

INTERNAL REVENUE ACT, 2000 (ACT 592)

As amended by:

- INTERNAL REVENUE (AMENDMENT) ACT, 2002 (ACT 622)1
- REVENUE AGENCIES (RETENTION OF PART OF REVENUE) ACT, 2002 (ACT 628)2
- INTERNAL REVENUE (AMENDMENT) ACT, 2003 (ACT 644)3
- INTERNAL REVENUE (AMENDMENT) ACT 2004 (ACT 669)4
- INTERNAL REVENUE (AMENDMENT) ACT, 2006 (ACT 700)5
- INTERNAL REVENUE (AMENDMENT) (NO.2) ACT, 2006 (ACT 710)6

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**THE FIVE HUNDRED AND NINETY-SECOND ACT OF THE PARLIAMENT OF THE REPUBLIC
OF GHANA ENTITLED**

INTERNAL REVENUE ACT, 2000

AN ACT to amend and consolidate the law relating to Income Tax, Capital Gains Tax and Gift Tax and to provide for related matters.

DATE OF ASSENT: 22nd December, 2000

BE IT ENACTED by Parliament as follows:

CHAPTER I

INCOME TAX

PART I—IMPOSITION OF INCOME TAX

Section 1—Imposition of Income Tax

- (1) A person who has a chargeable income shall pay, subject to this Act, for each year of assessment income tax as calculated in accordance with this Act.
- (2) The income tax payable under subsection (1) for a year of assessment shall be calculated by applying the rates of tax under the relevant Part of the First Schedule to the chargeable income of that person for the year and from the resulting amount there shall be subtracted any tax credits allowed to that person for the year.
- (3) Where a person is allowed more than one tax credit for a year of assessment, the credits shall be applied in the following order:
 - (a) the foreign tax credit allowed under section 68; then
 - (b) the tax credit allowed under section 80 (relating to instalments); then
 - (c) the tax credit allowed under section 92 (relating to withholding).
- (4) Where a rate referred to in subsection (2) changes during a year of assessment:
 - (a) tentative taxes shall be computed by applying the rates in force before and after the effective date of the change to a person's chargeable income for the entire year; and
 - (a) the income tax payable by that person for the year shall be the sum of that portion of each tentative tax which 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 basis year.

Section 2—Final Taxes on Income Received by Residents

- (1) Subject to this Act, a tax shall be charged and shall be paid by a resident person who, or resident partnership which, is paid
 - (a) a dividend by a resident company, other than a dividend exempt from tax under this Act; or
 - (a) for services referred to in paragraphs (a) and (d) of subsection (1) of section 84; *[Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s. 1(a).]*
- (2) The tax payable under subsection (1) is calculated by applying the rate of tax prescribed,
 - (a) in a case within paragraph (a) of subsection (1), in paragraph 2, or *[Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s. 1(b).]*

- (b) in a case within paragraph (b) of subsection (1), in paragraph 3, of Part IV of the First Schedule to the gross amount paid to the resident person or the resident partnership.
- (3) A dividend consisting of a capitalisation of profits or treated as distributed under subsection (1) of section 45 is treated as paid to each of the company's shareholders in proportion to their respective interests in the company.
- (4) The Commissioner shall, in the case of capitalization of profits, direct that appropriate tax be paid in accordance with this Act.
- (5) The Commissioner shall, in issuing any directives under subsection (4), consider the matters contained in paragraphs (a) and (b) of subsection (2) of section 45 with the necessary modifications to make that subsection applicable to capitalisation of profits.
- (6) Subsections (3) and (4) shall not apply to a company during the first five years of commencement of business.

Section 3—Final Taxes on Income Received by Non-residents

- (1) Subject to this Act, a tax shall be charged and shall be paid by every non-resident person who, or non-resident partnership which, is paid any dividend, interest, royalty, natural resource payment, rent, endorsement fee or management and technical service fee accruing in or derived from Ghana, other than a payment exempt from tax under this Act.
- (2) The tax payable under subsection (1) is calculated by applying the rate of tax prescribed in Part V of the First Schedule to the gross amount of the dividend, interest, royalty, natural resource payment, rent, endorsement fee or management and technical service fee received by that person or partnership. *[Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.2.]*
- (3) Subsection (3) of section 2 applies to this section.
- (4) This section does not apply to any dividend, interest, royalty, natural resource payment, rent, endorsement fee or management and technical service fee attributable to a permanent establishment in Ghana of a non-resident person or non-resident partnership. *[Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.2.]*
- (5) Income to which subsection (4) applies shall be included in ascertaining assessable income of the non-resident person or non-resident partners in accordance with section 6.

Section 4—General Provisions Relating to Taxes Imposed Under Sections 2 and 3

Tax imposed under subsection (1) of section 2 and subsection (1) of section 3 is a final tax on the income on which the tax is imposed and

- (a) that income shall not be included in ascertaining the assessable income of the person who receives it;
- (a) no deduction shall be allowed to the extent to which the deduction relates to the production of that income; and
- (a) the tax payable by a person or partnership under those subsections shall not be reduced by any tax credits allowed under this Act and the liability of a person or partnership under those subsections is satisfied if the tax payable has been withheld by a withholding agent under Subdivision B of Division III of Part X.

PART II—CHARGEABLE INCOME

Section 5—Chargeable Income

Subject to this Act, the chargeable income of a person for a year of assessment is the total of that person's assessable income for the year from each business, employment, and investment less the total amount of deductions allowed to that person for the year under sections 13 to 22 (relating to

general and specific deductions), 39 (relating to personal reliefs), 57 (relating to life insurance), and 60 (relating to contributions to retirement funds).

PART III—ASSESSABLE INCOME

Division I: Assessable Income

Section 6—Assessable Income

- (1) Subject to this Act, the assessable income of a person for a year of assessment from any business, employment, or investment is,
 - i. in the case of a resident person, the full amount of the person's income from the business, employment, or investment accruing in, derived from, brought into, or received in Ghana during any basis period of the person ending within the year of assessment;
 - ii. in the case of a non-resident person, the full amount of the person's income from the business, employment, or investment accruing in or derived from Ghana during any basis period of the person ending within the year of assessment, but does not include exempt income.
- (2) The amounts described in the following paragraphs shall be income brought into or received in Ghana whether or not the source from which the income is derived has ceased:
 - a. any amount from an income accruing or derived from outside Ghana which is remitted to or transmitted into Ghana;
 - b. any amount from an income accruing or derived from outside Ghana which is applied in whole or partial satisfaction of any debt incurred in Ghana; or
 - c. any amount from an income accruing or derived from outside Ghana which is applied to purchase a movable property which is brought into Ghana.

Section 7—Income from a Business

- (1) A person's income from a business is that person's gains or profits from any business carried on for whatever period of time by that person.
- (2) There shall be included in ascertaining the gains or profits from a business carried on by a person amounts accruing to or derived by that person that are attributable to the business and that would otherwise be included in calculating that person's income from any investment.

Section 8—Income from an Employment

- (1) A person's income from an employment is that person's gains or profits from that employment.
- (2) The gains or profits from an employment of a person include any allowances or benefits paid in cash or given in kind to, or on behalf of, that person from that employment, other than
 - (a) a reimbursement or discharge of a person's dental, medical, or health insurance expenses where the benefit is available to all full-time employees on equal terms;
 - (b) a passage to or from Ghana in respect of that person's appointment or termination of employment where that person:
 - (i) is recruited or engaged outside Ghana;
 - (ii) is in Ghana solely for the purpose of serving the employer; and
 - (iii) is not a resident of Ghana;

- (c) any provision of accommodation by an employer carrying on a timber, mining, building, construction or farming business to that person at any place or site where the field operation of the business is carried on;
 - (d) a discharge or reimbursement by an employer of an expenditure incurred by that person on behalf of the employer that serves the proper business purposes of the employer;
 - (e) a severance pay; or
 - (f) a night duty allowance paid to a person who is a night shift employee where the amount involved does not exceed fifty per cent of the monthly basic salary of that person. *[Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.3].*
- (3) 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.
- (4) The amount of any allowance or benefit from an employment to be included in ascertaining a person's gains or profits under subsection (2) shall be determined in accordance with the Second Schedule and, in any case not referred to in that Schedule, as the value of the allowance or benefit to a reasonable person in the position of that person.

Section 9—Income from an Investment

- (1) A person's income from an investment is that person's gains or profits from any investment.
- (2) The gains or profits of a person from an investment include any dividends from a non-resident company, interest, charge, annuity, royalties, rent, natural resource payment, or other income accruing to or derived by that person from the investment other than an amount included in ascertaining that person's income from a business or employment.

Division II: Exempt Income

Section 10—Exempt Income

- (1) The following incomes are exempt from tax:
- (a) the salary, allowances, pension and gratuity of the President;
 - (b) the income of a local authority, other than income from activities which are only indirectly connected with the local authority's status as a local authority;
 - (c) the income of a statutory or registered building society or statutory or registered friendly society, other than income from any business carried on by the society;
 - (d) income accruing to or derived by an exempt organisation other than income from any business;
 - (e) interest paid
 - (i) to an individual by a resident financial institution; or
 - (ii) to an individual on bonds issued by the Government of Ghana;
 - (f) capital sums paid to a person as compensation or a gratuity in relation to
 - (i) personal injuries suffered by that person; or
 - (ii) the death of another person;
 - (g) the interest, dividend or
 - (i) any other income of an approved unit trust scheme or mutual fund,
 - (ii) any other income payable under an approved unit trust scheme or mutual fund to a holder or member of that scheme;

the dividend of a venture capital financing company that satisfies the eligibility requirements for funding under the Venture Capital Trust Fund Act, 2004 (Act 680) for a period of five years of assessment commencing from and including the year in which the basis period of the company ends, being the period in which operations commenced. *[Inserted by Internal Revenue (Amendment) Act, 2006 (Act 700), s.1.]*

- (h) the income of a non-resident person from any business of operating ships or aircraft, provided the Commissioner is satisfied that an equivalent exemption is granted by that person's country of residence to persons resident in Ghana;
 - (i) the income of a public corporation or institution exempted from tax under any enactment;
 - (ii) the income of a person receiving instruction at an educational institution from a scholarship, exhibition, bursary, or similar educational endowment;
- (i) the income of an individual entitled to privileges under the Diplomatic Immunities Act, 1962 (Act 148) or a similar enactment to the extent provided in that Act or similar enactment or under Regulations made under that Act or similar enactment;
- (j) the income of an individual entitled to privileges under an enactment 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 to the extent provided in that enactment;
- (k) 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 service to Ghana where
 - (i) the individual is a non-resident person or an individual who is resident solely by reason of performing that service; and
 - (ii) the President has concurred in writing with the tax provisions in the agreement; and
 - (iii) it is in accordance with the Constitution of the Republic of Ghana; or
- (l) the income of a person from an employment in the public service of the government of a foreign country provided
 - (i) that person is either a non-resident person or an individual who is resident solely by reason of performing that service;
 - (ii) that person does not exercise any other employment or carry on any 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.

- (2) The Minister responsible for Finance in consultation with the Commissioner may, subject to the prior approval of Parliament by resolution in accordance with clause (2) of article 174 of the Constitution grant a waiver or variation of tax imposed by this Act in favour of any person or authority.

Section 11—Industry Concessions

- (1) Subject to subsection (7), the income of a person from a farming business in Ghana is exempt from tax
 - (a) in the case of farming tree crops, for the period of ten years of assessment commencing from and including the year in which the basis period of that person ends, being the period in which the first harvest of those crops by the business occurs;

- (b) in the case of farming livestock (other than cattle), fish, or cash crops, for the period of five years of assessment commencing from and including the year in which the basis period of that person ends, being the period in which the business commences; or
 - (c) in the case of farming cattle, for the period of ten years of assessment commencing from and including the year in which the basis period of that person ends, being the period in which the business commences.
- (2) The income of a company from an agro processing business in Ghana is exempt from tax for the period of three years of assessment commencing from and including the year in which the basis period of the company ends, being the period in which commercial production commences. *[Amended by Internal Revenue (Amendment) Act, 2004 (Act 669), s.1(a)]*
- (2.a.) The income of a company from an agro processing business established in Ghana in or after the financial year commencing 1st January 2004 is exempt from tax for a period of five years of assessment commencing from and including the year in which the basis period of the company ends being the period in which commercial production commences.
- (2.b.) The income of a company which produces on commercial basis cocoa by-products derived from substandard cocoa beans, cocoa husks and other cocoa waste as its main raw materials is exempt from tax for a period of five years of assessment commencing from and including the year in which the basis period of the company ends being the period in which commercial production commences.
- (2.c.) The income of a company whose principal activity is the processing of waste including recycling of plastic and polythene material for agricultural or commercial purposes is exempt from tax for a period of seven years of assessment commencing from and including the year in which the basis period of the company ends being the period in which commercial production commences. *[Inserted by Internal Revenue (Amendment) Act, 2004 (Act 669), s.1(b)]*.
- (3) Where a company conducts both farming and agro processing business, the company may elect to be treated as if the business were a farming business or an agro processing business and claim the exemption for which it is eligible under subsection (1) or (2). *[Amended by Internal Revenue (Amendment) Act, 2004 (Act 669), s.1(c)]*
- (4) The income of a rural bank from a business of banking is exempt from tax for the period of ten years of assessment commencing from and including the year in which the basis period of the bank ends, being the period in which operations commence.
- (5) the[sic] income of a venture capital financing company that satisfies the eligibility requirements for funding under the Venture Capital Trust Fund Act, 2004 (Act 680) is exempt from tax for the period of five years of assessment commencing from and including the year in which the basis period of the company ends, being the period in which operations commenced. *[Amended by the Internal Revenue (Amendment) Act, 2006 (Act 700), s.2]*
- (6) The income of a company from a business of construction for sale or letting of residential premises is exempt from tax for the period of five years of assessment commencing from and including the year in which the basis period of that company ends, being the period in which operations commenced. *[Amended by the Internal Revenue (Amendment) Act, 2006 (Act 700), s.2(b)]*
- (7) The income from cocoa of a cocoa farmer is exempt from tax.
- (8) The income of the Ghana Stock Exchange is exempt from tax for the period of twenty years of assessment commencing from and including the year in which the basis period of the Ghana Stock Exchange ends, being the period in which operations commenced. *[Amended by the Internal Revenue (Amendment) Act, 2006 (Act 700), s.2(c)]*
- (9) For the purposes of this section, a business of a person of the type referred to in subsection (1), (2), (4), or (6) which is carried on by that person at a particular time is treated as the same business as one of a similar type carried on by that person or an associate of that person at a later time.

- (10) In this section,
- (1) "cash crops" includes cassava, maize, pineapple, rice, and yam;
 - (2) "farming business" means the business of producing crops, fish, or livestock;
 - (3) "agro processing business" means the business of converting crops, fish, or livestock produced in Ghana into edible canned or other packaged product other than in their raw state; [Amended by Internal Revenue (Amendment) Act, 2004 (Act 669), s.1(c)]
 - (4) "tree crops" includes coconut, coffee, oil palm, rubber, and shear nut.

Section 12—Derivative Amounts

Nothing in section 10 or 11 shall be construed as exempting in the hands of the recipient, any amounts, including dividends, interest, or employment income, paid wholly or partly out of income exempt from tax.

Division III: Deductions

Section 13—Deductions Allowed

Subject to this Act, for the purposes of ascertaining the income of a person for a basis period from any business or investment there shall be deducted—

- (a) all outgoings and expenses wholly, exclusively and necessarily incurred during that period by that person in the production of the income; [Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.5(a)]
- (b) any other deductions as may be prescribed by Regulations made under section 114. [Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.5(b)]

Section 14—Interest

- (1) Subject to this Act, for the purposes of ascertaining the income of a person for a basis period from any business or investment, there shall be deducted any interest incurred during the period in respect of a borrowing employed by that person in the production of the income. [Re-numbered by the Internal Revenue (Amendment) Act, 2006 (Act 700) s.4(a)]
- (2) For the purposes of ascertaining the income of an individual for a period from any business, employment or investment there shall be deducted any interest incurred during the period in respect of a borrowing employed in constructing or acquiring residential premises. [Inserted by the Internal Revenue (Amendment) Act, 2006 (Act 700) s.4(b)]

Section 15—Rent

For the purposes of ascertaining the income of a person for a basis period from any business or investment, there shall be deducted any rent incurred during the period in respect of a land or building occupied by that person to the extent that the land or building is occupied by that person for the purposes of producing the income.

Section 16—Repairs

For the purposes of ascertaining the income of a person for a basis period from any business or investment, there shall be deducted any outgoing or expense incurred during the period in respect of,

- (a) the repair of any premises, plant, machinery, or fixtures, or

- (b) the renewal, repair, or alteration of any implement, utensil, or article, to the extent that the premises, plant, machinery, fixtures, implement, utensil, or article is employed by that person in the production of the income.

Section 17—Deductions in Relation to the Rental of Premises

- (1) Subject to subsection (2), where an individual receives a rent in respect of residential or commercial premises which is included in ascertaining that individual's income from an investment for a basis period, that individual shall be allowed the following deductions for the period in respect of the premises:
 - (a) to the extent to which the premises are used in the production of the rent,
 - (i) the amount of any rates incurred by that individual during the period to any local, urban, city, or district council in respect of the premises; and
 - (ii) a mortgage interest incurred by that individual during the period in respect of a borrowing employed by that individual in constructing or acquiring the premises; and
 - (b) a standard allowance equal to thirty per cent of the aggregate rent received by that individual in respect of the premises during the period.
- (2) Where, during a basis period, an individual has actually incurred necessary outgoings or expenses, other than those covered by paragraph (a) of subsection (1), in respect of any premises referred to in subsection (1) in excess of the amount of the standard allowance for those premises referred to in paragraph (b) of subsection (1), that individual shall also be allowed a deduction for that excess.

Section 18—Bad Debts

- (1) For the purposes of ascertaining the income of a person for a basis period from any business, there shall be deducted any debt claim that has become a bad debt of that person during the period where,
 - (a) the amount of the debt claim is included in ascertaining the person's assessable income with respect to any prior basis period; or
 - (b) the debt claim is in respect of advances made by that person in the normal course of business other than advances made on capital account.
- (2) In this section, "bad debt", in relation to a person, means a debt claim of that person in respect of which that person has taken all reasonable steps to pursue payment and which that person reasonably believes will not be satisfied.

Section 19—Research and Development Expenditure

- (1) For the purposes of ascertaining the income of a person for a basis period from any business, there shall be deducted research and development expenditure incurred by that person during the period in the production of the income.
- (2) In this section, "research and development expenditure" means any outgoing or expense incurred by a person for the purpose of developing that person's business and improving business products or process but does not include any outgoing or expense incurred for the acquisition of an asset in relation to which that person is entitled to a capital allowance under section 20.

Section 19A—Deduction in relation to Venture Capital Companies

For the purposes of ascertaining the income of a financial institution which invests in a venture capital financing company there shall be deducted an amount equal to the full amount of the investment in a year of assessment. [*Inserted by the Internal Revenue (Amendment) Act, 2006 (Act 700), s.3*]

Section 20—Capital Allowances

For the purposes of ascertaining the income of a person for a basis period from any business, there shall be deducted the capital allowances for the business calculated in accordance with the Third Schedule.

Section 21—Foreign Currency Exchange Losses

- (1) Subject to this section, for the purposes of ascertaining the income of a person for a basis period from any business, there shall be deducted any foreign currency exchange loss, other than a loss that is capital in nature, incurred in the production of income during the period in respect of any debt claim, debt obligation, or foreign currency holding of that person.
- (2) A foreign exchange loss of a capital nature may be capitalised and capital allowance granted under section 20.
- (3) A deduction is not allowed to a person for a foreign currency exchange loss incurred unless that person has notified the Commissioner in writing of the existence of the debt claim, debt obligation, or foreign currency holding which gave rise to the loss by the due date for furnishing of that person's return of income for the year of assessment in which the basis period in which the debt arose or foreign currency was acquired ends, or by a later date which the Commissioner may allow.
- (4) Subsection (3) does not apply to a financial institution.
- (5) Where,
 - (a) a person has incurred a foreign currency exchange loss under a transaction,
 - (b) a foreign currency exchange gain has accrued to or has been derived by that person or an associate under another transaction, including a hedging contract, and
 - (c) either
 - (i) the transaction giving rise to the loss would not have been entered into, or might reasonably be expected not to have been entered into, if the transaction giving rise to the gain had not been entered into, or
 - (ii) the transaction giving rise to the gain would not have been entered into, or might reasonably be expected not to have been entered into, if the transaction giving rise to the loss had not been entered into, no deduction is allowed to that person where the amount of the loss exceeds that part of the gain included in the assessable income of that person or associate.
- (6) For the purposes of paragraph (b) of subsection (5), "hedging contract" means a contract entered into by a person in order to eliminate or reduce the risk of adverse financial consequences which might result for that person under another contract from currency exchange rate fluctuation.

Section 22 - Carry Over of Losses

- (1) Subject to this Act, for the purposes of ascertaining the income of a person for a basis period from agro processing, tourism, information and communication

technology[sic] a farming, manufacturing or mining business, [*Amended by the Internal Revenue (Amendment) Act, 2006 (Act 700), s.5(a).*]

- (a) there shall be deducted, for a period of five years, a loss of the previous five basis periods incurred by that person in carrying on that business; and
 - (b) where that person has incurred more than one such loss, the losses shall be deducted in the order in which they were incurred.
- (1a) A loss incurred by a venture capital financing company from the disposal of share [sic] invested in a venture capital subsidiary company under the Venture Capital Trust Fund Act, 2004 (Act 684) during the period of tax exemption granted under section 11 (5) shall be carried forward for a period of 5 years of assessment following the end of the exemption period. [*Inserted by the Internal Revenue (Amendment) Act, 2006 (Act 700), s.5(b)*]
- (2) A loss may only be deducted where the loss has not been deducted in ascertaining the income of that person for a previous basis period.
 - (3) The loss incurred by a person for a basis period in carrying on a business shall be calculated as the excess of amounts deductible under this Act in ascertaining a profit or gain from the business over the amounts required to be included in ascertaining the profit or gain.
 - (4) The aggregate deduction from the assessable income in respect of the loss shall not in any circumstances exceed the amount of the loss. [*Inserted by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.6(b)*]
 - (5) No deduction under this section for any year of assessment shall exceed the amount, if any, of the assessable income (included in the total assessable income for that year of assessment) from the source of income in respect of which the loss, which is the subject of the deduction, was incurred. [*Inserted by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.6(b)*]
 - (6) For the purposes of this section
 - "manufacturing business" means a business that manufactures mainly for export.
 - "tourism business" means an operator of a tourism business registered with the Ghana Tourist Board.
 - "an information technology business" means an ICT business that is engaged in software development. [*Amended by the Internal Revenue (Amendment) Act, 2006 (Act 700), s.5(c)*]

Section 23—Deductions Not Allowed

- (1) A person shall not be allowed a deduction for
 - (iii) any domestic or private outgoing or expense incurred by that person;
 - (iv) any outgoing or expense of a capital nature incurred by that person;
 - (v) any outgoing or expense incurred by that person during a basis period that is recoverable during the period under any insurance or contract of indemnity;
 - (vi) any income tax, profits tax, or other similar tax incurred by that person during the year in Ghana or elsewhere other than as provided for by subsection (1) of section 68; or
 - (vii) the depreciation of any fixed assets. [*Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.7*]
- (3) For the purposes of paragraph (a) of subsection (1), "domestic or private outgoing or expense" incurred by a person includes outgoings or expenses incurred by that person
 - (i) in travelling between that person's home and place of business;
 - (ii) in the maintenance of that person, or that person's family or home;
 - (iii) in acquiring clothing worn to work, other than clothing that is not suitable for wearing outside of work; and
 - (iv) in the education of that person not directly relevant to that person's business, and education leading to a degree, whether or not it is directly relevant to that person's business.

Division IV: Tax Accounting Principles

Section 24—Year of Assessment and Basis Period

- (1) The year of assessment for a person shall be the calendar year from 1st January to 31st December.
- (2) The basis period of a person is,
 - a. in the case of an individual or a partnership, the calendar year from 1st January to 31st December; and
 - b. in the case of a company or a body of persons, the accounting year of the company or body.
- (3) A company or body of persons shall not change its accounting date unless it obtains prior approval in writing from the Commissioner and complies with any condition that may be attached to the approval.
- (4) The Commissioner may by notice in writing, revoke an approval granted a company or body of persons under subsection (3) if the company or body fails to comply with any of the conditions attached to the approval.

Section 25—Method of Accounting

- (1) Subject to this Act, for the purposes of ascertaining a person's income accruing or derived during a basis period, the timing of inclusions and deductions shall be made according to generally accepted accounting principles.
- (2) Subject to subsections (1) and (3), and unless the Commissioner prescribes otherwise in a particular case, a person shall account for tax purposes on a cash or accrual basis.
- (3) A company shall account for tax purposes on an accrual basis.
- (4) A person may apply, in writing, for a change in that person's method of accounting and the Commissioner may, by notice in writing, approve the application but only if satisfied that the change is necessary to clearly reflect that person's income.
- (5) If the person's method of accounting is changed, adjustments to items of income, deduction, or credit shall be made in the basis period following the change, so that an item is not omitted nor taken into account more than once.

Section 26—Cash-Basis Accounting

- (1) A person who is accounting for tax purposes on a cash basis shall account for amounts to be included in calculating that person's income when they are received by, or made available to that person.
- (2) An outgoing or expense is incurred by a person who is accounting for tax purposes on a cash basis when it is paid by that person.

Section 27—Accrual-Basis Accounting

- (1) A person who is accounting for tax purposes on an accrual basis shall account for amounts to be included in ascertaining that person's income when they are receivable by that person.
- (2) An outgoing or expense is incurred by a person who is accounting for tax purposes on an accrual basis when it is payable by that person.
- (3) Subject to this Act, an amount is receivable by a person when that person becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is payable by instalments.
- (4) Subject to this Act, an amount is treated as payable by a person when all the events that determine liability have occurred and the amount of the liability can be determined with

reasonable accuracy, but not before economic performance with respect to that amount occurs.

- (5) For the purposes of subsection (4), economic performance occurs
 - a. with respect to the acquisition of services or property, at the time the services or property are provided;
 - b. with respect to the use of property, at the time the property is used; or
 - c. in any other case, at the time that person makes payment in full satisfaction of the liability.

Section 28—Prepayments

Where a person is allowed a deduction for an outgoing 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.

Section 29—Claim of Right

- (1) A person who is accounting for tax purposes on a cash basis shall treat an amount as received and an outgoing or expense as paid even though that person is not legally entitled to receive the amount or liable to make the payment, if that person claims to be legally entitled to receive, or legally obliged to pay the amount.
- (2) Where subsection (1) applies and that person later refunds the amount received or recovers the outgoing or expense paid, an appropriate adjustment shall be made to that person's income of the basis period during which the refund or recovery occurs.
- (3) A person who is accounting for tax purposes on an accrual basis shall treat an amount as receivable and an outgoing or expense as payable even though that person is not legally entitled to receive the amount or liable to make the payment, if that person claims to be legally entitled to receive, or to be legally obliged to pay the amount.
- (4) Where subsection (3) applies and that person later ceases to claim the right to receive the amount or to claim an obligation to pay the outgoing or expense, an appropriate adjustment shall be made to that person's income of the basis period during which that person ceases to make the claim.

Section 30—Long-Term Contracts

- (1) In the case of a person accounting for tax purposes on an accrual basis, the timing of inclusions in and deductions from income relating to a long-term contract of a business of that person shall be accounted for on the basis of the percentage of the contract completed during any basis period.
- (2) The percentage of completion is determined by comparing the total costs allocated to the contract and incurred before the end of the basis period with the estimated total contract costs including any variations or fluctuation.
- (3) Where during the basis period in which a long-term contract of a business is completed the person carrying on the business
 - (a) incurs a loss, or
 - (b) has an unrelieved loss available for carry forward under subsection (1) of section 22, which is attributable to the long-term contract, the Commissioner may allow the loss to be
 - (c) carried back to preceding basis periods, and
 - (d) applied against an amount of income of a basis period not exceeding the amount by which inclusions in the income of the business relating to the long-term contract for that period exceed deductions there from.
- (4) A loss incurred by a person in carrying on a business during a basis period is attributable to a long-term contract of the business to the extent that deductions allowed in ascertaining the

income from the business relating to the long-term contract for that period exceed inclusions in ascertaining that income.

- (5) In this section, "long-term contract" of a business of a person means a contract for manufacture, installation, or construction, or, in relation to each, the performance of related services, which is not completed within the basis period in which work under the contract commenced, other than a contract estimated to be completed within twelve months of the date on which work under the contract commenced.

Section 31—Trading Stock

- (1) For the purposes of ascertaining the income of a person for a basis period from a business, there shall be deducted the cost of trading stock of the business disposed of by that person during that period.
- (2) The cost of trading stock disposed of during a basis period is determined by adding to the opening value of trading stock for that period the cost of trading stock acquired during that period, and subtracting the closing value of trading stock for that period.
- (3) The opening value of trading stock for a basis period is
 - i. the closing value of trading stock at the end of the previous basis period, or
 - ii. where that person commenced to carry on the business during the basis period, the value of trading stock acquired prior to the commencement of the business.
- (4) The closing value of trading stock is the lower of cost or market value of trading stock on hand at the end of the basis period.
- (5) A person who is accounting for tax purposes on a cash basis may calculate the cost of trading stock on the prime-cost method or absorption-cost method; and a person who is accounting for tax purposes on an accrual basis shall calculate the cost of trading stock on the absorption-cost method.
- (6) Where particular items of trading stock are not readily identifiable, a person may account for that trading stock on the first-in-first-out method or the average-cost method but, once chosen, a stock valuation method may be changed only with the written permission of the Commissioner.
- (7) In this section,
 - "absorption-cost method" means the generally accepted accounting principle under which the cost of trading stock is the sum of direct material costs, direct labour costs, and factory overhead costs;
 - "average-cost method" means the generally accepted accounting principle under which trading stock valuation is based on a weighted average cost of units on hand;
 - "direct labour costs" means labour costs directly related to the production of trading stock;
 - "direct material costs" means the cost of materials that become an integral part of the trading stock produced;
 - "factory overhead costs" means the total costs of manufacturing except direct labour and direct material costs;
 - "first-in-first-out method" means the generally accepted accounting principle under which trading stock valuation is based on the assumption that trading stock is disposed of in the order of its receipt;
 - "prime-cost method" means the generally accepted accounting principle under which the cost of trading stock is the sum of direct material costs, direct labour costs, and variable factory overhead costs;
 - "variable factory overhead costs" means the factory overhead costs which vary directly with changes in volume.

Section 32—Debt Obligations with Discount or Premium

- (1) Subject to subsection (2), for the purposes of ascertaining the income of a person for a basis period from any business or investment, interest in the form of

any discount, premium, or deferred interest shall be taken into account as it accrues.

- (2) Where the interest referred to in subsection (1) is subject to withholding tax under section 82 on payment, the interest shall be taken into account when paid.

PART IV—MISCELLANEOUS RULES FOR DETERMINING INCOME

Section 33—Jointly Owned Investment

For the purposes of ascertaining the income of a person from an investment which is jointly owned with another person, inclusions and deductions with respect to the investment shall be apportioned among the joint owners in proportion to their respective interests in the investment.

Section 34—Leases

- (1) Subject to subsection (2), where a lesser leases is a tangible asset to a lessee under an operating lease then for the purposes of this Act, the lesser is treated as the owner of the asset and the lease payments are treated as payment received from the lessee.
- (2) Where a lessor leases a tangible asset to a lessee under a finance lease, and that asset is used by the lessee in the production of that lessee's income the lease rentals payable by the lessee shall be treated as an expense deductible under paragraph (a) of section 13.
- (3) For the purposes of this Act, a lease of an asset is a finance lease where,
 - i. the lease agreement provides for transfer of ownership following the end of the lease term, or the lessee has an option to purchase the asset after expiry of the lease term for a fixed or agreed price; or
 - ii. the lease term exceeds seventy-five per cent of the useful life of the leased asset; or
 - iii. the estimated residual value of the asset after expiry of the lease term is less than twenty per cent of its market value at the commencement of the lease; or
 - iv. the present value of the minimum lease payments equals or exceeds ninety percent of the market value of the asset at the commencement of the lease term; or
 - v. the leased asset is custom-made for the lessee and after expiry of the lease term it will not be usable by anyone other than the lessee.
- (4) Paragraph (d) of subsection (3) does not apply to leases that commence during the last twenty-five per cent of the useful life of the asset.
- (5) For the purposes of this section, the discount rate used to determine the present value of lease payments shall be the Bank of Ghana rediscount rate.
- (6) For the purposes of this section, a lease term includes an additional period for which the lessee has an option to renew the lease.
- (7) Where the lesser was the owner of the asset before commencement of the finance lease, then the lease agreement is treated as a sale by the lesser and a purchase by the lessee.

Section 35—Valuation

- (1) For the purposes of this Chapter, the value of a benefit in kind is the market value of the benefit on the date the benefit is taken into account for tax purposes.
- (2) The market value of a benefit is determined without regard to any restriction on transfer or to the fact that it is not otherwise convertible to cash.

Section 36—Indirect Payments and Benefits

There shall be included, in ascertaining the income of a person,

- (a) a payment that directly or indirectly benefits that person, and
- (b) a payment dealt with as that person directs, which would have been so included if the payment had been made directly to that person.

Section 37—Recouped Expenditure

- (1) Where a previously deducted outgoing, expense, or bad debt is recovered by a person, the amount recovered is included in ascertaining the income of that person in the basis period in which it is recovered and takes the character of the income to which the deduction is related.
- (2) For the purposes of subsection (1), a deduction is considered recovered upon the occurrence of an event which is inconsistent with the basis for the deduction.

PART V—TAXATION OF INDIVIDUALS

Section 38—Individual as Tax Unit

The assessable income of each individual is determined separately. *[Amended by the Internal Revenue (Amendment) Act, 2006 (Act 700), s.6.]*

Section 39—Personal Reliefs

- (1) The assessable income of an individual for a year of assessment shall be reduced by the following amounts:
 - a. in the case of an individual with a dependant spouse or at least two dependant children, thirty currency points;
 - b. in the case of a disabled individual, twenty-five per cent of that individual's assessable income from any business or employment;
 - c. in the case of an individual who is sixty or more years of age and derives an assessable income during the year from an employment or business, the lesser of thirty currency points or the total of that income;
 - 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, twenty-four currency points per child or ward, but that individual may only claim a relief in respect of three children or wards and, where two or more persons qualify in respect of the same child or ward, only one relief shall be granted;
 - e. in the case of an individual with a dependant relative, other than a child or spouse, who is sixty or more years of age, twenty currency points but that individual may only claim a relief in respect of two dependant relatives and, where two or more persons qualify in respect of the same relative, only one relief shall be granted; and
 - f. in the case of an individual who has undergone any training to update the professional, technical or vocational skills or knowledge of that individual, the cost of the training, not exceeding fifty currency points. *[Substituted by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.8(a)]*
- (2) In this section, "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. *[Substituted by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.8(b)]*

PART VI—TAXATION OF ENTITIES

Division I: Taxation of Partnerships and Partners

Section 40—Principles of Taxation for Partnerships

- (1) Except as provided in this Act, a partnership is not liable to pay tax on the income of the partnership.
- (2) The income of a partnership is taxed to the partners in the partnership in accordance with this Division.

Section 41—Ascertaining Partnership Income

- (1) Partnership income for a basis period of a resident or non-resident partnership is the assessable income of the partnership for the year of assessment in which the basis period ends calculated according to sections 5 and 6, without regard to sections 39, 57, or 60, as if the partnership were a resident person.
- (2) Losses of a partnership for a basis period are not allocated to the partners of the partnership, but are carried over and taken into account in ascertaining the partnership income of the partnership in subsequent basis periods of the partnership in accordance with section 22.
- (3) Subject to section 54, where there is a change in the constitution of a partnership, the reconstituted partnership may claim a deduction for losses of the former partnership under section 22 as though the reconstituted partnership and the former partnership were the same partnership.
- (4) In ascertaining partnership income,
 - a. account shall only be taken of amounts which are accrued, derived, or incurred on behalf of the partners in common; and
 - b. property held on behalf of the partners in common is treated as if the partnership and not the partners owned it.
- (5) Amounts included and deducted in ascertaining partnership income under subsection (4) are treated as if they were accrued, derived, or incurred by the partnership and not the partners.

Section 42—Taxation of Partners

- (1) For the purposes of ascertaining the income of a partner from a partnership for a basis period of the partner, there shall be included the partner's share of partnership income for a basis period of the partnership ending on the last day of, or during the basis period of the partner.
- (2) Partnership income retains its character as to type and source (including geographic source) on allocation to partners under subsection (1), and is deemed to pass through the partnership proportionally to each partner's share of partnership income unless the Commissioner permits otherwise.
- (3) Tax withheld under Subdivision B of Division III of Part X from payments made to a partnership which are included in ascertaining partnership income and foreign income tax paid by a partnership are allocated among the partners according to each partner's share of partnership income at the end of the basis period of the partnership during which the tax is withheld.
- (4) A partner is deemed to have paid the tax allocated to the partner by subsection (3) at the time of allocation and a credit may be available to the partner for the tax as provided by section 68 or 92.
- (5) Subject to subsection (6), a partner's share of partnership income shall be equal to the partner's percentage interest in the income of the partnership as set out in the partnership agreement.

- (6) Where the allocation of income in the partnership agreement does not reflect the contribution of the partners to the partnership's operations, a partner's share of partnership income shall be equal to the partner's percentage interest in the capital of the partnership.

Section 43—Partnership Obligations

- (1) A partnership shall file a return of partnership income in accordance with Division I of Part X where
 - a. the partnership is a resident partnership, or
 - b. the partnership has a permanent establishment situated in Ghana.
- (2) Any election, notice, or statement to be filed in relation to a partnership's activities shall be filed by the partnership.

Division II: Taxation of Companies and Shareholders

Section 44—Principles of Taxation for Companies

- (1) A company is liable to tax separately from its shareholders.
- (2) Subject to subsection (3), a dividend paid to a resident company by another resident company is exempt from tax where the company receiving the dividend controls, directly or indirectly, twenty-five per cent or more of the voting power in the company paying the dividend.
- (3) Subsection (2) 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 the type referred to in paragraph (e) of subsection (3) of section 55.

Section 45—Undistributed Profits of Companies

- (1) Where the Commissioner is satisfied that a company controlled by not more than five persons and their associates does not distribute to its shareholders as 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 may, by notice in writing, treat that part of the company's income which the Commissioner determines as distributed as dividends paid to its shareholders during that period or any other period.
- (2) In determining whether a company has distributed a reasonable part of its income from all sources for a basis period, the Commissioner shall consider
 - a. the current requirements of the company's business after accounting for any adjustments which the Commissioner may make under sections 70 or 112; and
 - b. any other requirements necessary or advisable for the maintenance and development of the business.

Division III: Taxation of Bodies of Persons and their Owners

Section 46—Principles of Taxation for Bodies of Persons

- (1) A body of persons is liable to tax with respect to its chargeable income separately from its beneficiaries.

- (2) The attributable income of a body of persons, ascertained in accordance with section 47, may be attributed to and taxed in the hands of that body's beneficiaries in the circumstances outlined in section 49 with credit for any tax paid by that body with respect to the attributed income.
- (3) Separate calculations of the chargeable income of a body of persons shall be made for separate bodies of persons regardless of whether they have the same managers.
- (4) Income accruing to, or derived by a body of persons other than as a bare agent, whether or not derived on behalf of another person and whether or not any other person is entitled to the income, is treated as the income of that body and not the income of any other person.
- (5) Property of a body of persons is treated as if it were owned by that body and not the beneficiaries or managers of that body.
- (6) Foreign income tax paid with respect to the income of a body of persons, whether paid by a manager or beneficiary, is treated as paid by that body.

Section 47— Calculation of the Attributable Income of a Body of Persons

- (1) The attributable income of a resident or non-resident body of persons for a basis period is the chargeable income of that body for the year of assessment in which the basis period ends calculated according to sections 5 and 6, without regard to section 39, 57, or 60, as if the body were a resident person and determined without regard to subsection (1) of section 48.
- (2) Losses of a body of persons for a basis period are not allocated to the beneficiaries of that body, but are carried over and taken into account in ascertaining the income and attributable income of that body in subsequent basis periods of that body in accordance with section 22.

Section 48—Deduction for Amounts Attributed to Beneficiary

- (1) Subject to this Act, where an ascertained resident beneficiary of a body of persons
 - a. acquires a vested right to an amount included in ascertaining the attributable income of that body during the basis period of that body in which the amount is included in ascertaining the income of the body, and
 - b. has the same basis period as that body,
- (2) the amount shall be deducted in ascertaining the income of that body for the basis period.
- (3) Subsection (1) applies irrespective of whether the beneficiary acquires the vested right as a result of the exercise by a manager of a discretion vested in the manager or the happening of some other contingent event.

Section 49—Taxation of Beneficiaries of Bodies of Persons

- (1) Notwithstanding subsection (4) of section 46, for the purposes of ascertaining the income of a beneficiary from a body of persons for a basis period of the beneficiary, there shall be included any amount included in ascertaining the attributable income of that body, whenever derived by that body
 - a. to which the beneficiary has a vested right and which is deductible in ascertaining the income of that body under subsection (1) of section 48,
 - b. to which the beneficiary is or has become entitled otherwise than in the manner referred to in paragraph (a), or
 - c. which is applied to the benefit of the beneficiary in cash or in kind,
- (2) whichever occurs first.

- (3) Attributable income of a body of persons retains its character as to type and source (including geographic source) on allocation to the beneficiaries under subsection (1).
- (4) Subject to subsection (4), where subsection (1) applies, the beneficiary is treated as deriving the amount at the end of the basis period of the beneficiary in which the beneficiary becomes entitled to the amount or in which the amount is applied to the beneficiary's benefit.
- (5) Where subsection (1) of section 48 applies, the beneficiary is treated as deriving the amount referred to in subsection (1) of this section at the time the amount is derived by that body.
- (6) Subject to this Act, a beneficiary of a body of persons is allocated any tax paid by the body, whether by withholding under Subdivision B of Division III of Part X, as a result of subsection (6) of section 46, or otherwise, with respect to an amount referred to in subsection (1) at the time the beneficiary is treated as deriving the amount.
- (7) A beneficiary is deemed to have paid the tax allocated to the beneficiary by subsection (5) at the time of allocation and a credit may be available to the beneficiary for that tax as provided by section 68 or 92, in the latter case, as though the tax were withheld from a payment to the beneficiary.

Section 50—Incapacitated Persons

For the purposes of determining whether an amount vests in a beneficiary of a body of persons under subsection (1) of section 48 or whether a beneficiary of that body is entitled to an amount under subsection (1) of section 49, a lack of legal capacity of the beneficiary shall be ignored.

Section 51—Deceased Individuals

For the purposes of subsection (1) of section 48 and subsection (1) of section 49, an ascertained successor or legatee of a deceased individual is treated as having a vested interest in an amount included in ascertaining the attributable income of the estate of the deceased which is derived by the executor of the estate for the immediate or future benefit of the successor or legatee.

Division IV: General Provisions Applicable to Entities

Section 52—Roll-Over Relief

- (1) Subject to subsection (3), the transfer by a person of a business asset, other than a class 1, 2, 3, or 4 depreciable asset, to an associate is treated as a disposal for a consideration equal to
 - a. the cost of the asset to the person or, in the case of a class 5 or 6 depreciable asset, the asset's written down value, pursuant to paragraph 4 of the Third Schedule, where all the following conditions are satisfied:
 - i. the asset is a business asset of the associate or, in the case of a class 5 or 6 depreciable asset, a depreciable asset of the associate;
 - ii. at the time of the transfer, that person and the associate are residents; and the associate is or, in the case of an associate partnership, its partners are not exempt from tax;
 - iii. there is continuity of underlying ownership in the asset of at least twenty five per cent; and
 - iv. an election for this paragraph to apply is made by both the person and the associate; or
 - b. in any other case, the market value of the asset at the date the transfer is made.

- (2) Subject to subsection (3), the transfer by a person of class 1, 2, 3, or 4 depreciable assets to an associate is treated as a disposal for a consideration equal to
 - a. the written down value, pursuant to paragraph 3 of the Third Schedule, of the pool to which the depreciable assets of the person belong at the date of transfer where all the following conditions are satisfied:
 - i. the assets constitute all the assets in that pool of the person;
 - ii. the assets constitute depreciable assets of the associate;
 - iii. at the time of the transfer that person and the associate are residents; and the associate is or, in the case of an associate partnership, its partners are not exempt from tax;
 - iv. there is continuity of underlying ownership in the asset of at least twenty five per cent; and an election for this paragraph to apply is made by both the person and the associate; or in any other case, the market value of each asset at the date the transfer is made.
- (3) The transfer of a business asset between individuals who are associates is treated as a disposal for a consideration equal to the market value of the asset at the time the transfer is made.
- (4) In this section, "business asset" includes any asset which is used in, or held for the purposes of a business, any asset held for sale in a business and an asset of a partnership or company; "person" includes a partnership.

Section 53—Collateral Benefits

- (1) For the purposes of this Chapter, a benefit conferred by an entity directly or indirectly on an eligible person, in any capacity, in respect of
 - a. the use or transfer of property, money or rights of the entity,
 - b. the creation or destruction of property,
 - c. the creation or release of rights or obligations, or
 - d. the provision of services,
 - e. is treated as income of the person from an investment.
- (2) The amount of income referred to in subsection (1) is equivalent to the value of the benefit conferred, less the following amounts:
 - a. a consideration provided by that person for the benefit;
 - b. an amount in respect of the conferring of the benefit which otherwise is included in ascertaining the assessable income of that person;
 - c. an amount which represents a return of capital by that entity; and
 - d. an amount which represents a distribution of realised profits of that entity.
- (3) The value of a benefit referred to in subsection (1) shall be determined in accordance with the Second Schedule and, in any case not referred to in that Schedule, as the value of the benefit to a reasonable person in the position of the first-mentioned person.
- (4) In this section, "eligible person" includes a partner of a partnership, a director or shareholder of a company, a manager or beneficiary of a body of persons and an associate of those persons.

Section 54—Change in Control

- a. Notwithstanding sections 18 and 22, where there is a change of fifty per cent or more in the underlying ownership of an entity as compared with its ownership one year previously, the entity is not permitted to
 - i. deduct a debt claim arising prior to the change in ownership, which has become a bad debt after the change, or
 - ii. deduct a loss incurred prior to the change in ownership after the change.
- b. For the purposes of ascertaining a loss under subsection (1), the periods before and after the change in ownership are treated separately.

Section 55—Profit or Dividend Stripping

- (1) A deduction is not allowed for a loss incurred on the disposal of shares or an interest in shares of a company or a disposal of an interest in a body of persons where the disposal forms part of a profit or dividend stripping arrangement.
- (2) Subsection (1) of section 48 and subsection (5) of section 49 do not apply to a beneficiary of a body of persons who acquires a vested right or an entitlement to an amount included in ascertaining attributable income of that body as part of a profit or dividend stripping arrangement.
- (3) In this section, "profit or dividend stripping arrangement" means an arrangement under which
 - i. a company or body of persons (referred to as the "target") has accumulated, current, or expected profits (referred to as the "profits");
 - ii. another person (referred to as the "acquirer") acquires an interest (including shares) in the target and makes a payment, whether or not in respect of the acquisition and whether or not the payment is at the time of acquisition;
 - iii. the payment made by the acquirer reflects, in whole or in part, the profits of the target;
 - iv. the payment made by the acquirer is not taxed in the hands of the recipient or is taxed at a rate below the tax rate applicable to resident companies;
 - v. after the acquirer acquires the interest in the target, the target makes a distribution, whether by way of dividend or otherwise, to the acquirer which represents, in whole or in part, the profits.

PART VII—INSURANCE AND RETIREMENT SAVINGS

Division I: Short-Term Insurance

Section 56—Short-Term Insurance Business

- (1) The income of a person for a basis period from a short-term insurance business shall be determined according to this section.
- (2) There shall be included in ascertaining the income of a person for a basis period from a short-term insurance business
 - (a) the amount of gross premiums, including premiums on re-insurance, accruing to or derived by that person during the basis period from carrying on that business in respect of the insurance of any risk, other than premiums returned to the insured;
 - (b) amounts otherwise to be included in ascertaining the income of that person during the basis period from carrying on that business, including any commission or expense allowance from re-insurers, and any amounts from investments held in connection with that business; and
 - (c) the amount of any reserve deducted in the previous basis period under paragraph (c) of subsection (3).
- (3) For the purposes of ascertaining the income of a person for a basis period from a short-term insurance business, there shall be deducted
 - (a) the amount of any claims admitted by that person during the basis period in the carrying on that business, less any amount recovered or recoverable during the basis period under any contract of re-insurance, guarantee, security, or indemnity;
 - (b) amounts otherwise deductible in ascertaining the income of that person during the basis period in carrying on that business, other than amounts deductible under paragraph (a); and
 - (c) the amount of any reserve for unexpired risks referable to that business as at the end of the basis period.

- (4) Where, for a basis period, the total amount allowed to a person as deductions under subsection (3) exceeds the total amount included in income under subsection (2), the amount of the excess shall not be deducted against any other income of that person. *[Substituted by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.9]*

Division II: Life Insurance

Section 57—Reductions for Premiums Paid

- (1) Subject to subsection (2), the assessable income of an individual for a year of assessment shall be reduced by any insurance premium paid by that individual in Ghana currency during a basis period ending within the year to a person carrying on a life insurance business in Ghana with respect to insurance on the individual's life.
- (2) The reduction for premiums paid, referred to in subsection (1), shall not exceed the lesser of:
- (a) ten percent of the sum assured; or
 - (b) the amount calculated as ten percent of the individual's total assessable income for the year from each business, employment, and investment. *[Substituted by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.10]*

Section 58—Income from Life Insurance Business

- (1) The income of a person for a basis period from a life insurance business shall be determined according to this section.
- (2) There shall only be included in ascertaining the income of a person for a basis period from a life insurance business amounts accruing to or derived by that person during the basis period from investments attributable to the business.
- (3) There shall only be deducted in ascertaining the income of a person for a basis period from a life insurance business management expenses, including commissions, to the extent incurred by that person during the basis period in carrying on the life insurance business.
- (4) Where, for a basis period, the total amount allowed to a person as deductions under subsection (3) exceeds the total amount included in income under subsection (2), the amount of the excess shall not be deducted against any other income of that person. *[Substituted by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.11.]*

Section 59— Proceeds of a Life Insurance Policy

The proceeds of a life insurance policy paid by a person in the course of carrying on a life insurance business are exempt from tax in the hands of the policy-holder to the extent to which they are attributable to

- (a) premiums paid in Ghana with respect to the policy, and
- (b) income of the business, for any basis period, included in the assessable income of the person.

Division III: Retirement Savings

Section 60—Contributions to a Retirement Fund

- (1) For the purposes of ascertaining the income of a person for a basis period from a business, that person

- (a) is entitled to a deduction for a contribution made to a retirement fund in respect of an employee only if the contribution is included in the income of the employee under subsection (2); and
 - (b) is not entitled to a deduction for a payment made to an individual on retirement on account of old age, sickness, or other infirmity.
- (2) There shall be included in ascertaining the income of an employee from an employment for a basis period of the employee, a contribution made by an employer during the period to any retirement fund in respect of the employee and, to the extent that the contribution is attributable to employment producing income accruing in or derived from Ghana, the contribution shall be included in the employee's assessable income from the employment for the year of assessment in which the basis period ends.
- (3) An employee's assessable income for a year of assessment shall be reduced by contributions made in respect of the employee by an employer during a basis period of the employee ending within the year to the Social Security Pension Scheme established under the Social Security Law, 1991 (P.N.D.C.L. 247) to the extent to which the contributions
- (a) are included in assessable income of the employee for the year under subsection (2); and
 - (b) do not exceed seventeen and a half per cent of the employee's assessable income from the employment.
- (4) Subject to subsection (5), and in addition to subsection (3), the assessable income of an individual for a year of assessment shall be reduced by a contribution made by the individual to the Social Security Pension Scheme established under the Social Security Law, 1991 (P.N.D.C.L. 247) during the year.
- (5) The reduction for contributions referred to in subsection (4) shall not exceed the total of,
- (a) with respect to each employment,
 - i. seventeen and a half per cent of the individual's income from the employment included in the individual's assessable income for the year; reduced by
 - ii. any reduction in the individual's assessable income for the year under subsection (3); and *[Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.12.]*
 - (b) seventeen and a half per cent of the individual's income from each business included in the individual's assessable income for the year.

Section 61—Income of a Retirement Fund

The income of a retirement fund exempted under an enactment is exempt from tax.

Section 62—Payments Made on Retirement

- (1) A pension or lump sum paid by a resident person or a permanent establishment of a non-resident person in Ghana to an individual on retirement on account of old age, sickness, or other infirmity is exempt from tax.
- (2) A pension or lump sum payment made by a retirement fund to a member or a nominated beneficiary of a member of the fund is exempt from tax.

PART VIII—INTERNATIONAL

Section 63—Geographic Source of Income

- (1) The gains or profits from any employment of a person shall be treated as accruing in or derived from Ghana to the extent to which the employment is exercised in Ghana, regardless of the place of payment.
- (2) Subject to subsection (3), the gains or profits from a business of

- (a) a resident person shall be treated as accruing in or derived from Ghana, unless attributable to a permanent establishment of the resident person outside Ghana; or
 - (b) a non-resident person shall be treated as accruing in or derived from Ghana to the extent that the gains or profits are attributable to a permanent establishment of the non-resident person in Ghana.
- (3) The gross receipts of a non-resident person who carries on a business of ship operator, charter, or air transport operator from
 - (a) the carriage of passengers who embark, or
 - (b) mail, livestock, or goods which are embarked, in Ghana, other than as a result of transshipment, shall be treated as accruing in or derived from Ghana.
- (4) The gross receipts of a non-resident person who carries on a business of transmitting messages by cable, radio, optical fibre, or satellite communication from the transmission of messages by apparatus established in Ghana, whether or not the messages originated in Ghana, shall be treated as accruing in or derived from Ghana.
- (5) A dividend is treated as accruing in or derived from Ghana where it is paid by a resident company.
- (6) Interest is treated as accruing in or derived from Ghana where
 - (a) the debt obligation giving rise to the interest is secured by real property located in Ghana;
 - (b) the interest is paid by a resident person; or
 - (c) the interest is borne by a permanent establishment of a non-resident person in Ghana.
- (7) Any charge, annuity, management and technical service fee, proceeds of a life insurance policy, or pension or other payment from a retirement fund is treated as accruing in or derived from Ghana where it is paid by a resident person or is borne by a permanent establishment of a non-resident person in Ghana.
- (8) A royalty is treated as accruing in or derived from Ghana where the royalty arises from
 - (a) the use of or right to use a copyright of literary, artistic, or scientific work (including cinematograph films, or video or audio tapes), patent, trade mark, design or model, plan, or secret formula or process in Ghana;
 - (b) the use of or right to use any industrial, commercial, or scientific equipment in Ghana;
 - (c) the use of or right to use information concerning industrial, commercial, or scientific experience in Ghana;
 - (d) the rendering of, or the undertaking to render, assistance ancillary to a matter referred to in paragraph (a), (b) or (c); or
 - (e) a total or partial forbearance with respect to a matter referred to in paragraph (a), (b), (c) or (d).
- (9) A natural resource payment is treated as accruing in or derived from Ghana where the payment is made in respect of a natural resource taken from Ghana.
- (10) Rent is treated as accruing in or derived from Ghana where the rent is paid for the use of personal property used or real property situated in Ghana.
- (11) Gross premiums, including premiums on re-insurance, from carrying on a short-term insurance business in respect of the insurance of a risk in Ghana are treated as accruing in or derived from Ghana.
- (12) An income or inclusion in ascertaining income, whether or not mentioned in this section is also treated as accruing in or derived from Ghana to the extent to which the income or inclusion arises from an activity undertaken in Ghana.
- (13) An income or inclusion in ascertaining income that is not treated as accruing in or derived from sources in Ghana is treated as accruing or derived from outside Ghana.

Section 64—Foreign Income from a Separate Business or Investment

Where the income of a person from a business or investment is partly accruing in or derived from Ghana and partly from outside Ghana, the part which is accruing in or derived from Ghana is treated as income from a separate business or investment from the part which is accruing or derived from outside Ghana.

Section 65—Income Attributable to a Permanent Establishment

- (1) Subject to subsection (2), the gains or profits attributable to a permanent establishment of a non-resident person in Ghana shall be calculated as those which the permanent establishment might be expected to make if it were a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with that person of which it is a permanent establishment.
- (2) In ascertaining the gains or profits attributable to a permanent establishment of a non-resident person in Ghana,
 - (a) no account shall be taken for amounts charged, otherwise than towards reimbursement of actual expenses, by the permanent establishment to the head office of the non-resident person or any of its other offices by way of
 - i. royalties, fees or other similar payments in return for the use of patents or other rights;
 - ii. commission for specific services performed or for management; or
 - iii. except in the case of a banking business, interest on moneys lent to the head office of the non-resident person or any of its other offices; and
 - (b) no deduction shall be allowed in respect of amounts paid, otherwise than towards reimbursement of actual expenses, by the permanent establishment to the head office of the non-resident person or any of its other offices by way of
 - i. royalties, fees or other similar payments in return for the use of patents or other rights;
 - ii. commission for specific services performed or for management; or
 - iii. except in the case of a banking business, interest on moneys lent to the permanent establishment.

Section 66—Branch Profits Tax

- (1) 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 repatriated profits for a basis period ending within the year.
- (2) The tax payable by a non-resident person under subsection (1) is calculated by applying the rate prescribed in Part VI of the First Schedule to the repatriated profits referred to in that subsection.

Section 67—Taxation of Non-Residents Providing Shipping, Air Transport or

- (1) Telecommunications Services in Ghana
- (2) The assessable income for a year of assessment of a non-resident person who carries on a business of ship operator, charterer, or air transport operator includes the gross receipts derived during a basis period ending within the year from
 - (a) the carriage of passengers who embark, or
 - (b) mail, livestock or goods which are embarked, in Ghana, other than as a result of transshipment.
- (3) The assessable income for a year of assessment of a non-resident person who carries on a business of transmitting messages by cable, radio, optical fibre, or satellite communication includes the gross receipts derived during a basis period

ending within the year from the transmission of messages by apparatus established in Ghana, whether or not the messages originated in Ghana.

- (4) The gross receipts included in a non-resident person's assessable income under subsection (1) or (2) shall be taxed at the rate prescribed in Part VII of the First Schedule and
 - (a) the gross receipts shall be ignored in ascertaining the tax payable with respect to any remaining assessable income of that person;
 - (b) no deduction shall be allowed with respect to ascertaining that remaining assessable income to the extent to which the deduction relates to the production of the gross receipts; and
 - (c) no tax credits shall be allowed to that person to reduce the tax payable by that person under this section with respect to the gross receipts.

Section 68—Relief from Double Taxation

- (1) For the purposes of ascertaining the income of a person for a basis period accruing or derived from outside Ghana, there shall be deducted any foreign income tax paid with respect to the income.
- (2) A resident person is entitled to a credit for a year of assessment, in this section referred to as a "foreign tax credit", for any foreign income tax paid by that person to the extent to which it is paid with respect to that person's taxable foreign income for the year.
- (3) Foreign tax credits are calculated separately for taxable foreign income from each business, employment, or investment and shall not exceed the average rate of Ghanaian income tax of that person for the year of assessment applied to that person's taxable foreign income for the year from each business, employment, or investment.
- (4) A person's assessable income in respect of which that person is entitled to a foreign tax credit under subsection (2) is increased by the amount of the foreign tax credit.
- (5) Where,
 - (a) the taxable foreign income of a person for a year of assessment includes a dividend, and
 - (b) as a result of a Double Taxation Arrangement referred to in section 111, credit is to be granted for foreign income tax paid with respect to the profits from which the dividend is distributed, that person shall, for the purposes of this section, be treated as having paid with respect to the dividend the foreign income tax paid with respect to the profits from which the dividend is distributed.
- (6) Subsections (2) and (4) do not apply where a person elects to relinquish a foreign tax credit.
- (7) For the purposes of this section, "average rate of Ghanaian income tax" of a person for a year of assessment means the percentage that the Ghanaian income tax payable by that person for the year, before any foreign tax credit, is of the chargeable income of that person for the year; "taxable foreign income" of a person for a year of assessment means that person's income from any business, employment or investment accruing or derived from outside Ghana and included in the assessable income of that person for the year increased by the amount referred to in subsection (4).

PART IX—ANTI-AVOIDANCE

Section 69—Income Splitting

- (1) Where a person attempts to split income with another person, the Commissioner may adjust the chargeable income of both persons to prevent a reduction in tax payable as a result of the splitting of income.
- (2) A person is treated as having attempted to split income where
 - a. that person transfers income, directly or indirectly, to an associate; or

- b. that person transfers property, including money, directly or indirectly, to an associate with the result that the associate receives or enjoys the income from that property, and the reason or one of the reasons for the transfer is to lower the total tax payable upon the income of that person and the associate.
- (3) In determining whether a person is seeking to split income, the Commissioner shall consider the value given by the associate for the transfer.
- (4) A transfer of income or property indirectly from a person to an associate of that person includes a transfer made through the interposition of one or more entities.

Section 70—Transfer Pricing

- (1) In a transaction between persons who are associates, the Commissioner may distribute, apportion, or allocate inclusions in income, deductions, credits, or personal reliefs between those persons as is necessary to reflect the chargeable income or tax payable which would have arisen for these persons if the transaction had been conducted at arm's length.
- (2) Where,
 - in the case of an associated resident entity of a non-resident person, the Commissioner is satisfied that some adjustment is warranted under subsection (1) of section 69, or
 - in the case of a permanent establishment of a non-resident person in Ghana, the Commissioner is not satisfied with a return of income of that person made under section 72,
 the Commissioner may adjust the income of the permanent establishment or entity for a basis period so that it reflects an amount calculated
 - by reference to the total consolidated income of the non-resident person and all associates of that non-resident person, other than individuals but irrespective of residence;
 - by taking into account the proportion which the turnover of the permanent establishment or entity bears to the total consolidated turnover of the non-resident person and those associates; and
 - by taking into account any other relevant considerations in determining the proportion of the total consolidated income which should be attributed to the permanent establishment or entity.
- (3) In making an adjustment under subsections (1) or (2), the Commissioner may re-characterise the source of income and the nature of any payment or loss as revenue, capital, or otherwise.

Section 71—Thin Capitalisation

- (1) Where an exempt-controlled resident entity which is not a financial institution has an exempt debt-to-exempt equity ratio in excess of 2 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 2 to 1 being a portion of the interest or loss otherwise deductible but for this subsection.
- (2) In this section "exempt-controlled resident entity" means a resident entity in which fifty per cent or more of the underlying ownership or control of the entity is held by an exempt person, in this section referred to as the "exempt controller", either alone or together with an associate or associates; "exempt debt", in relation to an exempt-controlled resident entity, means the greatest amount, at any time during a basis period, of the sum of
 - (a) the balance outstanding at that time on any debt obligation owed by the exempt-controlled resident entity to an exempt controller or an exempt person who is an associate of the exempt controller with respect to which
 - i. interest is paid which is, or

- ii. in the case of a debt obligation denominated in foreign currency, any foreign currency exchange loss incurred is, or if incurred would be, deductible to the exempt-controlled resident entity and the interest or foreign currency exchange gain is not or would not be included in ascertaining assessable income of the exempt controller or associate; and
- (b) the balance outstanding at that time on a debt obligation owed by the exempt-controlled resident entity to a person other than the exempt controller or an associate of the exempt controller where that person has a balance outstanding of a similar amount on a debt obligation owed by that person to the exempt controller or an exempt person who is an associate of the exempt controller; “exempt equity”, in relation to an exempt-controlled resident entity and for a basis period, means the sum of the following amounts:
- (i) so much of any amount standing to the credit of the capital accounts of the entity at the beginning of the period as the exempt controller or an exempt person who is an associate of the exempt controller is entitled to or would be entitled to if the entity were wound up at that time; and
 - (ii) so much of the accumulated profits and asset revaluation reserves of the entity at the beginning of the basis period as the exempt controller or an exempt person who is an associate of the exempt controller is entitled to or would be entitled to if the entity were wound up at that time; reduced by the sum of
 - (iii) the balance outstanding at the beginning of the period on a debt obligation owed to the entity by the exempt controller or an exempt person who is an associate of the exempt controller; and
 - (iv) where the entity has accumulated losses at the beginning of the period, the amount by which the return of capital to the exempt controller or an exempt person who is an associate of the exempt controller would be reduced by virtue of the losses if the entity were wound up at that time;

“exempt person” means

a non-resident person; and

a resident person for whom interest paid to that exempt person by the exempt-controlled resident entity or for whom any foreign currency exchange gain realised with respect to a debt claim against the exempt-controlled resident entity

i. constitutes exempt income; or

ii. is not included in ascertaining the exempt person's assessable income;

iii. “resident entity” means a resident partnership, resident company, resident body of persons, or a permanent establishment of a non-resident person in Ghana.

PART X—PROCEDURE RELATING TO THE INCOME TAX

Division I: Returns

Section 72—Furnishing of Return of Income

- (1) Subject to section 73, 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 shall be in the form prescribed by the Commissioner, shall state the information required, and shall be furnished in the manner prescribed by the Commissioner.
- (3) A return of income shall include a declaration that the return is complete and accurate and shall be signed by the person making the return.

- (4) A person carrying on a business shall furnish with that person's return of income a separate statement of income and expenditure and a statement of assets and liabilities for each business undertaking carried on within that business by that person.
- (5) A person who, for remuneration, prepares or assists in the preparation of a return of income, or a balance sheet, statement of income and expenditure, or any other document submitted in support of a return of another person, other than as employee of the other person, shall sign the return certifying
- (6) Where a person refuses to sign a certificate referred to in subsection (5), that person shall furnish the other person with a statement in writing of the reasons for the refusal and the other person shall include that statement with the return of income to which the refusal relates.
 - (a) that the books of account and other relevant documentation of the other person have been examined, and
 - (b) that to the best of the examiner's knowledge, the return or document correctly reflects the data and transactions to which it relates.
- (7) Where, during a basis period
 - (a) a person dies,
 - (b) a person becomes bankrupt, is wound-up or goes into liquidation,
 - (c) a person is about to leave Ghana indefinitely,
 - (d) a person is otherwise about to cease activity in Ghana, or
 - (e) the Commissioner otherwise considers it appropriate, the Commissioner may, by notice in writing, require that person or that person's trustee, to furnish, by the date specified in the notice, a return of income for that person for a period less than the basis period.
- (8) Where a person fails to furnish a return of income as required by this section, the Commissioner may, by notice in writing, appoint a person to prepare and furnish the return, and the return so furnished is deemed, for the purposes of this Act, to be the return of the person originally required to furnish the return.
- (9) The Commissioner may, by notice in writing, require the person who furnished the return to provide a fuller or further return of income.

Section 73—Cases where Return of Income Not Required

Unless requested by the Commissioner by notice in writing, a return of income shall not be furnished under this Chapter for a year of assessment

- (a) by a non-resident person who has no income accruing in or derived from Ghana during a basis period ending within the year or where section 85 applies to that person's income accruing in or derived from Ghana during that basis period; or
- (b) by a resident individual
 - (i) to whom subsection (7) of section 81 applies; or
 - (ii) who has no chargeable income for the year or whose chargeable income for the year is subject to the nil rate of tax under Part I of the First Schedule.

Section 74—Extension of Time to Furnish a Return of Income

- (1) A person required to furnish a return of income under section 72 may apply in writing to the Commissioner for an extension of time to furnish the return.
- (2) An application under subsection (1) shall be made by the due date for furnishing of the return to which it relates.
- (3) Where an application is made under subsection (1), the Commissioner, if satisfied as to the inability of that person to furnish the return by the due date because of absence from Ghana, sickness, or other reasonable cause, may, by notice in writing, grant that person an extension of time for furnishing the return of a period not exceeding two months.

- (4) A person dissatisfied with a decision under subsection (3) may only challenge the decision under the objection and appeal procedure in Division II of Part III of Chapter IV as though a reference in that Division to an assessment were a reference to that decision. *[Amended by the Internal Revenue (Amendment) Act, 2003 (Act 644), s.1]*.
- (5) The granting of an extension of time under this section does not alter the due date for payment of tax under section 134.

Section 75—Definition

In this Division, a reference to a person includes a reference to a partnership.

Division II: Assessments

Section 76—Provisional Assessments

- (1) Subject to section 78, the Commissioner may as soon as may be after the commencement of each basis period of a person who pays tax by instalments proceed to make a provisional assessment computed according to the Commissioner's best judgement on that persons chargeable income,
- (2) A provisional assessment shall not affect a liability otherwise incurred by that person by reason of failure or neglect to deliver a return.
- (3) Where a provisional assessment is made under this section, the Commissioner shall serve a notice of the assessment on that person stating
 - (a) the estimated chargeable income,
 - (b) the estimated tax payable,
 - (c) the amount and timing of tax instalments to be paid in accordance with section 80, and
 - (d) the time, place, and manner of objecting to the assessment.
- (4) Where the Commissioner discovers or is of the opinion at any time that a person liable to tax has not been assessed under subsection (1), the Commissioner may, within the year and as often as may be necessary assess that person at such amount as according to his best judgement ought to have been charged and the provisions of subsections (2) and (3) together with the provisions of this Act as to notice of assessment, appeal and other proceedings shall apply to that assessment and to the tax charged.

Section 77—Final Assessments

- (1) Subject to section 78, the Commissioner shall, based on a person's return of income and on any other information available, make a final assessment of the chargeable income of that person and the tax payable on that assessment.
- (2) Where
 - (a) a person defaults in furnishing a return of income for a year of assessment, or
 - (b) the Commissioner is not satisfied with a return of income for a year of assessment furnished by a person, the Commissioner may, according to the Commissioner's best judgement, make a final assessment of the chargeable income of that person and the tax payable on that income for the year.
- (3) The Commissioner shall, on making an assessment under paragraph (b) of subsection (2), include with the assessment a statement of reasons as to why the Commissioner is not satisfied with the return.

- (4) In the circumstances specified in subsection (7) of section 72, in lieu of requiring a return of income, the Commissioner may, according to the Commissioner's best judgement, make a final assessment of the chargeable income of that person and the tax payable on that assessment for the year of assessment during which the basis period ends.
- (5) The Commissioner shall not assess a person for a year of assessment who, as a result of the operation of section 73, is not required to furnish a return of income for the year.
- (6) Where a final assessment is made under this section, the Commissioner shall serve a notice of the assessment on that person stating
 - (a) the amount of chargeable income,
 - (b) the amount of tax payable,
 - (c) the amount of tax paid, if any, and
 - (d) the time, place, and manner of objecting to the assessment.

Section 78—Self-Assessment

- (1) This section only applies to those persons specified in a notice published in the Gazette or in the print media by the Commissioner as persons to which this section is to apply for a year of assessment.
- (2) A person who pays tax by instalments shall furnish an estimate of
 - (a) the chargeable income to be derived by that person for a year of assessment in respect of which tax is or may be payable by that person by instalments under section 80; and
 - (b) the tax to be payable with respect to that chargeable income.
- (3) The estimate under subsection (2) shall be in the form prescribed by the Commissioner and shall be furnished to the Commissioner on or before the commencement of a basis period of that person which will end within the year of assessment.
- (4) The estimate under subsection (2) shall remain in force for the whole of the basis period to which it relates unless that person furnishes a revised estimate to the Commissioner together with a statement of reasons for the revision.
- (5) The revised estimate under subsection (4) shall only apply to the calculation of the tax payable by that person by instalments after the date the revised estimate is furnished to the Commissioner.
- (6) Subject to subsection (7), where a person
 - (a) furnishes an estimate in accordance with subsection (2) or a revised estimate in accordance with subsection (4), or
 - (b) furnishes a return of income for a year of assessment,
 - (c) the Commissioner is deemed to have made a provisional assessment or final assessment, as the case requires, of the chargeable income of that person and the tax payable on that chargeable income for the year, shall be those respective amounts shown in the estimate or return.
- (7) Where a person who pays tax by instalments fails to furnish an estimate as required by subsections (2) and (3) or the Commissioner is not satisfied with the estimate or revised estimate furnished then subsection (6) of this section shall not apply to the estimate or revised estimate and the Commissioner may make a provisional assessment in accordance with section 76.
- (8) Where subsection (6) applies, that person's estimate or return of income is treated as a notice of assessment served on that person by the Commissioner on the due date for furnishing of the estimate or return or on the actual date the estimate or return is furnished, whichever is the later.

Section 79—Additional Assessments

- (1) Subject to subsections (2) and (3), the Commissioner may, within three years after service of a notice of assessment, make an additional assessment amending an assessment previously made.

- (2) Where the need to make an additional assessment arises by reason of fraud or a gross or wilful neglect by, or on behalf of, a person or the discovery of new information in relation to the tax payable for any year of assessment, the Commissioner may make an additional assessment for that year at any time.
- (3) The Commissioner shall not make an additional assessment amending a previous assessment if the previous assessment has been amended or reduced pursuant to an order of the High Court unless that order is obtained by fraud.
- (4) An additional assessment shall be treated in all respects as an assessment under this Act.

Division III: Payment of Tax
Subdivision A: Tax Instalments

Section 80—Payment of Tax by Instalments

- (1) Subject to subsection (4), a person who derives or expects to derive an assessable income for a year of assessment which is not or will not be subject to withholding of tax at source under Subdivision B is liable to pay tax under this section by quarterly instalments.
- (2) A person liable to pay tax under subsection (1) in respect of a basis period ending within the year of assessment, shall 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 the basis period and a final instalment on the last day of the period unless it coincides with the end of such a three month period.

- (3) For the purposes of subsection (2), the amount of each instalment of tax for a basis period is calculated according to the following formula:

$$\frac{A - B}{C}$$

Where,

A is the estimated tax payable by the tax payer for the period at the time of the instalment under the most recent provisional assessment made under section 76 or 78; and

B is the amount of any tax paid during the period but prior to the due date for payment of the instalment

- (a) by prior instalment under this section; or
- (b) withheld under Subdivision B from any amounts derived by that person during the period which will be included in ascertaining the assessable income of that person for the year of assessment in which the period ends.

C is the number of instalments remaining for the period including the current instalment;

- (4) Regulations made under section 114 may prescribe that a particular class of persons shall pay tax by instalments otherwise than or in substitution for instalments payable under subsection (1).
- (5) Regulations made under section 114 may provide
 - (a) that a particular or particular class of organised association or recognised occupational group shall collect from its members any tax payable by those members by instalment under subsection (4);
 - (b) the terms and conditions which shall apply to the collection of that tax; and
 - (c) the terms and conditions on which the association or group shall account to the Commissioner for that tax.
- (6) A person who fails to make an instalment payment to an association or group as provided by Regulations made under subsection (5) shall be treated as having failed to pay the instalment by the due date.

- (7) Upon a written application by a person who pays tax by instalments the Commissioner may, where good cause is shown, extend the due date for payment of an instalment of tax or allow for payment of the instalment in equal or varying amounts.
- (8) An instalment of tax is due and payable on the date by which the instalment is to be paid.
- (9) An instalment of tax shall be credited against the tax assessed to the person who pays tax by instalments for the year of assessment in which the basis period to which the instalment relates ends.

Subdivision B: Withholding of Tax at Source

Section 81—Withholding of Tax by Employers

- (1) An employer shall withhold tax from the payment of an amount to be included in ascertaining the income of an employee from the employment as prescribed by Regulations made under section 114.
- (2) The obligation of an employer to withhold tax under subsection (1) is not reduced or extinguished because the employer has a right, or is otherwise under an obligation, to deduct and withhold any other amount from those payments.
- (3) The obligation of an employer to withhold tax under subsection (1) applies notwithstanding any other law which provides that the income from employment of an employee shall not be reduced or subject to attachment.
- (4) An employer shall, not later than the 31st of March following the end of every year of assessment, furnish a return with respect to each person employed by the employer who derives assessable income for the year from the employment.
- (5) The return referred to in subsection (4) shall be in the form and furnished in the manner prescribed by the Commissioner and shall contain the following information:
 - (a) the amount of assessable income derived by the employee from the employment;
 - (b) the amount of tax withheld from that income under subsection (1) and the manner in which it is calculated, including the deductions under sections 39, 57, and 60 which are taken into account; and
 - (c) in the case of an employee to whom subsection (7) applies, the employee's chargeable income and tax payable with respect to that income.
- (6) At the time of furnishing the return under subsection (4), an employer shall serve on each employee an extract of the return, in the form prescribed by the Commissioner, which extract shall also state, in the case of an employee to whom subsection (7) applies,
 - (a) that the extract is an assessment, and
 - (b) the time, place, and manner of objecting to the assessment.
- (7) In the case of an employee whose assessable income for a year of assessment consists exclusively of income from an employment, the extract served under subsection (6) is treated as an assessment served on the employee by the Commissioner.

Section 82—Payment of Interest to Resident Persons

Subject to subsection (2), a resident person who pays interest to another resident person shall withhold tax on the gross amount of the payment at the rate prescribed in Part IV of the First Schedule.

This section does not apply to
interest paid by an individual, and
interest paid which is exempt from tax.

Section 83—Payment of Dividends to Resident Shareholders

Subject to subsection (3), a resident company which pays a dividend to a resident shareholder shall withhold tax on the gross amount of the payment at the rate prescribed in Part IV of the First Schedule.

Subsection (3) of section 2 applies to this section.
This section does not apply where the dividend is exempt from tax.

Section 84—Payment to Residents for Goods and Services

- (1) Subject to section 81, where a resident person, other than an individual, pays
 - (a) fees to a resident part-time teacher, lecturer, examiner, examinations invigilator, or examinations supervisor,
 - (b) fees, emoluments, and any other benefit, including a benefit referred to in section 53, to a resident director, manager, or board member of a company or body of persons,
 - (c) a commission to a resident insurance, sales, or canvassing agent,
 - (d) endorsement fees to a resident person, or
 - (e) a commission to a resident lotto receiver or agent, the person making the payment shall withhold tax on the gross amount of the payment at the rate prescribed in Part IV of the First Schedule.
- (2) Subject to subsection (4), where a resident person pays a sum to another resident person which does not fall within subsection (1),
 - (a) for the supply or use of goods or property of any kind, or
 - (b) for the supply of any services, [*Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.13.*] in respect of a contract between the payee and a resident person other than an individual exceeding fifty currency points, the person making the payment shall withhold tax on the gross amount of the payment at the rate prescribed in Part IV of the First Schedule.
- (3) For the purpose of determining under subsection (2) whether a contract exceeds fifty currency points, two or more contracts in respect of the same goods, property or services shall be treated as a single contract.
- (4) Subsection (2) does not apply
 - (a) to payments under a contract for the sale of goods which constitute trading stock of both the vendor and the purchaser; or
 - (b) where the Commissioner,
 - (i) for a good cause shown, exempts in writing a person from deducting tax under that subsection 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.
- (5) A person provided with an exemption under paragraph (b) of subsection (4) 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.

Section 85—Payments to Non-Residents Under Section 3

A person making a payment to a non-resident person of the kind referred to in subsection (1) of section 3 shall withhold tax on the gross amount of the payment at the appropriate rate prescribed in Part V of the First Schedule.

Subsection (3) of section 2 applies to this section.
This section does not apply where the payment is exempt from tax.

Section 86—Payment to Non-Residents for Goods and Services

1. Subject to section 81, a person who enters into a contract with a non-resident person for,
 - a. the supply or use of goods or property of any kind, or

- b. the supply of any services, which contract gives rise to income accruing in or derived from Ghana, shall, within thirty days of the date of entering into the contract, notify the Commissioner in writing of,
 - c. the nature of the contract;
 - d. the likely duration of the contract;
 - e. the name and postal address of the non-resident person to whom payments under the contract are to be made; and
 - f. the total amount estimated to be payable under the contract to the non-resident person.
2. The Commissioner may, by notice in writing served on the person who has notified the Commissioner under subsection (1), require that person to withhold tax from a payment made under the contract at the rate specified in Part VIII of the First Schedule. Subsection (2) does not apply to a payment of the kind referred to in subsection (1) of section 3.

Section 87—Payment of Tax Withheld

- (1) Subject to subsection (2), a withholding agent shall pay to the Commissioner a tax that has been withheld or that should have been withheld under this Subdivision within fifteen days after the end of the month in which the payment subject to withholding tax is made by the withholding agent.
- (2) Where a person is required to withhold tax from a payment under subsection (2) of section 86, the tax shall be paid to the Commissioner at the time specified in the Commissioner's notice.
- (3) An amount withheld under this Subdivision is treated as if it were tax due and payable on the date referred to in subsection (1) or (2).
- (4) Subject to sections 10(2) and 84(4) 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 is void.

Section 88—Failure to Withhold Tax

- (1) A withholding agent who fails to withhold tax in accordance with this Subdivision is personally liable to pay to the Commissioner the amount of tax which has not been withheld, but the withholding agent is entitled to recover this amount from the payee.
- (2) The liability imposed by subsection (1) is treated as if it were tax due and payable on the date referred to in subsection (1) or (2) of section 87.

Section 89—Tax Credit Certificates

1. The Commissioner shall, upon receipt of an amount paid under section 87, issue to the withholding agent in favour of the payee a tax credit certificate in the form prescribed by the Commissioner stating the amount deducted.
2. A withholding agent shall deliver to the payee a tax credit certificate setting out the amount of tax withheld under this Subdivision together with a statement of the amount of the payment from which tax has been withheld.
3. A payee who is required to furnish a return of income shall attach to the return the tax credit certificate or certificates supplied to the payee for a basis period of the payee ending within the year of assessment for which the return is filed.

Section 90—Record of Payments and Tax Withheld

- (1) A withholding agent shall maintain, and make available for inspection by the Commissioner, records showing, in relation to each year of assessment,

- a) payments made to a payee, and
 - b) tax withheld from those payments.
- (2) The records referred to in subsection (1) shall be kept by the withholding agent for five years of assessment after the end of the year of assessment to which the records relate.
- (3) The Commissioner may require a withholding agent to submit a return of the records to be maintained under subsection (1) in the manner, form and at the intervals prescribed by the Commissioner.

Section 91—Priority of Tax Withheld

- (1) Tax withheld by a withholding agent under this Subdivision
- a) is held by the withholding agent in trust for the Service;
 - b) is not subject to attachment in respect of a debt or liability of the withholding agent; and
 - c) in the event of the liquidation or bankruptcy of the withholding agent, does not form a part of the estate in liquidation, assignment, or bankruptcy and the Commissioner has a first claim before any distribution of property is made.
- (2) An amount which a withholding agent is required under this Subdivision to withhold from a payment is
- a) a first charge on that payment, and
 - b) withheld prior to any other deduction which the withholding agent may be required to make by virtue of an order of any court or any other law.

Section 92—Adjustment on Assessment and Withholding Agent's Indemnity

- (1) Tax withheld under this Subdivision is included in ascertaining income of the payee.
- (2) A withholding agent who has withheld tax under this Subdivision and remitted the amount withheld to the Commissioner is treated as having paid the withheld amount to the payee for the purposes of a claim by the payee for payment of the amount withheld.
- (3) Tax withheld from a payment under this Subdivision is deemed to have been paid by the payee and, except in the case of a tax that is a final tax under section 4, is credited against the tax assessed on the payee for the year of assessment in which the basis period of the person ends, being the period in which the payment is made.

Section 93—Definitions

In this Subdivision,

“payee” means a person receiving payments from which tax is required to be withheld under this Subdivision;

“person” includes a partnership;

“resident person” includes a permanent establishment of a non-resident person in Ghana;

“withholding agent” means a person obliged to withhold tax under this Subdivision.

PART XI—INTERPRETATION

Section 94—Definitions

In this Chapter, unless the context otherwise requires,

“accruing in or derived from” Ghana or outside Ghana with respect to income has the meaning in section 63;

“basis period” means the period by reference to which assessable income of any person is computed in accordance with the provisions of this Act;

"beneficiary", in relation to a body of persons, means any beneficiary, member, owner, or any other person who has a right, including a contingent right, to participate in the income or capital of that body;

"debt claim" means a right to receive a repayment of money from another person arising in the course of carrying on a business, including deposits with a financial institution, accounts receivable, promissory notes, bills of exchange, or bonds;

"dividends" includes

- (a) a capitalisation of profits, whether by way of a bonus share issue or increase in the amount paid-up on shares, or otherwise involving a credit of profits to the share capital or share premium account; or
 - (b) an amount derived by a shareholder from a company
 - i) (i) in the course of liquidation or reconstruction, or
 - ii) (ii) with respect to a reduction of share capital or share buy back, but only to the extent that the amount is not debited to the company's share capital or share premium account;
- "employee" means an individual engaged in employment;
"employer" means a person who employs or remunerates an employee;

"employment" means

- (a) the position of an individual in the employment of another person;
- (b) the holding of or acting in any office or a position entitling the holder to a fixed or ascertainable remuneration other than an office or position as director of a company or manager of a body of persons;

"exempt organisation" means a person

- (a) who or that is and functions as
 - i) a religious, charitable, or educational institution of a public character;
 - ii) a body of persons formed for the purpose of promoting social or sporting amenities;.
 - iii) a trade union registered under the Trade Unions Ordinance (Cap. 91);
 - iv) an institution or trust of a public character established by an enactment solely for the purposes of scientific research; or
 - v) registered sporting club;
- (b) who or that has been issued with a written ruling by the Commissioner currently in force stating that it is an exempt organisation; and
- (c) none of whose income or assets confers, or may confer, a private benefit, other than in pursuit of the organisation's function referred to in paragraph (a);

"financial institution" means

- (a) a bank regulated under the Banking Law, 1989 (P.N.D.C.L. 225);
- (b) a non-banking financial institution regulated under the Financial Institutions (Non-Banking) Law, 1993 (P.N.D.C.L. 328); and
- (c) any other category of persons prescribed by Regulations made under section 114; "foreign income tax" includes a foreign withholding tax, but does not include a foreign tax designed to raise the level of the tax on the income so that taxation by the country of residence is reduced;

"insurance business" means the business of, or in relation to the issue of, or the undertaking of liability under, life policies, or to make good or indemnify the insured against any loss or damage, including liability to pay damages or compensation contingent upon the happening of a specified event;

"investment" means a manner in which a person may derive gains, profits, or income, other than from a business or employment;

"life insurance business" means the business of

- (a) effecting, carrying out, and issuing policies on human life or contracts to pay annuities on human life; or
- (b) effecting, carrying out, and issuing contracts of insurance against the risk of the person insured sustaining injury or dying as the result of an accident or of an accident of a specific class, or becoming incapacitated in consequence of disease or of diseases of specified

- classes, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either are not expressed to be terminable by the insurer before the expiry of five years from taking effect or are expressed to be so terminable before the expiry of that period only in special circumstances specified in the contract; or
- (c) effecting, carrying out, and issuing of insurance whether effected by the issue of policies, bonds, endowment certificates, or otherwise, whereby, in return for one or more premiums paid to the insurer, an amount or series of amounts is to become payable to the insured in the future, not being contracts as fall within paragraph (a) or (b) above;

“management and technical services fee” means a payment of any kind to a person, other than to an employee of the person making the payment, in consideration for any services of a managerial, technical, or consultancy nature;

“manager”, in relation to a body of persons, means any member, councillor, director, manager, officer, or any other person who participates in making, whether alone or jointly with other persons, managerial decisions on behalf of the body, and the trustee of a trust;

“natural resource payment” means

- (a) a payment, including a premium or like amount, for the right to take minerals or a living or non-living resource from real property or the sea; or
- (b) a payment calculated in whole or part by reference to the quantity or value of minerals or a living or non-living resource taken from real property or the sea;

“rent” means a payment, including a payment of a premium or like amount, for the use of, or right to use, property of any kind but does not include a natural resource payment or a royalty;

“retirement fund” means a pension, provident, retirement, superannuation or similar fund established as a permanent fund maintained solely for either or both of the following purposes:

- (a) the provision of benefits for members of the fund in the event of retirement;
- (b) the provision of benefits for dependants of members in the event of the death of the member; and the Social Security Pension Scheme established under the Social Security Law, 1991 (P.N.D.C.L. 247);

“royalties” means any 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, or video or audio tapes 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 paragraphs (a), (b), (c) and (d); or
- (f) a total or partial forbearance with respect to a matter referred to in paragraphs (a), (b), (c), (d) and (e);

“short-term insurance business” means any insurance business which is not a life insurance business;

“tax” means tax levied under this Chapter;

“trading stock” includes anything produced, manufactured, purchased, or otherwise acquired for sale or exchange;

“turnover” means the total receipts in money or moneys' worth from a business without deduction for customs duty or import duty or excise duty but not including vehicle purchase tax or value added tax paid directly to the Commissioner of Customs, Excise and Preventive Service or the Commissioner of Value Added Tax Service.

CHAPTER II

CAPITAL GAINS TAX

PART I—IMPOSITION OF CAPITAL GAINS TAX

Section 95—Imposition and Rate of Capital Gains Tax

- (1) Subject to subsection (2), capital gains tax is payable by a person at the rate of ten per cent of capital gains accruing to or derived by that person from the realisation of a chargeable asset owned by that person.
- (2) Capital gains tax is not payable on capital gains from the realisation of a chargeable asset falling within paragraph (b) of subsection (1) of section 97 unless and until those gains are brought into or received in Ghana.

PART II—REALISATION

Section 96—Realisation

- (1) Subject to subsection (2), a person who owns a chargeable asset is treated as realising the asset where
 - (a) that person parts with ownership of the asset including where the asset is
 - (i) sold, exchanged, surrendered, or distributed by the owner of the asset, or
 - (ii) redeemed, destroyed or lost;
 - (b) that person begins to use the asset in such a way that it ceases to be a chargeable asset; or
 - (c) that person is a resident who becomes a non-resident but only with respect to chargeable assets referred to in paragraph (b) of subsection (1) of section 97.
- (2) For the purposes of this Act, a realisation of a chargeable asset does not include a realisation by way of gift within the meaning of Chapter III or a realisation involving the disposal of shares in the course of the liquidation of a company.

PART III—CHARGEABLE ASSET

Section 97—Chargeable Asset

- (1) Subject to subsection (3), chargeable asset means,
 - any of the following assets:
 - buildings of a permanent or temporary nature situated in Ghana;
 - business and business assets, including goodwill, of a permanent establishment situated in Ghana;
 - land situated in Ghana;
 - shares of a resident company;
 - part of, or any right or interest in, to or over any of the assets referred to in subparagraphs (i) to (iv); and
 - (b) to the extent that they are not chargeable assets as a result of paragraph (a), any of the following assets of a resident person:
 - (i) buildings of a permanent or temporary nature wherever situated;
 - (ii) business and business assets, including goodwill, wherever situated;
 - (iii) land wherever situated;

- (iv) shares of a company;
- (v) part of, or any right or interest in, to or over any of the assets referred to in subparagraphs (i) to (iv).

Regulations made under section 114 may add to the categories of chargeable asset in either paragraph (a) or (b) of subsection (1).

Chargeable asset does not include

securities of a company listed on the Ghana Stock Exchange during the twenty years after the establishment of the Ghana Stock Exchange; [*Amended by the Internal Revenue (Amendment) (No. 2) Act, 2006 (Act 710), s.1*]
agricultural land situated in Ghana; and trading stock or a Class 1, 2, 3, or 4 depreciable asset.

PART IV—CALCULATION OF CAPITAL GAIN

Section 98—Calculation of Capital Gain

The amount of a capital gain accruing to or derived by a person from the realisation of a chargeable asset owned by that person is the excess of the consideration received by that person from the realisation over the cost base at the time of realisation.

Section 99—Cost Base

1. The cost base of a chargeable asset owned by a person at a particular time equals the sum of
 - (a) the costs, including incidental costs and, where relevant, the cost of construction or production, incurred by the person in acquiring ownership of the asset,
 - (b) the costs incurred by that person on alteration and improvement of the asset between the date of its acquisition and the date of its realisation, and
 - (c) the costs incurred by that person in realising the asset.
2. For the purposes of subsection (1), where, as a result of a person acquiring ownership of a chargeable asset, that person is treated under Chapter I as deriving an amount of income, that person shall be treated as having incurred in acquiring ownership of the asset an additional cost equal to the amount of the income.
3. A person who acquires ownership of a chargeable asset in a non-arm's length transaction is treated as having incurred in acquiring that ownership a cost equal to the market value of the asset at the date of acquisition.
4. Where a person who owns an asset, which is not a chargeable asset, begins to use the asset in such a way that it becomes a chargeable asset, that person is treated as having incurred in acquiring ownership of the asset a cost equal to the market value of the asset at the date that person begins to so use the asset.
5. Where a non-resident person who owns one or more assets, which are not chargeable assets, becomes a resident and, as a result, the assets become chargeable assets, that person is treated as having incurred in acquiring ownership of each asset a cost equal to the market value of the asset at the time of becoming resident.
6. Where a capital gain is exempt as a result of paragraph (b), (c), or (d) of subsection (1) of section 101, the person acquiring ownership of the asset is treated as having incurred in acquiring that ownership a cost equal to the cost base of the asset of the former owner at the time of realisation.
7. Where a capital gain, or part thereof, is exempt as a result of paragraph (e) or (f) of subsection (1) of section 101, the person acquiring ownership of the replacement asset is treated as having incurred in acquiring that ownership a cost equal to the cost base of the asset realised at the time of realisation.

8. Where a part of a chargeable asset owned by a person is realised, the cost base of the asset is apportioned between the part of the asset retained and the part realised in accordance with their respective market values at the time of realisation but the costs incurred in realisation shall not be so apportioned.

Section 100—Consideration Received

- (1) The consideration received or receivable by a person from the realisation of a chargeable asset owned by that person is equal to the sum of all amounts received or receivable by that person or an associate in respect of the realisation.
- (2) Where a person who owns a chargeable asset realises it by way of transfer to an associate or in a non-arm's-length transaction, that person is treated as having received consideration from the realisation of an amount equal to the market value of the asset at the time of realisation.
- (3) Where a resident person becomes a non-resident and, as a result, is treated as realising a chargeable asset in accordance with paragraph (c) of subsection (1) of section 96, that person shall be treated as receiving as consideration from the realisation the market value of the asset at that time.
- (4) Where a chargeable asset and one or more other assets are realised in a single transaction and the consideration received for each asset is not specified, the total consideration received from the realisation is apportioned among the assets in proportion to their market values at the time of the transaction.

Section 101—Exemption from Capital Gain

- (1) The following capital gains from the realisation of a chargeable asset are exempt:
 - a. capital gains of a person up to a total of fifty currency points per year of assessment;
 - b. capital gains 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;
 - c. capital gains resulting from a transfer of ownership of the asset by a person to that person's spouse, child, parent, brother, sister, aunt, uncle, nephew or niece;
 - d. capital gains resulting from a transfer of ownership of the asset between former spouses as part of a divorce settlement or a genuine separation agreement;
 - e. capital gains where the amount received on realisation is, within one year of realisation, used to acquire a chargeable asset of the same nature (referred to as the "replacement asset"); and
 - f. where part only of the amount received on realisation is used in the manner referred to in paragraph (e), any part of the capital gain represented by the amount used to acquire the replacement asset less the cost base of the asset realised at the time of realisation.
 - g. capital gains accruing to or derived by a venture capital financing company that satisfies the eligibility requirements of the Venture Capital Trust Fund Act 2004 (Act 684) for a period of five years of assessment commencing from and including the year in which the basis period of the company ends, being the period in which operations of the subsidiary company commenced. *[Inserted by the Internal Revenue (Amendment) Act, 2006 (Act 700), s.7.]*
- (2) The Commissioner may extend the period of one year for the purposes of paragraphs (e) and (e) of subsection (1) where, having regard to the circumstances of a particular case, it is fair and reasonable to do so.

PART V—PROCEDURE RELATING TO CAPITAL GAINS TAX

Section 102—Returns and Payment of Tax

- (1) Subject to subsection (3), a person who accrues or derives a capital gain from the realisation of a chargeable asset shall, thirty days after the realisation, furnish the Commissioner with a return in writing containing the following information:
 - a. the description and location of the chargeable asset;
 - b. the cost base of the asset immediately prior to the realisation and how that cost base is calculated;
 - c. the consideration received by that person from the realisation;
 - d. the amount of any capital gain and tax payable with respect to that capital gain and tax;
 - e. the full name and address of the new owner of the asset; and
 - f. other information prescribed by Regulations made under section 114.
- (2) Subject to subsection (3), a person who brings into or receives in Ghana a capital gain of the type referred to in subsection (2) of section 95 shall, within thirty days, furnish the Commissioner with a return in writing containing the following information:

the amount of the capital gain brought into or received in Ghana and tax payable with respect to that amount; and

other information prescribed by Regulations made under section 114.
- (3) Subsections (1) and (2) do not apply where the capital gain referred to in those subsections together with any other capital gains from the realisation of chargeable assets referred to in
 - a. subsection (1) of section 95 accruing to or derived by, and
 - b. subsection (2) of section 95 brought into or received in Ghana by, that person during the same year of assessment does not exceed in total fifty currency points.
- (4) Where a person is required to furnish a return under subsections (1) or (2); that person shall remit to the Commissioner the amount of tax calculated as payable and the payment of tax is due at that time.

Section 103—Assessments and Application of Income Tax Procedure

Subject to subsection (2), the Commissioner shall, based on a person's return furnished under section 102 and on any other information available, make an assessment of the amount of any capital gain of that person and the tax payable on that amount within one year from the date the return is furnished.

Where section 78 applies to a person and that person furnishes a return under section 102, the Commissioner is deemed to have made an assessment of any capital gain of that person and the tax payable on that assessment, being those respective amounts shown in the return.

Except to the extent that they are inconsistent with section 102 and subsections (1) and (2) of this section, sections 72 to 79 apply, with the necessary modifications to give full effect to this Chapter, to returns and assessments under that section and those subsections as though

- references to a return of income were replaced with references to a return under section 102; and
- references to chargeable income were replaced with references to capital gains liable to charge under section 95.

PART VI—INTERPRETATION

Section 104—Definitions

- (1) In this Chapter, unless the context otherwise requires,
 - "amounts received or receivable" from the realisation of a chargeable asset means money and the market value of a property received or to be received in respect of the realisation;
 - "capital gain" with respect to the realisation of a chargeable asset means the amount computed in accordance with section 98;
 - "costs incurred" in acquiring ownership of a chargeable asset means money paid and the market value of a given property;
 - "owner" with respect to a chargeable asset means,
 - (a) in the case of an asset held by a partnership, the partners; and
 - (b) in the case of an asset held by a company or body of persons, that company or that body only;
 - "tax" means tax levied under this Chapter.
- (2) Section 34 applies for the purposes of this Chapter.

CHAPTER III

GIFT TAX

PART I—IMPOSITION OF TAX

Section 105—Imposition of Tax

- (1) Subject to subsection (2), gift tax at the rate specified in the Fourth Schedule is payable by a person on the total value of taxable gifts received by that person by way of gift within a year of assessment.
- (2) The total value referred to in subsection (1) does not include the value of a taxable gift received
 - a. by that person under a will or upon intestacy;
 - b. by that person from that person's spouse, child, parent, brother, sister, aunt, uncle, nephew, or niece; [*Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.14.*]
 - c. by a religious body which uses the gift for the benefit of the public or a section of the public; or
 - d. for charitable purposes. [*Amended by the Internal Revenue (Amendment) Act, 2003 (Act 644), s.2.*]

PART II—TAXABLE GIFT

Section 106—Taxable Gift.

- (1) In this Chapter "taxable gift" means
 - a. any of the following assets situated in Ghana:
 - i. building of a permanent or temporary nature,
 - ii. land,
 - iii. shares, bonds and other securities,
 - iv. money, including foreign currency,
 - v. business and business assets, and
 - vi. any means of transportation (land, air or sea),
 - vii. goods or chattels not included in subparagraph (vi),
 - viii. part of, or any right or interest in, to or over any of the assets referred to in subparagraphs (i) to (vii), or
 - b. an asset or a benefit, whether situated in Ghana or outside Ghana, received by a resident person as a gift by or for the benefit of that person, or
 - c. an asset whether, situated in Ghana or outside Ghana, received by or for the benefit of a resident person as a gift where the asset has been or is credited in an account or has been or is invested, accumulated, capitalised or otherwise dealt with in the name of or on behalf of or at the direction of that person, or
 - d. a favour in money or money's worth or a consideration for an act or omission or the forbearance of an act or omission that ensures for or to the benefit of a resident person.
- (2) For the purposes of paragraphs (b) and (c), "assets" means an asset referred to in subparagraphs (i) to (viii) of paragraph (a).
- (3) For the purpose of this section, it is immaterial whether or not that person physically received the asset so long as the act, omission or transaction inured or inures to the benefit of that person. [*Substituted by the Internal Revenue (Amendment) Act, 2003 (Act 644), s.3.*]

PART III—VALUATION

Section 107—Valuation

For the purposes of section 105, the value of a taxable gift is the market value of the gift at the time of the receipt.

PART IV—PROCEDURE RELATING TO GIFT TAX

Section 108—Returns and Payment of Tax

- (1) Subject to subsection (2), a person who receives a taxable gift shall, within thirty days of receipt, furnish the Commissioner with a return in writing containing the following information:
 - a. the description and location of the taxable gift;
 - b. the total value of the gift, how it is calculated and tax payable with respect to that gift;
 - c. the full name and address of the donor of the gift; and
 - d. any other information required by the Commissioner.
- (2) Subsection (1) does not apply where the gift referred to in that subsection together with any other taxable gifts received by that person during the same year of assessment does not exceed in total fifty currency points.
- (3) Where a person is required to furnish a return under subsection (1), that person shall remit to the Commissioner the amount of tax calculated as payable and the payment of tax is due at that time.

Section 109—Assessments and Application of Income Tax Procedure

- (1) Subject to subsection (2), the Commissioner shall, based on a person's return furnished under section 108 and on any other information available, make an assessment of the value of the taxable gift received by that person and the tax payable thereon within one year from the date the return is furnished.
- (2) Where section 78 applies to a person and that person furnishes a return under section 108, the Commissioner is deemed to have made an assessment of the value of the taxable gift received by that person and the tax payable on that assessment are those respective amounts shown in the return.
- (3) Except to the extent that they are inconsistent with section 108 and subsections (1) and (2) of this section, sections 72 to 79 shall apply, with the necessary modifications to give full effect to this Chapter, to returns and assessments under that section and those subsections as though
 - a. references to a return of income were replaced with references to a return under section 108; and
 - b. references to chargeable income were replaced with references to gifts liable to charge under section 105.

PART V—INTERPRETATION

Section 110—Definitions

- (4) In this Chapter, unless the context otherwise requires,
 - "aunt" means parent's sister;
 - "gift" with respect to the receipt of a taxable gift means a receipt without consideration or for inadequate consideration;
 - "nephew" or "niece" means child of a parent's sister or brother;

"tax" means tax levied under this Chapter;
"taxable gifts" has the meaning in section 106;
"total value" has the meaning in section 105; and
"uncle" means parent's brother.

- (5) For the purposes of this Chapter, an unincorporated body of persons is treated as having legal personality and receiving the beneficial interest in all taxable gifts received by it by way of gift.

CHAPTER IV

GENERAL PROVISIONS

PART I—INTERNATIONAL

Section 111—Double Taxation Arrangements

- (1) To the extent that the terms of an international arrangement which has been ratified by Parliament under article 75 of the Constitution are inconsistent with the provisions of this Act, apart from section 34, subsection (4) of this section, Part IX of Chapter I, and Part II of this Chapter, the terms of the international arrangement shall prevail over the provisions of this Act.
- (2) Where an international arrangement provides for reciprocal assistance in the collection of taxes and the Commissioner has received a request from the competent authority of another country pursuant to that arrangement for the collection from a person in Ghana of an amount due by that person under the tax laws of that other country, the Commissioner may, by notice in writing, require that person to pay the amount to the Commissioner by the date specified in the notice for transmission to the competent authority of that other country.
- (3) Where a person fails to comply with a notice under subsection (2), the amount in question may be recovered for transmission to the competent authority of that other country as if it were tax due and payable by that person under this Act.
- (4) Where an international arrangement provides that income accruing in or derived from Ghana or some other amount is exempt from Ghanaian tax or is subject to a reduction in the rate of Ghanaian tax, the benefit of that exemption or reduction is not available to a person who, for the purposes of the arrangement, is a resident of the other contracting state where fifty per cent or more of the underlying ownership of that person is held by an individual or individuals who are not residents of that other contracting state for the purposes of the arrangement.
- (5) The Minister responsible for Finance may make Regulations which are consistent with an international arrangement under section 114 for carrying out the provisions of that international arrangement.
- (6) In this section, "international arrangement" includes
 - a. an agreement with a foreign government providing for the relief of international double taxation and the prevention of fiscal evasion; and
 - b. an agreement with a foreign government providing for reciprocal administrative assistance in the enforcement of tax liabilities.

PART II—ANTI-AVOIDANCE

Section 112—General Anti-Avoidance Rule

- (1) For the purposes of determining liability to tax under this Act, the Commissioner may re-characterise 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. [*Substituted by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.16*].
- (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 III—PROCEDURE

Division I: Administration Subdivision A: Commissioner of Internal Revenue

Section 113—Commissioner of Internal Revenue

- (1) For the purposes of this Act, the Commissioner means the Commissioner of Internal Revenue appointed under the Internal Revenue Service Law, 1986 (P.N.D.C.L. 143).
- (2) The Commissioner shall be responsible for the administration of this Act and shall pay into the Consolidated Fund monies due to the Service under this Act unless otherwise provided under any other enactment. *[Substituted by the Revenue Agencies (Retention of Part of Revenue) Act, 2002 (Act 628), s.2(4).]*
- (3) Subject to subsection (4), the Commissioner 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 by this Act.
- (4) The Commissioner shall not delegate the power to
 - a. determine any matter or do anything required to be determined or done under subsection (4) of section 2 and subsection (2) of section 45;
 - b. exempt a person from the provisions of subsection (2) of section 84;
 - c. compound an offence under section 155, other than to the Solicitor of the Service; or
 - d. remit taxes, interest, or penalties under section 158;
- (5) Subject to subsection (4), the Commissioner may delegate to
 - a. any Deputy Commissioner or Assistant Commissioner of Internal Revenue and any Chief, Principal, or Senior Inspector of Taxes
 - i. the power to extend the date for payment of or vary the amount of instalments under section 80;
 - ii. this power of delegation other than with respect to matters referred to in subsection (4); and
 - iii. the authorisation of an officer under section 124 or 125; and
 - b. an officer appointed by the Service, including an officer referred to in paragraph (a), any functions conferred or imposed on the Commissioner under this Act which are not mentioned in subsection (4) or paragraph (a) of this subsection.

Subdivision B: Official Documentation

Section 114—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. exempting any person, class of person or income from tax;
 - c. amending a provision of the Schedules to this Act or any monetary amount set out in this Act; and
 - d. for the better carrying into effect of the provisions of this Act.
- (2) Without prejudice to the general effect of subsection (1), Regulations made under that subsection may
 - a. require a person or class of persons to deduct from an amount payable by that person or class of persons to any other person an amount calculated at the prescribed rate and pay that amount to the Commissioner;
 - b. require a person or class of persons to pay tax to the Commissioner for any year of assessment in amounts calculated at the prescribed rate; and
 - c. provide for the time of payment, manner of ascertaining, and recovery of the amounts referred to in paragraphs (a) and (b) and any other matter incidental to the matters referred to in those paragraphs.

Section 115—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 Internal Revenue Service, the Commissioner may issue practice notes setting out the Commissioner's interpretation of this Act.
- (2) A practice note is binding on the Commissioner until revoked.
- (3) A practice note is not binding on persons affected by this Act.

Section 116—Private Rulings

- (1) The Commissioner may, upon application in writing by a person, issue to that person a private ruling setting out the Commissioner's position regarding the application of this Act to that person with respect to a transaction proposed or entered into by that person.
- (2) Where a person issued with a ruling under subsection (1) makes, prior to issue of the ruling,
 - a. a full and true disclosure to the Commissioner 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 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.

Section 117—Forms and Notices

- (4) The Commissioner 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.
- (5) The Commissioner shall make the documents referred to in subsection (1) available to the public at the offices of the Internal Revenue Service and at other locations or by other medium determined by the Commissioner.

Section 118—Tax Clearance Certificate

- (1) An alien who has been resident in Ghana or who, not being a person so resident, has a tax liability due under this Act or has income which accrued in or was derived from Ghana with respect to which that alien is chargeable to tax under Chapter I, shall not depart from Ghana unless that alien produces to the immigration officer at the port of departure a tax clearance certificate.
- (2) The Commissioner of Customs, Excise and Preventive Service 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 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.
- (3) 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. [*Amended by the Internal Revenue (Amendment) Act, 2003 (Act 644), s.4 (a) (b)*].

(3.a.) 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 in respect of that person in the year of assessment in which the contract is to be awarded. [*Inserted by the Internal Revenue (Amendment) Act, 2003 (Act 644), s.4(c)*].

- (4) A tax clearance certificate issued under this section is valid for the period and for the purposes determined by the Commissioner.
- (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 certificate under this section, 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 section,
 - a. "immigration officer" has the meaning assigned to it in the Aliens Act, 1963 (Act 160); [*Amended by the Internal Revenue (Amendment) Act, 2006 (Act 700), s.8*]
 - b. "tax clearance certificate" means a certificate issued by the Commissioner 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 for the payment of the tax due.

Section 119—Tax Identification Number

- (1) For the purpose of identifying persons subject to tax under this Act, the Commissioner 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.

Section 120—Service of Notices and Other Documents

- (1) Unless otherwise provided in this Act, a notice or other document required or authorised by this Act to be served
 - a. on a person being a resident individual, other than in a representative capacity, is considered sufficiently served if
 - i. personally served on that person;
 - ii. left at that person's usual or last known place of abode, office, or place of business in Ghana; or
 - iii. sent by registered post to that place of abode, office, or place of business, or to that person's usual or last known address in Ghana; or
 - b. on any other person, is considered sufficiently served if
 - i. it is left at or sent by registered post to the registered office of that person or that person's address for service of notices under this Act; or
 - ii. where there is no such office or address, it is personally served on or sent by registered post to the usual or last known business or private address of a nominated officer of that person; or
 - iii. where there is no such office or address, it is left at or sent by registered post to the usual or last known business, office or other address of that person.
- (2) Where a notice or other document is served by registered post it shall be treated as served on the day after the day on which the addressee of the registered letter containing the notice would have been informed in the ordinary course that the letter is available.

- (3) A notice or other document issued, served, or given by the Commissioner under this Act is sufficiently authenticated if the name or title of the Commissioner, or authorised officer, is signed or written on the notice or document.
- (4) In this section,

"nominated officer",
 - a. in the case of a partnership, means a partner or manager of the partnership;
 - b. in the case of a company, means a director or manager of the company; and
 - c. in the case of a body of persons, means a manager of the body; "person" includes a partnership.

Section 121—Document Containing a Mistake

- (1) Where the Commissioner is satisfied that a document issued by the Commissioner contains a mistake that does not involve a dispute as to the interpretation of this Act or facts of a particular case, the Commissioner may, for the purposes of rectifying the mistake, amend the document any time before the expiry of two years from the date of issuing the document.
- (2) In this section, "document" includes an assessment, ruling, notice, or certificate.

Subdivision C: Records and Information Collection

Section 122—Accounts and Records

- (1) Unless otherwise authorised by the Commissioner, a person liable to tax under this Act other than an employee with respect to his employment income 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 under this Act or to enable an accurate determination of the tax payable by that person.
- (2) Where a person does not maintain records as required by subsection (1), the Commissioner 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 section shall be retained for a period of not less than six years unless the Commissioner otherwise specifies in writing.
- (4) For the purposes of this section, 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.

Section 123—Currency Conversion

- (1) Amounts taken into account under this Act shall be calculated in cedis.
- (2) Where an amount taken into account under this Act is in a currency other than cedis, the amount shall be converted to cedis at the Bank of Ghana Inter-Bank Exchange rate applying between the currency and the cedi on the date that the amount is accrued, derived, incurred, or otherwise taken into account for tax purposes.
- (3) Notwithstanding subsections (1) and (2)
 - a. The Commissioner may in writing request a person; or
 - b. a person may, with the written approval of the Commissioner and subject to such conditions as the Commissioner may determine, be permitted to take any amount into account under this Act in a currency other than cedis.
- (4) The Commissioner shall in exercising the discretion under subsection (3) take into consideration the volume of purchases or loans usually made or contracted by that person from foreign sources in respect of that business.

- (5) The Commissioner may, by notice in writing, revoke an approval granted any person under subsection (3) if that person fails to comply with any of the conditions attached to the approval. [Inserted by the Internal Revenue (Amendment) Act, 2003 (Act 644), s.5].

Section 124—Access to Books, Records, and Computers

- (1) For the purposes of administering this Act, the Commissioner, or an officer authorised in writing by the Commissioner,
 - a. shall have at all times and without any prior notice full and free access to any premises, place, property, book, record, or computer;
 - b. may make an extract or copy from any book, record, or computer-stored information to which access is obtained under paragraph (a);
 - c. may seize any book, record, or other document that, in the opinion of the Commissioner 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 computer disk of information stored on a computer is not provided, seize and retain the computer for as long as is necessary to copy the information required; and
 - f. and 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 and the officer shall produce the authorisation to the occupier of the premises or place to which the exercise of powers relates.
- (3) For the purposes of this section, the Commissioner may request the Inspector-General of Police for the requisite assistance for a specific assignment.
- (4) The occupier of the premises or place to which an exercise of powers under subsection (1) relates shall provide all reasonable facilities and assistance for the effective exercise of the powers.
- (5) A person whose books, records, or computer have been removed and retained under subsection (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.
- (6) All records, books, or computers removed and retained under sub-section (1) shall be signed for by the Commissioner or an authorised officer and the Commissioner shall return them to the owner as soon as is practicable after the Commissioner's investigation of that person's affairs and any related proceedings have been concluded.
- (7) This section 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.
- (8) In this section, "occupier" in relation to premises or a place includes the owner, manager, or any other person on the premises or place.

Section 125—Notice to Obtain Information or Evidence

- (1) The Commissioner 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 or by an officer authorised by the Commissioner, concerning the tax affairs of that person or any other person and, for that purpose, the Commissioner 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 computer-stored information, it is sufficient if the book, record, or computer-stored information is described with reasonable certainty in the notice.
- (3) A person to be examined on oath under paragraph (b) of subsection (1) is entitled to legal or other representation throughout the examination.
- (4) A notice issued under this section shall be served by, or at the direction of, the Commissioner 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 section has effect notwithstanding any rule of law or enactment in relation to the production of, or access to, the documents.

Section 126—Books and Records Not in English Language

Where a book, record, or computer-stored information referred to in section 122, 124, or 125 is not in English, the Commissioner may, by notice in writing, require the person keeping the book, record, or computer-stored information to provide, at that person's expense, a translation into English by a translator approved by the Commissioner.

Section 127—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 section 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
 - 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 subsection (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. *[Amended by the Internal Revenue (Amendment) Act, 2006 (Act 700), s.9]*

Division II: Dispute Resolution

Subdivision A: Objections and Appeals

Section 128—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 within thirty days of the service of the notice of assessment or, in the case of a provisional assessment under section 76, within nine months of the commencement of the basis period to which the provisional assessment relates.

- (2) An objection to an assessment shall be in writing and state precisely the grounds upon which it is made.
- (3) The Commissioner may, upon application in writing by an objector, extend the time for lodging an objection where the Commissioner 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 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 shall serve the objector with notice of the decision.
- (6) Where a decision has not been made by the Commissioner within ninety days after the objection was lodged with the Commissioner, the objector may, by notice in writing to the Commissioner, elect to treat the Commissioner as having made a decision to disallow the objection.
- (7) Where an objector makes an election under subsection (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.

Section 129—Appeal to Court

- (1) A person dissatisfied with an objection decision may appeal against the decision to the High Court.
- (2) An appeal under subsection (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 subsection (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 subsection (2) or (3) shall, within five working days of doing so, serve a copy of the notice of appeal on the Commissioner.
- (5) The High Court may confirm, reduce, increase or annul the assessment on which the decision is based or make an appropriate order.
- (6) An appeal against a decision of the Commissioner shall be instituted against the Attorney-General in accordance with article 88(5) of the Constitution.

Section 130—Appeal to Court of Appeal and Supreme Court

- (1) The Commissioner or the appellant may appeal against the decision of the High Court made under subsection (5) of section 129 to the Court of Appeal on a matter of law only.
- (2) An appeal against a decision of the Court of Appeal under subsection (1) shall lie as of right to the Supreme Court.
- (3) An appeal under subsection (1) or (2) shall be made within thirty days after the decision to which it pertains.

Section 131—Payment of Tax

- (1) Where a person has lodged a notice of objection to a notice of assessment under section 128 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. [Substituted by the Internal Revenue (Amendment) Act, 2006 (Act 700), s.10]
- (2) An application, action, or appeal shall not be entertained by a Court in respect of an objection under section 128 unless the person to whom the decision relates has paid

the amount specified under subsection (1) of this section. [Amended by the Internal Revenue (Amendment) (No. 2) Act, 2006 (Act 710), s.2]

- (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 or objection on appeal shall be payable within thirty days from the date of service of the notice of the decision of the Commissioner 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 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. [Amended by Internal Revenue (Amendment) Act, 2004 (Act 669), s.2].

Subdivision B: Proof

Section 132—Burden of Proof

In an objection to an assessment or on an appeal, under section 129 or 130, the onus is on the person assessed to prove, on the balance of probabilities, the extent to which the assessment made by the Commissioner is excessive or erroneous.

Section 133—Documents

- (1) A document purporting to be made, issued, or executed under this Act
 - a. shall not be quashed or deemed to be void or voidable for want of form; or
 - b. shall not be affected by reason of any mistake, defect, or omission in the document, if it is, in substance and effect, in conformity with this Act and the person assessed or intended to be assessed or affected by the document is designated in it according to common intent and understanding.
- (2) In subsection (1), "document" includes an assessment, ruling, notice, or certificate.
- (3) Where the Commissioner or an authorised officer makes a copy of a book, record, or computer-stored information or part of it under paragraph (b) of subsection (1) of section 124 and the copy is certified by the Commissioner 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.

Division III: Compliance

Subdivision A: Collection

Section 134—Due Date and Payment of 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) Subject to this Act, tax due in an assessment shall be paid by the person assessed,
 - a. in the case of a person subject to section 78, on the due date for furnishing of the return of income to which the assessment relates;
 - b. in the circumstances specified in subsection (7) of section 72, on the date specified in the assessment;
 - c. in the case of tax payable by instalments or by withholding, at the time provided for in Division III of Part X of Chapter I; or

- d. in any other case, within thirty days from the date of service of the notice of assessment.
- (3) Upon written application by the person assessed, the Commissioner may, where good cause is shown, allow for the payment of tax
 - a. due on assessment, or
 - b. due by way of payment under subsection (4) of section 102 or subsection (3) of section 108, by instalments of equal or varying amounts as the Commissioner may determine having regard to the circumstances of the case.
- (4) Where tax is permitted to be paid by instalments under subsection (3) and there is default in the payment of an instalment, the whole balance of the tax outstanding shall become immediately payable.
- (5) Permission under subsection (3) to pay tax by instalments does not preclude a liability for interest arising under section 143 on the unpaid balance of the tax due.

Section 135—Tax as a Debt Due to the Service

- (1) Tax, when it becomes due and payable, is a debt due to the Service and is payable to the Commissioner 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 with full costs of suit from the person sued.

Section 136—Collection of Tax by Distress

- (1) The Commissioner 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 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 subsection (1), the Commissioner 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 section, 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 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 considers reasonable having regard to the condition of the goods, or
 - b. in any other case, within ten days after the distress is levied, the property distrained may be sold by public auction or in any other manner directed by the Commissioner.
- (5) The proceeds of a disposal under subsection (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 section shall preclude the Commissioner from proceeding under section 135 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 in respect of any distress may be recovered by the Commissioner 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 section shall be identified by the pasting or hanging of a piece of ribbon or cloth determined by the Commissioner to or on a conspicuous place of the property.

Section 137—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 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 section 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 subsection (1), the Commissioner may, by notice in writing, in this section 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 subsection (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 subsection (3), the Commissioner shall serve notice on the Chief Registrar cancelling the direction made under subsection (2) and the Chief Registrar shall, without fee, record the cancellation at which time the direction shall cease to have effect.

Section 138—Recovery of Tax from Person Owing Money to Tax Debtor

- (1) Subject to subsection (2), where a person, referred to as the "tax debtor", has not paid tax which is due, the Commissioner 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 tax debtor, to pay the money to the Commissioner on the date set out in the notice, up to the amount of tax due.
- (2) The Commissioner may only issue a notice under subsection (1) with respect to tax which is due but not currently payable where the Commissioner 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 subsection (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 subsection (1), the Commissioner shall also serve a copy of the notice on the tax debtor.
- (5) Where a person served with a notice under subsection (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 accordingly in writing setting out the reasons for the inability to comply.
- (6) Where a notice is served on the Commissioner under subsection (5), the Commissioner may, by notice in writing,
 - a. accept the notification and cancel or amend the notice issued under subsection (1); or
 - b. reject the notification.
- (7) A person dissatisfied with a decision under subsection (6) may only challenge the decision under the objection and appeal procedure in Division II.
- (8) A person making a payment pursuant to a notice under subsection (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 section as if it were tax due and payable.

Section 139—Duties of Receivers

- (1) A receiver shall, in writing, notify the Commissioner 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 may, in writing, notify a receiver of the amount which appears to the Commissioner 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 under subsection (3), or the lesser amount subsequently agreed to by the Commissioner; 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.
- (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 under subsection (3) shall become a debt due to the Service 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.

Section 140—Recovery from Agent of Non-Resident

- (1) The Commissioner 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 42 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 49 is assessable in the name of the trustee and may be recovered out of the assets of the trust or from the trustee personally.
- (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 Division apply to an amount due under this section as if it were tax due and payable.

Subdivision B: Interest and Penalties

Section 140—Recovery from Agent of Non-Resident

- (1) The Commissioner 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 42 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 49 is assessable in the name of the trustee and may be recovered out of the assets of the trust or from the trustee personally.
- (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 Division apply to an amount due under this section as if it were tax due and payable.

Subdivision B: Interest and Penalties

Section 141—Failure to Maintain Records

A person who deliberately fails to maintain proper records for a year of assessment in accordance with section 122 is liable to pay a penalty equal to 5% of the amount of tax payable by that person for the year.

Section 142—Failure to Furnish Return

Any company or self-employed person that fails to furnish a return of income within the time required under this Act is liable to pay a penalty of one penalty unit in the case of a company and half a penalty unit in the case of a self employed person in respect of each day during which the default continues. [Substituted by Internal Revenue (Amendment) Act, 2004 (Act 669), s.3]

Section 143—Failure to Pay Tax on Due Date

- (1) Subject to subsection (2) a person who 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 is liable

- a. in a case where the failure is for a period of not more than three months to pay a sum equal to 10% of the tax payable in addition to the tax unpaid;
 - b. in a case where the failure is for a period exceeding three months to pay a penalty equal to 20% of the tax payable in addition to the tax unpaid.
- (2) Where a person fails to pay any tax which that person is required under this Act to withhold and pay to the Commissioner on the due date, that person is liable
- a. in a case where the failure is for a period of not more than three months to pay a penalty equal to 20% of the tax payable in addition to the tax unpaid;
 - b. in a case where failure is for a period exceeding three months to pay a penalty equal to 30% of the tax payable in addition to the tax unpaid.
- (3) If any person without reasonable excuse fails to pay the tax and penalty imposed under subsections (1) and (2) after notice has been served on that person in accordance with section 147 (4) of this Act, the Commissioner may direct that such a person shall pay in addition a penalty of a sum equal to 5% of the total of the outstanding tax and penalty imposed under those sub-sections for every month during which the default continues.
- (4) Interest or penalty charged or imposed in respect of a failure to comply with any provision of sections 81 to 87 is borne personally by the withholding agent and no part of it is recoverable from the person who received the payment from which tax was or should have been withheld. [Substituted by Internal Revenue (Amendment) Act, 2004 (Act 669), s.4).

Section 144—Understating Estimated Tax Payable by Instalment

A person to whom section 78 applies and whose estimate or revised estimate of chargeable income for a year of assessment under that section is less than ninety per cent of the person's actual chargeable income assessed for that year is liable to pay a penalty equal to thirty per cent of the difference between the tax calculated in respect of that person's estimate or revised estimate of chargeable income and the tax calculated in respect of ninety per cent of that person's actual chargeable income for the year.

Section 145—Making False or Misleading Statements

- (1) A person who,
- a. makes a statement to an officer of the Service that is false or misleading in a material particular, or
 - b. omits from a statement made to an officer of the Service 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 Service 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;
 - b. in information required to be furnished under this Act;
 - c. in a document furnished to an officer of the Service otherwise than pursuant to this Act;
 - d. in answer to a question asked of a person by an officer of the Service; or to another person with the knowledge or reasonable expectation that the statement would be conveyed to an officer of the Service.

Section 146—Aiding and Abetting

A person who aids or abets another person to commit an offence of a type referred to under Subdivision C, 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.

Section 147—Assessment of Interest and Penalties

- (1) The Commissioner shall make an assessment of the interest and penalties for which a person is liable under this Subdivision.
- (2) Liability for interest and penalties under this Subdivision is calculated separately with respect to each section of this Subdivision.
- (3) The imposition of interest and penalties under this Subdivision is in addition to any other tax imposed by this Act or fine imposed as a result of conviction of an offence under Subdivision 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 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.

Subdivision C: Offences

Section 148—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 five hundred currency points, to a fine of not less than fifty penalty units and not more than three hundred penalty units; and
- (3) in any other case, to a fine of not less than ten penalty units and not more than one hundred penalty units. *[Amended by Internal Revenue (Amendment) Act, 2004 (Act 669), s.5(a) and (b)].*

Section 149—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 one hundred currency points to a fine of not less than twenty-five penalty units and not more than one hundred 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 five penalty units and not more than twenty-five penalty units or imprisonment for a term of not less than one month and not more than three months, or both.

Section 150—Making False or Misleading Statements

- (1) A person who,
 - a. makes a statement to an officer of the Internal Revenue Service that is false or misleading in a material particular, or
 - b. omits from a statement made to an officer of the Internal Revenue Service 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,
 - i. 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 twenty-five penalty units and not more than one hundred penalty units or imprisonment for a term of not less than three months and not more the one year, or both; and
 - ii. in any other case, to a fine of not less than five penalty units and not more than twenty-five 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 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
 - ii. 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.
- (2) A reference in this section to a statement made to an officer of the Service has the same meaning as in subsection (2) of section 145.

Section 151—Impeding Tax Administration

- (1) A person who without reasonable excuse,
 - a. obstructs or attempts to obstruct an officer of the Internal Revenue Service in the performance of duties under this Act, or
 - b. otherwise impedes or attempts to impede the administration the Act, commits an offence and is liable on summary conviction to a fine of not less than twenty-five penalty units and not more than two hundred penalty units or imprisonment for a term of not more than two years, or both.

(2) Section 152—Offences by Authorised and Unauthorised Persons

- (3) 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
 - 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.
- (4) A person who contravenes section 127 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.

Section 153—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 (a) or (b) of subsection (1) of section 150 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.

Subdivision D: Entities

Section 154—Offences by Entities

- (1) Subject to subsection (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 subsection (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 for the amount.
- (3) Subsections (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 with respect to a liability under subsection (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.
- (5) In subsections (1) and (2), "manager" means,
 - a. in the case of a partnership, a partner or manager of the partnership or a person purporting to act in either of those capacities;
 - b. in the case of a company, a director, manager, or officer of the company or a person purporting to act in any of those capacities; and
 - c. in the case of a body of persons, a manager or a person purporting to act in that capacity.

Subdivision E: Proceedings

Section 155—Compounding Offences

- (1) Where a person commits an offence under this Act, other than of a kind referred to in section 152, the Commissioner 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, not exceeding the amount of the fine prescribed for the offence.
- (2) The Commissioner 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 compounds an offence under this section, the order referred to in subsection (1)
- (4) 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);
 - a. shall be served on the person who committed the offence;
 - b. shall be final and not subject to an appeal; and
 - c. 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.
- (5) Where the Commissioner compounds an offence under this section, the person concerned is not liable for prosecution or a penalty under Subdivisions B or C in respect of that offence.

Section 156—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 having primary responsibility for that person's affairs under this Act is situated.

Section 157—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.

In proceedings under this Division, the production of a certificate signed by the Commissioner 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

Section 158—Remission

- (1) Where the Commissioner 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 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 Subdivision B, the Commissioner 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 Subdivision 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.

Section 159—Refunds and Set-off

- (1) Where the Commissioner 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 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 Service under this Act; and
 - b. refund the remainder to that person within three months of becoming satisfied.
- (2) Interest paid by a person under section 143 shall be refunded to that person to the extent that the tax to which the interest relates is found not to have been due and payable.
- (3) Where the Commissioner is required to refund an amount of tax to a person as a result of a decision of a court under Subdivision A of Division II, the Commissioner 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. *[Amended by Internal Revenue (Amendment) Act, 2004 (Act 669), s.6]*
- (4) Without limiting subsection (1), a person may apply for a refund under this section and the application shall be made to the Commissioner in writing within six years of the later of
 - a. the date on which the Commissioner 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 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 Subdivision A of Division II as though the decision were an assessment.
- (7) For the purposes of paragraph (b) of subsection (1), the Commissioner 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 IRS Account out of which refunds due under this Act may be made after certification by the Commissioner. *[Inserted by the Internal Revenue (Amendment) Act, 2003 (Act 644), s.6].*

PART IV—INTERPRETION

Division I: Residence

Section 160—Resident Individual

- (1) Subject to subsections (2) and (3), an individual is a resident individual for a year of assessment if that individual is
 - a. a citizen of Ghana, other than a citizen who has a permanent home outside Ghana for the whole of the year of assessment;

- b. present in Ghana for a period, or periods amounting in aggregate to, 183 days or more in any twelve-month period that commences or ends during the year of assessment;
 - c. an employee or official of the Government of Ghana posted abroad during the year of assessment; 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) An individual who is a resident individual under subsection (1) for a year of assessment (referred to in this section as the "current year of assessment"), but who was not a resident individual for the preceding year of assessment is treated as a resident individual in the current year of assessment only for the period commencing on the day that individual was first present in Ghana.
- (3) An individual who is a resident individual for the current year of assessment, but who is not a resident individual for the following year of assessment is treated as a resident individual in the current year of assessment only for the period ending on the last day on which the individual is present in Ghana during the current year.

Section 161—Resident Company

- (1) A company is a resident company for a year of assessment if it is
- a. incorporated under the laws of Ghana, or
 - b. has its management and control exercised in Ghana at any time during the year of assessment.

Section 162—Resident Body of Persons

- (1) A body of persons is a resident body of persons for a year of assessment if it
- a. is established in Ghana,
 - b. has a resident person as a manager at any time during the year of assessment, or is controlled directly or indirectly by a resident person or persons at any time during the year of assessment.

Section 163—Resident Partnership

A partnership is a resident partnership for a year of assessment if, at any time during the year of assessment, any partner in the partnership is a resident person.

Division II: General Definitions

Section 164—Associate

- (1) For the purposes of this Act, where 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, both persons are treated as associates of each other.
- (2) Without limiting the generality of subsection (1), the following are treated as associates of each other:
- a. an individual and a relative of the individual, unless the Commissioner is satisfied that neither individual acts in accordance with the directions, requests, suggestions, or wishes of the other individual;
 - b. a person and a partner of that person, unless the Commissioner is satisfied that neither person acts in accordance with the directions, requests, suggestions, or wishes of the other person; and

- c. a person who is an entity and
 - i. a person who, either alone or together with an associate or associates under another application of this section, controls or may benefit from fifty per cent or more of the rights to income or capital or voting power of the entity, as the case requires, either directly or through one or more interposed entities; or
 - ii. a person who, under another application of this section, is an associate of a person to whom subparagraph (i) applies.

Section 165—Calculation of Amounts

- (3) With respect to an amount of tax payable under this Act
 - a. a part of a cedi which is less than one-half of a cedi shall not be taken into account; and
 - b. a part of a cedi equal to or more than one-half of a cedi shall be reckoned as one cedi.
- (4) For the purposes of this Act, one currency point is equivalent to ten thousand cedis.
- (5) In this Act a penalty unit has the meaning assigned to it under the Fines (Penalty Units) Act, 2000 (Act 572).

Section 166—Underlying Ownership

In this Act, "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.

Section 167—Definitions

In this Act, unless the context otherwise requires,

"asset" means any kind of property or any legal or equitable right and includes goodwill and a part of an asset;

"associate" has the meaning in section 164;

"best judgement" in relation to the assessment of a chargeable income by the Commissioner means the discretion of the Commissioner to make an assessment in the absence of returns or in cases where the returns are incomplete or are rejected by the Commissioner;

"body of persons" means a body of persons corporate or unincorporated, whether created or recognised under a law in force in Ghana or elsewhere, and includes

- (a) a trust, including an estate of a deceased individual and an incapacitated person's trust, but not including a unit trust,
- (b) a co-operative, and
- (c) a government, a political subdivision of a government, and a public international organisation, but does not include a company or partnership;

"business" includes any trade, profession, or vocation, but does not include employment;

"chargeable asset" has the meaning in section 97;

"Commissioner" has the meaning in section 113;

"company" means a company or corporation incorporated in Ghana or elsewhere;

"consideration received", in relation to the realisation of a chargeable or depreciable asset has the meaning in section 100;

"cost base", in relation to a chargeable or depreciable asset, has the meaning in section 99;

"Constitution" means the Constitution of the Republic of Ghana;

"Court" means a court of competent jurisdiction;

"debt obligation" means an obligation to make a repayment of money to another person, including accounts payable and the obligations arising under deposits, debentures, stocks, treasury bills, promissory notes, bills of exchanges and bonds;

"depreciable asset" means any asset of the kind and class referred to in paragraph 2 of the Third Schedule of Chapter I;

"endorsement fee" means a payment made to a person for recommending a product in an advertisement launched to promote the sales of a new product or to promote sales at the expense of a competing product whether in electronic, print media or other wise;

"entity" means a company, body of persons or partnership;

"executor" includes any executor, administrator, or other person administering the estate of a deceased person;

"functions" includes powers and duties;

"incapacitated person" means an individual under the age of eighteen years and an individual who by reason of mental illness or insanity is incapable of managing her or his affairs;

"interest" includes

- (a) any payment, including of a discount or premium, made under a debt obligation which is not a return of capital;
- (b) any swap or other payments functionally equivalent to interest;
- (c) any commitment, guarantee, or service fee paid in respect of a debt obligation or swap agreement; or
- (d) a distribution by a building society;

"Internal Revenue Service" means the body established under the Internal Revenue Service Law, 1986 (P.N.D.C.L. 143);

"monthly basic salary" means the income represented by the monthly salary paid to an employee and applicable to the grade, rank or position of that employee without the addition of any allowance or benefit paid in cash or given in kind to that employee or applicable to the grade, rank or position of that employee. *[Inserted by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.17]*

"mutual fund" means a public or external company incorporated solely to hold and manage securities or other financial assets and which has made satisfactory arrangements for ensuring that if an invitation is made to the public to subscribe for its shares the price at which the shares are offered shall be based on the net value of its assets at the time of the offer with no addition except for a reasonable charge subject to the proviso to section 37(1) (b) of the Securities Industry Law, 1993 (P.N.D.C.L. 333) and is willing at any time to repurchase any of its shares from the holder at a price based on the net value of its assets at the time of the repurchase without any deduction except for a reasonable service charge;

"partnership" means an association of two or more individuals carrying on business jointly for the purpose of making profit;

"payment" includes an amount paid or payable in cash or kind, and any other means of conferring value or benefit on a person;

"permanent establishment" means a place where a person carries on business, and a place where a person carries on business through an agent, other than a general agent of independent status acting in the ordinary course of business as such;

a place where a person has, is using, or is installing substantial equipment or machinery; or a place where a person is engaged in a construction, assembly, or installation project for ninety days or more, including a place where a person is conducting supervisory activities in relation to such project;

"person" means an individual, a company, or a body of persons;

"realisation", in relation to a chargeable or depreciable asset, has the meaning in section 96;

"resident body of persons" has the meaning in section 162;

"resident company" has the meaning in section 161;

"resident individual" has the meaning in section 160;

"resident partnership" has the meaning in section 163;

"resident person" means a resident individual, resident company, resident body of persons, the Government of Ghana, or a political subdivision of the Government of Ghana;

"Service" means the Internal Revenue Service established under the Internal Revenue Service Law, 1986 (PNDCL. 143);

"tax" means any tax imposed under this Act and

amounts payable under Subdivision A and B of Division III of Part X of Chapter I;

amounts payable under Subdivisions B, C, and D of Division III of Part III of this Chapter; and

amounts payable under sections 67, 102, and 108;

"trust" means an arrangement affecting property in relation to which there is a trustee;

"trustee" includes

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

(f) an executor, administrator, tutor, or curator;

(g) a liquidator, receiver, trustee in bankruptcy or judicial manager;

(h) a person having the administration or control of property subject to a trust, usufruct, fideicommissum, or other limited interest;

(i) a person acting in a fiduciary capacity;

(j) a person having, either in a private or official capacity, the possession, direction, control, or management of any property of an incapacitated person; or

(k) a person who manages assets under a private foundation or other similar arrangement;

"underlying ownership" has the meaning in section 166;

"unit trust" means an arrangement whereby securities or any other charge, other than a charge to secure the debentures of one body corporate are vested in trustees and the beneficial interest in it is divided into units, sub-units, or other interests by whatever name called with a view to an invitation being made to the public to acquire those units or any of them; and

"year of assessment" has the meaning in section 24.

PART V—REPEALS TRANSITIONAL PROVISIONS AND COMMENCEMENT

Section 168—Repeals

- (2) The following enactments or parts of enactments and Regulations made under those enactments are repealed:
 - a. Income Tax Decree, 1975 (S.M.C.D. 5),
 - b. Capital Gains Tax Decree, 1975 (N.R.C.D. 347),
 - c. Gift Tax Decree, 1975 (N.R.C.D. 348),
 - d. section 23, section 26, and paragraph (b) of section 27 of the Minerals and Mining Law, 1986 (P.N.D.C.L. 153),
 - e. Additional Profit Tax Law, 1985 (P.N.D.C.L. 122),
 - f. section 32 of the Social Security Law, 1991 (P.N.D.C.L. 247.)
- (3) A right or privilege acquired by a person under a repealed enactment ceases to exist on the date this Act comes into effect unless it is expressly provided in section 169 or in Regulations made under section 114 that the right or privilege is to remain in existence.

Section 169—Transitional Provisions

- (1) The repealed enactments continue to apply to years of assessment prior to the year of assessment in which this Act comes into operation.
- (2) All appointments and authorisations made under the repealed enactments and subsisting at the date of commencement of this Act are deemed to be appointments and authorisations made under this Act.

- (3) Any arrangements between the Government of Ghana and the Government of a foreign country with a view to affording relief from double taxation made under section 20 of the Income Tax Decree, 1975 (S.M.C.D. 5) or its predecessor and which is still in force at 1st January 2001 continues to have effect under section 111 of this Act.
- (4) All forms and documents used in relation to the repealed enactment may continue to be used under this Act, and all references in those forms and documents to provisions of and expressions appropriate to the repealed enactment are taken to refer to the corresponding provisions and expressions of this Act.
- (5) A reference in this Act
 - a. to a previous year of assessment includes, where the context requires, is a reference to a year of assessment under the repealed enactment; and
 - b. this Act or to a provision of this Act includes, where the context requires, a reference to the repealed enactment or to a corresponding provision of the repealed enactment, respectively.
- (6) Subdivision C of Division I (relating to records and information collection), Subdivision A of Division II (relating to objections and appeals), and Subdivision A of Division III (relating to collection) of Part III apply with respect to assessments made on or after 1st January 2001.
- (7) Subdivision B (relating to interest and penalties), Subdivision C (relating to offences), and Subdivision D (relating to entities) of Division III of Part III apply to tax due and to offences committed on or after 1 January 2001.
- (8) A person that has been granted approval to change the person's accounting period to a period of twelve months other than the calendar year under subsection (6) of section 11 of the Income Tax Decree, 1975 (S.M.C.D. 5) may use that period as the person's basis period under this Act unless the Commissioner determines otherwise under subsection (4) of section 24 of this Act.
- (9) The Minister responsible for Finance may make Regulations under section 114 with respect to transitional measures related to the implementation of this Act.

Section 170—Commencement

Subject to section 169 this Act shall come into force for years of assessment commencing on or after 1st January 2001.

SCHEDULES

FIRST SCHEDULE

RATES OF INCOME TAX

PART I: RATES OF INCOME TAX UPON INDIVIDUALS

Section 1(2)

- (1) The income tax rates applicable to resident individuals are:

CHARGEABLE INCOME			RATE OF TAX
Graduation	¢	GH¢	Percentage
First	2,400,000	240	Free
Next	2,400,000	240	5%
Next	12,000,000	1200	10%
Next	79,200,000	7920	17.50%
Exceeding	96,000,000	9600	25%

[Substituted by Internal Revenue (Amendment) Act, 2004 (Act 669), s.7(a)]

- (2) The income tax rate applicable to non-resident individuals is 20%.

PART II: RATES OF INCOME TAX UPON COMPANIES

Section 1(2)

- (1) Subject to paragraphs 3, 4 and 5 the income tax rates applicable to companies (other than a company principally engaged in the hotel industry) are: *[Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.18(a)]*

Nature of Income	Rate of Income Tax (for every cedi)
Income from the export of non-traditional goods and income of rural banks	8%
Other income	32.5%

- (2) The income tax rate applicable to a company principally engaged in the hotel industry is 25%.
2.a. The income tax rate applicable to the chargeable income of a company referred to in sections 11 (2a) and 11 (2b) after the five year tax holiday is

LOCATION	RATE OF INCOME TAX
Accra and Tema	20%
Other Regional Capitals except Northern, Upper East and Upper West	10%
Northern, Upper East and Upper West Regions	0%
Outside other Regional Capitals	0%

The above rates schedule shall apply to agro processing businesses in existence before the financial year commencing 1st January 2004 that use local raw agricultural products as their main inputs other than businesses which process raw cocoa beans. *[Inserted by Internal Revenue (Amendment) Act, 2004 (Act 669) s.7(b)]*

- (3) The income tax rate applicable to 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 20%.
- (4) The income tax rate applicable to 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 20%.
- (5) The income tax rate applicable to a company listed on the Ghana Stock Exchange is 30%.
a. The income tax rate applicable to a company fully listed on the Ghana Stock Exchange in or after the financial year commencing 1st January 2004 shall be 25% for the first three years. *[Inserted by Internal Revenue (Amendment) Act, 2004 (Act 669), s.7(c)]*

- (6) The income tax rate applicable to a company's chargeable income "from a manufacturing business not included in subsections (2a) and 2(b) of section 11. [*Amended by Internal Revenue (Amendment) Act, 2004 (Act 669), s.7 (d)*]

Location	Rate of Income Tax
Manufacturing business located in regional capitals of Ghana	75% of the rate of income tax applicable to other income under paragraph 1
Manufacturing business located elsewhere in Ghana	50% of the rate of income tax applicable to other income under paragraph 1

[*Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.18(c)*]

- (7) In this Part, "non-traditional goods" means
- a. horticultural products;
 - b. processed and raw agricultural products grown in Ghana, other than cocoa beans;
 - c. wood products, other than lumber and logs;
 - d. handicrafts; and
 - e. locally manufactured goods

PART III: RATE OF TAX APPLICABLE TO BODIES OF PERSONS

Section 1(2)

The income tax rate applicable to bodies of persons is 32.5%.

PART IV: WITHHOLDING TAX RATES ON PAYMENTS TO RESIDENT PERSONS

Sections 2, 82, 83, & 84

- (1) The rate of withholding tax applicable to interest payments to a resident person under section 82 is 10%.
- (2) The rate of tax applicable to dividends paid to a resident person under paragraph (a) of subsection (1) of section 2 and the rate of withholding tax applicable to such dividends paid under section 83 is 10%.
- (3) The rate of withholding tax applicable to payments under paragraph (b) of subsection (1) of section 2 and section 84 is
 - a. in a case in which paragraphs (a) to (d) of subsection (1) of section 84 apply, 15%;
 - b. in a case in which paragraph (e) of subsection (1) of section 84 applies, 7½%;
 - c. in a case in which subsection (2) of section 84 applies, 5%.

PART V: RATE OF NON-RESIDENT TAX

Sections 3 (2) & 85

The rate of tax applicable to a payment to a non-resident person or partnership under subsection (2) of section 3 and the rate of withholding tax applicable to such a payment under section 85 is

- d. in the case of dividends and interest, 10%; and
- e. in the case of royalties, natural resource payments, and rents, 15%.

- f. in the case of endorsement fees or management and technical service fees, 20%.*[Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.18(d)]*

PART VI: BRANCH PROFITS TAX

Section 66

The rate of tax applicable to a non-resident person under section 66 is 10%.

PART VII: TRANSPORTATION AND COMMUNICATIONS INCOME OF A NON-RESIDENT PERSON

Section 67

The rate of tax applicable to a non-resident person under section 67 is 15%.

PART VIII: WITHHOLDING OF TAX ON PAYMENTS TO NON-RESIDENTS FOR GOODS AND SERVICES

The rate of tax applicable to non-residents under section 86 is 20%.

SECOND SCHEDULE

ACCOMMODATION AND VEHICLES

Sections 8(2) & 53(2)

- (1) The allowances and benefits referred to in subsection (2) of section 8 and subsection (2) of section 53 shall be determined in accordance with the following tables:

TABLE A: ACCOMMODATION

Facility Provided	Value to be Added for Tax Purposes
(a) Accommodation with furnishing	15% of the person's total cash emoluments
(b) Accommodation only	10% of the person's total cash emoluments
(c) Furnishing only	5% of the person's total cash emoluments
(d) Shared accommodation	5% of the person's total cash emoluments

TABLE B: VEHICLES

Facility Provided	Value to be Added for Tax Purposes
(a) Vehicle with fuel	15% of the person's total cash emoluments up to a maximum of ₦300,000.00 per month
(b) Vehicle only	7.5% of the person's total cash emoluments up to a maximum of ₦150,000.00 per month
(c) Fuel only	7.5% of the person's total cash emoluments up to a maximum of ₦150,000.00 per month

- (2) In this Schedule, a person's "total cash emoluments "means the total of all income derived by the person during the year of assessment from any and all employment and the total of any amount required to be included in that person's income under section 53 as may be applicable.

THIRD SCHEDULE

CAPITAL ALLOWANCES

Section 20

1. Capital Allowances Granted

- (1) A person shall be granted capital allowances for each year of assessment in respect of depreciable assets owned by the person at the end of a basis period ending within the year and used in carrying on a business during that period.
- (2) The Commissioner shall be notified about any new depreciable asset acquired within one month after it has been put into use in the production of the income from the business.
- (3) Capital allowance which a person is entitled to or granted under this Act is not transferable either separately or together with any depreciable asset. [Substituted by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.19(a)]

2. Classes of Depreciable Assets

- (1) A depreciable asset is an asset to the extent to which it is used in carrying on a business, which asset is likely to lose value because of wear and tear, obsolescence, or the effluxion of time, but does not include trading stock, and depreciable assets are classified as follows:

Class Assets Included

- i. Computers and data handling equipment.
 - ii. 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;
 - iii. Assets referred to in subparagraph (3) in respect of long term crop planting costs.
 - iv. Mineral and petroleum exploration and production rights; assets referred to in subparagraph (4) in respect of mineral and petroleum prospecting, exploration, and development costs;
 - v. Buildings, structures and works of a permanent nature used in respect of assets referred to in item (i) which are likely to be of little or no value when the rights are exhausted or the prospecting, exploration, or development ends, as the case requires;
 - vi. Plant and machinery used in mining or petroleum operations.
 - vii. 4 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;
 - viii. 5 Buildings, structures, and works of a permanent nature other than those mentioned in class 3;
 - ix. 6 intangible assets, other than those mentioned in class 3
- (2) For the purposes of sub-paragraph (1), an asset is treated as used by the person who owns it in carrying on a business where

- a. the asset is acquired by the person for the purposes of a business which the person intends to carry on and, subsequently, the asset is first used by the person in that business;
 - b. the asset has been used in the business but is in temporary disuse; or
 - c. the person leases the asset on an operating lease to another person who uses it in carrying on a business of that other person.
- (3) Costs of a capital nature incurred by a person in the production of income from a business which is a timber concern or a large scale rubber, oil palm, or other long term crop plantation in respect of planting vegetation from which timber, rubber, oil palm, or other crops are derived are treated as if they were incurred in securing the acquisition of an asset that is used by the person in that production.
- (4) Costs incurred by a person in the production of income from a business in respect of mineral and petroleum prospecting, exploration, and development are treated as if they were incurred in securing the acquisition of an asset that is used by the person in that production.

3. Class 1, 2, 3, and 4 Depreciable Assets

- (1) A person's depreciable assets in classes 1, 2, 3 and 4 shall be placed into separate pools for each class of asset, and a capital allowance granted for each pool for a year of assessment with respect to each basis period of the person ending within the year calculated according to the following formula

$$A \times B \times C/365$$

Where,

A is the written down value of the pool at the end of a basis period;

B is the depreciation rate applicable to the pool; and

C is the number of days in the period.

- (2) The depreciation rate applicable to the pools of depreciable assets referred to in sub-paragraph (1) are

Class	Rate
1	40%
2	30%
3	80% of the cost base of assets added to the pool during the basis period and 50% of the balance of the pool, if any
4	20%

- (3) The written down value of a pool at the end of a basis period is the total of
- a. the written down value of the pool at the end of the preceding basis period after allowing for the capital allowance granted under sub-paragraph (1) with respect to that preceding period;
 - b. with respect to a pool of Class 3 depreciable assets, 5% of the cost base of assets added to the pool during the preceding basis period; and
 - c. the cost base of assets added to the pool during the period, reduced, but not below zero, with respect to each asset from the pool realised during the period by the consideration received from the realisation of the asset.
- (4) Where the amount of consideration received by a person from the realisation during a basis period of any asset or assets from a pool exceeds the written down value of the pool at the end of the period disregarding that amount, the excess is included in ascertaining the person's income from the business in which the asset or assets were used for the year of assessment in which the period ends.
- (5) If the written down value of a pool at the end of a basis period, after allowing for the deduction under sub-paragraph (1) in respect of that period, is less than ₦50,000, a capital allowance is granted for the year of assessment in which the period ends for the amount of that written down value and that written down value shall be reduced to zero.

- (6) Where all the assets in a pool are realised before the end of a basis period, a capital allowance is granted for the year of assessment in which the period ends for the amount of the written down value of the pool as at the end of that period.
- (7) The cost base of a depreciable asset is added to a pool in the basis period in which the asset is first used in carrying on the business.
- (8) For the purposes of this Schedule only, the cost base of a road vehicle, other than a commercial vehicle, shall not exceed ₦250 million. [*Amended by Internal Revenue (Amendment) Act, 2004 (Act 669), s.8*].
- (9) In this paragraph, "commercial vehicle" means
 - a. a road vehicle designed to carry loads of more than half a tonne or more than thirteen passengers; or
 - b. a vehicle used in a transportation or vehicle rental business.

4. Class 5 and 6 Depreciable Assets

- (1) A person shall be granted for a year of assessment a capital allowance for each Class 5 depreciable asset with respect to a basis period ending within the year calculated using the following formula:

$$A \times B \times C / 365$$
 Where,
 A is the cost base of the asset;
 B is the rate of 10%; and
 C is the number of days in the basis period.
- (2) A person shall be granted for a year of assessment a capital allowance for each Class 6 depreciable asset with respect to a basis period ending within the year calculated using the following formula

$$A / D \times C / 365$$
 Where,
 A is the cost base of the asset;
 C is the number of days in the basis period; and
 D is the useful life of the asset in whole years calculated at the time the asset is acquired by the person.
- (3) The total amount of capital allowances granted to a person for a Class 5 or 6 depreciable asset for one or more years of assessment shall not exceed the cost base of the asset.
- (4) Where a person realises a Class 5 or 6 depreciable asset during a basis period ending within a year of assessment,
 - a. there shall be included in ascertaining the person's income for the year from the business in which the asset is used an amount, if any, calculated using the following formula

$$E - F$$
 or
 - b. there shall be granted to the person for that year an additional capital allowance calculated using the following formula

$$F - E$$
 E is the lesser of the consideration received from the realisation or the cost base of the asset; and
 F is the written down value of the asset.
- (5) For the purposes of this paragraph, the "written down value" of a depreciable asset of a person means the cost base of the asset as reduced by the total of any capital allowances granted to the person for the asset.

5. General Provisions

- (6) Where a person incurs costs in more than one basis period which are included in the cost base of a depreciable asset, this Schedule applies as if the costs incurred in different periods were incurred for the acquisition of separate depreciable assets of the same class.
- (7) Where a depreciable asset owned by a person is only partly used in the production of income from a business then, for the purposes of this Schedule only, the cost base of the asset and any consideration received from the realisation of the asset shall be proportionately reduced.
- (8) Where a person uses depreciable assets in the production of income which is exempt from tax
 - a. that person is granted capital allowances under this Schedule in respect of those assets; and
 - b. those allowances shall be deducted in ascertaining the income which is exempt, and where the assets are subsequently used by that person in the production of income which is not exempt from tax, only the written down value of the pool or written down value of the asset, as the case requires, shall be used in calculating capital allowances granted to that person in respect of that subsequent use.
- (9) References in this Schedule to cost base in relation to the person incurring the cost, shall not include an expenditure which is allowed to be deducted in computing the gains or profits of any business or investment under section 5 of this Act. *[Amended by the Internal Revenue (Amendment) Act, 2002 (Act 622), s.19(b).]*

FOURTH SCHEDULE

RATES OF GIFT TAX

Section 105 (1)

The gift tax rates applicable to individuals, companies and bodies of persons are:

TOTAL VALUE OF TAXABLE GIFTS	RATE OF TAX
Not exceeding ₦500,000.00	Nil
Exceeding ₦500,000.00	10% of excess over ₦500,000.00

Date of Gazette Notification: 16th Fe