

# **INCOME AND SALES TAX ACT, 2005**

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THE GAMBIA

NO. 19 OF 2004.

Assented to by The President,  
this 28th day of December, 2004.



YAHYA A. J. J. JAMMEH  
*President.*

**AN ACT** to revise and consolidate the law relating to income tax and sales tax and matters connected therewith.

[ See section 1 ]

**ENACTED** by the President and the National Assembly.

**CHAPTER I – PRELIMINARY**

Short title and commencement

1. (1) This Act may be cited as the Income and Sales Tax Act, 2004.

(2) Subject to subsection (3), this Act comes into force on 1<sup>st</sup> January 2005.

(3) Part II of Chapter VIII comes into force on the date to be appointed by the Secretary of State by notice in the *Gazette*.

2. In this Act, unless the context otherwise requires —  
“amount” includes an amount-in-kind;

“approved retirement fund” means a retirement fund approved by the Commissioner-General in accordance with regulations made under this Act;

“associate” has the meaning given to it in section 3;

“associate employer” means an employer acting for or on behalf of another employer whose relationship is such that —

(a) one employer may reasonably be expected to act in accordance with the intention of the other; or

(b) both employers may reasonably be expected to act in accordance with the intention of a third employer;

“audited accounts”, in relation to a taxpayer, means the accounts of the taxpayer that have been audited by a person registered as a chartered accountant with the Association of Chartered Accountants, other than an individual who is an employee of the taxpayer;

“body of persons” means a fraternity, fellowship, or society of persons, but does not include a partnership;

“business” includes a trade, or adventure or concern in the nature of trade;

“business income” has the meaning given to it in section 16;

“business loss” has the meaning in subsection (5) of section 45;

“capital gains tax” means the tax imposed under section 105;

“capital gains taxpayer” means a person liable for capital gains tax under this Act;

“chargeable income” has the meaning given to it in section 14;

“Commissioner General” means the Commissioner-General of Taxes appointed under section 226;

“company” means —

(a) a company or corporation incorporated or registered in The Gambia or elsewhere;

- (b) a foreign association of persons, whether incorporated or not, which the Commissioner-General has, by general or special order, declared to be a company for the purposes of this Act; or
- (C) any other legal person which is not an individual, partnership, body of persons, trust, government, political subdivision of
  - a. public international organisation;

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- “Consideration received”, in relation to the disposal of an asset, has the meaning given to it in section 55;
- “cost, in relation to an asset, has the meaning in section 54;
- “customs laws” means the Customs Act or any other legislation relating to customs, including any Proclamation, regulation, rule, resolution or Order made under the authority of any law relating to customs;
- “debt means an amount owing, including accounts payable and amounts owing under a promissory note, bill of exchange, debenture, security, bond, or similar financial instrument;
- “depreciable asset” has the meaning given to it in section 36 (12);
- “disposal” has the meaning given to it in section 53;
- “dividend” means any distribution of profits by a company to a shareholder or by a partnership to a partner
- “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 involved in the management of a company;

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- (b) a position entitling the holder to a• or ascertainable remuneration; or
- (c) the holding or acting in any public of
  - “employment income” has the meaning given it in section 17;
  - excise laws” means the Excise Act and legislative enactment relating to excisable goods, including any Proclamation, regulation rule, resolution or Order made under authority of any law relating to excisable goods
  - “fair market value” has the meaning given to section 4;

“financial institution” has the meaning given under the Financial Institutions Act, 2003;

“financial lease” has the meaning given to section 52 (6);

“foreign-source income” has the meaning to it in section 70 (17);

“fringe benefits tax” means the fringe benefits tax imposed under section 124;

“fringe benefits taxpayer” means an employer liable for fringe benefits tax under this Act;

“Gambian-source income” has the meaning given to it in section 70;

“Government institution” does not include a parastatal;

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“interest” means —

or

“gross income” has the meaning given to it in section 15;

“income tax” means the tax imposed under sections 10, 11, 12 or 79;

“income taxpayer” means a person liable for income tax under this Act;

“insurance premium” includes a premium in relation to re-insurance;

“intangible asset” has the meaning given to it in section 38 (9);

(a) an amount, however described, whether periodical or a lump sum, as consideration for the use of money or being given time to pay a sum of money;

(b) an amount that is functionally equivalent to an amount referred to in paragraph (a), such as an amount payable for the time value of money under a derivative financial instrument or as defaulted interest under a guarantee agreement;

(C) a commitment, guarantee, service, or similar fee payable in respect of a debt;

“local authority” has the meaning given to it in the Local Government Act, 2002;

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“natural resource amount” means —

(a) an amount (including a premium or like amount) paid as consideration for the right to take minerals or a living or non- living resource from land; or

(b) an amount calculated in whole or part by reference to the quantity or value of minerals or a living or non-living resource taken from land;

“non-profit organisation” has the meaning given to it in section 25 (2);

“non-resident person” means a person who is not a resident person;

“parent” means a biological or adoptive parent;

“partnership” means an association of persons carrying on business jointly with a common view to profit;

“permanent establishment” in relation to a person, means a place of business through which the business of person is wholly or partly carried on, and includes —

(a) a place of management, branch, office, factory, warehouse, or workshop;

(b) a mine, oil or gas well, quarry, or other place of extraction of natural resources;

(C) a building site, or a construction, assembly or installation project, or any  
• supervisory activity connected with the site or project;

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(d) the furnishing of services, including consultancy services, by any person through employees or other personnel engaged by the person for that purpose, but only if activities of that nature continue for the same or a connected project within The Gambia for a period or periods aggregating more than ninety days within any twelve-month period;

(e) a person (referred to as an “agent”) acting in The Gambia on behalf of the other person if the agent—

(i) has and habitually exercises an authority to conclude contracts on behalf of the other person, or

(ii) habitually maintains a stock of goods or other merchandise from which the agent regularly delivers goods or merchandise on behalf of the other person; or

(f) any substantial equipment installed, or other asset or property of the person capable of any activity giving rise to income;

“person” means an individual, a company, partnership, body of persons, trust, government, political subdivision of a government, or a public international organisation;

“pre-commencement expenditure” has the meaning given to it in section 39 (3);

“prescribed” means prescribed by regulations made under this Act;

“property income” has the meaning given to it in section 19”

“received”, in relation to a person, includes —

(a) applied on behalf of the person either at the instruction of the person or under any law; or

(b) made available to the person;

“rent” means an amount representing consideration for the use or occupation of, or the right to use or occupy any land or building, including any premium or like amount;

“resident body of persons” has the meaning given to it in section 8;

“resident company” has the meaning given to it in section 6;

“resident individual” has the meaning given to it in section 5;

“resident partnership” has the meaning given to it in section 7;

“resident person” means —

(a) a resident individual, resident company, resident partnership, resident body of persons, or resident trust; or

(b) the Government of The Gambia, or any local or district authority in The Gambia;

“resident trust” has the meaning given to it in section 9;

“residential rent tax” means the tax imposed under section 116;

“residential rent taxpayer” means a person liable for residential rent tax under this Act;

“royalty” means an amount, however described, whether periodical or a lump sum, as consideration for—

(a) the use of, or right to use any patent,

invention, design or model, secret formula or process, trademark, or other like property or right;

(b) the use of, or right to use any copyright of a literary, artistic, or scientific work (including films or video tapes for use in connection with television or tapes in connection with radio broadcasting);

(c) the receipt of, or right to receive, any visual images or sounds, or both, transmitted by satellite, cable, optic fibre or similar technology in connection with television, radio, or internet broadcasting;

(d) the supply of any technical, industrial, commercial or scientific knowledge, experience, or skill;

(e) the use of or right to use any industrial, commercial or scientific equipment;

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(f) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any property or right mentioned in paragraphs (a) to (e); or

(g) the disposal of any property or right referred to in paragraphs (a) to (e);  
“sales tax” means the tax imposed under section 142;

“Secretary of State” means the Secretary of State responsible for finance and economic affairs;

“shares”, in relation to a company, means an ownership interest;

“shareholder”, in relation to a company, includes



a member and a person who has an ownership interest in a company;

“stock-in-trade” has the meaning given to it in section 50 (8);

“tax treaty” has the meaning given to it in section 76 (5);

“tax year” has the meaning given to it in section 46;

“taxable business income” means business income included in gross income;

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“technical service fees” means an amount, however described, whether periodical or lump sum, paid as consideration for the rendering of a managerial, technical or consultancy service, including the service of technical and other personnel, but does not include employment income;

“total turnover, in relation to a person for a tax year, means the gross revenue (including the gross proceeds from the disposal of an asset used in a business) received or receivable by the person in the tax year, but does not include amounts exempt from income tax, capital gains liable for tax under Chapter III, or residential rent liable for tax under Chapter IV;

“trust” means an arrangement under which there is a trustee in relation to property;

“trustee” means —

(a) a person appointed or constituted as trustee by an act of parties, by a will, or by an order or a declaration of a court, or by operation of the law;

(b) an executor, administrator, a tutor, or curator;

(C) a liquidator or judicial manager;

(d) any person having, either in a private or official capacity, the possession, direction, control, or management of any property of a person under a legal disability;  
or

(e) any person who manages assets under a private foundation or other similar arrangement.

3. (1) Subject to subsection (2), two persons are associates if the relationship between them is such that one may reasonably be expected to act in accordance with the intentions of the other, or both persons may reasonably be

‘Expected to act in accordance with the intention of a third person.

(2) Two persons are not associates solely b reason of the fact that one person is an employee of the other or both persons an employees of a third person.

(3) Without limiting the generality c subsection (1), the following are treated a. associates —

(a) An individual and a relative of the individual, except if the Commissioner General is satisfied that neither person may reasonably be expected to act ii accordance with the intentions of the other;

(b) a partner in a partnership and this partnership, if the partner, either alone c together with an associate or associate under another application of this section controls fifty per cent or more of the right to income or capital of the partnership;

(c) A trust and a person who benefits or ma benefit under the trust;

(d) A shareholder in a company and this company, if the shareholder, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons-

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(C) a spouse of the individual or of any person specified in paragraph (a) or (b).

(I) fifty per cent or more of the voting power in the company;

(ii) fifty per cent or more of the rights to dividends, or

(iii) fifty per cent or more of the rights to capital, and

(e) two companies, if a person, either alone or together with an associate or associates under another application of this section, controls either directly or through one or more interposed persons—

(I) fifty per cent or more of the voting power in both companies,

(iii) fifty per cent or more of the rights to dividends in both companies, or

(iii) fifty per cent or more of the rights to capital in both companies.

(4) In this section, “relative”, in relation to an individual, means— (a) an ancestor, a descendant of any of the

grandparents, or an adopted child, of the individual; or

(b) an ancestor, a descendant of any of the grandparents, or an adopted child of a spouse of the individual; or

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(5) In applying paragraphs (b), (d), or (e) of subsection (3), holdings that are attributable to a person from an associate are not reattributed to another associate.

4. (1) For the purposes of this Act, the fair market value of any property, asset, service, benefit, or supply at a particular time is the amount the property, asset, service, benefit, or supply would ordinarily fetch in the open market at that time.

(2) If the fair market value of any property, asset, service, benefit, or supply cannot be determined under subsection (1), the fair market value is the amount determined by the Commissioner-General.

5. (1) Subject to subsections (2) and (3), an individual is a resident individual for a tax year if the individual —

(a) resides in The Gambia at any time in the year;

(b) is present in The Gambia for a period of, or periods amounting in aggregate to, one hundred and eighty-three days or more in the tax year, or

(c) is an employee or official of the Government of The Gambia posted abroad at any time in the tax year?

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(2) An individual who is a resident individual under subsection (1) for a tax year, in this section referred to as the “current tax year”, but who was not a resident individual for the preceding tax year, is treated as a resident individual in the current tax year only for the period commencing on the day on which the individual was first present in The Gambia.

(3) An individual who is a resident individual for the current tax year, but who is not a resident individual for the following tax year, is treated as a resident individual in the

current tax year only for the period ending on the last day on which the individual was present in The Gambia.

6. A company is a resident company for a tax year if—

Resident partnership

Resident body of persons

(a) the company was incorporated or formed in The Gambia; or

(b) the control and management of the company's business is exercised in The Gambia at any time in the year.

7. A partnership is a resident partnership for a tax year if a partner of the partnership is a resident person at any time in the tax year.

8. A body of persons is a resident body of persons for a tax year if—

(a) the body was formed in The Gambia; or

(b) the control and management of the body's activities is exercised in The Gambia at any time in the year.

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Resident trust 9. A trust is a resident trust for a tax year if —

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(a) the trust was settled or established in The Gambia; or

(b) a trustee of the trust is a resident person at any time in the tax year.

## **CHAPTER II-INCOME TAX**

### **PART I — IMPOSITION OF INCOME TAX**

10. (1) Subject to this Act, income tax is imposed for each tax year at the rate specified in the First Schedule on a person who has chargeable income for the year.

(2) The income tax imposed under subsection (1) is computed by applying the rate or rates of tax applicable to the person under this Act to the chargeable income of the person for the tax year, and any tax credits allowed to the person for the year are deducted from the resulting amount.

(3) If a person is allowed more than one tax credit for a tax year, the credits are applied in the following order —

- (a) the foreign tax credit allowed under section 72;
- (b) the tax credit allowed under section 103; and
- (c) the tax credit allowed under section 101.

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Tax on certain payments to a non-resident person

(4) In lieu of taxation under subsection (1), certain classes of income (including the income of certain classes of persons) may be subject to —

- (a) income tax as provided in section 11 or 12;
- (b) withholding of tax as a final tax as pro- in section 102; or
- (C) separate assessment under Chapters III, IV, or V.

(5) Subject to the Petroleum (Exploration, Development and Production) Act, 2004, income arising out of or in connection with petroleum operations is subject to income tax under this Act, subject to the modifications set out in the Second Schedule to this Act.

11. (1) Subject to this Act, income tax is imposed on a non-resident person who receives a Gambian-source dividend, interest, royalty, or technical services fee.

(2) The income tax imposed under subsection (1) is fifteen per cent of the gross amount of the dividend, interest, royalty, or technical services fee received.

(3) This section does not apply to —

- (a) any dividend if the holding giving rise to the dividend is effectively connected with a permanent establishment in The Gambia of the non-resident person;

- (b) any interest if the debt claim giving rise to the interest is effectively connected with a permanent establishment in The Gambia of the non-resident person;
  - (d) any royalty if the property or right giving rise to the royalty is effectively connected with a permanent establishment in The Gambia of the non-resident person;
  - (e) any technical services fee if the services giving rise to the fee are rendered through a permanent establishment in The Gambia of the non-resident person; or
  - (f) any dividend, interest, royalty, or technical services fee that is exempt from income tax under this Act.
- (4) Any dividend, interest, royalty, or technical services fee described in paragraph (a), (b), (c), or (d) of subsection (3) is treated as income attributable to the permanent establishment and is taxable under section 10.

Tax on shipping and air transport income of a non-resident person

12. (1) Subject to this Act, income tax is imposed on a non-resident person operating a ship or an aircraft

- (2) The tax imposed under subsection (1) is three per cent of the gross amount derived by the non-resident person for the carriage of passengers, livestock, mail, or goods embarked in The Gambia.
- (3) This section does not apply to any amount exempt from tax under this Act.

13. Subject to this Act, the tax imposed under sections 11 and 12 is a final tax on the income in respect of which it is imposed and –

- (a) the income is not included in gross income in computing the chargeable income of the person who derives it for any tax year;
- (b) no deduction is allowable under this Act for any expenditure incurred in deriving the income;
- (c) the taxable amount computed under subsection (2) of section 11 or subsection (2) of section 12 is not reduced by any loss;

(d) the tax payable by a person under section 11 or 12 is not reduced by any tax credits allowed under this Act; and

(e) the liability of a person under section 11 or 12 is discharged to the extent that —

- (i) in the case of shipping and air transport income, the tax has been paid in accordance with section 87 or 88, or
- (ii) in any other case, the tax payable has been withheld from the payment of the income under section 92.

## **PART II- CHARGEABLE INCOME**

14. The chargeable income of a person for a tax year is the gross income of the person for the year reduced by the total amount of deductions allowed to the person for the year under this Act.

General provisions relating to income tax imposed under sections 11 and 12

## **PART III - COMPUTATION OF CHARGEABLE INCOME**

### **Sub-Part I - Gross Income**

Gross income 15. (1) Subject to this Act, the gross income of a person for a tax year is the total amount of –

(a) business income;

(b) employment income;

(c) property income; and

(d) any other income not mentioned in paragraphs (a), (b) and (c), derived by the person during the year, other than income exempt from income tax.

(2) Any capital gain liable for tax under Chapter III, rent from lease of residential property liable for tax under Chapter IV, or fringe benefit liable for tax under Chapter V, is not included in gross income.

(3) For the purposes of subsection (1) –

- (a) the gross income of a resident person includes income derived from all geographical sources; and
  - (b) the gross income of a non-resident person includes only Gambian-source income.
- (4) Unless this Act provides otherwise, the rules in Sub-Part IV of this Part apply in determining when an amount is derived for the purposes of this Act

16. Business income is any profit or gain arising from business.

17. (1) Employment income is any profit or gain, come whether of a revenue or capital nature, arising from employment, including-

(a) any salary, wage, or other remuneration provided to an employee, including leave pay, payment in lieu of leave, overtime payment, bonus, commission, fee, gratuity, or work condition supplement paid for unpleasant or dangerous working condition or any other similar condition;

(b) the amount of any allowance provided by an employer to an employee, including a cost of living, subsistence, rent, utilities, education, entertainment, or travel allowance, but does not include any allowance solely expended in the performance of the employee's duties of employment;

(C) 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 in the performance of the employee's duties of employment;

(d) any amount paid as consideration for a person's agreement to —

(i) enter into employment;



(ii) Any condition of employment any change to the employee's;  
Conditions of employment or

(iii) A restrictive covenant in any past, present, or pro  
Employment;

(e) Any amount received on termination employment, whether paid v or under an  
agreement, including compensation for redundancy employment and golden  
handshake payment;

(f) Any pension, annuity, or sup a pension or annuity received€relation to  
employment; or

(g) Any amount treated as employment income under section 18.

(2) For the purposes of this Act, an amount treated as arising from employment of  
whether it is paid —

(a) By the employee's employer associate of the employer, o party under an  
arrangement employer or an associate of the employer;

(b) By a past employer or a employer; or

(c) To the employee or an associate employee.

18. (1) The value of a right or option to acquire shares under an employee share  
scheme granted to an employee is not chargeable to income tax.

(2) Subject to subsection (3), if, in a tax year, an employee is issued with shares under  
an employee share scheme, including shares issued as a result of the exercise of an  
option or right to acquire the shares, the employment income of the employee for the  
year includes the fair market value of the shares at the date of issue reduced by the  
employee's contribution for the shares.

(3) If shares issued to an employee under an employee share scheme are subject to a  
restriction on the transfer of the shares –

(a) no amount is included in the employment income of the employee until —

(i) the time the employee has a free right to transfer the shares, or

(ii) the time the employee disposes of the shares,  
Whichever is earlier and

(b) the amount included in employment income shall be the fair market value of the shares at the time the employee has a free right to transfer the shares or disposes of the shares, as the case may be, as reduced by the employee's contribution for the shares.

(4) For the purposes of this Act, if subsection (2) or (3) applies, the cost of the shares to the employee shall be the sum of the employee's contribution for the shares and the amount included in employment income under those subsections.

(5) Chapter III applies to any gain or loss arising on the disposal of—

(a) a right or option to acquire shares under an employee share scheme; or

(b) shares acquired under an employee share scheme.

(6) In this section –

“employee's contribution”, in relation to shares issued to an employee under an employee share scheme, means the sum of the consideration, if any, given by the employee —

(a) for the shares; and

(b) for the grant of any right or option to acquire the shares; and

“employee share scheme” means an agreement or arrangement under which a company may issue shares in the company to —

(a) an employee of the company or an employee of a company that is an associate of the first-mentioned company; or

(b) the trustee of a trust and under the trust deed the trustee may transfer the shares to an employee of the company or an employee of a company that is an associate of the first-mentioned company.

(a) any dividend, interest, royalty, rent, natural resource amount, or other amount arising from the provision, use, or exploitation of property; or

(b) any pension, charge, or annuity, or any supplement to a pension, charge, or annuity,

but does not include an amount that is business or employment income.

## **Sub-Part II - Exempt Income**

20. (1) The official employment income derived by the President or acting President is exempt from income tax.

(2) The official employment income derived by the President while on leave is exempt from income tax.

21. (1) The income derived by an individual entitled to privileges under the Diplomatic Privileges (Commonwealth and Foreign Mission) Act is exempt from income tax to the extent provided in that Act.

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(2) The income derived by an individual entitled to privileges under the Diplomatic Privileges (International Organisations) Act is exempt from income tax to the extent provided in that Act.

(3) The income derived by a public international organisation is exempt from income tax to the extent provided in the Diplomatic Privileges (International Organisations) Act.

22. The official employment income of a non-commissioned officer of the Armed Forces of The Gambia is exempt from income tax.

23. (1) A Gambian-source income that The Gambia is not permitted to tax under a tax treaty is exempt from income tax.

(2) An employment income derived by an individual who is not a citizen of The Gambia is exempt from income tax to the extent provided for in any applicable international agreement.

(3) In this section, “international agreement” means an agreement between the Government of The Gambia and a foreign Government or public international organisation for the provision of financial, technical, or administrative assistance to the Government of The Gambia.

24. The income of a local authority, district authority, or Government institution is exempt from income tax.

25. (1) The income of a non-profit making organisation, other than business income derived from the carrying on of a business, is exempt from income tax.

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(2) In this section, “non-profit making organisation” means —

(a) a religious, charitable, or an educational institution of a public character;

(b) a body of persons formed for the purposes of promoting social or amateur sporting activities;

(c) a trade union registered under the Labour Act;

(d) a cooperative society registered under Cap. 50:02 the Co-operative Societies Act or any other relevant law; and

(e) a registered political party, provided that the claim for exemption is supported by legal documents.

26. The following amounts are exempt from income tax

(a) a lump sum amount derived —

(i) as a retiring or death gratuity,

(ii) as consolidated compensation for death or injuries, or

(iii) under any compensation scheme referred to in The Gambia (Compensation and Retiring Benefits) Order, 1965; or

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(b) a gratuity received by a public officer for service with the Government of The Gambia pursuant to any contract or service agreement.

27. (1) The property income of an approved retirement fund is exempt from income tax.

(2) A lump sum amount from an approved retirement fund derived by an individual on retirement is exempt from income tax.

28. (1) A wound or disability pension is exempt from income tax if it is granted to —

(a) a member of the Armed Forces of The Gambia or a Commonwealth Force; or

(b) a person injured as a result of action by enemies of The Gambia.

(2) A pension granted to a person under the provisions of the Widows' and Orphans' (European Officers) Pensions Act 1913 or the Widows' and Orphans' (African Officers) Pensions Act is exempt from income tax.

(3) A pension paid by the Government of The Gambia to a retired civil servant is exempt from income tax.

29. (1) Interest derived by a resident individual from savings at the Gambia Post Office is exempt from income tax.

(2) Interest payable on a loan charged on the public revenue of The Gambia is exempt from tax to the extent specified by the President in a notice published in the Gazette.

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30. (1) Subject to subsection (2): the business income derived by a non-resident person from the operation of ships or aircraft is exempt from income tax, other than income derived from the operation of ships or aircraft in the transportation of passengers between places in The Gambia.

(2) Subsection (1) does not apply to a non-resident person if the person's country of residence does not allow a similar exemption to a resident person.

(31) subject to subsection (2) a commission or allowance derived by a person under the provinces Act or the Lands (provinces) Act or by a "Seyfo" or an "Alkalo" under the customs Act in respect of the collection of a tax, duty or fee under the Act is exempt from Income tax

(2) The amount exempt from income tax under subsection (1) for a tax year shall not exceed seven thousand five hundred dalais.

32. A scholarship granted to a student to meet scholarship the cost of the student's education is exempt from income tax.

33. The President may, with the approval of the National Assembly, by order published in the Gazettes, exempt any person from income tax if the President considers that the exemption is for the economic benefit of The Gambia.

### **Sub-Part iii – Deductions**

34. (1) Subject to this Act, a person is allowed a deduction for any expenditure incurred in deriving gross income.

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(2) If an amount of expenditure is incurred partly in deriving gross income and partly for another purpose, a deduction is allowed only for the part of the expenditure that relates to the derivation of gross income.

(3) Subject to this Act, if the expenditure referred to in subsection (1)—

(a) is incurred in acquiring a depreciable asset or an intangible asset; or

(b) is pre-commencement expenditure,

the expenditure is deducted in accordance with section 36, 37, 38, or 39, as the case may be.

(4) Unless the Act provides otherwise, the rules in Sub-Part IV of this Part apply in determining when an amount is incurred for the purposes of this Act.

(a) Any domestic or private expenditure;

(b) Any expenditure incurred in deriving employment income;

(C) Any capital withdrawn, or sum employed or intended to be employed as capital;

(d) Any expenditure of a capital nature except as provided in this Sub-Part;

(e) An amount carried to a reserve fund or capitalised in any way;

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(f) an expenditure or a loss recoverable under a policy of insurance or contract of indemnity;

(g) any income tax, capital gains tax, or residential rent tax payable in The Gambia or elsewhere;

(h) any contribution or payment to a provident, savings, widows' and orphans', or other society or fund, except as provided in section 44;

(i) any fine or penalty imposed for violation of any law, rule, or regulation; or

(j) any bribe, kickback, or similar amount.

(2) A person required to withhold tax under section 92 from any interest, royalty, or technical services fee paid to a non-resident person is not entitled to a deduction for the interest, royalty, or fee until the person has paid the withheld tax to the Commissioner-General.

36. (1) Subject to this section, a person is allowed a deduction (referred to as an “annual allowance”) for the amount by which the value of the person’s depreciable assets diminished by reason of wear and tear from use in the person’s business to derive gross income in a tax year.

(2) Subject to subsections (3) and (4), the annual allowance for a tax year is computed by applying the rate specified in the Third Schedule against the written down value of the asset at the beginning of the year.

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(3) If a depreciable asset is used in a tax year partly in deriving business income included gross income and partly for another use, the annual allowance for that year is restricted to the fair proportional part of the amount that would be allowed if the asset were wholly used to derive business income included in gross income.

(4) If a depreciable asset is not used for the whole of the tax year in deriving business income included in gross income, the annual allowance for the year is computed according to the following formula —

where —

$A \times B / C$

A is the annual allowance computed under subsection (2) or (3), as the case may be

B is the number of days in the tax year the asset is used or available for use deriving business income included in gross income; and

C is the number of days in the tax year.

(5) The written down value of a depreciable asset of a person at the beginning of the tax year is —

(a) if the asset was acquired in the tax year the cost of the asset to the person reduced by any initial allowance in respect of the asset under section 37; or

(b) in any other case, the cost of the asset to the person as reduced by the total initial and annual allowance deductions allowed to the person in respect of the asset in previous tax years.

(6) The total deductions allowed to a person during the period of ownership of a depreciable asset under this section and section 37 shall not exceed the cost of the asset.

(7) If a person disposes of a depreciable asset in a tax year, there is no annual allowance for that year and —

(a) if the consideration received exceeds the written down value of the asset at the time of disposal, the excess is business income included in the person's gross income for that year; or

(b) if the consideration received is less than the written down value of the asset at the time of disposal, the difference is allowed as a deduction in computing the person's chargeable income for that year.

(8) If subsection (3) applies to a depreciable asset for a tax year-

(a) the written down value of the asset for the purposes of subsections (5) and (7) is computed on the basis that the asset has been used solely to derive taxable business income included in gross income;

(b) the amount included in gross income under subsection (7) (a) or the amount allowed under subsection (7) (b) is apportioned in accordance with subsection (3).

(9) For the purposes of this section, if the cost of a depreciable asset being a passenger transport vehicle (other than a bus, taxi, or hire car) exceeds two hundred thousand dalais, the cost of the vehicle is limited to that amount.

(10) If subsection (9) applies, the written down value of the passenger transport vehicle for the purposes of subsection (7) is computed as if the limitation in subsection (9) had not been in effect.

(11) The cost of a structural improvement to immovable property does not include the cost of the land.

(12) In this section -



“Depreciable asset means any tangible movable property or structural improvement to immovable property, owned by a person that —

- (a) Has a normal useful life exceeding one year;
- (b) is likely to lose value as a result of normal wear and tear, or obsolescence; and
- (c) is used wholly or partly by the person in deriving business income included in gross income; and

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‘structural improvement’, in- relation to immovable property, includes any building, road, driveway, car park, railway line, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, drainage, landscaping, or dam.

37. (1) A person who places an eligible depreciable asset into service in The Gambia for the first time in a tax year is allowed a deduction (referred to as an “initial allowance”) computed in accordance with subsection (2), provided the asset is wholly and exclusively used by the person in deriving business income included in gross income.

(2) The amount of the initial allowance of a person is twenty per cent of the cost of the asset or ten per cent for buildings, structures or works of a permanent nature.

(3) In this section, “eligible depreciable asset” means a depreciable asset that is plant or machinery, but does not include—

- (a) a passenger transport vehicle, other than a bus, taxi, or hire car;
- (b) Furniture, including fittings; and
- (c) Plant or machinery acquired second hand.

38. (1) A person is allowed a deduction (referred to as an “amortisation deduction”) in accordance with this section for the cost of an intangible asset wholly or partly used by the person in a tax year in deriving business income included in gross income.

—  
(2) Subject to subsection (6), the amortisation deduction of a person for a tax year is computed according to the following formula —

A

B

where —

A is the cost of the intangible asset; and

B is the useful life of the intangible asset in whole years.

(3) An intangible asset —

(a) with a useful life of more than ten  
Years; or

(b) that does not have an ascertainable useful life, is treated as having a useful  
life of ten years.

(4) If an intangible asset is used in a tax year partly in deriving business income included in gross income and partly for another use, the amortisation deduction for that year is restricted to the fair proportional part of the amount that would be allowed if the intangible asset were wholly used to derive business income included in gross income.

(5) If an intangible asset is not used for the whole of the tax year in deriving business income included in gross income, the amortisation deduction for the year is computed according to the following formula

AxBIC

where —

A is the amortisation deduction computed ‘  
under subsection (2) or (4), as the case  
may be;

B is the number of days in the tax year the intangible asset is used or available for use in deriving business income included in gross income; and

C is the number of days in the tax year.

(6) The total amortisation deductions allowed to a person under this section in the current tax year and all previous tax years in respect of an intangible asset shall not exceed the cost of the intangible asset.

(7) If a person disposes of an intangible asset in a tax year, there is no amortisation deduction for that year and —

(a) if the consideration received by the person exceeds the written down value of the intangible asset at the time of disposal, the excess is business income included in the gross income of the person for that year; or

(b) if the consideration received is less than the written down value of the intangible asset at the time of disposal, the difference is allowed as a deduction in computing the person's chargeable income for that year.

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(8) For the purposes of subsection (7), the written down value of an intangible asset at the time of disposal—

(a) is the cost of the intangible property reduced by the total amortisation deductions allowed to the person under this section? in respect of the intangible property; or

(b) is, if the intangible asset is not wholly used to derive business income included in gross income, the amount that would be allowed under this section if the intangible asset were wholly so used.

(9) In this section - “cost” means —

(a) in relation to an intangible asset referred to in paragraph (a) or (b) of the definition of “intangible asset”, the total expenditure incurred in acquiring, creating, improving, and renewing the intangible asset; or

(b) in relation to an intangible asset referred to in paragraph (C) of the definition of “intangible asset”, the amount of the expenditure; and

“intangible asset” means —

(a) a patent, an invention, a design or model, secret formula or process, trademark, copyright, or any other like property or right;

- (b) a contractual right with a benefit for a period of more than one year; or
- (C) an expenditure that provides an advantage or benefit for a period of more than one year, other than expenditure incurred to acquire a depreciable asset or unimproved land.

39. (1) A person is allowed a deduction for pre-commencement expenditure in the tax year in which the expenditure is incurred and in the following three tax years.

(2) The amount of the deduction allowed in each tax year is twenty-five per cent of the Expenditure.

(3) In this section, “pre-commencement expenditure” means any expenditure incurred before the commencement of a business if the income to be derived by the business will be wholly and exclusively included in gross income-

(a) Including the cost of feasibility studies, construction of prototypes, and trial production activities; but

(b) Excluding any expenditure incurred in acquiring land, a depreciable asset to which section 36 applies, and an intangible asset to which section 38 applies.

40. (1) A person is allowed a deduction for expenditure incurred in a tax year for the repair of a depreciable asset.

(2) No deduction is allowed under this section for any expenditure incurred in improving, reconstructing, or rebuilding a depreciable asset, or which is otherwise of a capital nature.

41. (1) Subject to subsection (2), a person is allowed a deduction for any interest incurred by a person in a tax year if the person has used the proceeds or benefit of the debt on which the interest is payable in deriving gross income.

(2) The total amount of interest allowed to a person as a deduction under, this section for a tax year shall not exceed the amount computed

according to the following formula —

where —

$$A + (50\% \times (B - C))$$

A is the interest income derived by the person during the year;

B is the person's gross income for the year, other than interest income; and

C is the total amount of deductions allowed to the person for the year, other than for interest incurred.

(3) The amount of any interest not deducted in a tax year as a result of subsection (2) shall be carried forward as interest incurred in the following tax year.

(4) An amount carried forward under subsection (3) shall be carried forward for a maximum of six tax years and if a person has an amount of interest carried forward for more than one tax year, the interest incurred in the earliest tax year shall be deducted first.

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(5) Subsection (2) does not apply to a financial institution.

42. (1) A person is allowed a deduction for a bad debt written off in a tax year if the following conditions are satisfied —

(a) the amount of the debt —

(i) was previously included in the person's gross income; or

(ii) is money lent by the person in the normal course of business for the purposes of deriving business income included in gross income?

(b) the debt or part of the debt is written off in the accounts of the person in the tax year; and

(c) there are reasonable grounds for believing that the debt is irrecoverable.

(2) The amount of the deduction allowed under this section for a tax year shall not exceed the amount of the debt written off in the accounts of the person in the tax year.

43. (1) Subject to subsections (2) and (3), a bank is allowed a deduction for the addition to its provision for doubtful debts' in a tax year, provided the addition has been determined in accordance with the prudential requirements specified by the Central Bank of The Gambia.

(2) The amount allowed as a deduction under this section for a tax year shall not exceed a half of one per cent of the total outstanding debt Claims. of the bank as the end of the tax year.

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(3) No deduction is allowed under this section for a tax year if the banks total provision for doubtful debts as at the end of the tax year exceeds five per cent of the total outstanding debt claims of the bank as at the end of the year.

(4) In this section, “debt claim”, in relation to a bank, means a debt owing to the bank

44. (1) An employee is allowed a deduction for the amount of a contribution made under —

(a) the Widows’ and Orphans’ (European Officers) Pensions Act, 1913 or any approved scheme within the meaning of that Act; or

(b) the Widows’ and Orphans’ (African Officers) Pensions Act,

(2) An employer is allowed a deduction for a contribution made in a tax year to an approved retirement fund in respect of a resident employee of an amount not exceeding twenty- five per cent of the employment income paid by the employer to the employee for the year.

(3) Subject to subsection (4), a resident employee is allowed a deduction for a contribution made in the tax year to an approved retirement fund.

(4) The amount allowed as a deduction under subsection (3) for a tax year is limited to the lesser of-

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(a) twenty-five per cent of the employee’s employment income for the tax year in which the contribution is made, as reduced by any deduction allowed to the employer of the employee under subsection (2) for contributions made in respect of the employee for that year; or

(b) seven thousand five hundred dalais.

(5) If, in a tax year, an employer makes a special contribution to an approved retirement fund at the time the fund is first established in respect of employees employed by the employer prior to the establishment of the fund, the Commissioner-

General may allow a deduction in that year for the contribution to the extent the Commissioner-General considers appropriate.

(6) In this section, “employment income”, in relation to an employee, includes the value of fringe benefits provided by an employer to the employee as determined under Chapter V.

45. (1) If a person has a business loss for a tax year, the amount of the loss is carried forward to the following tax year and allowed as a deduction in computing the person’s chargeable income for that following year.

(2) If a business loss is not wholly deducted under subsection (1), the amount not deducted shall be carried forward to the next following tax year and applied as specified in subsection (1) in that year, and so on, but no loss shall be carried forward for more than six tax years after the tax year in which the loss was incurred.

(3) If a person has a business loss carried forward under this section for more than one tax year, the loss of the earliest tax year is deducted first.

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(4) If a person carries on more than one business, this section applies separately to each business.

(5) A person has a business loss for a tax year if the total deductions allowed to the person in deriving business income included in the person’s gross income for the year (other than the deduction allowed under this section) exceed the amount of that business income, and the amount of the excess is the amount of the business loss.

#### **Sub-Part IV - Tax Accounting**

46. (1) For the purposes of this Act and subject to this section, the tax year is the calendar year.

(2) A company may apply, in writing, to use a twelve-month period (referred to as a “special tax year) other than the calendar year as the company’s tax year and the Commissioner-General may, subject to subsections (3) and (5), by notice in writing, approve the application.

(3) Unless the Commissioner-General allows otherwise, an application under subsection (2) shall be made within two years of the incorporation or formation of the company

(4) A company granted permission under subsection (2) to use a special tax year may apply, in writing, to change the company's tax year to the calendar year or to another special tax year and the Commissioner-General may, subject to subsection (5), by notice in writing, approve the application.

(5) The Commissioner-General may approve an application under subsection (2) or (4) only if the company has shown a compelling need to use a special tax year or to change the company's tax year and any approval is subject to such conditions as the Commissioner-General may specify.

(6) The Commissioner-General may, by notice in writing to a company, withdraw the permission to use a special tax year granted under subsection (2) or (4).

(7) A notice served by the Commissioner-General under subsection (2) takes effect on the date specified in the notice and a notice under subsection (4) or (6) takes effect at the end of the special tax year of the company in which the notice was served.

(8) If a company's tax year changes under this section, the period between the last full tax year prior to the change and the date on which the changed tax year commences is a separate tax year (referred to as a "transitional tax year").

(9) A transitional tax year shall not exceed a period of twelve months.

(10) If a company is permitted to use a special tax year or is required to use a transitional tax year under this section, a reference in this Chapter to a person's tax year for the purposes of computing the person's chargeable income or the payment of instalments of tax means the company's "special tax year or a "transitional tax year, as the case may be.

47. (1) Subject to this Act, a person's method of accounting for the purposes of computing the business income and expenditure of the person for a tax year shall conform to generally accepted accounting principles.

(2) Subject to subsection (3), a company shall account for income tax purposes on an accrual basis, while other persons may account for income tax purposes on a cash or accrual basis.



(3) The Commissioner-General may specify that any class of persons shall account for income tax purposes on a cash or accrual basis.

(4) A person may apply, in writing, for a change in the person's method of accounting and the Commissioner-General may, by notice in writing; approve the application but only if satisfied that the change is necessary to properly compute the person's chargeable income.

(5) Subject to subsection (6), if a person's method of accounting changes, the person shall make adjustments in the tax year of change to items of income, deduction, or credit, or to any other items affected by the change so that no item is omitted and no item is taken into account more than once.

(6) If an amount is added to a person's chargeable income solely by reason of the adjustments required under subsection (5), one third of the amount is included in the tax year in which the change occurs and the balance is included equally in the following two tax years.

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48. A person accounting for income tax purposes on a cash basis derive an amount when it is received and incurs expenditure when it is paid.

49. (1) A person accounting for income tax purposes on an accrual basis derives an amount when it is due to the person and incurs expenditure when it is payable by the person.

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

(3) Subject to this Act, an amount is payable by a person when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance occurs.

(4) For the purposes of subsection (3), economic performance occurs –

(a) in the case of the acquisition of services or assets, at the time the services are provided or assets are delivered;

(b) in the case of the use of assets, at the time the assets are used; and

(c) in any other case, at the time payment is made in full satisfaction of the liability.

(5) If a person has been allowed a deduction for any expenditure incurred in deriving gross income and the person has not paid the liability or a part of the liability to which the deduction relates within three years of the end of the tax year in which the deduction was allowed, the unpaid amount of the liability shall be included in the person's gross income for the first tax year following the end of the three years.

(6) An amount to which subsection (5) applies has the same character as the income to which the deduction relates.

(7) If the amount of an unpaid liability is included in gross income under subsection (5) and the person subsequently pays the liability or a part of the liability, the person is allowed a deduction for the amount paid in the tax year in which the payment is made.

50. (1) A person is allowed a deduction for the cost of stock-in-trade disposed of by the person in a tax year for the purposes of deriving business income included in gross income.

(2) The cost of stock-in-trade disposed of by a person in a tax year is computed in accordance with the following formula —

where —  
 $(A + B) - C$

A is the opening value of the person's stock-in-trade for the year

B is the cost of stock-in-trade acquired by the person in the year and

C is the closing value of stock-in-trade for the year

(3) The opening value of stock-in-trade of a person for a tax year is-

(a) the closing value of the person's stock-in-trade for the previous tax year; or

(b) if the person commenced to carry on business in the year, the fair market value of any stock-in-trade acquired by the person prior to the commencement of the business.

- (4) The fair market value of stock-in-trade referred to in paragraph (b) of subsection (3) is determined at the time the stock-in-trade is ventured in the business.
- (5) The closing value of a person's stock-in-trade for a tax year is the lower of cost or fair market value of the person's stock-in-trade on hand at the end of the year.
- (6) A person accounting for income tax purposes-
  - (a) on a cash basis, may compute the person's cost of stock-in-trade on the prime-cost method or absorption-cost method; and
  - (b) on an accrual basis, shall compute the person's cost of stock-in-trade on the absorption-cost method.

(7) If particular items of stock-in-trade are readily identifiable, a person may account that stock on the first-in-first-out method or average-cost method but, once chosen, a stock valuation method may be changed only with the written permission of the Commissioner-General and in accordance with any conditions that the Commissioner-General may impose.

(8) In this section, -

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

“average-cost method” means the general accepted accounting principle under which valuation of stock-in-trade is based on weighted average cost of items of stock on hand;

“direct labour costs” means labour costs directly related to the manufacture or production of stock-in-trade;

“direct material costs” means the cost of materials that become an integral part of stock-in-trade manufactured or produced, which are consumed in the manufacturing production process;

“factory overhead costs” means the total cost manufacturing or producing stock-in-trade, other than direct labour and direct material costs;

“first-in-first-out method” means the generally accepted accounting principle under which the valuation of stock-in-trade is based on the assumption that stock is sold in the order of its acquisition;

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

“stock-in-trade” means anything produced, manufactured, purchased, or otherwise acquired for manufacture, sale, or exchange, and includes any materials or supplies to be consumed in the production or manufacturing process; and

“Variable factory overhead costs” means those factory overhead costs which vary directly with changes in the volume of stock-in-trade manufactured or produced.

51. (1) A person accounting for income tax purposes on an accrual basis shall compute the income arising under a long-term contract on the basis of the percentage of completion method.

(2) The percentage of completion of a long-term contract in a tax year is determined by comparing the total costs allocated to the contract and incurred before the end of the year with the estimated total contract costs as determined at the commencement of the contract.

((3) In this section –

“long-term contract means a contract for manufacture, installation, or construction, or, in relation to each, the performance of related services, which is not completed within the tax year in which work under the contract commenced, other than a contract estimated to be completed within six months of the date on which work under the contract commenced; and

“percentage of completion method” means the generally accepted accounting principle under which income and expenses arising under a long-term contract are recognised by reference to the stage of completion of the contract, as modified by subsection (2).

52. (1) This section applies to an asset that is leased or hired under a financial lease.

(2) If this section applies, this Act applies on the basis that —

- (a) the lessee is the owner of the asset;
- (b) the lessee acquired the asset at the commencement of the lease, except in cases where the lessee already was the owner of the asset; and
- c) The lessor has made a blended loan to the lessee at the commencement of the lease and each (ease payment is in part repayment of principal and in part payment of interest under that loan.

(3) The cost of the asset treated as owned by the lessee under paragraph (a) of subsection (2) is

(a) if the lessor and lessee are not associates and an amount is stated as the cost or value of the asset in the lease agreement, that amount; or

(b) in any other case, the fair market value of the asset at the commencement of the lease.

(4) The amount of the loan referred to in paragraph (C) of subsection (2) is the amount determined under subsection (3) as the cost of the asset.

(5) The interest part of each payment made under the loan is computed by reference to the interest rate implicit in the lease agreement.

(6) In this section — “blended loan” means a loan under which payments by the borrower represent in part a payment of interest and in part a repayment of principal where the interest part is calculated on the principal outstanding at the time of each payment;

“financial lease” means —

(a) a hire purchase agreement; or

(b) a lease if—

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- (i) the lease agreement provides for transfer of ownership at the end of the lease term, or the lessee has an option to acquire the asset at the end of the lease term for a fixed or determinable amount,
- (ii) the lease term exceeds seventy- five per cent of the useful life of the asset,
- (iii) the estimated fair market value of the asset at the end of the lease term is less than twenty per cent of its fair market value at the commencement of the lease,

(iv) in the case of a lease that commences before the last twenty-five per cent of the useful life of the asset, the present value of the minimum lease payments equals or exceeds ninety per cent of the fair market value of the asset at the commencement of the lease term, or

(v) the asset is custom-made for the lessee and at the end of the lease term the asset will not be of practical use to any person, other than the lessee;

“lease term” includes any additional period of the lease under an option to renew;

“lessee” includes a hire under a hire purchase agreement; and

( “lessor” includes a hirer under a hire purchase agreement.

**Sub-Part V - Rules Relating to Assets**

53. (1) Except as otherwise provided in this Act, this section establishes when an asset is disposed of or acquired for the purposes of this Act.

(2) A person who holds an asset is treated as having made a disposal of the asset at the time the person parts with the ownership of the asset, including when the asset is –

(a) sold, exchanged, transferred, or distributed; or

(b) cancelled, redeemed, relinquished, destroyed, lost, expired, or surrendered.

(3) The transmission of an asset by succession or under a will is treated as a disposal of the asset by the deceased at the time the asset is transmitted.

(4) The application of stock-in-trade, a depreciable asset, or an intangible asset to personal use is treated as a disposal of the stock, asset, or intangible asset by the owner at the time the asset is so applied,

5) A disposal includes the disposal of a part of an asset.

(6) A person acquires an asset at the time the person begins to own the asset, including at the time the person is granted any right.

(7) The use of a personal asset as stock-in- trade, a depreciable asset, or an intangible asset is treated as an acquisition of the stock, asset, or intangible asset by the owner at the time the asset is so used.

(8) In this section, “personal asset” means an asset held wholly for personal use.

54. (1) Except as otherwise provided in this Act, this section establishes the cost of an asset for the purposes of this Act.

(2) Subject to this section, the cost of an asset purchased by a person is the sum of the following amounts -

(a) the total consideration given by the person for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired;

(b) any incidental expenditure incurred by the person in acquiring or disposing of the asset; and

(C) any expenditure incurred by the person to alter or improve the asset.

(3) Subject to this section, the cost of an asset produced or constructed by a person is the total of the costs incurred by the person in producing or constructing the asset plus any expenditure referred to in paragraphs (b) and (c) of subsection (2) incurred by the person.

(4) No amount is included in the cost of an asset under paragraphs (b) and (c) of subsection (2) to the extent to which it has been allowed as a deduction under this Act,

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(5) The cost of an asset treated as acquired under subsection (7) of section 53 is the fair market value of the asset determined at the date it is applied to business use.

(6) If an asset has been acquired by a person with a loan denominated in a foreign currency and, before full and final repayment of the loan, there is an increase or decrease in the liability of the person under the loan as expressed in dalasis, the amount by which the liability is increased or decreased is added to or deducted from the cost of the asset, as the case may be.

(7) In determining whether the liability of a person has increased or decreased for the purposes of subsection (6), account is taken of the person's position under any hedging agreement relating to the loan.

(8) If a person disposes of a part of an asset, the cost of the asset is apportioned between the part of the asset retained and the part disposed of in accordance with their respective fair market values determined at the time the person



acquired the asset,

If the acquisition of an asset by a person is the derivation of an amount included in gross income, the cost of the asset is the amount included plus any amount paid by the person for the asset.

(10) If the acquisition of asset by a person is the derivation of an amount exempt from income tax, the cost of the asset is the exempt amount plus any amount paid by the person for the asset.

(11) The cost of an asset does not include the amount of any grant, subsidy, rebate, commission, or other assistance received or receivable by a person in respect of the acquisition of the asset, except to the extent to which the amount is included in the person's gross income.

(12) The reference to "other assistance" in subsection (11) does not include a loan repayable with or without interest.

55. (1) Except as otherwise provided in this Act, this section establishes the amount of consideration received on disposal of an asset for the purposes of this Act.

(2) The consideration received by a person on disposal of an asset is the total amount received by the person for the asset, including the fair market value of any consideration received in kind determined at the time of disposal.

(3) If an asset has been lost or destroyed by a person, the consideration received for the asset includes any compensation, indemnity, or damages received by the person under —

(a) an insurance policy, indemnity, or other agreement;

(b) a settlement; or

(c) a judicial decision.

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(4) The consideration received for an asset treated as disposed of under subsection (4) of section 53 is the fair market value of the asset determined at the time it is applied to personal use.

(5) If two or more assets are disposed of by a person in a single transaction and the consideration received for each asset is not specified, the total consideration received by the person shall be apportioned among the assets disposed of in proportion to their respective fair market values determined at the time of the transaction.

56. For the purposes of this Act, if an asset is disposed of in a non-arm's length transaction, the person —

(a) disposing of the asset is treated as having received consideration equal to the fair market value of the asset determined at the time the asset is disposed of; and

(b) Acquiring the asset is treated as having a cost equal to the amount determined under paragraph (a).

57. (1) For the purposes of this Act and subject to subsection (2), no gain or loss is taken to arise on the disposal of an asset —

(a) Between spouses as part of a divorce settlement or under an agreement to live apart;

(b) By reason of the transmission of the asset to an executor or beneficiary on the death of a person;

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(C) by reason of the compulsory acquisition of the asset under any law if the consideration received for the disposal is reinvested by the recipient in an asset of a like kind (referred to as a "replacement asset") within one year of the disposal;

(d) by a company to a shareholder on liquidation of the company; or

(e) by a partnership to a partner on dissolution of the partnership if the assets are distributed to the partners in accordance with their interests in the capital of the partnership.

(2) Subsection (1) does not apply if the person acquiring the asset is a non-resident person at the time of the acquisition.

(3) If paragraph (a), (b), (d), or (e) of subsection (1) applies, the person acquiring the asset is treated as —

(a) acquiring an asset of the same character as the person disposing of the asset; and

(b) acquiring the asset for a cost equal to the cost of the asset for the person disposing of the asset at the time of the disposal.

(4) A person's cost of a replacement asset referred to in paragraph (c) of subsection (1) is the cost of the asset disposed of plus the amount by which any consideration given by the person for the replacement asset exceeds the consideration received by the person for the asset disposed of.

### **Sub-Part VI - General Rules Relating to Income and Deductions**

58. (1) For the purposes of this Act, if any property is jointly owned by two or more persons, any income or expenditure relating to the property are apportioned among the owners according to their respective interests in the property.

(2) If the interests of the owners of jointly owned property cannot be ascertained, the owners of the property are treated as having an equal interest in the property.

59• (1) Subject to this Act, expenditure relating to-

(a) the derivation of more than one class of income; or

(c) the derivation of a class of income and to some other purpose,

is apportioned on any reasonable basis taking account of the relative nature and size of the activities to which it relates.

(2) Subject to subsection (3), each of the following is treated as a "class of income"

— (a) business income included in gross income

(b) employment income included in gross income;

(C) property income included in gross income;

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(d) income exempt from income tax;

(3) If a person carries on more than one business, the business income arising from each business is treated as a separate class.

60. If a person has been allowed a deduction for any expenditure or loss incurred, or bad debt written off, in a tax year in the computation of the person's chargeable income for the year and, subsequently, the person has received, in cash or in kind, any amount as a reimbursement or recumbent of, or indemnity for the expenditure, loss, or debt, the amount received shall be—

(a) included in the gross income of the person in the tax year in which it is received; and

(b) treated as income of the same character as the income to which the deduction related.

61. If—

(a) any income is derived by a person in a tax year from any business, activity, investment, or other source that had ceased before the income was derived; and

(b) The income had been derived before the business, activity, investment, or other source ceased it would have been included in the person's gross income

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this Act applies to the income on the basis that the business, activity, investment, or other source had not ceased at the time the income was derived.

62. (1) For the purposes of this Act, if—

(a) an amount is included in gross income on the basis that it is due, the amount shall not be included again on the basis

that it is received; or

(b) an amount is included in gross income on the basis that it is received; the amount shall not be included again on the basis that it is due.

(2) For the purposes of this Act, if—

(a) expenditure is deductible under this Act on the basis that it is payable, the expenditure shall not be deductible again on the basis that it is paid; or

(c) expenditure is deductible under this Act on the basis that it is paid, the expenditure shall not be deductible again on the basis that it is payable.

(d)

## **PART IV - RULES RELATING TO PERSONS**

### **Sub-Part I — Individuals**

63. The chargeable income of each individual shall be computed separately.

### **Sub- part II –Entities**

64. (1) Income derived by the trustee of a trust is taxed either to the trustee or the beneficiary of the trust in accordance with this section.

(2) An amount derived by a trustee of a trust is treated as derived by a beneficiary of the trust (other than a beneficiary under a legal disability) if the beneficiary has a vested right to the income.

(3) A beneficiary is allowed a deduction in accordance with this Act for any expenditure incurred by the trustee in deriving income referred to in subsection (2) that is included in the gross income of the beneficiary.

(4) Income to which subsection (2) applies —

(a) retains its character and geographic source in the hands of the beneficiary and

(b) is treated as derived by the beneficiary at the time the amount was derived by the trustee.

(5) The trustee of a trust is liable for tax for a tax year on the chargeable trust income of the trust for the year.

(6) In this section, “chargeable trust income”, in relation to a tax year, means—

(a) in the case of a resident trust, the gross income of the trust for the year reduced by the sum of the following —

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(i) any part of that amount to which subsection (2) applies for the year; and

(ii) the total deductions allowed to the trust for the year under this Act, other than amounts to which subsection (3) applies; or

(b) in the case of a non-resident trust, the total amount of Gambian-source income derived by the trust for the year included in gross income reduced by the sum of the following —

(i) any part of that amount to which subsection (2) applies for the year and in respect of which the beneficiary has paid tax, and

(ii) the total deductions allowed to the trust for the year under this Act, other than amounts to which subsection (3) applies.

65. (1) A body of persons is liable to tax separately from the members of the body.

(2) A distribution of profits by a body of persons to a member shall not be included in the member's gross income.

66. (1) A partnership is liable to tax separately from the partners.

(2) A distribution of profits by a partnership to a partner is liable to tax under this Act as a dividend.

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

(2) A shareholder is liable dividend received from a accordance with this Act.

68. (1) If there is a change of fifty per cent or more in the underlying ownership of an entity, any carry forward loss incurred for a tax year before the change is not allowed as a deduction in a tax year after the change, unless the entity —

(a) carries on the same business after the change as it carried on before the change until the loss has been fully deducted; and

(b) does not, until the loss has been fully deducted, engage in any new business or investment after the change if the principal purpose of the entity or the owners of the entity is to utilise the loss so as to reduce the income tax payable on the income arising from the new business or investment.

(2) In this section —

“carry forward loss” means an interest deduction carried forward under section 41, a business loss carried forward under section 45, or a foreign business loss carried forward under section 73;

“entity” means a body of persons, a partnership, company or trust;

“ownership interest” means an interest of a member in a body of persons, an interest of a partner in a partnership, or a share in a company; and

“underlying ownership” in relation to an entity, means an ownership interest in the entity held, directly or indirectly through an interposed entity or entities, by an individual or by a person not ultimately owned by individuals.

## **PART V - RULES RELATING TO PARTICULAR INDUSTRIES**

69 (1) The chargeable income of a company carrying on a short-term insurance business shall be computed in accordance with this section.

(2) The gross income of a resident company carrying on a short term insurance business for a tax year is the sum of—

(a) the gross premiums derived by the company in the year for the insurance of any risk, including premiums on reinsurance but not including premiums returned to the insured;

(b) the gross income of the company for the year, including any commission or expense allowance derived from the reinsurance of any risk and any income derived from investments; and

(C) the amount of the company’s reserve for unexpired risks deducted in the previous tax year under paragraph (C) of subsection (3).

(3) The total deductions allowed to a resident company carrying on a short-term insurance business for a tax year is the sum of –

(a) the amount of the claims admitted by the company in the year less any amount recovered or recoverable under any contract of re-insurance, guarantee, security, or indemnity;

(b) the amount of agency expenses incurred by the company in the year;

(c) the balance of the company's reserve for unexpired risks at the percentage adopted by the company as at the end of the year; and

(d) the total amount of any other expenditure incurred by the company in the year allowable as a deduction under this Act.

(4) The gross income of a non-resident company carrying on a short-term insurance business in The Gambia for a tax year is the sum of—

(a) the gross premiums derived by the company in the year for the insurance of any risk in The Gambia, including premiums on reinsurance but excluding premiums returned to the insured;

(b) the total amount of any Gambian-source income derived by the company that is included in the gross income of the company for the year, including any commission or expense allowance derived from the reinsurance of any risk in The Gambia and any income derived from investments; and

(c) the amount of the company reserve for unexpired risks deducted in the previous tax year under paragraph (c) of subsection (5).

(5) The total deductions allowed to a non-resident company carrying on a short-term insurance business in The Gambia for a tax year is the sum of-

(a) the amount of the claims admitted by the company in the year in respect of insured risks in The Gambia less any amount recovered or recoverable under any contract of re-insurance, security, or indemnity;



(b) the amount of agency expenses incurred by the company in The Gambia in the year;

(b) the balance of the company's reserve for unexpired risks in The Gambia at the percentage adopted by the company as at the end of the year; and

(d) the total amount of any other expenditure incurred by the company in the year in deriving income included in the gross income of the company and allowable as a deduction in accordance with this Act.

(6) In this section, "short-term insurance" means any insurance other than life insurance.

## **PART VI- INTERNATIONAL**

### **Sub-Part I - Geographic Source of Income**

70. (1) An amount is foreign-source income to the extent it is not Gambian-source income as set out in this section.

(2) An employment income is Gambian-source income to the extent to which the income —

(a) is received from employment carried out in The Gambia, wherever paid; or

(b) is paid by, or on behalf of, the Government of The Gambia, wherever the employment is carried out.

(3) A business income of a resident person is Gambian-source income to the extent to which the income is derived from any business carried on in The Gambia.

(4) A business income of a non-resident person is Gambian-source income to the extent to which it is directly or indirectly attributable to —

(a) a permanent establishment of the non-resident person in The Gambia;

(b) sales in The Gambia of goods or merchandise of the same or similar kind as those sold by the person through a permanent establishment in The Gambia; or

(c) any other business activity carried on in The Gambia of the same or similar kind as that carried on by the person through a permanent establishment in the Gambia.

(5) If the business of a non-resident person comprises the rendering of independent services (including professional services and the services of entertainers and sportspersons), the Gambian-source business income of the person includes (in addition to any amounts treated as Gambian-source income under subsection (4)) any remuneration derived by the person when the remuneration is paid by a resident person or borne by a permanent establishment in The Gambia of a non-resident person.

(6) Any gain from the disposal of an asset used in deriving business income referred to in subsection (3), (4), or (5) is Gambian-source income.

(7) A dividend is Gambian-source income if it is paid by a resident company or a resident partnership.

(8) An Interest is Gambian-source income if it

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(a) paid by a resident person, except when the interest is payable in respect of any debt used for the purposes of a business carried on by the person outside The Gambia through a permanent establishment; or

(b) borne by a permanent establishment in The Gambia of a non-resident person.

(9) A royalty is Gambian-source income if it

is —

(a) paid by a resident person, except when the royalty is payable in respect of any right, property, or information used, or services utilised for the purposes of a business Gamed on by the person outside The Gambia through a permanent establishment; or

(b) borne by a permanent establishment in The Gambia of a non-resident person.

(10) A rent is Gambian-source income if it is derived from the lease of immovable property in The Gambia, or from any other interest in or over immovable property in The Gambia.

(11) A gain from the alienation of any property or right referred to in subsection (10) or from the alienation of any share in a company the assets of which consist wholly or Principally, directly or indirectly, of property or rights referred to in subsection (10) is Gambian source income.

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(12) A pension, charge, or annuity is Gambian source income if it is paid by a resident person or borne by a permanent establishment in The Gambia of a non-resident person.

(13) A technical services fee is Gambian source income if it is —

(a) paid by a resident person, except when the fee is payable in respect of services utilised in a business carried on by the person outside The Gambia through a permanent establishment; or

(b) borne by a permanent establishment in The Gambia of a non-resident person.

(14) A gain arising on the disposal of a share in a resident company or an interest in a resident partnership is Gambian-source income.

(15) A natural resource amount is Gambian source income if it relates to the taking of minerals or a living or non-living resource from land in The Gambia.

(16) An amount of any kind not mentioned in the preceding subsections is Gambian-source income if it is paid by a resident person or borne by a permanent establishment in The Gambia of a non-resident person.

(17) If an amount comes within subsection (4) and another subsection (other than subsection (16)), this section applies —

(a) by first determining whether the amount is Gambian-source income under that other subsection; and

- (c) if the amount is not Gambian-source income under that other subsection, then determining whether it is Gambian-source income under subsection (4).

## **Sub-Part II - Taxation of Foreign-source Income of a Resident Person**

### Foreign-source employment income of resident individuals

71. (1) A foreign-source employment income received by a resident individual is exempt from income tax if the individual has paid foreign income tax in respect of the income.

(2) A resident individual is treated as having paid foreign income tax in respect of foreign- source employment income if tax has been withheld from the income by the individual's employer.

72. (1) If a resident person derives foreign-source income included in gross income in respect of which the person has paid foreign income tax, the person is allowed a tax credit (referred to as a "foreign tax credit) of an amount equal to the lesser of —

(a) the foreign income tax paid; or

(b) The Gambian income tax payable in respect of the income.

(2) For the purposes of paragraph (b) of subsection (1), The Gambian income tax payable in respect of foreign-source income derived by a resident person in a tax year shall be computed by applying the average rate of The Gambian income tax applicable to the person for the year against the person's net foreign-source income for the year.

(3) The foreign tax credit of a resident person for a tax year shall be computed separately for foreign-source business income and the other foreign-source income of the person.

(4) A foreign tax credit is allowed under this section only if the foreign income tax is paid within two years after the end of the tax year in which the foreign-source income to which the tax relates was derived by the resident person.

(5) A foreign tax credit allowed under this section shall be applied in accordance with subsection (3) of section 10.

(6) Any foreign tax credit or part of a foreign tax credit allowed under this section for a tax year that is not credited under subsection (3) of section 10 shall not be refunded, carried back to the preceding tax year, or carried forward to the following tax year.

(7) In this section —

“average rate of The Gambian income tax”  
in relation to a resident person for a tax year, means the percentage that the income tax under this Act, before the allowance of any tax credit under this Act, is of the chargeable income of the person for the year;

“foreign income tax” includes a foreign withholding tax, but does not include any penalty, additional tax or interest payable in respect of an foreign income tax; and

“net foreign-source income”, in relation to a resident person for a tax year, means the total foreign-source income included in the gross income of the person for the year, as reduced by any deductions allowed to the person under this Act for the year that —

(a) relate exclusively to the derivation of the foreign-source income; and

(b) are apportioned to the derivation of foreign-source income in accordance with section 59 on the basis that foreign-source business income and other foreign-source income are separate classes of income.

73. (1) Any amount that a resident person is allowed as a deduction under this Act in deriving taxable foreign-source business income is deductible only against that income.

(2) If a resident person has a foreign business loss for a tax year, the amount of the loss shall be carried forward to the following tax year and allowed as a deduction against the person’s foreign-source business income derived in that following year.

(3) If a foreign business loss is not wholly deducted under subsection (2), the amount not deducted shall carried forward to the next following tax year and applied as specified in subsection (2) in that year, and so on, but no loss shall be carried forward for more than six tax years after the tax year in which the loss was incurred.

(4) If a person has a foreign business loss carried forward under this section for more than one tax year, the loss of the earliest tax year shall be deducted first.

(5) If a person carries on more than one foreign business, this section applies separately to each business.

(6) A person has a foreign business loss for a tax year if the total deductions allowed to the person in deriving taxable foreign-source business income for the year exceed the amount of that foreign-source business income, and the amount of the excess is the amount of the foreign business loss.

(7) Any amount that a resident person is allowed as a deduction under this Act in deriving taxable foreign-source non-business income is deductible only against that income.

(8) If the total amount of deductions referred to in subsection (7) for a tax year exceeds the person's taxable foreign-source non-business income for the year, the amount of the excess shall not be carried forward to the following tax year.

(9) In this section-

“taxable foreign-source business income”, in relation to a resident person, means foreign- source business income included in the gross income of the person; and

“taxable foreign-source non-business income”, in relation to a resident person, means foreign-source income (other than foreign-source business income) included in the gross income of the person.

### **Sub-Part III - Taxation of Non-Resident Persons**

74. (1) Subject to this section, this Act applies to a non-resident person with a permanent establishment in The Gambia on the basis that the permanent establishment is a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the non resident person of which it is a permanent establishment.

(2) The gross income of a permanent establishment in The Gambia of a non-resident person for a tax year is the total Gambian source income of the person for the year as determined under section 70.

(3) Subject to subsection (4), no deduction is allowed for amounts paid or payable by the permanent establishment to its head office or to another permanent establishment of the non resident person as –

(a) Royalties, fees, or payments for the use  
Or any intangible or intangible asset,

(b) Compensation for any services, including management service performed for the permanent; establishment; or

(C) interest on moneys lent to the permanent establishment, except in connection with a banking business.

(4) Nothing in subsection (3) prevents a deduction for an amount paid or payable by a permanent establishment as a reimbursement of actual expenses incurred by the non-resident person to third parties if the reimbursement is otherwise deductible under this Act.

(5) The total expenditures incurred by the head office of a non-resident person and allocated to a permanent establishment of the person in The Gambia for the purposes of computing the chargeable income of the person for a tax year shall not exceed one-quarter of one per cent of the worldwide total turnover of the person for that year.

(6) In this section, “total turnover”, in relation to a non-resident person for a tax year, means the gross revenue (including the gross proceeds from the disposal of any asset used in business) received or receivable by the person in the tax year.

75. The foreign-source income of a non resident person is exempt from income tax.  
Sub-Part IV - Tax Treaties

76. (1) The Secretary of State may, by an Order published in the Gazette, declare that a tax treaty has legal effect in The Gambia.

(2) An Order made under subsection (1) may be varied or revoked by the Secretary of State by a subsequent Order published in the Gazette.

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(3) Subject to subsection (4), if the terms of a tax treaty having legal effect under subsection (1) are inconsistent with the terms of this Act, the terms of the treaty shall prevail.

(4) Nothing in subsection (3) prevents the operation of Part VII of this Chapter.

(5) In this section, “tax treaty” means —

(a) an agreement between the Government of The Gambia and the government of a foreign country providing for the relief from double taxation and the prevention of fiscal evasion; or

(b) an agreement between the Government of The Gambia and the government of a foreign country providing for reciprocal administrative assistance in the enforcement of income tax liabilities.

## PART VII - ANTI-TAX AVOIDANCE

77. (1) The Commissioner-General may, in respect of any transaction between persons who are associates, distribute, apportion, or allocate income, deductions, or tax credits between the persons as is necessary to reflect the income that the persons would have realised in an arm’s length transaction..

(2) In making any adjustment under subsection (1), the Commissioner-General may determine the geographic source of income and the nature of any income, payment, or loss as revenue, capital, or otherwise.

78. (1) For the purposes of determining the liability of any person to tax under this Act, the Commissioner-General may —

(a) re-characterise a transaction or an element of a transaction that was entered into as part of a tax avoidance scheme;



(b) disregard a transaction that does not have substantial economic effect; or

(C) re-characterise a transaction if the form of the transaction does not reflect the substance.

(2) In this section, “tax avoidance scheme” means any transaction in which one of the main purposes of a person in entering into the transaction is the avoidance or reduction of a person’s liability to tax under this Act.

## **PART VIII- MINIMUM INCOME TAX**

79. (1) In addition to the income tax imposed under section 10 (referred to as the “normal income tax”), a person carrying on business is liable for minimum income tax for each tax year.

(2) The amount of minimum income tax payable by a person for a tax year is computed by applying the rate specified in subsection (3) to the person’s total turnover for the year.

(3) The rate of minimum income tax is —

(a) in the case of a person with audited accounts, two per cent, or

(b) in any other case, three per cent.

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(4) The normal income tax payable by a person for a tax year, determined without taking into account any tax credits allowed under section 101 or 103, shall be credited against the minimum income tax payable by the person for that year.

(5) If the normal income tax paid by a person for a tax year exceeds the minimum income tax payable for that year, no minimum income tax is payable for that year.

(6) Minimum income tax payable under this section shall be treated for all purposes of this Act (other than this section and paragraph (b) of subsection (5) of section 103) as income tax.

## **PART IX-INCOME TAX PROCEDURE**

### **Sub-Part I - Income Tax Returns**

80. (1) Subject to section 81, an income taxpayer shall furnish an income tax return for each tax year not later than —

(a) in the case of a company permitted to use a special tax year as the company's tax year, within three months after the end of the special tax year or,

(b) in any other case, by 31 March after the end of the tax year.

(2) An income tax return shall—

(a) be in the prescribed form;

(b) state the information required by the form;

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(c) be signed by the income taxpayer or the taxpayers representative; and

(d) be furnished in the prescribed manner.

(3) The Commissioner-General may, by notice in writing, require an income taxpayer or the taxpayers representative, as the case may be, to furnish an income tax return by the date specified in the notice for a period of less than twelve months, if -

(a) the taxpayer has died;

(b) the taxpayer has become bankrupt or gone into liquidation;

(c) the taxpayer is about to leave The Gambia permanently;

(d) the taxpayer is otherwise about to cease carrying on business in The Gambia; or

(e) the Commissioner-General otherwise considers it appropriate to require the return to be furnished.

81. An income taxpayer is not required to furnish an income tax return if the only income derived by the taxpayer is —

(a) employment income from which tax has been withheld under section 89; or

(b) income from which tax has been withheld as a final tax under section 102.

## **Sub-Part II - Income Tax Assessments**

### **Income tax assessment**

82. If an income taxpayer furnishes an income tax return, other than a revised return under subsection (2) of section 169, for a tax year —

(a) the Commissioner-General is treated as having determined the chargeable income of the taxpayer for the year and assessed the income tax due thereon, equal to those respective amounts specified in the return; and

(b) the taxpayers return is treated for all purposes of this Act as a notice of the income tax assessment served on the taxpayer by the Commissioner-General on the day the return was furnished by the taxpayer.

### **Assessment of income taxpayers who have not furnished income tax returns**

83. (1) If an income taxpayer fails to furnish an income tax return for a tax year by the due date, the Commissioner-General may, based on any available information and to the best of the Commissioner-General's judgment, determine the chargeable income of the taxpayer and make an assessment of the income tax due thereon for the year.

(2) As soon as possible after making an income tax assessment under this section, the Commissioner-General shall serve the income taxpayer with notice of the assessment stating —

(a) the chargeable income of the taxpayer for the year;

(b) the amount of income tax due;

(c) the amount of income tax paid, if any;

(d) the amount of any penalty and interest payable (if any) in respect of the income tax due; and

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

(3) The making of an income tax assessment under this section is an alternative to the application of subsection (2) of section 169.

#### Amendment of income tax assessments

84. (1) Subject to this section, the Commissioner-General may amend an income tax assessment by making such alterations or additions to the assessment as the Commissioner-General considers necessary to ensure that an income taxpayer is liable for the correct amount of income tax for the tax year to which the assessment relates.

(2) The amendment of an income tax assessment of an income taxpayer under subsection (1) may be made —

(a) in the case of fraud or wilful neglect by or on behalf of the taxpayer, at any time; or

(b) in any other case, within six years of the date the Commissioner-General served or is treated as having served notice of the assessment on the taxpayer.

(3) An income taxpayer may furnish the Commissioner-General with a revised return for a tax year either as required under subsection (2) of section 169 or on the taxpayer's own motion.

(4) A revised return furnished under subsection

(3) on the income taxpayer's own motion shall be furnished within six years of the date the Commissioner-General served or is treated as having served notice of the assessment to which the revised return relates.

(5) If an income taxpayer furnishes a revised return in accordance with subsections (3) and (4) —

(a) the Commissioner-General is treated as having made a revised determination of the chargeable income of the taxpayer and made an amended income tax assessment of the income tax payable thereon as set out in the revised return; and

(b) the taxpayer's revised return is treated for all purposes of this Act as notice of the amended income tax assessment served on the taxpayer by the Commissioner-General on the day on which the revised return was furnished by the taxpayer.

(6) If a notice of an income tax assessment (in this section referred to as the "original assessment") has been amended under subsection (1) or (5), the Commissioner-General may further amend the original assessment within the later of —

(a) six years after the Commissioner-General income tax assessment has served or is treated as having served notice of the original assessment on the income taxpayer; or

(b) one year after the Commissioner-General has served or is treated as having served notice of the amended income tax assessment on the income taxpayer.

(7) As soon as possible after making an amended assessment under subsection (1) or (6), the Commissioner-General shall serve the income taxpayer with notice of the amended income tax assessment stating —

(a) the revised chargeable income of the taxpayer;

(b) the revised amount of income tax due;

(C) the amount of income tax paid, if any;

(d) the amount of any penalty and interest payable (if any) in respect of the income tax due; and

(e) the time, place, and manner of objecting to the amended

(8) An amended income tax assessment is treated in all respects as an income tax assessment for the purposes of this Act, other than for the purposes of subsection (1).

85. (1) As soon as is reasonably practicable after expiry of the time allowed under this Act for the furnishing of income tax returns for a tax year, the Commissioner-General shall prepare a list (in this section referred to as an “assessment list”) of income taxpayers for that year.

(2) An assessment list shall state —

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(a) the taxpayer’s name and address;

(b) the amount of chargeable income of the taxpayer for the year

(c) the amount of income tax payable by the taxpayer for the year; and

(d) any other particulars as may be prescribed.

(3) If complete copies of all notices, including computerised notices, of income tax assessments and amended income tax assessments for a tax year are filed in the office of the Commissioner-General, they constitute the assessment list for that year.

(4) A reference in subsection (3) —

(a) to notices of income tax assessments includes an income tax return treated as an income tax assessment; and

(b) to notices of amended income tax assessments includes an income tax return treated as an amended income tax assessment.

#### Sub-Part III - Payment of Income Tax

86. (1) The income tax payable by an income taxpayer for a tax year is due on the due date for furnishing the taxpayers income tax return for that year.

(2) If—

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(a) a notice of an income tax assessment is served by the Commissioner- General on an income taxpayer under section 83; or a

(b) a notice of an amended income tax assessment is served by the Commissioner-General on an income taxpayer under section 84, the income tax payable under the notice is payable as specified in the notice.

(3) The application of subsection (2) does not change the original due date for payment of any income tax in respect of the income tax assessment or amended income tax assessment as determined under subsection (1).

87. (1) Before the departure of a ship owned or chartered by a non-resident person from a port in The Gambia, the master of the ship shall furnish to the Commissioner-General a return showing the gross amount specified in subsection (2) of section 12 in respect of the ship.

(2) If the master of a ship has furnished a return under subsection (1), the Commissioner- General shall determine the amount of tax due under section 12 in respect of the ship and, as soon as possible, notify the master of the ship, in writing, of the amount due.

(3) The master of a ship is liable for the tax notified under subsection (2) and the provisions of this Act shall apply to that tax as if it were tax due under an income tax assessment.

(4) If the Commissioner-General is satisfied that the master of a ship or the non-resident owner or charterer of the ship is unable to furnish the return required under subsection (1) before the departure of the ship from The Gambia, the Commissioner-General may allow the return to be furnished within thirty days of departure of the ship provided the non-resident owner or charterer has made satisfactory arrangements for the payment of the tax due under section 12 in respect of the ship.

(5) The Commissioner-General or other authorised officer shall not grant a port clearance for a ship owned or chartered by a non-resident person until satisfied that any tax due under section 12 in respect of the ship has been paid or that arrangements for its payment have been made to the satisfaction of the Commissioner-General.

(6) This section does not relieve the non-resident owner or charterer of the ship from liability to pay any tax due under this section that is not paid by the master of the ship.

88. (1) A non-resident owner or charterer of an aircraft liable for tax under section 12, or an agent authorised by the non-resident person for the purposes of this section, shall furnish to the Commissioner-General, for each quarter of the financial year, a return stating the gross amount specified in subsection (2) of section 12 for the quarter and the tax due on the amount.

(2) A return under subsection (1) shall be in the prescribed form and furnished within fifteen days after the end of the quarter.

(3) The tax payable by the non-resident person under section 12 shall be collected quarterly and is due on the due date for furnishing the return for each quarter

(4) If the tax referred to in subsection (3) is not paid within three months of the due date, the Commissioner-General may issue to the airport authority a certificate specifying the name of the non-resident person and the amount of tax due.

(5) The airport authority shall, on receiving a certificate under subsection (4), refuse clearance from any airport in The Gambia to any aircraft owned or chartered by the non-resident person until the tax due has been paid.

#### **Sub-Part IV - Withholding Tax**

89. (1) Subject to subsection (4), an employer shall withhold tax from a payment of employment income to an employee as prescribed.

(2) The obligation of an employer to withhold tax under subsection (1)—

(a) is not reduced or extinguished because the employer has a right, or is otherwise obliged, to withhold any other amount from a payment of employment income; and

(b) applies notwithstanding any law that provides that the employment income of an employee is not to be reduced or subject to attachment.

(3) A person who retains the services of a contractor or subcontractor to carry out work, or supply labour or materials for carrying out the work shall withhold tax at the rate of ten per cent of gross fees or other payments made to the contractor or subcontractor in respect of the services.

(4) This section does not apply to employment income that is exempt from income tax.

90. (1) Subject to subsection (2), a resident company or a resident partnership paying a dividend to a resident individual shall withhold tax from the gross amount of the dividend at the rate of fifteen per cent.

(2) This section does not apply to a dividend exempt from income tax.

91. (1) Subject to subsection (2) —

(a) a resident company or resident partnership; or

(b) a permanent establishment in The Gambia of a non-resident company or non-resident partnership,

paying interest to a resident person shall withhold tax from the gross amount of the interest at the rate of fifteen per cent.

(2) This section does not apply to —

(a) interest paid to a financial institution; or

(b) interest exempt from income tax.



92. A person paying a dividend, interest, royalty, or technical services fee to a non resident person that is liable for tax under section 11 shall withhold tax from the gross amount paid at the rate of fifteen per cent.

93. A person required to withhold tax under this Sub-Part from an amount paid by the person shall withhold the tax at the earlier of —

(a) the time the amount is credited to the account of the recipient; or

(b) the time the amount is actually paid.

94. Tax required to be withheld by a person under this Sub-Part shall be paid to the Commissioner-General within fifteen days after the end of the month in which the person was required to withhold the tax.

(a) fails to withhold tax as required under this Sub-Part; or

(b) having withheld tax fails to pay the tax to the Commissioner-General as required under section 94,

the person is personally liable to pay to the Commissioner-General the amount of tax.

(2) A person to whom subsection (1) applies may also be liable for interest under section 202 and penalty under section 204 in respect of the failure referred to in that subsection.

(3) A person personally liable for an amount of tax under subsection (1) as a result of failing to withhold the tax is entitled to recover the tax from the recipient of the payment.

96. (1) If a person fails to withhold tax as required under this Sub-Part, the Commissioner- General may recover the tax from —

(a) the person required to withhold the tax; or

(b) the recipient of the payment.

(2) The recovery of tax under paragraph (b) of subsection (1) does not absolve the person who failed to withhold the tax from —

(a) any other legal action in relation to the failure;

(b) the imposition of late payment interest and penalty for the failure; and

(C) the disallowance of a deduction for the expenditure to which the failure relates under subsection (2) of section 35.

97. (1) A person withholding tax under this Sub-Part shall furnish to the recipient of the payment a tax-withholding certificate as may be person bed.

(2) A person required to furnish an income tax return for a tax year shall attach to the return any tax-withholding certificate as may be prescribed.

98. (1) A person withholding tax under this Sub Part shall, within two months after the end of the tax year or within such further time as the Commissioner-General may allow by notice in writing, furnish to the Commissioner-General a statement in the prescribed form setting out —

(a) the name and address of each person to whom a payment has been made in the tax year from which tax has been withheld;

(b) the total amount of payments made to a person from which tax has been withheld under this Sub-Part in the year;

(C) the total amount of tax withheld from payments made to a person under this Sub-Part in the year, and

(d) any other particulars as may be prescribed.

(2) In addition to the annual statement required to be furnished under subsection (1), a person withholding tax may be required to furnish statements on a monthly, quarterly, or six monthly bases as may be prescribed.

99. (1) Tax withheld from a payment under this Sub-Part —

(a) is held by the person in trust for the Government of The Gambia; and

(b) is not subject to attachment in respect of any debt or liability of the person.

(2) In the event of the liquidation or bankruptcy of a person who has withheld tax under this Sub-Part, any amount withheld shall not form part of the estate of the person in liquidation or bankruptcy and the Commissioner-General has first claim for that amount before any distribution of property is made.

(3) An amount that a person is required to withhold from a payment under this Sub-Part is —

(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.

100. A person who has withheld tax from a payment under this Sub-Part and remitted the tax to the Commissioner-General is indemnified against any claim by the recipient for payment of the amount withheld.

101. (1) For the purposes of this Act, if tax has been withheld under this Sub-Part from income derived by a person, the amount of income included in the gross income of that person is the amount derived before the withholding of the tax.

(2) Subject to subsections (3) and (4), if tax has been withheld under this Sub-Part from income derived by a person, the person is allowed a tax credit for that tax against the tax due by the person on the chargeable income of the person for the tax year in which the tax was withheld.

(3) No tax credit is allowed for —

(a) any tax withheld under section 90 or 92; or

(b) any tax withheld under section 91, if the recipient of the interest is a resident individual.

(4) A tax credit allowed under this section shall be applied in accordance with subsection (3) of section 10.

(5) A tax credit or part of a tax credit allowed under this section for a tax year that cannot be credited under subsection (3) of section 10 for the year shall be treated as overpaid tax and dealt with in accordance with subsection (3) of section 197.

102. (1) This section applies to —

(a) tax withheld under section 90; and

(b) tax withheld under section 91, if the recipient of the interest is a resident individual.

(2) If this section applies, the tax withheld is a final tax on the income in respect of which the tax has been withheld and-

(a) the income shall not be included in gross income in computing the chargeable income of the person who derives it for any tax year;

(b) no deduction shall be allowable under this Act for any expenditure incurred in deriving the income;

(c) the income shall not be reduced by any loss;

(d) the tax withheld shall not be reduced by any tax credits allowed under this Act; and

(e) the tax withheld shall not be refunded.

#### **Sub-Part V- Instalment Payments of Income Tax**

103. (1) An income taxpayer shall pay instalments of income tax for a tax year.

(2) Instalments are payable for the three- month period ending on last day of the third, sixth, ninth, and twelfth months of the income taxpayers tax year.

(3) The amount of each instalment shall —

(a) in the case of a company with audited accounts, be two per cent of the company's total turnover for the period; or

(b) in any other case, it is three per cent of the taxpayer's total turnover for the period.

(4) The instalments of income tax are due on the 15th day after the end of the period to which they relate.

(5) The instalments of income tax paid by an income taxpayer in a tax year shall be credited against the taxpayers income tax liability for that year, and-

(a) any excess shall be credited against the taxpayers minimum income tax liability for that year; and

(b) any further excess shall be treated as overpaid tax and dealt with in accordance with subsection (3) of section 197.

### **CHAPTER III- CAPITAL GAINS TAX**

#### **PART I – PRELIMINARY**

. (1) In this Chapter, capital asset" means — Chapter III

(a) in the case of a resident person —

(i) any land, building, or other structural improvement to land,

(ii) any plant, machinery, fixture or equipment,

(iii) any share, security, or other financial asset,

(iv) Any interest in a partnership, or

(v) any right, title, or interest in an asset referred to in sub-paragraph (i), (ii), (iii) or (iv); or

(b) In the case of a non-resident person —

(i) Any land in The Gambia, or any building or other structural improvement to land located in The Gambia,

- (ii) any plant, machinery, fixture or equipment located in The Gambia,
- (iii) any share, security, or other financial asset issued by a resident or non-resident person in The Gambia,
- (iv) any interest in a resident partnership, or
- (v) any right, title, or interest in an asset referred to in sub-paragraph (i), (ii), (iii) or (iv),

but does not include a depreciable asset or stock –in -trade

(2) Sub-Part V of Part III of Chapter II applies for the purposes of this Chapter in determining when a capital asset has been disposed of, the cost of the asset, and the consideration received on the disposal.

#### **PART II— IMPOSITION OF CAPITAL GAINS TAX**

- . (1) Subject to this Act, capital gains tax is imposed on a person who has disposed of a capital asset.
- (2) The capital gains tax payable by a person on the disposal of a capital asset is —
  - (a) in the case of an individual, body of persons, or trustee of a deceased estate if the disposal is in the first two years of administration of the estate,
    - . the greater of—

- (I) fifteen per cent of the capital gain arising on percentage of the disposal, or
- (II) five per cent of the consideration received on the disposal; or
- (b) in the case of a partnership, company, or trustee (other than a trustee to whom paragraph (a) applies), the greater of —
  - (i) twenty-five per cent of the capital gain arising on the disposal, or

(ii) ten per cent of the consideration received for the disposal.

(3) No capital gains tax is payable on the disposal of a capital asset if the capital gain arising on the disposal is exempt from capital gains tax.

106. (1) The capital gain arising on disposal of a capital asset is the excess of the consideration received on the disposal over the cost of the asset at the time of the disposal.

(2) The capital gain arising on disposal of a capital asset shall not be reduced by any capital loss arising on disposal of another capital asset.

107. (1) The following capital gains are exempt from capital gains tax —

(a) a capital gain on disposal of a capital asset by any person, if the amount of the gain does not exceed seven thousand five hundred dalasis;

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(b) a capital gain derived by a local authority, district authority, Government institution, or charitable organisation;

(C) a capital gain on disposal of a private residence to the extent provided for in section 108; and

(d) a capital gain on disposal of agricultural land to the extent provided for in section 109.

(2) If the Commissioner-General is satisfied that a capital asset has been disposed of in two or more parts for the purpose of taking advantage of paragraph (a) of subsection (1), any capital gain arising from the disposals is exempt under that paragraph only if the total gain from the disposal of all parts does not exceed seven thousand five hundred dalasis.

108. (1) This section applies to a disposal of a building by a person if —

(a) in the two years immediately preceding the disposal, the building was used by the person or a parent of the person mainly as a private residence; and

(b) the person has —

(i) within one year after the disposal, purchased a new private residence for his or her use, or

- (ii) within two years after the disposal, constructed a private residence for his or her use.

(2) If this section applies and the capital gain on the disposal is equal to or less than the cost of the new private residence, the capital gain is exempt from capital gains tax.

(3) If this section applies and the capital gain on the disposal exceeds the cost of the new private residence, the amount of the excess is subject to capital gains tax at the time the new private residence is purchased or constructed.

109. (1) This section applies to a disposal of land by a person if—

(a) in the two years immediately preceding the disposal, the land was used by the person or a parent of the person for agricultural purposes; and

(b) the person has within two years after the disposal, purchased new land for agricultural purposes.

(2) If this section applies and the capital gain on the disposal is equal to or less than the cost of the new agricultural land, the capital gain is exempt from capital gains tax.

(3) If this section applies and the capital gain on the disposal exceeds the cost of the new agricultural land, the amount of the excess is subject to capital gains tax at the time the new agricultural land is purchased.

110. (1) If a resident person has a foreign capital gain on which foreign tax has been paid, the person is allowed a tax credit of an amount equal to—

(a) the foreign tax paid; or

(b) The Gambian capital gains tax payable in respect of the capital gain.

(2) A tax credit allowed under subsection (1) reduces the amount of tax payable in respect of the capital gain as computed under section 105.

(3) In this section –



“foreign capital gain” means a capital gain on the following capital assets —

(a) any land located outside The Gambia, or any building or other structural improvement to land located outside The Gambia;

(b) any share, security, or other financial asset issued by a non-resident person;

(C) any interest in a non-resident partnership; or

(c) any right, title, or interest in an asset referred to in paragraph (a), (b), or (C);  
and

### **PART III — CAPITAL GAINS TAX PROCEDURE**

111. (1) A capital gains taxpayer shall furnish a capital gains tax return within fifteen days after the disposal of a capital asset.

(2) A capital gains tax return shall —

(a) be in the prescribed form;

(b) state the information required by the form;

(C) be signed by the capital gains taxpayer or the taxpayer’s representative; and

(d) be furnished in the prescribed manner.

112. (1) If a capital gains taxpayer furnishes a capital gains tax return, other than a revised return under subsection (2) of section 169, in respect of the disposal of a capital asset —

(a) the Commissioner-General is treated as having determined the amount of the consideration received and capital gain on the disposal, and assessed the capital gains tax due thereon, equal to those respective amounts specified in the return; and

(b) the taxpayer’s return is treated for all purposes of this Act to be a notice of a capital gains tax assessment served on the taxpayer by the Commissioner-General on the day the return was furnished by the taxpayer.

(2) If a capital gains taxpayer fails to furnish a capital gains tax return in respect of the disposal of a capital asset by the due date, the Commissioner-General may, based on any available information and to the best of the Commissioner-General's judgment, determine the consideration received and capital gain on disposal, and make an assessment of the capital gains tax due on the capital gain.

(3) As soon as possible after making a capital gains tax assessment under subsection (2), the Commissioner-General shall serve the capital gains taxpayer with notice of the assessment stating —

(a) the cost of the asset, the consideration received, and the capital gain on disposal;

(b) the amount of capital gains tax due on the disposal;

(c) the amount of any penalty and interest payable, if any, in respect of the capital gains tax due; and

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

(4) The making of a capital gains tax assessment under subsection (2) is an alternative to the application of subsection (1) of section 169.

(5) Section 84 applies, with the necessary changes made, for the purposes of amending a capital gains tax assessment.

113. The capital gains tax payable by a capital gains taxpayer on the disposal of a capital asset is due on the due date for furnishing the taxpayer's capital gains tax return in respect of the disposal.

114. (1) The Registrar-General shall not register an instrument relating to the transfer of a capital asset under the Lands (Registration of Deeds) Act, unless the transferor or transferee has furnished the Registrar-General with a certificate from

the Commissioner-General stating that the capital gains tax due on the transfer has been paid or satisfactory arrangements for payment of the tax have been made.

(2) This section applies notwithstanding anything contained in any other law for the time being in force.

## **CHAPTER IV - RESIDENTIAL RENT TAX**

### **PART I - PRELIMINARY**

115. In this Chapter, “residential property” means any property occupied as a private residence, but does not include a hotel, inn, guest house, or boarding house.

### **PART II— IMPOSITION OF RESIDENTIAL RENT TAX**

116. (1) Subject to this Act, residential rent tax is imposed for each tax year on a person who has a taxable rental amount for the year.

(2) The tax imposed under subsection (1) on a person for a tax year is ten per cent of the person’s taxable rental amount for the year.

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117. The taxable rental amount of a person for a tax year is the total rent received by the person in the year from the lease of residential property in The Gambia.

118. The tax imposed under section 116 is a final tax on the rent in respect of which the tax is imposed and -

(a) the rent shall not be included in gross income in computing the chargeable income of the person who receives it for any tax year

(b) no deduction is allowable under this Act for any expenditure incurred in deriving the rent;

(C) the amount of the rent is not reduced by any loss; and

(d) the residential rent tax payable by a person under section 116 is not reduced by any tax credits allowed under this Act.

### **PART III — RESIDENTIAL RENT TAX PROCEDURE**

119. (1) A residential rent taxpayer shall furnish a residential rent tax return for each tax year within three months after the end of the year.

(2) A residential rent tax return shall —

(a) be in the prescribed form;

(b) state the information required by the form;

(c) be signed by the residential rent taxpayer or the taxpayer's representative; and

(d) be furnished in the prescribed manner.

120. (1) If a residential rent taxpayer furnishes a residential rent tax return for a tax year, other than a revised return under subsection (2) of section 169 —

(a) the Commissioner-General is treated as having determined the taxpayer's taxable rental amount for the year and assessed the residential rent tax due on the rental amount, equal to those respective amounts specified in the return; and

(b) the taxpayer's return is treated for all purposes of this Act to be a notice of a residential rent tax assessment served on the taxpayer by the Commissioner-General on the day the return was furnished by the taxpayer.

Residential rent tax assessments

(2) If a residential rent taxpayer fails to furnish a residential rent tax return for a tax year by the due date, the Commissioner-General may, based on any available information and to the best of the Commissioner-General's judgment, determine the taxpayer's taxable rental amount for the year and make an assessment of the residential rent tax due on the rental amount.

(3) As soon as possible after making a residential rent tax assessment under subsection (2), the Commissioner-General shall serve the residential rent taxpayer with notice of the assessment stating —

(a) the taxable rental amount for the year

- (b) the amount of residential rent tax due for the year
  - (C) the amount of residential rent tax paid, if any, for the year;
  - (d) the amount of any penalty and interest payable, if any, in respect of the residential rent tax due; and
  - (e) the time, place, and manner of objecting to the assessment.
- (4) The making of a residential rent tax assessment under subsection (2) is an alternative to the application of subsection (1) of section 169.
- (5) Section 84 applies, with the necessary changes made, for the purposes of amending a residential rent tax assessment

121. The residential rent tax payable by a residential rent taxpayer for a tax year is due on the due date for furnishing the taxpayer's residential rent tax return for the year.

122. (1) A residential rent taxpayer shall pay instalments of residential rent tax for a tax year.

(2) Instalments of residential rent tax are payable for the three-month period ending on 31 March, 30th June, 30th September, and 31 December.

(3) The amount of each instalment is ten per cent of the total rent received by the taxpayer for the period.

(4) Instalments of residential rent tax are due on the 15<sup>th</sup> day after the end of the period to which they relate.

(5) Instalments of residential rent tax paid by a residential rent taxpayer in a tax year are credited against the taxpayer's residential rent tax liability for that year.

## **CHAPTER V - FRINGE BENEFITS TAX**

### **PART I - PRELIMINARY**

“debt waiver fringe benefit” has the meaning given to it in subsection (1) of section 131;

“employee” includes an associate of an employee;

“employer includes an associate of an employer;

“entertainment fringe benefit” has the meaning given to it in subsection (1) of section 135;

“fringe benefit” means a housing fringe benefit, motor vehicle fringe benefit, household personnel fringe benefit, loan fringe benefit, debt waiver fringe benefit, property fringe benefit, medical fringe benefit, life insurance fringe benefit, entertainment fringe benefit, and residual fringe benefit;

“household personnel fringe benefit” has the meaning given to it in subsection (1) of section 129;

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“housing fringe benefit” has the meaning given to it in subsection (1) of section 127;

“life insurance fringe benefit” has the meaning given to it in subsection (1) of section 134;

“loan fringe benefit” has the meaning given to it in subsection (1) of section 130;

“medical fringe benefit” has the meaning given to it in subsection (1) of section 133;

“motor vehicle fringe benefit” has the meaning given to it in subsection (1) of section 128;

“property fringe benefit” has the meaning given to it in subsection (1) of section 132;

“residual fringe benefit” has the meaning given to it in subsection (1) of section 136; and

“taxable fringe benefits amount” has the meaning given to it in section 125.

(2) For the purposes of this Chapter, the fair market value of a fringe benefit is determined without regard to any restriction on transfer of the benefit or the fact that the benefit is not otherwise convertible to cash.

## **PART II—IMPOSITION OF FRINGE BENEFITS**

124. (1) Subject to this Act, fringe benefits tax is imposed for each tax year on every employer who has a taxable fringe benefit amount for the year.

(2) The tax imposed under subsection (1) on an employer is thirty-five per cent of the employer's taxable fringe benefit amounts for the year.

(3) The fringe benefits tax paid by an employer in a tax year is allowed as a deduction in computing the chargeable income of the employer for the tax year.

125. The taxable fringe benefits amount of an employer for a tax year is computed in accordance with the following formula -

where -

A is the total value of fringe benefits provided by the employer to employees in the tax year, other than exempt benefits; and

R is the rate of tax specified in subsection (2) of section 124.

126. The following benefits are exempt benefits- benefits

(a) a fringe benefit provided to an employee in respect of employment, if the employment income arising from the employment is exempt from income tax;

(b) a fringe benefit provided by the Government of The Gambia to an employee; or

(C) a pension contribution that is exempt from income tax.

(1) Accommodation or housing provided by an employer to an employee is a housing fringe benefit.

(2) The value of a housing fringe benefit provided to an employee for a tax year is

—  
(a) if the employer or an associate owns the accommodation or housing, the fair market rent of the accommodation or housing for the period the benefit is provided in the year; or

(b) in any other case, the total rent paid by the employer in the year for the accommodation or housing,

reduced by any payment made by the employee in the year for the benefit.

128 (1) A motor vehicle provided by an fringe benefit employer to an employee wholly or partly for the private use of the employee is a motor vehicle fringe benefit.

(2) The value of a motor vehicle fringe benefit provided to an employee for a tax year is computed according to the following formula —

where —

$(25\% \times A \times B \div C) - D$

A is the cost to the employer of acquiring the motor vehicle or, if the vehicle is leased by the employer, the fair market value of the vehicle at the commencement of the lease;

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B is the number of days in the tax year on which the motor vehicle was used or available for use for private purposes during all or a portion of the day;

C is the number of days in the tax year;

D is any payment made by the employee in the year for the use of the motor vehicle or its running costs.

129. (1) The services of a housekeeper, driver, gardener, security guard, or other household personnel provided by an employer to an employee is a household personnel fringe benefit

(2) The value of a household personnel fringe benefit provided to an employee for a tax year is the total employment income paid by the employer in the year for the services rendered to the employee, reduced by any payment made by the employee for the benefit.

130. (1) A loan provided by an employer to an employee is a loan fringe benefit.

(2) The value of a loan fringe benefit provided to an employee for a tax year is computed according to the following formula —

where —

A-B

A is the interest, if any, paid by the employee on the loan for the year; and



B is the interest that would have been paid by the employee on the loan for the year if the loan had been made at the benchmark rate.

(3) For the purposes of this Act (other than subsection (2)), if the employee uses a loan referred to in this section wholly or partly for the acquisition of property producing gross income, the employee is treated as having paid an amount as interest equal to the benchmark rate on the loan or that part of the loan used to acquire the property.

(4) In this section, “benchmark rate” means the Central Bank of The Gambia rediscount rate as at the later of —

(a) the first day of the tax year; or

(b) the date the loan is provided to the employee.

131. (1). The waiver by an employer of the obligation of an employee to pay or repay an amount owing to the employer is a debt waiver fringe benefit.

(2)The value of a debt waiver fringe benefit provided to an employee for a tax year is the amount of the debt waived.

132. (1) The transfer of property or provision of services by an employer to an employee is a property fringe benefit.  
Property fringe benefit

(2) The value of a property fringe benefit provided to an employee for a tax year is the fair market value of the property or services determined at the time the property is transferred or the services are provided, reduced by any payment made by the employee in the year for the property or services.

(3) In this section, “services include the use of property and the making available of any facility, such as a childcare or recreational facility.

133. (1) The payment by an employer of an employee’s medical expenses is a medical fringe benefit.

(2) The value of a medical fringe benefit provided to an employee for a tax year is the total amount of medical expenses paid by the employer in the year.

(3) In this section, “medical expenses” includes a premium or other amount paid for medical insurance.

134. (1) The payment by an employer of a life insurance premium on the life of an employee is a life insurance fringe benefit except where the policy is exclusively for the benefit of the employer.

(2) The value of a life insurance fringe benefit provided to an employee for a tax year is the total premiums paid by the employer in the year.

135. (1) A meal, refreshment, or any other entertainment provided by an employer to an employee is an entertainment fringe benefit

(2) The value of an entertainment fringe benefit provided to an employee for a tax year is the total cost to the employer of providing the meal, refreshment, or other entertainment in the year.

136. (1) Any benefit provided by an employer to an employee not covered by sections 127 through 135 is a residual fringe benefit

(2) The value of a residual fringe benefit provided to an employee for a tax year is the fair market value of the benefit determined at the time it is provided, reduced by any payment made by the employee for the benefit

### **PART III — FRINGE BENEFITS TAX PROCEDURE**

137. (1) A fringe benefits taxpayer shall furnish a fringe benefits tax return for each tax year within three months after the end of the year.

(2) A fringe benefits tax return must —

- (a) be in the prescribed form
- (b) state the information required by the form;
- (C) be signed by the fringe benefits taxpayer or the taxpayer's representative; and
- (d) be furnished in the prescribed manner.

138. (1) If a fringe benefits taxpayer furnishes a fringe benefits tax return for a tax year (other than a revised return under subsection (2) of section 169)—

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(a) the Commissioner-General is treated as having determined the taxpayer's taxable fringe benefits amount for the year and assessed the fringe benefits tax due on the fringe benefits amount, equal to those respective amounts specified in the return; and

(b) the taxpayer's return is treated for all purposes of this Act to be a notice of a fringe benefits tax assessment served on the taxpayer by the Commissioner-General on the day the return was furnished by the taxpayer.

(2) if a fringe benefits taxpayer fails to furnish a fringe benefits tax return for a tax year by the due date, the Commissioner-General may, based on any available information and to the best of the Commissioner-General's judgment, determine the taxpayer's taxable fringe benefits amount for the year and make an assessment of the fringe benefits tax due on the fringe benefits amount.

(3) As soon as possible after making a fringe benefits tax assessment under subsection (2), the Commissioner-General shall serve the fringe benefits taxpayer with notice of the assessment stating —

(a) the taxable fringe benefits amount for the year;

(c) the amount of fringe benefits tax due for the year;

- (c) the amount of fringe benefits tax paid, if any, for the year,
  - (d) the amount of any penalty and interest payable, if any, in respect of the fringe benefits tax due; and
  - (e) the time, place, and manner of objecting to the assessment.
- (4) The making of a fringe benefits tax assessment under subsection (2) is an alternative to the application of subsection (1) of section 169.
- (5) Section 84 applies, with the necessary changes made, for the purposes of amending a fringe benefits tax assessment.

139. The fringe benefits tax payable by a fringe benefits taxpayer for a tax year is due on the due date for furnishing the taxpayer's fringe benefits tax return for the year.

140. (1) A fringe benefits taxpayer shall pay instalments of fringe benefits tax for a tax year.

(2) Instalments of fringe benefits tax are payable for the three-month period ending on 31 March, 30th June, 30th September, and 31 December.

(3) The amount of each instalment is computed by applying the rate of tax in subsection (2) of section 124 to the taxable fringe benefits amount for the period.

- (4) Instalments of fringe benefits tax are due on the 15th day after the end of the period to which they relate.
- (5) Instalments of fringe benefits tax paid by a fringe benefits taxpayer in a tax year are credited against the taxpayer's fringe benefits tax liability for that year.

## **CHAPTER VI- SALES TAX**

### **PART I - PRELIMINARY**

"consideration", in relation to a supply of goods or services, means the total of the following amounts —

- (a) the amount, in money or kind, paid or payable by any person, directly or indirectly, for the supply, reduced by any price discounts or rebates allowed and accounted for at the time of the supply; and
- (b) any duty, levy, fee, and charge (other than sales tax imposed under this Chapter) paid or payable on, or by reason of the supply;

“goods” means any tangible movable property, other than money;

“import” has the meaning given to it in section 146;

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“importer, in relation to an import of goods, means any person who owns, possesses or has a beneficial interest in the goods at the time of the import;

“manufacture” means the subjection of any physical matter to any process which materially changes it in substance, character, or appearance, and includes assembling, printing, blending, mixing, cutting to size, diluting, bottling, packaging or repackaging of goods, or applying a coating or finishing to goods;

“manufacturer means any person engaged in manufacture;

“money” means any currency issued by the Central Bank of The Gambia as legal tender in The Gambia, but does not include any coins or paper currency that is a collector’s piece or is otherwise of numismatic interest;

“registered manufacturer” means a registered person who is a manufacturer;

“registered person” means a person who is registered or required to be registered under this Chapter

“sales tax period” means the calendar month;

“supply”, in relation to goods or services, has the meaning given to it in section 143;

“taxable import” has the meaning given to it in section 151;

“taxable services” means –

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(a) telecommunications services;

- (b) insurance services;
- (C) air transport services;
- (d) shipping agency services;
- (e) the provision of board, lodging, meals, beverages, or any other facility supplied in carrying on the business of a hotel operator;
- (f) the provision of meals, beverages, or any other facility supplied in carrying on the business of restaurant, bar, or night club operator;
- (g) services provided by a tourist enterprise licensed under The Gambia Tourism Authority Act, 2001;
- (h) services provided by casinos and gaming houses;
- (i) services provided by builders, lawyers, accountants, laundry and dry cleaners, surveyors, engineers, architects, and hairdressers;
- (j) video hire;
- (k) printing and publishing of commercial newspapers;
- (I) newspaper advertising; and
- (m) Recording studio services

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“taxable supply”, in relation to goods or services, has the meaning given to it in section 149; and

“telecommunication services” means —

- (a) services relating to the transmission, emission, or reception of signals, writing, images, sounds, or information of any kind by wire, radio, optical, or other electromagnetic systems;
- (b) the transfer or assignment of the right to use capacity for any transmission, emission, or reception referred to in paragraph (a); or
- (C) the provision of access to global information networks.

## **PART II- IMPOSITION OF SALES TAX**

142. (1) Sales tax is imposed on —

- (a) a taxable supply of goods;
- (b) a taxable supply of services; and
- (c) a taxable import.

(2) The amount of sales tax payable in respect of a taxable supply of goods or services, or taxable import is computed by applying the rate specified in subsection (3) to the value of the taxable supply or taxable import.

(3) The rate of sales tax is —

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(a) in the case of a taxable supply of goods if the goods are treated as exported under section 148, zero per cent;

(b) in the case of a taxable supply of telecommunications services, eighteen per cent;

(C) in the case of manufacturing and shipping agency services, fifteen per cent,

(d) in the case of imported construction materials, fifteen per cent; and

(e) in any other case, ten per cent.

(4) The sales tax payable —

(a) on a taxable supply of goods or services, is to be accounted for to the Commissioner-General by the registered person making the supply; or

(b) on taxable import, is payable by the importer.

(5) Notwithstanding anything contained in any law, the sales tax payable by a registered person under paragraph (a) of subsection (4) is recoverable from the recipient of the supply.

(6) Notwithstanding anything contained in this section, sales tax shall not be payable on the goods listed in the Fourth Schedule.

### **PART III - SUPPLIES, IMPORTS AND EXPORTS**

143. (1) The following is a supply of goods —

- (a) a sale, exchange, or other transfer of the right to dispose of goods as owner;
  - (b) an application of goods to a non-business use; or
  - (c) a lease or hire of goods.
- (2) The performance of services is a supply of services.
- (3) A supply of goods incidental to the supply of services is treated as part of the supply of services.
- (4) A supply of services incidental to the supply of goods is treated as part of the supply of goods.
- (5) Subject to subsections (3) and (4), if a supply is a supply of goods and services, the Commissioner-General may determine on any reasonable basis the extent to which the supply is to be treated as a supply of services or goods.

144. (1) Subject to this section, a supply of goods or services occurs on the earlier of —

- (a) the date on which the invoice for the supply is issued; or
  - (b) the date on which payment (including part payment) for the supply is made.
- (2) A supply of goods by way of an application of the goods to a non-business use occurs on the date the goods are first applied to such use.

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- (3) A supply of goods under a financial lease occurs on the date of commencement of the lease.
- (4) If—
- (a) goods are supplied under a lease (other than a financial lease); or
  - (b) services are supplied under an agreement or law that provides for periodic payments,

the goods or services shall be treated as successively supplied for successive parts of the period of the agreement or as determined by law, and each successive supply



occurs on the earlier of the date on which the payment for the supply is due or received.

145. (1) A supply of goods occurs at the place where the goods are delivered or made available by the supplier or, if the delivery or making available involves transportation, the place where the goods are when the transportation commences.

(2) A supply of services occurs at the place where the services are performed.

146. (1) An import of goods is the bringing of the goods into The Gambia from a foreign country.

(2) A supply of services incidental to an import of goods is treated as part of the import of the goods, including packaging, insurance, transportation, warranty costs, or services giving rise to commission.

147. An import occurs —

(a) if the goods are entered under the customs laws or excise laws for home consumption, on the date on which the goods are so entered; or

(b) in any other case, on the date the goods are brought into The Gambia.

148. (1) Subject to subsection (2), goods are treated as having been exported if—

(a) the goods have been delivered to, or made available at, an address outside The Gambia for use or consumption outside The Gambia as evidenced by such documentary proof as prescribed; or

(b) the goods have been supplied to a designated duty free sales outlet and the goods have been taken outside The Gambia by the purchaser from the outlet for use or consumption outside The Gambia.

(2) No goods shall be treated as having been exported from The Gambia, unless the goods have been exported in accordance with the provisions of the customs laws or excise laws.

#### **PART IV - TAXABLE SUPPLIES AND TAXABLE IMPORTS**

149. (1) A taxable supply of goods is a supply of goods, other than an exempt supply of goods, in The Gambia by a registered person in connection with the carrying on of a business.

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(2) A taxable supply of services is a supply of taxable services in The Gambia by a registered person in connection with the carrying on of a business

.(3) A supply of goods or services is made by a registered person in connection with the carrying on of a business if the supply is made as part of, or incidental to, any independent economic activity of the person, whatever the purpose or results of that activity.

150. Any of the following the supplies is an exempt supply of goods—

(a) a supply of food or drink for human consumption, including sweetening agents, seasonings, and other ingredients to be mixed with or used in the preparation of food or drink, but does not include —

(i) imported food or drink,

(ii) alcoholic beverages and non-alcoholic malt beverages,

(iii) carbonated beverages and goods for use in the preparation of carbonated beverages, or

(iv) candies and other confectionery, including chewing gum, chocolate, popcorn, or fruits, seeds or nuts coated or treated with candy, chocolate, honey, molasses, sugar, syrup, or artificial sweeteners; and

(b) a supply of books and equipment to an educational institution for the institutions own use and not for resale.

Taxable imports 151. A taxable import is any import of goods that is not an exempt import.

152. An import of goods referred to in section 150 is an exempt import.

## **PART V - VALUE OF SUPPLIES AND TAXABLE IMPORTS**

153. (1) Subject to this section, the value of a supply of goods or services is the consideration for the supply.

(2) The value of a supply of goods being the application of goods to a non-business use is the consideration paid or payable on acquisition of the goods.

(3) The value of a supply of goods under a financial lease is the amount determined under subsection (3) of section 52.

(4) The value of a supply of goods or services made by a registered person to an associate for no consideration or for a consideration that is less than the fair market value of the supply is the fair market value of the supply at the time of the supply.

(5) Except as provided in subsection (2) or (4), the value of a supply of goods or services for no consideration is zero.

(6) If a taxable supply of goods or services is made without a separate amount of the price being identified as sales tax, the value of the supply is the price reduced by an amount equal to the price multiplied by the tax fraction.

(7) In this section, “tax fraction”, in relation to a taxable supply of goods or services, means the fraction calculated in accordance with the following formula —

$$\frac{r}{1 + r}$$

where r is the rate of sales tax applicable to the supply as determined under subsection (3) of section 142.

154. (1) This section applies if—

(a) a taxable supply of goods or services is cancelled;

(b) the nature of a taxable supply of goods or services is fundamentally varied or altered;

- (c) the consideration for a taxable supply of goods or services is altered; or
- (d) the goods (or part of the goods) that are the subject of a taxable supply are returned to the supplier.

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(2) If this section applies and the sales tax properly chargeable in respect of the supply exceeds the sales tax actually accounted for by the registered person making the supply, the amount of the excess is treated as sales tax payable by the registered person in respect of a taxable supply of goods or services made by the person in the sales tax period in which the event referred to in subsection (1) occurred.

(3) If-

(a) subsection (2) applies; and

(b) the supplier has issued a debit note to the recipient of the supply in accordance with subsection (4) of section 160,

the recipient of the supply shall treat the additional sales tax specified in the debit note as input tax payable by the recipient in the sales tax period in which the debit note is received.

(4) Subject to subsection (6), if this section applies and the sales tax actually accounted for by the registered person making the supply exceeds the sales tax properly chargeable in respect of the supply, the registered person shall be allowed an input tax credit for the amount of the excess in the sales tax period in which the event referred to in subsection (1) occurred.

(5) If —

(a) subsection (4) applies; and

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(b) the supplier has issued a credit note to the recipient of the supply in accordance with subsection (3) of section 160,

(c)

the recipient shall treat the additional sales tax specified in the credit note as sales tax payable by the recipient in the sales tax period in which the credit note is received.

(6) If the recipient of a supply to which subsection (4) applies is unregistered, no credit is allowed until the registered person has repaid the excess sales tax to the recipient of the supply, whether in cash or as a credit against any amount owing to the registered person by the recipient.

155. The value of a taxable import is the sum of- import

(a) the value of the goods ascertained for the purposes of customs duty under the customs or excise laws whether or not any duty is payable on the import;

(b) the amount of customs duty, excise duty, and any other fiscal charge (other than sales tax) payable on the import; and

(d) . . . the value of any services referred to in subsection (2) of section 146 not included in the value under paragraph (a).

## **PART VI- REGISTRATION**

156. (1) A person who is a manufacturer or supplier of goods or taxable services, other than a person who makes only exempt supplies, is obliged to register for sales tax —

(a) at the end of any twelve-month or shorter period, if during the period the total value of supplies of goods or taxable services made by the person in The Gambia equalled or exceeded one hundred and fifty thousand dalasis; or

(b) at the beginning of any twelve-month period, if there are reasonable grounds to expect that the total value of supplies of goods or taxable services to be made by the person En The Gambia during that period Will equal or exceed one hundred and fifty thousand dalasis.

(2) In determining whether a person has an obligation to register under subsection (1), the Commissioner-General may have regard to the value of supplies of goods or taxable services made by an associate of the person.

(3) A person who has an obligation to under subsection (1) shall apply Commissioner-General for registration twenty-one days of becoming so obliged.

(4) If the Commissioner-General is satisfied that a person who has applied for registration is obliged to register for sales tax, the Commissioner-General shall register the person within twenty-one days of receipt of the application.  
register to the within twenty-one days of receipt of the application

(5) Registration takes effect from the beginning of the first sales tax period after the person became obliged to register or such later period as the Commissioner-General may notify in writing.

(6) A person who fails to apply for registration as required under subsection (3) is treated as registered from the beginning of the first sales tax period after the person became obliged to register.

(7) A registered person shall notify the Commissioner-General, in writing, of any change in the name (including business name), address, place of business, or nature of the business of the person within twenty-one days of the change occurring.

157. (1) A registered person shall apply, in writing, to the Commissioner-General for cancellation of the person's registration if the person has ceased to make taxable supplies of goods or services.

(2) Subject to subsection (3), if the Commissioner-General is satisfied that a registered person who has properly made an application under subsection (1) has ceased to make taxable supplies of goods or services, the Commissioner-General shall cancel the person's registration with effect from the last day of the sales tax period in which the person ceased to make taxable supplies or such other date as the Commissioner-General may determine.

(3) The Commissioner-General shall not cancel the registration of a registered person if the Commissioner-General has reasonable grounds to believe that, at any time in the following twelve months, the person will recommence making taxable supplies of goods or services.

(4) A person whose registration is cancelled under subsection (2) shall be treated as having made a taxable supply of any goods (including raw materials) on hand at the time the registration is cancelled but only if the person was allowed an input tax credit on acquisition of the goods.

(5) The taxable supply referred to in subsection (4) is treated as having been made —

(a) Immediately before cancellation of the person's registration; and

(b) for a value equal to the fair market value of the goods at the time the person's registration is cancelled.

(6) The obligations and liabilities of a person under this Chapter, including the furnishing of sales tax returns, in respect of anything done or omitted to be done while the person was registered are not affected by cancellation of the person's registration.

**PART VII - CALCULATION OF SALES TAX  
PAYABLE**

158. (1) The sales tax payable in respect of taxable supplies of goods by a registered person for a sales tax period is computed in accordance with the following formula —

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A-B

where—

A is the total sales tax payable in respect of taxable supplies of goods made by the registered person during the period; and

B is the total input tax credit allowed to the registered person for the period under subsection (4) of section 154 and section 159

(2) If, for any sales tax period, the amount of B in subsection (1) exceeds the amount of A in that subsection, section 167 shall apply to the excess.

(3) The sales tax payable in respect of taxable supplies of services by a registered person for a sales tax period is the total sales tax payable in respect of taxable supplies of services made by the person during the period.

159. (1) A registered manufacturer is allowed an input tax credit for the sales tax payable in respect of a taxable supply of goods to, or taxable import by, the manufacturer to the extent to which the goods are capital goods or goods for use in manufacturing to make taxable supplies.

(2) An input tax credit is allowed on the date the goods are supplied to, or imported by, the registered manufacturer.

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(3) Subject to subsection (4), an input tax credit allowed under subsection (1) shall not be claimed by a registered manufacturer until the sales tax period in which the manufacturer has —

(a) a sales tax invoice for the taxable supply to which the credit relates; or

(b) a bill of entry or other document prescribed under the Customs or excise laws.

(4) If a registered manufacturer entitled to an input tax credit does not have a sales tax invoice evidencing the sales tax payable, the Commissioner-General may allow an

input tax credit in the sales tax period in which the credit is allowed if the Commissioner-General is satisfied that —

- (a) the manufacturer took all reasonable steps to acquire a sales tax invoice;
  - (b) the failure to acquire a sales tax invoice was not the fault of the manufacturer; and
  - (C) the amount of sales tax claimed by the manufacturer as an input tax credit is correct.
- (5) In this section, “capital goods” means any plant or equipment, including spare parts therefore, but not including motor vehicles, for use exclusively and directly in manufacturing.

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160. (1) A registered manufacturer making a taxable supply of goods to another registered manufacturer shall, at the time of the supply, provide the recipient with a sales tax invoice for the supply.

(2) A sales tax invoice shall contain the following particulars —

- (a) the words ‘sales tax invoice’ in a prominent place;
- (b) the name, address, and taxpayer identification number of the registered manufacturer making the supply;
- (C) the individualised serial number and the date on which the sales tax invoice is issued;
- (d) the description of the goods supplied, including quantity or volume, and the date on which the supply was made; and
- (e) The consideration for the supply and the amount of sales tax charged.

(3) If subsection (4) of section 154 applies to a taxable supply of goods by a registered manufacturer to another registered manufacturer, the registered manufacturer making the supply shall provide the recipient with a credit note containing the following particulars—

- (a) the words “credit note” in a prominent place;
- (b) the name, address, and taxpayer identification number of the registered manufacturer making the supply;



- (C) the individualised serial number and the date on which the credit note is issued;
  - (d) a brief description of the circumstances giving rise to the issuing of the credit note, including information sufficient to identify the taxable supply to which the credit note relates; and
  - (e) the consideration shown on the sales tax invoice for the supply, the correct amount of the consideration, the difference between these two amounts, and the amount of sales tax that relates to the difference.
- (4) If subsection (2) of section 154 applies to a taxable supply of goods by a registered manufacturer to another registered manufacturer, the registered manufacturer making the supply shall provide the recipient with a debit note in relation to the supply containing the following particulars-
- (a) the words “debit note” in a prominent place;
  - (b) the name, address, and taxpayer identification number of the registered manufacturer making the supply;
  - (j) the individualised serial number and the date on which the debit note is issued;

- (d) a brief description of the circumstances giving rise to the issuing of the debit note, including information sufficient to identify the taxable supply to which the debit note relates, and
- (k) the consideration shown on the sales tax invoice for the supply, the correct amount of the consideration, the difference between these two amounts, and the amount of sales tax that relates to the difference.

(l)

#### **PART VIII - SALES TAX PROCEDURE**

161. (1) A registered person shall furnish a sales tax return for each sales tax period within fifteen days after the end of the period.

- (2) A sales tax return must —
- (a) be in the prescribed form;
  - (b) state the information required by the form;
  - (C) be signed by the registered person or the person's representative; and
  - (e) be furnished in the prescribed manner.
  - (f)
- . (1) If a registered person furnishes a sales tax return for a sales tax period, other than a revised return under subsection (2) of section 169—

- (a) the Commissioner-General is treated as having determined the person's value of taxable supplies of goods and services made in the period and as having assessed the sales tax due thereon, equal to those respective amounts specified in the return; and
  - (b) the taxpayers return is treated for all purposes of this Act to be a notice of a sales tax assessment served on the taxpayer by the Commissioner- General on the day the return was furnished by the taxpayer.
- (2) If a registered person fails to furnish a sales tax return for a sales tax period by the due date, the Commissioner-General may, based on any available information and to the best of the Commissioners judgment, determine the person's value of taxable supplies of goods or services for the period and make an assessment of the sales tax due the goods or services.
- (3) As soon as possible after making a sales tax assessment under subsection (2), the Commissioner-General shall serve the registered person with notice of the assessment stating—
- (a) the value of taxable supplies of goods or services made in the sales tax period;
  - (b) the amount of sales tax due for the period;
  - (c) the amount of penalty and interest payable, if any, in respect of the sales tax due; and

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

(4) The making of a sales tax assessment under subsection (2) is an alternative to the application of subsection (1) of section 169.

(5) Section 84 applies, with the necessary changes made, for the purposes of amending a sales tax assessment.

163. (1) The sales tax payable by a registered person for a sales tax period as computed under section 158 is due on the date for furnishing the person's sales tax return for that period.

(2) The sales tax payable by an importer on a taxable import is due on the date of the import.

(3) The Commissioner of Customs and Excise shall-

(a) collect, at the time of import and on behalf of the Commissioner-General, any sales tax due under this Act in respect of a taxable import; and

(b) make arrangements with The Gambia Post Office for sales tax to be collected on taxable imports made through the post.

(4) Except if the contrary intention appears, the provisions of the customs or excise laws relating to the import, transit, coastwise carriage and clearance of goods, and to the payment and recovery of duties apply, with such exceptions, modifications, and adaptations as the Secretary of State may by regulation prescribe, and so far as is relevant, to any sales tax payable under this Chapter on a taxable import.

164. (1) If a registered person (referred to as the "supplier") has, in consequence of a fraudulent action or misrepresentation by the recipient of a supply, incorrectly treated the supply as —

(a) an exempt supply; or

(b) a supply subject to a zero rate of sales tax under paragraph (a) of subsection (3) of section 142,

the Commissioner-General may assess the recipient of the supply for payment of the sales tax due in respect of the supply and any interest and penalty imposed as a result of the late payment of the sales tax.

(2) Subsection (1) does not preclude the Commissioner-General from recovering the sales tax, together with any interest imposed under section 202 and penalty imposed under section 204, payable in respect of the supply from the supplier and —

(a) any amount recovered from the recipient of the supply shall be credited against the liability of the supplier in respect of the supply; and

(b) any amount recovered from the supplier shall be credited against the liability of the recipient of the supply.

(3) A supplier who pays sales tax, interest, or penalty referred to in subsection (1) may recover the amount from the recipient of the supply.

(4) An assessment made under subsection (1) is treated as a sales tax assessment for all purposes of this Act.

165. (1) The Commissioner-General may seize any goods in respect of which the Commissioner-General has reasonable grounds to believe that sales tax that is, or will become, payable in respect of the supply of those goods has not been, or will not be, paid.

(2) Any goods seized under this section shall be stored in a place approved by the Commissioner-General for the storage of those goods.

(3) If goods have been seized under subsection (1), the Commissioner-General shall, as soon as is practicable after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before the seizure, a notice in writing —

(a) identifying the goods;

(b) stating that the goods have been seized under this section and the reason for seizure; and

(c) setting out the terms of subsections (6), (7), and (8).

(4) The Commissioner-General is not required to serve a notice under subsection (3) if, after making reasonable enquiries, the Commissioner-General does not have sufficient information to identify the person on whom the notice should be served.

- (5) If subsection (4) applies, the Commissioner- General may serve a notice under subsection (3) on any person claiming the goods, provided the person has given the Commissioner-General sufficient information to enable such a notice to be served.
- (6) The Commissioner-General may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (3) has been served if that person has paid, or makes an arrangement satisfactory to the Commissioner-General for payment of, the sales tax that is, or will become, payable in respect of the supply of the goods.
- (7) Except if subsection (6) applies, the Commissioner-General shall detain the goods seized under subsection (1) –
- (a) in the case of perishable goods, for such period as the Commissioner-General considers reasonable having regard to the condition of the goods; or
- (b) in any other case, for twenty-one days after seizure of the goods.
- (8) If the detention period in subsection (7) has expired, the Commissioner-General may sell the goods in the manner specified in subsection (7) of section 185 and apply the proceeds of sale as set out in subsection (8) of section 185.
- (9) Nothing in this section precludes the Commissioner-General from proceeding under Part V of Chapter VII if the proceeds of disposal are not sufficient to meet the costs of disposal and the sales tax due.

166. If the Commissioner-General considers it necessary for the protection of the revenue, the Commissioner-General may require a registered person or importer, as a condition of the person making a taxable supply of goods or services, or a taxable import, to give security of such amount and in such manner as the Commissioner-General may determine for the payment of sales tax due or that may become due in respect of the supply or import.
167. (1) Except as provided in this section, a person who has paid sales tax in excess of the amount due under this Act may apply for a refund under section 197.
- (2) Subject to subsection (3), if, for any sales tax period, the total input tax credit allowed to a registered person under this Chapter exceeds the person's sales tax liability for that period

(a) the excess shall be carried forward and allowed as an input tax credit in the following sales tax period and any amount of the excess not credited in that period shall be carried forward to the next following sales tax period; and

(b) any amount of the excess not credited under paragraph (a) shall, on application by the person, be refunded to the person within forty-five days of the lodgement of the refund application.

(3) If the registered person has an excess input tax credit carried forward under this section for more than one sales tax period, the excess credit of the earliest tax period shall be allowed first.

(4) If the excess referred to in subsection (2) is due to excess input tax credits that are a regular feature of the registered person's business, the Commissioner-General shall, upon application in writing, refund the excess at the end of each sales tax period Within forty five days after the date of furnishing the sales tax return for the period.

## **CHAPTER VII - GENERAL PROCEDURAL PROVISIONS**

### **PART I – PRELIMINARY**

168. In this Chapter, unless the context otherwise requires —  
“capital gains tax assessment” means an assessment under section 112 of capital gains tax due;

“capital gains tax return” means a capital gains tax return required to be furnished under section 111;

“fringe benefits tax assessment” means an assessment under section 138 of fringe benefits tax due;

“fringe benefits tax return” means a fringe benefits tax return required to be furnished under section 137;

“income tax assessment” means an assessment under Sub-Part II of Part IX of Chapter II of income tax due;

“income tax return” means —

(a) an income tax return required to be furnished under section 80; or

(b) a return required to be furnished under section 87 or 88;

“liquidator” means a person appointed or assuming the position of liquidator, receiver, trustee in-bankruptcy, or mortgagee-in-possession;

“objection decision” has the meaning given to it in subsection (8) of section 176;  
Repetitive has the meaning given to it in section 198

“residential rent tax assessment means an assessment under section 120 of residential rent tax due;

“residential rent tax return” means a residential rent tax return required to be furnished under section 119

“revenue officer” means the Commissioner- General, and any officer of the Authority;

“reviewable decision” means —

(a) an objection decision;

(b) a decision relating to the determination of the amount of customs duty payable under the customs or excise laws in respect of an import of goods;

“sales tax assessment” means an assessment under section 162 of sales tax due;

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“sales tax return” means a sales tax return required to be furnished under section 161;

“sales taxpayer means a registered person for the purposes of sales tax or an importer;

“tax” means —

(a) income tax, capital gains tax,

(b) an instalment of income tax, resident residential rent tax, fringe benefits tax, or sales tax;

(C) tax withheld or required to be withheld from a payment under section 89,90,91, or 92

(d) penalty imposed under Sub-Part II of Part X of this Chapter;

“taxation assessment means —

(a) an income tax assessment, capital gains tax assessment, residential rent tax assessment, fringe benefits tax assessment, or sales tax assessment

(b) a determination of the amount of a business loss under section 45; or

(C) an assessment of penalty under subsection (3) of section 208;  
“taxation decision” means —

- (a) a taxation assessment;

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(b) a decision by the Commissioner- General on an application under subsection (2) or (4) of section 46;

(C) a decision by the Commissioner- General under subsection (6) of section 46 to withdraw permission to use a special tax year;

(d) a decision by the Commissioner- General on an application under subsection (4) of section 47;

(e) a decision by the Commissioner- General under subsection (7) of section 50 in relation to a change in stock valuation method;

(f) a decision by the Commissioner- General under subsection (2) of section 157 on an application for cancellation of sales tax registration;

(g) a decision by General under section 170

(h) a decision by General under section 176

(i) a decision by General under section 181

(j) a decision by the Commissioner- General to issue a notice under subsection (7) of section 181;



(k) a decision by the Commissioner- General to issue a notice under subsection (2) of section 184;

(l) a decision by the Commissioner- General on an application under subsection (9) of section 184;

(m) a determination by the Commissioner- General of the amount of tax payable notified to a liquidator under subsection (3) of section 186;

(n) a decision by the Commissioner- General to refuse to allow a liquidator to part with an asset under subsection (5) of section 186;

(o) a decision by the Commissioner- General to issue a certificate under section 187;

(p) a decision by General under section (5) of section 194 or subsection (1) of section 195

(q) a decision by the Commissioner- General on an application for a refund under section 197; or

(r) a decision by the Commissioner- General to declare an individual to be a representative of a person under subsection (2) of section 198;

“taxpayer” means —

(a) an income taxpayer, capital gains tax- payer, residential rent taxpayer, fringe benefits taxpayer; or sales taxpayer; .

(b) a person who has made a business loss for a tax year;

(c) a person required to withhold tax from a payment under section 89, 90, 91, or 92; or

(d) a representative of a person referred

“tax period”, in relation to a taxpayer, means — to in paragraph (a), (b), or (C);

(a) in the case of the income tax, the taxpayer’s tax year including a special tax year or transitional tax year;

(b) in the case of the residential rent tax or fringe benefits tax, the tax year;

(C) in the case of the capital gains tax, the time of disposal;

(d) in the case of tax withheld under section 89, 90, 91, or 92, the period to which the withholding relates; or

(d) in the case of sales tax, the sales tax period

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“tax return means —

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(a) an income tax return, capital gains tax return, residential rent tax return, fringe benefits tax return, or sales tax return; or

(b) a section 98 withholding tax statement; and

“Tax Tribunal” means the Tax Tribunal established under section 229.

## **PART II - TAX RETURNS AND OTHER DOCUMENTS**

(1) If a taxpayer fails to furnish a tax return, returns and other Documents statement, certificate, or other document as required under this Act, the Commissioner- General may, by notice in writing, require the taxpayer to furnish the tax return, statement, certificate, or other document, as the case may be, by the due date set out in the notice or within such further time as the Commissioner-General may allow under section 170

(2) If the Commissioner-General is not satisfied with a tax return, statement, certificate, or other document furnished by a taxpayer, the Commissioner-General may, by notice in writing, by notice in writing require the taxpayer to furnish by the due date set out in the notice or within such further time as the commissioner-general may allow under section 170

(a) a further or fuller return, statement, certificate or other document; or

(b) any information as specified in the notice.

170. (1) A taxpayer may apply, in writing, to the Commissioner-General for an extension of time to furnish a tax return, statement, certificate or other document (in this section referred to as “the document”).

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

(3) Subject to subsections (4) and (5), the Commissioner-General may grant an application under subsection (1) if satisfied that the applicant is unable to furnish the document by the due date for any reasonable cause.

(4) In the case of an application for an extension of time to furnish a tax return, the Commissioner-General may grant an extension under subsection (3) only if the applicant has paid ninety per cent of the tax due under the return.

(5) If—

(a) a taxpayer has been granted an extension of time to furnish a tax return; and

(b) after the return is finished, the Commissioner-General determines that the taxpayer had failed to pay ninety per cent of the tax due at the time the extension was granted,

the extension shall be treated as having not been granted.

(6) The Commissioner-General shall serve the applicant with notice of the decision on the application.

(7) An extension of time granted under subsection (3) shall not exceed thirty days from the original due date for furnishing the document unless the Commissioner-General is satisfied that there are exceptional circumstances justifying a longer extension of time.

(8) If an extension of time granted under subsection (3) relates to a tax return, the grant of the extension does not preclude the liability for interest under section 202 arising from the original due date for payment of the tax.

171. (1) A person who, in return for a payment, prepares or assists in the preparation of a tax return of a taxpayer (other than as an employee of the taxpayer) shall sign the return certifying that —

(a) the person has examined the books of account and other relevant documentation of the taxpayer; and

(b) to the best of the person's knowledge, the return correctly reflects the information and transactions to which it relates.

(2) If a person referred to in subsection (1) refuses to sign a tax return as required by that subsection, the person shall furnish the taxpayer with a statement, in writing, of the reasons for the refusal and the taxpayer shall include the statement with the return.

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172. A tax return, statement, certificate, or other document purporting to be furnished by or on behalf of a taxpayer—

(a) shall be treated as having been made by the taxpayer or with the taxpayer's authority unless the contrary is proved; and

(b) any person signing it shall be treated as being cognisant of all the matters stated in the return, statement, certificate or document.

### **PART III - TAXATION DECISIONS**

173. The validity of a taxation decision is not affected by reason that any provision of this Act has not been complied with.

174. (1) except in proceedings under Part IV of this Chapter—

(a) a taxation decision shall not be disputed in the Tax Tribunal, in any Court, or in any other proceedings on any ground whatsoever; and

(b) the amount and particulars of a taxation assessment are correct and the liability of the taxpayer is determined accordingly.

(2) A taxation decision is final if no objection to the decision is lodged within the time specified in subsection (1) of section 176 or such further time as the Commissioner-General may allow.

175. A notice of a taxation decision or any other document purporting to be made, issued, or executed under this Act—

(a) shall not be quashed or deemed to be void or void able for want of form; and

(b) shall not be affected by reason of any mistake, defect, or omission therein,

if it is, in substance and effect, in conformity with this Act and the person assessed, or intended to be assessed or affected by the decision or document, is designated in it according to common understanding.

#### **PART IV - TAXATION OBJECTIONS AND APPEALS**

176. (1) A taxpayer dissatisfied with a taxation decision may lodge an objection to the decision with the Commissioner-General within thirty days of service of the notice of the decision.

(2) An objection to a taxation decision shall be in the prescribed form and shall state fully the grounds on which it is made.

(3) A taxpayer may apply, in writing, to the Commissioner-General for an extension of time to lodge an objection.

(4) An application for an extension of time shall be made before the expiry of the time for lodging an objection under subsection (1).

(5) The Commissioner-General may grant an application for an extension of time if the applicant is unable to lodge the objection by the due date for any reasonable cause.

(6) The Commissioner-General shall serve the applicant with notice of the decision on the application.

(7) An extension of time granted under subsection (5) shall not exceed thirty days from the original due date for lodging the objection.

(8) After consideration of the objection, the Commissioner-General may allow the objection in whole or part and amend the decision accordingly, or disallow the objection and the Commissioner-Generals decision on the objection is referred to as an ‘objection decision’.

(9) The Commissioner-General shall serve notice of the objection decision on the taxpayer as soon as practical after making the decision.

(10) If the Commissioner-General has not made an objection decision within ninety days of the objection being lodged, the taxpayer may elect, by notice in writing to the Commissioner- General, to treat the Commissioner-General as having made a decision to disallow the objection.

(11) If a taxpayer has made an election under subsection (10), the taxpayer is treated as having been served with notice of the objection decision on the day the election notice was lodged with the Commissioner-General.

(12) In the case of an objection to a taxation assessment, the objection is not considered lodged for the purposes of this section until such time as the taxpayer pays the portion of the tax due under the assessment that is not in dispute.

177. (1) A taxpayer dissatisfied with an objection decision may apply to the Tax Tribunal for review of the decision.

(2) An application under subsection (1) shall be made in accordance with section 231.

(3) For the purposes of reviewing an objection decision, the Tax Tribunal may exercise all the powers and discretions conferred by this Act on the Commissioner-General.

(4) If the review relates to a taxation assessment, the Tax Tribunal may make an order to—

(a) affirm, reduce, increase, or otherwise amend the assessment; or

(b) remit the assessment to the Commissioner-General for reconsideration in accordance with the directions of the Tax Tribunal.

(5) If the review relates to a taxation decision, other than a taxation assessment, the Tax Tribunal may make an order to affirm, vary, or set aside the decision, and issue such consequential directions as the case may require.

178. (1) A party to a proceeding before the Tax Tribunal who is dissatisfied with the decision of the Tribunal, in relation to an application to review an objection decision, may appeal against the Tribunal's decision to the High Court.

(1) A notice of appeal shall be made in accordance with section 233.

(3) An appeal to the High Court may be made on a question of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal.

179. (1) The Commissioner-General shall within sixty days after —

(a) a decision of the Tax Tribunal becomes final; or

(c) being notified of a decision of the High Court,

take such action, including amending a taxation assessment, as is necessary to give effect to the decision.

(2) For the purposes of subsection (1), if no notice of appeal is lodged with the Registrar of the High Court within the period specified in section 233, the decision of the Tribunal becomes final at the end of that period.

(3) This section applies, notwithstanding any time limit in this Act relating to the amendment of a taxation assessment.

180. (1) In any proceeding under this Part, the burden is on the taxpayer to prove —

(a) in the case of a taxation assessment, that the assessment is excessive; or

(b) in the case of any other taxation decision, that the decision should not have been made or should have been made differently.

(2) The tax payable under a taxation assessment may be recovered by the Commissioner-General notwithstanding that an objection, application for review, or a notice of appeal has been lodged in respect of the assessment.

(3) In an application to the Tax Tribunal or appeal to the High Court, the taxpayer is limited to the grounds stated in the objection to which the objection decision relates unless the Tribunal or Court, as the case may be, grants the taxpayer leave to add new grounds to support the application or appeal.

#### **PART V - COLLECTION AND RECOVERY OF TAX**

181. (1) A taxpayer may apply, in writing, to the Commissioner-General for an extension of time to pay any tax due.

(2) An application for an extension of time shall be made by the original due date for payment of the tax.

(3) If an application is made under subsection (1), the Commissioner-General may, having regard to the circumstances of the case —

(a) grant the taxpayer an extension of time for payment of the tax due; or

(b) require the taxpayer to pay the tax due in instalments of equal or varying amounts as the Commissioner-General may determine.

(4) The Commissioner-General shall serve the taxpayer with notice of the decision on the application.

(5) If a taxpayer is permitted to pay tax by instalments and the taxpayer defaults in payment of any instalment, the whole balance of the tax outstanding at the time of the default becomes immediately payable.

(6) The grant of an extension of time to pay tax due or the grant of permission to pay tax due by instalments does not preclude the liability for interest under section 202 arising from the original due date for payment of the tax.

(7) If the Commissioner-General has reasonable grounds to believe that a taxpayer may leave The Gambia before the due date for payment of tax, the Commissioner-General may, by notice in writing, require the taxpayer to pay the tax on the date specified in the notice.



182. (1) Tax due is recoverable from the taxpayer as a debt due to the State.

(2) The Commissioner-General may recover any tax due in a Court of competent jurisdiction in the name of the State.

(3) If a taxpayer fails to pay tax by the due date, the Commissioner-General may file with the Registrar of a Court of competent jurisdiction a statement certified by the Commissioner-General specifying the amount of tax owed and that statement is treated for all purposes as a civil judgment lawfully given in that Court in favour of the Commissioner-General for a debt in the amount specified.

183. Subject to section 99, tax due under this Act has priority over all other debts of the taxpayer notwithstanding anything in any other law.

184. (1) This section applies if a taxpayer is liable to pay an amount of tax and –

(a) the tax has not been paid by the taxpayer by the due date for payment; or

(b) the Commissioner-General has reasonable grounds to believe that the taxpayer will not pay the tax by the due date for payment.

(2) If this section applies, the Commissioner-General may, by notice in writing, require any person who owes money to the taxpayer to pay the amount specified in the notice to the Commissioner-General.

(3) The amount specified in a notice under this subsection shall not exceed the amount of tax that has not been paid or the amount that the Commissioner-General believes will not be paid by the due date.

(4) A person (referred to as the payer) owes money (referred to as the “available amount”) to a taxpayer if the payer

(a) owes or may subsequently owe money to the taxpayer;

(b) holds or may subsequently hold money for, or on account of, the taxpayer

(c) holds or may subsequently hold money on account of some other person for payment to the taxpayer; or

(d) has authority from some other person to pay money to the taxpayer.

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(5) Subject to subsection (7), a payer shall pay the amount specified in a notice under subsection (2) by the date specified in the notice.

(6) The date for payment specified in the notice shall not be a date before the date that the available amount becomes due to the taxpayer or held on the taxpayer's behalf.

(7) A payer shall not pay an amount under this section in excess of the available amount.

(8) The Commissioner-General shall, by notice in writing to the payer, revoke or amend a notice served under subsection (2) if the taxpayer has paid the whole or part of the tax due or has made an arrangement satisfactory to the Commissioner-General for payment of the tax.

(9) A payer served with a notice under subsection (2) may apply, in writing, to the Commissioner-General for –

(a) an amendment of the amount due under the notice; or

(b) an extension of time for payment of the amount due under the notice.

(10) The Commissioner-General shall serve an applicant under subsection (9) with notice, in writing, of the decision on the application.

(11) A copy of a notice served on a payer under this section shall be served on the taxpayer.

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(12) If a notice served under this section requires the deduction of amounts from payments of employment income, the amount to be deducted by the payer from each payment shall not exceed the lesser of –

(a) an amount equal to one-twentieth of the amount of tax that has not been paid or the Commissioner-General believes will not be paid by the due date; or

(b) twenty per cent of the amount of each payment of employment income.

(13) A payer who has paid an amount in compliance with a notice served under this section

(a) shall give the taxpayer notice in writing of the fact that the payment has been made; and

(b) is treated as having paid such amount under the authority of the taxpayer and the receipt of the Commissioner- General constitutes a good and sufficient discharge of the liability of the payer to the taxpayer to the extent of the amount referred to in the receipt.

(14) The Commissioner-General shall apply an amount paid by a payer under this section in respect of a taxpayer against the amount of tax owing by the taxpayer.

(15) A payer who, without reasonable excuse, fails to comply with a notice under this section is personally liable for the amount specified in the notice and the Commissioner-General may recover the amount under this Part as if it were tax payable by the payer.

185. (1) The Commissioner-General may appoint a person to be a Tax Collector,

(2) If a taxpayer fails to pay any tax by the due date, the Commissioner-General may issue a certificate for a Tax Collector to recover such tax by distress and sale of the personal property of the taxpayer.

(3) A certificate issued under subsection (2) shall specify —

(a) the taxpayer against whose property the distress and sale proceedings are authorised;

(b) the property against which the proceedings are to be executed and the location of that property; and

(4) A copy of a certificate issued under subsection (2) shall be served on the taxpayer.

(5) A Tax Collector may, at any time, enter any premises described in a certificate issued under subsection (2) for the purposes of executing distress and sale proceedings under this section and shall require a police officer to be present while the proceedings are being executed.

(6) A property distained under this section shall be —

(a) identified by the pasting or hanging of a piece of ribbon or cloth in a conspicuous place on the property;

(b) kept for ten days (other than perishable goods) either at the premises where the distress is executed or at any other place that the Tax Collector may consider appropriate, at the cost of the taxpayer.

(7) If the liability specified in a notice issued under subsection (2) is paid before the property is sold under subsection (8), the property shall be immediately released to the taxpayer.

(8) If the taxpayer does not pay the liability specified in a certificate issued under subsection (2), together with the costs of the distress, within the time specified in paragraph (b) of subsection (6), or within such shorter period as the Tax Collector may determine in the case of perishable goods, the Tax Collector may -

(a) in the case of goods, sell the goods by public auction;

(b) in the case of negotiable instruments, sell the instrument through a broker at the prevailing market rate; or

(C) in the case of money (including foreign currency), deposit the money with the Central Bank of The Gambia.

(9) The proceeds of disposal or deposit of monies under subsection (8) shall be applied as follows —

(a) first towards the cost of taking, keeping, and selling the property distained;

(b) then towards payment of any tax and interest owed by the taxpayer and

(C) the remainder of the proceeds, if any, shall be paid to the taxpayer within forty-five days of the sale.

(10) Nothing in this section precludes the Commissioner-General from proceeding under section 182 with respect to the balance owed by the taxpayer if the proceeds of the distress are insufficient to meet the tax due and the costs of the distress and sale.

(11) The taxpayer is liable for all costs incurred by the Commissioner-General in respect of any distress and sale proceedings and the Commissioner-General may recover those costs under this Part as if the costs were tax payable by the taxpayer.

186. (1) A person who is appointed a liquidator in respect of a taxpayer shall give the Commissioner-General notice of his or her appointment as, or assumption of the position of, liquidator.

(2) A notice under subsection (1) shall be in writing and lodged with the Commissioner-General within fourteen days of the earlier of being appointed as, or assuming the position of, liquidator.

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(3) The Commissioner-General shall notify the liquidator, in writing, of the amount that the Commissioner-General believes will be sufficient to pay any tax and interest that are or will become payable by the taxpayer whose assets are in the possession or control of the liquidator.

(4) A notice under subsection (3) shall be served on the liquidator within sixty days of the Commissioner-General being served with a notice under subsection (1).

(5) A liquidator shall not, without leave of the Commissioner-General, part with any asset held as liquidator until the liquidator has been served with a notice under subsection (3).

(6) Subject to subsection (7), a liquidator shall set aside, out of the proceeds of sale of any asset of the taxpayer, the amount notified by the Commissioner-General under subsection (3), and the liquidator is liable to the extent of the amount set aside for the tax due by the taxpayer.

(7) If the proceeds of sale of any asset are less than the amount notified by the Commissioner-General under subsection (3), the liquidator shall set aside the entire proceeds of sale to meet the amount notified under subsection (3).

(8) A liquidator who fails to comply with subsection (5), (6), or (7) is personally liable to the extent of any amount required to be set aside under those subsections, and the Commissioner shall recover the amount under those sections as if it were tax payable by the taxpayer.

(9) If two or more persons are liquidators in respect of a taxpayer, the obligations and liabilities under this section apply to all the liquidators but may be discharged by any of them.

187. (1) If the Commissioner-General has reasonable grounds to believe that a taxpayer may leave The Gambia without paying any tax due, the Commissioner-General may issue a departure prohibition certificate to the Director of Immigration and request the Director of Immigration to prevent the person from leaving The Gambia until that person makes -

(a) payment of the tax due in full; or

(b) an arrangement satisfactory to the Commissioner-General for payment of the tax due.

(2) The Commissioner-General shall serve a copy of a departure prohibition certificate issued under subsection (1) on the taxpayer named in the certificate if it is practicable to do so.

(3) Payment of the tax specified in a departure prohibition certificate to a customs or immigration officer or the production of a certificate signed by the Commissioner-General stating that the tax has been paid or satisfactory arrangements for payment have been made is sufficient authority for allowing the person to leave The Gambia.

188. (1) If a taxpayer

(a) fails to pay to the Commissioner-General any sales tax;

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(b) fails to pay to the Commissioner-General any tax deducted from a payment of employment income under section 89; or

(c) repeatedly fails to pay income tax,

on or before the due date, the Commissioner-General may, by notice in writing, inform the taxpayer of the Commissioner-General's intention to close down part or the whole of the taxpayer's business for a temporary period not exceeding fourteen days unless the taxpayer pays the tax due within a period of seven days of the date of the notice.

(2) If a taxpayer fails to comply with a notice under subsection (1), the Commissioner-General may issue an order to close down part or the whole of the business of that person for a period not exceeding fourteen days.

(3) The Commissioner-General may, at any time, enter any premises described in an order issued under subsection (2) for the purposes of executing the order and shall require a police officer to be present while the order is being executed.

(4) The Commissioner-General shall affix, in a conspicuous place on the front of the premises of the business or part of the business closed under a subsection (2) order, a notice in the following words “WARNING: CLOSED TEMPORARILY UNDER SECTION 188 OF THE INCOME AND SALES TAXES ACT FOR NOT PAYING TAX”.

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(5) If the tax due is paid within the period of closure, the Commissioner-General shall immediately arrange for removal of the notice referred to in subsection (4).

#### **PART VI- RECORDS, INVESTIGATIONS, AND AUDIT**

189. (1) A taxpayer shall maintain in The Gambia the accounts, documents, and records prescribed for the purposes of this Act.

(2) The taxpayer shall maintain the accounts, documents, and records referred to in subsection (1) for six years after the end of the tax period to which they relate.

190. (1) for the purposes of this Act, the Commissioner-General -

(a) shall have, at all times and without any prior notice, full and free access to any premises, place, property, book, record, or computer;

(b) may make an extract or copy, including an electronic copy, of any book, record, or computer-stored information to which access is obtained under paragraph (a);

(c) may seize any book, record, or other document that, in the opinion of the Commissioner-General, affords evidence that may be material in determining the tax liability of any taxpayer;

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(d) may retain any book, record, or document seized under paragraph (c) for as long as it may be required for determining a taxpayer’s tax liability or for any proceeding under this Act; and

(e) may, if a hard copy or computer disk of information stored on a computer is not provided, seize and retain the computer for as long as is necessary to copy the information required.

(2) A revenue officer exercising the Commissioner-General's powers under this section is not entitled to enter or remain on any premises or place if, upon request by the occupier, the officer is unable to produce the Commissioner-General's written authorisation permitting the officer to exercise powers under subsection (1).

(3) The Commissioner-General shall require a police officer to be present for the purposes of exercising powers under this section.

(4) The occupier of the premises or place to which an exercise of power under subsection (1) relates shall provide all reasonable facilities and assistance for the effective exercise of the power.

(5) A person whose books, records, or computer have been seized under subsection (1) may examine them and make copies or extracts from them, at the person's expense, during regular office hours under such supervision as the Commissioner-General may determine.

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(6) All records, books, or computers seized under subsection (1) shall be signed for by the Commissioner-General and shall be returned to the owner as soon as is practicable after the Commissioner-General's investigation of the person's affairs and any related proceedings have been concluded.

(7) This section has effect notwithstanding —

(a) any rule of law relating to privilege or the public interest with respect to access to premises or places, or the production of any property, book, record, or computer-stored information;

(b) any contractual duty of confidentiality.

(8) In this section, "occupier in relation to premises or a place means the owner, manager, or any other person lawfully on the premises or at the place.

191. (1) For the purposes of this Act, the Commissioner-General may, by notice in writing, require any person, whether or not a taxpayer to -

(a) furnish, within the time specified in the notice, any information that may be required by the notice; or



(b) attend at the time and place designated in the notice for the purpose of being examined on oath by the Commissioner-General, concerning the tax affairs of that person or any other person and, for that purpose, the Commissioner-General may require the person examined to produce any book, record, or computer-stored information under the control of the person.

(2) If a notice served under subsection (1) requires the production of a book, record, or computer-stored information, it is sufficient that the book, record, or computer-stored information is described in the notice with reasonable certainty.

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

(4) The certificate of service signed by the person serving a notice under this section is evidence of the facts stated in the certificate.

(5) This section has effect notwithstanding —

(a) a rule of law relating to privilege or the public interest with respect to the giving of information or the production of books, records, or computer-stored information; or

(b) a contractual duty of confidentiality.

192. If a book, record, or computer-stored information referred to in section 189, 190, or 191 is not in the English language, the Commissioner-General may, by notice in writing, require the person keeping the book, record, or computer-stored information to provide, at the person's expense, a translation into the English language by a translator approved by the Commissioner-General.

193. (1) The Commissioner-General may select any person for an audit of the person's tax affairs for the purpose of this Act having regard to —

(a) the person's history of compliance or non compliance with this Act;

(b) the amount of tax payable by the person;

(c) the class of business conducted by the person; or

(d) any other matter that the Commissioner-General considers relevant relating to the assurance of revenue collection under this Act.

(2) The fact that a person has been audited in a tax year does not preclude the person from being audited again in the next and following years if there are reasonable grounds for the audits, particularly having regard to the matters referred to in subsection (1).

#### PART VII- TAXPAYER IDENTIFICATION NUMBER

194. (1) For the purposes of identification and cross-checking, the Commissioner-General may require taxpayers to apply for a Taxpayer Identification Number.

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(2) An application for a Taxpayer Identification Number shall be in the prescribed form, be accompanied by documentary evidence of the person's identity, and be lodged in the prescribed manner.

(3) If the Commissioner-General is satisfied that the identity of an applicant under subsection (1) has been established, the Commissioner-General shall issue a Taxpayer Identification Number to the applicant.

(4) Each Taxpayer Identification Number issued shall be unique and used in accordance with section 196 or as prescribed.

(5) The Commissioner-General shall refuse an application for a Taxpayer Identification Number if —

(a) the Commissioner-General is satisfied as to the applicant's identity; or

(b) the applicant has already been issued with a Taxpayer Identification Number that is still in force.

(6) The Commissioner-General shall serve the applicant with written notice of the decision to refuse an application under this section.

(7) The Commissioner-General may, without an application being made, issue a Taxpayer Identification Number to any person liable for tax under this Act.

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(8) The Commissioner-General shall issue a Taxpayer Identification Number to a person by serving the person with written notice of the Number.

195. (1) The Commissioner-General shall, by notice in writing, cancel a Taxpayer Identification Number if the Number has been issued to —

- (a) a person under an identity that is not the person's true identity; or
  - (b) a person who has already been issued with a Taxpayer Identification Number that is still in force.
- (2) The Commissioner-General may, by notice in writing, withdraw a Taxpayer Identification Number issued to a taxpayer and issue the taxpayer with a new Taxpayer Identification Number.

196. A taxpayer shall state the taxpayer's Taxpayer Identification Number in any tax return, notice, or other document used for the purposes of this Act, the Customs laws or the excise laws.

### **PART VIII - REFUNDS**

197. (1) Subject to this Act, a taxpayer who has paid tax in excess of the amount for which the taxpayer is property chargeable under this Act may apply to the Commissioner-General for a refund of the excess.

(2) An application for a refund under subsection (1) shall —

(a) be in the prescribed form;

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(b) state the information required by the form;

(c) be signed by the taxpayer or the taxpayer's representative; and

(d) be furnished in the prescribed manner within three years of the date on which the tax was paid.

(3) If the Commissioner-General is satisfied that tax has been overpaid, the Commissioner-General shall -

(a) apply the amount overpaid in reduction of any other tax, if any, due by the taxpayer under this Act; and

(b) refund the remainder, if any, to the taxpayer.

(4) The Commissioner-General shall serve the taxpayer with notice, in writing, of the Commissioner-General's decision on the application for a refund.

## PART IX - REPRESENTATIVES

198. (1) For the purposes of this Act, “representative” in respect of a person, means

(a) if the person is an individual under a legal disability, the guardian or manager who receives or is entitled to receive income on behalf, or for the benefit of the individual;

(b) if the person is a company, the principal officer of the company;

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(c) if the person is a partnership, any partner in the partnership;

(d) if the person is a trust, any trustee of the trust;

(e) if the person is the Government of The Gambia, a local authority in The Gambia, or a body of persons, any individual responsible for accounting for the receipt or payment of moneys or funds on behalf of the Government, authority, or body;

(f) if the person is a public international organisation, or a foreign government or political subdivision of a foreign government, any individual responsible for accounting for the receipt or payment of moneys or funds in The Gambia on behalf of the organisation, government, or political subdivision of the government;

(g) if the person is a non-resident person, any person controlling the person’s affairs in The Gambia, including any manager of any business of the person in The Gambia;  
or

(h) if there is a liquidator in respect of the person, the liquidator.

(2) The Commissioner-General may, by notice in writing, declare an individual to be a representative of a person for the purposes of this Act.

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199. (1) A representative of a person is responsible for performing any duty or obligation imposed by this Act on the person, including the payment of tax.

(2) Subject to subsection (4), any tax that, by virtue of subsection (1), is payable by a representative of a taxpayer is recoverable from the representative only to the extent of the assets of the taxpayer that are in the possession or under the control of the representative.

(3) A representative of a taxpayer who pays any tax owing by the taxpayer is entitled to recover the amount so paid from the taxpayer or to retain the amount so paid out of

any moneys of the taxpayer that are in the representative's possession or under the representative's control.

(4) A representative is personally liable for the payment of any tax due by the representative in a representative capacity if, while the amount remains unpaid, the representative -

(a) alienates, charges, or disposes of any moneys received or accrued in respect of which the tax is payable; or

(b) disposes of or parts with any moneys or funds belonging to the taxpayer that are in the possession of the representative or which come to the representative after the tax is payable, if the tax could legally have been paid from or out of the moneys or funds.

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(5) Nothing in this section relieves a person from performing any duty or obligation imposed by this Act on the person that the representative of the person has failed to perform.

(6) If there are two or more representatives of a person, the duties and obligations referred to in subsection (1) apply to all representatives but may be discharged by any of them.

200. (1) The executor of the estate of a deceased person is liable for any tax that the deceased would have become liable for in respect of income derived or transactions entered into before the deceased died.

(2) Section 64 applies to the income of a deceased estate.

201. (1) This section applies if—

(a) an arrangement has been entered into with the effect that a company or partnership is unable to satisfy a current or future tax liability of the company or partnership under this Act; and

(b) a purpose of the arrangement is to have the effect specified in paragraph (a).

(2) Subject to subsection (3), if this section applies, a person who was a director or controlling shareholder of the company or a partner in the partnership, at the time the arrangement was entered into, is jointly and severally liable for the tax liability of the company or partnership.

(3) ‘A director of a company or partner in a partnership is not liable under this section for the tax liability of a company or partnership if the Commissioner-General is satisfied that the director or partner derived no financial or other benefit from the arrangement and either —

(a) the director or partner has, as soon as becoming aware of the arrangement, formally recorded with the company or partnership his or her dissent from the arrangement and notified the Commissioner-General in writing of the arrangement; or

(b) the director or partner satisfies the Commissioner-General that, at the time the arrangement was entered into, the director or partner had no knowledge of, and could not reasonably have been expected to know of the arrangement.

(4) In this section —

‘arrangement’ means any contract, agreement, plan, or understanding whether express or implied and whether or not enforceable in legal proceedings;

‘controlling shareholder’, in relation to a company, means any person who beneficially holds, either alone or together with an associate or associates —

(a) fifty per cent or more of the voting rights in the company;

(b) fifty per cent or more of the rights to dividends; or

(C) fifty per cent or more of the rights to capital; and

‘director’, in relation to a company, means any person occupying the position, of director of the company, by whatever name called.

## **PART X - INTEREST, PENALTY TAX, AND OFFENCES**

### **Sub-Part I - Late Payment Interest**

202. (1) A person who fails to pay —

(a) a tax; or

(b) an amount specified in a notice served on the person under section 184,’

on or before the due date for payment is liable for interest at the prescribed rate on the amount unpaid, computed for the period commencing on the date on which the payment was due and ending on the date on which the payment is made.

(2) An interest paid by a person under subsection (1) shall be refunded to the person to the extent that the amount to which the interest relates is found not to have been payable.

(3) Interest payable by a person —

(a) in respect of tax referred to in paragraph (C) of the definition of tax in section 168; or

(b) in respect of any amount referred to in paragraph (b) of subsection (1),

shall be borne personally by the person and is not recoverable from any other person.

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(4) Interest payable under this section computed as simple interest.

(5) The Commissioner-General may review interest payable by a person under Part \ Chapter as if it were tax payable by the people

(6) Interest payable under this section addition to any penalty imposed under S II of this Part or any fine imposed un& Part III of this Part in respect of the same omission.

(7) In this section, “prescribed rate” means Central Bank of The Gambia rediscount at the commencement of the first day period for which interest is computed subsection (1) increased by five percent points.

#### **Sub-Part II-Penalty**

203. A person who fails to furnish a tax return required under this Act is liable for a equal to five per cent of the tax payable the return per month (or part of a month) which the failure continues, up to a max penalty of twenty five percent of the unpaid tax

204. (1) A taxpayer who fails to pay (other than penalty) by the due date is liable for penalty equal to five per cent of the tax un paid month (or part of a month) during which failure continues, up to a maximum penalty of twenty-five per cent of the unpaid tax.

(2) A penalty paid by a taxpayer subsection (1) shall be refunded to the tax to the extent that the tax to which the taxpayer relates is subsequently found not to ha payable.

(3) A penalty imposed under this section is in addition to interest payable under section 202 in respect of the failure to pay tax by the due date.

(4) A penalty payable by a person in respect of tax referred to in paragraph (c) of the definition of “tax” in section 168 shall be borne personally by the person and is not recoverable from any other person.

205. A person who fails to apply for registration as required by subsection (3) of section 156 is liable for a penalty equal to double the amount of sales tax payable during the period commencing on the day on which the person was required to apply for registration until either the person files an application for registration or the person is registered by the Commissioner- General on the Commissioner-General’s own motion.

206. A taxpayer who fails to maintain proper accounts, documents, or records in accordance with the requirements of this Act is liable -

(a) if the failure was knowingly or recklessly made, for a penalty equal to one hundred per cent of the amount of tax payable by the taxpayer for the tax period to which the failure relates; or

(b) in any other case, for a penalty equal to twenty-five per cent of the amount of tax payable by the taxpayer for the tax period to which the failure relates.

207. (1) This section applies to a person —

(a) who makes a statement to a revenue officer that is false or misleading in a material particular or omits from a statement made to a revenue officer any matter or thing without which the statement is false or misleading in a material particular; and

(b) the tax liability of any person computed on the basis of the statement is less than it would have been if the statement had not been false or misleading (the difference being referred to as the “tax shortfall”).

(2) Subject to subsection (3), a person to whom this section applies is liable—

(a) if the statement or omission was made knowingly or recklessly, for a penalty equal to one hundred per cent of the tax shortfall; or

(b) in any other case, for a penalty equal to twenty-five per cent of the tax shortfall.

(3) No penalty is payable under subsection (2)

if—



- (a) the tax shortfall arose as a result of a taxpayer taking a reasonably arguable position on the application of this Act to the taxpayers position; or

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(b) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular.

(4) Nothing in subsection (3) prevents the imposition of interest under section 202 in respect of a tax shortfall if the tax is not paid by the due date.

(5) A reference in this section to a statement made to a revenue officer is a reference to a statement made in writing or orally to an officer acting in the performance of the officers duties under this Act, and includes a statement made –

(a) in any application, certificate, declaration, notification, tax return, objection, or other document furnished or lodged under this Act;

(b) in any information required to be furnished under this Act;

(C) in any document furnished to a revenue officer otherwise than pursuant to this Act;

d) in answer to a question asked of a person by a revenue officer: or

- (e) to another person with the knowledge or reasonable expectation that the statement would be passed on to a revenue officer.

208. (1) The liability for penalty shall be calculated separately for each section in this sub part

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(2) If a penalty has been paid under this Sub Part and the Commissioner-General institutes a prosecution proceeding under Sub-Part III of this Part for the same act or omission, the Commissioner-General shall refund the amount of penalty paid, and the penalty is not payable unless the prosecution is withdrawn.

(3) The Commissioner-General shall make an assessment of any penalty imposed under this Sub-Part and serve a notice of the assessment on the person subject to the penalty, which notice must state the amount of penalty payable and the due date for payment.

(4) A person liable to pay a penalty may apply, in writing, to the Commissioner-General for remission of the penalty payable.

(5) The Commissioner-General may, on an application under subsection (4) or of the Commissioner-General's own motion, remit, in whole or part, any penalty payable by a person.

### **Sub-Part III - Offences**

209. A taxpayer who fails to furnish a tax return or other document as required under this Act commits an offence and is liable on conviction to a fine not exceeding fifteen thousand dollars or one per cent of the tax due per day, the aggregate of whichever is the greater.

210. (1) A person who fails to -

(a) apply for registration as required by subsection (3) of section 156;

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(b) notify the Commissioner-General of a change in circumstances as required by subsection (7) of section 156; or

(c) apply for cancellation of registration as required by subsection (1) of section 157, commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction —

(a) if the failure was made knowingly or recklessly, to a fine not exceeding fifteen thousand dollars or imprisonment for a term not exceeding one year, or to both the fine and imprisonment; or

(b) in any other case, to a fine not exceeding ten thousand dollars.

211. (1) A registered person who fails to provide a sales tax invoice, credit note, or debit note as required by section 160 commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

(2) A person who provides a sales tax invoice, credit note, or debit note otherwise than as provided for in section 160 commits an offence and is liable on conviction -

(a) if done knowingly or recklessly, to a fine not exceeding twenty thousand dollars or imprisonment for a term not exceeding one year, or to both the fine and imprisonment; or

(b) in any other case, to a fine not exceeding ten thousand dalasis.

212. A person who, without reasonable excuse, fails to comply with a notice served on the person under section 184 commits an offence and is liable on conviction to a fine not exceeding twenty thousand dalasis,

213. A liquidator who fails to comply with section 186 commits an offence and is liable on conviction to a fine not exceeding twenty thousand dalasis.

214. A taxpayer who fails to maintain proper accounts, documents, or records in accordance with the requirements of this Act commits an offence and is liable on conviction —

(a) if the failure was knowingly or recklessly made, to a fine not exceeding fifty thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment; or

(b) in any other case, to a fine not exceeding thirty thousand dalasis.

215. A person who fails to provide facilities and assistance as required by subsection (4) of section 190 commits an offence and is liable on conviction to a fine not exceeding ten thousand dalasis.

216. A person who, without reasonable excuse, fails to comply with a notice under section 191 commits an offence and is liable on conviction to a fine not exceeding ten thousand dalasis.

217. (1) A person who uses a false Taxpayer Identification Number on any tax return or document prescribed or used for the purposes of this Act commits an offence and is liable on conviction to a fine not exceeding twenty thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

(2) A person who uses the Taxpayer Identification Number of another person shall be treated as having used a false Taxpayer Identification Number, unless the person has used the Taxpayer Identification Number of another person with the permission of that other person on a document relating to the tax affairs of that other person.

218. (1) This section applies to a person who —

(a) makes a statement to a revenue officer that is false or misleading in a material particular; or



imprisonment for a term not exceeding one year, or to both the fine and imprisonment..

(2) A revenue officer who enters into or acquiesces in any agreement to—

(a) do any act or thing;

(b) abstain from doing any act or thing;

(c) permit or connive in the doing of any act or thing; or

(d) conceal any act or thing,

whereby the Government is or may be defrauded of tax revenue, or which is contrary to the provisions of this Act or to the proper execution of the officers duty commits an offence and is liable on conviction to a fine not exceeding twenty thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

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(3) A person who directly or indirectly offers or gives to a revenue officer any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any payment or reward, not being a payment or reward which the officer was lawfully entitled to receive, commits offence and is liable on conviction to a fine not exceeding twenty thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

(4) A person who proposes or enters into any agreement with any revenue officer in order to in order to induce the officer to—

(a) do any act or thing;

(b) abstain from doing any act or thing; to permit or connive in the doing of any act or thing; or

(c) conceal any act or thing,

whereby the Government is or may be defrauded of tax revenue, or which is contrary to the provisions of this Act or to the proper execution of the officer's duty commits an offence and is liable on conviction to a fine not exceeding twenty thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

(5) In this section, "revenue officer" includes a former revenue officer and any person employed by the Government and attached to the Authority in any capacity whatsoever.

222. (1) An offence committed by a company is treated as committed by any person who, at the time the offence was committed, was –

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(a) a director, principal officer, general manager, secretary, or other similar officer of the company; or

(b) acting or purporting to act in that capacity.

(2) Subsection (1) does not apply to a person if-

(a) the offence was committed without that person's consent or knowledge; and

(b) the person has exercised all diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and all the circumstances.

#### **PART XI- RULINGS**

223. (1) In order to achieve consistency in the administration of this Act and to provide guidance to taxpayers and revenue officers, the Commissioner-General may issue public rulings setting out the Commissioner-General's interpretation of the application of this Act.

(2) A public ruling is binding on the Commissioner-General until revoked.

(3) A public ruling is not binding on taxpayers.

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#### **PART XII — FORMS AND NOTICES**

224. (1) The forms, notices, tax returns, statements, tables, and other documents prescribed or published by the Commissioner- General for the purposes of this Act may be in such form as the Commissioner-General determines for the efficient administration of this Act and their publication in the Gazette is not required.

(2) The Commissioner-General shall make such documents available to the public at the offices of the Authority and at such other locations, or by mail or such other means, as the Commissioner-General may determine.

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

225. (1) Subject to this Act, any notice or other document required to be served on an individual (other than a non-resident or incapacitated individual) for the purposes of this Act shall be treated as property served on the individual if —

- (a) personally served on the individual;
- (b) left at the individual's usual or last known place of abode or business in The Gambia, or at any office of the individual in The Gambia;

(C) sent by post to the place specified in paragraph (b); or

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(d) sent by facsimile transmission in accordance with subsection (3).

(2) Subject to this Act, any notice or document required to be served on any person (other than an individual to whom subsection (1) applies) for the purposes of this Act is treated as properly served on the person if —

- (a) personally served on the representative of the person;
- (b) left at the person's registered office, address for services of notices under this Act, or if the person does not have a registered office or an address for service, left at any office or place of business of the person in The Gambia;

(c) sent by post to the place specified in paragraph (b); or

(d) sent by facsimile transmission in accordance with subsection (3).

(3) If a taxpayer has notified the Commissioner-General, in writing, of a facsimile number as an address for service of any notice for the purposes of this Act, any notice required to be served on the taxpayer is treated as properly served if sent by facsimile transmission to that number.

(4) For the purposes of subsection (3), a notice is treated as sent by facsimile transmission to a facsimile number if the Commissioner-General receives a confirmation, in writing, from the sending facsimile machine that the facsimile transmission has been sent.

(5) The validity of service of any notice under this Act cannot be challenged after the notice has been wholly or partly complied with.

**CHAPTER VIII- ADMINISTRATION**

**PART I - COMMISSIONER-GENERAL AND  
REVENUE OFFICERS**

226. A Commissioner-General, Commissioner of Taxes and such other revenue officers, as may be required for the purposes of this Act, shall be appointed in accordance with the provisions of the Gambia Revenue Authority Act, 2004.

227. The Commissioner-General may delegate to any revenue officer any duty, power, or function conferred or imposed on the Commissioner-General under this Act, other than the power of delegation.

228. (1) A revenue officer shall treat as secret any document and information coming into the officers possession or knowledge in connection with the performance of his or her duties under this Act.

(2) A revenue officer shall not disclose any document or information referred to in subsection (1) to any person except to the minimum extent necessary for the performance of duties under this Act.

(3) Nothing in subsection (2) prevents the disclosure of any document or information to-

(a) the Tax Tribunal or any court in relation to proceedings under this Act;



(b) a person in the service of the Government of The Gambia in a revenue or statistical department, if the disclosure is necessary for the performance of the person's official duties;

(c) the Auditor-General or any person authorised by the Auditor-General, if the disclosure is necessary for the performance of official duties; or

(d) to the competent authority of the government of another country with which The Gambia has entered into a tax treaty, to the extent permitted under that treaty.

(4) A person who receives a document or information under subsection (3) is required to keep the document or information secret as specified in subsection (1), except to the minimum extent necessary for the purpose for which the disclosure is permitted.

(5) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding twenty thousand dalais or imprisonment for a term not exceeding one year, or to both the fine and imprisonment..

(6) In this section, "revenue officer" includes al person who is a former revenue officer and any person employed by the Government and attached to the Authority in any capacity whatsoever.

## **PART II -TAX TRIBUNAL**

229. There is hereby established a tribunal, to be referred to as the Tax Tribunal, to hear applications for review of reviewable decisions made under this Act.

230. (1) The Tax Tribunal consists of a President and such other members as the Secretary of State considers necessary, having regard to the needs of the Tribunal.

(2) The President of the Tax Tribunal shall be a Judge of the High Court appointed by the Chief Justice.

(3) The other members of the Tax Tribunal shall be appointed by the Secretary of State with the consent of Cabinet.

(4) Subject to subsection (5), a person may be appointed as a member under subsection (3) if the person —

(a) is enrolled as a legal practitioner in The Gambia and has significant experience in taxation matters;

(b) is a member of the Institute of Chartered Accountants of The Gambia and has significant experience in taxation matters;

(C) has previously been engaged as a revenue officer with significant technical and administrative experience in taxation matters; or

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(d) has special knowledge, experience, or skills relevant to the functions of the Tax Tribunal.

(5) The following persons cannot be appointed as a member under subsection (3) —

(a) a person currently engaged as a revenue officer;

(b) a person who has been convicted of an offence, or has been liable for a penalty, under this Act; or

(C) a person who is an undischarged bankrupt.

(6) A member appointed under subsection (3) —

(a) may be appointed as either a full-time or part-time member; and

(b) is appointed for a term of five years and is eligible for re-appointment.

(7) The President of the Tax Tribunal shall hold that office until he or she ceases to hold the office of Judge of the High Court, or until he or she resigns from the office of President by notice in writing to the Chief Justice.

(8) Subject to subsections (9), (10), and (11), a member appointed under subsection (3) ceases to be a member on —

(a) becoming an undischarged bankrupt; or

(b) being removed by the Secretary of State, by notice in writing, for inability to perform the duties of office or for proven misconduct; or

(C) Resigning by notice in writing to the Secretary of State.

(9) A member appointed under subsection (3) may be removed from office under paragraph (b) of subsection (8) only if the question of the member's removal has been referred to a committee appointed under subsection (10) and the committee has recommended to the Secretary of State that the member ought to be removed from office.

(10) If the Secretary of State is of the opinion that a member appointed under subsection (3) should be removed from office under paragraph (b) of subsection (8), the Secretary of State shall appoint a committee consisting of a chairperson and not less than two other members selected by the Chief Justice from among persons who hold or have held judicial office.

(11) The committee appointed under subsection (10) shall enquire into the matter and report to the Secretary of State with a recommendation as to whether the member ought to be removed from office.

231. (1) A person dissatisfied with a reviewable decision may apply to the Tax Tribunal for review of the decision.

(2) An application under subsection (1) shall –

(a) be in writing in the prescribed form;

(b) include a statement of the reasons for the application; and

(c) be lodged with the Tax Tribunal within thirty days after the person making the application has been served with notice of the reviewable decision.

(3) The Tax Tribunal may, on an application in writing, extend the time for making an application to the Tribunal for a review of a reviewable decision.

(4) An applicant to the Tax Tribunal shall serve a copy of the application on the Commissioner- General within five days of lodging the application with the Tribunal.

(5) An application to the Tax Tribunal for review of a reviewable decision shall not be considered by the Tribunal unless the prescribed fee (if any) in respect of the application has been paid.

232. (1) If an application to the Tax Tribunal relates to —

- (a) an objection decision, the Tribunal shall make an order as set out in section 177; or
- (b) any other reviewable decision, the Tribunal may make an order to affirm, vary, or set aside the decision, and may issue such consequential directions as the case may require.

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(2) A decision on an application for review shall be made as soon as practicable after the hearing has been completed and the Tax Tribunal shall cause a notice of its decision to be served on each party to the proceeding.

(3) The notice of a decision referred to in subsection (2) shall include the Tax Tribunal's reasons for the decision and its findings on material questions of fact and reference to the evidence or other material on which those findings were based.

(4) A decision of the Tax Tribunal comes into operation upon the giving of the decision or on such other date as may be specified by the Tribunal in the decision.

(5) Subject to subsection (7), all decisions of the Tax Tribunal and all evidence received by it, including a transcript of the report of the hearings, are public records open to the inspection of the public.

(6) Subject to subsection (7), the Tax Tribunal shall provide for the publication of its decisions in such form and manner as may be adapted for public information and use, and such authorised publication is evidence of the decisions of the Tribunal in all courts of The Gambia without any further proof or authentication.

(7) In releasing information or allowing access to information under subsection (5) or (6), the Tax Tribunal shall ensure that —

- (a) the identity and affairs of the applicant and any other person concerned is concealed: and

(b) Measures are taken to prevent the disclosure of trade secrets or other confidential information.

233. (1) A party to a proceeding before the Tax Tribunal may, within thirty days after being notified of the decision of the Tribunal or within such further time as the High Court may allow on an application in writing, lodge a notice of appeal with the Registrar of the High Court; the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the Tribunal.

(2) The High Court shall hear and determine the appeal and shall make such order as it thinks appropriate by reason of its decision, including an order affirming or setting aside the decision of the Tax Tribunal or an order remitting the case to the Tribunal for reconsideration.

### **CHAPTER IX - MISCELLANEOUS PROVISIONS**

234. (1) An amount taken into account under this Act shall be expressed in dalais.

(2) If an amount is in a currency other than dalais, the amount shall be translated to dalais at the Central Bank of The Gambia mid- exchange rate applying between the foreign currency and the dalais on the date the amount is taken into account for the purposes of this Act.

235. A provision in any law enacted before the commencement of this Act providing for —

(a) an exemption from any tax imposed under this Act;

(b) a reduction in the rate of tax imposed under this Act;

(C) a reduction in tax liability of any person under this Act; or

(c) an exemption from the operation of any provision of this Act,

ceases to have legal effect from the date of commencement of this Act unless also provided for in this Act.

236. Regulations made under section 237 may require the production of a tax clearance certificate in the prescribed form as a condition to the registration of any goods under any law.

237. (1) The Secretary of State may make regulations for —

- (a) matters which are to be prescribed by regulations under this Act;
  - (b) the amendment of any rate of tax and any monetary amount set out in this Act;
  - (c) the administration and operation of the Tax Tribunal; or
  - (d) the effective carrying out of the provisions of this Act.
- (2) Without limiting the general effect of subsection (1), regulations made under that subsection may —

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- a) contain provisions of a saving or transitional nature consequent on the making of this Act; or
  - (b) prescribe penalties for the contravention of the regulations.
- (3) If regulations made under this section are of a transitional nature and are made within six months after the commencement of this Act, the regulations may provide that they take effect from the date on which the Act comes into force.

238. (1) The Income Tax Act and the National Sales Tax Act are hereby repealed.  
 (2) A tax due and payable under the repealed enactments shall be assessed and collected as if this Act had not been enacted.

## SCHEDULES

### FIRST SCHEDULE (section 10)

#### RATES OF INCOME TAX

1. The rates of income tax imposed on the chargeable income of an individual or body of persons is as set out in the following table —

Chargeable income range	Income Tax Rate
0—D7,500	0%
D7,501- D17,500	10%
D17,501-D27,500	15%
D27,501-D37,500	20%
D37,501-D47,500	25%
Above D47,500	35%

2. The rate of income tax imposed on the chargeable income of a company or partnership is thirty-five per cent.
3. The rate of income tax payable by a trustee is —
- (a) in the case of the first two years of administration of a deceased estate or trustee of an incapacitated person, the rates of tax applicable under paragraph 1; or
- (b) in any other case, thirty-five per cent.

**SECOND SCHEDULE** (section 10(6))

**MODIFICATIONS TO THIS ACT IN RESPECT OF INCOME ARISING OUT OF OR IN CONNECTION WITH PETROLEUM OPERATIONS UNDER THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION ACT, 2004**

**PART I – PRELIMINARY**

1. (1) In this Schedule, unless the context otherwise requires-

“Cumulative resource expense” means, amount obtained from performing calculation:

$$(A+B) - (C+D+E)$$

**A** is the total of all amounts each of which is a resource expense made or incurred by the person before that time;

**B** is the total of all amounts required by paragraph 6 of this Schedule to be included in computing net income from petroleum operations for a person’s tax years ending before that time;

**C** is the total of all amounts of cumulative resource expense claimed as a deduction in accordance with paragraphs 4 and 5 of this Schedule in computing a person’s net income from petroleum operations for the person’s tax years ending before that time;

**D** is the total amount of any government assistance received or receivable by the person before that time; and

E is the total amounts received or receivable by the taxpayer with respect to the disposition of all or a portion of the person's licence or permit, net of any reasonable outlays or expenses incurred in connection with the disposition;

“direct operating costs means any outlay or expense directly incurred by a person for the purposes of producing petroleum from a particular licence area, including any royalties paid or payable to the Government for those purposes, provided that the outlays or expenses-

(a) are incurred during a tax year in which the person has gross income from petroleum operations;

(b) does not include costs or expenses in satisfaction of environmental obligations pursuant to the Petroleum Act;

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(c) does not include any fines or other penalties incurred pursuant to the Petroleum Act;

(d) does not include any exploration, appraisal or development costs, drilling or completing costs, costs of equipping wells, planning, engineering, project management, procurement or construction costs overhead, general administration, management or interest expenses or any costs similar to any of the foregoing; and

(e) does not include any excess operating costs;

“excess operating costs” means, in a tax year, the amount (if any) by which a person's direct operating costs in the tax year exceeds the person's gross income from petroleum operations for the same tax year;

“gross income from petroleum operations” means, in a tax year, any and all amounts received or receivable by a person in connection with-

(a) any licence, permit or petroleum operations in The Gambia;

(b) the sale of rights or assets in respect of sub-paragraph (a) or petroleum or petroleum products; or

(c) circumstances or activities in connection with sub-paragraphs (a) and (b), but does not include any amount received or receivable by the person for the disposition of a licence or permit which constitutes amount E in the definition of “cumulative resource expenses;



“income after operating costs” means, in a tax year, the amount, if any, by which a person’s gross income from petroleum operations for the tax year exceeds the person’s direct operating costs for the same tax year;

“licence” or “permit means a licence or permit issued under the Petroleum Act;

“net income from petroleum operations” means in respect of a person’s tax year, the sum of-

(a) the amount, if any, by which the person’s income after operating costs exceeds any deduction of cumulative resource expense claimed by the person in accordance with paragraphs 4 and 5 of this Schedule; plus

(b) any amount deemed by paragraph 6 of this Schedule to be net income from petroleum operations;

“Petroleum Act means The Petroleum (Exploration, No.7 Development and Production) Act, 2004;

“resource expense” means an outlay or expense incurred by a person which is reasonably attributable to the person’s acquisition of an interest in a licence or permit or the exploration, development and production of petroleum in The Gambia with respect to a particular licence or permit, including an excess operating costs, rentals paid or payable to the Government and a reasonable amount of any general administration and management or interest expense incurred for the purpose of exploration, development and production of petroleum in The Gambia with respect to the licence, but does not include-

(a) costs or expenses incurred in satisfaction of environmental obligations pursuant to this Act;

(b) fines or other penalties incurred pursuant to this act; or

(c) direct operating costs;

“specified rate” means, for-

- (a) net income from petroleum operations not exceeding ten million United States dollars or the equivalent in Dalasis, thirty- five per cent;
- (b) net income from petroleum operations between ten million United States dollars and twenty-five million United States dollars or their equivalent in dalasis, thirty-eight per cent and
- (c) net income from petroleum operations equal to or in excess of twenty-five million United States dollars or the equivalent in dalasis, forty per cent;

“The Gambia” includes the continental shelf and all the lands and waters of The Gambia.

(2) A word used in this Schedule in relation to petroleum operations has the meaning given to it in the Petroleum Act.

## **PART II— APPLICATION OF THIS ACT**

2. This Act, as modified by this Schedule, applies to-

- (a) a person having an interest in a licence or permit;

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- (b) activities or circumstances in connection with a licence or permit;
- (c) a person undertaking petroleum operations or similar activities in The Gambia; or
- (d) activities or circumstances in connection with sub-paragraph (a), (b) or (C).

## **PART III - INCOME TAX LIABILITY**

3. A person described, or undertaking any activity or facing any circumstances described, in paragraph 3 of this Schedule is liable for income tax at the specified rate multiplied by the person’s net income from petroleum operations for each tax year.

## **PART IV - CALCULATION OF NET INCOME FROM PETROLEUM OPERATIONS**

4. Subject to paragraph 5 of this Schedule, for the purposes of computing net income from petroleum operations for a tax year, a person may claim as a deduction up to twenty-five per cent of the person’s cumulative resource expense at the end of the tax year, provided that the deductions do not exceed the person’s income after operating costs for the tax year.

5. (1) To the extent that a person’s cumulative resource expense is attributable to petroleum operation, similar activities or activities of circumstances in connection therewith prior to a change of control (as described in section 68 of this Act), the

person's deduction for the cumulative resource expense in tax years ending after such time is limited to the income after operating costs attributable to licences held by the person immediately prior to the change of control.

(2) The rule out in this paragraph applies with the necessary changes to any successive change of control of the person.

6. If, at the end of a person's tax year, the aggregate of amounts C, D, and E in the definition of cumulative resource expense exceed the aggregate of amounts A and B in the definition of "cumulative resource expense", the amount is deemed to be net income from petroleum operations for the person for the tax year.

7. Gross income from petroleum operations, income after operating costs, net income from petroleum operations, direct operating costs, excess operating costs resource expense, and cumulative resource expense shall only be used to compute the income tax liability of a person pursuant to this Schedule and shall not be used in computing any income tax liability pursuant to the provisions of this Act.

8. Direct operating costs, excess operating costs or cumulative resource expense is not allowable or deductible if it is not reasonable in the circumstances or constitutes a payment for goods or services to be used or enjoyed after the end of a person's tax year.

**THIRD SCHEDULE** (section 36)**ANNUAL ALLOWANCE**

The annual allowance rates specified for the purposes of section 36 are —

Asset	Depreciation Rate
Motor vehicles; buses and minibuses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than 7 tonnes; computers and data handling equipment; and construction equipment and earthmoving equipment	40%
Buses with a seating capacity of 30 or more passengers; goods vehicles designed to carry or pull loads of more than 7 tonnes; specialised trucks; tractors; trailers and trailer-mounted containers; and plant and machinery used in manufacturing, mining, or farming operations	30%
Vessels, barges, tugs, and similar water transportation equipment; aircraft; specialised public utility plant, equipment, and machinery; office furniture, fixtures, and equipment; any depreciable asset not included in another category	20%
Building	5%

**FOURTH SCHEDULE**

(section 142(6))

**GOODS EXEMPT FROM SALES TAX  
EDUCATIONAL, TECHNICAL, CULTURAL, REUGIOUS AND UTERARY  
ITEMS**

1. Religious books, bound and unbound, pamphlets, booklets, leaflets, scripture, and prayer cards and religious mottoes and pictures unframed, for the promotion of religion, and materials to be used exclusively in the manufacture thereof, but not including forms, stationery or annual calendars.

2. Chalkboards, tack boards, desks, tables and chairs, including upholstered chairs, when sold to or imported by educational institutions for their own use and not for resale, and articles and materials for use exclusively in the manufacture of the tax-exempt goods specified in this paragraph.

3. The following printed matter, articles and materials-

(a) school annuals, bound literary papers regularly issued at stated intervals, not less frequently than four times yearly, sheet music, manuscripts, national manufacturing, industrial or trade printed books that contain no advertising and are solely for educational, technical, cultural or literary purposes, articles and materials for use exclusively in the manufacture or production of the foregoing;

(b) phonograph records and audio tapes authorised by the Government for the instruction and materials for use exclusively in their manufacture;

(c) books purchased or imported by public libraries;

(d) printed matters for use by school boards, schools and colleges and not for sale, and articles and materials for use exclusively in the manufacture or production of the printed matters;

(e) utensils, instruments and other apparatus that are designed for use 'in classroom instruction and that are to be employed directly in teaching;

(f) maps, charts, diagrams, posters, motion picture films, filmstrips, microfilms, slides and other photographic reproductions and pictorial illustrations, reproductions of art, sound and video recordings, models, static or moving, parts of the foregoing, all of the foregoing for use by public libraries, public museums, or institutions established solely for educational, scientific or religious purposes, and not for sale or rental, articles and materials for use exclusively in the manufacture of the foregoing; and

- (f) goods for placement as exhibits in public museums, public libraries, colleges or schools and not for sale.

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PASSED in the National Assembly this 15th day of December, in the year of Our Lord Two Thousand and Four

M. S. JALLOW  
Clerk of the National Assembly

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which was passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.

M. S. JALLOW  
Clerk of the National Assembly.