

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 110.

*Income Tax.*

NOTE.

Although not falling within the period of this up-date it is thought that the omission of this Chapter under Section 5 of the *Revision of Laws Act 1973* should be brought to notice as soon as possible. The Chapter was omitted by the following notice in *National Gazette* No. G 6 of 4 February 1982:—

"OMISSION OF LAW FROM THE REVISED EDITION.

I, Tore Lokoloko, G.C.M.G., O.B.E., K. St. J., Governor-General, by virtue of the powers conferred by Section 5 of the *Revision of the Laws Act 1973* and all other powers me enabling, acting with, and in accordance with, the advice of the National Executive Council, hereby direct the omission from the Revised Edition of the Laws prepared under the authority of that Act of the *Income Tax Act 1959*, it being my opinion that it is undesirable to publish it in the Revised Edition.

Dated this 26th day of January, 1982.

TORE LOKOLOKO  
Governor-General."

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 110.

*Income Tax Act.*

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"company"  
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"exempt income"  
"fishing operations"  
"friendly society"  
"income tax"  
"liquidator"  
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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 110.

*Income Tax Act.*

Being an Act to impose a tax on incomes and to provide for its assessment and collection, and for related purposes.

PART I.—PRELIMINARY.

1. Interpretation.

(1) In this Act, unless the contrary intention appears—

“adopted child”, in relation to a person, means a person adopted by the first-mentioned person—

- (a) under a law of Papua New Guinea, or of a State or Territory of Australia, relating to the adoption of children; or
- (b) under a law of any other place relating to the adoption of children, if the validity of the adoption would be recognized under the law of Papua New Guinea or of a State or Territory of Australia;

“agent” includes—

- (a) a person who, in the country and for or on behalf of any person outside the country, holds or has the control, receipt or disposal of any money belonging to that person; and
- (b) a person declared by the Chief Collector to be an agent or the sole agent of a person for any of the purposes of this Act;

“agent’s certificate” means a certificate referred to in Section 228(1);

“allowable deduction” means a deduction allowable under this Act;

“assessable income” means all the amounts that, under this Act, are included in the assessable income;

“assessment” means the ascertainment of the amount of taxable income and of the tax payable on that income but does not include the ascertainment of the amount of any provisional tax;

“Assistant Collector” means an Assistant Collector of Taxes referred to in Section 3(b);

“the Australian Income Tax Act” means the *Income Tax Assessment Act 1936* of Australia, as in force from time to time;

“business” includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee;

“the Chief Collector” means the Chief Collector of Taxes referred to in Section 3(a);

“child” in relation to a person, includes an adopted child, a step-child and an ex-nuptial child of the person;

“Commonwealth country” means—

- (a) Australia, Canada, Sri Lanka, Ghana, India, Malaysia, New Zealand, Pakistan or the United Kingdom; or

- (b) any other country declared by the regulations to be a Commonwealth country,

and includes—

- (c) a colony, overseas territory or protectorate of a country specified in Paragraph (a), or of a country declared to be a Commonwealth country under Paragraph (b); and
- (d) a territory for the international relations of which any such country is responsible;

"company" includes a body or association, corporate or unincorporate, but does not include a partnership;

"concessional rebate" means a rebate allowable under Division III.22;

"daughter", in relation to a person, includes an adopted child, a step-child or an ex-nuptial child, being a female, of that person;

"dividend" includes—

- (a) any distribution made by a company to any of its shareholders, whether in money or other property; and
- (b) any amount credited by a company to any of its shareholders as shareholders; and
- (c) the paid-up value of shares issued by a company to any of its shareholders to the extent to which the paid-up value represents a capitalization of profits,

but does not include—

- (d) subject to Subsections (4) and (5), moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of a share premium account of the company; or
- (e) subject to Subsection (6), moneys paid or credited, or property distributed, by a company by way of repayment by the company of moneys paid up on a share; or
- (f) a reversionary bonus on a policy of life-assurance;

"dividend (withholding) tax" means tax payable under Section 180;

"employee" means a person who receives, or is entitled to receive, salary or wages, and includes—

- (a) a member of the Parliament; and
- (b) a person employed in the Public Service; and
- (c) a person employed by an authority constituted by or under a law of Papua New Guinea;

"exempt income" means income that is exempt from income tax, and includes income that is not assessable income;

"fishing operations" means—

- (a) operations relating directly to the taking or catching of fish, turtles, dugong, crustacea or oysters or other shellfish; or

(b) pearling operations,  
and includes oyster farming, but does not include—

(c) whaling; or

(d) any operations conducted otherwise than for the purposes of a business;

“friendly society” means a society registered as a friendly society under—

(a) a law of Papua New Guinea; or

(b) an Act of Australia or of a State of Australia; or

(c) a law in force in a Territory of Australia;

“income tax” means income tax imposed as such by this Act as assessed under this Act, but does not include dividend (withholding) tax or provisional tax;

“liquidator” means the person who, whether or not he is appointed as liquidator, is the person required by law to carry out the winding-up of a company;

“live stock” does not include animals used as beasts of burden or working beasts in a business other than a business of primary production;

“mortgage” includes a charge, lien or encumbrance to secure the repayment of money

“native body” means—

(a) a Local Government Council; or

(b) a society 90% of the shares in which are owned by automatic citizens and which is registered under the *Co-operative Societies Act 1965*<sup>1</sup>; or

(c) a society certified by the Director of Agriculture, Stock and Fisheries to be a native rural development society; or

(d) any other group or body of automatic citizens declared by the Head of State, acting on advice, by notice in the National Gazette to be a native body for the purposes of this Act;

“non-profit company” means a company that—

(a) is not carried on for the purposes of profit or gain to its individual members; and

(b) by the terms of the memorandum or articles of association, rules or other document constituting it or governing its activities, is prohibited from making any distribution, whether in money, property or otherwise, to its members;

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

“paid”, in relation to dividends, includes credited or distributed;

“partnership” means an association of persons carrying on business as partners or in receipt of income jointly, but does not include a company;

“pearling operations” means operations relating directly to—

(a) the taking of pearl shell or the culture of pearls or pearl shell; or

<sup>1</sup> By Section 4 of the pre-Independence *Companies (Co-operative Societies) Act 1975*, co-operative societies were converted into “co-operative companies” under Division XII.5 of the *Companies Act*. The former Act was not in force on the effective date, and when it comes into force Paragraph (b) will read—

“(b) a co-operative company 90% of the shares in which are owned by automatic citizens;”.

And see *Companies* (Ch. 146), footnote 1 to Division XII.5.

(b) the taking or catching or trochus, bêche-de-mer or green snails, but does not include operations conducted otherwise than for the purposes of a business;

"person" includes a company;

"primary production" means production resulting directly from—

- (a) the cultivation of the land; or
- (b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase; or
- (c) fishing operations,

and includes the manufacture of dairy produce by the person who produced the raw material used in the manufacture;

"provisional tax" means an amount payable as provisional tax in accordance with Division VI.3;

"relative" in relation to a person, means—

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of his spouse; and
- (b) the spouse of the person or of any other person specified in Paragraph (a);

"resident", used without qualification, means a resident of the country;

"resident of Australia"—

(a) in relation to a person other than a company, means a person who resides in Australia, and includes a person—

- (i) whose domicile is in Australia, unless the Chief Collector is satisfied that his permanent place of abode is outside Australia; or
- (ii) who has actually been in Australia, continuously or intermittently, during more than 50% of the year of income, unless the Chief Collector is satisfied that—

(A) his usual place of abode is outside Australia; and

(B) he does not intend to take up residence in Australia; or

(iii) who is—

(A) a contributor to the Superannuation Fund established under the *Superannuation Act 1922* of Australia, as in force from time to time; or

(B) the spouse, or a child under 16 years of age, of such a contributor; and

(b) in relation to a company, means a company that—

(i) is incorporated in Australia; or

(ii) not being incorporated in Australia, carries on business in, and has—

(A) its central management and control in; or

(B) its voting power controlled by shareholders who are residents of,

Australia;

"resident of the country"—

(a) in relation to a person other than a company, means a person who resides in the country, and includes a person—

(i) whose domicile is in the country, unless the Chief Collector is satisfied that his permanent place of abode is outside the country; or

(ii) who has actually been in the country, continuously or intermittently, during more than 50% of the year of income, unless the Chief Collector is satisfied that—

(A) his usual place of abode is outside the country; and

(B) he does not intend to take up residence in the country; or

(iii) who is—

(A) a contributor to the Public Officers Superannuation Fund established under the *Public Officers Superannuation Act*; or

(B) the spouse, or a child under 16 years of age, of such a contributor; and

(b) in relation to a company, means a company that—

(i) is incorporated in the country; or

(ii) not being incorporated in the country, carries on business in, and has—

(A) its central management and control in; or

(B) its voting power controlled by shareholders who are residents of,

the country;

"the Review Tribunal" means the Review Tribunal established under Section 239;

"salary or wages" means salary, wages, commission, bonuses or allowances paid (whether at piece-work rates or otherwise) to an employee as such, and without limiting the generality of the foregoing includes any payments made—

(a) under a contract that is wholly or substantially for the labour of the person to whom the payments are made; or

(b) by a company by way of remuneration to one of its directors; or

(c) by way of superannuation, pension or retiring allowance; or

(d) by way of commission to an insurance or time-payment canvasser or collector,

but does not include payments of exempt income;

"shareholder" includes a member or stockholder;

"share premium account", in relation to a company, means an account, whether called a share premium account or not, to which the company has, in respect

of premiums received by the company on shares issued by it, credited amounts, being amounts not exceeding the respective amounts of the premiums, but does not include such an account in a case—

- (a) where any other amount is included in the amount standing to the credit of the account; or
- (b) where an amount that has been credited to the account in respect of a premium received by the company on a share issued by it (not being an amount that has been so credited immediately after the receipt by the company of the premium) could not, at any time before it was so credited, be identified in the books of the company as such a premium;

"tax" means income tax;

"taxable income" means the amount remaining after deducting from the assessable income all allowable deductions;

"taxpayer" means a person deriving income;

"trading stock" includes—

- (a) live stock; and
- (b) anything produced, manufactured, acquired or purchased for purposes of manufacture, sale or exchange;

"the Tribunal" means the Review Tribunal;

"trustee" means a person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law, and includes—

- (a) an executor, administrator, guardian, committee, receiver or liquidator; and
- (b) a person—

- (i) having or taking on himself the administration or control of income affected by an express or implied trust; or
- (ii) acting in a fiduciary capacity; or
- (iii) having the possession, control or management of the income of a person under a legal disability;

"year of income"—

- (a) in the case of a company (other than a company in the capacity of a trustee), means—

- (i) in relation to any year of tax—the fiscal year next preceding that year; or
- (ii) the accounting period (if any) adopted under this Act in place of that fiscal year,

as the case requires; or

- (b) in the case of any other person, means—

- (i) the fiscal year for which income tax is levied; or
- (ii) the accounting period (if any) adopted under this Act in place of that fiscal year,

as the case requires;

"year of tax" means the fiscal year for which income tax is levied.

(2) Unless the contrary intention appears, a reference in this Act to a year of income commencing or ending on a specified date includes, in relation to a taxpayer who has adopted, or who is deemed to have adopted, under this Act, an accounting period in place of that year of income, a reference to that accounting period.

(3) For the purposes of this Act, the average rate of tax payable by a company for a year of tax shall be deemed to be an amount per kina being the amount ascertained by dividing the amount of income tax that would be assessed in respect of the taxable income derived by the company in the year of income if—

(a) the company was not entitled to any rebate of tax or credit against its liability to tax; and

(b) the company was not liable to pay any tax under Division III.7,

by a number equal to the number of whole kina in the taxable income.

(4) Subject to Subsection (5), where, under or as part of an agreement or an arrangement, whether oral or written, made after the commencement of Section 4(6) of the pre-Independence *Income Tax Act 1959/1972*<sup>1</sup>—

(a) a company issues shares at a premium, being a premium in respect of which the company credits an amount to a share premium account of the company; and

(b) the company pays or credits any moneys, or distributes any other property to shareholders in the company; and

(c) the amount of the moneys so paid or credited, or the amount of the value of the property so distributed, is debited against an amount standing to the credit of the share premium account,

Paragraph (d) of the definition "dividend" in Subsection (1) does not apply to the moneys so paid or credited, or to the property so distributed, as the case may be.

(5) Where moneys credited as referred to in Subsection (4) are, under or as part of the agreement or arrangement, applied or to be applied in paying up an amount on a share issued or to be issued by the company, the credit shall be disregarded for the purposes of Subsection (4) unless, in pursuance of or as part of the agreement or arrangement, the company, by means of the redemption or cancellation, or of a reduction in the paid-up value, of that share or any other share in the company, is to pay or transfer to, or pay, transfer or apply on behalf of or at the direction of, the holder of the share, any money or other property other than shares in the company.

(6) Paragraph (e) of the definition "dividend" in Subsection (1) does not apply to any moneys or property referred to in that paragraph to the extent that—

(a) if the share concerned is cancelled or redeemed—the amount of the moneys or the value of the property, as the case may be, is greater than the amount to which the share was paid up immediately before the cancellation or redemption; or

(b) in any other case—the amount of the moneys or the value of the property, as the case may be, is greater than the amount by which the amount to which the share concerned was paid up immediately before the repayment exceeds the amount to which the share is paid up immediately after the repayment.

<sup>1</sup> See the pre-Independence *Income Tax (Amendment) Act 1972*, Section 2.

**2. Application.**

This Act does not apply to any income derived by a resident of Norfolk Island, the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island from sources within any of those places.

**PART II.—ADMINISTRATION.****3. Chief Collector and Assistant Collectors.**

There shall be—

- (a) a Chief Collector of Taxes; and
- (b) such Assistant Collectors as are required.

**4. Delegation.**

(1) The Chief Collector may, by writing under his hand, delegate all or any of his powers and functions (except this power of delegation) under this Act or any other enactment with respect to taxation.

(2) A delegation under this section may be made subject to a power of review and alteration by the Chief Collector, within a period specified in the instrument of delegation, of acts done under the delegation and a decision given on such a review or alteration shall be deemed to be the decision of the Chief Collector.

**5. Report by Chief Collector.**

(1) The Chief Collector shall furnish to the Minister annually, for presentation to the Parliament, a report on the working of this Act.

(2) In the report, the Chief Collector shall draw attention to any breaches or evasions of this Act that have come under his notice.

**6. Secrecy.**

(1) In this section, "officer" means a person who is or has been—

- (a) appointed to or employed in the Public Service; or
- (b) appointed or employed by the Government of Australia,

and who, by reason of that appointment or employment or in the course of that employment, acquires or has acquired information respecting the affairs of any other person disclosed or obtained under this Act.

(2) Except in the performance of a duty as an officer, but subject to this section, a person who is or has been an officer must not, directly or indirectly, make a record of, or divulge or communicate to any person, any information referred to in Subsection (1) that is or has been acquired by him in the way set out in that subsection.

(3) An officer shall not be required—

- (a) to produce in a court a return, assessment or notice of assessment; or
- (b) to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties as an officer,

except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

(4) This section does not prevent the Chief Collector or an Assistant Collector, or a person authorized by the Chief Collector or an Assistant Collector, from communicating any information to—

- (a) a person performing, under any appointment or employment in the Public Service or of the Government of Australia, any duty arising under any Act administered by the Chief Collector, for the purpose of enabling that person to carry out that duty; or
- (b) the Review Tribunal; or
- (c) the Board referred to in Section 374; or
- (d) the Commissioner of Taxation for Australia, the Second Commissioner of Taxation for Australia or any Deputy Commissioner of Taxation for Australia.

(5) A person to whom information is communicated under Subsection (4), and any person or employee under his control, is, in respect of the information, subject to the same rights, privileges, obligations and liabilities under Subsections (2) and (3) as if he were an officer.

(6) An officer must, if and when required by the Chief Collector or an Assistant Collector to do so, make an oath or declaration, in the prescribed manner and form, to maintain secrecy in conformity with this section.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding 12 months.

#### 7. Officers assisting in preparation of tax returns, etc.

(1) In this section, "officer" means a person who is an officer for the purposes of Section 6, other than a person whose appointment to or employment in the Public Service, or whose appointment or employment by the Government of Australia has ceased.

(2) An officer must not, except in the performance of a duty as an officer—

- (a) prepare a return or objection under this Act for any other person; or
- (b) advise or assist any person in relation to the preparation of such a return or objection.

Penalty: A fine not exceeding K200.00.

### PART III.—LIABILITY TO TAXATION.

#### Division 1.—General.

#### 8. Imposition of income tax.

(1) Subject to this Act, a tax by the name of income tax is imposed and shall be levied and paid, at such rates as are declared by Act for the fiscal year that commenced on 1 July 1975, and for each subsequent fiscal year, on the taxable income derived during the year of income by any person, whether a resident or a non-resident.

(2) Notwithstanding anything in this Act, income tax is not imposed on a taxable income not exceeding K936.00 derived by—

- (a) a person who is not a company; or
- (b) a company in the capacity of a trustee; or
- (c) a non-profit company.

**9. Accounting periods.**

(1) With the leave of the Chief Collector and subject to such conditions as he determines, a person may adopt for the purposes of this Act, in place of a fiscal year, an accounting period that is a period of 12 months ending on some date other than 30 June.

(2) Where a person adopts an accounting period under Subsection (1), his accounting period in each succeeding year shall end on the corresponding date of that year, unless with the leave of the Chief Collector some other date is adopted.

(3) Where the Chief Collector is of the opinion that, by reason of the adoption of an accounting period by a person, his taxable income of a year of income is likely to be greater or less than the amount that it would otherwise have been, the conditions on which the Chief Collector grants leave to him to adopt the accounting period may include a condition that his taxable income of the year of income shall be decreased or increased by an amount to be determined in accordance with the terms of the condition.

**10. Money re-invested, etc., as income.**

Income shall be deemed to have been derived by a person although it is not actually paid over to him but is—

- (a) re-invested, accumulated, capitalized, carried to any reserve, sinking fund or insurance fund, however designated; or
- (b) otherwise dealt with on his behalf or as he directs.

**11. Consideration not in cash.**

Where on a transaction any consideration is paid or given otherwise than in cash, the money value of the consideration shall, for the purposes of this Act, be deemed to have been paid or given.

**12. Non-profit companies.**

Where the taxable income of a non-profit company does not exceed K2 808.00, the maximum amount of tax payable by the company is 50% of the amount by which the taxable income exceeds K936.00.

**13. Minimum tax.**

Where, but for this section, the amount of income tax that a person would be liable to pay under this Act, after deducting all rebates to which he is entitled in his assessment, is less than K1.00, the income tax payable by him is K1.00.

**14. Official salaries, etc., of foreign representatives, etc.**

The official salary of, and the income derived from sources out of Papua New Guinea by, any of the following persons is exempt from income tax:—

- (a) the representative in Papua New Guinea of the government of another country; and
- (b) a foreign consul; and
- (c) a trade commissioner of a Commonwealth country; and
- (d) a member of the staff of any such representative, foreign consul or trade commissioner if—
  - (i) the member is domiciled in the country represented by the representative, foreign consul or trade commissioner; and

- (ii) the member is temporarily resident in Papua New Guinea, by direction of the government of the country so represented, for the purposes of performing his official duties; and
- (iii) the official salaries of officials (if any) of Papua New Guinea temporarily resident for similar purposes in the country so represented are exempt from income tax by that country; and
- (e) an officer of the government of a Commonwealth country who is temporarily in Papua New Guinea to render service on behalf of that country or Papua New Guinea in accordance with an arrangement between the government of that country and the government of Papua New Guinea if the salaries of officers of Papua New Guinea temporarily in that country for similar purposes in accordance with a similar arrangement are exempted from income tax by that country; and
- (f) the representative of any government who is visiting Papua New Guinea on behalf of that government, or a member of the entourage of such a person, in his official capacity as such a representative or member; and
- (g) a liaison officer of the government of another country.

#### 15. Foreign aid personnel.

The official emoluments and income derived from sources outside Papua New Guinea, of a person who is in Papua New Guinea, are, to the prescribed extent and subject to the prescribed conditions, exempt from income tax if—

- (a) he is an employee or an officer of a government of a country that is a prescribed donor of agreed international aid; and
- (b) his official emoluments and income are not exempt from income tax in the country where he is ordinarily resident.

#### 16. Non-resident members of Commissions of Inquiry.

The remuneration paid by the State to a non-resident as a member of a Commission of Inquiry under the *Commissions of Inquiry Act*, or any equivalent commission or inquiry, is exempt from income tax.

#### 17. Representatives of sporting clubs, etc.

Income derived—

- (a) in the capacity of representative of an association or club established in any country for the control of any out-door athletic sport or game in that country, by any person visiting Papua New Guinea in that capacity for the purpose of engaging in contests in Papua New Guinea in that sport or game; or
- (b) by any association or club in a Commonwealth country as its share of the proceeds of cricket, football or similar matches played in Papua New Guinea by a team—
  - (i) controlled by the association or club visiting Papua New Guinea from that country; and
  - (ii) recognised by the authority controlling that class of match in Papua New Guinea as being representative of that country,

is exempt from income tax.

**18. Representatives of educational, etc., institutions.**

Income derived, in the capacity of representative of a society or association established for educational, scientific, religious or philanthropic purposes, by a person visiting Papua New Guinea in that capacity for the purpose of—

(a) attending an international conference; or

(b) carrying on investigation or research for the society or association,  
is exempt from income tax.

**19. Press representatives.**

Income derived, in the capacity of representative of the press outside Papua New Guinea by a person visiting Papua New Guinea in that capacity for the purpose of reporting the proceedings relating to any matters referred to in Section 14(f), 17 or 18 is exempt from income tax.

**20. Public authorities.**

(1) Subject to Subsection (2), the revenue of a local governing body or of a public authority constituted by or under an Act, or an Act of Australia or a State of Australia, is exempt from income tax.

(2) The Commonwealth Trading Bank of Australia and the Australian National Airlines Commission are not public authorities for the purposes of Subsection (1).

**21. Religious institutions, hospitals, etc.**

The income of—

(a) a religious, scientific, charitable or public educational institution; or

(b) a public hospital; or

(c) a hospital that is carried on by a society or association otherwise than for the purposes of profit or gain to the individual members of the society or association; or

(d) an organization that is—

(i) a registered medical benefits organization or a registered hospital benefits organization for the purposes of the *National Health Act 1953* of Australia, as in force from time to time; and

(ii) is carried on otherwise than for the purposes of profit or gain to the individual members of the organization,

is exempt from income tax.

**22. Trade unions, etc.**

The income of a trade union, or of an association of employers or employees registered under an Act, or an Act of Australia or a State of Australia, relating to the settlement of industrial disputes is exempt from income tax.

**23. Non-profit bodies.**

The income of a society, association or club that is not carried on for the purposes of profit or gain to its individual members and is—

(a) a society, association or club established for musical purposes, or for encouragement of music, art, science or literature; or

- (b) a society, association or club established for the encouragement or promotion of an athletic game or athletic sport in which human beings are the sole participants; or
- (c) a society, association or club established for the purpose of promoting the development of aviation or of the agricultural, pastoral, horticultural, viticultural, manufacturing or industrial resources of the country,

is exempt from income tax.

#### 24. Superannuation, charitable and research funds.

The income of—

- (a) a provident, benefit or superannuation fund established for the benefit of employees; or
- (b) a fund established by will or instrument of trust for public charitable purposes; or
- (c) a fund established for the purpose of enabling scientific research to be conducted by or in conjunction with a public university or public hospital,

is exempt from income tax if the fund is being applied for the purpose for which it was established.

#### 25. Pensions, etc.

The following pensions, allowances and other payments are exempt from income tax :—

- (a) pensions and attendants' allowances paid, and payments of a like nature made under—
  - (i) the *Repatriation Act* 1920 of Australia, as in force from time to time; or
  - (ii) the *Repatriation (Far East Strategic Reserve) Act* 1956 of Australia, as in force from time to time; or
  - (iii) the *Seamen's War Pensions and Allowances Act* 1940 of Australia, as in force from time to time; or
  - (iv) the *Seamen's War Pensions and Allowances Act* 1940 of Australia as in force from time to time, as adopted by Section Sch.2.6 (*adoption of pre-Independence laws*) of, and Part 1 of Schedule 5 (*adopted laws of other countries—Australia*) to, the Constitution; and
- (b) pensions and allowances paid, and payments made, by the Government of Australia or the United Kingdom, being pensions, allowances or payments that, in the opinion of the Chief Collector, are of a similar nature to pensions, allowances or payments specified in Paragraph (a); and
- (c) wounds and disability pensions of the kinds specified in Section 365(2) of the Imperial Act known as the Income and Corporation Taxes Act 1970; and
- (d) pensions, allowances, endowments or benefits under the *Social Services Act* 1947 of Australia, as in force from time to time; and
- (e) allowances under the *Tuberculosis Act* 1948 of Australia, as in force from time to time; and
- (f) allowances paid by the State or the Government of Australia or by public authorities that, in the opinion of the Chief Collector, are substantially

analogous to the allowances formerly payable under Part III. of the *Public Service (Overseas Officers' Allowances) Determination* 1968; and

- (g) allowances and expenses to disabled persons under Part IV., and re-employment allowances under Division VI.2, of the *Re-establishment and Employment Act* 1945 of Australia as in force from time to time; and
- (b) any allowance or other amount provided by the State, Australia or a public authority in connection with the education of a child of the taxpayer who is less than 21 years of age, whether the allowance or amount is provided voluntarily, by agreement or by compulsion of law; and
- (i) pensions paid from 1 July 1974 to a person resident in Australia.

#### 26. Alimony.

Income received by way of periodical payments in the nature of alimony or maintenance by a woman from her husband or former husband is exempt from income tax unless the husband or former husband, as the case may be, has for the purpose of making the payments—

- (a) not divested himself of any income-producing assets; or
- (b) diverted from himself income on which he would otherwise have been liable to tax.

#### 27. Income of non-residents.

Income derived by a non-resident from sources wholly outside Papua New Guinea is exempt from income tax.

#### 28. Military pay and allowances, etc.

(1) Pay and allowances paid to a member of the Defence force, other than pay or allowances in respect of full-time duty, are exempt from income tax.

(2) Payments to a member of the Defence Force by way of dependents' or exchange allowances are exempt from income tax.

(3) Deferred pay, including interest on deferred pay, paid to a person who is or has been a member of the Defence Force or the Defence Force of Australia in respect of service as a member of the Defence Force of Australia during any period before 1 July 1947, being a period in which the pay and allowances earned by the member were paid under the War Financial (Military Forces) Regulations or the Air Force (War Financial) Regulations, both of Australia, or, in the case of a member of the Naval forces of Australia, were pay and allowances that the Secretary of the Department of the Treasury of Australia, or a person authorized by him to give such certificates, certifies, for the purposes of this provision, to have been special war-time pay and allowances, is exempt from income tax.

(4) The pay and allowances earned in Papua New Guinea by a person enlisted in or appointed to the naval, military or air forces of the government of a country other than Papua New Guinea as a member of those forces are exempt from income tax if the pay and allowances are not paid, given or granted by the State.

#### 29. Income of persons assisting in defence, etc.

Income derived by a person visiting Papua New Guinea from an occupation carried on by him while in Papua New Guinea is exempt from income tax if—

- (a) in the opinion of the Minister, the visit and occupation are primarily principally directed to assisting the Government of Papua New Guinea or of

Australia in the defence of Papua New Guinea or Australia or the Territories of Australia; and

- (b) the Chief Collector is satisfied that the income is not exempt from income tax in the country where the person is ordinarily resident.

**30. International organizations, etc.**

(1) The income of a prescribed organization of which Papua New Guinea and one or more other countries are members is exempt from income tax.

(2) The official salary and emoluments of an official of a prescribed organization of which Papua New Guinea and one or more other countries are members are, to the prescribed extent and subject to the prescribed conditions, exempt from income tax.

**31. Scholarships, etc.**

(1) Income derived by way of a scholarship, bursary or other educational allowance by a student receiving full-time education at a school, college or university (other than any amount received by the student from a person or authority on condition that the student will if required, render, or continue to render, services to that person or authority) is exempt from income tax.

(2) Income derived by way of an educational allowance in respect of a student, being an allowance paid by the State (other than an allowance paid on condition that the student will, or will if required, render, or continue to render, services to the State), is exempt from income tax.

(3) Income derived by way of a scholarship, bursary or educational or living or other allowance (being a scholarship, bursary or allowance provided by Australia) by a person who is pursuing in Australia a course of study or training, and who is in Australia substantially for the purpose of pursuing that course, is exempt from income tax.

**32. Savings and Loan Societies.**

The income of Savings and Loan Societies is exempt from income tax.

**33. Locally controlled corporations.**

(1) Subject to Subsection (2), the income of—

- (a) a business group registered under the *Business Groups Incorporation Act*, derived within five years after it is registered under that Act; and
- (b) an incorporated land group recognised under the *Land Groups Incorporation Act*, derived within five years after it is recognised under that Act; and
- (c) a company that is a company to which Division XII.4 of the *Companies Act* applies, derived within five years after it has become a company to which that Division applies,

is exempt from income tax.

(2) The exemption conferred by Subsection (1)(c) applies only where the Chief Collector is of the opinion that—

- (a) the members of the company are the beneficial owners of the shares in the company; and
- (b) the affairs of the company are being conducted substantially for their benefit.

**34. Dividends arising out of revaluation of assets.**

(1) The assessable income of a shareholder does not include dividends paid wholly and exclusively out of profits arising from the revaluation of assets not acquired for the purpose of resale at a profit, if the dividends paid from those profits are satisfied by the issue of shares (other than redeemable shares) of the company declaring the dividends.

(2) For the purposes of Subsection (1), a share issued by a company is a redeemable share if—

- (a) the share is, or at the option of the company is to be, liable to be redeemed; or
- (b) the share was issued under, or as part of, an agreement or arrangement that had the purpose or purposes that included the purpose, of enabling the company, by means of—
  - (i) the redemption, purchase or cancellation; or
  - (ii) a reduction in the paid-up value,

of the share, or of any other share in the company, to pay, transfer or apply any money or other property (other than shares in the company) to, on behalf of or at the direction of the person to whom the share was issued or any other person.

(3) Subsection (2)(b) applies—

- (a) whether or not the agreement or arrangement was oral or written; and
- (b) no matter when the agreement or arrangement was entered into; and
- (c) whether or not any payment, transfer or application under the agreement or arrangement took place on the exercise of an option by the company or any other person.

**35. Premium securities redeemable at a premium.**

(1) In this section, "Papua New Guinea Premium Security" means—

- (a) a security—
  - (i) issued under the *Loans Securities Act*; and
  - (ii) bearing on its face the words "Papua New Guinea Premium Bond" or "Territory Premium Bond"; or
- (b) any other security—
  - (i) issued under that Act; and
  - (ii) redeemable at a premium; and
  - (iii) declared by the Minister, by notice in the National Gazette, to be a Papua New Guinea Premium Security for the purposes of this section.

(2) Subject to Subsection (3), no part of the amount received by a person on the redemption of a Papua New Guinea Premium Security, other than any amount paid as accrued interest, shall, for any purpose of this Act, be taken to be income derived by him.

(3) Subsection (2) does not affect the operation of this Act in relation to the redemption of Papua New Guinea Premium Security owned by a person where, if the bond had been sold by him at the time of the redemption—

- (a) the proceeds of the sale; or
- (b) any profit arising from the sale,

would have been included in his assessable income.

**36. Limitation of exemption.**

Where any income is exempt from income tax, the exemption—

- (a) is limited to the specified or original recipient of the income; and
- (b) does not extend to persons receiving payments from him, even if the payments are made wholly or in part out of that income.

**37. Liability to furnish return.**

The exemption of any income from income tax does not exempt a person from—

- (a) furnishing any return or information required by the Chief Collector; or
- (b) including in his return such information as is prescribed by the Chief Collector.

*Division 2.—Income.**Subdivision A.—Assessable Income Generally.***38. Assessable income generally.**

(1) The assessable income of a taxpayer includes—

- (a) where the taxpayer is a resident—the gross income derived directly or indirectly from all sources, whether in or out of the country; and
- (b) where the taxpayer is a non-resident—the gross income derived directly or indirectly from all sources in the country,

but does not include exempt income.

(2) Interest (other than interest paid outside the country to a non-resident on debentures issued outside the country by a company) on money secured by mortgage of any property in the country shall be deemed to be derived from a source in the country.

(3) Salary or wages paid or payable by a foreign contractor within the meaning of Division 17 in respect of employment exercised in the country shall be deemed to be derived from a source in the country.

**39. Miscellaneous items of assessable income.**

(1) The assessable income of a taxpayer includes—

(a) profit arising from—

- (i) the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale; or
- (ii) the carrying on or carrying out of any profit-making undertaking or scheme; and

(b) any beneficial interest in income derived under a will, settlement, deed of gift or instrument of trust; and

(c) 5% of the capital amount of any allowance gratuity or compensation (other than an amount, referred to in Subsection (2)), that is paid in a lump sum in consequence of retirement from, or the termination of, any office or employment, whether it is paid voluntarily, by agreement or by compulsion of law; and

(d) the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of, or for or in relation directly or indirectly to, any employment or services

rendered by him, whether it is allowed, given or granted in money, goods, land, meals, sustenance, the use of premises or quarters or otherwise, other than any allowance, gratuity or compensation that—

- (i) is included in Paragraph (c); or
- (ii) is, under this Act, deemed to be a dividend paid to the recipient; and
- (e) subject to Subsection (3)—the value to a taxpayer who is a member of the Defence Force of all allowances given or granted in respect of his service as such a member, whether it is given or granted in money, goods, meals, sustenance, the use of premises or quarters, or otherwise; and
- (f) any amount received as or by way of royalty; and
- (g) any bounty or subsidy received in or in relation to the carrying on of a business; and
- (h) the amount of any fee or commission received for procuring a loan of money; and
- (i) any amount received as or by way of bonus, other than a reversionary bonus on a policy of life assurance; and
- (j) any amount received by way of insurance or indemnity for or in respect of any loss of—
  - (i) trading stock that, if the loss had not occurred, would have been taken into account in computing taxable income; or
  - (ii) profit or income that, if the loss had not occurred, would have been assessable income,
 and any amount so received for or in respect of any loss or outgoing that is an allowable deduction.

(2) The excepted amounts for the purposes of Subsection (1)(c) are—

- (a) any amount paid or credited by a private company that, under any provision of this Act, is deemed to be a dividend paid to the recipient; or
- (b) any amount of deferred pay (including interest on deferred pay) paid to a person who is or has been a member of the Defence Force or of the Defence Force of Australia in respect of service as a member of the Defence Force of Australia during any period before 1 July 1947, being a period in respect of which the pay and allowances earned by the member were paid under the War Finance (Military Forces) Regulations or the Air Force (War Financial) Regulations, both of Australia, or, in the case of a member of the Naval Forces of Australia, were pay and allowances that the Secretary of the Department of the Treasury of Australia, or a person authorized by him to give such certificates, certifies, for the purposes of this provision, to have been special war-time pay and allowances.

(3) For the purposes of Subsection (1)(e), the total value of all allowances specified in that paragraph given or granted to a taxpayer by way of meals, sustenance or the use of premises or quarters (including payment in place of one or more of those allowances) shall be taken as an amount calculated at the rate of K2.00 per week.

(4) Any bounty or subsidy to which Subsection (1)(g) applies shall be deemed to be part of the proceeds of the business concerned.

**40. Premiums for leases.**

(1) In this section, 'premium' means a consideration payable in one amount, or each amount of a consideration payable on more than one amount, where the consideration is—

(a) in the nature of a premium, fine or foregift payable for or in connexion with the grant or assignment of a lease; or

(b) for or in connexion with an assent to the grant or assignment of a lease,

but does not include an amount in respect of goodwill or a licence.

(2) Where, in the year of income, a taxpayer receives a premium that relates to the grant or assignment of a lease of property that was not, at the date on which—

(a) the agreement to grant or assign the lease was made; or

(b) the assent to the grant or assignment of the lease was given,

as the case may be, intended by the grantee or assignee to be used by the grantee or assignee, or by some other person, wholly or partly for the purpose of the gaining or producing of assessable income, the assessable income of the taxpayer includes the premium.

(3) Where, in the year of income, a taxpayer receives a premium that relates to the grant or assignment of a lease of property that was, at the date on which—

(a) the agreement to grant or assign the lease was made; or

(b) the assent to the grant or assignment of the lease was given,

as the case may be, intended by the grantee or assignee to be used by the grantee or assignee, or by some other person, partly for the purpose of gaining or producing assessable income and partly for other purposes, the assessable income of the taxpayer includes such part of the premium as the Chief Collector thinks may reasonably be attributed to the intended use of the property for purposes other than the gaining or producing of assessable income.

(4) Where in a case referred to in Subsection (2) or (3) the taxpayer satisfies the Chief Collector that, at the date on which—

(a) the agreement to grant or assign the lease was made; or

(b) the assent to the grant or assignment of the lease was given,

as the case may be, he believed on reasonable grounds that the grantee or assignee intended a particular use of the property by the grantee or assignee or some other person for the purpose of the gaining or producing of assessable income, the Chief Collector may apply this section on the basis that that intention existed.

(5) This section does not apply in relation to—

(a) a premium in relation to which Division 4 applies; or

(b) a premium received in connexion with the assignment of a lease referred to in Section 100(1); or

(c) a premium received in connexion with the assignment of a mining lease as defined in Section 106(1); or

(d) a premium received in connexion with the grant or assignment of a lease that is, for the purposes of Section 106, a grant or assignment for mining purposes.

**41. Dividends.**

(1) In this section, "paid-up capital"—

(a) does not include the paid-up value of shares that have been issued by the company in satisfaction of dividends that have been paid out of profits arising from the revaluation of assets not acquired for the purposes of re-sale at a profit; but

(b) includes capital that—

(i) has been paid up in money or by other valuable consideration; and

(ii) has been cancelled; and

(iii) has not been repaid by the company to the shareholders.

(2) Subject to Sections 34 and 182, the assessable income of a taxpayer includes—

(a) if he is a resident—dividends received by him directly or indirectly from a company (whether or not the company is a resident) out of profits derived by it from any source; and

(b) if he is a non-resident—

(i) dividends received by him directly or indirectly from a company that is a resident out of profits derived by it from any source; and

(ii) dividends received by him directly or indirectly from a company that is a non-resident out of profits derived by it from a source in the country that are not profits on which Papua New Guinea dividend (withholding) tax has been directly or indirectly paid.

(3) Where—

(a) the amount of the moneys or of the value of other property of which a dividend paid by a company consists is debited against an amount standing to the credit of a share premium account of the company; or

(b) a dividend paid by a company is a repayment by the company of moneys paid on a share,

the dividend shall, for the purposes of this section, be deemed to have been paid by the company out of profits derived by it.

(4) To the extent to which they represent—

(a) income derived by the company; or

(b) amounts that have been included in the assessable income of the company,

whether before or during liquidation, other than income that has been properly applied to replace a loss of paid-up capital, distributions to shareholders of a company by the company, or by a liquidator in the course of winding up the company, shall for the purposes of this Act be deemed to be dividends paid to the shareholders by the company out of profits derived by it.

(5) To the extent to which they are made out of any profits or income, distributions referred to in Subsection (4), shall be deemed to have been paid wholly and exclusively out of those profits or that income.

(6) Where—

(a) the business of the company has been, or is in the course of being discontinued otherwise than in the course of a winding-up of the company under any law relating to companies; and

- (b) in connexion with the discontinuance any money or other property of the company has been distributed, otherwise than by the company, to shareholders of the company; and
- (c) the money or other property so distributed is not a dividend for the purposes of this Act, the distribution shall, subject to Subsection (7), be deemed for the purposes of this section to be a distribution to the shareholders by a liquidator in the course of the winding-up of the company.

(7) Where—

- (a) Subsection (6) would, but for this subsection, apply in relation to any money or other property of a company distributed to shareholders of the company; and
- (b) the company is not dissolved within a period of three years after the distribution, or within such further period as the Chief Collector allows.

Subsection (6) does not apply, and shall be deemed never to have applied, in relation to that money or property, and it shall for the purposes of this Act, be deemed to be a dividend paid by the company to the shareholders out of profits derived by it.

(8) Where—

- (a) a dividend or a part of a dividend is or has been included in the assessable income of a taxpayer of the year of income of any previous year; and
- (b) under the law of a country outside Papua New Guinea the company paying the dividend deducted, or was authorized to deduct, from the dividend income tax that the taxpayer was not personally liable to pay; and
- (c) the taxpayer, in the year of income, receives a payment or is allowed a credit of an amount in respect of the income tax that the company deducted or was authorized to deduct,

his assessable income of the year of income includes that amount, and that amount shall, for all purposes of this Act, be deemed to be a dividend.

#### 42. Annuities.

(1) For the purposes of this section, "the undeducted purchase price", in relation to an annuity, means so much of the purchase price of the annuity paid by the taxpayer as—

- (a) has not been allowed and is not allowable as a deduction under this Act; and
- (b) has not been allowed as a deduction, and in respect of which a rebate of income tax has not been allowed, in assessments for income tax under an Act of Australia relating to income tax.

(2) The assessable income of a taxpayer includes the amount of any annuity, excluding in the case of an annuity that has been purchased the part of the amount of the annuity that represents, in accordance with the succeeding provisions of this section, the undeducted purchase price.

(3) Subject to Subsection (4), the amount to be excluded under Subsection (2) from the amount of an annuity derived by a taxpayer during a year of income is—

- (a) in the case of an annuity payable until the death of the taxpayer or for a term that will not end before his death—an amount ascertained by dividing the undeducted purchase price of the annuity by the number of years in the complete expectation of life of the taxpayer, as ascertained by reference to the

prescribed Life Tables, at the time when the annuity first commenced to be derived; and

- (b) in the case of an annuity payable for a term of years certain—an amount ascertained by dividing the undeducted purchase price of the annuity by the number of years in the term.

(4) Where the amount of an annuity derived by the taxpayer during a year of income is more than, or less than, the amount payable for a whole year, the amount to be excluded from the amount so derived is the amount that bears to the amount that, but for this subsection, would be the amount to be so excluded the same proportion as the amount so derived bears to the amount payable for a whole year.

#### 43. Insurance recoveries on losses of live stock and trees.

(1) In this section, "insurance recovery" means an amount received, by a taxpayer or a partnership carrying on in Papua New Guinea a business of primary production, by way of insurance for or in respect of a loss of live stock or a loss of trees.

(2) Where a taxpayer receives an insurance recovery that is included in his assessable income of a year of income, he may elect that the assessable income be reduced by an amount equal to 80% of the insurance recovery.

(3) Where a taxpayer has made an election under Subsection (2)—

- (a) his assessable income of the year in which the insurance recovery is received shall be reduced by an amount equal to 80% of the insurance recovery, or of the part of the insurance recovery to which his election relates; and

- (b) there shall be included in his assessable income of each of the next four succeeding years an amount equal to 20% of the insurance recovery, or of that part of the insurance recovery, as the case may be.

(4) Where an insurance recovery is received by a partnership, any partner in the partnership may make an election under Subsection (2) in relation to the part of the insurance recovery that is included in his individual interest in the net income of the partnership.

(5) Where an insurance recovery is received by the trustee of a trust estate—

- (a) the trustee may make an election under Subsection (2) in relation only to the part of the insurance recovery that is included in the net income of the trust estate in respect of which he is liable to be assessed and to pay tax under Division 6; and

- (b) any beneficiary in the trust estate who—

- (i) is not under legal disability; and

- (ii) is presently entitled to a share of the net income of the trust estate, being a share that includes a part of the insurance recovery,

may make an election under Subsection (2) in relation to the part so included.

(6) An election by a taxpayer under Subsection (2) shall—

- (a) be in writing; and

- (b) be lodged with the Chief Collector—

- (i) on or before the date of lodgement of the return of income of the year of income in which the insurance recovery is received; or

- (ii) within such further time as the Chief Collector allows.

(7) Where, in a year of income, a taxpayer who has made an election under Subsection (2)—

- (a) dies; or
- (b) appears to the Chief Collector to be about to leave the country; or
- (c) is adjudicated insolvent, applies to take the benefit of a law for the relief of insolvent debtors, compounds with his creditors or makes an assignment of any of his property for their benefit, or has his affairs liquidated by arrangement; or
- (d) being a company—commences to be wound up,

there shall, if the Chief Collector so determines, be included in his assessable income of that year of income any amount that would otherwise be included, in accordance with this section, in the assessable income of any subsequent year of income.

(8) An amount that, in accordance with Subsection (6) or (7), is included in the assessable income of a taxpayer of any year shall, for purposes of this Act, be deemed to be assessable income derived by him during that year from the carrying on by him in the country, during that year, of a business of primary production.

#### Subdivision B.—Trading Stock.

#### 44. Taking trading stock into account.

(1) Where a taxpayer carries on a business, the value, ascertained under this Subdivision, of all trading stock on hand at the beginning of the year of income, and of all trading stock on hand at the end of that year shall be taken into account in ascertaining whether he has a taxable income.

(2) Where the value of all trading stock on hand at the end of the year of income exceeds the value of all trading stock on hand at the beginning of that year, the assessable income of the taxpayer includes the amount of the excess.

(3) Where the value of all trading stock on hand at the beginning of the year of income exceeds the value of all trading stock on hand at the end of that year, the amount of the excess is an allowable deduction.

#### 45. Value at beginning of year of income.

The value of live stock and of each article of other trading stock to be taken into account at the beginning of a year of income is its value, as ascertained under this Act, at the end of the year immediately preceding the year of income.

#### 46. Value of trading stock at end of year of income.

The value of each article of trading stock (not being live stock) to be taken to account at the end of the year of income is, at the option of the taxpayer—

- (a) its cost price; or
- (b) its market selling value; or
- (c) the price at which it can be replaced.

#### 47. Value of live stock at end of year of income.

(1) Subject to this section, the value of live stock to be taken into account at the end of the year of income is, at the option of the taxpayer—

- (a) its cost price; or

(b) its market selling value.

(2) If a taxpayer does not exercise his option under Subsection (1) within the prescribed time and in the prescribed manner, the value to be taken into account is the cost price.

(3) Where a taxpayer satisfies the Chief Collector that there are circumstances that justify the adoption by him of a value other than cost price or market selling value for the whole or part of his live stock, he may, with the leave of the Chief Collector, adopt that other value.

(4) Except with the leave of the Chief Collector, a taxpayer shall not adopt a basis of valuation of his live stock taken into account at the end of the year of income different from the basis on which valuation of his live stock was made when it was last taken into account at the end of the previous year.

(5) For the purposes of this section, the cost price per head of natural increase of any class of live stock of a taxpayer shall be deemed to be—

- (a) where the cost price of natural increase of that class has been previously taken into account under this Act by the taxpayer—the cost price per head at which natural increase of that class was last taken into account unless, with the leave of the Chief Collector, the taxpayer selects another cost price; and
- (b) where the cost price of natural increase of that class has not been previously taken into account under this Act by the taxpayer—a price selected by him, not being less than the minimum cost price prescribed in respect of live stock of that class.

(6) Where a taxpayer does not make a selection in accordance with Subsection (5), within the prescribed time and in the prescribed manner, he shall be deemed to have selected as the cost price the prescribed minimum cost price.

#### 48. Disposal of trading stock, etc.

(1) Subject to this section, where—

- (a) a taxpayer disposes, by sale or otherwise, of property that is trading stock, standing or growing crops, crop-stools or trees that have been planted and tended for the purpose of sale; and
- (b) that property constitutes or constituted the whole or part of the assets of the business that is or was carried on by the taxpayer; and
- (c) the disposal was not in the ordinary course of the carrying on of that business,

then—

- (d) the value of the property shall be included in the assessable income of the taxpayer; and
- (e) the person acquiring it shall be deemed to have purchased it at a price equal to that value.

(2) Where, in consequence of—

- (a) the acquisition or resumption of land under an Act that contains provisions for the compulsory acquisition or resumption of land; or
- (b) the loss or destruction of pastures or fodder by reason of fire, drought or flood; or

- (c) the taking of a lease of land by the State for purposes of a campaign for the eradication of cattle tick,

a taxpayer, in a year of income, disposes, by sale or otherwise, of live stock that are assets of a business of primary production carried on by him in the country, he may elect that his assessable income of that year be reduced by an amount equal to 80% of the profit on the disposal of the stock.

- (3) Subject to Subsection (5), where a taxpayer has made an election under Subsection (2)—

- (a) his assessable income of the year to which the election relates is reduced by an amount equal to 80% of the profit on the disposal of the live stock; and  
(b) there shall be included in his assessable income of each of the next four succeeding years an amount equal to 20% of that profit.

(4) An amount included by virtue of Subsection (3)(b) in the assessable income of a taxpayer of any year, shall for the purposes of this Act, be deemed to be assessable income derived by him during that year from the carrying on by him in the country, during that year, of a business of primary production.

(5) Where the disposal of live stock is in consequence of the loss or destruction of pastures of fodder by reason of fire, drought or flood, Subsection (3) applies only if the taxpayer establishes to the satisfaction of the Chief Collector that the proceeds (if any) of the disposal have been or will be applied by the taxpayer wholly or principally to the purchase of live stock in replacement of the live stock disposed of.

(6) Where live stock to which Subsection (2) applies is disposed of by a partnership, any partner in the partnership may make an election under that subsection in relation to the part of the profit on the disposal of the live stock that is included in his individual interest in the net income of the partnership.

(7) Where any live stock to which Subsection (2) applies is disposed of by the trustee of a trust estate—

- (a) the trustee may make an election under that subsection in relation only to the part of the profit on the disposal of the live stock that is included in the net income of the trust estate in respect of which he is liable to be assessed and to pay tax under Division 6; and  
(b) any beneficiary in the trust estate who—  
(i) is not under a legal disability; and  
(ii) is presently entitled to a share of the net income of the trust estate, being a share that includes a part of the profit on the disposal of the live stock,

may make an election under that subsection in relation to the part so included.

(8) An election by a taxpayer under Subsection (2) shall—

- (a) be in writing; and  
(b) be lodged with the Chief Collector—  
(i) on or before the date of lodgement of the return of income of the year in which the disposal occurred; or  
(ii) within such further time as the Chief Collector allows.

(9) Where, in any year of income, a taxpayer who has made an election under Subsection (2)—

- (a) dies; or
- (b) appears to the Chief Collector to be about to leave the country; or
- (c) is adjudicated insolvent, applies to take the benefit of a law for the relief of insolvent debtors, compounds with his creditors or makes an assignment of any of his property for their benefit, or has his affairs liquidated by arrangement; or
- (d) being a company—commences to be wound up,

there shall, if the Chief Collector so determines, be included in his assessable income of that year of income any amount that would otherwise be included, in accordance with this section, in the assessable income of any subsequent year of income.

(10) For the purposes of this section, the value of any property or live stock is—

- (a) the market value of the property or live stock on the day of disposal; or
- (b) if, in the opinion of the Chief Collector, there is insufficient evidence of the market value on that day—the value that in his opinion is fair and reasonable.

(11) For the purposes of this section, the profit on the disposal of any live stock is the amount remaining after deducting from the proceeds of the sale of the live stock or, where the live stock was disposed of together with any other assets or the disposal was otherwise than by sale, from the value of the live stock, the total of the following amounts:—

- (a) in respect of any of the live stock that was on hand at the beginning of the year of income in which it was disposed of—the value at which it was, for the purposes of this Act, taken into account at the beginning of that year; and
- (b) in respect of any of the live stock that was not on hand at the beginning of that year—
  - (i) in the case of live stock acquired by purchase—the purchase price of it; and
  - (ii) in the case of live stock acquired otherwise than by purchase (other than natural increase bred, during the year of income, by the taxpayer)—the amount that, under this Act, is deemed to be the purchase price of it.

#### 49. Disposal on change of ownership, etc.

(1) Where—

- (a) for any reason (including the formation or dissolution of a partnership, or a variation in the constitution of a partnership or in the interests of the partners) a change has occurred in the ownership of, or in the interests of persons in, property that—
  - (i) consists of trading stock, standing or growing crops, crop-stools or trees that have been planted and tended for the purpose of sale; and
  - (ii) constitutes the whole or part of the assets of a business; and
- (b) the person, or one or more of the persons, who owned the property before the change has or have an interest in the property after the change,

Section 48 applies as if the person or persons who owned the property before the change had, on the day on which the change occurred, disposed of the whole of the property to the person, or to all the persons, by whom the property is owned after the change.

## (2) Where—

- (a) property in relation to which Subsection (1) applies has become, on the change in ownership or interests, an asset of a business carried on by the person by whom the property is owned after the change; and
- (b) the person or persons by whom the property was owned before the change holds or hold, after the change, an interest or interests in the property of a value equal to not less than 25% of the value of the property; and
- (c) the person or persons by whom the property was owned before the change, together with the person or persons by whom the property is owned after the change, give notice to the Chief Collector, in accordance with this section, that they have agreed that this subsection will apply in respect of the property,

the value of the property shall, for the purposes of Section 48, be deemed to be, instead of the value specified in Section 48(10), the value (if any) at which it would have been taken into account at the end of the year of income if—

- (d) no disposal had taken place; and
- (e) the year of income had ended on the date of the change.

## (3) A notice under Subsection (2) shall—

- (a) be in writing; and
- (b) be signed by all the persons giving it; and
- (c) be lodged with the Chief Collector on or before—
  - (i) 31 August next succeeding the end of the financial year in which the change in ownership or interests occurred; or
  - (ii) such later date as the Chief Collector determines.

(4) Where Subsection (1) applies in relation to any property in consequence of the death of a member of a partnership, the persons by whom a notice under Subsection (2) may be given include, in place of the deceased person—

- (a) the trustee of his estate; and
- (b) the beneficiaries (if any) who are liable to be assessed in respect of the whole or a share in the income of the business of which the property becomes an asset.

**50. Compensation for death, etc., of live stock.**

## (1) Where—

- (a) any live stock that is an asset of a business of primary production carried on by a taxpayer in the country—
  - (i) dies by reason of a disease for the purpose of the control or eradication of which provision is made by a law of Papua New Guinea or of Australia for or in relation to the compulsory destruction of live stock; or
  - (ii) is destroyed under a law of Papua New Guinea or of Australia that makes provision for or in relation to the compulsory destruction of live stock for the purpose of the control or eradication of a disease; and
- (b) the proceeds of the death would, apart from this section, be included in the assessable income of the taxpayer of a year or years of income; and

(c) there is a profit arising in respect of the death,  
the taxpayer may elect that this section apply in relation to the profit arising in respect of the death.

(2) Where a taxpayer makes an election under Subsection (1)—

- (a) the whole of the proceeds of the death of the live stock to which the election relates (whenever received) shall be included in his assessable income of the year of income in which the live stock died or was destroyed; and
- (b) no part of those proceeds shall be included in his assessable income of any other year of income; and
- (c) his assessable income of the year of income in which the live stock died or was destroyed is reduced by an amount equal to 80% of the profit in relation to which the election is made; and
- (d) there shall be included in his assessable income of each of the next four succeeding years of income an amount equal to 20% of the profit in relation to which the election is made.

(3) An amount included by virtue of Subsection (2)(d) in the assessable income of a taxpayer of any year of income shall, for the purposes of this Act, be deemed to be assessable income derived by him during that year of income from the carrying on by him in the country, during that year of income, of a business of primary production.

(4) Where any live stock is an asset of a partnership and, if it were owned by a person other than as a partner or a trustee of a trust estate, he would be entitled to make an election under Subsection (1) in relation to it—

- (a) any partner in the partnership may make an election under that subsection in relation to the part of the profit arising in respect of the death of the live stock that is included in his individual interest in the net income of the partnership; and

(b) where a partner makes such an election, Subsection (2)(a) does not apply.

(5) In a case to which Subsection (4)(b) applies, for the purpose of assessments in respect of the partner who made the election the net income of the partnership shall be ascertained as if the proceeds of the death of the live stock to which the election relates (whenever received) had been received by the partnership in the year of income in which it died or was destroyed.

(6) Where any live stock referred to in Subsection (1) is owned by the trustee of a trust estate—

- (a) the trustee may make an election under that subsection in relation only to the part of the profit arising in respect of the death of the live stock that is included in the net income of the trust estate in respect of which he is liable to be assessed and to pay tax under Division 6; and

(b) any beneficiary in the trust estate who—

(i) is not under a legal disability; and

(ii) is presently entitled to a share of the net income of the trust estate, being a share that includes a part of the profit arising in respect of the death of the live stock,

may make an election under that subsection in relation to the part so included; and

(c) where a beneficiary makes such an election, Subsection (2)(a) does not apply.

(7) In a case to which Subsection (6)(b) applies, for the purpose of assessments in respect of the beneficiary who made the election the net income of the trust estate shall be ascertained as if the proceeds of the death of the live stock to which the election relates (whenever received) had been received by the trustee in the year of income in which it died or was destroyed.

(8) An election by a taxpayer under Subsection (1) shall—

(a) be in writing; and

(b) be lodged with the Chief Collector on or before—

(i) the date of lodgement of his return of income of the year of income in which the proceeds of the death of the live stock to which the election relates were received; or

(ii) if the whole of those proceeds was not received in one year of income—the date of lodgement of his return of income of the latest year of income in which any part of those proceeds were received,

or on or before such later date as the Chief Collector allows.

(9) Where, in a year of income, a taxpayer who has made an election under Subsection (1)—

(a) dies; or

(b) appears to the Chief Collector to be about to leave the country; or

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of any of his property for their benefit; or

(d) being a company—commences to be wound up,

there shall, if the Chief Collector so determines, be included in his assessable income of that year of income any amount that would otherwise be included, in accordance with this section, in the assessable income of any subsequent year of income.

(10) An amount that, in accordance with Subsection (9), is included in the assessable income of a taxpayer of any year of income shall, for the purposes of this Act, be deemed to be assessable income derived by him during that year of income from the carrying on by him in the country, during that year of income, of a business of primary production.

(11) In this section, a reference to the proceeds of the death of any live stock shall be read as a reference to the sum of—

(a) any amount received by the person who owned the live stock from the State or the Government of Australia, or from an authority constituted by or under a law of Papua New Guinea or of Australia, by way of compensation for the death or destruction of the live stock; and

(b) any amount received by the person who owned the live stock as payment for the carcasses, or any part of the carcasses, of the live stock.

(12) For the purposes of this section, the profit arising in respect of the death of any live stock is the amount remaining after deducting from the proceeds of the death of the live stock the total of the following amounts:—

(a) in respect of any of the live stock that was on hand at the beginning of the year of income in which it died or was destroyed—the value at which it is, for the purpose of this Act, to be taken into account at the beginning of that year of income; and

(b) in respect of any of the live stock that was not on hand at the beginning of that year of income—

- (i) in the case of live stock acquired by purchase—the purchase price of it; and
- (ii) in the case of live stock acquired otherwise than by purchase, other than natural increase bred during the year of income, by the person who owned the live stock at the time of its death or destruction—the amount that, under this Act, is deemed to be the purchase price of that live stock.

#### 51. Devolution on death.

(1) Where the assets of a business carried on by a taxpayer—

- (a) devolve by reason of his death; and
- (b) include any property that is trading stock, standing or growing crops, crop-stools or trees that have been planted and tended for the purpose of sale,

then—

- (c) the value of the property shall, subject to this Act, be included in the assessable income derived by the deceased up to the date of his death; and
- (d) the person on whom it devolves shall be deemed to have purchased it at that value.

(2) For the purpose of Subsection (1), the value of the property is, subject to Subsection (3), the amount that, under Section 48, would have been included in respect of it in the assessable income of the deceased taxpayer if he had not died but had disposed of the property, otherwise than in the ordinary course of his business, on the day of his death.

(3) Where—

- (a) the property referred to in Subsection (1) has, immediately after its devolution by reason of death of the taxpayer, become an asset of a business carried on by the trustee of the estate of the deceased taxpayer, or by the persons who are beneficially entitled to that estate; and
- (b) the trustee and the beneficiaries (if any) who are liable to be assessed in respect of the income of the business, or of a share in that income, unanimously so agree and give notice of their agreement to the Chief Collector at the prescribed time and in the prescribed manner,

the value of the property shall be deemed, for the purpose of Subsection (1), to be the value (if any) at which it would have been taken into account at the date of the death of the deceased taxpayer if—

- (c) he had not died; and
- (d) an assessment had been made in respect of the income derived by him up to that date.

Subdivision C.—Business Carried on Partly in and Partly out of Papua New Guinea.

#### 52. Sales by manufacturers.

Where goods manufactured outside the country—

- (a) are imported into Papua New Guinea; and

- (b) are, before or after importation, sold in Papua New Guinea by the manufacturer,

the profit deemed to be derived in Papua New Guinea from the sale shall be ascertained by deducting from the sale price of the goods the sum of—

- (c) the amount for which, at the date when the goods were shipped to Papua New Guinea, goods of the same nature and quality could be purchased by a wholesale buyer in the country of manufacture; and
- (d) the expenses incurred in transporting them to and selling them in Papua New Guinea.

### 53. Sales by merchants.

Where goods that are imported into Papua New Guinea are, before or after importation, sold in Papua New Guinea by a person other than the manufacturer of the goods, the profit deemed to be derived in Papua New Guinea from the sale shall be ascertained by deducting from the sale price of the goods—

- (a) their purchase price; and
- (b) the expenses incurred in transporting them to and selling them in Papua New Guinea.

### 54. Determination of profit.

Where the amount of a profit for the purposes of Section 52 or 53 cannot be ascertained under that section to the satisfaction of the Chief Collector, it shall be deemed to be such amount as the Chief Collector determines.

### 55. Definition of sale in Papua New Guinea.

- (1) Where—

- (a) a person sells goods by means of anything done by himself when in Papua New Guinea, or by means of an agent or representative in Papua New Guinea; and
- (b) the goods are in Papua New Guinea, or are to be brought into Papua New Guinea, for the purpose, or in the pursuance or in consequence, of the sale,

he shall be deemed to have sold them in Papua New Guinea.

(2) For the purpose of Subsection (1), a sale shall be deemed to be made by means of a person or of something done when that person or thing done is instrumental in bringing about the sale.

### 56. Source of profits.

In any case not specified in the preceding provisions of this Subdivision, where, by reason of—

- (a) the manufacture, production or purchase of goods in one country and their sale in another; or
- (b) successive steps of production or manufacture in different countries; or

(c) the making of contracts in one country and their performance in another, or for any other reason, a question arises, whether the whole or any part (and if so, what part) of any profit is derived by a person from sources in Papua New Guinea, the question shall be determined—

(d) in accordance with the regulations; or

(e) if there is no regulation applying to the case—by the Chief Collector.

#### 57. Inclusion of certain profits in assessable income.

(1) The assessable income of a taxpayer includes any profit derived by him in the year of income that, under this Subdivision, is derived or deemed to be derived in Papua New Guinea but does not otherwise include the proceeds of any sale to which this Subdivision applies.

(2) No amount taken into account in ascertaining such a profit, and no expenditure incurred directly or indirectly in or in relation to such a sale, is an allowable deduction.

#### *Division 3.—Deductions.*

#### 58. Interpretation of Division 3.

(1) In this Division, "depreciated value" in relation to a unit of property at any time, means, subject to Subsection (2), the cost of the unit to the person who owns or owned the property at that time, less the total amount of depreciation (if any) allowed or allowable in respect of the unit in assessments of his income, for any period before that time, under this Act.

(2) For the purposes of Subsection (1), and Section 67(1)(b) in relation to any case in which Section 73 applied or applies in relation to a unit of property, the person who acquired or acquires the unit shall be deemed to have acquired or to acquire it at a cost equal to—

(a) the depreciated value of the unit immediately before the time of the acquisition; or

(b) if the case is one in which Section 73(2) applied or applies, the sum of that depreciated value and the amount required to be added to that depreciated value for the purposes of that subsection.

#### 59. Calculation of taxable income.

In calculating the taxable income of a taxpayer, the total assessable income derived by him during the year of income shall be taken as a basis, and from it there shall be deducted all allowable deductions.

#### 60. Successive deductions.

Where, by this Act, it is provided that any deduction shall be made successively from two or more classes of income—

(a) the deduction shall be set off against the income of the first of the classes; and

(b) if it exceeds the income of that class, the excess shall be set off against the income of the second class,

and so on until either the deduction or the income of the last of the classes is exhausted.

**61. Losses and outgoings.**

(1) All losses and outgoings, to the extent to which they—

- (a) are incurred in gaining or producing the assessable income; or
- (b) are necessarily incurred in carrying on a business for the purpose of gaining or producing that income,

are allowable deductions except to the extent to which they—

- (c) are losses or outgoings of capital; or
- (d) are of a capital, private or domestic nature; or
- (e) are incurred in relation to the gaining or production of exempt income.

(2) Expenditure incurred or deemed to have been incurred in the purchase of stock used by the taxpayer as trading stock shall be deemed not to be an outgoing of capital or of a capital nature.

**62. Deductions for child allowance contributions.**

An amount contributed to the State or a public authority by a taxpayer employed by the State or by that authority for purposes that in the opinion of the Chief Collector, are substantially analogous to the purposes of Part III. of the pre-Independence *Public Service (Overseas Officers' Allowances) Determination* 1968 is an allowable deduction.

**63. Losses on property acquired for profit-making.**

(1) Subject to Subsection (2), a loss incurred by the taxpayer in the year of income—

- (a) on the sale of any property; or
- (b) from carrying on or carrying out any undertaking or scheme,

being a sale, undertaking or scheme any profit from which would have been included in his assessable income, is an allowable deduction.

(2) Except where the Chief Collector, being satisfied that the property was acquired by the taxpayer for the purpose of profit-making by sale or for carrying on or carrying out a profit-making undertaking or scheme, otherwise directs, a deduction is not allowable under Subsection (1) in respect of any property unless the taxpayer not later than the date on which he lodges his first return under this Act after having acquired the property, notifies the Chief Collector that it has been acquired by him for the purpose of profit-making by sale, or for the carrying on or carrying out a profit-making undertaking or scheme.

**64. Repairs.**

(1) Expenditure, other than expenditure of a capital nature, incurred by the taxpayer in the year of income for repairs to any premises or part of any premises, plant, machinery, implements, utensils, rolling stock or articles held, occupied or used by him for the purpose of producing assessable income, or in carrying on a business for that purpose, is an allowable deduction.

(2) Expenditure incurred on repairs to any premises or part of any premises not held, occupied or used as set out in Subsection (1) is not an allowable deduction.

**65. Depreciation.**

(1) In this section, "plant" includes—

- (a) animals used as beasts of burden or working beasts in a business other than a business of primary production; and

- (b) machinery, implements, utensils and rolling stock; and
  - (c) subject to Subsection (2), fences, dams and other structural improvements on land that is used for the purposes of agricultural or pastoral pursuits; and
  - (d) subject to Subsection (2), structural improvements that are used wholly and exclusively for the purposes of pearling operations and are situated at or in the vicinity of a port or harbour from which those operations are conducted; and
  - (e) structural improvements used for accommodation of employees and their families that the taxpayer is or was bound, by or under an Act at any time in force in the country, to provide for such employees or their families; and
  - (f) buildings and other structural improvements the construction of which was commenced after 31 December 1960, other than any such improvements used primarily and principally for the domestic or residential purposes of the taxpayer.
- (2) Subsection (1)(c) and (d) do not apply to—
- (a) structural improvements used for domestic or residential purposes, except where the improvements are provided for the accommodation of the employees, tenants or share-farmers engaged in or in connexion with the pursuits or operations referred to in either of those paragraphs; or
  - (b) structural improvements, bores or wells, expenditure on which has been allowed, or is or has been allowable, as a deduction under Section 86 from the assessable income of any year of income of the taxpayer or of any other person.
- (3) Subject to this Act, depreciation during the year of income of any plant or articles owned by a taxpayer and—
- (a) used by him during that year for the purpose of producing assessable income; or
  - (b) installed ready for use for that purpose and during that year held in reserve by him,
- is an allowable deduction.

#### 66. Basis of depreciation.

Subject to Section 84(10), in the first calculation of the depreciation to be allowed in respect of a unit of property, an estimate shall be made by the Chief Collector of the effective life of the unit assuming that it is maintained in reasonably good order and condition, and the annual depreciation per centum shall be fixed accordingly.

#### 67. Calculation of depreciation.

- (1) Subject to this section, the depreciation allowable under this Act in respect of a unit of property in relation to a year of income is—
- (a) 1.5 times the percentage fixed by or under Section 66 of the depreciated value of the unit at the beginning of the year of income; or
  - (b) at the option of the taxpayer, to be exercised in accordance with Section 68, and subject to Section 58(2)—the percentage fixed by or under Section 66 of the cost of the unit.
- (2) The deduction allowable in respect of a unit of property shall not exceed the depreciated value of the unit.

(3) Where an amount that would, but for this subsection, be part of the cost of a unit of property has been allowed or is allowable under this Act as a deduction (otherwise than on account of depreciation) from the assessable income of the taxpayer of a year of income, the cost of the unit shall be deemed to be the amount remaining after deducting from the cost of the unit to the taxpayer, as ascertained apart from this subsection, the sum of any amount so allowed or allowable.

#### 68. Exercise of option.

- (1) The option under Section 67(1)(b) is exercisable by a taxpayer in relation to—
  - (a) all units of property in respect of which depreciation is or will be allowable to him in accordance with Section 67; or
  - (b) such of those units as have been, or will be—
    - (i) first used by him for the purpose of producing assessable income; or
    - (ii) installed ready for use by him for that purpose, during the year of income in relation to which the option first applies or during a subsequent year.
- (2) An option under Section 67(1)(b) shall be—
  - (a) exercised by written notice to the Chief Collector; and
  - (b) expressed to apply in the first instance in relation to a year of income specified in the notice and has effect accordingly; and
  - (c) lodged with the Chief Collector—
    - (i) on or before the date of lodgement of the return of income of the taxpayer for the year of income referred to in Paragraph (b); or
    - (ii) within such further time as the Chief Collector allows.

#### 69. Alteration of method of calculation.

Where depreciation has been allowed to a taxpayer in respect of a year before the year of income, the method of calculating the depreciation to be allowed to him in respect of the year of income is, unless altered with the leave of the Chief Collector or in the exercise of the option under Section 67(1)(b), the same as that applied in the calculation in respect of the preceding year of income.

#### 70. Disposal, loss or destruction of depreciated property.

- (1) In this section, a reference to the consideration receivable in respect of the disposal, loss or destruction of a unit of property shall be read as a reference—
  - (a) in the case of a sale of the unit—
    - (i) if the Chief Collector is satisfied that the sale price is fair and reasonable—to the sale price less the expenses of the sale of the unit; or
    - (ii) if the Chief Collector is not so satisfied—to such amount as, in his opinion, is fair and reasonable; or
  - (b) in the case of loss or destruction of the property—to the amount or value received or receivable under a policy of insurance or otherwise in respect of the loss or destruction; or

(c) in the case where the property is sold with other assets and a separate value is not allocated to the property—to such amount as is determined by the Chief Collector; or

(d) in the case where property is disposed of otherwise than by sale—to the value (if any), of the property at the date of disposal.

(2) Where any property of a taxpayer in respect of which depreciation has been allowed or is allowable under this Act is disposed of, lost or destroyed at any time in the year of income, the depreciated value of the property at that time, less the amount of any consideration receivable in respect of the disposal, loss or destruction, is an allowable deduction.

(3) Subject to the succeeding provisions of this section, if the consideration referred to in Subsection (2) exceeds the depreciated value referred to in that subsection, the excess shall, to the extent of the sum of the amounts allowed and allowable in respect of depreciation in assessments of income tax under this Act, be included in the assessable income of the taxpayer of that year.

(4) Where—

(a) an amount, being the whole or a part of the consideration receivable in respect of the disposal, loss or destruction of a unit of property in the year of income, (in this subsection referred to as "the balancing charge") would but for this subsection be included in the assessable income of the taxpayer under Subsection (3); and

(b) the taxpayer so requests in writing when lodging the return of income of the year of income or within such further time as the Chief Collector allows,

the Chief Collector shall not include the balancing charge in the assessable income but instead shall successively reduce—

(c) the cost, for the purpose of calculating depreciation allowable under this Act, of any unit of property acquired by him during the year of income to replace the unit of property so disposed of, lost or destroyed; and

(d) the cost, for the purpose of calculating depreciation allowable under this Act, of any other unit of property acquired by him during the year of income; and

(e) the depreciated values, at the beginning of the year of income, of other units of property,

by such amounts as do not exceed, in the aggregate, the balancing charge.

(5) The cost or depreciated value of a unit of property shall not be reduced under Subsection (4) unless—

(a) at the end of the year of income the unit—

(i) is used wholly for the purpose of producing assessable income; or

(ii) has been installed ready for use wholly for that purpose and is held in reserve; and

(b) depreciation is allowable under this Act to the taxpayer in respect of the unit.

(6) Where an amount that would, but for Subsection (4), be included in the assessable income of the taxpayer of the year of income under Subsection (3) exceeds the sum of the reductions made under Subsection (4), the amount of the excess shall be included in his assessable income of the year of income.

## (7) Where—

- (a) during a year of income not later than the second year of income after the year of income in which a unit of property is disposed of, lost or destroyed, a taxpayer acquires, to replace that unit, a unit or property that, at the end of the year of income—
  - (i) is used wholly for the purpose of producing assessable income; or
  - (ii) has been installed ready for use wholly for that purpose and is held in reserve; and
- (b) the taxpayer has not made a request under Subsection (4) in relation to the disposal, loss or destruction; and
- (c) the taxpayer so requests in writing not later than the date of lodgement of the return of income of the first-mentioned year, or within such further time as the Chief Collector allows,

the Chief Collector shall—

- (d) exclude from the assessable income of the year of income in which the property was disposed of, lost or destroyed so much of the amount that would otherwise be included in that assessable income under Subsection (3) by reason of the disposal, loss or destruction as does not exceed the cost of the unit of property acquired; and
- (e) reduce, by an amount equal to the excluded amount, the cost, for the purpose of calculating depreciation allowable under this Act, of the unit of property acquired.

(8) An amount by which the cost or depreciated value of a unit of property has been reduced under Subsection (4) or (7) shall for the purposes of this Act, be deemed to be depreciation that has been allowed in respect of the unit in the assessment in which the reduction was made.

**71. Disposal of depreciated property on change of ownership, etc.**

## (1) This section applies in a case where—

- (a) for any reason (including the formation or dissolution of a partnership or a variation in the constitution of a partnership or in the interests of the partners) a change has occurred in the ownership of, or in the interests of persons in, property in respect of which depreciation has been allowed or is allowable under this Act; and
- (b) the person, or one or more of the persons, who owned the property before the change has or have an interest in the property after the change.

(2) In a case to which this section applies, the provisions of this Act relating to depreciation apply as if the person or persons who owned the property before the change had, on the day on which the change occurred, disposed of the whole of the property to the person, or to all the persons, by whom the property is owned after the change for a consideration equal to—

- (a) the amount specified in the agreement in consequence of which the change occurred as the value of the property for the purposes of the agreement; or
- (b) if—
  - (i) there is no such agreement; or
  - (ii) an amount is not so specified; or

(iii) the Chief Collector is not satisfied that the amount specified is a fair and reasonable value of the property,  
an amount determined by the Chief Collector.

**72. Notional income where assessable income includes consideration receivable on disposal, etc., or depreciated property.**

(1) Subject to Subsection (2), this section applies to a taxpayer where—

(a) assets of a business carried on by—

(i) the taxpayer; or

(ii) a partnership in which a taxpayer is a partner; or

(iii) the trustee of a trust estate to a share of the net income of which the taxpayer (not being a person under a legal disability) is presently entitled,

are disposed of, lost or destroyed and in consequence of the disposal, loss or destruction of the assets the business ceases to be so carried on; and

(b) the assets include units of property in respect of which depreciation has been allowed or is allowable under this Act; and

(c) an amount (in this section referred to as "the balancing charge") is included in the assessable income of the year of income of the taxpayer, partnership or trust estate, as the case may be, under Section 70(3) in consequence of the disposal, loss or destruction of those assets.

(2) This section does not apply where—

(a) the taxpayer is a company, except where it is assessable in respect of the whole or a part of the balancing charge, as a trustee; or

(b) the taxpayer has, in relation to the disposal, loss or destruction, made a request under Section 70(4) or (7).

(3) For the purposes of this section, a part, ascertained as follows, of the assessable income of a taxpayer to whom this section applies shall be deemed to be abnormal income :—

(a) where the assets disposed of, lost or destroyed were assets of a business carried on by a taxpayer otherwise than in partnership or as the trustee of a trust estate, the abnormal income is the amount of the balancing charge; and

(b) where the assets disposed of, lost or destroyed were assets of a business carried on by a partnership of which the taxpayer is a partner, the abnormal income is so much of the balancing charge as is included in the individual interest of the taxpayer in the net income of the partnership; and

(c) where the assets disposed of, lost or destroyed were assets of a business carried on by the trustee of a trust estate, the abnormal income is—

(i) for the purposes of an assessment of the trustee under Division 6—so much of the balancing charge as is included in the amount of the net income of the trust estate to which the assessment relates; and

(ii) for the purposes of the assessment of a taxpayer who is a beneficiary in the trust estate—so much of the balancing charge as is included in the share of the net income of the trust estate to which he is presently entitled.

(4) A taxpayer to whom this section applies may—

- (a) on or before the date of lodgement of his return in respect of the year of income; or
- (b) within such further time as the Chief Collector allows,

apply in writing to the Chief Collector for the determination under this section of a notional income in respect of the year of income.

(5) Where a taxpayer makes an application under Subsection (4), the succeeding provisions of this section apply in the determination of a notional income for the purpose of any Act by which a rate of tax on the taxable income of a taxpayer is fixed by reference to a notional income.

(6) Subject to Subsection (8), where the taxable income of the taxpayer exceeds his abnormal income, the notional income is the amount ascertained by deducting from the taxable income an amount equal to two-thirds of the abnormal income.

(7) Subject to Subsection (8), where the taxable income of the taxpayer does not exceed his abnormal income, the notional income is an amount equal to one-third of the taxable income.

(8) Where Section 101(2) or 211 applies, or both of those provisions apply, in respect of the taxpayer, the notional income is not the notional income determined in accordance with either or both of those provisions but is—

- (a) where the notional income determined in accordance with either or both of those provisions exceeds the abnormal income of the taxpayer—the amount ascertained by deducting from the notional income so determined an amount equal to two-thirds of the abnormal income; and
- (b) where the notional income determined in accordance with either or both of those provisions does not exceed the abnormal income of the taxpayer—an amount equal to one-third of the notional income so determined.

### 73. Acquisition of depreciated property.

(1) Where a person acquires any property in respect of which depreciation has been allowed or is allowable under this Act, he is not, except as provided by Subsection (2), entitled to any greater deduction for depreciation than that which would have been allowed to the person from whom the property was acquired if that person had retained it.

(2) Where an amount is included under Section 70 in the assessable income of the person disposing of the property, the person acquiring the property shall be allowed depreciation calculated on the sum of that amount and the depreciated value, for the purposes of this Act, of the property immediately before the time of the sale.

(3) For the purposes of Subsection (2), an amount that would, but for Section 70(4) or (7), be included in the assessable income of the person disposing of the property shall be deemed to have been so included.

(4) This section does not apply where the Chief Collector is of the opinion that the circumstances are such that depreciation based on the actual consideration given should be allowed.

**74. Property used partly for producing assessable income.**

Where the use of any property by a taxpayer has been only partly for the purposes of producing assessable income—

- (a) only such part of a deduction otherwise allowable under Section 65 or 70 in respect of the property as, in the opinion of the Chief Collector, is proper is an allowable deduction; and
- (b) only such part of any excess otherwise to be included in the assessable income of the taxpayer under Section 70 in respect of the property as, in the opinion of the Chief Collector, is proper shall be included in the assessable income.

**75. Bad debts.**

(1) Bad debts that are written off as such during the year of income and—

- (a) have been brought to account by the taxpayer as assessable income of any year; or
- (b) are in respect of money lent in the ordinary course of the business of the lending of money by a taxpayer who carries on that business,

are allowable deductions, but no other bad debts are allowable deductions.

(2) Where, after a debtor incurs a debt brought to account in accordance with Subsection (1)(a) or a debt in respect of money lent in accordance with Subsection (1)(b)—

- (a) the debtor is adjudicated insolvent; or
- (b) the affairs of the debtor are liquidated by arrangement; or
- (c) the debtor makes a composition with his creditors,

then—

- (d) where, in the opinion of the Chief Collector, no amount will be paid on account of the debt—the whole of the debt; or
- (e) the amount by which, in the opinion of the Chief Collector, the amount that will be received on account of the debt will be less than the debt,

shall be deemed to be a bad debt.

(3) Where in the year of income a taxpayer receives an amount in respect of a debt for which a deduction has been allowed to him under this Act, his assessable income includes that amount.

**76. Commission.**

Expenditure incurred by the taxpayer in the year of income by way of commission for collecting his assessable income is an allowable deduction.

**77. Payments to relatives.**

(1) Subject to this section, payments becoming due in the year of income by a taxpayer to a relative are allowable deductions only to the extent to which, in the opinion of the Chief Collector, they are reasonable in amount and made in good faith in the production of assessable income.

(2) Expenditure incurred, and payments becoming due, by the taxpayer in the year of income in or for the maintenance of—

- (a) the spouse of the taxpayer; or

(b) a member of the family of the taxpayer who is under the age of 16 years, are not, whether or not the expenditure was incurred in the production of assessable income, allowable deductions.

**78. Contributions to fund for benefit of employees.**

**(1) Where—**

- (a) for the purpose of making provision for individual personal benefits, pensions or retiring allowances for, or for dependants of, employees of the taxpayer, being or including employees engaged in producing his assessable income, a taxpayer sets apart or pays in the year of income a sum as or to a fund from which the benefits, pensions or allowances are to be provided; and
- (b) the rights of the employees or dependants to receive the benefits, pensions or allowances are fully secured,

an amount ascertained in accordance with this section is an allowable deduction.

(2) For the purposes of this section, the Chief Collector shall determine, in respect of each sum set apart or paid in accordance with Subsection (1)—

- (a) the number of employees employed during the year of income who, or whose dependants, were eligible, or might become eligible, to receive benefits, pensions or retiring allowances from the fund; and
- (b) the part (if any) of the sum set apart or paid that is attributable to the provision of benefits, pensions or retiring allowances for, or for dependants of, employees other than employees engaged during the year of income in producing assessable income of the taxpayer; and
- (c) where—

- (i) the taxpayer is a private company within the meaning of Division 7; and

- (ii) a part of the sum set apart or paid is attributable to the provision of benefits, pensions or retiring allowances for a person, or for dependants of a person, who was, at any time during the year of income, both a shareholder and an employee of that company,

the part (if any) of the sum set apart or paid that, in the opinion of the Chief Collector, would not have been set apart or paid if he had not been a shareholder; and

- (d) the amount included in the sum set apart or paid that is attributable to the provision of benefits, pensions or retiring allowances for, or for the dependants of, each employee who—

- (i) is included in the number determined under Paragraph (a); and

- (ii) is not an employee, or one of a number of employees, in relation to whom a part has been determined under Paragraph (b),

excluding any part of any such amount that has been determined under Paragraph (c),

(3) The amount that is an allowable deduction under this section is the amount remaining after deducting from the sum set apart or paid the total of—

- (a) any amount determined by the Chief Collector under Subsection (2)(b); and
- (b) any amount determined by the Chief Collector under Subsection (2)(c); and

- (c) an amount equal to the sum of the respective amounts by which each of the amounts determined by the Chief Collector under Subsection (2)(d) exceeds 15% of the remuneration paid, in respect of the year of income during which the sum was set apart or paid, by the taxpayer to the employee in relation to whom the amount has been determined.

(4) Where—

- (a) the provisions of Subsection (3)(c) result in a reduction of the amount otherwise allowable as a deduction under the preceding provisions of this section; and
- (b) the Chief Collector is of the opinion that the special circumstances of the case warrant the allowance of a higher amount as a deduction,

the Chief Collector shall allow as a deduction such higher amount (not exceeding the amount that would have been allowable if Subsection (3)(c) did not apply) as he thinks reasonable.

(5) In the application of this section—

- (a) the aggregate of all sums set apart or paid in the year of income by the taxpayer as or to any one fund shall be deemed to be one sum so set apart or paid; and
- (b) in the case of a taxpayer who has, in the year of income, set apart or paid sums as or to more than one fund—
  - (i) the deductions allowable under this section shall be ascertained in respect of the funds in such order as the Chief Collector thinks proper; and
  - (ii) in the application of this section in relation to such a fund, the amount specified in Subsection (3)(c) shall, in relation to any employee, be reduced by the aggregate of any amounts determined in respect of that employee under Subsection (2)(d) in relation to any other funds, to the extent to which the amounts so determined have not been excluded in ascertaining the deductions allowable in relation to the other funds.

(6) A sum or part of a sum that is excluded in ascertaining the deductions under this section is not an allowable deduction under any other provision of this Act.

(7) Where a taxpayer who has been allowed a deduction of a sum, or part of a sum, set apart or paid as or to a fund referred to in Subsection (1) receives from the fund a payment or other benefit that has a money value, his assessable income includes the payment, or the money value of the benefit, as the case may be.

(8) For the purposes of this section, a director of a company shall be deemed to be an employee of the company.

#### 79. Expenses of borrowing.

(1) So much of the expenditure incurred by the taxpayer on or after 1 July 1959 in borrowing money used by him for the purpose of producing assessable income as bears to the whole of that expenditure the same proportion as the part of the period for which the money was borrowed that is in the year of income bears to the whole of that period is an allowable deduction.

(2) For the purposes of Subsection (1), if the period for which the money was borrowed—

- (a) is not fixed; or

(b) exceeds five years,

the money shall be deemed to have been borrowed for the period of five years after the date on which it was borrowed.

(3) Where the deduction allowable under Subsection (1) in a year of income would, but for this subsection, be less than K100.00, the deduction allowable is—

(a) K100.00; or

(b) so much of the expenditure referred to in Subsection (1) as has not been allowed as a deduction in a previous year of income,

whichever is the less.

#### 80. Expenses of preparing leases.

Expenditure incurred by the taxpayer in the year of income for the preparation, registration and stamping of a lease of property to be held by him for the purpose of producing assessable income is an allowable deduction.

#### 81. Expenses relating to grant or patents, etc.

Expenditure incurred by the taxpayer (whether in the way of payment of fees or otherwise) in the year of income in obtaining or seeking to obtain, for the purpose of producing assessable income—

(a) the grant, or the extension of the term, of a patent for an invention; or

(b) the registration, or the extension of the period of registration, of a design; or

(c) the registration of a copyright,

is an allowable deduction.

#### 82. Losses by embezzlement, etc.

Where a loss incurred by the taxpayer through the embezzlement, fraudulent misappropriation or larceny, by a person employed in the taxpayer's business, of money that is or has been included in the assessable income of the taxpayer, is ascertained in the year of income, the loss is an allowable deduction.

#### 83. Subscriptions to associations.

(1) Where the carrying on of a business from which assessable income is derived by the taxpayer is conditional on membership of an association, a periodical subscription paid by him in the year of income in respect of that membership is an allowable deduction.

(2) Where in the year of income an association carries out, on behalf of its members, an activity of such a nature that if it had been carried out by the taxpayer on his own behalf its expense would be an allowable deduction to him—

(a) any subscriptions, levies or contributions, not exceeding in the aggregate K21.00 paid by him in that year in respect of membership of the association are allowable deductions; and

(b) any such subscriptions, levies or contributions exceeding in the aggregate that amount are allowable deductions to the extent only of the greater of—

(i) K21.00; or

(ii) so much of them as bears to the whole the same proportion as the losses and outgoings (not being losses or outgoings of capital or of a capital nature) incurred by the association in the year in carrying out the activity bear to its total losses and outgoings in the year.

(3) Subject to Subsection (4), a periodical subscription to which the preceding provisions of this section do not apply that is paid by the taxpayer in the year of income in respect of his membership of a trade, business or professional association is an allowable deduction.

(4) The total deduction allowable under Subsection (3) in respect of subscriptions to any one association in the year of income shall not exceed K21.00.

#### 84. Expenditure on scientific research.

In this section—

“approved research institute” means—

- (a) the Commonwealth Scientific and Industrial Research Organization; and
- (b) any university, college, institute, association or organization that is approved in writing for the purposes of this section by that organization, or by the Head of State, acting on advice, as an institution, association or organization for undertaking scientific research that is or may prove to be of value to Papua New Guinea or Australia;

“consideration received or receivable in respect of the disposal, loss or destruction” means—

(a) in the case of a sale of the unit—

- (i) if the Chief Collector is satisfied that the sale price is fair and reasonable—the sale price less the expenses of the sale of the unit; or
- (ii) if the Chief Collector is not so satisfied—such amount as, in his opinion, is fair and reasonable; or

(b) in the case of loss or destruction of the property—the amount of value received or receivable under a policy of insurance or otherwise in respect of the loss or destruction; or

(c) in the case where the property is sold with other assets and a separate value is not allocated to the property—such amount as is determined by the Chief Collector; or

(d) in the case where property is disposed of otherwise than by sale—the value, if any, of the property at the date of disposal;

“scientific research” means any activities in the fields of natural or applied science for the extension of knowledge.

(2) An approval for the purposes of Subsection (1)—

- (a) may operate as from a date, whether before or after the date of the approval, specified in the instrument of approval; and
- (b) may be withdrawn at any time.

(3) In this section, a reference to scientific research related to a business or class of business shall be read as including a reference to—

- (a) any scientific research that may lead to or facilitate an extension, or an improvement in the technical efficiency, of the business, or, as the case may be, of businesses of that class; and

- (b) any scientific research of a medical nature that is of special relation to the welfare of workers employed in that business, or, as the case may be, in businesses of that class.

(4) The following payments made, and expenditure incurred, during the year of income (other than any amount that is allowable as a deduction under any other section of this Act) by a person carrying on a business for the purpose of gaining or producing assessable income are allowable deductions:—

(a) payments to—

- (i) an approved research institute for scientific research related to the business; or
- (ii) an approved research institute, the object of which is the undertaking of scientific research related to the class of business to which the business belongs; and

(b) expenditure of a capital nature on scientific research related to the business, except to the extent that it is expenditure—

- (i) on plant, machinery, land or buildings; or
- (ii) on alterations, additions or extensions to buildings; or
- (iii) in the acquisition of rights in or arising out of scientific research.

(5) Subsection (6) applies in any case where—

(a) on or after 1 July 1959 a taxpayer carrying on a business for the purpose of gaining or producing assessable income incurs expenditure of a capital nature—

- (i) in the construction or acquisition of a building, or part of a building; or

(ii) in making any alteration or addition to a building,

in which scientific research related to that business is to be carried on by him or on his behalf; and

(b) the building, part of a building, alteration or addition, as the case may be, is of use for scientific research purposes only.

(6) In a case to which this subsection applies, an amount equal to one-third of the expenditure is an allowable deduction—

(a) from the assessable income of the year of income in which the building, part of a building, alteration or addition is first used by or on behalf of the taxpayer for the scientific research; and

(b) from the assessable income of each of the two years of income after that year of income, if he continues to carry on the business during the year in which the assessable income was derived.

(7) Where—

(a) any expenditure or payment to which this section refers is incurred or made outside the country; and

(b) the business in relation to which it is incurred or made is carried on partly in and partly out of the country,

the deduction allowable under this section is such part of the amount that would otherwise be allowable as the Chief Collector thinks reasonable in the circumstances.

(8) Where any expenditure has been allowed or is allowable as a deduction under Subsection (6) and—

(a) the taxpayer sells, transfers or otherwise disposes of the building or any part of the building; or

(b) the building or any part of the building is destroyed,

the consideration received or receivable in respect of the disposal, loss or destruction shall, to the extent of the expenditure so allowed or allowable as a deduction, and subject to Subsection (9), be included in the assessable income of the year of income in which the disposal, loss or destruction occurs.

(9) If in a case referred to in Subsection (8) the Chief Collector is of the opinion that part only, or no part, of the consideration relates to the disposal, loss or destruction of property that was acquired or created by the expenditure, that part only, or no part, as the case may be, of the consideration shall be taken into account for the purposes of that subsection.

(10) Notwithstanding anything in Section 66, the annual depreciation in respect of plant used by the taxpayer for the purposes of scientific research only, being plant in respect of which depreciation is allowable under Section 65, shall be deemed to have been fixed under Section 66 as 33-1/3%.

#### 85. Election expenses of parliamentary candidates.

(1) Expenditure incurred in the year of income by the taxpayer in being elected as a member, or in contesting an election for membership, of the Parliament is an allowable deduction.

(2) Where—

(a) a deduction has been allowed or is allowable under Subsection (1) in respect of any expenditure; and

(b) the expenditure or any part of it is reimbursed to the taxpayer or paid for him by any other person or by any organization,

the assessable income of the taxpayer of the year in which the amount is so reimbursed or paid includes that amount.

#### 86. Expenditure on land used for primary production.

(1) Expenditure incurred in the year of income by a taxpayer engaged in primary production on any land in the country in—

(a) the eradication or extermination of animal or vegetable pests from the land; or

(b) the destruction and removal of timber, scrub or undergrowth indigenous to the land; or

(c) the destruction of weed or plant growth detrimental to the land; or

(d) the preparation of the land for agriculture; or

(e) the ploughing and grassing of the land for grazing purposes; or

(f) the draining of swamp or low-lying lands where that operation improves the agricultural or grazing value of the land; or

(g) the prevention or combating of soil erosion on the land otherwise than by the erection of fences; or

- (b) the construction of dams, earth tanks, underground tanks, irrigation channels or similar structural improvements, or the sinking of bores and wells, for the purpose of conserving or conveying water for use in carrying on primary production on the land; or
- (i) the construction on the land of levee banks or similar improvements having like uses; or
- (j) the construction on the land of roads, including bridges, culverts or similar works forming part of a road; or
- (k) the planting of the land with trees, including the purchase of seed, seedlings, cuttings and similar material; or
- (l) where the Chief Collector is satisfied that the land is in an area that is subject to the ravages of animal pests—the construction or alteration of fences on the land, the sole purpose of which is to prevent animal pests entering on the land or any part of the land,

is an allowable tax deduction.

(2) The amount of the deduction that would otherwise be allowable under Subsection (1)(g), (b), (i), (j) and (l) shall be reduced by the amount (if any) of the expenditure that the taxpayer has been recouped or is entitled to be recouped by the State, the Government of Australia, an authority constituted by or under a law of Papua New Guinea or Australia or any other person, where the amount recouped or to be recouped is not or will not be included in assessable income.

#### 87. Loss in deriving exempt income.

(1) In this section, "exempt business" means a business the income (if any) from which would be exempt income.

(2) Where a loss is incurred in the year of income by a taxpayer in carrying on in the country an exempt business, the loss is an allowable deduction.

(3) In calculating the amount of the loss, no deduction may be made that would not have been an allowable deduction if the income (if any) had been assessable income.

(4) Notwithstanding any other provision of this Act, where a deduction allowable under this section has been made from the income of any of the three years immediately preceding the year of income, profits derived by the taxpayer from the exempt business in the year of income shall, subject to Subsection (5), be included in his assessable income.

(5) The amount to be included under Subsection (4) shall not exceed the amount (if any) by which the deductions so made from the income of the three years referred to in that subsection exceed the profits included under that subsection in the assessable income of those years in respect of those deductions.

#### 88. Pensions, etc.

Sums that—

- (a) are not otherwise allowable deductions; and
- (b) are paid by the taxpayer during the year of income as pensions, gratuities or retiring allowances to persons who are or have been employees or dependants of employees,

to the extent to which, in the opinion of the Chief Collector, they are paid in good faith in consideration of the past services of the employees in any business operations that were

carried on by the taxpayer for the purpose of gaining or producing assessable income are allowable deductions.

### 89. Losses of previous years.

(1) In this section—

“net exempt income” means—

- (a) where the taxpayer is a resident—the amount by which his exempt income derived from all sources exceeds the sum of the expenses (not being expenses of a capital nature) incurred in deriving it; and
- (b) where he is a non-resident—the amount by which his exempt income derived from sources in the country (other than income (if any) to which Section 182 applies) exceeds the sum of the expenses (not being expenses of a capital nature) incurred in deriving that income;

“year of loss”, in relation to taxpayer, means a year in which the taxpayer incurred a loss.

(2) For the purposes of this section, a loss shall be deemed to be incurred in any year when the allowable deductions (other than the deductions allowable under this section or Section 90) from the assessable income of that year exceed the sum of that income and the net exempt income of that year.

(3) The amount of the loss deemed under Subsection (2) to have been incurred in a year is the amount of the excess referred to under that subsection.

(4) So much of the losses incurred by a taxpayer in any of the seven years immediately preceding the year of income as has not been allowed as a deduction from his income of any of those years is allowable as a deduction in accordance with the following provisions :—

- (a) where he has not derived exempt income in the year of income, the deduction shall be made from the assessable income; and
- (b) where he has derived exempt income in that year, the deduction shall be made successively from the net exempt income and from the assessable income; and
- (c) where a deduction is allowable under this section in respect of two or more losses, the losses shall be taken into account in the order in which they were incurred; and
- (d) where a deduction is allowable under this section, it shall be taken into account after the allowance of allowable deductions.

(5) Where—

- (a) a taxpayer has incurred a loss in any of the seven years next preceding the year of income; and
- (b) for the purposes of Section 90, a loss in engaging in primary production is to be deemed to have been incurred by him in that preceding year,

so much only of the first-mentioned loss as exceeds the second-mentioned loss shall be taken into account for the purposes of Subsection (4).

(6) Notwithstanding any other provision of this section, where, before the year of income, a taxpayer—

- (a) has become a bankrupt; or
- (b) has been adjudicated insolvent; or

- (c) not having become a bankrupt or been adjudicated insolvent, has been released from any debts by the operation of a law relating to bankruptcy or insolvency,

no loss to which this section applies that was incurred by him before the date on which he—

- (d) became a bankrupt; or
- (e) was adjudicated insolvent; or
- (f) was so released,

as the case may be, is an allowable deduction.

(7) Where, in the year of income, a taxpayer pays an amount in respect of a debt incurred by him in one of the seven years immediately preceding the year of income, being a year in which the taxpayer incurred a loss to which Subsection (6) applies, the amount paid by the taxpayer in respect of the debt is, subject to Subsection (8), an allowable deduction to the extent that it does not exceed so much of the debt as the Chief Collector is satisfied was taken into account in ascertaining the amount of the loss.

(8) The aggregate of the deductions allowable under Subsection (7) from the income of the taxpayer of the year of income in relation to the payment of amounts in respect of debts incurred by the taxpayer in a year of loss shall not exceed the amount of the loss incurred in the year of loss less the sum of—

- (a) any deductions from his income of a year or years of income preceding the year of income allowed under Subsection (7) in relation to the payment of other amounts in respect of debts incurred by the taxpayer in the year of loss; and
- (b) so much of the loss as has been allowed under Subsection (4) as a deduction or deductions from his income (including his net exempt income) of a year or years of income preceding the year of income; and
- (c) so much of the loss as, but for Subsection (6), would have been allowed or allowable under Subsection (4) as a deduction or deductions from his net exempt income of—
  - (i) the year of income; or
  - (ii) a year or years of income preceding that year; and
- (d) so much of a loss that, for the purposes of Section 90, is to be deemed to have been incurred by him in the year of loss as has been allowed under Section 90(6) as a deduction or deductions from his income (including his net exempt income) of a year or years of income before the year of income; and
- (e) so much of a loss that, for the purposes of Section 90, is to be deemed to have been incurred by him in the year of loss as, but for Section 90(7), would have been allowed or allowable under Section 90(6) as a deduction or deductions from his net exempt income of the year of income, or of a year or years of income before the year of income.

#### 90. Losses of previous years incurred in primary production.

(1) In this section, "net exempt income" means—

- (a) where the taxpayer is a resident—the amount by which his exempt income derived from all sources exceeds the sum of the expenses (not being expenses of a capital nature) incurred in deriving it; and

- (b) where he is a non-resident—the amount by which his exempt income derived from sources in the country (other than income, if any, to which Section 182 applies) exceeds the sum of the expenses (not being expenses of a capital nature) incurred in deriving that income.

(2) This section applies to losses incurred by a taxpayer engaging in primary production in the year of income that commenced on 1 July 1959 and subsequent years.

(3) For the purposes of this section, a taxpayer who has engaged in primary production in any year shall be deemed to have incurred a loss in engaging in primary production in that year if—

- (a) the deductions (other than the deductions allowable under this section or Section 89) allowable from so much of the assessable income of the year as was derived from engaging in primary production exceed the assessable income; and

(b) for the purposes of Section 89, a loss was incurred by the taxpayer in the year.

(4) The amount of the loss that the taxpayer is, under Subsection (3), deemed to have incurred in engaging in primary production in the year referred to in that subsection shall be deemed to be—

- (a) if the amount of the excess referred to in Subsection (3)(a) is equal to the amount of the loss referred to in Subsection (3)(b)—the amount of the excess; and
- (b) in any other case—the amount of the excess referred to in Subsection (3)(a), or the amount of the loss referred to in Subsection (3)(b), whichever is the less.

(5) The reference in Subsection (3) to the deductions allowable from so much of the assessable income of a year as was derived from engaging in primary production shall be read as a reference to—

- (a) any deductions allowable from the assessable income that relate exclusively to engaging in primary production; and
- (b) any other deductions allowable from the assessable income to the extent to which they relate to engaging in primary production.

(6) So much of the losses to which this section applies incurred by a taxpayer in any of the years preceding the year of income as has not been allowed as a deduction from his income of any of those years under this section is allowable as a deduction in accordance with the following provisions :—

- (a) where he has not derived exempt income in the year of income, the deduction shall be made from the assessable income; and
- (b) where he has derived exempt income in that year, the deduction shall be made successively from the net exempt income and from the assessable income; and
- (c) where a deduction is allowable under this section in respect of two or more losses, the losses shall be taken into account in the order in which they were incurred; and
- (d) where a deduction is allowable under this section, it shall be taken into account after the allowance of all allowable deductions.

(7) Notwithstanding any other provision of this section, where, before the year of income, a taxpayer—

- (a) has become a bankrupt; or
- (b) has been adjudicated insolvent; or
- (c) not having become a bankrupt or been adjudicated insolvent, has been released from any debts by the operation of a law relating to bankruptcy or insolvency,

no loss to which this section applies that was incurred by him before the date on which he—

- (d) became a bankrupt; or
- (e) was adjudicated insolvent; or
- (f) was so released,

as the case may be, is an allowable deduction.

(8) Where, in the year of income, a taxpayer pays an amount in respect of a debt incurred by him in the course of engaging in primary production in a year in which he incurred a loss to which Subsection (7) applies, being a year not later than the eighth year next preceding the year of income, the amount paid by the taxpayer in respect of the debt is, subject to Subsection (9), an allowable deduction to the extent to which it does not exceed so much of the debt as the Chief Collector is satisfied was taken into account in ascertaining the amount of loss.

(9) The aggregate of the deductions from the income of the taxpayer of the year of income allowable under Subsection (8) in relation to the payment of amounts in respect of debts incurred by the taxpayer in a year in which he incurred a loss to which this section applies (in this subsection referred to as "the year of loss") shall not exceed the amount of that loss less the sum of—

- (a) the deductions (if any) from his income of a year or years of income before the year of income allowed under Subsection (8) or Section 89(7) in relation to the payment of other amounts in respect of debts incurred by the taxpayer in the course of engaging in primary production in the year of loss; and
- (b) so much (if any) of the loss as has been allowed under Subsection (6) as a deduction or deductions from his income (including his net exempt income) of a year or years of income before the year of income; and
- (c) so much (if any) of the loss as, but for Subsection (7), would have been allowed or allowable under Subsection (6) as a deduction or deductions from his net exempt income of—
  - (i) the year of income; or
  - (ii) a year or years of income before the year of income; and
- (d) the amount (if any) by which the sum of—
  - (i) the deductions (if any) from his income of a year or years of income before the year of income allowed under Section 89(7) in relation to the payment of amounts in respect of debts (other than debts incurred in the course of engaging in primary production) incurred by the taxpayer in the year of loss; and
  - (ii) the deductions (if any) from his income (including his net exempt income) of a year or years of income before the year of income allowed under Section 89(4) in respect of a loss that, for the purposes of

Section 89 is to be deemed to have been incurred by him in the year of loss; and

- (iii) the deductions (if any) that, but for Section 89(6), would have been allowed or allowable in respect of that loss under Section 89(4) from his net exempt income of—

- (A) the year of income; or

- (B) a year or years of income before the year of income,

exceeds the difference (if any) between—

- (iv) the amount of the loss that, for the purposes of Section 89, is to be deemed to have been incurred by him in the year of loss; and
  - (v) the amount of the loss to which this section applies that was incurred by him in that year.

#### 91. Order in which deductions allowable for losses of previous years to be taken into account.

Where deductions are allowable from the income of a taxpayer of the year of income under both Section 89(4) and Section 90(6), any deductions allowable under the former provision shall be taken into account before any deductions allowable under the latter provision.

#### 92. Limitations on net exempt income to be taken into account.

(1) Where, but for this section, the net exempt income of a taxpayer of the year of income would be taken into account both for the purpose of Section 89(4)(b) and Section 90(6)(b), the amount of that net exempt income to be taken into account for the purpose of the latter provision shall not exceed the amount (if any) of the net exempt income that remains after deducting so much of the net exempt income as has been taken into account for the purpose of the former provision.

(2) Where, but for this section, the net exempt income of a taxpayer of the year of income would be taken into account both for the purpose of Section 89(8)(c) and for the purpose of Section 90(9)(c), the amount of the net exempt income to be taken into account for the purpose of the latter provision shall not exceed the amount (if any) of the net exempt income that remains after deducting so much of that net exempt income as has been taken into account for the purpose of the former provision.

#### 93. Losses of previous years where no substantial continuity of ownership of shares in taxpayer company.

Notwithstanding Sections 89 and 90, but subject to Sections 94, 95 and 96, a loss incurred by a taxpayer, being a company, in a year before the year of income shall not be taken into account for the purposes of Section 89 or 90 unless the company satisfies the Chief Collector that shares in the company carrying between them—

- (a) the right to exercise not less than 50% of the voting power in the company; and
- (b) the right to receive not less than 50% of any dividends paid by the company; and

- (c) the right to receive not less than 50% of any distribution of capital of the company in the event of the winding-up, or of a reduction in the capital, of the company,

were, at all times during the year of income, beneficially owned by persons who, at all times during the year in which the loss was incurred, beneficially owned shares in the company carrying rights of those kinds.

**94. Special provision relating to beneficial ownership of, or rights attached to, shares.**

(1) This section has effect for the purposes of the application of Section 93 in determining whether a loss incurred by a company in a year before the year of income is to be taken into account.

(2) Subsection (3) applies in a case where—

- (a) shares in the company were allotted after the commencement of the year in which the loss was incurred; and
- (b) the allotment took place in the year of income in which the company was incorporated or within—

- (i) a period of two years; or

- (ii) such further period of a year or years as the Chief Collector approves for the purpose of this subsection in relation to the company,

after the end of that year of income.

(3) In a case to which this subsection applies, the shares referred to in Subsection (2) shall be deemed to have been—

- (a) allotted at the commencement of the year in which the loss was incurred; and
- (b) beneficially owned, at all times from the commencement of that year until the time when the shares were in fact allotted, by the persons who beneficially owned the shares immediately after the shares were allotted.

(4) Shares in the company that were beneficially owned by a person at any time shall be deemed to have been beneficially owned by him at a later time if—

- (a) he had died; and

- (b) at that later time, the shares—

- (i) were owned by the trustee of his estate in his capacity as trustee of the estate; or

- (ii) were beneficially owned by a person who received the shares as a beneficiary in the estate.

(5) Where—

- (a) shares in the company that were beneficially owned by a person at any time have been transferred by him to a company; and

- (b) at a later time, shares in the last-mentioned company carrying between them—

- (i) the right to exercise more than 50% of the voting power in the last-mentioned company; and

- (ii) the right to receive more than 50% of any dividends that might be paid by the last-mentioned company; and

- (iii) the right to receive more than 50% of any distribution of capital of the last-mentioned company in the event of the winding-up, or of reduction in the capital, of that company,

were beneficially owned by him or, if he has died—

- (iv) were owned by the trustee of his estate in his capacity as trustee of the estate; or
- (v) were beneficially owned by a person who received the shares as a beneficiary in the estate,

the Chief Collector may, if he thinks that it is reasonable to do so, treat the shares in the first-mentioned company as having been beneficially owned by the first-mentioned person at that later time.

(6) Where—

- (a) a person who beneficially owned any shares in the company at all times during the year in which the loss was incurred also beneficially owned shares in the company at any time (in this subsection referred to as "the relevant time") during the year of income; and
- (b) before or during the year of income, he entered into a contract, agreement or arrangement, or granted or was granted a right, power or option (including a contingent right, power or option), that directly or indirectly related to, affected or depended for its operation on—
  - (i) his beneficial interest in the last-mentioned shares, or the value of the interest; or
  - (ii) his right to sell or otherwise dispose of the interest, or any such sale or other disposition; or
  - (iii) any rights carried by those shares, or the exercise of any such rights; or
  - (iv) any dividends that might be paid, or any distribution of capital that might be made, in respect of those shares, or the payment of any such dividends or the making of any such distribution of capital; and
- (c) the contract, agreement or arrangement was entered into, or the right, power or option was granted, for the purpose, or for purposes that included the purpose, of enabling the company to take into account for the purposes of Section 89 or 90—
  - (i) a loss that it had incurred in a year before the year in which the contract, agreement or arrangement was entered into or the right, power or option was granted; or
  - (ii) a loss that it might incur in the last-mentioned year,

the Chief Collector may, subject to the succeeding provisions of this section, treat the shares as not having been beneficially owned by that person at the relevant time.

(7) Where the Chief Collector is satisfied that, by virtue of—

- (a) a provision in the constituent document of the company, as in force at any time during the year of income; or
- (b) an agreement or arrangement made before the end of the year of income between persons who at the time when the agreement or arrangement was

made were, or since that time have become, beneficial owners of shares in the company,

shares in the company that—

- (c) were beneficially owned at any time during the year of income by persons who beneficially owned any shares in the company at all times during the year in which the loss was incurred; and
- (d) carried any rights at all times during the year of income,

have ceased, or will or may cease, at any time after the end of the year of income, to carry those rights, the shares shall be deemed not to have carried those rights at any time during the year of income.

(8) Where the Chief Collector is satisfied that, by virtue of—

- (a) a provision of the constituent document of the company, as in force at any time during the year of income; or
- (b) an agreement or arrangement made before the end of the year of income between persons who at the time when the agreement or arrangement was made were, or since that time have become beneficial owners of shares in the company,

shares in the company have commenced, or will or may commence, at any time after the end of the year of income, to carry rights that they did not carry at a time during the year of income—

- (c) if the shares were not beneficially owned at any time during the year of income by persons who beneficially owned any shares in the company at all times during the year in which the loan was incurred—the shares shall be deemed to have carried those rights at all times during the year of income; and
- (d) in any other case—if the Chief Collector thinks that, having regard to all the circumstances, it is reasonable, he may treat the shares as having carried those rights at all times during the year of income.

(9) In ascertaining whether a person who beneficially owned shares in the company at all time during the year in which the loss was incurred beneficially owned any shares in the company at all times during the year of income, any shares (other than shares allotted by the company before the year in which the loss was incurred) that are, or at the option of the company are to be, liable to be redeemed shall be disregarded.

#### **95. Previous losses of subsidiary where no substantial continuity of ownership of shares in holding company.**

(1) Notwithstanding Sections 89, 90 and 93, but subject to this section and to Section 96, where a company in which no other company had a controlling interest (in this section referred to as "the holding company") had a controlling interest in another company (in this section referred to as "the subsidiary company") at any time during a year in which a loss was incurred by the subsidiary company, the loss shall not be taken into account for purposes of Section 89 or 90 unless the Chief Collector is satisfied that, at all times during the year of income of the subsidiary company—

- (a) the holding company had a controlling interest in the subsidiary company; and
- (b) shares in the holding company carrying between them—
  - (i) the right to exercise not less than 50% of the voting power in the company; and

- (ii) the right to receive not less than 50% of any dividends that may be paid by the company; and
- (iii) the right to receive not less than 50% of any distribution of capital of the company in the event of the winding-up, or of a reduction in the capital, of the company,

were beneficially owned by persons who, at all times during the year in which the loss was incurred by the subsidiary company, beneficially owned shares in the holding company carrying rights of those kinds.

(2) For the purposes of the application of Subsection (1), Section 94(4) to (9), apply in relation to—

- (a) the holding company; and
- (b) every company that was at any relevant time interposed between the holding company and the subsidiary company,

as if references in those subsections to the company were references to the holding company or to the interposed company, as the case may be.

#### 96. Previous losses where company carries on same business.

(1) Subject to Subsection (2), where—

- (a) but for this section the whole or part of a loss incurred by a taxpayer, being a company, in a year before the year of income would not by reason of Section 93 (including that section as affected by Section 95) or Section 95, be taken account for the purposes of Section 89 or 90; and
- (b) but for a change that has taken place in the beneficial ownership of shares in the company or in a company that had a controlling interest in the company, the whole of the loss would have been so taken into account; and
- (c) the first-mentioned company carried on at all times during the year of income the same business as it carried on immediately before the change took place; and
- (d) the first-mentioned company did not, at any time during the year of income, derive income from—
  - (i) a business of a kind that it did not carry on; or
  - (ii) a transaction of a kind that it had not entered into in the course of its business operations,

before the change took place,

Section 93 or 95, as the case may be, does not operate to prevent the whole of the loss being taken into account.

(2) Subsection (1) does not apply in respect of a loss incurred by a taxpayer, being a company, in a year before the year of income if—

- (a) before the change took place, the company—
  - (i) commenced to carry on a business that it had not previously carried on; or
  - (ii) entered into, in the course of its business operations, a transaction of a kind that it had not previously entered into; and
- (b) the company commenced to carry on that business, or entered into that transaction, as the case may be, for the purpose, or for purposes that included

the purpose, of enabling the company to take into account for the purpose of Section 89 or 90 a loss that it had incurred in a year before the first-mentioned year, or might incur in the first-mentioned year.

#### 97. Amendment of assessments.

Notwithstanding anything in any other provision of this Act, the Chief Collector may amend an assessment for the purpose of giving effect to Section 94(6), (7), (8) or (9) (including those subsections as applied by Section 95(2)) if the amendment is made within six years after the date on which the tax became due and payable under the assessment.

#### 98. Double deductions.

(1) Where, but for this section, a deduction in respect of any amount would be allowable under more than one provision of this Act (whether it would be so allowable from the assessable income of the same year or of different years), the deduction is allowable only under the provision that in the opinion of the Chief Collector is more appropriate.

(2) Where—

(a) either—

(i) the profit arising from the sale of any property is included in the assessable income of a person; or

(ii) the loss arising from the sale of any property is an allowable deduction from the assessable income of a taxpayer; and

(b) any expenditure incurred by him in connexion with property is an allowable deduction under this Act,

the expenditure shall not be deducted in ascertaining the amount of the profit or loss.

(3) The reference in Subsection (2) to expenditure incurred by a person in connexion with any property shall be read as not including a reference to expenditure that has been allowed, or is allowable, as a deduction under Section 86.

(4) Where expenditure incurred by a taxpayer in connexion with any property has been allowed, or is allowable, as a deduction or deductions in an assessment or assessments of the taxpayer under or by virtue of Section 86, the expenditure may be deducted in ascertaining the amount of any profit or loss arising from the sale of the property only to the extent that the deduction does not result in the tax payable by the taxpayer for the year or years of income in relation to which the deduction is made being reduced by an amount that is greater than the difference between—

(a) the amount of the expenditure; and

(b) the amount, or the sum of the amounts, by which tax payable by the taxpayer for the year of income and previous years of income will be, or has been, reduced by reason of the first-mentioned deduction or deductions.

#### *Division 4.—Leases.*

#### 99. Interpretation of Division 4.

(1) In this Division, unless the contrary intention appears—

"lease" includes an interest in a lease;

"lessor", when used in relation to any time, means the person entitled at that time to the reversion;

"net premium" means the amount ascertained by deducting from a premium the allowable deductions directly relating to the premium;

"premium" means a consideration payable in one amount, or each amount of a consideration payable in more than one amount, where the consideration is—

- (a) in the nature of a premium, fine or foregift payable to a person for or in connexion with the grant or assignment by him of a lease; or
- (b) for or in connexion with an assent to the grant or assignment of a lease; or
- (c) for or in connexion with the surrender of a lease, whether the consideration is payable by the lessor to the lessee or by the lessee to the lessor,

but does not include any amount attributable to goodwill or a licence;

"the term of the lease" means—

- (a) the length of time that the lease has to run from the date when the premium is received; or
- (b) if the premium is received for or in connexion with the surrender of a lease—the length of time that the lease would have had to run at that date if it had not been surrendered.

(2) Where, in connexion with the grant, assignment or surrender of a lease, there is an agreement to sell or assign goodwill, a licence or any other asset, the amount of the consideration attributable to the lease shall, subject to Sections 48(10), 70(1), 84(8) and (9), be—

- (a) where a separate amount is allocated to the lease in a contract of sale or arrangement and the Chief Collector is satisfied that the amount allocated is fair and reasonable—the amount so allocated; or
- (b) where no separate amount is so allocated or the Chief Collector is not satisfied that the amount allocated is fair and reasonable—an amount determined by the Chief Collector.

(3) A deduction is not allowable under this Division in respect of an amount paid, or expenditure incurred, before 1 July 1959, except to the extent that the amount or expenditure is determined by the Chief Collector to be allowable as a deduction.

#### 100. Application of Division 4.

(1) This Division does not apply to—

- (a) a lease from the State of land used for primary production; or
- (b) a lease from the State, being—
  - (i) a lease granted in perpetuity or for a term of not less than 99 years; or
  - (ii) a lease with a right of purchase; or
  - (iii) a lease granted for the purpose of effecting improvements to be used for residential purposes only.

(2) Subject to this section, this Division does not apply to or in relation to a lease other than a lease granted on or before, or under an agreement entered into on or before 28 August 1972.

(3) This Division, other than Section 103, does not apply in relation to the assignment or surrender of a lease unless the assignment or surrender—

- (a) took effect on or before 28 August 1972; or
- (b) took effect or takes effect after that date under an agreement entered into on or before that date.

(4) In relation to the assignment or surrender of a lease after 28 August 1972, Section 103 does not apply unless the assignment or surrender is made by—

- (a) a person who acquired the lease on or before that date, or under an agreement entered into on or before that date; or
- (b) a person who succeeded to the lease on the death of such a person,

and does not apply—

- (c) in relation to an amount to which Section 103(1)(b) applies that was paid in effecting improvements other than improvements referred to in Section 105(2), unless the assignment or surrender is made under an agreement entered into on or before that date; or
- (d) in relation to an amount that was paid for the purpose referred to in Section 103(1)(c), unless the amount was paid on or before that date or under an agreement entered into on or before that date.

(5) Where, after 28 August 1972, improvements are made on land the subject of a lease with the written consent of the lessor of the land, Sections 102, 103 and 105 do not apply in relation to the improvements unless the written consent was given on or before that date.

#### 101. Premiums.

(1) The assessable income of a taxpayer includes, in addition to rent, any premium received by him in the year of income.

(2) Subject to Subsection (3) and to Section 211(5), where a premium—

- (a) that exceeds the sum of the allowable deductions directly relating to it; and
- (b) in respect of which the term of the related lease is not less than 25 complete months,

is included in the assessable income of a taxpayer, the following provisions apply, subject to Section 72(8), in the determination of a notional income for the purpose of any enactment by which a rate of tax on the taxable income of a taxpayer is fixed by reference to a notional income :—

- (c) where the taxable income exceeds the net premium (or, if more than one of the premiums are included, the sum of the net premiums), the notional income of the taxpayer is the amount obtained by deducting the net premium or the sum of the net premiums, as the case may be, from the taxable income, and adding to the result the amount or amounts ascertained by dividing each of the net premiums by  $\frac{1}{24}$  of the number of complete months in the term of the lease; and

(d) where the taxable income is not more than the net premium (or, if more than one of the premiums are included, the sum of the net premiums), the notional income is—

(i) where there is only one such premium—the amount ascertained by dividing the taxable income by  $1/24$  of the number of complete months in the term of the lease; and

(ii) where there are more than one such premium—the sum of the amounts ascertained by apportioning the taxable income among the net premiums in proportion to their amounts, and dividing the amount so apportioned to each net premium by  $1/24$  of the number of complete months in the term of the lease.

(3) Subsection (2) does not apply—

(a) where the taxpayer is a company, except where it is assessable in respect of the premium as a trustee; or

(b) where a premium or premiums for the lease is or are payable in each of three or more years of the lease.

## 102. Improvements.

(1) Subject to Subsections (2) and (3), where improvements not subject to tenant rights have been made on any land by—

(a) a person as consideration for the grant to him of a lease of the land; or

(b) a lessee of the land who—

(i) was required to make them under the lease; or

(ii) made them with the written consent of the lessor,

the following provisions apply :—

(c) there shall be included in the assessable income of the lessor of the year in which the improvements have been completed, and of each subsequent year until and including the year in which the lease expires, an instalment of the estimated value to the lessor of the improvements as at the expiration of the lease; and

(d) subject to Paragraph (e), the instalments shall be equal in amount and shall be such that, if received at the commencement of each of those years, they would, with interest at the prescribed rate, accumulate to a sum equal to the estimated value; and

(e) where in the year of income two or more persons have been lessors for successive periods, the instalment shall be included in the assessable income of the last of the lessors; and

(f) where, in the opinion of the Chief Collector, the amount of the instalment cannot be satisfactorily determined, the value of the improvements at the expiration of the lease shall be included in the lessor's assessable income of the year in which the lease expires.

(2) Subsection (1) does not apply—

(a) where the agreement under which improvements were made as consideration for the grant of a lease was entered into before 1 July 1959; or

(b) where the lessee is required to make the improvements under the terms of a lease entered into before that date; or

- (c) where the improvements are made under a consent given before that date; or
- (d) in any of the cases specified in Section 105(4).

(3) For the purposes of the application of Subsection (1) in relation to improvements made on land that is the subject of a lease of indefinite duration, the lease shall be deemed to expire at the end of the period of two years commencing on the day after the day on which the improvements were completed.

### 103. Assignments and surrenders.

(1) Subject to this section, where, in the year of income, a taxpayer assigns or surrenders a lease, any amount that has been paid by him—

- (a) to acquire the lease; or
- (b) in effecting improvements on land that is the subject of the lease; or
- (c) to obtain the assent of the lessor to the assignment or surrender,

is an allowable deduction.

(2) The deduction allowable under Subsection (1) in respect of an amount paid by the taxpayer shall be reduced by so much (if any) of the amount as has been allowed, or is allowable, as a deduction in assessments of the taxpayer (or, where Subsection (3) applies, in assessments of the taxpayer or of another person) for income tax under another provision of this Act.

(3) Where on the death of another person a taxpayer succeeds to any property that is a lease, any amount that was paid by the deceased person in respect of the property shall be deemed, for the purposes of this section, to have been paid by the taxpayer.

(4) Where a premium in relation to the assignment or surrender of a lease is included in the assessable income of the taxpayer of the year of income, any deduction allowable under this section in relation to the assignment or surrender, shall, for the purposes of this Act, be deemed to relate directly to the premium.

(5) Where premiums in relation to the assignment or surrender of a lease are payable to the taxpayer in two or more years of income—

- (a) Subsection (1) does not apply; and
- (b) the amount that bears to the amount that, but for this subsection, would be allowable as a deduction under that subsection in the year of income in which the assignment or surrender takes place the same proportion as the total of the premiums payable in the year of income bears to the total of those premiums is an allowable deduction.

### 104. Deductions for sub-lessors.

(1) Where—

- (a) a premium is received by a taxpayer in the year of income for or in connexion with the grant by him of a sub-lease; and
- (b) he has paid an amount to acquire the lease of the premises the subject of the sub-lease, or to obtain the assent of his lessor to the grant of the sub-lease,

so much of the total deductions to which he would, but for this section, be entitled, during the period for which the sub-lease is granted, in respect of the amount so paid by him as bears to those deductions the same proportion as the premium bears to the total of the premiums payable by him for the grant of that sub-lease is an allowable deduction in the year of income.

(2) In a case to which Subsection (1) applies, the taxpayer is not entitled to a deduction, during the period for which the sub-lease is granted, in respect of the amount referred to in Subsection (1)(b) otherwise than under this section.

#### 105. Deductions for lessees.

(1) Where a taxpayer has paid a premium in respect of land, premises or machinery used for the purpose of producing assessable income, and in the year of income—

- (a) he is the lessee of the land, premises or machinery; or
- (b) in the case of a premium paid for the surrender of the lease, he would have been the lessee if—
  - (i) the lease had been transferred to him; and
  - (ii) he had not been entitled to the reversion,

a proportionate part of the amount of the premium, arrived at by distributing that amount proportionately over the period of the lease unexpired at the date when the premium was paid, is an allowable deduction.

(2) Subject to Subsections (3) and (4), where a taxpayer who in the year of income is a lessee of land used for the purpose of producing assessable income has, before or after the commencement of the lease, incurred expenditure in making on the land improvements—

- (a) that are not subject to tenant rights; and
- (b) that—
  - (i) have been made as consideration for the grant to him of the lease; or
  - (ii) are improvements that he was required to make under the lease; or
  - (iii) have been made with the written consent of the lessor,

a proportionate part of the amount of the expenditure, arrived at by distributing that amount proportionately over the period of the lease unexpired at the date when the expenditure was incurred, is an allowable deduction.

(3) In calculating a deduction under Subsection (2), expenditure in excess of the amount (if any) specified in—

- (a) the agreement for the lease; or
- (b) the lease; or
- (c) the lessor's consent,

shall not be taken into account.

(4) Subsection (2) does not apply where—

- (a) the lease is a lease of land to a company from an individual, or from a company to an individual, and the individual directly or indirectly controls the voting power of the company; or
- (b) the Chief Collector is of the opinion that, in consequence of the terms and conditions of the lease or of any other circumstances—
  - (i) the lessor is in substantial control of the operations of the lessee; or
  - (ii) the lessee is in substantial control of the operations of the lessor; or
  - (iii) the operations of both the lessor and the lessee are substantially controlled by the same person.

(5) Where a taxpayer succeeds to a lease or a share in a lease on the death of a person who has paid a premium referred to in Subsection (1) or incurred expenditure referred to

in Subsection (2), he is entitled to the same deduction, or part of the deduction proportionate to his share in the lease, as that person would have been entitled to under this section if he had lived.

(6) For the purposes of the application of this section in relation to—

- (a) a premium paid in respect of land or machinery that is, or premises that are, the subject of a lease of indefinite duration; or
- (b) expenditure incurred in making improvements on land that is the subject of such a lease,

the taxpayer who paid the premium or incurred the expenditure, as the case may be, may elect that the period of the lease unexpired at the date when the premium was paid or when the expenditure was incurred shall be deemed to be two years, and where such an election has been made this section applies accordingly.

(7) An election under Subsection (6) shall be—

- (a) made in writing; and
- (b) lodged with the Chief Collector—
  - (i) on or before the date of lodgement of the return of income of the year of income in which the premium is paid or the expenditure is incurred; or
  - (ii) within such further time as the Chief Collector allows.

#### 106. Mining leases.

(1) In this section—

“land” means land in Papua New Guinea;

“mining lease” means a lease of land granted under a law relating to mining;

“mining operations” includes prospecting for a metal or mineral.

(2) For the purpose of this section, a lease shall be deemed not to have been granted, assigned or surrendered for mining purposes unless there appears, in a document signed by the parties—

- (a) before or at the time when the grant, assignment or surrender was made; or
- (b) before such later time as the Chief Collector determines,

a statement to the effect that the purpose of the grant, assignment or surrender is to enable the person to whom the grant, assignment or surrender is made to carry on mining operations on the land.

(3) Where a mining lease is granted, or a lease of land other than a mining lease is granted for mining purposes, and an election is not made under Subsection (6) in respect of the grant—

- (a) Sections 101 and 105(1) do not apply in relation to any premium received or paid for or in connexion with the grant of the lease; and
- (b) Section 103 does not apply in relation to an assignment or surrender of the lease by the lessee; and
- (c) Sections 102 and 105(2) do not apply in relation to improvements made on the leased land by the lessee wholly or partly for the purpose of mining operations carried on by him on the land; and

(d) if the lease is a sub-lease for or in connexion with which a premium is payable—

(i) Section 104 does not apply in relation to the sub-lease; and

(ii) the amount (if any) that, but for this paragraph, would, in a year of income during the whole or a part of which the sub-lease is in force, be allowed under Section 105 as a deduction from the assessable income of the person who granted the sub-lease shall be reduced by an amount that bears to that first-mentioned amount the same proportion as the number of days during which the sub-lease is in force in that year bears to the number of days in that year.

(4) Where—

(a) a mining lease is assigned; or

(b) a lease of land other than a mining lease is assigned for mining purposes, and an election is not made under Subsection (6) in respect of the assignment—

(c) Sections 101 and 105(1) do not apply in relation to any premium received or paid for or in connexion with the assignment of the lease; and

(d) Section 103 does not apply—

(i) in relation to the assignment of the lease by the assignor; or

(ii) in relation to an assignment or surrender of the lease by the assignee; and

(e) Sections 102 and 105(2) do not apply in relation to improvements made on the leased land by the assignee wholly or partly for the purpose of mining operations carried on by him on the land.

(5) Where—

(a) a mining lease is surrendered; or

(b) a lease of land other than a mining lease is surrendered for mining purposes, and an election is not made under Subsection (6) in respect of the surrender—

(c) Sections 101 and 105(1) do not apply in relation to any premium received or paid for or in connexion with the surrender of the lease; and

(d) Section 103 does not apply in relation to the surrender of the lease.

(6) The parties to the grant, assignment or surrender of a lease may, by written notice signed by the parties and lodged with the Chief Collector on or before—

(a) 31 August after the end of the fiscal year in which the lease was granted, assigned or surrendered; or

(b) such later date as the Chief Collector determines,

elect that this section does not apply in relation to the grant, assignment or surrender.

(7) An election under Subsection (6) made after 28 August 1972 is of no effect unless—

(a) in the case of the grant of a lease, the lease—

(i) was granted on or before that date; or

(ii) was granted after that date in pursuance of an agreement entered into on or before that date; or

(b) in the case of the assignment or surrender of a lease, the assignment or surrender—

- (i) took effect on or before that date; or
- (ii) took effect after that date in pursuance of an agreement entered into on or before that date.

(8) Where the State or a person or authority acting for or on behalf of the State, is a party to the grant, assignment or surrender of a lease, an election made by the other party or parties to the grant, assignment or surrender has effect for the purpose of Subsection (6) as if it were made by all the parties.

#### *Division 5.—Partnerships*

#### **107. Interpretation of Division 5.**

In this Division—

“net income”, in relation to a partnership, means the assessable income of the partnership, calculated as if the partnership were a taxpayer, less all allowable deductions except deductions allowable under Sections 89 and 90 in respect of losses of previous years;

“partnership loss” means the excess (if any) of the allowable deductions (other than deductions allowable under Sections 89 and 90 in respect of losses of previous years) over the assessable income of a partnership, calculated as if the partnership were a taxpayer.

#### **108. Partnerships.**

A partnership shall furnish a return of the income of the partnership, but is not, except as provided in this Division, liable to pay tax on it.

#### **109. Income of partner.**

(1) The assessable income of a partner includes his individual interest in the net income of the partnership of the year of income, and his individual interest in any partnership loss incurred in the year of income is an allowable deduction.

(2) The exempt income of a partner includes his individual interest in the exempt income of the partnership of the year of income.

#### **110. Options of partners in respect of live stock.**

(1) In calculating the net income of a partnership or a partnership loss for the purpose of assessing the share of a partner, the partnership shall be deemed to have exercised or failed to exercise all options and rights under this Act to select a value for live stock in the same manner as the partner has in fact exercised or failed to exercise them, and the partnership is not, as a partnership, entitled to exercise any such option or right.

(2) The fact that—

- (a) a taxpayer has entered into a partnership; or
- (b) a variation has taken place in the membership of a partnership of which the taxpayer is a member,

does not—

- (c) affect any option or a right to select a value for live stock previously exercised by him under this Act; or

- (d) confer on him any right to alter such an option or value without the leave of the Chief Collector.

#### 111. Partner not in receipt and control of share.

(1) Where a partnership is so constituted or controlled, or its operations are so conducted, that a partner has not the real and effective control and disposal of his share of the net income of the partnership, the Chief Collector may assess the additional amount of tax that would be payable if the share of that partner, or of all such partners if more than one—

- (a) had been received by the partner who has the real and effective control of the share; or  
(b) had been divided between such other partners as have the real and effective control of the share in proportion to the extent to which, in the opinion of the Chief Collector, they respectively have the real and effective control of it,

as the case may be, and had been added to and included in his or their assessable income, and the partnership is liable to pay the tax so assessed.

(2) Where this section is applied to a share of the net income of a partnership, the share shall not be included in the assessable income of any partner.

(3) For the purpose of this section, but without limiting its application, a partner shall be deemed not to have the real or effective control and disposal of any money received by him that is applied to meet the private or domestic obligations of any other partner.

#### *Division 6.—Trustees.*

#### 112. Interpretation of Division 6.

In this Division, "net income of a trust estate" means the total assessable income of the trust estate calculated under this Act as if the trustee were a taxpayer in respect of the income, less all allowable deductions except, in respect of—

- (a) a beneficiary who has no beneficial interest in the corpus of the trust estate;  
or  
(b) a life tenant,

the deductions allowable under Section 89 or 90 in respect of such of the losses of previous years as are required to be met out of corpus.

#### 113. Trustees.

Except as provided in this Act, a trustee is not liable as trustee to pay income tax on the income of the trust estate.

#### 114. Beneficiaries not under disability.

(1) Where a beneficiary—

- (a) is presently entitled to a share of the income of a trust estate; and  
(b) is not under a legal disability,

his assessable income includes that share of the net income of his trust estate.

(2) The exempt income of a beneficiary to whom Subsection (1) applies includes his individual interest in the exempt income of the trust estate, except to the extent to which that exempt income is taken into account in calculating the net income of the trust estate.

**115. Beneficiaries under disability.**

Where a beneficiary—

- (a) is presently entitled to a share of the income of a trust estate; and
- (b) is under a legal disability,

the trustee shall be assessed and is liable to pay tax in respect of that share of the net income of the trust estate as if it—

- (c) were the income of an individual; and
- (d) were not subject to any deduction.

**116. Absence of present entitlement.**

Where—

- (a) there is no beneficiary presently entitled to any part of the income of a trust estate; or

- (b) there is a part of that income to which no beneficiary is entitled,

the trustee shall be assessed and is liable to pay tax on the net income of the trust estate, or on that part of that net income, as the case may be, as if it—

- (c) were the income of an individual; and
- (d) were not subject to any deduction.

**117. Beneficiary under disability deriving other income.**

- (1) The assessable income of a beneficiary who—

- (a) is under a legal disability; and
- (b) either—

- (i) is a beneficiary in more than one trust estate; or
  - (ii) derives income from any other source,

includes his individual interest in the net income of the trust estate or estates.

- (2) There shall be deducted from the income tax assessed against a beneficiary to whom Subsection (1) applies the tax paid or payable by a trustee in respect of the beneficiary's interest in the net income of the trust estate.

**118. Discretionary trusts.**

For the purposes of this Division, where a trustee has a discretion to pay or apply income of a trust estate to or for the benefit of specified beneficiaries, a beneficiary in whose favour the trustee exercises his discretion shall be deemed to be presently entitled to the amount paid to him or applied for his benefit by the trustee in the exercise of that discretion.

**119. Income of deceased estate after death.**

Where, in the year of income, the trustee of the estate of a deceased person receives an amount that would have been assessable income in the hands of the deceased person if it had been received by him during his lifetime, the amount—

- (a) shall be included in the assessable income of that year of the trust estate; and
- (b) shall be deemed to be income to which no beneficiary is presently entitled.

**120. Revocable trusts.**

(1) Where a person has created a trust in respect of any income or property and—

(a) he has power, whenever exercisable, to revoke or alter the trusts so as to acquire a beneficial interest in—

(i) the income derived by the trustee during the year of income; or

(ii) the property producing that income; or

(iii) any part of that income or property; or

(b) under the trust, income is, in the year of income, payable to or accumulated for, or applicable for the benefit of, a child or children of the person, who is or are under the age of 21 years and unmarried,

the Chief Collector may assess the trustee to pay income tax, under this section, and the trustee is liable to pay the tax so assessed.

(2) The amount of the tax payable under this section is the amount by which the tax actually payable on his own taxable income by the person who created the trust is less than the tax that would have been payable by him if he had received, in addition to any other income derived by him, so much of the net income of the trust estate as—

(a) is attributable to the property in which he has power to acquire the beneficial interest; or

(b) represents the income, or the part of the income, in which he has power to acquire the beneficial interest; or

(c) is payable to or accumulated for, or applicable for the benefit of, a child or children of the person, who is or are under the age of 21 years and unmarried.

(3) Where any property the subject of a trust has been converted into other property, this section applies in the same way as if the trust had originally been created in respect of the other property.

(4) Where this section is applied to the assessment of the income of a trust estate or part of a trust estate derived in the year of income—

(a) no beneficiary shall be assessed in his individual capacity in respect of his individual interest in the income or part to which this section has been so applied; and

(b) the trustee shall not be assessed in respect of the income or part otherwise than under this section.

*Division 7.—Private Companies.*

**121. Interpretation of Division 7.**

(1) In this Division, unless the contrary intention appears—

“the distributable income”, in relation to a private company, means the amount ascertained by deducting from the taxable income of the company—

(a) the tax payable under this Act (other than the tax payable under this Division) in respect of the income of the year of income, before the allowance of any credit under Section 303(c); and

(b) taxes paid in the year of income in a country other than Papua New Guinea in respect of income derived by the company that is assessable income under this Act, less any refund received in the year of income.

of any tax that, by virtue of this paragraph, has been deducted or is deductible for the purpose of ascertaining the distributable income of any year under this Division;

"income derived from property", in relation to a private company, means income consisting of—

- (a) rents; and
- (b) amounts that are premiums for the purpose of Division 4; and
- (c) dividends; and
- (d) interest, unless—
  - (i) the principal business of the company consists of the lending of money; or
  - (ii) the interest is received in respect of a debt due to the company for goods supplied or services rendered by the company in the course of its business; and
- (e) royalties, unless the royalties form part of the proceeds of a business carried on by the company,

less such deductions as relate to that income and are allowed or allowable from the assessable income of the year of income;

"the prescribed period", in relation to a year of income, means the period of the year commencing two months before the end of the year of income;

"private company" means a company that is a private company within the meaning of Section 122;

"the reduced distributable income", in relation to a private company, means the distributable income of the company reduced by so much of the amount of any income derived from property by the company as is included in the distributable income;

"the retention allowance", in relation to the distributable income of a private company of a year of income, means the retention allowance ascertained in accordance with Section 126 in respect of the distributable income;

"special fund dividends", in relation to a private company, means dividends, or part of dividends, paid by the private company, being dividends or parts of dividends that are exempt from income tax by virtue of Section 34;

"the undistributed amount", in relation to a private company, means the amount remaining after deducting from the distributable income the sum of the retention allowance and the dividends (other than special fund dividends) paid by the company within the prescribed period.

(2) For the purposes of this Division, a person is the nominee of another person in relation to shares if he may be required to exercise his voting power in relation to the shares at the direction of, or holds the shares directly or indirectly on behalf of or for the benefit of, that person.

## 122. Definition of private company.

(1) For the purposes of this Division but subject to this section, a company is a private company if—

- (a) it is not a company in which the public are substantially interested; and

(b) on the last day of the year of income, it—

(i) is not a subsidiary of a public company; and

(ii) is a company of any of the following kinds :—

- (A) a company all the issued shares of which are held by not more than 20 persons; or
- (B) a company in which more than 50% of the voting power is capable (having regard to the operation of Subsection (2)) of being exercised by not more than seven persons; or
- (C) a company in which shares representing more than 50% of the paid-up capital, other than capital represented by shares bearing a fixed rate of dividend only, are held (having regard to the operation of Subsection (2)) by not more than seven persons; or
- (D) a company in which not less than 75% of the voting power is capable (having regard to the operation of Subsection (3)) of being exercised by not more than seven persons; or
- (E) a company in which shares representing not less than 75% of the paid-up capital, other than capital represented by shares bearing a fixed rate of dividend only, are held (having regard to the operation of Subsection (3)) by not more than seven persons; or
- (F) a company that is capable of being controlled by any means by not more than seven persons.

(2) For the purposes of Subsection (1)(b)(ii)(B) and (C), a person and his nominee shall be deemed to be one person.

(3) For the purposes of Subsection (1)(b)(ii)(D) and (E), a person (whether or not he holds shares in the company concerned) and—

(a) his relatives; and

(b) in relation to any shares in respect of which they are such nominees, his nominees, or nominees of any of his relatives,

shall be deemed to be one person.

(4) For the purposes of this section—

- (a) subject to Subsection (5), a company is a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) have, in the course of the year of income, been quoted in the official list of a stock exchange; and
- (b) a company is a subsidiary of a public company if, by reason of the beneficial ownership of the shares, the control of the company is in the hands of a company or companies none of which is a private company; and
- (c) shares of a company shall be deemed to be held indirectly on behalf of or for the benefit of a person (not being a company, trustee or partnership) if he would, otherwise than as a shareholder of the company, receive the whole or part of any dividend paid on the shares if there were successive distributions of the relative parts of the dividend to and by each of any companies, trustees or partnerships interposed between him and the company paying the dividend.

(5) Subsection (4)(a) does not apply in relation to a company if shares carrying not less than 75% of the voting power in the company are, at the end of the year of income, beneficially held by, or held directly or indirectly on behalf of or for the benefit of, not more than 20 persons.

(6) Where it is established to the satisfaction of the Chief Collector that, because of special circumstances existing on the last day of the year of income in the constitution or control of a company (being a company that would, but for this subsection, be a private company), it is unreasonable that the company should be treated as a private company, the company shall be deemed not to be a private company for the purposes of this Division.

(7) Subsection (6) does not apply to a company in respect of a year of income unless, on or before—

(a) the date on which it lodges its return of income of that year; or

(b) such later date as the Chief Collector determines,

the company lodges with the Chief Collector a written statement—

(c) claiming to have that subsection applied to the company in respect of that year; and

(d) setting out the special circumstances on which the company relies.

(8) The Commonwealth Trading Bank and the Australian National Airlines Commission are not private companies within the meaning of this section.

#### 123. Additional tax on undistributed amount.

(1) Subject to this section, a private company that is not deemed, by virtue of Section 124, to have made a sufficient distribution in relation to the year of income is liable to pay additional tax on the undistributed amount at such rate as is declared by Act.

(2) Additional tax under this section is not payable by a private company that—

(a) is a non-resident; and

(b) does not carry on business in the country by means of a principal office or of a branch.

#### 124. Sufficient distribution.

(1) For the purposes of this Division, a private company shall be deemed to have made a sufficient distribution in relation to a year of income if it has, during the prescribed period, paid in dividends (other than special fund dividends) an amount not less than the excess of the distributable income of the year of income over the retention allowance in respect of the distributable income.

(2) For the purposes of Subsection (1), in relation to the first year of income of a private company under this Act—

(a) dividends paid by the company during the first 10 months of the year of income shall be deemed to be paid during the prescribed period; and

(b) where the Chief Collector is satisfied that special circumstances justify his so doing, the Chief Collector may treat dividends paid by the company within one year after the end of the prescribed period as having been paid during the prescribed period.

(3) Where by virtue of Subsection (2)(b) the Chief Collector, in relation to the first year of income of a private company under this Act, treats dividends as having been paid by the company during the prescribed period, the dividends shall, for the purposes of

Subsection (1), be deemed not to have been paid during the period that is the prescribed period in relation to the second year of income of the company under this Act.

**125. Additional period for making sufficient distribution.**

(1) For the purposes of this section, "the prescribed time", in relation to a company and in relation to a year of income, means—

- (a) in the case of a year of income preceding the year of income that ended on 30 June 1965—the end of the last-mentioned year of income; or
- (b) in the case of any other year of income—the time of expiration of the fifteenth day before the end of the period that is the prescribed period in relation to the year of income.

(2) Where—

- (a) a notice of assessment in respect of the income of a company of a year of income has not been served on the company before the prescribed time; or
- (b) before the prescribed time there was served on a company a notice of assessment in respect of the income of the company of a year of income on the basis of which the company would not have had a distributable income in respect of that year of income, and after the prescribed time there has been served on the company a notice of amended assessment in respect of that income on the basis of which the company has a distributable income in respect of that year of income; or
- (c) after the prescribed time there has been served on a company a notice of amended assessment in respect of the income of the company of a year of income on the basis of which the distributable income of the company in respect of that year of income is greater than it would have been on the basis of the assessment before it was amended,

the company may, by writing signed by the public officer of the company, request the Chief Collector to determine a further period within which the company may pay dividends for the purpose of making a sufficient distribution in relation to that year of income.

(3) On receipt of a request under Subsection (2), the Chief Collector may, subject to Subsection (4)—

- (a) grant the request and determine a further period; or
- (b) refuse the request.

(4) In deciding whether to grant or refuse the request, the Chief Collector shall have regard to—

- (a) the date on which the company lodged a return of its income of the year of income to which the request relates; and
- (b) if the company did not make a full and true disclosure in its return of all the material facts necessary for an assessment of the taxable income of the company of that year of income—the date on which a full and true disclosure was made; and
- (c) any other matters that he thinks relevant.

(5) The Chief Collector shall serve by post, on the company that made the request, a written notice of his decision on the request, and where the request is granted the notice shall be served before the commencement of the further period determined by the Chief Collector.

(6) If—

(a) the Chief Collector determines a further period in relation to a company and in relation to a year of income; and

(b) dividends (other than special fund dividends) are paid by the company during the further period,

so much (if any) of the amount of those dividends as—

(c) is specified in a written notice signed by the public officer of the company and lodged with the Chief Collector not later than 30 days after the end of the further period; and

(d) does not exceed—

(i) in a case to which Subsection (2)(c) applies—the excess of the amount that is the undistributed amount in relation to the company in relation to that year of income over the amount that would have been that undistributed amount on the basis of the assessment before it was amended; or

(ii) in any other case—the undistributed amount in relation to the company in relation to the year of income,

shall, for the purposes of this Division, be deemed to have been paid during the prescribed period in relation to the year of income.

#### 126. Retention allowance.

The retention allowance of a private company in respect of its distributable income of a year of income is the aggregate of—

(a) so much of the reduced distributable income as does not exceed K10 000.00; and

(b) 50% of so much of the reduced distributable income as exceeds K10 000.00; and

(c) 10% of so much of any income derived from property by the company (other than dividends received from other private companies) as is included in the distributable income.

#### 127. Excess distributions carried forward.

(1) Where, during the prescribed period in relation to a year of income, a private company has paid in dividends (other than special fund dividends) an amount in excess of the lowest amount that would have been a sufficient distribution the amount of the excess is, for the purposes of this section, an excess distribution made by the company for the year of income.

(2) Where a private company has made an excess distribution for a year of income, the amount of the excess distribution shall, for the purposes of this Division, be deemed to be a dividend (other than a special fund dividend) paid by the company during the period that is the prescribed period in relation to the next year of income.

#### 128. Private companies carrying on insurance.

For the purposes of the application of this Division to a private company carrying on in the country the business of insurance—

(a) the taxable income shall be deemed to be the amount that would be the taxable income if Section 207 did not apply to the company; and

- (b) there shall be included in the distributable income, in addition to the amount ascertained in accordance with the definition "the distributable income" in Section 121(1), any amount (other than a refund) that has been received by the private company in the year of income, directly or indirectly as a reimbursement of, or otherwise for or in respect of, any tax that has been deducted, or is deductible, in ascertaining the distributable income of any year of income, under this Division.

### 129. Loans to shareholders.

(1) If—

- (a) amounts are paid, or assets are distributed, by a private company to any of its shareholders by way of advance or loans; or
- (b) payments are made by the company on behalf of, or for the individual benefit of, any of its shareholders,

so much (if any) of the amount or value of the advances, loans or payments as in the opinion of the Chief Collector represents distributions of income, shall, for all purposes of this Act (except the purposes of Division III.15 and of Division VI.4), be deemed to be dividends paid by the company on the last day of the year of income of the company in which the payment or distribution is made.

(2) Where—

- (a) the amount or value of an advance, loan or payment is deemed, under Subsection (1), to be a dividend paid by a company to a shareholder; and
- (b) the company subsequently sets off the whole or a part of a dividend distributed by it in satisfaction in whole or in part of the advance, loan or payment,

the dividend shall, to the extent to which it is so set off, be deemed not to be a dividend for any purpose of this Act.

### 130. Payments to shareholders and directors.

So much of any sum paid or credited by a private company to a person who is or has been—

- (a) a shareholder or director of the company; or
- (b) a relative of a shareholder or director of the company,

being or purporting to be—

- (c) remuneration for services rendered by him; or
- (d) an allowance, gratuity or compensation—
- (i) in consequence of his retirement from an office or employment held by him in the company; or
- (ii) on the termination of any such office or employment,

as exceeds an amount that, in the opinion of the Chief Collector is reasonable, is not an allowable deduction and shall, for all purposes of this Act (except the purposes of Division III.15 and Division VI.4), be deemed to be a dividend paid by the company on the last year of income of the company in which the sum is paid or credited.

*Division 8.—Life Assurance Companies.***131. Interpretation of Division 8.**

In this Division—

"future premiums" means such premiums as, according to the rate of interest and the rate of mortality assumed in the company's actuarial valuation, are sufficient to provide for the risk incurred by the company in issuing the policies in force on the date in respect of which the valuation is made, exclusive of any addition for office expenses and other charges;

"life assurance company" means a company the sole or principal business of which is life assurance;

"valuation of liabilities" means a valuation of the amount that, together with the future premiums payable, if accumulated at the rate of interest stated as assumed in the company's actuarial valuation, would provide the amount required to pay in full on the respective dates of their maturity, according to the rates of mortality assumed in the valuation, the liabilities under policies in force on the date in respect of which the valuation is made.

**132. Life assurance premiums, etc.**

The assessable income of a life assurance company shall not include premiums received in respect of policies of life assurance or considerations received in respect of annuities granted.

**133. Deduction of certain expenditure.**

(1) Expenditure incurred by a life assurance company exclusively in gaining premiums or considerations referred to in Section 132 is not an allowable deduction.

(2) So much only of the expenditure incurred in the year of income in the general management of the business of a life assurance company as bears to that expenditure the same proportion as its assessable income bears to its total income is an allowable deduction.

(3) For the purpose of Subsection (2)—

(a) the expenditure exclusively incurred in gaining or producing assessable income, or exclusively incurred in gaining or producing income that is not assessable, shall be deemed not to be expenditure incurred in the general management of the business of the life assurance company; and

(b) the total income of the life assurance company includes premiums and considerations referred to in Section 132.

**134. Calculated liabilities.**

(1) Where an actuarial valuation of liabilities of a life assurance company is made as at the end of the year of income, the amount of the calculated liabilities for the purpose of this section, of the company at that date is—

(a) where the basis of the valuation is compound interest at the rate of 4% per annum or more—the amount of valuation; or

(b) where the basis is compound interest at a rate less than 4% and not less than 3.5% per annum—95% of that valuation; or

(c) where the basis is compound interest at a rate less than 3.5% and not less than 3% per annum—90% of that valuation; or

(d) where the basis is compound interest at a rate less than 3% per annum—85% of that valuation.

(2) Where an actuarial valuation of liabilities is not made as at the end of the year of income—

(a) a calculation shall be made of the proportion that the last actuarial valuation of liabilities as at some other date bears to the value of all the assets of the company at that date; and

(b) the amount that bears that proportion to the value of all the assets of the company at the end of the year of income shall be deemed to be an actuarial valuation of liabilities made as at the end of that year on the same basis as the preceding valuation.

(3) An amount equal to 3% of the part of the calculated liabilities of a life assurance company at the end of the year of income that bears to the calculated liabilities the same proportion as the value at that date of the assets from which the company derives assessable income bears to the value at that date of all the assets of the company is an allowable deduction.

(4) When the calculated liabilities at the end of the year of income exceed the value at that date of all the assets of the company, the company is not liable to pay income tax in respect of the income derived in that year from the business of life assurance.

*Division 9.—Co-operative and Mutual Companies<sup>1</sup>.*

**135. Interpretation of Division 9.**

(1) Subject to Subsection (2), in this Division "co-operative company" means company—

(a) the rules of which—

(i) limit the number of shares that may be held by, or by and on behalf of, any one shareholder; and

(ii) prohibit the quotation of the shares for sale or purchase at a stock exchange or in any other public manner; or

(b) that has no share capital,

if the company is established for the purpose of carrying on any business having as its primary object or objects one or more of the following:—

(c) the acquisition of commodities or animals for disposal or distribution among its shareholders; or

(d) the acquisition of commodities or animals from its shareholders for disposal or distribution; or

(e) the storage, marketing, packing or processing of commodities of its shareholders; or

(f) rendering services to its shareholders; or

(g) obtaining funds from its shareholders for the purpose of making loans to its shareholders to enable them to acquire land or buildings to be used for the purpose of residence or of residence and business.

<sup>1</sup> See footnote to definition "native body", Section 1.

(2) If, in the ordinary course of business of a company in the year of income—

(a) the value of commodities and animals disposed of to, or acquired from, its shareholders by the company; or

(b) the amount of its receipts from—

(i) the storage, marketing, packing and processing of commodities of its shareholders; or

(ii) the rendering of services to them; or

(c) the amount lent by it to them,

is less than 90% of the total value of—

(d) commodities and animals disposed of or acquired by the company; or

(e) its receipts from—

(i) the storage, marketing, packing and processing of commodities; or

(ii) the rendering of services; or

(f) the total amount lent by it,

the company shall, in respect of that year, be deemed not to be a co-operative company.

### 136. Assessable income of co-operative company.

The assessable income of a co-operative company includes all sums received by it, whether from shareholders or from other persons—

(a) for the storage, marketing, packing or processing of commodities; or

(b) for the rendering of services; or

(c) in payment for commodities, animals or land sold, whether on account of the company or on account of its shareholders.

### 137. Allowable deductions.

(1) So much of the assessable income of a co-operative company as—

(a) is distributed among its shareholders as rebates or bonuses based on business done by shareholders with the company; or

(b) is distributed among its shareholders as interest or dividends on shares; or

(c) in the case of a company having as its primary object the object specified in Section 135(1)(d)—is applied by the company for or towards the repayment of any moneys loaned to the company by the State to enable the company—

(i) to acquire assets that are required for the purpose of carrying on the business of the company; or

(ii) to pay the State for assets so required that the company has taken over from the State,

is an allowable deduction.

(2) A deduction under Subsection (1)(c) is not allowable unless shares representing not less than 90% of the paid-up capital of the company are held by persons who supply the company with the commodities or animals that the company requires for the purposes of its business.

(3) A rebate or bonus based on purchases made by a shareholder from the company shall not be included in his assessable income except where the price of the purchases is allowable as a deduction in ascertaining his taxable income of any year.

**138. Mutual insurance associations.**

(1) For the purposes of this Act, an association of persons formed for the purpose of insuring themselves against loss, damage or risk of any kind in respect of property shall be deemed to be a company carrying on the business of insurance.

(2) The assessable income of a company to which Subsection (1) applies includes all premiums derived by the company, whether or not from its shareholders, other than premiums received in respect of policies of life assurance or considerations received in respect of annuities granted.

*Division 10.—Mining.***139. Interpretation of Division 10.**

(1) In this Division—

“allowable capital expenditure” has the meaning given to it by Section 140;

“expenditure” means the net expenditure after taking into account—

(a) any bounty or subsidy received in or in relation to the carrying on of prescribed mining operations; and

(b) any rebates or returns in respect of such expenditure;

“housing and welfare”, in relation to a taxpayer, means—

(a) residential accommodation provided by him at, or at a place adjacent to, the site of prescribed mining operations carried on by him, being accommodation provided for the use of—

(i) his employees employed for the purposes of his operations the site, or of his operations connected with those operations; or

(ii) dependants of such employees; and

(b) health, educational, recreational, law and order or other similar facilities, or facilities for the provision of meals, provided by him at, or at a place adjacent to, the site of prescribed mining operations carried on by him, being facilities that—

(i) are provided principally for the welfare of employees or dependants referred to in Paragraph (a); and

(ii) are not conducted for the purpose of profit-making by him or any other person,

and includes works carried out directly in connexion with such accommodation or facilities (including works for the provision of water, light, power, access or communications);

“mining or prospecting information” means geological, geophysical or technical information, being information—

(a) that relates to the presence, absence or extent of deposits of minerals, other than petroleum, in an area; or

(b) is likely to be of assistance in determining the presence, absence or extent of such deposits in an area,

and that has been obtained from exploration, prospecting or mining minerals;

"mining or prospecting right" means—

(a) an authority, licence, permit or right to mine or prospect for minerals in a particular area of the country; or

(b) a lease of land in the country by virtue of which the lessee is entitled to mine or prospect for minerals on the land,

and includes an interest in such an authority, licence, permit, right or lease;

"the pre-Independence *Income Tax Act* 1959-1973" means the pre-Independence *Income Tax Act* 1959, or that Act as amended from time to time by Acts up to and including Act No. 65 of 1973;

"prescribed mining operations" means mining operations on a mining property in the country for the extraction of minerals, other than petroleum, from their natural site, being operations carried on for the purpose of gaining or producing assessable income;

"prescribed purposes" means the purposes for which allowable capital expenditure may be incurred and, in relation to property in respect of which the taxpayer incurred expenditure of a capital nature before the year of income that commenced on 1 July 1974, includes the purposes for which expenditure referred to in Section 155(1) of the pre-Independence *Income Tax Act* 1959-1973 could be incurred;

"property" includes a mining or prospecting right.

(2) In this Division, a reference to a deduction allowed or allowable under this Division (other than a reference to a deduction allowed or allowable under a specified provision of this Division) shall, unless the contrary intention appears, be read as including a reference to a deduction allowed or allowable under Division III.10 of the pre-Independence *Income Tax Act* 1959-1973.

(3) In this Division, a reference to a year of income includes a reference to an accounting period adopted, in accordance with Section 9, in the place of that year of income.

(4) Where a taxpayer carries on or carried on prescribed mining operations on two or more mining properties—

(a) this Division applies to his operations on and in connexion with each of those mining properties as if it were the only mining property on which he carries on or carried on prescribed mining operations; and

(b) for that purpose, amounts of expenditure or other amounts shall be apportioned in such manner as is reasonable.

#### 140. Definition of allowable capital expenditure.

(1) For the purposes of this Division, the allowable capital expenditure of a taxpayer in carrying on prescribed mining operations is, subject to Subsection (2), any expenditure incurred by him on—

(a) the acquisition of—

(i) the site of the source of mineral deposits; or

(ii) rights in or over any such site; or

(iii) rights in or over the deposits; and

(b) searching for or on discovery and testing the deposits, or winning access to the deposits; and

- (c) the construction of any works in connexion with the provision of, or contributions to the cost of providing water, light or power for use on, access to or communications with, the site of prescribed mining operations carried on, or to be carried on, by him; and
- (d) works carried out directly in connexion with housing and welfare; and
- (e) the acquisition of a mining or prospecting right or mining or prospecting information from another person, to the extent only of the amount of the expenditure that is specified in a notice under Section 141 duly given to the Chief Collector by the taxpayer and to the other person; and
- (f) general administration and management before the commencement of commercial production.

(2) The expenditure referred to in Subsection (1) does not include expenditure incurred by the taxpayer on or in relation to—

- (a) plant or articles for which a deduction for depreciation is allowable in accordance with Section 65; or
- (b) works carried out in connexion with the establishment, operation or use of a port or other facilities for ships.

#### 141. Expenditure in relation to acquisition of rights and information.

(1) Where a person (in this section referred to as "the purchaser") has incurred expenditure in acquiring from another person (in this section referred to as "the vendor"), for the purpose of carrying on prescribed mining operations, a mining or prospecting right or mining or prospecting information, the purchaser and the vendor may give notice to Chief Collector that they have agreed to the inclusion in the allowable capital expenditure of the purchaser of an amount specified in the notice, being the whole or a part of that expenditure.

(2) If the amount specified in a notice given under Subsection (1) in respect of a transaction exceeds the sum of—

- (a) so much of the capital expenditure incurred by the vendor before the date of the transaction in relation to the area that is the subject of the right or to which the information relates as would, but for the transaction and any later transaction in relation to the area, have been included in the residual capital expenditure of the vendor as at the end of the year of income of the vendor during which the transaction occurred; and
- (b) the amount included under Section 144 in the assessable income of the vendor in relation to property acquired by the purchaser from the vendor in connexion with the transaction,

the amount specified in the notice shall, for the purposes of this Division, be deemed to be reduced by the amount of the excess.

(3) A notice under this section shall—

- (a) be in writing, signed by or on behalf of the persons giving it; and
- (b) be lodged with the Chief Collector—
  - (i) not later than two months after the end of the year of income of the purchaser in which the right or information was acquired; or
  - (ii) within such further time as the Chief Collector allows.

**142. Calculation of residual capital expenditure.**

(1) For the purpose of this Division, the residual capital expenditure of a taxpayer as at the end of a year of income (in this section referred to as "the relevant year") shall be ascertained by deducting from the sum of—

- (a) the amount of capital expenditure, ascertained in accordance with Section 155 of the pre-Independence *Income Tax Act* 1959-1973, incurred by the taxpayer in any year of income that commenced—
  - (i) after the year of income that ended on 30 June 1960; and
  - (ii) before the year of income that commenced on 1 July 1974; and
- (b) the amount of allowable capital expenditure incurred by the taxpayer—
  - (i) after the year of income that ended on 30 June 1974; and
  - (ii) before the end of the relevant year,

any part of the expenditure included in that sum that—

- (c) has been allowed, or is allowable, as a deduction under Section 155 of the pre-Independence *Income Tax Act* 1959-1973 from the assessable income of a year of income before the year of income that commenced on 1 July 1974; or
- (d) has been allowed, or is allowable, as a deduction under Section 143 from the assessable income of a year of income before the relevant year; or
- (e) was incurred on—
  - (i) property that has been disposed of, lost or destroyed after the year of income that ended on 30 June 1960; or
  - (ii) property the use of which for prescribed purposes has, after that last-mentioned year of income, been otherwise terminated,and has not been allowed, and is not allowable, as a deduction from the assessable income of any year of income that ended before the year of income in which the disposal, loss, destruction or termination of use took place; or
- (f) not being expenditure to which Paragraph (e) applies, is or has been required to be taken into account in calculating the amount to be included in the allowable capital expenditure of a purchaser, by virtue of a notice under Section 141 duly given to the Chief Collector under that section in relation to the acquisition from the taxpayer, during the year of income or a prior year of income, of a mining or prospecting right or mining or prospecting information.

(2) Where any property referred to in Subsection (1)(e)(ii) again comes into use for a purpose for which allowable capital expenditure may be incurred, so much of the capital expenditure incurred on it before the termination of use as the Chief Collector determines shall, for the purposes of this section, be deemed to have been incurred by the taxpayer in the year of income in which the property so comes into use, and for the purposes for which the property so comes into use.

**143. Deduction for residual capital expenditure.**

(1) Where, at the end of the year of income, there is, in relation to a taxpayer, an amount of residual capital expenditure, an amount ascertained in accordance with this section is an allowable deduction.

(2) The deduction allowable under Subsection (1) is the amount ascertained by dividing the amount of the residual capital expenditure by—

- (a) a number equal to the number of whole years in the estimated life of—
  - (i) the mine on the mining property; or
  - (ii) if there is more than one such mine the mine that has the longer or longest estimated life,as at the end of the year of income; or
- (b) 20,

whichever is the less.

(3) For the purpose of this section—

- (a) a person carrying on prescribed mining operations shall furnish to the Chief Collector, from time to time as necessary, an estimate of the life of the mine during which productive mining may be expected to continue, supported by calculations showing how the estimate is arrived at; and
- (b) the Chief Collector shall determine the estimated life of the mine as being the number of years that he thinks reasonable in the circumstances.

#### 144. Disposal, destruction or termination of use of property.

(1) In this section, "consideration receivable in respect of disposal, loss or destruction", in relation to any property, means—

- (a) where the property is sold (whether with or without other property) for a specified price—the sale price, less—
  - (i) the expenses of the sale of the property; or
  - (ii) such part of the expenses of the sale of the property together with the other property as the Chief Collector determines; or
- (b) where the property is sold with other property and a specified price is not allocated to the property—such part of the total sale price, less the expenses of the sale, as the Chief Collector determines; or
- (c) where the property is disposed of otherwise than by sale—the value (if any) of the property at the date of disposal; or
- (d) where the property is lost or destroyed—any amount or value received or receivable under a policy of insurance or otherwise in respect of the loss or destruction,

but does not include any amount that is included, or will when received be included, in the assessable income of any year of income under Section 40 or Division 4.

(2) This section applies where deductions have been allowed, or are allowable, under this Division in respect of expenditure of a capital nature by the taxpayer in respect of property of the taxpayer that—

- (a) has been disposed of, lost or destroyed in the year of income; or
- (b) the use of which by the taxpayer for prescribed purposes has been otherwise terminated in the year of income.

(3) Where the aggregate of—

- (a) the sum of the deductions referred to in Subsection (2); and

- (b) the consideration receivable in respect of the disposal, loss or destruction or, in the case of other termination of the use of the property, the value of the property at the date of termination of use,

exceeds the total expenditure of a capital nature of the taxpayer in respect of that property, so much of the amount of the excess as does not exceed the sum of those deductions shall be included in the assessable income.

(4) Where the total expenditure exceeds the aggregate specified in Subsection (3), the amount of the excess is an allowable deduction.

#### 145. Calculation of purchase price of property to which Division 10 applies.

Where—

- (a) a person has purchased from another person a unit of property (other than a mining or prospecting right)—
  - (i) in respect of which the vendor has incurred capital expenditure of a kind in respect of which deductions are, or have been, allowable under this Division; or
  - (ii) the expenditure of the purchaser in acquiring which is expenditure of such a kind; and
- (b) the Chief Collector is satisfied that, having regard to any connexion between the vendor and the purchaser or to any other relevant circumstances, they were not dealing with each other at arms length; and
- (c) the purchase price is greater or less than the amount that, in the opinion of the Chief Collector, was the value of the unit at the time of the purchase,

the purchase price shall, for all purposes of the application of this Act in relation to the vendor or the purchaser, be deemed to have been the amount that, in the opinion of the Chief Collector, was the value of the unit at the time of the purchase.

#### 146. Double deductions.

Where the whole or a part of any expenditure of a capital nature incurred by a taxpayer has been allowed, or is or may become allowable, as a deduction under this Division, the expenditure—

- (a) is not an allowable deduction; and
- (b) shall not be taken into account in ascertaining the amount of an allowable deduction,

from the assessable income of the taxpayer of any year of income under this Act except under this Division.

#### 147. Appropriation of deductions to particular expenditure.

For any purpose of this Act, the Chief Collector may determine the extent to which a deduction allowed or allowable under this Division is to be treated as attributable to particular expenditure that has been taken into account in the calculations by which the entitlement of the taxpayer to the deduction has been ascertained.

*Division 11.—Mining for Petroleum.***148. Interpretation of Division 11.**

In this Division—

“net assessable income” means the amount remaining after deducting from the assessable income derived by the taxpayer from the sale of petroleum obtained from mining operations carried on by the taxpayer in the country or in Australia, and of the products of that petroleum—

- (a) all outgoings (other than outgoings of a capital nature) incurred in gaining or producing that income; and
- (b) all taxes paid in respect of that income;

“net exempt income” means the amount remaining after deducting from the exempt income derived by the taxpayer from the sale outside the country of petroleum obtained from mining operations carried on by the taxpayer in the country or in Australia, and of the products of that petroleum—

- (a) all outgoings (other than outgoings of a capital nature) incurred in gaining or producing that income; and
- (b) all taxes paid in respect of that income;

“petroleum” means naturally occurring solid, liquid or gaseous hydrocarbons in a free state, but does not include any substance that may be extracted from rocks or minerals by any process of destructive distillation;

“unrecouped capital expenditure” means the amount remaining after deducting from the total amount of the capital expenditure incurred by the taxpayer before or during the year of income—

- (a) in prospecting or mining for petroleum in the country or in Australia; and
- (b) in plant necessary for the treatment of that petroleum,

the total of—

- (c) the net assessable income derived by the taxpayer before the year of income (except income in respect of which the taxpayer has paid or is liable to pay tax under this Act); and
- (d) the net exempt income derived by the taxpayer before and during the year of income; and
- (e) the sum of the moneys paid on shares received by the taxpayer before or during that year of income, being amounts specified in declarations lodged by the taxpayer under Section 99(3) or (6) of the pre-Independence *Income Tax Act* 1959-1970 (other than moneys specified in declarations lodged by the taxpayer under Section 99(6) of that Act and expended before or during that year of income in making payments referred to in Section 99(6)(e) of that Act).

**149. Unrecouped capital expenditure on prospecting or mining for petroleum.**

Where a taxpayer derives income from carrying on mining operations in the country or in Australia for the purpose of obtaining petroleum, the amount of the unrecouped capital expenditure (to an amount not exceeding the amount remaining after deducting from the assessable income derived from the sale of the petroleum and its products all deductions allowable in respect of that assessable income) is an allowable deduction.

**150. Disposal, loss, destruction or termination of use of property.**

(1) In this section, "the consideration receivable in respect of disposal, loss or destruction", in relation to any property, means—

(a) where the property is sold—

(i) if the Chief Collector is satisfied that the sale price is fair and reasonable—the sale price less the expenses of the sale of the property; or

(ii) if the Chief Collector is not so satisfied—such amount as, in his opinion, is fair and reasonable; and

(b) where the property is sold with other property and no separate value is allocated to the property—an amount determined by the Chief Collector; and

(c) where the property is disposed of otherwise than by sale—the value (if any) of the property at the date of disposal; and

(d) where the property is lost or destroyed—any amount or value received or receivable under a policy of insurance or otherwise in respect of the loss or destruction;

but does not include any amount that is included, or will when received be included, in the assessable income of any year of income under Section 40 or Division 4.

(2) This section applies where deductions have been allowed, or are allowable, under this Division in respect of expenditure of a capital nature and, in the year of income—

(a) property on which any of the expenditure was incurred has been disposed of, lost or destroyed; or

(b) the use of any such property for the purposes of mining operations has been otherwise terminated.

(3) Where the aggregate of—

(a) the sum of the deductions allowed or allowable under this Division in respect of expenditure of a capital nature on the property referred to in Subsection (1)(a) or (b); and

(b) the consideration receivable in respect of the disposal, loss or destruction, or in the case of other termination of the use of property the value of the property at the date of the termination of use; and

(c) in the case of expenditure incurred before 1 July 1960, the sum of the deductions that would have been allowable in respect of the expenditure if this Act had commenced to take effect on the date on which the expenditure was incurred and had applied to income of the year of income in which that date fell and of each subsequent year before 1 July 1960;

exceeds the total expenditure of a capital nature by the taxpayer on the property, so much of the amount of the excess as does not exceed the sum of the deductions referred to in Paragraph (a) is included in the assessable income.

(4) Where the total expenditure of a capital nature by the taxpayer on the property exceeds the aggregate specified in Subsection (3), the excess is an allowable deduction.

**151. Acquisition of property.**

(1) Subject to Subsection (2), where a person has purchased, from another person carrying on mining operations in the country, property for the purpose of gaining or producing assessable income, so much (if any) of the purchase price as exceeds the sum of—

- (a) the amount, or the sum of the amounts, attributable to expenditure on the property that, if the property had not been sold, would have been allowable as a deduction to the vendor in the years subsequent to the year of income in which the sale took place; and
- (b) any part of the purchase price that is included in the assessable income of the vendor under Section 150,

is not included for the purposes of this Division in the expenditure of the purchaser on the property.

(2) Subsection (1) does not apply where the Chief Collector is of the opinion that the circumstances are such that it should not apply.

**152. Double deductions.**

(1) Where the whole or a part of any expenditure of a capital nature incurred by a taxpayer has been allowed, or is allowable, as a deduction under this Division, the expenditure—

- (a) is not an allowable deduction; and
- (b) shall not be taken into account in ascertaining the amount of an allowable deduction,

under this Act, except under this Division.

(2) Subsection (1) does not apply in relation to expenditure on any property after—

- (a) the use of the property for the purposes of mining operations has terminated; and
- (b) the property has come into use for the purpose of producing assessable income otherwise than by the carrying on of mining operations on it.

***Division 12.—Timber Operations.*****153. Interpretation of Division 12.**

(1) In this Division—

“access road” means a road (including a bridge, culvert or similar work forming part of the road) constructed primarily and principally for the purpose of providing access to an area so as to enable—

- (a) the planting or tending of trees in the area; or
- (b) the removal from the area of timber felled in the area;

“expenditure” means net expenditure after taking into account—

- (a) any bounty or subsidy received in or in relation to the carrying on of timber operations; and

(b) any rebates or returns in respect of such expenditure;

"housing and welfare", in relation to a taxpayer, means—

(a) residential accommodation provided by him at, or at a place adjacent to, the site of timber operations carried on by him, being accommodation provided for the use of—

(i) his employees employed for the purposes of his operations on that site, or of his operation connected with those operations; or

(ii) dependants of such employees,

or for the use of—

(iii) employees of the State or of a public authority, under any agreement with or requirement of the State; or

(iv) dependants of such employees; and

(b) health, educational, recreational, law and order, fire-fighting, civil administration or other similar facilities, or facilities for the provision of meals, provided by him at, or at a place adjacent to, the site of timber operations carried on by him, being facilities that—

(i) are provided principally for the welfare of employees or dependants referred to in Paragraph (a); and

(ii) are not conducted for the purpose of profit making by the taxpayer or any other person,

and includes works carried out directly in connexion with such accommodation or facilities (including works for the provision of water, lights, power, access or communications);

"the pre-Independence *Income Tax Act 1959-1973*" means the pre-Independence *Income Tax Act 1959*, or that Act as amended from time to time by Acts up to and including Act No. 65 of 1973;

"primary processing of timber" means—

(a) the planting or tending of trees for felling; and

(b) the felling of standing timber; and

(c) the removal of felled timber; and

(d) the sawing of felled timber at a sawmill; and

(e) the preservation of sawn timber at a sawmill by a process approved by the Director of Forests; and

(f) the planing, shaping and moulding of sawn timber at a sawmill; and

(g) processing timber for veneer, plywood, woodchips or other primary timber products;

"structural improvements" means structural improvements—

(a) used primarily and principally for the purpose of carrying out primary processing of timber; and

(b) constructed on, or adjacent to, land used primarily and principally for that purpose;

"timber operations" means—

(a) the planting or tending of trees for felling; and

- (b) the felling of standing timber; and
- (c) the removal of felled timber; and
- (d) milling or other processing of felled timber.

(2) A reference in this Division to a deduction allowed or allowable under this Division (other than a reference to a deduction allowed or allowable under a specified provision of this Division) shall, unless the contrary intention appears, be read as including a reference to a deduction allowed or allowable under Division III.11 of the pre-Independence *Income Tax Act 1959-1973*.

(3) In this Division, a reference to a year of income includes a reference to an accounting period adopted, in accordance with Section 9, in the place of that year of income.

(4) Where a taxpayer carries on or carried on timber operations on two or more timber leases—

- (a) this Division applies to his operations on and in connexion with each of those timber leases as if it were the only timber lease on which he carries on or carried on timber operations; and
- (b) for that purpose, amounts of expenditure or other amounts shall be apportioned in such manner as is reasonable.

#### 154. Deduction of expenditure.

(1) Where, in connexion with the carrying on by him of timber operations in the country for the purpose of gaining or producing—

- (a) assessable income; or
- (b) income that would, if this Act had commenced to have effect on 1 July 1946 and had applied to income derived on or after that date and before the first year of income to which this Act applies, have been assessable income,

a person has incurred, on or after 1 July 1946, expenditure of a capital nature on an access road, housing and welfare or structural improvements, an amount ascertained in accordance with this section is, subject to Subsection (2), an allowable deduction in respect of that expenditure.

(2) Subsection (1) does not apply in respect of expenditure—

- (a) in respect of which a deduction has been allowed, or is allowable, under a provision of this Act, other than this Division; or
- (b) that has been, or is, taken into account in ascertaining the amount of an allowable deduction under such a provision.

(3) The deduction allowable under Subsection (1) is the amount ascertained by dividing the residual capital expenditure as at the end of the year of income, ascertained in accordance with the succeeding provisions of this section, by—

- (a) a number equal to the number of whole years, as at the end of the year of income, in the estimated period during which the access road, housing and welfare or structural improvements, as the case may be, will be used for the purpose for which it was or they were primarily and principally constructed; or
- (b) 15,

whichever is the less.

(4) For the purpose of this Division, but subject to Subsection (5), the residual capital expenditure shall be ascertained by deducting from the amount of expenditure referred to in Subsection (1)—

- (a) any part of that expenditure that has been allowed, or is allowable, as a deduction under this section from the assessable income of a year of income before the year of income; and
- (b) any part of the expenditure that was incurred on—

- (i) property that has been disposed of or destroyed; or
  - (ii) property the use of which by the taxpayer for the purpose for which the access road, housing and welfare or structural improvements, as the case may be, was or were primarily and principally constructed has been otherwise terminated,

and has not been allowed and is not allowable, as a deduction under this section from the assessable income of any year of income that ended before the year of income in which the disposal, destruction or termination of use took place; and

- (c) any part of that expenditure that would be required to be deducted by virtue of Paragraph (a) or (b) if this Act—

- (i) had commenced to have effect on 1 July 1946; and
    - (ii) had applied to income of the year commencing on that date and of each subsequent year before the first year of income to which this Act applies.

(5) Where a property referred to in Subsection (4)(b)(ii) again comes into use for the purpose for which the access road, housing and welfare or structural improvements, as the case may be, was or were primarily and principally constructed, the residual capital expenditure shall be deemed to be increased by so much of the expenditure on the property as the Chief Collector determines.

(6) The expenditure referred to in Subsection (1) does not include expenditure incurred by the taxpayer on or in relation to works carried out in connexion with the establishment, operation or use of a port or other facilities for ships.

#### 155. Election that deduction not be made.

(1) A taxpayer may elect that no deduction shall be allowed under this Division in respect of expenditure on housing and welfare and on structural improvements specified in the election incurred in the year of income specified in the election or in any subsequent year.

(2) Where an election has been made under Subsection (1), no deduction is allowable.

(3) An election under Subsection (1)—

- (a) shall be made in writing, signed by or on behalf of the taxpayer; and
- (b) shall be delivered to the Chief Collector—

- (i) on or before the last day for the furnishing of the return of income for the year of income specified in the election; or
  - (ii) within such further period as the Chief Collector allows.

**156. Disposal, destruction or termination of use of property.**

(1) In this section "consideration receivable in respect of disposal or destruction", in relation to any property, means—

(a) where the property is sold—

(i) if the Chief Collector is satisfied that the sale price is fair and reasonable—the sale price less the expenses of the sale of the property; or

(ii) if the Chief Collector is not so satisfied—such amount as, in his opinion, is fair and reasonable; and

(b) where the property is sold with other property and no separate value is allocated to the property—an amount determined by the Chief Collector; and

(c) where the property is disposed of otherwise than by sale—the value (if any) of the property at the date of disposal; and

(d) where the property is destroyed—any amount or value received or receivable under a policy of insurance or otherwise in respect of the destruction,

but does not include any amount that is included, or will when received be included, in the assessable income of any year of income under Section 40 or Division 4.

(2) This section applies where—

(a) deductions have been allowed, or are allowable, under Section 154 in respect of expenditure of a capital nature on an access road, housing and welfare or structural improvements; and

(b) in the year of income—

(i) property on which any of the expenditure was incurred had been disposed of or destroyed; or

(ii) the use by the taxpayer of the property for the purpose for which the access road, housing and welfare or structural improvements, as the case may be, was or were primarily and principally constructed had been otherwise terminated.

(3) Where—

(a) the consideration receivable in respect of the disposal or destruction of the property; or

(b) in the case of other termination of the use of the property, the value of the property at the date of the termination of use,

exceeds the portion of the residual capital expenditure that, at the time of the disposal, destruction or termination of use, is attributable to expenditure on the property, so much of the amount of the excess as does not exceed the sum of the deductions allowed or allowable under Section 154 in respect of expenditure on the property so disposed of or destroyed, or the use of which has been so terminated, shall be included in the assessable income.

(4) Where the portion of the residual capital expenditure that, at the time of the disposal, destruction or termination of use of the property, is attributable to expenditure on the property exceeds—

(a) the consideration receivable in respect of the disposal or destruction of property; or

- (b) in the case of other termination of the use of the property—the value of the property at the date of the termination of use,

the amount of the excess is an allowable deduction.

#### 157. Acquisition of property.

(1) Subject to Subsection (2), where a person has purchased from another person carrying on timber operations, property for the purpose of gaining or producing assessable income, so much (if any) of the purchase price as exceeds the sum of—

- (a) the amount that, if the property had not been sold, would have been, at the end of the year of income in which the sale took place, the portion of the residual capital expenditure of the vendor attributable to expenditure on the property; and
- (b) any part of the purchase price that is included in the assessable income of the vendor under Section 156(3),

shall not be included for the purposes of this Division in the expenditure of the purchaser on the property.

(2) Subsection (1) does not apply where the Chief Collector is of the opinion that the circumstances are such that it should not apply.

#### 158. Timber felled on acquired land, etc.

Where—

- (a) a taxpayer has acquired—

- (i) land carrying standing timber, part of the price paid for the land being attributable to the timber; or
- (ii) a right to fell standing timber; and

- (b) during the year of income, the whole or a part of the timber is felled—

- (i) for sale, or for use in manufacture, by the taxpayer for the purpose of producing assessable income; or
- (ii) under a right to fell timber granted by the taxpayer to another person in consideration of payments to be made to the taxpayer as, or by way of, royalty,

so much of that part of the price paid by the taxpayer to acquire the land, or so much of the amount paid by him to acquire the right, as the case may be, as is attributable to the timber felled during the year is an allowable deduction.

#### 159. Double deductions.

(1) Where the whole or a part of any expenditure on housing and welfare or structural improvements has been allowed, or is allowable, as a deduction under this Division, the expenditure—

- (a) is not an allowable deduction; and
- (b) shall not be taken into account in ascertaining the amount of an allowable deduction,

under this Act, except under this Division.

(2) Subsection (1) does not apply in relation to the residual capital expenditure on structural improvements after—

- (a) the use of the improvements for the purpose for which they were primarily and principally constructed has terminated; and
- (b) they have come into use for the purpose of producing assessable income otherwise than the carrying on of the primary processing of timber.

*Division 13.—Industrial Property.*

*Subdivision A.—Interpretation and Application.*

**160. Interpretation of Division 13.**

(1) In this Division, unless the contrary intention appears—

“the owner”, in relation to a unit of industrial property, means the person who possesses the rights in respect of the unit;

“unit of industrial property” means rights possessed by a person as—

- (a) the grantee or proprietor of a patent for an invention granted in Papua New Guinea or Australia; or
- (b) the owner of a copyright subsisting in Papua New Guinea or Australia; or
- (c) the owner of a design registered in Papua New Guinea or Australia; or
- (d) a licensee under any such patent, copyright or design, and includes equitable rights in respect of—
- (e) any such patent, copyright or design; or
- (f) a licence under any such patent, copyright or design.

(2) A reference in this Division to expenditure of a capital nature does not include a reference to expenditure—

- (a) in respect of which a deduction has been allowed, or is allowable, under a provision of this Act, other than this Division; or
- (b) that has been or is taken into account in ascertaining the amount of an allowable deduction under any such provision.

**161. Application of Division 13.**

(1) This Division applies to the owner of a unit of industrial property who—

(a) became the owner of the unit by reason of—

- (i) being the inventor of an invention, and being granted a patent for it; or
- (ii) being the first owner of the copyright to which the unit relates; or
- (iii) being the author of the design to which the unit relates, and obtaining the registration of the design,

and, before the unit came into existence, incurred expenditure of a capital nature directly in relation to devising the invention, producing the work in which the copyright subsists or producing the design, as the case may be; or

(b) incurred expenditure of a capital nature on the purchase of the unit industrial property; or

(c) acquired the unit of industrial property by virtue of the disposal, in whole or in part and otherwise than for valuable consideration, of a unit of industrial property by the owner of that last-mentioned unit in a case where a deduction under this Division in respect of that unit—

- (i) has been allowed, or is allowable, in an assessment in respect of income of that owner; or
- (ii) would have been allowable if that unit, or the invention, work or design to which that unit relates, had been used by that owner for the purpose of producing assessable income,

and has used the unit of industrial property of which he is the owner, or the invention, work or design to which the unit relates—

(d) in the year of income, or in a previous year of income, for the purpose of producing assessable income; or

(e) in a year preceding the first year of income to which this Act applies for the purpose of producing income that would have been assessable income if this Act—

- (i) had commenced to have effect at the commencement of that year; and
- (ii) had applied to income of that year.

(2) Where the owner of industrial property—

(a) became the owner of the unit by reason of—

- (i) being granted a patent for an invention as the assignee of the inventor; or
- (ii) obtaining the registration of a design as the assignee of the author of the design; and

(b) incurred expenditure of a capital nature in obtaining the assignment,

he shall, for the purposes of this Division, be deemed to have incurred the expenditure on the purchase of the unit of industrial property.

#### 162. Disposal of part of a unit of industrial property.

Subject to this Division, where the owner of a unit of industrial property disposes of the unit in part, that part of the unit of which he remains the owner shall, for the purposes of this Division, be deemed to be the same unit of industrial property as the unit of industrial property that he disposed of in part.

#### 163. Cost of industrial property.

(1) For the purposes of this Division, the cost of a unit of industrial property to the owner of the unit is, subject to Subsection (2)—

(a) in the case of an owner referred to in Section 161(1)(a) or (b)—the expenditure specified in whichever of those paragraphs is applicable to him; and

(b) in the case of an owner referred to in Section 161(1)(c)—

- (i) if the owner acquired a unit of industrial property of another person in whole—the residual value of the unit in relation to the other person at the time of the acquisition; or
- (ii) in any other case—such amount as the Chief Collector determines.

## (2) Where—

- (a) the Chief Collector is of the opinion that the expenditure of a capital nature incurred by the owner of a unit of industrial property on the purchase of the unit is, having regard to the value of the unit, excessive; or
- (b) a unit of industrial property was purchased by the owner of the unit with other assets, and no separate price is allocated to the unit,

the cost of the unit to the owner of the unit shall, for the purposes of this Division, be deemed to be such amount as is determined by the Chief Collector.

**164. Residual value.**

(1) Subject to this section, the residual value of a unit of industrial property at any time in relation to the owner of the unit shall be ascertained, for the purposes of this Division, by deducting from the cost of the unit to the owner the sum of—

- (a) any deductions allowed or allowable under this Division, in respect of the unit, in assessments in respect of income of the owner of a year or years of income that ended before that time; and
- (b) the consideration receivable by the owner in respect of any disposal by him of the unit in part before that time.

(2) Where the owner of a unit of industrial property has incurred expenditure of a capital nature in obtaining the surrender to him of a licence previously granted by him in respect of the patent, copyright or design, as the case may be, to which the unit relates, the residual value of the unit to the owner of the unit at any time after the surrender shall be increased—

- (a) by an amount equal to the expenditure; or
- (b) if the Chief Controller is of the opinion that, having regard to the value of the licence, the expenditure is excessive—by such amount as the Chief Collector determines.

(3) Where a person was the owner of a unit of industrial property immediately before the commencement of the first year of income to which this Act applies, being a unit the effective life of which in relation to him had commenced at the commencement of a year preceding that year of income, the residual value of the unit at any time in relation to him shall be deemed to be the amount that would have been the residual value of the unit at that time if this Act—

- (a) had commenced to have effect at the commencement of the year at the commencement of which the effective life commenced; and
- (b) had applied to income of that year and of each subsequent year.

**165. Consideration receivable on disposal.**

For the purposes of this Division, the consideration receivable by the owner of a unit of industrial property in respect of the disposal in whole or in part, of the unit is—

- (a) where the unit is disposed of, in whole or in part, otherwise than as specified in Paragraph (b), in consideration of the payment of a lump sum—that sum, less the expenses of the disposal; and
- (b) where—
  - (i) the unit is disposed of in whole or in part together with other assets in consideration of the payment of a lump sum; and

- (ii) no separate amount is allocated to the unit or the part of the unit, such amount as is determined by the Chief Collector; and
- (c) in any other case—
  - (i) if the unit is disposed of in whole—an amount equal to the value of the unit in relation to the owner at the time of the disposal; or
  - (ii) if the unit is disposed of in part—such amount as is determined by the Chief Collector.

#### 166. Effective life.

(1) For the purpose of this Division, the effective life of a unit of industrial property shall, in relation to the owner of the unit, be deemed to have commenced at the commencement of the year of income during which he first used the unit, or the invention work or design to which the unit relates, for the purposes of producing assessable income and ends—

- (a) where the unit was purchased or otherwise acquired by him for a specific period—at the end of the year of income during which—
  - (i) the patent, copyright or design to which the unit relates will terminate; or
  - (ii) the specified period will terminate,whichever will first occur; and
- (b) in any other case—
  - (i) if the unit relates to a patent or design—at the end of the year of income during which the patent or design will terminate; or
  - (ii) if the unit relates to a copyright—at the end of the year of income during which—
    - (A) a period of 25 years, commencing on the date on which the owner of the unit became the owner, will expire; or
    - (B) the copyright will terminate,whichever will first occur.

(2) Subject to Subsections (3) and (4)—

- (a) a patent shall be deemed to terminate at the expiration of a period of 16 years after the date of the patent; and
- (b) a copyright shall be deemed to terminate on the date on which it ceases to subsist; and
- (c) a design shall be deemed to terminate on a date 15 years after the date on which the registration of the design took effect.

(3) Where a person acquires a unit of industrial property that relates to a patent the term of which had been extended before the date of the acquisition, the patent shall, for the purposes of the application of Subsection (1) in relation to that person be deemed to terminate at the expiration of the extended term.

(4) Where—

- (a) a person acquires a unit of industrial property that relates to a copyright in respect of a work of joint authorship; and

- (b) the acquisition takes place after the expiration of a period of 50 years after the death of the author who died first,

the copyright shall, for the purposes of the application of Subsection (1) in relation to that person, be deemed to terminate on such date as, having regard to the expectation of life of the surviving author or authors, the Chief Collector determines.

#### 167. Interest by licence in patent, etc.

(1) For the purposes of this Division, the owner of a unit of industrial property who, by licence, grants to another person an interest in the patent, copyright or design to which the unit relates shall, subject to Subsection (2), be deemed to have disposed of the unit in part.

(2) For the purposes of this Division, where a person who became the owner of a unit of industrial property by reason of the grant to him, by licence, of an interest in a patent, copyright or design surrenders the licence—

(a) he shall not be deemed to have disposed of the unit unless the surrender was made in consideration of the payment to him of a lump sum; and

(b) the person to whom the licence was surrendered shall not, by reason only of the surrender, be deemed to have acquired a unit of industrial property.

(3) For the purposes of this Division, where a unit of industrial property arises out of the grant, by licence, of an interest in a patent, copyright or design, an extension of the term of the licence shall be deemed to be the grant of a new licence.

#### 168. Disposal of unit of industrial property on change of ownership, etc.

(1) This section applies in a case where—

(a) for any reason (including the formation or dissolution of a partnership, or a variation in the constitution of a partnership or in the interest of the partners) a change has occurred in the ownership of, or in the interests of persons in, a unit of industrial property; and

(b) the person, or one or more of the persons, who owned the unit before the change has or have an interest in the unit after the change.

(2) In a case to which this section applies, this Division applies as if the person or persons who owned the unit of industrial property before the change had, on the day on which the change occurred, disposed of the unit in whole to the person, or to all the persons, by whom the unit is owned after the change, for a consideration equal to—

(a) the amount specified in the agreement in consequence of which the change occurred as the value of the unit for the purposes of the agreement; or

(b) if—

(i) there is no such agreement; or

(ii) an amount is not so specified; or

(iii) the Chief Collector is of the opinion that the amount so specified is excessive,

an amount determined by the Chief Collector.

**169. Use of patent by the State or Australia.**

Where—

- (a) a person is, or has been, the owner of a unit of industrial property that relates to a patent; and
- (b) a lump sum is paid to him in respect of the making, using, exercising or vending by—
  - (i) the State; or
  - (ii) Australia or a State of Australia; or
  - (iii) a person authorized by the State, or by Australia or a State of Australia, of the patented invention for the purposes of the State, or of Australia or the State of Australia, as the case may be,

he shall, for the purposes of this Division, be deemed to have disposed of the unit in part, at the time of payment, in consideration of the payment of the lump sum.

**170. Damages for infringement.**

Where, under a judgement of a court or otherwise, a lump sum is paid to a person who is or has been the owner of a unit of industrial property in respect of an infringement, or an alleged infringement, of the patent, copyright or design to which the unit relates, he shall, for the purposes of this Division, be deemed to have disposed of the unit in part, at the time of payment, in consideration of the payment of the lump sum.

**Subdivision B.—Tax Liability.****171. Annual deductions.**

(1) Where at any time during the year of income a taxpayer is an owner of a unit of industrial property to whom this Division applies, an amount equal to the residual value of the unit in relation to the taxpayer as at the end of the year of income, divided by a number equal to the number of whole years in the effective life of the unit in relation to the taxpayer as at the commencement of the year of income, is an allowable deduction in respect of the unit.

(2) Where but for this subsection, the deduction allowable under Subsection (1) would be less than K100.00, the deduction allowable is K100.00 or the amount of the residual value referred to in that subsection, whichever is the less.

(3) Where the owner of a unit of industrial property ceases to be the owner at any time before the expiration of the effective life of the unit in relation to him, a deduction under this section in respect of the unit is not allowable in the assessment in respect of his income of the year of income in which he ceased to be the owner.

**172. Disposal, etc., of industrial property.**

(1) Where at any time during the year of income—

- (a) a taxpayer who is an owner of a unit of industrial property to whom this Division applies disposes of the unit in whole; and
- (b) the amount of the consideration receivable in respect of the disposal is less than the residual value of the unit in relation to him at that time,

the amount of the residual value, less the amount of the consideration is an allowable deduction.

## (2) Where—

(a) a unit of industrial property owned by a taxpayer who is an owner to whom this Division applies ceases to exist at any time during the year of income (being a time before the expiration of the effective life of the unit in relation to him) by reason of the patent or copyright, or the registration of the design, to which the unit relates ceasing to be in force; or

(b) a unit of industrial property owned by a taxpayer who—

(i) is an owner to whom this Division applies; and

(ii) became the owner by reason of the grant, by licence, to him of an interest in a patent, copyright or design,

ceases to exist at any time during the year of income (being a time before the expiration of the effective life of the unit in relation to him) by reason of a surrender of the licence otherwise than in consideration of the payment of a lump sum,

the residual value of the unit in relation to the taxpayer at that time is an allowable deduction.

**173. Consideration on disposal of industrial property.**

## (1) Subject to Subsection (3), where—

(a) at any time during the year of income a taxpayer who is the owner of a unit of industrial property to whom this Division applies disposes of the unit in whole or in part; and

(b) the effective life of the unit in relation to him had not expired at that time; and

(c) the amount of the consideration receivable in respect of the disposal exceeds the residual value of the unit to him at that time,

the amount of the excess shall be included in his assessable income of the year of income.

## (2) Subject to Subsection (3), where—

(a) at any time during the year of income a taxpayer who is the owner of a unit of industrial property to whom this Division applies disposes of the unit in whole or in part; and

(b) the effective life of the unit in relation to him had expired at that time,

the amount of the consideration receivable in respect of the disposal shall be included in his assessable income of the year of income.

(3) The amount that, under Subsection (1) or (2), is required to be included in the assessable income of a taxpayer of a year of income in respect of a unit of industrial property shall not exceed the sum of the deductions that have been allowed, or are allowable, in respect of the unit under this Division in assessments of his income, less the sum of the amounts (if any) that have, under this section, been included in his assessable income of a previous year or previous years of income in respect of the unit.

**174. Benefit from foreign rights.**

Where the owner of a unit of industrial property has obtained, or is obtaining, a benefit from a right exercisable in a place outside the country, being a right that relates to the invention, work or design to which the unit of industrial property relates the Chief Collector may determine that any deduction allowable under this Division in respect of the

unit is reduced by such amount as the Chief Collector, having regard to the benefit, thinks proper.

*Division 14.—Interest Paid by Companies.*

**175. Interest paid to non-residents.**

(1) Where interest is paid or credited by a company to a person who is not a resident of the country or of Australia—

(a) on money secured by debentures of the company and used in the country, or used in acquiring assets for use or disposal in the country; or

(b) on money lodged at interest in the country with the company,

the company is liable, without affecting its liability (if any) in respect of other income tax payable by it, to pay, at such rate as is declared by Act—

(c) where the person to whom the interest is paid or credited is a company—  
income tax on the interest; and

(d) where the person to whom the interest is paid or credited is not a company—  
income tax on so much of that interest paid or credited in the year of income as exceeds K644.00.

(2) The company may deduct and retain for its own use so much of the amount payable to the person referred to in Subsection (1) as is necessary to pay the tax.

(3) Where a company establishes, to the satisfaction of the Chief Collector, that a person can enforce payment, without any deduction under this section, of interest on money referred to in Subsection (1) secured by debentures, or on money lodged at interest with it, this section does not apply in respect of the interest paid or credited to him.

(4) This section does not apply to interest paid or credited to a company that—

(a) is carrying on business in the country; and

(b) has a public officer duly appointed under this Act,

unless the Chief Collector, by written notice to the company paying or crediting the interest, directs that the section applies.

**176. Interest paid on bearer debentures.**

(1) Where interest is paid or credited by a company in respect of debentures payable to bearer the names and addresses of the holders of which are not supplied to the Chief Collector by the company, the company is liable, without affecting its liability (if any) in respect of other income tax payable by it, to pay income tax on the total amount so paid or credited in respect of the debentures, at such rate as is declared by Act.

(2) The company may deduct and retain for its own use from the amount payable to any person who is a holder of a debenture referred to in Subsection (1) an amount that bears the same proportion to the amount of tax payable by the company under this section as the interest payable to him bears to the total interest payable in respect of the debentures.

(3) Where the Chief Collector is satisfied that a person referred to in Subsection (2) not liable to furnish a return, he shall refund to him the amount of tax paid by the company in respect of his debentures.

**177. Rebate of tax paid by company.****(1) Where—**

- (a) a company pays tax under this Division on any interest; and
- (b) the interest is included in the assessment of the person to whom it was paid or credited,

the proportionate amount of tax paid by the company in respect of the interest shall be deducted from the total tax payable by him.

(2) If the proportionate amount referred to in Subsection (1) exceeds the total tax, the Chief Collector shall pay to the person an amount equal to the excess.

**178. Tax on interest.**

Where in a financial year interest is paid by a company in respect of which it is liable under this Division to pay income tax, the company is liable for income tax on the interest to the extent to which it would have been liable if an assessment had been made in respect of the interest at the date when it was paid.

*Division 15.—Dividends Paid to Non-residents.***179. Interpretation of Division 15.**

(1) In this Division, unless the contrary intention appears, "dividend" includes a part of a dividend.

(2) For the purposes of this Division, a beneficiary who is presently entitled to a dividend included in the income of a trust estate shall be deemed to have derived income consisting of the dividend at the time when he became so entitled.

**180. Liability to dividend (withholding) tax.**

(1) Subject to Subsection (2), this section applies to income derived by a non-resident that consists of a dividend paid by a company that is a resident.

**(2) This section does not apply to—****(a) income derived by a non-resident that—**

- (i) is exempt from income tax by virtue of Sections 21(a), (b) or (c), 22, 23 or 24; and
- (ii) is exempt from income tax in the country in which the non-resident resides; or

**(b) income that is exempt from income tax by virtue of Section 30(1); or****(c) income that consists of a dividend that is excluded from assessable income by Section 34; or****(d) income in respect of which a trustee is liable to be assessed under Section 116; or****(e) income that is derived by a trustee, being a trustee in relation to a trust—**

- (i) created by a person who, at the time when the income is derived, is a resident; and
- (ii) in respect of which the Chief Collector is empowered under Section 120 to assess the trustee to pay income tax.

(3) A person who derives income to which this section applies is liable to pay tax on that income at such rate as is declared by Act.

(4) Tax payable by a person in accordance with this section is in addition to any other tax payable by him on income to which this section does not apply.

### 181. Payment of dividend (withholding) tax.

(1) Dividend (withholding) tax is due and payable by the person liable to pay the tax at the expiration of—

(a) 21 days after the end of the month in which the income to which the tax relates was derived by him; or

(b) such further period as the Chief Collector, in special circumstances, allows.

(2) Dividend (withholding) tax due and payable is a debt due to the State, and is payable to the Chief Collector.

(3) Subject to Subsection (4), if any dividend (withholding) tax remains unpaid at the expiration of 60 days after the time when it became due and payable, additional tax is due and payable at the rate of 20% per annum on the amount unpaid, computed from the expiration of that period.

(4) The Chief Collector may, for reasons that he thinks sufficient, remit in any case any additional tax, or any part of any additional tax, payable under Subsection (3).

(5) Any unpaid dividend (withholding) tax, and any unpaid additional tax payable under this section, may be sued for and recovered in a court of competent jurisdiction by the Chief Collector suing in his official name.

(6) The ascertainment of the amount of any dividend (withholding) tax shall not be deemed to be an assessment within the meaning of this Act.

(7) The Chief Collector may serve on a person, by post or otherwise, a notice in which is specified—

(a) the amount of any dividend (withholding) tax that the Chief Collector has ascertained is payable by the person; and

(b) the date on which the tax became due and payable.

(8) The production of a notice served under Subsection (7), or of a document under the hand of the Chief Collector purporting to be a copy of such a notice, is evidence that the amount of dividend (withholding) tax specified in the notice or document became due and payable by the person on whom the notice was served on the date specified in the notice or document.

### 182. Effect of dividend (withholding) tax on assessable income.

Income on which dividend (withholding) tax is payable is not included in the assessable income of a person.

### *Division 16.—Oversea Ships.*

### 183. Taxable income of shipowners and charterers.

(1) Subject to Subsection (2), where a ship belonging to or chartered by a person whose principal place of business is out of the country carries passengers, live stock, mails or goods shipped in the country, 5% of the amount paid or payable to him in respect of the carriage shall, whether it is payable in or out of the country, be deemed to be taxable income derived by him in the country.

(2) Where, in the case of a ship belonging to or chartered by a person whose principal place of business is in Australia, the actual profit or loss derived or made by the person in

respect of the carriage of passengers, live stock, mails or goods shipped in Papua New Guinea is established to the satisfaction of the Chief Collector, his taxable income in respect of the profit, or the amount of the loss so made by him, shall, subject to this Act, be calculated by reference to receipts and expenditure taken into account in calculating the profit or loss.

#### 184. Returns by masters and agents.

The master of the ship, or the agent or other representative in the country of the owner or charterer, shall when called on by the Chief Collector by notice in the National Gazette or by any other notice to him, make a return of the amounts referred to in Section 183(1).

#### 185. Determination by Chief Collector.

If a return under Section 184 is not made, or if the Chief Collector is not satisfied with the return, he may determine the relevant amount referred to in Section 183(1).

#### 186. Assessment of tax on master, etc.

The master, agent or representative, as agent for the owner or charterer, may be assessed on the taxable income and is liable to pay the tax assessed.

#### 187. Liability of master for tax.

(1) Where—

- (a) the assessment is made on the agent or representative; and
  - (b) the tax is not paid immediately on receipt of notice of the assessment,
- the master is liable to pay the tax.

(2) So long as any tax for which the master becomes liable under this section remains unpaid, this section does not relieve any other person to whom notice of assessment has been given in respect of the tax from liability to pay the tax remaining unpaid.

#### 188. Notice of assessment under Division 16.

Where a person is liable to pay tax under this Division—

- (a) the Chief Collector shall give notice to him of the assessment; and
- (b) he shall pay the tax immediately.

#### 189. Clearance of ship.

A Collector of Customs or an officer of Customs shall not grant a clearance to the ship until he is satisfied that—

- (a) any tax that has been, or may be, assessed under this Division has been paid; or
- (b) arrangements for its payment have been made to the satisfaction of the Chief Collector.

#### *Division 17.—Overseas Construction Contractors.*

#### 190. Interpretation of Division 17.

In this Division—

“foreign contractor” means a party to a prescribed contract, other than—

- (a) a company incorporated in the country or in Australia; or

- (b) a person, other than a company, who is ordinarily resident in the country or in Australia;

"prescribed contract" means a contract or sub-contract for a prescribed purpose;

"prescribed purpose" means a purpose for or in connexion with—

- (a) the installation, maintenance or use in the country of substantial equipment or substantial machinery; or

- (b) the construction in the country of structural improvements or other works, including—

(i) the construction of roads, including bridges, culverts or similar works forming part of a road; and

(ii) the erection of buildings, fences or similar improvements; and

(iii) the clearing or draining of land; and

(iv) the construction of ports or port facilities; and

(v) the construction of facilities for the provision of water, light, power or communication; and

(vi) the provision or improvement of transport facilities of any kind,

and includes the provision in the country of professional services or services as an adviser, consultant or manager, but does not include construction work or the installation, maintenance or use of equipment or machinery related primarily and principally to prospecting or mining operations for the purpose of discovering or obtaining petroleum.

#### 191. Source of income.

For the purposes of this Act, income derived from a prescribed contract shall be deemed to be derived from a source in the country.

#### 192. Tax liability of foreign contractors.

A foreign contractor who derives income from a prescribed contract is liable to pay tax on the income.

#### 193. Taxable income of foreign contractors.

(1) Subject to Subsection (2), where a foreign contractor has derived income from a prescribed contract, an amount equal to 25% of the gross income so derived, whether paid or payable in or outside the country, is included in his taxable income.

(2) Where, in the case of a foreign contractor who derives income from a prescribed contract, the actual profit or loss derived or made by him in respect of the contract is established to the satisfaction of the Chief Collector, his taxable income in respect of the profit, or the amount of the loss so made by him, shall, subject to this Act, be calculated by reference to receipts and expenditure taken into account in calculating the profit or loss.

#### 194. Notice of assessment under Division 17.

Where a person is liable to pay tax under this Division—

- (a) the Chief Collector shall give notice to him of the assessment; and  
(b) he shall pay the tax immediately.

**195. Liability of agents.**

(1) For the purposes of this Act, a person carrying on business in the country who has entered into a prescribed contract with a foreign contractor shall be deemed to be the agent of the foreign contractor.

(2) A person who is deemed, by virtue of Subsection (1), to be the agent of a foreign contractor must not—

(a) make any payment of any income assessable under this Division to the foreign contractor; or

(b) transfer out of the country any such income for the purpose of making such a payment,

until arrangements have been made to the satisfaction of the Chief Collector for the payment of any income tax that has been, or may be, assessed to be paid by the foreign contractor.

(3) A person who makes a payment or transfers any income in contravention of Subsection (2) is guilty of an offence.

Penalty: The amount of tax that is, or becomes, payable in respect of the income by the foreign contractor for whom the person paying or transferring the income is deemed to be the agent, and in addition a fine not exceeding K200.00.

*Division 18.—Businesses Controlled Abroad.*

**196. Tax on incomes of businesses controlled abroad.**

Notwithstanding any other provision of this Act, where—

(a) a business carried on in the country—

(i) is controlled principally by non-residents; or

(ii) is carried on by a company a majority of the shares in which is held by or on behalf of non-residents; or

(iii) is carried on by a company that holds, or on behalf of which other persons hold, a majority of the shares in a non-resident company; and

(b) it appears to the Chief Collector that the business produces—

(i) no taxable income; or

(ii) less than the amount of taxable income that might be expected to arise from it,

the person carrying on the business in the country is liable to pay income tax on a taxable income of such amount of the total receipts (whether cash or credit) of the business as the Chief Collector determines.

*Division 19.—Film Businesses Controlled Abroad.*

**197. Tax on incomes of film businesses controlled abroad.**

Where a non-resident derives income under a contract or agreement with a person in relation to—

(a) the carrying on by that person in the country of a business of—

(i) distributing, exhibiting or exploiting cinematograph films; or

(ii) leasing such films to other persons; or

(iii) licensing other persons to exhibit or display such films; or  
(b) the acquisition of advertising matter for use in connexion with such films,  
the non-resident is liable to pay income tax on the income.

#### 198. Taxable income of non-residents.

(1) Where a non-resident has derived income referred to in Section 197, an amount equal to 10% of the gross income so derived shall be included in his taxable income.

(2) In ascertaining the gross income for the purpose of Subsection (1), there shall be deducted from what would otherwise be the gross income the amount of any customs duty paid in respect of the importation of any film imported for the purpose of carrying on the business that—

- (a) is paid in the year of income to the State (whether directly or indirectly) by the non-resident; and
- (b) is not an allowable deduction to the person carrying on the business in the country.

#### 199. Liability of agents.

(1) A person carrying on business in the country who has entered into a contract or agreement referred in Section 197 with a non-resident shall be deemed to be, for the purposes of this Act, the agent of that non-resident.

(2) A person who is deemed, by virtue of Subsection (1), to be the agent of a non-resident must not—

- (a) make any payment of any income assessable under this Division to the non-resident; or
- (b) transfer out of the country any such income for the purpose of making such a payment,

until arrangements have been made to the satisfaction of the Chief Collector for the payment of any income tax that has been, or may be, assessed to be paid by the non-resident.

(3) A person who makes a payment or transfers any income in contravention of Subsection (2) is guilty of an offence.

Penalty: The amount of tax that is, or becomes, payable in respect of income by the non-resident for whom the person paying or transferring the income is deemed to be the agent, and in addition a fine not exceeding K200.00.

#### *Division 20.—Insurance with Non-residents.*

#### 200. Interpretation of Division 20.

In this Division—

“insurance contract” means a contract or guarantee by which liability is undertaken, contingent on the happening of a specified event, to pay any money or make good any loss or damage, but does not include a contract of life assurance;

“insured event” means an event on the happening of which the liability under an insurance contract arises;

“insured person” means a person with whom an insurance contract is entered into by an insurer;

"insured property" means the property the subject of an insurance contract or given by an insurer;

"insurer" means a non-resident who undertakes liability under an insurance contract.

## 201. Incomes derived by non-resident insurers.

### (1) Where—

(a) an insured person, whether a resident or non-resident, has entered into an insurance contract with an insurer; and

### (b) either—

(i) the insured property at the time of the making of the contract is situated in the country; or

(ii) the insured event is one that can happen only in the country,

the premium paid or payable under the contract—

(c) shall be included in the assessable income of the insurer; and

(d) shall be deemed to be derived by him from sources in the country,

and unless the contract was made by a principal office or branch established by the insurer in the country, this Division applies to the premium.

### (2) Subject to Subsection (3), where—

(a) an insured person who is a resident has entered into an insurance contract with an insurer; and

(b) an agent or representative of the insurer in the country was instrumental in inducing the entry of the insured person into the contract,

any premium paid or payable under the contract—

(c) shall be included in the assessable income of the insurer wherever the insured property is situated or the insured event may happen; and

(d) shall be deemed to be derived by him from sources in the country,

and unless the contract was made by a principal office or branch established by the insurer in the country, this Division applies to the premium.

(3) Subsection (2) does not apply to or in relation to a premium paid or payable under an insurance contract with an insurer if—

(a) the insured property at the time of the making of the contract is situated in Australia; or

(b) the insured event is one that can happen only in Australia.

## 202. Taxable incomes of non-resident insurers.

(1) Subject to Subsection (2), the insurer shall be deemed to have derived in any year, in respect of the premiums paid or payable in that year under contracts referred to in Section 201, a taxable income equal to 10% of the total amount of the premiums.

(2) Subject to this Act, where the actual profit or loss derived or made by the insurer in respect of premiums referred to in Subsection (1) is established to the satisfaction of the Chief Collector, the taxable income of the insurer in respect of the profit, or the amount of the loss so made by him, shall be calculated by reference to receipts and expenditure taken into account in calculating the profit or loss.

**203. Liability of agent of insurer.**

The insured person and any person in the country who acts on behalf of the insurer—

- (a) shall be deemed to be the agents of the insurer; and
- (b) are jointly and severally liable as such for the purposes of this Act,

and if either of them pays or credits to the insurer any amount in respect of the insurance contract before arrangements have been made to the satisfaction of the Chief Collector for the payment of any income tax that has been, or may be, assessed under this Division in respect of that amount, he is personally liable to pay the tax.

**204. Deductions of premiums.**

Notwithstanding any other provision of this Act, no premium referred to in Section 202(1) is an allowable deduction to the insured person unless arrangements have been made to the satisfaction of the Chief Collector for the payment of any income tax that has been, or may be, assessed in respect of that premium.

**205. Supply of information by exporters.**

A person who exports any goods shall furnish to a Collector of Customs, for transmission to the Chief Collector, a copy of the Customs entry for the goods, and shall show on the entry such information as is prescribed regarding the insurance of those goods.

**206. Rate of tax in special circumstances.**

Where the insurer satisfies the Chief Collector that, on account of special circumstances, it is necessary that the rate of tax payable by him under this Division should be ascertained at the time when premiums are paid to him, the Chief Collector may direct that the tax so payable in respect of premiums paid during any financial year shall be calculated at the rate that would have been payable if an assessment had been made in respect of them at the date when they were paid.

**207. Re-insurance with non-residents.**

(1) Notwithstanding anything in this Act, but subject to this section, where a person carrying on the business of insurance in the country re-insures out of the country with a non-resident, the whole or part of any risk—

- (a) no premium paid or credited in respect of the re-insurance—
  - (i) is an allowable deduction to the person carrying on the business of insurance in the country; and
  - (ii) is included in the assessable income of the non-resident; and
- (b) the income of the person carrying on the business of insurance in the country does not include sums recovered from the non-resident in respect of a loss on a risk so re-insured.

(2) A person carrying on the business of insurance in the country who re-insures outside the country, with a non-resident, the whole or part of a risk may elect, in accordance with this section, that Subsection (1) shall not be applied in arriving at his taxable income.

(3) Where a person makes an election under Subsection (2)—

- (a) Subsection (1) does not apply in arriving at his taxable income of the year of income to which the election applies; and

- (b) he is liable to furnish returns, and to pay tax, in accordance with succeeding provisions of this section, as agent for all non-residents with whom he re-insures.

(4) Subject to Subsection (5), where a person makes an election under Subsection (2) he shall be assessed and is liable to pay tax as agent on an amount equal to 10% of the sum of the gross amounts of the premiums paid or credited by him in the year of income (being a year of income to which the election applies) to non-residents in respect of all re-insurances referred to in Subsection (2), as if that amount were the taxable income of a non-resident company (not being a private company) not carrying on business in the country by means either of a principal office or a branch.

(5) A person who has made an election under Subsection (2) shall, as agent, furnish to the Chief Collector, within the prescribed time, or within such further time as the Chief Collector allows, in respect of every year of income to which the election applies—

- (a) a return showing the gross amounts of the premiums paid or credited by him to non-residents in respect of all re-insurances referred to in that subsection; or
- (b) two returns, of which—
- (i) one shows the gross amounts of the premiums paid or credited by him to non-residents that are companies; and
- (ii) the other shows the gross amounts of the premiums paid or credited by him to non-residents who are not companies.

(6) When returns are furnished by a person in accordance with Subsection (5)(b), there shall be excluded from the amount on which he is assessed and is liable to pay tax as agent under Subsection (4) an amount equal to 10% of the sum of the gross premiums properly shown in the return referred to in Subsection (5)(b)(ii), and, in addition to any other tax that he is liable under this section to pay as agent, he shall be assessed and is liable to pay tax as agent on the amount so excluded as if it were the taxable income of a non-resident company (being a private company) not carrying on business in the country by means of a principal office or a branch.

(7) An election under Subsection (2)—

- (a) shall be made in writing; and
- (b) shall, in the case of a company, be signed by the public officer of the company; and
- (c) shall be delivered to the Chief Collector—
- (i) on or before the last day for the furnishing of the taxpayer's return of income of the year of income in respect of which the election is first to apply; or
- (ii) within such further time as the Chief Collector allows; and
- (d) first applies in respect of a year of income specified in the election; and
- (e) applies in respect of all subsequent years of income.

(8) An assessment for the purpose of Subsection (4) or (6) shall be made and notified separately from any other assessment.

(9) Where under an assessment for the purpose of this section a person is liable to pay tax, in respect of any premium, as agent for more than one non-resident, the amount he is liable to pay as agent for any one of them is so much of the tax so payable as bears to

the whole of the tax the same proportion as the total amount of such of the premiums as were paid to the non-resident bears to the total amount of the premiums.

(10) Where a person is or may become liable under this section to pay tax as agent for a non-resident in respect of any premium paid or credited by him to the non-resident—

- (a) he shall, for the purposes of Section 362, be deemed to have received the premium in his representative capacity immediately before it was so paid or credited; and
- (b) if he pays or credits the premium before arrangements have been made to the satisfaction of the Chief Collector for the payment of any tax that may be assessed in respect of the premium, he is personally liable to pay the tax.

*Division 21.—Abnormal Income of Authors and Inventors.*

**208. Application of Division 21.**

(1) Subject to Subsection (2), this Division applies to a taxpayer who is the author of a literary, dramatic, musical or artistic work or the inventor of an invention.

(2) This Division does not apply where the taxpayer is a company, except where, in respect of abnormal income, it is assessable as a trustee.

**209. Abnormal income.**

(1) In this section—

“lump sum earnings” means any amount received in a lump sum by the taxpayer—

(a) as consideration—

(i) for the assignment, in whole or in part, of, or for the grant of an interest by licence in—

(A) the copyright in a literary, dramatic, musical or artistic work of which the taxpayer is the author; or

(B) the patent for an invention of which the taxpayer is the inventor; or

(ii) for an assignment by virtue of which the assignee has the right to make an application for a patent for an invention of which the taxpayer is the inventor; or

(b) as an advance on account of royalties in respect of such a copyright or patent, not being an advance that is subject to a condition as to repayment; or

(c) as a prize in respect of such a work or invention;

“recurrent earnings” means any amount (other than lump sum earnings or remuneration for the employment of, or for services rendered by, the taxpayer) received, by way of royalties or otherwise, by the taxpayer—

(a) in respect of, or in respect of the copyright in, a literary, dramatic, musical or artistic work of which the taxpayer is the author; or

(b) in respect of, or in respect of the patent for, an invention of which the taxpayer is the inventor.

(2) For purposes of this Division, the abnormal income of a taxpayer to whom this Division applies is so much of the assessable income of the taxpayer of the year of income as consists of—

- (a) lump sum earnings of the taxpayer; and
- (b) the part (if any) of the aggregate of the recurrent earnings of the taxpayer derived during the year of income that exceeds—
  - (i) one-third of the aggregate of the recurrent earnings of the taxpayer included in his assessable income of each of the three years of income immediately preceding the year of income; or
  - (ii) K1 000.00,whichever is the greater.

#### 210. Joint authors and inventors.

A reference in this Division to the author of a literary, dramatic, musical or artistic work, or to the inventor of an invention, includes a reference to one of two or more joint authors of such work, or to one of two or more joint inventors of an invention, as the case may be.

#### 211. Determination of notional income.

(1) Where the assessable income derived during the year of income by a taxpayer to whom this Division applies includes abnormal income, he may, on or before—

- (a) the date of lodgement of his return of income in respect of the year of income; or
- (b) such later date as the Chief Collector determines,

apply in writing to the Chief Collector for the determination under this Division of a notional income in respect of the year of income.

(2) Where a taxpayer makes an application to the Chief Collector in accordance with Subsection (1), the succeeding provisions of this section apply, subject to Section 72(8), in the determination of a notional income for the purposes of any Act by which a rate of tax on the taxable income of a taxpayer is fixed by reference to a notional income.

(3) Subject to Subsection (5), where the taxable income of the taxpayer is greater than his abnormal income the notional income is the amount ascertained by deducting from the taxable income an amount equal to two thirds of the abnormal income.

(4) Subject to Subsection (5), where the taxable income of the taxpayer is not greater than his abnormal income the notional income is an amount equal to one-third of the taxable income.

(5) Where Section 101(2) applies in respect of the taxpayer, the notional income is, instead of the notional income determined in accordance with that subsection—

- (a) where the notional income determined in accordance with that subsection is greater than the abnormal income of the taxpayer—the amount ascertained by deducting from the notional income so determined an amount equal to two-thirds of the abnormal income; or
- (b) where the notional income determined in accordance with that subsection is not greater than the abnormal income of the taxpayer—an amount equal to one-third of the notional income so determined.

## Division 22.—Rebates.

## Subdivision A.—Concessional Rebates.

## 212. Interpretation of Subdivision A.

## (1) In this Subdivision—

“dependant” means a person who is—

- (a) a spouse of the taxpayer; or
- (b) an unmarried child less than 16 years of age; or
- (c) a student child; or
- (d) an invalid relative; or
- (e) a parent of the taxpayer or of his spouse, where the parent is a resident;

“invalid relative” means a person—

- (a) who is not less than 16 years of age; and
- (b) who is a child, brother or sister of the taxpayer; and
- (c) in respect of whom the taxpayer produces to the Chief Collector a certificate issued by a Medical Officer of the Public Service certifying that the person is permanently incapacitated from work;

“separate net income”—

- (a) does not include a child allowance under Clause 10 of the pre-Independence *Public Service (Overseas Officers' Allowances) Determination* 1964<sup>1</sup>; and
- (b) does not include child endowment paid under the *Social Services Act* 1947 of Australia, as in force from time to time; and
- (c) in the case of a child under 16 years of age or a student—
  - (i) includes the value of any assistance consisting of money, accommodation or maintenance provided to him or to any person in connexion with his education; and
  - (ii) does not include the value or amount of any scholarship, bursary, exhibition or prize except to the extent that it consists of assistance in the form of accommodation or maintenance;

“student” means a person who—

- (a) is not less than 16 years of age but is less than 25 years of age; and
- (b) is receiving full-time education at a school, college or university.

(2) For the purposes of this Division, where two persons have been married in accordance with custom the Chief Collector may treat each of those persons as being the spouse of the other<sup>2</sup>.

## 213. Allowance of concessional rebates.

A rebate under this Subdivision is allowable only where the taxpayer is a resident.

<sup>1</sup> No longer in force at the effective date.

<sup>2</sup> But see *Marriage Act*, Section 3(2).

**214. General rebate allowance to taxpayers other than companies.**

A taxpayer, not being a company, is entitled to a rebate in his assessment in respect of a year of income of an amount of tax equal to an amount of—

- (a) 10% of the amount of tax assessed; or
- (b) K250.00,

whichever is the less.

**215. Rebate for dependants.**

(1) Subject to Section 216, where during the year of income a taxpayer wholly maintains a dependant or dependants, he is entitled to a rebate, for each such dependant, in his assessment of tax equal to an amount of—

- (a) 10% of the amount of the tax assessed; or
- (b) K250.00,

whichever is the less, but being not less than K30.00 for each dependant.

(2) For the purposes of this section, a dependant shall be deemed to be wholly maintained if—

- (a) the taxpayer is the sole contributor to the maintenance of the dependant; and
- (b) the separate net income derived by the dependant from all sources during the year of income did not exceed K520.00.

(3) Where—

- (a) the taxpayer contributes to the maintenance of a dependant during part of the year of income; or
- (b) during the whole or part of the year of income two or more persons contribute to the maintenance of a dependant; or
- (c) a child attains the age of 16 years during the year of income; or
- (d) a student ceases to be a student or attains the age of 25 years during the year of income; or
- (e) a dependant, being a spouse of the taxpayer, is married to the taxpayer during part only of the year of income; or
- (f) a person is wholly maintained by the taxpayer during part only of the year of income,

the rebate allowable to the taxpayer in respect of the dependant is such part of the amount specified in Subsection (1) as in the opinion of the Chief Collector is reasonable in the circumstances.

**216. Limit to rebate entitlement.**

Subject to Section 219, the sum of rebates allowable under this Division shall not exceed—

- (a) the greater of—
  - (i) 50% of the amount of tax payable on the taxable income of the year of income; and
  - (ii) K120.00 plus 10% of the amount of tax payable on the taxable income of the year of income; or

(b) K1 250.00,  
whichever is the less.

Subdivision B.—Other Rebates.

**217. Rebates on dividends.**

(1) Subject to this section, a taxpayer, being a company that is a resident, is entitled to a rebate in its assessment of the amount obtained by applying to that part of its taxable income that represents dividends the average rate of tax payable by the company.

(2) For the purposes of Subsection (1), the part of the taxable income of a company that represents dividends shall be deemed to be the amount remaining after deducting from the amount of dividends included in the assessable income of the company of the year of income such deductions that are allowed or allowable from the assessable income as relate directly to income from dividends.

(3) A company is not entitled to a rebate in its assessment in respect of dividends paid by a company that is a co-operative company within the meaning of Division 9.

**218. Refunds of rebated tax.**

Where—

(a) a rebate has been allowed under this Act in respect of an amount of tax paid by the taxpayer; and

(b) some or all of the tax is refunded to the taxpayer (whether or not within the same year of income),

the taxpayer is liable to pay an additional amount of tax equal to the amount so refunded.

Subdivision C.—General.

**219. Maximum amount of rebates.**

Notwithstanding anything in this or any other Act, the sum of the rebates allowable under this Act shall not exceed the amount of tax that would otherwise be payable by the taxpayer.

*Division 23.—Credits in Respect of Tax Paid Outside Papua New Guinea.*

**220. Credits.**

(1) In this section —

“the adjusted non-Papua New Guinea income”, in relation to a taxpayer that is a company, means the amount that bears to the non-Papua New Guinea income of the company the same proportion as the undistributed amount of the company of the year of income bears to the taxable income of the company of that year of income;

“income derived from sources in a country outside Papua New Guinea”, in relation to a dividend paid by a company, means a dividend paid by a company that is not a resident of Papua New Guinea but is a resident of a country outside Papua New Guinea for the purposes of a law of that country that imposes a tax on incomes;

“the non-Papua New Guinea income”, in relation to a taxpayer, means the amount of the income derived from the country outside Papua New Guinea less the

sum of such of the deductions allowed or allowable from the assessable income of the year of income as relate directly to the income so derived;

"the Papua New Guinea tax", in relation to a taxpayer, means the tax payable by him under this Act in respect of his taxable income of the year of income after the allowance of any concessional rebates to which he is entitled, but before the allowance of any rebates of credits to which he is entitled under this Act;

"the undistributed amount", in relation to a taxpayer that is a company, means the amount that is the undistributed amount in relation to the company for the purposes of Division 7.

(2) Where—

- (a) the assessable income of a year of income of a taxpayer who is a resident includes income derived from sources in a country outside Papua New Guinea; and
- (b) the taxpayer has paid, directly or indirectly, income tax payable under the law of that country in respect of the income so derived, being tax for which he was personally liable under that law,

the taxpayer is, subject to this Division, entitled to a credit ascertained in accordance with this section.

(3) Subject to Subsections (4) and (5), the credit to which a taxpayer is entitled under this Division is the amount of the income tax referred to in Subsection (2)(b), as reduced by the amount of any refund or credit of that tax to which he is entitled in respect of the income to which the tax relates.

(4) Where—

- (a) a relevant part of a company's income of the year of income consists of dividends in respect of which it is entitled to a rebate under Section 217; and
- (b) income tax referred to in Subsection (2)(b) was payable in respect of the dividends,

the credit to which the taxpayer is entitled under Subsection (3) shall be reduced by the amount of that income tax.

(5) Credit under this section shall not exceed—

- (a) in the case of a taxpayer other than a company—an amount that bears to the Papua New Guinea tax of the taxpayer the same proportion as the non-Papua New Guinea income of the taxpayer bears to the taxable income of the taxpayer; and
- (b) in the case of a taxpayer that is a company—
  - (i) an amount ascertained by applying to the non-Papua New Guinea income of the taxpayer, other than dividends included in that income, the average rate of tax payable by the company for the year of tax; or
  - (ii) if the company is a company by which additional tax under Division 7 is or was payable in respect of the undistributed amount of the company of the year of income—the sum of the amount referred to in Subparagraph (i) and an amount ascertained by applying to the adjusted non-Papua New Guinea income of the taxpayer the rate of the additional tax; and

- (c) in any case—the amount of the tax payable by the taxpayer under this Act in respect of his taxable income of the year of income before the allowance of any credit to which the taxpayer is entitled under this Division.

#### 221. Application of credits.

(1) Subject to Subsection (2), the amount of any credit to which a taxpayer is entitled under this Division is a debt due and payable to him by the Chief Collector on behalf of the State.

(2) The Chief Collector may apply the whole or any part of the credit in total or partial discharge of any liability to the State of the person entitled to it arising under or by virtue of this Act or any other Act of which the Chief Collector has the general administration.

(3) Where the Chief Collector has applied any amount of credit to which a taxpayer is entitled under this Division in discharge of a debt of the taxpayer in respect of income tax or any other tax, the taxpayer shall be deemed to have paid to the Chief Collector the amount so applied for the purpose for which, and at the time at which, it was so applied.

(4) Where, in a year of income, an amount of credit to which a company is entitled under this Division is, in accordance with this section, applied by the Chief Collector or paid to the company, the amount otherwise deductible from the taxable income of the company of that year of income in accordance with Paragraphs (a) and (b) of the definition "the distributable income" in Section 121(1) shall be reduced by the aggregate of the amounts so applied or paid.

#### 222. Determination of claims for credits.

(1) Where a taxpayer makes a claim for a credit under this Division, the Chief Collector shall determine whether a credit is allowable and, if so, the amount of the credit.

(2) A determination under this Division does not form part of an assessment under this Act.

(3) As soon as conveniently may be after a determination under Subsection (1) is made, the Chief Collector shall serve written notice of the determination, by post or otherwise, on the person claiming the credit.

(4) A notice under Subsection (3) may be included in a notice of assessment.

(5) The production of a notice of a determination under this section, or of a document under the hand of the Chief Collector or an Assistant Collector purporting to be a copy of such a notice, is conclusive evidence of the due making of the determination and (except in proceedings on appeal against the determination) that the determination is correct.

(6) Subject to Subsections (7) and (8), the Chief Collector may, at any time, amend a determination in such manner as he thinks necessary.

(7) Where—

(a) a person claiming a credit has made to the Chief Collector a full and true disclosure of all the material facts necessary for the making of a determination; and

(b) a determination is made after the disclosure,

an amendment of the determination decreasing the amount of a credit shall not be made except—

(c) to correct an error in calculation or a mistake of fact; or

(d) in consequence of an adjustment, credit or refund of income tax payable under this Act or of income tax referred to in Section 220(2)(b).

(8) An amendment of a determination increasing the amount of a credit shall not be made except—

- (a) to correct an error in calculation or a mistake of fact; or
- (b) in consequence of an adjustment, credit or refund of income tax payable under this Act or of income tax referred to in Section 220(2)(b).

(9) This section does not prevent the amendment of a determination—

- (a) in order to give effect to the decision on an appeal or review; or
- (b) increasing the amount of a credit under an objection made by the person who claimed the credit, or pending an appeal or review.

(10) An amended determination shall, for the purposes of this Act, be deemed to be a determination.

(11) Part V. applies to and in relation to determinations under this Division in like manner as it applies to and in relation to assessments and, as so applying—

- (a) a reference in that Part to an assessment shall be read as a reference to a determination under this Division; and
- (b) the reference in Section 247(2) to the reduction of an assessment shall be read as a reference to the allowance of a credit or of an increase in the amount of a credit; and
- (c) the reference in Section 249(b) to the burden of proving that an assessment is excessive shall be read as a reference to the burden of proving that a determination allows insufficient credit; and
- (d) the references in Section 250 to the reduction of an assessment by the Chief Collector and to the reduced assessment shall be read as references to the amendment of a determination by the Chief Collector and to the amended determination, respectively.

(12) The fact that an appeal or reference in respect of a determination is pending does not in the meantime interfere with or affect the determination or an assessment of tax against which a credit is claimed, and tax may be recovered on the assessment as if the appeal or reference were not pending.

(13) A credit under this Division shall not be allowed unless, within—

- (a) three years after the date on which the income tax payable under this Act against which the credit is claimed became due and payable; or
- (b) such further period, not exceeding three years, as the Chief Collector, in special circumstances, determines,

the person claiming the credit furnishes to the Chief Collector all the information necessary for the purpose of determining the amount of the credit.

### 223. Recovery of overpayment of credits.

Where, by reason of any adjustment, credit or refund of any tax or for any other reason, the amount, or the sum of the amounts, applied or paid by the Chief Collector in respect of a credit under this Division exceeds the amount of the credit to which the taxpayer is entitled, the Chief Collector may recover the amount of the excess as if it were tax due and payable by the taxpayer.

## PART IV.—RETURNS AND ASSESSMENTS.

**224. Annual returns.**

(1) If required by the Chief Collector by notice in the National Gazette, every person shall furnish to the Chief Collector in the prescribed manner, within the time specified in the notice or such extended time as the Chief Collector allows, a return signed by him setting out a full statement of the total income derived by him during the year of income, and of any deductions claimed by him.

(2) In a notice under Subsection (1), the Chief Collector may exempt from liability to furnish returns such classes of persons as he thinks proper, and a person included in a class of persons so exempted need not furnish a return unless he is required to do so by the Chief Collector.

(3) If the taxpayer is absent from the country or is unable from physical or mental infirmity to make a return required by this section, the return may be signed and delivered by a person duly authorized.

**225. Further returns, etc.**

(1) If required by the Chief Collector, whether before or after the expiration of the year of income, a person shall furnish to the Chief Collector, in the manner and within the time required by him, a return, or a further or fuller return, of the income or any part of the income derived by him in any year, whether on his own behalf or as agent or trustee, and whether or not a return has been previously furnished for the same period.

(2) If no income has been derived by a person required to furnish a return under this section, he shall nevertheless furnish a return stating that fact.

**226. Special returns.**

A person, whether a taxpayer or not, shall, if required by the Chief Collector, furnish, in the manner and within the time required by the Chief Collector, a return required by the Chief Collector for the purposes of this Act.

**227. Returns deemed to be duly made.**

A return purporting to be made or signed by or on behalf of a person shall, until the contrary is proved, be deemed to have been duly made by him or with his authority.

**228. Certificate of sources of information.**

(1) A person who charges, directly or indirectly, a fee for preparing or assisting in the preparation of a return required by this Act or the regulations or by the Chief Collector shall sign a certificate in the prescribed form to be endorsed on or annexed to the return setting out the prescribed information as to the sources available for the compilation of the return.

(2) For the purpose of this Act, the agent's certificate shall be deemed to be duly signed, in the case of a partnership or a company that is registered as a tax agent under Part VIII., if—

(a) it is signed in the name of the partnership or company, as the case requires, by a person who is registered as a nominee of the partnership or company for the purposes of that Part; and

(b) the person's name is also appended,

and not otherwise.

(3) A person carrying on business who does not furnish with his return an age certificate shall furnish particulars in the prescribed form, endorsed on or annexed to the return, setting out the prescribed information as to the sources available for the compilation of the return.

#### 229. Assessments.

From the returns, and from any other information in his possession, or from any one or more of those sources, the Chief Collector shall make an assessment of the amount of the taxable income of a taxpayer and of the tax payable on it.

#### 230. Default assessments.

Where—

- (a) a person makes default in furnishing a return; or
- (b) the Chief Collector is not satisfied with the return furnished by a person; or
- (c) the Chief Collector has reason to believe that a person who has not furnished a return has derived taxable income,

the Chief Collector may make an assessment of the amount on which in his judgement income tax ought to be levied, and that amount is the taxable income of that person for the purpose of Section 229.

#### 231. Special assessments.

(1) The Chief Collector may, at any time during a year, or after its expiration, make an assessment of the taxable income derived in the year or any part of it by a taxpayer, of the tax payable on it.

(2) Where the income in respect of which an assessment is made is derived in a period less than a year, the assessment shall be made as if the beginning and end of that period were the beginning and end respectively of the year of income.

#### 232. Assessments on persons liable to tax.

Where under this Act a person is liable to pay tax, the Chief Collector may make an assessment of the amount of that tax.

#### 233. Amendment of assessments.

(1) Subject to this section, the Chief Collector may at any time amend an assessment by making such alterations in it, or such additions to it, as he thinks necessary, notwithstanding that tax has been paid in respect of the assessment.

(2) Where—

- (a) a taxpayer has not made to the Chief Collector a full and true disclosure of all the material facts necessary for his assessment; and
- (b) there has been an avoidance of tax,

the Chief Collector may—

- (c) where he is of opinion that the avoidance was due to fraud or evasion—at any time; and
- (d) in any other case—within six years from the date on which the tax became and payable under the assessment,

amend the assessment by making such alterations in, or additions to, it as he thinks necessary to correct an error in calculation or a mistake of fact, or to prevent avoidance of tax, as the case may be.

(3) Where—

(a) a taxpayer has made to the Chief Collector a full and true disclosure of all the material facts necessary for his assessment; and

(b) an assessment is made after the disclosure,

an amendment of the assessment increasing the liability of the taxpayer in any particular shall not be made—

(c) except to correct an error in calculation or a mistake of fact; or

(d) more than three years after the date on which the tax became due and payable under the assessment.

(4) An amendment effecting a reduction in the liability of a taxpayer under an assessment shall not be made—

(a) except to correct an error in calculation or a mistake of fact; or

(b) more than three years after the date on which the tax became due and payable under the assessment.

(5) Where an assessment has, under this section, been amended in any particular, the Chief Collector may, within three years after the date on which the tax became due under the amended assessment, make, in or in respect of that particular, such further amendment in the assessment as, in his opinion, is necessary to effect the just reduction in the liability of the taxpayer under the assessment.

(6) Where—

(a) an application for an amendment in his assessment is made by a taxpayer within the period of three years after the date on which the tax became due and payable under the assessment; and

(b) the taxpayer has supplied to the Chief Collector within that period all information needed by him for the purpose of deciding the application,

the Chief Collector may amend the assessment when he decides the application notwithstanding that the period has elapsed.

(7) This section does not prevent the amendment of an assessment—

(a) in order to give effect to the decision on an appeal or review; or

(b) by way of a reduction in any particular in pursuance of an objection made by the taxpayer, or pending an appeal or review.

(8) Where—

(a) a provision of this Act is expressly made to depend in any way on a determination, opinion or judgement of the Chief Collector; and

(b) an assessment is affected in any particular by that determination, opinion or judgement,

then, if after the making of the assessment it appears to the Chief Collector that the determination, opinion or judgement was erroneous, he may correct it and amend the assessment accordingly in the same circumstances as those in which he could, under this section, amend an assessment by reason of a mistake of fact.

(9) Notwithstanding anything in this section, where the assessment of the taxpayer's income of a year includes an estimated amount of income derived by the taxpayer in that year from an operation or series of operations to which this subsection applies by virtue of Subsection (10), the Chief Collector may, at any time within the period of three years after ascertaining the total profit or loss actually derived or arising from the operation or series of operations, amend the assessment so as to ensure its completeness and accuracy on the basis of the profit or loss so ascertained.

(10) Subsection (9) applies to an operation or series of operations the profit or loss on which was not ascertainable at the end of the year in question owing to the fact that the operation or series of operations extended over more than one year or parts of more than one year.

(11) This section does not prevent the amendment at any time of an assessment for the purpose of giving effect to Section 50, 70(7) or 124(2)(b) or (3).

#### 234. Failure to serve notice of assessment.

(1) Where—

- (a) a taxpayer has duly furnished to the Chief Collector a return of income; and
- (b) no notice of assessment in respect of the return has been served within 12 months after it was furnished,

the taxpayer may, by registered post, request the Chief Collector to make an assessment.

(2) If within the period of three months after the receipt by the Chief Collector of a request under Subsection (1) a notice of assessment is not served on the taxpayer—

- (a) any assessment subsequently issued in respect of the income to which the request relates shall be deemed to be an amended assessment; and
- (b) for the purpose of determining whether such an amended assessment might be made, the taxpayer shall be deemed to have been served on the last day of that period with a notice of assessment in respect of which income tax was payable on that day.

#### 235. Refunds of tax overpaid.

Where by reason of an amendment of an assessment the taxpayer's liability is reduced, the Chief Collector shall refund the amount of any tax overpaid.

#### 236. Amended assessments.

Except as otherwise provided, an amended assessment shall, for the purposes of this Act, be deemed to be an assessment.

#### 237. Notice of assessment.

As soon as convenient after an assessment is made, the Chief Collector shall serve written notice of the assessment, by post or otherwise, on the person liable to pay tax.

#### 238. Validity of assessments.

The validity of an assessment is not affected by reason of the fact that any provision of this Act has not been complied with.

## PART V.—OBJECTIONS AND APPEALS.

*Division 1.—Constitution of Review Tribunal.***239. Establishment of Review Tribunal.**

- (1) A Review Tribunal is hereby established for the purposes of this Act.
- (2) The Tribunal shall be constituted by one person appointed by the Minister.
- (3) The person constituting the Tribunal shall be appointed for a period of three years, and is eligible for re-appointment.
- (4) The person constituting the Tribunal—
  - (a) holds office on such terms and conditions; and
  - (b) shall be paid such remuneration, allowances, fees and expenses,as the Minister<sup>1</sup> determines.

**240. Illness, suspension or absence of Tribunal.**

- (1) In the event of the absence (through illness or otherwise) or the suspension of the person constituting the Tribunal, the Minister may appoint a person to act in his place during the absence or suspension.
- (2) A person appointed under Subsection (1)—
  - (a) shall be appointed on such terms and conditions; and
  - (b) shall be paid such remuneration, allowances, fees and expenses,as the Minister<sup>1</sup> determines.

**241. Indemnity.**

An action or suit shall not be brought or maintained against a person who constitutes, or has constituted, the Tribunal, or a person who acts or has acted in the place of such a person, for any non-feasance or misfeasance in connexion with his duties.

**242. Removal, etc., of person constituting Tribunal.**

- (1) The Minister may remove the person constituting the Tribunal from office on an address asking for his removal being presented to the Minister by the Parliament.
- (2) The Minister may suspend from office the person constituting the Tribunal for misbehaviour or incapacity, and shall cause a statement of the cause of the suspension to be laid before the Parliament within seven sitting days of the Parliament after the suspension.
- (3) Where, within 15 sitting days of the Parliament after a statement under Subsection (2) has been laid before the Parliament, an address is presented to the Minister by the Parliament asking for the restoration to office of the suspended person, he shall be restored accordingly, but if no such address is presented the Minister may declare the office to be vacant.

**243. Vacation of office.**

- (1) The person constituting the Tribunal may resign his office by writing under his hand addressed to the Minister.

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<sup>1</sup> As at the effective date the reference was to the Prime Minister.

## (2) If the person constituting the Tribunal—

- (a) engages in paid employment outside the duties of his office without the approval of the Minister; or
- (b) is adjudicated insolvent, applies to take the benefit of an Act for the relief of insolvent debtors, compounds with his creditors or makes an assignment of his salary for their benefit; or
- (c) except on leave granted by the Minister, fails to attend to the duties of his office for 14 consecutive days; or
- (d) becomes permanently incapable of performing his duties,

the Minister shall, by notice in the National Gazette, declare the office to be vacant.

*Division 2.—Objections.***244. Objections.**

(1) Subject to Subsection (2), a taxpayer dissatisfied with an assessment may, within 60 days after service of the notice of assessment, post to or lodge with the Chief Collector a written objection against the assessment stating fully and in detail the grounds on which he relies.

(2) If the assessment is an amended assessment, the taxpayer has no further right of objection than he would have had if the amendment had not been made, except to the extent to which by reason of the amendment—

- (a) a fresh liability in respect of any particular is imposed on him; or
- (b) an existing liability in respect of any particular is increased.

**245. Decision on objection.**

The Chief Collector—

- (a) shall consider any objection; and
- (b) may disallow it, or allow it wholly or in part; and
- (c) shall serve the taxpayer, by post or otherwise, with written notice of his decision.

**246. Application for appeal or review.**

A taxpayer dissatisfied with the decision on an objection may, within 60 days after service of the notice under Section 245, request the Chief Collector, in writing—

- (a) to refer the decision to the Tribunal for review; or
- (b) to treat his objection as an appeal and to forward it to the National Court.

**247. Reference to Tribunal or Court.**

(1) If a request under Section 246 is accompanied by a fee of K2.00, the Chief Collector shall—

- (a) refer the decision to the Tribunal; or
- (b) forward the objection to the National Court,

in accordance with the request.

(2) The fee paid under Subsection (1) shall be refunded to the taxpayer if assessment is reduced by amendment or as a result of the decision of the Tribunal or Court.

**248. Notice to refer.**

(1) If, within 60 days after receiving a request under Section 246 and the fee prescribed by Section 247 the Chief Collector does not refer the decision or forward the objection as required by Section 247, the taxpayer may at any time give him written notice to do so.

(2) Subject to Subsection (3), the Chief Collector shall refer the decision or forward the objection to the Tribunal or the National Court within 60 days after receiving a notice under Subsection (1).

(3) If, within 60 days after receiving a request under Section 246 the Chief Collector requires the taxpayer in writing to furnish information relating to the decision or objection, the Chief Collector is not bound to refer the decision or forward the objection to the Tribunal or the National Court until the expiration of 60 days after receipt by him of that information.

**249. Grounds for reference or appeal.**

On a reference or appeal—

- (a) the taxpayer is limited to the grounds stated in his objection; and
- (b) the burden of proving that the assessment is excessive is on the taxpayer.

**250. Reduced assessments.**

If an assessment has been reduced by the Chief Collector after considering an objection, the reduced assessment is the assessment to be dealt with on any reference or appeal.

*Division 3.—Reviews.***251. Power of review.**

The Tribunal has power to review such decisions of the Chief Collector or an Assistant Collector as are referred to it under this Act.

**252. Powers of Tribunal on review.**

(1) Subject to this section, for the purpose of reviewing decisions of the Chief Collector or an Assistant Collector, the Tribunal has all the powers and functions of the Chief Collector in making assessments, determinations and decisions under this Act, and the assessments, determinations and decisions of the Tribunal, and its decision on review, shall for all purposes be deemed to be assessments, determinations or decisions of the Chief Collector (except for the purpose of objections, reviews and appeals).

(2) The Tribunal has no power to review a decision of the Chief Collector relating to the remission of additional tax or penalty, except a decision relating to the remission of additional tax or penalty imposed by Section 326 in a case where the additional tax or penalty payable, after the making by the Chief Collector of his decision, exceeds—

(a) in a case to which Section 326(1) applies—

(i) the sum of K50.00 for each complete month or part of a month of the period referred to in Subsection (3); or

(ii) an amount calculated, in accordance with Subsection (3), at the rate of 20% per annum of the tax assessable to the taxpayer,

whichever is the greater; and

(b) in a case to which Section 326(2) applies—

- (i) the sum of K50.00 for each complete month or part of a month of the period referred to in Subsection (4); or
- (ii) an amount calculated, in accordance with Subsection (4), at the rate of 20% per annum of the difference between the tax properly payable by the taxpayer and the tax that would be payable if it were assessed on the basis of the return furnished by him,

whichever is the greater.

(3) The amounts referred to in Subsection (2)(a) shall be calculated in respect of the period—

- (a) commencing on the last day allowed for furnishing the relevant return or information; and
- (b) ending on the day on which the return or information is furnished or the day on which the assessment is made, whichever first happens.

(4) The amount referred to in Subsection (2)(b) shall be calculated in respect of the period—

- (a) commencing on the last day allowed for furnishing the return; and
- (b) ending on the day on which the assessment or notice in respect of the omitted income or excessive deduction is made.

#### 253. Decision of Tribunal.

(1) The Tribunal shall give its written decision on a reference to it, and may confirm, reduce, increase or vary the assessment.

(2) On the request of the Chief Collector or the taxpayer, made at the hearing, the Tribunal shall, when giving its decision, state, in writing, its findings of fact and its reasons in law for the decision.

#### *Division 4.—Appeals, etc.*

#### 254. Appeal, etc., to National Court.

(1) The Chief Collector or the taxpayer may appeal to the National Court from any decision of the Tribunal that involves a question of law.

(2) On the request of the Chief Collector or the taxpayer, the Tribunal shall refer any question of law arising before it to the National Court.

#### 255. Order of National Court on appeal.

On the hearing of an appeal under this Division, the National Court may—

- (a) make such order as it thinks proper; and
- (b) by the order, confirm, reduce, increase or vary the assessment.

#### *Division 5.—Miscellaneous.*

#### 256. Continuing liability for tax.

The fact that an appeal or reference is pending does not in the meantime interfere with or affect the assessment the subject of the appeal or reference, and income tax not recovered on the assessment as if no appeal or reference were pending.

**257. Adjustment of tax.**

Where an assessment is altered on an appeal or reference under this Part, a due adjustment shall be made, for which purpose—

- (a) amounts paid in excess shall be refunded; and
- (b) amounts short-paid are recoverable as arrears.

**PART VI.—COLLECTION AND RECOVERY OF TAX.****Division 1.—General.****258. Due date for payment.**

(1) Subject to this Part, any income tax assessed is due and payable by the person liable to pay the tax on the date specified in the notice as the date on which tax is due and payable or, if no date is specified, then on the thirtieth day after service of the notice.

(2) The date specified under Subsection (1) shall be not less than 30 days after the service of the notice.

**259. Taxpayer leaving Papua New Guinea.**

Where the Chief Collector has reason to believe that a person liable to pay tax may leave the country before the date on which the tax is due and payable, the tax is due and payable on such date as the Chief Collector notifies to that person.

**260. Extension of time, etc.**

(1) In this section, "tax" includes provisional tax.

(2) The Chief Collector may in any case grant such extension of time for payment of any tax, or permit payment of any tax to be made by such instalments and within such time, as he thinks the circumstances warrant.

**261. Penalty for unpaid tax.**

(1) In this section, "tax" includes provisional tax.

(2) If any tax remains unpaid after the time when it becomes due and payable, additional tax is due and payable at the rate of 20% per annum on the amount unpaid, computed from that time or, where an extension of time has been granted under Section 260, from such date as the Chief Collector determines, not being a date before the date on which the tax was originally due and payable.

(3) The Chief Collector may in any case, for reasons that he thinks sufficient, remit the additional tax or any part of the tax.

(4) Notwithstanding anything in Subsections (2) and (3), the Chief Collector may sue for recovery of any tax unpaid immediately after the expiry of the time when it becomes due and payable.

**262. Recovery of tax.**

(1) In this section, "tax" includes provisional tax.

(2) Any tax that is due and payable is a debt due to the State, and is payable to the Chief Collector in the manner and at the place prescribed.

(3) Any tax unpaid may be recovered in a court of competent jurisdiction by the Chief Collector suing in his official name.

**263. Issue of tax clearance certificates.**

(1) On application by or on behalf of a person who is about to leave the country, Chief Collector or an Assistant Collector may, if he is satisfied that—

- (a) tax is not payable by the person; or
- (b) arrangements have been made to the satisfaction of the Chief Collector for the payment of any tax that is or may become payable by him; or
- (c) tax payable by him is irrecoverable,

issue a certificate that there is no objection to his departure from the country.

(2) A certificate under Subsection (1) remains in force until—

- (a) the expiration of a period of one month from the date of its issue, or of such other period as is specified in it; or
- (b) it is revoked,

whichever first occurs.

**264. Production of tax clearances.**

(1) Subject to Section 266, when so required by the Chief Collector the owner or charterer, or an agent or other representative of the owner or charterer, of a ship or aircraft must not issue, or permit the issue, of an authority for a person to travel from the country on the ship or aircraft unless there has been presented to the owner, charterer, agent or representative, as the case may be, a certificate under Section 263 in respect of the person, being a certificate that is in force on the day on which it is presented.

(2) A person who, in contravention of Subsection (1), issues, or permits the issue of an authority for a person to travel on a ship or aircraft—

- (a) is personally liable to pay any amount of tax that is or may become due or payable by the last-mentioned person; and
- (b) in addition, is guilty of an offence.

Penalty: A fine of not less than K100.00 and not more than K400.00.

**265. Duty of shipowner, etc., in relation to tax clearances.**

(1) Subsection (2) applies in a case where a ship or aircraft departs from a place at which it has taken on board passengers in respect of whom certificates under Section 263 have been presented for the purpose of obtaining authorities for them to travel from the country in it.

(2) Subject to Section 266, in a case to which this subsection applies the owner or charterer of the ship or aircraft, or, if the owner or charterer does not have a place of business at the place at which the passengers are taken on board, the principal agent of the owner or charterer at that place, must, not later than the first working day after the departure of the ship or aircraft from the place or as soon afterwards as is practicable, lodge, or cause to be lodged, at the office of the Chief Collector.—

- (a) the certificates referred to in Subsection (1); and
- (b) a list showing the name, last-known address in the country and place of destination of every person (other than a member of the crew or staff of the ship or aircraft) taken on board the ship or aircraft at the first-mentioned place.

Penalty: A fine of not less than K20.00 and not more than K200.00.

**266. Exemption of members of Defence Force from tax clearance requirements.**

Sections 264 and 265 do not apply in relation to travel by a member of the Defence Force who is certified by a person authorized for the purpose by the Minister<sup>1</sup> to be travelling in the course of his duty as such a member.

**267. Temporary businesses.**

(1) Where the Chief Collector—

(a) has reason to believe that a person establishing or carrying on business in the country intends to carry on the business for a limited period only; or

(b) for any other reason thinks it proper to do so,

he may at any time, and from time to time, require him to give security, by bond or deposit or otherwise, to the satisfaction of the Chief Collector, for the due return of, and for payment of income tax on, the income derived by him.

(2) A person who fails to give security when required to do so under Subsection (1) is guilty of an offence.

Penalty: A fine of not less than K20.00 or more than K200.00.

**268. Substituted service.**

(1) In this section, "tax" includes provisional tax.

(2) Where a taxpayer—

(a) is absent from the country and has not to the knowledge of the Chief Collector, after reasonable inquiry, an attorney or agent in the country on whom service of process can be effected; or

(b) cannot after reasonable inquiry be found,

service of any process in proceedings against him for the recovery of income tax or dividend (withholding) tax may be effected on him by posting the process, or a sealed copy of the process, in a letter addressed to him at his last-known place of business or abode in the country.

**269. Windings-up, receiverships, etc.**

(1) A person (in this section called "the trustee")—

(a) who is a liquidator of a company that is being wound up; or

(b) who is a receiver for any debenture holders and has taken possession of any assets of a company; or

(c) who is an agent for a non-resident and has been required by his principal to wind up the business or realize the assets of his principal,

must, within 14 days after—

(d) he has become liquidator; or

(e) he has taken possession of assets; or

(f) he has been so required by his principal,

as the case may be, give to the Chief Collector notice of his holding that position.

(2) As soon as practicable after receiving a notice under Subsection (1), the Chief Collector shall notify the trustee of the amount that appears to the Chief Collector to be

<sup>1</sup> At the effective date the reference was to the Minister for Defence.

sufficient to provide for any tax that then is, or will subsequently become, payable by the company or principal, as the case may be.

(3) The trustee—

- (a) must not, without the leave of the Chief Collector, part with any of the assets of the company or principal until he has been given notice under Subsection (2); and
- (b) must set aside, out of the assets available for the payment of the tax, assets to the value of the amount notified under that subsection, or the whole of the assets so available if they are less than that value; and
- (c) is, to the extent of the value of the assets that he is required to set aside, liable as trustee to pay the tax.

(4) If the trustee fails to comply with a provision of this section (or fails as trustee duly to pay the tax for which he is liable under Subsection (3)), he is—

- (a) to the extent of the value of the assets of which he has taken possession and that were available at any time for the payment of tax—personally liable to pay the tax; and
- (b) in addition, guilty of an offence.

Penalty: A fine of not less than K2.00 and not more than K100.00

(5) Where more than one person is the trustee, the obligations and liabilities attaching to the trustee under this section attach to them jointly.

(6) On the winding-up of a company, the Chief Collector may, if all other creditors of the company whose debts rank in priority to the costs, charges and expenses incurred by the liquidator agree to do likewise, permit all such costs, charges and expenses that, in opinion of the Chief Collector, have been properly incurred by the liquidator, including the remuneration of the liquidator, to be paid out of the assets of the company in priority to any tax payable by the company.

## 270. Tax unpaid on death of taxpayer.

(1) The following provisions apply in any case where, whether or not intentionally, a deceased taxpayer has escaped full taxation in his lifetime by reason of not having duly made full, complete and accurate returns:—

- (a) the Chief Collector has the same powers and remedies against the trustees of the estate of the taxpayer in respect of his taxable income as he would have against the taxpayer, if he were still alive; and
- (b) the trustees shall make such returns as the Chief Collector requires for the purpose of an accurate assessment; and
- (c) subject to Subsection (2), the trustees are subject to additional tax to the same extent as the taxpayer would be subject if he were still alive; and
- (d) the amount of any tax payable by the trustees is a first charge on all of the estate of the taxpayer in their hands.

(2) The Chief Collector may in any particular case, for reasons that he thinks sufficient, remit any additional tax referred to in Subsection (1)(c), or any part of the tax.

## 271. Payment of tax by trustees of deceased person.

(1) Where at the time of the death of a person tax has not been assessed and paid the whole of the income derived by him up to the date of his death, the Chief Collector has

the same powers and remedies for the assessment and recovery of tax from the trustees of his estates as he would have had against the person, if he were still alive.

(2) The trustees shall furnish a return of any income derived by the deceased person in respect of which no return has been lodged by him.

(3) Where the trustees are unable or fail to furnish a return as required by Subsection (2)—

- (a) the Chief Collector may make an assessment of the amount on which, in his judgement, tax ought to be levied; and
- (b) the trustees are liable to pay tax as if that amount were the taxable income of the deceased.

#### 272. Collection of tax from debtor, etc., of taxpayer.

(1) In this section—

"person" includes the State, a company or partnership, and a public authority constituted by or under a law;

"tax" means income tax, dividend (withholding) tax or provisional tax, and includes a judgement debt and costs in respect of any such tax.

(2) The Chief Collector may, by written notice, require—

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

to pay to the Chief Collector, immediately on the money becoming due or being held, or at or within a time specified in the notice (not being a time before the money becomes due or is held)—

- (e) so much of the money as is sufficient to pay any amount due by the taxpayer in respect of any tax and of any fines and costs imposed on him under this Act, or the whole of the money when it is equal to or less than that amount; or
- (f) such amount as is specified in the notice out of each of any payments that the person so notified becomes liable from time to time to make to the taxpayer, until the amount due by the taxpayer in respect of any tax and of any fines and costs imposed on him under this Act is satisfied.

(3) The Chief Collector may amend or revoke a notice under Subsection (2) or extend the time for making any payment under the notice.

(4) A copy of a notice under Subsection (2) shall be forwarded to the taxpayer at his place of address last known to the Chief Collector.

(5) A person who fails to comply with a notice under Subsection (2) is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(6) A person who makes a payment under this section shall be deemed to have been acting under the authority of the taxpayer and of all other persons concerned, and by force of this subsection, indemnified in respect of the payment.

(7) Where the Chief Collector receives a payment in respect of the amount due by the taxpayer before payment is made by a person referred to in Subsection (2), he shall promptly give notice of receipt of the payment to that person.

(8) A notice under Subsection (2) to be given to the State may be served on such person as is prescribed, and a notice so served shall be deemed to have been served on the State.

### 273. Consolidation of assessments.

Where several persons are in receipt of income for or on behalf of a non-resident or a person who is absent from the country, the Chief Collector may, if it appears to him to be expedient to do so—

- (a) consolidate all or any of the assessments in respect of that income; and
- (b) declare any one of those persons to be the agent of the non-resident or absent person in respect of the consolidated assessment; and
- (c) require the person so declared to pay income tax on the amount of the assessment,

and the person declared under Paragraph (b) to be the agent is liable to pay the tax.

### 274. Failure to take out administration.

(1) Where—

- (a) probate has not been granted or letters of administration have not been taken out within six months after the death of a taxpayer; and
- (b) tax has not been assessed and paid on the whole of the income derived by him up to the date of his death,

the Chief Collector may make an assessment of the amount of tax payable in respect of that income.

(2) The Chief Collector shall cause notice of an assessment under Subsection (1) to be published twice in a daily newspaper circulating in the country.

(3) Within 60 days of the first publication under Subsection (2) of a notice of an assessment, a person claiming an interest in the estate of the taxpayer may post to or lodge with the Chief Collector a written objection against the assessment, stating fully and in detail the grounds on which he relies.

(4) On the posting or lodging of an objection under Subsection (3), the provisions of this Act relating to objections and appeals apply in relation to the objection as if the person claiming an interest were the taxpayer.

(5) Subject to any amendment of the assessment by the Chief Collector, the Tribunal or the National Court, the published notice of the assessment made is conclusive evidence of the indebtedness of the deceased to the Chief Collector.

(6) The Chief Collector may issue an order in the prescribed form authorizing a member of the Police Force, or any other person named in the order, to levy the amount of tax assessed with costs, by distress and sale of any property of the deceased.

(7) On the issue of an order under Subsection (6), the member or person authorized by the order may levy, in the prescribed manner, the amount involved.

(8) Notwithstanding Subsections (5), (6) and (7), if probate of the will of the deceased is granted to a person, or letters of administration of the estate are taken out by a person, he may, within 60 days after the date on which probate was granted or letters of administration were taken out, lodge an objection against the assessment, stating fully and in detail the grounds on which he relies.

(9) The provisions of this Act relating to objections and appeals apply in relation to an objection lodged by a person under Subsection (8) as if he were the taxpayer.

#### 275. Insolvency and winding-up.

(1) Notwithstanding anything in the *Insolvency Act*, a person who is a trustee within the meaning of that Act must apply the estate of the insolvent in payment of tax due under this Act (whether assessed before or after the date on which he became insolvent) in priority to all other unsecured debts other than debts of a class specified in Section 37 or 119(1)(c) or (d), of that Act.

(2) The liquidator of a company that is being wound up must, notwithstanding anything in any other law, apply the assets of the company in payment of tax due under this Act (whether assessed before or after the date of the commencement of the winding-up) in priority to all other unsecured debts other than—

(a) the costs and expenses of the winding-up; and

(b) debts of a class specified in Section 119(1)(c) or (d) of the *Insolvency Act*.

(3) A person who fails to comply with a provision of this section is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

(4) In addition to imposing a penalty under Subsection (3), the court may order the convicted person to pay to the Chief Collector a sum not exceeding double the amount of tax due by the insolvent estate, or by the company in liquidation, as the case may be, on the date on which the offence occurred.

#### *Division 2.—Collection of Income Tax by Instalments.*

#### 276. Interpretation of Division 2.

In this Division, unless the contrary intention appears—

“deduction” means a deduction under Section 277 or 278 from the salary or wages of an employee;

“employer” means a person who pays, or is liable to pay, any salary or wages, and includes—

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

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

(c) except in relation to the imposition of a penalty—the State and an authority constituted by or under a law;

“group certificate” means a certificate, in a form authorized by the Chief Collector, issued by a group employer, or by or on behalf of an authority with which an arrangement has been entered into under Section 290, to an employee in accordance with this Division in respect of deductions made from the salary or wages of the employee;

"group employer" means a person who is registered as a group employer under Section 280;

"interim receipt" means an interim receipt issued under Section 281;

"tax payable by the employee" means income tax that is, or may become, due and payable by an employee under an assessment made, or to be made—

- (a) on a return that he has furnished or has been required to furnish, or may be required to furnish; or
- (b) in default of such a return.

## 277. Deductions by employer from salary, etc.

(1) For the purpose of enabling the collection from employees of income tax by instalments, where an employee receives, or is entitled to receive, from an employer salary or wages in excess of K12.00 in respect of a week or part of a week, the employer must, at the time of paying the salary or wages, make a deduction from the salary or wages at the prescribed rate.

Penalty: A fine not exceeding K40.00

(2) For the purposes of this section, where an employee receives from an employer salary or wages—

(a) if the salary or wages is or are paid in respect of—

- (i) piece-work performed by the employee; or
- (ii) services rendered under a contract that is wholly or substantially for the labour of the employee,

he shall be deemed to be entitled to receive the salary or wages in respect of the period from the commencement of the performance of the work or services until the completion of the work or services; and

(b) if the salary or wages is or are paid—

- (i) in respect of any other service performed or rendered; and
- (ii) not in respect of a period,

he shall be deemed to be entitled to receive the salary or wages in respect of the period of 52 weeks preceding the date on which the salary or wages is or are received by him; and

(c) if he is entitled, or is deemed to be entitled, to receive the salary or wages in respect of a period in excess of one week, he shall be deemed to be entitled to receive, in respect of each week or part of a week in the period, an amount of the salary or wages ascertained by dividing it or them by the number of days in the period and multiplying the resultant amount—

- (i) in the case of each week—by seven; and
- (ii) in the case of a part of a week—by the number of days in the part of a week.

(3) Where salary or wages for, or deemed to be received in respect of, a week or part of a week is or are paid in two or more separate sums—

- (a) all sums so paid shall be aggregated for the purpose of computing the amount of the deduction under this section; and
- (b) the employer may, at his option, make the deduction wholly from one or in part from each of any two or more sums.

(4) Subject to Subsection (5), where, in addition to his salary or wages, an employee receives from his employer meals, sustenance or the use of premises or quarters as part consideration for his services, he shall, for the purpose of computing the amounts of deductions under this section, be deemed to receive as salary or wages, in addition to any money actually payable to him—

- (a) in respect of each week or part of a week during which he receives the meals or sustenance—an amount calculated at a rate determined by the Chief Collector in respect of him or, where the Chief Collector has not so determined a rate, at the rate of K3.00 per week; and
- (b) in respect of each week or part of a week during which he receives the use of premises or quarters—an amount calculated at a rate determined by the Chief Collector in respect of him or, where the Chief Collector has not so determined a rate, at the rate of K1.00 per week.

(5) Where—

- (a) an employee is employed under the terms of an award, order or determination of an industrial tribunal, or under an industrial agreement; and
- (b) the award, order, determination or agreement—
  - (i) specifies the value of sustenance or quarters, or both, provided by an employer to an employee of that class; or
  - (ii) provides that instead of providing an employee of that class with sustenance or quarters, or both, an employer shall pay a money allowance to the employee,

the employee shall, for the purpose of computing the amounts of deductions under this section, be deemed to receive as salary or wages, in addition to any other amount received by him—

- (c) in respect of each week or part of a week during which he receives sustenance from the employer; or
- (d) in respect of each week or part of a week during which he occupies quarters provided for him by the employer; or
- (e) in respect of each week or part of a week during which he—
  - (i) receives sustenance from the employer; and
  - (ii) occupies quarters provided for him by the employer,

an amount calculated at—

- (f) the value specified for sustenance or quarters (or both) by the award, order, determination or agreement; or
- (g) the rate of the money allowance that would have been payable instead of the sustenance or quarters (or both) under the award, order, determination or agreement,

as the case may be.

#### 278. Variation of deductions.

(1) Notwithstanding anything in Section 277, the Chief Collector may vary the amount to be deducted from the salary or wages of an employee or a class of employees for the purpose of meeting the special circumstances of any case or class of cases.

(2) Where the Chief Collector varies the amount to be deducted, he shall notify the employer of the employee or class of employees, in writing, of the variation.

(3) After receipt of a notification of a variation under Subsection (2) an employer must make deductions from the salary or wages payable to the employee or employees concerned in accordance with the amounts notified under that subsection.

Penalty: A fine not exceeding K40.00.

#### 279. Exemption from deductions.

(1) The Chief Collector may issue to an employee a certificate that no deductions need, during the period specified in the certificate, be made from the salary or wages of the employee.

(2) During the period specified in a certificate under Subsection (1), Sections 277 and 278 do not apply, in relation to salary or wages of the employee named in the certificate, to an employer to whom the certificate, bearing the signature of the employee, is shown at the time of the payment of the salary or wages.

(3) The Chief Collector may cancel a certificate under Subsection (1).

(4) Where a certificate is cancelled under Subsection (3), the person named in the certificate must return the certificate to the Chief Collector within 21 days after the Chief Collector has notified him of the cancellation.

Penalty: A fine not exceeding K40.00.

(5) A person who—

- (a) alters a certificate issued under Subsection (1); or
- (b) shows to an employer any such certificate that has been altered without the authority of the Chief Collector; or
- (c) without lawful excuse (proof of which is on him), has in his possession a colourable imitation of any such certificate; or
- (d) falsely pretends to be the person named in any such certificate; or
- (e) causes an employer to refrain from making a deduction from his salary or wages by the production of a document other than a certificate issued to him under Subsection (1) and for the time being in force,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

#### 280. Group employers.

(1) Unless he is already registered as a group employer, an employer who, during the period of 12 months ending on 31 May in any year, has ordinarily had in his employment one or more employees from whose salary or wages he had been required to make deductions must apply to the Chief Collector, not later than 14 June in that year, in a form approved by the Chief Collector, for registration as a group employer.

(2) An employer who—

- (a) is not already registered as a group employer; and
- (b) commences to carry on a business or becomes an employer; and
- (c) in consequence of commencing to carry on a business or becoming an employer, has in his employment one or more employees from whose salary or wages he is required to make deductions,

must, within seven days after commencing to carry on the business or becoming an employer, as the case may be, apply to the Chief Collector, in a form approved by the Chief Collector, for registration as a group employer.

## (3) The Chief Collector may—

(a) register as a group employer any employer, or a person acting on behalf of two or more employers, whether or not he is required by this section to apply for registration as a group employer; or

(b) cancel the registration of a group employer,

and shall notify the group employer, in writing, that—

(c) he has been so registered; or

(d) his registration has been cancelled,

as the case may be.

(4) An employer registered as a group employer remains a group employer until notified by the Chief Collector that his registration has been cancelled.

## (5) A group employer must—

(a) not later than the seventh day of each month—

(i) furnish to the Chief Collector a statement of the total number of employees from whose salary or wages he was required to make deductions, or that there were no such employees (if that was the case); and

(ii) furnish to the Chief Collector a statement of the total amount of salaries and wages paid to employees in the preceding month; and

(iii) furnish to the Chief Collector a statement of the total amount of deductions made from the salaries and wages of employees in the preceding month; and

(iv) pay to the Chief Collector the total amount of deductions made in the preceding month; and

(b) not later than 14 July in each year, issue to each employee a group certificate setting out the total amounts of deductions made by him as a group employer from the salary or wages of the employee during the period of 12 months that ended on 30 June in that year, other than amounts that have been included in a group certificate previously issued to the employee; and

(c) within seven days after an employee ceases to be employed by him, issue to the employee a group certificate setting out the total of the amounts of the deductions made by him as a group employer from the salary or wages of the employee, other than amounts that have been included in a group certificate previously issued to the employee; and

(d) on production to him by an employee of a certificate issued to the employee under Section 279, where the certificate is so produced during the period specified in the certificate, issue to the employee a group certificate setting out the total of the amounts of the deductions made by him as a group employer from the salary or wages of the employee (other than amounts that have been included in a group certificate previously issued to the employee); and

(e) at the time of issuing to an employee a group certificate, issue to him a copy of the certificate; and

(f) not later than 14 August in each year, furnish to the Chief Collector—

- (i) a copy of each group certificate issued by him to each employee in respect of deductions made by him during the period of 12 months that ended on 30 June in that year; and
- (ii) a statement, in a form approved by the Chief Collector, signed by the group employer, reconciling the total of the amounts of the deductions shown in each of the copies of group certificates furnished under Subparagraph (i) with the total of the amounts paid to the Chief Collector in respect of those deductions.

(6) A group employer to whom the Chief Collector has—

- (a) supplied any group certificate forms in respect of a year of income; or
- (b) allotted any serial numbers to be marked on group certificate forms in respect of a year of income,

must, not later than 14 August after the end of that year, forward to the Chief Collector any of those forms, and any forms marked with any of those numbers, that have not been issued as group certificates.

(7) The Chief Collector may, by written notice served on a group employer, vary, in relation to the group employer, in such instances and to such extent as he thinks proper, any of the requirements of Subsection (5).

(8) Where any of the requirements of Subsection (5) are varied by a notice under Subsection (7) to a group employer, he must comply with those requirements as so varied.

(9) Where, by reason of a notice given under Subsection (7), a group certificate is not required to be issued in respect of a deduction made by a group employer, the Chief Collector shall apply the provisions of Section 281 as if a group certificate in respect of the deduction had been received by him.

(10) Where the Chief Collector has credited in payment of tax, or made a payment in respect of, an amount shown in a group certificate that is in excess of the amount that the group employer by whom the certificate was issued has deducted from the salary or wages of the employee to whom the certificate was issued in respect of the period specified in the certificate —

- (a) the group employer is liable to pay to the Chief Collector the amount of the excess; and
- (b) the group employer may recover from the employee, as a debt due to him, any amount paid to or recovered by the Chief Collector under this subsection.

(11) If an amount payable to the Chief Collector by a group employer under this section remains unpaid after the time when it becomes payable, an additional amount is payable at the rate of 20% per annum on the amount unpaid computed from that time.

(12) The Chief Collector may in any case, for reasons that he thinks sufficient, remit any additional amount payable under Subsection (11), or any part of that amount.

(13) An employer who contravenes, or fails to comply with, a provision of this section that is applicable to him is guilty of an offence.

Penalty: For failure to comply with any of the requirements of Subsection (5)(a) or with the requirements of that paragraph as varied under Subsection (7), a fine not exceeding K1 000.00 or imprisonment for a term not exceeding six months.

For any other offence, a fine not exceeding K200.00.

**281. Application of deductions.**

(1) An employee shall forward any group certificate issued to him in respect of deductions made, in any year of income, from his salary or wages to the Chief Collector with the return that he is required under Section 224 to furnish in respect of that year of income.

(2) Where—

(a) the Chief Collector receives from an employee a group certificate in respect of deductions made in a year of income from his salary or wages; and

(b) the tax payable by the employee in respect of that year of income has been assessed,

the Chief Collector shall—

(c) if the amount of the deductions shown in the group certificate does not exceed the tax payable by the employee in respect of that year of income—credit that amount in payment of part payment of that tax; or

(d) if that amount exceeds the tax—

(i) credit so much of that amount as is required in payment of the tax and any other tax payable by the employee; and

(ii) pay to the employee an amount equal to any excess; or

(e) if he is satisfied that there is no tax payable by the employee—pay to the employee an amount equal to that amount.

(3) If the amount credited by the Chief Collector under Subsection (2) is less than the amount of tax payable by the employee, the Chief Collector may credit in payment or part payment of the tax an amount equal to the amount of any deductions shown in any other group certificate received by him from the employee, if he is satisfied that—

(a) it is desirable to do so by reason of special circumstances; and

(b) the amounts of the deductions, not so credited, that have been, or will have been, made from the salary or wages of the employee before the close of the year of income to which the other group certificate relates will be sufficient to pay the tax payable by the employee in respect of that year of income.

(4) If the amount credited by the Chief Collector under Subsection (2) or (3) in respect of an employee is less than the amount of the tax payable by him—

(a) the Chief Collector shall apply the amount so credited, so far as it extends, in payment of such tax payable by the employee as the Chief Collector determines; and

(b) the employee is liable, or continues to be liable, as the case may be, to pay the remainder of the tax payable by him on the date or dates specified in the notice or notices of assessment.

(5) Where under Subsection (4)(a) an amount is credited in payment of tax payable by an employee, the amount shall be deemed to have been paid by the employee in satisfaction, to the extent referred to in that subsection, of the tax, and not otherwise.

(6) Subject to Subsection (7), where under Subsection (3) the Chief Collector credits in payment or part payment of any tax payable by the employee part only of the amount of any deductions shown in a group certificate, he shall issue to the employee an interim receipt showing an amount equal to so much of the amount shown in the certificate as is not so credited.

(7) Where the amount that would, apart from this section, be shown in an interim receipt issued under Subsection (6) is less than K2.00 the Chief Collector shall, instead of issuing an interim receipt, pay the amount to the employee.

(8) The Chief Collector shall—

- (a) deface all group certificates in respect of which he credits an amount, makes a payment or issues an interim receipt; and
- (b) retain them for such period as he thinks proper, after which he shall cause them to be destroyed.

(9) If the Chief Collector has reason to believe that a group certificate received by him for the purpose of this section is incorrect in any particular, he—

- (a) may retain it for such period as he thinks proper; and
- (b) shall not deal with it as required by this section until he is satisfied as to its correctness.

#### 282. Minor differences between tax and deductions.

(1) In this section, "the available deductions" means the amount of the deductions specified in a group certificate referred to in Subsection (2).

(2) Notwithstanding anything in this Act, where—

- (a) a person has, in accordance with Section 281, forwarded to the Chief Collector a group certificate issued to him in respect of deductions made in a year from his salary or wages; and
- (b) the difference between the available deductions and the income tax that would, but for this subsection, be payable by him in respect of the taxable income derived by him in that year is not more than K0.20,

the income tax payable by him in respect of that taxable income is an amount equal to the available deductions.

(3) Subsection (2) does not apply—

- (a) in relation to a person who is liable to pay provisional tax in respect of his income of the year immediately succeeding the year referred to in that subsection; or
- (b) in any case in which the amount of income tax that would, but for this section, be payable is K1.00 and the available deductions exceed K1.00.

#### 283. Interim receipts.

(1) Subject to this Division, the provisions of this Division apply in relation to an interim receipt as if it were a group certificate issued to the employee under this Division for an amount of deductions—

- (a) equal to the amount for which the receipt is issued; and
- (b) made from the salary or wages of the employee in the year of income specified in the receipt.

(2) An interim receipt is not liable to stamp duty or other tax under any law.

(3) A person who sells or otherwise disposes of, or purchases or otherwise acquires, an interim receipt, otherwise than in accordance with this Division or with the consent of the Chief Collector, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

**284. Stolen, etc., certificates.**

(1) If the Chief Collector is satisfied—

- (a) that a group certificate has been stolen, lost or destroyed; and
- (b) as to the amount of the deductions shown in the certificate,

the Chief Collector shall apply Section 281 in the same manner as if the certificate had been received by the Chief Collector.

(2) Where the Chief Collector has applied Subsection (1) in respect of a group certificate, a person is not entitled to receive further benefit on production of the certificate, and a person who subsequently has the certificate in his possession must forward it, without delay, to the Chief Collector, together with a statement of the circumstances of his possession.

Penalty: A fine not exceeding K40.00.

**285. Powers of Chief Collector relating to certificates.**

(1) The Chief Collector, or an officer authorized for the purpose by the Chief Collector, may require a person to deliver to him a group certificate in his possession, and the person must deliver the certificate to the Chief Collector or authorized person.

Penalty: A fine not exceeding K100.00.

(2) If the Chief Collector suspects that a group certificate received by him has been obtained in a manner not authorized by this Division, he—

- (a) may retain the certificate for such period as he thinks proper; and
- (b) shall not grant a benefit in respect of the certificate until he is satisfied as to the identity of the person who is entitled to receive the benefit.

**286. Recovery of amounts not deducted.**

(1) Where an employer fails to make a deduction, he is liable, in addition to any penalty for which he is liable, to pay to the Chief Collector the amount that he has failed to deduct.

(2) The Chief Collector may recover, in accordance with Section 289, any amount that under Subsection (1) an employer is liable to pay, or the court before which any proceedings for an offence are taken may order the employer to pay the amount to the Chief Collector.

(3) The Chief Collector shall apply any amount recovered in accordance with Subsection (2) by him, or paid to him, in or towards payment of the tax payable by the employee.

(4) The employer may recover from the employee any amount that he has failed to deduct and that—

- (a) he has paid to the Chief Collector; or
- (b) has been recovered from him, under Subsection (1), by the Chief Collector.

**287. Failure to account for deductions.**

(1) Where an employer makes—

- (a) a deduction for the purposes of this Division, or purporting to be for those purposes, from the salary or wages paid to an employee; and

- (b) fails to deal with the amount so deducted in the manner required by this Division,

he is liable, and where his property has become vested in, or where the control of his property has passed to, a trustee, the trustee is liable, to pay the amount to the Chief Collector.

(2) Notwithstanding any other Act, any amount payable to the Chief Collector by a trustee under this section has priority over all other debts, whether preferential, secured or unsecured.

#### 288. Failure to issue group certificate.

- (1) Where the Chief Collector is satisfied that an employer—

- (a) has made deductions from the salary or wages of an employee; and
- (b) has failed to issue a group certificate in respect of the deductions to the employee within the period prescribed by this Division,

he may—

- (c) apply in satisfaction of any tax payable by the employee an amount equal to the amount of the deductions; or
- (d) issue an interim receipt or make a payment in respect of the deductions,

in the same manner as if a group certificate in respect of the deductions had been received by the Chief Collector.

(2) Where the Chief Collector has applied this section in relation to any deduction a person is not entitled to receive any further benefit on production of a group certificate in respect of them.

#### 289. Recovery of deductions, etc., by Chief Collector.

(1) Any amount payable to the Chief Collector under this Division is a debt due to the State and payable to the Chief Collector, and may be recovered in any court of competent jurisdiction by the Chief Collector suing in his official name.

(2) In an action against a person for the recovery of an amount payable to the Chief Collector under this Division, a written certificate signed by the Chief Collector, an Assistant Collector or a prescribed delegate of the Chief Collector, certifying that—

- (a) the person named in the certificate is, or was on the date specified in the certificate, a group employer; and
- (b) the sum specified in the certificate was, at the date of the certificate, due by that person to the State in respect of amounts payable to the Chief Collector under this Division,

is evidence of the matters stated in the certificate.

#### 290. Arrangements with authorities of other countries.

(1) The Chief Collector may enter into an arrangement with an authority in Papua New Guinea or the government of any other country, or with a prescribed organization, providing for deductions to be made from the salary or wages of persons who are become employed by that government through that authority, or by that organization.

(2) A person who is or becomes included in a class of persons in relation to whom an arrangement under Subsection (1) is in force must—

(a) unless he has already done so—within 30 days after—

(i) he became or becomes included in that class of persons; or

(ii) the publication of a notice by the Chief Collector in the National Gazette that such an arrangement is in force in relation to that class of persons,

whichever is the later, authorize, by writing under his hand, his employer to make deductions from his salary or wages at the rates prescribed for the purposes of this Division; and

(b) keep his employer so authorized.

Penalty: A fine not exceeding K40.00.

(3) The amount of a deduction made under an authority given under Subsection (2) shall be paid to the Chief Collector, and the Chief Collector shall apply the provisions of Section 281 as if a group certificate in respect of the deduction had been received by him.

#### 291. Payments to and from the Consolidated Revenue Fund.

(1) All money received by the Chief Collector under this Division shall be paid into the Consolidated Revenue Fund.

(2) Any amount that the Chief Collector is liable to pay under this Division is payable out of the Consolidated Revenue Fund which is, to the necessary extent, appropriated accordingly.

#### 292. Offences in relation to tax deductions, etc.

A person who—

(a) presents a document under the hand of the Chief Collector for the purpose of obtaining a credit with respect to, or a payment of, the amount of a deduction made from the salary or wages of a person other than the person named in the document; or

(b) presents a document under the hand of the Chief Collector and falsely pretends to be the person named in it for the purpose of obtaining a credit or payment under this Division; or

(c) endeavours to obtain for his own advantage or benefit a credit with respect to, or a payment of, the amount of a deduction made from the salary or wages of another person; or

(d) presents, for the purpose of obtaining a credit, payment or other benefit, a group certificate, or a document purporting to be a group certificate, that is not a group certificate duly issued to him in respect of the amount shown in the certificate; or

(e) makes, for the purposes of any of the regulations prescribing matters in relation to this Division, a declaration that is false or misleading in any particular,

is guilty of an offence.

Penalty: A fine of not less than K4.00 and not more than K1 000.00 or imprisonment for a term not exceeding six months.

**293. Joinder of charges under Division 2.**

(1) Charges against the same person for any number of offences against this Division may be joined in one complaint if the charges—

- (a) are founded on the same facts; or
- (b) form, or are part of, a series of offences of the same or a similar character.

(2) Where more than one charge is included, under Subsection (1), in the same complaint, particulars of each offence charged shall be set out in a separate paragraph.

(3) All charges joined under Subsection (1) shall be tried together unless the court dealing with the matter thinks it just that any charge should be tried separately, and makes an order to that effect.

(4) If a person is found guilty of more than one offence, the court that convicts him may, if it thinks fit, impose one penalty in respect of all offences of which he has been found guilty, but that penalty shall not exceed the sum of the maximum penalties that could be inflicted if penalties were imposed for each offence separately.

**294. Offences by partners.**

Notwithstanding anything in this Division, a member of a partnership shall not be punished for a contravention of a provision of this Division for which another member of the partnership has already been punished.

**295. Time for prosecutions.**

A prosecution for an offence against this Division may be commenced at any time.

*Division 3.—Provisional Tax.***296. Interpretation of Division 3.**

In this Division, unless the contrary intention appears—

“estimated taxable income”, in relation to a year of income, means the amount of the estimated taxable income of the taxpayer for that year of income as shown in a statement furnished to the Chief Collector under Section 300;

“provisional income”, in relation to a year of income, means—

- (a) an amount equal to the taxable income of the taxpayer for the year immediately preceding that year of income; or
- (b) where the taxpayer commenced, during the year immediately preceding that year of income, to derive income from any source—such amount as the Chief Collector estimates would have been the taxable income for that preceding year if the taxpayer had commenced, at the beginning of that year, to derive income from that source;

“taxpayer” means a taxpayer who is liable under Section 297 to pay provisional tax.

**297. Liability to provisional tax.**

(1) In this section, “taxpayer to whom this section applies”, in relation to the fiscal year for which any income tax is levied, means—

- (a) a person (other than a company); or
- (b) a company in the capacity of a trustee,

who or which derives assessable income, other than salary or wages, during the fiscal year.

(2) For the purpose of enabling the income tax that will be payable by taxpayers to whom this section applies to be collected during the fiscal year for which the income tax is levied, a taxpayer to whom this section applies is liable to pay provisional tax in accordance with this Division in respect of income of the year of income.

(3) Where—

- (a) a percentage of an amount paid or payable to a person in respect of the carriage by ship of passengers, live stock, mails or goods is, under Division III.16, deemed to be taxable income derived in the country by him; and
- (b) the tax in respect of that taxable income has been paid during the year of income in which the amount was paid or became payable, or the Chief Collector is satisfied that the tax will be so paid; and
- (c) the person has not, during that year of income, derived any taxable income other than amounts deemed to be taxable income under that Division,

he is not liable to pay provisional tax in respect of his income of the year of income after that year of income.

#### 298. Amount of provisional tax.

(1) Subject to this Division, the amount of provisional tax payable by a taxpayer in respect of the income of a year of income is—

- (a) where his provisional income is equal to his taxable income for the year immediately preceding that year of income—an amount equal to the income tax assessed in respect of the taxable income of that preceding year; and
- (b) in any other case—an amount equal to the income tax that would have been payable in respect of the taxable income of that preceding year if that taxable income had been equal to the provisional income.

(2) Where the assessable income of the taxpayer for the year of income immediately preceding a year of income included salary or wages, the provisional tax payable in respect of the income of that last-mentioned year of income is such part of the provisional tax otherwise payable in accordance with Subsection (1) as the Chief Collector determines.

(3) Where the rates of income tax declared by Act for a fiscal year are higher or lower than the rates declared for the immediately preceding fiscal year, the provisional tax otherwise payable in respect of the income to which those first-mentioned rates are applicable shall be increased or decreased, as the case may be, accordingly.

(4) Where a taxpayer—

- (a) did not lodge a return of income under Part IV. with the Chief Collector in respect of the year immediately preceding the year of income; and
- (b) has, up to 31 March in the year of income, derived assessable income (other than salary or wages) in excess of K312.00,

he shall, not later than 15 April in the year of income, or within such extended time as the Chief Collector allows, furnish to the Chief Collector a statement, in the form provided by the Chief Collector for the purpose, showing—

- (c) the amount of assessable income derived by him up to 31 March in the year of income; and
- (d) the amount of assessable income that he estimates will be derived by him during the remainder of the year of income,

together with such other information as is specified in the form.

(5) The amount of provisional tax payable by a taxpayer to whom Subsection (4) applies is the amount that the Chief Collector estimates, from the statement furnished under that subsection or from any other information in his possession, will be the income tax payable by the taxpayer in respect of the income (other than salary or wages) of the year of income.

(6) All amounts of provisional tax shall be calculated to the nearest kina.

#### 299. Due date for provisional tax.

(1) The amount of provisional tax payable by a taxpayer in respect of the income of a year of income —

- (a) may be notified on the notice of assessment of the income tax (other than tax payable under Division III.7) payable by him in respect of the income of the year immediately preceding that year of income, in which case it is due and payable on the date specified in the notice as the date on which tax is due and payable; or
- (b) may be specified in a notice served by the Chief Collector on the taxpayer, in which case it is, subject to Subsection (2), due and payable on the date specified in the notice.

(2) The date specified in a notice under Subsection (1)(b) shall be a date not less than 30 days after the service of the notice.

(3) Where, under Subsection (1), the due date for payment of provisional tax in respect of income of a year of income would be a date before 31 March in that year, the provisional tax is due and payable on that last-mentioned date.

#### 300. Provisional tax on estimated income.

(1) A taxpayer who receives a notice of assessment on which is notified the amount of provisional tax payable in respect of the income of a year of income may, not later than—

- (a) the due date for the payment of the tax notified by the notice; or
- (b) 31 March in that year of income or, in the case of an accounting period, the last day of the ninth month of the accounting period,

whichever is the later—

(c) make an estimate of—

(i) the amount of his taxable income for the whole of the year of income; and

(ii) the respective amounts of—

(A) salary or wages; and

(B) income other than salary or wages,

comprised in the estimated taxable income; and

(iii) the amount of the deductions that have been, and will be, made from his salary or wages during that year of income in accordance with Section 277; and

(d) furnish to the Chief Collector a statement showing—

(i) the amounts so estimated; and

(ii) the amount of provisional tax payable in accordance with Subsection (2).

(2) Where, in relation to a year of income, a taxpayer duly furnishes to the Chief Collector a statement under Subsection (1), the amount of provisional tax payable by him in respect of the income of that year of income is, subject to Subsection (4), an amount ascertained—

(a) by calculating the amount of tax that would be payable in respect of the income of the year of income if the taxable income of that year—

(i) were an amount equal to the estimated taxable income; and

(ii) consisted of the amounts of salary or wages, and of income other than salary or wages, comprised in the estimated taxable income; and

(b) by deducting from the amount so calculated the estimated amount of deductions under Section 277 as shown in the statement.

(3) Where provisional tax is payable in accordance with Subsection (2), it is, notwithstanding Section 299, due and payable on the date that is the date not later than which a taxpayer is permitted to furnish a statement under Subsection (1).

(4) Where the Chief Collector has reason to believe that the taxable income that will be, or that has been, derived by a taxpayer in a year of income is greater than the estimated taxable income, the Chief Collector may—

(a) subject to Subsections (5) and (6), estimate the respective amounts that, in his opinion, should have been the amounts estimated by the taxpayer under Subsection (1) in respect of the year of income; and

(b) calculate the amounts of provisional tax that would be payable if the amount so estimated had been shown in a statement duly furnished by the taxpayer under Subsection (1); and

(c) serve on the taxpayer a written notice specifying the amount of provisional tax so calculated,

and the amount of provisional tax so specified is the amount of provisional tax payable by the taxpayer.

(5) The amount estimated under Subsection (4) by the Chief Collector as the amount of the taxable income of the taxpayer shall not be greater than the taxable income of the taxpayer for the year immediately preceding the year of income.

(6) The amount estimated under Subsection (4) by the Chief Collector as the amount of—

(a) salary or wages; or

(b) income other than salary or wages,

shall not be greater than the amount of the salary or wages, or the income other than salary or wages, as the case may be, derived by the taxpayer in the year immediately preceding the year of income.

(7) A notice under Subsection (4) shall—

(a) state the amount of any additional provisional tax that becomes payable by reason of the operation of that subsection; and

(b) specify a date as the due date for the payment of that additional provisional tax.

(8) The date specified in a notice under Subsection (7) shall be a date not less than 14 days after the date of service of the notice.

(9) The amount of additional provisional tax stated in a notice under Subsection (7) notwithstanding Section 299, due and payable on that date.

### 301. Underestimate of income.

(1) Where, in respect of a year of income, the estimated taxable income is less than 80% of the provisional income and is also less than 80% of the taxable income, the taxpayer is liable to pay to the Chief Collector, by way of penalty, an amount equal to 10% of—

- (a) the amount by which the amount of tax that would be payable in respect of a taxable income equal to 80% of his taxable income exceeds the amount of provisional tax payable in respect of the estimated taxable income; or
- (b) the amount by which the amount of tax that would be payable in respect of a taxable income equal to 80% of his taxable income for the year immediately preceding the year of income exceeds the amount of provisional tax payable in respect of the estimated taxable income,

whichever is the less.

(2) In the application of Subsection (1)—

- (a) the reference in Subsection (1)(a) to the amount of provisional tax payable in respect of the estimated taxable income shall be read, in the case of a taxpayer whose income for the year of income includes salary or wages, as a reference to an amount equal to the sum of —

- (i) that provisional tax; and

- (ii) an amount equal to 80% of the amount of the deductions made in accordance with Section 277 from the salary or wages; and

- (b) the reference in Subsection (1)(b) to the amount of provisional tax payable in respect of the estimated taxable income shall be read, in the case of a taxpayer whose income for the year immediately preceding the year of income included salary or wages, as a reference to an amount equal to the sum of—

- (i) that provisional tax; and

- (ii) an amount equal to 80% of the amount of the deductions made in accordance with Section 277 from that salary or wages.

(3) An amount that becomes payable to the Chief Collector under Subsection (1) is a debt due to the State and may be recovered in a court of competent jurisdiction by the Chief Collector suing in his official name.

(4) In an action against a person for the recovery of an amount referred to in Subsection (3), a written certificate, signed by the Chief Collector or an Assistant Collector, certifying that the sum specified in the certificate was, at the date of the certificate, due to the State under this section by the person is evidence of the matters stated in the certificate.

(5) Where the Chief Collector is satisfied that a penalty under this section became payable by a taxpayer in relation to provisional tax for a year of income by reason of circumstances, affecting his taxable income of that year, of which he was not aware at the prescribed date, the Chief Collector may remit the penalty or a part of the penalty.

(6) In Subsection (5), "the prescribed date", in relation to a taxpayer, means the last day on which he was permitted by Section 300 to furnish a statement of estimated taxable income.

**302. Reduction of provisional tax.**

Where, by reason of Division III.23 the amount of income tax that a person will be liable to pay in respect of the income of a year of income is likely to be less than the amount of provisional tax that, but for this section, would be payable in respect of that income, the Chief Collector may reduce the provisional tax by such amount as he thinks reasonable in the circumstances.

**303. Credit for provisional tax.**

Where a taxpayer has paid provisional tax in respect of income of a year of income, and—

- (a) an assessment of income tax in respect of the income has been made; or
- (b) the Chief Collector is satisfied that no income tax (other than income tax payable under Division III.7) will be payable in respect of the income,

the Chief Collector shall credit the amount of the provisional tax in payment successively of—

- (c) such income tax (if any) as is payable by the taxpayer in respect of the income (not being income tax payable under Division III.7); and
- (d) any provisional tax notified to the taxpayer in respect of income of the year after that year of income; and
- (e) any other income tax payable by the taxpayer,

and is liable to refund to the taxpayer the amount of the provisional tax not so credited.

**304. Notification of provisional tax where income tax assessed.**

Notwithstanding anything in this Division, provisional tax shall not be notified to a taxpayer in respect of the income of any year of income where the Chief Collector has made an assessment in respect of the income.

**305. Alteration of notice of provisional tax.**

(1) Where an alteration of the amount of provisional tax notified as payable by a taxpayer is, in the opinion of the Chief Collector, necessary, by reason of the amendment of an assessment of income tax or otherwise, the Chief Collector—

- (a) may make the necessary alteration; and
- (b) shall notify the taxpayer, in writing, of the altered amount.

(2) On the service of a notice under Subsection (1)—

- (a) if the amount of provisional tax payable is increased, the additional amount becomes due and payable on the date specified, subject to Subsection (3), in the notice; and
- (b) if the amount of provisional tax payable is reduced, the Chief Collector shall—
  - (i) credit any provisional tax overpaid in payment of any income tax payable by the taxpayer; and
  - (ii) refund to the taxpayer any amount of provisional tax overpaid not so credited.

(3) The date specified in a notice under Subsection (2)(a) shall be a date not less than 30 days after service of the notice.

**306. Evidence of provisional tax.**

The production of—

- (a) a notice of assessment or other notice on which an amount of provisional tax payable by any person is specified; or
- (b) a document under the hand of the Chief Collector or an Assistant Collector purporting to be a copy of any such notice of assessment or other notice,

is evidence that the amount of provisional tax, and all particulars relating to that amount are correct.

*Division 4.—Collection of Dividend (Withholding) Tax.*

**307. Object of Division 4.**

The object of this Division is to facilitate the collection of dividend (withholding) tax.

**308. Interpretation of Division 4.**

(1) In this Division, unless the contrary intention appears, "dividend" includes a part of a dividend.

(2) In relation to distributions by a liquidator of a company or by any other person that, by virtue of Section 41, are deemed to be dividends paid by the company, a reference in this Division to a company shall be read as including a reference to the liquidator or the other person, as the case may be.

**309. Deductions from dividends.**

(1) In this section, "money" includes postal orders, money orders, bills of exchange, promissory notes, drafts and letters of credit.

(2) Where—

- (a) the holder, or if there is more than one holder any holder, of a share or stock in a company that is a resident is shown, in relation to the share or stock, in the register of members of the company as having an address outside the country; or
- (b) the holder of a share or stock in a company that is a resident has authorized or directed the company to pay dividends in respect of the share or stock to himself, or to any other person, at a place outside the country,

then, subject to this section and to Section 310, the company must, before or at the time when a dividend of the company is paid by it in respect of the share or stock, make a deduction from the dividend of an amount determined in accordance with the regulations.

(3) Subject to this section and to Section 310, where—

- (a) a dividend of a company that is a resident is paid to the State, an authority of the Government or a person in the country (in this subsection referred to as "the payee"); and
- (b) another person who is a non-resident is entitled—

- (i) to receive the dividend or a part of the dividend, or the amount of the dividend or of a part of the dividend, from the payee; or

- (ii) to have the dividend or a part of the dividend, or the amount of the dividend or of a part of the dividend, credited to him by the payee, or otherwise dealt with by the payee on his behalf or as he directs.

the payee shall, except as provided by the regulations, promptly make a deduction from the dividend, or the part of the dividend, of an amount determined in accordance with the regulations.

(4) A person is not required to make a deduction from a dividend under Subsection (3)—

(a) if dividend (withholding) tax is not payable in respect of the dividend; or

(b) if—

(i) an amount has, or amounts have, previously been deducted from the dividend under this section; and

(ii) that amount, or the sum of those amounts, is not less than the dividend (withholding) tax payable in respect of the dividend.

(5) Notwithstanding anything in the regulations made for the purposes of this section, a person is not required to deduct under this section from a dividend an amount that exceeds the dividend (withholding) tax payable in respect of the dividend.

(6) This section does not apply in relation to a dividend that is not paid in money or is not credited to a person.

(7) A person, other than the State or an authority of the Government, who does not make a deduction from a dividend as required by this section is guilty of an offence.

Penalty: A fine not exceeding K200.00.

### 310. Exemptions and variations.

For the purpose of meeting the special circumstances of a case or of the cases included in a class of cases, the Chief Collector may, by written notice to a person—

(a) exempt him from an obligation imposed on him by Section 309; or

(b) vary the amount to be deducted under that section by him from a dividend, or from the dividends included in a class of dividends.

### 311. Payment to Chief Collector.

(1) Where—

(a) a person has made a deduction from a dividend; and

(b) the deduction was made, or purports to have been made, under Section 309,

he must—

(c) within 21 days after the end of the month in which the deduction was made, pay to the Chief Collector an amount equal to the deduction; and

(d) before the expiration of two months after the end of the financial year in which the deduction was made, or within such further time as the Chief Collector allows, furnish to the Chief Collector a statement with respect to the deduction, in a form authorized by the Chief Collector, signed by him or on his behalf.

(2) A person, other than the State or an authority of the Government, who fails to comply with Subsection (1)(c) is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding six months.

(3) A person, other than the State or an authority of the Government, who fails to comply with Subsection (1)(d) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(4) Where an amount payable by a person under this section to the Chief Collector remains unpaid after the expiration of the period within which it is required by this section to be paid—

(a) it continues to be payable by the person to the Chief Collector; and

(b) in addition to any other penalty to which the person may be liable, an additional amount is payable by him to the Chief Collector at the rate of 20% per annum on the amount unpaid, computed from the expiration of that period.

(5) The Chief Collector may, in any case, for reasons that he thinks sufficient, remit any additional amount payable under Subsection (4), or any part of such an additional amount.

### 312. Payment of dividends not in money.

(1) Where—

(a) a dividend is to be paid by a company to a person; and

(b) the company would, but for Section 309(6), be required to make a deduction under that section from the dividend,

the company must not pay, credit or distribute the dividend to any person until an amount equal to the amount that, but for that subsection, would have been required to be deducted has been paid to the Chief Collector in respect of the dividend.

(2) Where—

(a) a dividend is paid to the State, an authority of the Government or a person in the country (in this section referred to as "the payee"); and

(b) the payee would, but for Section 309(6), be required to make a deduction under that section from the dividend or a part of the dividend,

the payee must not pay, credit or distribute the dividend, or the part of the dividend, to any person until an amount equal to the amount that, but for that subsection, would have been required to be deducted has been paid to the Chief Collector in respect of the dividend.

(3) A person who has, for the purposes of this section, paid an amount to the Chief Collector in respect of a dividend may, in writing, request the Chief Collector to inform—

(a) the company by which the dividend is to be paid; or

(b) any person to whom the dividend has been paid,

that the amount has been paid in respect of the dividend.

(4) On receipt of a request under Subsection (3), the Chief Collector shall, in writing, inform the other person accordingly.

(5) A person, other than the State or an authority of the Government, who fails to comply with a provision of this section is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**313. Failure to make deductions, etc.**

(1) Where a person has failed to make a deduction, in accordance with Section 309, from a dividend, or has contravened Section 312(1) or (2) in relation to a dividend, he is liable, in addition to any other penalty to which he may be liable, to pay to the Chief Collector—

- (a) an amount equal to any unpaid dividend (withholding) tax payable in respect of the dividend; and
- (b) an amount equal to any unpaid tax payable under Section 181(3) in respect of the dividend (withholding) tax.

(2) Where a person has paid to the Chief Collector an amount payable under Subsection (1)(a), he may recover an amount equal to that amount from the person liable to pay the dividend (withholding) tax to which that amount relates.

(3) Where an amount payable under Subsection (1) has been paid to the Chief Collector, the person liable to pay the dividend (withholding) tax to which the amount relates is entitled to a credit equal to that amount.

(4) Where—

- (a) a person has paid to the Chief Collector an amount payable under Subsection (1)(b); and
- (b) the additional tax, or any part of the additional tax, to which the amount relates is remitted by the Chief Collector under Section 181(4),

then—

- (c) any credit under Subsection (3) that relates to that amount shall be reduced by an amount equal to the additional tax that is remitted; and
- (d) the Chief Collector shall pay to the person who paid that amount to the Chief Collector an amount equal to the additional tax that is remitted.

**314. Recovery of amounts due under Division 4.**

(1) An amount payable to the Chief Collector under this Division by a person is a debt due to the State and payable to the Chief Collector, and—

- (a) the amount may be recovered in a court of competent jurisdiction by the Chief Collector suing in his official name; or
- (b) a court before which proceedings are taken against the person for an offence against this Division may order him to pay the amount to the Chief Collector.

(2) Section 338 applies in proceedings for the recovery of an amount payable to the Chief Collector under this Division in the same way as it applies in proceedings for the recovery of a pecuniary penalty under this Act.

(3) Section 344 applies to an order for the payment of a sum of money to the Chief Collector made under Subsection (1)(b) in the same way as it applies to an order for the payment of a sum of money to the Chief Collector made under Part VII.

**315. Credits in respect of deductions made from dividends.**

(1) A person whose income includes a dividend from which a deduction has been made, or purports to have been made, under Section 309 is entitled to a credit—

- (a) where the whole of the deduction has been borne by him—of an amount equal to the deduction; and

(b) where part only of the deduction has been borne by him—of an amount equal to that part.

(2) A person whose income includes a dividend in respect of which an amount has been paid to the Chief Collector for the purposes of Section 312 is entitled to a credit—

(a) where the whole of the amount has been met by him—of an amount equal to that amount; and

(b) where part only of the amount has been met by him—of an amount equal to that part.

### 316. Application of credits.

(1) Subject to Subsection (2), the amount of any credit to which a person is entitled under this Division is a debt due and payable to him by the Chief Collector on behalf of the State.

(2) The Chief Collector may apply the whole or any part of the credit in total or partial discharge of any liability to the State of the person entitled to it arising under or by virtue of this Act or any other Act of which the Chief Collector has the general administration.

(3) Where, under Subsection (2), the Chief Collector has applied an amount of credit in discharge of a liability of a person to the State, the person shall be deemed to have paid the amount so applied—

(a) for the purposes for which it has been so applied; and

(b) at the time at which it has been so applied, or at such earlier time as the Chief Collector determines.

(4) Where the amount, or the sum of the amounts, applied or paid by the Chief Collector as a credit to which a person is entitled under this Division exceeds the amount of the credit to which the person is so entitled, the Chief Collector may recover the amount of the excess as if it were income tax due and payable by the person.

### 317. Liability of trustee to pay deductions.

(1) Where—

(a) an amount deducted from a dividend is payable to the Chief Collector under this Division by a person; and

(b) the property of that person has become vested in, or the control of the property of that person has passed to, a trustee,

the trustee is liable to pay the amount to the Chief Collector.

(2) Notwithstanding anything in any other Act, an amount payable to the Chief Collector by a trustee under this section has priority over all other debts (other than debts payable to the Chief Collector), whether preferential, secured or unsecured.

(3) Where a trustee, being the trustee of the estate of a bankrupt or the liquidator of a company that is being wound up, is liable to pay an amount to the Chief Collector under this section, Subsection (2) does not operate so as to make the amount payable in priority to any costs, charges or expenses of the administration of the estate or of the winding-up of the company (including costs of a creditor or other person on whose petition the sequestration order or the winding-up order (if any) was made and the remuneration of the

trustee) that are lawfully payable out of the assets of the estate or of the company except where, in the case of the winding-up of a company, any creditor—

- (a) is entitled to payment of a debt by the liquidator in priority to all or any of those costs, charges and expenses; and
- (b) has not waived his priority.

**318. Discharge from liability for deductions.**

Where a person has made a deduction from a dividend, being a deduction made, or purporting to have been made, under Section 309, he is, by force of this section, discharged from all liability to pay or account for the deduction to any person other than the Chief Collector.

**319. Payments to and from the Consolidated Revenue Fund.**

(1) All money received by the Chief Collector under this Division shall be paid into the Consolidated Revenue Fund.

(2) Any amount that the Chief Collector is liable to pay under this Division is payable out of the Consolidated Revenue Fund, which is, to the necessary extent, appropriated accordingly.

**320. Joinder of charges under Division 4.**

(1) Charges against the same person for any number of offences against this Division may be joined in one complaint if the charges—

- (a) are founded on the same facts; or
- (b) form, or are part of, a series of offences of the same or a similar character.

(2) Where more than one charge is included, under Subsection (1), in the same complaint, particulars of each offence charged shall be set out in a separate paragraph.

(3) All charges joined under Subsection (1) shall be tried together unless the court dealing with the matter thinks it just that any charge should be tried separately, and makes an order to that effect.

(4) If a person is found guilty of more than one offence, the court that convicts him may, if it thinks fit, impose one penalty in respect of all offences of which he has been found guilty, but that penalty shall not exceed the sum of the maximum penalties that could be inflicted if penalties were imposed for each offence separately.

**321. Time for prosecutions.**

A prosecution for an offence against this Division may be commenced at any time.

**PART VII.—PENAL PROVISIONS AND PROSECUTIONS.**

**322. Interpretation of Part VII.**

In this Part, "taxation prosecution" means a proceeding instituted under Section 333, in the name of the Chief Collector, for the recovery of a pecuniary penalty under this Act.

**323. Failure to furnish returns, etc.**

(1) A person who fails duly to furnish a return or information, or to comply with a requirement of the Chief Collector, as and when required by this Act or the regulations, or by the Chief Collector, is guilty of an offence.

Penalty: A fine of not less than K4.00 and not more than K200.00.

(2) A prosecution for an offence against this section may be commenced at any time.

**324. Refusal to give evidence.**

A person who, without just cause or excuse (proof of which is on him), fails—

(a) to duly attend and give evidence when required by the Chief Collector or an officer duly authorized by him; or

(b) to truly and fully answer any questions put to him by, or to produce any book or paper required of him by, the Chief Collector or any such officer,

is guilty of an offence.

Penalty: A fine of not less than K4.00 and not more than K200.00.

**325. Order to comply with requirement.**

(1) On the conviction of—

(a) any person for an offence against Section 323 or 324; or

(b) a group employer for an offence against Section 280(13),

the court that convicts him may order him to do, within a time specified in the order, the act that he has failed, or refused or neglected to do.

(2) A person who does not duly comply with an order under Subsection (1) is guilty of an offence.

Penalty: A fine of not less than K20.00 and not more than K1 000.00.

(3) An order under Subsection (1) may be—

(a) made orally by the court to the defendant; or

(b) served in the manner prescribed.

**326. Additional tax in certain cases.**

(1) Notwithstanding anything in Section 323, 324 or 325, a taxpayer who fails to furnish, as and when required by this Act or the regulations, or by the Chief Collector, a return or any information in relation to a matter affecting his liability to tax or the amount of the tax, is liable to pay as additional tax or penalty—

(a) an amount equal to the tax assessable to him; or

(b) the amount of K50.00 for each complete month or part of a month calculated in respect of the period—

(i) commencing on the last day allowed for furnishing the return or information; and

(ii) ending on the day on which the return or information is furnished,

whichever is the greater.

(2) A taxpayer who—

(a) omits from his return any assessable income; or

- (b) includes in his return as a deduction for expenditure incurred by him an amount in excess of the expenditure actually incurred by him,

is liable to pay as additional tax or penalty—

- (c) an amount equal to double the difference between the tax properly payable by him and the tax that would be payable if it were assessed on the basis of the return furnished by him; or

- (d) the amount of K50.00 for each complete month or part of a month calculated in respect of the period—

(i) commencing on the last day allowed for furnishing the return; and

(ii) ending on the day on which the assessment or notice in respect of the omitted income or excessive deduction is made,

whichever is the greater.

(3) The Chief Collector may in any case, for reasons that he thinks sufficient, and either before or after making an assessment or notice, remit the additional tax or penalty, or any part of the tax or penalty.

(4) If in any case in which a taxpayer is liable to pay additional tax or penalty under this section a taxation prosecution is instituted in respect of the same subject-matter, any additional tax or penalty otherwise prescribed by this section is reduced by the amount of the penalty awarded under the prosecution.

### 327. False returns and statements.

- (1) A person who—

(a) makes or delivers a return that is false in any particular; or

(b) makes a false answer, whether oral or written, to a question duly put to him by the Chief Collector or an officer duly authorized by him,

is guilty of an offence.

Penalty: A fine of not less than K4.00 and not more than K200.00 and, in addition, the court may order the person to pay to the Chief Collector a sum not exceeding double the amount of income tax or dividend (withholding) tax that would have been avoided if the return or answer had been accepted as correct.

(2) In a prosecution for an offence against this section of a person who has not previously been convicted of an offence against this Act, or against a law of Papua New Guinea or Australia relating to income tax or dividend (withholding) tax, it is a defence if the defendant proves—

(a) that the return or answer to which the prosecution relates was prepared or made by him personally; and

(b) that the false return or false answer was made through ignorance or inadvertence.

(3) A prosecution for an offence against Subsection (1) may be commenced at any time.

### 328. Failure to sign, etc., certificate.

- (1) A person who is required by this Act to sign an agent's certificate and who—

(a) fails to do so; or

(b) signs an agent's certificate that is false in any particular, is guilty of an offence.

Penalty: A fine of not less than K2.00 and not more than K100.00.

(2) A prosecution for an offence against Subsection (1) may be commenced at any time within six years after the commission of the offence.

### 329. False declarations.

A person who, in a declaration made under, or authorized or prescribed by, this Act or the regulations, knowingly and wilfully declares to any matter or thing that is false is guilty of an offence.

Penalty: Imprisonment for a term not exceeding four years.

### 330. Understating income.

(1) Where—

(a) a person; or

(b) the public officer, or a director, servant or agent, of a company, on behalf of the company,

knowingly and wilfully understates in a return the amount of any income, or makes in a return a misstatement affecting the liability of any person to income tax or dividend (withholding) tax, or the amount of that tax—

(c) in a case referred to in Paragraph (a)—the person; or

(d) in a case referred to in Paragraph (b)—the company,

is guilty of an offence.

Penalty: A fine of not less than K50.00 and not more than K100.00 and, in addition, the court may order the person or company to pay to the Chief Collector a sum not exceeding double the amount of tax that would have been avoided if the statement in the return had been accepted as correct.

(2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

### 331. Fraudulent avoidance of tax.

(1) Where—

(a) a person; or

(b) the public officer, or a director, servant or agent, of a company, on behalf of the company,

by a wilful act, default or neglect, or by any fraud, art or contrivance, avoids or attempts to avoid assessment or taxation—

(c) in a case to which Paragraph (a) applies—the person; and

(d) in a case to which Paragraph (b) applies—the company,

is guilty of an offence.

Penalty: A fine of not less than K50.00 and not more than K1 000.00 and, in addition, the court may order the person or company to pay to the Chief Collector a sum not exceeding double the amount of tax that has been avoided or attempted to be avoided.

(2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

### 332. Obstruction.

A person who obstructs or hinders an officer acting in the discharge of his duty under this Act or the regulations is guilty of an offence.

Penalty: A fine of not less than K2.00 and not more than K100.00.

### 333. Taxation prosecutions.

(1) Proceedings for the recovery of a pecuniary penalty under this Act may be instituted in the name of the Chief Collector by action in the National Court.

(2) Where the penalty sought to be recovered does not exceed K1 000.00 or the excess is abandoned, the proceedings may be instituted in the name of the Chief Collector by information in a court of summary jurisdiction.

### 334. Right of trial in National Court.

(1) In a prosecution instituted in a court of summary jurisdiction in which the penalty exceeds K200.00 and the excess is not abandoned, the defendant may, within seven days after the service of process, elect in the prescribed manner to have the case tried in the National Court.

(2) If a defendant makes an election under Subsection (1), the prosecution—

(a) stands removed to the National Court; and

(b) shall be conducted as if it had been originally instituted in the National Court.

### 335. Prosecution in accordance with practice rules.

A taxation prosecution in the National Court may be commenced, prosecuted and proceeded with in accordance with—

(a) any rules of practice established by the Court for proceedings by the State in revenue matters; or

(b) the usual practice and procedure of the Court in civil cases; or

(c) any directions of the Court or a Judge.

### 336. Place where offence committed.

The offence of—

(a) failure duly to furnish any return or information; or

(b) making or delivering a return that is false in any particular, or making a false answer; or

(c) failure to comply with any requirement,

shall be deemed to have been committed—

(d) at the place where—

(i) the return or information was furnished, or should, in accordance with this Act, the regulations or a requirement of the Chief Collector, have been furnished; or

(ii) the answer was made; or

(iii) the requirement should have been complied with,  
as the case may be; or

(e) at the usual or last-known place of business or abode of the defendant, and may be charged as having been committed at either of those places.

### 337. Protection to witnesses.

(1) A witness on behalf of the Chief Collector in a taxation prosecution shall not be compelled to disclose—

- (a) the fact that he received any information; or
- (b) the nature of the information; or
- (c) the name of the person who gave the information.

(2) An officer appearing as a witness in a taxation prosecution shall not be compelled to produce any reports—

- (a) made or received by him confidentially in his official capacity; or
- (b) containing confidential information.

### 338. Averments.

(1) In a taxation prosecution, an averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim is evidence of the matter averred.

(2) This section applies to any matter averred even if—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given; or
- (b) the matter averred is a mixed question of law and fact,

but in a case to which Paragraph (b) applies the averment is evidence of the fact only.

(3) Any evidence given in support or rebuttal of a matter averred shall be considered on its merits, and the credibility and probative value of the evidence shall be neither increased nor decreased by reason of this section.

(4) The preceding provisions of this section do not apply to—

- (a) an averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5) This section does not lessen or affect any burden of proof otherwise falling on the defendant.

### 339. Evidence of authority to institute proceedings.

(1) Where a taxation prosecution has been instituted by an officer in the name of the Chief Collector, the prosecution shall, unless the contrary is proved, be deemed to have been instituted by the authority of the Chief Collector.

(2) The production of a telegram purporting—

- (a) to have been sent by the Chief Collector, and
- (b) to authorize an officer to institute any taxation prosecution, is sufficient evidence of the authority of the officer to institute the prosecution in the name of the Chief Collector.

### 340. Appearance by Chief Collector.

(1) In any action, prosecution or other proceedings in a court by the Chief Collector, he may appear personally or by a lawyer or an officer of the Public Service.

(2) The appearance of an officer and his statement that he appears by authority of the Chief Collector are sufficient evidence of that authority.

### 341. Minimum penalties.

A minimum penalty imposed by this Act shall not be reduced under any power of mitigation that would, but for this section, be possessed by the court.

### 342. Treatment of convicted offenders.

(1) Where a pecuniary penalty under this Act is adjudged to be paid by a convicted person, the court shall—

- (a) commit the offender to prison until the penalty is paid; or
- (b) release the offender on his giving security for the payment of the penalty; or
- (c) exercise for the enforcement and recovery of the penalty any power of distress or execution possessed by the court for the enforcement and recovery of penalties or money adjudged to be paid in any other case.

(2) Where the court makes an order committing an offender to prison under Subsection (1), it may, at any time before he is imprisoned under the order—

- (a) allow him a specified time for payment of the penalty; or
- (b) allow him to pay the penalty by specified instalments.

(3) In a case to which Subsection (2) applies—

- (a) the order committing the offender to prison shall not be executed unless he fails to pay the penalty within the time specified, or fails to pay any instalment at the time when it is payable, as the case may be; and
- (b) if he pays the penalty within that time or pays all the instalments, as the case may be, the order committing the offender to prison shall be deemed to have been discharged; and
- (c) if the offender is imprisoned under the order but, before being so imprisoned, has paid part of the penalty—Section 343 applies in relation to him as if the amount of the penalty were the part of the penalty remaining unpaid immediately before his being so imprisoned.

### 343. Release of offenders.

(1) The officer-in-charge of a prison to which a person has been committed for non-payment of a penalty under this Act shall discharge him—

- (a) on payment to the officer-in-charge of the penalty adjudged; or
- (b) on a certificate by the Chief Collector or an Assistant Collector that the penalty has been paid or released; or

(c) if the penalty adjudged to be paid is not paid or released—according to the following table :—

Amount of penalty.	Period after commencement of imprisonment on the expiration of which defendant is to be discharged.
Not more than K4.00	7 days
More than K4.00 and not more than K10.00	14 days
More than K10.00 and not more than K40.00	1 month
More than K40.00 and not more than K100.00	2 months
More than K100.00 and not more than K200.00	3 months
More than K200.00 and not more than K400.00	6 months
More than K400.00	1 year

(2) Where a person is committed to prison for non-payment of more than one penalty—

- (a) his imprisonment for the period specified in Subsection (1) in respect of the amount of any one of those penalties does not relieve him from liability to imprisonment for the period so specified in respect of the amount of any other of those penalties; and
- (b) the last-mentioned period of imprisonment commences at the expiration of the first-mentioned period of imprisonment.

#### 344. Enforcement of orders for payment.

(1) Where an order for the payment of a sum of money by a person to the Chief Collector is made under this Part by a court of summary jurisdiction, a certificate of the order in the prescribed form and containing the prescribed particulars (which certificate the clerk or other proper officer of the court is required to grant) may, in the prescribed manner and subject to the prescribed conditions, be registered in any court having jurisdiction to entertain civil proceedings to the amount of the order.

(2) From the date of registration—

(a) the certificate—

(i) is a record of the court in which it is registered; and

(ii) has the same force and effect in all respects as a judgement of that court; and

(b) subject to the prescribed conditions, the like proceedings (including proceedings in insolvency) may be taken on the certificate as if the order had been a judgement of that court in favour of the Chief Collector.

(3) Subject to the prescribed conditions, the Chief Collector's costs of registration of the certificate and other proceedings under this section shall be deemed to be payable under the certificate.

#### 345. Continuing liability for tax.

The adjudgement of payment of a penalty under this Act does not relieve a person from liability to assessment and payment of any income tax or dividend (withholding) tax for which he would otherwise be liable.

**346. Costs.**

In a taxation prosecution—

- (a) the court may award costs against any party; and
- (b) the provisions of this Act relating to the recovery of penalties (except provisions for commitment to prison) extend to the recovery of any costs adjudged to be paid.

**PART VIII.—REGISTRATION OF TAX AGENTS.**

**347. Interpretation of Part VIII.**

In this Part, unless the contrary intention appears—

- “application” means an application to the Registrar under this Part;
- “registered tax agent” means a person or partnership who or which is registered as a tax agent under this Part;
- “the Registrar” means the Registrar of Tax Agents referred to in Section 348.

**348. Registrar of Tax Agents.**

For the purposes of this Part, there shall be a Registrar of Tax Agents.

**349. Indemnity.**

Proceedings shall not be brought or maintained against a person who is or has been the Registrar of Tax Agents for any non-feasance or misfeasance in connexion with his duties.

**350. Summoning of witnesses, etc.**

The Registrar has such powers as are prescribed with respect to—

- (a) the taking of evidence; and
- (b) the administration of oaths or affirmations; and
- (c) the summoning of witnesses; and
- (d) the production of documents.

**351. Registration of tax agents.**

(1) A person or partnership desiring to be registered as a tax agent may make application to the Registrar for registration.

(2) An application under this section shall be accompanied by a lodgement fee of K2.00, which the Registrar shall pay to the Chief Collector.

(3) If the applicant satisfies the Registrar that—

- (a) in the case of an individual—the applicant; or
- (b) in the case of a partnership—a member of the partnership specified in the application; or
- (c) in the case of a company—a person employed by the company and specified in the application,

is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters and, that—

- (d) in the case of a partnership—every member of the partnership; or

(e) in the case of a company—every director, and every manager or other administrative officer, of the company,

is over the age of 21 years at the date on which the application is made, and is of good fame, integrity and character, the Registrar shall register the applicant as a tax agent.

(4) Where a partnership or company is registered as a tax agent, the member or person referred to in Subsection (3)(b) or (c) shall be registered by the Registrar as a nominee of the tax agent for the purposes of this Part.

(5) A partnership or a company may, in an application for registration as a tax agent or, if it is already so registered, in an application made for the purpose, request the Registrar to register as additional or substituted nominees of the partnership or company for the purposes of this Part any other members of the partnership or persons employed by the company, and shall pay, in respect of each proposed nominee, a lodgement fee of K2.00, which the Registrar shall pay to the Chief Collector.

(6) If the Registrar is satisfied that a person in respect of whom a request is made under Subsection (5) is a fit and proper person to prepare income tax returns and transact income tax business on behalf of taxpayers, he may register him as an additional or substituted nominee of the tax agent for the purposes of this Part.

(7) A partnership that is registered as a tax agent must notify the Registrar, without delay, of any change in its constitution.

Penalty: A fine not exceeding K20.00.

(8) A company that is registered as a tax agent must notify the Registrar, without delay, if—

- (a) any person who is a nominee of the company for the purposes of this Part ceases to be employed by the company; or
- (b) a person becomes a director, or a manager or other administrative officer, of the company.

Penalty: A fine not exceeding K20.00.

(9) For the purposes of this Part, a person ceases to be a nominee of a partnership or company—

- (a) in the case of a partnership—if he ceases to be a member of the partnership; or
- (b) in the case of a company—if he ceases to be employed by the company; or
- (c) on notification by the partnership or company to the Registrar that it no longer desires him to be its nominee; or
- (d) if the Registrar serves on the partnership or company a notice that in his opinion the person is no longer a fit and proper person to be a nominee of the partnership or company, as the case may be.

(10) Where—

- (a) an application under this section has not been granted, or has been withdrawn; or
- (b) the registration of a person or a partnership as a tax agent, or as the nominee of a tax agent, has ceased,

in circumstances that, in the opinion of the Registrar, justify the repayment of the lodgement fee paid under Subsection (2) or (5), the Registrar shall notify the Chief Collector, in writing, accordingly, and the Chief Collector shall repay the lodgement fee.

**352. Annual notice by tax agents.**

Where—

(a) the Registrar has registered a person as a tax agent; and  
(b) the registration is in force on 1 April after the registration; and  
(c) the person desires that the registration continue in force,  
the person shall, on or before 8 April of that year, or within such further time as the Registrar allows—

- (d) notify the Registrar, in a form approved by the Registrar, that he desires to continue to be registered; and  
(e) furnish to the Registrar such particulars as are specified in the form.

**353. Cancellation of registration.**

(1) A registration as a tax agent remains in force until cancelled in accordance with this Act.

(2) The Registrar may cancel the registration of a tax agent on being satisfied that—

(a) subject to Subsection (6), a return that has been prepared by or on behalf of the tax agent is false in a material particular; or

(b) the tax agent—

(i) has neglected the business of a principal; or

(ii) has been guilty of misconduct as a tax agent; or

(iii) is not a fit and proper person to remain registered; or

(c) in the case of a partnership or company—

(i) a nominee of the tax agent is not a fit and proper person to be such a nominee; or

(ii) a person who has become a member of the partnership, or a director, manager or other administrative officer of the company, as the case may be—

(A) is under the age of 21 years; or

(B) is not of good fame, integrity and character.

(3) The Registrar shall cancel the registration of a tax agent if the tax agent fails to give notice, and furnish particulars, to the Registrar in accordance with Section 352.

(4) The Registrar shall cancel the registration of an individual as a tax agent on his death or insolvency, or if he permanently ceases to carry on business as a tax agent.

(5) The Registrar shall cancel the registration of a tax agent that is a partnership or a company—

(a) in any case—if there is no nominee registered in respect of the tax agent; or

(b) in the case of a company—if the company goes into liquidation; or

(c) in the case of a partnership—if any partner is adjudicated insolvent; or

(d) if it permanently ceases to carry on business as a tax agent.

(6) Subsection (2)(a) does not apply if the tax agent establishes to the satisfaction of the Registrar that—

(a) he had no knowledge of the falsity; or

(b) the falsity was due to his inadvertence.

(7) Where the registration of a tax agent is cancelled, an appeal lies to the National Court.

(8) The decision of the National Court on an appeal under Subsection (7) is final<sup>1</sup>.

(9) The regulations may make provision for the suspension of the cancellation of the registration of a tax agent during any period before the appeal is finally disposed of.

(10) If an individual who is registered as a tax agent is adjudicated insolvent or permanently ceases to carry on business as a tax agent, he must notify the Registrar, without delay, of that fact.

Penalty: A fine not exceeding K20.00.

(11) A registered tax agent that is a partnership or a company must notify the Registrar, without delay, of any event or matter specified in Subsection (5) that occurs in relation to the partnership or company.

Penalty: A fine not exceeding K20.00.

### 354. Unregistered tax agents.

(1) Subject to Subsections (2) and (4), a person other than a registered tax agent or a person exempted under this section who demands or receives a fee for or in relation to—

(a) the preparation of an income tax return or objection; or

(b) the transaction of any business on behalf of a taxpayer in income tax matters, is guilty of an offence.

Penalty: A fine of not less than K4.00 and not more than K200.00.

(2) The Registrar may, in his discretion, exempt a person from the operation of this section on being satisfied that the total income derived by that person as a tax agent during the period of 12 months immediately preceding the date of his application for such an exemption did not exceed K40.00.

(3) An exemption under Subsection (2)—

(a) lapses at the expiration of 12 months from the date of grant or, if it has been renewed, of the last renewal; and

(b) may, in the discretion of the Registrar, be renewed every 12 months.

(4) Subsection (1) does not apply to a lawyer acting in the course of his profession—

(a) in the preparation of an objection, in litigation or in any proceedings before the Review Tribunal; or

(b) in an advisory capacity in connexion with the preparation of an income tax return or with any income tax matter.

(5) A person is not entitled to sue for, recover or set-off a fee that he is prohibited by this section from demanding.

(6) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

### 355. Negligence of registered tax agents, etc.

(1) If, through the negligence of a registered tax agent or of a person exempted under Section 354(2), a taxpayer becomes liable to pay a fine or other penalty or any additional tax, the registered tax agent, or the exempted person, as the case may be, is liable to pay to the taxpayer the amount of the fine, penalty or additional tax.

<sup>1</sup> But see Constitution, Section 155.

(2) This section does not exonerate a taxpayer from the liability referred to in Subsection (1).

**356. Preparation of returns, etc., on behalf of registered tax agents.**

(1) A registered tax agent or a person exempted under Section 354(2) who allows any person other than his employee, a registered tax agent, or, in the case of a partnership that is registered as a tax agent, a member of the partnership—

(a) to prepare on his behalf, directly or indirectly, his own or any other income tax return or objection; or

(b) to conduct on his behalf, directly or indirectly, any business of himself or any other person relating to any income tax return or income tax matter,

is guilty of an offence.

Penalty: A fine of not less than K4.00 and not more than K100.00.

(2) A partnership or company that is registered as a tax agent must not allow any person to do anything specified in Subsection (1)(a) or (b) otherwise than under the supervision and control of a nominee of the partnership or company.

Penalty: A fine of not less than K4.00 and not more than K100.00.

(3) This section does not prohibit the employment by a registered tax agent, or by a person exempted under Section 354(2), of a lawyer to act in the course of his profession—

(a) in the preparation of any objection, in any litigation or in any proceedings before the Review Tribunal; or

(b) in any advisory capacity in connexion with the preparation of any such return or the conduct of any such business.

**357. Advertising, etc., by unregistered persons.**

A person other than a registered tax agent or a person exempted under Section 354(2) who directly or indirectly—

(a) describes himself as, or represents himself to be, a tax agent; or

(b) advertises in any manner—

(i) that income tax returns will be prepared by him; or

(ii) that any other matter in connexion with income tax will be attended to by him,

is guilty of an offence.

Penalty: A fine of not less than K4.00 and not more than K100.00.

**358. Offences by partnerships.**

(1) Subject to Subsection (2), where—

(a) under this Part an obligation is imposed on a partnership to do, or to refrain from doing, any thing; and

(b) the partnership fails to comply with the obligation,

each partner, unless he proves that he had no knowledge of the failure, is guilty of an offence, and is liable to the penalty provided in respect of the obligation.

(2) Only one partner may be punished by virtue of Subsection (1), for one offence.

## PART IX.—EVIDENCE GENERALLY.

## 359. Judicial notice.

All courts and all persons having by law or consent of parties authority to hear, receive and examine evidence shall take judicial notice of the signature of a person who is or has been the Chief Collector or an Assistant Collector, if it is attached or appended to an official document.

## 360. Evidence.

## (1) The production of—

(a) a notice of assessment; or

(b) a document under the hand of the Chief Collector or an Assistant Collector purporting to be a copy of a notice of assessment,

is conclusive evidence of the due making of the assessment and (except in proceedings on appeal against the assessment) that the amount and all particulars of the assessment are correct.

(2) The production of a copy of the National Gazette containing a notice purporting to be issued by the Chief Collector is conclusive evidence that the notice was so issued.

(3) The production of a document under the hand of the Chief Collector or an Assistant Collector purporting to be a copy of a document issued by the Chief Collector or an Assistant Collector is conclusive evidence that the document was so issued.

(4) The production of a document under the hand of the Chief Collector or an Assistant Collector purporting to be a copy of or extract from a return or notice of assessment is evidence of the matter set out in the document to the same extent as the original would be if it were produced.

## PART X.—MISCELLANEOUS.

## 361. Public officers of companies.

(1) A company carrying on business in the country, or deriving income in the country, must at all times, unless exempted by the Chief Collector, be represented for the purposes of this Act by a public officer who is a person—

(a) residing in the country; and

(b) duly appointed by the company or by its duly authorized agent or attorney.

(2) The following provisions apply with respect to a company referred to in Subsection (1):—

(a) the company shall appoint a public officer within three months after it commences to carry on business in the country, or derive income in the country; and

(b) it shall keep the office of the public officer constantly filled; and

(c) service of a document at the address for service, or on the public officer of the company, is sufficient service on the company for all purposes of this Act or the regulations, and if at any time there is no public officer then service on any person acting or appearing to act in the business of the company is sufficient; and

- (d) the public officer is answerable for doing all things that are required to be done by the company under this Act or the regulations, and in case of default is liable to the same penalties; and
- (e) everything done by the public officer that he is required to do in his representative capacity shall be deemed to have been done by the company, and—
  - (i) the absence or non-appointment of a public officer does not excuse the company from the necessity to comply, or from any penalty for failure to comply, with any of the provisions of this Act or the regulations; and
  - (ii) the company remains liable to the provisions of this Act as if there were no requirement to appoint a public officer; and
- (f) a notice given to or requisition made on the public officer shall be deemed to be given to or made on the company; and
- (g) any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company, and the company is liable jointly with the public officer for any penalty imposed on him; and
- (h) notwithstanding anything in this section, and without limiting, altering or transferring the liability of the public officer of a company—
  - (i) any notice, process or proceedings that, under this Act or the regulations, may be given to, served on or taken against the company or its public officer may, if the Chief Collector thinks fit, be given to, served on or taken against any director, secretary or other officer of the company or any attorney or agent of the company; and
  - (ii) a director, secretary, officer, attorney or agent to whom Subparagraph (i) applies has the same liability in respect of the notice, process or proceedings as the company or public officer would have had if it had been given to, served on or taken against it or him.

(3) For the purposes of this Act, an appointment of a public officer of a company referred to in Subsection (1) shall be deemed not to have been duly made until written notice of the appointment, specifying the name of the officer and an address for service on him, has been given to the Chief Collector.

(4) If a company referred to in Subsection (1) fails to appoint a public officer when and as often as such an appointment becomes necessary, it is guilty of an offence.

Penalty: A fine not exceeding K4.00 for every day during which the failure continues.

### 362. Agents and trustees.

- (1) In this section, "tax" includes provisional tax.
- (2) The following provisions apply to an agent or a trustee :—
  - (a) he is answerable as taxpayer for the doing of all things that are required to be done under this Act in respect of the income derived—
    - (i) by him in his representative capacity; or
    - (ii) in the case of an agent, by the principal by virtue of his agency, and for payment of tax on that income; and
  - (b) he shall make the returns in respect of income referred to in Paragraph (a) and be assessed on that income, but in his representative capacity only, and

each return and assessment, except as otherwise provided by this Act, shall be separate and distinct from any other; and

- (c) if he is a trustee of the estate of a deceased person, the returns shall be the same, as far as practicable, as the returns that the deceased person, if still alive, would have been liable to make; and
- (d) by force of this section—
  - (i) he is authorized and required to retain out of any money that comes to him in his representative capacity enough to pay the tax that is or will become due in respect of income referred to in Paragraph (a); and
  - (ii) he is personally liable for the tax payable in respect of the income to the extent of any amount that he has retained, or should have retained, under Subparagraph (i), but is not otherwise personally liable for the tax; and
- (e) by force of this section, he is indemnified for all payments that he makes under this Act or any requirement of the Chief Collector; and
- (f) where, as one of two or more joint agents or trustees, he pays an amount for which they are jointly liable, the other or others are liable to pay him each his equal share of the amount so paid; and
- (g) for the purpose of insuring the payment of tax, the Chief Collector has the same remedies against attachable property of any kind vested in him, under his control or management or in his possession, as he would have against the property of any other taxpayer.

### 363. Person in control, etc., of money for non-resident.

(1) In this section, "tax" includes provisional tax.

(2) For the purposes of this section, a person who is liable to pay money to a non-resident shall be deemed to be a person having the control of money belonging to the non-resident, and all money due by him to the non-resident shall be deemed to be money that comes to him on behalf of the non-resident.

(3) Subject to this Act, the following provisions apply with respect to a person having the receipt, control or disposal of money belonging to a non-resident who—

- (a) derives income from a source in the country; or
- (b) is a shareholder, debenture holder or depositor in a company deriving income from a source in the country,

that is to say :—

- (c) he shall, when required by the Chief Collector, pay the tax due and payable by the non-resident; and
- (d) by force of this section—
  - (i) he is authorized and required to retain out of any money that comes to him on behalf of the non-resident enough to pay the tax that is or will become due by the non-resident; and
  - (ii) he is personally liable for the tax payable by him on behalf of the non-resident to the extent of any amount that he has retained, or should have retained, under Subparagraph (i), but is not otherwise personally liable for the tax; and

- (e) by force of this section, he is indemnified for all payments that he makes under this Act or any requirement of the Chief Collector.

**364. Person paying royalty to non-resident.**

(1) A person who is liable to pay money as or by way of royalty to a non-resident shall—

(a) before making any payment to him or on his behalf, furnish to the Chief Collector a statement of the amount of royalty due; and

(b) ascertain from the Chief Collector the amount (if any) to be retained in respect of tax due, or that may become due, by the non-resident.

(2) Section 363 applies in respect of payments of royalty referred to in this section.

**365. Payment of tax by banker.**

(1) Where any income of a person out of the country is paid into his account with a banker, the Chief Collector may, by written notice to the banker, appoint him to be the person's agent in respect of the money so paid so long as the banker is indebted in respect of the money.

(2) When notice is given under Subsection (1) to the banker, he shall be deemed to be the person's agent accordingly.

**366. Recovery of tax paid for another person.**

(1) In this section, "tax" includes provisional tax.

(2) A person who, under this Act, pays any tax for or on behalf of any other person may—

(a) recover the amount of the tax, together with the costs of recovery, from the other person as a debt; or

(b) retain or deduct it out of any money in his hands belonging to, or payable to, the other person.

**367. Contribution from joint taxpayers.**

(1) In this section, "tax" includes provisional tax.

(2) Where two or more persons are jointly liable to pay tax, they are each liable for the whole tax.

(3) Any of the persons referred to in Subsection (2) who has paid the tax in respect of any of the taxable income—

(a) is entitled to receive by way of contribution from any other of those persons a sum bearing the same proportion to the tax as that other person's share of the taxable income bears to the whole taxable income; and

(b) may—

(i) recover that sum from the other person as a debt; or

(ii) retain or deduct it out of any money in his hands belonging to, or payable to, the other person.

**368. Contracts to evade tax.**

A contract, agreement or arrangement, whether oral or written, made or entered into at any time is void, as against the Chief Collector or in regard to any proceedings under this Act, so far as it has or purports to have the purpose or effect, directly or indirectly, of—

- (a) altering the incidence of any income tax or dividend (withholding) tax; or
- (b) relieving any person from liability to pay any income tax or dividend (withholding) tax, or to make any return; or
- (c) defeating, evading or avoiding any duty or liability imposed on any person by this Act; or
- (d) preventing the operation of this Act in any respect,

but without prejudice to any validity that it has in any other respect or for any other purpose.

**369. Covenants by mortgagors to pay tax.**

- (1) In this section—

“mortgage” includes a charge, lien or encumbrance to secure the repayment of money, and any collateral or supplementary agreement, whether or not written, and whether or not it is one by which—

- (a) the terms of a mortgage are varied or supplemented; or
- (b) the due date for payment of money secured by a mortgage is altered; or
- (c) an extension of time is granted;

“tax” means income tax or dividend (withholding) tax.

- (2) A covenant or stipulation in a mortgage that has, or purports to have, the purpose or effect of imposing on the mortgagor the obligation of paying tax on the interest to be paid under the mortgage—

- (a) if the mortgage was entered into on or before 31 January 1959—is not valid to impose on the mortgagor the obligation of paying tax to any greater amount than the amount (if any) that would have been payable by him if his taxable income consisted solely of a sum equivalent to the amount of interest to be paid under the mortgage without taking into account any tax payable on the interest; and
- (b) if the mortgage was entered into after that date—is void.

- (3) A covenant or stipulation in a mortgage, whenever made, that has or purports to have the purpose or effect of including in or adding to the interest payable, in any specified circumstances, by the mortgagor any amount in respect of tax payable by the mortgagee on the interest to be paid under the mortgage is void to the extent to which it has or purports to have that purpose or effect.

- (4) Where provision is made in a mortgage—

- (a) for the reduction of the rate or amount of interest in the event of prompt payment of the interest or in any other circumstances; and
- (b) for the rate or amount of the reduction to be diminished by or in proportion to any amount of tax payable by the mortgagee,

then—

- (c) the portion of the provision that provides for diminution is void; and

- (d) the reduction of the rate or amount of interest takes effect as if that portion of the provision had not been inserted.

(5) A provision in a mortgage by or under which it is provided that any tax payable by the mortgagee, or any portion of that tax, shall or may be taken into account for the purpose of fixing, measuring or calculating—

- (a) the rate of interest payable under the mortgage; or  
(b) any reduction or alteration of that rate,

is, to the extent to which it provides for tax to be so taken into account, void.

(6) Subsection (5) applies whether the provision is in the form of—

- (a) a covenant or agreement to pay interest; or  
(b) a proviso or a stipulation for an alternative, substituted or reduced rate of interest instead of a higher rate payable by the mortgagor under such a covenant or agreement,

or otherwise.

### 370. Periodical payments in the nature of income.

Where under a contract, agreement or arrangement, oral or written, made or entered at any time, a person assigns, conveys, transfers or disposes of any property on terms and conditions that include the payment for the assignment, conveyance, transfer or disposal of the property by periodical payments that, in the opinion of the Chief Collector, are, wholly or in part, really in the nature of income of the person, such of those payments as are derived in the year of income shall, to the extent to which they are in the opinion of the Chief Collector in the nature of income, be included in his assessable income.

### 371. Taxpayer's records.

(1) Subject to Subsection (2), a person carrying on a business must—

- (a) keep sufficient records in the English language of his income and expenditure to enable his assessable income and allowable deductions to be readily ascertained; and  
(b) retain them for a period of at least seven years after the completion of the transactions, acts or operations to which they relate.

Penalty: A fine of not less than K4.00 and not more than K200.00.

(2) Subsection (1) does not require the preservation of any records—

- (a) in respect of which the Chief Collector has notified the taxpayer that their preservation is not required; or  
(b) of a company that has gone into liquidation and has been finally dissolved.

### 372. Access to books, etc.

The Chief Collector, or an officer authorized by him for the purpose, shall at all times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Act, and for that purpose take copies of or extracts from any of those books, documents or papers.

**373. Power of Chief Collector to obtain information, etc.**

(1) The Chief Collector may, by written notice, require a person, whether a taxpayer or not (including a person employed in the Public Service or by an authority constituted by or under a law)—

- (a) to furnish any information that he requires; and
- (b) to attend and give evidence before him, or before an officer authorized by him for the purpose, concerning his income or assessment, or that of any other person; and
- (c) to produce all books, documents and other papers in his custody or under his control relating to any income or assessment referred to in Paragraph (b).

(2) The Chief Collector may require any information or evidence referred to in Subsection (1) to be given on oath, orally or in writing, and for that purpose he or the authorized officer may administer an oath.

(3) The regulations may prescribe scales of expenses to be allowed to persons required under Subsection (1) to attend.

**374. Release in cases of hardship.**

(1) In this section, "tax" means income tax or dividend (withholding) tax.

(2) In a case where it is shown to the satisfaction of a Board consisting of the Chief Collector, the Departmental Head and the Comptroller of Customs, or of such substitutes for all or any of them as the Head of State, acting on advice, appoints, that—

- (a) a taxpayer has suffered such a loss or is in such circumstances; or
- (b) owing to the death of a person who, if he had lived, would have been liable to pay tax, the dependants of that person are in such circumstances,

that the exaction of the full amount of tax would entail serious hardship, the Board may release the taxpayer or the trustee of the estate of the deceased person, as the case may be, wholly or in part from his liability, and the Chief Collector may make such entries and alterations in the assessment as are necessary for that purpose.

(3) The Chief Collector or his substitute shall be Chairman of the Board.

(4) All matters before the Board shall be decided in accordance with the majority of votes.

(5) Where an application is made for release in respect of an amount of tax, the Board—

- (a) shall, if the amount is K1 000.00 or more; and
- (b) may, if the amount is less than K1 000.00,

refer the application to the Review Tribunal.

(6) If an application is referred under Subsection (5), the Board shall notify the applicant, in writing, of its having done so.

(7) The applicant may appear before the Tribunal, or the Tribunal may require the applicant to appear before it, in person or by a representative, and the Tribunal may examine the applicant or his representative on oath concerning any statements that the applicant has, or desires to have, placed before the Board.

(8) The Tribunal shall be assisted in its examination of the applicant by an officer of the Chief Collector.

(9) The Tribunal may permit the taxpayer to be assisted at the examination by such persons as the Tribunal thinks the circumstances justify.

(10) A record shall be made of the information elicited by the Tribunal during the examination.

(11) The Tribunal shall—

(a) submit to the Board a report on the facts disclosed by the examination, together with the record referred to in Subsection (10); and

(b) draw the attention of the Board to any facts that, in the opinion of the Tribunal, have particular bearing on the application for release from tax.

(12) In any case where the amount of the liability does not exceed K200.00, the powers conferred on the Board by Subsection (2) may be exercised by the Chief Collector.

### 375. Release of estates of deceased members of Defence Force.

(1) In this section, "tax deductions unapplied", in relation to a deceased member of the Defence Force, means the amount of any deductions made under Division VI.2 from pay or allowances earned by the deceased person as a member of the Defence Force, being deductions—

(a) that have not been credited in payment of income tax; and

(b) in respect of which a payment has not been made by the Chief Collector.

(2) Subject to Subsections (3) and (4), where income tax in respect of the income of a year of income is payable by the trustee of the estate of a deceased person who has been a member of the Defence Force, the trustee is, by force of this section, released from the payment of so much of the tax as remains after deducting any tax deductions unapplied—

(a) where the assessable income of the year of income consists solely of pay and allowances earned as a member of the Defence Force—from the amount of income tax so payable by the trustee; and

(b) where the assessable income of the year of income includes income other than such pay and allowances—

(i) from the amount of income tax so payable by the trustee; or

(ii) from the amount by which the income tax payable in respect of the income of the year of income has been increased by the inclusion of the pay and allowances in the assessable income,

whichever is the less.

(3) Subsection (2) does not authorize or require the Chief Collector to refund any amount paid as or for income tax by or on behalf of the taxpayer or his trustee.

(4) Subsection (2) does not apply in any case where the death of the taxpayer has occurred in circumstances (including the circumstances of his service) in which Section

368(1) of the pre-Independence *Income Tax Act* 1959, as in force immediately before Independence day, would not have applied immediately before Independence Day<sup>1</sup>.

### 376. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular prescribing penalties of not less than K2.00 and not more than K40.00 for offences against the regulations.

<sup>1</sup> Section 368(1) of the pre-Independence Act corresponded with Section 375(2) of this Act, and referred to "the Defence Force" (*see below*, in this footnote).

Section 368(3) and (4) of the pre-Independence Act read, at all relevant times, as follows:—

"(3) The provisions of Subsection (1) of this section do not apply in any case where the death of the taxpayer has occurred in circumstances (including the circumstances of his service) in which the Commonwealth would not be liable to pay pensions under the *Repatriation Act* 1920-1958<sup>2</sup> or under the *Repatriation (Far East Strategic Reserve) Act* 1956<sup>3</sup> to the dependants of deceased members of the Forces.

"(4) A decision of an authority constituted under the *Repatriation Act* 1920-1958<sup>2</sup> on a question affecting the right of any dependants of a deceased member of the Forces to a pension under that Act or under the *Repatriation (Far East Strategic Reserve) Act* 1956<sup>3</sup> in respect of his death is, so long as that decision has not been reversed or overruled, conclusive evidence of the matters of fact or law so decided for the purposes of the application of the last preceding subsection in relation to that deceased member of the Forces."

The situation was complicated by the creation of the Papua New Guinea Defence Force and the transfer to it of the former Pacific Islands Regiment of the Military Forces of Australia and the Papua and New Guinea Division of the Naval Forces of Australia (*see pre-Independence Defence Act* 1974, Section 79), and by the following interpretation provisions:—

(a) *Pre-Independence Defence Act* 1974, Section 82—

"82. Construction of certain references to other forces.

Except where the context makes it inappropriate, a reference in any Act or subordinate enactment, made before the date on which this Act was made, to the Defence Force of Australia or a part of it shall be read as a reference to the Papua New Guinea Defence Force or the equivalent part of it . . . ."

(b) *Pre-Independence Interpretation Act* 1975, S.98(2)—

"(2) In relation to anything done or to be done on or after Independence Day, a reference, direct or indirect, in a provision of a former Territory<sup>4</sup> to an institution . . . . set out in Column 1 of the Table to this section, when it appears in a provision of a former Territory<sup>4</sup>, shall be read as a reference to the institution . . . . set out in Column 2 opposite the first-mentioned reference.

TABLE.

Column 1.	Column 2.
Defence Force of Australia	Defence Force

<sup>2</sup> As at immediately before Independence Day, the correct reference was to the *Repatriation Act* 1920-1975.

<sup>3</sup> As at immediately before Independence Day, the correct reference was to the *Repatriation (Far East Strategic Reserve) Act* 1956-1974.

<sup>4</sup> *i.e.*, including the former Territory of Papua and New Guinea and pre-Independence "Papua New Guinea".

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 110.

*Income Tax (General) Regulation.*

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2. Appointment of prescribed delegate.

PART II.—ADMINISTRATION.

3. Oath or declaration of secrecy.

PART III.—LIABILITY TO TAXATION.

4. International organizations.
5. Prescribed Life Tables.
6. Live stock.
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13. Statements to be furnished by employers.
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15. Separate returns by partners.
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17. Returns by agents.
18. Special returns.
19. Identification of statements accompanying returns.
20. Place at which returns of income to be furnished.
21. Manner of furnishing returns.
22. Responsibility for furnishing returns.
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- 33. Decisions of Tribunal.
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72. Notification to Chief Collector of registration.
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SCHEDULE 2.—Table Showing the Sum that, if Invested Annually at 5% per annum Compound Interest, would Amount to K1.00 at the end of any Number of Years from 1 to 99.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 110.

*Income Tax (General) Regulation.*

MADE under the *Income Tax Act*.

PART I.—PRELIMINARY.

1. Interpretation.

In this Regulation "prescribed delegate of the Chief Collector" means a person appointed by the Chief Collector under Section 2 to be a prescribed delegate of the Chief Collector for the purposes of this Regulation.

2. Appointment of prescribed delegate.

The Chief Collector may, by notice in the National Gazette, appoint a person to be a prescribed delegate of the Chief Collector for the purposes of this Regulation.

PART II.—ADMINISTRATION.

3. Oath or declaration of secrecy.

An oath or declaration for the purposes of Section 6(6) of the Act shall be in Form 1 or 2 as the case requires.

PART III.—LIABILITY TO TAXATION.

4. International organizations.

(1) For the purposes of Section 30(1) of the Act, the following organizations are prescribed organizations:—

- (a) the Economic Commission for Asia and the Far East; and
- (b) the Food and Agriculture Organization of the United Nations; and
- (c) the Intergovernmental Committee for European Migration; and
- (d) the Interim Commission for the International Trade Organization; and
- (e) the International Bank for Reconstruction and Development; and
- (f) the International Civil Aviation Organization; and
- (g) the International Development Association; and
- (h) the International Labour Organization; and
- (i) the International Monetary Fund; and
- (j) the International Telecommunication Union; and
- (k) the South Pacific Commission; and
- (l) the United Nations; and
- (m) the United Nations Educational, Scientific and Cultural Organization; and
- (n) the Universal Postal Union; and
- (o) the World Health Organization; and
- (p) the World Meteorological Organization.

## (2) For the purposes of Section 30(2) of the Act—

- (a) the organizations specified in Subsection (1) and the International Finance Corporation are prescribed organizations; and
- (b) the official salary and emoluments of an official of such an organization are, in accordance with Section 30(2) of the Act, exempt from income tax—
  - (i) in case of an official of the United Nations—to the extent that Papua New Guinea is bound by an international convention or agreement to exempt from taxation his official salary and emoluments; and
  - (ii) in the case of an official of any other organization specified in Subsection (1) or of the International Finance Corporation, who came to the country solely for the purpose of performing his official duties—to the extent that the official salary and emoluments are for services rendered in the country; and
  - (iii) in the case of an official of an organization specified in Subsection (1)(a), (d), (e), (f), (g), (i) or (k) or of the International Finance Corporation, who is a resident of the country and is appointed for service out of the country with that organization—to the extent that the official salary and emoluments are for services rendered out of the country.

## 5. Prescribed Life Tables.

For the purposes of Section 42(3)(a) of the Act, the Australian Life Tables, 1953-1955, published by the Australian Commonwealth Statistician, are the prescribed Life Tables.

## 6. Live stock.

(1) The option that may be exercised under Section 47(1) of the Act, and the selection that may be made under Section 47(5)(b) of the Act, may be notified on the return of the taxpayer or by a separate notification in Form 3 or Form 4, as the case requires, signed by the taxpayer.

(2) A separate notification referred to in Subsection (1) shall be delivered to the Chief Collector at his office at Port Moresby—

- (a) on or before the date of furnishing the first return in which the value of live stock is taken into account; or
- (b) within such extended time as the Chief Collector allows for the exercise of the option, or for making the selection, as the case may be.

(3) For the purposes of Section 47(5)(b) of the Act, the minimum cost price in respect of live stock of a class specified in the following table is the price specified in that table opposite to that class:—

TABLE.

Class of live stock.	K
Sheep	0.40
Cattle	2.00
Horses	2.00
Pigs	0.50

**7. Value on devolution on death, by agreement by trustee and beneficiaries.**

A notice of agreement given for the purposes of Section 51(3)(b) of the Act—

(a) shall be in writing, signed by—

(i) the trustee of the estate of the deceased; and

(ii) the beneficiaries (if any) who are liable to be assessed in respect of the income, or of a share in the income, of the business; and

(b) shall be given to the Chief Collector at his office at Port Moresby—

(i) on or before the date of the furnishing of the first return by the trustee of the estate of the deceased; or

(ii) within such extended time as the Chief Collector allows.

**8. Improvements on leased land.**

For the purposes of Section 102(1)(d) of the Act—

(a) the rate of interest is 10% per annum; and

(b) the instalments referred to in Section 102(1) of the Act may be calculated by reference to the Table in Schedule 2.

**PART IV.—RETURNS AND ASSESSMENTS.****9. Returns generally.**

(1) Except as otherwise prescribed, a return under the Act shall—

(a) be made and furnished in such of the forms provided by the Chief Collector for the purpose as is applicable; and

(b) contain the information and particulars referred to in the form; and

(c) be verified by declaration as set out in the form; and

(d) be accompanied by such balance-sheets, profit and loss accounts, statements and other documents as are referred to in the form or as are necessary.

(2) In the case of a non-resident, the declaration set out in the form of return may be altered so as to exclude any reference to income derived from sources out of the country.

**10. Returns by persons other than companies.**

Subject to Section 12, the form of return in the case of a person other than a company shall—

(a) itemize the income derived from various sources, the deductions claimed and the dependants for whom a rebate is claimed; and

(b) provide for particulars to be supplied under separate headings relating to income derived and deductions claimed; and

(c) provide for the following particulars, with such modifications or extensions (if any) as the Chief Collector determines :—

(i) a statement of particulars relating to sources of information and a certificate to be signed by tax agents; and

(ii) a schedule of live stock; and

(iii) a statement of group certificates and tax stamp sheets forwarded with the return; and

- (iv) a statement of salaries, wages and commission paid, and allowances to employees; and
- (v) a statement by trustee or partnership; and
- (vi) a statement of dividends received; and
- (vii) a statement of interest received; and
- (viii) a statement of dependants; and
- (d) provide for a declaration by the person making the return that the particulars shown in the return and in the accompanying statements—
  - (i) are correct in every particular; and
  - (ii) disclose without reservation or exception a full statement of the total income derived during the year of income from all sources in and out of the country.

#### 11. Returns by companies.

(1) Subject to Section 12, the form of return applicable in the case of a company shall provide for—

- (a) a statement reconciling the net profit as shown in the profit and loss account with the net taxable income; and
- (b) a statement of dividends paid or credited during a period to be specified on the form; and
- (c) in the case of a private company, a statement—
  - (i) of particulars of advances or loans made by the company to its shareholders; and
  - (ii) of payments made on behalf of, or for the individual benefit of, any of its shareholders,
 and of the dates of the advances, loans or payments; and
- (d) a statement of particulars relating to sources of information, and a certificate to be signed by tax agents; and
- (e) a statement of interest received; and
- (f) a statement of remuneration of directors and shareholders; and
- (g) a statement of salaries, wages and commission paid, and allowances to employees; and
- (h) a declaration by the public officer that the particulars shown in the return and in the accompanying statements—
  - (i) are correct in every particular; and
  - (ii) disclose without reservation or exception a full statement of the total income derived during the year of income from all sources in and out of the country.

(2) A return by a company shall be accompanied, in addition to any other documents required under this Regulation, by statements showing the following particulars, with such modifications (if any) as the Chief Collector determines :—

- (a) the names and addresses of all shareholders during the year of income, and the amount of dividend (if any) paid to each shareholder; and

- (b) the names and addresses of all persons to whom interest in excess of K100.00 was paid or credited during the year of income, and the amount so paid or credited to each person; and
  - (c) the total amount of interest paid or credited, during the year of income, to depositors and debenture-holders, who are not residents of Papua New Guinea or of Australia, on—
    - (i) money secured by debentures of the company and used—
      - (A) in Papua New Guinea; or
      - (B) in acquiring assets for use or disposal in Papua New Guinea; and
    - (ii) money lodged at interest in Papua New Guinea with the company, after making the deductions provided for by Subsection (3); and
  - (d) the total amount of interest paid or credited during the year of income in respect of debentures payable to bearer, the names and addresses of the holders of which are not supplied to the Chief Collector by the company; and
  - (e) the names and addresses of all holders of debentures payable to bearer that the company is in a position to furnish (whether they are residents or non-residents), together with the amount of interest paid or credited, during the year of income, to each of them.
- (3) The deductions referred to in Subsection (2)(c) are—
- (a) interest paid or credited outside Papua New Guinea, to persons who are not residents of Papua New Guinea or residents of Australia, on debentures issued outside Papua New Guinea; and
  - (b) unless the Chief Collector otherwise directs—interest paid or credited to a company, not being a resident of Papua New Guinea or a resident of Australia, carrying on business in Papua New Guinea that has a public officer duly appointed under the Act; and
  - (c) in the case of other interest paid or credited to any person (other than a company) who is not a resident of Papua New Guinea or a resident of Australia—the amount of the interest or the amount of K208.00, whichever is the less.

## 12. Simplified return forms.

Notwithstanding Sections 10 and 11, the Chief Collector may provide forms of return that omit any of the items, parts, particulars or statements specified in those sections.

## 13. Statements to be furnished by employers.

- (1) When called on by the Chief Collector by—

- (a) a general notice in the National Gazette; or
- (b) direct notice to the employer,

an employer of labour shall furnish to the Chief Collector a statement showing—

- (c) the names and addresses of all persons employed by him during the period specified in the notice; and
- (d) the capacity in which each such person was so employed; and
- (e) the total amount of remuneration paid to each person during that period; and

- (f) the value of board, residence and other allowances made to each person during that period.

(2) Each statement shall be furnished to the Chief Collector at his office at Port Moresby.

#### 14. Returns by partnerships.

(1) The Chief Collector may, by notice in the National Gazette, require the partners in every partnership to make and furnish a return setting out a full and complete statement of the income derived by the partnership during the year of income.

(2) A return under Subsection (1) shall be made and furnished—

- (a) by the partners resident in the country, or by any one of them; or
- (b) where there is no partner resident in the country, by the agent for the partnership in the country.

#### 15. Separate returns by partners.

(1) Each partner in a partnership shall furnish a separate return of his total individual income (including income from the partnership and other sources) in every case in which he would be required to furnish a return if the same total income had been derived by him from sources other than the partnership.

(2) The return under Subsection (1) shall state the income derived respectively from—

- (a) the partnership; and
- (b) other sources.

#### 16. Returns by trustees.

(1) The Chief Collector may, by notice in the National Gazette, require the trustees of every trust to make and furnish a return setting out a full and complete statement of the income derived by the trust during the year of income.

(2) A return under Subsection (1) shall be made and furnished by the trustees resident in the country or by any one of them, or where there is no trustee resident in the country by the agent for the trustees in the country.

#### 17. Returns by agents.

(1) A person liable to furnish a return as agent for any person shall furnish a separate return for each person for whom he is agent, in addition to his own individual return.

(2) If an agent is not the sole agent in the country for a person for whom he is required to furnish a return, he shall set out in the return particulars of all his transactions as agent for the person.

#### 18. Special returns.

Returns required by the Chief Collector otherwise than by notice in the National Gazette shall be made and furnished in the form required by the Chief Collector.

#### 19. Identification of statements accompanying returns.

Any balance-sheet, profit and loss account or other statement, document, list or information accompanying a return shall—

- (a) be signed by the person making and furnishing the return; and

- (b) bear an endorsement so that it may be identified as so accompanying the return.

**20. Place at which returns of income to be furnished.**

All returns of income shall be furnished to the Chief Collector at his office at Port Moresby.

**21. Manner of furnishing returns.**

A return shall be deemed not to have been duly furnished to the Chief Collector until—

- (a) the proper form, signed as required by the Act and this Regulation, and containing a full and true statement of all matters and things required to be stated in the form by the Act, this Regulation, the Chief Collector and the form itself; and
- (b) all balance-sheets, profit and loss accounts, statements, notices and other documents that are required by the Act, this Regulation or the Chief Collector to accompany the return,

have been received at the office of the Chief Collector at Port Moresby by an officer authorized by the Chief Collector to receive returns.

**22. Responsibility for furnishing returns.**

Where a person is required by the Act, this Regulation or the Chief Collector to furnish a return to the Chief Collector, it is the duty of the person—

- (a) to make the required return; and
- (b) to take all steps necessary to ensure that the return is received by the Chief Collector at his office at Port Moresby.

**23. Address for service.**

(1) A person who furnishes a return shall, in the return, give an address for service in Papua New Guinea or in Australia.

(2) A person who—

- (a) has given an address for service; and
- (b) subsequently changes his address,

shall, within one month after the change, give written notice to the Chief Collector at his office at Port Moresby.

(3) The address for service last given to the Chief Collector by a person is his address for service, but where—

- (a) no address for service has been given to the Chief Collector; or
- (b) the departmental records disclose that the person has subsequently changed his address, and he has not notified the Chief Collector, in the return or by separate written advice, of the change,

the address of the person as described in any record in the custody of the Chief Collector is his address for service for the purposes of the Act and this Regulation.

(4) The address for service of a person, as prescribed by this section, shall be deemed, for the purposes of the Act and this Regulation, to be the last-known place of business or abode in Papua New Guinea or in Australia of that person.

**24. Failure to notify change of address.**

A person who changes his address and fails to give notice to the Chief Collector of his new address for service in Papua New Guinea or in Australia shall not be permitted to plead the change of address as a defence in any proceedings instituted against him under the Act or this Regulation.

**25. Annotations on return.**

(1) The Chief Collector may cause or permit his officers to make on any return such marks, figures and annotations as the Chief Collector thinks proper.

(2) Marks, figures and annotations referred to in Subsection (1) shall be made in ink of a colour different from that of the ink used in the return.

**26. Particulars relating to sources of information.**

(1) A person who charges, directly or indirectly, any fee for preparing or assisting in the preparation of a return shall furnish information in Form 5 as to—

- (a) what books of account (if any) are kept by or on behalf of the taxpayer; and
- (b) the name and address of the person by whom the books are kept; and
- (c) whether the books are audited each year and, if so, the name and address of the person by whom they are audited; and
- (d) whether the return is in accordance with the books; and
- (e) if the return is not in accordance with the books—the basis on which, and the information on which, the return has been prepared; and
- (f) the means by which he has endeavoured to ascertain whether the books of account or other sources of information on which the return is based are correct and disclose the whole of the taxpayer's income from all sources,

and shall sign the certificate contained in the form.

(2) In the case of a partnership or a company that is registered as a tax agent under Part VIII. of the Act, a certificate under Subsection (1) shall be deemed to be duly signed if—

- (a) it is signed in the name of the partnership or the company, as the case may be, by a person who is registered as a nominee of the partnership or the company for the purposes of that Part; and
- (b) that person's name is also appended,

and not otherwise.

(3) A person carrying on business who does not furnish with his return a certificate under Subsection (1) shall furnish the particulars referred to in Subsection (1)(a)—(e).

**PART V.—OBJECTIONS AND APPEALS.****27. Form of objection.**

(1) An objection under Section 244 of the Act against an assessment may be made in Form 6.

(2) The objection shall be posted to, or lodged with, the Chief Collector at his office at Port Moresby.

**28. Particulars to be supplied by Chief Collector.**

(1) In referring a decision to the Review Tribunal in accordance with Section 247 or 248 of the Act, the Chief Collector shall furnish the Tribunal with a printed or typewritten statement containing—

- (a) the name and address of the taxpayer; and
- (b) full details of the taxpayer's claim as made to the Chief Collector; and
- (c) the Chief Collector's reasons for disallowing the claim,

and at the same time he shall furnish the taxpayer with a copy of the statements referred to in Paragraphs (b) and (c).

**29. Notice of review.**

(1) The Tribunal shall cause notices to be served on the Chief Collector and the taxpayer of the date on which the review is to take place.

(2) Notice of a review shall be given not less than 14 days before the date on which the review is to take place.

(3) A notice under Subsection (1) may be served personally or by post.

**30. Order, place and time of review.**

(1) References for the purpose of review by the Tribunal shall be numbered consecutively, and, unless the Tribunal otherwise directs, the reviews shall take place in the order in which the references are received.

(2) The sittings of the Tribunal for the purpose of reviews shall be held in such place or places, and at such time or times, as are fixed by the Tribunal.

(3) The Tribunal is not required to sit on public holidays.

**31. Conduct of review.**

(1) Subject to this Part, reviews by the Tribunal shall be conducted as the Tribunal directs.

(2) All reviews shall take place in private, unless the taxpayer requires otherwise.

(3) Where a review takes place in public, the decision shall be given at a public meeting of the Tribunal.

(4) Either party to a review may nominate a person to represent him at the review.

(5) The Tribunal may adjourn a review from time to time as it thinks fit.

**32. Evidence.**

(1) Subject to Subsection (2)—

(a) the Review Tribunal shall take all oral evidence on oath or affirmation, and for that purpose the person constituting the Tribunal has power to administer oaths and affirmations; and

(b) the Tribunal may—

(i) receive, without formal proof, a copy, duly certified as correct by a responsible officer of a bank, of an account with the bank of a person; and

(ii) take into consideration any entry or particular contained in the copy; and

(c) the Tribunal may—

(i) receive, without formal proof, a copy, duly certified as correct by a responsible officer of the Public Service, a government or a public, municipal or other local body or authority within Papua New Guinea or Australia, of a document in the possession of the State or of any such government, body or authority, as the case may be; and

(ii) take into consideration any statement or particular in the copy; and

(d) the Review Tribunal may—

(i) receive, without formal proof, any other document containing any statement or particular that, in the opinion of the Tribunal, is relevant to the question in issue in the review (not being a document that has been brought into existence solely for the purpose of the review); and

(ii) take into consideration any such statement or particular.

(2) The Tribunal may, by written notice, require a person—

(a) to furnish the Tribunal with such information as, in the opinion of the Tribunal, is necessary for the purpose of a review by the Tribunal; and

(b) to attend and give evidence before the Tribunal, or before an officer authorized by the Tribunal to take evidence, concerning his or any other person's income or assessment; and

(c) to produce all books, documents and other papers in his custody or under his control relating to that income or assessment.

(3) The Tribunal may require the information or evidence to be given on oath, orally or in writing, and for that purpose the person constituting the Tribunal or the officer authorized by him has power to administer oaths.

(4) A person shall not, without just cause or excuse (proof of which is on him), fail—

(a) to comply with a requirement made on him under this section; or

(b) to answer fully and truly any question put to him by the Tribunal, or by an officer authorized by the Tribunal to take evidence, in connexion with a review.

(5) The expenses to be allowed to a person required to attend and give evidence under this section are as prescribed by Section 86, but expenses shall not be allowed under this section to a person who is so required to attend in consequence of a request made by or on behalf of the taxpayer.

### 33. Decisions of Tribunal.

(1) The Tribunal shall forward copies of its decision on a review to the Chief Collector and to the taxpayer, and unless the decision has been appealed from the Chief Collector shall give effect to the decision within 60 days after receipt of it.

(2) The Tribunal may compile and publish summaries of its decisions.

### 34. Communications to Tribunal.

Communications to the Tribunal may be addressed to the Tribunal in the care of the Chief Collector at his office at Port Moresby.

**35. Evidence on appeal.**

Where the Chief Collector has, under Section 233(2)(c) of the Act, amended an assessment, the production, in any proceedings on appeal against the assessment as so amended, of a written certificate signed by the Chief Collector or an Assistant Collector and stating that he is of the opinion that the avoidance of tax was due to fraud or evasion is conclusive evidence that the Chief Collector or the Assistant Collector, as the case may be, was of the opinion stated in the certificate.

**PART VI.—COLLECTION AND RECOVERY OF TAX.****Division 1.—General.****36. Manner of payment of tax.**

A taxpayer may pay income tax—

- (a) by delivery of cash, bank notes, cheques or group certificates at—
  - (i) the office of the Chief Collector; or
  - (ii) an office of the Department or the Department of the Treasury of Australia, authorized by the Chief Collector to receive payments of income tax; or
- (b) by remitting the tax to the Chief Collector by—
  - (i) bank draft, cheque, postal money order or postal note payable in Port Moresby; or
  - (ii) group certificates.

**37. Agency function of Post Office.**

Where a person posts a remittance addressed to the Chief Collector—

- (a) the Post Office shall be deemed to be the agent of the remitter; and
- (b) payment shall be deemed not to have been made until the remittance has been received by the addressee.

**38. Payment by cheque.**

Where a cheque has been delivered or remitted to the Chief Collector in payment of an amount payable to the Chief Collector, notwithstanding any receipt given for it the amount for which the cheque is drawn shall be deemed not to have been paid until it has been collected.

**39. Receipts.**

Receipts for amounts paid to the Chief Collector shall be issued by persons authorized by the Chief Collector.

**40. Part payment.**

Except with the express consent of the Chief Collector, money shall not be accepted on account, or in part payment, of an amount payable to the Chief Collector.

**41. Postage.**

(1) The postage on a return, statement, communication, remittance or other matter sent by post addressed to the Chief Collector shall be fully prepaid by the sender.

- (2) Where a sum is received as payment of income tax, the Chief Collector shall—
- (a) deduct from that sum the amount of postage and surcharge (if any) paid on any unstamped or insufficiently stamped matter received through the post from the taxpayer; and
  - (b) credit in payment of tax the net amount then remaining.

**42. Service of garnishee notice on the State.**

(1) For the purposes of this section, "Paying Officer" means any officer who, by any law, regulation or appointment, is charged with the duty of disbursing, or who does actually disburse, any public moneys.

(2) The person on whom notice may be served under Section 272(8) of the Act is the Paying Officer of any Department.

**43. Failure to take out administration.**

An order under Section 274(6) of the Act shall be in Form 7.

**44. Certificate as to assessment, etc.**

In an action against a person for the recovery of income tax, a written certificate, signed by the Chief Collector, an Assistant Collector or a prescribed delegate of the Chief Collector, certifying that—

- (a) the person named in the certificate is a taxpayer; and
- (b) an assessment of income tax was duly made against him in respect of the year referred to in the certificate; and
- (c) the particulars of the assessment are as stated in the certificate; and
- (d) notice of the assessment was duly served on him; and
- (e) the sum named in the certificate was at the date of the certificate due by him to the State in respect of income tax,

is evidence of the facts stated in the certificate.

**45. Evidence by affidavit.**

In an action for the recovery of an amount payable to the Chief Collector, evidence may be given by affidavit, but the court may require the deponent to attend for the purpose of being cross-examined.

*Division 2.—Collection of Income Tax by Instalments.*

**Subdivision A.—Rates of Deductions from Salaries or Wages of Employees.**

**46. Interpretation of Subdivision A.**

In this Subdivision, "dependants declaration" means a declaration referred to in Section 47(1) or a further declaration under Section 47(4).

**47. Dependants declaration.**

(1) A dependants declaration shall—

- (a) be in a form provided by the Chief Collector; and
- (b) be signed by the employee; and
- (c) set out particulars of such of the dependants of the employee at the time of the making of the declaration as the employee desires to have taken into

account for the purposes of Section 3 of the *Income Tax (Deductions from Wages) Regulation*.

(2) Where the Chief Collector is satisfied that, by reason of circumstances connected with the employment of an employee, it is or will be impracticable for the employee to furnish to his employer a dependants declaration—

- (a) the employee may furnish the declaration to the Chief Collector; and
- (b) the Chief Collector may issue to the employee a certificate specifying the number of his dependants who are named in the declaration.

(3) After the issue to an employee of a certificate under Subsection (2) and until the date specified in the certificate as the date on which it expires, the rates at which an employer—

- (a) who employs the employee for not less than four days in any week; and
- (b) to whom the certificate is exhibited in that week,

shall make deductions from the salary or wages of the employee in respect of that week are, notwithstanding Section 3(4) of the *Income Tax (Deductions from Wages) Regulation*, the same as if the number of dependants shown in the certificate were the number of dependants set out in a dependants declaration duly furnished to the employer at the time when the certificate is exhibited.

(4) Where after an employee has furnished a dependants declaration to his employer or to the Chief Collector in accordance with this section a person described in the declaration ceases to be a dependant of the employee, the employee shall, within 14 days after the date on which the person ceases to be such a dependant, furnish a further declaration to his employer or to the Chief Collector, as the case may be.

(5) Where a further declaration is furnished to the Chief Collector under Subsection (4), the employee shall return to the Chief Collector the certificate under Subsection (2) issued to him.

(6) Subject to Subsection (7), for the purposes of this section a person is a dependant of an employee at any time only when the facts and circumstances that exist are such that, if they existed unchanged during the whole of the year of income of the employee, the employee would be entitled, in his assessment in respect of the income of that year of income, to a rebate in respect of him under Section 215 of the Act.

(7) A person is not a dependant of an employee at any date by reference to Section 215 of the Act if, at that date, he—

- (a) is in receipt of a separate net income at a rate not less than K10.00 per week;  
or
- (b) is maintained by more than one taxpayer; or
- (c) has derived a separate net income, or has derived income, as the case may be, of such an amount that the employee would not be entitled, in his assessment in respect of the income of that year of income, to a rebate in respect of him under that section.

(8) Where a dependants declaration on a form that bears a reference at its head to a particular fiscal year is furnished to an employer or to the Chief Collector before the first day of that fiscal year, this Regulation (other than Subsection (4) and Section 3(4) of the *Income Tax (Deductions from Wages) Regulation*) applies as if the declaration had been declared, dated and furnished on the first day of that fiscal year.

**48. Rates of deductions.**

For the purposes of Section 277 of the Act, the prescribed rates of deductions from the salary or wages of an employee are as set out in the *Income Tax (Deductions from Wages) Regulation*.

**49. Dealing with dependants declarations.**

Within 14 days after the end of the fiscal year referred to at the head of a dependants declaration furnished to an employer by an employee, the employer shall—

- (a) countersign the declaration in the place provided on the form; and
- (b) forward the declaration to the Chief Collector.

**Subdivision B.—Group Employers.****50. Application for registration as a group employer.**

An application for registration as a group employer shall be signed by the applicant and shall be made at the office of the Chief Collector at Port Moresby.

**51. Registration groups.****(1) The Chief Collector—****(a) may—**

- (i) register all employees, or any class of employees, of a group employer as a group for the purposes of this Regulation; and
- (ii) allot a registration number in respect of the group; and

**(b) shall notify the group employer accordingly.**

(2) The Chief Collector may, at any time, by written notice to the employer concerned, cancel the registration of a group, and the employees or the class of employees included in the group thereupon cease or ceases to be a group for the purposes of this Regulation.

**52. Payments to Chief Collector.**

A group employer required to pay an amount to the Chief Collector may pay the amount—

- (a) by delivery of cash, bank notes or cheques at the office of the Chief Collector or at an office of the Department or the Department of the Treasury of Australia, authorized by the Chief Collector to receive payments of income tax; or
- (b) by remitting the amount to the Chief Collector by bank draft or cheque, or by postal money order or postal note payable in Port Moresby.

**53. Remittance certificates.**

At the time of paying to the Chief Collector an amount deducted from the salaries or wages of employees included in a group, a group employer shall furnish to the Chief Collector a certificate in a form approved by the Chief Collector, and signed by the employer, that the amount so paid is the total amount so deducted during the period specified in the certificate.

**54. Annual statements of deductions.**

(1) Where employees of a group employer are in more groups than one, the statement referred to in Section 280(5)(f)(ii) of the Act shall be furnished in separate parts, with one part in respect of each group.

(2) The statement, or each part of the statement, as the case may be, shall—

- (a) show the deductions in respect of the employees included in the group; and
- (b) reconcile the total of the amounts deducted as set out in it with the total of the sums paid to the Chief Collector by the group employer on account of those amounts; and
- (c) include a certificate signed by the group employer certifying that the information in the statement is correct.

**55. Issue of group certificates.**

(1) A group employer who is required to issue a group certificate to a person who is or has been an employee shall sign the certificate, and may issue it—

- (a) by causing it to be delivered to the person personally; or
- (b) by posting it by prepaid letter post addressed to the person at his last-known postal address.

(2) Where a group certificate that has been posted in accordance with Subsection (1)(b) is returned to the group employer undelivered, he shall forward the certificate to the Chief Collector not later than—

- (a) 31 October after the end of the fiscal year in which the deductions covered by the certificate were made; or
- (b) seven days after the date of the return of the certificate,

whichever is the later.

(3) A group employer shall include in every group certificate issued by him particulars of—

- (a) the total salary or wages paid, during the period covered by the certificate, to the person to whom the certificate is issued; and
- (b) the value of board or residence provided for, or any allowance made to, the person during that period.

**56. Signatures by or for group employers.**

(1) A document required by this Regulation to be signed by a group employer shall be signed—

- (a) in the case of an individual—by the individual; and
- (b) in the case of trustees—
  - (i) by the senior active trustee resident in the country; or
  - (ii) where there is no active trustee resident in the country—by the agent of the trustees; and
- (c) in the case of a company—by the public officer of the company; and
- (d) in the case of the State—by an officer appointed for the purpose by the Departmental Head; and
- (e) in the case of a municipal corporation, local governing body or public authority—by an officer authorized by it.

(2) Where it is not possible or practicable for the person specified in Subsection (1) personally to sign all such documents, he may authorize, in writing, another person to sign any such documents.

(3) A group employer shall forward to the Chief Collector—

(a) a specimen signature, on a form approved by the Chief Collector, of every person authorized by or under this section to sign documents in relation to a group; and

(b) particulars of the names of the persons so authorized and of the capacity in which they act,

and a person so authorized shall not sign a document referred to in Subsection (1) until his specimen signature has been furnished in accordance with this subsection.

(4) If he thinks fit, the Chief Collector may, by written notice to the group employer, disapprove the authorization of a person under Subsection (2), and a person whose authorization is so disapproved shall not sign a document referred to in Subsection (1).

(5) Where a person authorized by or under this section to sign documents in relation to a group ceases (otherwise than in pursuance of Subsection (4)) to be so authorized, the group employer shall, within 14 days, notify the Chief Collector accordingly.

*Division 3.—Collection of Dividend (Withholding) Tax.*

**57. Deductions from dividends.**

(1) For the purposes of Section 309 of the Act, the amount of the deduction to be made from a dividend payable under that section is the amount prescribed by Section 7 of the *Income Tax and Dividend (Withholding) Tax Rates Act* as the rate of dividend (withholding) tax.

(2) Where a deduction has been made from a dividend under Division VI.4 of the Act, the payee shall, at the time when the dividend is paid by him to the person entitled to the dividend, advise the person, in writing, of the amount of dividend (withholding) tax deducted from the dividend.

**58. Payment of deductions to Chief Collector.**

A person who is required to pay an amount to the Chief Collector under Section 311(1)(c) of the Act may pay the amount—

(a) by delivery in cash, bank notes or cheque at the office of the Chief Collector; or

(b) by remitting the amount to the Chief Collector by cheque or bank draft, or by forwarding a money order or postal order payable in the country; or

(c) by depositing the amount to the credit of the Chief Collector at an office of the Department authorized for the purpose by the Chief Collector.

**59. Furnishing of statements of deductions.**

A statement required to be furnished by a person to the Chief Collector under Section 311(1)(d) of the Act shall be furnished to the Chief Collector at the Taxation Office at Port Moresby.

## PART VII.—PENAL PROVISIONS AND PROSECUTIONS.

**60. Certificate as to failure to furnish return.**

In any proceedings against a person for failing or neglecting duly to furnish a return, a written certificate signed by the Chief Collector, an Assistant Collector or a prescribed delegate of the Chief Collector, certifying that a return has not been received from the person by any officer authorized by the Chief Collector to receive returns, is evidence that the defendant has failed or neglected duly to furnish a return.

**61. Order to comply with requirement.**

An order under Section 325 of the Act may be served in the manner prescribed by Section 82 for the service of notices.

**62. Right of trial in National Court.**

The election that may be exercised by a defendant under Section 334(1) of the Act shall be exercised by serving on the Chief Collector, and filing in the court in which the prosecution was instituted, a notice in Form 8.

**63. Enforcement of orders for payment.**

(1) Where an order for the payment of a sum of money by a person to the Chief Collector is made under Part VII. of the Act by a court of summary jurisdiction, the Chief Collector may obtain from the clerk or other proper officer of the court a certificate under Section 344 of the Act.

(2) A certificate referred to in Subsection (1) shall be in Form 9, and shall contain the following particulars :—

- (a) the name and location of the court making the order; and
- (b) the name and address of the defendant; and
- (c) the date and amount of the order; and
- (d) the section of the Act under which the order was made.

(3) On production of a certificate referred to in Subsection (1) to the registrar or other proper officer of a court having jurisdiction to entertain civil proceedings to the amount of the order, he shall register the certificate by entering the particulars of the certificate in a book to be kept by him.

(4) A certificate shall not be registered more than 12 months after the date of the order to which it relates unless leave to do so has first been obtained from the court in which it is proposed to register it.

## PART VIII.—REGISTRATION OF TAX AGENTS.

**64. Interpretation of Part VIII.**

In this Part, unless the contrary intention appears—

“applicant” means an applicant for registration as a tax agent;

“the Registrar” means the Registrar of Tax Agents referred to in Section 348 of the Act.

**65. Communications to Registrar.**

All correspondence to the Registrar, including applications under the Act or this Regulation, shall be addressed to the Registrar, in the care of the Chief Collector at his office at Port Moresby.

**66. Applications for registration.**

(1) An application for registration as a tax agent shall state—

- (a) the full name and address of the applicant; and
- (b) if the applicant is a partnership the full name and address of each partner; and
- (c) an address for service for the applicant; and
- (d) in the case of an application by a partnership or a company—the full name and address of, and an address for service for, each partner or person whom it is desired to register as a nominee or additional nominee of the tax agent; and
- (e) the qualifications of the applicant, or, in the case of an application by a partnership or a company, the qualifications of each partner or person referred to in Paragraph (d); and
- (f) whether the applicant and—
  - (i) in the case of an application by a partnership—any partner; or
  - (ii) in the case of an application by a company—any person on behalf of the company,is registered as a tax agent under the *Australian Income Tax Act*, and, if so, particulars of the registration; and
- (g) whether the applicant, and, in the case of an application by a partnership or a company—
  - (i) any member of the partnership; or
  - (ii) any person whom it is desired to register as a nominee or additional nominee,has had his registration as a tax agent cancelled or refused under the *Australian Income Tax Act*; and
- (h) when the applicant proposes to carry on business at more than one office—the address of the head office and of each branch office.

(2) An applicant shall furnish to the Registrar such further information as the Registrar from time to time requires.

**67. Applications for registration of additional nominees, etc.**

An application for the registration of an additional or substituted nominee of a partnership or company that is already registered as a tax agent under the Act shall state—

- (a) the full name and address of the partnership or company making the application; and
- (b) the full name and address of, and an address for service for, each partner or person whom it is desired to register as an additional or substituted nominee; and
- (c) the qualifications of each partner or person referred to in Paragraph (b); and
- (d) whether the partner or person so referred to is registered as a tax agent under the *Australian Income Tax Act*, and, if so, particulars of the registration; and

- (e) whether the partner or person so referred to has had his registration as a tax agent cancelled or refused under that Act; and
- (f) any further information required by the Registrar.

**68. Application for exemption from registration as tax agent.**

An applicant for exemption under Section 354(2) of the Act shall furnish to the Registrar his full name and address, and address for service and such further information as the Registrar requires.

**69. Declaration by applicant.**

An application referred to in Section 66, 67 or 68 shall be supported by a declaration—

- (a) signed by the person or the members of the partnership making the application; and
- (b) stating that the information in the application is correct in every particular.

**70. Lodgement of applications.**

An application for—

- (a) registration as a tax agent; or
- (b) the registration of an additional or substituted nominee of a partnership or company; or
- (c) exemption under Section 354(2) of the Act,

shall be lodged with the Registrar.

**71. Certificate of registration.**

Where the Registrar registers a person or partnership as a tax agent under Section 351 of the Act, he shall issue a certificate of registration to him or it.

**72. Notification to Chief Collector of registration.**

Where the Registrar registers an applicant as a tax agent, or a person as a nominee, additional nominee or substituted nominee of a tax agent, the Registrar shall notify the Chief Collector accordingly.

**73. Publication of names of tax agents.**

As soon as convenient after 30 June in each year, the Chief Collector shall publish in the National Gazette the full names and addresses of persons and partnerships registered as tax agents.

**74. Notification of exemption of tax agents.**

Where the Registrar exempts a person or partnership from the operation of Section 354 of the Act, the Registrar shall—

- (a) issue a certificate of exemption to him or it; and
- (b) notify the Chief Collector accordingly.

**75. Return of certificates of registration and exemption.**

(1) Where the Registrar has registered a person or partnership as a tax agent, or exempted a person or partnership from the operation of Section 354 of the Act, he may, if he thinks it necessary to do so—

- (a) by reason of the cancellation of the registration or the lapse of the exemption; or
- (b) for the issue of a new certificate in place of an existing certificate; or
- (c) for the alteration of an existing certificate; or
- (d) for any other purpose of the Act or of this Regulation,

by written notice call on the person or partnership, or in the case of a person who has died his personal representative, to return to the Registrar the certificate issued under Section 71 or 74(a), as the case may be.

(2) A person, partnership or personal representative on whom a notice under this section is served must, within 14 days after the service of the notice, return to the Registrar the certificate specified in the notice.

Penalty: A fine not exceeding K40.00.

**76. Notification of change of address.**

(1) A registered tax agent shall, without delay, give written notice to the Registrar of any change in the address for service of himself or, in the case of a registered tax agent that is a company or a partnership, of a partner or person who is registered as a nominee, additional nominee or substituted nominee of the tax agent under Section 351 of the Act.

(2) A person who is exempted by the Registrar from the operation of Section 354 of the Act shall, without delay, give written notice to the Registrar of a change in his address for service.

**77. Service of notices, etc.**

A notice or other communication to any person or partnership by or on behalf of the Chief Collector or the Registrar, in relation to a matter arising under this Part or Part VIII. of the Act, may be given to or served on him or it—

- (a) personally; or
- (b) by prepaid letter post at his or its address for service under this Part.

**78. Cancellation of registration.**

(1) Where the registration of a person or partnership as a tax agent is cancelled by the Registrar, the Registrar shall immediately give notice of the cancellation to—

- (a) the tax agent, or if the registration was cancelled by reason of the death of the tax agent, to his personal representative; and
- (b) the Chief Collector.

(2) If the registration was cancelled by the Registrar under Section 353(2) of the Act, the Chief Collector shall, after the end of the period for appeal prescribed by Section 79(1), cause notice of the cancellation to be published in the National Gazette.

(3) Where a person or partnership duly institutes, within the prescribed time, an appeal under Section 353(7) of the Act against a decision of the Registrar to cancel his or its registration—

- (a) the Registrar may suspend the cancellation; and

- (b) whether or not the Registrar has suspended the cancellation, notice of the cancellation shall not be published until the appeal has been withdrawn by, or determined against, the person or partnership.

**79. Appeals after cancellation of registration.**

- (1) An appeal under Section 353(7) of the Act shall be instituted—
- (a) not later than 30 days after service of the notice of cancellation given under Section 78; and
  - (b) by—
    - (i) filing a written notice of appeal in the National Court; and
    - (ii) serving a copy of the notice of appeal on the Registrar.
- (2) The Registrar shall furnish to the Chief Collector a copy of any notice of appeal served on him by a person or partnership, or served by the Registrar, under this section.
- (3) On the hearing of an appeal under Section 353 of the Act, if the Chief Collector so desires he may be represented by a lawyer.

**80. Notification when person ceases to be nominee of registered tax agent.**

Where a person ceases to be a nominee, additional nominee or substituted nominee of a partnership or a company that is registered as a tax agent, the Registrar shall notify the Chief Collector accordingly.

**81. Evidence.**

- (1) For the purposes of Part VIII. of the Act, the Registrar—
- (a) may take oral evidence on oath or affirmation, and for that purpose has power to administer oaths and affirmations; and
  - (b) may permit evidence to be given by affidavit, but may require the deponent to attend for the purpose of being cross-examined; and
  - (c) may—
    - (i) receive, without formal proof, a copy, duly certified as correct by a responsible officer of a bank, of the account of a person with the bank; and
    - (ii) take into consideration any entry or particular in the copy of the account; and
  - (d) may—
    - (i) receive, without formal proof, a copy, duly certified as correct by a responsible officer of the Public Service or a government, or of a public, municipal or other local body or authority within Papua New Guinea or Australia, of a document in the possession of the State or of that government, body or authority, as the case may be; and
    - (ii) take into consideration any statement or particular in the copy of the document; and
  - (e) may—
    - (i) receive, without formal proof, any other document containing any statement or particulars that, in his opinion, is or are relevant to the application or other matter under consideration (not being a document

that has been brought into existence solely for the purpose of application or other matter); and

(ii) take into consideration the statement or particulars.

(2) The Registrar may, by written notice, require a person—

(a) to furnish him with such information as is specified in the notice relating to an application or other matter before the Registrar; and

(b) to attend and give evidence before him concerning an application or other matter before the Registrar; and

(c) to produce all books, documents and other papers in his custody or under his control that, in the opinion of the Registrar, are likely to contain information or particulars relating to the application or matter.

(3) The Registrar may require the information or evidence to be given on oath, orally or in writing, and for that purpose has power to administer oaths.

(4) The expenses to be allowed to a person required to attend and give evidence under this section are as prescribed by Section 86.

(5) Where a person is required to attend in consequence of a request made by or on behalf of an applicant or a tax agent, his expenses are payable by the applicant or agent.

#### PART IX.—MISCELLANEOUS.

##### 82. Notices, etc., by Chief Collector.

(1) A notice to be given by the Chief Collector may be given by any officer duly authorized by the Chief Collector for the purpose.

(2) A notice purporting to be signed by the authority of the Chief Collector is as valid and effectual for all purposes as if signed by the Chief Collector in person.

(3) A notice or other communication by or on behalf of the Chief Collector may be served on a person—

(a) by causing it to be served on him personally; or

(b) by leaving it at his address for service; or

(c) by posting it addressed to him at his address for service.

##### 83. Signature of certificates, etc.

(1) A certificate, notice or other document, bearing the written, stamped or printed signature of the Chief Collector, an Assistant Collector or a prescribed delegate of the Chief Collector, shall, until the contrary is proved, be deemed to have been duly signed by the person by whom it purports to have been signed.

(2) Judicial notice shall be taken of—

(a) every signature referred to in Subsection (1); and

(b) the fact that the person whose signature it purports to be holds or has held the office of Chief Collector, Assistant Collector or prescribed delegate of the Chief Collector, as the case may be.

##### 84. Prescribed organizations.

The following organizations are prescribed organizations for the purposes of Section 290 of the Act:—

(a) the Attorney-General's Department of Australia; and

- (b) the Australian Broadcasting Commission; and
- (c) the Commonwealth Bureau of Meteorology of Australia; and
- (d) the Department of Civil Aviation of Australia; and
- (e) the Department of Defence of Australia; and
- (f) the Department of Foreign Affairs of Australia; and
- (g) the Department of Housing and Construction of Australia; and
- (h) the Department of Transport of Australia; and
- (i) the Overseas Telecommunication Commission (Australia); and
- (j) the Postmaster-General's Department of Australia<sup>1</sup>.

#### 85. Appointment of public officers of companies.

When the position of public officer of a company becomes vacant and it is necessary for a new public officer to be appointed, the notice of appointment by the company of a new public officer shall be given to the Chief Collector at his office at Port Moresby.

#### 86. Expenses of persons required to attend and give evidence.

Where a person (other than the taxpayer, or a representative of the taxpayer, concerning whom the evidence is required) is required under Section 373 of the Act to attend and give evidence before the Chief Collector or an officer authorized by him, there may be allowed to him—

- (a) the sum (not exceeding K21.00 per day) actually and necessarily lost by him by reason of his attendance; and
- (b) if he resides more than 6.437 km<sup>2</sup> from the place at which he is required to attend, such sum for travelling expenses (not exceeding the sum actually paid) as the person conducting the inquiry thinks reasonable.

#### 87. Fees for medical examinations.

(1) For the purposes of this section, "public hospital" means a public hospital within the meaning of the *Public Hospitals (Charges) Act*.

(2) Where application is made to a medical officer for a certificate referred to in the definition "invalid relative" in Section 212(1) of the Act, there is payable in advance to the Department concerned for the examination of the person—

- (a) where the examination is made at the office or surgery of a Medical Officer of the Public Service or at some other place in the country—the fee prescribed under the regulations by which the Medical Officer operates and is required to make a charge; or
- (b) where the examination is made in a public hospital—the fee prescribed in Item 2 of Schedule 1 to the *Public Hospitals (Charges) Regulation*.

<sup>1</sup> But see the *Postal Services Act 1975*, the *Telecommunications Act 1975* and the *Postal and Telecommunications Act 1975*, all of Australia, under which the former Postmaster-General's Department was largely split up into Commissions.

<sup>2</sup> Metricated editorially. The original distance was 4 miles.

**88. General penalty.**

A person who fails to comply with a provision of this Regulation for which no penalty is expressly provided is guilty of an offence.

Penalty: A fine not exceeding K40.00.

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**SCHEDULES.**

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**SCHEDULE 1.**

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**PAPUA NEW GUINEA.**

***Income Tax Act.***

Act, Sec. 6(6).

Form 1.

Reg., Sec. 3.

**OATH OF SECRECY.**

I, \_\_\_\_\_, of \_\_\_\_\_, being an officer within the meaning of Section 6(1) of the *Income Tax Act*, do swear that I will not, directly or indirectly, except as permitted under that section, and either while I am, or after I cease to be, an officer, make a record of, or divulge or communicate to any person, any information respecting the affairs of any other person disclosed or obtained under that Act.

So help me God!

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**PAPUA NEW GUINEA.**

***Income Tax Act.***

Act, Sec. 6(6).

Form 2.

Reg., Sec. 3.

**DECLARATION OF SECRECY.**

I, \_\_\_\_\_, of \_\_\_\_\_, being an officer within the meaning of Section 6(1) of the *Income Tax Act*, do solemnly and sincerely declare that I will not, directly or indirectly, except as permitted under that section, and either while I am, or after I cease to be, an officer, make a record of, or divulge or communicate to any person, any information respecting the affairs of any other person disclosed or obtained under that Act.

*Income Tax*  
PAPUA NEW GUINEA.

Ch. No. 110

*Income Tax Act.*

Form 3.

Act, Sec. 47(1).

Reg., Sec. 6.

NOTICE OF OPTION AS TO BASIS OF VALUATION OF LIVE STOCK.

I, \_\_\_\_\_ of \_\_\_\_\_, exercise the option granted by Section 47 of the *Income Tax Act* by requiring that the value of live stock to be taken into account shall be the cost price/market selling value\*.

Dated

19 .

(Signature of Taxpayer.)

\*Strike out the option not exercised.

PAPUA NEW GUINEA.

*Income Tax Act.*

Form 4.

Act, Sec. 47(5)(b).

Reg., Sec. 6.

NOTICE OF SELECTION OF COST PRICE OF NATURAL INCREASE.

I, \_\_\_\_\_ of \_\_\_\_\_, by virtue of Section 47 of the *Income Tax Act*, select, as the cost price of natural increase of each class of live stock to be taken into account, the value shown below, opposite that class, as the selected value, not being less than the value shown as the minimum cost price.

Class of live stock.	Minimum cost price. K.	Selected value. K.
Sheep	0.80	
Cattle	2.00	
Horses	2.00	
Pigs	0.50	

Dated

19 .

(Signature of Taxpayer.)

## PAPUA NEW GUINEA

## Income Tax Act.

Act, Sec. 228.

Reg., Sec. 26.

Form 5.

## PARTICULARS RELATING TO SOURCES OF INFORMATION.

To be given by—

- (a) any person who charges directly or indirectly any fee for preparing or assisting to prepare this return\*.
- (b) every person or company carrying on business who does not furnish with his or its return an agent's certificate.\*

Question.

Answer.

- (1) What books of account, if any, are kept by or on behalf of the taxpayer?
- (2) By whom are those books of account kept? (State name and address.)
- (3) Are those books of account audited each year? If so, by whom?
- (4) Is the return in accordance with those books?
- (5) If the return is not in accordance with those books, on what basis and on what information has the return been prepared?
- (6) By what means have you endeavoured to ascertain whether the books of account, or other sources of information on which this return is based, are correct and disclose the whole of the taxpayer's income from all sources?

Certificate by Agent†.

I, \_\_\_\_\_, having prepared or assisted in the preparation of this return for a fee, certify that the answers set out in the second column in this statement opposite the questions set out in the first column in this statement are correct in every particular.

Dated

19

(Signature of Agent.)‡

(Agent's Registered Number.)

\* Omit whichever is inapplicable.

† To be answered only by the person mentioned in (a) above.

‡ Where the agent is a partnership or a company, this certificate must be signed in the name of the partnership or company, as the case requires, by a person who is registered as a nominee of the partnership or company, and the person's name must also be appended.

## PAPUA NEW GUINEA.

## Income Tax Act.

Act, Sec. 244.

Reg., Sec. 27.

Form 6.

## NOTICE OF OBJECTION AGAINST ASSESSMENT.

I object to the assessment of income tax based on income derived during the year ended 19\_\_\_\_, and issued to me by notice of assessment dated\_\_\_\_, and claim that the assessment should be reduced by—

- (a) the omission of the following amounts included in the assessable income:—
- (b) the allowance of the following amounts as deductions:—
- (c) the following items not covered by (a) and (b):—

The grounds on which I rely are:—\*

Dated

19

(Signature.)

(Address.)

\*Section 244 of the Income Tax Act requires that the grounds be stated fully and in detail.

*Income Tax*

Ch. No. 110

PAPUA NEW GUINEA.

*Income Tax Act.*

Act. Sec. 274(6).

Form 7.

Reg., Sec. 43.

ORDER.

To \_\_\_\_\_ at \_\_\_\_\_

Whereas at the time of the death of \_\_\_\_\_ of \_\_\_\_\_, deceased, income tax had not been assessed and paid on the whole of the income derived by him up to the date of his death:

And whereas probate has not been granted and letters of administration have not been taken out in respect of the estate of the deceased:

And whereas the amount of tax payable in respect of that income has been assessed by me as K \_\_\_\_\_:

You are required and authorized to levy, without delay, the sum of K \_\_\_\_\_, together with the costs of this Order, by distress and sale of any property of the estate found by you, and that you certify to me on \_\_\_\_\_ 19 \_\_\_\_\_ what you have done by virtue of this Order.

Dated \_\_\_\_\_ 19 \_\_\_\_\_

Chief Collector of Taxes.

PAPUA NEW GUINEA.

*(Heading as in Proceedings before Court of Summary Jurisdiction.)*

Act, Sec. 334(1).

Form 8.

Reg., Sec. 62.

NOTICE OF ELECTION BY DEFENDANT TO HAVE TAXATION PROSECUTION TRIED IN THE NATIONAL COURT.

To the National Court

And to the Chief Collector of Taxes,

Port Moresby.

Notice is given, under Section 334 of the *Income Tax Act*, that the defendant in the abovenamed prosecution elects to have the case tried in the National Court.

Dated \_\_\_\_\_ 19 \_\_\_\_\_

*(Signature of Defendant or his Lawyer.)*

PAPUA NEW GUINEA.

Act, Sec. 344.

Form 9.

Reg., Sec. 63.

CERTIFICATE OF ORDER UNDER THE INCOME TAX ACT.

In pursuance of Section 344 of the *Income Tax Act* I, \_\_\_\_\_, the Clerk of the (*name and location of court*), certify that on \_\_\_\_\_ 19 \_\_\_\_\_ that court, acting under Section \_\_\_\_\_ of the *Income Tax Act*, ordered (*name and address of defendant*) to pay to the Chief Collector of Taxes the sum of K \_\_\_\_\_

Dated \_\_\_\_\_ 19 \_\_\_\_\_

Clerk of the Court.\*

\*If the certificate is not granted by the Clerk of Court, substitute the title of the proper officer by whom it is granted.

## SCHEDULE 2.

Act, Sec. 102(1).

Reg., Sec. 8.

TABLE SHOWING THE SUM THAT, IF INVESTED ANNUALLY AT 5% PER ANNUM  
COMPOUND INTEREST, WOULD AMOUNT TO K1.00 AT THE END OF ANY NUMBER OF  
YEARS FROM 1 TO 99.

(Annual Investment made at the Commencement of each Year.)					
Years.	Amounts.	Years.	Amounts.	Years.	Amounts.
	K.		K.		K.
1	.952381	34	.011195	67	.001884
2	.464576	35	.010545	68	.001790
3	.302104	36	.009937	69	.001702
4	.220964	37	.009371	70	.001618
5	.172357	38	.008842	71	.001539
6	.140016	39	.008348	72	.001463
7	.116971	40	.007884	73	.001391
8	.099735	41	.007450	74	.001324
9	.086371	42	.007043	75	.001259
10	.075719	43	.006660	76	.001197
11	.067037	44	.006301	77	.001139
12	.059833	45	.005964	78	.001084
13	.053768	46	.005646	79	.001030
14	.048594	47	.005347	80	.000981
15	.044135	48	.005065	81	.000933
16	.040257	49	.004800	82	.000888
17	.036856	50	.004550	83	.000845
18	.033853	51	.004313	84	.000804
19	.031186	52	.004090	85	.000765
20	.028803	53	.003879	86	.000728
21	.026663	54	.003680	87	.000692
22	.024734	55	.003492	88	.000659
23	.022988	56	.003314	89	.000628
24	.021401	57	.003146	90	.000597
25	.019954	58	.002987	91	.000569
26	.018632	59	.002836	92	.000541
27	.017421	60	.002693	93	.000515
28	.016308	61	.002558	94	.000490
29	.015282	62	.002430	95	.000467
30	.014334	63	.002309	96	.000444
31	.013459	64	.002194	97	.000423
32	.012648	65	.002085	98	.000403
33	.011895	66	.001982	99	.000383

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 110.

*Income Tax (Deductions from Wages) Regulation.*

ARRANGEMENT OF SECTIONS.

1. Interpretation—  
    "dependants declaration".
2. Deductions where no dependants claimed.
3. Rates of deduction where dependants claimed.

SCHEDULE.—Tables of Deductions.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 110.

*Income Tax (Deductions from Wages) Regulation.*

MADE under the *Income Tax Act*.

1. Interpretation.

In this Regulation, "dependants declaration" means a dependants declaration as defined in Section 46 of the *Income Tax (General) Regulation*.

2. Deductions where no dependants claimed.

Subject to Section 3, for the purposes of Section 277 of the Act the prescribed rate of deductions from the salary or wages of an employee in respect of a week or part of a week is—

- (a) where the salary or wages of the employee does not exceed K400.00—the rate specified in Subcolumn (i) of Column 2 of Table A in the Schedule<sup>1</sup> opposite the limits specified in Column 1 of that Table within which the salary or wages is included; and
- (b) where the salary or wages of the employee exceeds K400.00—the rate specified in Column 2 of Table B in the Schedule<sup>1</sup> opposite the limits specified in Column 1 of that Table within which the salary or wages is included.

3. Rates of deduction where dependants claimed.

(1) Where an employee has furnished to his employer a dependants declaration, for the purposes of Section 277 of the Act the prescribed rate at which deductions from the salary or wages of the employee are to be made in respect of a week or part of a week at any time up to—

- (a) the last payment of salary or wages before 1 July after the date on which the declaration is furnished; or
- (b) the close of the first pay period that ends after the date on which a further declaration is furnished to his employer by the employee,

whichever is the earlier, is —

- (c) where the salary or wages of the employee does not exceed K400.00—subject to Subsection (2), the rate specified, opposite the limits specified in Column 1 of Table A in the Schedule<sup>1</sup> within which the salary or wages is included, in the subcolumn of Column 2 of that Table that has the same number of dependants at its head as is detailed in the declaration; or
- (d) where the salary or wages of the employee exceeds K400.00—the rate specified, opposite the limits specified in Column 1 of Table B in the Schedule<sup>1</sup> within which the salary or wages is included, in Column 2 of that Table, reduced, subject to Subsection (3), by the amount of K5.20 for each dependant detailed in the declaration.

<sup>1</sup> Omitted. See the note under the heading "Schedule" to this Regulation.

(2) Where a dependants declaration is furnished for any number of dependants in excess of four, the rate of deductions to be made in accordance with Subsection (1)(c) is the rate specified in the subcolumn of Column 2 of Table A in the Schedule<sup>1</sup> headed "4 Or More".

(3) The maximum amount by which deductions are, in accordance with Subsection (1)(d), to be reduced in any case is K20.80.

(4) The employer is not required to give effect to a dependants declaration in making deductions from salary or wages paid before the close of the first pay period commencing after the furnishing of the declaration.

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### SCHEDULE.

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Act, Sec. 277.

Reg., Sec. 2, 3.

### TABLES OF DEDUCTIONS.

NOTE: This Schedule (originally the Third Schedule to the *Income Tax Regulations* 1959, which was inserted as at the effective date by Statutory Instrument No. 60 of 1975) has been omitted from this Revised Edition, under Section 5(1) of the *Revision of the Laws Act* 1973. Its form as at the effective date, was of transitory interest only, and was repealed and replaced by the *Income Tax (Weekly Deductions) Regulation* 1976 (Statutory Instrument No. 16 of 1976), which came into force on 29 June 1976.

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<sup>1</sup> Omitted. See the note under the heading "Schedule" to this Regulation.

# INDEPENDENT STATE OF PAPUA NEW GUINEA.

## CHAPTER No. 110.

### *Income Tax.*

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#### SUBSIDIARY LEGISLATION.

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1. Act, Section 224—Requirement of returns of income.

Since these requirements relate solely to individual years of income, year by year, no good purpose would be served by their inclusion and they have therefore not been included in this Revised Edition.

2. Act, Section 290—Arrangements with authorities of other governments and with prescribed organizations for deductions from salaries of employees.

Providing for deductions to be made from the salary or wages of persons who are or become employed by—

Army, Australian Department of.<sup>1 2</sup>

Attorney-General, Australian Department of.<sup>3</sup>

Australian Broadcasting Commission.<sup>3</sup>

Civil Aviation, Australian Department of.<sup>3 4</sup>

Meteorology, Australian Bureau of.<sup>3</sup>

Navy, Australian Department of.<sup>1 2</sup>

Overseas Telecommunications Commission (Australia).<sup>3</sup>

Postmaster-General's Department, Australian.<sup>3 5</sup>

Shipping and Transport, Australian Department of.<sup>1 4</sup>

Territories, Australian Department of.<sup>3 6</sup>

Works, Australian Department of.<sup>3 7</sup>

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<sup>1</sup> Designation as at 11 December 1959.

<sup>2</sup> See, now, Australian Department of Defence.

<sup>3</sup> Designation as at 10 September 1959.

<sup>4</sup> See, now, the Australian Department of Transport.

<sup>5</sup> See, now, the Australian Postal and Telecommunications Department.

<sup>6</sup> See, now, the Australian Department of Foreign Affairs.

<sup>7</sup> See, now, the Australian Department of Construction.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 110.

*Income Tax.*

APPENDIXES.

APPENDIX 1.

SOURCE OF THE INCOME TAX ACT.

Part A.—Previous Legislation.

*Income Tax Act* 1959 (No. 26 of 1959) as amended by—

*Income Tax Act* 1960 (No. 29 of 1960)

*Income Tax Act* (No. 2) 1960 (No. 52 of 1960)

*Income Tax Act* 1961 (No. 11 of 1961)

*Income Tax Act* (No. 2.) 1961 (No. 18 of 1961)

*Income Tax Act* 1962 (No. 47 of 1962)

*Income Tax Act* 1963 (No. 57 of 1963)

*Income Tax Act* 1964 (No. 43 of 1964)

*Income Tax Act* 1965 (No. 9 of 1965)

*Income Tax Act* (No. 2) 1965 (No. 41 of 1965)

*Income Tax Act* 1966 (No. 9 of 1966)

*Income Tax Act* (No. 2) 1966 (No. 31 of 1966)

*Income Tax Act* (No. 3) 1966 (No. 64 of 1966)

*Income Tax Act* 1967 (No. 59 of 1967)

*Income Tax Act* (No. 2) 1967 (No. 88 of 1967)

*Income Tax Act* 1968 (No. 49 of 1968)

*Income Tax Act* (No. 2) 1968 (No. 81 of 1968)

*Income Tax (Amendment) Act* 1969 (No. 77 of 1969)

*Income Tax (Amendment) Act* 1970 (No. 64 of 1970)

*Income Tax (Amendment) Act* 1972 (No. 49 of 1972)

*Income Tax (Allowances and Rebates) Act* 1973 (No. 65 of 1973)

Transfer of Powers Regulations 1973 (Statutory Instrument No. 49 of 1973)

*Income Tax (Amendment) Act* 1974 (No. 70 of 1974)

*Income Tax (Exemption) Act* 1975 (No. 32 of 1975)

*Income Tax (Amendment) Act* 1975 (No. 117 of 1975)

## Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference <sup>1</sup>	Section, etc., in Revised Edition	Previous Reference <sup>1</sup>
1	4, 300(3)	53	61
2	5	54	62
3	6	55	63
4	7	56	64
5	8	57	65
6	9	58	83,84
7	10	59	66
8	11	60	67
9	12	61	68
10	13	62	70
11	15	63	71
12	16	64	72
13	17	65	73
14	19, 21(c)	66	74
15	19A	67	75
16	20	68	76
17	21(a), (b)	69	77
18	21(d)	70	78
19	21(e)	71	79
20	24, 45A (in part)	72	80
	45B (in part).	73	81
21	25	74	82
22	26	75	85
23	27	76	86
24	28	77	87
25	29	78	88
26	30	79	89
27	36	80	90
28	36A, 37	81	91
29	38	82	92
30	39	83	94
31	40	84	95
32	40A	85	96
33	40B	86	97
34	42	87	98
35	43A	88	100
36	44	89	101
37	45	90	101A
38	46	91	101B
39	47	92	101C
40	47A	93	101D
41	48	94	101E
42	49	95	101F
43	50	96	101G
44	51	97	101H
45	52	98	103
46	53	99	116
47	54,55,56	100	116A, 122
48	57	101	117(1),(2),(3)
49	58	102	117(4),(5),(6)
50	57A	103	118
51	59	104	119
52	60	105	120

<sup>1</sup> Unless otherwise indicated, references are to the Act set out in Part A.

Part B.—Cross References—*continued.*

Section, etc., in Revised Edition.	Previous Reference.	Section, etc., in Revised Edition.	Previous Reference.
106	121	161	172
107	123	162	176
108	124	163	177
109	125	164	178
110	126	165	179
111	127	166	180
112	128	167	181
113	129	168	182
114	130	169	183
115	131	170	184
116	132	171	173
117	133	172	174
118	134	173	175
119	135	174	185
120	136	175	186
121	137	176	187
122	139, 45A (in part), 45B (in part)	177	188
		178	189
123	138	179	189A
124	140	180	189B
125	140A	181	189C
126	141	182	189D
127	142	183	190
128	143	184	191
129	144	185	192
130	145	186	193
131	146	187	194
132	147	188	195
133	148	189	196
134	149	190	196A
135	150, 151	191	196B
136	152	192	196C
137	153	193	196D
138	154	194	196E
139	155	195	196F
140	156	196	197
141	157	197	198
142	158	198	199
143	159	199	200, 201
144	160	200	202
145	161	201	203
146	162	202	204
147	163	203	205
148	164	204	206
149	165	205	207
150	165A	206	208
151	165B	207	209
152	165C	208	210
153	166	209	211
154	167	210	213
155	167A, 170A	211	212
156	168	212	213A
157	169	213	213B
158	170	214	213C
159	170B	215	213D
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Part B.—Cross References—*continued.*

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## APPENDIX 2.

## SOURCE OF THE INCOME TAX (GENERAL) REGULATION.

## Part A.—Previous Legislation.

*Income Tax Regulations* 1959 (Regulations No. 20 of 1959)

as amended by—

Regulations No. 25 of 1959

Regulations No. 37 of 1959

Regulations No. 34 of 1960

Regulations No. 20 of 1965

Statutory Instrument No. 33 of 1965

Statutory Instrument No. 37 of 1966

Statutory Instrument No. 2 of 1967

Statutory Instrument No. 46 of 1968

Statutory Instrument No. 38 of 1969

Statutory Instrument No. 54 of 1972

Statutory Instrument No. 41 of 1973

Income Tax (Amendment) Regulation 1974 (Statutory Instrument No. 34 of 1974)

Income Tax (Amendment) Regulation 1975 (No. 60 of 1975).

## Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference <sup>1</sup> .	Section, etc., in Revised Edition.	Previous Reference <sup>1</sup>
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<sup>1</sup> Unless otherwise indicated, references are to the regulations set out in Part A.

Part B.—Cross References—*continued*.

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58	65B	Schedules—	Schedules—
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60	69	Form 1	Form 1
61	70	Form 2	Form 2
62	71	Form 3	Form 3
63	72	Form 4	Form 4
64	73	Form 5	Form 5
65	74	Form 6	Form 6
66	75	Form 7	Form 7
67	76	Form 8	Form 8
68	77	Form 9	Form 9
69	78	Schedule 2	Second Schedule.
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## APPENDIX 3.

## SOURCE OF THE INCOME TAX (DEDUCTIONS FROM WAGES) REGULATION.

## Part A.—Previous Legislation.

*Income Tax Regulations 1959<sup>1</sup>.*

## Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference <sup>2</sup> .
1	— <sup>3</sup>
2	55
3	54, 56
Schedule	Third Schedule.

<sup>1</sup> For details, see Appendix 2.<sup>2</sup> Unless otherwise indicated, references are to the regulations set out in Part A.<sup>3</sup> Compare *Income Tax (General) Regulation*, Section 46.

