

LAWS OF THE GILBERT ISLANDS
REVISED EDITION 1977

CHAPTER 44

INCOME TAX

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Short title and application
2. Interpretation

PART II

CHARGE OF TAX

3. Basic tax
4. Income in respect of which tax is charged
5. Provisions relating to income from business
6. Provisions relating to income from employment
7. Provisions relating to income from the use of property
8. Provisions relating to income from dividends
9. Trust income, etc., deemed income of trustee, beneficiary, etc.
10. Exemptions. Declaration of pioneer company

PART III

ASCERTAINMENT OF TOTAL INCOME

11. Deductions allowed
12. Deductions not allowed
13. Transactions designed to avoid liability
14. Accounting periods not coinciding with calendar year
15. Retirement benefits

PART IV

PERSONAL ALLOWANCES AND RATES OF TAX

16. General
17. Basic personal allowance

Section

18. Wife allowance
19. Child allowance
20. Education allowance
21. Passages allowance
22. Dependent relative allowance
23. Retirement benefit allowance
24. Non-resident individual
25. Rates of tax

PART V

DEDUCTION OF TAX: DOUBLE TAXATION RELIEF

26. Deduction of tax from dividends
27. Deduction of tax from interest paid to non-resident
28. Set-off of tax deducted
29. Credit for overseas income tax
30. Arrangements for relief from double taxation
31. Tax credit

PART VI

PERSONS ASSESSABLE

32. Income of a person assessed on him
33. Wife's income, etc.
34. Incapacitated person
35. Non-resident person
36. Deceased person
37. Indemnification of representative
38. Liability of manager, etc., of body corporate

PART VII

RETURNS

39. Returns of income, etc.
40. Keeping of records
41. Return of emoluments, etc., paid
42. Returns of interest paid
43. Further returns

Section

PART VIII

ASSESSMENTS

44. Minister to make assessments
45. Assessment of persons leaving the Gilbert Islands
46. Additional assessments
47. Notice of assessment
48. Time limit for making assessments
49. Assessment lists
50. Errors in assessments, etc.

PART IX

OBJECTIONS AND APPEALS

51. Notice of objection to assessment
52. Settlement of objections
53. Appeal against settlement of objections
54. Effect of High Court's decision
55. Finality of assessments
56. Relief in respect of error or mistake

PART X

COLLECTION AND REPAYMENT OF TAX

57. Time for payment
58. Penalty for non-payment of tax
59. Recovery of tax
60. Repayment and remission of tax
61. Power to appoint agent and require information

PART XI

PAY AS YOU EARN

62. Interpretation of sections 63 and 64
63. Assessment charge on emoluments
64. Regulations
65. Amount deducted to be held in trust for Crown
66. Priority of deductions under this Part
67. Formal assessment to be unnecessary
68. Transitional provisions

Section

PART XII

OFFENCES AND PENALTIES

- 69. Offences
- 70. Time limit for proceedings
- 71. Power of Minister to compound offence
- 72. Offences by corporate body
- 73. Tax to be payable notwithstanding prosecutions

PART XIII

ADMINISTRATION

- 74. Responsibility of Minister, etc.
- 75. Secrecy
- 76. Form of returns, etc.
- 77. Rules
- 78. Repeals and transition

SCHEDULES

10 of 1972
2 of 1973
(Cap. 52 of
1973)
5 of 1974
26 of 1974
13 of 1975
L.N. 42/75
19 of 1975
L.N. 71/75
26 of 1977

An Ordinance relating to income tax

Commencement: 1st January 1973

PART I

PRELIMINARY

Short title
and
application

1. This Ordinance may be cited as the Income Tax Ordinance and shall apply to income of the year 1972 and subsequent years.

Interpretation

2. In this Ordinance, unless the context otherwise requires—
“approved annuity contract” means a contract approved by the Minister under section 15 (2);
“approved pension fund” means a scheme approved by the Minister under section 15 (1) or a scheme to which public officers or a class of public officers are required to contribute;
“assessment” includes an additional assessment;

- “basic tax” means the tax imposed under section 3;
- “business” includes any trade, profession or vocation, and any concern or adventure in the nature of trade;
- “chargeable income” means the total income of any person for any year, less any personal allowances to which he is entitled under Part IV in respect of that year;
- “company” means any company incorporated or registered under any law in force in the Gilbert Islands or elsewhere;
- “incapacitated person” means any infant, person of unsound mind, lunatic, idiot or insane person;
- “overseas income tax” means any income tax or any tax of a similar nature charged under any law in force in any country other than the Gilbert Islands;
- “partnership” means an association of not more than 7 persons carrying on business as partners or in receipt of income jointly but does not include a company;
- “person” includes any body of persons, company or corporation but does not include a partnership;
- “resident in the Gilbert Islands”, when applied in relation to any year—
- (a) to an individual, means—
 - (i) that his normal place of abode is in the Islands and that he was present in the Islands for some part of that year; or
 - (ii) that he was present in the Islands for a period or periods exceeding in the aggregate 6 months in that year; or
 - (iii) that he was present in the Islands in that year in fulfilment of a contract of employment exercised in the Islands which is specified to be of not less than 6 months’ duration;
 - (b) to a body of persons, means that the control and management of the affairs of such body of persons was exercised in the Islands in such year;
- and references to “resident” or “non-resident” in relation to any person mean that that person is resident in the Islands or not resident in the Islands as the case may be;
- “tax” or “the tax” means the appropriate tax or taxes imposed under this Ordinance;
- “total income” means the aggregate amount of the income of any person chargeable to tax under this Ordinance as ascertained under the provisions of this Ordinance;

“world income” means the aggregate amount of the income of any person from all sources, the amount of any income from a source outside the Islands being ascertained under the laws of the country in which such income arises;

“year” means the calendar year.

PART II

CHARGE OF TAX

Basic tax

3. (1) Without prejudice to the other provisions of this Ordinance, there shall be assessed, levied and paid a tax on total income to be known as basic tax at the rates specified in Schedule 1.

Schedule 1

(2) In the case of an employee basic tax shall be assessed, levied and paid in each appropriate separate period of charge for which provision is made by subsection (3).

(3) In the case of an employee paid monthly or at longer intervals, each month shall be a separate period of charge; and in the case of an employee paid at less than monthly intervals, each week shall be a separate period of charge.

(4) There shall be exempt from basic tax—

(a) that part of a person's income directly derived by him from the sale of goods;

(aa) that part of a person's income which is deducted by his employer and paid to the National Provident Fund in respect of that person, in each appropriate separate period of charge, on his behalf of this under

(Added, 18 of 78, s. 2)

(b) the income of any person whose liability for tax upon his chargeable income under the other provisions of this Ordinance would, apart from this subsection, be the same or less than his liability for basic tax under this section shall be exempt from such tax upon his chargeable income.

(6) Notwithstanding the provisions of any other law, basic tax shall be collected in the manner most convenient to the source of income and where practicable shall be deducted at source by the person making payment of any amount which constitutes income of the person to whom or for whose benefit the payment is made.

(7) For removing doubts it is hereby declared that sections 62, 63, 64, 65 and 66 shall apply to basic tax payable by an employee.

(8) The provisions of this section shall apply only to income of the year 1976 and subsequent years.

(9) The Minister may by order amend Schedule 1.

4. Subject to this Ordinance tax shall be charged for each year upon the income for that year of any person which in the case of a resident person accrued in, was derived from or was received in the Gilbert Islands and in the case of a non-resident person accrued in or was derived from the Islands in respect of—

Income in respect of which tax is charged

(a) gains or profits from—

- (i) any business, for whatever period of time carried on;
- (ii) any employment or services rendered;
- (iii) any right granted to any other person for the use or possession of any property;

(b) dividends, interest and discounts;

(c) any pension, charge, annuity or alimony;

(d) any amount deemed to be his income under this Ordinance.

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

Provisions relating to income from business

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

(b) the gains or profits of a partner from a partnership shall be deemed to be the share to which he was entitled during the year from the partnership, ascertained under this Ordinance and he shall be liable for tax thereon in his individual capacity:

Provided that a husband and wife carrying on business together shall not be treated as partners in relation to each other for any purpose of this Ordinance;

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

(d) where in computing gains or profits for any year any expenditure or loss has been deducted or any bad debt allowed or a deduction in respect of any reserve or provision to meet any liability has been made, and in a later

year the whole or part of such expenditure or loss or bad debt is recovered or the whole or part of such liability is released or the retention in whole or in part of such reserve or provision has become unnecessary, then any sums so recovered or released or no longer required as a reserve or a provision shall be deemed to be gains or profits of the year in which it is recovered or released or becomes no longer required.

(2) Where any sum is received by any person after the cessation of his business which, if it had been received prior to such cessation would have been included in the gains or profits from that business, then, to the extent to which that sum has not already been included in those gains or profits, that sum shall be deemed to be income of such person for the year in which such sum is received.

Provisions
relating to
income from
employment

6. For the purposes of section 4 (a) (ii)—

(a) gains or profits include—

- (i) any wages, salary, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus or gratuity; and any amount so received in respect of employment or services rendered in a year earlier than the year in which it is received shall be deemed to be income of such earlier year and for removing doubts it is hereby declared that any gratuity or any like payment received under a contract of employment on or in respect of the completion of a period of employment shall be deemed to be income of the years in which that period of employment fell, *pro rata*;
 - (ii) any amount received as compensation for the termination of any contract of service, whether or not provision is made in such contract for payment of such compensation;
 - (iii) the value of any benefits, advantages or facilities granted in respect of any employment or service rendered to the extent that, in the opinion of the Minister they exceed in value similar benefits, advantages or facilities provided for a public officer of similar status and category to the taxpayer;
- (b) the gains or profits from any employment exercised or services rendered in the Gilbert Islands shall be deemed to be derived from the Islands whether or not they are received in the Islands.

7. For the purposes of section 4 (a) (iii) gains or profits include any premium or like consideration received for the use or possession of property.

Provisions relating to income from the use of property

8. For the purposes of section 4 (b) a dividend paid by a resident company shall be deemed to be income of the year in which it is payable and to be of such gross amount as, after deduction of the tax which such company is entitled to deduct under section 26, is equal to the net amount received.

Provisions relating to income from dividends

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

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

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

10. (1) Notwithstanding the other provisions of this Ordinance the income specified in Schedule 2 shall be exempt from tax to the extent there specified.

Exemptions. Declaration of pioneer company Schedule 2

(2) Where having regard to the economic and other benefits likely to accrue to the Gilbert Islands the Minister is of the opinion that it would be in the public interest so to do he may by order declare any company which proposes to commence a business in the Islands to be a pioneer company whereupon the provisions of Schedule 3 shall apply either in full or to such modified extent and upon such conditions as the Minister may by such order specify:

Schedule 3

Provided that a company shall not be declared to be a pioneer company if before the date of its application to be declared such a company it is engaged in any business.

(3) Application for an order under subsection (2) may be made to the Minister in accordance with the requirements set out in Schedule 3 and shall be made by the company which proposes to commence the business or by any other person intending to be concerned in the formation of such a company.

(4) Every order made under subsection (2) shall specify a date of production being the date by which in the opinion of the Minister the pioneer company may reasonably be expected to manufac-

ture or produce in marketable quantities the goods or produce or to provide the services specified in the application upon the basis of which the order is made.

(5) The terms of any order which it is proposed should be made under subsection (2) shall be published in the Islands in such manner as the Minister may direct together with a notice that any person who objects to the making of the order may state the grounds of his objection in writing to the Minister on or before such day, not being less than 1 month after the date of such publication, as may be specified in the notice and the order shall not finally be made before that day and until every valid objection thereto has been considered by the Minister:

Provided that where the terms of any proposed order have been varied in consequence of an objection thereto it shall be lawful for the Minister finally to make the order as so amended without further notice.

(6) An order made under subsection (2) may be revoked or amended with or without the agreement of the pioneer company in any case where it appears to the Minister that any estimate made in the relevant application or any information supplied by the applicant in or in connection with his application was recklessly or wilfully erroneous and misleading.

(7) Upon the revocation of an order made under subsection (2), notice thereof shall be published in the Islands in such manner as the Minister may direct and the revocation shall have effect for all the purposes of this Ordinance from the commencement of the year in which the order is revoked.

(8) The Minister may by order amend Schedule 3.

PART III

ASCERTAINMENT OF TOTAL INCOME

Deductions
allowed

11. (1) For the purpose of ascertaining the total income of any person for any year there shall be deducted all outgoings and expenses, the deduction of which is not prohibited by section 12 and which were wholly and exclusively incurred by such person during that year in the production of the income, including—

(a) the amount of interest paid upon borrowed money where the Minister is satisfied that the said money is employed in the production of income chargeable to tax:

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

- (b) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;
- (c) any sum expended upon the repair of premises, plant, machinery, implements or utensils employed in acquiring the income;
- (d) bad debts incurred in any business which are proved to the satisfaction of the Minister to have become bad during the year;
- (e) any sum contributed by an employer to an approved pension fund:

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

- (f) such expenditure of a capital nature incurred upon scientific or other research for the purposes of a business as the Minister may consider to be just and reasonable;
- (g) any amount paid by way of alimony or allowance under a decree of divorce, a judicial order of separation or maintenance or a deed of separation or maintenance:

Provided that where the person claiming a deduction under this paragraph is entitled to any income which is not charged to tax under this Ordinance, such deduction shall be that proportion of the alimony or allowance which his total income, ascertained before any deduction under this paragraph, bears to his world income.

(2) For the purpose of ascertaining the amount of any income chargeable to tax under section 4 (a) there shall be deducted any amounts authorised by Schedule 4 and that Schedule may be amended by order made by the Minister.

Schedule 4

(3) For the purpose of ascertaining the total income of a person for any year there shall be deducted the amount of any loss incurred in that year in a business carried on by that person and, where the amount of the loss is such that it cannot be wholly set off against his income from other sources for that year, the remainder shall be carried forward and deducted in ascertaining his total income for subsequent years in succession.

12. For the purpose of ascertaining the total income of any person no deduction shall be allowed for—

Deductions
not allowed

- (a) expenditure not wholly and exclusively incurred by him in the production of the income;
- (b) capital expenditure or for any loss, diminution or exhaustion of capital other than as authorised by section 11 (1) (f) and section 11 (2);
- (c) any sum recoverable under an insurance or contract of indemnity;
- (d) any income tax or tax of a similar nature apart from any deductions authorised by rules made under section 31 (2).

Transactions
designed to
avoid liability

13. (1) Where the Minister has reasonable grounds to believe that the main purpose or one of the main purposes for which a transaction was effected was the avoidance or reduction of liability to tax he may, if he deems it to be just and reasonable, direct that such adjustments shall be made as he considers appropriate so as to counteract the avoidance or reduction of liability to tax which would otherwise be effected by the transaction.

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

Accounting
periods not
coinciding
with calendar
year

14. (1) Where a person usually makes up the accounts of his business for a period of 12 months ending on some day other than the 31st day of December then, for the purpose of ascertaining his total income for any year, the income of such accounting period ending on such other day shall be taken to be income—

- (a) where the accounting period ends after the 30th day of June in any year, of the year in which such accounting period ends;
- (b) where the accounting period ends before the 1st day of July in any year, of the year preceding that in which such accounting period ends.

(2) Where a person makes up the accounts of his business for a period greater or less than 12 months the profits from that business for any year shall be computed on such basis as the Minister in his discretion shall think fit.

15. (1) Where an employer has established a scheme for the payment of pensions to his retired employees (or to dependants of deceased employees) the Minister may, subject to such conditions as he may impose, declare such scheme to be an approved pension fund.

Retirement
benefits

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

PART IV

PERSONAL ALLOWANCES AND RATES OF TAX

16. An individual who for any year—

General

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

(b) has furnished a return of income in respect of such year, shall, in respect of such year, be entitled to such personal allowances and of such amounts as are specified in this Part:

Provided that where an individual is entitled to personal allowances in respect of a period of assessment which is less than 12 months, the amount of those allowances shall be in the proportion which the period of assessment bears to 12 months.

17. A resident individual shall be entitled to a personal allowance of \$600, referred to in this Ordinance as the basic personal allowance:

Basic
personal
allowance

Provided that the basic personal allowance shall be \$1100 for a widower or widow and

(2) in section 18 by inserting the following subsection— 18 of 78, s. 2

(2) Where, by virtue of the proviso to section 33 income tax is to be assessable and chargeable on the incomes of a husband and a wife as if they were not married, the total allowance to which they shall be entitled by virtue of subsection (1) shall be the same as if no separate assessment has been made.

(Added, 18 of 78, s. 2)

Child
allowance

19. (1) A resident individual who in any year maintains a child shall in respect of each such child not exceeding 4 in number be entitled to a personal allowance of \$100, in this Ordinance referred to as a child allowance.

(2) In this section "child" means any child, step-child or adopted child of the individual claiming the personal allowance in respect thereof whose own total income for the year for which such claim is made does not exceed \$100 and who—

- (a) has not attained the age of 19 years before the end of such year; or
- (b) has attained the age of 19 years but has not attained the age of 26 years before the end of such year and is receiving full-time instruction at any university, college, school or other place of instruction; or
- (c) has attained the age of 19 years before the end of such year and is dependent upon the individual by reason of mental or physical incapacity.

Education
allowance

20. (1) A resident individual who is entitled for any year to a child allowance under section 19 in respect of a child who has not attained the age of 26 years before the end of such year and who is receiving full-time instruction at the expense of that individual at any university, college, school or other place of instruction shall be entitled, in respect of each such child to a personal allowance, in this Ordinance referred to as an education allowance, of \$50 where such instruction is received within the Gilbert Islands and of \$600 where such instruction is received elsewhere or the amount actually expended by the taxpayer on the education of the child, whichever is the less:

Provided that the amount of the education allowance in respect of any child for any year shall be reduced by any payment made in respect of that child for such year which is exempt from tax by virtue of paragraph 3 or 5 of Schedule 2.

(2) The Minister may require any person claiming to be entitled to an education allowance to produce evidence to his satisfaction of the amount expended by that person on the education of the child in respect of whom the claim is made.

Passages
allowance

21. A resident individual who is entitled for any year to an education allowance under section 20 in respect of a child who is receiving full-time instruction at a place outside the Gilbert Islands shall be entitled to a personal allowance, in this Ordinance referred to as a passages allowance, equal to the amount expended by such individual in such year upon 1 return journey by

such child between the Islands and the place where such instruction is being received:

Provided that the amount of an allowance under this section shall not exceed the cost of 1 return air fare for a journey between the Islands and the United Kingdom by a direct route.

22. (1) A resident individual who contributes in any year to the maintenance of a relative shall be entitled to a personal allowance, in this Ordinance referred to as a dependent relative allowance, of the amount so contributed not exceeding \$50 in the case of each such relative: Dependent
relative
allowance

Provided that the total amount of all such allowances in any year shall not exceed \$100.

(2) In this section "relative" means a brother, sister, parent or grandparent of the resident individual or of his wife who is dependent upon the said individual and whose total income for the year for which a claim under this section is made does not exceed \$600:

Provided that no allowance shall be made for a contribution to a brother or sister of such individual or his wife who has attained the age of 19 years before the end of such year unless such brother or sister is dependent upon such individual by reason of mental or physical incapacity.

23. A resident individual who in any year has—

(a) paid a premium for an insurance made by him on his own life or that of his wife, if the policy of insurance requires the payment of premiums for a period of not less than 10 years, or

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

(c) paid a premium under an approved annuity contract,

shall be entitled to a personal allowance, in this Ordinance referred to as a retirement benefit allowance, of the aggregate of such premiums and such contribution or \$600, whichever is the less. Retirement
benefit
allowance

24. A non-resident individual shall not be entitled to any of the allowances specified in this Part and his income shall be deemed to be chargeable income. Non-resident
individual

25. (1) Tax upon the chargeable income of a person for any year shall be charged at the rates specified in Schedule 1 or 5. Rates of tax
Schedule 5

(2) The Minister may by order amend Schedule 5.

PART V

DEDUCTION OF TAX: DOUBLE TAXATION RELIEF

Deduction of
tax from
dividends

26. (1) Every resident company shall be entitled to deduct from the gross amount (as determined under section 8) of any dividend paid by it tax at the rate (ignoring any relief for double taxation under sections 29 and 30) at which the company is liable to pay tax on the profits out of which the dividend is paid.

(2) Every such company shall, upon payment of a dividend, furnish each shareholder with a certificate showing the gross amount, the tax deducted therefrom and the net amount paid to him.

Deduction of
tax from
interest paid
to non-
resident

27. (1) Every resident person who makes to a non-resident person a payment of interest which is chargeable to tax under section 4 (b) shall deduct therefrom tax at the rate laid down in Schedule 5 as applicable to a person other than an individual.

(2) Upon payment of such interest the payer shall forthwith render an account in writing to the Minister of the amount payable and the amount deductible under subsection (1) and every amount so deductible shall be due and payable by the payer of the interest to the Minister within 30 days of the date on which the interest was paid; and the provisions of this Ordinance relating to the collection and recovery of tax shall apply to the collection and recovery of such amount so deductible as if it were tax which was due for payment within 30 days of payment of the said interest.

(3) A resident person who makes a payment of interest within subsection (1) shall forthwith furnish the person to whom such interest is paid with a certificate showing the gross amount of the interest payable to him, the amount of tax deducted therefrom and the net amount paid.

Set-off of tax
deducted

28. The amount of tax which is deducted from the gross amount of a dividend under section 26 or from the gross amount of interest under section 27 shall be deemed to have been paid by the person receiving such dividend or interest and shall be set off for the purpose of collection against the tax charged on such person for the year in which such dividend or interest is received.

Credit for
overseas
income tax

29. Where any resident person chargeable to tax on any part of his income for any year proves that he has paid, by deduction or otherwise, overseas income tax for such year in respect of the same part of his income, he shall be entitled to a credit against the tax so chargeable on such part of his income equal to such over-

seas tax or the Gilbert Islands tax on that part of his income, whichever is the less.

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

Arrangements
for relief
from double
taxation

(2) Except in so far as such arrangements otherwise provide section 29 shall cease to have effect as respects any territory with the Government of which arrangements have been made under this section for the year in respect of which those arrangements first have effect and for each succeeding year.

31. (1) Where under arrangements having effect under section 30 overseas tax is to be allowed as a credit for any year against Gilbert Islands tax such credit shall be allowed provided that the person claiming the credit is resident in the Gilbert Islands for the said year.

Tax credit

(2) The Minister may by order make rules for the determination of the amount of any credit under section 29 and under arrangements having effect under section 30 and, without prejudice to the generality of the powers given by this subsection, may by such rules determine—

- (a) the amount of any income upon which overseas tax has been paid;
- (b) the amount of any overseas tax;
- (c) the amount of Gilbert Islands tax payable in respect of any income upon which overseas tax has been paid;
- (d) any amount to be deducted for the purpose of ascertaining the total income of any person in respect of overseas tax for which no credit has been allowed; and
- (e) the procedures to be followed for the purpose of making a claim to a credit for overseas tax.

PART VI

PERSONS ASSESSABLE

Income of a
person
assessed on
him

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

Wife's
income, etc.

33. (1) The income of a married woman living with her husband shall for the purposes of this Ordinance be deemed to be the income of the husband and the tax on such income shall be charged upon the husband:

Provided that where such married woman derives income—

- (a) from a business carried on by her apart from her husband,
or
- (b) from employment with or services rendered to any person other than her husband,

of an amount which exceeds \$600 in any year the spouses shall for the purposes of this Ordinance be treated for that year as if they were unmarried persons.

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

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

Incapacitated
person

34. A receiver appointed by a court, or a trustee, guardian, curator or committee having the control of the property of an incapacitated person shall be chargeable to tax on the income of such incapacitated person in the like manner and to the like amount as such person would be chargeable if he were not an incapacitated person.

Non-resident
person

35. Tax on the income of a non-resident person shall be chargeable upon such person or upon his trustee, attorney, factor, agent, receiver, partner or manager on his behalf.

Deceased
person

36. Income accruing or received prior to the date of death of a deceased person which would but for his death have been chargeable to tax on him for any year shall, subject to section 48, be

charged to tax as his income upon his executors or administrators for such year.

37. Every person chargeable to tax under this Ordinance on behalf of another person may retain out of any money coming into his hands on behalf of that other person so much thereof as shall be sufficient to pay such tax; and shall be indemnified against any person whatsoever for all payments made by him by virtue of this Ordinance.

Indemnification of representative

38. Where any obligation is imposed on any person under this Ordinance and such person is a body corporate then the general manager or other principal officer thereof shall be responsible for performing that obligation.

Liability of manager, etc., of body corporate

PART VII

RETURNS

39. (1) Every person chargeable to tax for any year shall, notwithstanding that he may not have received a notice in writing from the Minister under subsection (2), make a return of income for that year on the form specified under section 76 not later than the 31st day of March following that year:

Returns of income etc.

Provided that where any such person carries on a business the gains or profits from which for such year fall to be determined under section 14 by accounts made up for a period which ends after the end of such year, the return required by this subsection shall be made not later than 3 months after the end of the period for which such accounts are made up.

(2) The Minister may by notice in writing require any person to furnish him, within such time as he may specify, with a return of income for any year together with such other particulars as may be required for the purposes of this Ordinance and such return shall be on the form specified under section 76.

(3) Where any business is carried on by 2 or more persons in partnership the Minister may by notice in writing require the precedent resident partner to furnish him, within such time as he may specify, with a return of income of the partnership for any year as if the partnership were a person liable to tax, together with such other particulars as may be required for the purposes of this Ordinance including the names and addresses of the partners and the share of the partnership income to which each partner was entitled for such year.

(4) For the purposes of subsection (3) the precedent resident partner shall be that partner who, of the resident partners—

- (a) is first named in the agreement of partnership; or
- (b) if there be no written agreement is specified by name or initials singly or with precedence to the other partners in the usual name of the partnership; or
- (c) is the precedent acting partner if the partner named with precedence is not an acting partner.

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

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

Keeping of records

40. Every person who carries on a business shall keep such records of the transactions of that business as are necessary for the accurate determination of the gains and profits from that business and for the rendering of the returns of income required by section 39.

Return of emoluments, etc., paid

41. (1) The Minister may by notice in writing require any employer to furnish him, within such time as he may specify, with a return for any year containing—

- (a) the name and address of each person to or in respect of whom any payment or allowance was made during that year in respect of that person's employment together with the amounts of those payments and allowances; and
- (b) the name and address of each person to whom any payment of pension was made during that year in respect of that person's former employment together with the amounts of those payments:

Provided that there may be excluded from such return such payments or allowances as the Minister may permit.

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

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

- (a) to payments and allowances include all payments and all benefits, advantages and facilities referred to in subparagraphs (i), (ii) and (iii) of section 6 (a);
- (b) to persons employed include, in relation to a company, a director of that company.

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

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

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

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

PART VIII

ASSESSMENTS

44. (1) The Minister shall proceed to assess every person chargeable with tax as soon as possible after the receipt of the return of income required by section 39 or, where there has been failure to make such return, after the expiry of the time allowed for the delivery of such return by that section. Minister to make assessments

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

- (a) accept such return and assess him on the basis thereof; or
- (b) if he has reasonable cause to believe that such return is not true and correct, estimate according to the best of his judgment the amount of the income of such person and assess him accordingly.

(3) Where a person has not furnished a return of income and the Minister considers that such person is liable to tax he may, according to the best of his judgment, determine the amount of the income of such person and assess him accordingly.

Assessment
of persons
leaving the
Gilbert
Islands

45. Where—

- (a) the Minister has reasonable cause to believe that any person is about to leave, or has left, the Gilbert Islands for other than a temporary absence, and
- (b) such person has not been assessed to tax on income chargeable to tax for any year,

then the Minister may, according to the best of his judgment, determine the amount of the income of such person for such year and assess him accordingly.

Additional
assessments

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

Notice of
assessment

47. The Minister shall cause a notice of assessment to be served on each person assessed; and such notice shall state the amount of income assessed and the amount of tax payable and shall inform such person of his rights under section 51.

Time limit for
making
assessments

48. An assessment may be made under this Ordinance at any time prior to the expiry of 7 years after the year to which the assessment relates:

Provided that—

- (i) where any fraud or any gross or wilful neglect has been committed by or on behalf of any person in relation to tax for any year, an assessment for such year may be made at any time;
- (ii) in the case of an assessment made upon the executors or administrators of a deceased person in respect of the income of such person, the assessment shall be made prior to the expiry of 3 years after the year in which such person died.

Assessment
lists

49. (1) The Minister shall as expeditiously as possible prepare lists (in this Ordinance referred to as "the assessment lists") of persons assessed to tax, such lists containing the name and address of each person assessed and the amount of the income assessed on and the tax payable by each such person.

(2) Where for any year complete copies of all notices of assessment and of notices amending assessments are filed in the

office of the Minister, they shall constitute the assessment lists for the purposes of this Ordinance and each such copy shall be receivable in any proceedings as evidence of the fact of the assessment, of the details thereof and of any amendment thereto.

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

Errors in assessments, etc.

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

(a) by reason of a mistake therein as to—

- (i) the name of the person assessed; or
- (ii) the description of any income; or
- (iii) the amount of tax charged; or

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

PART IX

OBJECTIONS AND APPEALS

51. Any person who disputes an assessment made upon him under this Ordinance may by notice in writing to the Minister object to the assessment; and no such notice shall be valid unless it states precisely the grounds of the objection and is received by the Minister within the time determined for payment in the notice of assessment:

Notice of objection to assessment

Provided that if the Minister is satisfied that the person objecting to the assessment was prevented by reasonable cause from giving such notice within such period the Minister may admit such notice after the expiry of such period whereupon such admitted notice shall be deemed to be a valid notice of objection.

52. (1) Where a person has given a valid notice of objection to an assessment and subsequently agrees with the Minister the manner in which and the extent to which that assessment shall be amended the Minister shall amend the assessment accordingly and shall send to that person a statement of the amended assessment and of the tax payable thereunder.

Settlement of objections

(2) Where a person has given a valid notice of objection to an assessment and, not having withdrawn that objection, does not agree with the Minister as to the amendment of the assessment the Minister shall make such amendments, if any, to the assessment as he considers appropriate and shall cause a notice of the assessment as so amended and of the tax payable thereunder to be served upon that person together with an intimation of that person's rights under section 53.

Appeal
against
settlement of
objections

53. (1) Any person who has given a valid notice of objection to an assessment and as a consequence has been served with a notice under section 52 (2) may, within 60 days after the date of service upon him of that notice, give notice in writing to the Minister that he intends to appeal to the High Court, stating the grounds of the appeal; and the appeal shall be heard and determined as is hereinafter provided.

(2) Notice in writing of the appeal shall be lodged with the Registrar of the High Court within 60 days after the date of service upon the appellant of the notice under section 52 (2).

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

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

(5) In determining the appeal the High Court may confirm, reduce, increase or annul the assessment or make such order thereon as may be thought fit whereupon the Minister shall make such adjustments thereto as are consequent upon that determination.

Effect of
High Court's
decision

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

Finality of
assessments

55. (1) Where—

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

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

(i) the assessment has been amended under section 52 (1); or

(ii) a notice has been served under section 52 (2) but no notice of appeal has been given under section 53 (1); or

(iii) the assessment has been determined on appeal;

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

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

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

56. (1) Where for any year a person has made a return of income under section 39 and has been assessed to tax under section 44 (2) (a) and he alleges that the assessment was excessive by reason of some error or mistake of fact in such return then he may, not later than 2 years after the expiry of such year, make an application to the Minister for relief.

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

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

PART X

COLLECTION AND REPAYMENT OF TAX

57. (1) Subject to the following provisions of this section the tax charged in each assessment shall be due and payable on or before a date, not less than 30 days after the date of service of the notice of assessment, to be determined by the Minister and stated in the notice of assessment.

Time for
payment

(2) Where a valid notice of objection to an assessment has been given under section 51 the amount of tax which is not in dispute shall, notwithstanding that the assessment has not been finally determined, be due and payable in accordance with subsection (1) and the balance, if any, within 30 days of the date of determination of the assessment.

(3) The Minister may in his discretion extend the period within which any tax is payable and may specify another due date for payment; and in particular he may accept payment of tax by instalments with the addition of interest at such rate not exceeding 10 per cent per annum as he may determine.

(4) Notwithstanding the other provisions of this Ordinance, the Minister may require the tax charged in an assessment under section 45 on the ground of a person's imminent departure from the Gilbert Islands to be paid in full within 12 hours after service of the notice of assessment.

Penalty for
non-payment
of tax

58. (1) If any tax is not paid on or before the due date an additional sum by way of penalty shall become payable amounting to the greater of—

- (a) \$10, or
- (b) interest at the rate of 15 per cent per annum on the unpaid tax from the date by which it should have been paid until the date of payment:

Provided that the penalty shall not exceed the amount of tax unpaid.

(2) The provisions of this Ordinance relating to the collection and recovery of tax shall apply to the collection and recovery of the penalty imposed by this section as if it were tax.

(3) The Minister may in his discretion remit the whole or any part of the penalty imposed by this section.

Recovery of
tax

59. (1) Any tax, interest or penalty assessed or imposed upon any person under this Ordinance shall be recoverable as a Crown debt and may be sued for and recovered in a court of competent jurisdiction by the Minister, or any officer authorised by him in writing, with full costs of the suit from that person.

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

60. (1) If it is proved to the satisfaction of the Minister that any person has for any year paid tax by deduction or otherwise in excess of the amount which he ought to have paid for that year that person shall be entitled to be repaid the amount so paid in excess:

Repayment
and remission
of tax

Provided that every claim for repayment under this section shall be made within 6 years of the end of the year to which it relates.

(2) The Minister may remit wholly or in part the tax payable by any person on the ground—

- (a) of poverty; or
- (b) that the expense likely in the opinion of the Minister to be incurred in collecting or recovering the tax would be greater than the amount of tax payable or unpaid.

(3) The Minister on being satisfied that it is just and equitable to do so may remit wholly or in part the tax payable by any person or may refund wholly or in part the tax paid by any person.

61. (1) The Minister may, in any case where he thinks it necessary, by notice declare any person to be the agent of any other person and the person so declared an agent shall be deemed to be the agent of such other person for all the purposes of this Ordinance.

Power to
appoint agent
and require
information

(2) For the purpose of this section the Minister may require any person to give him information, either orally or in writing, in respect of any money, funds or other assets which may be held by him for or be due from him to any other person.

PART XI

PAY AS YOU EARN

62. For the purposes of sections 63 and 64—

“emoluments” means all salary, wages, overtime, bonus, remuneration, gratuities, including the estimated value of any benefits, advantages or facilities referred to in section 6 (a) (iii), stipend, commission or other amounts for services, retiring allowances or pension, accruing in, derived from or received in the Gilbert Islands and which are assessable to tax, but does not include any salary or share of profits arising from a trade, business, profession or vocation carried on by any person either by himself or in partnership with any other person;

Interpretation
of sections 63
and 64

“employment” means the position of an individual in the service of some other person including the Crown, and includes an office or position entitling the holder thereof to a fixed or ascertainable stipend or remuneration and includes any other office the holder of which is elected by popular vote or is elected or appointed in a representative capacity.

Assessment
charge on
emoluments

63. Notwithstanding the other provisions of this Ordinance, on the making of any payment of or on account of any emoluments tax shall, subject to and in accordance with the regulations made by the Minister under section 64, be deducted by the person making the payment notwithstanding that when the payment is made no assessment has been made in respect of those emoluments and notwithstanding that such emoluments may be in whole or in part emoluments of some year other than the year during which the payment is made:

Provided that if any question arises as to whether any emoluments are or are not emoluments within the meaning of section 62 such question shall be determined by the Minister, and the provisions of this Ordinance relating to objections and appeals shall apply to any determination of the Minister under this section.

Regulations

64. (1) The Minister shall make regulations with respect to assessment, charge, collection, recovery and repayment of tax in respect of all emoluments and such regulations may, in particular, include provision—

- (a) for requiring any person making any payment of or on account of any such emoluments, when he makes the payment, to make deductions of tax in accordance with instructions issued by the Minister and for rendering persons required to make such deductions accountable to the Minister;
- (b) for the production to and inspection by the Minister, or any officer authorised by him in writing upon the production of his written authority, of wages sheets and other documents and records for the purpose of satisfying the Minister that tax has been and is being deducted and accounted for in accordance with the regulations;
- (c) for the collection and recovery, whether by deduction from income paid in any later year or otherwise, of tax in respect of emoluments to which this Ordinance applies which has not been deducted or otherwise recovered during the year;

(d) for the making of assessments in respect of emoluments and for other matters dealing with the recovery of underpayments or the refund of overpayments arising therefrom and for ignoring any amount of less than \$2 in the amounts so ascertained of any underpayments to be recovered or overpayments to be refunded and for the manner in which amounts of excess tax are to be refunded under section 60 (1);

(e) for appeals with respect to matters arising under the regulations which would not otherwise be the subject of an appeal.

(2) Any regulations made under subsection (1) may provide that a contravention or breach thereof shall be punishable by a fine of \$200 and imprisonment for 3 months.

65. All amounts deducted by any person under any regulations made under section 64 shall be deemed to be held in trust by such person for the Crown and shall not be subject to attachment in respect of any debt or liability of the said person and in the event of any liquidation, assignment or bankruptcy the said amounts shall form no part of the estate in liquidation, assignment or bankruptcy but shall be paid in full to the Minister before any distribution of property is made.

Amount deducted to be held in trust for Crown

66. Every sum which a person is required by section 63 and by any regulations made under section 64 to deduct from any payment of or on account of any emoluments shall be a first charge on those emoluments and shall be deducted prior to any other deduction which such person may be required to make therefrom whether by virtue of an order of a court or any other law.

Priority of deductions under this Part

67. (1) Notwithstanding any other provision of this Ordinance, the Minister shall not be required to assess a person in respect of his emoluments for any period during which tax was deducted from those emoluments under this Part if the tax so deducted is the correct amount to be deducted in accordance with instructions issued by the Minister under regulations made under section 64

Formal assessment to be unnecessary

(2) If the amount of tax deducted under this Part is not the correct amount to be paid the error may be corrected by means of an assessment and any tax remaining payable or paid in excess of the amount which ought to have been paid may be collected from or repaid to the taxpayer, as the case may be, in accordance with this Ordinance.

(3). Where the amount of tax deducted under this Part is less than the correct amount to be paid the tax remaining payable may be deducted under this Part in accordance with instructions issued by the Minister under regulations made under section 64.

Transitional provisions

68. (1) Notwithstanding any other provisions of this Ordinance, tax which, under the law in force immediately prior to 1st January 1975, would have been payable upon the chargeable income of an employee for the year ended 31st December 1974 shall, subject to this section, be deemed to have been paid.

(2) Tax shall not be deemed to have been paid by virtue of subsection (1) unless the employee concerned has delivered the return required by section 39 in respect of the income year 1974 to the Minister.

(3) If the tax payable by an employee for the income year 1975 is less than the tax that would have been payable by that employee for the income year 1974 if this Part had not come into operation, the amount of tax deemed to have been paid by virtue of subsection (1) shall not exceed the amount of tax assessed and paid for the income year 1975.

PART XII

OFFENCES AND PENALTIES

Offences

- 69.** (1) Any person who without reasonable excuse—
- (a) fails to furnish within the required time any return, statement or document which he is required under this Ordinance to furnish; or
 - (b) fails to keep the business records which he is required to keep by section 40,
- shall be guilty of an offence.
- (2) Any person who wilfully, with intent to evade tax—
- (a) makes a false return of income by omitting therefrom or understating therein any income which should have been stated therein; or
 - (b) makes any false statement in any return which he is required under this Ordinance to make; or
 - (c) gives any false information in relation to any matter; or
 - (d) maintains or authorises the maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or

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

(f) makes any fraudulent claim for the repayment of tax,
shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall for each such offence be liable to a fine of \$400 and twice the amount of tax for which he is liable under this Ordinance for the year in respect of which the offence was committed and to imprisonment for 6 months.

70. Proceedings for an offence under section 69 may be instituted at any time within 6 years after the end of the year in respect of which the offence was committed.

Time limit for proceedings

71. Where any person admits in writing that he has committed any offence under section 69 the Minister may, instead of initiating proceedings before a court, compound the offence and accept such sum of money not exceeding the amount of the fine to which such person would have been liable if he had been convicted of such offence.

Power of Minister to compound offence

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

Offences by corporate body

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

Tax to be payable notwithstanding prosecutions

PART XIII

ADMINISTRATION

74. (1) The Minister shall undertake the administration of this Ordinance, shall account for the tax levied thereunder and

Responsibility of Minister, etc.

shall be responsible for the due care and management of that tax and of all matters incidental thereto and the Minister may appoint such other officers as may be necessary for the due administration of this Ordinance.

(2) The Minister may by writing under his hand delegate to any public officer or to the person for the time being holding any public office specified by him the exercise of any power or the performance of any duty conferred or imposed upon him by any provision of this Ordinance.

(3) The Minister may appoint 1 or more agents for the purpose of carrying out such duties under this Ordinance as are specified in the instrument of appointment and any such agent shall thereupon be deemed to be an officer for the purpose of carrying out those duties.

Secrecy

75. (1) The Minister, the Director of Audit and every other person concerned in the administration of this Ordinance shall regard and deal with all documents and information relating to the income or other circumstances of any person which may come into his possession or to his knowledge in the course of such administration as secret:

Provided that where arrangements for the avoidance of double taxation which have been made with the Government of any other territory have effect under section 30 and contain provisions for the mutual exchange of information, nothing in this section shall prevent the furnishing of information to such Government in accordance with such provisions.

(2) Any person violating the provisions of this section shall be guilty of an offence and shall for each such offence be liable to a fine of \$500 or to imprisonment for 6 months.

Form of returns, etc.

76. The Minister may specify the form of any return, notice or other document required for the purpose of this Ordinance and where any form has been so specified such return, notice or other document shall be in the form so specified.

Rules

77. The Minister may make rules generally for the carrying out of the provisions of this Ordinance.

**Repeals and transition
Cap. 55 of
1952
Rev. 1952,
p. 713
L.N. 57/66**

78. (1) The former Income Tax Ordinance is repealed and the Income Tax (Depreciation) Order 1948 and the Tax Certificate (Exemption) Order 1966 are revoked:

Provided that, notwithstanding such repeal and such revocations, the repealed Ordinance and the Income Tax (Deprecia-

tion) Order 1948 shall continue to apply to income of such years prior to 1972 as they would have applied to if they had not been repealed or revoked.

(2) Notwithstanding the foregoing provisions of this section—

- (a) section 10 and Schedule 3 shall apply to applications for pioneer relief made on or after 1st January 1973 and section 24B and Schedule 3 of the repealed Ordinance shall continue to apply to such applications made before that date;
- (b) where an annuity contract has been approved under section 3 (1) (c) (ii) of the repealed Ordinance or a fund or scheme has been approved under section 3 (1) (c) (iii) of that Ordinance such contract, fund or scheme shall be deemed for the purposes of this Ordinance to have been approved under section 15 of this Ordinance;
- (c) all arrangements declared under section 36 of the repealed Ordinance to have been made with a view to affording relief from double taxation shall be deemed to have been the subject of an order under section 30 of this Ordinance and shall continue to have effect accordingly.

SCHEDULE 1

(Section 3)

RATES OF BASIC TAX

- 1. Emoluments paid monthly or at longer intervals—
Exceeding \$58.50 per month 3 cents per dollar per month
- 2. Emoluments paid at less than monthly intervals—
Exceeding \$13.50 per week 3 cents per dollar per week
- 3. Other income—
Exceeding \$702 per year 3 cents per dollar per year

SCHEDULE 2

(Section 10(1))

EXEMPTIONS

- 1. The official emoluments of the Governor
- 2. Travelling, subsistence and entertainment allowances paid to officers in the public service and similar allowances paid to other persons so long as the Minister is satisfied that they are reasonable in amount

3. Education allowances paid to officers in the public service in respect of the education of their children

In this paragraph "children" means sons and daughters, including step-sons, step-daughters, adopted sons and adopted daughters, not having passed their 19th birthdays and being unmarried and wholly dependent upon officers in the public service

4. The following sums paid to designated officers as defined in the Overseas Service (Gilbert and Ellice Islands) Agreement, 1961—

- (a) the inducement allowance referred to in clause 3 (a) of that Agreement;
- (b) that part of a gratuity as defined in that Agreement referred to in clause 2 (d) of that Agreement; and
- (c) the special allowance referred to in clause 3 of the Overseas Service (Gilbert and Ellice Islands) Agreement, 1967

5. Sums paid in respect of any employment which are certified by the Minister to be similar to those described in paragraphs 3 and 4 as payable to public officers and designated officers respectively

6. Any pecuniary benefit or gratuity payable under the Schedule to the Gilbert and Ellice Islands Colony (Entitled Officers) Order 1971

7. The income of any religious, charitable, benevolent or educational institution approved by the Minister

8. Pensions granted in respect of wounds or disabilities suffered by members of Her Majesty's Forces while on active service in such Forces

9. Any amounts received by way of compensation for death or injuries, or by way of retiring gratuity

10. The income of an approved pension fund

11. The income of the South Pacific Commission and the income derived from funds of the Commission by persons employed thereby

12. The profits derived from a business of air transport carried on in the Gilbert Islands by a non-resident person who is declared exempt by the Minister

Cap. 14

13. The income of any co-operative society registered under the Co-operative Societies Ordinance

14. The income of any local authority established under the Local Government Ordinance or any Ordinance for the time being in force amending or replacing it

15. The official salary of and the income derived from sources outside the Gilbert Islands by the representative in the Islands of the Government of another country

16. The official emoluments of—

- (a) any member of Her Majesty's Forces of a member country of the Commonwealth; and
- (b) any person in the public service of the Government of such member country where such person is resident in the Gilbert Islands solely for the purposes of performing the duties of his office, where such emoluments are payable from the public funds of such member country and are subject to income tax in such member country

17. The emoluments payable out of overseas sources in respect of duties performed in the Gilbert Islands in connection with any technical assistance agreement to which the Government is a party to any non-resident person or to any person who is resident solely for the purpose of performing such duties, in any case where such agreement provides for the exemption of such emoluments

18. The income arising from a scholarship awarded to a person for the purpose of full-time instruction at a university, college, school or other place of instruction

19. The profits of the Gilbert Islands Development Authority

20. A gratuity received under a written contract of employment upon expiry, termination, renewal or extension of such contract, to an employee who is not during such employment a member of a pension fund (other than a pension fund to which he is a voluntary contributor and in respect of which no contributions are payable by his employer and out of which a pension will be paid to such employee in respect of such employment):

Provided that such a gratuity paid to an employee other than a public officer shall be exempt from tax only to the extent that in the opinion of the Minister the gratuity does not exceed in proportion to such employee's salary any such gratuity payable to public officers of a like category to such employee:

And provided further that such a gratuity shall be exempt from tax only to the extent that it is or is deemed by virtue of section 6 (a) (i) to be income of the year 1975 or a subsequent year.

SCHEDULE 3

(Section 10 (2))

PIONEER RELIEF

1. In this Schedule unless the context otherwise requires—

Interpretation

“date of production” means the date of production specified in the relevant development order;

“development order” means an order made under section 10;

“tax concession period” means the period starting from the date of the development order and ending with the year in which the fifth anniversary of the date of production falls.

2. Every application made under the provisions of section 10 (2) shall contain the following particulars—

Particulars to be given in every application

- (a) the nature of the business which it is proposed that the company shall commence;
- (b) a detailed estimate of the benefits to the economy to be expected from such business;
- (c) the estimated date of production;
- (d) the estimated amount and purpose of the capital to be employed in the business and the sources from which that capital will be obtained;
- (e) the conditions under which workers will be employed, their numbers and provisions for their housing;
- (f) evidence that the business will be provided with effective and competent management; and

(g) such other particulars or information as the Minister may require.

Income of a
pioneer
company to
be exempt

3. The total income of a pioneer company for each year comprised within its tax concession period shall be exempt from tax.

Exempt
income to be
distributable
tax-free

4. (1) Upon the agreement by the Minister of the amount of the total income of a pioneer company to be exempt from tax or upon the final determination of that amount on appeal, the amount thereof shall be credited by the company to a special account:

Provided that at no time shall the total of all amounts so credited exceed the amount of the ordinary share capital of the company which is in issue, excluding any such capital issued for other than valuable consideration.

(2) The amount standing to the credit of such special account may be applied by the company to the payment of 1 or more special dividends to its shareholders, and every such dividend shall be exempt from tax in the hands of those shareholders:

Provided that no such special dividend may be declared to be payable on a date later than 2 years after the end of the tax concession period applicable to the company.

(3) Where any such special dividend is received by a shareholder which is a company then, not later than 1 year after the date upon which that dividend was received, that company may distribute an amount not exceeding the amount so received by way of 1 or more special dividends to its own shareholders, and each such special dividend shall be exempt from tax in the hands of those shareholders.

(4) Where the Minister and the company are unable to agree upon the amount of any total income to be exempted from tax, the Minister shall determine that amount and cause written notice thereof to be served on the company.

SCHEDULE 4

(Section 11 (2))

DEPRECIATION

Interpretation

1. In this Schedule, unless the context otherwise requires—

“depreciation deduction” means a deduction authorised by this Schedule;

“expenditure”, in relation to the cost of a capital asset, means the amount spent upon the provision of that asset by the person claiming the depreciation deduction, reduced by the amount of any grant, subsidy or contribution towards that cost made by any other person;

“written-down value”, in relation to a capital asset, means the amount of the expenditure upon that asset less the sum of any depreciation deductions made in respect of that asset for all earlier years and any similar deductions authorised by any repealed Income Tax Ordinance.

Deduction

2. Where a person in receipt of income chargeable to tax under section 4 (a) for any year employs during that year in the production of that income any of the capital assets specified in paragraph 3 there shall be allowed, upon his making a claim thereto, a deduction on account of the depreciation of such assets for the purpose of arriving at the amount of such income.

3. The capital assets in respect of which a depreciation deduction may be claimed are buildings (excluding land), ships and machinery and plant other than ships. Assets qualifying

4. (1) Where capital expenditure upon an asset within paragraph 3 is incurred in the year for which the relevant depreciation deduction is being claimed, the amount of such deduction shall be— Amount of deduction

(a) where the asset is a ship or is machinery or plant other than a ship, 50 per cent,

(b) where the asset is a building, 25 per cent of the amount of such expenditure.

(2) Where such expenditure is incurred in a year earlier than the year for which the relevant depreciation deduction is being claimed, the amount of such deduction shall be—

(a) where the asset is machinery or plant other than a ship, 25 per cent,

(b) where the asset is a ship or a building, 10 per cent of the written-down value of the asset.

5. Where in any year a capital asset in respect of which a depreciation deduction has been made is sold, scrapped or destroyed and the amount of the sale proceeds or insurance recoveries are less than the written-down value, there shall be made for that year a deduction equal to the amount of the deficiency. Balancing deductions

6. Where in any year a capital asset in respect of which depreciation has been made is sold or destroyed and the amount of the sale proceeds or insurance recoveries are more than the written-down value, the amount of the excess shall be additional income chargeable to tax for that year under section 4 (a). Balancing charge

7. Where a building is bought or sold together with land the Minister shall make such apportionment of the total sum as is just for the purpose of arriving at the separate value of the building. Buildings

SCHEDULE 5

(Section 25)

RATES OF TAX

A. In respect of income of the years before the year 1976—

1. Tax shall be charged upon the chargeable income of an individual at the following rates—

	\$	c.
For every dollar of the first	300	4
“ “ “ “ next	300	6
“ “ “ “ “	300	8
“ “ “ “ “	300	10
“ “ “ “ “	600	15
“ “ “ “ “	1,200	20
“ “ “ “ “	1,200	25
“ “ “ “ “	1,800	30
“ “ “ “ “	1,800	35
“ “ “ “ “	2,400	40
“ “ “ “ “	2,400	45
For every dollar exceeding	12,600	50

2. Tax shall be charged upon the chargeable income of a person other than an individual at the rate of 22½ cents for every dollar.

B. In respect of income of the year 1976 and subsequent years—

1. Tax shall be charged upon the chargeable income of an individual at the following rates—

	\$	c.
For every dollar of the first	500	9
" " " " next	500	12
" " " " "	1,000	21
" " " " "	1,000	30
" " " " "	1,500	39
" " " " "	1,500	45
For every dollar exceeding	6,000	50

2. Tax shall be charged upon the chargeable income of a person other than an individual at the rate of 25 cents for every dollar.

[Subsidiary]

SUBSIDIARY LEGISLATION

Regulations under section 64

L.N. 1/75

INCOME TAX (PAY AS YOU EARN) REGULATIONS

Citation 1. These Regulations may be cited as the Income Tax (Pay As You Earn) Regulations.

Interpretation 2. In these Regulations—
 "emoluments" means emoluments as defined by section 62 of the Ordinance;
 "employment" means employment as defined by section 62 of the Ordinance.

Deduction of income tax 3. (1) Every employer shall deduct income tax at the rates specified by the Chief Accountant from the emoluments of every person in his employment designated by the Chief Accountant (hereinafter referred to as a designated employee).

(2) If an employer fails to deduct income tax in accordance with paragraph (1) he shall be personally liable to pay to the Chief Accountant the amount of any tax which he has so failed to deduct but such employer shall be entitled to recover any amount paid by him under this paragraph from the designated employee in respect of whom the payment was made.

Variations in amount of P.A.Y.E. deductions 4. (1) The Chief Accountant may authorise an employer to vary the amount of deductions under regulation 3 (1) in respect of a designated employee in any of the following cases—

- (a) a change in the marital status of the employee;
- (b) the birth or legal adoption of a child to or by the employee;
- (c) the ceasing of the employment of a married woman if the Chief Accountant is satisfied that she is unlikely to resume employment in the year in respect of which the varied deductions are to be made;
- (d) exceptional hardship.

(2) The Chief Accountant may repay to a designated employee any amount of income tax deducted under these Regulations in a case of exceptional hardship.

5. Without prejudice to the right to object to an assessment and the rights of appeal connected therewith after the end of the year to which the assessment in question relates, any designated employee who is dissatisfied with the amount of any deduction made under regulation 3 (1) may make an objection thereto to the Chief Accountant at any time during the year in respect of which the deduction was made and the decision of the Chief Accountant in respect of any such objection shall be final and not subject to appeal until the end of that year.

[Subsidiary]
Objections
during tax
year

6. (1) Every employer of a designated employee shall keep a record showing—

Records to be
maintained

(a) the emoluments paid and payable to such employee;

(b) the amount of income tax deducted from the emoluments of such employee under regulation 3 (1);

in such form as the Chief Accountant may approve.

(2) Every employer shall ensure that every record kept under paragraph (1) is available for inspection at any reasonable time by the Chief Accountant or by any public officer authorised in that behalf by the Chief Accountant.

(3) Every employer of a designated employee shall within 14 days after the end of each year, or within such further time as the Chief Accountant may in any case allow, furnish to the Chief Accountant a statement in a form approved by the Chief Accountant setting forth the name and address of every such employee, the emoluments paid to him and the total amount of tax deducted from those emoluments during that year.

(4) Together with the statement under paragraph (3) the employer shall furnish to the Chief Accountant details of any emoluments payable but not paid to designated employees during the year in question.

7. (1) The Chief Accountant shall supply to every employer of a designated employee a sufficient supply of tax deduction certificates in such form as he shall approve for the purpose of this regulation.

Tax
deduction
certificates

(2) Every employer shall complete a tax deduction certificate supplied under paragraph (1) in respect of each designated employee and shall dispose of such certificate in the manner specified therein.

(3) One copy only of the tax deduction certificate maintained in respect of him shall be handed to a designated employee by his employer on the date his employment terminates or within 21 days after the end of the year to which the certificate relates, whichever is the earlier.

(4) No employer shall, without the written consent of the Chief Accountant, show or furnish to any employee any document showing or purporting to show the amount of tax deducted from his emoluments under regulation 3 (1) other than a certificate supplied under paragraph (1) or the sole copy thereof handed to the employee under paragraph (3).

(5) Every employer to whom tax deduction certificates are supplied under paragraph (1) shall account for the disposal thereof to the Chief Accountant within 21 days after the end of the year in respect of which the certificates were so supplied.

8. Where a designated employee dies his employer shall pay no emoluments due and payable to the estate of the employee until the Chief Accountant has been notified of the amount so to be paid and has given his direction as to the amount of income tax, if any, to be deducted from such emoluments.

Death of a
designated
employee

9. Where any income tax has been deducted by an employer under regulation 3 (1) the amount of such tax shall for the purposes of the Ordinance be deemed

Liability for
income tax
on total
income

[Subsidiary]

to have been received by the employee from whose emoluments the tax was deducted at the time it was deducted.

Payment to the Chief Accountant of income tax deducted

10. (1) Every employer shall pay to the Chief Accountant the amount of any income tax deducted under regulation 3 (1) within 15 days after the end of the month in which it was so deducted.

(2) Any employer who fails to comply with paragraph (1) shall pay to the Chief Accountant an additional sum of 15 per cent of the amount of tax he has failed to pay to the Chief Accountant in accordance with that paragraph and such additional sum together with the amount of the tax shall be recoverable by the Chief Accountant in his own name.

(3) The Chief Accountant may reduce the amount of any additional sum recoverable under paragraph (2) if a satisfactory explanation for the delay is provided.

(4) Any additional sum recoverable under paragraph (2) shall be borne personally by the employer and no part thereof shall be recoverable from any employee or credited against any assessment for income tax.

Chief Accountant may require particulars of employees

11. The Chief Accountant may in writing require any employer to provide him with such details as he may require to identify the persons in that employer's employment and to ascertain their emoluments or anticipated emoluments in respect of any year the Chief Accountant may specify.

Offences

12. Any employer who—

- (a) contravenes these Regulations;
- (b) fails to comply with any requirement of the Chief Accountant under regulation 11;
- (c) wilfully makes or condones or connives at the making of any false entry in or omits or condones or connives at the omission of any material particular from any record, statement, form or other document required to be kept, furnished, completed or maintained by these Regulations;
- (d) in any notification required by regulation 8 or details required under regulation 11 provides any information which he knows to be false or does not believe to be true,

shall be liable to a fine of \$200 and to imprisonment for 3 months.

NOTE. All other subsidiary legislation under, deemed to be under or continued in force by this Ordinance is specifically omitted.

L.N. 52/72

With reference to section 10 (2) (Declaration of pioneer company) the Tarawa Biscuit Company Limited was declared a pioneer company for the purposes of the Ordinance.

With reference to section 30 (Arrangements for relief from double taxation) such arrangements have been made with the Governments of the following territories—

- The United Kingdom (Rev. 1952, p. 717, L.N. 57/68 and L.N. 33/73)
- Sweden (G.N. 31/55)
- Denmark (G.N. 145/56)
- Norway (G.N. 122/57)

[Subsidiary]

L.N. 4/75

With reference to section 61 (Power to approve agent and require information), the following agents have been appointed—

- (i) for the Gilbert Islands Development Authority, its Financial Controller;
- (ii) for employees of the Government, the Chief Accountant;
- (iii) for persons having accounts with the Bank of New South Wales on Tarawa Island, the Manager of the said Bank.

[Subsidiary]

SUBSIDIARY LEGISLATION**Declaration of pioneer company under section 10**

L.N. 16/80

Gilbert Islands Industries Ltd. is declared to be a pioneer company, the date of production being 1 February 1980. The provisions of paragraphs 1, 3 and 4 of Schedule 2 to the Ordinance apply, subject to the modification that the tax concessions period ends 2 years after the date of production.

Declaration of approved pension fund under section 15 (1)

L.N. 79/80

The Kiribati Provident Fund is declared to be an approved pension fund with effect from 1 July 1977.

SUBSIDIARY LEGISLATION

[Subsidiary]

Declaration of approved pension fund under section 15 (1)

The Kiribati Provident Fund is declared to be an approved pension fund with L.N. 79/78 effect from 1st July 1977.