relevant agreement; and
    - (ii) irrevocable arrangements are in place to ensure the funds will be available to the Government of Solomon Islands to carry out the environmental rehabilitation, restoration or reclamation in the event the approved mining company does not apply the amounts as required.
- (2A) Notwithstanding the provisions of subsection (1), the expenditure incurred in respect of interest, royalty and management fees shall only be deductible where:
- (a) withholding tax has been deducted and paid in respect of such income;
  - (b) such income is exempted under the terms of a Double Taxation Treaty; or
  - (c) such income is otherwise exempted or withholding tax is not deductible therefrom.

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

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

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

- (b) the amount of any passage deduction to which he is entitled under subsection (5), for such year;
- (c) the amount of any loss arrived at in computing gains or profits for such year which, if it had been a profit, would have been chargeable to tax under section 3(a);
- (d) any amount paid during such year by such person by way of alimony or allowance under a decree of divorce, a judicial order of separation or maintenance or a deed of separation or maintenance:

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

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

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

provide:

- (a) that any class of capital expenditure specified in such order shall be the subject of relief under the Fourth Schedule and to the extent provided for in such order;
- (b) that the amount of any deduction made under the Fourth Schedule shall be varied to such amount as may be prescribed in such order either generally, or in relation to any class of business, or in a particular instance.

## **19 Carrying forward of losses**

- (1) In this section, a “**deductible loss**” for a year means the amount by which deductions allowed in the calculation of chargeable income subject to tax exceed amounts included in chargeable income under section 3 for the year.
- (2) A person who has a deductible loss in respect of a year may reduce chargeable income subject to tax by the amount of the deductible loss in the following year and for each of the subsequent four years to the extent the loss is not used to reduce chargeable income subject to taxation in a prior year.
- (2A) Notwithstanding subsection (2), an approved mining company that has a deductible loss in respect of a year may reduce chargeable income subject to tax by the amount of the deductible loss in the following year and for each of the subsequent six years to the extent the loss is not used to reduce chargeable income subject to taxation in a prior year.
- (2B) Where any loss is incurred outside Solomon Islands, such loss shall only be set off against income derived from outside Solomon Islands.
- (3) Where, if a profit, other than a profit exempt under section 9, had been made from the transaction in which the loss was incurred, the amount of the profit would not have been chargeable to tax, no relief shall be given under this section in respect of that loss.
- (4) Notwithstanding anything in the foregoing provisions of this section, if any company claims to carry forward to any year any loss incurred by it in any previous year, the claim shall not be allowed unless the

Commissioner is satisfied that the shareholders of the company on the last day of the first-mentioned income year were substantially the same as the shareholders of the company on the last day of the year in which the loss was incurred.

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

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

## **20 Deductions not allowed**

- (1) Subject to subsections (2), (3) and (4) of section 18, for the purposes of ascertaining the total income of any person for any year, no deduction shall be allowed in respect of:
  - (a) any expenditure or loss which is not wholly and exclusively incurred by him in the production of the income;
  - (b) any capital expenditure, or any loss, diminution or exhaustion of capital.
- (2) No deduction shall be allowed in respect of:
  - (a) any expenditure incurred by any person in the maintenance of himself, his family or establishment, or for any other personal or domestic purpose;



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

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

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

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

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

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

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

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

(i) any expenditure incurred in deriving employment income;

(j) expenditures that would otherwise be deductible under section 18, apart from interest expenses allowed under paragraph 12A of the Fourth Schedule and management expenses subject to withholding tax at the level set in paragraph (xiv) of the Sixth Schedule, to the extent that the otherwise deductible expenditures:

(i) are paid to a related person not resident in the Solomon Islands; and

- (ii) exceed five percent of the total of deductions allowed under this Act in the year apart from operation of this paragraph.
  - (k) expenditure for rehabilitation, restoration or reclamation as required by a mining licence, the *Mines and Minerals Act*, the *Environment Act 1998*, or a relevant agreement, apart from expenditure for which a deduction is allowed under paragraph 18(2)(o), or subparagraph 5(5) of the Fourth Schedule.
  - (l) expenditure incurred by an approved mining company on the construction of approved infrastructure to the extent a credit is allowable to the company under section 15;
- (2A) For the purpose of paragraph 20(2)(j), a related person is:
- (a) a person with a direct or indirect interest in the approved mining company; or
  - (b) any person in which a person described in (a) has a direct or indirect interest.
- (2B) If a person is required to deduct tax from a payment under a tax deduction provision and, in the absence of this subsection, the person would be allowed a deduction under the Act for the payment, the person shall not be allowed the deduction until the correct tax required to be deducted has been paid to the Commissioner.

## **21 Source of gains or profits from sales of products and produce from Solomon Islands**

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

sold wholesale to the best advantage.

**21A Arrangement and transaction not at arm's length**

- (1) This section applies where a person derives an amount or incurs a liability for an amount in the course of a transaction or arrangement that is for any reason not at arm's length.
- (2) Where an amount described in subsection (1) differs from the amount that would have been derived or incurred had the arrangement or transaction been at arm's length, the Commissioner may deem the amount to be the amount that would have been derived or incurred had the arrangement or transaction been at arm's length.

**22 Determination of total income from insurance business**

- (1) Notwithstanding anything in this Act, this section shall apply for the purpose of ascertaining the gains or profits derived by any person from the carrying on of insurance business in Solomon Islands.
- (2) Where an insurance company carries on life insurance business in connection with insurance business of any other class, the life insurance business of the company shall be treated as a business separate from any other class of insurance business carried on by the company.
- (3) The gains or profits for any year derived from the insurance business, other than life insurance business, carried on in Solomon Islands by an insurance company, shall be the amount arrived at after:
  - (a) taking, for such year, the sum of:
    - (i) the amount of the gross premiums (other than premiums in respect of life insurance business) received or accrued in respect of risks in Solomon Islands (less such premiums returned to the insured and such premiums paid on reinsurances as related to such business);
    - (ii) the amount of other income from such business, not being income from investments, received or accrued in Solomon Islands, including any commission or expense allowance from re-insurers in connection with the

reinsurance as risks in Solomon Islands;

- (iii) such proportion of its investment income as the amount referred to in sub-paragraph (i) bears to the total premiums received or accrued, and
  - (b) deducting from such sum a reserve for the unexpired risks of such business outstanding at the end of such year at the percentage adopted by the company in relation to its insurance business as a whole, other than life insurance, but adding to such sum the reserve deducted for similar unexpired risks at the end of the previous year, and
  - (c) deducting from the figure arrived at under paragraph (a) and paragraph (b):
    - (i) the amount of the claims admitted in such year in connection with such business, less any amount recovered in respect thereof under reinsurance; and
    - (ii) the amount of branch and agency expenses incurred in such year in connection with such business; and
    - (iii) such proportion of the expenses of the Head Office of such company, other than any life insurance expenses, as the Commissioner may determine to be just and reasonable.
- (4) The gains or profits for any year derived from the life insurance business carried on in Solomon Islands by a life insurance company shall be the amount arrived at after:
- (a) taking for such year, the sum of:
    - (i) such proportion of its investment income as the life insurance premiums received or accrued in Solomon Islands bear to the total premiums received or accrued; and
    - (ii) the amount of any interest paid by such company from its annuity fund on the surrender of policies the premiums in respect of which were received in Solomon Islands or on

the return of premiums received in Solomon Islands; and

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

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

## **23 Determination of total income of co-operative society**

- (1) Notwithstanding anything in this Act this section shall apply for the purpose of ascertaining the gains or profits of any co-operative society which shall be chargeable to tax.
- (2) The income of a co-operative society shall include all sums received by it including all sums received from its members, other than payments made in respect of membership of such society.
- (3) Subject to subsection (4) in arriving at the income of a co-operative society a deduction shall be allowed for:
  - (a) any sum distributed among its members as rebates or bonuses based on their transactions with the co-operative society; and
  - (b) any sum distributed among its members as interest or dividends on shares.
- (4) Where the co-operative society has entered into transactions with persons other than its members then the Commissioner may where he considers it just and reasonable restrict the deduction allowable under paragraph (a) of subsection (3) to a proportion of such

deduction as the transactions with members bears to the total transactions.

- (5) Any dividend or interest paid by a co-operative society shall for the purpose of this Act be deemed to be a dividend paid by a resident company and such co-operative society shall be required to deduct and pay to the Commissioner withholding tax in accordance with this Act.
- (6) For the purpose of this section a co-operative society shall include any co-operative society or mutual association whether incorporated, unincorporated, registered or unregistered.

**24 Annual value of premises provided by employer**

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

**25 Arrangements purporting to alter incidence of tax to be void**

- (1) Every arrangement made or entered into, whether before or after the commencement of this Act, shall be absolutely void as against the Commissioner, for income tax purposes, if and to the extent that, directly or indirectly:
  - (a) its purpose or effect is tax avoidance; or
  - (b) where it has two or more purposes or effects, one of its purposes or effects (not being merely an incidental purpose or effect) is tax avoidance, whether or not any other or others of its purposes or effects relates to, or are referable to, ordinary business or family dealings,

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

- (2) Where an arrangement is void in accordance with subsection (1), the chargeable income of any person affected by that arrangement shall be adjusted in such manner as the Commissioner considers

appropriate so as to counteract any tax advantage obtained by that person from or under that arrangement, and without limiting the generality of the foregoing provisions of this subsection, the Commissioner may have regard to such income as, in his opinion, either:

- (a) that person would have, or might be expected to have, or would in all likelihood have, derived if that arrangement had not been made or entered into; or
  - (b) that person would have derived if he had been entitled to the benefit of an income, or of such part thereof as the Commissioner considers proper, derived by any other person or persons as a result of that arrangement.
- (3) Where any income is included in the chargeable income of any person pursuant to subsection (2), then for the purposes of this Act, that income shall be deemed not to have been derived by any other person.
- (4) Without limiting the generality of the foregoing provisions of this section, where in any income year, any person sells or otherwise disposes of any shares in any company under an arrangement (being an arrangement of the kind referred to in subsection (1)) under which that person receives, or is credited with, or there is dealt with on his behalf, any consideration (whether in money or money's worth) for that sale or other disposal, being consideration, the whole or, as the case may be, a part of which, in the opinion of the Commissioner, represents, or is equivalent to, or is the substitution for, any amount which, if that arrangement had not been made or entered into, that person would have derived or would derive, or might be expected to have derived or to derive, or in all likelihood would have derived or would derive, as income by way of dividend in that income year, or in any subsequent income year or years, whether in one sum in any of those years or otherwise howsoever, an amount equal to the value of that part of that consideration shall be deemed to be dividend derived by that person in that first-mentioned income year:

Provided that the provisions of this section shall not apply to any arrangement where the main purpose was to effect the succession by a resident company incorporated for that purpose, to any business carried on by an individual or partnership, if such arrangement does

not directly or indirectly effect tax avoidance or one of its purposes or effect (not being merely incidental) is not tax avoidance.

(5) For the purpose of this section:

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

**“liability”** includes a potential or prospective liability in respect of future income;

**“tax avoidance”** includes:

- (a) directly or indirectly altering the incidence of any income tax;
- (b) directly or indirectly relieving any person from liability to pay income tax;
- (c) directly or indirectly avoiding, reducing, or postponing any liability to income tax.

## **26 Accounting periods not coinciding with year of income, etc.**

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



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

**27 Special provisions relating to retirement benefits**

- (1) Where an employer has established any scheme for the payment, under regulations relating thereto, of pensions and other benefits to his employees in respect of services with him on the retirement of such employees from such service, or to the dependants of such employees on the death of such employees, then, subject to such conditions as he may impose as to the establishment of such scheme, the Minister may by order declare the fund established under such regulations to be an approved pension fund.
- (2) Where an individual has entered into a contract which the commissioner is satisfied has as its principal object the provision for such individual, or for such individual and his wife jointly, of a life annuity in old age or upon retirement on the grounds of ill health, or of a lump sum by way of endowment assurance, he may, subject to such conditions as he may require to be included in such contract, declare it to be an approved annuity contract.

**PART VI PERSONAL EXEMPTIONS**

**28 General**

- (1) Subject to subsection (2), an individual who for any year:
- (a) makes a claim in that behalf on the specified form, containing such particulars and supported by such proof as the Commissioner may require; and
  - (b) has furnished a return of income in respect of such year,
- shall, in respect of such year, be entitled to a personal exemption of seven thousand eight hundred dollars.

(2) Where:

- (a) an individual has become a resident individual for the purpose of engaging in any employment or carrying on of any business in Solomon Islands; or
- (b) a non-resident individual is in Solomon Islands for the purpose of engaging in any employment or carrying on of any business in Solomon Islands,

and the individual is present in Solomon Islands for part only of a year, the individual shall be entitled for that year to only such portion of the exemption as the total period of the individual's presence in Solomon Islands for the year bears to the whole of the year.

## **PART VII            RATES, DEDUCTION AND SET-OFF OF TAX AND DOUBLE TAXATION RELIEF**

### ***A    Rates of Tax***

#### **32            Individual rates of tax**

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

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

#### **33            Non-individual rate of tax**

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

Solomon Islands, shall be charged at the rate of thirty-five cents for every dollar of such chargeable income.

**34 Rate of withholding tax**

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

**35 Provisions relating to application of certain sections**

- (1) Subject to the provisions of subsections (2) and (3), the tax chargeable upon the total income in any year of any person to whom the provisions of section 19(1) apply shall be at the rate of 0.5 per cent for every dollar of income up to a maximum tax of ten thousand dollars.
- (2) The provisions of subsection (1) shall not apply to:
  - (a) a non-resident person to whom the provisions of section 3(2)(a)(ii) apply; and
  - (b) a person to whom the provisions of section 33(1) and (2) apply and the tax chargeable under that section exceeds the tax chargeable under subsection (1); and
  - (c) any person granted incentives under the provisions of this Act.
- (3) The Commissioner in determining the tax payable under the provisions of subsection (1) shall:
  - (a) where the provisions of section 19(1) apply take into consideration the quantum of dividend paid, the exemptions or incentives granted and the nature and extent of the losses incurred by such person; and
  - (b) in calculating the turnover tax of an individual who is in paid employment and is also in receipt of business income, exclude such person's income from employment from the total income, provided the tax due from such paid employment has been deducted and paid to the Commissioner.

## ***B Deduction of Tax***

### **36 Deduction of tax from dividends**

- (1) Subject to subsection (2), a resident company shall deduct tax from the gross amount of any dividend paid at the rate of:
  - (a) in the case of a resident corporate or individual shareholder, twenty *per centum*; or
  - (b) in the case of a resident body of persons, other than a corporation and a non-resident shareholder, the rate prescribed in section 33(1).
- (2) This section does not apply to a dividend exempt from income tax.

### **36A Deduction of tax from employment**

- (1) Subject to subsection (2), an employer shall deduct tax from the gross amount of employment income paid to an employee as prescribed in the Tax Deduction Rules 2005.
- (2) This section does not apply to employment income that is exempt from income tax.
- (3) The obligation of an employer to deduct tax under subsection (1):
  - (a) shall not be reduced or extinguished because the employer has a right, or is otherwise obliged, to deduct any other amount from a payment of employment income; and
  - (b) shall apply notwithstanding any law that provides that the employment income of an employee is not to be reduced or subject to attachment.

### **36B Deduction of tax from interest**

- (1) Subject to subsection (2), a resident person or a permanent establishment in Solomon Islands of a non-resident person shall deduct tax from the gross amount of interest paid to a resident person at the rate of 10%.
- (2) This section does not apply to interest income:

- (a) that is exempt from income tax;
  - (b) paid to a financial institution; or
  - (c) interest income paid by a resident individual who is not carrying on a business.
- (3) In this section:

**“non resident partnership”** means any partnership that is not a resident partnership; **“non-resident person”** includes a non-resident partnership;

**“permanent establishment”** has the same meaning as in section 38(2);

**“resident partnership”** means any partnership that has a resident person as a partner; and

**“resident person”** includes a resident partnership.

### **37 Withholding tax on gross payments made to residents**

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

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

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

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

- (a) income from contracting or subcontracting;
  - (b) royalties;
  - (c) income from fishing operations;
  - (d) income from lease of property;
  - (e) income from the sale of cocoa;
  - (f) income from the sale of copra;
  - (g) income from the sale of marine products;
  - (h) income from stevedoring services; and
  - (i) any other income or class of income provided by order of the Minister;
- (7) In this section and the Seventh Schedule unless the context otherwise requires:

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

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

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

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

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

***“income from the sale of marine products”*** means gross payments from all sales of beche-de-mer, marine shells, turtle shells and shark fins within the Solomon Islands;

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

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

***“royalties”*** includes the extracting, removal or other exploitation or the right to extract, remove or otherwise exploit standing timber or any natural resource;

***“income from stevedoring service”*** means gross payments for the service of:

- (a) loading or unloading of cargo onto or from ships;
- (b) loading or unloading of ship’s stores, coal or fuel oil (whether for bunkers or not), passengers’ luggage, or mails onto or from ships;
- (c) handling or storage of cargo or other goods at or adjacent to a wharf;
- (d) driving or operating mechanical appliances in connection with the loading or unloading of ships, or with the handling or storage of cargo or other goods at or adjacent to a wharf;
- (e) hauling or trucking from ship to shed or shed to ship;
- (f) removing or replacing of beams or hatches;
- (g) handling of dunnage or ballast;
- (h) preparing or cleaning of holds; or
- (j) preparing gear for use in connection with the loading or unloading of ships;

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

### **38 Deduction of tax from certain income paid to non-residents**

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

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

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

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

***“income from ships or aircraft”*** means the gross payments from the carriage of passengers who embark, or cargo or mail which is embarked, in Solomon Islands by any person who carries on the business of owner or charterer of ships or aircraft but shall not include the gross payments from the carriage of passengers who embark, or cargo or mail which is embarked in Solomon Islands solely as a result of transshipment, and where any ship or aircraft owned or chartered by a non-resident person calls at any place in Solomon Islands for the purpose of embarking cargo purchased by or on behalf of such person which has been manufactured, grown, mined, produced, harvested or felled within Solomon Islands or surrounding waters, then for the purpose of this section such person shall be deemed to be carrying on the business of owner or charterer of such ship or aircraft and shall be deemed to have received such income as the Commissioner considers just and reasonable;

***“insurance premiums”*** means the amount of the gross premiums (other than premiums in respect of life insurance) paid in respect of



risks in Solomon Islands and from the carriage of cargo from Solomon Islands, and shall include any re-insurance premiums;

**“lease income”** means gross payments received from:

- (a) leasing of any plant, equipment or machinery; or
- (b) chartering or hiring of fishing vessels or related vessels for the purpose of fishing;

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

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

**“person”** includes Solomon Islands Government and any Provincial Government or public authority;

**“professional services”** means any payment for professional or technical services or services of an adviser or consultant on behalf of a person or entity resident in Solomon Islands (whether such services are rendered wholly or partly in Solomon Islands or outside Solomon Islands) to the extent that such payments do not constitute:

- (i) employment income; or
- (ii) reimbursement of travelling or accommodation expenses which are wholly and exclusively incurred in relation to such payment;

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

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

- (i) the use of or right to use any copyright, patent, design or model, plan, secret formula or process, trade mark or other like property or right;
  - (ii) the supply of scientific, technical, industrial or commercial knowledge, information or assistance;
  - (iii) the supply of assistance ancillary and subsidiary to and furnished as a means of enabling the application or enjoyment of any such property or right or any such knowledge or information or assistance as is mentioned in paragraphs (i) and (ii) of this definition.
- (3) For the purposes of this section non-resident income includes any income that consists of:
- (a) interest;
  - (b) professional services;
  - (c) royalties or other like payments;
  - (d) income from contracting;
  - (e) income from ships or aircraft;
  - (f) insurance premiums;
  - (g) rent for the hiring of films;
  - (h) lease income and
  - (i) income from management services; and
  - (j) any other income or class of income provided by order by the Minister.
- (7) No officer of customs and excise shall grant clearance to any ship or aircraft to depart until he is satisfied that any tax that has been or may be chargeable in respect of the carriage of passengers who

embark or cargo or mail which is embarked in Solomon Islands, other than as a result of a trans-shipment, has been paid, or that arrangements for its payment have been made to the satisfaction of the Commissioner.

**38A      Payment of tax deducted**

Tax required to be deducted by a person under a tax deduction provision shall be paid to the Commissioner within fifteen days after the end of the month in which the person was required to deduct the tax.

**38B      Failure to pay tax deducted**

- (1) If a person:
  - (a) fails to deduct tax as required under a tax deduction provisions;  
or
  - (b) having deducted tax fails to pay the tax to the Commissioner as required under section 38A,

the person shall be personally liable to pay to the Commissioner the amount of tax, and any penalty and additional tax due in respect of the failure.

- (2) A person liable for an amount of tax under subsection (1) as a result of failing to deduct the tax shall be entitled to recover the tax (but not any penalty or additional tax due in respect of the failure) from the recipient of the payment.

**38C      Recovery of tax from recipient**

- (1) If a person fails to deduct tax as required under a tax deduction provision, the Commissioner may recover the tax from the recipient of the payment provided the total amount recovered does not exceed the tax that should have been deducted;
- (2) Notwithstanding the recovery of any tax under subsection (1), the person who failed to deduct the tax shall continue to be liable for:
  - (a) any other legal action in relation to the failure;

- (b) the imposition of any penalty or additional tax in respect of the failure; and
- (c) the disallowing of a deduction for the expenditure to which the failure relates under section 20(2A).

**38D Evidence of tax deduction**

A person deducting tax under a tax deduction provision shall, at the time of deducting the tax, furnish the recipient of the payment with written evidence that tax has been deducted from the payment.

**38E Priority of deducted tax**

- (1) Tax deducted by a person from a payment under a tax deduction provision:
  - (a) shall be held by the person in trust for the government; and
  - (b) shall not be subject to attachment in respect of any debt or liability of the person.
- (2) In the event of the death, liquidation or bankruptcy of a person who has deducted tax, any tax deducted shall not form part of the person's estate and the Commissioner has first claim for that amount before any distribution of property is made.
- (3) An amount of tax that a person is required to deduct from a payment under a tax deduction provisions shall be:
  - (a) a first charge on the payment; and
  - (b) deducted prior to any other amount that the person may be required to deduct from the payment by virtue of an order of any Court or under any other law.

**38F Indemnity**

A person who has deducted tax under a tax deduction provision and remitted the tax to the Commissioner shall be indemnified against any claim by the recipient for payment of the deducted amount.

**38G      Annual tax deduction certificate**

- (1) A person deducting tax from a payment under a tax deduction provision shall furnish the recipient of the payment from which tax has been deducted with an annual tax deduction certificate in the form and manner prescribed.
- (2) A person required to furnish a return of income for a year shall attach to the return the annual tax deduction certificate for any income in respect of which the deducted tax is not a final tax on the income.

**38H      Monthly summary**

A person deducting tax from a payment under a tax deduction provision shall furnish to the Commissioner a monthly summary in the form and manner prescribed.

**38J      Deducted tax treated as tax**

Tax deducted under a tax deduction provision shall be treated as tax for the purposes of sections 83(4), 84, 85, 87, 88, 89 and 89A.

**39      Distribution of a capitalised amount**

- (1) Where a company resident in Solomon Islands makes a bonus issue and at any time thereafter such company makes a distribution of any amount (whether in money or money's worth) that in the opinion of the Commissioner is either directly or indirectly a distribution of any amount capitalised by such bonus issue then there shall be payable by the company at the time of the distribution a tax referred to in this Act as a bonus issue tax which shall be distinct from and in addition to any other income tax levied under this Act.
- (2) Bonus issue tax shall be payable at the rate of twenty cents for every dollar of the amount distributed and shall be due and payable by the company to the Commissioner within fifteen days of the date on which the distribution was made and the provisions of this Act relating to the collection and recovery of tax shall apply to bonus issue tax as if it were income tax which was due for payment on the fifteenth day next after the date on which the distribution was made.
- (3) For the purpose of this section “**bonus issue**” means a capitalisation

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

## **C      *Set-off of Tax***

### **40      *Set-off of tax deducted***

- (1) For the purposes of this Act, if tax has been deducted from a payment under a tax deduction provision, the amount derived by the recipient of the payment shall be the amount of the income before the deduction of the tax.
- (2) Subject to subsection (3), if tax has been deducted from a payment under a tax deduction provision, the recipient shall set off the deducted tax against tax charged on the income represented by the payment.
- (3) Subsection (2) shall not apply if:
  - (a) the tax deducted is a final tax on the income under section 40A; or
  - (b) the recipient does not attach an annual tax deduction certificate to the recipient's return as required under section 38G(2) as evidence of the amount of tax deducted.

### **40A      *Deducted tax as a correct final tax***

- (1) Subject to subsection (2), this section applies to tax deducted under the following sections provided the correct amount has been deducted and paid to the Commissioner:
  - (a) section 36 if the dividend is paid to:
    - (i) a person who is not resident in Solomon Islands;
    - (ii) resident body of persons other than a company; or

- (iii) resident individual person;
  - (b) section 36A;
  - (c) section 36B, if the interest is paid by a financial institution and is derived by a resident individual;
  - (d) section 37, if the payment is:
    - (i) made to a resident body of persons other than a company;
    - (ii) made to a resident individual when the total income of the individual including the payments covered by section 37 for the year is less than \$10,000; or
    - (iii) income is covered by section 37(2)(d) and is derived by a resident individual; or
  - (e) section 38.
- (2) This does not apply to tax deducted under:
- (a) section 36 from dividends, section 36A from director's fees, and section 36B from interest if the total amount of dividends, director's fees, and interest income derived by a resident individual person for a year is more than \$10,000; or
  - (b) section 36A from employment income (including director's fees) if the employee has three or more employers concurrently at any time during a year and the total employment income of the employee for the year is more than \$60,000.
- (3) If this section applies, the tax deducted shall be a final tax on the income of the recipient in respect of which the tax has been deducted and:
- (a) the income shall not be taken into account in calculating the total income of the recipient;
  - (b) no deduction shall be allowable under this Act for any expenditure incurred in deriving the income; and

- (c) if the only income derived by the recipient for a year is income covered by this section, the recipient shall not furnish a return of income as required by section 57 for the year.

**41      Licence fees paid to Councils may be allowed to be set off**

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

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

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

**42      Set-off of specific export duty on copra or rice**

If any person proves:

- (a) that he has paid or is liable to pay for any year specific duty under the *Customs and Excise Act* in respect of copra or rice exported by him; or
- (b) that any sum received by him from the sale in any year of copra or rice produced by him was determined after taking into account any specific duty payable under the *Customs and Excise Act* in respect of such copra or rice,

he shall be entitled, on a claim made within the time allowed for furnishing a return of income under section 57, or such longer period as the Commissioner may allow, to set off for the purposes of payment of tax under this Act such specific duty against so much of



the tax charged on him for such year as is attributable to gains or profits derived from the production of such copra or rice; and for the purposes of this section “**specific duty**” means a duty levied upon a quantity of the commodity exported and does not include any duty levied *ad valorem*:

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

#### ***D - Double Taxation Relief***

#### **44 Relief in respect of overseas income tax**

- (1) If any resident person chargeable to tax on any part of his income, proves that he has paid, by deduction or otherwise, or is liable to pay overseas income tax for such year in respect of the same part of his income, he shall be entitled to relief from tax so chargeable on such part of his income at the overseas rate of tax or Solomon Islands rate of tax, whichever is the less.
- (2) For the purposes of this section, Solomon Islands rate of tax and the overseas rate of tax shall be computed by dividing the amount of tax paid or payable for the year (before deduction of any relief granted under this section) by the amount of the total income of such person for such year.

#### **45 Special arrangements for relief from double taxation**

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

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

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

**46 Computation of income and credits where special arrangements apply**

- (1) Where, under arrangements having effect under section 45, foreign tax payable in respect of any income is to be allowed as a credit against tax chargeable in respect of such income, this section shall have effect, notwithstanding the other provisions of this Act, as regards the computation of such income for the purposes of this Act and of the amount of credit to be allowed thereunder.
- (2) The amount of the tax otherwise chargeable upon the income referred to in subsection (1) shall be reduced by the amount of the credit.
- (3) Income arising out of but received in Solomon Islands shall be deemed to be income of such gross amount as would, after deduction of the foreign tax directly chargeable thereon or payable by deduction therefrom, be equal to the net amount received:

Provided that:

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

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

(5) Where:

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

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

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

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

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

(8) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any income tax, or tax of a similar nature, payable either in Solomon Islands or elsewhere, nothing in this Act limiting the time for making of assessments or claims for relief shall apply to any

assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than three years from the time when all such assessments, adjustments and other determinations have been made, whether in Solomon Islands or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

## **PART VIII       PERSONS ASSESSABLE: LIABILITIES ON BEHALF OF OTHER PERSONS**

### **47       Income of a person assessed on him**

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

### **48       Wife's income, etc.**

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

Provided that:

- (i) where such married woman derives income:
- (a) from a business, carried on by her apart from her husband; or
  - (b) from employment or services rendered, other than from employment with or services rendered to her husband; or
  - (c) from any other source other than business or employment,
- of an amount which exceeds seven thousand eight hundred dollars, in any year the spouses shall, for the purposes of this Act, be treated for that year as if they were unmarried persons;
- (ii) such part of the total amount of tax charged on the husband as bears the same proportion to such total amount of tax as the

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

- (1A) Where the income of a married woman is deemed to be the income of the husband in accordance with subsection (1), the husband shall be entitled to a personal exemption calculated on an equivalent percentage of the wife's income.
- (2) Where a married woman is not living with her husband, then each spouse shall, for the purposes of this Act, be treated as if he or she were unmarried.
- (3) For the purposes of this Act, a married woman shall be treated as living with her husband unless:
  - (a) they are separated under an order of a court of competent jurisdiction or under any written agreement of separation; or
  - (b) they are separated in such circumstances that the separation is likely to be permanent; or
  - (c) she is a resident person and her husband is a non-resident person.

#### **48A      Dependent child's income**

The income of a dependent child, from employment or services rendered to a parent or business or company owned, operated or controlled by the parent, shall be deemed to be the income of the child's parent for the purpose of ascertaining the parent's income, and shall be assessed, and the tax thereon charged, on the parent.

**49           Income of an incapacitated person**

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

**50           Income of a non-resident person**

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

**51           Income of a deceased person, etc.**

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

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

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

which are in his possession on, or may come into his possession after, the date of the service of the notice of assessment on him.

- (2) Every person responsible under this Act for the payment of tax on behalf of another person:
  - (a) may retain out of any money coming into his hands on behalf of such other person so much thereof as is sufficient to pay such tax; and such person shall be and is hereby indemnified against any person whatsoever for all payments so made by him under this Act;
  - (b) shall, before making any distribution of the assets of such other person for which he is responsible, obtain a certificate from the Commissioner that no tax, interest or penalties chargeable against such assets remain unpaid; and if such person fails to comply with this requirement and any tax, interest or penalties remain unpaid, the provisions of this Act relating to the collection and recovery of tax, interest or penalties, shall apply to such unpaid tax, interest or penalties as if they were tax due to be paid by such person on the date of distribution of such assets.

### **53 Liability of manager, etc., of corporate body of persons**

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

### **54 Notice within fourteen days and duties of liquidator**

- (1) Every person who is a liquidator of any company which is being wound up, shall, within fourteen days after he has become liquidator of that company, give notice in writing to the Commissioner of his appointment as liquidator.
- (2) The Commissioner shall, as soon as practicable thereafter, notify the liquidator the amount which appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company.

- (3) Subject to subsection (4), the liquidator:
- (a) shall not, without the leave of the Commissioner, part with any of the assets of the company until the liquidator has been so notified;
  - (b) shall set aside, out of the assets available for payment of ordinary debts of the company, assets to the value of an amount that bears to the value of the assets available for payment of ordinary debts of the company the same proportion as the amount notified by the Commissioner under subsection (2) bears to the sum of:
    - (i) the amount notified by the Commissioner under subsection (2);
    - (ii) the aggregate of the ordinary debts of the company; and
  - (c) is, to the extent of the value of the assets that the liquidator is so required to set aside, liable as trustee to pay the tax.
- (4) Nothing in subsection (3)(a) prevents the liquidator parting with assets of the company for the purpose of paying debts of the company that are not ordinary debts of the company.
- (5) For the purposes of subsections (3) and (4), a debt of the company is an ordinary debt if:
- (a) the debt is an unsecured debt; and
  - (b) the debt is not required, under the laws of Solomon Islands to be paid in priority to some or all of the other debts of the company.
- (6) If the liquidator refuses or fails to comply with any provision of this section or refuses or fails as trustee to pay the tax for which the liquidator is liable under subsection (3), the liquidator:
- (a) is, to the extent of the value of the assets that the liquidator is required under subsection (3) to set aside, personally liable to pay the tax; and
  - (b) is guilty of an offence punishable on conviction by a fine not



exceeding one thousand penalty units.

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

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

## **55 Notice of intention to Wind up and liability of agent**

- (1) Where an agent for an absentee principal has been required by the principal to wind up the business of his principal he shall, before taking any steps to wind up the business, notify the Commissioner of his intention so to do, and shall set aside such sum out of the assets of the principal as appears to the Commissioner to be sufficient to provide for any tax that becomes payable.
- (2) Any agent who refuses to give notice to the Commissioner or refuses or fails to provide for payment of the tax as required by this section shall be personally liable for any tax that becomes payable in respect of the business of the principal.

## **56 Obligations and authority of agents and trustees**

With respect to every agent and with respect also to every trustee, the following provisions shall apply:

- (a) he shall be answerable as taxpayer for doing of all such things as are required to be done by virtue of this Act;
- (b) he shall make returns and be chargeable with tax in his representative capacity;
- (c) if he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make;
- (d) where as agent or trustee he pays tax, he is hereby authorised to recover the amount so paid from the person on whose behalf

he paid it, or to deduct it from any money in his hands belonging to that person;

- (e) he is hereby authorised and required to retain from time to time out of any money which comes to him in his representative capacity so as much is sufficient to pay tax which is or will become due in respect of such sale value;
- (f) he is hereby indemnified for all payments which he makes in pursuance of this Act or by the requirements to the Commissioner; and
- (g) for the purpose of ensuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other tax payment in respect of tax, and in as full and ample manner.

## **PART IX            RETURNS AND NOTICES**

### **57            Returns of income, etc.**

- (1) Subject to any rules made under section 114(b), every person deriving income chargeable to tax for any year shall, notwithstanding that he may not have received a notice in writing from the Commissioner under subsections (2) or (3), make a return of income for that year on the prescribed form not later than 31st March following such year, or, where he is in receipt of gains or profits from a business the accounting period of which ends on a date later than 31st December in such year, not later than a date three months after the end of such accounting period.
- (2) The Commissioner may, by notice in writing, require any person to furnish him, within such time as may be specified in such notice, with a return of income for any year or part of a year, containing a full and true statement of the income of such person, including income deemed to be his under this Act, liable to tax and of such particulars as may be required for the purposes of this Act; and such return shall include a declaration signed by such person, or by the person in whose name he is assessable and chargeable, that such return is a full and true statement.

- (3) In the case of the executor or administrator of a deceased person, or of the liquidator of a resident company, or of a bankrupt, or of any person whom the Commissioner has reason to believe is about to leave Solomon Islands, the Commissioner may, by notice in writing, require him to furnish a return of income at any time whether before or after the end of the year to which such return relates.
- (4) Where any business is carried on by two or more persons in partnership, the Commissioner may, by notice in writing, require the precedent resident partner, that is the partner who, of the resident partners:
  - (a) is first named in the agreement of partnership; or
  - (b) if there be no written agreement, is specified by name or initials singly, or with precedence to the other partners, in the usual name of the partnership; or
  - (c) is first named in any statement required under any law of Solomon Islands to register the name of the business;

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

- (5) The provisions of this section shall apply to any person who is assessable in respect of the income of another person, in whatever capacity, as they do to any person in respect of the income to which he is beneficially entitled.
- (6) In every return furnished under this section the person making the return shall state an address to which all notices to be served under this Act may be sent.
- (7) The Commissioner may at any time extend the period of which a return required under this section is to be made.

**58            Penalty for failure to furnish return under section 57**

- (1) Where any person carrying on business in Solomon Islands:
- (a) fails to make a return for any year in respect of his business as required under this Act; or
  - (b) fails to comply with a notice in writing given to him by the Commissioner under subsections (2), (3) or (4) of section 57, requiring such person to furnish a return of income,
- the Commissioner may by notice in writing:
- (i) impose on such person a penalty of a sum of five hundred dollars; and
  - (ii) require such person to furnish such return within such period as may be specified in such notice.
- (2) The Commissioner may, by notice in writing, require a person in default under subsection (1) to furnish such return, certificate, or summary within such period as may be specified in the notice
- (3) The Commissioner may waive the penalty or the additional penalty imposed on such person under this section, if such person proves to the satisfaction of the Commissioner, that his failure to furnish a return was due to circumstances beyond his control and that he has, after the imposition of the penalty furnished such return.
- (4) Any penalty imposed under the provisions of this section shall not relieve any person from liability for which he may be liable to be prosecuted for an offence under section 96 or from the additional tax payable under section 69.

**61            Accounts, books of account, etc.**

- (1) Where any person who carries on any business makes a return of income for any year and accounts of his business for any accounting period relating to such year have been prepared by him, or prepared or examined by another person in a professional capacity, then such person shall furnish with such return of income a copy of such accounts signed by himself, and by any such other person, together

with a certificate signed by himself or such other person, as the case may be, specifying the nature of the books of account and documents from which such accounts were prepared; and such certificate shall also state:

- (a) if the accounts were prepared by himself, whether they reflect all the transactions of his business and present a true and fair view of the gains or profits from such business for such period;
- (b) if the accounts were prepared by such other person, whether and subject to what reservations, if any, such other person considers that such accounts present a true and fair view of the gains or profits from such business for such period, and recording the extent of his verification of the books of account and the documents produced to him;
- (c) if the accounts were examined by such other person, specifying the extent of the examination thereof.

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

- (2) Subject to subsection (3), every person carrying on a business shall keep such records in the English language as the Commissioner considers adequate for the purpose of ascertaining the receipts and expenditure of the business and the gains or profits which are chargeable to tax and such person shall retain all such records so kept after the 1st January, 1966, and all records relating to that business in existence at that date, for a period of at least seven years after the completion of the transactions, acts or operations to which they relate.
- (3) Every person carrying on a business shall preserve every book of account and every document which is essential to the explanation of any entry in such book of account, relating to such business for a period of not less than seven years after the year to which such book of account or document relates:

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

- (a) in respect of which the Commissioner has notified that person in writing that its preservation is not required, or
- (b) in the case of a company which has gone into liquidation and has been finally dissolved, or in the case of the cessation of a business other than one carried on by a company, for more than three months after the date on which the person having custody of the documents or books of account relating to such company or business, as the case may be, informs the Commissioner that he proposes to destroy them.

## **62            Production and preservation of books, attendances, etc.**

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

- (a) to produce for examination by the Commissioner, at such time and place as may be specified in such notice, any accounts, books of account, statements of assets and liabilities, or other documents which the Commissioner may consider necessary for such purpose;
- (b) not to destroy, damage or deface, on or after service of such notice, any of the accounts, books of account or other documents so specified without permission of the Commissioner in writing;
- (c) to produce forthwith for retention by the Commissioner for such period as may be reasonable after examination any accounts, books of account or other documents which the Commissioner may specify in such notice;
- (d) to attend at such time and place as may be specified in such notice, for the purpose of being examined respecting his income or the income of any other person or any transactions or matters appearing to be relevant thereto.

## **63            Power to obtain information and evidence**

- (1) The Commissioner or any officer authorised in that behalf by him shall at all reasonable times have full and free access to any land,

building, or place, and to any record, whether in custody or under control of a public officer, or a body corporate, or any other person whatsoever, for the purpose of inspecting any such record and any property, process or matter which the Commissioner or officer considers necessary or relevant for the purpose of collecting any tax under this Act, or for the purpose of carrying out any other function lawfully conferred on the Commissioner, or considers likely to provide any information otherwise required for the purposes of this Act or any of these functions, and may, without fee or reward, make extracts from or copies of any such record.

- (2) The Commissioner or any other authorised officer may for the purposes of any investigation under this section, require the owner or manager of any property or business which is being investigated, or any other person employed or previously employed, in connection with the property or business, to give him all reasonable assistance in the investigation and to answer all proper questions relating to any such investigation either orally or, if the Commissioner or officer so requires, in writing, require the owner or manager or in the case of a company, any officer of the company, to attend at the premises with him.
- (3) In this section **“record”** includes any book, account, deed, writing, document and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means.
- (4) The Commissioner may require a police officer to be present for the purposes of exercising powers under this section,

## **67 Further returns and extension of time**

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

return is to be made.

**68 Return deemed to be furnished with due authority**

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

**69 Additional tax in the event of fraud, default or omission**

(1) In respect of any person who:

- (a) fails to make a return of income for any year as required by section 57(1); or
- (b) omits from his return of income for any year any amount which ought to have been included therein, or claims any personal exemption to which he is not entitled;

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

- (i) the normal tax chargeable on a correct amount of income after taking account of the correct personal exemptions, and
- (ii) the normal tax chargeable on income included in the return after allowing the personal exemptions claimed therein;

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

(2) Any person who, in his return of income for any year, deducts or sets off any amount the deduction or set-off whereof is not allowed under



this Act, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of subsection (1) (b) to have omitted such amount from his return of income.

- (3) Where any failure, omission, claim or deduction, has been made in connection with a return of income required under this Act to be furnished by any person on behalf of another person, such other person shall be liable for any additional tax charged under this section.
- (4) The additional tax charged under this section shall be charged:
  - (a) in any assessment made under this Act; and
  - (b) whether or not any proceedings are commenced for any offence against this Act arising out of the same facts;

and such additional tax shall be levied and collected as if it were normal tax:

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

- (5) The Commissioner may in his discretion, where there is an appeal against an assessment which includes additional tax, remit the whole or part of such additional tax.
- (6) In this section “**tax**” means tax charged under this Act apart from this section and “**additional tax**” means tax charged under this section in addition to the normal tax.

## **70 Failure to make deduction or misapplication of deduction**

- (1) If a person required to deduct tax under a tax deduction provision:
  - (a) fails to make the deduction either in whole or part; or
  - (b) makes the deduction or purports to make the deduction and fails to remit the deducted tax to the Commissioner in whole or part,

the Commissioner may, when satisfied that such failure was not due to any cause beyond the person's control, charge the person with an additional amount, not exceeding double the amount of tax not deducted or remitted to the Commissioner, as the case may be.

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

## **PART X                    ASSESSMENTS**

### **71                    Commissioner to make assessment**

- (1) Subject to subsection (3) and to section 72 and to any rules made under section 114(b), the Commissioner shall proceed to assess every person chargeable with tax as expeditiously as possible after the expiry of the time allowed to such person under section 57 and 67 for the delivery of a return of income.
- (2) Where a person has furnished a return of income the Commissioner may:
  - (a) accept such return and assess him on the basis thereof; or
  - (b) if he has reasonable cause to believe that such return was not true and correct, estimate, according to the best of his judgment, the amount of the income of such person and assess him accordingly.
- (3) Where a person has not delivered a return of income, whether or not he has been required by the Commissioner so to do, and the Commissioner considers that such person is liable to tax, he may, according to the best of his judgment, determine the amount of the income of such person and assess him accordingly; but such assessment shall not affect any liability otherwise incurred by such person under this Act.

### **72                    Assessment of persons about to leave or having left Solomon Islands**

Where:

- (a) the Commissioner has reasonable cause to believe that any person:
  - (i) may leave Solomon Islands within a short time; or
  - (ii) has left Solomon Islands and his absence is unlikely to be only temporary; and
- (b) such person has not been assessed to tax on income chargeable to tax for any year,

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

### **73 Making of additional assessments**

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

### **74 Service of notice of assessment**

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

### **75 Time limit for making assessments**

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

Provided that:

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

at any time;

- (ii) in the case of income consisting of gains or profits from employment or services rendered, an assessment in relation thereto may be made at any time prior to the expiry of seven years after the year in which the gains or profits are received;
  - (iii) in the case of an assessment made upon the executors or administrators of a deceased person in respect of the income of such person, the assessment shall be made prior to the expiry of three years after the year in which such deceased person died.
- (2) The question whether an assessment has been made after the time specified in this section for the making thereof shall be raised only on a valid objection made under section 77 and on any appeal consequent thereon.

## **76        Errors, etc., in assessments or notices**

- (1) No assessment, warrant or other document purporting to be made, issued or executed under this Act shall be quashed, or deemed to be void or voidable for want of form, or be affected by reason of a mistake, defect or omission therein, if it is in substance and effect in conformity with or according to the intent and meaning of this Act and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.
- (2) An assessment shall not be impeached or affected:
- (a) by reason of a mistake therein as to:
    - (i) the name of the person assessed; or
    - (ii) the description of any income; or
    - (iii) the amount of tax charged; or
  - (b) by reason of any variance between the assessment and the duly served notice thereof.

## **PART XI                    OBJECTIONS AND APPEALS**

### **77                    Notice of objection to assessment**

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

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

### **78                    Power of Commissioner on notice of objection**

- (1) Where a valid notice of objection has been received, the Commissioner may:
  - (a) amend the assessment in accordance with the objection; or
  - (b) amend the assessment in the light of the objection according to the best of his judgment; or
  - (c) refuse to amend the assessment.
- (2) Where the Commissioner either:
  - (a) agrees to amend the assessment in accordance with the objection; or
  - (b) proposes to amend the assessment in the light of the objection

and the person objecting agrees with the Commissioner as to such proposed amendment,

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

(3) Where the Commissioner:

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

## **79 Right of appeal from Commissioner's determination of objection**

- (1) Any person who has given a valid notice of objection to an assessment and, consequent thereon has been served with a notice under section 78(3) may, within sixty days after the date of service upon him of such notice, give notice to the Commissioner in Form 2 of the Eighth Schedule, that he intends to appeal to the Court, and stating the grounds of the appeal, and such application shall be heard and determined as hereinafter provided.
- (2) Notice in writing of the appeal shall be lodged with the Registrar of the Court within sixty days after the date of service upon the appellant of the notice under section 78(3).
- (3) The appeal shall be heard in chambers on such terms as to costs and otherwise as the Court may direct.
- (4) The onus of proving that the assessment objected to is excessive shall be on the person assessed.
- (5) In determining the appeal the Court may confirm, reduce, increase or annul the assessment or make such order thereon as may be

thought fit, whereupon, subject to any appeal under section 80, the Commissioner shall make such adjustments thereto as are consequent upon such determination.

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

## **80 Appeals from judgment of Court**

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

## **81 Finality of assessment**

- (1) Where:
  - (a) no valid notice of objection to an assessment has been given under this Part; or
  - (b) a valid notice of objection has been given and:
    - (i) the assessment has been amended under section 78(2); or
    - (ii) a notice has been served under section 78(3) but no application has been made under section 79; or
    - (iii) the assessment has been determined on appeal;

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

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

Provided that where any fraud or any gross or wilful neglect has been committed by or on behalf of any person in relation to tax for any year, the Commissioner may make an additional assessment on that

person for such year even if it involves reopening a matter which has been determined on appeal.

## **82 Relief in respect of error or mistake**

- (1) Where for any year a person has made a return of income under section 57 and has been assessed to tax under section 71(2)(a) and he alleges that the assessment was excessive by reason of some error or mistake of fact in such return, then he may, not later than two years after the expiry of such year, make an application to the Commissioner for relief.
- (2) On receiving any such application the Commissioner shall enquire into the matter and, after taking into account all relevant circumstances, shall give such relief by way of repayment as is reasonable and just:

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

## **PART XII COLLECTION, RECOVERY AND REPAYMENT OF TAX**

### **83 Time within which payment is to be made**

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

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

- (2) In the case of a company which is being wound up, the due date for payment of tax on any income chargeable for any period ending on the date of the winding-up order or the resolution, special resolution, or extraordinary resolution, as the case may be, passed for the



winding up of the company shall be deemed for the purposes of the priority of debts, but for that purpose only, to be the date of such winding-up order, resolution, special resolution or extraordinary resolution.

- (3) The obligation to pay and the right to receive and recover any tax chargeable under this Act (including any interest, costs and penalties) shall not, unless the Commissioner so directs, be suspended by any objection or appeal or pending the decision of the Court but if any assessment is altered on objection or appeal or in conformity with any such decision, a due adjustment shall be made, amounts paid in excess being refunded and amounts short paid being recoverable.
- (4) The Commissioner in his discretion may extend the period within which any tax is payable and may specify another due date for payment; and, in particular, at the request of the person assessed, the Commissioner may by notice in writing accept payment of tax by instalments with the addition of interest on the dates specified by him in such notice; and the Minister may by order prescribe the rate or rates of interest to be adopted for this purpose.
- (5) A person who in the year 1973 or any subsequent year is carrying on a business shall make payments on account of the tax on the profits of the business for each such year in equal instalments on or before 20th March, 20th June, 20th September and 20th December during that year, each such payment being one-quarter of the tax charged on the profits of the business for the latest previous year for which the Commissioner has assessed that person under section 71:

Provided that:

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

Commissioner shall determine the amount of the instalments;

- (ii) where a person fails to provide an estimate in accordance with the previous proviso or where the Commissioner is of the opinion that the income has been underestimated he may for the purpose of this subsection determine the tax payable;
  - (iii) where a person required by this subsection to pay instalments on account of tax during a year can show that, for a specific and substantial reason, an instalment determined under the foregoing provisions is likely to be excessive, he may pay such smaller instalment as may be agreed by the Commissioner.
- (6) In assessing any person the Commissioner shall credit against the tax chargeable any instalments paid for that year under subsection (5) and shall recover the balance or refund the excess as necessary.
- (7) For the purposes of subsections (5) and (6) and of this subsection:
- (a) where a business is carried on by a partnership, the subsections shall apply to a partner as they apply to a person carrying on a business alone;
  - (b) where a business is carried on by a married woman in such circumstances that the profits are deemed under section 48 to be the income of her husband, references in the subsections to a person carrying on the business shall be regarded as references to the husband;
  - (c) where the total income of a person includes other income in addition to the profits of a business, the profits of the business shall be regarded as constituting the higher part of that total income.

#### **84      Penalty for non-payment of tax**

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

Provided that where the amount of the tax unpaid is less than ten

dollars the penalty shall not exceed the amount of such tax.

- (1A) To the extent that any tax and any penalty charged under subsection (1) remain outstanding six months after the due date, a further amount equivalent to ten *per centum* of the tax and of the penalty so outstanding shall become payable by way of an additional penalty, and to the extent that such amounts (including any penalty chargeable under this subsection) continue to remain outstanding at six months intervals from that date, further amounts as additional penalty, equivalent to ten *per centum* of those outstanding amounts shall be chargeable and payable:

Provided, however, that for the purposes of this subsection where an amount payable pursuant to subsection (1) remains outstanding on the date of commencement of this subsection, the due date shall be deemed to be the first day of April 2000.

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

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

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

## **85 Power to declare agent**

- (1) The Commissioner may in his discretion by notice in writing to any person declare him to be the agent of any other person for the purposes of the collection and recovery of tax due by such other person; and the person so declared agent shall pay any tax so due and specified in such notice from any moneys, including rent, pension, salary, wages or any other remuneration, which may, at any time within twelve months from the date of such notice, be held by him for, or be due and payable by him to, such other person.
- (2) For the purpose of this section the Commissioner may, by notice in writing, at any time require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return showing any moneys which may

be held by him for, or be due by him to, any other person from whom tax is due.

- (3) Where any person declared an agent under subsection (1) fails to pay the Commissioner within thirty days of the date of service of the notice referred to in such subsection or of the date on which any moneys referred to in such subsection are held by him for, or due by him to, the person of whom he is so declared to be agent, whichever is the later, any amount which he is required to pay under such subsection, then the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such amount as if it were tax due by the person declared an agent the due date for the payment of which was the latest date upon which such person is due to pay such amount to the Commissioner under this subsection.
- (4) Any person declared an agent by notice under subsection (1) who is aggrieved by such notice may appeal therefrom to the Court whereupon all the provisions of this Act relating to appeals against assessments, including the giving of notice of appeal and the time within which such notice is to be given shall, so far as they are applicable, have effect with respect to any such appeal as if such appeal were an appeal against an assessment.
- (5) For the purposes of this section, the amount of any balance standing to the credit of any person at any bank shall be deemed to be moneys held by such bank for such person.

## **86 Deceased persons**

- (1) Where any person dies, then, to the extent to which:
  - (a) any tax charged in an assessment made upon him has not been paid; or
  - (b) his executors or administrators are charged to tax in an assessment made under section 51,

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

- (2) Where, under this Act, any tax is payable by the executors or

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

**87            Collection of tax, and security in respect of persons leaving Solomon Islands**

- (1) Where the Commissioner has reason to believe that any person who has been assessed to tax may make default in payment of such tax then, notwithstanding any provision in section 83, he may, whether or not the due date for payment of such tax has arrived, by notice in writing served on such person, require that he pay such tax or give security, satisfactory to the Commissioner, for the payment thereof, within the time limited in such notice.
- (2) Where any notice has been served on any person under subsection (1), then the amount of the tax assessed in respect of which payment or security is required shall, notwithstanding that a valid notice of objection against the assessment has been given, be deemed to be due on the date specified in such notice, and in default of compliance with such notice the Commissioner shall be entitled to sue forthwith for the recovery of the tax under section 88, or to distrain forthwith under section 89:

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

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

as is specified in such notice.

- (4) Upon the application of such person, if the Commissioner is satisfied:
- (a) that such person is not liable to pay any tax;
  - (b) that all tax payable by such person has been paid; or
  - (c) that satisfactory arrangements have been or will be made for the payment of all tax that is or may become payable by such person,

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

- (5) An immigration officer shall not permit any person on whom a notice has been served under subsection (3) to leave Solomon Islands unless such person can produce the relevant tax clearance certificate or prove that he has paid the amount of tax as is specified in such notice.
- (6) For the purpose of securing the payment of any tax or the discharge of any liability to tax, the Commissioner may accept, register, deal and enforce a charge over any land not being customary land as defined in section 2(1) of the *Land and Titles Act*.

## **88 Collection of tax by suit**

- (1) Where:
- (a) payment of any tax has not been made on or before the due date; or
  - (b) a notice has been served on any person under section 87(1) and such person has failed to comply with such notice,
- then:
- (c) a lien shall arise in the person's goods and chattels to secure the payment of the amount of tax, and the Commissioner, or any officer authorized by him in writing, may file a notice of such lien, in the Filing Office established by the *Secured*

*Transactions Act*, to establish the priority date and time of such lien; and

- (d) the tax due by such person may be sued for and recovered as a Crown debt in a court of competent jurisdiction by the Commissioner, or any officer authorized by him in writing, in the official name of the Commissioner, with full costs of the suit from such person.
- (2) In any suit under subsection (1)(d), the production of a certificate signed by the Commissioner giving the name and address of the defendant and the amount of tax due by him shall be sufficient evidence that such amount of tax is due by such person and sufficient authority for the court to give judgment for such amount.

## **89 Collection of tax by distraint, etc.**

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

Provided that where the full amount of the tax due is not recovered by such distress the Commissioner may forthwith recover the deficiency in the manner provided by section 88(1)(d).

- (2) For the purposes of levying any such distress, the person authorised by the Commissioner, together with such servants or agents as such person may consider necessary, may break open in the day-time any premises; and the person so authorised may require any police officer to be present while such distress is being levied and any police officer so required shall comply with such requirement.
- (3) A distress levied by the person authorised by the Commissioner shall be kept for ten days, either at the premises at which such distress was levied or at such other place as the person so authorised may consider appropriate, at the cost of the person from whom such tax is recoverable.
- (4) If the person from whom such tax is recoverable does not pay the tax due together with the costs of the distress within such period of ten days, the goods and chattels distrained upon: then towards

satisfaction of any security interest or lien for which notice was filed in the Filing Office or otherwise perfected under the *Secured Transactions Act* before the earlier to occur of filing of the notice of lien under section 88(1)(d) or distraint of the goods and chattels under subsection (1), then towards the tax due, then towards any subordinate perfected security interests or lien according to their priority, and thereafter any surplus arising from such sale shall be restored to the owner of the goods and chattels distrained:

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

## **90 Repayment of tax**

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

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

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

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



**91           Repayment of tax in respect of income accumulated under trusts**

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

**92           Remission of tax**

- (1) The Commissioner may remit, on the ground of poverty, in whole or in part, the tax payable by any person, and may also, for like reason, refund any tax paid by such person or any part thereof.
- (2) The Minister, if he is satisfied that it is just and equitable so to do, may remit, in whole or in part, the tax payable by any person, and may refund any tax paid by such person or any part thereof.

**93           Relief on winding up of a company**

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

## **PART XIII            OFFENCES AND PENALTIES**

### **94            Penalty for offences**

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

### **95            Further penalty in certain cases**

- (1) Where any tax payable by any employer remains unpaid on and after the date it is required to be paid under the provisions of this Act or the Tax Deduction Rules, and any further time allowed (if any) by the Commissioner has expired, such employer shall in addition to the penalty payable under section 84 be liable to pay where:
  - (a) it is paid within one month after that date, a penalty at the rate of five *per centum* on the amount due; and
  - (b) it is not paid within one month, but is paid within six months after that date, a penalty at the rate of ten *per centum*;
  - (c) it is not paid as referred to in paragraphs (a) or (b) a penalty at the rate of fifteen *per centum* in respect of each further period of six months or part of such period.
- (2) The Commissioner may reduce or waive any penalty under this section if it appears to the Commissioner that such reduction or waiver is just and equitable in all the circumstances of the case.

### **96            Penalty for failure to comply with notice, etc.**

- (1) Any person who:
  - (a) fails to furnish within the required time any document which under this Act, the Tax Deduction Rules 2005 or under any notice served on him under this Act he is required so to furnish;  
or
  - (b) fails to furnish a full and true return in accordance with any of the provisions of section 57; or
  - (c) fails to keep any records, books or accounts in accordance with

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the requirements of section 61; or

- (d) fails to produce any accounts, books of account or other documents for the examination or retention by the Commissioner in accordance with the requirements of any notice served on him under section 62(a) and (c); or
- (e) fails to attend at a time and place in accordance with the requirements of any notice served on him under section 62(d); or
- (f) destroys, damages or defaces any accounts, books of account or other documents in contravention of any notice served on him under section 62(b); or
- (g) fails to answer any question lawfully put to him, or to supply any information lawfully required from him under this Act,

shall be guilty of an offence against this Act:

Provided that:

- (i) where any such person proves that he had reasonable excuse for any such failure, destruction, damage or defacement, then he shall not be guilty of such offence;
  - (ii) no complaint charging any such offence shall be brought at any time subsequent to six years after the date of the commission of the offence or in the case of the contravention of paragraphs (c) or (f), after the date on which the fact of the commission of such offence came to the knowledge of the Commissioner.
- (2) A Court may order, by notice in writing a person guilty of an offence under paragraph (a) or (b) of subsection (1) to furnish the document or return within such period as may be specified in the notice.

**97      Penalty for failure to make deduction, misapplication of deduction, etc.**

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

- (a) fails to make such deduction;
- (b) having made such deduction applies such amount for any purpose other than remitting it to the Commissioner;
- (c) fails to remit the amount due;
- (d) makes a false tax code declaration;
- (e) fails to furnish annual summaries as required under the Tax Deduction Rules;
- (f) gives false information regarding tax deductions, or tax codes;  
or
- (g) gives false information in relation to any matter or thing in the annual summary,

shall be guilty of an offence under this Act.

**98      Penalty for incorrect returns, etc.**

Any person who:

- (a) makes an incorrect return of income by omitting therefrom or understating therein any income which should have been stated therein; or
- (b) makes an incorrect statement in any return made in compliance with a notice served on him under this Act; or
- (c) gives any incorrect information in relation to any matter or thing, including any incorrect information in relation to any claim for a personal exemption, affecting his liability to tax; or
- (d) gives any incorrect information in relation to any matter or thing affecting the liability to tax of any other person,

shall be guilty of an offence against this Act:

Provided that:

- (i) where any such person proves that he had reasonable

excuse for any such omission, understatement, incorrect statement or incorrect information, then he shall not be guilty of such offence;

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

**99      Penalty for fraudulent returns, etc.**

- (1) Any person who, with intent to evade tax:

- (a) makes a false return of income by omitting therefrom or understating therein any income which should have been stated therein; or
- (b) makes any false statement in any return made in compliance with a notice served on him under this Act or
- (c) gives any false information in relation to any matter or thing, including any false information in relation to any claim for a personal exemption, affecting his liability to tax; or
- (d) prepares or maintains, or authorises the preparation or maintenance of, any false books of account or other records, or falsifies, or authorises the falsification of, any books of account or records; or
- (e) makes use of any fraud, or authorises the use of any fraud; or
- (f) makes any fraudulent claim for the repayment of any tax,

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

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

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

- (b) makes any false statement in any return made by him on behalf of such other person in compliance with a notice served on such other person under this Act; or
- (c) gives any false information in relation to any matter or thing, including any false information in relation to a claim by such other person to a personal exemption, affecting the liability to tax of such other person; or
- (d) prepares any false books of account or other records relating to such other person or falsifies any such books of account or other records; or
- (e) does any other fraudulent act,

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

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

#### **100 Sanction of Commissioner for prosecutions**

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

#### **101 Provisions as to evidence in cases of fraud, etc.**

- (1) Notwithstanding any provision to the contrary in any Act or law, a statement made or document produced by or on behalf of a person shall not be inadmissible in any proceedings to which this section applies by reason only that it has been drawn to his attention that:
  - (a) in relation to tax, the Commissioner may accept a pecuniary

settlement instead of sanctioning the institution of a prosecution; and

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

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

- (2) This section shall apply to:

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

## **102 Power of Commissioner to compound offence**

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

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

- (2) Where the Commissioner compounds a ny offence under this section:

- (a) the order of the Commissioner shall be put into writing and there shall be attached to it the written admission referred to in the proviso to subsection (1); and
- (b) such order shall specify the offence committed, the sum of money ordered to be paid, and the date or dates on which payment is to be made; and
- (c) a copy of such order shall be given, if he so requests, to the person who committed the offence; and
- (d) such person shall not be liable to any further prosecution on the strength of such offence, and if any such prosecution is brought it shall be a good defence for such person to prove that such an offence has been compounded under this section; and
- (e) such order shall be final and shall not be subject to any appeal; and
- (f) such order may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order; and
- (g) such order shall, on production to any court, be treated as proof of the conviction of such person for such offence.

### **103 Place of trial**

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

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



**104      Offences by corporate bodies**

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

**105      Tax charged to be payable notwithstanding prosecution**

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

**PART XIV      ADMINISTRATION**

**106      Appointment of Commissioner, Deputy Commissioner and other officers**

- (1) For the due administration of this Act, there may be appointed:
  - (a) a Commissioner;
  - (b) one or more Deputy Commissioners;
  - (c) such other officers as may be necessary; and
  - (d) one or more agents within or outside Solomon Islands for the purpose of carrying out such duties under this Act as are specified in the instrument of appointment.
- (2) Any appointment under subsection (1) shall, if the person appointed is to be a public officer, be made pursuant to the *Constitution*, but otherwise shall be made by the Minister.
- (3) An agent appointed pursuant to subsection 1(d) shall be deemed to

be an officer for the purpose of carrying out his duties.

**107 Commissioner to be responsible for collection of tax**

- (1) The Commissioner shall be responsible for the administration of this Act, and the control and management of the collection of, and accounting for, tax levied thereunder and of all matters incidental thereto.
- (2) The Commissioner may, subject to such limitations as he may think fit, authorise any officer to exercise any of the powers conferred by this Act upon the Commissioner other than the powers conferred by section 100 and section 102.
- (3) Notwithstanding the provisions of subsection (2), where any vacancy in the office of the Commissioner occurs (whether by reason of death, resignation or otherwise) and in any case where the Commissioner is incapacitated by illness, absence or other cause from performing the duties of his office, and as long as any such vacancy or incapacity continues, a Deputy Commissioner shall have and may exercise or perform all the powers, duties and functions of the Commissioner.
- (4) The fact that a Deputy Commissioner exercises or performs any power, duty or function of the Commissioner shall be conclusive of his authority to do so.

**107A Public ruling**

- (1) The Commissioner may, by way of a public ruling explain the Commissioner's interpretation of any provision of this Act.
- (2) The Commissioner may not collect from a person tax greater than that due under the provisions of this Act as interpreted by the Commissioner in a public ruling authorised by this section.
- (3) The Commissioner may not seek to impose any penalty on a person for failure to pay tax exceeding that due under the provisions of this Act as interpreted by the Commissioner in a public ruling authorised by this section.

## **108      Audit**

- (1) The accounts of the receipt of revenue under this Act shall be examined by the Auditor-General in order to ascertain that adequate rules and procedure have been framed to secure an effective check on the assessment, collection and proper allocation of revenue, and the Auditor-General shall satisfy himself that any such rules and procedure are being duly carried out.
- (2) The Auditor-General shall make such examination as he thinks fit with regard to the correctness of the sums brought to account in respect of such revenue.

## **109      Official secrecy**

- (1) Subject to this section, the Auditor-General and every officer employed in carrying out the provisions of this Act shall regard and deal with all documents and information relating to the income of any person and of confidential instructions in respect of the administration of this Act, which may come into his possession or to his knowledge in the course of his duties, as secret.
- (2) The Auditor-General, the Commissioner, and such other officers as may be appointed under section 106, shall, before performing any duty under this Act, make and subscribe before a Magistrate appointed under the *Magistrates' Courts Act*, a declaration in Form 3 in the Eighth Schedule.
- (3) No officer employed in carrying out the provisions of this Act shall be required to produce in any court any document, or to communicate to any court any information, which has come into his possession or to his knowledge in the performance of his duties under this Act, except as may be necessary for the purpose of carrying into effect the provisions of this Act or in order to bring, or assist in the course of, a prosecution for any offence in relation to tax.
- (4) Nothing in this section shall prevent any officer employed in carrying out the provisions of this Act from revealing any document or information relating to the income of any person, or any confidential instructions in respect of the administration of this Act, to any other such officer in the course of his duties, or to any person authorised in that behalf by the Minister, or to any court or person for the

purposes of this Act or for the purposes of the *Stamp Duties Act*.

- (5) Where, under any law in force in any country, or under any arrangements having effect under section 45, provision is made for the allowance of relief from income tax in respect of the payment of tax in Solomon Islands, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government of the place with which such arrangements were made of such facts as may be necessary for the obtaining of such relief or for the prevention or detection of fraud or for the administration of statutory provisions against legal avoidance in relation to such taxes.
- (6) Nothing in subsection (1) or subsection (3) shall prevent any officer employed in carrying out the provisions of this Act from communicating to any officer, being an employee of the Department of Prime Minister and Cabinet or other Ministry for the time being responsible for the reporting requirements under the EITI Standard Requirements for EITI implementing countries, any information, being aggregate tax information that does not directly reveal the identity of any taxpayer and that:
  - (i) the officer is authorised by the Ministry to receive; and
  - (ii) the Commissioner considers is not undesirable to disclose and is essential to enable the officer to carry out the duties conferred on the officer in order to comply with the requirements for reporting and disclosure under EITI.
- (7) In this section “*EITI*” means Extractive Industries Transparency Initiative.

## **110 Offences by or in relation to officers**

- (1) Any officer employed in carrying out the provisions of this Act who:
  - (a) directly or indirectly asks for, or takes, or seeks for any other person, in connection with any of his duties, any payment, favour, or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment, favour or reward, not being a payment or reward which he is lawfully entitled to receive; or

- (b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal or connive at, any act or thing whereby the tax revenue of Solomon Islands is or may be defrauded, or which is contrary to the provisions of this Act or to the proper execution of his duty thereunder; or
- (c) in contravention of the provisions of section 109 or of the terms of his declaration of secrecy, and without lawful excuse, reveals to any person any document or information which has come into his possession or to his knowledge in the course of his official duties, or permits any other person to have access to any document in the possession or custody of the Commissioner in his official capacity,

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

(2) Any person who:

- (a) directly or indirectly offers any officer or gives to any officer or person designated by such officer any payment, favour, or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment, favour, or reward; or
- (b) proposes or enters into any agreement with any officer, in order to induce him to do, abstain from doing, permit, conceal or connive at, any act or thing whereby the tax revenue of Solomon Islands is or may be defrauded, or which is contrary to the provisions of this Act or to the proper execution of the duty of such officer under this Act,

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

## **111 Form of notices, returns, etc.**

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

- (2) Notices given by the Commissioner under this Act may be signed by any officer authorised by him in that behalf, and any notice purporting to be signed by order of the Commissioner shall, unless the contrary is proved, be presumed to have been signed by an officer so authorised.
- (3) Every form, notice, or other document issued, served, or given by the Commissioner under this Act shall be sufficiently authenticated if the name or title of the Commissioner, or of the officer authorised in that behalf, is printed, stamped or written thereon.

**112      Service of notices, etc.**

- (1) Where under this Act any notice or other document is required or authorised to be served on or given to any person by the Commissioner, then such notice or other document may be so served or given by addressing it to such person or, where such person is a company, to the principal officer or secretary of such company, and:
  - (a) delivering it personally to him; or
  - (b) leaving it at his usual or last known place of address or the address shown on the latest return of income furnished by him or on his behalf to the Commissioner; or
  - (c) sending it by post addressed to his usual or last known place of address or to any Post Office Box rented in the name of such person or his employer, or to the address shown on the latest return of income furnished by him or on his behalf to the Commissioner.
- (2) Where a notice or other document is served or given by ordinary or by registered post, then service shall, in the absence of proof to the contrary, be deemed to have been effected at the time at which such notice or other document would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the envelope containing the notice or other document was properly addressed and was posted:

Provided that where the person to whom a notice or other document has been sent by registered post is informed of the fact that there is

a registered letter awaiting him at a Post Office, and such person refuses or neglects to take delivery of such letter, and such letter consists of such notice or other document, then service of such notice or other document shall be deemed to have been effected.

**113 Free postage**

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

**114 Rules**

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

- (a) for the deduction and payment of tax from the emoluments and pensions payable out of the funds of Solomon Islands to persons in the service of, or in respect of past services with, the Government of Solomon Islands, whether or not such tax relates solely to tax charged on such persons in respect of such emoluments or pensions;
- (b) for the deduction from the emoluments paid in respect of employment or services rendered, and from pensions, of sums on account of tax chargeable under this Act for the year during which such emoluments or pensions are paid and for the payment of such sums to the Commissioner;
- (c) for matters relating to the approval by the Commissioner of anything which under this Act he may approve;
- (d) for requiring and making such other returns as are not provided for in Part IX.

**115 Continuation in force of double taxation agreements**

The Double Taxation Relief (British Solomon Islands Protectorate/United Kingdom) Arrangements Proclamation, 1950\*,

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

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

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

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

\*\*\*\* Proclamation No. 5 of 1957 (GN 134/1957)



## FIRST SCHEDULE

(Section 11)

### PART I

#### TAX HOLIDAYS

<i>Enterprise</i>	<i>Tax holiday period</i>
1. Investment activities of which the local value added in respect of the approved products amounts to 75% or more of the value of ex-factory sales of the products.	6 years
2. Investment activities of which the local value added in respect of the approved products amount to 50% or more but less than 75% of the value of ex-factory sales of the products.	5 years
3. Investment activities of which the local value added in respect of the approved products amount to 40% but less than 50% of the value of ex-factory sales of the products.	4 years
4. Investment activities of which the local value added in respect of the approved products amount to 25% or more but less than 40% of the value of ex-factory sales of the products.	3 years
5. Investment activities which involve a capital investment of not less than \$10 million irrespective of their local value added.	5 to 10 years

## PART II

### LOCAL VALUE ADDED CALCULATION

*Total Ex-factory sales* \$ (1)

(A) Payments made in respect of:

1. Import cost of raw materials, fuel, components, imported content of locally produced components
2. Salaries and wages to non-residents \$
3. Profits and dividends to non-residents \$
4. Loan interest \$
5. Management fees \$
6. Royalties \$
7. Licence \$
8. Professional fees \$
9. Other Payments (Specify) \$

\$ (2)

(B) Depreciation of imported plant, machinery, equipment and spare parts \$ (2)

Total Deductions (A + B) \$ (3)

Balance (1-3) \$ (4)

Local value added =  $\frac{(4)}{(1)} \times 100$

## PART III

## TAX RELIEF ON EXPORT PROFITS

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

## **SECOND SCHEDULE**

*(Section 12)*

### **PART I**

#### **TOURIST HOTELS, RESORTS AND OTHER TOURIST ORIENTED PROJECTS**

**1.**

- (1) There shall be exempt from income tax, the profits and income for a period of five years, accruing to any investor operating:
- (a) tourist hotels of three hundred or more bedrooms;
  - (b) tourist hotels of fifty or more bedrooms; or
  - (c) other tourist oriented projects,

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

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

**2.**

- (1) In addition to the tax exemptions on the profits and income of any investor qualifying under sub-paragraph (1) of paragraph 1, such investor shall be entitled to:
- (a) a fifty per cent depreciation of capital expenditure (excluding land) against annual chargeable income until claimed in full;
  - (b) a one hundred and fifty per cent tax deduction for expenses incurred in overseas promotion programmes conducted with the prior approval of the Commissioner.
- (2) The benefits referred to in sub-paragraph (1) shall not be available to an investor in respect of which an order under section 18(6) has been made by the Minister.

- 3.** Subject to the provisions of this Part, where any tourist hotel or resort in

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

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

## **PART II**

### **TAX RELIEF ON EXPORT PROFITS**

#### **5.**

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

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

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

(2) The provisions of sub-paragraph (1) shall not be available to an investor granted tax exemptions under section 11 based on the local value added scheme.

#### **6.**

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

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

- (a) researching foreign markets;

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

### **PART III**

#### **AGRICULTURE, FORESTRY, ANIMAL HUSBANDRY AND FISHERIES**

##### **7.**

(1) Any investor engaged in the business of:

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

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

(2) Subject to the provisions of this Part, where any investor engaged in any business sector referred to in sub-paragraph (1) satisfies the Minister, that

such investor has on or after the 1st day of January, 1989, incurred capital expenditure in expanding its existing business or project, such investor shall be entitled to claim from the Minister the exemptions from income tax in respect of its income and profits for a period of five years out of any ten years.

## **PART IV**

### **FACTORY CONSTRUCTION**

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

## **PART V**

### **OTHER INCENTIVES**

**9.** An investor may in addition to the incentives provided for in Parts I, II, III and IV claim:

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

## THIRD SCHEDULE

(Section 16)

<i>Paragraph</i>	<i>Exemptions</i>
1.	The official emoluments of the Governor-General
2.	<i>Omitted</i>
3.	The education allowances paid to officers in the public service in respect of the education of their children
4.	The income of any religious, charitable, benevolent or educational institution approved by the Minister
5.	Pensions granted in respect of wounds or disabilities suffered by members of Her Majesty's Forces
6.	<p>(1) Any amount received by way of compensation for death or injuries</p> <p>(2) All or any part of a lump sum payment by way of a bonus, gratuity or retiring allowance in respect of the full-time employment of a person on the occasion of his retirement from such employment which:</p> <p>(a) is, in the opinion of the Commissioner, just and reasonable; and</p> <p>(b) does not exceed a sum equivalent to half the total income of such person from that employment in respect of the two years immediately preceding his year of retirement reduced by one-tenth for every year by which the number of his completed years of continuous service in such employment immediately preceding such retirement is less than fifteen.</p>
7.	The income of any fund declared by the Minister under section 27(1) to be an approved pension fund.



8. The income of the South Pacific Commission and the income derived from funds of the Commission by persons employed thereby.
9. The gains or profits of a non-resident person from the business of an air transport operator to the extent that the Minister may direct.
10. The income of any co-operative society registered under the Co-operative Societies Act the principal objects of which are the acquisition or development of agricultural land, so far as that income is derived from agriculture.
11. The income of any council established under the Local Government Act, to the extent to which such income is not derived from a business carried on by such council.
12. Any distribution by the North New Georgia Timber Corporation to a land owner in North New Georgia of royalties or other sums in respect of the grant of felling licences issued by it received from Lever's Pacific Timbers Limited in respect of timber extracted from land, being land specified in the First Schedule to the *North New Georgia Timber Corporation Act*, owned by such land owner.
13. (1) The emoluments of any member of the permanent consular services of any foreign country in respect of his office or in respect of services rendered by him in his official capacity.  
  
(2) The emoluments of any member of the consular service of any foreign country to the extent specified in any reciprocal arrangement for the exemption from income tax of consular emoluments concluded between the Government and such foreign country.
14. The emoluments:  
  
(a) of any member of Her Majesty's Forces of a member country of the Commonwealth; or

(b) of any person in the public service of the Government of such member country in respect of his office under such Government where such person is resident in Solomon Islands solely for the purposes of performing the duties of his office,

where such emoluments are payable from the public funds of such member country and are subject to income tax in such member country.

15. *Deleted*
16. The emoluments payable out of overseas sources in respect of duties performed in Solomon Islands in connection with any technical assistance agreement to which the Government of Solomon Islands is a party to any non-resident person or to any person who is resident solely for the purpose of performing such duties, in any case where such agreement provides for the exemption of such emoluments.
17. Any sum paid under an agreement made between Her Majesty's Government and the Solomon Islands' Government to an employee of the Solomon Islands' Government which is stated to represent compensation for loss of career.
18. Interest paid on tax reserve certificates issued by the Government of Solomon Islands.
19. *Deleted*
20. Interest on deposits made with any savings bank in Solomon Islands or on fixed deposit account with any bank in Solomon Islands up to five thousand dollars)
21. (a) The appointment grants, constituency allowances and terminal grants payable from public funds to or in respect of any elected member of Parliament in accordance with the Parliamentary Regulations.  
  
(b) The value of any benefit, advantage or facility from the provision of an official house, services and servants to the

Prime Minister, Ministers and Leader of the Opposition in accordance with the Parliamentary Regulations.

22. The income of an association of persons established solely for the purpose of controlling or furthering any amateur sport or game if no part of the income or other funds of the society or association is used or available for the pecuniary profit of any proprietor, member or shareholder thereof.
23. The income arising from a scholarship awarded to a person for the purpose of full-time instruction at a university, college, school or other educational establishment.
24. The income of any trade union registered under the provisions of the *Trade Unions Act* in so far as such income is not derived from a trade or business carried on by such trade union.
25. The income of any club, society or association, organised and operated exclusively for social welfare, civic improvement, pleasure or recreation, or for any other purposes except profit, no part of the income of which is payable to, or is otherwise available for the personal benefit of any proprietor, member or shareholder thereof in so far as such income is not derived from a trade or business carried on by such club, society or association.
26. *Deleted*
27. The income of the Solomon Islands Ports Authority, in so far as such income is not derived from haulage, sea transport or from the provision of warehousing in a warehouse appointed as a private warehouse under section 2 of the *Customs and Excise Act*.
28. (1) The income of the Solomon Islands National Provident Fund.  
  
(2) The interest credited to the account with the Solomon Islands National Provident Fund of any member thereof.

29. Interest on development bonds issued by the Central Bank of Solomon Islands.
30. Reinsurance premiums; and premiums on insurance exempted under section 11 of the *Insurance Act*.
31. Terminal grants paid to members of Provincial Assemblies.
32. The profits derived from the sale of electricity by the Solomon Islands Electricity Authority.
33. The profits made by broadcasting services provided by the Solomon Islands Broadcasting Corporation.
34. Interest on loans payable to the Commonwealth Development Corporation, to the extent that such interest is only exempt from withholding tax.
35. The income and revenue of the Investment Corporation of Solomon Islands.

## FOURTH SCHEDULE

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

### PART I

#### DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE

##### 1. Wear and tear, mining rights and development pool deductions

(1) Subject to this Part, there shall be made in computing a person's gains or profits from a business for a year, the following deductions:

- (a) a wear and tear deduction as set out in subparagraph (2);
- (b) a mining rights amortisation deduction as set out in subparagraph (2A); and
- (c) a development expense deduction as set out in subparagraph (2B).

(2)

The amount of the wear and tear deduction for any year shall be the appropriate percentage of the written-down value at the end of such year before making such deduction of capital assets owned by a person and used for the purposes of the person's business, as follows:

	<i>Per cent</i>
(i) all buildings, building fixtures and fittings, bridges, wharves, slipways, boilers and oil storage tanks not otherwise specified ...	5
... ..	
(ii) vehicles, vessels, aircraft and all plant and machinery not otherwise specified ... ..	25
(iii) all buildings and building fixtures owned and used in Solomon Islands by an employer for the purpose of providing	35

accommodation for his  
employees where the capital cost  
of accommodation per employee  
including his family is ten  
thousand dollars or less and all  
assets in (i) and (ii) above owned  
and used by a timber  
concessionaire for the principal  
purpose of cutting, extracting and  
processing timber from within the  
boundaries of a timber  
concession ... ..

- (2A) The amount of the mining rights amortisation deduction for any year is  $1/X$  of the cost of obtaining rights required to enable a person to utilise or acquire a prospecting licence or a mining lease, where  $X$  is the number of years for which the rights are effective, with a deduction allowed in the year of acquisition of the rights and in each of the subsequent years until the full cost has been deducted.
- (2B) The amount of the development expense deduction for any year is 25% of the balance of the approved mining company's development expense pool, within the meaning in subparagraph 9(5) of the Fourth Schedule, at the end of the year.
- (3) For the purposes of this paragraph the expression "used by him for the purposes of his business" shall be deemed to include the period from the date on which capital expenditure is first incurred on the provision of a capital asset to the date on which such asset is put into use by the person incurring such expenditure for the purposes of his business:

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

## 2. Deleted

## 3. Ascertainment of written-down value

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

#### **4. Application to lessors**

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

#### **5. Balancing deduction and balancing charge**

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

Provided that:

- (a) for the purposes of this paragraph a partnership shall be deemed not to have ceased to carry on a business unless all the partners who carried it on cease to carry it on;
- (b) where capital assets are sold by the liquidator of a company

which is in the course of being wound up, the balancing deduction or balancing charge shall be made in computing the gains or profits of such company for the year in which the winding up commenced and shall be computed on the sale moneys received by the liquidator;

- (c) where, in the case of a balancing deduction, the total income for such year before taking account of such deduction is less than the amount of such deduction, the excess may be carried back and allowed in calculating the total income of the next preceding year, and so on, for as long as is necessary for such deduction to be absorbed by the total income of preceding years, not exceeding in all six in number.
- (2) Subject to this Part, where on the cessation of a business a balancing deduction or a balancing charge is to be made under this paragraph and:
- (a) no sale moneys are received by the person owning such capital assets, or the written-down value at the time of such cessation exceeds those moneys, the balancing deduction shall be the written-down value at the time of such cessation, or the excess thereof over such moneys, as the case may be;
  - (b) the sale moneys exceed the written-down value, if any, at the time of such cessation, the balancing charge shall be the amount of such excess or, where the written-down value is nil, the amount of such moneys, as the case may be.
- (3) Notwithstanding the provisions of sub-paragraph (1), where a capital asset has ceased altogether to be used for the purposes of a business carried on by any person then, if such asset has been lost or destroyed or has been sold by such person, or is unlikely to be saleable for a price in excess of the cost of procuring its sale, the foregoing provisions of this paragraph shall apply in relation to such asset as though:
- (a) such asset had been sold by such person, and
  - (b) such person had ceased to carry on the business for the purposes of which such asset had been used.
- (4) Where an approved mining company has enjoyed deductions in respect of the cost of obtaining rights required to enable the company to utilise or



acquire a prospecting licence or a mining lease and has not fully deducted that cost prior to the year in which the rights cease to be owned by the company or cease to be used by the company following termination of its activities:

- (a) if any amount received by the company as a consequence of ceasing to be owner or ceasing to use the rights exceeds the undeducted value of the rights, the excess will be treated as chargeable income derived in the year; and
  - (b) if any amount received by the company as a consequence of ceasing to be owner or ceasing to use the rights is less than the undeducted value of the rights, the difference between the amount received and the undeducted value may be deducted in that year.
- (5) Where an approved mining company that has enjoyed deductions under paragraph 18(2)(o) for amounts allocated for future application towards the cost of environmental rehabilitation, restoration or reclamation as required by a mining licence, the *Mines and Minerals Act*, the *Environment Act 1998*, or a relevant agreement has completed the rehabilitation, restoration or reclamation as required:
  - (a) if the amount deducted under paragraph 18(2)(o) exceeds the amount spent on rehabilitation, restoration or reclamation, the excess shall be included in the chargeable income of the company in the year in which the rehabilitation, restoration or reclamation activities are completed;
  - (b) if the amount spent on rehabilitation, restoration or reclamation exceeds the amount deducted under paragraph 18(2)(o), the excess shall be allowed as a deduction in the year in which the rehabilitation, restoration or reclamation activities are completed; and
  - (c) if the amount deductible under (b) above exceeds the chargeable income of the year, the excess shall be deductible consecutively in each of the preceding four years to the extent the excess exceeds the chargeable income of each year measured without regard to (b) above.

6.

In this Part:

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

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

## PART II

### DEDUCTIONS IN RESPECT OF IMPROVEMENTS

#### 7. Deduction for improvements to plantations

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

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

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

- (i) that the whole of such expenditure shall be deducted in computing his gains or profits for the year in which it is incurred, or
- (ii) (a) that in the case of coconut palms one-seventh of such expenditure shall be deducted in computing his gains or profits for such year and each of the six following years;
- (b) that in the case of oil-palms one-quarter of such expenditure shall be deducted in computing his gains or

profits for such year and each of the following three years;

- (c) that in the case of cocoa one-fifth of such expenditure shall be deducted in computing his gains or profits for such year and each of the four following years;
- (d) that in the case of yards, fences and water supplies one-tenth of such expenditure shall be deducted in computing his gains and profits for such year and each of the nine following years;
- (e) that in the case of re-forestation expenditure one-fifteenth of such expenditure shall be deducted in computing gains or profits for such year and each of the following fourteen years,

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

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

## PART III

### MINING

#### 8. Interpretations

In this Part, unless the context otherwise requires:

**“mining lease”** has the meaning given in the *Mines and Minerals Act* (Cap. 42); and

**“prospecting licence”** has the meaning given in the *Mines and Minerals Act*.

#### 9. Development expenses

- (1) Expenses incurred by an approved mining company on or after the date on which a mining lease commences and prior to the date on which

production of minerals from the mining lease for sale commences shall be treated as expenses incurred wholly and exclusively by the approved mining company in the production of income.

- (2) Expenses described in subparagraph (1) that would otherwise be deductible under this Act are deductible only to the extent allowed in subparagraph (3).
- (3) Thirty percent of expenses described in subparagraph (1) are deductible.
- (4) Subparagraph (1) does not apply to a wear and tear deduction, mining rights amortisation deduction, or a development expense pool deduction allowed under subparagraph 1(1) of this Schedule.
- (5) The amount of expenses described in subparagraph (1) that are not deductible in a year as a result of subparagraph (3) shall be added to an account known as the approved mining company's development expense pool.
- (6) A company's development expense pool shall be reduced at the end of each year by an amount for which a deduction is allowed under subparagraph 1(1) of the Fourth Schedule for that year.
- (7) A deduction is allowed for the balance of an approved mining company's development expense pool at the earlier of the date on which the mining lease to which the pool relates ends or the date on which production of minerals from the mining lease for sale ends if production ceases prior to the expiry of a mining lease because insufficient mineral reserves remain in the property.

## **10. Fiscal Stability**

- (1) An approved mining company may irrevocably elect within 30 days of the entry into effect of a mineral licence for the *Income Tax Act* as it stood at the time of the election to apply to the company for the duration of the mineral licence.
- (2) An election made pursuant to subparagraph (1) shall be conveyed in writing to the Commissioner.

## **11. Multiple Mineral Licences**

- (1) Subject to subparagraph (2), an approved mining company is treated as a separate person for the purposes of this Act in respect of each mineral licence held by the company.
- (2) Where an approved mining company incurs expenses in respect of activities carried out pursuant to a prospecting licence on property adjoining a property on which the company carries out activities in respect of a mining lease, the amount of expenses incurred in respect of the prospecting license for the property described in subparagraph (3) shall be treated as expenditures incurred in respect of the property for which the mining lease applies.
- (3) The amount of expenditure for the purpose of subparagraph (2) is the lesser of:
  - (a) the amount of expenditure incurred in the year; and
  - (b) the amount of expenditure incurred in the year that is equal to 5 per cent of the deductions allowed to the approved mining company in respect of its mining lease in the year other than the deductions that would result from the application of this section.

## **12. Limit on deductions for interest expenses Licence**

In computing the gains and profits of an approved mining company for any year, interest paid by an approved mining company on a loan to finance its mining operations shall be deductible only in respect of debt that is equal to or less than three times the paid up equity of the company.

## **13. Accounts and tax returns to be kept in Solomon Islands, United States or Australian currency**

- (1) Financial records of an approved mining company needed for determination of its income tax liability under this Act shall be maintained in a nominated currency and information included in a return of income required by section 57 of this Act shall be prepared on the basis of the nominated currency.
- (2) For the purpose of subsection (1), a nominated currency is either Solomon Islands, United States or Australian currency as nominated by the approved mining company.

- (3) The value of receipts or liabilities denominated in currencies other than the nominated currency shall be converted to a value in the nominated currency on the basis of the exchange rate in effect at 9:00 a.m. on the day the receipts are derived or the liabilities are incurred.
- (4) The Commissioner may prescribe by way of public ruling the basis of the exchange rate to be used for the conversion required by subsection (3).
- (5) Where the amount of a receipt or liability determined as a result of the conversion required by subsection (3) differs from the amount determined when the receipt or liability is actually received or paid:
  - (a) any amount by which the nominated currency value of a receipt determined at the later date exceeds the nominated currency value determined at the earlier date is income of the approved mining company;
  - (b) any amount by which the nominated currency value of a receipt determined at the earlier date exceeds the nominated currency value determined at the later date is a deductible expense of the approved mining company;
  - (c) any amount by which the nominated currency value of a liability determined at the earlier date exceeds the nominated currency value determined at the later date is income of the approved mining company; and
  - (d) any amount by which the nominated currency value of a liability determined at the later date exceeds the nominated currency value determined at the earlier date is a deductible expense of the approved mining company.

## **PART IV**

### **MISCELLANEOUS**

#### **13. Effect in certain successions, transfers, etc.**

Where a person succeeds to any business which until that time was carried on by another person, and any capital asset which, immediately before the succession was in use for the purposes of the business without being sold is,

immediately after such succession, in use for the purposes of the business, such capital asset shall, for the purposes of this Schedule, be treated as if it had been sold at the date of the succession to the person or persons carrying on the business immediately thereafter and as if the net proceeds of the sale had been the written-down value of the capital asset.

#### **14. Special provisions as to certain sales**

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

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

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

#### **15 Private use**

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

#### **16. Application to employments**

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

#### **17. Apportionment of consideration for sale of any asset**

- (1) Any reference in this Schedule to the sale of any asset, of whatsoever nature, includes a reference to the sale of that asset together with any other assets; and, where an asset is sold together with other assets, so much of the net proceeds of the sale of the whole of the assets as the Commissioner may determine to be just and reasonable as properly attributable to the first-mentioned asset shall, for the purposes of this Schedule, be deemed to be the net proceeds of the sale of the first-mentioned asset, and reference to expenditure incurred on the provision or the purchase of assets shall be construed accordingly.
- (2) For the purposes of this paragraph all the assets which are sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are, or purport to be, agreed for separate assets or that there are, or purport to be, separate sales of separate assets.

#### **18. Interpretation of certain references to expenditure, etc.**

- (1) Unless the context otherwise requires, references in this Schedule to capital expenditure and capital sums in relation to the person incurring such expenditure, or paying such sums, do not include any expenditure or sum which is deductible otherwise than under this Schedule for the purpose of ascertaining his total income.
- (2) Any reference in this Schedule to the date on which expenditure is incurred shall be construed as a reference to the date when the sum in question becomes payable.

#### **19. Subsidies**

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

#### **20. Prevention of double allowances**



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

## 21. Other provisions as to interpretation

(1) In this Schedule, except where the context otherwise requires:

- (a) **“machinery”** includes plant;
- (b) **“sale moneys”** means, in relation to:
  - (i) a sale of any property, the net proceeds of the sale;
  - (ii) the coming to an end of any interest in property, any compensation payable in respect of that property;
  - (iii) the demolition or destruction of any property, the net amount received for the remains of the property, together with any insurance or salvage moneys received in respect of the demolition or destruction and any other compensation of any description received in respect thereof, in so far as that compensation consists of capital sums;
- (c) **“control”**, in relation to a body corporate, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person and, in relation to a partnership, means the right to a share of more than one-half of the assets or of more than one-half of the income of the partnership;
- (d) any references to any machinery, building works or capital asset shall be construed as including a reference to a part of any such machinery, building works or capital asset;

- (e) any reference to the time of any sale shall be construed as a reference to the time of completion or the time that possession is given, whichever is the earlier;
  - (f) the price which any property would have fetched if sold in the open market shall be determined by the Commissioner.
- (2) Where any income of an accounting period ending on some day other than the last day of any year is taken into account for the purpose of ascertaining total income for any year, then any reference in this Schedule to a year shall be construed as a reference to such accounting period:

Provided that where any deduction under this Schedule is related to a year and any income of an accounting period is so taken into account, then, if such accounting period is more or less within twelve months, the amount of such deduction shall be appropriately increased or decreased as the case may be.

## FIFTH SCHEDULE

(Section 32)

### RATES OF INDIVIDUAL INCOME TAX

<i>Income Bracket</i>	<i>Rate</i>
\$1 to \$15,000.00	\$0.11
\$15,001.00 to \$30,000.00	\$0.23
\$30,001.00 to \$60,000.00	\$0.35
\$60,001.00 and over	\$0.40

## SIXTH SCHEDULE

(Section 34)

### RATES OF NON-RESIDENT WITHHOLDING TAX

INCOME	RATE
(i) Interest	15¢ in the dollar
(ii) Professional Services	20% in the dollar
(iii) Royalties	15¢ in the dollar
(iv) Income from contracting	7½¢ in the dollar
(v) Income from ships and aircraft	5¢ in the dollar
(vi) Insurance premiums	15¢ in the dollar
(vii) rent for the hiring of films	5¢ in the dollar
(viii) the remuneration of foreign fishermen who are Pole and Line fishermen deemed to be non-resident for purposes of income tax as provided under section 2 of the Act	10¢ in the dollar
(ix) the remuneration of foreign fishermen who are Purse Seiners and deemed to be non-resident for purposes of income tax as provided under section 2 of the Act	15¢ in the dollar
(x) lease income	15¢ in the dollar

## SEVENTH SCHEDULE

(Section 37)

### RATES OF RESIDENT WITHHOLDING TAX

INCOME	RATE
(i) Income from contracting and/or sub-contracting	7½¢ in the dollar
(ii) Royalties	10¢ in the dollar
(iii) Income from fishing operations	10¢ in the dollar
(iv) Income from lease of property	10¢ in the dollar
(v) Income from the sale of cocoa	NIL
(vi) Income from the sale of copra	NIL
(vii) Income from the sale of marine products	10¢ in the dollar

## EIGHTH SCHEDULE

### FORM 1

#### THE INCOME TAX ACT

(Section 77)

To the Commissioner of Inland Revenue.

In the matter of assessment of..... for the  
year.....Assessment No.....

I hereby give notice that I object to the above assessment for the following  
reasons:

*(State precisely the grounds of the objection.)*

Dated this ..... day of....., 19.....

(Signed).....

### FORM 2

#### THE INCOME TAX ACT

(Section 79)

To the Commissioner of Inland Revenue.

In the matter of assessment of..... for the year.....Assessment No.....

I hereby give notice that I am dissatisfied with your decision, notice of which  
has been served upon me under section 78(3), for the following reasons:

*(State precisely the grounds of appeal.)*

and that I intend to appeal to the Court.

Dated this ..... day of....., 19.....

(Signed).....

**FORM 3**

**THE INCOME TAX ACT**

*(Section 109)*

I, ....., make oath and swear that I will faithfully and honestly perform the duties which devolve upon me under the Income Tax Act and that I shall regard and deal with all documents and information relating to the income of any person and all confidential instructions in respect of the administration of the Act, which may come into my possession or to my knowledge in the course of my official duty, as secret, and that I shall not reveal any such document or information to any person, nor permit any person to have any access to such document, save in the circumstances in which I am permitted to do so under the Act.

(Signed).....

Made and subscribed before me this ..... day of.....19.....

.....

*Magistrate*

## TWELFTH SCHEDULE

(Section 32C)

### 1. Interpretation

In this Schedule, unless the context otherwise requires:

**“affiliate company”** in relation to an approved mining company means any person, firm or company, directly or indirectly, controlling, controlled by or under common control with the approved mining company;

**“date of commencement of commercial production”** means the date when the production of minerals from the mining lease for sale commences or such other date as specified in the relevant agreement;

**“development expenditure”** means expenditure incurred, whether directly or indirectly, in or in connection with the carrying out of development operations in or in connection with the mineral licence area, including expenditure incurred in respect of:

- (a) the acquisition of:
  - (i) machinery, implements, utensils and other articles used for purposes of production, treatment and processing;
  - (ii) furniture, tools and equipment used in offices and export terminals, vehicles, motorised rolling equipment, aircraft, fire and security stations, water and sewage plants, power plants and other works in connection with development operations;
- (b) the leasing of fixed and mobile plant, buildings and structures;
- (c) labour, fuel, haulage, supplies, materials and repairs and related costs in connection with the drilling, laying, installation and construction of mine facilities and other works in connection with development operations;
- (d) the advancement of training and education of Solomon Islands citizens at institutions approved by the Ministry of Education and the provision of educational and scientific materials and



equipment;

- (e) charges, fees or rent for, or in respect of, land or buildings occupied for purposes of carrying out development operations;
- (f) preparation of feasibility studies and applications for requisite approvals and consents and related costs;
- (g) the general and administrative expenditure directly connected with development operations;
- (h) the restoration of the mineral licence area, or any part thereof, after cessation of development operations in such area to the extent to which such expenditure has been incurred by virtue of any term and condition of the mining lease or the relevant agreement relating to safety or the prevention of pollution;
- (i) customs duty and goods tax in respect of the importation for use in or in connection with development operations in the mineral licence area of plant, machinery, equipment, spare parts, materials, supplies or consumable items to be used in or in connection with such development operations; and
- (j) such items of expenditure included as development expenditure in a relevant agreement as the Commissioner determines appropriate and by Order specifies;

**“development operations”** means operations relating to the development and construction of the mine under a mining lease, and includes development operations for the approved expansion of the mining project under the mining lease in accordance with the relevant agreement;

**“exploration expenditure”** means expenditure incurred, whether directly or indirectly, by an approved mining company in or in connection with the carrying out of prospecting operations in the mineral licence area, including expenditure relating to such operations incurred in respect of:

- (a) the acquisition of machinery, implements, utensils and other articles employed in such operations;

- (b) labour, fuel, haulage, supplies, materials and repairs and related costs in connection with a survey or study or other prospecting operations;
- (c) the advancement of training and education of Solomon Islands citizens at institutions approved by the Ministry of Education and the provision of educational and scientific material and equipment;
- (d) charges, fees or rent including tenement fees and compensation for access to land for, or in respect, of land or buildings occupied for purposes of carrying out prospecting operations;
- (e) the general and administrative expenditure directly connected with prospecting operations;
- (f) the restoration of the mineral licence area, or any part thereof, after cessation of prospecting operations in the area to the extent to which such expenditure has been incurred by virtue of any term and condition of the prospecting licence or the relevant agreement relating to safety or the prevention of pollution;
- (g) customs duty and goods tax in respect of the importation for use in or, in connection with prospecting operations in the mineral licence area, of plant, machinery, equipment, spare parts, materials, supplies or consumable items used in or in connection with such prospecting operations; and
- (h) such items of expenditure included as exploration expenditure in a relevant agreement as the Commissioner determines appropriate and by Order specifies;

**“general and administrative expenditure”** means expenditure incurred on general administration and management primarily and principally related to mining operations in or in connection with the mineral licence area, comprising and limited to:

- (a) expenditure related to office, field office and general administration in Solomon Islands, including supervisory, legal, accounting and employee relations services (excluding

commissions paid to intermediaries by the approved mining company); and

- (b) an annual overhead charge for services rendered outside Solomon Islands and not otherwise deducted under any other head of expenditure under this Act, for managing mining operations and for staff advice and assistance including financial, legal, accounting and employee relations services, provided that:
  - (i) for the period from the date on which the relevant agreement takes effect until the date on which a mining lease under the agreement is granted to the approved mining company, or such other date as specified in the relevant agreement, such annual charge shall be the approved mining company's verifiable reasonable expenditure as approved by the Commissioner and allowable as deduction in the computation of taxable income under this Act; and
  - (ii) for the period commencing from the date on which the mining lease is granted to the approved mining company, or such other date as specified in the relevant agreement, the charge shall be at an amount or rate agreed between the parties to the relevant agreement and specified in the feasibility study approved with the grant of the mining lease;

**“gross income”** means total income as defined in this Act and shall in relation in this Act and shall in relation to an approved mining company that derives assessable income from mining operations, include any amount received or receivable in the tax year by the approved mining company, including proceeds under a policy of insurance or otherwise, in respect of the loss or destruction of minerals obtained by it from mining operations carried out by it and any interest or amount in the nature of interest or any other amount received or receivable by it in the tax year from or in connection with mining operations carried out by it.

**“mineral licence”** means a prospecting licence or a mining lease or both;

**“mining operations”** means prospecting operations, development operations and production operations and includes all other operations incidental thereto carried out by an approved mining company pursuant to a mineral license;

**“net cash receipts”** in relation to a mining lease in a tax year, means the result denominated in such foreign currency as specified in the relevant agreement which may be a negative amount, that is obtained by aggregating the gross income of the approved mining company from mining operations for that tax year and subtracting therefrom the sum of:

- (i) income tax on taxable income from mining operations paid by the approved mining company in that tax year; and
- (ii) subject to paragraphs 2, 3 and 4, all exploration, development and production expenditures incurred by the approved mining company in that tax year in relation to mining operations but excluding amounts in respect of interest and other financing charges on loans raised by the approved mining company for mining operations carried out by it;

**“production expenditure”** means expenditure incurred in production operations by the approved mining company and which, is allowed as a deduction in the determination of taxable income under this Act;

**“production operations”** means operations carried out under the mining lease other than development operations;

**“prospecting operations”** means operations carried out under a prospecting licence other than development operations;

**“relevant agreement”** means an agreement between the government and the approved mining company relating to a mineral licence; and

**“tax year”** means a calendar year or any other period of twelve months as specified in the relevant agreement.

## 2. Allowable expenditure

(1) The expenditures described in subparagraphs (2) to (9) shall be classified under the headings exploration expenditure, development expenditure, production expenditure and general and administrative expenditure in accordance with the definitions of these terms sets out in paragraph 1 and, subject to the provisions of this Schedule shall be allowable deductions in the computation of net cash receipts for the purposes of calculation of additional profits tax.

(2) Surface rights expenditure cover all expenditure directly attributable to the acquisition, renewal or relinquishment of surface rights acquired and maintained in force for the mineral area.

***“prospecting operations”*** means operations carried out under a prospecting licence other than development operations;

(3) Labour and related expenditure:

- (a) gross salaries and wages, including bonuses, of approved mining company's employees directly and necessarily engaged in the mining operations, irrespective of the location of such employees, provided that in the case of those employees, only a portion of whose time is wholly dedicated to the mining operations, only that pro rata portion of applicable salaries and wages will be allowable;
- (b) cost relating to the approved mining company of established plans for employees' group life insurance, hospitalisation, company pension, retirement and other benefits of a life nature customarily granted to the approved mining company's employees and the approved mining company's expenditure regarding holiday, vacation, sickness and disability payments applicable to the salaries and wages chargeable under clause (a) shall be allowed at actual cost, provided, however, that such total expenditure shall not exceed twenty-five per cent of the approved mining company's total labour expenditure under clause (a);
- (c) expenditure or contributions made pursuant to assessment or obligations imposed under the laws of Solomon Islands which are applicable to the approved mining company's expenditure

on salaries and wages chargeable under clause (a);

- (d) reasonable travel and personal expenditure of employees of the approved mining company, including those made for travel and relocation of the expatriate employees assigned to Solomon Islands.

(4) The expenditure incurred in respect of transportation of employees, equipment, materials and supplies necessary for the conduct of mining operations.

(5) Charges for services:

- (a) the expenditure incurred under contracts for technical and other services entered into by the approved mining company for the mining operations, made with third parties other than affiliated companies of the approved mining company are deductible, provided that the prices paid by the approved mining company are no higher than those generally charged by other international or domestic suppliers for comparable work and services;
- (b) in the case of services rendered to the mining operations by an affiliated company of the approved mining company the charges shall be based on the expenditure incurred without including any profits and shall be competitive. The charges shall be no higher than the most favourable prices charged by the affiliated company to third parties for comparable services under similar terms and conditions elsewhere. The approved mining company shall, if requested by the Commissioner, specify the amount of the charges which constitutes an allocated proportion of the general material, management, technical and other expenditure of the affiliated company, and the amount which is the direct cost incurred in respect of providing the services concerned. If required by the Commissioner certified evidence regarding the basis of prices charged shall be obtained by the approved mining company from the auditors of the affiliated company;
- (c) in the event that the prices and charges referred to in clauses (a) and (b) are shown to be uncompetitive then the Commissioner may under this Schedule disallow as a

deduction such portion of the prices and charges as he deems fit.

(6) For services rendered to the mining operations through the use of property exclusively owned by the approved mining company, the accounts shall be charged at rates not exceeding those prevailing in the region which reflect the cost of ownership and operation of such property or at rates to be agreed.

(7) Material and equipment:

- (a) Material and equipment held as inventory shall only be charged to the accounts of the mining operations when such material is removed from the inventory and used in the mining operations;
- (b) in the case of defective material or equipment, any adjustment received by the approved mining company from the suppliers or manufacturers or their agents shall be credited to the accounts of the mining operations;
- (c) Value of material charged to the account of the mining operations:
  - (i) except as otherwise provided in subclause (ii) below, material purchased by the approved mining company for use in the mining operations shall be valued to include invoice price less trade and cash discounts, if any, purchase and procurement fees plus freight and forwarding charges between point of supply and point of shipment, freight to port of destination, insurance, taxes, custom duties, consular fees, other items chargeable against imported material and, where applicable handling and transportation costs from point of importation to warehouse or operating site, and its costs shall not exceed those currently prevailing in normal arms length transactions on the open market;
  - (ii) material purchased from or sold to affiliated companies of the approved mining company or transferred to or from activities of the approved mining company other than mining operations:

- (aa) in the case of new material (hereinafter referred to as “condition A),” shall be valued at the current price which shall not exceed the price prevailing in normal arms length transactions on the open market;
  - (bb) in the case of used material which is in sound and serviceable condition and is suitable for re-use without reconditioning (hereinafter referred to as “condition B),” shall be priced at not more than seventy-five per cent of the current price of the above mentioned new materials;
  - (cc) in the case of used material which cannot be classified as condition B, but which, after reconditioning, is further serviceable for the original function as good second hand condition B material or is serviceable for original function, but substantially not suitable for reconditioning (hereinafter referred to as “condition C),” shall be priced at not more than fifty per cent of the current price of the new material referred to above as condition A;
- (iii) the cost of reconditioning shall be charged to the reconditioned material, provided that the condition C material value plus the cost of reconditioning does not exceed the value of condition B material. Material which cannot be classified as condition B or condition C shall be priced at a value commensurate with its use.
  - (iv) when the use of material is temporary and its service to the mining operations does not justify the reduction in price in relation to materials referred to above as conditions B and C, such material shall be priced on a basis that will result in a net charge to the accounts of the mining operations consistent with the value of the service rendered.

(8) Insurance premiums and expenditure incurred for insurance in respect of mining operations pursuant to a relevant agreement shall be deductible, provided that where such insurance is wholly or partly placed with an affiliated company of the approved mining



company such premiums and expenditure shall be deductible only to the extent generally charged by competitive insurance companies other than an affiliated company of the taxpayer. Expenditure and losses incurred as a consequence of events which are, and in so far as, not made good by insurance shall be deductible, provided that any expenditure or loss caused by wilful misconduct or negligence of the approved mining company shall not be deductible.

(9) Expenditure incurred by the approved mining company in training of its employees who are nationals of Solomon Islands engaged in the mining operations and such other training as is required under a relevant agreement shall be deductible.

(10) For the purposes of calculation of additional profits tax, general and administrative expenditure shall be deductible. Such expenditure shall be allocated to and form part of exploration expenditure, development expenditure and production expenditure incurred in each tax year in proportion to the amount of exploration expenditure, development expenditure and production expenditure incurred in such tax year, or in such other equitable and consistent manner as determined by the Commissioner.

### **3. Expenditure not deductible**

The following expenditure shall not be deductible in the computation of net cash receipts for the purposes of calculating additional profits tax:

- (a) interest and any other financing charges or fees incurred on loans raised by the approved mining company;
- (b) expenditure incurred on the marketing or transportation of minerals produced by the approved mining company beyond the delivery point designated in the relevant agreement;
- (c) costs incurred by the approved mining company in obtaining and maintaining a bank guarantee and performance guarantee required under a relevant agreement (and any other amounts spent on indemnities with regard to non-fulfilment of contractual obligations thereunder);

- (d) donations and contributions made by the approved mining company;
- (e) expenditure incurred in relation to arbitration in respect of any dispute under a relevant agreement;
- (f) fines and penalties imposed on the approved mining company by a court or tribunal;
- (g) expenditure incurred by the approved mining company as a result of its wilful misconduct or negligence;
- (h) any expenditure which by reference to international mining industry practices is excessive; and
- (i) expenditure relating to the negotiation of a relevant agreement.

#### **4. Other expenditure**

Other expenditure not covered or dealt with in paragraphs 2 and which is incurred by other expenditure the approved mining company for the necessary and proper conduct of the mining operations shall, for the purposes of this Schedule be deductible subject to the prior approval in writing of the Commissioner.

#### **5. Additional profits tax**

- (1)
- (a) An additional profits tax shall be payable by an approved mining company in any tax year when the accumulated present value of net cash receipts, at the end of that tax year, calculated in accordance with the formula set out below, is a positive amount, at the rate of X per cent (X%) of that positive amount:

“A” =  $B(100\% + R) + C$ , where

“A” = accumulated present value of net cash receipts at the end of the tax year for which the calculation is made;

“B” = accumulated present value of net cash receipts at the end of the preceding tax year;

“C” = net cash receipts for the tax year in respect of which the assessment of additional profits tax is made;

“R” = the accumulation rate specified in the relevant agreement with the approved mining company;

“X” = the rate of additional profits tax specified in the relevant agreement with the approved mining company,

provided that, where in any tax year the accumulated present value of the net cash receipts is a positive amount, such accumulated present value of the net cash receipts shall, for the purposes of determining the accumulated present value of the net cash receipts in respect of the immediately succeeding tax year, be deemed to be zero;

- (b) where, in relation to an approved mining company the relevant agreement so provides, the present value of net cash receipts shall be adjusted by applying the price index agreed in the relevant agreement in the manner set out therein.

(2) Where an approved mining company carries on mining operations on two or more areas that are the subject of two or more mining leases, this Schedule applies, in relation to the operations of the approved mining company on and in connection with each of the mining leases as if it were the only mining lease on which the approved mining company carries on mining operations.

(3) For the purposes of the application of this Schedule by virtue of subparagraph (2) in relation to an approved mining company in relation to a mining lease:

- (a) any thing relating exclusively to any other mining lease on which the approved mining company carries on mining operations shall be disregarded; and
- (b) amounts of expenditure (including expenditure on plant for use in operations on two or more of the mining leases on which the taxpayer carries on mining operations) or other amounts to which clause (a) does not apply shall be apportioned in such manner as the Commissioner may determine.

(4) The additional profits tax shall be payable within 90 days of the end of the tax year concerned. Interest on the amount of the additional profits tax payable in any tax year shall accrue as of the due date at the rate applicable under section 84 of the Act in relation to late payment of income tax (hereinafter called "Accrued Interest") and shall be payable within 30 days of the notification issued by the Commissioner pursuant to subparagraph (5).

(5) The Commissioner shall notify the approved mining company of his assessment of additional profits tax and accrued interest for each tax year. If the amount of additional profits tax paid to the government is less or more than the amount of, the commissioner's assessment, the shortfall together with accrued interest thereon shall be promptly paid by the approved mining company or the excess, if any, subject to the Government's right to set off against such excess any sums due from the approved mining company in accordance with the relevant agreement shall be refunded to the approved mining company, as may be the case.

(6) The provisions of section 83(5), relating to advance payments of income tax shall apply, *mutatis mutandis*, to an approved mining company in relation to the payment of additional profits tax.

## **6. Miscellaneous income and credits**

The net proceeds received in connection with mining operations by the approved mining company shall be included as gross income of the approved mining company in the tax year received. Such net proceeds shall include, but not limited to, the following:

- (a) the net proceeds of any insurance or claim in connection with the mining operations or any assets relating thereto where the costs of such insurance have been included as allowable expenditure under this Schedule;
- (b) revenue received by the approved mining company from third parties or affiliated companies for the use of property or assets relating to the mining operations where the costs of such property or assets have been included as allowable expenditure under this Schedule;
- (c) any adjustment received by the approved mining company from

the suppliers or manufacturers or their agents in connection with defective material for use in the mining operations where the costs of such material have been included as allowable expenditure under this Schedule;

- (d) the cost of materials which have been included as allowable expenditure under this Schedule, where such materials are subsequently exported from Solomon Islands without being used in the mining operations;
- (e) the proceeds from the sale or exchange by the approved mining company of plant or facilities from or in connection with the mineral licence area or, plant or facilities where the expenditure incurred on the acquisition thereof has been included as allowable expenditure under this Schedule;
- (f) the proceeds from the sale or exchange by the approved mining company of any licence, lease or other right held by the approved mining company relating to the mining operations;
- (g) the proceeds from the sale of any mining information which relates to the mineral licence area provided that expenditure incurred in respect of the acquisition of such information has been included as allowable expenditure under this Schedule.
- (h) the proceeds derived from the sale or licence of any intellectual property developed in the course of the mining operations.

## **7. Duplication of charges and credits**

Notwithstanding any provision of this Schedule, where any expenditure is allowed or any credit given under any provision of this Schedule there shall be no duplication of that allowance or the credit under any other provision of this Act.

## **8. Additional profits tax statements**

(1) The approved mining company shall prepare with respect to each tax year an additional profits tax statement containing the following information:

- (a) the value of net cash receipts for the tax year, identifying

separately each of the categories of gross income and allowable deductions provided for under this Act;

- (b) the appropriate value of the price index for the tax year;
- (c) the accumulated present value of the net cash receipts for the tax year;
- (d) the amount of additional profits tax payable for the tax year.

(2) The information required in subparagraph (1) shall be presented in sufficient detail so as to enable the Commissioner to verify the timing and amount of additional profits tax payment.

(3) The Commissioner may require the submission of additional profits tax statements more frequently than annually or at such intervals as specified in the relevant agreement.

(4) The additional profits tax statement for each tax year shall be submitted to the Commissioner not later than sixty days after the end of such tax year.

(5) The approved mining company shall submit to the Commissioner such records, returns and information relating to the approved mining company's liability to additional profits tax as may be prescribed or required by the Commissioner.

## ENDNOTES

### 1

#### KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

#### NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 123 of the Revised Edition of the Laws of Solomon Islands, together with amendments made from that date to 1 March 2018.

### 2

#### LIST OF LEGISLATION

##### ***Income Tax Act (Cap. 123)***

<i>Constituent legislation:</i>	9 of 1965 (Commenced 1 January 1965)
	10 of 1966
	14 of 1968
	11 of 1970
	22 of 1972
	2 of 1976
	LN 106 of 1976
	LN 107 of 1976
	5 of 1977
	LN 33 of 1978
	LN 46A of 1978
	LN 88 of 1978
	17 of 1979
	LN 1 of 1980
	LN 2 of 1980
	LN 4 of 1980
	LN 8 of 1980
	LN 27 of 1980
	LN 53 of 1980
	LN 54 of 1980
	9 of 1981
	LN 36 of 1981
	LN 61 of 1987

14 of 1989  
 5 of 1990  
 15 of 1990  
 16 of 1990  
 17 of 1990  
 LN 40 of 1990  
 LN 41 of 1990  
 LN 75 of 1990  
 6 of 1991  
 10 of 1991  
 12 of 1992  
 3 of 1993  
 15 of 1995\*  
 (\*Not in operation on 1st March 1996, and not commenced)

***Income Tax (Amendment) Act 1996 (No. 12 of 1996)\****

Assent date	12 February 1997
Gazetted	18 February 1997
Commenced	7 March 1997

***Income Tax (Amendment) (No.2) Act 1996 (No. 13 of 1996)\****

Assent date	12 February 1997
Gazetted	18 February 1997
Commenced	7 March 1997

*[\*Note: both Amendment Acts of 1996 made reference to sections and Schedules in the version of the Income Tax Act (Cap. 61) predating the 1996 Consolidation. The 1996 Consolidation became the official version of the legislation on 1 March 1996. Therefore, not all amendments were valid and those which were invalid have been omitted from this Point in Time version of the Act but have been corrected in the Legislation Amendment, Repeal and Validation Act 2023]*

***Income Tax (Exemption) Order 1997 (LN 84 of 1997)\****

Gazetted	20 June 1997
Commenced	20 June 1997

*[\*Note: This Legal Notice seeks to substitute paragraph 30 of the First Schedule to the principal Act. The 1996 Consolidation renamed the First Schedule as the Third Schedule and therefore the substitution fails.]*

***Income Tax (Amendment) Act 1998 (No. 2 of 1998)\****

Assent date	3 June 1998
Gazetted	13 October 1998
Commenced	21 December 1998

*[\*Note: This Act also refers to sections in the Income Tax Act (Cap.61) which pre-dates the official version as at 1 March 1996 (Cap. 123) in the 1996 Consolidation. Any amendments after s5*



*are invalid]*

***Income Tax (Amendment) Act 1999 (No. 14 of 1999)***

Assent date	10 December 1999
Gazetted	29 December 1999
Commenced	4 January 2000

***Income Tax (Amendment) Act 2005 (No. 8 of 2005)***

Assent date	16 December 2005
Gazetted	23 December 2005
Commenced	1 January 2006 (for a period of one year)

***Income Tax (Amendment) (No. 2) Act 2005 (No. 9 of 2005)***

Assent date	16 December 2005
Gazetted	23 December 2005
Commenced	26 June 2006

***Income Tax (Professional Services) (Amendment) Order 2007 (LN 36 of 2007)***

Gazetted	31 January 2007
Commenced	1 March 2007

***Income Tax (Amendment) Act 2007 (No. 3 of 2007)***

Assent date	7 March 2007
Gazetted	9 March 2007
Commenced	9 March 2007

***Income Tax (Exemption) (Amendment) Order 2007 (LN 135 of 2007)\****

Gazetted	12 April 2007
Commenced	12 April 2007

*[\*Note: the amendment of the Third Schedule by this LN fails due to an earlier error in the Income Tax (Amendment) Act 1996 failing to correctly identify the Schedule and its amendments. This is corrected by the Legislation Amendment, Repeal and Validation Act 2023]*

***Secured Transactions Act 2008 (No. 4 of 2008)***

Assent date	22 August 2008
Gazetted	5 September 2008
Commenced	31 August 2009

***Penalties Miscellaneous Amendments Act 2009 (No. 14 of 2009)***

Assent date	29 July 2009
Gazetted	1 October 2009
Commenced	1 October 2009

***Income Tax (Amendment) Act 2011 (No. 4 of 2011)***

Assent date	16 December 2011
Gazetted	1 January 2012*
Commenced	1 January 2012 (for the period of one year)

*[\*Note: the date of publication in the Gazette has been validated by s4 of the Constitution (Amendment and Validation) Act 2023]*

**Customs and Excise (Amendment) (No. 2) Act 2012 (No. 8 of 2012)**

Assent date	18 December 2012
Gazetted	27 December 2012
Commenced	1 August 2013

**Income Tax (Amendment) Act 2014 (No. 7 of 2014)**

Assent date	14 May 2014
Gazetted	20 May 2014
Commenced	1 July 2014

**Income Tax (Cap. 123) Amendment to Sixth and Seventh Schedule (LN 16 of 2018)**

Gazetted	26 February 2018
Commenced	1 March 2018*

*[\*Note: the amendment of the Sixth and Seventh Schedule by this LN fails due to the Income Tax (Amendment) Act 1996 (No. 12 of 1996) and Income Tax (Amendment) (No.2) Act 1996 (No. 13 of 1996) failing to refer to the correct Schedules. This is corrected by the Legislation Amendment, Repeal and Validation Act 2023]*

### **3 LIST OF AMENDMENTS**

s 2	amd by Acts No. 12 of 1996; No.2 of 1998; No. 8 of 2005; No. 8 of 2012; No. 7 of 2014
s 3	amd by Act No. 2 of 1998 sub by Act No. 8 of 2005; amd by Act No. 7 of 2024
s 4	amd by Acts No. 2 of 1998; No. 8 of 2005
s 4A	ins by Act No. 12 of 1996
s 5	amd by Act No. 2 of 1998 sub by Act No. 8 of 2005
s 6	amd by Act No. 8 of 2005
s 7	amd by Act No. 8 of 2005
s 9	amd by Act No. 8 of 2012
Pt III	sub by Act No. 9 of 2005
s 10	sub by Act No. 9 of 2005; amd by Act No. 8 of 2012
s 11	sub by Act No. 9 of 2005; amd by Act No. 8 of 2012
s 12	sub by Act No. 9 of 2005; amd by Act No. 8 of 2012
s 13	sub by Act No. 9 of 2005; amd by Act No. 8 of 2012
s 13A	ins by Act No. 8 of 2012
s 13B	ins by Act No. 8 of 2012
s 14	sub by Act No. 9 of 2005; amd by Act No. 8 of 2012
s 15	amd by Act No. 7 of 2014
s 15A	sub by Act No. 9 of 2005
s 15B	rep by Act No. 9 of 2005
s 16	amd by Act No. 8 of 2012
s 18	amd by Acts No. 14 of 1999; No. 8 of 2005; No. 7 of 2014

s 19	amd by Acts No. 14 of 1999; No. 7 of 2014
s 20	amd by Acts No. 8 of 2005; No. 7 of 2014
s 21	amd by Act No. 7 of 2014
s 21 hdg	amd by Act No. 7 of 2014
s 21A	ins by Act No. 7 of 2014
s 28 hdg	amd by Act No. 4 of 2011*
s 28	amd by Acts No. 14 of 1999; No. 8 of 2005; No. 4 of 2011*
s 29	amd by Act No. 14 of 1999 rep by Act No. 8 of 2005
s 30	rep by Act No. 14 of 1999
s 31	rep by Act No. 14 of 1999
s 32	amd by Act No. 4 of 2011*
s 33	amd by Act No. 14 of 1999
s 36	sub by Act No. 8 of 2005
s 36A	ins by Act No. 8 of 2005
s 36B	ins by Act No. 8 of 2005; Commencement of s 36B deferred to 1 January 2007 and indemnity provided by Act No. 3 of 2007
s 37	amd by Act No. 8 of 2005
s 38	amd by Act No. 8 of 2005
s 38A	ins by Act No. 8 of 2005
s 38B	ins by Act No. 8 of 2005
s 38C	ins by Act No. 8 of 2005
s 38D	ins by Act No. 8 of 2005
s 38E	ins by Act No. 8 of 2005
s 38F	ins by Act No. 8 of 2005
s 38G	ins by Act No. 8 of 2005
s 38H	ins by Act No. 8 of 2005
s 38J	ins by Act No. 8 of 2005
s 40	sub by Act No. 8 of 2005
s 40A	ins by Act No. 8 of 2005
s 43	rep by Act No. 8 of 2005
s 48	amd by Act No. 14 of 1999
s 48A	ins by Act No. 14 of 1999
s 54	amd by Act No. 14 of 2009
s 57	amd by Act No. 8 of 2005
s 58	amd by Act No. 8 of 2005
s 59	rep by Act No. 8 of 2005
s 60	rep by Act No. 8 of 2005
s 63	amd by Act No. 8 of 2005
s 64	rep by Act No. 8 of 2005
s 65	rep by Act No. 8 of 2005
s 66	rep by Act No. 8 of 2005
s 70	amd by Act No. 8 of 2005
s 84	amd by Act No. 14 of 1999
s 88	amd by Act No. 4 of 2008
s 89	amd by Act No. 4 of 2008
s 90	amd by Act No. 8 of 2005
s 94	amd by Act No. 14 of 2009
s 96	amd by Act No. 8 of 2005

s 99	amd by Act No. 14 of 2009
s 107A	ins by Act No. 7 of 2014
s 109	amd by Acts No. 8 of 2012; No. 7 of 2014
s 110	amd by Act No. 14 of 2009
First Sch	amd by Acts No. 9 of 2005; No.8 of 2012
Second Sch	amd by Acts No. 9 of 2005; No. 8 of 2012
Fourth Sch	amd by Act No. 7 of 2014
Fifth Sch	amd by Act No. 14 of 1999
Sixth Sch	amd by LN 36 of 2007
Twelfth Sch	ins by Act No. 12 of 1996

\* *for the period of one year: 1 Jan 2012 - 1 Jan 2013*