



**Tuvalu**

# **INCOME TAX ACT**

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Tuvalu

## INCOME TAX ACT

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Tuvalu

## INCOME TAX ACT

### AN ACT TO IMPOSE A TAX ON TAXABLE INCOME, AND TO PROVIDE FOR THE COLLECTION AND MANAGEMENT OF THE TAX<sup>1</sup>

Commencement [1st January 1993]<sup>2</sup>

## PART 1 - PRELIMINARY

### 1 Citation

This Act may be cited as the Income Tax Act.

### 2 Definitions<sup>3</sup>

In this Act, unless the context otherwise requires:

“**agent**”, in relation to any person includes:

- (a) any other person who has the authority to act in a representative capacity in relation to that first person, so far as that authority extends;
- (b) any attorney, factor, or receiver, or a manager appointed under statute in relation to that person;
- (c) where that person is incapacitated, the legal guardian of that person;
- (d) where that person is a non resident, any other person who is deemed to be an agent of that non resident pursuant to the provisions of section 32;
- (e) any other person whom the Minister declares to be an agent of that first person pursuant to section 35;
- (f) any person who is liable to withhold or collect income tax in relation to a source deduction payment, to the extent contemplated by section 37; and

- (g) any person who is deemed by this Act to be an agent in relation to any payment or transaction, to the extent so provided;

**“annual reporting date”** means the last day of the year, or where a substituted reporting period is approved in relation to the operation of any business, the last day of that substituted reporting period;

**“appropriate portion of income tax”** in relation to any person and any category of income and any year means:

- (a) that portion of the amount of income tax for which the person is liable for the year (being the amount as calculated under section 5(2) prior to taking into account any credits for overseas tax under that section); and
- (b) the proportion which that person's net income of that category (after deduction of related deductible costs) for that year bears to that person's total taxable income for that year;

**“appropriate portion of overseas tax”** in relation to any person and any category of income and any year means the portion of overseas tax paid for the year which the Taxation Office is satisfied is fairly attributable to the amount of gross income of that category for the year; and for this purpose the Taxation Officer:

- (a) may make such adjustments or allowances as he considers just and equitable; and
- (b) may adopt such administrative practices as may be appropriate, to accommodate either:
- (c) different reporting periods adopted in any overseas country; or
- (d) practical difficulties that are the appropriate portion;

**“approved annuity contract”** means any contract which the Minister is satisfied has as its principal object the provision for a person (or for that person's spouse, or for that person and his spouse) of a life or term annuity in old age or upon retirement on the grounds of ill health or similar, or for a lump sum endowment in lieu of such an annuity, and determines accordingly in writing:

Provided that where that approval is made subject to conditions, that contract shall only be an approved annuity contract if and for so long as those conditions are met;

**“approved community service organisation”** is any organisation (not being a benevolent, religious, educational, cultural, amateur sporting or charitable organisation) which the Minister is satisfied:

- (a) is, and operates as, a non-profit enterprise serving general community interests; and
- (b) is not for the direct or indirect personal pecuniary gain of members, and approves accordingly by public notice;

“**approved fund**” means any scheme which the Minister is satisfied was established by an employer for the payment of pensions or lump sum benefits to employees in their old age or on their retirement on the grounds of ill health or similar, and determines accordingly in writing:

Provided that where that approval is made subject to conditions, that fund shall only be an approved fund if and for so long as those conditions are met;

“**arrangement**” includes any arrangement, agreement, contract, transaction, plan or understanding, whether or not enforceable at law, including any steps which form a part thereof or which helped put into effect;

“**benefit of debt release**” includes any advantage or benefit accruing to a person by reason of the remission or release of any part of any amount of indebtedness, whether this occurs by reason of:

- (a) any act of release or forgiveness of forbearance or compromise or similar by the person to whom that debt is owed;
- (b) the prescription of any amount of indebtedness by the effluxion of time or by the operation of statute; or
- (c) any occurrence similar to any of the above,

but shall not include any such benefit to the extent to which it:

- (d) is an emolument;
- (e) arises by reason of natural love and affection shown by one individual to another; or
- (f) is a benefit which the Secretary, having regard to all the circumstances of the case, considers that in equity, or in the economic interests of Tuvalu, should not constitute gross income;

“**business**” includes any business, trade, profession, or vocation, carried on for profit, as well as:

- (a) any profit making scheme or undertaking;
- (b) any adventure or activity in the nature of trade where the making of profit is an element, or profit may reasonably be anticipated; or
- (c) any activity involving the acquisition and disposition of an asset where the principal purpose in acquiring the asset is or was its subsequent disposition for profit:

Provided that the term “**business**” shall not include:

- (d) any scheme, undertaking, advent, or activity of a local authority, except where and to the extent that the Minister considers:
    - (i) there exist commercial motives on the part of the authority; or
    - (ii) the relevant scheme, undertaking, adventure, or activity operates or will operate in competition with any other business;
- and by regulation determines the existence of a business; or

- (e) the derivation of passive investment income (otherwise than as part of a wider business scheme, undertaking, adventure or activity);

“**capital asset**” means any asset which is acquired by a person where that asset was not acquired or used by that person with the principal purpose of disposal:

Provided that the term “**capital asset**” shall not include any interest of a person as a member of a pension, provident, superannuation or benefit fund;

“**company**” means any body of persons, whether or not incorporated, which is established or otherwise formed or is registered in Tuvalu or elsewhere, for a common purpose, and includes:

- (a) statutory bodies;
- (b) any cooperative society;
- (c) the Crown (in relation to any enterprise of a trading nature);
- (d) any benevolent, religious, educational, charitable, cultural, amateur sporting or community service institution or organisation (in relation to investment and business income);
- (e) any local authority (in relation to investment and business income);
- (f) any trade union;
- (g) any pension, provident, superannuation or benefit fund, whether or not an approved fund; and
- (h) any body of persons which the Minister by regulation determines to be a company for the purpose of this Act  
but shall not include:
  - (i) any family;
  - (j) any partnership;
  - (k) a joint venture;
  - (l) a trust or a deceased estate;
  - (m) any joint ownership of an asset; or
  - (n) any body or persons which the Minister by regulation determines not to be a company for the purpose of this Act;

“**cost price**” in relation to any item means the actual purchase price (or if the item was not acquired by purchase, its market value at acquisition) with —

- (a) any duty, sales tax, levy, or impost subsequently applicable to getting the item into its location for use or disposal (as the case may be);
- (b) any freight or insurance or other charge subsequently applicable to getting the item into its location for use or disposal (as the case may be):

Provided that —

- (c) where the item comprises any work in progress under construction, the cost price of that work shall include an appropriate share of overhead costs;
- (d) where, at the request of any taxpayer, the Secretary approves an alternative basis of arriving at cost price, the cost price determined pursuant to that basis shall be deemed to be the cost price of the item;
- (e) where the Act provides for an alternative amount to be the cost price of any item, that alternative amount shall apply in lieu of the cost price otherwise determined in accordance with the preceding parts of this definition; and
- (f) where any amount or benefit receivable by way of credit, rebate, discount, allowance, grant, contribution or otherwise towards or against the purchase price or market value of any item or items, the cost price of that item or items (determined in accordance with the preceding parts of this definition) shall be reduced by the amount or value of the benefit received or receivable;

**“deductible cost”** in relation to any person comprises any amount of expenditure, loss, or deduction by way of allowance, which in accordance with the provisions of this Act is deductible in determining the taxable income of that person;

**“derived”** includes earned by, accrued to, accumulated for, credited in account to or for, provided to, conferred on, or dealt with on behalf of, the person entitled to the amount or item referred to:

Provided that —

- (a) in the case of any benefit conferred, the benefit shall be treated as derived at the time or times it is conferred;
- (b) in the case of any emolument payable to any person, save insofar as is provided in section 23, the emolument shall be treated as being derived at the time it is paid or is made available, and not at any other time;
- (c) in the case of any benefit of debt release, that benefit shall be treated as derived when the benefit arises;
- (d) any sum receivable in respect of any claim under an agreement which provides for indemnity or guarantee shall be treated as derived when it is paid;
- (e) any sum by way of compensation or damages which is receivable otherwise than under an agreement for indemnity or guarantee shall be treated as derived at the time it is paid;
- (f) any dividend in the form of bonus shares shall be treated as a dividend only when those shares are disposed of; and
- (g) in the case of the amount of any bonus distributed to a person by a cooperative society which, pursuant to section 19(6) is gross income of that person, the amount shall only be treated as derived when it is paid;

“**director**” in relation to any company and any time includes any person however described who in relation to that company is or was at the time accustomed to act (whether alone or with others) in a managerial or control capacity in accordance with the directions or instructions of the persons who are in fact the directors;

“**disposal**” includes disposal by way of sale, transfer, or appropriation or in any other manner whatsoever, and includes:

- (a) any event involving the destruction of or irreparable damage to an asset; and
- (b) the transfer of an item to the executor or administrator or trustee of a deceased estate, or by any such person to a beneficiary in that estate;

“**disqualifying event**” in relation to any company and the application of the qualifying company provisions in section 26 means —

- (a) any variation in the rights attaching to the shares in that company if that variation does not apply universally and equally to each share in that company;
- (b) the issue of any shares of a class not already on issue, or the issue of shares of a class already on issue but with rights which differ from those already on issue;
- (c) the acquisition of any shares in the company by a non qualifying shareholder; or
- (d) any change of shareholding which results in there being more than 7 shareholders at any time:

Provided that for this purpose, the executors or administrators or trustees of a deceased estate holding shares in a qualifying company in their capacity as such shall collectively be viewed as a single shareholder;

“**dividend**” in relation to any company and any shareholder in that company includes any amount, and the market value of any item, distributed or provided to the shareholder in that company or to a person related to that shareholder, where that distribution is derived by that person in their capacity as (or by reason of being, or a related person being) a shareholder in that company:

Provided that —

- (a) save insofar as adjustments be made by the Taxation Officer pursuant to the anti-tax avoidance provisions of section 24, it shall not include —
  - (i) the amount of any return of contributed capital or share premium;
  - (ii) the amount of any realised capital profit which is distributed;
  - (iii) the amount of any bonus shares issued by the company where these are funded by share premium or realised capital profit; or
  - (iv) any distribution by any benevolent, religious, educational, cultural or charitable bodies to members of the community,

- where those distributions do not represent consideration for, or recognition of, services rendered by the individual who is the recipient of the distribution;
- (b) where the items distributed are bonus shares which constitute a dividend, their value shall be the nominal value of those shares;
  - (c) where the item provided is the use of any company asset (including money) —
    - (i) the value of the benefit shall be taken to be the excess of the market value of the benefit provided over the amount contributed by or on behalf of the person enjoying the benefit of the use of the company asset;
    - (ii) the value of the benefit shall be disregarded where and to the extent that it is or (but for section 3(2)) would otherwise be treated as an emolument for the purposes of this Act; or
    - (iii) the value of the benefit shall be disregarded in any case where and to the extent that the cost of providing that benefit has not been claimed or has been specifically disallowed as a deduction in arriving at the taxable income of the company:

Provided that where the taxable income of the company is determined pursuant to section 20 or 21, the cost of providing the benefit shall be deemed to have been a deductible cost of the company providing the benefit; and

- (d) in the case of a pension or annuity payable by a pension scheme or under a contract of insurance, the recipient person shall be deemed to receive that in his capacity as a shareholder;

“**emolument**” means all amounts payable and the value of all benefits provided in respect of, or in relation to, or arising out of, a relationship involving any person holding a remunerated post or position; and without in any way limiting the scope of the term, unless otherwise provided in this definition, shall include:

- (a) any wages, salary, bonus, allowance, leave pay, sick pay, payment in lieu of leave, fees, commission, gratuity or other lump sum payment (whether or not derived at the conclusion of a period of employment) derived in respect of, relation to, or arising out of the employment of any person;
- (b) any amount derived by or the value of any benefit conferred on any person:
  - (i) as compensation for the termination or variation of any contract of employment;
  - (ii) as an inducement to enter into or leave employment, or to accept any variation in terms of employment; or

- (iii) by way of any compensation consequent upon any event involving variations in the ownership, management or control of the employer organisation or any person who is in relation to the employer a related person;
- (c) any amount of any personal debt of an employee (or of any person who is in relation to that employee or a related person) to the extent to which it is settled by or by arrangement with the employer of that employee, or it is forgiven and released; and
- (d) any other amount or the value of any other benefit, advantage or facility derived or conferred on any person in respect of, in relation to, or arising out of that person's employment or the employment of a related person;

but shall exclude:

- (e) any amount payable or the value of any benefit referred to in Schedule 1 to the extent that the amount or the value of the benefit is designated as exempt;
- (f) any employer contribution to any approved fund in respect of any employee of that employer:

Provided that in any case where the Taxation Officer, in his best judgment objectively exercised, considers that any such contribution is not a regular contribution and might reasonably be viewed to some extent as an emolument or other gross income that in all likelihood would otherwise have accrued to the employee (or a person related to that employee), to that extent the contribution shall be deemed to be an emolument; and

- (g) any amount payable or the value of any benefit provided to a person in the course of the conduct of a business undertaking conducted by that person on his own account (whether or not in conjunction with any other person);

**“employment”** means any relationship between two or more persons in terms of which an emolument is payable by one such person to the other; and **“employer”** and **“employee”** have corresponding meanings;

**“exempt income”** comprises any amount or the value of any benefit to the extent to which it is exempt from income tax either:

- (a) pursuant to Schedule 1 (as it applies at the time the gross income is derived);
- (b) pursuant to any tax treaty entered into in terms of section 84 in force at the time that gross income is derived; or
- (c) by reason of any other provision of this Act (including any regulations issued pursuant to section 82);

**“financial securities”** includes:

- (a) shares in the capital of any company; and
- (b) debt securities of any kind;

**“forbearance payments”** mean any amounts payable for or in relation to any person forgoing any right of action or other thing which, had it not been forgone, would or in all likelihood would have been, or would or in all likelihood would have generated, gross income by way of interest, knowhow, rent, royalties, or service fees;

**“gross income”** includes:

- (a) all income, revenue, profits or gains (not being amounts of a capital nature), of any kind whatsoever; and
- (b) all amounts or the value of any benefits which in accordance with section 9 are treated as gross income, whether or not they are of a capital nature,

but does not include:

- (c) any exempt income;

**“incapacitated person”** means any infant, person of unsound mind, lunatic, idiot or insane person;

**“income tax”** includes any income tax (including any non resident withholding tax) imposed by this Act, but shall not include any overseas tax:

Provided that for the purposes of section 14 and Parts 6 to 9 inclusive it shall also include —

- (a) any penalties or fines applicable to any default or for any offence under this Act;
- (b) any amount of interest imposed under the Act on any income tax, penalty or fine which was not paid within the time required by the Act;
- (c) any amounts required to be paid by way of provisional tax; and
- (d) any amount which is required to be withheld or collected at source in accordance with section 37;

**“income tax value”** in relation to any capital asset and any person at any time is the cost price of that asset to that person, reduced by the aggregate amount of depreciation calculated by that person under:

- (a) the provisions of Schedule 2; and
- (b) the provisions of Schedule 3 of the Income Tax Act 1982,

up to the time that the income tax value is determined;

**“interest”** (in the context of gross income) includes:

- (a) any interest, discount or other income or gain in relation to money lent, advanced, credited or otherwise let out; or

- (b) unless the Minister otherwise determines by regulation, any gain arising in relation to any financial securities (other than shares in the capital of a company) of whatever kind;

**“knowhow”** means any amount payable for:

- (a) the supply of commercial, scientific or other knowledge; or  
(b) for assistance in relation to the use or right to use any such knowledge, wherever such knowhow is provided;

**“liability to income tax”** (or **“income tax liability”**) in relation to any person and any year means the personal income tax liability determined in accordance with section 5 and:

- (a) where section 63 so provides; or  
(b) where the context so requires,

also includes —

- (c) any liability to withhold or collect and account for income tax in accordance with section 37; and  
(d) any liability for interest, penalty or fines imposed by or under this Act;

**“local authority”** means any local authority established under the Falekaupule Act, or any Act for the time being in force amending or repealing it;

**“market value”** in relation to any item or service at any time is the consideration which persons dealing with each other at arm's length at that time in like or comparable circumstances would in all likelihood have agreed upon if those persons were a willing buyer and a willing seller:

Provided that, on application in writing by any person, the Secretary, if he considers it appropriate to do so, may determine that for the purpose of this Act, the market value of any item or service shall be some other value, if all persons party to that transaction or event have first agreed in writing to the adoption of that other value;

**“mitigating circumstances”** are those situations which give rise to an offence under this Act as are, in the opinion of the Minister beyond the reasonable understanding or control of the person who would otherwise be charged with an offence, or beyond that person's reasonable capacity to understand:

Provided that an insufficiency of funds shall not be a mitigating circumstance;

**“non qualifying shareholder”** in relation to any company and any time means:

- (a) a non resident;  
(b) a trustee of a trust (other than a trustee of a deceased estate in his capacity as such);  
(c) a company; or

(d) the Crown;

**“non resident”** means any person who, at the relevant time, is not resident in Tuvalu;

**“non resident withholding income”** comprises gross income from a source within (or deemed to be within) Tuvalu, which is by way of, or in the form of:

- (a) dividend;
- (b) forbearance payments;
- (c) interest;
- (d) knowhow;
- (e) rent;
- (f) royalty;
- (g) service fees; or
- (h) specified alimony payment,

where such is derived by a person who, by the derivation, is a non resident, but shall not include any such amount which is exempt income;

**“non resident withholding tax”** is the income tax required to be withheld or collected at the rate specified in Schedule 5 to this Act from or in relation to any amount of non resident withholding income payable;

**“notice of assessment”** in relation to any person and any year means a notice which has been issued setting out particulars of a person's taxable income, related income tax liability, tax settlements, and that person's residual income tax liability at the time of issue, and where appropriate, includes (with any necessary modifications):

- (a) any notice of amended assessment;
- (b) any notice of default assessment; and
- (c) any notice of determination of loss;

**“overseas tax”** means the amount of any tax in the nature of the income tax imposed under this Act which is charged under any law in force in any country other than Tuvalu on any amount or value included in the person's gross income for the relevant period:

Provided that in no case does it include any amount of interest, penalty or fine in relation to that liability or related matters;

**“paid”**, in relation to any person, includes paid —

- (a) distributed to or on behalf of that person;
- (b) credited in account or dealt with on behalf of that person;
- (c) made or becomes available to that person; and
- (d) provided to or conferred upon that person,

and “**pays**” and “**payable**” and “**payment**” have a corresponding meaning, with the “**payee**” being the person who is entitled to the payment, and “**payer**” having a corresponding meaning;

“**passive investment income**” means gross income by way of interest, dividends, royalty, rents or otherwise, where the derivation of that income is the natural consequence of holding the related asset, and not the result of significant personal effort for or on behalf of the holder;

“**permanent place of abode**” in relation to any person includes the location which is that person's usual habitual home, having regard to that person's personal and economic circumstances and interests, and to any other relevant circumstances;

“**person**” includes a company, and any executor, administrator or trustee of any trust or deceased estate (in their individual and collective capacity as such);

“**post business income**” means any amount, or the value of any benefit, derived by any person after the cessation of a business previously conducted by that person, where that amount or the value of the benefit, had it been derived prior to that cessation, would have been gross income from that business:

Provided that —

- (a) the term shall also include the market value of any trading stock held at the time of cessation where the cost was claimed as a deductible cost on acquisition by or introduction into the business; and
- (b) the term shall not include any amount, or the value of any benefit, arising or dealt with pursuant to section 23(8) or section 22(2);

“**prescribed rate of interest**” in relation to any period of time means the relevant rate of interest prescribed in Schedule 7 as being the rate for each month or part of a month that falls within that period, or any other rate prescribed by regulation in lieu of the rate or rates so prescribed;

“**presumptive taxpayer**” means a person liable for tax under section 5A;<sup>4</sup>

“**provisional tax**” in relation to any person and any year means any amount of income tax (not being amounts withheld or collected at source or which otherwise stands to that person's credit) which pursuant to section 53 and section 54 is required to be paid on account of that person's liability for income tax for that year;

“**qualifying company**” means, in relation to any company and any year, a company in respect of which there is in relation to that year a valid election in force in accordance with section 26;

“**related persons**” (or “**persons related**” to each other) are any two or more persons who, at the relevant time, have a significant association with each other, whether by reason of:

- (a) being a relative;
- (b) being engaged in a partnership, joint asset ownership, in arrangements or events related to or arising out of that association;
- (c) being two or more companies where, in the aggregate for any given type of interest in relation to each of those companies, that type is beneficially held in any combination for or by:
  - (i) the same shareholder; and
  - (ii) persons who are in relation to any of those shareholders, a related person,  
to the extent of 25% or more of interests;
- (d) a relationship involving a company and a shareholder (not being a company) where the aggregate of any particular type of interest in relation to that company which are beneficially held in any combination for or by:
  - (i) that shareholder; and
  - (ii) persons who are in relation to that shareholder a related person,  
amounts to 25% or more of the total of such interest;
- (e) being a trustee or nominee for any person or persons where any one of those persons would be a related person in terms of this definition; or
- (f) a decision of the Taxation Office who, having regard to all the relevant circumstances, in his best judgment objectively exercised, considers that such persons should be treated as persons in relation to any one or more arrangements, circumstances or events, by reason or the pattern of association which prevailed, or will in all likelihood prevail, at the relevant time or times;

**“relative”** in relation to any person means:

- (a) any spouse, child, adopted child or foster child of that person; and
- (b) any other person (and the spouse of any other person) where that other person is related to the person within two degrees on consanguinity;

**“rent”** means any charge or payment including any premium or inducement or other payment for or in relation to the hire or use or right to hire or use any property of any kind, wherever located, but shall not include any charge or payment which is a royalty;

**“resident”**, in relation to any person and any time in any year, means:

- (a) in the case of a company —
  - (i) a company incorporated, formed or established in Tuvalu; and
  - (ii) any other company which is at the time controlled (in any way whatsoever), or has its centre of management or administration in Tuvalu;

but in either case shall not include any company incorporated, formed or established outside Tuvalu where the company is merely registered in terms of the provisions of any statute in Tuvalu;

- (b) in the case of a person who is an individual —
- (i) any person whose permanent place of abode is at the time in Tuvalu; and
  - (ii) any person personally present in Tuvalu for more than 183 days in any 12 month period, from the first day of such presence and thereafter until he ceases to be resident in either case, whether or not that person is also resident in or has a permanent place of abode in another country; and that person shall cease to be resident from the later of:
    - (iii) the date the person ceases to have a permanent place of abode in Tuvalu; and
    - (iv) where the person has left Tuvalu, and has been personally absent for more than 183 days in any 12 month period, from the first day of such absence,

and thereafter until the person again becomes a resident:

Provided that for the purpose of this part of the definition —

- (v) where any merchant or naval seaman is absent from Tuvalu under a contract of maritime service of 12 months or more, he shall be deemed not to have a permanent place of abode in Tuvalu for the duration of that contract;
  - (vi) the fact that a person's family or extended family have their permanent place of abode in Tuvalu shall not automatically determine whether that person's permanent place of abode is in Tuvalu;
  - (vii) references in this definition to a “**day**” include any part of a day; and
  - (viii) where:
    - (aa) a person is resident in Tuvalu solely by reason of paragraph (b)(ii) of this definition;
    - (bb) his presence was largely accountable to the undertaking of services to or for the Crown or a statutory corporation for a period not exceeding two years; and
    - (cc) the person retains a permanent place of abode and tax residence in another country;
- then:
- (dd) the Minister may determine that the person is not a resident of Tuvalu for the duration of that presence.

- (ee) in the case of any deceased estate, the estate of an individual at the time of his death, was resident in Tuvalu; or
- (ff) in the case of any trust estate (not being a deceased estate), where any trustee is resident in Tuvalu;

“**residual income tax**” in relation to any person and any year means so much of the amount of the person’s personal income tax liability for that year as has not been accounted for by way of tax settlements made by the end of February in the immediately succeeding year (or where the person has had a substituted reporting period approved, any later date which the Secretary has approved for this purpose);

“**revenue asset**” means any asset where that asset:

- (a) is not a capital asset (as defined);
- (b) but for section 18(5) would not be trading stock; and
- (c) the proceeds of disposal of that asset will be treated as gross income, and includes any asset referred to in section 19(2) and section 19(3) where the Secretary has not otherwise determined pursuant to those sub-sections:

Provided that the term shall not include any interest as a member in a pension, provident, superannuation or benefit fund;

“**royalty**” means any amount to the extent that it is payable in relation to the use of or right to use any intangible property, or for assistance in relation to the use of or right to use any such property;

- (a) wherever such use or right to use occurs or is exercised; and
- (b) whether or not the amount is on account of the purchase price of the property;

“**Secretary**” means the person who, at the relevant time, holds the post of Secretary of Finance within the Government of Tuvalu, or is officially acting in that capacity;

“**service fees**” comprise any fees or other charges (not being charges by way of interest, knowhow, rent or royalty) payable by any person for the provision of advice, assistance, management, administration, work or other service or thing (not being the supply of goods) done by a non resident, where the cost of that service:

- (a) is borne by that person; and
- (b) either —
  - (i) is claimed as a cost in arriving at that person's taxable income in accordance with this Act (or could have been claimed were the expenditure not capital expenditure or expenditure of a capital nature);

- (ii) relates to a business or part of a business of that person and the taxable income of that business or relevant part is determined on the special basis provided in section 20; or
- (iii) relates to an activity by the Crown or a statutory corporation or a local authority:

Provided that service fees shall not include:

- (c) any such amount which is wholly a reimbursement of actual costs incurred by the non resident for the benefit of that person:

Provided that this exclusion shall not apply to any such costs incurred by the non resident which originate directly or indirectly in charges from a person who is, in relation to the non resident, a related person where and to the extent that the Secretary considers that in the circumstances of the case, that exclusion is inappropriate or inequitable;

- (d) any amount for services rendered personally to any resident during a period that the resident was outside Tuvalu;
- (e) emoluments which are subject to the withholding of income tax pursuant to section 37; or
- (f) any amount or the value of any benefit which is exempt income;

**“shareholder”** in relation to any company includes —

- (a) any person who has a beneficial interest in the capital or profits of a company, whether or not:
  - (i) that person holds shares in that company; or
  - (ii) the interest is held indirectly through one or more interposed companies or by nominees; and
- (b) any person who is a member of a company, and for this purpose:
- (c) the crown shall be viewed as a single shareholder; and
- (d) capital includes any funds contributed for or on behalf of members of the company by way of capital contribution;

**“source deduction payment”** means any amount or the value of any benefit where there is an obligation for income tax to be withheld or collected and accounted for at source;

**“specified alimony payment”** means any amount paid by way of alimony or allowance under a decree of divorce, a dissolution of marriage, or any legal order or deed of separation or maintenance, where the amount paid has had the correct amount of income tax withheld or collected at source and accounted for in accordance with section 37;

**“specified circumstance”** means any situation where, in relation to any person, the Taxation Officer, in his best judgment objectively exercised, considers that:

- (a) there has been an arrangement in relation to which a party to the arrangement had as an objective of relative significance the avoiding, deferring, or altering the incidence of income tax by any means whatsoever;
- (b) transactions have been entered into between any two or more persons, whether or not related persons, on a basis which, having regard to all the relevant circumstances, may be viewed as not being on sufficiently arm's length terms;
- (c) there has been a disposition of any share or shares in a company in circumstances where it is reasonable to infer that a significant objective underlying the arrangement or transaction was to provide the vendor or a person related to the vendor with the opportunity to avoid deriving any prospective or possible future distribution of all or any profits or future profits of the company where that distribution would have been subject to income tax in the hands of the vendor;
- (d) any asset of a business has been disposed of by a person otherwise than at market value, if and to the extent that the disposition has not been dealt with either:
  - (i) by an appropriate adjustment to the taxable income of the business; or
  - (ii) in any case where that person is a company, and an appropriate adjustment has not been made, as a dividend;
- (e) a person resident in Tuvalu directly or indirectly (and whether or not through any interposed company, trust or other entity) has either personally or together with related persons control (or *de facto* control) of any company;
- (f) a person is in any way under the legal or *de facto* control of any other person or persons who at the relevant time or times were non resident; or
- (g) any venture involves participation by a person or persons who are non resident,  
and for the purpose of this definition, in determining the objectives of any person regard shall be had to any knowledge he or his agent or advisors or a related person had or might reasonably be expected to have had;

“**spouse**” includes a *de facto* spouse, and where the context so requires, a former spouse;

“**substituted reporting period**” is any alternative reporting period approved by the Secretary in accordance with section 6 of this Act;

“**taxable income**” means gross income less deductible costs;

“**Taxation Officer**” means the person who is, at the relevant time, the senior person appointed by the Minister pursuant to section 77 to assist the Secretary with his responsibilities under this Act;

“**tax settlements**” in relation to any person and any year include:

- (a) income tax withheld at source from gross income derived by that person in that year;
- (b) provisional tax payments in person's liability to income tax for that year; and
- (c) any other payments made or credits available in respect of that person's liability to income tax for that year,

but shall not include —

- (d) the amount of any overseas tax credit required to be taken into account in arriving at the person's income tax liability; or
- (e) any payment of, or to the extent it is appropriated in payment of, any amount of —
  - (i) interest or penalty payable, or fine imposed, by or under this Act; or
  - (ii) income tax which is required to be accounted for by that person and which was not paid to the Crown by the final date for payment in either case, being an amount payable by the person in the same capacity as that in which the liability arose;

“**throughout**” in relation to any person and any business or any part of any business where this Act requires or allows a special approach to the determination of a person's taxable income, means the category of transactions which, pursuant to section 20 or 21, have been prescribed as forming the basis of calculating that person's gross income from that business or any part thereof;

“**trading stock**” in relation to any person includes any item (including livestock) which have been acquired, manufactured, fabricated, constructed, processed or otherwise made or procured by the person for a purpose of sale or other disposal in the course of any business, and includes:

- (a) any physical work in progress or work under construction, whether or not legal ownership in the work remains with the person or has passed to another party; and
- (b) any revenue asset to which section 18(5) refers;

“**value of throughput**” in relation to any person and any year means the amount arrived at by applying to the aggregate amount of throughput of that person for that year the relevant fixed percentage prescribed in Schedule 4;

“**venture**” includes any business or other venture, other than employment, where there is a reasonable element of commercial risk, and whether pursued by a single person or 2 or more persons together;

“**working day**” means any day which is not a public holiday, or a Saturday or a Sunday;

“**year**” means the calendar year:

Provided that where, pursuant to section 6, a person prepares annual financial accounts and related records of any business for a substituted reporting period, the year to which the taxable income of that person from that business shall be attributed shall be determined in accordance with that section.

### 3 Interpretation of the Act

- (1) There shall be a presumption that the provisions of this Act shall operate so as not to allow any incidence of economic double taxation, and not cause any amount of gross income to be taxed directly in the hands of the same person more than once (whether under any one or more provisions of the Act).
- (2) In any case where a dividend is derived by any person is also gross income of another type, for the purposes of this Act it shall be treated solely as a dividend.
- (3) There shall be a presumption that the provisions of this Act shall not operate to allow any person to claim the same expenditure more than once, whether under any one or more provisions of the Act.
- (4) Notwithstanding anything in this Act, where the Taxation Officer in consultation with the Secretary considers that there is genuine cause for doubt as to the true interpretation of any provision of this Act (including any Regulations issued and in force), the Taxation Officer shall:
  - (a) if the general tenor and apparent intent of the legislation is not in reasonable doubt, apply the relevant provision in accord with that general tenor and apparent intent of the legislation; or
  - (b) in any other case, allow the *contra fiscum* rule to apply.
- (5) Unless the context otherwise requires, any references made to this Act include references to:
  - (i) the Schedules to this Act;
  - (ii) any Regulations issued; and
  - (iii) any judicial decisions made in accordance with the provisions of this Act.

### 4 Binding interpretations in relation to circumstances in which certain provisions may apply

- (1) This section authorises the Minister to issue to a person binding rulings as to the approach or interpretation to be adopted by the Crown in applying the provisions of this Act, including the anti-tax avoidance provisions listed in

sub-section (2), to circumstances, arrangements or relationships advised by or on behalf of that person.<sup>5</sup>

- (2) The anti-tax avoidance provisions to which subsection (1) refers are:
- (a) definitions of 'related persons' and 'specified circumstances' in section 2;
  - (b) section 14(2) (being the discretionary prohibition of deductions);
  - (c) section 24 (being the general anti-tax avoidance provision);
  - (d) any other provision of this Act which the Minister considers to be essentially an anti-tax avoidance provision; and
  - (e) any provision of the Act where the Minister is empowered to vary the tax treatment of any arrangement if he so determines;

and in this section, those sections or provisions are collectively referred to as the 'relevant provision'.

- (3) On receipt of any written application from or on behalf of any applicant, setting out all relevant facts and circumstances, including particulars of all the parties involved and affected, the Minister shall consider whether it is appropriate that the applicant be charged a fee for the issue of the requested determination, and if so, shall advise the applicant of the amount (if any) to be paid to be to the Crown by way of fee.
- (4) On the payment of the required fee (or if no fee is required, on deciding accordingly) the Minister shall with the consent of Cabinet first obtain, in relation to any current or future years confirm in writing to the applicant how he has determined that the relevant provision will be applied to the persons affected by the arrangement in the circumstance or set of circumstances advised to him.
- (5) Where any written determination is contemplated by sub-section (4) is given to the applicant, it will be binding on the Crown in relation to the person or persons covered by the application insofar and for so long as the advised circumstances prevail, or the ruling becomes time expired.
- (6) Any written determination contemplated by this section:
- (a) will be void and of no effect if there is any material misrepresentation to the Minister of particulars, or the circumstances which prevail differ in any material respect from those upon which the determination was based; or
  - (b) may be altered or cancelled by the Minister prospectively to arrangements entered into or implemented or concluded (whether or not pursuant to any pre-existing arrangement) from a date no earlier than the commencement of the next succeeding year,

and written notification of the relevant occurrence shall be given to the person or persons to whom the determination related, or to his or their agent or the original applicant.

- (7) Any decision of the Minister to treat any determination made under sub-section (4) as void and of no effect shall be subject to objection and appeal procedures in accordance with the provisions of this Act.
- (8) Any decision of the Minister to alter or cancel prospectively any determination made under sub-section (4) shall not be subject to the objection and appeal procedures in this Act.
- (9) Notwithstanding the other provisions of this section, the Minister may also issue advance binding rulings as to the approach or interpretation to be adopted in applying the provisions of this Act to persons generally, without first having received a written application from any particular applicant, and such rulings shall be applied without any fees being payable.<sup>6</sup>

## **PART 2 - LIABILITY TO INCOME TAX**

### **5 Personal liability to income tax<sup>7</sup>**

- (1) Each person who for any year derives taxable income shall (subject to the provisions of section 38), be personally liable for income tax on the aggregate of that taxable income.
- (2) The amount of income tax for which any person is liable in terms of sub-section (1) shall be:
  - (a) the amount calculated in the manner and at the rates prescribed in Schedule 6;reduced by:
  - (b) the amount of any credits for overseas tax to which that person is entitled pursuant to section 27.

### **5A Presumptive tax<sup>8</sup>**

- (1) Notwithstanding section 21, Schedule 4 and the other provisions of this Act, presumptive tax is imposed on a person carrying on business in Tuvalu who:
  - (a) is not a taxable person for the purposes of the Consumption Tax;
  - (b) whose business was in existence throughout the whole of the previous year; and
  - (c) whose annual gross income was less than \$100,000 in that previous year.
- (2) Where the annual gross income of the person is \$50,000 or less the presumptive tax shall:
  - (a) be paid by the person for a fiscal year; and

- (b) the amount of presumptive tax payable by the person for a fiscal year shall be determined according to Schedule 9.
- (3) Where the annual gross income of the person is more than \$50,000, the presumptive tax shall:
  - (a) be payable quarterly; and
  - (b) the amount of presumptive tax payable by the person for each quarter shall be 2% of the gross income of the quarter.
- (4) In determining the gross income of a person for a tax period for the purpose of this section or Schedule 9, the Taxation Officer may have regard to the annual gross income of an associate or associates of the person for that period.
- (5) Presumptive tax shall be a final tax on the taxable income from businesses of taxpayers upon whom it is imposed. No allowances, deductions or reductions shall be permissible in respect of presumptive tax.
- (6) A presumptive taxpayer shall file a presumptive tax return for each quarter within 15 days of the end of the quarter.
- (7) A presumptive tax shall be due by the due date for filing the presumptive return for the quarter regardless of any assessment.
- (8) The Taxation Officer may assess presumptive tax payable by a taxpayer in the event that a presumptive taxpayer fails to file a presumptive tax return or if the Taxation Officer is dissatisfied with the said return.
- (9) The assessment prescribed under subsection (8) shall be made *mutatis mutandis* in the same fashion and according to the rules as pertained in other tax types provided in this Act.

## **6 Accounting periods not coinciding with calendar year**

- (1) Where any person or persons carry on any business, that person or those persons may seek approval from the Secretary for an annual reporting date other than 31st December, or for an annual reporting date other than that previously approved as the last day of a substituted reporting period, in relation to that business.
- (2) The Secretary shall consider any application made pursuant to sub-section (1), and may give his approval to a substituted annual reporting date if the person or persons:
  - (a) ordinarily, or will ordinarily, account for the annual results of the business to the annual reporting date requested;
  - (b) that date is or is to be observed, on an ongoing basis:
    - (i) for bona fide commercial reasons; or
    - (ii) in the case of a non resident, by reason of statutory requirements in the person's or persons' country of residence; and

- (c) in all the circumstances, the Secretary considers that:
  - (i) the requested annual reporting date is appropriate; and
  - (ii) the person or persons do not thereby enjoy any untoward advantage under this Act.
- (3) Where the Secretary gives approval to any request made under sub-section (1), that approval shall be notified in writing to the applicant and state the first reporting period for which the substituted annual reporting date is to take effect, and the business from that year on determine its annual taxable income for that approved substituted reporting period.
- (4) Where the annual reporting date in relation to any business is prior to 1 July in any year, notwithstanding anything in this Act, the taxable income determined shall be taken as taxable income of the person or persons for the year ended the preceding December.
- (5) Where the annual reporting date for any business ends with a date after 30 June, notwithstanding anything in this Act, the taxable income determined shall be taken as taxable income of the person or persons for the year ended the succeeding December.
- (6) Where for any reason the ending with any approved reporting date in relation to any business and any person covers a period greater or less than 12 months, the Taxation Officer shall determine (if any) adjustments are required in the determination of taxable income or income tax payment obligation for that year so as to reflect fairly the effect of the longer or shorter reporting period.
- (7) Where in terms of this section, the Secretary approves a substituted annual reporting date for any business and any person:
  - (a) the final date for the filing of that person's annual return of income shall be as provided in section 41; and
  - (b) where the Secretary has approved an annual reporting date which ends between 1 January and 30 June, the Secretary shall determine whether it is appropriate to alter the final dates by when that person shall be required to effect payments of provisional tax and residual income tax, and notify the person accordingly.

## **PART 3 - DETERMINATION OF TAXABLE INCOME**

### **7 Requirement to include gross income in taxable income.**

- (1) Subject to the provisions of this Act, if at the time that any gross income is derived by any person, that person is:

- (a) resident in Tuvalu, he shall include that gross income in his taxable income for that year only if it is derived from a source within (or deemed to be from a source within) Tuvalu; and
- (b) not resident in Tuvalu, he shall include that gross income in his taxable income for that year only if it is derived from a source within (or deemed to be from a source within) Tuvalu.

## **8 When gross income is to be regarded as having a source within Tuvalu.**

- (1) Gross income will be regarded as having a source within Tuvalu if:
  - (a) it is derived within Tuvalu;
  - (b) it is a specified alimony payment;
  - (c) it is an emolument earned in, or in respect of a period of service in, Tuvalu;
  - (d) it is non resident withholding income which constitutes interest, and the interest relates to monies lent in, or used in, Tuvalu;
  - (e) it is non resident withholding income which constitutes either rent, royalty, knowhow, forbearance payment or service fees, where the payment was made by a resident, or some person is entitled to treat the amount as a deductible cost in terms of this Act; or
  - (f) it flows from any other arrangements entered into in Tuvalu, or wholly or partly performed within, Tuvalu:

Provided that where this paragraph applies, if the gross income is attributable to activity or other factors both within and outside Tuvalu, then only so much of the gross income as the Taxation Officer (in consultation with the Secretary) considers, in his best judgment objectively exercised, to be fairly attributable to a source within Tuvalu, shall be treated as being from a source within Tuvalu.

- (2) No part of any dividend distribution by a company which is not resident in Tuvalu shall be regarded as having a source within Tuvalu notwithstanding that it may comprise profits which were derived wholly or partly in Tuvalu.

## **9 Items specifically included within the term 'gross income'.**

- (1) Without in any way limiting the scope of the term 'gross income' (as defined in section 2), paragraph (b) of that definition shall include all amounts or the value of any benefits derived which are:
  - (a) amounts or benefits specifically deemed to be gross income in terms of this Act;
  - (b) an annuity;

- (c) a benefit of debt release;
  - (d) business profits or gain;
  - (e) a dividend;
  - (f) an emolument;
  - (g) a forbearance payment;
  - (h) interest;
  - (i) knowhow;
  - (j) a pension;
  - (k) post business income;
  - (l) proceeds of disposal of revenue assets;
  - (m) recoveries (whether by way of indemnity or otherwise) of any amount which constituted a deductible cost;
  - (n) recoveries of debts previously written off and treated as a deductible cost in any year;
  - (o) rent;
  - (p) royalty;
  - (q) service fees;
  - (r) specified alimony payments;
  - (s) value of throughput.
- (2) No amount or benefit of the type referred to in the previous sub-section requires to be included in gross income where it is exempt income.
- (3) Where any emolument is a benefit, advantage or facility conferred on any person by reason of any other person being an employee, the value of that benefit, advantage or facility shall be treated as gross income of the employee and not of the person in whom it was conferred.
- (4) For the avoidance of doubt, the following categories of capital receipt do not constitute gross income:
- (a) contributions received by any pension, provident, superannuation or benefit fund from or in relation to its members;
  - (b) the proceeds of any policy of life or accident insurance, except to the extent that:
    - (i) the benefits payable represent compensation for loss of earnings; or
    - (ii) the Taxation Officer, in his best judgement objectively exercised considers that having regard to the nature and terms of the policy, the benefits payable should more properly be treated as being similar to a return on a term deposit with a financial institution; and

- (c) compensation for death or injuries, except to the extent that the benefits payable take the form of compensation for loss of earnings.
- (5) Where:
- (a) any gross income is a source deduction payment, the amount to be included in gross income is the amount prior to any deductions from that gross income on account of income tax (or otherwise); and
  - (b) any gross income has been subject to deduction of overseas tax at source, the amount to be included in gross income is the amount prior to any such deduction for overseas tax (or otherwise).

## 10 Special provisions relating to pre-incorporation contracts

- (1) Where any company first comes into existence and prior to that event a contract had been entered into for its benefit, that contract shall be viewed as a pre-incorporation contract and the provisions of this section shall apply.
- (2) Where any company:
- (a) is a resident of Tuvalu; and
  - (b) ratifies a pre-incorporation contract within a period of 6 months from the date of such incorporation, establishment or formation (as appropriate),

unless that company otherwise elects in writing at the time of furnishing its annual return of income for the year in which ratification occurs, any gross income arising from or by reason of the contract or the matters covered by the contract shall be deemed to have been derived by the company as if it had existed at the time the gross income arose.

- (3) Where any company has either:
- (a) ratified a pre-incorporation contract but at the time is not (or was not at the time) a resident of Tuvalu;
  - (b) ratified a pre-incorporation contract later than 6 months from the date of incorporation, establishment or formation (as appropriate);
  - (c) fails to ratify a pre-incorporation contract entered into for its benefit; or
  - (d) ratifies the pre-incorporation contract within 6 months but makes the election referred to above,

any gross income arising from or by reason of the contract shall be treated as having been derived by the persons who in law would have been the parties entitled to the gross income had the contract not been ratified.

## 11 Authority to claim deductible costs as a deduction from gross income.

Where, in relation to any person and any year, that person is required to include gross income in the calculation of his taxable income for that year, in the arriving at

the amount of that taxable income, he shall be entitled to claim a deduction for deductible costs.

## **12 Authority to treat expenditure as deductible costs.**

Save as otherwise provided in this Act, in relation to any person and any year, expenditure incurred by that person in that year will constitute a deductible cost to the extent that it is incurred in the production or gaining of gross income or is incurred in the conduct of any business for the production or gaining of gross income in any year.

## **13 Certain losses and allowances deemed to be expenditure.**

- (1) Where in relation to any year a person:
  - (a) suffers a loss (including a loss by way of bad debt) which is not otherwise taken into account, whether directly or indirectly, in arriving at the person's taxable income for any year; or
  - (b) is eligible to claim depreciation with respect to capital assets in accordance with Schedule 2,  
then for the purpose of this Act —
  - (c) that loss shall be deemed to be expenditure incurred as at the date of that loss; and
  - (d) the depreciation which he is eligible to claim for that year shall be deemed to be expenditure incurred progressively over the course of those months in that year during which the asset was used as required, month by month.
- (2) Where in relation to any year a person is entitled to any investment allowance in accordance with Schedule 3, that allowance shall be deemed to be expenditure incurred as at the date the related asset was first used by the person in the course of the production or gaining of gross income or in the conduct of any business for the production or gaining of gross income in any year:

Provided that if the related asset is disposed of within 12 months of the first use, any such investment allowance that would have been available to the person shall be deemed not to have been available and not to have been expenditure incurred.

## **14 Circumstances in which no deduction shall be allowed for expenditure**

- (1) In relation to any person and any year, a deductible cost shall not include any expenditure where and to the extent that:
  - (a) the deduction is specially prohibited by any provision of this Act;

- (b) the gross income to which it relates is non resident withholding income and pursuant to section 38 and Schedule 5, the applicable income tax liability is ultimately determined solely with reference to the income tax to be withheld or collected at source; or
  - (c) it is a dividend.
- (2) Except as specified in section 15, in relation to any person and any year, a deductible cost shall not include any expenditure where and to the extent that:
- (a) it relates to a business (or any part of a business) the gross income of which is required by this Act to be determined exclusively with reference to the value of throughput; or
  - (b) the Taxation Officer in his best judgment objectively exercised considers that in all the circumstances of the case, it is not appropriate for a deduction to be allowed, and the Secretary has formally concurred with that decision.
- (3) Except as specified in section 15, in relation to any person and any year, a deductible cost shall not include any expenditure to the extent to which:
- (a) it is of a capital nature, or is an investment of capital or is expenditure on the acquisition of capital asset:  
 Provided that where the expenditure relates to an asset the disposal of which will give rise to gross income:
    - (i) nothing in this provision shall preclude the cost of that asset (insofar as it has not already constituted a deductible cost to the person) from being taken into account in the determination of the gain or loss on disposal of that asset; or
    - (ii) there shall be no recapture of any amount of depreciation treated as a deductible cost insofar as the cost of that asset has been reduced by that amount in the determination of the gain or loss on disposal of that asset;
  - (b) it is recoverable under any guarantee or indemnity of whatever kind;
  - (c) it relates to the derivation of any emolument;
  - (d) it comprises income tax (including any interest, fine or penalty imposed by or under this Act);
  - (e) it relates to the derivation of exempt income;
  - (f) it is of a private or domestic nature:  
 Provided that when the person is a company, expenditure which is incurred otherwise than directly in the production or gaining of gross income or for the purpose of the business of the company shall be deemed to be expenditure of a private or domestic nature;
  - (g) it represents a provision or a reserve or (except as provided in this Act) is expenditure that has not been incurred;

- (h) it is a gift or similar voluntary contribution, except as provided for under section 15.<sup>9</sup>
- (4) Except as specified in section 15, in relation to any person and any year, a deductible cost shall not include any expenditure to the extent to which it either:
- (a) represents the amount of (or part of) an unrecovered debt, except to the extent that —
- (i) that amount of debt was incurred in the conduct of a business;
- (ii) the amount of debt was written off as an expense in the accounts of that business for that year, and  
written out of any related accounting records maintained by that person for that year;
- (iii) as at the end of that year the amount of debt could reasonably be regarded as irrecoverable; and
- (iv) that amount of debt had previously been included in the person's gross income for any year;
- (b) represents the amount of (or part of) an unrecovered debt, except to the extent it arose as a result of advances made by a person as part of a business of banking or lending or similar to the extent that:
- (i) an amount of that debt has been written off as an expense in the accounts of that business for that year, and written out of any related accounting records maintained by that person for that year; and
- (ii) as at the end of that year that amount of debt could reasonably be regarded as irrecoverable; or
- (c) relates to a loss incurred by that person under any guarantee or indemnity given by him, unless that guarantee or indemnity was given as a natural incident of a business conducted by that person and which involves the provision of such guarantees or indemnities.

## 15 Expenditure which is deemed to be a deductible cost

- (1) Notwithstanding sections 14(2) to 14(4), except as provided in this section, the following outgoings will be treated as a deductible cost:
- (a) any sum contributed to an approved fund:  
Provided that where the contribution is not an ordinary annual contribution, the Secretary may in his discretion direct that the deduction of the sum be spread over a number of years;
- (b) any expenditure of a capital nature incurred on scientific or other research in relation to a business conducted in Tuvalu:

Provided that the amount of the deduction which may be allowed shall be limited to such sum as the Secretary considers reasonable, and he may require all or some of that amount to be spread over a number of years;

- (c) any amount paid by way of a specified alimony payment; and
  - (d) any expenditure necessarily incurred by a person in pursuing objection and appeal proceedings under this Act;
  - (e) any gifts in the form of monetary donation or sponsorship towards academic, sports or humanitarian activities.<sup>10</sup>
- (2) Where any expenditure would be treated as a deductible cost but for the provisions of sections 14(2)(a) or 14(3)(e), except as provided in this section, that expenditure will be treated as a deductible cost to the extent that:
- (a) the expenditure constitutes interest or other borrowing costs to fund the acquisition or retention of shares in a resident company; and
  - (b) the expenditure constitutes interest or other borrowing costs to fund the acquisition or retention of shares in a non resident company, where either —
    - (i) the Secretary has determined in advance that a deduction should be allowed on the basis of it being in the economic interests of Tuvalu; or
    - (ii) the Secretary is satisfied that the expenditure fairly relates to amounts which are included in the person's gross income consequent upon the application of section 24.
- (3) Where:
- (a) any expenditure incurred by any resident company is expended for the benefit of any other resident company;
  - (b) at the time the expenditure is incurred, all the interests in and in relation to the capital and profits of both companies are 100% commonly held; and
  - (c) but for this sub-section, the expenditure would not be treated as a deductible cost to the company which incurred the expenditure but it would have been a deductible cost in determining the taxable income of the other company had it been incurred by that other company; then,
  - (d) that expenditure will be treated as a deductible cost to the company which incurred the expenditure.
- (4) Save insofar as the Secretary considers appropriate in the circumstances, no deduction shall be allowed under this section to any person who is a non resident at the relevant time.

**16 Special provisions relating to the determination of gains and losses.**

Where any gains or losses of any arrangement or activity constitute gross income, these are to be dealt with by identifying the component gross income derived and the associated deductible costs incurred, and recognising those components in the manner contemplated by this Act.

**17 Need for allocation and apportionment.**

- (1) Where any amount or the value of any benefits received or derived constitute gross income, and comprise two or more elements which need to be treated separately or differently by the requirements of this Act, such amounts or values shall:
  - (a) so far as practical, the allocated between those elements according to the factual circumstances;
  - (b) insofar as they cannot be so allocated, shall be apportioned between relevant elements on a basis which is appropriate in the circumstances.
- (2) Where any amount of expenditure comprises two or more elements which need to be treated separately or differently by the requirements of this Act, that amount shall:
  - (a) so far as practical, be allocated between those elements according to the factual circumstances; and
  - (b) insofar as they can be so allocated, shall be apportioned between relevant elements on a basis which is appropriate in the circumstances.
- (3) For the purposes of sub-section (2) where the expenditure relates directly to the use of an asset (including borrowed monies), regard shall be had only to the use to which that asset was put over the period to which the expenditure relates.

**18 Treatment of trading stock of any business.**

- (1) In arriving at the amount of taxable income attributed to any business conducted by any person in any year, due regard shall be had to the effect on taxable income of movements during the year in the levels of trading stock held or being undertaken by the person.
- (2) For the purposes of sub-section (1):
  - (a) the value of any trading stock held or being undertaken by any person at any annual reporting date shall be included in the person's gross income for that year; and
  - (b) where any amount is included in a person's gross income in respect of trading stock held or being undertaken at any annual reporting date the corresponding amount shall be treated as a deductible cost to that person at the commencement of the next succeeding year:

Provided that where the annual reporting date was the date of death of the person, and the business continues to be conducted by his executors, administrators or trustees, or direct beneficiaries, then the deduction will be available to whichever of such persons continued the business.

- (3) For the purpose of sub-section (2) the following specific rules shall apply:
- (a) save as otherwise provided in this sub-section, all trading stock held or being undertaken at the end of any year shall be valued at its cost price; and
  - (b) where the trading stock (not being land or financial securities) has deteriorated in quality and thus in value such that it will not realise its cost price, it may be valued at market value:

Provided that the use of market value shall only be permitted where and to the extent that appropriate details are supplied with the tax return, and the Taxation Officer is satisfied that both the use of that basis and the value used are fair and reasonable.

- (4) For the purpose of sub-section (1):
- (a) where any trading stock held or being undertaken in relation to any business is applied otherwise than for the purpose of the business, then the market value of that trading stock so applied shall be treated as gross income of the business;
  - (b) where any trading stock is held by any person on the cessation of any business to which it relates, the market value of that trading stock shall be treated as gross income of that person on the day of that cessation, and the items shall thereupon cease to be trading stock; and
  - (c) where any items which were not trading stock of the person at the time of acquisition, and are subsequently introduced by him into his business as trading stock, the market value of those items when so introduced shall be deemed to be their cost price, and shall be a deductible cost to that person at that time of introduction.
- (5) Save where the Act otherwise provides:
- (a) the term trading stock shall also include any revenue asset held; and
  - (b) save insofar as the Secretary may otherwise determine in the special circumstances of any case, this section shall operate as if that revenue asset were held by a business.
- (6) Where he considers it expedient to do so, the Minister may issue regulations governing any aspect of the basis for determining and accounting for trading stock, or providing for exceptions to the requirements of the legislation in this regard.
- (7) This section shall not apply in determining the taxable income of any business or part of a business of any person where and to the extent that the gross

income thereof is determined at the value of throughput in accordance with section 20 or section 21 of this Act.

**19 Special provisions relating to the treatment of gross income and related expenditure.**

- (1) The special rules provided for in this section shall be followed:
  - (a) in the determination of the amount, and where applicable, the timing of the derivation of, gross income; and
  - (b) in the determination of the amount of, and where applicable, the timing of the deduction for, related expenditure,of any person to whom these rules have application.
- (2) In the case of any person:
  - (a) that is a financial institution or an insurance company;
  - (b) that conducts any other business where the investment or lending of customers' or clients' or members' funds are undertaken to generate an investment return;
  - (c) that is a company which is related to any person to whom this sub-section otherwise apply; or
  - (d) that is a trustee for any person to whom this sub-section would otherwise apply;

except to the extent to which the Secretary having regard to any special circumstances of the case otherwise determines, all investments made as part of its business of earning a return on its capital shall be treated as revenue assets:

Provided that this provision shall not apply to that portion of any premises held and occupied for business use, rather than for the earning of rent or other direct return on the capital invested.

- (3) All investments made by a provident, pension, superannuation or benefit fund shall be treated as if —
  - (a) they were investments made by a business; and
  - (b) the fund were a financial institution and those investments were investments of a financial institution:

Provided that this provision shall not apply to that portion of any premises held and occupied for business use, rather than for the earning of rent or other direct return on the capital invested.

- (4) In determining the gross income and deductible costs of any person that is a cooperative society, regard shall be had to transactions with members in the same manner as would have been required had those members not been members.

- (5) In the case of any person that is a cooperative society, and in relation to any year, that person may treat as a deductible cost the amount of any bonus distributed by it to its members within 3 months following the end of that year, insofar as:
- (a) the bonus was determined on a pro rata basis among all members having regard to the value of transactions entered into between the society and the members during the course of that year; and
  - (b) the amount of that bonus does not exceed that portion of the taxable income made by the society for that year as the Taxation Officer is satisfied is attributable to the member transaction and not transactions otherwise than with members,
- and for this purpose:
- (c) taxable income attributable to loans or financial assistance given to or by members shall be treated as transactions with non-members.
- (6) In the case of any person who is a member of a cooperative society, any bonus derived by him in any year shall be treated as gross income only insofar as it is attributable to transactions pertaining to a business conducted by that person or a related person.
- (7) Where any non resident withholding income is derived by a non resident, the provisions of section 38 shall apply in the determination of that person's taxable income.
- (8) In any case where any gross income is derived by any person in any year in his capacity as an executor, administrator or trustee of a deceased estate, or as a trustee of any other trust, then:
- (a) to the extent that such income vests in or is paid to a beneficiary within 2 months of the end of that year, it shall be treated as a gross income derived by the beneficiary in that year and not income of the executor, administrator or trustee; and
  - (b) to the extent it is income which is not so derived, it shall be deemed to be gross income of the executor or administrator or trustee (in his capacity as such in relation to that trust or estate) for that year, and not income of a beneficiary:

Provided that this sub-section shall not apply to —

- (c) any person insofar as he acts as a bare trustee; or
- (d) any amount of gross income that is deemed to be gross income of a deceased person pursuant to section 23(8).

**20 Special provisions for determining the taxable income content of throughput.**

- (1) Subject to this section, where in relation to any year the taxable income of a person includes or would include gross income from any business of the type described in Schedule 4, then the gross income derived from that business (or relevant part thereof) shall be determined at the value of throughput.
- (2) Where sub-section (1) applies in relation to any person and any business or part of a business, except as provided in section 15 or by regulation, the provisions of this Act which otherwise would have applied in determining the taxable income content of the gross income from that business or relevant part, shall not apply.
- (3) Where in relation to any year, a person first adopts or ceases to pursue the determination of value of throughput in accordance with this section, then:
  - (a) in order to avoid prejudice to the person or to the Crown, adjustments may be necessary to the person's taxable income to recognise the existence of debtors, creditors, trading stock and other assets on hand at the time of entry to or exit from the regime; and
  - (b) for this purpose the Taxation Officer shall determine (in consultation with the Secretary) what basis should be applied in any particular case to address the situation.

**21 Minister empowered to prescribe a simplified method of determining taxable income in the interest of reducing compliance costs.**

- (1) In any case where he considers it appropriate to do so, the Minister may determine in relation to any year and:
  - (a) any person carrying on business in Tuvalu; or
  - (b) any class of persons carrying on business in Tuvalu,that in order to obviate the need for the person or persons of that class to maintain full accounting records or prepare annual accounts, an alternative basis shall apply to determine the taxable income content of gross income derived from any such business (including any part of a business).
- (2) Any determination made pursuant to sub-section (1):
  - (a) in the case of a class of persons, shall be authorised by regulation amending Schedule 4; and
  - (b) in relation to any individual person, shall be notified in writing to that person,in either case specifying the year or years for which the alternative basis may be applied and setting out appropriate details of the alternative basis.
- (3) The Minister shall only approve an alternative basis pursuant to sub-section (1) if:

- (a) the business has independently controllable level of business throughout which can act as a basis for reliably calculating its gross income using a value of throughput approach;
  - (b) the business has a relatively low level of purchase or turnover (or other appropriate criterion of throughput) in or in relation to Tuvalu; and
  - (c) the alternative basis attempts so far as possible to leave the person in no better or no worse position as regards the level of taxable income that would otherwise have pertained.
- (4) Any alternative basis approved and notified —
- (a) shall only apply to:
    - (i) a person whose level of purchases or turnover (or other appropriate criterion of throughput) for the business is for the relevant year below a basic threshold level at which it would be reasonable to expect that the person or persons should have proper accounting records to properly reflect the conduct of the business; or
    - (ii) any business conducted by the Crown, or by a statutory corporation, where the Minister has so determined by regulation;
  - (b) shall operate at the election of the person entitled to adopt the value of throughput basis in terms of a determination made under this section; and where an election is made under this section by a person entitled to do so it shall take effect as follows:
    - (i) if made at or before the time when the annual return of income of that person for the year is furnished, for the succeeding year just commenced; or
    - (ii) in relation to any year, where the Taxation Officer is satisfied that the adoption of the value of throughput approach does not confer on the person any untoward tax advantage, for such year as he may determine.
- (5) Where in relation to any business and any year a person makes an election in accordance with this section, the gross income derived in that year from that business shall be determined at the value of throughput.
- (6) Where sub-section (5) applies in relation to any person and any business or part of a business, except as provided in section 15 or by regulation, the provisions of this Act which otherwise would have applied in determining the taxable income content of the gross income from that business or relevant part, shall not apply.
- (7) Where in relation to any year, a person adopts or ceases to pursue or be entitled to pursue the elective option, then in order to avoid prejudice to the person or to the Crown, adjustments may be necessary to the persons' taxable income to recognise the existence of debtors, creditors, trading stock and

other assets on hand at the time of entry to or exit from the regime, and for this purpose:

- (a) the Taxation Officer shall determine (in consultation with the Secretary) what basis should be applied in any particular case or class of cases; and
- (b) where appropriate, the general approach which is required be taken to effecting any such adjustments shall be published in regulations, and they shall apply accordingly.

## **22 Adjustments required where persons or assets move in or out of the tax base.**

- (1) Where in relation to any person and any year:
  - (a) any resident becomes non resident;
  - (b) any non resident becomes resident;
  - (c) any person previously liable to income tax on any gross income henceforth ceases to be so liable in relation to income of that class;
  - (d) any person who derived exempt income henceforth becomes taxable on the gross income which was previously exempt from income tax;
  - (e) any asset or thing (other than trading stock) used by a person in a business ceases to be so used and commences to be used otherwise than for the purpose of the business; or
  - (f) any asset or thing (other than trading stock) previously acquired otherwise than for the purpose of a business is introduced into a business,

save insofar as the circumstance is specifically addressed by the Act, the Taxation Officer, in consultation with that person and subject to the provisions of this Act, shall determine the nature of the adjustments that are appropriate in order that the tax consequences of the event are suitably dealt with so as to ensure that, so far as possible, there is no resultant tax preference or unfair tax consequence to the person as a result of the event.

- (2) Where any person dies:
  - (a) the date of death shall be taken to be the annual reporting date of that person for the year in which he died, and the provisions of this Act shall apply accordingly for the period ending with that annual reporting date;
  - (b) assets passing —
    - (i) to the estate of the deceased; or
    - (ii) direct to the beneficiaries of the deceased,shall be regarded as having been disposed of by the deceased immediately prior to the date of death, at their market value;

- (c) assets passing from the estate of a deceased person to beneficiaries in that estate shall be treated as having been disposed of by the estate, at their market value at the date of disposition;
- (d) the provisions of —
  - (i) section 6(6) (with respect to adjustments for a shortened annual reporting period);
  - (ii) section 18(2) (with respect to trading stock);
  - (iii) section 23(8) (with respect to gross income received after death, and related expenditure); and
  - (iv) section 25(4) (with respect to tax losses),shall have application; and
- (e) the executors, administrators or trustees shall assume any responsibilities which the deceased person had under this Act in accordance with section 34.

### **23 Determining the year in which gross income and expenditure is to be recognised.**

- (1) Notwithstanding any other provisions of this Act, and in particular:
  - (a) section 7, (which requires that gross income shall be recognised when derived); and
  - (b) section 12, (which requires that expenditure shall be recognised when incurred);

where and to the extent applicable, the provisions of this section shall govern the timing of the recognition of gross income and expenditure in the calculation of the taxable income of any person.

- (2) Where:
  - (a) any emolument comprises any wages, salary, bonus allowance, leave pay, sick pay, pay in lieu of leave, fees, commission, gratuity or other lump sum payment (whether or not derived at the conclusion of a period of employment) derived in respect of, or in relation to, or arising out of the employment of any person;
  - (b) the amount so derived relates to services rendered in an earlier year or years (whether or not it also relates to services rendered in the current year); then
  - (c) at the option of the person deriving that emolument, the amount so derived may be treated as gross income of that person for the relevant year or years (whether on a pro rata basis or otherwise) with the intent that it be subjected to tax in the year or years to which it most properly relates.

- (3) In any such case under subsection 2 of this section, if the person accordingly provides the Taxation Officer with a written election to that effect not later than the final date prescribed for furnishing the annual return of income for the year of derivation, then:
- (a) to the extent that the emolument is attributed to an earlier year or years, the amount shall constitute gross income in the earlier year or years and not in the year it was derived; and
  - (b) notwithstanding any time limit specified in section 50 the Taxation Officer shall on receipt of that written election raise an assessment or amended assessment accordingly for the appropriate year or years, and credit any income tax withheld or collected at source against the liabilities so arising.
- (4) Where and to the extent that any gross income derived (or to be derived) is gross income of a business, and this is more properly attributable to a year other than that in which it was (or will in fact be) derived, then the income shall be deemed to be derived in that other year and not in the year it was actually derived (or will be derived):

Provided that this sub-section shall not apply:

- (a) to any gross income which is a dividend; or
  - (b) in any case where the Taxation Officer so determines in accordance with this Act
- (5) Where and to the extent that any deductible cost is —
- (a) expenditure of a business, and this is more properly attributable to gross income which was derived (or will in fact be derived) in a later year, then those costs shall be deductible only in that later year;
  - (b) expenditure which is only deductible by reason of section 15(2), and the expenditure may reasonably be viewed as relating to a later year, then those costs shall be deductible only in that later year:

Provided that this sub-section shall not apply where the Taxation Officer so determines in accordance with this Act.

- (6) The provisions of sub-sections (4) and (5) shall not apply in any case where, having regard to the circumstances of the person's business or investment activity, the aggregate net amount of the adjustments required is not a material amount.
- (7) For the purpose of giving effect to sub-sections (4) and (5) the Taxation Officer may make such adjustments to the taxable income of any person for any year as he, in his judgment objectively exercised, deems necessary to ensure that the taxable income determined provides a correct reflex of the true profit derived from the relevant business or investment activity in that year, in accordance with the tenor of this section:

Provided that any such adjustments shall not operate to provide a deduction for any expenditure or loss, or any deductions by way of allowance, to the extent that such are not, or will not be, deductible costs in relation to that or any other year.

- (8) The preceding provisions of this section shall not apply in relation to any person and any year where and to the extent that the person's gross income from a business (or part of a business) is determined with reference to the value of throughput.
- (9) Where in any year a person dies:
  - (a) any gross income derived by him in the period to the date of his death shall be gross income for that period, even if received by or on behalf of the executors and administrators, or trustees of his estate after his death; and
  - (b) any expenditure incurred by the executors and administrators or the trustees of his estate in collecting that gross income shall be deemed to have been expenditure incurred by the deceased in the period prior to his death.
- (10) In relation to any year or years and to any particular case or class of cases, the Minister may determine by regulation that the principles outlined in this section shall (to the extent so determined) not be applicable in determining the taxable income of any person or class of persons to whom the section would otherwise apply.

## **24 Anti-tax avoidance provisions.**

- (1) Where the Taxation Office considers that:
  - (a) at any time in relation to any year a specified circumstance prevails or prevailed;
  - (b) directly or indirectly as a result of this, any person has either —
    - (i) derived less gross income or has incurred a higher level of deductible costs than would or would in all likelihood otherwise have occurred but for the arrangements, occurrences or relationships which constitute the specified circumstance; or
    - (ii) derived gross income or incurred deductible costs in a year other than that in which they might reasonably have been expected to be derived or incurred but for the arrangements, occurrences or relationships which constitute the specified circumstance; and
  - (c) in all the circumstances of the case, the situation identified may be objectively viewed as being accountable significant extent to an attempt by any person to achieve or engineer a tax advantage (whether or not there are other advantages associated with the circumstance) other than

a tax advantage specifically contemplated by the Act having regard to its scheme and purpose;

then the Taxation Officer shall:

- (d) discuss his concerns with the person or his agent, with a view to establishing the validity of his opinion;
- (e) where he still considers the provisions of this section should apply, discuss those concerns with the Secretary; and
- (f) to the extent that the Secretary concurs with the views of the Taxation Officer, and approves the pattern of adjustments contemplated by the Taxation Officer to negate the perceived tax advantage, proceed in accordance with sub-section (4).

(2) Where at any time in any income year a resident, either alone or with related persons, directly or indirectly controls or has *de facto* over either:

- (a) any company or other person who is non resident; or
- (b) is a member (or a person related to a member) of a pension, provident, superannuation or benefit fund (other than an approved fund) where that member, together with related persons, can reasonably be viewed as the person or persons will be the most likely beneficiaries under the fund,

then, unless the Taxation Officer in his best judgment objectively exercised otherwise determines:

- (c) the gross income and deductible costs (in each case determined as if the company or other persons were resident in Tuvalu) shall be identified;
- (d) insofar as that gross income and those deductible costs may reasonably be attributed to the control or *de facto* control by the resident, shall be treated as gross income and that deductible costs of that resident; and
- (e) subject to the provisions of this Act, any overseas tax fairly attributable to the gross income attributed pursuant to paragraph (d) shall rank for a tax credit:

Provided that —

- (f) this sub-section shall not apply in any case where and to the extent that, in the Taxation Officer's best judgment objectively exercised the use of that company or other person (or any person who is related to that company or other person) did not have as a significant objective the gaining of a tax advantage under this Act; or
- (g) in exercising his judgment as to:
  - (i) whether this sub-section does or does not apply to any person at any time; and
  - (ii) where the sub-section is to apply, the manner and the extent to which it shall be applied;

the Taxation Officer shall —

- (iii) have regard to the tenor of this sub-section and the scheme and purpose of the Act;
- (iv) discuss his concerns with the Secretary; and
- (v) to the extent that the Secretary concurs with the views of the Taxation Officer, and approves the pattern of adjustments contemplated by the Taxation Officer to negate the perceived tax advantage, proceed in accordance with sub-section (4)

(3) Where:

- (a) any amount or any benefit derived by any resident from the executor, administrator or trustee of a deceased estate, or from the trustee of any other trust; and
- (b) the full amount or the value of that benefit is not gross income of the resident;

then if, in the best judgment of the Taxation Officer objectively exercised:

- (c) that amount or benefit so received or derived by the resident may reasonably be regarded as representing a distribution of amounts or the value of benefits received or derived by the executor or administrator or trustee at a time when the person was resident in Tuvalu;
- (d) had all or any of the amounts or the value of the benefits derived by the executor, administrator or trustee instead been derived by the resident, such would have been gross income of the resident;
- (e) that amount or value of the benefit had not constituted gross income in Tuvalu in relation to the year it was derived by the executor, administrator or trustee; and
- (f) the delay in the executor, administrator or trustee in distributing the amount or benefit to the person may be reasonably regarded as having as a significant objective the gaining of a tax advantage under this Act;

then the Taxation Officer shall:

- (g) discuss his concern with the person or his agent, with a view to establishing the validity of his opinion;
- (h) where he still considers the provisions of this section should apply, discuss those concerns with the Secretary; and
- (i) to the extent that the Secretary concurs with the view of the Taxation Officer, and approves the pattern of adjustments contemplated by the Taxation Officer to negate the perceived tax advantage, proceed in accordance with sub-section (4):

Provided that —

- (j) if the person fails to make available to the Taxation Officer within the time reasonably allowed, such information as the Taxation Officer may reasonably require to exercise his judgment as required, the Taxation

Officer and the Secretary shall make their decision on the facts then available to them; and

- (k) subject to the provisions of this Act, any overseas tax fairly attributable to any amount included in the gross income of any person pursuant to this sub-section shall rank for a tax credit.
- (4) Where the Secretary has given the approval contemplated by sub-sections (1), (2) or (3), then notwithstanding any other provision of this Act the Taxation Officer shall amend the liabilities to income tax imposed by this Act on the person or persons affected by the specified circumstance or other situation in which those sub-section pertain, in the manner approved by the Secretary.
- (5) Any adjustments which the Secretary approves and the Taxation Officer makes under this section shall do no more than, in their best judgement objectively exercised, is necessary to negate the perceived tax advantage.

## **25 Tax losses.**

- (1) Where in relation to any person and any year the aggregate of deductible costs exceeds the aggregate of the person's gross income for the year then:
  - (a) for the purposes of this Act that excess shall be referred to as a 'tax loss'; and
  - (b) for the purpose of the succeeding provisions of this section, shall be treated as a tax loss which arose in that year.
- (2) Subject to this section, any tax loss arising in any year shall be treated as a deductible in the next succeeding year, but only so far as the person's taxable income (prior to any deduction under this section) for that next succeeding year extends.
- (3) Subject to this section, to the extent that any tax loss referred to in sub-section (2) is not able to be treated as a deductible cost in the next succeeding year, the residue of the tax loss shall be treated as the deductible cost in the next subsequent year, and so on, in each case, so far as the person's taxable income (prior to any deduction under this section) in those later years extends.
- (4) For the purposes of this section:
  - (a) losses arising in any years shall be applied in the order in which they arose;
  - (b) where the person is a company, a tax loss arising in any year may be carried forward and dealt with in accordance with the provisions of this section only where and to the extent that the Taxation Officer is satisfied that there exists at the relevant times the requisite continuity of effective interests (as set out in this sub-section);
  - (c) the requisite continuity of effective interests requires that the aggregate of relevant shareholder interests in the company (including relevant indirect shareholder interests through interposed companies) may

- reasonably be regarded as being effectively held primarily and principally by the same persons throughout the period from the start of the year (or relevant part of the year) in which the tax loss (or relevant part) arose through to the end of the year (or relevant part of the year) in which that tax loss (or relevant part) is to be claimed as a deductible cost; and
- (d) where any person (being an individual) dies, and at the time of his death, after taking into account taxable income derived in the period up to his death, there remains any unused tax loss (whether it arose in the year of death or in any year or years prior to his death)
    - (i) at the election of the executors, administrators, or trustees of his estate, that tax loss shall be deemed to be expenditure which was incurred by them in their capacity as such; and
    - (ii) that tax loss shall thereupon cease to be available in relation to any subsequent re-assessment of the deceased's liability to income tax.
  - (5) No deduction shall be claimable for any tax loss (or part of a tax loss) which (pursuant to this section) is treated as expenditure incurred where and to the extent that:
    - (a) in the case of any company, the requisite continuity of effective interests (as described in sub-section (4)) has not been maintained; or
    - (b) the Taxation Officer has applied the provisions of sections 14(2) or 24 to disallow the deduction of any such tax loss which is claimed by the company as being a deductible cost in a later year of claim.
  - (6) For the purpose of this section:
    - (a) shareholder interests include all monetary interests and voting interests in the capital of the company, as well as entitlements to profits on a distribution; and
    - (b) should the need arise the provisions of this Act relating to the determination of taxable income or loss shall be applied as if the date when the requisite continuity of effective interests was breached was the company's annual reporting date.

**26 A company may elect to have its taxable income taxed directly in the hands of (and tax losses allocated directly to) its shareholders.**

- (1) Subject to this section, the shareholders of any company incorporated or registered under the Companies Act 1991 and which is resident in Tuvalu may elect that its gross income and deductible costs for any year be treated as gross income and deductible costs of the shareholders (on a pro rata basis) and that this Act shall apply accordingly.

- (2) No election may be made under this section by the shareholders of any company if:
- (a) any of the shareholders are non qualifying shareholders (as defined in section 2);
  - (b) there are at the time more than 7 persons who are shareholders:
- Provided that for this purpose, the executors or administrators or trustees of a deceased estate holding shares in a qualifying company in their capacity as such shall collectively be viewed as a single shareholder; or
- (c) the company is of any of the types referred to in the following paragraphs of the definition of 'company' in section 2:
    - (i) paragraph (b), (being any cooperative society);
    - (ii) paragraph (d), (being any benevolent, religious, educational, charitable, cultural, amateur sporting or community service, institution or organisation);
    - (iii) paragraph (e), (being any local authority);
    - (iv) paragraph (f), (being any trade union);
    - (v) paragraph (g), (being any pension provident, superannuation or benefit fund); and
    - (vi) paragraph (h), (being any body of persons which the Minister determines to be a company).
- (3) No election may be made in relation to any company unless there is on issue only one class of shares, all being paid up to the same extent, and each share carries with it equal rights to share in any profits that may be distributed.
- (4) An election can only be made if:
- (a) made by all the persons who are shareholders at the time, and each of whom accept personal liability for the income tax liability on the taxable income represented by their pro rata share of the gross income and deductible costs at any time —
    - (i) they are a shareholder; and
    - (ii) the company is a qualifying company for that year; and
  - (b) the company provides the Taxation Officer with a written certificate making an election to that effect, and for each shareholder:
    - (i) indicating the extent of their pro rata percentage interest in any profits of that company that may be distributed; and
    - (ii) affixing his signature (or that of his agent) to confirm acceptance (or the person they represent's acceptance of) a personal liability for the income tax liability on the taxable income represented by their pro rata share of the gross income and deductible costs at any time during the period they are a shareholder and the company remains a qualifying company.

- (5) Any valid certificate given to the Taxation Officer:
  - (a) within 3 months of incorporation of a company shall cause the election to take effect in relation to that company from the date of incorporation;
  - (b) within 3 months of the start of any year, shall cause the election to first take effect in relation to that company for that year; and
  - (c) at any other time shall cause the election to take effect in relation to that company from the commencement of the next succeeding year.
- (6) Where any election contemplated by this section is in effect, the company shall be referred to as a qualifying company.
- (7) No election contemplated by this section shall be of effect in any year where the company is at any time in that year not resident in Tuvalu.
- (8) Within 2 months of the end of each year (or such further time as the Minister in any particular case may approve), a qualifying company shall advise its shareholders of their attributed pro rata share of each item of gross income and each item of deductible cost comprising the taxable income (or tax loss) of the company for the year just completed, and shall include details of that allocation with its own annual return of income.
- (9) In respect of any year during which an election is in force and effect for that year:
  - (a) there shall be no obligation on the company to effect any provisional tax payments or make any payment on account of its personal income tax liability; and
  - (b) any overseas tax credits to which the company is entitled pursuant to section 27 shall be allocated to shareholders on a pro rata basis.
- (10) Where, in accordance with sub-section (8), an extended period of time for advising shareholders has been approved in relation to any year, such approval shall correspondingly apply to the time within which the company and its shareholders must file their annual return of income, but shall not affect the final date by when those persons must pay any residual income tax liability in relation to that year.
- (11) Any amount of gross income and deductible cost comprising the taxable income or tax loss of the company which is attributed to any person in accordance with this section shall be included respectively in the gross income and the deductible costs of that person for the same year as that in which the company otherwise would have been required to recognise them.
- (12) Where a company which becomes a qualifying company already has a tax loss, that tax loss may not be accessed by its shareholders, but subject to the provisions of section 25, shall remain available for use by the company in any subsequent year in which it is not a qualifying company.
- (13) Where there is any event triggering a change in the pattern of shareholder profit participation in a qualifying company:

- (a) a new certificate (listing the revised information and carrying the signatures which accept personal liability for the company's income tax liability) shall be lodged with the Taxation Officer; and
  - (b) that lodgement shall occur within 3 months of the date of the event, otherwise the existing election will lapse with effect from the first day of the year in which that event occurred.
- (14) Where any disqualifying event occurs, any existing election lapses, and will be treated as having not been in effect in the year in which that event occurs:

Provided that in any case where the company is able to satisfy the Minister that there would be no significant prejudice to the Crown by allowing the company to retain qualifying company status for the remainder of the year in which that disqualifying event occurs, the Minister may authorise that the election be treated as being in effect until the end of that year (or the date of any other disqualifying event, whichever first occurs).

- (15) Where a company and its shareholders wish to revoke any election under this section, they shall give written notice to the Taxation Officer to that effect (that notice being signed by all the shareholders or, where appropriate, their guardian or agent) and that revocation shall take effect from the commencement of the next succeeding year.
- (16) Where any election made under this section lapses or is revoked:
- (a) the undertakings as to personal liability given by shareholders or their agent in respect of the income tax liability on the taxable income represented by their pro rata share of gross income and deductible costs during the period the company was a qualifying company shall remain in force and of effect;
  - (b) the provisions of this Act shall continue to apply from the relevant date as if the company had never had qualifying company status; and
  - (c) the Taxation Officer shall make such adjustments to the taxable income or income tax liability of any person, or require such payments to the Crown, as he, in his best judgment objectively exercised, considers appropriate to ensure that the company and its shareholders do not enjoy any undue preference or suffer any unfair disadvantage as a result of the change in status.
- (17) Where any company was not previously a qualifying company but becomes a qualifying company, should the need arise, the Taxation Officer shall make any adjustments to the taxable income or income tax liability of any person, or require such payments to the Crown, as he, in his best judgment objectively exercised, considers appropriate to ensure that the company and its shareholders do not enjoy any undue preference or suffer any unfair disadvantage as a result of the change in status.
- (18) In any case where there is any dispute as to the portion of any gross income deductible costs and tax liability attributed to any shareholder in accordance

with this section, the decision of the Minister shall be final, and not subject to objection and appeal procedures.

## PART 4 - CREDITS FOR OVERSEAS TAX

### 27 Credits for overseas tax

- (1) Subject to this section, where:
  - (a) any resident is liable to pay income tax on his taxable income for any year; and
  - (b) that resident has paid by deduction or otherwise any amount of overseas tax for such year on any amounts included in that taxable income,

then he shall be entitled to a credit against the income tax attributable to that taxable income, of that portion of the overseas tax paid as is determined under sub-section (2).
- (2) The amount of any tax credit available under sub-section (1) in respect of any category of gross income arising overseas in any year shall be limited to the lesser of:
  - (a) the appropriate portion of income tax (as defined in section 2); and
  - (b) the appropriate portion of overseas tax (as defined in section 2).
- (3) No credit shall be available in respect of any amount of overseas tax unless satisfactory evidence is furnished to the Taxation Officer to establish or evidence the fact that:
  - (a) the overseas tax was in fact paid (whether through withholding or otherwise), and is fairly attributable to the overseas income included in gross income for the year for which the claim is being made; and
  - (b) the person has and had no right of recovery from the relevant overseas authorities of the amount of overseas tax being taken into account in the calculation of the appropriate portion of overseas tax.
- (4) Notwithstanding the preceding provisions of this section:
  - (a) where any person in any year derives a dividend from a source outside Tuvalu, that person:
    - (i) shall not be entitled to any overseas tax credit in respect of any portion of that dividend; and
    - (ii) shall instead be entitled to treat that dividend as exempt to the extent provided in paragraph 3 of Part 3 of Schedule 1:

Provided that, by an election (made in writing within 2 years following the end of the year in which the dividend was derived) that person may choose for the exemption provided in paragraph 4 of Part 3 of Schedule

- 1 to apply instead of that provided by paragraph 3 to Part 3 of Schedule 1;
- (b) where:
- (i) any income is excluded from gross income by reason of being exempt income; and
- (ii) that income has any overseas tax attributable to it;
- in applying the provisions of this section that overseas tax so attributable shall be disregarded;
- (c) in any case where in relation to any person and any year:
- (i) that person considers in the circumstances of the case, the application of this section gives rise to a significant inequity; and
- (ii) this is demonstrated to the satisfaction of the Secretary;
- the Secretary (with the concurrence of the Minister) may approve such additional relief as he considers to be warranted; and
- (d) the provisions of this section, and the definitions of 'appropriate portion of income tax' and 'appropriate portion of overseas tax' in section 2, shall be read subject to the requirements of any tax treaty entered into pursuant to section 84 and in force for the relevant year.

## **PART 5 - STATUS OF PERSONS IN RELATION TO PARTICULAR TRANSACTIONS OR CIRCUMSTANCES**

### **28 Status of persons representing a company**

- (1) Where any obligation is imposed upon any company by this Act, save as provided in section 29, the directors of that company at the relevant time shall be jointly and severally responsible for ensuring that the obligation is performed.
- (2) Where a company is in default of any obligation under the Act, save as provided in section 29, the directors of the company at the relevant time shall be deemed to be the persons committing the offence or allowing the omission which gave rise to default.
- (3) Save as provided in sub-section (4), in the absence of fraud or wilful neglect or default, nothing in this section shall be construed as imposing any personal liability on the directors to meet the amount of any income tax liability in respect of the company's taxable income for any year.
- (4) Where any company or its, shareholders take or fail to take any action, and in the opinion of the Taxation Officer (and with the concurrence of the Secretary) a purpose of that action or failure was to leave the company unable

to meet any income tax liability, the directors at the time of that action or failure shall be jointly and severally liable for the amounts unpaid:

Provided that:

- (a) where the action or failure was an action or failure by the shareholders, the liability shall befall the shareholders pro rata to their interests in the company, and not the directors; and
  - (b) where and to the extent that the Minister, having regard to the circumstances and the level of culpability of any one or more directors, considers that it is appropriate that such director or directors should not be personally liable, this sub-section shall not apply.
- (5) The provisions of sub-section (3) and (4) apply equally to any income tax which the company was required to account for under section 37.

## **29 Effect of liquidation or receivership on the tax status of a company**

- (1) Where any company is:
- (a) placed in liquidation or receivership or is otherwise placed under statutory or judicial management or control; or
  - (b) the requisite steps have been initiated to wind up or terminate the existence of the company;

then subject to this section, so long as the company remains in existence and is subject to such liquidation, receivership, management or control, or is being wound up or its existence is in the process of being terminated, it shall continue to remain subject to this Act as if no such event had occurred.

- (2) Any person who is appointed as liquidator, receiver, or statutory or judicial manager, or who has responsibility for the winding up or termination of the company, shall be liable in that capacity for all the income tax obligations that would otherwise have befallen the company during the period of his appointment, and shall be entitled to all the rights which the company otherwise would have had during that period.

## **30 Status of partners in a partnership or parties to a joint venture**

- (1) Where any persons:
- (a) are in partnership; or
  - (b) are parties to a joint venture; or
  - (c) hold investments jointly;
- then —
- (d) the partnership, joint venture or joint investment shall not itself be an entity subject to income tax;

- (e) the taxable income (or tax loss) of the partnership, joint venture or joint asset ownership shall be determined in accordance with the provisions of this Act as if it was an entity in its own right;
  - (f) subject to this Act those persons shall be liable to income tax on their respective shares of any taxable income arising from that partnership, joint venture or joint asset ownership on the basis that, having regard to the terms of the arrangement between the parties, it comprises gross income derived by them and expenditure incurred by or available to them at the time or times such gross income was derived or expenditure was incurred or became available; and
  - (g) subject to the provisions of this Act, those persons shall avail themselves of their respective shares of any tax loss (as contemplated by section 25(1)) arising from that partnership, joint venture or joint asset ownership on the basis that, having regard to the terms of the arrangements between the parties, it comprises gross income derived by them and expenditure incurred by or available to them at the time or times such gross income was derived or expenditure was incurred or became available.
- (2) Where any persons referred to in sub-section (1) are required pursuant to section 37 to withhold or collect tax at source in relation to payments made by or on behalf of the partnership, joint venture, or joint asset ownership those persons shall be jointly and severally responsible for so doing.

### **31 Persons making certain payments to non residents deemed to be an agent of the non resident**

- (1) Where any person makes payment to any non resident of any amount referred to in Schedule 5 that person shall be deemed to be the agent of that non resident in relation to that payment.
- (2) This Act shall apply to that person in his capacity as agent of that non resident.

### **32 Liability of persons representing non-residents**

- (1) To the extent that any income tax liability of a non resident has not been assessed to, or has been assessed and not recovered from that non resident, that income tax liability shall be recoverable from any person who is the agent of that non resident, or from any person who in relation to that non resident is a related person.
- (2) This section shall apply equally to any income tax which that non resident or his agent is required to account for pursuant to section 37.

- (3) The Minister may determine that this section shall not apply to any person to the extent that he considers it appropriate having regard to all the circumstances of the case.

### **33 Status of persons representing an incapacitated person**

Where any person or persons assume responsibility for or have the control of the property of an incapacitated person, that person or persons assuming that responsibility shall be liable in their representative capacity to income tax in a like manner and to a like amount as would have applied had the incapacitated person not been incapacitated.

### **34 Status of executor and administrator, or trustee, in relation to the estate of a deceased person**

- (1) The executor, administrator or trustee of a deceased estate shall be responsible in his representative capacity for:
- (a) any income tax liability of the deceased for any prior year and for the period up to his death; or
  - (b) any income tax liability attaching to the estate in respect of gross income derived by the estate.
- (2) This section shall apply equally to any income tax which that deceased person or that estate was or is required to account for pursuant to section 37 of this Act.

### **35 Minister's power to appoint agent**

In any case where he considers it necessary, and appropriate, with the approval of Cabinet, the Minister may by notice declare any person to be the agent of any other person for the purposes of this Act, and the provisions of the Act shall apply as if that person were the agent of that other person.

### **36 Right of persons to recover income tax from persons they represent**

- (1) Every person who is required under this Act to account for any income tax liability of another person may:
- (a) recover the amount of that liability from the person who derived the gross income or taxable income to which the income tax liability attaches; or
  - (b) retain out of any money coming into his hands on behalf of that other person so much as may be sufficient to meet such liability,
- and shall be indemnified against any person whatsoever for all payments made by him on account of the liability of the other person.

- (2) Where:
- (a) any person has, pursuant to this Act, directly or indirectly legally withheld or retained any money from any amounts owing to another person on account of that person's liability to income tax; and
  - (b) the Minister has not in the special circumstances of the case otherwise determined by notice in writing,
- that other person shall be deemed to have paid the amount of income tax so retained.

## **PART 6 - OBLIGATION TO WITHHOLD TAX FROM PAYMENTS MADE TO OTHER PERSONS, AND LIABILITY TO TAX ON NON RESIDENT WITHHOLDING INCOME**

### **37 Obligation on persons to withhold or collect income tax at source**

- (1) Where in relation to any employment a person derives any amount or is provided with any benefit which constitutes an emolument, the employer shall at that time withhold or otherwise collect income tax attributed thereto at the rate and on the basis specified in Schedule 5.
- (2) Every person who pays or credits to any non resident any amount of non resident withholding income shall at that time withhold or otherwise collect income tax (being non resident withholding tax) at the rate prescribed in Schedule 5.
- (3) Where any person pays to any non resident any amount (not being an amount by way of emolument or non resident withholding income), and that amount is of a type referred to in Schedule 5, that person shall withhold from that amount or shall otherwise collect any amount of income tax required to be withheld or collected at source (being an amount calculated at the rate prescribed in Schedule 5 as applied to the amount of the payment or the proportion of the payment, as required by that schedule).
- (4) Every person who pays any other person any amount (not being an amount being previously referred to in this section) in respect of which a withholding rate is prescribed in Schedule 5, shall at that time withhold or otherwise collect an amount of income tax (being an amount calculated at the rate prescribed in Schedule 5 applied to the amount of the payment of the proportion of the payment, as required by that Schedule).
- (5) The Minister, in his discretion having regard to all relevant circumstances (including the terms of any tax treaty concluded in terms of section 84, and currently in force), may authorise any person in writing —
  - (a) not to withhold income tax; or

- (b) to withhold an amount of tax which is less than that prescribed by the Act;

where he is satisfied that if that action were not taken significantly more tax would be collected than any related liability which may befall the person who will be the recipient of the amount subject to withholding or collection, and the provisions of this Act shall be applied accordingly.

- (6) Any authority issued in terms of sub-section (5) shall set out the extent and the period for which the relief provisions are to apply.
- (7) where, in accordance with this section, any person is required to withhold or otherwise collect an amount of income tax from or in relation to any gross income:
- (a) to that extent, the person shall be an agent of the Crown; and
- (b) every such amount that is required to be withheld or collected —
- (i) shall be accounted to the Crown not later than the final date for payment, being the 15th day of the month immediately following that in which withholding or collection was required in terms of this section;<sup>11</sup>
- (ii) shall be regarded as a first charge on the gross income or entitlement in question and shall be dealt with prior to any other deduction or charge which the person may be required to observe, whether by virtue of any court order or rule of law;
- (iii) shall be deemed to be held in trust for the Crown and shall not be subject to attachment in respect of any debt or liability of the said person; and
- (iv) in the event of any liquidation, assignment, or bankruptcy shall form no part of the assets available for distribution to other persons, but shall be payable in full to the Crown before any other distribution of property is made.
- (8) Where any income tax is withheld or otherwise collected in terms of this section, the person on whose behalf the income tax has been gathered shall be entitled to obtain from the withholder or collector (or their agent or successors in office) documentary evidence of that tax having been gathered, and so far as practical, such evidence shall be provided within 7 days of a request being received by the withholder or collector.
- (9) Save where this Act otherwise provides, any income tax withheld or collected in terms of this section shall be credited against the income tax liability of the person who derived the non resident withholding income, emolument or other gross income referred to in this section.
- (10) Where any person fails to account to the Crown within the time prescribed in this section for any amount which was or should have been collected at source:

- (a) that person shall be and remains personally liable as agent to pay to the Crown the amount required to be accounted for;
- (b) subject to this Act, that person shall be liable to pay interest in accordance with section 58 and (where appropriate) to pay late payment penalties in accordance with section 61 in respect of the amounts of income tax not accounted for by final payment date, in relation to the period that the amount owing remains unpaid after that final payment date; and
- (c) unless the Minister in any particular case otherwise determines in accordance with the provisions of this Act, the failure to withhold or collect and account shall constitute a Category 1 offence.

(11) Where:

- (a) any person has failed to withhold or collect income tax at source; and
- (b) that person or any other agent is required pursuant to sub-sections (10) or (12) to personally account for that income tax;

then —

- (c) insofar as that income tax has not otherwise been accounted for to the Crown, that person or other agent may recover all or part of that amount (but not any interest or penalty imposed pursuant to section 58 or section 61) from any other person who:
  - (i) is the person (in this paragraph referred to as the taxpayer) who derived the relevant gross income to which the amount of income tax relates;
  - (ii) has in his possession any funds which belong to that taxpayer;
  - (iii) is an agent (including any person who under this Act is deemed to be an agent) of the taxpayer, so far as that agent has or will have in his possession or control any funds which belong to the taxpayer:

Provided that where the funds are not yet in the possession or control of the agent, the agent shall not be obliged to act on any recovery claim until those funds are in his possession or control:

Provided that in no case may the amount so recovered exceed in the aggregate the amount of income tax which was required to be withheld or accounted for.

(12) Where any person, including any agent for any person, receives or derives any amount of gross income from or in relation to which income tax is required to be withheld or collected either:

- (a) no amount of income tax was so withheld or collected; or
- (b) insufficient income tax was withheld or collected,

that person shall be personally liable to make payment of the income tax shortfall, and where the Minister so directs, shall be jointly and severally

liable with any agent who had the responsibility for withholding and collecting the correct amount of income tax for any applicable interest and late payment penalties.

- (13) Within one month of the end of each year, every person who was in relation to that year required to withhold or collect and account for income tax in terms of this section in relation to any payments or benefits made shall provide the recipient of the payment (or his agent) with a certificate (in the form prescribed pursuant to section 81) setting out in relation to that year:
  - (a) the aggregate of gross amount of payments made and value of benefits provided;
  - (b) the aggregate of any deductions made and accounted for to approved funds; and
  - (c) the aggregate of any income tax withheld or collected on behalf of the recipient.
- (14) Where any person fails to provide the information required by sub-section 13 within the time required, that failure shall constitute a Category 3 offence.

### **38 Income tax treatment of non resident withholding income**

- (1) Where for any year any non resident derives gross income that is non resident withholding income (as defined in section 2 of this Act), then notwithstanding withholding income any other provision in this Act, the non resident's liability to income tax in respect of that gross income shall be determined in accordance with this section.
- (2) Where the non resident withholding income is a dividend, the liability to income tax shall be determined solely with reference to the amount of income tax required to be withheld or collected at source pursuant to section 37, and neither the amount of the dividend nor related expenditure shall be taken into account in the determination of the non resident's taxable income.
- (3) Where:
  - (a) the non resident withholding income derived by any person at any time is service fees;
  - (b) the service fees (or relevant part thereof) relate to services rendered outside Tuvalu; and
  - (c) those services were not rendered by the non resident in the context of a business conducted by him or a related person in Tuvalu,

the liability to income tax with respect to those service fees shall be determined solely with reference to the amount of income tax required to be withheld or collected at source pursuant to section 37, and neither the amount of the service fees nor related expenditure shall be taken into account in the determination of the non resident's taxable income.

- (4) Where:
- (a) the non resident's withholding income is an amount paid by way of specified alimony payment; and
  - (b) the amount of income tax withheld or collected at source has been accounted for in the manner required by section 37, the liability of the non resident to income tax on that amount shall be determined solely with reference to the amount of income tax required to be withheld or collected at source, and neither that amount nor related expenditure shall be taken into account in the determination of the non resident's taxable income.
- (5) Where the non resident withholding income is gross income other than:
- (a) a dividend;
  - (b) a service fee to which sub-section (3) applies; or
  - (c) specified alimony payment to which sub-section (4) applies,
- then the tax treatment of that gross income shall be determined in accordance with the succeeding provisions of this section.
- (6) Where in relation to any person and any year subsection (5) applies, there shall be calculated in relation to that person and that year a notional taxable income as if the provisions of this Act (other than this sub-section and succeeding sub-sections) applied, to permit the determinations specified in sub-section (7) to be made.
- (7) The determinations required by sub-section (6) are:
- (a) the amount which would be the notional income tax liability of the non resident if his taxable income for the year were an amount equal to the notional taxable income for that year calculated in accordance with the provisions of sub-section (6);
  - (b) the proportion of the person's notional income tax liability as is, on a pro rata basis, attributable to the aggregate net amount of each category of non resident withholding income (after taking into account related deductible cost) included in that amount of notional taxable income; and
  - (c) the amount of income tax (being non resident withholding tax) which was required to be withheld or collected at source with respect of each such category of non resident withholding income.
- (8) The amount of income tax which shall be payable by any person in respect of each category of non resident withholding income derived by him shall be the greater of:
- (a) the amount of attributable notional income tax (determined in accordance with sub-section (7)); and
  - (b) the amount of the non resident withholding tax identified (in accordance with sub-section (7)) with respect to that category.

- (9) Where, with respect to any category of non resident withholding income (not being gross income to which sub-sections (2), (3) or (4) apply) the greater liability is the amount of non resident withholding tax, then:
- (a) the non resident's liability to income tax on that category of non resident withholding income shall be determined solely with reference to the amount of income tax required to be withheld or collected at source pursuant to section 35; and
  - (b) neither the amount of gross income nor the amount of related expenditure with respect to that category of non resident withholding income shall be taken into account in the determination of the non resident's taxable income for the year.
- (10) Where, with respect to any category of non resident withholding income (not being gross income to which sub-sections (2), (3) or (4) apply) the greater liability is the amount of the notional income tax liability, then:
- (a) the non resident withholding income shall be included in the gross income taken into account in determining the non resident's taxable income for the year;
  - (b) the non resident shall be entitled to take into account any deductible cost relating to that category of non resident withholding income;
  - (c) the taxable income of the non resident shall then be determined;
  - (d) the non resident's liability to income tax on their taxable income shall be determined in accordance with the provisions of this Act; and
  - (e) credit shall be given against that liability for the amount of income tax withheld or collected at source pursuant to section 37 in respect of any item of gross income included in that taxable income.

## **PART 7 - ADMINISTRATION OF THE ACT AND COLLECTION OF INCOME TAX**

### **DIVISION 1 - RECORD KEEPING**

#### **39 Requirements to keep appropriate records**

- (1) For the purposes of this section, the term person shall include any partnership, joint venture or activity involving the joint ownership of assets and the persons who are parties to any such partnership, joint venture or joint ownership.
- (2) Every person who, whether separately or jointly, carries on in Tuvalu any business or owns in Tuvalu any income earning capital assets shall ensure that there is kept, either in English or the language of Tuvalu, such records of the

transactions and activities of the business or of matters pertaining to asset ownership as are necessary to allow the proper determination of —

- (a) the amount of any income tax liabilities thus arising (whether on their own account or in any other capacity); and
- (b) any obligations befalling the person under this Act:

Provided that in the case of persons conducting a business in Tuvalu, unless the Secretary considers it appropriate for all or any of those records to be kept outside Tuvalu, and authorises accordingly in writing those records shall be kept within Tuvalu.

- (3) Without in any way limiting the requirements of this section, the records required to be kept by any person to whom sub-section (2) applies need to be sufficient:

- (a) to substantiate the accurate determination of the gross income derived by that person in any year and the deductible cost incurred in that year;
- (b) to disclose details of —
  - (i) the full income and address of each person who is or was at any time an employee of the person:

Provided that in respect of a former employee, a record of such employee's address at the time of his ceasing to be an employee shall be sufficient compliance with this requirement;

- (ii) the amount or value of each periodic payment or provision of emoluments to each such employee;
  - (iii) the amount of each periodic amount collected from each employee by way of contribution to an approved fund and the amount of the corresponding contribution to that fund by the person as employer; and
  - (iv) the amount of income tax withheld at source from each periodic amount of emolument due to each employee,  
and for this purpose the records shall also record separately any amount paid or any benefit provided to any person which, but for being exempt income, would have been an emolument; and
- (c) to evidence the amount and circumstances of any payments to non residents (whether or not those amounts comprise non resident withholding income) and any related liability to account for income tax pursuant to section 37.

- (4) Unless the Secretary or Minister otherwise requires or allows pursuant to approvals given under sub-section (5), all records which are required to be maintained in terms of this section shall be retained for a period of not less than 5 years from the end of the year to which the transactions relate.

- (5) In:
  - (a) any particular case or class of cases; or

- (b) relation to particular types of records  
a differing pattern of record retention may be approved either by —
  - (c) the Secretary, by specific approval given in writing to the person or persons affected; or
  - (d) the Minister, by regulation.
- (6) Where, without reasonable cause, any person to whom this section applies fails to keep records in the manner required by this section for the period required, that failure shall constitute:
- (a) a Category 2 offence where, in the opinion of the Minister, the failure involves wilful neglect or wilful default; and
  - (b) a Category 3 offence in any other case.

#### **40 Requirement of a person to provide officials with information and assistance on request**

- (1) Where either the Minister, the Secretary or the Taxation Officer so request of any person, that person shall within the time allowed —
- (a) provide that officer at any reasonable time suitable access to all or any parts of any premises owned or used by the person, where the officer making the request reasonably requires such access for the due performance of his responsibilities under this Act;
  - (b) make available to the officer such books, documents, records information or other thing which the officer making the request reasonably requires for the due performance of his responsibilities under this Act; and
  - (c) prepare or collect or complete such information or records or returns as the officer making the request reasonably requires for the due performance of his responsibilities under this Act:

Provided that in no case shall the person be required to provide or collect any document or thing insofar as it records advice given to the person by a professional adviser in respect of any matter under this Act, where and to the extent —

- (d) that advice was given after the occurrence of the transaction or event or circumstance to which it relates; and
  - (e) it does no more than —
    - (i) advise with respect to the tax and accounting implications thereof; or
    - (ii) give advice in contemplation of, or for the purpose of, objection and appeal procedures under this Act.
- (2) Where, without reasonable cause, any person to whom this section applies fails fully and properly and honestly to respond in the manner required and

within the time period reasonably allowed in relation to any valid request made by an officer pursuant to this section, that failure shall constitute:

- (a) a Category 2 offence where, in the opinion of the Minister, the failure involves wilful neglect or wilful default; and
- (b) a Category 3 offence in any other case.

## DIVISION 2 - RETURNS

### 41 Requirement to furnish a return of income

- (1) This section shall apply to any person for any year where that person is:
  - (a) in relation to any year, an individual deriving income in excess of the threshold established by Schedule 6 hereto;
  - (b) a company which has in that year derived income in excess of the threshold established by Schedule 6 hereto (not being non resident withholding income, the income tax liability in relation to which is determined exclusively by the amount of income tax withheld at source);
  - (c) in respect of any year (or part of a year) by notice writing required by the Minister, the Secretary or the Taxation Officer to furnish a return of income; or
  - (d) of a class of persons whom the Minister has by regulation determined that this section should apply;

but:

- (e) this section shall not apply with respect to any non resident where the only gross income derived by that non resident from Tuvalu is gross income by way of one or more of dividends, service fees, and specified alimony payments, where the liability to income tax in respect thereof has been fully withheld or collected and accounted for at source.<sup>12</sup>
- (2) Every person to whom this section applies shall prepare and furnish a full and proper return of income for that year (or part of a year) using the forms prescribed under authority of section 81:

Provided that presumptive taxpayers, and employees to whom section 41A applies, shall not be subject to the requirements of this subsection in respect of their business income and their income from employment, but subject to the particular regimes appearing in this Act for taxation of same.<sup>13</sup>

- (3) For the purpose of subsection (2):
  - (a) where the person's gross income includes items other than:
    - (i) any emolument; and
    - (ii) interest (in the case of an individual),the person shall append to the return —

- (iii) any appropriate annual accounts or other relevant financial information sufficient to show the gross income and any related deductible costs for the period and (in the case of a business) the related financial position at annual reporting date; and
    - (iv) such other information as the Taxation Officer may reasonably require for the proper performance of his official duties with respect to that return and the determination of any related income tax liabilities;
  - (b) where any return of income has been requested in writing by the Minister, the Secretary or the Taxation Officer, that officer may request the return to include any such information as he may reasonably, require for the proper performance of his official duties with respect to that return and the determination of any related income tax liabilities;
  - (c) a full and proper return of income means a return of income:
    - (i) which is furnished to the Taxation Officer within the time (or, where applicable, the extended time) allowed under his Act;
    - (ii) which is complete in all material respects, including the information and items requested in the return form or accompanying instructions or which are otherwise required to be furnished in terms of the Act; and
    - (iii) that information and those items are in an acceptable form and reflect sufficient detail to meet the obligations and expectations of that person in terms of this Act.
- (4) Where the Secretary so requires, the provisions of sub-section (2) shall also apply to any person who is responsible under this Act (otherwise than under Section 37) for accounting for the income tax liability of any other person to whom sub-section (2) applies or would otherwise apply.
- (5) Notwithstanding sub-section (2), either:
  - (a) on his own initiative in relation to any person; or
  - (b) on request by any person,the Taxation Officer, if he considers it appropriate, may allow that person to prepare any return of income otherwise than by using all or any of the forms prescribed under authority of section 81.
- (6) Any return of income required to be furnished in terms of this section shall be furnished:
  - (a) Where the person had not been accorded an extension of time pursuant to section 43, within 2 months of the end of the year;
  - (b) where the person has been accorded an extension of time pursuant to section 43, within the time thereby allowed; and
  - (c) where the person is a person who received a written notice to furnish a return within such time as is specified in that notice.

- (7) Notwithstanding anything in this section, where in accordance with section 6, in relation to any business conducted by any person, the Secretary has approved an annual reporting date which falls between January and 30 June in any year, that person's annual return of income shall be furnished within two months after the end of the reporting period which ends with that annual reporting date (or within such further time as the Secretary has allowed pursuant to section 43).
- (8) Any failure to furnish a return within the period required by this section shall constitute:
  - (a) a Category 2 offence where, in the opinion of the Minister the failure involves wilful neglect or wilful default; and
  - (b) a Category 3 offence in any other case.
- (9) Where any return has been furnished which is found to be wilfully or negligently deficient or incorrect, or contains false statements, with an intent to evade income tax, that shall constitute a Category 2 offence.

#### **41A Taxpayers whose only income is employment income<sup>14</sup>**

- (1) This section applies to individuals whose sole income is derived from employment.
- (2) Said individuals may, for each year of income, request the giving by the Taxation Officer of an income statement.
- (3) An income statement should contain the amount of gross income derived from employment, the sources of same, the amounts of source deductions or withholding deductions, together with such information as the Taxation Officer considers necessary.
- (4) Whether or not an income statement is requested, unless the Taxation Officer considers otherwise, the total income tax payable in respect of employment income shall be deemed to be equal to the amounts withheld from that income or otherwise collected from employers under section 37(1) of this Act and any returns made by employers in relation thereto shall be deemed to be in substitution for any return which otherwise would be required from employees.

#### **42 Persons required to lodge returns of information**

- (1) Where any person:
  - (a) who is not an employer on the coming into force of this Act, commences to be an employer, he shall notify the Taxation Officer in writing of that fact within a period of 10 working days from the date he commences to be an employer; or

- (b) ceases to be an employer after the coming into force of this Act, he shall:
  - (i) notify the Taxation Officer in writing of that fact within 10 working days of the date of cessation; and
  - (ii) within 30 days of the end of the month in which cessation occurred, furnish a return setting out the information as contemplated by sub-section (2)(b).
- (2) The following persons shall be required to furnish within the time frames indicated, a return in the form prescribed in terms of section 81 (or where appropriate, section 41(5)) setting out fully the details required in that return:
  - (a) every employer, within 30 days of the end of each month, a return setting out the amount of income tax withheld or collected at source pursuant to section 37;
  - (b) every employer, within 30 days of the end of each year, a return setting out for each individual person who was an employee in relation to that employer in that year, particulars as to —
    - (i) total emoluments for the year;
    - (ii) contributions to approved funds withheld from emoluments for the year; and
    - (iii) income tax withheld or collected at source in relation to those emoluments for the year,  
being the same particulars as individually advised to each employee, and reconciling;
    - (iv) the aggregate of the income tax so withheld or collected in relation to emoluments derived by the employees from that employer in that year; with
    - (v) the aggregate of the monthly payments made to the Crown on their behalf;
  - (c) every person who withholds or collects income tax (being non resident withholding tax) from any amount of non resident withholding income, within 30 days of the end of each month in which there was an obligation to withhold or collect such tax, a return setting out each such amount and relevant particulars of that income tax withheld or collected at source pursuant to section 37;
  - (d) every person who withholds or collects income tax (other than from any emolument or non resident withholding income) from any person pursuant to section 37, within 30 days of the end of each month in which there was an obligation to withhold or collect such tax, a return setting out each such circumstance and relevant particulars of income tax so withheld or collected at source;
  - (e) the parties to any partnership or joint venture or joint asset ownership, in respect of the taxable income derived by them collectively as

- members of that partnership or joint venture or joint asset ownership, in such form as the Taxation Officer may require or approve or allow; and
- (f) every person who, under authority of section 40, is required by the Minister, the Secretary or the Taxation Officer to provide a return of information of any kind reasonably required by him for the administration of the Act or the collection of income tax, within the time allowed;
- (3) Where any person is required by this section to furnish any return and fails to do so within the time allowed (including any extension of time allowed under section 44), that failure shall constitute:
    - (a) a Category 2 offence where, in the opinion of the Minister, the failure involves wilful neglect or wilful default; and
    - (b) a Category 3 offence in any other case.

#### **43 Extension of time for furnishing any return of income**

- (1) By written request to the Taxation Officer, a person liable to furnish a return of income for any year may seek an extension of time for doing this.
- (2) The Taxation Officer shall consider any such request and shall advise the person in writing of his decision within 10 working days from receipt of the request.
- (3) Where the Taxation Officer approves an extension of time, his advice to the person shall indicate the new final date for complying with the request made pursuant to section 40 or 42.
- (4) Except with the prior approval of the Secretary, the Taxation Officer shall not approve a new final date more than 4 months following the end of the year (or substituted reporting period) to which the annual return of income relates.

#### **44 Extension of time for doing or furnishing any other thing**

- (1) By written request to a Taxation Officer, a person who is required pursuant to sections 40 or 42:
  - (a) to do anything;
  - (b) to furnish anything;
  - (c) to furnish any information or return (not being a return of income); or
  - (d) to provide any assistance requested of him pursuant to section 40;may seek an extension of time for doing this.
- (2) The Taxation Officer shall consider any such request and shall advise the person in writing of his decision within 10 working days from receipt of the request.

- (3) Where the Taxation Officer approves an extension of time, the written advice shall indicate the new final date for complying with the request made pursuant to sections 40 or 42.

### DIVISION 3 - NOTICES OF ASSESSMENT

#### **45 Notice of determination of loss**

- (1) Where in relation to any person and any year the Taxation Officer determines that the aggregate of their deductible costs exceeds their gross income, he shall issue a notice of loss determination.
- (2) The provisions in this Act relating to the requirement to issue, and those relating to the issue, of any notice of assessment shall apply with any necessary alterations as if the notice of loss determination was a notice of assessment.

#### **46 Obligation on Taxation Officer to issue a notice of assessment, and matters to be dealt with in any such notice**

- (1) The Taxation Officer, for each year, shall issue a notice of assessment for that year to each person liable to furnish:
  - (a) an annual return of income; or
  - (b) a return of income requested pursuant to section 41(3).
- (2) Any notice of assessment for any year shall include details for that year as to the amount of:
  - (a) the person's taxable income;
  - (b) the person's assessed liability for income tax;
  - (c) the aggregate amount of tax settlements received on account of that liability up to the date of issue of the notice ; and
  - (d) the person's residual income tax liability as at that date of issue.
- (3) The Taxation Officer shall, so far as practical, for each such person, issue the notice of assessment within one month of the final date by which the person was required to furnish his annual return of income pursuant to section 41 (or, where appropriate, section 43).
- (4) Where any person has not furnished an annual or other return of income by the final date prescribed in section 41 (or, where applicable, any later date to which the Taxation Officer or the Secretary has pursuant to section 43 approved an extension of time) the Taxation Officer shall, subject to subsection (6), issue a notice of assessment (being a notice of default assessment):

Provided that the issue of any such default assessment shall not remove the obligation of the person to furnish any return of income required under this Act.

- (5) Any notice of default assessment shall set out:
  - (a) the information prescribed by sub-section (2); and
  - (b) the basis upon which the amounts of taxable income (or where applicable, non resident withholding income) and related income tax liability as shown in the notice were determined.
- (6) No notice of default assessment issued to any person for any year shall be issued without the consent of the Secretary after satisfying himself that on the basis of available information, the disclosures on the notice of default assessment represent, in the circumstances, a reasonable assessment or estimate of the likely taxable income and related income tax liability which pertains to that person for that year.
- (7) For the purposes of this section:
  - (a) where the Taxation Officer is not satisfied with the amount of taxable income disclosed in any return of income; or
  - (b) where the Taxation Officer finds it necessary to issue a default assessment, he may determine the amount of taxable income or taxable income of a particular type by using an asset accretion basis of computation, where he considers that basis will give a more reliable or more reasonable reflection of the amount of that taxable income.
- (8) Any notice of assessment shall only be valid where the notice clearly sets out the objection and appeal rights available to the person to whom it relates.
- (9) Any residual income tax liability determined under a notice of default assessment shall be recoverable from the person to whom that liability relates, or his agent, as if the liability was the person's actual residual income tax liability for the year to which it relates.
- (10) The issue of any notice of default assessment shall not preclude the issue of any substitute notice of default assessment at any later stage.

#### **47 Exceptions to the requirements as to the issue of a notice of assessment**

- (1) Where, pursuant to section 38, the liability of any person for any amount of income tax is finally determined exclusively by reference to income tax withheld or collected at source:
  - (a) the requirements of section 46 as to the issue of any notice of assessment shall not apply in relation to that amount;
  - (b) the amount of tax so withheld or collected (or required to be withheld or collected) at source shall be deemed to have been an amount for

which a valid notice of assessment was issued on the last day of the month succeeding that in which withholding or collection was required; and

- (c) the objection and appeal provisions of this Act shall apply accordingly in respect of the amount so withheld or collected:

Provided that any non resident to whom this section applies may make a written request for a statement setting out the particulars which would have appeared on a notice of assessment had one been issued on the last day of the month succeeding that in which withholding or collection was required.

#### **48 Other circumstances requiring the issue of a notice of assessment**

- (1) Where in relation to any person and any year (whether or not that year has ended):
- (a) the Taxation Officer determines that any notice of assessment should be issued prior to the normal time for issuing a notice of assessment for that year; and
  - (b) the Minister so concurs,
- the Taxation Officer may issue such a notice of assessment on that person at any time.
- (2) Any notice of assessment issued to any person pursuant to this section shall disclose:
- (a) the amount of that person's taxable income (if necessary, and if it is a notice of default assessment, reflecting the Taxation Officer's assessment or estimate of the amount of taxable income of that person for the period to which the notice of assessment relates);
  - (b) the resultant assessed liability for income tax;
  - (c) tax settlements made on account of that liability up to the date of issue of the notice of assessment; and
  - (d) the amount of the person's residual income tax liability as at that date of issue.
- (3) Any notice of assessment issued under this section:
- (a) shall only be valid where the notice clearly sets out, or is accompanied by a clear statement of, the objection and appeal rights available to the person to whom it relates; and
  - (b) shall prescribe a final date for payment of the residual income tax liability shown in the notice, and the provisions of section 58 and section 59 with regard to interest and late payment penalties shall apply accordingly from that date.

**49 Notice of amended assessment**

- (1) Where the Taxation Officer becomes aware that any notice of assessment issued by him to any person at any time in relation to any year overstates the amount of the taxable income or assessed liability for income tax, he shall as soon as practical thereafter issue a notice of amended assessment.
- (2) Where in relation to any person and any year:
  - (a) that person has furnished an annual return of income and the Taxation Officer has thereafter issued any notice of assessment with respect to that year; and
  - (b) subsequently —
    - (i) following due enquiries by the Taxation Officer or the receipt by him of information affecting the liability of that person to income tax; and
    - (ii) where practical, following discussion between the Taxation Officer and that person, the Taxation Officer considers (in his best judgment objectively exercised having regard to the provisions of this Act) and the Secretary concurs, that the amount of taxable income returned is less than might reasonably be expected,  
the Taxation Officer shall issue to that person (or his agent or any other appropriate person in accordance with the provisions of this Act) a notice of amended assessment setting out:
      - (c) in an informative manner, the reasons for the notice of amended assessment;
      - (d) the basis upon which that notice of amended assessment was formulated; and
      - (e) the resultant amounts contemplated by section 46(2).
- (3) Any notice of amended assessment shall only be valid where the notice clearly sets out, or is accompanied by a clear statement of the objection and appeal rights available to the person to whom it relates.
- (4) Subject to subsection (5), where the Taxation Officer issues a notice of amended assessment, he shall treat any notice of assessment which it replaces as withdrawn and of no effect.
- (5) Notwithstanding the withdrawal of any notice of assessment issued to any person for any year:
  - (a) any objection lodged against matters dealt with in the withdrawn notice of assessment shall remain valid; and
  - (b) save insofar as the matter is disposed of by reason of the issue of the amended notice of assessment, where appropriate, appeal procedures may be initiated or continued as if the notice of assessment had not been withdrawn.

**50 Limitation of time for the issue of a notice of assessment**

- (1) Subject to the provisions of this section, in relation to any person and any year, any notice of assessment may be issued at any time prior to the expiry assessment of 5 years after the end of the year to which the notice relates, whether that notice is to increase or to reduce an existing liability to income tax.
- (2) Notwithstanding sub-section (1), where the Taxation Officer at any time is satisfied that in relation to the income tax liability of any person for any year there has been:
  - (a) any fraud committed which impacts on any person's income tax liability for that year; or
  - (b) wilful neglect or wilful default in compliance with the requirements of the Act which govern the determination of taxable income or the furnishing of full and proper return of income (as contemplated by section 41) for any person for that year,

he may at any time issue a notice of amended assessment in relation to that person and that year:

Provided that where a notice of amended assessment is issued pursuant to this sub-section outside the period prescribed in sub-section (1), no amendment may be made to any matter to which the fraud or wilful neglect or wilful default did not relate.

- (3) The limitations prescribed in sub-section (1) shall not apply where and to the consequential extent that the Taxation Officer has not been furnished with the information he may reasonably require and has prior to the lapse of that period of 5 years requested so as to allow the issue of any notice of assessment.

**51 Right of persons to require the issue of a notice of amended assessment**

- (1) Where any person is able to satisfy the Secretary that:
  - (a) in relation to any year any notice of assessment has been issued (or is deemed by this Act to have been issued); and
  - (b) that notice of assessment is (in whole or in part) in respect of an amount of income tax in excess of what, at the time that notice was issued (or was deemed to have been issued) was properly payable having regard to interpretations of the Act as they were then understood,

then subject to section 50, the Secretary may require the Taxation Officer to forthwith issue a notice of amended assessment reflecting the corrected position.

**52 Processing of income tax refunds**

- (1) Where following the issue of any notice of income tax refunds assessment to any person and the offset of tax settlements against that person's personal income tax liability therein determined, there is any net income tax credit owing to that person, then subject to sub-section (2), that income tax credit (together with any interest credit in terms of section 65) shall be paid to the person as soon as practical.
- (2) No credit balance (comprising an income tax credit and any interest credit) as contemplated by sub-section (1) shall be refunded to the extent that there are at that time any other income tax liabilities owing by that person which are due and unpaid; and for this purpose, other income tax liabilities include:
  - (a) any amount of interest or penalty or fine imposed by or under this Act; and
  - (b) any amount of income tax required to be accounted for in terms of section 37 where the final date for payment has passed.
- (3) In any case where the Minister so directs, the reference in sub-section (2) to other income tax liabilities owing by a person shall include any personal or other income tax liabilities (as contemplated by sub-section (2)) of any person who is a person related to the person who has an income tax credit balance to be refunded:

Provided the Minister shall not make any such direction where he considers that to do so would be inequitable having regard to the nature of the relationship between the persons and the circumstances of the case.

- (4) If for any reason any amount of net income tax credit (as contemplated by sub-section (1)) is subsequently determined to be in excess of that which was properly payable to the person having regard to the income tax liability of that person as finally determined for any year:
  - (a) so much of the net, income tax credit (together with any applicable interest credits) as was in excess of that payable to the person shall be repayable to the Crown;
  - (b) unless the Secretary in any particular case otherwise determines, interest calculated at the rates and on the general basis adopted in Schedule 7 shall be payable for each month (or part thereof) of the period of overpayment; and
  - (c) if and to the extent that repayment of the amount does not occur within 3 months of the end of the month in which the Taxation Officer gives the person advice of the overpayment, the provisions in this Act relating to late payment penalties shall have application.

**DIVISION 4 - PAYMENT OF INCOME TAX NOT ACCOUNTED FOR BY  
WITHHOLDING AT SOURCE, AND THE RELATED INTEREST AND LATE  
PAYMENT PENALTY PROVISIONS**

**53 Obligation to make a provisional tax payment by 30 September on account of final liability to income tax**

- (1) This section applies to any person who, in the course of any year:
  - (a) carries on any one or more businesses in Tuvalu; or
  - (b) is a resident who carries on business outside Tuvalu,and as at 31 August of that year could reasonably expect that he would derive taxable income in excess of \$50000 for that year.
- (2) Any person to whom sub-section (1) applies shall by 30 September of that year ensure that he has paid to the Crown (whether by way of a provisional tax, payment or otherwise) amounts of income tax which (in the aggregate) are not less than one third of the amount of the income tax liability which is ultimately determined as applicable to his taxable income for that year.
- (3) To give effect to the requirements of sub-section (2), where appropriate, any person to whom that sub-section applies shall pay to the Crown by 30 September of that year an amount which, together with the aggregate amount of any other tax settlements applicable to the taxable income derived by him in the period to 31 August, is sufficient to meet the requirements of that sub-section.
- (4) Any provisional tax payment required to be made by 30 September of any year is referred to in this Act as the first provisional tax instalment.

**54 Obligation to make a provisional tax payment by the last day of February on account of final liability to income tax**

- (1) This section applies to any person who, in the course of any year:
  - (a) carries on any one or more businesses in Tuvalu; or
  - (b) is a resident who carries on business outside Tuvalu.
- (2) Any person to whom sub-section (1) applies shall by the last day of February following the end of that year ensure that he has paid to the Crown (whether by way of a provisional tax payment or otherwise) amounts of income tax which (in the aggregate) are not less than two thirds of the amount of the income tax liability which is ultimately determined as applicable to his taxable income for that year.
- (3) To give effect to the requirements of subsection (2), where appropriate, any person to whom that sub-section applies shall pay to the Crown by the last day of February immediately succeeding that year an amount which, together

with the aggregate amount of any other tax settlements applicable to the taxable income derived by him in the year just ended, is sufficient to meet the requirements of that sub-section.

- (4) Any provisional tax payment required to be made by the last day of February following the end of any year is referred to in this Act as the second provisional tax instalment whether or not a first provisional tax instalment was required.
- (5) This section shall not apply to any person and any year where:
  - (a) the person is able to demonstrate to the Taxation Officer that, on the last day of February following the end of that year, he had reasonable grounds for believing that his residual income tax liability for that year would not exceed \$1,000; or
  - (b) the person is one of a class of persons whom the Minister has determined should be exempted from the requirements of this section.

## **55 Special provisions relating to the determination of provisional tax obligations**

- (1) For the purposes of sections 53 and 54 relating to provisional tax payments:
  - (a) where any taxable income of any person is also non resident withholding income the liability to tax on which is ultimately determined (pursuant to section 38) solely with reference to the amount of income tax required to be withheld or collected at source —
    - (i) that gross income and related taxable income;
    - (ii) the amount of income tax attributable thereto; and
    - (iii) the related non resident withholding tax,shall be disregarded in all respects; and
  - (b) where in relation to any year, section 63 (relating to subsequent events) applies in relation to any person, the amount of gross income involved, and the income tax attributable thereto, shall be disregarded in all respects.
- (2) The Minister may at any time, by regulation:
  - (a) extend the categories of persons liable to make provisional tax payments;
  - (b) vary thresholds specified in sections 53 and 54 or in any regulations issued with respect to provisional tax payments; and
  - (c) vary the proportion of the annual income tax liability of any person that must be paid by the dates prescribed in sections 53 or 54.
- (3) Where, pursuant to section 6(7) the Secretary has approved alternative dates for the making of the first or second provisional tax instalments, the

provisions of sections 53 and 54 shall be applied with the necessary modifications.

## **56 Obligation to settle residual income tax liabilities**

- (1) Where, in relation to any year, any person has a residual income tax liability which has not been paid in full by way of tax settlements, that person shall effect payment of that residual income tax liability not later than the final date for payment of that liability, being the last day of the fourth month following the end of the year:

Provided that where in relation to any person and any business:

- (a) the Secretary has approved a substituted annual reporting date; and
- (b) pursuant to section 6(7) has also approved a substituted final date for the payment of that person's residual income tax liability,

that person shall effect payment by that substituted final date for payment.

- (2) Where any person does not settle their residual income tax liability within the time allowed by this section, subject to this Act, he shall be liable to interest and penalty in accordance with the provisions of sections 58 and 59.
- (3) Whenever the need arises, for the purposes of this Act any tax settlements shall be regarded as being applied successively to —
  - (a) settlement of any liability arising under section 37 which is overdue;
  - (b) settlement of any fines owing;
  - (c) settlement of any late payment penalties owing;
  - (d) settlement of any interest owing;
  - (e) settlement of income tax liabilities of previous years, in the order in which they arose; and
  - (f) settlement of income tax liabilities of the current year,

and the settlements shall be appropriated accordingly:

Provided that these ordering rules:

- (g) shall not apply to any amount of income tax withheld at source pursuant to section 37 from any gross income derived by that person; and
- (h) may be modified by the Secretary for any particular case or class of cases, where the circumstances so require.

## **57 Obligation to pay residual income tax not affected by certain events**

- (1) The obligation of any person to pay any amount of residual income tax liability due in respect of any year shall not be affected by:

- (a) any failure to furnish their annual return of income by the applicable final date (as provided in this Act); or
  - (b) any failure by the Taxation Officer to issue a notice of assessment before the final date for payment of the residual income tax.
- (2) Where at any time in relation to any person and any year:
- (a) any notice of assessment is issued to that person; and
  - (b) the final date for payment of residual income tax for that year was prior to the date of issue of that notice; and
- then:
- (c) the amount of income tax thus assessed shall be deemed to be an amount which was required to be paid not later than the final date for that person to make payment of his residual income tax liability for that year (as contemplated by section 56).
- (3) Save as provided in section 63, the obligation of any person to pay any amount of residual income tax due in respect of any year shall not be affected by any action which the person may have initiated:
- (a) to object to any notice of assessment or any decision made under this Act; or
  - (b) to appeal any determination or decision affecting the person's liability to income tax for the year.

#### **57A Penalty payable where tax return not furnished by due date<sup>15</sup>**

- (1) Where any person who is required under this Act to furnish a tax return by a due date, or by any extended due date under section 43 of this Act, has not filed that tax return by that due date, there shall be payable (in addition to any interest payable under section 58 of this Act and any late payment penalty under sections 59 and 60 of this Act) a late furnishing penalty of \$500.
- (2) Where the due date that any tax return is required to be furnished by under subsection (1) of this section does not fall on a business day, the due date shall be the next business day following the due date.

#### **58 Interests payable to the Crown on any amounts of income tax not paid by the prescribed date**

- (1) Where any amount of income tax is required to be paid by a person to the Crown by a final date for payment specified in this Act, and the amount is not so paid, there shall be payable to the Crown interest (being the time value of money due but not paid to the Crown) on the amount of income tax not paid for each month (and part of a month) in the period following the final date for payment during which the amount was unpaid.

- (2) This section shall apply equally to amounts of income tax which are:
- (a) the personal income tax liability of the person required to make the payment; and
  - (b) amounts required to be withheld or collected and accounted for pursuant to section 37.

- (3) Any interest payable shall be calculated at the rate and on the basis prescribed in Schedule 7:

Provided that where the aggregate amount of interest that would be calculated in respect of any amount of unpaid tax owing by any person is less than \$5, the Taxation Officer may waive his right to charge and collect that amount of interest.

- (4) Interest payable on amounts of provisional tax unpaid shall cease to run:
- (a) in the case of the first provisional tax instalment (where applicable), on the final date for the second provisional tax instalment; and
  - (b) in the case of the second provisional tax instalment (where applicable), on the final date for payment of the residual income tax for the year,

and interest on any amounts not paid shall be subsumed by the interest calculated in respect of residual income tax (if any) not paid by the final date for payment of that liability.

**59 Late payment penalty payable to the Crown where any unpaid residual income tax remains outstanding for an extended period**

- (1) Where any amount of residual income tax (including any amount which should have been but was not in fact paid by way of provisional tax) is not paid within a period of 3 months following the date which, in relation to that person, is the final date for payment of residual income tax in accordance with section 56, there shall be payable (in addition to the interest payable in accordance with section 58) a late payment penalty of 5% of the amount of income tax (other than interest) unpaid.
- (2) For every further 3 completed months (after the 3 month period referred to in sub-section (1)) during which any income tax (other than interest and penalty) remains unpaid, there shall be imposed a further late payment penalty of 5% of the amount of income tax (other than interest and penalty) not paid.
- (3) Where following the receipt of any request in writing for relief from late payment penalties, the Secretary considers it appropriate to grant relief, he may approve that those penalties (but not, pursuant to this section, any amount of interest) be waived either in whole or in part.
- (4) Any decision of the Secretary with respect to an application by any person for relief from late payment penalties shall be notified in writing to that person.

**60 Late payment penalty payable to the Crown where any income tax required to be withheld or collected at source remains outstanding for an extended period**

- (1) Where any amount of income tax which was required to be withheld or collected at source pursuant to section 37 is not accounted for within the time allowed under that section, and remains unaccounted for 3 months following the final date for payment there shall be payable (in addition to the interest payable in accordance with section 58) a late payment penalty of 5% of the amount of income tax (other than interest) not paid.
- (2) For every further 3 completed months (after the 3 month period referred to in sub-section (1)) during which any such income tax (other than interest and penalty) remains unpaid, there shall be imposed a further late payment penalty of 5% of the amount of income tax (other than interest and penalty) not paid.
- (3) Where, following the receipt of any request in writing for relief from late payment penalties, the Secretary considers it appropriate to grant relief he may approve that those late payment penalties (but not, pursuant to this section, any amount of interest) be waived either in whole or in part.

**61 Special provisions applying to persons in default of their obligations with respect to income tax requires to be withheld or collected at source**

- (1) For the purposes of the provisions of this Act relating to the collection of income tax from any person, any amount of income tax withheld or collected (or which should have been withheld or collected) and which was not accounted for is deemed to be an income tax liability of that person.
- (2) Where in any particular situation the Secretary considers it appropriate to do so, he may relieve any person of his obligation to make payment to the Crown of all or any of the amount or amounts which were or should have been withheld or collected if (and to the extent that) the amounts or amounts will be recovered directly or indirectly from the person who derived the gross income to which the default or omission related, or his agent.
- (3) Where sub-section (2) applies:
  - (a) the Secretary shall notify the person in writing of his decision (and, if applicable, any conditions attaching);
  - (b) subject to the provisions of this Act, the person so relieved of the obligation shall still be liable to any interest and late payment penalties provided for in this Act with respect to late settlement of the income tax liability; and
  - (c) the Secretary may request the Minister, and the Minister may (in his sole discretion) approve that the default or omission shall not be treated as a Category 1 offence.

**62 Circumstances where the provisions relating to the charging of interest and late payment penalty will not apply**

- (1) Subject to this section, notwithstanding any provision of this Act requiring the charging of interest on amounts of income tax not paid by the relevant final date for payment:
  - (a) where any part of such liability arises by reason of events occurring after the final date prescribed in or under this Act for furnishing the annual return of income for that year; and
  - (b) the relevant amount of gross income to which that part of the liability relates was required or able to be included in gross income derived for the year to which that return relates,

there shall be no interest charge on that part of the amount of that income tax liability.

- (2) Where any amount of income tax liability is a liability of the type referred to in sub-section (1), and that liability remains unpaid after a period of 3 months from the end of the month in which was issued any notice of assessment giving effect to that recognition of the gross income to which that liability relates, the provisions of this Act with respect to interest and late payment penalty shall apply to any continuing period of non-payment after the end of that 3 month period as if that were the final date for payment of that income tax liability.

**63 Minister may provide relief from late payment penalties in respect of income tax liabilities subject to objection and appeal procedures**

- (1) In any case where objection or appeal procedures have been initiated, the Minister, where he considers the circumstances so warrant, may approve the deferral of the payment of any income tax liability attributable to any matter validly subject to objection or appeal proceedings, pending the outcome of those proceedings.
- (2) Where and to the extent that sub-section (1) applies, the Minister:
  - (a) may determine that in relation to amounts in dispute which are subject to the valid notice of objection or appeal proceedings, there shall be no exposure to the late payment penalties contemplated by section 59 until the expiry of the third month following the end of the month in which the matter under objection or appeal is resolved; or
  - (b) may not, pursuant to this section, waive any right of the Crown to collect interest in respect of any unpaid income tax liability finally determined to be validly due to the Crown.
- (3) Where in relation to any person and any year:
  - (a) the person of his own volition furnished a full and proper return of income (as contemplated by section 41(3);

- (b) any notice of assessment is issued to the person; and
- (c) the final date for payment of residual income tax for that year was prior to the date of issue of that notice of assessment,

then:

- (d) where and to the extent that the notice of assessment reflects a personal income tax liability which is greater than that contemplated by a full and proper return of income furnished by the person;
- (e) the person to whom it was issued has made a request in writing for relief from interest or late payment penalties (or both); and
- (f) the Secretary considers it appropriate to provide full or partial relief from interest or late payment penalties (or both) in relation to the additional income tax liability thus arising,

the Secretary may:

- (g) in any such case waive all or part of any late payment penalty (but not pursuant to this paragraph, any interest) applicable to non-payment of that portion of the additional income tax liability by the relevant final date for payment; or
- (h) where a significant portion of that additional income tax liability is accountable to facts, circumstances or statutory interpretations which could not reasonably have been known to the person at the time of furnishing the return (so that no default or neglect on the part of the person assessed can be implied), set a new final date for payment, and the provisions of this Act relating to the payment of interest and late payment penalty shall apply accordingly.

### **63A Penalties payable where income tax payable shown in a tax return has been understated<sup>16</sup>**

- (1) Where, without reasonable cause, any person who is required under this Act to furnish a tax return has understated the amount of income tax payable required to be shown on that tax return, there shall be payable a penalty which shall be:
  - (a) if the understatement was due to gross carelessness on the part of the person, fifty percent (50%) of the tax understated; or
  - (b) if the understatement was due to a deliberate attempt to avoid payment of tax, one hundred percent (100%) of the tax understated.
- (2) Notwithstanding subsection (1) of this section, where income tax has been understated and an additional penalty under that subsection is to be applied, the amount of that additional penalty will be reduced to:
  - (a) 25% of that that would otherwise apply under subsection (1) if the person voluntarily disclosed the existence of the understatement before

any inquiries in relation to that understatement had been initiated by the Taxation Officer; or

- (b) 50% of that that would otherwise apply under subsection (1) if the person voluntarily disclosed the existence of the understatement immediately after inquiries in relation to that understatement had been initiated by the Taxation Officer.
- (3) Nothing in this section shall be taken as:
- (a) relieving any person to whom this section applies from any interest or late payment penalty chargeable under this Act; or
  - (b) precluding the granting of relief from interest or late payment penalties otherwise chargeable where other provisions of this Act so allow.

#### **64 Right of persons to secure an early refund of income tax overpaid**

- (1) Where in relation to any person and any year:
- (a) tax settlements have been made; and
  - (b) upon written request from that person for an early refund of all or part of those tax settlements, the Minister is satisfied that the aggregate amount of those tax settlements will significantly exceed the person's liability to income tax for the year,

then having regard to all the circumstances of the case and the requirements of this section, the Minister may authorise an early refund of an amount corresponding with all or part of what he considers to be the excess amount of tax settlements.

- (2) In authorising any early refund of income tax payments in accordance with this section, the Minister shall have regard to any amount of any income tax liability due and unpaid by the person.
- (3) The provisions of section 52(4) with respect of refunds in excess of that properly refundable shall apply with the necessary modifications to any amount refunded pursuant to this section.

#### **65 Interest credit due to any person entitled to a refund of income tax**

- (1) Where in relation to any year any person has effected tax settlements which leave the person having overpaid their personal liability to income tax (as determined under section 5), subject to this section, that person shall be entitled to an interest credit.
- (2) Interest credits shall run from the earlier of:
- (a) the last day of the month of issue of any notice of assessment (other than a notice of default assessment) confirming the overpayment; and

- (b) three months from the end of the relevant year (or if later, the annual reporting date) in relation to which the overpayment of tax occurred.
- (3) Interest credits shall be calculated at the rate prescribed in Schedule 7, on the basis specified therein.
- (4) In calculating the amount of any interest credit under this section, no regard shall be had to tax settlements made after the final date for payment of the person's residual income tax liability for the relevant year (being the relevant date contemplated by section 56).

## DIVISION 5 - OFFENCES AGAINST THE ACT

### 66 Situations involving fraud and complicity

- (1) Where any person (either alone or with others) wilfully, with intent to evade his responsibilities under the Act to pay any amount of income tax for which he is liable or required to account for as agent:
  - (a) makes use of any fraud or authorises the use of any fraud;
  - (b) makes any fraudulent claim for the repayment of income tax; or
  - (c) enters into any arrangement with a purpose of rendering that person or any other person unable to meet any income tax liability (including any liability arising under section 37),that action shall constitute a Category 1 offence.
- (2) Where any person wilfully and knowingly aids or abets any other person in any offence with the intent of enabling that other person to evade his responsibilities under the Act to pay and account for the correct amount of income tax for which he is liable or required to account as agent, that action shall constitute a Category 1 offence.

### 67 Classification of offences and determination of whether an offence has been committed

- (1) Offences under this Act are classified according to their nature as Category 1, Category 2 or Category 3 offences.
- (2) A person shall only be considered guilty of committing a Category 1 or Category 2 offence where subsection (4) does not apply, and either:
  - (a) that guilt has been established in the Courts; or
  - (b) the person has signed an admission of guilt.
- (3) A person shall only be considered guilty of committing a Category 3 offence where sub-section (4) does not apply, and either:
  - (a) the Minister has, on an objective determination of all the evidence, so determined; or

- (b) the person has signed an admission of guilt.
- (4) Notwithstanding the preceding provisions of this section, it shall be open to the Minister to determine that any person shall be regarded as not having committed any offence of which he has been charged or might otherwise be charged where and to the extent that:
- (a) there exist mitigating circumstances (as defined in section 2) which gave rise to the offence; and
  - (b) the Minister is satisfied that so far as practical, the person remedied, or will in fact remedy, any default at first reasonable opportunity:

Provided that nothing in this sub-section shall be taken as:

- (c) relieving any person to whom this section applies from any interest or late payment penalty chargeable under this Act; or
  - (d) precluding the granting of relief from interest or late payment penalties otherwise chargeable where other provisions of this Act so allow.
- (5) Where a person is guilty of an offence, and remains liable to any penalty which the Court (or where appropriate, the Minister) may determine, that penalty shall be determined having regard to:
- (a) the provisions of sections 68 to 71 inclusive;
  - (b) the seriousness of the offence;
  - (c) the person's previous history of offending;
  - (d) the need to discourage further offending by that person and others;
  - (e) the nature of any other offences of which the person is concurrently guilty or is being charged; and
  - (f) the general pattern and level of fines applied to other persons who have committed or may commit offences against the Act.

## 68 Penalties for Category 1 offences

- (1) Where any offence is a Category 1 offence, being:
- (a) a wilful intent to evade income tax (as described in section 66);
  - (b) complicity in a matter involving a wilful intent to evade income tax (as described in section 66);
  - (c) an offence relating to the obligation to withhold or collect monies in trust for the Crown and to account for these within a prescribed time; or
  - (d) any other offence specifically declared by the Act to be a Category 1 offence,
- then the person charged with the offence shall;

- (e) upon the provision to, and acceptance by, the Minister of an admission of guilt, then subject to section 71, pay a default fine which reflects the seriousness of the offence; or
  - (f) upon conviction, be liable to a fine of up to \$15000 or a term of imprisonment of up to 3 years, or both.
- (2) Nothing in this section shall be taken as:
- (a) relieving any person to whom this section, applies from any interest or late payment penalty chargeable under this Act; or
  - (b) precluding the granting of relief from interest or late payment penalties otherwise chargeable where other provisions of this Act so allow.

## **69 Penalties for Category 2 offences**

- (1) Where the offence is a Category 2 offence, being:
- (a) wilful neglect or wilful default in a matter involving the maintenance and retention of records (as required by section 39);
  - (b) any failure without reasonable cause to respond appropriately to any valid requests made pursuant to sections 40 or 42; or
  - (c) any Category 2 offence other than one to which paragraphs (a) or (b) apply,
- then the person guilty of the offence shall:
- (d) upon the provision to and acceptance by the Minister of an admission of guilt, then subject to section 71, pay a default fine which reflects the seriousness of the offence; or
  - (e) upon conviction, be liable to a fine of up to \$10000 or a term of imprisonment of up to 2 years, or both.
- (2) Nothing in this section shall be taken as:
- (a) relieving any person to whom this section applies from any interest or late payment penalty chargeable under this Act; or
  - (b) precluding the granting of relief from interest or late payment penalties otherwise chargeable where other provisions of this Act so allow.

## **70 Penalties for category 3 offences**

- (1) A Category 3 offence, is any offence under this Act which is not a Category 1 or a Category 2 offence, and whether or not specifically declared by the Act to be a Category 3 offence.
- (2) Any person who commits a Category 3 offence shall be guilty of an offence and shall upon conviction be liable to a fine of up to \$2,500.
- (3) Nothing in this section shall be taken as:

- (a) relieving any person to whom this section applies from any interest or late payment penalty chargeable under this Act; or
- (b) precluding the granting of relief from interest or late payment penalties otherwise chargeable where other provisions of this Act so allow.

## **71 Application of penalties in cases where a Category 1 or Category 2 offence is admitted**

- (1) In any situation where a person considers that in relation to any offence he would or might be subject to a Court imposed fine or imprisonment or both, that person:
  - (a) may make a written offer of an admission of guilt, and of his willingness to volunteer the immediate payment of a lump sum by way of penalty for any such admitted offence; and
  - (b) in turn require the Minister with the consent of the Attorney-General to undertake that on receipt of the amount offered that he will confirm in writing that he will not be formally prosecuted.
- (2) If the Minister with the consent of the Attorney-General considers that the amount of the lump sum offered by way of penalty is, in all the circumstances of the case, a suitable amount reflecting the criteria in sections 67(5)(b) to 67(5)(f) he may accept the offer on behalf of the Crown.
- (3) Where the Minister with the consent of the Attorney-General accepts any offer (of the type referred to in sub-section (1)) which has been made by any person in respect of any Category 1 or Category 2 offence, that acceptance shall constitute an agreement and the Crown shall honour the terms of that agreement.
- (4) Any such agreement shall not preclude the imposition of unrelieved interest or unrelieved late payment penalties to amounts of income tax unpaid.
- (5) Where the person defaults under the agreement, then the terms of that agreement shall be of no effect.
- (6) Where the Minister with the consent of the Attorney-General declines to accept any offer made under sub-section (1), the matter shall be determined by the Courts.

## **DIVISION 6 - OBJECTION AND APPEAL RIGHTS AND PROCEDURES**

### **72 Objection and appeal procedures**

- (1) Subject to this section, any person may:
  - (a) object to any matter in any notice of assessment issued to him;

- (b) object to any decision of the Taxation Officer, the Secretary or the Minister, unless in the case of a decision by the Minister, this was made with the prior consent of Cabinet; and
  - (c) object to any matter in respect of which rights of objection are conferred on the person by this Act.
- (2) No objection or appeal proceedings may be prosecuted where this is debarred:
  - (a) by any provision of this Act; or
  - (b) by any regulation.
- (3) Where the objection relates to a matter in a notice of amended assessment, the objection may only relate to a matter altered by the notice of amended assessment, and only to the extent of that alteration.
- (4) Any objection shall be made in writing addressed to the Secretary and received by the Secretary within two months of the date of issue of the notice of assessment or the date upon which the advice of the decision was issued.
- (5) Notwithstanding sub-section (4), the Secretary may treat any objection received after the date by when it was required to be received by him as a valid objection if he considers it fair and reasonable to do so.
- (6) Any notice of objection furnished by or on behalf of any person shall only be of force and effect if it clearly indicates the grounds for the person objecting to the matter specified in the notice of objection.
- (7) If the objection relates to a decision or consent of the Minister, the matter shall be referred to the Cabinet for decision and instruction to the Secretary.
- (8) If the objection relates to a decision or consent of the Secretary, the matter shall be referred to the Minister for decision and instruction to the Secretary.
- (9) In any case where sub-sections (7) and (8) do not apply, the matter shall be decided by the Secretary.
- (10) If the officer or officers to whom the objection is referred decide (after making such enquiries as that officer or officers considered necessary) to accept the objection (either in whole or in part) then, as appropriate, the Secretary shall:
  - (a) instruct the Taxation Officer to issue a notice of assessment to reflect that decision, and the Taxation Officer shall issue such notice as soon as is practical; or
  - (b) take such action as may be required to reflect the acceptance or partial acceptance of the objection,and in either case, shall as soon as practical following that acceptance advise the objector in writing of the decision.
- (11) Any person who is notified that an objection made by him has not been accepted (either in whole or in part) may apply in writing to the Senior

Magistrate for a decision in respect of the matters to which objection was taken.

- (12) Where any application by way of appeal has been made to the Senior Magistrate, a copy of such application shall be served by the Clerk to the Senior Magistrate's Court on the Secretary.
- (13) The Senior Magistrate shall hear any application made under sub-section (11) as soon as practical, and on such hearing may:
  - (a) order the proceedings in such manner as he may feel fit;
  - (b) hear evidence on oath and summon witnesses; and
  - (c) either:
    - (i) refer the matter back for further decision by the Secretary; or
    - (ii) refer the matter for consideration by any other person or persons, in either case with or without a requirement that —
    - (iii) particular matters be taken into account; or
    - (iv) that the matter later be referred back to him for further deliberation and decision; or
  - (d) confirm, reduce, increase, or annul the notice of assessment, or confirm, alter or rescind any decision made or substitute his own decision.

## DIVISION 7 - ADMINISTRATION

### **73 Income tax to be payable notwithstanding prosecutions**

- (1) Save as provided in this section, the institution of any prosecution against any person for standing any offence under this Act shall not relieve that person from liability to pay any amount of income tax which he may be liable to pay.
- (2) Where an order is made under section 74, the person subject to the order shall be relieved of the liability to pay income tax to the extent that the order is satisfied.
- (3) The obligations imposed under sub-section (1) shall not apply in any case where a court, in the special circumstances of any particular case, otherwise directs.

### **74 Order for the payment of income tax**

- (1) Subject to this section, a court before which a person is convicted of an offence under this Act, on application or otherwise, may make an order (hereafter referred to as a 'tax order') requiring that person to pay any amount of income tax owing as a result of that offence.
- (2) In determining whether any tax order shall be made against any person, and in determining the amount to be paid by that person under such tax order, the

Court shall have regard to his economic circumstances as far as they appear or are known to the Court.

- (3) Any tax order made under this section may be enforced in the same manner as a compensation order can be enforced under the provisions of the Penal Code sections 31, 33 and 34.

## **75 Recovery of income tax**

- (1) Any income tax assessed or imposed upon or required to be accounted for by any person under this Act shall be recoverable as a Crown debt and may be sued for and recovered in a court of competent jurisdiction by the Secretary or any officer authorised by him in writing, with full costs of that suit from the person.

## **76 Certificate of income tax due**

In any proceedings other than a hearing of an appeal under section 72 the production of a certificate signed by the Secretary giving the name and address of the defendant and the amount of income tax due shall be sufficient evidence that the amount of income tax was assessed and is payable.

## **76A Recovery of unpaid tax from persons owing money to the person owing tax<sup>17</sup>**

- (1) Where any income tax or other amount imposed under this Act has not been paid by its due date, the Taxation Officer may by notice in writing require a person:
  - (a) owing money to the person liable to pay the income tax or other amount outstanding;
  - (b) holding money for, or on behalf of, the person liable to pay the income tax or other amount outstanding;
  - (c) who is liable to make payments of salary or wages or other similar payments to the person liable to pay the income tax or other amount outstanding; or
  - (d) having authority from some other person to pay money to the person liable to pay the income tax or other amount outstanding;

to pay the money to the Government or its nominated agent on the dates set out in the notice, up to the amount of the income tax or other amount outstanding due.

- (2) A copy of a notice issued under subsection (1) of this section shall be forwarded to the person liable to pay the income tax or other amount outstanding.

- (3) A person making a payment under a notice under subsection (1) of this section shall be treated as having made the payment on behalf of the person liable to pay the income tax or other amount outstanding and the person liable to pay the income tax or other amount outstanding shall not bring an action against the person making payment for recovery of that amount.
- (4) The Taxation Officer shall reduce the amount of the income tax or other amount outstanding by the person liable to pay them, by the amount of any payment made on that person's behalf under subsection (3) of this section.
- (5) Where any person who receives a notice under subsection (1) of this section transfers any money to which the notice applies to the person who he owes money to or is holding money on behalf of, or otherwise does not pay such money in accordance with the notice, that person shall, if the Taxation Officer agrees, become personally responsible for the amount outstanding under the notice and the other provisions of this Act shall apply as if the person who received the notice was the agent of the person liable to pay the income tax or other outstanding amount.

#### **76B Recovery of unpaid tax from seizure and sale of property belonging to debtors<sup>18</sup>**

- (1) Where any income tax or other amount imposed under this Act has not been paid by any person by its due date, the Taxation Officer may request that the Minister make an order placing restrictions on that person's movable property until the income tax or other amount has been paid.
- (2) Where a person to whom subsection (1) of this section applies, has not paid, or made arrangements satisfactory to the Taxation Officer to pay, the income tax or other amount due within 30 days of the order of the Minister obtained under that subsection, the Taxation Officer may enter any place and seize any movable property
- (3) Movable property that has been seized under this section shall be stored in a place approved by the Taxation Officer for the storage of such property.
- (4) If movable property has been seized under this section, the Taxation Officer shall, as soon as practicable after the seizure, serve on the owner of the movable property or the person who had custody or control of the movable property immediately before seizure, a notice in writing —
  - (a) identifying the movable property;
  - (b) stating the movable property that has been seized under this section and the reason for seizure; and
  - (c) setting out the terms of subsections (6), (7) and (8).
- (5) The Taxation Officer shall not be required to serve a notice under subsection (4) if, after making reasonable enquiries, the Taxation Officer does not have

sufficient information to identify the person on whom the notice should be served.

- (6) The Taxation Officer may authorise any movable property seized under this section to be delivered to the person on whom a notice under subsection (4) has been served, if that person has paid, or makes an arrangement to pay to the satisfaction of the Taxation Officer, any income tax or other amount due under this Act.
- (7) If subsection (6) does not apply, the Taxation Officer shall detain the movable property seized under this section –
  - (a) in the case of perishable property, for such period as the Taxation Officer considers reasonable having regard to the condition of the property; or
  - (b) in any other case, for 21 days after the seizure of the property.
- (8) If the detention period in subsection (7) has expired, the Taxation Officer may sell the seized property by public auction or in such other manner as the Taxation Officer may determine.
- (9) The proceeds of disposal under subsection (8) shall be applied as follows –
  - (a) first toward the cost of seizing, keeping and selling the seized property;
  - (b) then towards the payment of the income tax or other amount due under this Act; and
  - (c) the balance, if any, shall be paid to the owner of the property.
- (10) The Taxation Officer may request the assistance of the Tuvalu Police Force in delivering and putting into place any order made by a court under subsection (2) of this section

### **76C Persons with unpaid tax over \$500 not allowed to leave Tuvalu<sup>19</sup>**

- (1) Where any income tax or other amount imposed under this Act in excess of \$500 has not been paid by any person by its due date, the Taxation Officer may by notice in writing to the Principal Immigration Officer, require that the Principal Immigration Officer shall prevent that person from leaving Tuvalu, until the person:
  - (a) makes payment in full; or
  - (b) makes an arrangement satisfactory to the Taxation Officer for the payment of the tax or other amount.
- (2) In any case to which this section applies, where the conditions of paragraphs (a) or (b) of subsection (1) of this section have been met, the Taxation Officer shall by letter immediately inform the Principal Immigration Officer of that fact and the Principal Immigration shall forthwith no longer prevent the person to whom the conditions applies from leaving Tuvalu.

**76D Business of persons with unpaid tax over \$500 may be temporarily closed**<sup>20</sup>

- (1) Where any income tax or other amount imposed under this Act in excess of \$500 has not been paid by its due date by any person, being a person who is operating a business, the Taxation Officer may by notice in writing inform that person of an intention to close down part or the whole of that person's business, until the person:
  - (a) makes payment in full; or
  - (b) makes an arrangement satisfactory to the Taxation Officer for the payment of the tax or other amount.
- (2) In any case to which this section applies, where the conditions of paragraphs (a) or (b) of subsection (1) of this section have not been met within 7 days of the person to which it relates having received the notice, the Minister may by letter order the immediate closure of part or the whole of that person's business until the conditions in paragraph (a) or (b) of subsection (1) of this section have been met.
- (3) Where the Minister makes an order hereunder, the Taxation Officer shall affix in a conspicuous place on the front of the premises or part of a business which has been closed, a notice bearing the words —CLOSED TEMPORARILY FOR NOT PAYING OUTSTANDING TAX.
- (4) Any person who, contrary to the provisions of this section, carries on the business or part of the business concerned or who commits any breach of an order made under this section, commits a Category 1 offence
- (5) The Taxation Officer may request the assistance of the Tuvalu Police Force in delivering and putting into place any order made by the Minister under subsection (2) of this section.

**77 Responsibility of the Secretary**

- (1) The Secretary shall:
  - (a) undertake the administration of this Act;
  - (b) account for the income tax levied hereunder;
  - (c) be responsible for the due care and management of that income tax and of all matters incidental thereto; and
  - (d) collect such information relating to the patterns of gross income and any related costs, and of the exempt income and of the taxable income, of any person, as may be required to facilitate the preparation of government's periodic revenue estimates.
- (2) The Minister may appoint such officers as may be necessary to assist the Secretary in the proper performance of his responsibilities, but any such

appointments shall not relieve the Secretary of the responsibilities imposed by sub-section (1)

- (3) Where, in accordance with this Act, any act is required to be undertaken by the Taxation Officer or person appointed under sub-section (2) responsibility, for ensuring the proper execution of this Act shall rest with the Secretary.
- (4) With the prior consent of Cabinet and subject to sub-section (6), the Minister may authorise the Secretary to make decisions on particular matters set out in this Act, subject to any conditions and the parameters determined by Cabinet.
- (5) With the prior consent of the Minister, and subject to sub-section (6), the Secretary may authorise either:
  - (a) Any person appointed by the Minister under sub-section (2); or
  - (b) the Taxation Officer,to make decisions on particular matters set out in this Act (but not being matters referred to in sub-section (4)), subject to any conditions and the parameters determined by the Minister.
- (6) In no case:
  - (a) may any authority be delegated to another person where this would have the effect of abrogating any peer review expectation embodied in this Act; and
  - (b) may Cabinet delegate any decision making responsibilities conferred under this Act.

## **78 Responsibility of the Taxation Officer**

- (1) Subject to the provisions of this Act, it shall be the responsibility of the Taxation Officer to ensure that so far as practical, the Crown collects the correct amount of income tax in respect of all gross income to which this Act applies.
- (2) For the purposes of sub-section (1), the Taxation Officer shall:
  - (a) obtain such information he is entitled to require (whether pursuant of sections 40 or 42, or otherwise);
  - (b) issue such notice of assessment as may be required to be issued from time to time; and
  - (c) cause the Secretary to take such steps or proceedings as he considers appropriate to collect monies properly due to the Crown and which may be collected in accordance with this Act.
- (3) In the exercise of his responsibilities under this Act, and this section in particular, the Taxation Officer:
  - (a) may disregard small amounts of income tax that are uneconomic to collect; and

- (b) shall endeavour to apply the requirements of the Act in a pragmatic and practical way, but always consistent with the scheme and purpose of the Act.

### **79 Requirement as to secrecy**

- (1) Subject to this section, the Minister, the Secretary, the Taxation Officer, the Auditor General and every other person concerned in or reviewing the administration of this Act shall regard and deal with all documents and information relating to the income or circumstances of any other person which may come into their possession in the course of their duties as secret.
- (2) Where any person referred to in sub-section (1) is involved in the conduct of any objection and appeal proceedings or in any prosecution of an alleged offence under this Act, that person may disclose information relating to the income or circumstance of any other person to the extent necessary for such proceedings or prosecution.
- (3) Any person violating the provisions of this section shall be guilty of a Category 3 offence.

### **80 Procedure where Minister is a party to an alleged offence or has a conflict of interest**

In any case where the person alleged to have committed an offence is the Minister, or the Minister considers that he has a conflict of interest or is otherwise unable to deal objectively with a matter requiring his attention or decision, the matter shall be dealt with by decision of Cabinet.

### **81 Form of returns etc**

- (1) Save as may be otherwise provided in this Act, the Minister may from time to time by notice specify the form of return, notice or other document required for the purpose of this Act.
- (2) Where any return, notice or other document has been specified, it shall be in the form so specified.

## **PART 8 - ABILITY OF THE GOVERNMENT TO MODIFY THE PROVISIONS OF THE ACT**

### **82 General power for the Minister to issue regulations and amend Schedules to the Act**

- (1) Where:

- (a) the Act specifically so provides;
  - (b) it will facilitate the exercise by the Secretary or the Taxation Officer of any powers available to them under the Act;
  - (c) in any case for the better carrying out of the administrative and collection provisions of the Act;
  - (d) the Cabinet considers it appropriate to delay the introduction or suspend the operation of any provision (not being a relief provision); or
  - (e) it is appropriate to rescind and reissue any existing regulations,
- the Minister may issue regulations.
- (2) The Minister (with the consent of Cabinet first obtained) may determine changes or additions to any item incorporated in the Schedules to the Act, and give effect to these changes by regulation.

### **83 Specific powers to alter the Act in the commercial or economic interests of Tuvalu**

- (1) Where and to the extent that the Minister (with the prior approval of Cabinet) considers it to be the commercial or clearly in the overall commercial or economic interests of Tuvalu to do so, he may (subject to the provision of this section) either:
- (a) in relation to any major new or embryonic venture; or
  - (b) in relation to a major expansion of any existing venture,
- issue regulations setting out:
- (c) how in relation to that venture, any existing provisions, conditions, reliefs, entitlements, or obligation contemplated by the Act are varied so that they either no longer apply or apply in a manner differently to that provided in the Act.
- (2) Where it is proposed to issue any regulations so as to give effect to any matter or circumstance covered by the provision, of sub-section (1), the Minister shall first give full public notice including radio broadcast if practical of his intention to issue such regulations, and the relevant details of the matters intended to be set out therein.
- (3) Any person who considers it inappropriate that regulations be issued according to the tenor of the proposed regulations, shall have the right to make formal representations (either in writing, or orally, or both) to the Minister as to matters of concern, provided this is done within 6 weeks of the date of full public notice of the proposed regulations.
- (4) The Minister:
- (a) shall make himself available for the purpose of hearing any oral representations contemplated by sub-section (3);

- (b) shall give a full and fair hearing to any matters raised in oral representations;
  - (c) shall give full and fair consideration to any matters raised in written representations; and
  - (d) shall fully and fairly advise Cabinet of the nature of all the concerns expressed in all written and oral representations.
- (5) Once Cabinet is satisfied that:
- (a) the concerns advised by the Minister pursuant to sub-section (4) are suitably dealt with in amendments which will be made to the proposed regulations;
  - (b) suitable further or alternative provision (by way of financial assistance or otherwise) have been or will be made to ensure that affected persons are not unfairly disadvantaged; or
  - (c) the remaining concerns raised by those who made representations are in its opinion either not justified or are outweighed by the anticipated economic benefits to Tuvalu,
- it may authorise the Minister to formally issue the regulations and any other appropriate public notice incorporating the changes or further measures now agreed to.
- (6) No regulations issued under authority of this section shall be of any force or effect until the procedures outlined have been complied with, and shall apply only prospectively.

#### **84 Power of the Minister to conclude treaties with other countries**

- (1) The Minister may, with the prior consent of Cabinet, enter into arrangements with any other country with a view to concluding treaties regulating income tax matters affecting the investments of a resident in that other country or arrangements between a resident and a person who is a resident of that other country.
- (2) Any such treaty, once ratified by the governments of the treaty partners, shall take effect according to its tenor, as if the treaty were part of the Act, and notwithstanding any provision of the Act.
- (3) The Minister may set out in regulations rules to give effect to the operation of any treaty entered into, and those regulations shall remain in force so long as the treaty remains in force, or until they are otherwise amended or withdrawn by the Minister.
- (4) Without in any way limiting the matters in respect of which the Minister may make rules to give effect to the operation of a tax treaty, such rules may determine:

- (a) how particular provisions of the treaty will be interpreted and applied; and
- (b) the procedures to be followed for making a claim for a refund of tax paid in excess of the maximum amount permitted by the treaty.

**85 Power of the Minister to issue a certificate of exemption or regulations authorising non compliance with the requirements of the Act**

Where, on application by any person or class of persons, the Minister is satisfied that for whatever reason, it is impractical for that person or class of persons to comply with all or any of the requirements of the Act:

- (a) he may issue a certificate of exemption to that person or those persons; or
- (b) he may issue regulations suspending the operation and application of the relevant provision or provisions of the Act; and

in either case, should he see fit, setting out alternative administrative rules and procedures to meet the needs of the situation.

## **PART 9 - GENERAL PROVISIONS**

**86 Repeals and savings**

- (1) Subject to this section, the Income Tax Act, Cap 52 is repealed on the coming into force of this Act.
- (2) The provisions of the Income Tax Act, Cap 52 shall continue to apply to:
  - (a) the determination or payment of any income tax liability;
  - (b) the fulfilment of any obligation;
  - (c) the exercising of any right;
  - (d) the taking of any action; and
  - (e) any other matter or thing,that pertains to any year prior to the coming into force of this Act.
- (3) Where any amount has been allowed as a deduction in determining the taxable income (or chargeable income) of any person for any year prior to the coming into force of this Act (or any relevant part thereof), and that amount has directly or indirectly been recovered during any year this Act is in force, the amount so recovered is hereby deemed to have been a deductible cost for the purpose of this Act, and its recovery to be gross income in the year of recovery.

**87 Transitional provision on this Act coming into force**

- (1) Notwithstanding anything contained in this Act, where applicable, the provisions of Schedule 8 shall operate to alleviate hardship and avoid inequities which would otherwise arise on this Act coming into force.
- (2) Where:
  - (a) on the coming into force of this Act any income or revenues of the Crown or any statutory corporation were not previously subject to income tax pursuant to the provision of a statute other than the Income Tax Act, Cap 52; and
  - (b) the exemption conferred by paragraph 3 of Part 4 of Schedule 1 is determined by regulation not to apply from any particular date,then the issue of any regulation terminating the exemption shall be treated as valid repeal of the provisions in that other statute which conferred that income tax exemption.
- (3) The provision of this Act relating to the liability of non residents to income tax on service fees, and the liability of the payer of service fees to withhold tax therefrom, shall not take effect until a date notified by the Minister by regulation.
- (4) The following sections and schedules shall come into force from a date or different dates to be determined by the Minister and of which full public notice is given in advance of that date or such other date as the case may be:
  - (a) Part A of Schedule 4 (relating to persons whose gross income from specified sources is to be determined as a specified percentage of throughput);
  - (b) paragraph 4 of Part A of Schedule 5 (relating to the amount of tax to be withheld at source from certain payments to non residents); and
  - (c) Part B of Schedule 5 (relating to the amount of tax to be withheld at source from certain payments to non residents).

**SCHEDULE 1****EXEMPT INCOME****[Section 2]**

The following categories of income shall be exempt from income tax to the extent indicated:

**PART 1: Personal receipts and benefits**

**1.** Travelling, accommodation, subsistence and entertainment allowances paid to officers in the public service.

**2.** Travelling, accommodation, subsistence and entertainment allowances paid to persons not in the public service to the extent that the Secretary is satisfied that they are reasonable in amount and not in excess of what would be appropriate for an officer in the public service.

**3.** Any amounts, and the value of any benefits derived by an employee by reason of his attendance at or participation in any formal course, study or work instruction programme, or similar, insofar as those amounts or benefits:

- (a) constitute the cost, or contribution to the cost of tuition or course or programme fees and related costs, or travelling, accommodation and subsistence in relation to that attendance or participation; and
- (b) are not in lieu of emoluments which any person would, or in all likelihood would, have been entitled.

**4.** The value of any scholarship or bursary awarded to a person for the purpose of full time instruction at a university, college, school or other place of instruction:

Provided that where the scholarship or bursary is provided by an employer to an employee or a person related to an employee, this exemption shall not apply to the extent that the value of the award is in lieu of emoluments which any person would, or in all likelihood would have been entitled.

**5.** The amount of any allowances and the value of any benefits derived by volunteer workers in respect of work undertaken for non profit making aid organisations where:

- (a) the person deriving those allowance or benefits:
  - (i) is not a resident of Tuvalu; or
  - (ii) would not be resident in Tuvalu but for being present in Tuvalu to render those services; and
- (b) either:

- (i) the allowances are of an amount and the benefits are of a value that do not exceed those which the Minister from time to time has determined by regulation in relation to any case or class of cases, and for any period or periods; or
- (ii) the government of Tuvalu has entered into an agreement with the aid organisation or the country in which the central management of that organisation is based, for particular allowances and benefits to be exempt; and

the allowances are either:

- (c) no more than is appropriate to cover the costs of accommodation and subsistence of that person in undertaking the volunteer work; or
- (d) the allowances are of a type and amount contemplated by the agreement entered into with the aid organisation or country concerned.

**6.** Emoluments or other amounts payable in respect of duties performed in Tuvalu by any person who is present in Tuvalu solely for the purposes of performing those duties, where:

- (a) such emoluments or other amounts are paid from overseas sources, and the services are performed pursuant to any arrangement to which the Crown is party and that arrangement provides for those emoluments or other amounts to be exempt,

and in this regard:

- (b) if the arrangement to which the Crown is a party so provides, this exemption shall apply equally to other gross income of that person (and, if applicable, his immediate family).

**7.** A gratuity or bonus received by a person pursuant to a written contract of employment, where it is derived by the person on the termination, expiry, renewal or extension of that contract, if the person is either:

- (a) exempt from the provisions of the Tuvalu Provident Fund Act by virtue of section 2 of Schedule 1 to that Act; or
- (b) is a member of an approved fund, and in respect of that fund no contributions are payable by the person's employer (or by any other person by arrangement with that employer).

**8.** Interest payable by the Crown on any income tax credits refunded.

**9.** Any amount received or receivable by any person by way of alimony or allowance from his spouse or former spouse where the amount does not ( or will not) constitute a specified alimony payment.

**10.** The amount of any distribution by the executor, administrator or trustee of any trust or estate to the extent that the amounts out of which they are paid have been subject to tax in Tuvalu in the hands of the executor, administrator or trustee, or in the hands of a beneficiary in that trust or estate.

**11.** One half of the amount of any annuity received under an approved annuity contract (as defined in section 2).

**PART 2: Business and investment receipts and benefits**

**1.** All income derived from the sale of copra cut within Tuvalu, if that income is derived otherwise than from or in the conduct of a business.

**2.** The income of:

- (a) any benevolent, religious, educational, charitable, cultural or amateur sporting institution or organisation approved by the Minister by regulation;
- (b) any organisation which is at the time an approved community service organisation;
- (c) any trade union; and
- (d) any local authority:

Provided that:

- (e) this exemption shall not extend to the income derived by any such institution or organisation from any business it conducts or from any passive investments which it holds, unless the annual taxable income so derived is less than \$250 in the aggregate; and
- (f) in the case of an institution or organisation referred to in sub paragraphs (a) or (b), the exemption shall only operate so long as any conditions stipulated by the Minister are met.

**3.** Income derived by a non resident from fishing activity in Tuvalu's exclusive economic zone where that fishing activity was undertaken pursuant to an international fishing licence or similar issued by the Crown.

**4.** Income arising from the sale of fish and handicraft by a resident individual.

**5.** Any service fees payable to a non resident not carrying on business in Tuvalu to the extent that:

- (a) the amount relates to services provided outside Tuvalu to or on behalf of any person resident in Tuvalu or his representative; and

either:

- (b) at the time the payment is made by or on behalf of that person, the aggregate amount of consideration payable by way of service fees to that non resident person (and any related person) in that year does not exceed \$2500 (or such higher sum as the Minister may from time to time determine by Regulation);
- (c) the service fees are of a class which the Minister has determined by regulation should be exempt; or

- (d) the service fees would have given rise to a deductible cost to the payer, and that payer has in writing advised the Taxation Officer he shall not claim a deduction for or in relation to the expenditure, and does not do so.

**PART 3: Dividends**

1. Any dividend derived by any person resident in Tuvalu from a resident company.
2. The amount of any dividend derived by any person to the extent to which that person satisfies the Secretary that his taxable income for that year or any prior year included the profits out of which that dividend was paid, consequent upon the application of section 24(2):

Provided that if the person acquired the shares by inheritance, then this provision shall also apply equally where the person satisfies the Secretary that in that year or any prior year the taxable income of the deceased or his estate had included under the profits out of which that dividend was paid, consequent upon the application of that sub-section.

3. So much of any dividend derived by any person resident in Tuvalu from any non resident company as is not exempt pursuant to paragraph (2) of this Part, to the extent prescribed by the formulae below:

- (a) where the company distributing the dividends is any company other than an approved fund:

- (i) then where:  $t \geq r \times g$   
100% of the amount of the dividend; and
- (ii) in any other case, the exempt portion of the dividend shall be:  
 $\frac{t}{r}$

- (b) where the company distributing the dividend is an approved fund:

- (i) where:  $t \geq g \times a$   
100% of the amount of the dividend
- (ii) and in any other case, the exempt portion of the dividend shall be:  
 $\frac{t + g \times (r - a)}{r}$

in which formulae:

a = the rate of income tax applicable to an approved fund resident in Tuvalu;  
 g = the gross amount of the dividend which, but for this sub-paragraph would have been gross income;  
 r = the rate of income tax applicable to a person resident in Tuvalu (that rate being expressed as a decimal); and  
 t = the amount of overseas tax charged on the gross amount of the dividend ('g');

Provided that this exemption shall not apply where the person has made the election contemplated by the proviso to section 27(4)(a)(ii), and the exemption is determined pursuant to paragraph 4 of this schedule.

4. Where, within the time allowed by the proviso to section 27(4)(a)(ii), a person resident in Tuvalu has made the election contemplated by that section in relation to any dividend derived by that person from a non resident company, so much of that dividend as is not exempt pursuant to paragraph 2 of this Part shall be exempt to the extent determined by the formulae below:

(a) where the non-resident company distributing the dividends is a company other than an approved fund:

(i) then where:

$$[p - g + t] \geq (r \times p);$$

100% of the amount of the dividend shall be exempt; and

(ii) in any other case, the exempt portion of the dividend shall be the amount represented by the formula:

$$\frac{[p - g + t] - (p - g)}{r}$$

(b) where the company distributing the dividend is an approved fund:

(i) then where:

$$[p - g + t] \geq p \times a$$

100% of the amount of the dividend; and

(ii) In any other case, the exempt portion of the dividend shall be:

$$\frac{[p - g + t] - [(p \times a/r) - g]}{r}$$

in which formulae:

a = the rate of income tax applicable to an approved fund resident in Tuvalu;

g = the gross amount of the dividend which, but for this subparagraph would have been gross income;

p = the amount of profit earned by the company which, after the deduction of attributable foreign income tax, would have left an amount equal to item 'g' in the relevant formula;

r = the rate of income tax applicable to a person resident in Tuvalu (that rate being expressed as a decimal);

t = and the amount of overseas tax charged on the gross amount of the dividend ('9'),

and in relation to any determination pursuant to this paragraph:

- (c) the intent is that there should be no economic double taxation of the profits of the company distributing the dividend, having regard to:
  - (i) the overseas tax to which that non resident company was itself liable directly or indirectly in relation to its profits which funded the dividend; and
  - (ii) the incidence of Tuvalu income tax on the dividend in the hands of the person deriving that dividend;
- (d) in any case where the person deriving the dividend can demonstrate to the satisfaction of the Secretary that, having regard to the intent stated in sub-paragraph (c), the formulae in this paragraph result in significant prejudice to that person, the Secretary may determine what adjustments should be made to the formulae to meet the needs of the case, and those adjusted formulae shall apply accordingly; and
- (e) where the dividend derived by the person has any underlying tax, credits attached, subject to sub-paragraph (d), these shall provide the indicia as to the amount of attributable overseas tax for the purposes of item 'p' in the formulae.

**5.** The amount of any dividend to the extent it comprises the nominal value of any bonus shares, where the date upon which that dividend was derived (as contemplated by the definition of that term in section 2) is more than 5 years after that person acquired those shares:

Provided that if the bonus shares were acquired by inheritance, then the acquirer shall be deemed to have acquired those shares on the date upon which the deceased acquired (or was deemed to have acquired) those shares.

#### **PART 4: Governmental**

1. The income of the regional organizations listed below and the income derived from the funds of such organisation by persons employed thereby:

- (a) South Pacific Commission; and
- (b) Forum Secretariat.

2. The income of the Tuvalu Trust Fund set up by international treaty entitled the Agreement concerning an International Trust Fund of Tuvalu.

3. Income derived by the Crown or any statutory corporation:

PROVIDED THAT this exemption shall not apply where and to the extent that the Minister (on the advice of Cabinet) from time to time so determines by regulation;

AND PROVIDED THAT this exemption does not apply to the following statutory corporations —<sup>21</sup>

- 1. Development Bank of Tuvalu
- 2. National Bank of Tuvalu

3. National Fishing Corporation of Tuvalu
  4. Tuvalu Electricity Corporation
  5. Tuvalu Philatelic Bureau
  6. Tuvalu Provident Fund
  7. Tuvalu Telecommunications Corporation
  8. Vaiaku Lagi Hotel Corporation.
4. The income of an individual, other than a citizen of Tuvalu, who holds office in Tuvalu as an official of a foreign government or international organization is exempted to the extent provided in the Diplomatic Privileges Act.<sup>22</sup>

## SCHEDULE 2

**ALLOWABLE DEPRECIATION<sup>23</sup>**

[Section 13(1)]

1. In respect of any capital asset acquired and held by any person, there shall be calculated depreciation in accordance with this Schedule.

2. Any depreciation will be calculated by that person —

- (a) in the year of acquisition, on the cost price to him of the capital asset; and
- (b) in subsequent years, on the income tax value of that capital asset at the commencement of the relevant year.

3. Subject to this schedule and Schedule 8, the rate of depreciation shall be:

	% Rate per month	% Rate per annum
(a) Buildings (but not the land or other appurtenances on the land)		
(i) Constructed of imported materials	.3%	3.6%
(ii) Constructed of local materials	1.25%	15%
(b) Ships and boats		
(i) Constructed of imported materials	.42%	5%
(ii) Constructed of local materials	1.25%	15%
(c) Plant, machinery, equipment, (not being motor vehicles)	1%	12%
(d) Equipment (computers, photocopiers and other equipment)	1.67%	20%
(e) Furniture and fittings		

(i) Constructed of imported materials	.42%	5%
(ii) Constructed of local materials	1.25%	15%
(f) Motor vehicles and transport equipment	1.67%	20%
(g) Capital assets in respect of which a rate is determined by regulation	As determined by regulation	

4. Notwithstanding the provisions of paragraphs (2) and (3), depreciation calculated may only be claimed as a deductible cost, being an amount which is deemed to be expenditure incurred pursuant to section 13, where and to the extent that:

- (a) the depreciation relates to a month in which the capital asset was used either;
  - (i) in the production or gaining of gross income; or
  - (ii) in the conduct of a business for the production or gaining of gross income; and
- (b) the deductibility of that deemed expenditure is not debarred by any provision of the Act.

5. Where at any time any capital asset is disposed of, or will no longer be used as contemplated by paragraph (4) then:

- (a) in any case where the capital asset is:
  - (i) retained for purposes or use other than as contemplated by paragraph (4);
  - (ii) disposed of for inadequate consideration; or
  - (iii) a disposal to a related person;
 the month value of capital asset at that time; and
- (b) in any case, the net proceeds of disposal of that capital asset,

shall be compared with the income tax value of that asset at the time, and (subject to this Schedule):

- (c) any excess of the income tax value over that market value or those net proceeds of disposal (as the case may be) shall be treated as depreciation to which section 13(1) applies; and
- (d) any excess of that market value or those net proceeds of disposal (as the case may be) shall be treated as gross income (but only insofar as, on a pro rata basis, they may be viewed as a recovery of an amount which had constituted a deductible cost in the current or any previous year).

6. If, in applying paragraph 5:

- (a) there is a shortfall between the income tax value of a capital asset and its proceeds of disposal (or market value, as appropriate); and
- (b) the Taxation Officer, in his best judgment objectively exercised, considers that a significant portion of that shortfall is attributable to factors other than wear and tear and any *force majeure* affecting that capital asset;

he may determine that the portion so attributable shall not be treated as a deductible cost.

**SCHEDULE 3**

**INVESTMENT ALLOWANCES**

[Section 13(2)]

*[No incentive allowances currently in force]*

**SCHEDULE 4****PERSONS WHOSE GROSS INCOME FROM SPECIFIED SOURCES IS TO BE DETERMINED AS A SPECIFIED PERCENTAGE OF THROUGHPUT.**

[Section 20]

**PART A:**

1. For the purposes of sections 9(1) and 37, and of Schedule 5, the value of throughput in relation to the classes of business set out in paragraph 2 of this Part shall be determined at the specified percentage of the indicated throughput of that business in that year.

2. The classes of business to which this Part applies are:

<b>Class of business</b>	<b>Throughput basis</b>	<b>Specified percentage of throughput</b>
(a) Supply of petroleum and allied products to or within Tuvalu by any non resident or by any entity under the control of a non resident	Value of turnover	10%
(b) Carriage of passengers and goods by air or sea from Tuvalu by a non resident or by any entity under the control of a non resident	Amounts charged for carriage	10%
(c) General risk insurance premiums where the person insured is resident in Tuvalu, or the risk insured is in Tuvalu, not being a risk of a private or domestic nature	Premiums derived	10%

**PART B:**

1. For the purposes of section 9(1), any person who carries on in Tuvalu a business of the class or classes set out in paragraph 2 of this Part may for any year elect to have the taxable income content of their gross income from that business determined at the specified percentage of the indicated throughput of that business in that year:

Provided that any such election shall only be of effect if it is made in accordance with, and then subject to, the requirements of section 21.

2. The classes of business to which this Part applies are:

*[No determinations yet made]*

**SCHEDULE 5**

**INCOME TAX TO BE WITHHELD OR COLLECTED AT SOURCE<sup>24</sup>**

[Section 37]

In this Schedule, references to withholding of income tax at source include any situation where income tax is required to be collected at source.

**PART A**

The amount of income tax to be withheld at source from any amount of gross income (not being exempt income) from which, there is a requirement to withhold at source, is as follows:

	% of gross income
<p>(1) emoluments derived by a person from any income employment in Tuvalu, whether or not the services are rendered in Tuvalu, and irrespective of where the contract is made or the emoluments are paid or provided:</p> <p>Provided that:</p> <ul style="list-style-type: none"> <li>(a) for the purpose of this withholding, the amount or value of any emolument subject to withholding at source shall be the amount of the emolument less any contributions withheld or collected by the employer for payment to any approved fund; and</li> <li>(b) where the employment to which the emolument relates is the employee’s principal employment, the amount of the tax to be withheld shall be based on formulae provided by the Taxation Officer which reflect the tax rates specified in paragraph 1 of Schedule 6.<sup>25</sup></li> </ul>	15%
<p>(2) non resident withholding income comprising:</p> <ul style="list-style-type: none"> <li>(a) dividend</li> <li>(b) service fees</li> <li>(c) specified alimony payments</li> <li>(d) gross income other than dividends, service fees or specified alimony payments;</li> </ul>	<p>15%</p> <p>15%</p> <p>30%</p> <p>15%</p>

Provided that where the non resident withholding income is payable to a resident of a country with which Tuvalu has a tax treaty in effect, the rates here specified shall be reduced as necessary to any maximum applicable rate prescribed in the treaty;	
(3) any amount payable by any person to a resident by way of specified alimony payments; and	30%
(4) any amount (not being amounts covered by the preceding items on this schedule or amounts which are exempt income) paid or credited to a non resident in respect of work performed in Tuvalu by the non resident or an employee or representative of a non resident.	40%

## PART B

(1) The amount required to be withheld at source by:

- (a) any person carrying on business in Tuvalu who makes any payment to any person in respect of supplies of the type specified in Schedule 4; or
- (b) any person in Tuvalu who, for or on behalf of any business carried on in Tuvalu, directly or indirectly makes any payment to any other person in respect of supplies of the type specified in Schedule 4, (whether or not that person acquires ownership or title to the items supplied),

shall be as set out below, in each case the percentage being applied to the deemed amount of gross income (being the value of throughput determined in accordance with Schedule 4):

<b>Class of business</b>	<b>% of amount of value of throughput (as defined by section 2)</b>
(i) supply of petroleum and allied products to or within Tuvalu by any non resident or by any entity under the control of a non resident;	10%
(ii) carriage of passengers and goods by air or sea from Tuvalu by a non resident or by any entity under the control of a non resident; and	10%
(iii) general risk insurance premiums where the	10%

person insured is resident in Tuvalu, or the risk is in Tuvalu, not being a risk of a private or domestic nature:	
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Provided that no amount shall be required to be withheld where the Secretary confirms in writing to the payer that the amounts payable to the supplier are for any reason (including the provisions of any tax treaty in force) exempt income.

**SCHEDULE 6****APPLICABLE INCOME TAX RATES AND REBATES FROM INCOME TAX<sup>26</sup>****[Section 5]**

1. In relation to any person in any year, income tax shall be payable at the rates set out below in respect of that person's taxable income for that year:

	<b>% of taxable income</b>
(a) Taxable income of an individual, not exceeding ten thousand dollars	0%
(b) Taxable income of an individual, exceeding ten thousand dollars but not exceeding fourteen thousand dollars	15%
(c) Taxable income of an individual, exceeding fourteen thousand dollars	30%
(d) Taxable income of any executor, administrator or trustee in their capacity as such in relation to any one trust or estate in Tuvalu	30%
(e) Taxable income of any approved fund resident in Tuvalu	15%
(f) Taxable income of a resident local authority or trade union	30%
(g) Taxable income of any resident religious, educational, cultural, or charitable organisation	30%
(h) Taxable income of National Bank of Tuvalu	30%
(i) Taxable income of any resident company (other than those specified elsewhere on this schedule)	30%

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(j) Taxable income of any resident company	40%
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2. This schedule has no application to the gross income of any person where that gross income constitutes non resident withholding income, the income tax liability in respect of which ultimately is determinable solely with reference to the amount of income tax withheld or collected at source.

**SCHEDULE 7****PRESCRIBED RATES OF INTEREST**

[Section 58]

1. Where, pursuant to any provision of this Act, interest is required to be paid by any person on any amount of income tax due to the Crown and unpaid by the final date for payment, the prescribed rate shall be:

- (a) 1% for each month or part thereof from after the final date for payment during which the amount of income tax remains unpaid.

2. Where, pursuant to any provision of this Act, interest is required to be paid to any person on any amount of income tax refund due by the Crown, the prescribed rate shall be:

- (a) 1% for each month or part thereof for which the amount of income tax remains unpaid after the date from which, in accordance with the Act, interest is taken to run.

**SCHEDULE 8****TRANSITIONAL PROVISIONS****[Section 88]**

Notwithstanding the provisions of paragraph (3) of Schedule 2, where in relation to any capital asset held by any person in any year and either:

- (a) acquired by him prior to 1 April 1992; or
- (b) acquired pursuant to a binding contract entered into before 1 April 1992; and the amount of depreciation claimable by that person under the provisions of the Income Tax Act, is greater than that which would be claimable pursuant to this Schedule, that person may elect that in relation to that capital asset, the depreciation entitlement be determined as if the Income Tax Act, were still in force:

Provided that —

- (c) any such election shall be made with the person's return of income for the 1993 year;
- (d) once such an election is made in relation to any capital asset, that election shall remain in force for so long as the capital asset is retained by that person; and
- (e) if that capital asset is subsequently acquired by any related person, that election shall be binding on, and govern depreciation claims by, that related person.

Any exemption from income tax conferred under Schedule 1 to the Income Tax Act, and in force at 31 December 1992 shall remain in force and of effect under this Act, but only insofar as:

- (a) that exemption is not inconsistent with the provisions of this Act; and
- (b) that exemption has not been modified or withdrawn by regulation:

Provided that —

- (c) this paragraph specifically shall not apply to the exemptions conferred by the following paragraphs of Schedule 1 to the Income Tax Act:
  - (i) paragraph 6 (in relation to the income of an approved pension fund);
  - (ii) paragraph 9 (in relation to the income of any registered cooperative society); and
  - (iii) paragraph 18 (in relation to the income arising from the sale of copra cut within Tuvalu); and

- (d) this paragraph specifically shall not apply to the exemption conferred by paragraph 8 of Schedule 1 to the Income Tax Act 1982 (in relation to the profits derived from a business of air transport carried on in Tuvalu by a non-resident person who is declared exempt by the Minister), but only on the coming into force of paragraph 2(b) of Part A of Schedule 4.

**SCHEDULE 9<sup>27</sup>****PRESUMPTIVE TAX**

(Section 5A)

**PRESUMPTIVE TAX RATES**

The Rates of Presumptive Tax for the Purposes of Section 5A are:

Actual gross income	Presumptive tax payable	Presumptive tax payable per quarter
\$10,000 or less	\$100	\$25
\$10,001-\$30,000	\$250	\$62.50
\$30,001-\$50,000	\$500	\$125
\$50,001-\$100,000	2% of the Gross Income of the quarter	

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**ENDNOTES**

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<sup>1</sup> Act 5 of 1992

Amended by LN 15/1995, commencement 1 January 1996

Amended by LN 16/1995, commencement 1 January 1996

Amended by LN 17/1995, commencement 1 January 1996

Amended by LN 1/1996, commencement 8 February 1996

Amended by LN 19/1999, commencement 1 January 2000

Amended by Act 10/2008, commencement 1 July 2009 (LN 3/2009)

Amended by Act 13 of 2017, commencement 24 November 2017

Amended by Act 5 of 2019, commencement 17 April 2019

Amended by Act 9 of 2020, commencement 24 December 2020

Amended by LN 2/2021, commencement 1 July 2021

<sup>2</sup> See LN 15/1992

<sup>3</sup> Amended by Act 10 of 2008

<sup>4</sup> Inserted by Act 10 of 2008

<sup>5</sup> Amended by Act 10 of 2008

<sup>6</sup> Inserted by Act 10 of 2008

<sup>7</sup> Amended by Act 10 of 2008

<sup>8</sup> Substituted by Act 13 of 2017

<sup>9</sup> Amended by Act 9 of 2020

<sup>10</sup> Inserted by Act 9 of 2020

<sup>11</sup> Amended by Act 10 of 2008

<sup>12</sup> Subsection amended by Act 10 of 2008

<sup>13</sup> Proviso inserted by Act 10 of 2008

<sup>14</sup> Inserted by Act 10 of 2008

<sup>15</sup> Inserted by Act 10 of 2008

<sup>16</sup> Inserted by Act 10 of 2008

<sup>17</sup> Inserted by Act 10 of 2008

<sup>18</sup> Inserted by Act 10 of 2008

<sup>19</sup> Inserted by Act 10 of 2008

<sup>20</sup> Inserted by Act 10 of 2008

<sup>21</sup> Inserted by LN 17/1995

<sup>22</sup> Inserted by Act 5 of 2019

<sup>23</sup> Amended by LN 15/1995

<sup>24</sup> Amended by LN 2/2021

<sup>25</sup> Amended by Act 10 of 2008

<sup>26</sup> Amended by LN 16/1995, LN 1/1996, LN 19/1999, Act 10 of 2008, and LN 2/2021

<sup>27</sup> Inserted by Act 13 of 2017