

# **INCOME TAX BILL 2015**

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*INCOME TAX BILL, 2015*

A  
**BILL**

ENTITLED  
**INCOME TAX ACT, 2014**

AN ACT to provide for the imposition of income tax and for related purposes.

PASSED by Parliament and assented to by the President:

**PART I**  
**IMPOSITION OF INCOME TAX**

**Imposition of Income Tax**

1. (1) Income tax is payable for each year of assessment by-
- (a) a person who has chargeable income for the year; and
  - (b) a person who receives a final withholding payment during the year.

(2) The amount of income tax payable by a person for a year of assessment is the total of the amounts payable under subsection (1)(a) and (b).

(3) Subject to subsection (4), the income tax payable by a person under subsection(1)(a) is calculated by-

- (a) applying the relevant rates of income tax set out in the First Schedule to the person's chargeable income, and
- (b) subtracting any foreign tax credit allowed to the person for the year.



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(4) Income tax payable by an individual with respect to assessable income from a business may be subject to the modified taxation rules set out in the Second Schedule

(5) The income tax payable by a person under subsection (1)(b) is calculated by applying the relevant rate set out in the First Schedule to each final withholding payment.

**PART II**  
**INCOME TAX BASE**

*Division I: Chargeable Income*

**Chargeable Income**

2. (1) The chargeable income of a person for a year of assessment is the total of the person's assessable income for the year from each employment, business and investment minus the total amount of deductions allowed to that person by this Act

(2) The chargeable income of each person is determined separately.

*Division II: Assessable Income*

**Assessable Income**

3. (1) The assessable income of a person for a year of assessment is the person's income from an employment, business or investment minus the applicable deductions allowed under this Act-

(2) The assessable income of a person for a year of assessment from an employment, business or investment is-

(a) in the case of a resident person, the person's income from the employment, business or investment for the year, irrespective of the source, whether or not the source from which the income is derived has ceased and

(b) in the case of a non-resident person-

(i) the person's income from the employment, business or investment for the year to the extent that the income has a source in Ghana; and

(ii) where the person has a Ghanaian permanent establishment, income for the year that is connected with the permanent establishment, irrespective of source.

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- (c) A person's income from an employment, business or investment has a source in Ghana if it accrues in or is derived from Ghana
- (d) The Assessable income of each income is determined separately

### **Income from Employment**

4. (1) An individual's income from an employment for a year of assessment is the individual's gains and profits from the employment for the year.

(2) In calculating an individual's gains and profits from an employment for a year of assessment-

- (a) include the amounts referred to in subsection (3) if they are derived by the individual during the year from the employment; and
- (b) exclude the amounts referred to in subsection (4).

(3) The amounts included are:

- (a) payments of salary, wages, leave pay, fees, commissions, and gratuities
  - (b) overtime pay and bonuses; as provided by regulations
- (c) payments of personal allowance, including cost of living, subsistence, rent, entertainment or travel allowance;
- (d) payments providing discharge or of expenses incurred by the individual or an associate of the individual;
- (e) payments for the individual's agreement to conditions of the employment;
- (f) subject to section 92, retirement made to a retirement fund on behalf of the employee and retirement payments received in respect of the employment;
- (g) other payments, including gifts, received in respect of the employment; and
- (h) other amounts required to be included under Part III.
  - (i) any other allowances or benefits paid in cash or given in kind.

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- (4) The amounts excluded are:
- (a) exempt amounts and final withholding payments;
  - (b) a discharge or reimbursement of expenses incurred by the individual on behalf of the employer that serve the proper business purposes of the employer;
  - (c) a discharge or reimbursement of the individual's dental, medical or health insurance expenses where the benefit is available to all full-time employees on equal terms;
  - (d) payments providing passage of the individual to or from Ghana in respect of the individual's first employment by the employer or termination of the employment where the individual-
    - (i) is recruited or engaged outside of Ghana;
    - (ii) is in Ghana solely for the purpose of serving the employer; and
    - (iii) is not a resident of Ghana;
  - (e) any provision of accommodation by an employer carrying on a timber, mining, building, construction, farming business or petroleum operations to that person at any place or site where the field operation of the business is carried on; or as prescribed by regulations.
  - (f) payments made to employees on a non-discriminatory basis that, by reason of their size, type and frequency, are unreasonable or administratively impracticable for the employer to account for or to allocate to the individual.
  - (g) Redundancy pay

(5) For the purposes of this section, any amount, allowance, or benefit is a gain or profit from employment if it

- (a) is provided by the employer, an associate of the employer, or a third party under an arrangement with the employer or an associate of the employer;
- (b) is provided to an employee or an associate of an employee; and
- (c) is provided in respect of past, present, or prospective employment.

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### **Income from Business**

5. (1) A person's income from a business for a year of assessment is the person's gains and profits from conducting the business for the year or for whatever period in that year

(2) In calculating a person's gains and profits from conducting a business for a year of assessment-

- (a) include the amounts referred to in subsection (3) if they are derived by the person during the year from the business; and
- (b) exclude the amounts referred to in subsection (4).

(3) The amounts included are:

- (a) service fees;
- (b) consideration received in respect of trading stock;
- (c) gains from the realisation of capital assets and liabilities of the business as calculated under Part IV;
- (d) amounts required to be included by the Third Schedule on the realisation of the person's depreciable assets of the business;
- (e) amounts derived as consideration for accepting a restriction on the capacity to conduct the business;
- (f) gifts received by the person in respect of the business;
- (g) amounts derived that are effectively connected with the business and that would otherwise be included in calculating the person's income from an investment; and
  - (i) other amounts required to be included under sections 54, 58, Part III or Part VI.

(4) The amounts excluded are:

- (a) exempt amounts and final withholding payments; and
- (b) amounts that are included in calculating the person's income from an employment.

### **Income from Investment**

6. (1) A person's income from an investment for a year of assessment is the person's gains and profits from conducting the investment for the year.

(2) In calculating a person's gains and profits from conducting an investment for a year of assessment-

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- (a) include the amounts referred to in subsection (3) if they are derived by the person during the year from the investment; and
  - (b) exclude the amounts referred to in subsection (4).
- (3) The amounts included are:
  - (a) dividends, interest, annuities, natural resource payments, rents, and royalties;
  - (b) gains from the realisation of investment assets as calculated under Part IV;
  - (c) amounts derived as consideration for accepting a restriction on the capacity to conduct the investment;
  - (d) Lottery Winnings
  - (e) gifts received by the person in respect of the investment; and
  - (f) other amounts required to be included under section 59, Part III or Part VI.
- (4) The amounts excluded are:
  - (a) exempt amounts and final withholding payments; and
  - (b) amounts that are included in calculating the person's income from an employment or business.

### **Division III: Exempt Amounts Waivers and Variation of Tax Exempt Amounts**

7. (1) The following are exempt from tax:
- (a) the salary, allowances, facilities, pension and gratuity of the President in accordance with Article 68 (5) of the Constitution;
  - (b) (i) the income of the Government of Ghana or a local authority, other than income from activities which are only indirectly connected with the Government or authority's status as such;
    - (ii) the income of public corporations other than income from activities which are only indirectly connected with the corporation's status as such;
    - (iii) Public corporations set up as commercial ventures do not qualify for the exemption in Section 7(1)(b)(ii) above

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- (c) capital sums paid to a person as compensation or a gratuity in relation to-
  - (i) personal injuries suffered by the person; or
  - (ii) the death of another person;
- (d) the income of a non-resident person from a business of operating ships or aircraft, provided the Commissioner-General is satisfied that an equivalent exemption is granted by that person's country of residence to persons resident in Ghana
- (e) the income from cocoa of a cocoa farmer
- (f) the income of a person receiving instruction at an educational institution from a scholarship, exhibition, bursary or similar educational endowment;
- (g) the income of an individual entitled to privileges to the extent provided for by-
  - (i) the Diplomatic Immunities Act, 1962 (Act 148) or a similar enactment;
  - (ii) an Act giving effect to the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialised Agencies of the United Nations; or
  - (iii) an Act giving effect to any Convention, treaty or protocol conferring privileges and immunities on officers of any AU or ECOWAS office or secretariat or any agency of the two institutions,
  - (iv) regulations made under an Act referred to in subparagraph (i), (ii) or (iii);
- (h) the income of an individual to the extent provided for in an agreement between the Government of Ghana and a foreign government or a public international organisation for the provision of technical services to Ghana where-
  - (i) the individual is a non-resident person or an individual who is resident in Ghana solely by reason of performing that service; and
  - (ii) the agreement has been ratified by Parliament in accordance with Article 75 of the Constitution;

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- (i) the cost of living allowance (other than training allowance paid in lieu of salary) paid for services rendered abroad by members of the Ministry of Foreign Affairs and officers attached to official Ghanaian diplomatic or consular missions abroad;
- (j) income of an individual who is not a citizen of Ghana from temporary employment with the Government of Ghana where the income is expressly exempt under the employment contract and is paid out of the Consolidated Fund; and
- (k) the income of an individual from employment in the public service of the government of a foreign country where-
  - (i) the individual is either a non-resident or resident in Ghana solely by reason of performing that employment;
  - (ii) the individual does not exercise any other employment or carry on a business in Ghana;
  - (iii) the income is payable from the public funds of the foreign country; and
  - (iv) the income is subject to tax in the foreign country.
- (l) a state-owned or state-sponsored educational institution
- (m) an institution or trust of a public character established by an enactment solely for the purposes of scientific research

(2) The Minister may by Legislative Instrument make Regulations exempting any person, class of person or income from tax.

(3) Subject to the conditions in Article 174(2) of the Constitution the Minister may grant a waiver or variation of tax imposed by this Act in favour of any person

(4) For the avoidance of doubt sub section (3) shall apply only where the tax liability of the person has already been ascertained.

### *Division IV: Deductions*

#### **General Principles**

8. The following rules apply to deductions in calculating a person's income:

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- (a) no deduction is allowed-
  - (i) in calculating income from employment; or
  - (ii) for domestic or excluded expenses incurred by the person
- (b) where more than one deduction rule applies, apply the more specific rule

### **Residual Deduction Rule**

9. (1) In calculating a person's income from conducting a business or investment for a year of assessment, deduct expenses to the extent they are wholly, exclusively and necessarily incurred during the year by the person and in the production of income from the business or investment.

(2) No deduction is allowed under subsection (1) for an expense of a capital nature.

(3) In this section, "expense of a capital nature" includes an expense that secures a benefit lasting longer than twelve months.

### **Interest**

10. For the purposes of section 9, interest incurred by a person during a year of assessment under a debt obligation of the person is incurred in the production of income to the extent that-

- (a) where the debt obligation was incurred in borrowing money, the money is used during the year or was used to acquire an asset that is used during the year in the production of income; and
- (b) in any other case, the debt obligation was incurred in the production of income.

### **Trading Stock**

11. (1) For the purposes of calculating a person's income from a business for a year of assessment, deduct in respect of trading stock of the business the allowance calculated under subsection (2).

- (2) The allowance is calculated as-
  - (a) the opening value of trading stock of the business for the year of assessment; plus
  - (b) expenses incurred by the person during the year that are included in the cost of trading stock of the business; less
  - (c) the closing value of trading stock of the business for the year.



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(3) The opening value of trading stock of a business for a year of assessment is the closing value of trading stock of the business at the end of the previous year of assessment.

(4) The closing value of trading stock of a business for a year of assessment is the lower of-

- (a) the cost of the trading stock of the business at the end of the year; or
- (b) the market value of the trading stock of the business at the end of the year.

(5) Where the closing value of trading stock is determined in accordance with subsection (4)(b), the cost of the trading stock is reset to that value.

### **Repairs and Improvements**

**12.** (1) Expenses for the repair or improvement of depreciable assets and meeting the requirements of section 9(1) may be deducted irrespective of whether they are of a capital nature.

(2) However, deductions referred to in subsection (1) granted for a year of assessment with respect to depreciable assets in a particular pool of depreciable assets of a person-

- (a) shall not exceed five percent of the written down value of the pool at the end of the year and
- (b) are allowed in the order in which the expenses are incurred.

(3) Excess expense for which a deduction is not allowed as a result of the limitation in subsection (2) is added to the depreciation basis of the pool to which it relates.

### **Research and Development Expenses**

**13.** (1) Research and development expenses meeting the requirements of section 9(1) may be deducted irrespective of whether they are of a capital nature.

(2) In this section, “research and development expenses”-

- (a) means expenses incurred by the person in the process of developing the person’s business and improving business products or process; but
- (b) excludes expenses incurred that are otherwise included in the cost of an asset used in the process referred to in paragraph (a).

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### **Capital Allowances**

**14.** (1) For the purposes of calculating a person's income from a business for a year of assessment, deduct the capital allowances referred to in subsection (2).

(2) Capital allowances are-

- (a) granted in respect of depreciable assets owned and used by a person during a year of assessment in the production of the person's income from a business; and
- (b) calculated in accordance with the provisions of the Third Schedule.

(3) Capital allowances granted with respect to a particular year of assessment shall be taken in that year and cannot be deferred.

### **Losses on Realisation of Assets and Liabilities**

**15.** (1) For the purposes of calculating a person's income from a business or investment for a year of assessment, deduct a loss of the person from the realisation during the year of assets and liabilities referred to in subsection (2). The loss is calculated under Part IV.

(2) The assets and liabilities are-

- (a) capital assets of a business to the extent to which the assets were used in the production of income from the business;
- (b) liabilities of a business to the extent to which
  - (i) in the case of a liability that is a debt obligation incurred in borrowing money, the money was used or an asset purchased with the money was used in the production of income from the business; and
  - (ii) in the case of any other liability, the liability was wholly, exclusively and necessarily incurred in the production of income from the business; and
- (c) chargeable assets of an investment to the extent to which the assets were used wholly, exclusively and necessarily in the production of income from the investment.

### **Limit on Deduction of Financial Costs**

**16.** (1) The amount of financial costs other than interest deducted in calculating a person's income from conducting a business or investment for a year of assessment shall not exceed the limit referred to in subsection (2).

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- (2) The limit is the sum of-
- (a) financial gains derived by the person that are to be included in calculating the person's income from the business or investment for the year of assessment; plus
  - (b) 50 percent of the person's income for the year from the business or investment calculated without including financial gains derived or deducting financial costs incurred by the person.

(3) Financial costs for which a deduction is denied as a result of subsection (1) maybe carried forward and treated as incurred during any of the following fiveyears of assessment, but only to the extent of any unused limitation in subsection (2) for the year. Carry forwards are used in the order in which they are incurred.

(4) Regulations may prescribe circumstances in which losses on financial instruments may only be set against gains on financial instruments.

### **Losses from a Business or Investment**

17. (1) For the purposes of calculating the income of a person from a business for a year of assessment, deduct-an unrelieved loss of the person of the yearfrom that business:

- (a) in the case of specified priority sectors an unrelieved loss of the person for any of the previous fiveyears of assessment from the business or
- (b) in the case of all other sectors an unrelieved loss of the person for any of the previous three years of assessment from the business.

(2) Notwithstanding subsections (1), where a person makes a loss and if the loss were a profit it would be taxed at a reduced rate, the loss is deducted only in calculating income taxed at the same reduced rate, a lower reduced rate or exempt amounts. If the loss were a profit and the profit would be exempt, the loss is deducted only in calculating exempt amounts.

(3) Subsections (1) to (2) also apply to calculating income from an investment and unrelieved losses from an investment so that-

- (a) unrelieved losses from an investment are deducted only in calculating income from an investment.

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(4) In this section-

“loss” of a person for a year of assessment from a business or investment is calculated as the excess of amounts deducted in calculating the person’s income from the business or investment over amounts included in calculating that income; and

“unrelieved loss” means the amount of a loss that has not been deducted in calculating a person’s income under this section or section 23(5).

### PART III

#### RULES GOVERNING AMOUNTS USED IN CALCULATING THE INCOME TAX BASE

##### *Division I: Tax Accounting and Timing Year of Assessment and Basis Period*

18. (1) The year of assessment for a person shall be the calendar year.

(2) The basis period of a person is,

(a) in the case of an individual or a partnership, the calendar year from 1<sup>st</sup> January to 31<sup>st</sup> December; and

(b) in the case of a Company or a Trust, the accounting year of the Company or Trust.

(3) A trust or company may apply to the Commissioner-General for a change of its accounting year and the Commissioner-General may, on such terms and conditions as the Commissioner-General thinks fit, approve the change. The Commissioner-General may revoke an approval if a trust or company fails to comply with a condition attached to the approval.

(4) A change in a trust or company’s accounting year alters the time at which the trust or company must pay tax by instalments and on assessment under Part VIII.

#### **Method of Accounting**

19. (1) Subject to this Act, the timing of inclusions and deductions in calculating a person’s income during a basis period shall be made according to generally accepted accounting principles.

(2) An individual shall account for income tax purposes on a cash basis in calculating the individual’s income from an employment or investment.

(3) A company shall account for income tax purposes on an accrual basis.

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(4) A person other than a company shall account for income tax purposes on either a cash or accrual basis, whichever most clearly reflects the person's income.

(5) Subject to subsections (2), (3) and (4), the Commissioner-General may by written notice require a person to use a particular method of accounting or may approve an application of a person to change the person's method of accounting. The Commissioner-General must be satisfied that the new method is necessary to clearly reflect the person's income.

(6) If a person's method of accounting changes, adjustments must be made in the basis period following the change so that no item is omitted or taken into account more than once.

**Cash Basis Accounting**

20. Under the cash basis of accounting, a person—

- (a) derives an amount when payment is received by, made available to, or made in favour of the person; and
- (b) incurs an expense or other amount when it is paid by the person.

**Accrual Basis Accounting**

21. (1) Under the accrual basis of accounting, a person—

- (a) derives an amount when it is receivable by the person; and
- (b) incurs an expense or other amount when it is payable by the person.

(2) An amount is receivable by a person when the person becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is payable by instalments.

(3) An amount is treated as payable by the person when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance occurs with respect to that amount.

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

- (a) with respect to the acquisition of services or assets, at the time the services or assets are provided;
- (b) with respect to the use of an asset, at the time the asset is used; and

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

(5) Where in calculating income on an accrual basis an inaccuracy mentioned in subsection (6) occurs, appropriate adjustments must be made at the time the payment is received or made so as to remedy the inaccuracy.

(6) An inaccuracy involves-

(a) a person accounting for a payment of a particular quantity to which the person is entitled or that the person is obliged to make; and

(b) subsequently that entitlement or obligation being satisfied by a payment received or made by the person, as the case requires, of a different quantity.

(7) Prepayments: Where a person is allowed a deduction for an amount or expense incurred on a service or other benefit which extends beyond twelve months, the deduction is allowed proportionately over the basis periods to which the service or other benefit relates.

**Claim of Right**

22. (1) A person is treated as deriving an amount even though the person is not legally entitled to receive it if the person claims to be legally entitled to receive it.

(2) A person is treated as incurring an amount even though the person is not legally obliged to pay the amount if the person claims to be legally obliged to pay the amount.

(3) The time at which the person is treated as deriving or incurring an amount referred to in subsection (1) or (2) is determined in accordance with sections 20 and 21.

**Reversal of Amounts Including Bad Debts**

23. (1) Where a person deducts an expense in calculating the person's income and the person later recovers the expense, the person must, at the time of recovery, include the amount recovered in calculating the person's income.

(2) Where a person includes an amount in calculating the person's income and, because of a legal obligation to do so, the person later refunds the amount, the person may, at the time of refund, deduct the amount refunded in calculating the person's income.

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(3) Where, in calculating income on an accrual basis, a person deducts an expense that the person is obliged to make and the person later disclaims an obligation to incur the expense, the person must, at the time of disclaimer, include the amount disclaimed in calculating the person's income.

(4) Subsection (5) applies where, in calculating income on an accrual basis, a person includes an amount to which the person is entitled and the person later-

- (a) disclaims an entitlement to receive the amount; or
- (b) in the case where the amount constitutes a debt claim of the person, the person writes off the debt as bad.

(5) Subject to subsections (6) and (7), the person may, at the time of disclaimer or write off, deduct the amount disclaimed or written off in calculating the person's income.

(6) Where a person has incurred a liability and the person includes the amount in calculating the person's income as such and the liability ceases to exist in part or wholly because of its disclaimer on the part of the person to whom the liability is owed, the person who incurred the liability must bring to account at the time of the disclaimer an amount equivalent to such disclaimer in calculating the person's income

(7) Subject to section 87(banking business), a person cannot disclaim the entitlement to receive an amount or write off a debt claim as bad unless the Commissioner-General is satisfied that the person has taken all reasonable steps in pursuing payment and that the Commissioner - General reasonably believes that the entitlement or debt claim will not be satisfied.

**Long-term Contracts**

24. (1) This section applies to a person who conducts a business, accounts for income tax purposes on an accrual basis with respect to that business and is a party to a long-term contract.

(2) Amounts to be included or deducted in calculating the person's income that relate to a long-term contract are taken into account on the basis of the percentage of the contract completed during each basis period.

(3) The percentage of completion is determined by comparing the total expenses allocated to the contract and incurred before the end of a basis period with the estimated total contract expenses as determined at the time of commencement of the contract.

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(4) Subsection (5) applies where a long-term contract is completed and the person has an unrelieved loss attributable to that contract for the basis period in which the contract ended or any earlier basis period. An unrelieved loss of a business for a basis period is attributable to a long-term contract to the extent that there is a loss from the contract for the period.

(5) The Commissioner-General may allow the unrelieved loss to be carried back and treated as an unrelieved loss of an earlier basis period for the purposes of section 17 (unrelieved losses). The amount carried back is limited to the profit (if any) from the contract for the basis period to which the loss is carried back.

(6) A profit or a loss from a long-term contract for a basis period is determined by comparing amounts included in income under the contract with deductions under the contract for that period.

(7) In this section—  
“long-term contract” means a contract—  
    (a) for manufacture, installation or construction or, in relation to each, the performance of related services; and  
    (b) which is not completed within 12 months of the date on which work under the contract commences; and  
“unrelieved loss”, with respect to a business, has the meaning given in section 17.

**Foreign Currency and Financial Instruments**

**25.** (1) This section applies where, under the rules in Divisions II or IV of Part II, a person must include an amount or may deduct an amount in relation to a financial instrument in calculating income from a business or investment.

(2) The time at which the amount is to be included or deducted is determined in accordance with generally accepted accounting principles. Those principles also determine to whom the amount must be allocated, its quantum and its character.

(3) In particular, generally accepted accounting principles apply even if they require the inclusion or deduction of an amount on a fair value accounting (mark-to-market) basis and irrespective of—

- (a) the other provisions of this Division;
- (b) whether or not the amounts have yet been derived, incurred or realised; and
- (c) whether or not the amounts are of a capital or revenue nature.



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*Division II: Quantification, Allocation and Characterisation of Amounts*

**Quantification According to Market Value**

26. (1) A payment or amount to be included or deducted in calculating income is quantified in the amount prescribed by:

- (a) the Fourth Schedule or regulations, or
- (b) in any other case, according to market value.

(2) The amount of a payment is quantified without reduction for any tax withheld from the payment under Division II of Part VIII.

(3) Market value is determined-

- (a) with due regard for the arm's length standard referred to in section 31 (arm's length rule); but
- (b) in the case of an asset, without regard to any restriction on transfer of the asset or the fact that the asset is not otherwise convertible into a payment of money or money's worth.

**Indirect Payments**

27. (1) Subsection (2) applies where a person indirectly benefits from a payment or directs who is to be the payee of a payment and the payer intends the payment to benefit the person.

(2) Where this subsection applies, the Commissioner-General may, by practice note generally or by notice in writing served on the person-

- (a) treat the person as the payee of the payment;
- (b) treat the person as the payer of the payment; or
- (c) treat the person as the payee of the payment and as making an equal payment to the person who would be considered the payee of the payment if this subsection were ignored.

(3) In this section, an intention of the payer of a payment includes an intention of an associate of the payer or a third person under an arrangement with the payer or with an associate of the payer.

**Jointly Owned Investment**

28. (1) In calculating a person's income from an investment that is jointly owned with another person, amounts to be included and deducted are apportioned among the joint owners in proportion to their interests in the investment.

(2) Where the interests of joint owners cannot be ascertained they are treated as equal.

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**Compensation and Recovery Payments**

29. (1) Subsection (2) applies where a person or an associate of the person derives an amount (“the compensation amount”) which compensates for or represents recovery of—

- (a) income or an amount to be included in calculating income, which the person expects or is expected to derive; or
- (b) a loss or an amount to be deducted in calculating income, which the person has incurred or which the person expects or is expected to incur.

(2) Subject to section 23(reversal of amounts), the compensation amount is included in calculating income of the person and takes its character from the amount compensated for.

**Annuities, Instalment Sales and Finance Leases**

30. (1) Payments made by a person under a finance lease or in acquiring an asset under an instalment sale are treated as interest and a repayment of capital under a loan made by the lessor or seller to the lessee or buyer, as the case requires.

(2) Payments made to a person under an annuity are treated as interest and a repayment of capital under a loan made by the person to the payer of the annuity.

(3) The interest and repayment of capital under subsections (1) and (2) are calculated as if the loan were a blended loan with interest compounded six-monthly or such other period as regulations may prescribe.

(4) Section 48 provides further rules regarding transfers under finance leases and instalment sales.

(5) For the purposes of this section-  
“blended loan” means a loan-

- (a) under which payments by the borrower represent in part a payment of interest and in part a repayment of capital;
- (b) where the interest part is calculated on capital outstanding at the time of each payment; and
- (c) where the rate of interest is uniform over the term of the loan;

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“finance lease” means a lease where-

- (a) the lease agreement provides for transfer of ownership following the end of the lease term or the lessee has an option to acquire the asset after expiry of the lease term for a fixed or presupposed price;
- (b) the lease term exceeds 75 percent of the useful life of the asset;
- (c) the estimated market value of the asset after expiry of the lease term is less than 20 percent of its market value at the start of the lease;
- (d) in the case of a lease that commences before the last 25 percent of the useful life of the asset, the present value of the minimum lease payments equals or exceeds 90 percent of the market value of the asset at the start of the lease term; or
- (e) the asset is custom-made for the lessee and after expiry of the lease term the asset will not be of practical use to any person other than the lessee;

“instalment sale” excludes a sale that provides for commercial periodic interest payable on sales proceeds outstanding; and

“lease term” includes an additional period for which the lessee has an option to renew a lease.

**Arm’s Length Standard and Arrangements between Associates**

31. (1) Where an arrangement exists between associated persons, the persons shall calculate their income and tax payable according to the arm’s length standard.

(2) The arm’s length standard requires associated persons to quantify, characterise, apportion and allocate amounts to be included or deducted in calculating income to reflect arrangements that would have been made between independent persons.

(3) Regulations may prescribe rules to this section and international guidelines, including guidelines that aim at checking transfer pricing, that shall be followed in applying the arm’s length standard.

(4) Where, in the opinion of the Commissioner-General, a person fails to comply with subsection (1), the Commissioner-General may make adjustments consistent with subsection (1) and in doing so the Commissioner-General may—

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- (a) re-characterise an arrangement made between associated persons, including re-characterising debt financing as equity financing;
- (b) re-characterise the source and type of any income, loss, amount or payment; and
- (c) apportion and allocate expenditure, including that referred to in section 102(2) (permanent establishment), based on turnover.

**Income Splitting**

32. (1) Where a person attempts to split income with another person, the Commissioner-General may prevent any reduction in tax payable by issuing a notice in writing.

(2) A notice referred to in subsection (1) may adjust amounts to be included or deducted in calculating the income of each person or re-characterise the source and type of any income, loss, amount or payment.

(3) A reference to a person attempting to split income includes a reference to an arrangement between associated persons-

- (a) for the transfer of an asset (directly or indirectly), including the transfer of an amount to be derived;
- (b) where the transferor retains any legal or implicit right to benefit (currently or in the future) from the asset; and
- (c) where one of the reasons for the transfer is to lower tax payable by any person.

**Thin Capitalisation**

33. (1) Where a resident entity which is not a financial institution and in which fifty percent or more of the underlying ownership or control is held by an exempt person either alone or together with an associate has a debt-to-equity ratio in excess of 3-to-1 at any time during a basis period, a deduction is disallowed for any interest paid or foreign currency exchange loss incurred by that entity during that period on that part of the debt which exceeds the 3-to-1 ratio being a portion of the interest or loss otherwise deductible but for this subsection.

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- (2) In this section “exempt person” means
- (a) a non-resident person; and
  - (b) a resident person for whom interest paid to that exempt person by the resident entity or for whom any foreign exchange gain realised with respect to a debt claim against the resident entity
    - (i) constitute exempt income; or
    - (ii) is not included in ascertaining the exempt person’s assessable income;

(3) in this section “resident entity” means a resident partnership, resident company, resident trust or permanent establishment of a non-resident person in Ghana.

**General Anti-Avoidance Rule**

34. (1) For the purposes of determining liability to tax under this Act, the Commissioner may recharacterise or disregard an arrangement or part of an arrangement that is entered into or carried out as part of a tax avoidance scheme,

- (a) which is fictitious or does not have a substantial economic effect; or
- (b) the form of which does not reflect its substance.

- (2) In this section,
- “arrangement” means any arrangement, action, agreement, course of conduct, promise, transaction, understanding, or undertaking, whether express or implied, whether or not enforceable by legal proceedings and whether unilateral or involving more than one person;
  - “tax avoidance scheme” includes an arrangement, one of the main purposes of which is the avoidance or reduction of liability to tax.

**PART IV**

**ASSETS AND LIABILITIES**

*Division I: Central Concepts*

**Calculation of Gains and Losses**

35. (1) A person’s gain from the realisation of an asset or liability is the amount by which the sum of the consideration received for the asset or liability exceeds the cost of the asset or liability at the time of realisation.

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(2) The loss of a person from the realisation of an asset or liability is the amount by which the cost of the asset or liability exceeds the sum of the consideration received for the asset or liability at the time of realisation.

**Cost of an Asset**

**36.** (1) Subject to this Act, the cost of an asset of a person is the sum of—

- (a) expenditure incurred by the person in acquiring the asset including, where relevant, expenditure of construction, manufacture or production of the asset;
- (b) expenditure incurred by the person in altering, improving, maintaining or repairing the asset;
- (c) incidental expenditure incurred by the person in acquiring and realising the asset; and
- (d) income amounts referred to in subsection (2).

(2) An income amount is—

- (a) an amount required by Division II of Part II to be directly included in calculating the person's income or that is an exempt amount or final withholding payment of the person; where
- (b) the treatment in paragraph (a) results from the person acquiring the asset or another person incurring expenditure of the type mentioned in subsection (1)(b) or (c) on behalf of the person.

(3) The cost of an asset does not include consumption expenditure, excluded expenditure and expenditure to the extent to which it is directly deducted in calculating a person's income or included in the cost of another asset.

(4) In this section, "incidental expenditure" incurred by a person in acquiring or realising an asset includes—

- (a) advertising expenditure, transfer taxes, duties and other expenditure of transfer;
- (b) expenditure of establishing, preserving or defending ownership of the asset; and
- (c) remuneration for the services of an accountant, agent, auctioneer, broker, consultant, legal advisor, surveyor or valuer relating to expenditure referred to in paragraph (a) or (b).

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**Consideration Received**

**37.** (1) Subject to this Act, consideration received for an asset of a person at a particular time means-

- (a) amounts derived by the person in respect of owning the asset including-
  - (i) amounts derived from altering or decreasing the value of the asset; and
  - (ii) amounts derived from the asset including by way of covenant to repair or otherwise; and
- (b) amounts derived by the person or an entitlement for the person to derive an amount in the future in respect of realising the asset.

(2) The consideration received for an asset does not include an exempt amount, a final withholding payment or, other than in the case of trading stock, an amount to be directly included in calculating the person's income under Division II of Part II.

**Realisation**

**38.** (1) Subject to this Act, a person who owns an asset is treated as realising the asset-

- (a) when the person parts with ownership of the asset, including when the asset is sold, exchanged, transferred, distributed, cancelled, redeemed, destroyed, lost, expired or surrendered;
- (b) in the case of an asset of a person who ceases to exist, including by reason of the death of an individual, immediately before the person ceases to exist;
- (c) in the case of an asset other than trading stock or a depreciable asset, where the sum of consideration received from owning the asset exceeds the cost of the asset;
- (d) in the case of an asset that is a debt claim owned by a person other than a financial institution, the person reasonably believes the debt claim will not be satisfied, the person has taken all reasonable steps in pursuing the debt claim and the person writes the debt off as bad;
- (e) in the case of trading stock, a depreciable asset, a capital asset of a business or an investment asset, immediately before the person begins to employ the asset in such a way that it ceases to be an asset of any of those types; and
- (f) in the circumstances referred to in sections 62(change in control) and 101(change of residence).

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(2) Subsection (1) shall not apply to realisation of assets accruing to or derived by a company arising out of a merger, amalgamation, or re-organisation of the company where there is continuity of underlying ownership in the asset of at least twenty five per cent;

**Application of this Division to Liabilities**

**39.** (1) The costs of and consideration received for a liability of a person are determined consistently with sections 37 and 38 as though a reference to an asset were a reference to a liability and the following are included:

- (a) in the costs - expenditure incurred in realising the liability; and
- (b) in consideration received - amounts derived in respect of incurring the liability.

(2) Subject to this Act, a person who owes a liability is treated as realising the liability-

- (a) when the person ceases to owe the liability, including when the liability is transferred, satisfied, cancelled, released or expired;
- (b) in the case of a liability of a person who ceases to exist, including by reason of the death of an individual, immediately before the person ceases to exist; and
- (c) in the circumstances referred to in sections 62(1) (change in control) and 101 (change of residence).

(3) Subject to any regulations, the provisions of Division II apply, with any necessary adaptations, to liabilities in a manner similar to that in which they apply to assets.

**Reverse, Quantification and Compensation of Amounts**

**40.** (1) Subject to section 23, where a person includes expenditure in the cost of an asset or liability and later recovers the expenditure, the person must include the amount recovered in the consideration received for the asset or liability, as the case requires.

(2) Subject to section 23, where a person includes an amount derived in the consideration received for an asset or liability and, because of a legal obligation to do so, later refunds the amount, the person may include the amount refunded in the cost of the asset.



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(3) Subsection (4) applies where a person or an associate of a person derives an amount (“the compensation amount”) which compensates for or represents-

- (a) recovery of actual or expected costs or expected but not received consideration for an asset or liability; or
- (b) a loss in value of an asset or increase in a liability.

(4) Subject to any other adjustment under this Act, the compensation amount is included in the consideration received for the asset or liability, as the case requires.

*Division II: Special Rules*

**Cost of Trading Stock and Other Fungible Assets**

**41.** (1) For the purposes of determining the cost of trading stock of a business of a person-

- (a) no amount is included in respect of the repair, improvement or depreciation of depreciable assets; and
- (b) subject to paragraph (a), the absorption-cost method shall be used for amounts that are eligible to be included in the cost of the trading stock (see section 36 Cost of an asset) .

(2) The owner of an asset referred to in subsection (3) may elect for the cost of the asset to be determined according to the first-in-first-out method or the average-cost method. Once chosen, the method may only be changed with the written permission of the Commissioner-General.

(3) The assets referred to in subsection (2) are trading stock or any other type of asset prescribed by regulations that are fungible and not readily identifiable.

(4) In this section-

“absorption-cost method” means the generally accepted accounting principle under which the cost of trading stock is the sum of direct asset costs, direct labour costs and factory overhead costs;

“average-cost method” means the generally accepted accounting principle under which costs are allocated to fungible assets of a particular type owned by a person based on a weighted average cost of all assets of that type owned by the person;

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“direct labour costs” means expenditure incurred by a person on labour that directly relates to the production of trading stock;

“direct asset costs” means expenditure incurred by a person in acquiring any asset or assets that constitutes trading stock or becomes an integral part of trading stock produced;

“factory overhead costs” means all expenditure incurred by a person in producing trading stock except direct labour and direct asset costs; and

“first-in-first-out method” means the generally accepted accounting principle under which costs are allocated to a fungible asset of a particular type owned by a person based on the assumption that assets of that type owned by the person are realised in the order of their acquisition.

**Realisation with Retention of Asset**

**42.** Where a person realises an asset in any of the manners described in section 38(d) to (f)–

- (a) the person is treated as having parted with ownership of the asset and deriving an amount in respect of the realisation equal to the market value of the asset at the time of the realisation; and
- (b) the person is treated as reacquiring the asset and incurring expenditure of the amount referred to in paragraph (a) in the acquisition.

**Transfer of Asset to Spouse or Former Spouse**

**43.** Where on death or as part of a divorce settlement or bona fide separation agreement an individual transfers an asset to a spouse or former spouse

- (a) the individual is treated as deriving an amount in respect of the realisation equal to the net cost of the asset immediately before the realisation; and
- (b) the spouse or former spouse is treated as incurring expenditure of the amount referred to in paragraph (a) in acquiring the asset.

**Transfer of Asset on Death**

44. Subject to section 43, where an individual realises an asset on death by way of transfer of ownership of the asset to another person-

- (a) the individual is treated as deriving an amount in respect of the realisation equal to the market value of the asset at the time of realisation; and
- (b) the person who acquires ownership of the asset is treated as incurring expenditure of the amount referred to in paragraph (a) in the acquisition.

**Transfer of Asset to an Associate or for No Consideration**

45. (1) Subject to this section and section 43 and 44 where a person realises an asset by way of transfer of ownership of the asset to an associate of the person or by way of transfer to any other person by way of gift other than under a will or upon intestacy or by way of transfer to the person's spouse, child, parent, brother and sister-

- (a) the person is treated as deriving an amount in respect of the realisation equal to the greater of the market value of the asset or the net cost of the asset immediately before the realisation; and
- (b) the person who acquires ownership of the asset is treated as incurring expenditure of the amount referred to in paragraph (a) in the acquisition.

(2) Where a person realises an asset, being trading stock, a depreciable asset or a capital asset of a business, by way of transfer of ownership of the asset to an associate of the person and the requirements of subsection (3) are met-

- (a) the person is treated as deriving an amount in respect of the realisation equal to the net cost of the asset immediately before the realisation; and
- (b) the associate is treated as incurring expenditure of the amount referred to in paragraph (a) in acquiring the asset.

(3) The requirements specified in subsection (2) are:

- (a) either the person or the associate is an entity;
- (b) the asset or assets are trading stock, depreciable assets or capital assets of a business of the associate immediately after transfer by the person;

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- (c) at the time of the transfer-(gi) the associate or, in the case of an associate partnership, none of its partners is exempt from income tax; and
- (d) there is continuity of underlying ownership in the asset of at least 25 percent;

**Realisation of Asset with Replacement**

**46.** (1) This section applies where a person realises an asset in any of the manners described in section 38(a), acquires an asset of the same type to replace the asset to be realised or realised within six months before or one year after the realisation.

- (2) Where this section applies, the person is treated as-
  - (a) deriving an amount in respect of the realisation equal to-
    - (i) the net cost of the asset immediately before the realisation; plus
    - (ii) the amount, if any, by which amounts derived in respect of the realisation exceed expenditure incurred in acquiring the replacement asset (calculated ignoring this section); and
  - (b) incurring expenditure in acquiring the replacement asset equal to-
    - (i) the amount referred to in paragraph (a)(i); plus
    - (ii) the amount, if any, by which expenditure incurred in acquiring the replacement asset exceeds amounts derived in respect of the realisation (calculated ignoring this section).

**Realisation of Asset as a Result of Merger, Amalgamation or Reorganisation**

**47.** The gain on realisation of assets accruing to or derived by a company arising out of a merger, amalgamation, or re-organisation of the company where there is continuity of underlying ownership in the asset of at least twenty five per cent is exempt,

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**Transfer by way of Security, Finance Lease or Instalment Sale**

48. (1) Where one person grants a mortgage (legal or equitable) or similar form of security over an asset to secure a debt owed to another person—

- (a) the one person is not treated as realising the asset or any part of it, but as still owning the asset and as having incurred a liability being the secured debt; and
- (b) the other person is not treated as acquiring the asset or any part of it, but only as owning the secured debt.

(2) Where an asset is leased under a finance lease, the lessor is treated as transferring ownership of the asset to the lessee.

(3) Subject to section 45, where a person transfers an asset under an instalment sale or, by reason of subsection (2), under a finance lease—

- (a) the person is treated as deriving an amount in respect of the transfer equal to the market value of the asset immediately before the transfer; and
- (b) the person who acquires the asset is treated as incurring expenditure of an equal amount in acquiring the asset.

(4) Where the lessee under a finance lease returns the asset to the lessor before ownership passes to the lessee (other than by reason of subsection (2)) the lessee is treated as transferring ownership of the asset back to the lessor.

(5) In this section, “finance lease” and “instalment sale” have the same meaning as in section 30.

**Realisation by Separation**

49. (1) Subject to section 48, where rights or obligations with respect to an asset owned by one person are created in another person, including by way of lease of an asset or part thereof, then—

- (a) where the rights or obligations are permanent, the one person is treated as realising part of the asset, but is not treated as acquiring any new asset or liability; and

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(b) where the rights or obligations are temporary or contingent, the one person is not treated as realising part of the asset or liability, but as acquiring a new asset or incurring a new liability, as the case requires.

(2) Rights or obligations are considered permanent when they are likely to last for more than 50 years.

**Apportionment of Costs and Consideration Received**

50. (1) Where a person acquires one or more assets by way of transfer at the same time or as part of the same arrangement, the expenditure incurred in acquiring each asset is apportioned between the assets according to their market values at the time of acquisition.

(2) Where a person realises one or more assets by way of transfer at the same time or as part of the same arrangement, the amounts derived in realising each asset are apportioned between the assets according to their market values at the time of realisation.

(3) Where a person who owns an asset realises part of it, the net cost of the asset immediately before the realisation is apportioned between the part of the asset realised and the part retained according to their market values immediately after the realisation.

**PART V**

**RULES GOVERNING TYPES OF PERSONS**

*Division I: Individuals*

**Personal Reliefs**

51. In arriving at the chargeable income of a resident individual for a year of assessment under section 2, subtract the personal reliefs referred to in the Fifth Schedule.

*Division II: Partnerships*

**Principles of Taxation**

52. (1) A partnership is not liable to pay income tax with respect to its chargeable income and is not entitled to any tax credit with respect to that income, but is liable to pay income tax with respect to final withholding payments.

(2) Partnership income or a partnership loss of a partnership is allocated to the partners in accordance with this Division.

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(3) Amounts derived and expenditure incurred by partners in common are treated as derived or incurred by the partnership and not the partners.

(4) Assets owned and liabilities owed by partners in common are treated as owned or owed by the partnership and not the partners and are treated as-

- (a) in the case of assets, acquired when they begin to be owned in that way;
- (b) in the case of liabilities, incurred when they begin to be owed in that way; and
- (c) realised when they cease to be so owned or owed in that way.

(5) Subject to this Act, all activities of a partnership are treated as conducted in the course of a single partnership business.

(6) Subject to this Act, arrangements between a partnership and its partners are recognised other than the following, which are taken into account in determining a partner's share under section 54(5):

- (a) loans made by a partner to a partnership and any interest paid with respect thereto; and
- (b) services provided by a partner to a partnership (including by way of employment) and any service fee or income from employment payable with respect thereto.

(7) Subject to any consequences under section 55, if on the change of partners in a partnership at least two existing partners continue, the partnership is treated as the same entity both before and after the change.

**Partnership Income or Loss**

**53.** (1) Partnership income of a partnership for a year of assessment is the partnership's income from its business for the year.

(2) A partnership loss of a partnership for a year of assessment is the partnership's loss from its business for the year.

**Taxation of Partners**

**54.** (1) For the purposes of calculating a partner's income from a partnership for a year of assessment of the partner, include the partner's share of any partnership income or deduct the partner's share of any partnership loss of the relevant partnership year. The relevant partnership year is the year of assessment of the partnership ending on the last day of or during the year of assessment of the partner.

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(2) Gains on disposal of an interest of a partner in a partnership are treated as income from a business and included in calculating the income of the partner from the partnership. Calculate such gains under Part IV, but subject to the adjustments in section 55.

(3) Partnership income or a partnership loss allocated to partners under subsection (1)-

- (a) retains its character as to type and source;
- (b) is treated as an amount derived or expenditure incurred, respectively, by a partner at the end of the partnership's year of assessment; and
- (c) is allocated to the partners proportionately to each partner's share, unless the Commissioner-General, by notice in writing and for good cause, orders otherwise.

(4) Tax paid under this Act and foreign income tax paid or treated as paid by the partnership with respect to the partnership income is allocated to the partners, proportionately to each partner's share, and treated as paid by them. The allocation occurs at the time partnership income is treated as derived by the partners under subsection (3)(b).

(5) For the purposes of this section and subject to section 52(6), a "partner's share" is equal to the partner's percentage interest in any income of the partnership as set out in the partnership arrangement.

**Cost of and Consideration Received for Partnership Interest**

**55.** (1) The following are included in the cost of a partner's membership interest in a partnership:

- (a) amounts included in calculating the partner's income under section 52(1), at the time of that inclusion; and
- (b) the partner's share of exempt amounts and final withholding payments derived by the partnership, at the time the amount or payment is derived.

(2) The following are included in the consideration received for a partner's membership interest in a partnership:

- (a) amounts deducted in calculating the partner's income under section 52(1), at the time of deduction;
- (b) distributions made by the partnership to the partner, at the time of distribution; and
- (c) the partner's share)) of domestic or excluded expenditure incurred by the partnership, at the time the expenditure is incurred.



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### *Division III: Trusts*

#### **Taxation of Trusts**

**56.** (1) A trust is liable to tax separately from its beneficiaries and separate calculations of income must be made for separate trusts regardless of whether they have the same trustees.

(2) A trust is taxed as an entity, except a trust of an incapacitated individual (not being a minor), which is taxed as though it were an individual.

(3) Amounts derived and expenditure incurred by a trust or a trustee (other than as a bare agent) are treated as derived or incurred by the trust and not any other person. This rule applies whether or not the amount is derived or incurred on behalf of another person and whether or not any other person is entitled to such an amount or income constituted by such an amount.

(4) Assets owned and liabilities owed by a trust or a trustee (other than as a bare agent) are treated as owned or owed by the trust and not any other person.

(5) Subject to this Act, arrangements between a trust and its trustees or beneficiaries are recognised.

#### **Taxation of Beneficiaries**

**57.** (1) Distributions-

(a) of a resident trust are exempt in the hands of the trust's beneficiaries; and

(b) of a non-resident trust are included in calculating the income of the trust's beneficiaries.

(2) Gains on disposal of the interest of a beneficiary in a trust are included in calculating the income of the beneficiary.

### *Division IV: Companies*

#### **Taxation of Companies**

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

(2) Amounts derived and expenditure incurred jointly or in common by the managers or shareholders for the purposes of a company that lacks legal capacity are treated as derived or incurred by the company and not any other person.

(3) Assets owned and liabilities owed jointly or in common by the managers or shareholders for the purposes of a company that lacks

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legal capacity are treated as owned or owed by the company and not any other person.

(4) Subject to this Act, all activities of a company are treated as conducted in the course of a single company business.

(5) Subject to this Act, arrangements between a company and its managers or shareholders are recognised.

**Taxation of Shareholders**

**59.** (1) Subject to subsection (3), dividends-

(a) distributed by a resident company are taxed to the company's shareholders in the form of a final withholding tax; and

(b) distributed by a non-resident company are included in calculating the income of the shareholders.

(2) Subject to subsection (3), gains on disposal of shares in a company are included in calculating the income of the shareholder.

(3) Subject to subsection (4), a dividend paid to a resident company by another resident company is exempt from tax where the company receiving the dividend controls, indirectly or directly 25% or more of the voting power in the company paying the dividend.

(4) Subsection (3) does not apply to

(a) a dividend paid to a company by virtue of its ownership of redeemable shares in the company paying the dividend; or

(b) a dividend of a type referred to in section 33(3).

(5) A dividend consisting of capitalisation of profits or treated as distributed under subsection (8) is treated as paid to each of the company's shareholders in proportion to their respective interest in the company

(6) The Commissioner-General shall in the case of capitalisation of profits, direct that appropriate tax be paid in accordance with this Act,

(7) The Commissioner –General shall in issuing any directives under subsection (6), consider the matters contained in sub-section(8)(b) with the necessary modifications to make that subsection applicable to subsection (6),

(8) (a) Where the Commissioner-General is satisfied that a company controlled by not more than five persons and their associates does not distribute to its shareholders as

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dividends a reasonable part of its income from all sources for a basis period within a reasonable time after the end of the basis period, the Commissioner-General may, by notice in writing treat that part of the company's income which the Commissioner-General determines as dividend paid to its shareholders during that period or any other period.

- (b) In determining whether a company has distributed a reasonable part of its income from all sources for a basis period, the Commissioner General shall consider
- (i) the current requirement of the company's business after accounting for any adjustment which the Commissioner-General may make under section (31) and paragraph 53 of the seventh schedule of this Act, and
  - (ii) any other requirement necessary or advisable for the maintenance and development of the business.

**Branch Profits Tax**

**60.** (1) (a) A tax is hereby imposed, for each year of assessment, on a non-resident person carrying on business in Ghana through a permanent establishment which has earned repatriated profits for a basis period ending within the year.

- (b) A person who has earned repatriated profits under paragraph (a) of this subsection shall pay a final tax on the gross amount of the earned repatriated profits to the Commissioner-General in accordance with the prescribed rate within thirty days after the end of the basis period of the person.

(2) For the purposes of subsection (9), the portion of the net profit of the resident person which corresponds to the interest of the non-resident shareholders shall be treated as repatriated profits and as dividends distributed in accordance with their respective shares in the company.

*Division V: General Provisions Applicable to Entities*

**Asset Dealings between Entities and Members**

**61.** Subject to section 42(2), where an asset is realised by way of transfer of ownership of the asset by an entity to one of its members or vice versa-

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- (a) the transferor is treated as deriving an amount in respect of the realisation equal to the market value of the asset immediately before the realisation; and
- (b) the transferee is treated as incurring expenditure of the amount referred to in paragraph (a) in the acquisition.

**Change in Control**

62. (1) Subsection (2) applies when the underlying ownership of an entity changes by more than 50 percent as compared with that ownership at any time during the previous three years the entity is treated as realising all its assets and liabilities immediately before the change

- (2) After the change the entity is not permitted to-
  - (a) deduct financial costs carried forward under section 16(3) that were incurred by the entity prior to the change;
  - (b) deduct a loss under section 17(1) that was incurred by the entity prior to the change;
  - (c) claim a deduction under section 23(2) or (4) after the change in a case where the entity has, prior to the change, included an amount in calculating income under those provisions
  - (d) carry back a loss under section 24(5) that was incurred after the change to a year of assessment before the change.

(3) Where a change in ownership of the type referred to in subsection (1) occurs during a year of assessment of an entity, the parts of the year of assessment before and after the change are treated as separate years of assessment.

(4) This section does not apply to a partnership or company that conducts its business after a change of the type mentioned in subsection (1) in the same manner as during the 12-month period before the change. It must continue to do so for a period of two years after the change.

**PART VI**

**SPECIAL INDUSTRIES**

*Division I: Petroleum Operations*

**Principles of Taxation**

63. (1) This Division modifies the standard rules of this Act as they apply to a person conducting petroleum operations. To the extent there

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is no modification, the standard rules apply.

(2) Income tax payable by a person with respect to the conduct of petroleum operations is known as petroleum income tax.

(3) Petroleum income tax payable by a person for a year of assessment is calculated by applying the relevant rate set out in the First Schedule to the person's chargeable income from petroleum operations for the year. If the person has other chargeable income, that income is charged at the appropriate rate in accordance with section 1.

(4) For the purposes of ascertaining a person's assessable income from petroleum operations-

- (a) each separate petroleum operation is treated as an independent business and the person must prepare accounts for that business separate from any other activity of the person; and
- (b) the person must calculate income, loss and petroleum income tax liability for the business independently for each year of assessment.

(5) Section 31 (arm's length standard) applies-

- (a) to arrangements between a separate petroleum operation and other activities of the person conducting the petroleum operation (including other separate petroleum operations or refining or other processing operations of the person); and
- (b) as though the arrangements were conducted between associated persons.

(6) In accordance with subsection (5), the transfer of an asset to or from a separate petroleum operation is treated as an acquisition or disposal of the asset, as the case requires.

(7) Where two or more persons hold a petroleum right (otherwise than in partnership), they must calculate their assessable income from petroleum operations with respect to the right separately, but do so as though they were associated persons. As a result, section 31 (arm's length standard) applies to arrangements between the persons.

(8) Petroleum income tax, including interest, fines and penalties imposed under this Act and the Petroleum Revenue Management Act with respect thereto is payable-

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- (a) in the currency provided for in the applicable petroleum agreement; and
- (b) in the absence of any express agreement, in cedis.

**Separate Petroleum Operations**

**64.** (1) Subject to subsection (2), petroleum operations pertaining to each petroleum right constitute a separate petroleum operation.

(2) The following rules apply following an approval of a development plan within a petroleum agreement area:

- (a) petroleum operations conducted with respect to the petroleum right to the date of approval and petroleum operations conducted with respect to the development and production area after that date are treated as conducted with respect to the same separate petroleum operation; and
- (b) from the date of approval, petroleum operations conducted with respect to the petroleum right that are not in respect of the development and production area are treated as a new separate petroleum operation.

**Development and Exploration Operations**

**65.** (1) The rules in this section apply to exploration and development operations conducted by a person as part of a separate petroleum operation but prior to the person commencing production.

(2) All expenditure, whether of a revenue or capital nature, incurred in the course of exploration and development operations is placed in a single pool and-

- (a) no deduction or capital allowance is granted with respect to that expenditure; and
- (b) that expenditure does not form part of the cost of an asset.

(3) Expenditure is not included in the pool referred to in subsection (2)-

- (a) if it is domestic or excluded expenditure; or
- (b) if it fails to meet the requirements of section 67(2)(b)(i) or (ii).

(4) No amount is included in calculating income from the separate petroleum operation or in consideration received in respect of a depreciable or capital asset of the operation. Rather, amounts that would be included reduce the pool referred to in subsection (2).

(5) The balance in the pool referred to in subsection (2) is carried forward from year to year until production commences. However, where

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at the end of a year of assessment the balance in the pool is negative (by reason of reductions referred to in subsection (4))-

- (a) that negative amount is included in calculating the person's income from the separate petroleum operation for the year; and
- (b) the balance in the pool carried forward to the next year of assessment is nil.

(6) Where a person commences production with respect to a separate petroleum operation, the balance in the pool of exploration and development expenditure at that time is capitalised and capital allowances granted (see section 67(6)).

**Income from Petroleum Operations**

66. (1) Subject to section 65, in calculating a person's income from conducting a separate petroleum operations for a year of assessment, include the following:

- (a) the market value of petroleum obtained from the separate petroleum agreement area that is disposed of or treated as disposed of during the year;
- (b) compensation derived, whether under a policy of insurance or otherwise, in respect of loss or destruction of petroleum from the petroleum agreement area;
- (c) amounts derived in respect of the sale of information pertaining to the operations or petroleum reserves;
- (d) gains from the assignment or other disposal of an interest in the petroleum right with respect to which the operation is conducted;
- (e) amounts required to be included under section 70 in respect of a surplus in a decommissioning fund;
- (f) Amounts received after production commenced as reimbursement of cost and premium to a sole risk party under the sole risk terms of a joint operating agreement, and
- (g) any other amounts derived by the person during the year from or incidental to the operation that are included in calculating income under other provisions of this Act.

(2) The market value of petroleum-

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- (a) is determined in accordance with the method prescribed in the petroleum agreement, but
- (b) is not less than the sale value receivable in a transaction meeting the requirements of section 31 (arm's length standard) without discount, commission or deduction.

**Deductions for Petroleum Operations**

67. (1) Subject to sections 8, 65 and this section, in calculating a person's income from a separate petroleum operation for a year of assessment, deduct the following:

- (a) annual rental charges and royalties paid by the person under the PEP Act with respect to the petroleum operation;
- (b) capital allowances granted with respect to the petroleum operation and calculated in accordance with Part II of the Third Schedule;
- (c) contributions to and other expenses incurred in respect of a decommissioning fund for the petroleum operation in accordance with the rules established for that fund;
- (d) expenses incurred by the person in the course of closure of the petroleum operation, but only to the extent funds in the relevant decommissioning fund are not yet available or are inadequate; and
- (e) any other amounts incurred by the person during the year directly in the course of the operation that may be deducted under other provisions of this Act.

(2) No deduction is allowed in calculating income from a separate petroleum operation-

- (a) under section 13 (research and development);
- (b) for an amount unless-
  - (i) it is wholly, exclusively and necessarily incurred in the acquisition or improvement of a valuable asset used in the operation; or
  - (ii) it is wholly, exclusively and necessarily incurred in acquiring services or facilities for the operation and the amount constitutes income of the recipient that has a source in Ghana;



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- (c) to the extent the amount does not comply with section 31 (arm's length standard);
  - (d) for a bonus payment made in respect of the grant of the petroleum right; or
  - (e) for expenditure incurred as a consequence of a breach of a petroleum agreement.
- (3) In applying section 14 to petroleum operations-
  - (a) "written down value" of a pool of depreciable assets means the written down value of all assets in that pool as determined under Part II of the Third Schedule; and
  - (b) excess expense referred to in section 12(3) is added to the pool of depreciable assets of the year in which the expense is incurred.
- (4) In calculating a person's income from a separate petroleum operation for a year of assessment, relevant financial costs incurred during the year may be deducted only to the extent that relevant financial gains are included in calculating the income. Losses on financial instruments may only be set against gains on financial instruments. This limitation is in addition to that provided in section 16 (deduction of financial costs).
- (5) (a) Any excess relevant financial cost for which a deduction is not available under subsection (4) may be carried forward and treated as incurred during any of the following five years of assessment.
  - (b) Any excess relevant financial cost to be carried forward under paragraph (a) shall be used in the order in which they are incurred.
  - (c) Where there has been a change of control under section 62 any carry forward of excess relevant financial cost under paragraph (a) shall be restricted in accordance with the provisions of section 62.
- (6) Subject to section 65, the following are treated as the cost of a depreciable asset for which capital allowances are granted with respect to a separate petroleum operation in accordance with Part II of the Third Schedule:
  - (a) the cost of the petroleum right;
  - (b) the balance in the pool of reconnaissance, appraisal and

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- exploration expenditure at the time production commences;
- (c) expenditure incurred in respect of the petroleum operation in developing petroleum operations and infrastructure, including as may be prescribed by regulations, that-
    - (i) in accordance with generally accepted accounting principles, is capitalised in the person's financial accounts; and
    - (ii) does not otherwise fall to be included in the cost of an asset; and
  - (d) bonus payments made in respect of the grant of the petroleum right.

(7) Regulations may make further provision with respect to the deduction of amounts in calculating income from petroleum operations.

**Losses from Petroleum Operations**

**68.** Section 17 applies to unrelieved losses of a person from a separate petroleum operation with the following modifications:

- (a) an unrelieved loss from the operation may be used under section 17(1)(b).
- (b) losses are used in the order in which they are incurred; and
- (c) losses from the separate petroleum operation may be deducted only in calculating future income from that separate petroleum operation and not income from any other petroleum operation or non-petroleum activity.

**Disposal of Petroleum Rights**

**69.** (1) Where a person (whether resident or non-resident) holds a direct or indirect interest in an entity that holds a petroleum right, the person is treated as holding that interest as a capital asset employed in a business.

(2) Where an entity that holds a petroleum right suffers a 5 percent or more change in its underlying ownership, the entity is treated as-

- (a) disposing of a proportionate interest in its petroleum right and immediately reacquiring that interest;
- (b) receiving for the disposal consideration equal to the amount received or receivable as consideration arising out of the change in ownership or the market value of the proportion of the right treated as disposed of whichever is higher; and

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- (c) incurring in respect of the reacquisition under paragraph (a), an equal amount.
- (3) (a) An entity that suffers a change of ownership referred to in subsection (1) must notify the Commissioner-General within 30 days of the change.
  - (b) An entity which fails to give notice to the Commissioner-General as required under this section commits an offence and is liable on summary conviction to a fine of not more than two hundred penalty units for each failure or to a term of imprisonment of not more than six months or to both.
  - (c) In addition to the penalty provided under subsection (1) the person shall pay a penalty of not more than five hundred currency points for each failure.”
- (4) This section is without prejudice to the tax treatment of actual disposals of petroleum rights and the application of section 60 (change of control) to an entity that holds a petroleum right.

**Decommissioning Funds**

70. (1) Amounts accumulated in or withdrawn from a decommissioning fund for decommissioning purposes are exempt from tax.

(2) Subsection (3) applies where there is a surplus in the relevant decommissioning fund at any of the following times:

- (a) after a person completes decommissioning of a separate petroleum operation conducted by the person; or
- (b) at the time the person breaches an approved decommissioning plan.

(3) Where this subsection applies, the surplus is included in calculating the income of the person from the separate petroleum operation for the year of assessment in which the event referred to in subsection (2) occurs.

**Withholding Tax**

71. (1) The exemption in section 59(3) does not apply to a dividend paid by a company that conducts or that has conducted petroleum operations or a company that is a partner in a partnership that conducts or that has conducted petroleum operations,

(2) For the avoidance of doubt, dividends paid in circumstances

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where subsection (1) applies shall be subject to withholding tax in accordance with the relevant provisions of this Act

(3) Expatriate Employees Unless, and to the extent that, a petroleum agreement provides in respect of an expatriate employee employed by a contractor or subcontractor conducting exclusively petroleum operations, the gains or profit of the employee is liable to tax and withholding tax under this Act.

(4) Amounts due to subcontractors

- (i) Where under the terms of a contract, an amount is due to a subcontractor in respect of work or services for or in connection with a petroleum agreement, the person liable under that contract to make payment to that subcontractor shall withhold tax at the rates specified in the First Schedule and the amount withheld shall be paid to the Commissioner-General and payment of that amount shall have the effect provided for in subsection (ii). The tax withheld shall be a final tax
- (ii) When an amount has been withheld from an aggregate amount due to a subcontractor under subsection (i), the tax withheld in the case of a non-resident person is a final tax.

**Furnishing of Quarterly Return of Income**

**72.** A person engaged in a separate petroleum operation shall, not later than thirty days after the end of a quarterly period, furnish or deliver to the Commissioner-General,

(1) a return containing an estimate of the chargeable income resulting from the operations during the quarterly period, and

(2) an estimate of the tax due on the chargeable income computed and a remittance in settlement of the tax so computed

**Furnishing of Annual Return of Income**

**73.** A person engaged in petroleum operations shall furnish a return for each separate petroleum operation for a year of assessment not later than four months after the end of the year of assessment.

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The annual return delivered under subsection (1) shall include

- (a) a statement containing the full names, addresses, nationality, salaries, wages, fees, allowances of the employees in the Republic
- (b) a statement of the amount of production during the year of assessment and the share of that person in that production
- (c) a statement of the price paid for the sale or export without sale of the person's share of petroleum produced
- (d) any other statement or information required to be provided under other provisions of this Act.

Information relating to matters referred to under this section that is provided under petroleum agreement should be filed as part of the returns. Where there is a dispute as to the price applicable in respect of that person's share of petroleum produced for a period in the year of assessment, a return indicating the amount of chargeable income shall be computed on the basis of that person's proposed price.

In the event of final determination of the price in accordance with the terms of a petroleum agreement there should be submitted, pursuant to this section fresh returns reflecting the determined price and the adjustments and payments of tax due in respect of that price.

The returns shall be submitted within thirty days of the final determination of the price.

**Calling for further information**

74. The Commissioner-General may give notice in writing to a person engaged in petroleum operations as often as the Commissioner-General thinks necessary requiring that person to furnish within the time specified in the notice fuller or further information as to the matters in connection with the quarterly returns and annual returns or to any matters which the Commissioner considers necessary for determining the assessment of the person

**Payment of tax by Quarterly Instalment**

75. Tax for the quarterly period is due and payable thirty days after the end of the quarterly period.

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**Interpretation**

**76.** In this Division-

- “approved development plan” with respect to the area subject to a petroleum agreement takes its meaning from section 10 of the PEP Act;
- “approved decommissioning plan” means a plan for decommissioning the facilities used in petroleum operations upon cessation of those operations that is approved by an authority established by enactment for this purpose or, in the absence of such an authority, the Minister responsible for petroleum;
- “basis period” means the calendar year from 1<sup>st</sup> January to 31<sup>st</sup> December;
- “decommissioning fund” means a fund established by a petroleum agreement contractor in accordance with an approved decommissioning plan;
- “development” has the meaning given in the PEP Act;
- “development and production area” means the area subject to an approved development plan;
- “expatriate employee” means a person who is not a citizen of Ghana and who is employed for or in connection with the conduct of petroleum operations by a contractor or by a subcontractor under an express or implied contract of employment which provides for the payment of passages to and from the country and in respect of whom approval has been obtained from the Government for inclusion within the immigrant quota of the employer;
- “exploration” has the meaning given in the PEP Act;
- “PEP Act” means the Petroleum (Exploration and Production) Law, 1984 (P.N.D.C.L 84);
- “petroleum” has the meaning given in the PEP Act;
- “petroleum agreement” has the meaning given in the PEP Act;
- “petroleum agreement area” means the area subject to a petroleum agreement;
- “petroleum agreement contractor” means a contractor as defined in the PEP Act;
- “petroleum operations” has the meaning given in the PEP Act;
- “petroleum right” means the right to conduct petroleum operations under a petroleum agreement; and

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“production” has the meaning given in the PEP Act

“production activities” means activities constituting production within the meaning given in the PEP Act.

“quarterly period” means the period from 1st January to 31st March, 1st April to 30th June, 1st July to 30th September, or 1st October to 31st December of each year

“subcontractor” means a person who enters into a contract with a contractor for the provision or supply of work or services including rental of plant and equipment in Ghana for or in connection with the petroleum agreement to which the contractor is a party and where specified in a petroleum agreement, a non-resident person who provides work or supplies that service under the terms of a contract

*Division II: Mining*

**Principles of Taxation**

77. (1) This Division modifies the standard rules of this Act as they apply to a person conducting mineral operations. To the extent there is no modification, the standard rules apply.

(2) Income tax payable by a person with respect to the conduct of mineral operations is known as mining income tax.

(3) Mining income tax payable by a person for a year of assessment is calculated by applying the relevant rate set out in the First Schedule to the person’s chargeable income from mineral operations for the year. If the person has other chargeable income, that income is charged at the appropriate rate in accordance with section 1.

(4) For the purposes of ascertaining a person’s Chargeable income from mineral operations-

- (a) each separate mineral operation is treated as an independent business and the person must prepare accounts for that business separate from any other activity of the person; and
- (b) the person must calculate income, loss and mining income tax liability for the business independently for each year of assessment.

(5) Section 31 (arm’s length standard) applies-

- (a) to arrangements between a separate mineral operation and other activities of the person conducting the mineral

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operation (including other mineral operations or processing operations of the person); and

(b) as though the arrangements were conducted between associated persons.

(6) In accordance with subsection (5), the transfer of an asset to or from a separate mineral operation is treated as an acquisition or disposal of the asset, as the case requires.

(7) Where two or more persons hold a mineral right otherwise than in partnership, they must ascertain their assessable income from mineral operations with respect to the right separately, but do so as though they were associated persons. As a result, section 31 (arm's length standard) applies to arrangements between the persons.

**Separate Mineral Operations**

**78.** (1) Subject to this section, mineral operations pertaining to each mine as defined in the MM Act or mineral operations with shared processing facilities constitutes a separate mineral operation.

(2) The following rules apply where a person holds a reconnaissance licence and is subsequently granted a prospecting licence:

(a) mineral operations conducted with respect to the reconnaissance licence to the date of grant of the prospecting licence are treated as conducted with respect to the prospecting licence, and so are treated as conducted with respect to the same separate mineral operation;

(b) in particular, the rule in paragraph (a) applies for the purposes of applying subsection (3); and

(3) The following rules apply where a person holds a prospecting licence, is subsequently granted a mining lease and the mining lease area falls wholly within the prospecting area:

(a) mineral operations conducted with respect to the prospecting licence to the date of grant of the mining lease are treated as conducted with respect to the mining lease, and so are treated as conducted with respect to the same separate mineral operation;

(b) in particular, the rule in paragraph (a) applies for the purposes of applying subsection (4)



### **Reconnaissance and Prospecting Operations**

**79.** (1) The rules in this section apply to reconnaissance and prospecting operations conducted by a person as part of a separate mineral operation but prior to commencing production of a commercial find

(2) All expenditure, whether of a revenue or capital nature, incurred in the course of reconnaissance and prospecting operations is placed in a single pool and-

(a) no deduction or capital allowance is granted with respect to that expenditure; and

(b) that expenditure does not form part of the cost of an asset.

(3) Expenditure is not included in the pool referred to in subsection (2)-

(a) if it is domestic or excluded expenditure; or

(b) if it fails to meet the requirements of section 81(2)(b)(i) or (ii).

(4) No amount is included in calculating income from the separate mineral operation or in consideration received in respect of a depreciable or capital asset of the operation. Rather, amounts that would be included reduce the pool referred to in subsection (2).

(5) The balance in the pool referred to in subsection (2) is carried forward from year to year until production commences. However, where at the end of a year of assessment the balance in the pool is negative (by reason of reductions referred to in subsection (4))-

(a) that negative amount is included in calculating the person's income from the separate mineral operation for the year; and

(b) the balance in the pool carried forward to the next year of assessment is nil.

(6) Where a person commences production of a commercial find with respect to a separate mineral operation, the balance in the pool of reconnaissance and prospecting expenditure at that time is capitalised and capital allowances granted (see section 81(6)).

### **Income from Mineral Operations**

**80.** Subject to section 79, in calculating a person's income from conducting mineral operations for a year of assessment, include the following:

(a) amounts derived or treated by section 31 (arm's length standard) as derived during the year from the disposal of

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- minerals obtained from a separate mining operation
- (b) compensation derived, whether under a policy of insurance or otherwise, in respect of loss or destruction of minerals from a separate mining operation
- (c) amounts derived in respect of the sale of information pertaining to the mineral operations or mineral reserves;
- (d) gains from the assignment or other disposal of an interest in the mineral right with respect to which the operation is conducted;
- (e) amounts required to be included under section 84 in respect of a surplus in a rehabilitation fund; and
- (f) any other amounts derived by the person during the year from or incidental to the operation that are included in calculating income under other provisions of this Act.

**Deductions for Mineral Operations**

**81.** (1) Subject to sections 8, 79 and this section, in calculating a person's income from a separate mineral operation for a year of assessment, deduct the following:

- (a) ground rents and royalties paid by the person under the MM Act with respect to the mineral operation;
- (b) capital allowances granted with respect to the mineral operation and calculated in accordance with Part III of the Third Schedule;
- (c) contributions to and other expenses incurred in respect of an approved rehabilitation fund for the mineral operation;
- (d) expenses incurred by the person in the course of reclamation, rehabilitation and closure of the mineral operation, but only to the extent funds in the relevant approved rehabilitation fund are not yet available or are inadequate; and
- (e) any other amounts incurred by the person during the year directly in the course of the operation that may be deducted under other provisions of this Act.

(2) No deduction is allowed in calculating income from a separate mineral operation-

- (a) under section 13 (research and development);
- (b) for an amount unless-

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- (i) it is wholly, exclusively and necessarily incurred in the acquisition or improvement of a valuable asset used in the operation; or
    - (ii) it is wholly, exclusively and necessarily incurred in acquiring services or facilities for the operation and the amount constitutes income of the recipient that has a source in Ghana;
  - (c) to the extent the amount does not comply with section 31 (arm's length standard);
  - (d) for a bonus payment made in respect of the grant of the mineral right; or
  - (e) for expenditure incurred as a consequence of a breach of any applicable mineral agreement.
- (3) In applying section 14 to mineral operations-
- (a) "written down value" of a pool of depreciable assets means the written down value of all assets in that pool as determined under Part III of the Third Schedule; and
  - (b) excess expense referred to in section 14(3) is added to the pool of depreciable assets of the year in which the expense is incurred.
- (4) In calculating a person's income from a separate mineral operation for a year of assessment, relevant financial costs incurred during the year may be deducted only to the extent that relevant financial gains are included in calculating the income. Losses on financial instruments may only be set against gains on financial instruments. This limitation is in addition to that provided in section 16 (deduction of financial costs).
- (5) Any excess relevant financial cost for which a deduction is not available under subsection (4) is carried forward and treated as incurred during any of the following five years of assessment. Carry forwards are used in the order in which they are incurred and section 60 applies to restrict carry forward on a change in control.
- (6) Subject to section 79, the following are treated as the cost of a depreciable asset for which capital allowances are granted with respect to a separate mineral operation in accordance with Part III of the Third Schedule:

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- (a) the cost of the mineral right;
- (b) the balance in the pool of reconnaissance and prospecting expenditure at the time production of a commercial find commences;
- (c) expenditure incurred in respect of the mineral operation on waste removal, overburden stripping, shaft sinking and like activities that are prescribed by regulation that-
  - (i) in accordance with generally accepted accounting principles, is capitalised in the person's financial accounts; and
  - (ii) does not otherwise fall to be included in the cost of an asset; and
- (d) bonus payments made in respect of the grant of the mineral right.

(7) Regulations may make further provision with respect to the deduction of amounts in calculating income from mineral operations and, in doing so, may relax the requirements of subsection (4) for small scale mining.

**Losses from Mineral Operations**

82. Section 17 applies to unrelieved losses of a person from a separate mineral operation with the following modifications:

- (a) losses are used in the order in which they are incurred; and
- (b) losses from the separate mineral operation may be deducted only in calculating future income from that operation and not income from any other mineral operation or non-mineral activity.

**Disposal of Mineral Rights**

83. (1) (1) Where a person (whether resident or non-resident) holds a direct or indirect interest in an entity that holds a mineral right, the person is treated as holding that interest as a capital asset employed in a business

(2) Where an entity that holds a mineral right suffers a 5 percent or more change in its underlying ownership, the entity is treated as-

- (a) disposing of a proportionate interest in its mineral right and immediately reacquiring that interest;
- (b) receiving for the disposal consideration equal to the amount received or receivable as consideration arising out of the change in ownership or the market value of the proportion of the right treated as disposed of whichever is higher; and

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(c) incurring in respect of the reacquisition an equal amount.

(2) An entity that suffers a change of ownership referred to in subsection (1) must notify the Commissioner-General within thirty days of the change.

(3) (1) An entity which fails to give notice to the Commissioner-General as required under this Act commits an offence and is liable on summary conviction to a fine of not more than two hundred penalty units for each failure or to a term of imprisonment of not more than six months or to both.

(2) In addition to the penalty provided under subsection (1) the person shall pay a penalty of not more than five hundred currency points for each failure.”

(4) This section is without prejudice to the tax treatment of actual disposals of mineral rights and the application of section 60 (change of control) to an entity that holds a mineral right.

**Approved Rehabilitation Funds**

**84.** (1) Amounts accumulated in or withdrawn from an approved rehabilitation fund for the purpose of rehabilitation are exempt from tax.

(2) Subsection (3) applies where there is a surplus in the relevant approved rehabilitation fund at any of the following times:

- (a) after a person completes rehabilitation of a separate mineral operation conducted by the person; or
- (b) at the time the person breaches an approved rehabilitation plan.

(3) Where this subsection applies, the surplus is included in calculating the income of the person from the separate mineral operation for the year of assessment in which the event referred to in subsection (2) occurs.

**Withholding Tax**

**85.** (1) The exemption in section 59(3) does not apply to a dividend paid by a company that conducts or that has conducted mineral operations or a company that is a partner in a partnership that conducts or that has conducted mineral operations.

(2) For the avoidance of doubt, dividends paid in circumstances where subsection (1) applies shall be subject to withholding tax in accor-

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dance with the relevant provisions of this Act

(3) Subject to subsection (4), a resident person must withhold tax at the rate provided for in paragraph 6 of the First Schedule when the person pays for unprocessed precious minerals located in or won from Ghana.

(4) This section does not apply to-

- (a) payments made by individuals, unless made in conducting a business;
- (b) payments made by the holder of a small scale mining licence to a labourer with respect to winnings from the area covered by the licence; or
- (c) payments received by the holder of a large scale mining lease.

(5) The rules in Division II of Part VIII (withholding) apply to tax required to be withheld under this section.

(6) In this section-

“large scale mining lease” means a mining lease that is not a small scale mining licence;

“small scale mining” has the meaning given in Minerals and Mining Act, 2006 (Act703)

“small scale mining licence” has the meaning given in the Minerals and Mining Act, 2006 (Act703); and

“unprocessed precious minerals” means unprocessed gold, rough diamonds within the meaning given in the MM Act and such other minerals as may be prescribed by regulations.

**Interpretation**

86. In this Division-

“approved rehabilitation fund”, in respect of mineral operations, means a fund established as required under any applicable mineral agreement or approved rehabilitation plan;

“approved rehabilitation plan”, in respect of mineral operations, means a plan approved by the Minister responsible for mines for reclamation, rehabilitation and closure of the operations;

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Mine has the meaning given in the MM Act;  
“mineral” has the meaning given in the MM Act;  
“mineral agreement” means an agreement concluded with the Government of Ghana in respect of a mineral right and includes the terms and conditions on which a mineral right is granted;  
“mineral operations” has the meaning given in the MM Act;  
“mineral right” has the meaning given in the MM Act;  
“mining” has the meaning given in the MM Act;  
“mining area” has the meaning given in the MM Act;  
“mining lease” has the meaning given in the MM Act and includes a restricted mining lease within the meaning of that Act;  
“mining lease area” means the area covered by a mining lease;  
“mining operations” has the meaning given in the MM Act;  
“mineral right” has the meaning given in the MM Act;  
“MM Act” means the Minerals and Mining Act, 2006 (Act 703);  
“prospect” has the meaning given in the MM Act;  
“prospecting area” has the meaning given in the MM Act;  
“prospecting licence” has the meaning given in the MM Act and includes a restricted prospecting licence within the meaning of that Act;  
“reconnaissance” has the meaning given in the MM Act; and  
“reconnaissance licence” has the meaning given in the MM Act and includes a restricted reconnaissance licence within the meaning of that Act.

*Division III: Financial Institutions*

**Banking Business**

87. (1) This Division modifies the standard rules of this Act as they apply to a person conducting a banking business. To the extent there is no modification, the standard rules apply.

(2) For the purposes of this Act, a person’s activities in conducting a banking business are treated as a business separate from any other activity of the person and the person’s income or loss from the business for a year of assessment is calculated separately.

(3) Where a person conducting a banking business makes

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specific provision for a debt claim in respect of which the Commissioner-General is satisfied that the debt has become bad.

- (a) in the case of a debt claim that has been previously included in calculating income from the business, the provision is deductible; and
  - (b) in the case of a debt claim that constitutes the advance of a principal sum, the provision is deductible and the cost of the debt claim is reduced by an equal amount.
- (4) Where a person makes a provision referred to in subsection (3) and the person later reverses that provision-
- (a) in a case referred to in subsection (3)(a), the reverse is included in calculating income; and
  - (b) in a case referred to in subsection (3)(b), the reverse is included in calculating income and increases the cost of the debt claim.
- (5) Section 23(Bad debts) does not apply to a debt claim to which subsection (3) applies.
- (6) In this section, “banking business” means the banking business of a financial institution licenced under the Banking Act, 2004 (Act 653) or the Non-Bank Financial Institutions Act 2008 (Act 774 ).

**General Insurance Business**

- 88.** (1) This Division modifies the standard rules of this Act as they apply to a person conducting a general insurance business. To the extent there is no modification, the standard rules apply.
- (2) For the purposes of this Act, a person’s activities in conducting a general insurance business are treated as a business separate from any other activity of the person and the person’s income or loss from the business for a year of assessment is calculated separately.
- (3) In calculating a person’s income from a general insurance business for a year of assessment, include the following:
- (a) premiums derived during the year by the person as insurer, including as re-insurer, in conducting the business; and
  - (b) proceeds derived during the year by the person under any contract of re-insurance in respect of proceeds referred to in paragraph (4)(a).



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- (c) Any commissions and any amounts from investments held in connection with that business
  - (d) the amount of any reserve deducted in the previous basis period under paragraph (c) of subsection (4).
- (4) Subject to section 8, in calculating a person's income from a general insurance business for a year of assessment, deduct the following:
  - (a) proceeds incurred during the year by the person as insurer, including as re-insurer, in conducting the business; and
  - (b) premiums incurred during the year by the person under any contract of re-insurance in respect of proceeds referred to in paragraph (a).
  - (c) the amount of any reserve for unexpired risks referable to that business as at the end of the basis period
- (5) For the purposes of section 23(3), proceeds incurred by a person as a general insurer are payable (and so a deduction may be available under subsection (4)(a)) when and to the extent that-
  - (a) all the events that determine liability have occurred; and
  - (b) the proceeds can be deducted in accordance with generally accepted accounting principles.

**Life Insurance Business**

- 89.** (1) This Division modifies the standard rules of this Act as they apply to a person conducting a life insurance business. To the extent there is no modification, the standard rules apply.
- (2) For the purposes of this Act, a person's activities in conducting a life insurance business are treated as a business separate from any other activity of the person and the person's income or loss from the business for a year of assessment is calculated separately.
- (3) In calculating a person's income from a life insurance business for a year of assessment, the following are excluded and are not consideration received for an asset or liability:
  - (a) premiums derived by the person as insurer, including as re-insurer, in conducting the business; and
  - (b) proceeds derived by the person under any contract of re-insurance in respect of proceeds referred to in subsection (4)(a).
- (4) In calculating a person's income from a life insurance business for a year of assessment, the following are not deductible and are

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not included in the cost of an asset or liability:

- (a) proceeds incurred by the person as insurer, including as re-insurer, in conducting the business; and
- (b) premiums incurred by the person under any contract of re-insurance in respect of proceeds referred to in paragraph (a).

**Proceeds from Insurance**

**90.** (1) Subject to subsection (2) and sections 87 and 88, for the purposes of calculating the income of a person, the treatment of proceeds derived by the person from insurance is determined in accordance with section 29.

(2) Subject to section 88, gains of an insured from life insurance are-

- (a) in the case where the proceeds are paid by a resident insurer, exempt in the hands of the insured; and
- (b) in the case where the proceeds are paid by a non-resident insurer, included in calculating the income of the insured.

(3) For the purposes of this section, “gains of an insured from life insurance” means the extent to which proceeds from life insurance paid by an insurer exceed premiums paid to the insurer with respect to the insurance.

**Interpretation**

**91.** In this Division-

“general insurance” means any insurance that is not life insurance; and

“life insurance” means insurance of any of the following classes:

- (a) insurance where the specified event is the death of an individual who is the insured or an associate of the insured;
- (b) insurance where-
  - (i) the specified event is an individual who is the insured or an associate of the insured sustaining personal injury or becoming incapacitated; and

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- (ii) the insurance agreement is expressed to be in effect for at least five years or without limit of time and is not terminable by the insurer before the expiry of five years except in circumstances prescribed by regulations;
- (c) insurance under which an amount or series of amounts is to become payable to the insured in the future; and
- (d) re-insurance of insurance referred to in paragraphs (a) to (c).

*Division IV: Retirement Savings*

**Approved Retirement Funds**

**92.** The National Pensions Act, 2008 (Act 766) modifies the application of this Act (including the remainder of this Division) as it applies to contributions to, income of and retirement payments made by an approved retirement fund.

**Taxation of Retirement Funds**

**93.** (1) Subject to subsections (2) and (3) and section 90, the standard rules for calculation and taxation apply to the income of a retirement fund.

(2) Retirement contributions received by a retirement fund are exempt and are not consideration received for an asset or liability of the fund.

(3) Retirement payments are not deductible by a retirement fund and are not included in the cost of any asset or liability of the fund.

**Retirement Payments from Retirement Funds**

**94.** (1) For the purposes of calculating a person's income for a year of assessment from an interest in a retirement fund-

- (a) retirement payments made by a resident fund in respect of the interest are exempt and not consideration received for the interest; and
- (b) gains from an interest in a non-resident retirement fund are included.

(2) In this section, "gain from an interest in a retirement fund"

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means the extent to which retirement payments made by the fund in respect of an interest in the fund exceed retirement contributions paid to the fund in respect of the interest.

**Interpretation**

95. In this Division-

“approved retirement fund” means-

(a) the Social Security and National Insurance Trust established under the National Pensions Act, 2008 (Act 766); and

(b) an occupational pension scheme, provident fund or personal pension scheme registered under that Act;

“retirement contribution” means a payment made to a retirement fund for the provision or future provision of retirement payments;

“retirement fund” means an entity established and maintained solely for the purposes of accepting and investing retirement contributions in order to provide retirement payments to individuals who are beneficiaries of the entity or a nominated beneficiary of such an individual; and

“retirement payment” means a payment, including by way of a lump sum, pension or commuted pension, made by a person to-

(a) an individual in the event of the individual’s retirement; or

(b) a nominated beneficiary of an individual in the event of the individual’s death.

*Division V: Public, Mutual and Non-profit Causes*

**Approval of Charitable Organisations**

96. (1) The Commissioner-General may by ruling approve an entity as a charitable organisation for the purposes of this Act if it meets the requirements of subsection (2).

(2) The requirements referred to in subsection (1) are:

(a) the entity was established and functions as -

I. a religious institution of a public character;

II. a charitable institution of a public character;

III. a body of persons formed for the purpose of pro-

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moting social or sporting activities;

IV. registered sporting club;

(b) the entity has a written constitution that prohibits-

(i) the engagement in party political activities, the support of any political party or the use of its platform to engage in party politics;

(ii) any function other than one specified in paragraph (a); and

(iii) the conferring of private benefits, other than in pursuit of the organisation's function referred to in paragraph (a);

(3) For good cause, the Commissioner-General may revoke an approval granted under subsection (1), including because the entity behaves in a manner inconsistent with the requirements of subsection (2).

(4) The income accruing to or derived by a Charitable Organisation other than any business income is exempt from tax.

(5) The minister for finance may by legislative instrument make regulation for the better carrying into effect these provisions.

**Clubs and Trade Associations**

**97.** (1) This section modifies the standard rules of this Act as they apply to clubs, trade associations and similar institutions. To the extent there is no modification, the standard rules apply.

(2) Clubs, trade associations and similar institutions are companies for the purposes of this Act and all their activities are treated as conducted in the course of a single business.

(3) In calculating a club, trade association or similar institution's income from its business for a year of assessment, include entrance fees, subscriptions and other amounts derived from members during the year.

(4) The income accruing to or derived by clubs, trade associations or similar institutions other than any business income is exempt from tax.

(5) In this section-

“member” means-

(a) in the case of a club or similar institution, a person

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who, while a member, is entitled to an interest in all the assets of the club or institution in the event of its liquidation or who is entitled to vote at a general meeting of the club or institution; and

(b) in the case of a trade association, a person who is entitled to vote at a general meeting of the association;

“members’ club” means a club or similar institution all the assets of which (ignoring section 56(3)) are owned in common by or held in trust for the members of the club or institution; and

“trade association”

(a) means an association of persons-

(i) who are all separately engaged in a particular type of business; and

(ii) formed with the main object of safeguarding or promoting the business interests of such persons; and

(b) includes a trade union registered under the Labour Act, 2003 (Act 651).

**Building and Friendly Societies**

**98.** (1) This section modifies the standard rules of this Act as they apply to building societies and friendly societies. To the extent there is no modification, the standard rules apply.

(2) Building societies and friendly societies are companies for the purposes of this Act.

(3) The income of a statutory or registered building society or statutory or registered friendly society that meets the requirements of subsection (4) is exempt.

(4) The requirements are that-

(a) only individuals are eligible to be members of and make contributions to the society;

(b) the organisation does not engage in party political activities, support any political party or use its platform to engage in party politics; and

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(c) the Commissioner-General has issued a ruling stating that the society complies with paragraphs (a) and (b).

(5) Where a society breaches a requirement in subsection (4)(a) or (b), the Commissioner-General may revoke or refuse to issue a ruling referred to in subsection (4)(c), or may amend or issue a ruling on such terms and conditions as the Commissioner-General thinks fit.

**Contributions and Donations to Worthwhile Causes**

**99.** (1) In arriving at the chargeable income of a person for a year of assessment under Section 2, the person may claim a deduction equal to contributions and donations made during the year for causes referred to in subsection (2) that have been approved by the Government.

(2) The causes are:

- (a) charitable institutions meeting the requirements of section 88;
- (b) schemes of scholarship for an academic, technical, professional or other course of study;
- (c) development of any rural or urban area;
- (d) sports development or sports promotion; and
- (e) any other worthwhile cause approved by the Commissioner-General.

**PART VII**  
**INTERNATIONAL**

*Division I: Residence and Source*

**Resident Persons**

**100.** (1) An individual is resident in Ghana for a year of assessment if the individual is-

- (a) a citizen of Ghana, other than a citizen who has a permanent home outside Ghana for the whole of the year;
- (b) present in Ghana during the year and that presence falls within a period or periods amounting in aggregate to 183 days or more in any 12 month period that commences or ends during the year;
- (c) an employee or an official of the Government of Ghana

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- posted abroad during the year; or
- (d) a citizen who is temporarily absent from Ghana for a period not exceeding 365 continuous days where that citizen has a permanent home in Ghana.
- (2) A partnership is resident in Ghana for a year of assessment if at any time during the year a partner is resident in Ghana.
- (3) A trust is resident in Ghana for a year of assessment if-
- (a) it was established in Ghana;
  - (b) at any time during the year a trustee of the trust is resident in Ghana; or
  - (c) at any time during the year a person resident in Ghana directs or may direct senior managerial decisions of the trust, whether the direction is or may be made alone or jointly with other persons or directly or through one or more interposed entities.
- (4) A company is resident in Ghana for a year of assessment if-
- (a) it is incorporated or formed under the laws of Ghana; or
  - (b) at any time during the year the management and control of the affairs of the company are exercised in Ghana.

**Change of Residence**

**101.** (1) An individual who is resident in Ghana only by reason of section 100(1)(b), is resident from the start of the 183 day period. Otherwise, a person who is resident in Ghana during a year of assessment is treated as a resident for the whole of the year.

(2) Subject to subsection (4), where a non-resident person becomes resident in Ghana, the net cost of an asset held by the person immediately before becoming resident is equal to the market value of the asset at that time.

(3) Subject to subsection (4), immediately before a person resident in Ghana ceases to be resident in Ghana, the person is treated as realising all assets owned by the person and deriving in respect of each an amount equal to the market value of the asset at the time of the realisation.

(4) Subsections (2) and (3) do not apply to an asset that is a domestic asset of the person immediately before becoming resident or after ceasing to be resident, respectively.



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**Source of Income and Quarantining of Foreign Losses**

**102.** (1) Income of a person from an employment that has a source in Ghana must be calculated separately from income from that employment that has a foreign source.

(2) Income or loss of a person from a business or investment that has a source in Ghana must be calculated separately from income or loss from that business or investment that has a foreign source.

(3) A person's income from an employment, business or investment has a source in Ghana to the extent to which amounts directly included in calculating that income that have a source in Ghana, exceed amounts directly deducted in calculating that income that have a source in Ghana

(4) A person's loss from a business or investment has a source in Ghana to the extent to which the amounts directly included in calculating that income that have a source in Ghana, is less than the amounts directly deducted in calculating that income that have a source in Ghana

(5) A person's foreign source income from an employment is calculated as the person's worldwide income from that employment (calculated notwithstanding subsection (1)) less any income with a source in Ghana from that employment.

(6) A person's foreign source income or loss from a business or investment is calculated as the person's worldwide income or loss from that business or investment (calculated notwithstanding subsection (2))-

- (a) less any income with a source in Ghana from that business or investment; or (as the case requires)
- (b) plus any loss with a source in Ghana from that business or investment.

(7) For the purposes of section 17, a person may deduct an unrelied loss-

- (a) in the case of a foreign source loss from an investment, only in calculating the person's foreign source income from an investment; and
- (b) in the case of a foreign source loss from a business, only in calculating the person's foreign source income from a business

**Source of Directly Included and Deducted Amounts**

**103.** (1) An amount directly included in calculating income has a

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source in Ghana where it consists of-

- (a) consideration received, a gain or an amount referred to in section 5(3)(b), (c) or (d) or section 6(3)(b), to the extent to which a domestic asset or domestic liability is involved; and
- (b) subject to paragraph (a), a payment that has a source in Ghana.

(2) An amount directly deducted in calculating income has a source in Ghana where it consists of-

- (a) to the extent to which it relates to domestic assets, an allowance referred to in section 11(1) or 14 or expenditure referred to in section 13(1);
- (b) a loss from the realisation of a capital asset or liability of a business or an investment asset where the asset or liability involved is a domestic asset or domestic liability; and
- (c) subject to paragraphs (a) and (b), a payment that has a source in Ghana.

**Source of Payments**

**104.** The following payments have a source in Ghana:

- (a) dividends paid by a resident company;
- (b) interest paid
  - I. Where the debt obligation giving rise to the interest is secured by real property located in Ghana;
  - II. by a resident person or
  - III. by a Ghanaian permanent establishment;
- (c) natural resource payments made in respect of or calculated by reference to natural resources taken from land or the sea situated within Ghana or its territorial waters;
- (d) rent paid for the use of, right to use or forbearance from using an asset situated in Ghana;
- (e) royalties paid for the use of, right to use or forbearance from using an asset in Ghana;
- (f) premiums for general insurance paid to and proceeds from general insurance paid by a person in respect of the insurance of any risk in Ghana;
- (g) payments received by a person who conducts a relevant transport business in respect of-
  - (i) the carriage of passengers who embark or cargo,

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- mail or other moveable tangible assets that are embarked in Ghana, other than as a result of transshipment; or
- (ii) rental of containers and related equipment which are supplementary or incidental to carriage referred to in subparagraph (i);
- (h) payments received by a person who conducts a business of transmitting, receiving or emitting messages by cable, radio, optical fibre or satellite or electronic communication in respect of the transmission, reception or emission of messages by apparatus located in Ghana, whether or not such messages originate, terminate or are used in Ghana;
- (i) payments, including service fees, of a type not mentioned in paragraphs (g) or (h) for or attributable to employment exercised, service rendered or a forbearance from exercising employment or rendering service-
- (i) in Ghana, regardless of the place of payment; or
  - (ii) where the payer is the Government of Ghana, irrespective of the place of exercise, rendering or forbearance of that service;
- (j) proceeds of life insurance and retirement payments not falling within paragraph (i) (the “return”) paid by a resident person or a Ghanaian permanent establishment and any premium or retirement contribution paid to a resident person or a Ghanaian permanent establishment to secure such a return;
- (k) gifts and other ex gratia payments to the extent received in respect of business or investment conducted with domestic assets;
- (l) any other gifts or gratuitous payments to the extent received in respect of employment or otherwise; and
- (m) payments not mentioned in the above paragraphs made in respect of-
- (i) the acquisition of a domestic asset, incurring of a domestic liability or realisation of such an asset or liability; or

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- (ii) activity conducted or a forbearance from conducting activity in Ghana.

**Interpretation**

**105.** In this Part-

“domestic asset” means-

- (a) an asset owned by a resident person (other than foreign land or buildings or an asset held by a foreign permanent establishment of the person) or held by a Ghanaian permanent establishment;
- (b) an interest in land or a building situated in Ghana; and
- (c) shares in a resident company where-
  - (i) the owner of the shares together with associates controls, or within the previous five years controlled, either directly or indirectly, 25 percent or more of the voting power in the company; or
  - (ii) the property of the company consists, directly or indirectly through one or more interposed entities, principally of immovable property or interests in land or buildings situated in Ghana;

“domestic liability” means a liability owed by a resident person (other than a liability attributable to a foreign permanent establishment of the person) or attributable to a Ghanaian permanent establishment; and

“relevant transport business” means a business of land, sea or air transport operator or charterer carrying passengers, cargo, mail or other moveable tangible assets.

*Division II: Permanent Establishments*

**Principles of Taxation**

**106.** (1) Permanent establishments are treated as entities separate from their owners and are subject to the following treatment:

- (a) a Ghanaian permanent establishment is subject to tax under section 1 in the same manner as a resident company; and
- (b) the income of a foreign permanent establishment is taxable in the hands of the resident owner

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- (2) In accordance with subsection (1)-
- (a) the income of a permanent establishment and any tax liability is calculated as if-
    - (i) the permanent establishment and its owner were separate but associated persons; and
    - (ii) the permanent establishment were a person resident in the country in which it is situated;
  - (b) Part VIII applies to a Ghanaian permanent establishment directly and separately from its owner (see subsection (3)); and
  - (c) subject to subsection (4), arrangements between a permanent establishment and its owner are recognised.
- (3) In applying Part VIII to a Ghanaian permanent establishment, the permanent establishment-
- (a) must withhold tax from payments made by it in the same circumstances as a resident company making such payments;
  - (b) is subject to withholding of tax on payments received by it in the same circumstances as a resident company receiving such payments; and
  - (c) is subject to payment of tax by instalment and on assessment in the same circumstances as a resident company.
- (4) Only the following arrangements are recognised between a Ghanaian permanent establishment and its non-resident owner:
- (a) those referred to in subsection (6); and
  - (b) those reflected in section 106(3) and (4).
- (5) Subsection (6) applies where a non-resident person carries on a banking business through a Ghanaian permanent establishment and has received written approval under this subsection from the Commissioner-General. The Commissioner-General's approval may be subject to such conditions as the Commissioner-General thinks fit.
- (6) Where this subsection applies and subject to Part III-
- (a) the following entries are recognised if shown in the same manner in the accounts of the owner and the permanent establishment:

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- (i) a debt obligation between the owner and the permanent establishment or vice versa; and
  - (ii) interest derived or incurred with respect to a debt obligation referred to in subparagraph (i); but
- (b) no debt obligation incurred by the owner in favour of a third party is attributed to the permanent establishment.

**Activities, Assets and Liabilities of a Permanent Establishment**

**107.** (1) All activities of a permanent establishment are treated as conducted in the course of a single business.

(2) The activities of a permanent establishment are those conducted by the owner through the permanent establishment. In addition, the following activities are treated as conducted by a Ghanaian permanent establishment (but not a foreign permanent establishment):

- (a) employment by the owner of any individual who is resident in Ghana;
  - (b) sales of trading stock by the owner of the same or a similar kind as those sold through the permanent establishment; and
  - (c) other business activities of the owner conducted with persons resident in Ghana of the same or a similar kind as those effected through the permanent establishment.
- (3) The assets or liabilities of a permanent establishment are:
- (a) assets held by or to the extent employed in the activities of the permanent establishment;
  - (b) intangible assets created by or through the permanent establishment;
  - (c) in the case of a Ghanaian permanent establishment, intangible assets, to the extent that they may be exploited in Ghana;
  - (d) subject to section 104(6), debt obligations incurred in borrowing money, to the extent that the money is employed in the activities of the permanent establishment or used to acquire an asset referred to in paragraph (a); and
  - (e) other liabilities arising directly out of the activities of the permanent establishment.

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**Income or Loss of a Permanent Establishment**

**108.** (1) This section modifies the standard rules of this Act as they apply to calculating the income of a permanent establishment. To the extent there is no modification, the standard rules apply.

(2) In calculating a permanent establishment's income from its business, attribute to the permanent establishment-

- (a) amounts derived and payments received in respect of assets held by, liabilities owed by or the activities of the permanent establishment; and
- (b) expenditure incurred and payments made for the purposes of assets held by, liabilities owed by or the activities of the permanent establishment, but only to the extent the expenditure is properly recorded in the accounts of the permanent establishment.

(3) A permanent establishment is treated as acquiring an asset or liability when the asset or liability becomes an asset or liability of the permanent establishment.

(4) In addition to the circumstances specified in sections 38 and 39, a permanent establishment is treated as realising an asset held by it or liability owed by it when the asset or liability ceases to be an asset or liability of the permanent establishment.

**Interpretation**

**109.** In this Part-

“foreign permanent establishment” means a fixed place of business of a resident person situated in a foreign country where the business is conducted continuously for at least six months, but excludes any place at which only activities of a preparatory or auxiliary nature are conducted;

“Ghanaian permanent establishment” means a place in Ghana where a non-resident person carries on business wholly or partly or that is at the disposal of the person for that purpose and includes-

- (a) a place in Ghana where a person has, is using or is installing substantial equipment or substantial machinery;
- (b) a place in Ghana where a person is engaged in a construction, assembly or installation project for 90 days or more, including a place where a person is

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- conducting supervisory activities in relation to such a project;
- (c) the provision of services in Ghana,
- (d) a place in Ghana where an agent performs any function on behalf of the business of a non-resident person-
  - (i) including, in the case of an insurance business, the collection of premiums or the insurance of risks situated in Ghana; but
  - (ii) excluding a case involving a general agent of independent status with its own legal personality acting in the ordinary course of business as such; and

“Owner” means the owner of a permanent establishment.

*Division III: Foreign Source Income of Residents*

**Principles of Taxation**

**110.** (1) The income of a resident person derived from a foreign source is taxable.

(2) Despite subsection (1), the income of a resident individual from employment exercised in a foreign country -

- (a) with a non-resident employer, or
- (b) with a resident employer where the individual is present in the foreign country for one hundred and eighty-three continuous days or more during the year of assessment is exempt.

(3) The Minister may by legislative instrument make Regulations to prescribe

- (a) the criteria for exempting from tax, the income of a foreign permanent establishment and the foreign income of a resident person;
- (b) circumstances in which the income of a foreign permanent establishment is not exempt, but is taxable in the hands of the resident owner with a foreign tax credit; and
- (c) circumstances in which the income of a foreign trust or company that is controlled by residents is attributed and taxed to the members of the trust or company.



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**Foreign Tax Credit**

**111.** (1) A resident person (other than a partnership) may claim a foreign tax credit for a year of assessment for any foreign income tax paid by the person and to the extent to which the foreign income tax is paid with respect to the person's assessable foreign income for the year.

(2) Foreign tax credits claimed under subsection (1)-

(a) are calculated separately for each year of assessment and separately for assessable foreign income from each employment, business or investment; and

(b) with respect to each calculation, may not exceed the average rate of Ghanaian income tax of the person for the year applied to the person's assessable foreign income.

(3) A person may elect to relinquish a foreign tax credit available for a year of assessment and claim a deduction for the amount of the foreign income tax, but otherwise no deduction is available for foreign income tax.

(4) For the purposes of this section-

“average rate of Ghanaian income tax” of a resident person for a year of assessment means the percentage that tax payable by the person under section 1(1)(a) (calculated under section 1(3) without subtraction for any foreign tax credit) is of the chargeable income of the person for the year; and

“assessable foreign income” means foreign source income included in the assessable income of a resident person for a year of assessment from an employment, business or investment, as the case requires.

**PART VIII**

**TAX PAYMENT PROCEDURE**

*Division I: General Obligations*

**Methods and Time for Payment**

**112.** (1) Tax imposed under section 1 is payable by withholding under Division II, by instalment under Division III or on assessment under

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Division IV of this part.

- (2) Tax is payable-
- (a) in the case of tax payable by withholding, at the time provided for in section 116(Statements of tax withheld ...);
  - (b) in the case of tax payable by instalment, on the date by which the instalment is to be paid under section 120(quarterly instalments);
  - (c) in the case of tax payable on assessment, on the date by which the return of income must be filed under section 123(return of income);and
  - (d) in any other case on the date stated in the notice

*Division II: Tax Payable by Withholding*

**Withholding by Employers**

113. (1) (a) An employer shall withhold tax from the payment of an amount to be included in ascertaining the income of an employee from the employment

- (b) Regulations may prescribe the circumstances in which a resident employer must withhold tax from a payment that is to be included in calculating the chargeable income of an employee.

(2) The obligation of an employer to withhold tax under subsection (1) is not reduced or extinguished because-

- (a) the employer has a right or is under an obligation to deduct and withhold any other amount from the payment; or
- (b) any other law provides that an employee's income from employment must not be reduced or subject to attachment.

**Withholding from Investment Returns**

114. (1) Subject to subsection (2), a resident person must withhold tax at the rate specified in paragraph 7of the First Schedule when the person-

- (a) pays a dividend, interest, lottery winning, natural resource payment, rent or royalty to another person; and
- (b) the payment has a source in Ghana.

(2) This section does not apply to-

- (a) payments subject to withholding under section 113(Employment income);

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- (b) payments made by individuals, unless made in conducting a business;
- (c) interest paid to a resident financial institution; or
- (d) payments that are exempt amounts.

**Withholding from Supply of Goods, Service Fees, Works and Contract Payments**

**115.** (1) Subject to subsection (3), a resident person must withhold tax at the rate provided for in paragraph 6 of the First Schedule when the person-

- (a) pays a service fee with a source in Ghana to a resident individual -
  - (i) as fees, and allowances, to a resident director, manager, trustee or board member of a company or trust,
  - (ii) for part-time teaching, lecturing, examining, invigilating or supervising an examination;
  - (iii) as an endorsement fee;
  - (iv) as a commission to a resident lotto receiver or agent
  - (v) as a commission to a sales or canvassing agent;
  - (vi) as a commission to a insurance sales or canvassing agent;
  - (vii) any other supply of services or
  - (viii) for such other matters as may be prescribed by regulation;
- (b) pays a service fee or an insurance premium with a source in Ghana to a non-resident person

(2) A resident person other than an individual must withhold tax on the gross amount of apayment at the rate provided for in the first schedule when the person makes a payment to another resident person who does not fall in subsection (1) or section 114for

- I. the supply or use of goods
- II. the provision of any works or
- III. the supply of services

in respect of a contract between the payee and the resident person

(3) Sub-section (2) applies to a contract between the payee and a resident person exceeding two thousand currency points,

(4) For the purpose of determining whether a contract exceeds two thousand currency points under subsection (3) two or more con-

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tracts in respect of the goods, works or services shall be treated as a single contract.

- (5) Subsection (2) does not apply
  - (a) to premiums paid to a resident insurance company;
  - (b) to payments under a contract for the sale of goods which constitute trading stock of both the vendor and the purchaser; or
  - (c) where the Commissioner-General,
    - (i) for a good cause shown, exempts in writing a person from deducting tax under subsection (2) in respect of an institution or a specific contract entered into by an institution upon an application made by the institution; or
    - (ii) is satisfied that a person has a satisfactory tax record and exempts in writing that person from the application of that subsection or exempts specific contracts entered into by that person from that application.

(6) A person provided with an exemption under paragraph (b) of subsection (5) shall, at the end of every calendar quarter, submit a list of particulars of all payments which would have fallen within subsection (2) but for the exemption.

- (7) Subject to subsection (6), regulations may prescribe-
  - (a) that a resident person must withhold tax when the person makes a payment to a non-resident person of a type referred to in section 104 (g) or (h) (land, sea or air transport or telecommunications services); and
  - (b) the rate at which the tax referred to in paragraph (a) must be withheld.

- (6) This section does not apply to-
  - (a) payments subject to withholding under section 113;
  - (b) payments made by individuals; or
  - (c) payments that are exempt amounts.

(8) A resident person must withhold tax at the rate prescribed in the First Schedule when the person makes a payment to a non-resident person for the rendering of management and technical services.

(9) A resident person must withhold tax at the rate prescribed in the First Schedule from a payment made under a contract with a non-resident person for the supply of goods, or works or the supply of any

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services where the contract gives rise to income from Ghana;

(10) Where subsection (9) applies, the resident person shall within thirty days of the date of entering into the contract, notify the Commissioner-General in writing of,

- (a) The nature of the contract;
- (b) The likely duration of the contract;
- (c) The name and postal address of the non-resident person to whom payments under the contract are to be made; and
- (d) The total sum estimated to be payable under the contract to the non-resident person.

(11) Subsection (10) does not apply to other payments which are subject to final withholding tax applicable to non-residents under this Act.

**Statements and Payments of Tax Withheld or Treated as Withheld**

**116.** (1) Every withholding agent must pay to the Commissioner-General within 15 days after the end of each calendar month any tax that has been withheld in accordance with this Division during the month.

(2) Every withholding agent must file with the Commissioner-General within 15 days after the end of each month a statement in the manner and form prescribed specifying-

- (a) payments made by the agent during the period that are subject to withholding under this Division;
- (b) the name, address and tax identification number of the withholder;
- (c) tax withheld from each payment; and
- (d) any other information that the Commissioner-General may prescribe.

(3) A withholding agent who fails to withhold tax in accordance with this Division must nevertheless pay the tax that should have been withheld in the same manner and at the same time as tax that is withheld.

(4) A withholding agent who withholds tax under this Division and pays the tax to the Commissioner-General is treated as having paid the amount withheld to the withholder for the purposes of any claim by the withholder for payment of the amount withheld.

(5) A withholding agent who fails to withhold tax under this Division but pays the tax that should have been withheld to the Commissioner-General in accordance with subsection (3) is entitled to

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recover an equal amount from the withholder. This section does not apply to withholding under Section 113

(6) Subject to this Act, a provision in an agreement which prohibits the deductions or withholding of a tax required to be deducted or withheld under this Act or any other enactment administered by the Commissioner General is void.

**Withholding Certificates**

**117.** (1) A withholding agent must prepare and serve on a withholder a withholding certificate-

- (a) separately for each period referred to in subsections (3) and (4);
- (b) at the time referred to in those subsections; and
- (c) in the form prescribed.

(2) A withholding certificate must set out the amount of payments made to the withholder during the period and tax withheld by the withholding agent from those payments under this Division.

(3) Subject to subsection (4), a withholding certificate must cover a calendar month and must be served within 30 days after the end of the month.

(4) In the case of tax withheld under section 113, a withholding certificate-

- (a) must cover the part of the calendar year during which the employee is employed; and
- (b) must be served within 30 days after the end of the year or, where the employee has ceased employment with the withholding agent during the year, no more than 30 days from the date on which the employment ceased.

**Final Withholding Payments**

**118.** (1) For the purposes of this Act, the following are final withholding payments:

- (a) dividends paid by a resident company;
- (b) rent paid to a resident individual under a lease of land or a building (with or without associated fittings and fixtures) situated in Ghana, other than rent received by an individual in conducting a business of sale or letting; and

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- (c) rent paid to a person other than an individual under a lease of land or a building (with or without associated fittings and fixtures) situated in Ghana, other than rent received in conducting a business of sale or letting; and
  - (d) payments made to non-resident persons that are subject to withholding under this Division or would be so subject if sections 114(2)(b) and 115(9)(b) were ignored, other than payments derived through a Ghanaian permanent establishment.
  - (e) payments made to a subcontractor under section 71(4)
  - (f) payments made to a person under section 115(1)(a)(i) - (iii)
  - (g) lottery winnings
- (2) The following satisfy a withholder's tax liability under section 1(1)(b):
- (a) tax withheld from a final withholding payment under this Division; and
  - (b) tax paid with respect to a final withholding payment in accordance with section 118(3).
- (3) Where a final withholding payment is not subject to withholding (whether by reason that the payer is a non-resident) the recipient's tax liability under section 1(1)(b) with respect to the payment is payable by way of instalment and assessment. For the purposes of applying Divisions III and IV, the liability is treated as a liability under section 1(1)(a).

**Credit for Non-final Withholding Tax**

- 119.** (1) The withholder of a payment that is not a final withholding payment is treated as having paid any tax-
- (a) withheld from the payment under this Division; or
  - (b) with respect to a payment in accordance with section 116(3).
- (2) A withholder is entitled to a tax credit in an amount equal to the tax treated as paid under subsection (1) for the year of assessment in which the payment is derived.

*Division III: Tax Payable by Instalment*

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**Payment of Tax by Quarterly Instalment**

**120.** (1) A person (an “instalment payer”) must pay tax by quarterly instalments if the person derives or expects to derive assessable income during a year of assessment-

- (a) from a business or investment, or
- (b) from an employment where the employer is not required to withhold tax under section 113.

(2) An instalment payer must pay instalments of tax-

- (a) in the case of a person whose basis period is a twelve month period beginning at the start of a calendar month, on or before the last day of the third, sixth, ninth and twelfth months of the basis period ; or
- (b) in any other case, at the end of each three-month period commencing at the beginning of each year of assessment and a final instalment on the last day of each year of assessment, unless it coincides with the end of one of the three-month periods.

(3) Subject to subsections (4) and (5), the amount of each instalment of tax payable by an instalment payer for a year of assessment is calculated according to the following formula-

**[A – B]**

—————  
**C**  
where-

**A** is the current estimated tax payable under section 121 or 122 by the instalment payer for the year of assessment;

**B** is the sum of any-

- (a) tax paid during the year of assessment, but prior to the due date for payment of the instalment, by the person by previous instalment under this section;
- (b) tax withheld under Division II during the year, but prior to the due date for payment of the instalment, from payments received by the person that are included in calculating the person’s income for the year; and
- (c) tax paid in accordance with section 115(3) or (4) that is



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paid to the Commissioner-General by a withholding agent or the person as withholdee during the year but prior to the due date for payment of the instalment. and

**C** is the number of instalments remaining for the year of assessment including the current instalment

(4) Regulations may prescribe that a particular class of persons must pay tax by instalments otherwise than or in substitution for instalments payable under this section.

(5) Regulations may prescribe-

(a) that a particular or particular class of organised association or recognized occupational group must collect from its members tax payable by those members by instalment under this section;

(b) the terms and conditions on which the tax must be collected; and

(c) the terms and conditions on which the association or group must account to the Commissioner-General for the tax.

(6) An instalment payer is entitled to a tax credit for a year of assessment in an amount equal to the tax paid by way of instalment for theyear.

**Statement of Estimated Tax Payable**

**121.** (1) Every person who is an instalment payer for a year of assessment under section 121 must file with the Commissioner-General by the date for payment of the first tax instalment an estimate of tax payable for the year.

(2) An estimate under subsection (1) must, subject to any instructions by the Commissioner-General to the contrary-

(a) be in the manner and form prescribed estimating-

(i) the person's assessable income for the year of assessment from each employment, business and investment and the source of that income;

(ii) the person's chargeable income for the year and the tax to become payable with respect to that income under section 1(1)(a); and

(iii) any other information that the Commissioner-General may prescribe; and

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(3) Subject to subsection (6) and section 122(3), the tax referred to in subsection (2)(a)(ii) is the person's estimated tax payable for the year of assessment.

(4) In estimating tax payable for a year of assessment under subsection (2)(a)(ii), a person may take into account a foreign tax credit to be claimed under section 111. However, in doing so a person may take account of foreign income tax only if the person has paid the tax or the person reasonably estimates that the tax will be paid during the year.

(5) An instalment payer's estimate under subsection (1) remains in force for the whole of the basis period unless the person files a revised estimate as and when necessary with the Commissioner-General together with a statement of reasons for the revision.

(6) A revised estimate filed by a person under subsection (5) is the person's estimated tax payable for the year of assessment, but only for the purposes of calculating instalments payable under section 120 after the date the revised estimate is filed with the Commissioner-General.

**Statement of Estimated Tax Payable Not Required**

**122.** (1) The Commissioner-General may specify by notice in writing that an instalment payer or class of instalment payers is not required to submit an estimate under section 121.

(2) Where an instalment payer is not required to submit an estimate by reason of subsection (1), the Commissioner-General must-

- (a) make an estimate of the person's estimated tax payable for the year of assessment, which may be based on the tax payable for the previous year of assessment with an uplift; and
- (b) serve on the instalment payer a written notice stating the Commissioner'-General's estimate and the manner in which it is calculated.

(3) Where the Commissioner-General serves a notice under subsection (2), then for the purposes of section 120 the estimated tax payable by the person for the year of assessment is the amount estimated by the Commissioner-General.

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*Division IV: Tax Payable on Assessment*

**Return of Income**

**123.** (1) Subject to section 124, a person shall furnish a return of income for a year of assessment of that person not later than four months after the end of a basis period of that person ending within the year.

(2) A return of income of a person for a year of assessment must, subject to any instructions by the Commissioner-General to the contrary-

(a) be in the manner and form prescribed specifying-

(i) the person's assessable income for the year from each employment, business and investment and the source of that income;

(ii) the person's chargeable income for the year and the tax payable with respect to that income under section 1(1)(a);

(iii) any tax paid by the person for the year by withholding, instalment or assessment for which a tax credit is available under section 118 or 119 of this Act

(iv) the amount of tax still to be paid for the year calculated as the sum of the tax referred to in subparagraph (ii) less the tax already paid referred to in subparagraph (iii); and

(v) any other information that the Commissioner-General may prescribe;

(b) have attached to it-

(i) any withholding certificates supplied to the person under section 117 with respect to payments derived by the person during the year;

(iii) any other information that the Commissioner-General may prescribe.

**Return of Income Not Required**

**124.** (1) Subject to subsection (2), a return of income for a year of assessment is not required under section 123 from-

(a) a resident individual-

(i) who has no tax payable for the year under section

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1(1)(a); or

- (ii) whose tax payable for the year under section 1(1)(a) relates exclusively to income from employment subject to withholding under section 113; or
- (b) a non-resident person who has no tax payable for the year under section 1(1)(a).

(2) Notwithstanding subsection (1), the Commissioner-General may serve a notice in writing on a person requiring the person to file a return.

(3) Notwithstanding subsection (1), a person may elect to file a return even though the person is not required to.

**Assessment**

**125.** A return of income filed under section 123 results in a self-assessment by the taxpayer

**PART IX  
INTERPRETATION**

**Associated Persons**

**126.** (1) For the purposes of this Act, two persons are associated persons where the relationship between the two is-

- (a) that of an individual and a relative of the individual;
  - (b) that of partners in the same partnership;
  - (c) that of an entity and a person referred to in subsection (2);
- or

(d) in any case not covered by paragraphs (a) to (c), such that a person, not being an employee, acts in accordance with the directions, requests, suggestions, or wishes of another person whether or not they are in a business relationship and whether or not those directions, requests, suggestions, or wishes are communicated to the first-mentioned person,

- (2) A person and an entity are associated persons where-
  - (a) the person controls the entity or may benefit from 50 percent or more of the rights to income, capital or voting power of the entity-

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(i) either alone or together with persons who, under another application of this section, are associated with the person; and

(ii) whether directly or through one or more interposed entities; or

(b) the person, under another application of this section, is an associate of a person referred to in paragraph (a).

(3) Two persons are not associated persons under subsection (1)(a) or (b) if the Commissioner-General is satisfied that, having regard to the prevailing circumstances, it is not reasonable to expect that either person will act in accordance with the intentions of the other.

(4) In this section, “relative” in relation to an individual, means the individual’s child, spouse, parent, grandparent, grandchild, sibling, aunt, uncle, nephew, niece or first cousin, including by way of marriage or adoption.

**Company**

**127.** (1) In this Act, “company”-

(a) means a corporation, unincorporated association or other body of persons; and

(b) includes-

(i) a friendly society, building society or similar society;

(ii) a pension fund, provident fund, retirement fund, superannuation fund or similar fund; and

(iii) a government, a political subdivision of a government, or a public international organisation; but

(c) excludes a partnership or trust.

(2) Notwithstanding subsection (1), the following are treated as a company for the purposes of this Act:

(a) a partnership in which at least 20 of the partners have limited liability for the debts of the partnership, and

(b) a trust with at least 20 beneficiaries whose entitlements to participate in the income or capital of the trust are divided into units such that the entitlements are determined by the number of units owned.

**Domestic and Excluded Expenditure**

**128.** (1) Where an individual incurs expenditure in respect of herself or himself, the expenditure is domestic expenditure to the extent that it is incurred -

- (a) in maintaining the individual, including in providing shelter as well as meals, refreshment, entertainment or other leisure activities;
- (b) in the individual commuting from home;
- (c) in acquiring clothing for the individual, other than clothing that is not suitable for wearing outside of work; or
- (d) in educating the individual, other than education that is directly relevant to a business conducted by the individual and that does not lead to a degree or diploma.

(2) Where another person incurs expenditure in making a payment to or providing any other benefit for an individual, the expenditure is domestic expenditure except to the extent that-

- (a) the payment or benefit is included in calculating the income of the individual;
- (b) the individual provides consideration of an equal market value for the payment or benefit; or
- (c) the amount of the expenditure is so small as to make it unreasonable or administratively impracticable to account for it.

(3) Expenditure referred to in subsections (1) and (2) includes interest incurred with respect to money borrowed that is used in a manner referred to in those subsections.

(4) For the purposes of this Act, “excluded expenditure” means-

- (a) tax payable under this Act;
- (b) bribes and expenditure incurred in corrupt practices;
- (c) interest, penalties and fines paid or payable to a government or a political subdivision of a government of any country for breach of any law or subsidiary legislation;
- (d) expenditure to the extent incurred by a person in deriving exempt amounts or final withholding payments;
- (e) retirement contributions, unless they are included in calculating the income of an employee under section 4(3)(f); and

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- (f) dividends of a company.
- (g) the depreciation of any fixed asset.

**Financial Instruments**

**129.** (1) For the purposes of this Act, the term “financial instrument”-

(a) means-

- (i) a debt claim or debt obligation;
- (ii) a derivative instrument;
- (iii) a foreign currency instrument; and
- (iv) any other instrument prescribed by regulations or, in the absence of regulations, treated as a financial instrument by generally accepted accounting principles; but

(b) except to the extent as may be specified by regulations, excludes a membership interest in an entity.

(2) For the purposes of this Act-

(a) “debt claim” means a right to receive a payment under a debt obligation;

(b) “debt obligation” means an obligation to make a payment to another person that is denominated in money, including accounts payable and the obligations arising under deposits, debentures, stocks, shares, treasury bills, promissory notes, bills of exchange and bonds;

(c) “derivative instrument” has the meaning in section 130 or as prescribed by regulations and, in the absence of regulations, takes its meaning from generally accepted accounting principles; and

(d) “foreign currency instrument” has the meaning prescribed by regulations and, in the absence of regulations, takes its meaning from generally accepted accounting principles.

(3) For the purposes of this Act, a person-

(a) derives a financial gain when the person derives interest or gains with respect to a financial instrument; and

(b) incurs a financial cost when the person incurs interest or losses with respect to a financial instrument; and

(4) For the purposes of this Act, a person-

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- (a) derives a relevant financial gain when the person derives a financial gain with respect to a derivative or foreign currency instrument; and
- (b) incurs a relevant financial cost when the person incurs a financial cost with respect to a derivative or foreign currency instrument.

**Derivative Amounts**

**130.** (1) Nothing in this Act is to be construed as subjecting an amount to a particular treatment just because it is paid, in whole or in part, out of an amount that is subject to a particular treatment.

(2) In this section, “subjecting an amount to a particular treatment” includes exempting the amount or providing a concession with respect to the amount.

**Interpretation**

**131.** (1) In this Act, unless the context otherwise requires-

“annuities” include any series of payments of a recurring nature made pursuant to a contractual obligation, other than payments of rent or royalties.

“arrangement” means

(a) an action, agreement, course of conduct, dealing, promise, transaction, understanding or undertaking, whether express or implied, whether or not enforceable by legal proceedings and whether unilateral or involving more than one person; or

(b) a part of an item described in paragraph (a);

“asset” includes property of any kind whether tangible or intangible, currency, goodwill, know-how, a right to income or future income, a benefit that lasts longer than 12 months, a part of or any right or interest in, to or over an asset;

“associated persons” or “associates” has the meaning given in section 126;

“basis period” has the meaning given in Section 18

“business”-

(a) includes-

(i) a trade, profession, vocation or isolated arrangement with a business character; and



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- (ii) a past, present or prospective business; but
  - (b) excludes an employment;
- “capital asset”-
- (a) means an asset to the extent to which it is employed in a business or investment; but
  - (b) excludes trading stock or a depreciable asset;
- “close company” means a company owned by not more than five persons.
- “Commissioner-General” means the Commissioner-General appointed under the Ghana Revenue Authority Act, 2009 (Act 791);
- “company” has the meaning given in section 127;
- “consideration received” for an asset has the meaning given in section 37;
- “cost” of an asset has the meaning given in section 36;
- “debt claim” and “debt obligation” have the meanings given in section 129;
- “depreciable asset”-
- (a) means an asset to the extent to which it is employed in the production of income from a business and which is likely to lose value because of wear and tear, obsolescence or the effluxion of time; but
  - (b) excludes goodwill, an interest in land, a membership interest in an entity and trading stock;
- “derived”, with respect to income or an amount, includes accrued;
- “derivative instrument “ A derivative instrument is a financial instrument or other contract with all three of the following characteristics:
- (a) Its value changes in response to the change in a specified interest rate, financial instrument price, commodity price, foreign exchange rate index of prices or rates, credit rating or credit index, or other variable, provided in the case of a non-financial variable that the variable is not specific to a party to the

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contract (sometimes called the 'underlying');

- (b) It requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have a similar response to changes in market factors; and
- (c) It is settled at a future date.

“dividend”-

- (a) means a payment derived by a member from a company, whether received as a division of profits, in the course of a liquidation or reconstruction, in a reduction of capital or redeemable preference shares, share buy-back or otherwise;
- (b) any amount treated as dividends in any situation where the Commissioner-General makes a deemed distribution of dividends in the case of a close company.
- (c) includes a capitalisation of profits-
  - (i) whether by way of a bonus share issue, increase in the amount paid-up on shares or otherwise; and
  - (ii) whether an amount is distributed or not; and
- (d) excludes a payment to the extent to which it is-
  - (i) matched by a payment made by the member to the company;
  - (ii) debited to a capital, share premium or similar account; or
  - (iii) otherwise constitutes a final withholding payment or is included in calculating the income of the member;

“domestic expenditure” has the meaning given in section 128;

“employee” means an individual engaged in employment;

“employer” means the person who engages or remunerates an employee in employment;1

“employment”-

- (a) means-

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- (i) a position of an individual in the employ of another person;
  - (ii) a position of an individual as manager of an entity other than as partner of a partnership;
  - (iii) a position of an individual entitling the individual to a fixed or ascertainable remuneration in respect of services performed; and
  - (iv) a public office held by an individual; and
- (b) includes a past, present or prospective employment;
- “entity” means a company, partnership or trust, but excludes an individual;
- “expenditure” or “expense” means a payment made that reduces the assets of the person making the payment;
- “excluded expenditure” has the meaning given in section 128;
- “exempt amount” means an amount exempt by reason of section 7, 54, 57, 59 or 110, Part VI or the Sixth Schedule;
- “final withholding payment” has the meaning given in section 118;
- “financial institution” means-
- (a) a bank regulated under the Banking Act, 2004 (Act 673);
  - (b) a non-banking financial institution regulated under the Non-Banking Financial Institutions Act, 2008 (Act 774); or
  - (c) any other category of person prescribed by Regulations;
- “financial cost” has the meaning given in section 129;
- “financial gain” has the meaning given in section 129;
- “financial instrument” has the meaning given in section 129;
- “gain” from the realisation of an asset or liability has the meaning given in section 35;
- “generally accepted accounting principles” means those adopted, from time to time, by the Institute of Chartered Accountants (Ghana);
- “interest” includes-
- (a) a payment, including of a discount or premium,

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made under a debt obligation that is not a return of capital;

- (b) a swap or other payment functionally equivalent to interest;
- (c) a commitment, guarantee or service fee paid in respect of a debt obligation or swap agreement; and
- (d) a distribution by a building society;

“investment”-

- (a) means the owning of one or more assets of a similar nature or that are used in an integrated fashion;
- (b) includes a past, present or prospective investment; but
- (c) excludes a business or employment;

“investment asset”-

- (a) means a capital asset held as part of an investment being shares or securities in a company, a beneficial interest in a trust or an interest in land or buildings, but-
- (b) excludes the primary private residence of an individual, provided it has been owned by the individual continuously for the three years before disposal and lived in for at least two of those three years (calculated on a daily basis);

“lease” means an arrangement providing a person with a temporary right in respect of an asset of another person, other than money, and includes a licence, profit-a-prendre, option, rental agreement, royalty agreement or tenancy;

“manager”

“, in relation to an entity-

- (a) means a councillor, director, manager, member, officer or other person who participates or may participate, whether alone or jointly with other persons, in making senior management decisions on behalf of the entity; and
- (b) includes-
  - (i) a partner of a partnership and a trustee of a trust;

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- (ii) a person treated as a manager of an entity by another tax law;
  - (iii) a person in accordance with whose directions and instructions the entity or a person described in the rest of this definition is required or accustomed to act; and
  - (iv) a non-resident person with respect to a Ghanaian permanent establishment owned by the person (see section 106);
- “market value” of a payment, asset or liability is determined in light of section 26;
- “member” in relation to an entity means any person who owns a membership interest in the entity;
- “membership interest” in an entity means a right, whether of a legal or equitable nature, including a contingent right, to participate in income or capital of the entity and includes the interest of a partner in a partnership, the interest of a beneficiary in a trust and shares in a company;
- “Minister” means the Minister responsible for finance;
- “natural resource” means minerals, petroleum, water or any other non-living or living resource that may be taken from land or the sea;
- “natural resource payment” means a payment, including a premium or like amount, for the right to take natural resources from land or the sea or calculated in whole or part by reference to the quantity or value of natural resources taken from land or the sea;
- “net cost” for an asset or liability at a particular time is equal to-
- (a) in the case of a depreciable asset, its share of the written down value of the pool to which it belongs at that time (see paragraph 4 of the Third Schedule) apportioned according to the market value of all the assets in the pool; and
  - (b) in the case of any other asset or a liability, the amount by which cumulative costs for the asset or liability exceed cumulative consideration received for the asset or liability to the time;

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“partnership” means an association of two or more individuals or corporations carrying on business jointly for the purpose of making profit, irrespective of whether the association is recorded in writing;

“payment” includes an amount paid or payable in cash or kind, and the conferring of value or a benefit in any form by one person on another person and includes-

- (a) the transfer by one person of an asset or money to another person or the transfer by another person of a liability to the one person;
- (b) the creation by one person of an asset that on creation is owned by another person or the decrease by one person of a liability owed by another person;
- (c) the provision by one person of services to another person; and
- (d) the making available of an asset or money owned by one person for use by another person or the granting of use of such an asset or money to another person;

“permanent establishment” means a Ghanaian permanent establishment or foreign permanent establishment within the meanings given in section 106;

“person” means an individual or entity;

“redundancy pay has the meaning as given by the Labour Act 2003 (Act 651)

“relative” has the meaning given in section 126;

“relevant financial cost” and “relevant financial gain” have the meanings given in section 129;

“rent”-

- (a) means a payment, including a payment of a premium or like amount, for the use of or right to use property including equipment of any kind;
- (b) includes a payment for the rendering of, or the undertaking to render, assistance ancillary to a use or a right referred to in paragraph (a); but
- (c) excludes a natural resource payment or a royalty;

“residence” or “resident” with respect to a person is determined

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in accordance with section 100;

“retirement contribution” has the meaning given in section 95;

“retirement fund” has the meaning given in section 95;

“retirement payment” has the meaning given in section 95;

“royalty” means a payment, including a payment of a premium or like amount, derived as consideration for-

- (a) the use of or right to use a copyright of literary, artistic or scientific work, including cinematograph films, software or video or audio recordings, whether the work is in electronic format or otherwise;
- (b) the use of or right to use a patent, trade mark, design or model, plan, or secret formula or process;
- (c) the use of or right to use any industrial, commercial, or scientific equipment;
- (d) the use of or right to use information concerning industrial, commercial, or scientific experience;
- (e) the rendering of or the undertaking to render assistance ancillary to a matter referred to in paragraph (a), (b), (c) or (d); or
- (f) a total or partial forbearance with respect to a matter referred to in paragraph (a), (b), (c), (d) or (e);

“service fee” means a payment to the extent to which, based on market values, it is reasonably attributable to services rendered by a business of a person, but excludes interest, rent or a royalty;

“shareholder” means a person who is a member of a company;

“small scale mining” has the meaning given in the Minerals and Mining Act, 2006 (Act 703)

“state owned or state sponsored educational institution” means an educational institution

- (i) established by the Government of Ghana or any political division of the government (whether district, municipal or metropolitan authority) and usually regulated in matters of detail by the government or that division and maintained at public expense and open, usually without charge or with

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minimal charge, to the children of all the residents of that division or other divisions; or

- (ii) belonging to the public and established, conducted or managed under public authority by the central government or a political division of the central government.

“trading stock” means assets owned by a person that are sold or intended to be sold in the ordinary course of a business of the person, work in progress on such assets, inventories of materials to be incorporated into such assets and consumable stores;

“trust” means an arrangement under which a trustee holds assets;

“trustee” means an individual or body corporate holding assets in a fiduciary capacity for the benefit of identifiable persons or for some object permitted by law and whether or not-

- (i) the assets are held alone or jointly with other individuals or bodies corporate; or
  - (ii) the individual or body corporate is appointed or constituted trustee by personal acts, by will, by order or declaration of a court or by other operation of the law; and
- (b) includes-
- (i) an executor, administrator, tutor or curator;
  - (ii) a liquidator, receiver, trustee in bankruptcy or judicial manager;
  - (iii) a person having the administration or control of assets subject to a usufruct, fideicommissum or other limited interest;
  - (iv) a person who manages the assets of an incapacitated individual; and
  - (v) a person who manages assets under a private foundation or other similar arrangement;



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“underlying ownership”-

- (a) in relation to an entity, means an interest held in or over the entity directly or indirectly through one or more interposed entities by an individual or by an entity not ultimately owned by individuals; or
- (b) in relation to an asset owned by an entity, is determined as though the asset is owned by the persons having underlying ownership of the entity in proportion to that ownership of the entity;

“withholdee” means a person receiving or entitled to receive a payment from which tax is required to be withheld under Division II of Part VIII;

“withholding agent” means a person required to withhold tax from a payment under Division II of Part VIII; and

“year of assessment” has the meaning given in section 18.

**PART X**

**TEMPORARY AND TRANSITIONAL PROVISIONS**

*Division I: Temporary Provisions*

**Temporary Concessions**

**132.** (1) The provisions of the Sixth Schedule provide for concessions of a temporary nature. Those provisions apply to modify the application of this Act for the periods set out therein.

(2) Unless expressly stated to the contrary, the provisions of the Sixth Schedule:are to be applied strictly and only in accordance with their clear wording;

(3) A person is not entitled to a concession in the Sixth Schedule if an associated person has benefited or is benefiting from that concession. This rule does not apply as between two associated individuals who are residents.

(4) For the purposes of this Act, where a provision of the Sixth Schedule applies to grant a concession to a person with respect to a particular type of business-

- (a) the business is construed narrowly and only the person’s

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activities devoted wholly, exclusively and necessarily to that business are treated as part of the business; and

- (b) the person's income or loss from the business for a year of assessment is calculated separately from any other activity of the person.
- (c) an unexpired period granted under the concession shall be treated as having been transferred to a new owner of the business in case of transfer of ownership of the business and that concession shall not be commenced with the new ownership.

(5) Unless expressly stated to the contrary the income of a person entitled to a concession in the Sixth Schedule is subject to tax at the rate provided for in the First Schedule

**Agreements Affecting Tax**

**133.** (1) Subsections (2) and (3) apply where the Government of Ghana has concluded (whether before or after the commencement of this Act) a binding agreement with a person that purports to modify the manner in which tax is imposed, including by reason of a fiscal stability clause.

(2) Where this subsection applies, the provisions of the old tax law that are modified or protected by the agreement continue to apply until the earlier of-

- (a) the end of the agreement or relevant clauses in the agreement;
- (b) the first alteration of the agreement after the commencement of this Act; and
- (c) the relinquishment by the person of the person's right to modified tax treatment.

(3) Where this subsection applies, in calculating the tax liability of the person during the application period referred to in subsection (2), the Commissioner-General may, in the Commissioner-General's discretion-

- (a) continue to apply other provisions of the old tax law-
  - (i) that the Commissioner-General considers are associated with or that have an application that is consequential upon the provisions mentioned in subsection (2); and

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- (ii) instead of applying the corresponding provisions under the new tax law, as amended from time to time; and
- (b) disapply any provisions in the new tax law, as amended from time to time, that have no corresponding provision in the old tax law.

(4) In this section-

“fiscal stability clause” refers to a clause in an agreement such that certain provisions of a tax law at the time of the agreement will continue to apply or not be altered to the detriment of a contracting party;

“new tax law” means a tax law after it has been modified or excluded by an agreement referred to in subsection (1), but without considering any such modification or exclusion; and

“old tax law” means a tax law as applicable immediately before it is modified or protected by an agreement referred to in subsection (1).”

*Division II: Repeals, Transitional Provisions and Commencement*

**Consequential Amendments and Repeals**

**134.** (1) The following laws and any regulations, rules or other subsidiary legislation made under them are repealed (the “repealed legislation”):

- (a) subject to section 135, the Internal Revenue Act, 2000 (Act 592); and
- (b) any other laws to the extent they are inconsistent with the provisions of this Act.

(2) Any right or privilege acquired by a person under the repealed legislation ceases to exist on the date this Act comes into effect under section 136, unless it is expressly provided in this Part or in the regulations that the right or privilege is to remain in existence.

**Transitional Provisions**

**135.** (1) The repealed legislation continues to apply for years of assessment commencing prior to the date on which this Act comes into effect under section 137.

(2) A reference in this Act to-

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- (a) a previous year of assessment includes, where the context requires, a reference to a year of assessment under the repealed legislation; or
- (b) this Act or to a provision of this Act includes, where the context requires, a reference to the repealed legislation or to a corresponding provision of the repealed legislation, respectively.

(3) The Minister may make regulations with respect to transitional measures related to the implementation of this Act.

**Provisions for Tax Administration**

136. Until the date a Tax Administration law administered by the Ghana Revenue Authority comes into force, the Seventh Schedule to this Act shall in addition to the Ghana Revenue Authority Act 2009, Act 791 be used to administer this Act.

**Commencement**

137. This Act comes into effect for years of assessment commencing on or after 1 January 20....

**FIRST SCHEDULE**

**TAX RATES**

*(Section 1)*

**Rates of Income Tax for Individuals**

1. (1) Subject to subparagraph (3), and the Second Schedules, the chargeable income of a resident individual for a year of assessment is taxed at the following rates:

<b>CHARGEABLE INCOME</b>	<b>RATE OF TAX</b>
First GH¢1,584	NIL
Next GH¢ 792	5%
Next GH¢ 1,104	10%
Next GH¢ 28,200	17.5%
Exceeding GH¢ 31,680	25%

(2) Subject to subparagraph (3), the chargeable income of a non-resident individual for a year of assessment is taxed at 20%.

(3) Where an individual's chargeable income includes gains from

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the realisation of investment assets not elsewhere charged, the individual may elect that-

- (a) those gains, less any losses from the realisation of investment assets (see sections 15 and 17), are taxed at the rate of 15%; and
- (b) only the remainder of the individual's chargeable income is taxed at the rates referred to in subparagraph (1) or (2), as the case requires.

### **Rate of Income Tax for Trusts**

2. The chargeable income of a trust for a year of assessment is taxed at the rate of 25%.

### **Rates of Income Tax for Companies**

3. (a) The chargeable income of a company (other than a company principally engaged in the hotel industry) and income from goods and services provided to the domestic market by a Free Zone Enterprise after its concessionary period for a year of assessment is taxed at the rate of 25%.

- (b) The chargeable income of a company principally engaged in the hotel industry for a year of assessment is taxed at the rate of 22%.
- (c) The chargeable income of a company from the export of non-traditional goods for a year of assessment is taxed at the rate of 8%.
- (k) The chargeable income derived by a financial institution from a loan

granted to a farming enterprise for use by that enterprise in the production of its income is taxed at the rate of 20%.

- (e) The chargeable income derived by a financial institution from a loan granted to a leasing company for the use by that company for the funding of acquisition of assets for lease is taxed at the rate of 20%
- (f) The chargeable income of a company "from a manufacturing business not included in paragraphs 3(a) and 3(c) of this schedule for a year of assessment is taxed at the rate of.

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### Location Rate of Income Tax

Manufacturing business located in regional capitals-75% of the rate of income tax applicable in Ghana to other income under paragraph 3(a)

Manufacturing business located elsewhere - 50% of the rate of income tax applicable in Ghana to other income under paragraph 3(a)

### **Rates of Income Tax for Free Zone Enterprises after their tax concession**

4. The chargeable income of a free zone enterprise from the export of goods and services outside the Domestic territory for a year of assessment is taxed at the rate of 15%.

### **Rate of Petroleum Income Tax**

5. A person's chargeable income from petroleum operations for a year of assessment is taxed at the rate of 35%.

### **Rate of Mining Income Tax**

6. A person's chargeable income from mineral operations for a year of assessment is taxed at the rate of 35%.

### **Rate of tax on persons entitled to concessions under the sixth schedule**

7. The income of a person entitled to a concession in the Sixth Schedule is subject to tax at the rate of 1% of chargeable income

### **Rates of Withholding Tax**

8. (1) The rates of tax to be withheld from payments under Division II of Part VIII are:

(a) payments to which section 113 applies-

(i) in the case of a resident withholder - at the rates specified in paragraph 1 (1) of this schedule or as amended by regulations; and

(ii) in the case of a non-resident withholder - 20%;

(b) payments to which section 114 applies-

(i) in the case of dividends - 8%;

(ii) in the case of interest paid to individuals - 1%;

(iii) in the case of any other interest - 8%;

(iii) in the case of residential rent paid to an individual

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- 8%;
  - (iv) in the case of non- residential rent paid to an individual - 15%;
  - (v) in the case of residential rent paid to a person other than an individual - 8%;
  - (vi) in the case of non-residential rent paid to a person other than an individual- 15%;
  - (vii) in the case of lottery winnings - 5% of the amount; and
  - (viii) in the case of natural resource payments and royalties - 15%; and
- (c) payments to which section 115 applies-
- i. in the case of service fees referred to in section 115(1)(a)(i) - 20%;
  - ii. in the case of service fees referred to in section 115(1)(a)(ii) – (vi) - 10%;
  - iii. in the case of service fees referred to in section 115(1)(b) - 20%;
  - iv. in the case of insurance premiums referred to in section 115(1)(b) - 5%.
  - v. in the case of goods referred to in section 115(2)(i) - 3%;
  - vi. in the case of works and service fees referred to in section 115(2)(ii) – (iii) - 5%;
  - vii. in the case of service fees referred to in section 115(2)(iii) - 15%;
  - viii. in the case of management and technical service fees referred to in section 115(8)- 20%; and
  - ix. in the case of goods, and works referred to in section 115(9)- 20%;
- (2) Payments to which section 71(4)(i) apply 15%

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(3) The rate of tax to be withheld from payments under section 85(3) is 10% of the payment.

(4) The rate of tax to be withheld from payments under section 104(g) and (h) is 15% of the payment.

**Change of Rate**

9. Where rates referred to in paragraphs 1, 2, 3, 4 or 5 change during a year of assessment:

- (a) tentative taxes are computed by applying the rates in force before and after the effective date of the change to the person's chargeable income for the entire year; and
- (b) the income tax payable by the person for the year is the sum of the portion of each tentative tax that the number of months in each part of the year during which the attributable rate is in force bears to the number of months in the entire year of assessment (usually 12).

**SECOND SCHEDULE  
MODIFIED TAXATION**  
*(Section 1(4))*

**Principles of Modified Taxation**

1. This Schedule modifies the taxation of certain eligible resident individuals by-

- (a) imposing a presumptive tax on individuals that only have income from certain types of businesses (paragraphs 3 and 4); and
- (b) applying a modified cash basis in calculating income from certain businesses (paragraph 5).

**Presumptive Taxation**

2. (1) Presumptive taxation applies where-

- (a) a resident individual's chargeable income for a year of assessment consists exclusively of income from a business;



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- (b) the income is exclusively from sources within Ghana; and
- (c) the individual-
  - (i) is not registered for value added tax purposes and the annual turnover of the business of that individual computed as an average of the turnover for three consecutive years ending in the year of assessment is not more than twenty thousand Cedis; or
  - (ii) has an annual turnover of the business which exceeds twenty thousand Cedis and is not required to register for value added tax purposes.

(2) For purposes of subparagraph (1)(c)(i), where the average turnover is not available for the period specified, the Commissioner-General may determine how the turnover is to be computed

(3) In this paragraph, “turnover” of a business for a year means amounts derived during the year that must be included in calculating income from the business under section 5(3)(a), (b) and (g), only.

**Exclusions from Presumptive Tax**

3. (1) The following individuals are excluded from presumptive taxation under paragraphs 4 and 5, even if they meet the requirements of paragraph 2(1):

- (a) individuals with a professional qualification;
- (b) individuals engaged in businesses prescribed by Regulation that have a high profit to turnover ratio;
- (c) Individuals with more than one business
- (d) Individuals with a business with more than one outlet
- (e) individuals in partnership; and
- (f) individuals that elect to disapply those paragraphs.

(2) Where an individual elects to disapply paragraphs 4 and 5 for a year of assessment-

- (a) those paragraphs do not apply for that year of assessment and the following five years of assessment; but
- (b) the individual may qualify for modified cash basis taxation under paragraph 6(1).

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**Presumptive Tax Based on Instalments**

4. (1) Where presumptive taxation applies as referred to in paragraph 2(1)(c)(i), an individual's tax payable under section 1(1)(a) for a year of assessment is the amount referred to in subparagraph (2).

(2) The amount is the total of instalments payable by the individual under section 120 (payment by instalments)(including as modified by regulation) for the year of assessment.

**Presumptive Tax Based on Turnover**

5. (1) Where presumptive taxation applies as referred to in paragraph 2(1)(c)(ii), an individual's tax payable under section 1(1)(a) for a year of assessment is the amount referred to in subparagraph (2).

(2) The amount is-

**TURNOVER**

**RATE OF TAX PAYABLE**

Exceeding GH¢20,000 but not exceeding GH¢120,000 3 % of turnover

(3) In this paragraph-

“turnover” has the meaning given in paragraph 2(3); and

“VAT threshold” means that provided for in section 6 of the Value Added Tax Act 2013 (Act 870).

**Modified Cash Basis**

6. (1) The modified cash basis under paragraph 7 applies where a resident individual's assessable income for a year of assessment from all businesses conducted by the individual-

(a) consists exclusively of income from sources in Ghana; and

(b) that individual's turnover does not exceed GH¢120,000 (as calculated using the modified basis).

7. (1) Where the modified cash basis applies to an individual's income from a business for a year of assessment it is calculated-

(a) according to the standard rules for calculation of income from a business; but

(b) subject to the modifications in subparagraph (2).

(2) The modifications are:

(a) ignore sections 17, 25, 26 and 31; and

(b) notwithstanding section 21(4), the income is calculated using the modified cash basis of accounting.

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**THIRD SCHEDULE  
CAPITAL ALLOWANCES**

*(Section 14)*

**Part I: General**

**Classification and Pooling of Depreciable Assets**

1. (1) Depreciable assets are classified as follows:

**CLASS      DEPRECIABLE ASSETS**

Computers and data handling equipment together with peripheral devices (i) Automobiles, buses and minibuses, goods vehicles; construction and earth-moving equipment, heavy general purpose or specialised trucks, trailers and trailer-mounted containers; plant and machinery used in manufacturing (ii) Assets resulting from expenses referred to in subparagraph (4) in respect of long term crop planting costs

Railroad cars, locomotives, and equipment; vessels, barges, tugs, and similar water transportation equipment; aircraft; specialised public utility plant, equipment, and machinery; office furniture, fixtures, and equipment; any depreciable asset not included in another class

4. Buildings, structures and similar works of a permanent nature
5. Intangible assets

(2) Each depreciable asset owned and employed by a person during a year of assessment in the production of the person's income from a particular business is, at the time the asset is first owned and so employed, placed in a pool-

- (a) in the case of a Class 1, 2 or 3 depreciable asset, with all other assets of the same Class so owned and employed by the person in that business; and
- (b) in the case of a Class 4 or 5 depreciable asset, of its own separately from other assets of that Class or any other Class.

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(3) Where a depreciable asset owned by a person is only partly used in the production of income from a business, only that part of the asset is placed in a pool of depreciable assets.

(4) Subparagraph (5) applies to expenses incurred by a person wholly, exclusively and necessarily in the production of the person's income from a business-

(a) in respect of planting vegetation from which timber, rubber, oil palm or other crops are derived; and

(b) where the business is a timber concern or a large scale rubber, oil palm or other long term crop plantation.

(5) Where this sub-paragraph applies then, to the extent not otherwise provided, the expenses are treated as if they were incurred in securing the acquisition of a depreciable asset that is used by the person in the production of income.

**Depreciation Allowances**

2. (1) Subject to this paragraph, an allowance is granted to a person for a year of assessment with respect to each basis period of the person ending in the year for each of the person's pools of depreciable assets equal to the depreciation for the period of each pool and calculated in accordance with subparagraphs (2) and (5).

(2) Depreciation for a year of assessment for each of a person's pools of depreciable assets is calculated-

(a) in the case of Class 1, 2 and 3 pools, according to the reducing balance method; and

(b) in the case of Class 4 and 5 pools, according to the straight line method.

(3) Depreciation is calculated using the following formula:

$$A \times B \times C / 365$$

where-

A is the depreciation basis of the pool at the end of the basis period

B is the depreciation rate applicable to the pool; and

C is the number of days in the person's basis period.

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(4) The depreciation rates applicable to each pool referred to in subparagraph (2) are:

CLASS	RATE
1	40%
2	30%
3	20%
4	10%
5	1 divided by the useful life of the asset in the pool

(5) If the depreciation basis of a pool of depreciable assets at the end of a year of assessment (reduced by depreciation calculated under subparagraph (2)) produces an amount that is less than GH¢500, additional depreciation of the pool is calculated as equal to that amount.

(6) The allowance granted to a person under subparagraph (1) for a year of assessment with respect to a Class 4 or 5 pool of depreciable assets must not exceed-

3. (a) the depreciation basis of the pool at the end of the basis period; reduced by
- (b) all other such allowances granted to the person in any previous basis period in respect of the pool.

**Depreciation Basis of a Pool of Depreciable Assets**

3. (1) The depreciation basis of a Class 1, 2 or 3 pool of depreciable assets of a person at the end of a basis period is-

- (a) the total of-
  - (i) the depreciation basis of the pool at the end of the previous basis period, if any, after deducting depreciation for that pool calculated under paragraph 2 for that previous period; and
  - (ii) amounts added to the depreciation basis of the pool during the basis period in respect of additions to the cost of assets in or added to the pool; and
- (b) reduced, but not below zero, by consideration received for the assets in the pool or that have been in the pool during the basis period.

(2) The depreciation basis of a Class 4 or 5 pool of depreciable assets of a person at the end of a basis period is-

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- (a) the total of
  - (i) the depreciation basis of the pool at the end of the previous basis period; and
  - (ii) amounts added to the depreciation basis of the pool during the basis period in respect of additions to the cost of assets in or added to the pool; and
- (b) reduced, but not below zero, by consideration received for the assets in the pool during the basis period.

(3) Where by reason of paragraph 1(3) only part of an asset is placed in a pool of depreciable assets, the cost of and consideration received for the asset are apportioned according to the market value of that part of the asset in the pool and that part which is not placed in the pool.

(4) For the purposes of this Schedule only, the cost of a road vehicle (other than a commercial vehicle) is not recognised to the extent it exceeds GH¢75,000.

(5) For the purposes of this paragraph, “commercial vehicle” means-

- (a) a road vehicle designed to carry loads of more than half a tonne or more than 13 passengers; or
- (b) a vehicle used in a transportation or vehicle rental business.

**Realisation of Depreciable Assets**

4. (1) The excess of the following two amounts is included in calculating a person’s income for a year of assessment from a business in which depreciable assets of a particular Class are or were employed:

- (a) consideration received by the person during the year for any assets that are or have been in a particular pool of depreciable assets of the person during the year; reduced by
- (b) subparagraph (i) or (ii), as appropriate-
  - (i) in the case of a Class 1, 2 or 3 pool, the depreciation basis of the pool at the end of the year, but disregarding the consideration received referred to in paragraph (a); or
  - (ii) in the case of a Class 4 or 5 pool, the written down value of the pool at the end of the year calculated under subparagraph (3), but disregarding the consideration received referred to in paragraph (a).

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(2) Where the assets in a pool of depreciable assets of a person are all realised by the person before the end of a year of assessment, the pool is dissolved and-

(a) an amount is included in calculating the person's income for the year calculated in accordance with the following formula:

A – B

or

(b) an allowance is granted to the person for the year calculated in accordance with the following formula:

B – A

where-

A is consideration received by the person during the year of assessment for the assets; and

B is the sum of-

- (i) the written down value of the pool at the end of the previous year of assessment; and
- (ii) amounts added to the depreciation basis of the pool during the year of assessment.

(3) For the purposes of this paragraph, "written down value" of a pool of depreciable assets at the end of a year of assessment means-

- (a) in the case of a Class 1, 2 or 3 pool, the depreciation basis of the pool at the end of the year, if any, after deducting depreciation for the pool for the year as calculated under paragraph 2; or
- (b) in the case of a Class 4 or 5 pool, the depreciation basis of the pool at the end of the year reduced by all allowances granted to the person under paragraph 2 in respect of the pool for that year and any previous year.

(4) For the purposes of this paragraph, a person realises a depreciable asset referred to in paragraph 1(5) only if the person sells the business in respect of which the expenses were incurred to another person who is not an associate.

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*Part II: Petroleum Operations*

**Modification of Part I**

5. (1) All capital allowance expenditure incurred in respect of a separate petroleum operations during a year of assessment is placed in a separate pool.

(2) Capital allowances are granted with respect to each year's pool at the rate of 20% using the straight line method (see paragraph 2 above).

(3) Where an asset for which capital allowance expenditure has been incurred under this paragraph is disposed of (or deemed to be disposed of) during a year of assessment-

(a) the consideration received for the disposal shall be included in calculating assessable income from the separate petroleum operations for the year;

(b) Where in a year of assessment an asset is partly used in a separate petroleum operation and partly used in another separate petroleum operation the capital allowance of that asset in that year shall be apportioned between the two separate petroleum operations in proportion to the use of the asset in each separate petroleum operation.

Where in a year of assessment a person has assigned his petroleum right the written down value of all capital allowance expenditure of the person at the beginning of that year shall be transferred to the assignee.

Where in a year of assessment a person has assigned part of his petroleum right the written down value of all capital allowance expenditure of the person shall be apportioned between that person and the assignee in proportion to the percentage of the interest retained and the percentage of the interest assigned.

Where a deduction is made in respect of a capital allowance expenditure in calculating the income of a person a further deduction shall not be made in respect of the same capital expenditure allowance under any other provision of this Act.

(4) In this paragraph-

“capital allowance expenditure” means expenditure for which capital allowances are available under this Schedule, including by reason of provisions in Division I of Part VI but subject to section 61; and

“written down value” of an asset means the cost of the asset less all capital allowances granted with respect to expenditure included in that cost.



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*Part III: Minerals and Mining*

**Modification of Part I**

6. (1) All capital allowance expenditure incurred in respect of a separate mineral operation during a year of assessment is placed in a separate pool.

(2) Capital allowances are granted with respect to each year's pool at the rate of 20% using the straight line method (see paragraph 2 above).

(3) Where an asset for which capital allowances have been granted under this paragraph is disposed of (or deemed to be disposed of) during a year of assessment-

- (a) if the consideration received for the disposal exceeds the written down value of the asset, the excess is included in calculating assessable income from the separate mineral operation for the year;
- (b) if the written down value of the asset exceeds the consideration received for the disposal, an additional capital allowance is granted for the year in an amount equal to the excess; and
- (c) the relevant pools referred to in subparagraph (1) are reduced by the written down value of the asset.

Where in a year of assessment an asset is partly used in a separate mineral operation and partly used in another separate mineral operation the capital allowance of that asset in that year shall be apportioned between the two separate mineral operations in proportion to the use of the asset in each separate mineral operation.

Where in a year of assessment a person has assigned his mineral right the written down value of all capital allowance expenditure of the person at the beginning of that year shall be transferred to the assignee.

Where in a year of assessment a person has assigned part of his mineral right the written down value of all capital allowance expenditure of the person shall be apportioned between that person and the assignee in proportion to the percentage of the interest retained and the percentage of the interest assigned.

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Where a deduction is made in respect of capital allowance expenditure in calculating the income of a person a further deduction shall not be made in respect of the same capital expenditure allowance under any other provision of this Act.

(4) In this paragraph-

“capital allowance expenditure” means expenditure for which capital allowances are available under this Schedule, including by reason of provisions in Division II of Part VI but subject to section 73; and

“written down value” of an asset means the cost of the asset less all capital allowances granted with respect to expenditure included in that cost.

**FOURTH SCHEDULE  
QUANTIFICATION OF BENEFITS**

*(Section 26)*

**Motor Vehicle Benefits**

1. A benefit consisting of the availability for use or use of a motor vehicle provided by an employer to an employee or an entity to a member or manager during a year of assessment is quantified according to the following rates:-

- (a) Driver and vehicle with fuel                      12.5% of the person's total cash emoluments up to a maximum of GHc 600.00 per month
- (b) Vehicle with fuel                                      10% of the person's total cash emoluments up to a maximum of GHc500.00 per month
- (c) Vehicle only 5% % of the person's total cash emoluments up to a maximum of GHc250.00 per month
- (d) Fuel only 5% of the person's total cash emoluments up to a maximum of GHc250.00 per month

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**2. Accommodation Benefits**

A benefit consisting of the provision of premises by an employer for residential occupation of an employee during a year of assessment is quantified as follows:

- (a) Accommodation with furnishing, 10% of the person's total cash emoluments.
- (b) Accommodation only 7.5% of the person's total cash emoluments.
- (c) Furnishing only 2.5% of the person's total cash emoluments
- (d) Shared accommodation 2.5% of the person's total cash emoluments

**Loan Benefits**

3. (1) A benefit consisting of a loan provided for a year of assessment in return for services (whether by way of employment or otherwise) or by an entity to a member or manager of the entity is quantified as-

- (a) where the loan is made by an employer to an employee, with the term of the loan not more than twelve months and the aggregate amount of the loan and any similar loans outstanding at any time during the previous twelve months does not exceed three months basic salary, the quantity of the payment is nil; and
  - (b) in any other case, a quarter of the amount by which-
    - (i) the interest that would have been paid by the payee during the year of assessment of the payee in which the payment is made if interest were payable under the loan at the statutory rate for the year of assessment, exceeds
    - (ii) the interest paid by the payee during the year of assessment under the loan, if any.
- (2) "statutory rate", means the Bank of Ghana rediscount rate;

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**FIFTH SCHEDULE  
PERSONAL RELIEFS**

*(Section 50)*

1. (1) the personal reliefs referred to in section 48 are:
  - (a) in the case of an individual with a dependant spouse or at least two dependant children, 200 currency points .;
  - (b) in the case of a disabled individual, 25 percent of the individual's assessable income from every business or employment;
  - (c) in the case of an individual who is 60 or more years of age, 200 currency points.
  - (d) in the case of an individual sponsoring the education of the individual's children or wards in any recognised registered educational institution in Ghana, 200 currency points per child or ward, but an individual may only claim relief in respect of three children or wards;
  - (e) in the case of an individual with a dependant relative (other than a child or spouse) who is 60 or more years of age, 100 currency points but that individual may only claim relief in respect of two dependant relatives; and
  - (f) in the case of an individual who has undergone any training to update the individual's professional, technical or vocational skills or knowledge, the cost of the training, not exceeding 400 currency points. .

(2) Where two or more persons qualify in respect of the same child, ward or relative under subparagraph (1)(d) or (e), only one relief is granted.

(3) In this paragraph "dependant child, spouse or relative" in respect of an individual, means a child, spouse or relative of the individual for whom that individual provides the necessities of life.

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**SIXTH SCHEDULE  
TEMPORARY CONCESSIONS**

*(Section 132)*

**Agriculture**

1. (1) Where an individual conducts a farming business wholly within Ghana, the following are subject to tax at the rate provided for in the First Schedule:

- (a) in the case of farming tree crops, income from the business for a period of ten years of assessment commencing from and including the year during which the first harvest of crops occurs;
- (b) in the case of farming livestock (other than cattle), fish or cash crops, income from the business for a period of five years of assessment commencing from and including the year during which the business commences; and
- (c) in the case of farming cattle, income from the business for the period of ten years of assessment commencing from and including the year during which the business commences.

(2) The income of a person from an agro processing business conducted wholly in Ghana is subject to tax at the rate provided for in the First Schedule for a period of five years of assessment commencing from and including the year in which commercial production commences.

(3) The income of a person from a cocoa by-product business conducted wholly in Ghana is subject to tax at the rate provided for in the First Schedule from tax for a period of five years of assessment commencing from and including the year in which commercial production commences.

(4) In this paragraph-

“cash crops” includes cassava, maize, pineapple, rice, and yam;  
“cocoa by-product business” means a business that produces on a commercial basis cocoa by-products using as its main raw material substandard cocoa beans, cocoa husks and other cocoa waste;

“farming business” means the business of producing, crops, fish or livestock;

“agro processing business” means the business of processing

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crops, fish or livestock produced, caught or raised in Ghana from their raw state into an edible canned or packaged product; and  
“tree crops” includes coconut, coffee, oil palm, rubber, and shear nut.

**Rural Banking**

2. (1) The income of a person from a rural banking business is subject to tax at the rate provided for in the First Schedule for the period of ten years of assessment commencing from and including the year in which the business is established.

(2) In this paragraph, “rural banking business” means a business designated as such under the Banking Act, 2004 (Act 273).

**Waste Processing**

3. (1) The income of a company from a waste processing business is subject to tax at the rate provided for in the First Schedule from tax for a period of seven years of assessment commencing from and including the year in which the business commences.

(2) In this paragraph, “waste processing business” means a business where the principal activity is the processing of waste, including recycling of plastic and polythene material for agricultural or commercial purposes.

**Residential Premises**

4. (1) The income of a certified company from a low cost housing business is subject to tax at the rate provided for in the First Schedule for the period of five years of assessment commencing from and including the year in which operations commence.

(2) Notwithstanding sections 8 and 9 of the Act, in calculating an individual’s income from conducting an employment, business or investment for a year of assessment, deduct mortgage interest incurred during the year

(3) An individual may deduct mortgage interest in respect of only one residential premises during the individual’s life.

(4) In this paragraph-

“certified company” means a company issued with a certificate from the Minister responsible for Works and Housing stating that it is engaged in a low cost housing business;

“low cost housing business” means the business of construc-

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tion for sale or letting of low cost affordable residential premises; and  
“mortgage interest” means interest incurred by an individual in respect of a borrowing employed in constructing or acquiring the individual’s only place of residence.

**Approved Unit Trust Scheme and Mutual Fund**

6. (1) The income of an approved unit trust scheme or mutual fund is subject to tax at the rate provided for in the First Schedule for a period of ten years of assessment from and including the year which the basis period of the trust or scheme ends being the period in which operations commence

(2) Interest and dividends paid or credited to a holder or member on an investment in the scheme or fund of an approved unit trust scheme or mutual fund provided for under subparagraph (1), are also subject to tax at the rate provided for in the First Schedule.

(3) In this paragraph, “approved unit trust scheme or mutual fund” means a scheme or fund approved under the Securities Industry Act, 1993 (PNDCL 333)

**Venture Capital Financing Companies**

7. (1) The income of a qualifying venture capital financing company is subject to tax at the rate provided for in the First Schedule for the period of ten years of assessment commencing from and including the year in which the company first qualifies.

(2) This subparagraph applies to a loss incurred by a venture capital financing company on the disposal of an investment in a venture capital subsidiary company under the Venture Capital Trust Fund Act, 2004 (Act 680) during the exemption period referred to in subparagraph (1). The loss may be carried forward for five years of assessment following the end of the exemption period.

(3) This subparagraph applies to a loss incurred by a venture capital financing company from the disposal of shares in any venture investment under section 17 of the Venture Capital Trust Fund Act, 2004 (Act 680) during a year of assessment. The loss may be carried forward for five years of assessment after the year of disposal.

(4) Interest and dividends paid or credited to a person on a qualifying investment in a venture capital financing company provided for in subparagraph (1), are also subject to tax at the rate provided for in the First Schedule.

(5) In this paragraph-

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“qualifying investment” means an investment by way of funding a qualifying venture capital financing company in accordance with the Venture Capital Trust Fund Act, 2004 (Act 680); and

“qualifying venture capital financing company” means a company that satisfies the eligibility requirements for funding under the Venture Capital Trust Fund Act, 2004 (Act 680).

**Employment of Graduates**

8. (1) In calculating a company’s income from conducting a business for a year of assessment, the company is entitled to an additional deduction as provided in subparagraph (2) for salary and wages paid during the year to fresh graduates from a recognised Ghanaian tertiary institution.

(2) The additional deduction is:

PERCENTAGE OF FRESH GRADUATES IN WORKFORCE	ADDITIONAL DEDUCTION
Up to 1%	10% of salaries and wages
Above 1%, but not more than 5%	30% of salaries and wages
Above 5%	50% of salaries and wages

**9. ARB Apex Bank**

The income of the ARB Apex Bank is exempt from tax until the end of the year 2020.

**10. Free Zone Companies**

1. Free zone developers and enterprises granted licenses under the Free Zones Act 1995 (Act 504) shall be subject to tax at the rate provided for in the First Schedule for the first ten years from the date of commencement of operation.



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**SEVENTH SCHEDULE**  
**PROVISIONS FOR TAX ADMINISTRATION**  
*(Section 135)*

**1. Commissioner-General**

(1) The Commissioner-General shall be responsible for the administration of this Act

(2) Subject to subsection (3), the Commissioner-General may by notice in the Gazette or in writing authorise any person within or outside Ghana to perform or to assist in the performance of a function imposed upon the Commissioner-General by this Act.

(3) The Commissioner-General shall not delegate the power to:

- a. determine any matter or do anything required to be determined or done under subsections (5), (6), (7) and (8) of section 59(Taxation of Shareholders) of this Act;
- b. exempt a person from the provisions of subsection (5) (b) of section 115(Withholding from Service fees and contract payments) other than to the Commissioner (Domestic Tax Revenue Division);
- c. compound an offence, other than to the Commissioner (Domestic Tax Revenue Division) and Solicitor of the Authority; or
- d. remit taxes, interest, or penalties provided in this schedule

(4) Subject to the provisions of this Act and Regulations made under it, the Commissioner-General may in writing give administrative directives as he considers necessary for the administration and implementation of the provisions of this Act

***Part B: OFFICIAL COMMUNICATIONS AND DOCUMENTATION***

**2 —Regulations**

(1) The Minister responsible for Finance may, by legislative instrument, make Regulations

- a. for matters authorised to be made or prescribed under this Act;
- b. amending a provision of the Schedules to this Act or any monetary amount set out in this Act; and
- c. for the better carrying into effect of the provisions of this Act.

### 3 —Practice Notes

(1) To achieve consistency in the administration of this Act and to provide guidance to persons affected by this Act and the officers of the Ghana Revenue Authority, the Commissioner-General may issue practice notes setting out the Commissioner-General's interpretation of this Act.

(2) A practice note is binding on the Commissioner-General until revoked.

(3) A practice note is not binding on persons affected by this Act.

### 4- Amendment and Revocation of Practice Notes

(1) The Commissioner-General may amend or revoke a practice note, in whole or part, by publishing notice of the amendment or revocation in the *Gazette* or in a daily newspaper with national circulation.

(2) The subsequent passage of legislation or issue of a practice note that is inconsistent with an existing practice note revokes the existing practice note to the extent of the inconsistency.

(3) The amendment or revocation of a practice note, in whole or part, has effect-

(a) if subparagraph (1) applies, from the date specified in the notice of amendment or revocation and if no date is specified, from the date notice of the amendment or revocation is published in the *Gazette* or in a daily newspaper with national circulation; or

(b) if subparagraph (2) applies, from the date the inconsistent legislation or practice note applies.

(4) The amended or revoked part of a practice note-

(a) continues to apply to arrangements commenced before the amendment or revocation; and

(b) does not apply to arrangements commenced after the amendment or revocation.

### 5—Private Rulings

(1) The Commissioner-General may, upon application in writing by a person, issue to that person a private ruling setting out the Commissioner-General's position regarding the application of this Act to that person with respect to a transaction proposed or entered into by that person.

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(2) Where a person issued with a ruling under subparagraph (1) makes, prior to issue of the ruling;

- a. a full and true disclosure to the Commissioner-General of all aspects of the transaction relevant to the ruling, and
- b. the transaction proceeds in all material respects as described in that person's application for the ruling, the ruling shall be binding on the Commissioner-General with respect to the application of this Act (as in force at the time of the ruling) to that person with respect to the transaction.

(3) Where there is an inconsistency between a practice note and a private ruling, priority is given to the terms of the private ruling.

(4) A private ruling must-

- (a) set out the matters ruled on, identifying the tax laws, periods and arrangements to which the ruling applies as well as any assumptions that affect the ruling;
- (b) identify the applicant and the applicant's TIN;

**6 - Amendment and Revocation of Private Rulings**

(1) For reasonable cause, the Commissioner-General may amend or revoke a ruling, in whole or part, by written notice- served on the applicant

(2) An amendment under subparagraph (1) must comply with the requirements of paragraph 4(4).

(3) The subsequent passage of legislation that is inconsistent with a private ruling revokes the ruling to the extent of the inconsistency.

(4) The amendment or revocation of a private ruling, in whole or part, has effect-

- (a) if subparagraph (1) applies, from the date specified in the notice of amendment or revocation; or
- (b) if subparagraph (3) applies, from the date the inconsistent legislation applies.

(5) The amended or revoked part of a private ruling-

- (a) continues to apply to arrangements commenced before the amendment or revocation; and

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- (b) does not apply to arrangements commenced after the amendment or revocation.

**7—Tax Clearance Certificate**

(1) The Commissioner-General shall not permit any importer or other person to clear goods in commercial quantities or meant for commercial purposes from a port or a factory in Ghana unless the importer or other person produces to the Commissioner-General a tax clearance certificate issued in respect of the importer or that other person in the year of assessment in which the goods are to be cleared.

(2) Where any authority or person is empowered by an enactment to effect the registration of title to land or a document conferring title to land, that authority or person shall not effect the registration of that title or document unless there is produced to that authority or person a tax clearance certificate issued in the year of assessment in which the registration is to be effected and in respect of the person applying for the registration or, in respect of the person on behalf of whom the application is made.

(3) No contract shall be awarded by any agency or body in which public funds are vested to any person for the provision of services including consultancy services, unless that person produces to the agency or body a Tax Clearance Certificate issued by the Commissioner-General in respect of that person in the year of assessment in which the contract is to be awarded.

(4) A tax clearance certificate issued under this paragraph is valid for the period and for the purposes determined by the Commissioner-General.

(5) Persons who discharge their tax obligations up to the end of the preceding year of assessment or the relevant quarter of the current year may be granted an all purpose tax clearance certificate valid for a period of not less than three months or valid for the subsequent quarter.

(6) Where a person is required to produce a tax clearance certifi-

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cate under this paragraph, and the certificate is not for a specific purpose, the person enjoined to require the production shall first inspect the original certificate and thereafter demand and retain a copy of the certificate.

(7) In this paragraph, “tax clearance certificate” means a certificate issued by the Commissioner-General to a person stating that no tax is due under this Act by that person in respect of the periods stated in the certificate or that that person has made arrangements satisfactory to the Commissioner-General for the payment of the tax due.

### **(8) Tax Identification Number**

(1) For the purpose of identifying persons subject to tax under this Act, the Commissioner-General may issue to a person a Tax Identification Number.

(2) A person shall show the Tax Identification Number in any return, notice, or other document used for the purposes of this Act.

### **(9) Official Language**

(1) English is the official language of this Act and the Revenue Authority may refuse to recognise any communication or document that is not in the official language.

(2) Where a communication or document that is not in the official language is relevant in applying a tax law to a taxpayer, the Commissioner-General may require the taxpayer to provide a translation of the communication or document into the official language.

(3) The Commissioner-General’s requirement must be in writing and served on the taxpayer.

(4) A taxpayer must use a translator approved by the Commissioner-General and meet the expense of the translation.

(5) If a taxpayer fails to comply with subparagraph (2), the Commissioner-General may have the communication or document translated at the cost of the taxpayer.

### **10. Official Currency**

(1) The cedi is the official currency of this Act and, subject to any provision in a tax law to the contrary, all amounts taken into account under a tax law must be denominated in or converted into Cedis.

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(2) Conversion of a foreign currency amount into Cedis must be at the Bank of Ghana inter-bank exchange rate applying on the date the amount is to be taken into account

(3) The Commissioner-General may, on written application or otherwise, require a person or persons to take a foreign currency amount or amounts into account for the purposes of this law

(4) A requirement of the Commissioner-General under subsection (3)-

- (a) must be in writing and may be by way of practice note;
- (b) may apply for one or more periods;
- (c) may be subject to such conditions as the Commissioner-General determines; and
- (d) has effect notwithstanding subparagraph (1).

(5) In exercising the discretion under subparagraph (3), the Commissioner-General must take into consideration the volume of foreign currency activities conducted by the person.

(6) The Commissioner-General may, by notice in writing and for reasonable cause, revoke a requirement under subparagraph (3).

(7) In this paragraph, the date an amount is to be taken into account under is the date the amount accrues, or is received, derived, incurred, paid or otherwise to be taken into account for the purposes of this Act

### **11. Forms and Notices**

(1) The Commissioner-General may specify the form of claims, forms, notices, returns, statements, and other documents required under this Act which shall contain the information required for the efficient administration of this Act.

(2) A person must use a prescribed form when filing a document with the Commissioner-General or when a form is otherwise required for the purposes of a this Act

(3) The Commissioner-General must make prescribed forms available to the public at offices of the Revenue Authority and at such other locations or by such other medium as the Commissioner-General may determine.

### **12. Authorised and Defective Documents**

(1) A document issued by the Commissioner-General under a this Act is sufficiently authenticated if the name or title of the Commissioner-General, or authorised tax officer, is-

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- (a) in the case of a paper document, signed, printed, stamped or written on the document; or
  - (b) in the case of an electronic document, imbedded in the document by way of electronic signature or if the name or title of the Commissioner-General, or authorised officer, is signed or written on the notice or document.
- (2) A document issued under a this law is not invalid or defective if-
  - (a) it is in substance and effect in conformity with the law; and
  - (b) the person to whom the document is addressed or to whom it applies is designated in the document according to common understanding.
- (3) Subject to subparagraph (5), the Commissioner-General may amend a document issued by the Commissioner-General under a this law for the purposes of rectifying a defect in the document.
- (4) This subparagraph applies where-
  - (a) a document issued by the Commissioner-General under this law contains a defect; and
  - (b) that defect involves a dispute as to the interpretation of this law or facts involving a particular person.
- (5) Where subparagraph (4) applies, the Commissioner-General may dispute the defect, but may not amend that part of the document that contains the defect.
- (6) The Commissioner-General may amend a practice note or private ruling, but only in accordance with paragraph 4 or 6, as the case requires.

**13. Paper Documents Filed with Commissioner-General**

- (1) A paper document is filed with the Commissioner-General under a tax law by-
  - (a) delivering the document to an office of the Revenue Authority; or
  - (b) sending it by post to an office of the Revenue Authority.
- (2) A document referred to in subsection (1) is treated as received by the Commissioner-General-

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- (a) when the document is posted, as long as it is received in an office of the Revenue Authority within a reasonable time; or
- (b) in any other case, when the Revenue Authority acknowledges it by stamping.

**14. Service of Paper Documents**

(1) The Commissioner-General or a tax officer sufficiently serves a paper document on a person under a tax law if the document is-

- (a) handed to the person or, in the case of an entity, a manager of the entity;
- (b) left at or sent by post to the usual or last known place of abode, business, office, post office box or other address of the person; or
- (c) sent by registered post addressed to the usual or last known place of abode, business, office, post office box or other address of the person

(2) For the purposes of subparagraph(1), the address of a person includes-

- (a) the address referred to in the person's TIN certificate
- (b) any ship to which the person belongs or has lately belonged.

(3) A document is considered served at the following time:

- (a) in the case of service by handing to a person or leaving at a place, at the time of handing or leaving;
- (b) in the case of service by registered post, at the time the document is delivered or the person is informed that the document awaits the person;
- (c) in the case of other service by post to an address within Ghana, seven days after posting; and
- (d) in the case of other service by post to an address outside Ghana, the time at which the document would normally be delivered in the ordinary course of post.

**15. Electronic Document System**

(1) The Commissioner-General may establish and operate a system for-



- (a) electronic filing of documents with the Commissioner-General,
  - (b) electronic service of documents by the Commissioner-General, and
  - (c) electronic payments of documents by persons
- (2) For this purpose, the Commissioner-General may prescribe rules, concerning-
- (a) registration of persons who wish to participate in the system, including issue and cancellation of authentication codes;
  - (b) types of documents that may be transmitted through the system, including format and manner of transmission and the issue and cancellation of document registration numbers;
  - (c) resolution of difficulties, including correction of errors, amendment of documents and procedure on breakdown or interruption of the system;
  - (d) secrecy to be maintained, whether by persons using the system on their own behalf or using the system on behalf of other persons; and
  - (e) any other matter for the better administration of the system, including those referred to in section 26(2) of the Electronic Transactions Act, 2008 (Act 772).
- (3) An electronic document is considered filed by a person and received by the Commissioner-General under a tax law when a document registration number is created using the person's authentication code.
- (4) The only exception to subparagraph (3) is where the person proves to the satisfaction of the Commissioner-General that the person did not send the document and the document was not sent with the person's authority.
- (5) An electronic document is considered served on a person by the Commissioner-General under a tax law when a document registration number is created and the document can be accessed using the person's authentication code.
- (6) The Commissioner-General may authorise a printed document as a copy of an electronic document filed under subparagraph (3) or served under subparagraph (5).

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(7) A court or tribunal must accept a copy authorised under subparagraph (6) as conclusive evidence of the nature and contents of an electronic document, unless the contrary is proved.

(2) In this Part, “document” includes an assessment, ruling, notice, or certificate.

*Part C: Records and Information Collection*

**16. Accounts and Records**

(1) Unless otherwise authorised by the Commissioner-General, a person required to be registered with the Commissioner-General under this Act other than an employee with respect to the employment income of that person shall maintain in Ghana the necessary records to explain the information to be provided in a return or in any other document to be furnished to the Commissioner-General under this Act or to enable an accurate determination of the tax payable or income earned by that person. And (1A) The necessary records required to be maintained by a person includes all underlying documents however described in the nature of receipts, invoices, vouchers, contracts or any electronic data from which information can be extracted

(2) Where a person does not maintain records as required by subsection (1), the Commissioner-General may adjust that person’s liability to tax in a manner that is consistent with the intention of this Act.

(3) The records referred to in this paragraph shall be retained for a period of not less than six years unless the Commissioner-General otherwise specifies in writing.

(4) For the purposes of this paragraph, the records to be maintained by a business shall include a record of all receipts and payments, all revenue and expenditure, and all assets and liabilities of the business.

**17. Record of Shareholders of company**

A company which is incorporated under the laws of Ghana or has its management and control exercised in Ghana at any time during the Year of Assessment, shall

- (a) Maintain available in Ghana a register of members reflecting the names and addresses of the members, and
- (b) In the case of a company having shares, maintain
  - I. A statement of the shares held by each member dis-

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tinguishing each share by a number where the share has a number and the amount paid or agreed to be considered as paid on the shares of each member and the amount remaining payable on the shares

- II. The date on which the person was entered in the register as a member and
- III. The date on which that person ceased to be a member

**18. Access to Books, Records, and Computers and other electronic device**

(1) For the purposes of administering this Act, the Commissioner-General, or an officer authorised in writing by the Commissioner-General,

- a. shall have at all times and without any prior notice full and free access to any premises, place, property, book, record, computer or other electronic storage device;
- b. may make an extract or copy from any book, record, or computer-stored information to which access is obtained under paragraph (a);
- c. may seize any book, record, other document, computer or other electronic storage device that, in the opinion of the Commissioner-General or authorised officer, affords evidence which may be material in determining the liability of a person to tax, interest, or penalty under this Act;
- d. may retain a book or record for as long as it may be required for determining a person's tax liability or for any proceeding under this Act;
- e. may, where a hard copy or information stored on a computer or electronic storage device is not provided, seize and retain the computer or device for as long as is necessary to copy the information required; and
- f. for the purposes of paragraphs (a) to (e), may search a person entering or leaving any premises or place.

(2) An officer shall not exercise the powers under subsection (1) without authorisation in writing from the Commissioner-General and the

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officer shall produce the authorisation to the occupier of the premises or place to which the exercise of powers relates.

(4) For the purposes of this paragraph, the Commissioner-General may request the Inspector-General of Police for the requisite assistance for a specific assignment.

(5) The occupier of the premises or place to which an exercise of powers under subparagraph (1) relates shall provide all reasonable facilities and assistance for the effective exercise of the powers.

(6) A person whose books, records, computer or electronic storage device have been removed and retained under subparagraph (1) may examine them and make copies or extracts from them, at that person's expense, during regular office hours under the supervision determined by the Commissioner-General.

(7) All records, books, computers or electronic storage device removed and retained under sub-paragraph (1) shall be signed for by the Commissioner-General or an authorised officer and the Commissioner-General shall return them to the owner as soon as is practicable after the Commissioner-General's investigation of that person's affairs and any related proceedings have been concluded.

(8) This paragraph has effect notwithstanding any rule of law relating to privilege or the public interest with respect to the production of, or access to, the documents.

(9) In this section, "occupier" in relation to premises or a place includes the owner, manager, or any other person on the premises or place.

**19. Notice to Obtain Information or Evidence**

(1) The Commissioner-General may, by notice in writing, require a person, whether or not liable to tax under this Act,

- a. to furnish, including by way of creation of a document, within the time specified in the notice, information that may be required by the notice; or
- b. to attend at the time and place designated in the notice for the purpose of being examined on oath by the Commissioner-General or by an officer authorised by the Commissioner-General, concerning the tax affairs of that person or any other person and, for that purpose, the Commissioner-

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General or an authorised officer may require the person examined to produce any book, record, or computer-stored information in the control of that person.

(2) Where the notice requires the production of a book, record, or electronic-stored information, it is sufficient if the book, record, or electronic -stored information is described with reasonable certainty in the notice.

(3) A person to be examined on oath under paragraph (b) of subparagraph (1) is entitled to legal or other representation throughout the examination.

(4) A notice issued under this paragraph shall be served by, or at the direction of, the Commissioner-General by a signed copy delivered by hand to the person to whom it is directed or left at that person's last and usual place of business or abode.

(5) This paragraph has effect notwithstanding any rule of law or enactment in relation to the production of, or access to, the documents or information.

**20. Official Secrecy**

(1) A person appointed under, or employed in carrying out the provisions of this Act shall regard and deal with all documents and information which may come to that person's possession or knowledge in connection with the performance of functions under this Act as secret and shall not disclose any information or document except in accordance with the provisions of this Act or under an order of a superior court.

(2) Nothing in this paragraph shall prevent the disclosure of information or documents to

- a. the Minister responsible for Finance or any other person where the disclosure is necessary for the purposes of this Act or any other fiscal law;
- b. a person in the service of the Government in a revenue or statistical department where the disclosure is necessary for the performance of official duties;
- c. the Auditor-General or a person authorised by the Auditor-General where the disclosure is necessary for the performance of official duties; or

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- d. the competent authority of the government of another country with which Ghana has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under that agreement.

(3) A person receiving documents and information under subparagraph (1) or (2) shall keep them secret under the provisions of this section, except to the minimum extent necessary to achieve the purpose for which the disclosure is necessary.

*Division II: Dispute Resolution*

**Subdivision A: Objections and Appeals**

**21. Objection to Assessment**

(1) A person who is dissatisfied with an assessment made under this Act may lodge an objection to the assessment with the Commissioner-General within thirty days of the service of the notice of assessment or, in the case of an estimate under section 117, within nine months of the commencement of the basis period to which the estimate relates.

(2) An objection to an assessment shall be in writing and state precisely the grounds upon which it is made.

(3) The Commissioner-General may, upon application in writing by an objector, extend the time for lodging an objection where the Commissioner-General is satisfied that the delay in lodging the objection is due to the objector's absence from Ghana, sickness, or other reasonable cause.

(4) After the determination of the objection, the Commissioner-General may allow the objection in whole or part and amend the assessment accordingly, or disallow the objection.

(5) As soon as is practicable after allowing or disallowing an objection, the Commissioner-General shall serve the objector with notice of the decision.

(6) Where a decision has not been made by the Commissioner-General within ninety days after the objection was lodged with the Commissioner-General, the objector may, by notice in writing to the Commissioner-General, elect to treat the Commissioner-General as having made a decision to disallow the objection.

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(7) Where an objector makes an election under subparagraph (6), the objector is treated as having been served with a notice of the disallowance on the date the objector's election is lodged with the Commissioner-General.

### **22. Appeal to Court**

(1) A person dissatisfied with an objection decision may appeal against the decision to the High Court.

(2) An appeal under subparagraph (1) shall be made by lodging a notice of appeal with the Registrar of the Court within thirty days after service of the notice of the decision.

(3) A person may lodge a notice of appeal after the date specified in subparagraph (2) if that person proves to the satisfaction of the Court that the delay in lodging the notice of appeal is due to that person's absence from Ghana, sickness, or other reasonable cause and that there has been no unreasonable delay on that person's part.

(4) A person who has lodged a notice of appeal with the Registrar of the High Court under subparagraph (2) or (3) shall, within five working days of doing so, serve a copy of the notice of appeal on the Commissioner-General.

(5) The High Court may confirm, reduce, increase or annul the assessment on which the decision is based or make an appropriate order.

### **23. Appeal to Court of Appeal and Supreme Court**

(1) The Commissioner-General or the appellant may appeal against the decision of the High Court made under subparagraph (5) of paragraph 22 to the Court of Appeal on a matter of law only.

(2) An appeal against a decision of the Court of Appeal under subparagraph (1) shall lie as of right to the Supreme Court.

(3) An appeal under subparagraph (1) or (2) shall be made within thirty days after the decision to which it pertains.

### **24. Payment of Tax**

(1) Where a person has lodged a notice of objection to a notice of assessment under paragraph 21 an amount of thirty per centum of the amount payable as contained in the notice of assessment shall be paid pending the determination of the objection and an appeal.

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(2) An application, action, or appeal shall not be entertained by a Court in respect of an objection under paragraph 21 unless the person to whom the decision relates has paid the amount specified under subparagraph (1) of this section.

(3) Where the payment of a tax has been held over pending an objection or appeal, any tax outstanding under the assessment as determined by the Commissioner-General or objection on appeal shall be payable within thirty days from the date of service of the notice of the decision of the Commissioner-General or the date of the decision of the Court.

(4) Where a person is required to pay tax as a result of an objection decision of the Commissioner-General or as a result of a court decision under subdivision A of Division II, the person shall pay, in addition to the tax payable a penalty at the minimum prevailing bank rate on the tax payable from the date of the service of the notice of assessment to the date the person pays the amount determined on objection or on appeal. [

### **Subdivision B: Proof**

#### **25. Burden of Proof**

(1) In an objection to an assessment or on an appeal, paragraph 22 or 23, the onus is on the person assessed to prove, on the balance of probabilities, the extent to which the assessment made by the Commissioner-General is excessive or erroneous.

(2) Where the Commissioner-General or an authorised officer makes a copy of a book, record, or computer-stored information or part of it under paragraph (18) and the copy is certified by the Commissioner-General or the officer as a true copy, the copy shall be admissible in evidence before any court and have the same probative value as the original book, record, or computer-stored information if it had been proved in the ordinary way.

## **Tax Returns**

#### **26. Tax returns**

(1) A tax return to be filed by an individual must be signed by the individual or his authorized agent and declare that the return is complete and accurate.

(2) A tax return to be filed by an entity must be signed by a duly authorised manager of the entity and declare that the return is complete and accurate.



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(3) If before the date for filing a tax return the circumstances specified in sub-paragraph (5) (revenue at risk) exist, the Commissioner- General may require a person to file a tax return.

(4) The Commissioner-General's requirement under subparagraph (3) must be in writing and served on the person specifying the period, part of a period or other events to be covered by the tax return and the date by which the return must be filed.

(5) The circumstances in which revenue is at risk are:

- (a) the person becomes bankrupt, is wound-up or goes into liquidation;
- (b) the Commissioner-General believes on reasonable grounds that the person-
  - (i) is about to leave Ghana indefinitely;
  - (ii) is otherwise about to cease activity in Ghana; or
  - (iii) has committed an offence under a tax law; or
- (c) the Commissioner-General otherwise considers it appropriate, including but not limited to where the person fails to maintain adequate documentation as required by paragraphs 16 and 17

**27. Assistance in Preparing Tax Return**

**41.** (1) A person (the "preparer") who, for remuneration, prepares or assists in the preparation of a tax return or an attachment to a tax return of another person, must sign the return-

- (a) specifying the extent to which the preparer has examined the relevant documents of the other person maintained paragraphs 16 and 17 and the nature of the documents examined, and
- (b) certifying that to the best of the preparer's knowledge, the return or attachment presents a true and fair view of the circumstances to which it relates.

(2) Subparagraph (1) does not apply to an employee of the person obliged to file the tax return.

(3) Where a preparer refuses to sign a tax return as required by subparagraph (1), the preparer must-

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- (a) furnish the other person with a statement in writing of the reasons for such refusal; and
- (b) sign the return noting that the signature is subject to such a statement.

(4) Where a preparer furnishes a statement under subparagraph (3)(a), the statement must be attached to and filed with the return.

**28. Extension of Time to File Tax Return**

42. (1) A person who is required to file a tax return under a tax law may apply to the Commissioner-General for an extension of the time by which the return must be filed.

(2) The application must be in writing and made by the due date for filing the return.

(3) Where a person makes an application under subparagraph (1) and the Commissioner-General is of the opinion that reasonable cause is shown, the Commissioner-General may extend the date by which the return is to be filed.

(4) The extension may be subject to such terms and conditions as the Commissioner-General thinks appropriate, including the payment of security.

(5) The Commissioner-General must serve the person with written notice of the Commissioner-General's decision on an application under subparagraph (1).

(6) The Commissioner-General may grant multiple extensions but the extensions must not in total exceed 60 days from the date the return was originally to be filed.

(7) The granting of an extension of time under this section does not alter the date for payment of tax as specified in the tax law under which the return is to be filed.

**29. Failure to File Tax Return on Time**

43. (1) This section applies where a person fails to file a tax return by the due date required by a tax law (as may be extended under paragraph 28).

(2) The Commissioner-General may use the power in paragraph 26 to appoint another person to prepare and file any information as the Commissioner-General may require, including information required by

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the return.

(3) The Commissioner-General must make an assessment of the tax liability of the person as required by the tax law, including by way of adjusted assessment, and for this purpose may use any information in the Commissioner-General's possession including any obtained as referred to in subparagraph (2).

(4) A tax return filed after the due date or in a manner other than that specified in the relevant tax law-

- (a) has no effect on a tax decision of the Commissioner-General, including an assessment made under subparagraph (3); but
- (b) the Commissioner-General must take the tax return into account in deciding whether or not to issue an adjusted assessment.

### **30. Correction of Tax Returns and Other Information**

(1) If the Commissioner-General is not satisfied with a tax return filed under a tax law, the Commissioner-General must use appropriate powers, including those in paragraphs 18 and 19 , to gather such further information as is necessary to make an assessment.

(2) A person may not amend or correct a tax return after the due date for filing the return without the permission of the Commissioner-General.

(3) A person must file further information with the Commissioner-General when the person discovers that any information filed with the Commissioner-General in a tax return or otherwise is incorrect or misleading in any material particular.

(4) The Commissioner-General may, but is not obliged to, take into account any information received under subparagraph (3) in making an assessment or adjusted assessment.

*Assessment*

### **31. Assessment**

- (1) Assessment of tax is made by way of-
  - (a) where self-assessment applies, a person being obliged to file a tax return; and
  - (b) in other cases, including where a self-assessment is adjusted, the Commissioner-General making an assessment.

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(2) Where a person files a self-assessment tax return, an assessment is treated as made on the due date for filing the tax return. The assessment is in an amount equal to the net amount of tax due (if any) as shown in the tax return.

(3) The Commissioner-General or an authorised tax officer may adjust an assessment by way of adjusted assessment.

(4) There is no time limit on the Commissioner-General making an assessment (including an adjusted assessment) in the case of discovery of new information, fraud, wilful default or serious omission by or on behalf of the taxpayer.

(5) Subject to subparagraph (4), the Commissioner-General's power to make an original assessment expires six years from the date on which the Commissioner-General was first entitled to make the assessment.

(6) Subject to subparagraph (4), the Commissioner-General's power to make an adjusted assessment expires six years from-

- (a) where a self-assessment is adjusted, the due date for filing the tax return that gives rise to the assessment or, if later, the date the tax return is filed;
- (b) where any other original assessment is adjusted, the date on which the Commissioner-General serves the notice of assessment on the taxpayer; and
- (c) where an adjusted assessment is adjusted, the date referred to in paragraph (a) or (b) of the original assessment that is adjusted.

(7) An assessment made under this paragraph is treated as made under the tax law that charges the person or subject matter assessed.

**32. Pre-emptive Assessment and Security**

(1) In the circumstances specified in paragraph 26(5) (revenue at risk), the Commissioner-General may make a pre-emptive assessment of tax payable or to become payable by a person under a tax law (whether or not the person is required to file a tax return).

(2) Instead of making a pre-emptive assessment, the Commissioner-General may accept from a person such security for outstanding and future tax liabilities as the Commissioner-General thinks appropriate.

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(3) The Commissioner-General must use best judgement and information reasonably available in making a pre-emptive assessment or fixing the amount of security.

(4) A pre-emptive assessment may be for such period or periods or with respect to such events or subject matter as the Commissioner-General may specify in the notice of assessment.

(5) Unless the Commissioner-General specifies otherwise in the notice of assessment, a pre-emptive assessment does not relieve a person of the obligation to file a tax return or otherwise report a taxable event as required by a tax law.

(6) The filing of a tax return, including where it results in a self-assessment, does not affect a pre-emptive assessment.

(7) Any tax paid with respect to a pre-emptive assessment is credited against tax payable with respect to a self-assessment that covers the same period, events and tax.

### **33. Adjusted Assessment**

(1) The Commissioner-General may adjust an assessment in such manner as ensures the taxpayer is liable for the correct amount of tax in the circumstances to which the assessment relates.

(2) The Commissioner-General must use best judgement and information reasonably available in making an adjusted assessment.

(3) The Commissioner-General shall not adjust an assessment that has been adjusted or reduced pursuant to a decision of a court of competent jurisdiction, unless the decision is vacated.

(4) An assessment ceases to have effect to the extent to which it is adjusted.

### **34. Notice of Assessment**

(1) Where the Commissioner-General makes an assessment under a tax law, the Commissioner-General must serve a written notice of the assessment on the taxpayer.

(2) In addition to anything prescribed by the tax law in question, a notice of assessment must state-

(a) the name of the taxpayer and the taxpayer's TIN;

(b) the Commissioner-General's assessment of the tax payable by the taxpayer for the period, event or matter to which the assessment relates;

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- (c) the amount of that tax remaining to be paid after any relevant credits, reductions or pre-payments;
- (d) the manner in which the assessment is calculated;
- (e) the reasons why the Commissioner-General has made the assessment;
- (f) the date by which the tax must be paid; and
- (g) the time, place and manner of objecting to the assessment.

*Division III: Compliance*

**PAYMENT AND RECOVERY OF TAX**

**Time for Paying Tax**

(1) Subject to this Act, tax assessed shall be due on the date on which the person assessed is served with a notice of assessment.

(2) Despite subparagraph (1) Tax is payable-

- (a) in the case of tax payable on an assessment under paragraph 29 (failure to file a return) or 32 (pre-emptive assessment), on the date specified in the notice of assessment served under paragraph 34;
- (b) in the case of tax payable on an adjusted assessment under paragraph 33, 30 days from the date on which the person assessed is served with a notice of assessment under paragraph 34;
- (c) in the case of interest and penalties under paragraph 53, on the date specified in the notice of assessment served under section 34;
- (d) with respect to amounts required to be paid to the Commissioner-General under paragraphs 44 (foreign tax debtors), 41 and 42 (costs of charge and sale), 43 (third party debtors), 46 (agents of non-residents), on the date set out in the relevant notice;
- (e) with respect to a liability under paragraph 60 (managers of entities), at the same time as the tax is payable by the entity;
- (f) with respect to amounts required to be paid to the Com-

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missioner-General under paragraph 45 (receivers), seven days after the sale from which the amount is set aside or the failure to set aside, respectively; or

(3) Subject to sections 7 and paragraph 64 (suspension, waiver or variation of tax decision), tax remains payable despite any dispute or review proceedings, irrespective of whether the proceedings are administrative, judicial, quasi-judicial or appellate in nature.

**Extension of Time for Paying Tax**

(1) A taxpayer may apply, in writing, to the Commissioner-General for an extension of time to pay tax under a tax law.

(2) On receiving an application, the Commissioner-General may, where good cause is shown, extend the date on which tax or part of tax is payable on such terms and conditions as the Commissioner-General thinks fit (including as to security).

(3) An extension of time to pay cannot exceed six months, but a taxpayer may reapply to the Commissioner-General before the end of an extension.

(4) The Commissioner-General must serve the applicant with written notice of the Commissioner-General's decision on the application.

(5) Where an extension is granted by permitting the taxpayer to pay by instalments and the taxpayer defaults in paying any of the instalments, the whole balance of the tax outstanding becomes payable immediately.

**Manner of Paying Tax**

(1) Regulations may prescribe-

(a) the manner and form in which tax must be paid;

(b) for approval of banks to accept payment of tax and related matters, including-

(i) the form of payments that approved banks may accept; and

(ii) the manner in which approved banks must account to the Commissioner-General for tax received; and

(c) limits on the quantum of tax that may be paid and the form of payment that may be accepted at particular offices of the Revenue Authority.

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(2) Where a cheque tendered in payment of tax is dishonoured, the payment is ineffective and the Commissioner-General may use all available powers to recover the tax,

### **Order of Paying Tax**

(1) This section applies where a taxpayer has more than one amount of tax payable, whether under one or more tax laws, and the taxpayer makes payment that is less than the total amount outstanding.

(2) Irrespective of any system established under paragraph 37, where this section applies the Commissioner-General may, in the Commissioner-General's absolute discretion, determine which amount of tax is considered paid.

### **Electronic Tax Accounts**

(1) The Commissioner-General may establish and operate an electronic system of taxpayer tax accounts.

(2) The system may be established and operated separately or as part of the electronic document system established under paragraph 15.

(3) For this purpose, the Commissioner-General may prescribe rules, published in the *Gazette*, concerning-

- (a) debiting of tax when it becomes payable;
- (b) crediting of tax paid;
- (c) allocation of tax paid against tax payable; and
- (d) other matters of the type described in paragraph 15).

### **40. Tax as a Debt Due to the Authority**

(1) Tax, when it becomes due and payable, is a debt due to the Authority and is payable to the Commissioner-General in the manner and at the place prescribed.

(2) Tax that has not been paid when it is due and payable may be sued for and recovered in any Court by the Commissioner-General with full costs of suit from the person sued.

### **41. Collection of Tax by Distress**

(1) The Commissioner-General may recover any unpaid tax by distress proceedings against the movable property of a person liable to pay tax, referred to as the "tax debtor", by issuing an order in writing specifying



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the person against whose property the proceedings are authorised, the location of the property, and the tax liability to which the proceedings relate; and may require a police officer to be present while distress is being executed.

(2) For the purposes of executing distress under subparagraph (1), the Commissioner-General may, at any time, enter any house or premises described in the order authorising the distress proceedings.

(3) The property upon which distress is levied under this paragraph, other than perishable goods, shall be kept for ten days either at the premises where the distress is levied or at any other place that the Commissioner-General may consider appropriate, at the cost of the tax debtor.

(4) Where the tax debtor does not pay the tax due, together with the costs of the distress,

- a. in the case of perishable goods, within a period that the Commissioner-General considers reasonable having regard to the condition of the goods, or
- b. in any other case, within fourteen days after the distress is levied, the property distrained may be sold by public auction or in any other manner directed by the Commissioner-General.

(5) The proceeds of a disposal under subparagraph (4) shall be applied by the auctioneer or seller towards the cost of taking, keeping, and selling the property distrained upon, then towards the tax due and payable, and the remainder of the proceeds, shall be given to the tax debtor.

(6) Nothing in this paragraph shall preclude the Commissioner-General from other proceedings under this Act with respect to the balance owed if the proceeds of the distress are not sufficient to meet the costs of the distress and the tax due.

(7) All costs incurred by the Commissioner-General in respect of any distress may be recovered by the Commissioner-General from the tax debtor and the provisions of this Division shall apply as if the costs were tax due and payable.

(8) Any property distrained under this paragraph shall be identified by the pasting or hanging of a piece of ribbon or cloth determined by the Commissioner-General to or on a conspicuous place of the property.

**42. Security on Landed Property for Unpaid Tax**

(1) Where a person who is the owner of land or buildings situated in Ghana fails to pay tax when it is due and payable, the Commissioner-General may, by notice in writing, notify that person of the intention to apply to the Chief Registrar of Lands, for the land or buildings to be the subject of security for tax as specified in the notice.

(2) If a person on whom a notice has been served under this paragraph fails to make payment of the whole of the amount of the tax specified in the notice within thirty days of the date of service of the notice under subparagraph (1), the Commissioner-General may, by notice in writing, in this paragraph referred to as a “notice of direction”, direct the Chief Registrar that the land or buildings of that person, to the extent of the interest of that person in the land or buildings, be the subject of security for unpaid tax in the amount specified in the notice.

(3) Where a notice of direction is served on the Chief Registrar under subparagraph (2), the Chief Registrar shall, without fee, register the direction as if it were an instrument or mortgage over, or charge on, the land or buildings and the registration shall, subject to any prior mortgage or charge, operate in all respects as a legal mortgage over or charge on the land or building to secure the amount of the unpaid tax.

(4) Upon receipt of the whole of the amount of tax secured under subparagraph (3), the Commissioner-General shall serve notice on the Chief Registrar cancelling the direction made under subparagraph (2) and the Chief Registrar shall, without fee, record the cancellation at which time the direction shall cease to have effect.

**43. Recovery of Tax from Person Owning Money to Tax Debtor**

(1) Subject to subparagraph (2), where a person, referred to as the “tax debtor”, has not paid tax which is due, the Commissioner-General may, by notice in writing, require any other person

- a. owing or who may owe money to the tax debtor,
- b. holding or who may subsequently hold money for, or on account of, the tax debtor,
- c. holding or who may subsequently hold money on account of a third person for payment to the tax debtor, or
- d. having authority from a third person to pay money to the

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tax debtor, to pay the money to the Commissioner-General on the date set out in the notice, up to the amount of tax due.

(2) The Commissioner-General may only issue a notice under subparagraph (1) with respect to tax which is due but not currently payable where the Commissioner-General reasonably believes that the tax debtor will not pay the tax by the date on which it becomes payable.

(3) The date specified in the notice under subparagraph (1) shall not be a date before the money becomes due to the tax debtor, or is held on behalf of the tax debtor.

(4) At the same time that notice is served under subparagraph (1), the Commissioner-General shall also serve a copy of the notice on the tax debtor.

(5) Where a person served with a notice under subparagraph (1) is unable to comply with the notice by reason of lack of moneys owing to or held for the tax debtor, that person shall, as soon as is practicable and in any event not later than the payment date specified in the notice, notify the Commissioner-General accordingly in writing setting out the reasons for the inability to comply.

(6) Where a notice is served on the Commissioner-General under subparagraph (5), the Commissioner-General may, by notice in writing,

- a. accept the notification and cancel or amend the notice issued under subparagraph (1); or
- b. reject the notification.

(7) A person dissatisfied with a decision under subparagraph (6) may only challenge the decision under the objection and appeal procedure in paragraph 18.

(8) A person making a payment pursuant to a notice under subparagraph (1) is deemed to have been acting under the authority of the tax debtor and of all other persons concerned and is hereby indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extra-judicial, notwithstanding any provisions to the contrary in any written law, contract, or agreement.

(9) The provisions of this Part apply to any amount due under this paragraph as if it were tax due and payable.

**44. Restraint of Person**

(1) Where a person other than a citizen of Ghana fails to pay tax on due date, the Commissioner-General may, by notice in writing to the Director of Immigration, require the Director of Immigration to prevent the person from leaving Ghana.

(2) On receiving the notice, the Director of Immigration must prevent the person from leaving Ghana for a period of 7 days from the time the notice is served on the Director of Immigration.

(3) The Commissioner-General must withdraw a notice where the person pays the tax or arranges for payment in a manner satisfactory to the Commissioner-General.

(4) On application by the Commissioner-General, the High Court may extend the period referred to in subparagraph (2).

**45. Duties of Receivers**

(1) A receiver shall, in writing, notify the Commissioner-General within thirty days of being appointed to the position of receiver or of taking possession of an asset situated in Ghana, whichever occurs first.

(2) The executor of a deceased individual's estate and the legal representative of an incapacitated person shall complete and submit any returns required under this Act of the deceased or incapacitated person whether or not the return is required with respect to matters occurring prior to the appointment of the executor or legal representative.

(3) The Commissioner-General may, in writing, notify a receiver of the amount which appears to the Commissioner-General to be sufficient to provide for any tax which is or will become payable by the person whose assets came into the possession of the receiver.

- (4) A receiver
- a. shall realise out of the assets which come into the receiver's possession under the receivership sufficient moneys to set aside the amount notified by the Commissioner-General under subsection (3), or the lesser amount subsequently agreed to by the Commissioner-General; and
  - b. is liable to the extent of the amount set aside for the tax of the person whose assets come into the possession of the receiver.

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(5) A receiver is personally liable to the extent of any amount required to be set aside under subsection (4) for the tax referred to in subsection (3) if and to the extent that the receiver fails to comply with the requirements of this section.

(6) The amount of tax notified by the Commissioner-General under subsection (3) shall become a debt due to the Authority within the meaning of this Act and shall have priority over all other debts of the tax debtor, notwithstanding anything contained in any other enactment.

(7) In this section, “receiver” includes a person who, in respect to an asset situated in Ghana, is

- a. a liquidator of a company,
- b. a receiver appointed out of court or by any Court,
- c. a trustee for a bankrupt,
- d. a mortgagee in possession,
- e. an executor of a deceased individual’s estate, or
- f. a person conducting the affairs of an incapacitated person.

**46. Recovery from Agent of Non-Resident**

(1) The Commissioner-General may, by notice in writing, require a person who is in possession of an asset, including money, belonging to a non-resident person to pay tax on behalf of the non-resident person, up to the market value of the asset but not exceeding the amount of tax due.

(2) The captain of any aircraft or ship owned or chartered by a non-resident person is deemed to be in possession of the aircraft or ship for the purposes of this section.

(3) The tax payable in respect of an amount included in ascertaining the income of a non-resident partner under section 53 is assessable in the name of the partnership or of any resident partner of the partnership and may be recovered out of the assets of the partnership or from a resident partner personally.

(4) The tax payable in respect of an amount included in ascertaining the income of a non-resident beneficiary under section 57 is assessable in the name of the trustee and may be recovered out of the assets of the trust or from the trustee personally.

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(5) A person making a payment pursuant to a notice under subsection (1) is deemed to have been acting under the authority of the non-resident person and of all other persons concerned and is hereby indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extra-judicial, notwithstanding any provisions to the contrary in any written law, contract, or agreement.

(6) The provisions of this paragraph apply to an amount due under this section as if it were tax due and payable.

*Subdivision B: Interest and Penalties*

**47. Failure to Maintain Records**

(1) A person who fails to maintain proper documents as required by a tax law is liable for a penalty for each month or part of a month (the “period”) during which the failure continues.

(2) The penalty is-

(a) where the failure is deliberate or reckless, 75 percent of the tax attributable to that period; or

(b) in any other case, the lesser of the amount referred to in paragraph (a) and 250 currency points

(3) The Commissioner-General must determine tax attributable to a period on a just and reasonable basis including by apportioning tax assessed with respect to a larger period or by reference to taxable events happening within the period.

**48. Failure to Furnish Return**

(1) Any company or self-employed person that fails to furnish an estimate or return of income or any other return required by the Commissioner-General within the time required under this Act is liable to pay a penalty for each day that the return remains outstanding – a penalty of 4 currency points in the case of Entities and 2 currency points in the case of individuals

(2) The penalty applies separately for a failure to file an estimate and a failure to file a tax return incorporating the final amount.

(3) Where a the person does not submit the return four months after the imposition of the penalty for non-submission, the person shall in addition be prosecuted to be compelled to submit the return,

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(4) For the purposes of subsection (2), the “underpayment” is the amount of tax assessable with respect to the tax return less tax paid by the start of the period towards that amount.

### **49. Failure to Pay Tax on Due Date**

(1) A person who fails to pay tax on or before the date on which the tax is payable is liable for interest for each month or part of a month (the “period”) for which any of the tax is outstanding.

(2) The interest is calculated as 125 percent of the statutory rate, compounded monthly, applied to the amount outstanding at the start of the period.

(3) For the purposes of calculating interest under subsection (1)-

(a) tax is payable-

(i) in the case of an adjusted assessment, on the date on which tax is payable under the original assessment; and

(ii) otherwise, on the date specified in section 61 (time for paying tax); and

(b) any extension granted under paragraphs 28 (returns) or 36 (payment of tax) or suspension under paragraph 21 (objection decisions) is ignored.

(4) Where a withholding agent is liable for interest for failing to pay withholding tax in respect of a payment made by the agent, the agent may not recover the interest from the person subject to withholding.

### **50. Understating Estimated Tax Payable by Instalment**

(1) This section applies where a taxpayer’s estimate or revised estimate of tax payable with respect to chargeable income tax for a year of assessment under section 116 of this Act is less than 90 percent of the correct amount.

(2) Where this section applies, the taxpayer is liable for interest for each month or part of a month (the “period”) from-

(a) the<sup>1</sup> date the first instalment for the year of assessment is payable; until

(b) the date by which the person files a return of income for the year of assessment under section 118 of this Act

(3) The amount of interest that a taxpayer must pay for each pe-

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riod under subsection (2) is calculated as 125 percent of the statutory rate, compounded monthly, applied to the difference between-

- (a) 90 percent of the total amount that would have been paid by way of instalments during the year of assessment to the start of the period had the person's estimate equalled the correct amount; and
- (b) the amount of income tax paid by instalments during the year of assessment to the start of the period.

(4) For the purposes of calculating interest payable under subsection (3), any extension granted paragraphs 21, 28 and 36 are ignored .

(5) In this section, "correct amount" means the actual income tax payable by the taxpayer for the year of assessment under this Act

**51. Making False or Misleading Statements**

- (1) A person who,
  - (a) makes a statement to an officer of the Authority that is false or misleading in a material particular, or
  - (b) omits from a statement made to an officer of the Authority any matter or thing without which the statement is misleading in a material particular, is liable to pay a penalty equal to,
  - (c) where the statement or omission is made without reasonable excuse, double the underpayment of tax which may result if the inaccuracy of the statement were undetected; and
  - (d) where the statement or omission is made knowingly or recklessly, triple the underpayment of tax which may result if the inaccuracy of the statement were undetected.

(2) A reference in this section to a statement made to an officer of the Authority is a reference to a statement made in writing to that officer acting in the performance of functions under this Act, and includes a statement made

- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, or furnished under this Act;



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- (b) in information required to be furnished under this Act;
- (c) in a document furnished to an officer of the Authority otherwise than pursuant to this Act;
- (d) in answer to a question asked of a person by an officer of the Authority; or to another person with the knowledge or reasonable expectation that the statement would be conveyed to an officer of the Authority.

**52. Aiding and Abetting**

A person who knowingly or recklessly aids or abets another person to commit an offence of a type referred to under Sub part C (offences) , or counsels or induces another person to commit that offence is liable to a penalty equal to triple the underpayment of tax which may result if the offence were committed and went unnoticed.

**53. Assessment of Interest and Penalties**

(1) The Commissioner-General shall make an assessment of the interest and penalties for which a person is liable under this Part.

(2) Liability for interest and penalties under this Part is calculated separately with respect to each section of this Part.

(3) The imposition of interest and penalties under this Part is in addition to any other tax imposed by this Act or fine imposed as a result of conviction of an offence under Sub Part C and shall not relieve any person from liability to criminal proceedings in respect of that offence.

(4) Where an assessment has been made under this section, the Commissioner-General shall serve a notice of assessment on that person stating

- (a) the amount of interest or penalties payable;
  - (b) how the amount is calculated; and
  - (c) the time, place, and manner of objecting to the assessment.
- (5) Interest and penalties assessed under this section
- (a) are due and payable within thirty days from the day on which the person liable is served with the notice of assessment under subsection (4); and
  - (b) are treated for the purposes of this Act as though they were tax.

*Sub Part C: Offences*

**54. Failure to Comply with Act**

(1) Except as otherwise provided in this Act, a person who fails to comply with a provision of this Act commits an offence and is liable on summary conviction,

(2) where the failure results or, if undetected, may result in an underpayment of tax in an amount exceeding 2000 currency points, to a fine of not less than 200 penalty units and not more than four hundred penalty units; and

(3) in any other case, to a fine of not less than ten penalty units and not more than two hundred penalty units.

**55. Failure to Pay Tax**

A person who without reasonable excuse fails to pay a tax, including an amount treated by this Act as if it were tax, on or before the due date for payment commits an offence and is liable on summary conviction,

- a. (a) where the failure is to pay an amount in excess of two thousand currency points to a fine of not less than two hundred penalty units and not more than one thousand penalty units or imprisonment for a term of not less than three months and not more than one year, or both; and
- b. (b) in any other case, to a fine of not less than fifty penalty units and not more than two hundred penalty units or imprisonment for a term of not less than one month and not more than three months, or both.

**56. Making False or Misleading Statements**

- (1) A person who,
  - (a) makes a statement to an officer of the Ghana Revenue Authority that is false or misleading in a material particular, or
  - (b) omits from a statement made to an officer of the Ghana Revenue Authority any matter or thing without which the statement is misleading in a material particular, commits an offence and is liable on summary conviction
  - (c) where the statement or omission is made without reasonable excuse,

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- i. and if the inaccuracy of the statement were undetected may result in an underpayment of tax in an amount exceeding two thousand currency points, to a fine of not less than two hundred penalty units and not more than one thousand penalty units or imprisonment for a term of not less than three months and not more than one year, or both; and
  - ii. in any other case, to a fine of not less than fifty penalty units and not more than two hundred penalty units or imprisonment for a term of not less than one month and not more than three months, or both; or
- d) where the statement or omission is made knowingly or recklessly,
  - i. and if the inaccuracy of the statement were undetected may result in an underpayment of tax in an amount exceeding two thousand currency points, to a fine of not less than two hundred penalty units and not more than one thousand penalty units or imprisonment for a term of not less than one year and not more than two years, or both; and
  - ii. in any other case, to a fine of not less than fifty penalty units and not more than two hundred penalty units or imprisonment for a term of not less than six months and not more than one year, or both.

(2) A reference in this section to a statement made to an officer of the Service has the same meaning as in subparagraph (2) of paragraph 51

**57. Impeding Tax Administration**

- (1) A person who without reasonable excuse,
  - a. obstructs or attempts to obstruct an officer of the Ghana Revenue Authority in the performance of duties under this Act, or

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- b. otherwise impedes or attempts to impede the administration of the Act, commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than one thousand penalty units or imprisonment for a term of not more than two years, or both.

(2) In addition to the punishment under subsection (2), any goods used by the offender in the commission of the offence are forfeited.

(3) In this paragraph, “impeding administration of a tax law” includes, but is not limited to-

- (a) with respect to a tax officer performing duties under a tax law or a person assisting such a tax officer-
  - (i) assaulting, abusing, interfering with or obstructing the tax officer or assistant or attempting to do so;
  - (ii) interfering with an asset used by the tax officer or assistant or attempting to do so; or
  - (iii) refusing to grant access to a premises, place, document or other asset as required by paragraph 18 (access to information);
- (b) failing to comply with a notice under paragraph 19 (notice to obtain information)
- (c) falsely making or altering a document or a mark on it with the intention that any person will wrongly believe or act on the basis that the document is correctly required by or issued under a tax law or correctly stamped;
- (d) with the intention of evading an obligation under a tax law, knowingly dealing with or using a document or asset-
  - (i) that is false or misleading in a material particular;
  - (ii) in a way that makes the document or asset false or misleading in a material particular; or
  - (iii) so that the document or asset contains or produces information (including by way of measurement) that is false or misleading in a material particular;
- (e) evading tax or knowingly being concerned in or taking steps with a view to evading tax, including-

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- (i) accepting goods knowing or believing that tax due with respect to the goods has not and will not be paid or will be falsely reclaimed;
- (ii) dealing with an asset charged under paragraph 41 so as to prevent seizure;
- (iii) dealing with an asset liable for seizure under a tax law so as to prevent seizure;
- (iv) dealing with an adhesive stamp that has been previously used;
- (g) recovering tax, including recovering or rescuing an asset seized under paragraph 18 (access to information), 42 (taking possession of charged assets), 41 (restraint of assets) of this Act or another tax law;
- (h) interfering with any lock, seal, mark, fastening or other security used to restrain an asset under paragraph 41 (restraint of assets);
- (i) with the intent that a liability, obligation or arrest of a person under a tax law is evaded-
  - i. being disguised or hiding; or
  - ii. disguising, warning, hiding or rescuing another person; and
- (j) committing an offence under a tax law where the person has already been convicted of an offence under a tax law or had an offence compounded under paragraph 61.

**58. Offences by Authorised and Unauthorised Persons**

- (1) Any person who,
  - (a) being an officer or a person employed in carrying out the provisions of this Act,
    - i. directly or indirectly asks for, or receives in connection with any of the officer's duties, a payment or reward, whether pecuniary or otherwise, or promise or security for that payment or reward, not being a payment or reward which the officer is lawfully entitled to receive, or

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ii. enters into or acquiesces in an agreement to do or to abstain from doing, permit, conceal, or connive at any act or thing whereby the tax revenue is or may be defrauded or which is contrary to the provisions of this Act or to the proper execution of the officer's duty, or

(b) not being authorised under this Act, collects or attempts to collect an amount of tax levied under this Act or an amount which that person describes as tax, commits an offence and is liable on summary conviction to a fine of not less than fifty penalty units or to imprisonment for a term of not less than one year and not more than three years, or both.

(2) A person who contravenes paragraph 20 commits an offence and is liable on summary conviction to a fine not exceeding one hundred penalty units or to imprisonment for a term not exceeding one year, or both.

**59. Aiding or Abetting**

(1) A person who aids or abets another person to commit an offence, referred to as the "original offence", under this Act, or counsels or induces another person to commit that offence, commits an offence and is liable on summary conviction,

(a) where the original offence involves a statement of the kind mentioned in paragraph 56 and if the inaccuracy of the statement were undetected may result in an underpayment of tax in an amount exceeding one hundred currency points, to a fine of not less than fifty penalty units and not more than two hundred penalty units or imprisonment for a term of not less than one year and not more than two years, or both; and

(b) in any other case, to a fine of not less than ten penalty units and not more than fifty penalty units or imprisonment for a term of not less than six months and not more than one year, or both.

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*Subdivision D: Entities*

**60. Offences by Entities**

(1) Subject to subparagraph (3), where an entity commits an offence, every person who is a manager of that entity at that time is treated as also having committed the same offence.

(2) Subject to subparagraph (3), where an entity commits an offence by failing to pay an amount of tax, including an amount treated by this Act as though it were tax, every person who is a manager of that entity at that time or was a manager within the previous six months is jointly and severally liable with that entity and that other person to the Commissioner-General for the amount.

(3) Subparagraph (1) and (2) do not apply where

- (a) the offence is committed without that person's knowledge or consent; and
- (b) that person has exercised the degree of care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances to prevent the commission of the offence.

(4) A person who makes a payment to the Commissioner-General with respect to a liability under subparagraph (2) shall be indemnified by that entity with respect to the payment and that person may retain out of any money or property of that entity coming into the possession of that person an amount not exceeding the payment and that entity shall have no claim against that person with respect to the retention.

*Subdivision E: Proceedings*

**62. Compounding Offences**

(1) Where a person commits an offence under this Act, other than of a kind referred to in paragraph 58. The Commissioner-General may, at any time prior to the commencement of court proceedings, compound the offence and order that person to pay a sum of money specified by the Commissioner-General, not exceeding the amount of the fine prescribed for the offence.

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(2) The Commissioner-General may only compound an offence under this section if the person concerned admits in writing to the commission of the offence.

(3) Where the Commissioner-General compounds an offence under this section, the order referred to in subsection (1)

(a) shall be in writing and specify the offence committed, the sum of money to be paid, and the due date for payment, and shall have attached the written admission referred to in subsection (2);

(b) shall be served on the person who committed the offence;

(c) shall be final and not subject to an appeal; and

(d) may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order or by the provisions of this Act.

(4) Where the Commissioner-General compounds an offence under this section, the person concerned is not liable for prosecution or a penalty under Sub Parts B or C in respect of that offence.

**63. Venue**

Any

a. offence committed by a person under this Act, or

b. civil proceedings under this Act in relation to a person,

shall be instituted, tried, heard, disposed of and the person punished, as the case requires, at the Court nearest to that person's usual place of residence or at a Court exercising jurisdiction over the area in which the office of the Commissioner-General having primary responsibility for that person's affairs under this Act is situated.

**64. Amounts Payable Notwithstanding**

The institution of proceedings for, or the imposition of, a penalty, fine or term of imprisonment under this Act shall not relieve a person from liability to pay a tax, including an amount treated by this Act as though it were tax, for which that person is or may become liable under this Act.



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In proceedings under this Part, the production of a certificate signed by the Commissioner-General stating the name and address of the person liable and the amount of tax due or due and payable by that person shall be sufficient evidence of the amount of tax due or due and payable by that person.

*Subdivision F: Remission and Refund*

**65. Remission**

(1) Where the Commissioner-General is of an opinion that the whole or a part of the tax which is due by a person, including an amount treated by this Act as though it were tax, cannot be effectively recovered by reason of,

- a. considerations of poverty, or
- b. impossibility, undue difficulty, or the excessive cost of recovery, the Commissioner-General may remit in whole or part the tax due by that person.

(2) Where good cause is shown by a person liable for interest or penalty under Sub Part B, the Commissioner-General may remit in whole or part any interest or penalty charged under that Subdivision whether before or after any related proceedings for an offence under Sub Part C are commenced or concluded.

(3) The President may, if satisfied that it is just and equitable to do so, remit in whole or part a tax due by a person under this Act.

**66. Refunds and Set-off**

(1) Where the Commissioner-General is satisfied that tax has been paid by a person, whether by withholding, instalments, or otherwise, in excess of the person's tax liability to which the payment or payments relate, the Commissioner-General shall

- (a) apply the overpaid tax in reduction of any amount due by that person in respect of
  - i. other taxes under this Act;
  - ii. instalments of tax or withholding of tax under this Act; or
  - iii. any other amount due to the Authority under this Act; and

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(b) refund the remainder to that person within three months of becoming satisfied.

(2) Interest or penalty paid by a person under paragraph 49 shall be refunded to that person to the extent that the tax to which the interest or penalty relates is found not to have been due and payable.

(3) Where the Commissioner-General is required to refund an amount of tax to a person as a result of a decision of a court paragraph 21 the Commissioner-General shall pay interest at the minimum prevailing bank rate. for the period commencing on the date that person paid the tax refunded and ending on the day on which the refund is made.

(4) Without limiting subsection (1), a person may apply for a refund under this section and the application shall be made to the Commissioner-General in writing within six years of the later of

(a) the date on which the Commissioner-General has served the notice of assessment to which the refund application relates, or

(b) the date on which the tax or interest was paid.

(5) The Commissioner-General shall, within forty-five days of making a decision on a refund application under subsection (1) or (2), serve on the person applying for the refund a notice in writing of the decision.

(6) A person dissatisfied with a decision referred to in subsection (5) may only challenge the decision under the objection and appeal procedure in paragraph 21as though the decision were an assessment.

(7) For the purposes of paragraph (b) of subsection (1), the Commissioner-General shall, at the end of each quarter, make recommendations to the Minister of an amount, determined on the basis of the total revenue collected for the quarter to be set aside in an account designated as GRA Refund Account out of which refunds due under this Act may be made after certification by the Commissioner-General.

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***Subdivision G: GENERAL PROVISION***

**67. Tax Avoidance Arrangements**

(1) Notwithstanding anything in any tax law, the Commissioner-General may serve a person with a notice where the Commissioner-General is of the opinion that the person might otherwise secure a tax benefit under a tax avoidance arrangement.

(2) The tax liability of the person is adjusted in such a way as the Commissioner-General thinks appropriate to counteract the tax benefit.

(3) The notice must be in writing specifying the tax benefit, the arrangement and the Commissioner-General's adjustment. The notice may be incorporated in a notice of assessment.

(4) In this section-

“tax avoidance arrangement” means, subject to subsection (5)-

- (a) an arrangement that has as a main purpose the provision of a tax benefit for any person;
- (b) an arrangement which is fictitious or does not have a substantial economic effect; or the form of which does not reflect its substance or
- (c) an arrangement where the main benefit that might be expected to accrue from the arrangement is a tax benefit for any person; and

“tax benefit”, in relation to a person, means-

- (a) avoiding, reducing or postponing a tax liability of the person;
- (b) increasing a claim of the person for a refund of tax; or
- (c) preventing or obstructing collection of tax from the person.

(5) An arrangement is a “tax avoidance arrangement” only if it involves a misuse or abuse of a tax law provision or provisions having regard to the purpose of the provision and the wider purposes of the law in which the provision is located.

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Date of *Gazette* notification: 26th March, 2015.

## **INCOME TAX BILL 2015**

### MEMORANDUM

The object of this bill is to revise and consolidate the law relating to income tax and to provide for related matters.

The passage of the Ghana Revenue Authority Act 2009 Act 791 integrated the erstwhile three main revenue agencies; Internal Revenue Service (IRS), Value Added Tax Service (VATS), Customs, Excise and Preventive Service (CEPS) to form the Ghana Revenue Authority (GRA).

Prior to the passage of Act 791, the erstwhile Revenue Agencies had their respective tax laws made up of both the charging provisions and administrative provisions. Some of the administrative provisions were common to the respective tax laws while other provisions were inconsistent with similar ones in these tax laws. In pursuance of harmonization, all the common administrative provisions in the previous tax laws have been pooled together into a single legislation, the proposed Revenue Administration Bill. There is therefore the need to reorganize the residual provisions in the respective Revenue Acts.

The Income Tax Bill is therefore seeking to reorganize the rest of the Income tax law provisions, to simplify the provisions and make it more user friendly. Provisions that are peculiar to income tax administration have been retained in the Bill. The provisions which specifically guide the different methods and time for payment including Tax Payable by Withholding, Tax Payable by Installment and Tax Payable by Assessment have also been retained and improved to enhance efficiency and facilitate compliance.

One striking feature of the Internal Revenue Act, 2000 (Act 592) after fourteen years of implementation is how narrow and distorted the tax base is. In an era when many countries have broadened their tax base and lowered tax rates, the Ghanaian tax base seems to have been narrowed, although tax rates have also come down. This was one of the rationales of the reforms of 1999/2000; reforms that attempted to restrict and phase out tax concessions. It was anticipated that in time more concessions would be removed. However, the opposite happened. Act 592 is littered

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with ill-targeted erosions of the tax base. The subjects of these erosions are typically immobile factors, such as land and domestic labour. As globalisation makes it increasingly difficult to tax mobile factors, the very subjects of tax base erosion are those that will increasingly be relied on to generate revenue.

These erosions take various forms. Some are exclusions from employment income, such as the exclusion for severance pay or income reductions for night duty allowance, or overly generous methods of valuing fringe benefits, in particular cars and accommodation. There are no provisions directly dealing with fringe benefits received in the context of a business, putting pressure on the poorly structured gift tax. Another erosion with potentially destructive consequences is the deduction of interest paid on residential mortgages. The tax base does not include notional income from owner occupied housing, so it is not clear why interest should be deductible.

The current treatment of retirement savings also seems extraordinarily generous. With the recent addition of beneficial tax treatment of contributions to an approved provident fund, it now seems possible for an individual to put up to 35% of their income into tax protected funds. There is no absolute limit, only a limit by reference to income. This must be understood in light of the tax treatment of these contributions. They are paid from exempt income (deductible), exempt in the fund and totally exempt on the way out (i.e. an exempt-exempt-exempt system). Historically, only contributions to life insurance were tax-preferred. Despite the move to a very generous approved retirement treatment the special treatment of life insurance on an exempt-taxed-exempt basis continues. This is in addition to contributions to the social security scheme and approved provident funds and also in addition to a general exemption for individuals with respect to interest received on bank deposits (despite the deduction for mortgage interest).

There are many more targeted concessions in the Act 592. A recent one is for venture capital trusts. An investment in such a scheme is from exempt funds (deductible), the scheme is largely exempt on its income

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(for 10 years) and payouts are exempt (i.e. an exempt-exempt-exempt system). In addition, losses incurred on disposal of investments in such funds are deductible (against ordinary income), despite the fact that the investment was deducted in the first place. Any gains are not taxed. This system seems particularly prone to abuse if it is possible to purchase and dispose of interests on a rolling basis.

*Clause 1* and *2* of the Bill retain the provisions on the imposition of income tax and chargeable income respectively. *Clauses 3* to *6* deal with assessable income, income from employment, business and investment. Exemption is dealt with in *Clause 7* of the Bill. *Clauses 8* to *17* of the Bill address the issue of deductions in relation to expenses, trading stock, capital allowances and other related matters.

Part III of the Bill deals with the rules governing amounts used in calculating the tax base. *Clauses 18* to *25* specifically deal with tax accounting and timing and *Clauses 26* to *34* of the Bill address the issue of quantification, allocation and characterization of amounts used in the calculation of a tax base.

The calculation of tax on assets and liabilities is dealt with under Part IV of the bill. *Clauses 35* to *40* under Part IV deal with the central concepts relating to assets and liabilities and include calculation of gains and losses, cost, consideration received and realization of assets and liabilities as well as reverse, quantification and compensation of amounts. *Clauses 41* to *50* of Part IV deal with special rules relating to trading stock, transfer of assets, replacement of assets and apportionment of costs and consideration received.

*Clauses 51* to *60* deal with the types of persons in relation to taxation; individuals, partnership and companies. *Clauses 61* to *62* address the issues of tax dealings between entities and members and change in control of entities.

The special industries which are the Petroleum industry, the minerals and mining industry, the financial institutions as well as retirement savings, public, mutual and non- profit causes are dealt with in clauses *63* to *99* of the Bill.

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The provisions in the Internal Revenue Act, 2000, (Act 592) on international issues deal exclusively with the issues of double taxation, however the Income Tax Bill under Part VII seeks to address more issues under the same caption. This part also deals with provisions relating to residence and source, permanent establishments and foreign source of income of residents.

Some of the administrative procedures peculiar to income tax can be found in Part VIII of the Bill. This part generally deals with the methods and time for payment, tax payable by withholding, tax payable by instalment and tax payable by assessment.

The provisions on interpretation can be found in *clauses* 126 to 131. *Clauses* 132 to 137 deal with the temporary and transitional provisions.

The first schedule deals with tax rates. It maintains the provisions in the Internal Revenue Act, 2000 (Act 592) with a few additions and modifications.

The second schedule contains provisions on modified taxation. The schedule highlights the principles of modified taxation and exclusions from modified taxation. The schedule further deals with presumptive tax based on instalments and turnover respectively. The modified cash basis covers those persons who are permitted to carry out cash accounting.

The third schedule deals with capital allowances. The schedule has three parts. Part I contains provisions on classification and pooling of depreciable assets, depreciation allowances, depreciation basis of a pool of depreciable asset and realization of Depreciable assets. Part II deals with Petroleum operations and Part III deals with Minerals and Mining.

The fourth Schedule of the Bill is under the heading quantification of benefits. Matters considered under this heading are motor vehicle benefits, loan benefits and accommodation benefits.

The Fifth schedule of the Bill sets out the guidelines for personal reliefs.



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The sixth Schedule of the Bill deals with provisions on temporary concessions in respect of agriculture, rural banking, waste processing, residential premises, Ghana Stock Exchange, Approved Unit Trust, Venture Capital, Free Zone Enterprises employment of graduates and Apex Bank.

The seventh schedule of the Bill provides for administration pending the passage of a Revenue Administration Act. This schedule will be repealed when an Administration Act is passed.

MR. SETH TERKPER  
*Minister responsible for Finance*

Date: February, 2015.