

CHAPTER 149 INCOME TAX ACT

• Act • Subsidiary Legislation •

ACT

Act No. 36 of 1994

Amended by

Act No. 2 of 1995

SRO 12 of 1995

Act No. 5 of 1996

Act No. 33 of 1996

Act No. 20 of 1997

SRO 62 of 1997

Act No. 31 of 1998

Act No. 10 of 1999

SRO 47 of 2001

Act No. 7 of 2002

SRO 22 of 2006

Act No. 20 of 2007

Act No. 2 of 2010

ARRANGEMENT OF SECTIONS

PART I

Preliminary

1. Short title and application.
2. Interpretation.

PART II

Administration

3. Comptroller of Inland Revenue.
4. Delegation by Comptroller.
5. Indemnity against liability for acts done.
6. Secrecy.

PART III

Imposition of Income Tax

DIVISION I

Charge to Tax

7. Charge to tax: general.
8. Assessable income defined.

9. Income accrued: meaning of.
10. Income deemed to have accrued from sources in Grenada.
11. Basis period for a year of assessment.

DIVISION II

Persons Chargeable to Tax

12. Persons chargeable: general.
13. Married women.
14. Minor children: dispositions to.
15. Settlements and wills.
16. Revocable dispositions.
17. Deceased persons.
18. Estates of deceased persons.
19. Legally disabled persons.
20. Insolvent persons.
21. Partnerships.
22. Non-resident persons.
23. Transactions designed to avoid liability to tax.
24. Responsibility of representative taxpayers.

PART IV

Exempt Income

25. Exemption of income: general.
26. Exemption: hotels.
27. Exemption: approved enterprises for fiscal incentive relief.
28. Distribution of exempt income.

PART V

Ascertainment of Assessable Income

DIVISION I

Gains or Profits Forming Assessable Income

29. Assessable income: general.
- 29A. VAT not included in income.
30. Business income.
31. Employment income.
32. *Repealed.*
33. Loans or advances by a controlled company to a shareholder.
34. Rental income.
35. Income from other sources.

DIVISION II

Deductions Allowable in Ascertaining Assessable Income

36. Deductions allowable: general.
- 36A. Deduction for re-investment allowance.
- 36B. No deductions for input tax credits.
37. Deductions allowable: specific.
38. Restrictions on deductions: management charges and certain payments by controlled companies to shareholders.
- 38A. Specific restrictions on deduction of employment income.

- 39. Deduction for losses.
- 40. Deductions not allowable under more than one provision.
- 41. Expenditure for which no deduction allowable.

PART VI

Ascertainment of Chargeable Income

- 42. Chargeable income.
- 42A. Statutory allowances.

PART VII

Special Provisions Relating to Certain Taxpayers

DIVISION I

Variation of Normal Basis of Taxation

- 43. International agreements for the avoidance of double taxation.
- 44. General insurance companies.
- 45. Life assurance companies.
- 46. Non-resident shipping and airline companies.
- 47. *Repealed.*
- 48. Approved pension funds.
- 49. Variation in the applicability of the Act: lecturers at Saint George's University (School of Medicine) Limited.

DIVISION II

Withholding Tax on Payments and Deduction of Tax by Employers

- 50. Deduction of tax from payments made to non-residents.
- 51. Deduction of tax from income of non-residents.
- 51A. Deduction of tax from non-resident partner.
- 52. Deduction of tax from certain payments to residents.
- 53. Deposit interest.
- 54. Deduction of tax by employers.
- 55. Indemnification for tax paid to Comptroller.
- 55A. Power of Minister to make exemption.

PART VIII

Ascertainment of Tax Payable

- 56. Rates of tax.
- 57. *Repealed.*
- 58. *Repealed.*
- 59. *Repealed.*
- 60. *Repealed.*
- 61. *Repealed.*
- 61A. *Repealed.*
- 62. Set off for tax paid.
- 63. *Repealed.*
- 64. *Repealed.*

PART IX

Returns and Notices

- 65. Returns of income: general.
- 65A. Registration.
- 66. Returns of income: individuals leaving Grenada, cessation of business, etc.
- 67. Returns of income: from persons liable to furnish but have not done so.
- 68. Further return or information, production of books and giving of evidence to Comptroller.
- 69. Examination of business records.
- 70. Powers of entry, inspection and removal of documents.
- 71. Maintenance of proper records of transactions, method of accounting and preservation of books of account and records.
- 72. Submission of accounts with return of income and certificate relating to preparation of accounts.
- 73. Principal officer of company.
- 74. Precedent partner of partnership.
- 75. Returns deemed to be furnished by due authority and in full knowledge of contents.
- 76. Returns: method of furnishing.
- 77. Returns: extension of time for furnishing.

PART X

Assessment of Tax

- 78. Assessments.
- 79. Additional assessments.
- 80. Reduced assessments.
- 81. Determination of assessed loss.
- 82. Time limits for assessments.
- 83. Notice of assessment.
- 84. Record of assessments.
- 85. Finality of assessment.

PART XI

Objections and Appeals

- 86. Objection to assessment.
- 87. Decision by Comptroller on objection.
- 88. Appeal Commissioners.
- 89. Appeal from decision by Comptroller.
- 90. Hearing by Appeal Commissioners.
- 91. Right of further appeal.
- 92. Payment of tax not suspended by objection or appeal.

PART XII

Payment, Recovery and Refund of Tax

- 93. Advance payment of tax.
- 94. When tax is due and payable.
- 95. Interest on unpaid tax.
- 96. When tax deducted from remuneration or certain other payments is due and payable.
- 97. Interest on unpaid tax deductions.
- 98. Recovery of tax by court action.
- 99. Recovery of tax by distraint.
- 100. Recovery of monies from persons leaving Grenada.
- 101. Recovery of tax from assets of certain dispositions.
- 102. Recovery of tax from representative taxpayer.

- 103. Right of representative taxpayer to indemnity.
- 104. Personal liability of representative taxpayer.
- 105. Recovery of tax from person holding money for another person.
- 106. Deductions from certain payments or remittance held in trust for Comptroller.
- 107. Priority of tax debt upon bankruptcy or liquidation.
- 107A. Accountant-General may apply payment to tax owed.
- 108. Refund of tax overpaid.
- 109. Remission of tax.

PART XIII

Offences

DIVISION I

Civil Penalties

- 110. Penalties: general.
- 111. Penalties: failure to furnish return of income.
- 112. Penalties: failure to furnish correct return of income.
- 113. Penalties: failure to comply with notice to give information, produce documents or give evidence to Comptroller.
- 114. Notice to be given of intention to impose penalty.

DIVISION II

Criminal Proceedings

- 115. Sanction for prosecution.
- 116. Offences: breach of secrecy.
- 117. Offences: failure to comply with requirements of the Act.
- 118. Offences: intent to evade liability to tax.
- 119. Offences: deduction of tax from certain payments.
- 120. Offences: by employers or employees.
- 121. Offences: evasion of tax in relation to deduction of tax by employers.
- 122. Offences: aiding or abetting.
- 123. Mitigation of penalties and compounding of offences.
- 124. Time limits for proceedings to be taken.

PART XIV

Miscellaneous

- 125. Forms of notices and returns.
- 126. Service of notices or documents.
- 127. Change of address for service of notices.
- 128. Amendment of Schedules, variation of rates of tax, etc., by order.
- 129. Regulations.
- 130. Repeal and saving.
- 131. Transitional.
- 132. Apportionment of taxes for the 1996 year of assessment.
- 133. Saving.
- First Schedule Value of Trading Stock
- Second Schedule Capital Allowances
- Third Schedule Deduction of Tax from Payments to Non-residents
- Fourth Schedule Deduction of Tax by Employers
- Fifth Schedule Rates of Tax

CHAPTER 149
INCOME TAX ACT

An Act to provide for the imposition of income tax and to regulate the collection thereof.

[Act No. 36 of 1994 amended by Act No. 2 of 1995, SRO 12 of 1995, Act No. 5 of 1996, Act No. 33 of 1996, Act No. 20 of 1997, SRO 62 of 1997, Act No. 31 of 1998, Act No. 10 of 1999, SRO 47 of 2001, Act No. 7 of 2002, SRO 22 of 2006, Act No. 20 of 2007, Act No. 2 of 2010.]

[1st January, 1994.]

PART I

Preliminary

1. Short title and application

This Act may be cited as the Income Tax Act and shall apply to—

- (a) the assessment of income for the year of assessment 1994 and subsequent years of assessment; and
- (b) the deduction of withholding tax from payments made on or after the date on which the Act is passed.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“agent” includes any partnership, company or body of persons which is acting as an agent;

“Appeal Commissioners” means the Appeal Commissioners appointed under section 88;

“approved pension fund” means a pension fund approved for the purposes of this Act under section 48;

“assessable income” means assessable income as ascertained in accordance with Part V;

“assessment”, in relation to any person, means a determination by the Comptroller—

- (a) of the amount of chargeable income and the tax chargeable thereon;
- (b) of the amount of any loss allowable as a deduction; or
- (c) that no tax is chargeable, and

includes, where the context so requires, an additional assessment or a reduced assessment;

“basis period” means a basis period for a year of assessment adopted in accordance with section 11;

“body of persons” means any association of persons, however described, but does not include an incorporated company or a partnership;

“business” includes any profession, vocation, trade, manufacture, venture or undertaking, provision of personal services or technical and managerial skills and any adventure or concern in the nature of trade but does not include any employment;

“chargeable income” has the same meaning as in Part VI;

“child”, in relation to an individual, includes a step-child, a child born out of wedlock and an adopted child of that individual;

“company” means a body corporate, wherever incorporated, but does not include a partnership or an unincorporated body of persons;

“Comptroller” means the Comptroller of Inland Revenue;

“Constitution” means the Constitution of Grenada, Chapter 128A;

“controlled company” has the meaning given to it in section 38(3);

“disposition” means any settlement, trust, agreement, arrangement or gift whereby assets, including a right to income, are transferred from one person to another, whether beneficially or as a trustee, without consideration in money’s worth but does not include—

(a) a transfer of assets by will or other testamentary disposition, except to the extent provided by section 15; or

(b) the assignment of any income by a deed or assignment however described;

“dividend” means a dividend as defined in section 32;

“employment” means any employment in which the relationship of master and servant subsists or an appointment or office whether public or not and whether or not that relationship subsists; and the terms “employee” and “employer” shall be construed accordingly;

“executor” means the executor, administrator or other person administering or managing the estate of a deceased person;

“input tax credit” has the meaning given to it in the Value Added Tax Act, 2002;

“legally disabled person” means a minor, a mentally defective person or any other person under a legal disability;

“management charges” means charges made for the provision of management services and includes charges made for the provision of personal services and technical or managerial skills;

“Minister” means the member of the Cabinet to whom responsibility for the subject of finance is assigned;

“minor” means an individual who has not attained the age of eighteen years;

“ordinarily resident”, in relation to an individual, means a person who is a resident within the meaning of paragraph (a)(i) of the definition of “resident in Grenada”;

“permanent establishment” includes—

(a) a place of management;

(b) a branch or office;

(c) a factory or workshop;

(d) premises used as a sales outlet;

(e) a building site or construction or assembly project;

(f) the maintenance of plant and machinery for rental;

(g) a mine, quarry or any other place of extraction of natural resources;

“person” includes an individual, a trust, the estate of a deceased person, a company, a body of persons, a partnership and every other juridical person;

“regulations” means regulations made under this Act;

“representative taxpayer” means, in relation to—

(a) the estate of a deceased person, a person under a legal disability, a trust or a settlement, the trustee of that person;

- (b) a non-resident, the agent, within the meaning of section 22(2);
- (c) tax due and payable—
 - (i) by a deceased person at the date of his or her death, the executor of the estate of that deceased person,
 - (ii) at the commencement of liquidation by a company which is being wound up, the liquidator of that company;

“resident in Grenada”, in relation to a year of assessment, means—

- (a) in the case of an individual, that—
 - (i) his or her permanent place of abode is in Grenada and that he or she is physically present therein for some period of time in that year of assessment, unless the Comptroller is satisfied that his or her absence throughout the whole of the year of assessment was for the purpose of education, medical treatment, performance of duties on behalf of the Government or for any other purpose which, in the opinion of the Comptroller, is reasonable,
 - (ii) he or she is physically present in Grenada for not less than one hundred and eighty three days in that year of assessment, or
 - (iii) he or she is physically present in Grenada for some period of time in that year of assessment and such period is continuous with a period of physical presence in the immediately preceding or succeeding year of assessment of such duration as to qualify him or her for the status of a resident for such preceding or succeeding year under subparagraph (ii);
- (b) in the case of an estate of a deceased person, that immediately prior to his or her death the deceased person qualified for the status of a resident under paragraph (a);
- (c) in the case of a trust or a body of persons, that such trust or body of persons was established in Grenada; and
- (d) in the case of a company, that such company was—
 - (i) incorporated in Grenada, or
 - (ii) if incorporated outside Grenada, was managed and controlled in Grenada,

and the terms “resident” and “non-resident”, in relation to a person, means that such person is resident or non-resident in Grenada as the case may be;

“royalties” means amounts paid as consideration, however described—

- (a) for the use of or the right to use—
 - (i) copyrights, artistic or scientific works, patents, trade marks, designs, plans, secret processes or formulae, motion picture films, tapes or films for radio or television broadcasting, or
 - (ii) information concerning industrial, commercial or scientific knowledge; or
- (b) in respect of the operation of a mine, quarry or other place of extraction of natural resources;

“separated”, in relation to the marital status of an individual, means that the individual is living apart from his or her spouse under—

- (a) an order of a court of competent jurisdiction;
- (b) a written agreement of separation; or

(c) any other circumstances where the separation is likely to be permanent;

“tax” means income tax imposed by this Act and for the purposes of recovery of tax includes any penalty, interest or other charge imposed under this Act but does not include any fine imposed by a court; and any reference to tax payable under the laws of another country means a tax of a substantially similar nature to the tax charged under this Act;

“taxable supply” has the meaning given to it in the Value Added Tax Act, 2002;

“trading stock”, in relation to any business, means anything produced, manufactured, purchased or otherwise acquired for the purposes of manufacture, sale or exchange, including uncompleted work on hand or in progress, or the proceeds from the disposal of which form or will form, part of the assessable income from such business and, in the case of a business of farming, includes livestock and produce;

“trustee” means a person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law and includes any person having or taking upon himself or herself the administration or control of any property subject to a trust;

“VAT” means the value added tax imposed under the Value Added Tax, 2009, Chapter 333A;

“VAT Act” means the Value Added Tax Act, 2009, Chapter 333A;

“withholding tax” means any tax deducted or deductible pursuant to section 46, 48(13), 50 or 52;

“year of assessment” means the period of twelve months commencing on the 1st of January in each year.

(2) Any reference in this Act to “any person employed in carrying out the provisions of this Act” shall be deemed to include any person whose services under agreement with the Government are provided by any other Government or international agency to assist with the administration of the Act.

(3) Where gains or profits are ascertainable only by reference to the whole of a basis period for a year of assessment and for the purposes of the charge to or exemption from tax, apportionment of such gains or profits to different periods of time is necessary, then such apportionment shall be made on a time basis according to the respective lengths of those periods of time.

PART II

Administration

3. Comptroller of Inland Revenue

The responsibility for the administration of this Act shall be vested in the Comptroller of Inland Revenue.

4. Delegation by Comptroller

(1) The Comptroller may, in relation to any matter or class of matter, delegate in writing to any other person employed in carrying out the provisions of this Act any powers, functions or duties conferred or imposed on the Comptroller by this Act other than—

- (a) the power of delegation conferred by this section; and
- (b) the power to sanction prosecutions conferred by section 115.

(2) Any delegation made under this section shall be revocable at any time by the Comptroller and the delegation shall not prevent the exercise of such powers, duties or functions by the Comptroller himself or herself.

5. Indemnity against liability for acts done

The Comptroller and any person employed in carrying out the provisions of this Act shall be indemnified against any liability for any acts done by or in the name of the Comptroller pursuant to any duty imposed by this Act.

6. Secrecy

(1) Subject to this section, the Comptroller and every person employed in carrying out the provisions of this Act shall regard and deal with all documents and information relating to any person, and all confidential instructions in respect of the administration of this Act which may come into his or her possession or to his or her knowledge in the course of his or her duties, as secret.

(2) Nothing in this section shall apply to the disclosure of any confidential information—

- (a) to any person authorised by any enactment to receive such information;
- (b) to any person to whom such disclosure is necessary for the performance of his or her duties under—
 - (i) this Act or any other written law administered by the Comptroller, or
 - (ii) any written law administered by the Comptroller of Customs; or
- (c) to any authorised officer of the government of a country with which an international agreement for the avoidance of double taxation exists, for the purpose of that agreement.

(3) Nothing in this section shall be construed to prevent the disclosure of information of a statistical nature, but any such information shall be supplied in such manner as not to disclose the identity of any person in relation to his or her income.

(4) Every person appointed under or employed in carrying out the provisions of this Act and every person to whom confidential information is disclosed under subsection (2)(a) or (b) shall make an oath or affirmation of secrecy in the manner and form approved by the Comptroller.

(5) Any oath or affirmation under subsection (4) may be taken before the Comptroller (who is hereby authorised to administer such oath or affirmation) or before a magistrate, and no fee shall be payable therefor.

(6) The obligation as to secrecy imposed by this section shall continue to apply in respect of any person notwithstanding that he or she ceases to be appointed under or employed in carrying out the provisions of this Act.

PART III

Imposition of Income Tax

DIVISION I

Charge to Tax

7. Charge to tax: general

(1) Subject to subsection (5), income tax shall be charged for each year of assessment on the chargeable income of a person for that year.

(2) The persons chargeable to tax shall be those persons specified in Division II of this Part.

(3) Subject to Part VII, the chargeable income of any person shall be ascertained in accordance with Part VI.

(4) The tax payable by any person shall be calculated in accordance with Part VIII.

(5) Where income ascertained in accordance with Part V accrues directly or indirectly to a non-resident person from any source other than from the carrying on of business, such income shall not form part of the assessable income of such person but such income shall be liable to withholding tax in accordance with section 50.

8. Assessable income defined

The assessable income of any person shall be—

- (a) where the person is a resident, all amounts ascertained in accordance with Part V, accrued directly or indirectly from all sources in Grenada; and
- (b) where the person is a non-resident, but subject to section 7(5), all amounts ascertained in accordance with Part V, accrued directly or indirectly from all sources in Grenada,

which is not exempt from tax under Part IV:

Provided that interest which accrues to a bank or branch of a bank or person engaged in banking activities in Grenada shall be included in the assessable income of such bank or branch of a bank or person whether or not the interest is received in Grenada.

9. Income accrued: meaning of

(1) Subject to this section, income shall accrue to a person for the purposes of this Act—

- (a) in the case of income from employment, when it is earned;
- (b) in the case of a business, in relation to which the Comptroller is satisfied that a commercially recognised system of accounting other than a cash received basis is regularly followed, when it is credited or should have been credited in the books of account of such person;
- (c) in the case of a business, where, pursuant to subsection (2), the Comptroller has accepted the preparation by that person of his or her accounts on a cash received basis, when it is received by him or her;
- (d) in any other case, when it becomes due and payable to him or her.

(2) Where any person regularly prepares the accounts of his or her business on a cash received basis the Comptroller may, on application and in his or her discretion, accept such method of accounting or may direct that accounts shall be prepared on an accruals basis and the income accrued to such person shall be ascertained accordingly.

(3) Nothing in subsection (2) shall be construed to prevent the Comptroller from directing the adoption of an accruals basis in respect of a particular person or class of persons for any year of assessment by reason only that a cash received basis had been accepted in respect of previous years.

(4) Where an amount that would otherwise have accrued to a person when it was received by him or her is not paid to him or her but is reinvested, accumulated, carried to any reserve or otherwise dealt with on his or her behalf or as he or she directs, it shall be deemed to have accrued to him or her on the date it is so dealt with.

(5) Income shall not cease to have accrued to any person within the meaning of this section by reason only of the cessation of a source of income prior to the receipt of any amount from such source.

10. Income deemed to have accrued from sources in Grenada

(1) Any income accrued to any person shall be deemed to have accrued from a source situated in Grenada where it has accrued to that person in respect of—

- (a) any employment exercised in Grenada irrespective of where payment is made or the contract of employment is entered into;
- (b) any employment exercised out of Grenada by a person who is ordinarily resident in Grenada where payment for such employment is charged directly or indirectly as an expense of a business carried on in Grenada;
- (c) any business carried on by a company resident in Grenada as owner or charterer of any ship or aircraft engaged in international traffic;
- (d) interest from an individual who is ordinarily resident in Grenada, where that person whether resident or non-resident is engaged in a business in Grenada in connection with which the indebtedness on which the interest accrued was incurred and such interest is borne by the business;
- (e) *Repealed*
- (f) any property physically situate in Grenada;
- (g) the provision of management services including personal services and technical and managerial skills where such services are provided for the purposes of a business carried on in Grenada and the cost of such services is borne by that business, and irrespective of where the contract for such services was entered into;
- (h) a source of income which under any international agreement made under section 43, is deemed to be situate in Grenada.

(2) Where, under this Act, or under any international agreement made under section 43, income is deemed to have accrued—

- (a) to some person;
- (b) from a source; or
- (c) in any basis period,

any reference to income accrued shall be construed as including income deemed to have accrued.

11. Basis period for a year of assessment

(1) Subject to this section, the assessable income of any person for a year of assessment shall be the whole of the income ascertained in accordance with Part V, which accrues to such person during the twelve months ending on 31st December in that year (in this Act referred to as “the basis period for a year of assessment”).

(2) A person carrying on business may make up the accounts of that business for a period of twelve months ending on a date other than 31st December in the year of assessment and his or her assessable income from the business in respect of the year of assessment shall be ascertained by reference to the accounts of such substituted period, which for the purposes of this Act shall be taken to be the basis period of that person for the year of assessment.

(3) Where, during the course of business, a person wishes to vary the basis period previously adopted by him or her [under subsection (1) or (2)] he or she may, with the

approval in writing of the Comptroller, and subject to subsection (4), do so and his or her assessable income from the business in respect of succeeding years of assessment shall be ascertained by reference to such varied basis period, which for the purposes of this Act shall be taken to be the basis period of that person for a year of assessment.

(4) Where, as a result of a variation of the basis period of any person under subsection (3)—

- (a) two basis periods terminate within the same calendar year, his or her chargeable income of the relevant year of assessment shall be ascertained by reference to the assessable income from the business of both such basis periods;
- (b) the Comptroller is of the opinion that substantially less tax would be payable in a year of assessment if the basis period of that person had not been varied, the Comptroller may require the payment of such additional amount as an advance payment of tax as he or she deems reasonable.

(5) Notwithstanding subsections (1), (2) and (3), in the year of cessation of a business, the basis period shall be the period from the end of the basis period ending in the previous year of assessment to the date of cessation, irrespective of whether such period is greater or less than twelve months.

(6) Notwithstanding that the income of a business charged to tax pursuant to this section may be for a period greater or less than twelve months, any tax credits allowable under Part VIII shall be deductible for a year of assessment only by reference to a twelve month period.

DIVISION II

Persons Chargeable to Tax

12. Persons chargeable: general

(1) Subject to this Division, the chargeable income of any person shall be charged to tax in the name of that person.

(2) Where, under this Division, any income which has accrued to one person is deemed to have accrued to some other person, the income shall be included in the assessable income of that other person and the chargeable income, if any, ascertained therefrom shall be charged to tax in the name of that other person.

13. Married women

Any income accrued to a married woman during any year of assessment shall be charged to tax in her own name.

14. Minor children: dispositions to

(1) Where, by reason of any disposition made by any disponor for the benefit of a minor child whether or not such child is related to the disponor, any income has accrued to that child, such income shall, during his or her minority or until the prior death of the disponor, be deemed to have accrued to the disponor and shall be included in his or her assessable income.

(2) Where, during a year of assessment, an individual ceases to be a minor, subsection (1) shall apply only in respect of income accrued prior to the date upon which he or she ceased to be a minor.

15. Settlements and wills

(1) Any income accruing to a trust, shall be included in the assessable income of the trust and the chargeable income ascertained therefrom shall be charged to tax in the name of the trustee.

(2) *Repealed*

(3) *Repealed*

(4) Where, in any will or other testamentary disposition, a stipulation has been made to the effect that the beneficiaries therein, or one or more of them, shall not receive any income accrued under such will or disposition until the happening of an event, whether fixed or contingent, any such income as would, but for the stipulation, have accrued to the beneficiaries shall, until the happening of that event be deemed to have accrued to the trust and shall be included in the assessable income of the trust and the chargeable income ascertained therefrom shall be charged to tax in the name of the trustee.

(5) Where any deed of donation, settlement or other disposition *inter vivos* (in this subsection referred to as “the disposition”) made by any person (in this subsection referred to as “the disponor”) contains a stipulation to the effect that the beneficiaries therein, or one or more of them, shall not receive any income accrued under the disposition until the happening of an event, whether fixed or contingent, any such income as would, but for the stipulation, have accrued to the beneficiaries shall, until the happening of that event or the prior death of the disponor, be deemed to have accrued to the disponor and shall be included in his or her assessable income.

(6) In subsection (1), “trust” means a trust created—

(a) by will or other testamentary disposition; or

(b) by a deed of donation, settlement or other disposition *inter vivos*.

16. Revocable dispositions

(1) Where income accrues to any person under a revocable disposition such income shall be deemed to have accrued to the disponor and shall be charged to tax in his or her name.

(2) For the purposes of this section, a disposition shall be deemed to be revocable where the disponor—

(a) has a right to reassume control directly or indirectly over, or have access to, the property or income of the disposition; or

(b) has power to revoke or otherwise determine the disposition, whether immediately or in the future and whether with or without the consent of any other person, but only where, in the event of the exercise of such power the disponor will or may become beneficially entitled to the whole or any part of the property or income of the disposition.

(3) Where part only of a disposition is capable of revocation, subsection (1) shall apply only to such part of the disposition.

(4) Nothing in subsection (2) shall be construed to deem a disposition to be revocable by reason only of a power of revocation in such disposition in relation to the interest of any beneficiary therein where such power of revocation is limited to arise only in the event that such beneficiary should pre-decease the disponor.

17. Deceased persons

Any income accrued to an individual and not included in any assessment made prior to his or her death shall be included in his or her assessable income and the chargeable income ascertained therefrom shall be charged to tax in the name of his or her executor in the same amount as would have been charged if that person had not died.

18. Estates of deceased persons

(1) Any income accruing to the estate of a deceased person before there is a beneficiary entitled to the immediate benefit thereof shall be included in the assessable income of the estate and the chargeable income ascertained therefrom shall be charged to tax in the name of the personal representative.

(2) Any income accruing to the estate of a deceased person on or after the date on which there is a beneficiary entitled to the immediate benefit thereof, other than as a legatee, shall be deemed to have accrued to the beneficiary and shall be included in his or her assessable income.

(3) Where a beneficiary of the estate of a deceased person is a legatee any income accruing in respect of the property of which he or she is the legatee, on or after the earlier of—

- (a) the date of the handing over of the property; or
- (b) the date of the completion of the administration of the estate,

shall accrue to or be deemed to accrue to such legatee and shall be included in his or her assessable income.

(4) For the purposes of this section—

- (a) a beneficiary shall be deemed to be entitled to the immediate benefit of any income accrued to the estate of a deceased person on or after the date of completion of the administration of the estate; and
- (b) the date of completion of the administration of the estate means the date upon which the whole of the debts relating to the estate of the deceased person have been ascertained and paid or provided for.

19. Legally disabled persons

Subject to this Part, any income accrued to a legally disabled person shall be included in his or her assessable income and the chargeable income ascertained therefrom shall be charged to tax in the name of the trustee in the same amount as would have been charged if that person had not been legally disabled.

20. Insolvent persons

Where a person becomes bankrupt—

- (a) any income accrued to that person in his or her own right after the date of sequestration and prior to the date sequestration ceases (in this section referred to as “the period of insolvency”) shall be included in the assessable income of that person; and
- (b) any income accrued in respect of the estate of that person held by his or her trustee during the period of insolvency shall be included in the assessable income of the estate and the chargeable income ascertained therefrom shall be charged to tax in the name of the trustee.

21. Partnerships

(1) A partnership shall not be charged to tax in its own name but all income accrued thereto in the basis period for any year of assessment shall be charged on the partners for that year of assessment in accordance with this section.

(2) The chargeable income of a partner for any year of assessment shall—

- (a) include his or her share of the partnership assessable income; or
- (b) be calculated after deducting his or her share of the partnership assessed loss.

(3) In this section—

“partnership assessable income” means the assessable income of the partnership calculated as if the partnership were a person chargeable to tax; but nothing shall be deducted for employment income of partners or for interest on partners’ capital but such sums shall be taken into account in apportioning among the partners the assessable income;

“partnership assessed loss” means an assessed loss calculated in the same manner as partnership assessable income.

22. Non-resident persons

(1) The chargeable income of a non-resident shall, where it is not charged to tax directly on him or her, be charged to tax on his or her agent in the same amount as would have been charged on the non-resident.

(2) For the purposes of this section, “agent”, in relation to a non-resident, means a resident who—

- (a) has the management or control of property in Grenada of such non-resident;
- (b) is appointed by the non-resident to act on his or her behalf; or
- (c) carries on business with a non-resident in circumstances to which section 23(2)(b) applies.

23. Transactions designed to avoid liability to tax

(1) Where any transaction, operation or scheme (hereinafter in this subsection referred to as “a transaction”) including a transaction involving the alienation of property, which has been entered into or carried out, whether before or after the commencement of this Act, has the effect of avoiding, reducing or postponing the liability to tax of any person for any year of assessment and the Comptroller is of the opinion that the transaction—

- (a) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction of the nature of the transaction in question; or
- (b) has created rights or obligations which would not normally be created between independent persons dealing at arm’s length under a transaction of the nature of the transaction in question,

the Comptroller shall determine the liability to tax as if the transaction had not been entered into or in such other manner as he or she deems appropriate to counteract such avoidance, reduction or postponement of liability as would otherwise be effected by the transaction.

(2) Where a resident carries on business with a non-resident and, in the opinion of the Comptroller, by reason of the relationship between such persons the course of business between them has been so arranged that the business done by the resident produces to him or her either more or less gains or profits than those which would be expected to arise from that business if such relationship had not existed, the Comptroller may determine in such manner as appears to him or her to be reasonable—

- (a) whether any additional gains or profits should be deemed to be assessable income of the resident person; and
- (b) whether any part of the gains or profits of the non-resident person should be deemed to have accrued from a source in Grenada.

(3) Where a loan, including a constructive loan, is made by a resident person to a non-resident person, either free of interest or at a rate of interest lower than the commercial rate generally prevailing at the time the loan was made, and the Comptroller is of the

opinion that the loan is not like one that would normally be made between independent persons dealing at arm's length with each other, interest shall be deemed to have accrued to the resident person for each year of assessment after the loan is made at such commercial rate as the Comptroller deems reasonable in the circumstances.

(4) In subsection (3) a constructive loan means any indebtedness to a resident person arising from the carrying on of business transactions between that person and a non-resident person which remains unpaid in circumstances which in the opinion of the Comptroller would not have operated as between independent persons dealing with each other at arm's length.

24. Responsibility of representative taxpayers

(1) Any person in whose name the chargeable income of a deceased person, the estate of a deceased person, a person under a legal disability, a non-resident or any other person is chargeable, shall be responsible for doing all such things as are under this Act required to be done by a person chargeable to tax.

(2) Where any person is liable to furnish a return of income under section 65, whether or not chargeable to tax, the obligation imposed by subsection (1) shall apply to any representative taxpayer acting on behalf of such person.

PART IV

Exempt Income

25. Exemption of income: general

(1) There shall be exempt from income tax—

- (a)
 - (i) the official emoluments of the Governor-General, and of any Acting Governor-General, any gratuity or pension payable to a former Governor or Governor-General upon his or her retirement, any gratuity payable to his or her legal personal representative upon the death of a Governor or Governor-General and any pension payable to the widow of a Governor or Governor-General upon his or her death,
 - (ii) the salaries, allowances and pensions paid to the Chief Justice, Justice of Appeal, and Puisne Judges of the Eastern Caribbean Supreme Court,
 - (iii) the employment income as defined in section 31 accruing in Grenada to an individual who is—
 - (A) resident in Grenada, and
 - (B) employed in Grenada subject however to the provisions of section 42A;
- (b) the official emoluments payable in respect of their offices to—
 - (i) heads of diplomatic missions and consulates accredited to Grenada,
 - (ii) members of the staff of such missions and consulates, except such persons who are citizens of or ordinarily resident in Grenada;
- (c) the official emoluments payable by—
 - (i) any international organisation of which Grenada and one or more other countries are members, or
 - (ii) any other Government,

in connection with the provision of any technical cooperation services, to the extent and subject to such conditions as may be prescribed by any enactment

or in any agreement or memorandum of understanding entered into by the Government;

- (d) any war pension (including any disability pension) or gratuity in respect of service during war;
- (e) any amount accruing under a scholarship or similar educational grant to a person receiving full time education at a school, college, university or other educational establishment;
- (f) any interest accrued on any loan charged on the public revenue, which is declared by the Minister to be exempt;
- (g) the rental value of the official residence of the Prime Minister;
- (h) any amount accrued by way of gratuity on the termination of a contract of employment:

Provided that this exemption shall not apply—

- (i) (except in the case of a contract of employment with the Government) if the contract is renewed or replaced by a new contract with the same employer on substantially similar terms, or
 - (ii) to any amount in excess of twelve and one-half per cent of the basic salary payable in respect of past service under the contract nor to any period of service in excess of three years;
- (i) any gratuity payable to a public officer on his or her retirement from service or to his or her legal personal representative on his or her death;
 - (j) so much of the amount as does not exceed twenty-five thousand dollars of severance pay payable under a contract of employment upon the termination of the employment of an employee by reason of the redundancy of the position held by the employee, but the exemption shall apply to the severance pay payable to the employee only once in a period of seven years;
 - (k) any benefit payable under the National Insurance Act, Chapter 205, to any person by way of—
 - (i) sickness benefit,
 - (ii) invalidity benefit,
 - (iii) maternity benefit,
 - (iv) funeral grant,
 - (v) any child allowance payable as a survivor's benefit;
 - (l) any income accrued to—
 - (i) an individual from his or her office, or
 - (ii) such an individual or his or her dependents by way of pension in respect of his or her past services,as a minister of religion or other person in holy orders in the service of any religious body approved for this purpose by the Minister;
 - (m) the income of any approved pension fund;
 - (n) the income of any local authority;
 - (o) the income of any trade union in so far as such income is not derived from a business carried on by it;
 - (p) the income of any registered friendly society or co-operative society;

- (q) the income of any religious, charitable, or educational institution of a public character in so far as such income is not derived from business carried on by it for profit, other than a business carried on for the primary purpose of assisting disabled persons to learn or exercise a trade or skill;
- (r) the income of the Marketing and National Importing Board;
- (s) the income of the Government Savings Bank;
- (t) the income of the Grenada Development Bank and the Industrial Development Corporation;
- (u) the income of the Grenada Banana Cooperative Society, the Windward Islands Banana Growers Association, the Grenada Cocoa Association and the Grenada Co-operative Nutmeg Association;
- (v) the income of the Caribbean Investment Corporation and the Caribbean Development Bank;
- (w) any travel, subsistence or transport allowance paid to any member of Parliament or any public officer in connection with the carrying out of the duties of his or her office;
- (x) the income of any body of persons established for the promotion of sport, where the Comptroller is satisfied that—
 - (i) it is a non-profit body, or
 - (ii) its profits are applied wholly to the promotion or advancement of sporting events, including the provision of facilities or amenities for competitors in or persons attending such events;
- (y) any income accruing from a source outside Grenada to any retired individual who, prior to his or her retirement, was not resident in Grenada;
- (z) *Repealed*
- (aa) interest accruing from deposits to an individual who is resident or ordinarily resident in Grenada with effect from 31st March, 1995;
- (ab) the income arising from trading securities other than by way of a business on an exchange licensed by the Eastern Caribbean Securities Regulatory Commission under the Securities Act, Chapter 299A;
- (bb) interest accruing from any loan made by a bank, and guaranteed by the Minister of Finance, to a statutory body, a statutory company, Government Company or a company under the supervision or control of the Government for any purpose relating to housing;
- (cc) the income of the Financial Complex Limited;
- (dd) any income accruing from trading in securities under the Securities Act, Chapter 299A, to any citizen of or belonger to any Member State of the Organisation of Eastern Caribbean States or to any company incorporated and registered in any Member State of the Organisation of Eastern Caribbean States.

(2) The Minister may, by Order, add to, delete or otherwise vary the exemptions in this section.

26. Exemption: hotels

(1) Where approval is duly given under any written law for exemption from tax of income accruing from a hotel, the exemption shall apply during the currency of the tax holiday period provided under that law.

(2) The income exempted under subsection (1) shall be ascertained after taking into account any allowances for capital expenditure to which the owner would have been entitled under the Second Schedule if such income had not been exempt from tax.

27. Exemption: approved enterprises for fiscal incentive relief

Where a company has been approved as an approved enterprise for the manufacture of an approved product under the Fiscal Incentives Act, Chapter 107, or as a qualified enterprise under the Qualified Enterprises Act, Chapter 270, it shall be exempt from tax under this Act during the currency of its tax holiday period provided under those Acts.

28. Distribution of exempt income

(1) Where, under this Act or any other enactment, exemption from income tax is conferred upon a company whether for a limited period of time or indefinitely, such company may declare dividends from its exempt income at any time if a special account is maintained by the company, to the satisfaction of the Comptroller, showing—

- (a) the amount of exempt income accrued; and
- (b) the amount of any dividends declared and paid therefrom,

and any dividends so declared shall be exempt in the hands of its shareholders.

(2) Where, under this Act or any other enactment conferring exemption from income tax in respect of any dividend payable by a company that is itself exempt from tax, whether for a limited period of time or indefinitely, the recipient is another company then that other company may at any time declare dividends equal to the exempt dividends received by it to its shareholders if a special account is maintained by the company to the satisfaction of the Comptroller, showing—

- (a) the amount of exempt income accrued; and
- (b) the amount of any dividends declared and paid therefrom,

and any dividends so declared shall be exempt in the hands of its shareholders.

PART V

Ascertainment of Assessable Income

DIVISION I

Gains or Profits Forming Assessable Income

29. Assessable income: general

(1) Subject to this Part, the assessable income of any person shall include the gains or profits from or by way of—

- (a) any business;
- (b) any employment;
- (c) rentals and royalties;
- (d) interest other than interest exempted in section 25(1)(aa);
- (da) discounts;
- (e) premiums, commissions, fees and licence charges;
- (f) annuities and other periodic receipts;

- (g) *Repealed*
- (h) gains or profits or amounts deemed to be income of that person under this Act; and
- (i) any other gains or profits accrued to that person which are not included under any other paragraph of this subsection.

(2) Nothing in subsection (1) shall be construed so as to bring within the meaning of assessable income, liable to assessment under Part X, any amounts accrued to a non-resident (other than from the carrying on of a business or the exercise of employment) which are liable to withholding tax under section 50.

29A. VAT not included in income

(1) This section deals with the interaction between the calculation of assessable income under this Act and the provisions of the VAT Act, Chapter 333A.

(2) For the purposes of section 29—

- (a) where VAT is imposed under the VAT Act, Chapter 333A on a taxable supply by a person, any consideration received or receivable by the person for that supply is taken to exclude the amount of VAT chargeable on the supply for the purpose of working out the amount, if any, to be included in the assessable income of the person for any year of assessment;
- (b) if a person (the recipient of a supply) is allowed by section 19(3) of the VAT Act, Chapter 333A, to treat an amount as an input tax credit deductible by the person under that Act, the amount is included in the assessable income of the person if a corresponding amount was allowable as a deduction from income in relation to the acquisition;
- (c) if a person (the supplier) is allowed by section 19(4) of the VAT Act, Chapter 333A, to treat an amount as an input tax credit deductible by the person under that Act, the amount is included in the assessable income of the person if a corresponding amount was previously excluded by this section from the person's income in relation to the supply.

(3) For the purposes of section 9, where subsection (2)(b) or (c) of this section applies, the amount to be included in assessable income is taken to have accrued to the person at the time when the relevant amount was required or allowed to be included in the person's VAT return.

Where subsection (2)(b) applies in respect of an acquisition of an asset that is treated as capital for the purposes of this Act, or in respect of which expenditure is otherwise not immediately deductible under this Act—

- (a) the amount treated as an input tax credit is subtracted from any remaining amount for which a deduction is or may be allowed under any provision of this Act providing a capital allowance or otherwise allowing a deduction in relation to the original expenditure, unless that asset has already been fully deducted through such capital allowance or deduction, in which case the amount is included in income as stated in the applicable paragraph;
- (b) if no deduction is allowed under this Act in relation to the acquisition of the asset, subsection (2)(b) does not apply.
- (c) if a person (the supplier) is allowed by section 19(4) of the VAT Act, Chapter 333A, to treat an amount as an input tax credit deductible by the person under that Act, the amount is included in the assessable income of the person if a corresponding amount was previously excluded by this section from the person's income in relation to the supply.

(3) For the purposes of section 9, where subsection (2)(b) or (c) of this section applies, the amount to be included in assessable income is taken to have accrued to the person at the time when the relevant amount was required or allowed to be included in the person's VAT return.

(4) Where subsection (2)(b) applies in respect of an acquisition of an asset that is treated as capital for the purposes of this Act, or in respect of which expenditure is otherwise not immediately deductible under this Act—

- (a) the amount treated as an input tax credit is subtracted from any remaining amount for which a deduction is or may be allowed under any provision of this Act providing a capital allowance or otherwise allowing a deduction in relation to the original expenditure, unless that asset has already been fully deducted through such capital allowance or deduction, in which case the amount is included in income as stated in the applicable paragraph;
- (b) if no deduction is allowed under this Act in relation to the acquisition of the asset, subsection (2)(b) does not apply.

(5) For the avoidance of doubt, this section also applies for the purpose of determining partnership assessable income under section 21.

(6) All words and phrases in this section shall have the meaning given to them in the VAT Act, Chapter 333A.

30. Business income

(1) Subject to this Act, the assessable income of any person for any year of assessment, in so far as it is derived from a business, shall be the gains or profits accrued therefrom during the basis period for that year of assessment.

(2) In ascertaining the assessable income from a business the value of any trading stock held at the beginning and end of the basis period, shall be taken into account in accordance with the First Schedule.

(3) The assessable income referred to in subsection (1) shall include—

- (a) any amount accrued under any contract of insurance against loss of profits or by way of compensation or damage for loss of profits;
- (b) any amount accrued by way of recovery of any bad or doubtful debt which has been allowed as a deduction for any previous year of assessment;
- (c) any amount accrued by way of recovery or reimbursement of any expenditure or loss or by way of remission or other cessation of indebtedness by a creditor, whether in a bankruptcy or insolvency or otherwise where such amount has been allowed as a deduction for a previous year of assessment;
- (d) any amount accrued by way of subsidy for, or in relation to, the carrying on of a business;
- (e) the market value of any benefit accruing in the course of business; and
- (f) the amount of any balancing charge, ascertained under the Second Schedule.

(4) Where a person carries on a business in and out of Grenada the amount which shall be deemed to have accrued to him or her from a source situate in Grenada in respect of that business shall be such sum as appears to the Comptroller to be reasonable having regard to—

- (a) the nature of the operations carried on in and out of Grenada;
- (b) the turnover of the business in and out of Grenada;
- (c) the situation and value of the assets employed in the business;

- (d) the market value of any trading stock imported into or exported from Grenada; and
- (e) any other matters which appear to the Comptroller to be relevant.

(5) Where income arises outside Grenada and such income is derived from any act incidental to business carried on in Grenada such income shall be included in the assessable income of the business in Grenada whether received in Grenada or not.

31. Employment income

(1) Subject to this Act, the employment income of any person for any year of assessment shall include—

- (a) any amount accrued by way of wages, salary, leave pay, fee (including a director's fee), commission, bonus or gratuity in respect of employment in Grenada;
- (b) any travelling, entertainment or other allowance to the extent to which it does not represent a repayment to the employee of monies wholly, exclusively and necessarily expended by him or her in the performance of the duties of the employment;
- (c) the rental value of any quarters or residence provided by reason of the employment;
- (d) the value of any other benefit or advantage received or enjoyed by the employee by reason of the employment;
- (e) any pension payable to a former employee or the dependant of a former employee by the trustees of a pension fund in respect of the employment; and
- (f) any loan or advances by a controlled company to a shareholder or associate of a shareholder deemed to be employment income under the provisions under section 31.

(2) The employment income of any person shall not include the value of any leave passage to or from Grenada granted to—

- (a) any public officer;
- (b) any other person, at intervals of not less than four years,

where such leave passage is in fact used but nothing in this subsection shall be so construed as to exclude from assessable income—

- (i) any money or other consideration received in lieu of the entitlement to a leave passage, or
- (ii) the value of any passage granted to any person at the termination of a contract of service, except at intervals of not less than four years, where the person returns to Grenada after leave to undertake employment under another contract of service with the same employer on substantially similar terms.

(3) Where an employment is exercised in Grenada on a visit or visits to Grenada by a non-resident in the performance of duties for a non-resident employer, and the Comptroller is satisfied that the expenses associated with the visit are not allowed as a deduction against the profits of a business carried on in Grenada, the income of the non-resident shall not be charged to tax under this Act:

Provided that nothing in this subsection shall exclude from assessable income, any employment income accruing to—

- (a) public entertainers, including theatre, motion picture, radio or television artists and musicians; or
- (b) athletes or sportsmen.

(4) For the purposes of subsection (1)(c) the rental value of any quarters or residence provided shall be deemed to be—

- (a) where the property is not owned by the employer, the annual rental paid therefor; or
- (b) where the property is owned by the employer, six per cent of what, in the opinion of the Comptroller, is the estimated market value of the property,

but limited in either case to the amount of twenty four thousand dollars or such lesser amount as appears to the Comptroller to be reasonable, together, with any other expenditure of a recurrent nature including electricity, water and telephone charges and other outgoings of a domestic nature borne by the employer, less any amount paid as rent by the employee.

32. Repealed

33. Loans or advances by a controlled company to a shareholder

(1) Where a controlled company makes a loan or advances any money to a shareholder therein, or to an associate of a shareholder, within the meaning of section 38(3), where such shareholder or associate is an employee or official of the company, the amount of such loan or advance shall, subject to this section, be deemed to be income under section 29(1)(h) accrued to the shareholder or associate in the basis period in which the loan or advance was made, unless the shareholder or associate satisfies the Comptroller that—

- (a) the loan or advance is repaid within one year after the end of the basis period in which it is made; and
- (b) that the repayment was not made as part of a series of loans or advances and repayments.

(2) Subsection (1) shall not apply to any loan or advance made by a company in the ordinary course of its business where such business includes the lending of money.

(3) Where a loan or advance is made to which subsection (1) applies and the shareholder or associate in a subsequent basis period repays such loan or advance either wholly or in part, the shareholder shall be entitled to relief, in the year of assessment in the basis period for which the repayment was made, by way of a credit of so much of the tax payable for the year of assessment in the basis period for which the amount was deemed to have been income as is attributable to the amount repaid.

(4) In this section a loan or advance to a shareholder or associate shall be deemed to include—

- (a) the amount of any payment made by the company to a third person on behalf of the shareholder or associate; or
- (b) the sale price of any trading stock or other property sold by the company to the shareholder or associate,

in respect of which debt the shareholder or associate is debited in the books of account of the company.

34. Rental income

The rental income of any person for any year of assessment shall include—

- (a) the rental payable by the lessee, tenant or occupier of any property;
- (b) any premium or other consideration, however described, payable for the right of use or occupancy of any property;

- (c) the value of any improvements which pursuant to a lease agreement, the lessee has effected to property for the benefit of the lessor during any year of assessment.

35. Income from other sources

Notwithstanding section 29(1)(i), the assessable income of any person shall not include the annual value of land and improvements thereon used by or on behalf of the owner or used rent free by the occupier for the purposes of residence or enjoyment and not used for the purposes of gain or profit.

DIVISION II

Deductions Allowable in Ascertaining Assessable Income

36. Deductions allowable: general

(1) The assessable income of every person for each year of assessment shall be ascertained after taking into account the deductions allowable under this Division.

(2) Subject to subsection (3) and section 38A in ascertaining the assessable income of any person for any year of assessment from any source specified in section 29 there shall, upon due claim and subject to such evidence as the Comptroller may require, be allowed as a deduction all expenditure wholly, exclusively and necessarily incurred by that person during the basis period for that year of assessment for the purpose of producing the income from that source.

(3) For the purposes of this Part, where income which has accrued to a person is deemed to have accrued to, and is included in the assessable income of, some other person, any expenditure incurred by either person in relation to such income shall be deemed to have been incurred by the person to whom such income is deemed to have accrued.

36A. Deduction for re-investment allowance

(1) Where a person carrying on a business in Grenada, to the satisfaction of the Comptroller, re-invests profits for reason of expansion and increase in employment of persons ordinarily resident in Grenada other than relatives, there shall be allowed to that person for the basis period relating to the incurring of that expenditure a deduction of twenty-five per cent of the amount so re-invested:

Provided that no amount shall be allowed in excess of the chargeable income.

(2) The amount of expenditure in respect of such additional employment for that basis period shall not be less than one-fifth ($\frac{1}{5}$) of the total expenditure incurred on additional fixed assets, plant and machinery and employment.

(3) The number of persons so employed as a result of such expenditure shall in addition to the number otherwise employed continue to be employed for the next three years except in the case of cessation of business.

36B. No deductions for input tax credits

(1) This section deals with the interaction between the calculation of any deductions allowable under this Act and the provisions of the VAT Act, Chapter 333A.

(2) For the purposes of applying this Act, in determining the amount of any deduction allowed to a person:

- (a) to the extent that a person is entitled to an input tax credit under the VAT Act, Chapter 333A for an amount paid or payable by the person in respect of a

taxable acquisition or importation made by the person, the input tax credit amount is treated as not having been paid or payable by the person in respect of the acquisition or importation;

- (b) an amount that a person is required to pay because of section 14(7) and (8) of the VAT Act, Chapter 333A, is treated as having been paid in respect of an acquisition or importation of the goods or services to which the amount relates, and the deemed payment is treated as being made in the tax period in which the payment is required to be made under those subsections;
- (c) if a person (the supplier) is required by section 19(2) of the VAT Act, Chapter 333A, to treat an amount as output tax payable by the person under that Act, the amount is allowed as a deduction from the person's income if a corresponding amount was or would be treated as income of the supplier in relation to the supply in any year of assessment;
- (d) if a person (the recipient of a supply) is required by section 19(5) of the VAT Act, Chapter 333A, to treat an amount as output tax payable by the person under that Act, the amount is allowed as a deduction from the person's income if a corresponding amount was or would be excluded from the person's deduction in relation to the acquisition in any year of assessment because of paragraph (a) of this subsection.

(3) Where subsection (2)(c) or (d) applies, the relevant deduction is taken to be allowed at the time when the relevant amount was required or allowed to be included in the person's VAT return.

(4) Where subsection (2)(d) applies in respect of an acquisition of an asset that is treated as capital for the purposes of this Act, or in respect of which expenditure is otherwise not deductible under this Act—

- (a) the amount treated as output tax is added to the remaining amount (if any) for which a capital allowance or other deduction is or may be available under this Act, unless that asset has already been fully deducted through such capital allowance or deduction, in which case the amount is deductible as stated in the applicable paragraph;
- (b) if no deduction is allowed under this Act in relation to the acquisition of the asset, subsection (2)(d) does not apply.

(5) For the avoidance of doubt, this section also applies for the purpose of determining partnership assessable income under section 21.

(6) All words and phrases in this section shall have the meaning given to them in the VAT Act, Chapter 333A.

37. Deductions allowable: specific

(1) Subject to this Division and without prejudice to section 36(2), save to the extent that any provision of this section imposes a restriction on a deduction otherwise allowable, the deductions allowable in ascertaining the assessable income of any person for any year of assessment shall include—

- (a) any allowance to which that person is entitled under the Second Schedule in respect of capital expenditure incurred by him or her;
- (b) any expenditure incurred by that person during the basis period for that year of assessment on the repair of premises, plant and machinery used by him or her in his or her business or the acquisition or replacement of any implement, utensil or similar article for which no allowance is given under the Second Schedule;
- (c) any legal expenses incurred by that person during the basis period for that year of assessment in respect of any claim, dispute or action at law arising in

the course, or by reason, of the ordinary operations undertaken by him or her in the carrying on of business;

- (d) any annually assessed rates or taxes imposed on any immovable property used by him or her in the production of assessable income;
- (e) any premiums incurred under a policy of insurance against damage to or loss of property—
 - (i) where the property insured is used in producing assessable income, and
 - (ii) the policy is entered into with an insurance company which carries on business in Grenada and is liable to include such premiums in its assessable income;
- (f) any premiums incurred under a policy of insurance against loss of profits:

Provided that—

- (i) no such deduction shall be allowed unless the policy is entered into with an insurance company which carries on business in Grenada and is liable to include such premiums in its assessable income, and
- (ii) where any policy against loss of profits arises under a policy of insurance on the life of an employee, including a director, a deduction shall only be allowable where the Comptroller is satisfied that—
 - (A) any sum recoverable will constitute assessable income under section 30,
 - (B) the insurance is intended to meet a loss of profits arising from the loss of the employee's services, and
 - (C) if the policy of insurance is against the death or permanent disablement of the employee, it is a policy providing only for a sum to be paid in the event of the death or permanent disablement of the employee within a specified number of years and while in the employment of the employer;
- (g) the amount of any debts due to that person to the extent to which they are proved to be bad and provided they have been brought to account in the ascertainment of his or her assessable income for any year of assessment;
- (h) such amount as the Comptroller deems reasonable in respect of any debts due to that person which he or she considers to be doubtful of recovery and provided they have been brought to account in the ascertainment of his or her assessable income for any year of assessment;
- (i) any expenditure incurred during the basis period for that year of assessment by way of interest on any loan made to that person including interest payable on debentures, to the extent to which the Comptroller is satisfied that the amount of such loan was used by that person for the purpose of producing assessable income;
- (j) any amount contributed by him or her in respect of his or her employees by way of current annual contributions to an approved pension fund;
- (k) such amount as is specified in subsection (2) in respect of any contribution made by way of special payment to an approved pension fund where such payment is made—
 - (i) in relation to a period of service by any employee prior to the setting up of the approved pension fund, or
 - (ii) to meet any actuarially ascertained insufficiency in the resources of the approved pension fund to meet its obligations to his or her employees;

- (l) any expenditure incurred by that person during the basis period for that year of assessment by way of audit fees, accountancy fees or in respect of the preparation of a return of income for the purposes of this Act;
- (m) any expenditure incurred by that person during the basis period for that year of assessment by way of subscription or donation to a charitable organisation, a non-profit company or a professional institute approved by the Comptroller where he or she is satisfied that such organisation, company or institute is not engaged in business for profit but solely for the purpose of advancing its objects which are of a non-profit nature;
- (n) any expenditure incurred by that person during the basis period by way of a leave passage to any employee at the termination of a contract of service:

Provided that—

- (i) a leave passage is not granted to the same person at intervals of less than four years, and
- (ii) the Comptroller is satisfied that the amount so granted is reasonable having regard to all the circumstances.

(2) Where a special payment is made to an approved pension fund to which subsection (1)(k) applies such amount shall be allowed as follows—

- (a) where the special payment does not exceed the current annual contribution it shall be wholly allowed for the year of assessment in the basis period for which payment is made;
- (b) where the special payment exceeds the current annual contribution, it shall be allowed in such years of assessment, not exceeding five in number, as in the opinion of the Comptroller is reasonable in the circumstances;
- (c) where under paragraph (b) annual deductions are allowable over a number of years of assessment, the first such deduction shall be allowable for the year of assessment in the basis period for which the special payment is made.

(3) Where expenditure is incurred by way of gratuity paid on the termination of a contract of employment by a person who is engaged in a business in Grenada there shall be allowed as a deduction the amount of such paid gratuity not exceeding twelve and one-half per cent (12.5%) of the basic salary payable in respect of such employment over a period not exceeding three (3) years:

Provided that where the recipient of such gratuity is re-employed by the same employer who paid the gratuity and such re-employment takes place within a period of three (3) years following the date of payment of the gratuity, the Comptroller shall revise the assessment for the basis period for which the gratuity was allowed as a deduction by—

- (a) disallowing the amount of gratuity previously allowed as a deduction; and
- (b) re-computing the chargeable income and the tax thereon accordingly, and

the additional tax so charged shall be due and payable within one (1) month from the date of notice of the revised assessment and the provisions of this Act in relation to the collection and recovery on tax shall apply to the additional tax charged.

38. Restrictions on deductions: management charges and certain payments by controlled companies to shareholders

(1) Notwithstanding section 36, where a person carrying on a business in Grenada incurs expenditure by way of management charges, being expenditure payable—

- (a) to a non-resident (such non-resident not being engaged in a business in Grenada giving rise to such management charges); or

- (b) by a branch of a non-resident company to its head office or to some other branch outside Grenada of the company,

a deduction shall be allowed of the lesser of—

- (i) the amount of such management charges, or
- (ii) one per cent of the deductions (exclusive of management charges) allowable under section 36 (excluding cost of sales) and the provisions of sections 36A, 37(1) and 38A other than section 37(1)(a):

Provided that where any expenditure to which this subsection relates—

- (aa) was incurred in respect of services provided from one of the States comprising the Caribbean Common Market, and
- (bb) the Comptroller is satisfied that such expenditure was incurred in respect of services which could not reasonably be expected to be provided in Grenada,

the Comptroller may, in his or her discretion, allow so much thereof as appears to him or her to be reasonable but such allowance shall not exceed five times the amount specified in paragraph (b)(ii) of this subsection.

(2) Notwithstanding section 36, in ascertaining the chargeable income of a controlled company for any year of assessment, the Comptroller may disallow any amount, otherwise deductible, which is paid or payable to a shareholder or any associate of a shareholder by way of—

- (a) employment income; or
- (b) interest on a loan by such person to the company,

and which in the opinion of the Comptroller is excessive in amount, having regard to the duties performed or the rate of interest payable on such loan.

(3) For the purposes of subsection (2)—

- (a) “a controlled company” means a resident company which is controlled by not more than five shareholders excluding the Government and any company which is not itself a controlled company;
- (b) “an associate of a shareholder” means, in relation to a shareholder—
 - (i) an individual who is—
 - (A) the spouse of the shareholder, or
 - (B) a lineal ancestor, child or other lineal descendant, brother, sister, uncle, aunt, nephew or niece of the shareholder or of his or her spouse, or
 - (ii) a company—
 - (A) the operations of which are controlled or are able to be controlled either directly or indirectly by that shareholder,
 - (B) which controls or is able to control either directly or indirectly the operations of that shareholder, or
 - (C) the operations of which are controlled or are able to be controlled either directly or indirectly by a person or persons who control or are able to control either directly or indirectly the operations of that shareholder;
- (c) a company shall be deemed to be controlled by not more than five shareholders where five or less individual persons and any associates of such persons [within the meaning of paragraph (b)] beneficially own shares carrying between them, directly or indirectly—
 - (i) the right to exercise more than one half of the voting power in that company,

- (ii) the right to receive more than one half of any dividends that might be paid by that company, or
- (iii) the right to receive more than one half of any capital distribution in the event of the winding-up or of a reduction in the share capital of that company.

38A. Specific restrictions on deduction of employment income

(1) In ascertaining the chargeable income of a controlled company as defined in section 38(3)(a), the claim for employment income shall be allowed as follows—

- (a) in the case of associates of shareholders the amount claimed not exceeding ten per cent (10%) of the gains or profits after deducting therefrom all allowable expenses except employment income paid to associates of shareholders;
- (b) in the case of other employees or officials the amount claimed to the extent that the said amount is wholly, exclusively and necessarily incurred in the production of the income subject to section 38A(1).

(2) (a) In computing the deductible expenses of a partnership, there shall be allowed as employment income accruing to relatives of the partners the lesser of the amount claimed or ten per cent (10%) of the gains or profits of the partnership for the basis period after deducting therefrom all other allowable expenses.

(b) For the purposes of this subsection, a “relative of a partner” means an individual who is—

- (i) the spouse of a partner, or
- (ii) a lineal ancestor, child, sister, uncle, Aunt, nephew or niece of a partner and includes a person having a beneficial interest in the partnership.

(3) (a) Where a person carries on a business in Grenada as a sole proprietor the total amount of employment income allowable in respect of relatives of the proprietor for a basis period shall not exceed ten per cent (10%) of the amount of gains or profits from the business for the basis period after deducting all other allowable expenses except employment income accruing to relatives of the proprietor and proprietor’s drawings;

(b) for the purposes of this subsection, a relative of a proprietor means—

- (i) the spouse of the proprietor, or
- (ii) a lineal ancestor, child or other lineal descendant, brother, sister, uncle, aunt, nephew or niece of a proprietor and include any person having a beneficial interest in the partnership.

(4) Notwithstanding subsections (1), (2) and (3), where the Comptroller is satisfied that employment income paid to a category of employee referred to in this section is in excess of the amount allowable under this section, the Comptroller may allow such additional portion of the amount paid if such an amount is wholly, exclusively and necessarily incurred in the production of the income for the basis period.

39. Deduction for losses

(1) Subject to subsection (4), where the deductions allowable to any person for any year of assessment under the provisions of this Part other than this section, exceed the income from the source to which those deductions relate, the amount of such excess shall be allowed as a deduction against income accruing from other sources of income for that year of assessment.

(2) Subject to subsection (4)—

- (a) where, after the allowance of any deduction to which the person may be entitled under subsection (1), an excess still remains; and
- (b) where that excess is in respect of carrying on of any business,

the amount of that excess (herein referred to as “the assessed loss”) shall be allowed as a deduction in ascertaining the assessable income of subsequent years of assessment to the extent provided in subsection (3).

(3) The deduction provided in subsection (2) shall not exceed one half of the assessable income of the next subsequent year of assessment in respect of the carrying on of the business ascertained in accordance with this Division but before the operation of subsection (2) (in this section referred to as “the relevant assessable income”) and where the assessed loss exceeds one half of the relevant assessable income, or there is no relevant assessable income for such subsequent year of assessment, the excess or the amount of the assessed loss, as the case may be, shall be carried forward and deducted in like manner in ascertaining the assessable income of the next following two years of assessment or until the assessed loss has been fully allowed, whichever is earlier.

(4) Where, during the tax holiday period of any person whose exemption relates to income accruing in respect of—

- (a) an hotel;
- (b) a development enterprise;
- (c) an enterprise approved under the Fiscal Incentives Act, Chapter 107, or the Qualified Enterprises Act, Chapter 270,

the deductions which would have been allowable under the provisions of this Part, other than this section, exceed any amount which would have been assessable income, if that person had not been exempt from tax then the amount of such excess shall be treated as an assessed loss allowable as a deduction in succeeding years in the manner provided in subsection (3) but, save as provided, no other loss incurred in relation to the production of exempt income shall be allowed as a deduction.

(5) Notwithstanding the provisions of this section, no deduction shall be allowable in respect of any loss arising from the carrying on of any business where, in the opinion of the Comptroller, such business was not carried on a commercial basis and with a view to the realisation of gains or profits.

40. Deductions not allowable under more than one provision

(1) No amount shall be deducted under any provision of this Act in respect of expenditure, or claim for an allowance, which has been or will be taken into account as a deduction or in calculating a deduction under any other provision of this Act.

(2) Where an amount qualifies for deduction under two or more provisions of this Act, nothing in subsection (1) shall prevent the person concerned claiming such of those deductions as is most advantageous to him or her.

41. Expenditure for which no deduction allowable

(1) Subject to any express provision in this Act authorising a specified deduction in ascertaining the assessable income of any person for any year of assessment, no deduction shall be allowed in respect of—

- (a) any expenditure to the extent to which it is not incurred for the purpose of producing assessable income;
- (b) any expenditure incurred for domestic or private purposes;
- (c) any expenditure incurred on entertainment or entertainment allowance;
- (d) any expenditure incurred for the purpose of producing exempt income;

- (e) any sum in respect of expenses recoverable under an insurance contract of indemnity;
- (f) any capital withdrawn or any expenditure or loss of a capital nature;
- (g) any tax imposed under this Act;
- (h) any income tax or tax of a similar nature charged in a country outside Grenada; or
- (i) any contribution made to a pension fund which has not been approved under this Act.

(2) Notwithstanding sections 36, 36A, 37 and 38A, in ascertaining the assessable income of any person for any year of assessment, no deduction shall be allowed in respect of any amount paid or payable to a non-resident to which section 50 applies unless the Comptroller is satisfied that the withholding tax chargeable thereon has been paid.

PART VI

Ascertainment of Chargeable Income

42. Chargeable income

The chargeable income of a person for any year of assessment is the aggregate amount of the assessable income of that person for that year of assessment from the sources specified in section 29.

42A. Statutory allowances

(1) In ascertaining the chargeable income of an individual, who is resident in Grenada there shall be allowed as a deduction the amount of assessable income accruing to that individual from all sources not exceeding sixty thousand dollars.

(2) Where the chargeable income of an employee or official who is resident in Grenada is less than sixty thousand dollars in a basis period there shall be allowed as a deduction an amount of assessable income accruing to such employee or official from sources other than employment to the extent that the aggregate amount of employment income exempt under the provisions of section 25(1)(a) and the amount of assessable income allowed as a deduction under this section does not exceed sixty thousand dollars.

(3) Where the amount of employment income accruing to an individual referred to in section 25(1)(a)(iii) exceeds sixty thousand dollars the amount of exempt employment income shall be restricted to sixty thousand dollars and the excess shall be subject to a surcharge at the rate applicable to chargeable income as specified in the Fifth Schedule.

PART VII

Special Provisions Relating to Certain Taxpayers

DIVISION I

Variation of Normal Basis of Taxation

43. International agreements for the avoidance of double taxation

(1) The Minister may enter into an agreement with the Government of any other country or group of countries with a view to—

- (a) the provision of relief by way of the prevention, mitigation or discontinuance of the levying of tax under this Act or the income tax laws of that other country, or otherwise for the avoidance of double taxation;
- (b) determining the assessable income to be attributed to any agency, branch or other permanent establishment in Grenada, of a resident of that other country or to any agency, branch or other permanent establishment in that country, of a resident of Grenada;
- (c) determining the assessable income to be attributed to a resident who enters into trading arrangements with a resident of that other country with whom he or she is not dealing at arm's length;
- (d) determining the situation of the source of any assessable income derived by a resident of Grenada or that other country;
- (e) the rendering of reciprocal assistance to facilitate the administration of this Act and the income tax laws of that other country and any agreement for the avoidance of double taxation or the exchange of information.

(2) The Minister may, at any time, amend or cancel any agreement entered into under subsection (1).

(3) Any agreement entered into under subsection (1) or amendment or cancellation under subsection (2) shall be published by Order in the *Gazette* and shall have effect notwithstanding anything in this Act or any other enactment.

44. General insurance companies

(1) The chargeable income for any year of assessment of any company carrying on a business of insurance other than life assurance (hereinafter referred to as "general insurance") shall, subject to subsection (2), be ascertained in accordance with Parts V and VI.

(2) To the amount ascertained under subsection (1) there shall be added a reserve for unexpired risks outstanding at the beginning of the basis period and from the amount so ascertained there shall be deducted—

- (a) a reserve for unexpired risks outstanding at the end of the basis period; and
- (b) where the company is a non-resident, but subject to section 38(1) such proportion of the expenses of the head office as is, in the opinion of the Comptroller, reasonably attributable to the general insurance business carried on in Grenada.

(3) The reserve for unexpired risks at the beginning and end of the basis period, referred to in subsection (2) shall be such percentage as is adopted by the company in relation to its operations as a whole for the risks at such times.

(4) The chargeable income for any year of assessment of an association of underwriters, within the meaning of that term as defined in section 2 of the Insurance Act, Chapter 150, shall be deemed to be an amount equal to ten per cent of the gross premium arising in Grenada during the basis period for that year of assessment.

(5) For the purposes of subsection (4), "gross premium" means the aggregate of all premiums collected by or on behalf of an association of underwriters and includes premiums paid by an insurer to a reinsurer or premiums received by an association of underwriters for re-insurance business.

45. Life assurance companies

(1) The chargeable income for any year of assessment of any company carrying on a business of life assurance shall be deemed to be the greater of an amount equal to ten per cent of the gross investment income accruing in Grenada to that company during the basis

period for that year of assessment or the remainder of such gross investment income after deducting therefrom the appropriate deductions allowable under sections 36, 36A, 37, 38 and 38A.

(2) For the purpose of subsection (1)—

- (a) “gross investment income accruing in Grenada” shall be deemed to be an amount equal to such part of the total investment income of the company as the premiums received in Grenada bear to the total premiums received;
- (b) “the total investment income” means the aggregate of the investment income accruing in Grenada and elsewhere including income which would in the hands of any other person be exempt;
- (c) no deduction or credit for tax shall be given against the gross investment income accruing in Grenada [ascertained under paragraph (a)] in respect of an investment income accruing in Grenada which would in the hands of any other person be exempt under Part IV.

(3) In this section, “investment income” means the income accruing to a company from the investment of premium monies received by the company in respect of ordinary life assurance (including non-cancellable group life assurance), industrial life assurance and general annuity life insurance.

46. Non-resident shipping and airline companies

(1) Where any ship or aircraft owned or chartered by a non-resident person carries passengers or freight shipped from Grenada two per cent of the amount paid in respect of such carriage shall be deemed to be assessable income accrued to that person from a source in Grenada but shall not form part of his or her chargeable income and shall be separately charged to withholding tax at the rate of thirty per cent in respect of every dollar thereof.

(2) The tax imposed by subsection (1) shall be deducted by the branch, agent or other representatives in Grenada of such non-resident person from the amounts received for such carriage and shall be paid to the Comptroller within seven days after the end of the month during which such payment was received.

(3) Where any branch, agent or other representative in Grenada of a non-resident person is liable to deduct withholding tax under this section he or she shall also be liable to comply with the provisions of paragraphs 4 to 6 of the Third Schedule.

47. Repealed

48. Approved pension funds

(1) For the purpose of this Act, the Comptroller may approve a fund established for the provision of retirement benefits for employees and their dependents as an approved pension fund in accordance with this section.

(2) The primary object of an approved pension fund shall be the provision of benefits by way of a pension—

- (a) to its members upon retirement;
- (b) to the spouse or child of a member upon his or her death,

but any such fund may also make provision for other benefits not inconsistent with this object.

(3) A pension fund shall not be approved by the Comptroller where—

- (a) subject to subsections (5) and (8) the benefit provided on retirement or death is a lump sum; or

(b) eligibility for membership in respect of members in permanent employment is not available to employees generally or to a class of employees generally.

(4) No pension fund shall be approved unless the Comptroller is satisfied that it provides—

(a) for a pension to be payable—

(i) on retirement of a member at his or her retirement date, which shall not be prior to him or her attaining fifty years of age,

(ii) on retirement of a member prior to his or her retirement date where he or she retires prematurely as a result of mental or physical infirmity, and

(iii) on death of a member while still in employment, except where alternative provision is made for a death benefit to be payable in accordance with subsection (5);

(b) that any pension provided shall be payable in equal annual amounts (whether annually or at lesser periodic intervals) to—

(i) the member for his or her life,

(ii) the spouse of a deceased member, during her widowhood or for a guaranteed term of years,

(iii) any child of a deceased member until such child attains an age of not less than sixteen years;

(c) that the maximum pension payable to a member shall not exceed twenty per cent of the maximum salary earned by him or her during any twelve month period of membership;

(d) that the maximum pension payable to the spouse and children of a deceased member shall not exceed seventy per cent of the pension payable to the member at his or her death, or where death occurred prior to his or her retirement would have been payable to him or her had he or she retired on the date of his or her death;

(e) that contributions by a member shall cease upon his or her retirement, death or withdrawal from the fund;

(f) that the annual contribution by the employer in relation to every calendar year shall not be less than the total contribution paid by all the members in relation to that year, except where the Comptroller is satisfied upon certification by an actuary that a lesser contribution is adequate to maintain solvency of the fund;

(g) that no pension payable thereunder shall be capable of being surrendered commuted or assigned either wholly or in part, except to the extent permitted by subsection (8);

(h) that no benefit shall be payable to or in respect of a member prior to his or her retirement or death, except to the extent permitted by subsection (11) or (12);

(i) for the constitution of the fund by a trust under which the property of the fund is irrevocably vested in—

(i) not less than three persons, where the trustees are individuals, or

(ii) a trust corporation.

(5) A pension fund may provide that, in lieu of widow's pension being payable in the event of the death of a member prior to retirement, a death benefit shall be payable equal to the aggregate of the joint contributions of the member and the employer together with compound interest thereon up to the date of his or her death.

(6) Where pursuant to subsection (5) death benefits are payable in the event of the death of a member prior to his or her retirement, he or she may elect that such benefits shall be payable to his or her estate or any nominated beneficiary.

(7) A pension fund may provide for contributions to be made only by the employer, but no pension fund shall be approved which provides for contributions to be made only by the members.

(8) A pension fund may provide for the commutation of pension benefits to the following extent—

- (a) where the annual amount payable does not exceed one thousand two hundred dollars, the full amount of the pension may be commuted;
- (b) in any other case, the greater of one thousand two hundred dollars or twenty five per cent of the pension may be commuted.

(9) The trustees of an approved pension fund shall not invest, lend or use the assets of the fund in any investment which is not authorised by law or by the instrument creating the fund.

(10) Notwithstanding subsection (4)(c) and (d) (which provide maximum limits in relation to pension entitlements) a pension fund may provide for increases in pensions to be payable to existing pensioners by reason of increased cost of living.

(11) A pension fund may provide for withdrawal from membership prior to retirement or death, but in any such case the rules of the fund shall provide that the maximum benefits to be paid to the member shall not exceed—

- (a) where membership of the employee does not exceed five years, a cash payment equal to, or a paid up deferred pension determined by reference to, the employee's own contributions together with compound interest thereon up to the date of withdrawal;
- (b) where membership of the employee exceeds five years a paid up deferred pension determined by reference to the aggregate of the joint contributions of the member and the employer together with compound interest thereon up to the date of withdrawal,

or alternatively may provide for the transfer of such benefits to another approved pension fund.

(12) Notwithstanding subsection (11)(b) the rules of a pension fund may provide for the payment of a cash sum in lieu of a paid up deferred pension in the following circumstances—

- (a) where the member is a married woman or an unmarried woman who is about to marry;
- (b) where the member intends, upon withdrawal, to leave Grenada permanently;
- (c) where, in the opinion of the Comptroller, other special circumstances exist.

(13) Where cash benefits are payable to a member pursuant to subsection (11) or (12) upon withdrawal from an approved pension fund such monies shall not form part of the chargeable income of the member but shall be separately charged to withholding tax in the hands of the trustees who shall deduct, as such tax, ten per cent of the monies prior to payment of the balance to the member.

(14) The tax deducted by the trustees under subsection (13) shall be paid to the Comptroller within fifteen days after the end of the month in which it was deducted and shall be accompanied by a statement setting out the names of all members to whom payments have been made, the amounts of such payments and the tax deducted therefrom.

(15) Where an approved pension fund is vested in—

- (a) individuals, at least one trustee shall be a representative of the employees, selected by them;
- (b) a trust corporation, a management committee shall be established comprising not less than three individuals, at least one of whom shall be a representative of the employees, selected by them.

(16) No employer shall be capable of being a trustee of any pension fund established under this section, but nothing herein shall be construed as preventing an employer from appointing a representative either as a trustee or a member of the management committee as the case may be.

(17) Where an alteration has been made in the rules of the approved pension fund, no approval given as regards the fund before the alteration shall apply unless the alteration has been approved by the Comptroller.

(18) In this section—

“employer” in the case of incorporated companies, includes a group of companies;

“member” means any person employed in the service of another at a weekly, monthly or other periodic remuneration, but does not include a director of an incorporated company who is not actively engaged in the day to day management of the company;

“retirement date” means the date upon which an employee reaches an age at which in accordance with the customary practice of his or her employer, he or she may optionally, or must compulsorily, retire but not being an age less than fifty years.

49. Variation in the applicability of the Act: lecturers at Saint George’s University (School of Medicine) Limited

Where any agreement referred to in the Saint George’s University (School of Medicine) Limited Act, No. 17 of 1976, provides for any variation in the applicability of this Act to employment income earned by lecturers employed in the medical faculty of the Saint George’s University (School of Medicine) Limited, who are not citizens of Grenada or not ordinarily resident in Grenada, such variation shall have effect, notwithstanding anything in this Act.

DIVISION II

Withholding Tax on Payments and Deduction of Tax by Employers

50. Deduction of tax from payments made to non-residents

(1) Where a person whether or not engaged in a business in Grenada makes payment to a non-resident person of interest, not exempt under section 25(1)(aa), discounts, commissions, fees, management charge, rent, lease premium, license charge, royalties or other payment whether or not the payer is entitled to deduct such payment in computing the chargeable income of a business, the payer shall deduct tax at the rate specified in the third schedule and pay the amount of tax so deducted to the Comptroller within seven days after the date of payment or credit to the payee.

(2) In any case where such a payment as described in subsection (1) accrues but is not paid as at the accounting date for the basis period, the person liable to make such payment shall make an advance payment to the Comptroller of the appropriate amount of tax payable under subsection (1) at the time when the return for the business in respect of the basis period is submitted and shall be entitled to recover the tax so paid when the amount accrued is paid or credited to the payee.

(3) Where the tax in respect of payment made under this section by a person engaged in a business is not paid to the Comptroller in accordance with subsection (1) or (2) the Comptroller shall disallow the amount claimed as if it were an expense not wholly, exclusively and necessarily incurred in the production of the income.

(4) For the purposes of this section, a person to whom any payment is made to which this section applies shall be presumed, unless the contrary is proved, to be non-resident if such payment is made to an address outside Grenada.

(5) Nothing in this section shall prevent the Comptroller from directing the deduction of a lesser amount than that provided in the Third Schedule where he or she is satisfied that the person to whom the payment is made is a resident of a country with which an international agreement made under section 43 exists which provides for a lower rate of withholding tax than that provided in the Third Schedule.

51. Deduction of tax from income of non-residents

(1) Notwithstanding any other provision in this Act, where a person engaged in a business in Grenada pays to a non-resident person employment income which is allowed as a deduction in computing the chargeable income of the business for the basis period, the payer shall deduct from the amount of employment income tax at the rate specified in the third Schedule and shall pay the tax so deducted to the comptroller within seven (7) days after the date of payment of the employment income.

(2) Where an amount of employment income referred to in subsection (1) accrues but is not paid as at the accounting date for the basis period the person liable to make such payment shall make an advance payment to the Comptroller of the appropriate amount of the tax payable under subsection (1) at the time when the return for the business for that basis period is submitted and shall be entitled to recover the tax so paid whenever the accrued amount of employment income is paid or credited to the non-resident person.

(3) Where the tax under this section is not paid in accordance with subsection (1) or (2) as the case may be the Comptroller shall disallow the amount of employment income claimed as if it were an expense not wholly, exclusively and necessarily incurred in the production of income.

51A. Deduction of tax from non-resident partner

(1) Where income from a partnership accrues to a non-resident partner the precedent partner or the agent shall deduct tax from such income at the rate specified and shall paid the amount of tax so deducted to the Comptroller within seven days from the date of payment or credit to the non-resident partner.

(2) Where an amount of employment income referred to in subsection (1) is not paid or credited as at the accounting date for the basis period, the precedent partner or the agent shall make an advance payment of the amount of tax payable under subsection (1) at the time when the return for the partnership for that basis period is submitted and shall be entitled to recover the tax so paid whenever the amount of such income is paid or credited to the non-resident partner.

52. Deduction of tax from certain payments to residents

(1) Where a person engaged in business in Granada pays to another person—

- (a) fees;
- (b) royalties;
- (c) discounts; or
- (d) management charges,

the payer shall deduct tax at the rate of fifteen per cent and shall pay such tax to the Comptroller within seven days from the date of the payment or credit the payee.

(2) The tax deducted under subsection (1) shall be allowed as a credit against the tax liability under section 56.

(3) Where the tax is not deducted and paid in accordance with subsection (1) the Comptroller shall disallow the amount claimed as if it were an expense not wholly, exclusively and necessarily incurred in the production of income.

(4) Where withholding tax is not deducted and paid to the Comptroller in accordance with this section the amount of such tax shall not be allowed as a credit in computing the tax liability of the payee under section 56.

(5) This section shall not apply where the payee carries on in Grenada regular activities of banking industrial or commercial enterprise, including the provision of security janitorial or like service, as may be prescribed; but the payee shall include any such payments in computing the assessable income arising from such activities.

(6) Where payment is subject to withholding tax under this section and the payee is likely to suffer financial hardship as a result of insufficient cash flow to carry on his or her business, the payee may apply to the Comptroller for a waiver of the withholding tax by identifying the person and his or her address who is likely to make the payment which is subject to the withholding tax.

(7) Where the Comptroller is satisfied that a person who has applied for a waiver of withholding tax under subsection (6) is not in default or any tax obligation under this Act he or she may review the application and, by way of certificate address to the payer, grant a waiver to the payee in respect of any amount of withholding tax which, but for this subsection, would be payable.

(8) A certificate authorising a waiver of withholding tax may be revoked at any time subsequent to the issuance of such certificate if the Comptroller is satisfied that the payee is in default of any tax obligations or that any tax liable to be paid by the payee may not be recovered.

(9) A notice of revocation under subsection (8) shall have effect from such date as may be stated in such notice and a copy of such notice of revocation shall be delivered to every person to whom a notice of waiver of withholding tax was addressed under subsection (7).

53. Deposit interest

A person engaged in a business of deposit banking in Grenada shall deduct from interest accrued, payable or paid to a person who is not resident or not ordinarily resident in Grenada on amounts deposited in any account with the person carrying on the business of deposit banking tax at the rate of zero (0) per cent of the amount of interest and shall subject to the rate, account to the Comptroller within seven (7) days from the date of payment for any tax deducted.

54. Deduction of tax by employers

(1) Every employer except the Government of Grenada who pays remuneration to his or her employees, shall deduct tax therefrom in accordance with and in the manner specified in the Fourth Schedule and shall carry out such other obligations as imposed by that Schedule.

(2) In this section, “employer” and “remuneration” shall have the meaning given to them in the Fourth Schedule.

55. Indemnification for tax paid to Comptroller

Where any person liable to deduct tax under this Act accounts to the Comptroller therefor, he or she shall be acquitted and discharged of so much money as is represented by the tax so deducted and accounted for as if such sum had actually been paid to the person entitled thereto.

55A. Power of Minister to make exemption

The Minister, acting on the approval of Cabinet, may wholly or partly, exempt a person from the provisions of this Act.

PART VIII

Ascertainment of Tax Payable

56. Rates of tax

(1) Tax shall be chargeable for each year of assessment on the chargeable income of a person at the rates specified in the Fifth Schedule.

(2) Withholding tax shall be charged—

- (a) in respect of the income of non-resident shipping and airline companies at the rate specified in section 46;
- (b) in respect of any other payments to non-residents at the rates specified in the Third Schedule;
- (c) in respect of payments under section 52 at the rate specified therein.

57. Repealed

58. Repealed

59. Repealed

60. Repealed

61. Repealed

61A. Repealed

62. Set off for tax paid

Where any tax has been paid in advance pursuant to section 93 or otherwise, the tax paid shall be set off against the tax charged under section 56 for the year of assessment in relation to which such income accrued.

63. Repealed

64. Repealed

PART IX

Returns and Notices

65. Returns of income: general

(1) Subject to section 77, every person liable to furnish a return of income in respect of any year of assessment, either personally or in a representative capacity, shall furnish a return in such form as may be approved by the Comptroller within ninety days after the end of the basis period and such return shall—

- (a) be signed by him or her or by an agent authorised to sign on his or her behalf;
- (b) contain a calculation of the chargeable income, if any, disclosed therein and of the tax payable thereon; and
- (c) contain an address for service of notices.

(2) For the purposes of this section, “every person liable to furnish a return of income” includes—

- (a) every person liable to pay tax under this Act;
- (b) every partnership;
- (c) every person who for that year or any previous year of assessment has made a loss in respect of which he or she may be entitled to claim a deduction for the year of assessment or any subsequent year of assessment;
- (d) subject to subsection (4), every person who derives any income from any source specified in section 29; irrespective of the amount of such income; and
- (e) every person who derives any income which would be charged to tax under this Act save for the provisions of sections 26 and 27 or any other enactment which has exempted such income from the charge to tax for a limited period of time.

(3) The Comptroller may cause forms to be delivered by hand or by post to any person, but failure to do so, or the non-receipt by any person of a return form shall in no way relieve any person liable to furnish a return of income from his or her obligation to comply with subsection (1).

(4) Notwithstanding subsection (2) but subject to section 67—

- (a) a resident individual, whose income accrues from sources other than business and whose income from which does not exceed sixty thousand dollars during a year of assessment; and
- (b) a non-resident person, whose income accrued from sources situated in Grenada consists only of income to which the provisions of section 50 apply,

shall be relieved of the obligation of furnishing a return of income under subsection (1).

65A. Registration

Every person liable or about to become liable for the payment of tax under this Act shall register with the Comptroller and provide such information to the Comptroller as may be required by him or her to give effect to such registration.

66. Returns of income: individuals leaving Grenada, cessation of business, etc.

Where it appears to the Comptroller that—

- (a) an individual may leave Grenada during any year of assessment or shortly after its expiry and that the absence from Grenada of such individual is unlikely to be temporary only;
- (b) a person has ceased to carry on business during any year of assessment; or
- (c) in the case of any other person, it is expedient to do so,

the Comptroller may at any time serve upon such person a notice in writing requiring him or her to furnish within such time as may be specified in the notice, not being less than seven days from the date of service of such notice, a return of income for any year of assessment.

67. Returns of income: from persons liable to furnish but have not done so

(1) Where it appears to the Comptroller that any person is or may be liable to furnish a return of income for any year of assessment and has not done so, the Comptroller may, by notice in writing, require such person to furnish a return of income within such time as may be specified in the notice, not being less than seven days from the date of service of such notice.

(2) Nothing in this section shall be construed as extending the time limits provided by section 65 for the furnishing of any return of income.

68. Further return or information, production of books and giving of evidence to Comptroller

(1) For the purposes of the administration or the enforcement of this Act, including the obtaining of full information in respect of the income of any person who is or may be liable to tax the Comptroller may, by notice in writing, require that person or any other person—

- (a) to furnish to the Comptroller within such time as may be specified in such notice such further return of income, statement of assets and liabilities or other information as may be required by him or her;
- (b) to produce, at such time and place as may be specified in such notice for examination by the Comptroller or for retention by him or her for such period as may be reasonable for their examination, any accounts, books of account, statement of assets and liabilities or other documents which the Comptroller may consider necessary for such purpose and, if any such information is not available in the English language, to produce at the expense of the person who is or may be liable to tax a translation in English prepared and certified by an approved translator;
- (c) to attend, at such time and place as may be specified in such notice, for the purpose of being examined by the Comptroller in respect of the assessable or chargeable income of himself or herself or any other person or any transaction or matters appearing to the Comptroller to be relevant thereto.

(2) Without prejudice to the generality of subsection (1), the Comptroller may require any bank—

- (a) to furnish to him or her details of any banking account or other assets which may be held on behalf of any person, or to furnish a copy of bank statements of any such banking account;
- (b) to permit the Comptroller or any officer authorised by him or her to inspect the records of the bank with respect to the banking account of any person;
- (c) to furnish annually a schedule showing the amount of interest paid on deposits together with the names and addresses of the persons to whom such interest accrued,

or may require the attendance of any officer of a bank before him or her to give evidence respecting any bank account or other assets which may be held by the bank on behalf of any person.

(3) Subject to such modifications and adaptations as may be necessary, the provisions of subsection (1) shall extend to the supply of information, the production of documents and the giving of evidence to the Comptroller in relation to—

- (a) the payment of income by any person to a non-resident, to which the Third Schedule applies;
- (b) the payment of remuneration by an employer to his or her employees, to which the Fourth Schedule applies,

the deduction of tax therefrom and the accounting for any tax so deducted.

(4) Where any books of account or other documents are produced for the purposes of this section the Comptroller may make copies of such books or documents or may retain them where such course of action appears to him or her to be necessary for the purposes of any prosecution or the substantiation of any assessment.

69. Examination of business records

(1) Whether or not any person has been assessed to tax, the Comptroller may carry out an examination of the income tax affairs of such person, but subject to the limit as to time specified in section 82.

(2) For the purposes of subsection (1), the Comptroller or any officer authorised by him or her may at all reasonable times, and subject to prior notice, enter into any premises where any business is carried on or the records or books of account of such business are kept, and—

- (a) examine the records or books of account and examine any documents which relate to income accruing from such business;
- (b) inspect any trading stock of the business and any assets of the business in respect of which allowances or deductions have been or may be claimed under the Act;
- (c) require the owner of the business, or any employee or agent to give him or her such reasonable assistance in connection with the examination and inspection as may be necessary and to answer orally or in writing any questions relating thereto.

(3) Where, during the course of any examination or inspection, it appears to the Comptroller or the officer that there may not have been a correct disclosure of assessable income or allowable deductions he or she may take possession of any books of account or other documents for further examination at the office of the Comptroller and after such examination may retain or make copies of or take extracts from such books or documents for the purposes of any prosecution or the substantiation of any assessment.

70. Powers of entry, inspection and removal of documents

(1) The Comptroller or any officer authorised by him or her, may, for the purpose of obtaining information which he or she considers necessary in relation to the liability of any person to tax, enter any premises at any time during the day, with or without previous notice, and search for any monies or documents; and in carrying out any such search he or she may—

- (a) open or cause to be opened, any article in which he or she considers any money or documents may be contained;
- (b) seize any documents which he or she considers may afford material evidence of the liability of any person to tax;
- (c) retain any such documents for such period as may be reasonable for their examination or for the purposes of a prosecution or the defence of any assessment;
- (d) make copies of any such documents;

- (e) require any person he or she finds in the premises to give him or her such reasonable assistance in connection with the search as may be necessary; and
- (f) require the owner of any business or any employee to answer orally or in writing any questions relating to assets found on the premises and as to the location of any books of accounts, documents, information or assets which should be on the premises.

(2) Any officer exercising any power under subsection (1) shall, upon demand, produce the authority furnished to him or her by the Comptroller.

(3) Where any documents are seized and retained under subsection (1), the person to whom such documents belong shall be entitled to examine and make copies or extracts from them at such time and place and under such supervision as the Comptroller may direct.

(4) No admission to any premises without previous notice to the owner shall be sought by any officer without specific authority of the Comptroller.

(5) In this section, "documents" includes any books, records or accounts.

71. Maintenance of proper records of transactions, method of accounting and preservation of books of account and records

(1) Every person carrying on any business shall keep, in the English Language, such records or books of account as are necessary to reflect the true and full nature of the transactions of the business regard being had to the nature of the activities concerned and the scale on which they are carried on.

(2) Where the Comptroller is of the opinion that records or books of account are not being kept in accordance with subsection (1), or where no records or books of account are being kept, by any person carrying on business then in addition to any proceedings which may be taken under section 117, the Comptroller may direct such person to keep such records or books of account as he or she may specify.

(3) The records or books of account required by this section shall be kept at the place of business of the person carrying on business unless the Comptroller approves of them being kept at some other place.

(4) Subject to subsections (5) and (6), every person to whom this section applies shall preserve all books of account and other records which are essential to the explanation of any entry in such books of account of that business for a period of seven years after the end of the basis period to which such books of account or records relate.

(5) The Comptroller may, by notice in writing require any person to retain such records as are referred to in subsection (4) for such further period of time as he or she deems necessary for their proper examination.

(6) Where—

- (a) a person has died;
- (b) a company has gone into liquidation;
- (c) a trust or body of persons has been terminated; or
- (d) in any other case where he or she is satisfied that it is reasonable to do so,

the Comptroller may, on application, approve of the disposal of any books of account or other records within such lesser period than seven years as he or she thinks fit.

(7) The Comptroller may, subject to such conditions as he or she may specify and in respect of such books of account or other records as he or she may specify, authorise the retention of a micro film copy of any books of account or other records in lieu of the original books or records.

(8) For the purposes of this section the books of account and other records required to be preserved shall be deemed to include the records required to be kept under the Third or Fourth Schedule.

72. Submission of accounts with return of income and certificate relating to preparation of accounts

(1) Where any person carries on business in the basis period for any year of assessment his or her return of income for such year shall be accompanied by a copy of the final accounts of the business together with a reconciliation of the income shown in the accounts with the assessable income disclosed in the return in relation to the business.

(2) Where the accounts referred to in subsection (1) have been audited by a professionally qualified auditor, he or she shall provide on the face of the accounts a certificate giving his or her name, address and occupation and stating—

- (a) the extent of the examination made of the books of account and of the documents from which such books of account were prepared; and
- (b) whether or not, as far as he or she was able to ascertain from the examination, the entries in those books of account disclosed the true nature of every transaction, receipt, accrual, payment and debit.

(3) Where the accounts referred to in subsection (1) have been prepared by a person other than the person carrying on the business and have not been audited by a professionally qualified auditor, that other person shall provide on the face of the accounts a certificate giving his or her name, address and occupation and stating whether he or she has made any examination, and if so—

- (a) the extent of the examination made of the books of account and of the documents from which such books of account were prepared; and
- (b) whether or not the accounts reflect a true and fair view of the transactions for the basis period under review and the state of affairs of the business at the end of that period.

73. Principal officer of company

(1) Every company carrying on business in Grenada shall at all times be represented for the purposes of this Act by a principal officer residing in Grenada and duly appointed by the company or its authorised agent or attorney.

(2) Every company shall appoint a principal officer and an address for service of notices—

- (a) if it is carrying on business at the commencement of the Act or on any day between the commencement and the passing of the Act, within two months after the day on which the Act is passed; or
- (b) in the case of a company which commences business in Grenada after the day on which the Act is passed, within one month after the commencement of business,

and shall in writing notify the Comptroller of such appointment and address within the periods specified.

(3) Every change of principal officer or of the address for service of notices on the company shall be notified in writing to the Comptroller by the company within fifteen days of such change occurring.

(4) The principal officer shall be answerable for the doing of all such things as are required under this Act to be done by the company of which he or she is the representative and in case of default he or she shall be liable to the same penalties as the company.

(5) Everything done by the principal officer, which he or she is required to do in his or her representative capacity shall be deemed to have been done by the company and any notice given to the principal officer shall be deemed to be given to the company.

(6) The absence of or failure to appoint a principal officer shall not excuse a company from necessity of complying with any of the provisions of this Act and the company shall be subject to and liable to comply with its provisions as if there were no requirement to appoint a principal officer.

(7) Every notice, process or proceeding which under this Act may be given to, served on or taken against any company may be given to, served on or taken against the principal officer, and if at any time there is no principal officer or if for any other reason the Comptroller considers it expedient to do so, then any such notice, process or proceeding may be given to, served on or taken against any officer or person acting in the management of the business of the company or as agent for the company and such officer or person shall have the same liability in respect of that notice, process or proceeding as the company or principal officer would have had if it had been given to, served on or taken against the company or principal officer.

(8) In the event of any company being placed in liquidation the liquidator shall be required to exercise all the functions and assume all the responsibilities of a principal officer under this Act during the continuance of the liquidation, and any person previously appointed as principal officer of the company shall cease to be principal officer at such time.

74. Precedent partner of partnership

(1) Every partnership carrying on business in Grenada shall at all times be represented by a resident individual who shall be—

- (a) the precedent partner; or
- (b) if no acting partner is resident in Grenada, the agent of the partnership in Grenada.

(2) The precedent partner shall be the person who, being an acting partner resident in Grenada—

- (a) is first named in the partnership agreement;
- (b) if there is no partnership agreement, is specified by name or initial singly or with precedence to the other partners in the usual name of the partnership,

or, in any case where neither paragraph (a) or (b) is applicable, such other partner as is specified by the partnership.

(3) Every partnership shall notify the Comptroller of the name of the precedent partner, or, if there is no acting partner resident in Grenada shall appoint and notify the Comptroller of the name of its agent in Grenada—

- (a) if it is carrying on business at the commencement of the Act or on any day between the commencement and the passing of the Act, within two months after the day on which the Act is passed; or
- (b) if it commences business after the day on which the Act is passed, within one month after the commencement of business.

(4) Every partnership shall within the period specified in subsection (3) appoint an address for service of notice.

(5) Every change of precedent partner or agent of the partnership or of address for service of notices shall be notified to the Comptroller within fifteen days of the change.

(6) The precedent partner or agent, as the case may be, shall be answerable for the doing of all such thing; as are required under this Act to be done by the partnership of

which he or she is the representative and in case of default he or she shall be liable to the same penalties.

(7) Everything done by the precedent partner or the agent, as the case may be, which he or she is required to do in his or her representative capacity shall be deemed to have been done by the partnership, and any notice given to or request made upon the precedent partner or the agent shall be deemed to have been given to or made upon the partnership.

75. Returns deemed to be furnished by due authority and in full knowledge of contents

Every return, statement or form purporting to be furnished under this Act by or on behalf of any person shall for all purposes of this Act be deemed to have been furnished by that person or with his or her authority, as the case may be, unless the contrary is proved, and any person signing such return, statement or form shall be deemed to be cognisant of all matters contained therein.

76. Returns: method of furnishing

Any return required to be furnished under this Act shall be delivered by hand or post to the address specified in the relevant form.

77. Returns: extension of time for furnishing

Where, under this Act, any return is required to be furnished by any person within a specified period, the Comptroller may, by notice in writing served on that person, extend the period within which the return is to be furnished.

PART X

Assessment of Tax

78. Assessments

(1) Subject to section 82, the Comptroller—

- (a) may make an assessment of the chargeable income of and the tax payable by any person chargeable to tax; and
- (b) may the tax computed on any person where there is no liability to tax but there is an entitlement to a refund of tax.

(2) Where a person has furnished a return of income, the Comptroller may accept such return and the tax computed in accordance therewith.

(3) Where—

- (a) a person fails to furnish a return of income; or
- (b) the Comptroller is not satisfied that the return furnished by any person is true and correct,

he or she may make an assessment to the best of his or her judgement.

79. Additional assessments

(1) Subject to section 82, where in relation to an assessment made on any person for any year of assessment, the Comptroller is of the opinion that—

- (a) the tax charged is less than the amount which should have been charged;

- (b) any assessed loss is greater than the amount at which it should have been assessed; or
- (c) a refund has been made in excess of the amount which should have been refunded,

he or she shall make an additional assessment accordingly.

(2) Where, on the determination of an appeal made under Part XI, the Appeal Commissioners or any subsequent appellate tribunal increase an assessment, the Comptroller shall increase the assessment accordingly, without limit as to time.

80. Reduced assessments

(1) Subject to this section, where, in relation to an assessment made on any person for any year of assessment, the Comptroller is satisfied upon a claim made within six years after the end of that year of assessment that there is a mistake in the assessment apparent from the face of the return, the assessment or other records, as a result of which—

- (a) the tax charged is greater than the amount which should have been charged;
- (b) any assessed loss is less than the amount at which it should have been assessed; or
- (c) a refund has been made which is less than the amount which should have been refunded,

the Comptroller shall make a reduced assessment accordingly.

(2) Where, on the determination of an appeal made under Part XI, the Appeal Commissioners or any subsequent appellate tribunal order the reduction of an assessment, the Comptroller shall reduce the assessment accordingly, without limit as to time.

(3) Where, for any year of assessment a person who has furnished a return of income for that year and has been assessed under section 78 or 79 notifies the Comptroller in writing within six years after the end of the basis period for that year of assessment that by reason of some error or mistake in such return the assessment was excessive, the Comptroller after taking into account all relevant circumstances and subject to subsection (4) may reduce the assessment to provide such relief as appears to him or her to be fair and reasonable.

(4) No relief shall be given under subsection (3) if the assessment was properly made in accordance with the practice generally prevailing at the time the return of income was made.

81. Determination of assessed loss

(1) Where in relation to any year of assessment the deductions allowable to any person under Division II of Part V exceed the income against which such deductions may be allowed resulting in an assessed loss in accordance with section 39, the Comptroller shall make a determination of the assessed loss.

(2) The determination of the assessed loss of any person under subsection (1) shall constitute the making of an assessment by the Comptroller and shall be notified in writing to the person assessed and the provisions of this Act other than sections 83 and 84 shall apply as if such determination were the determination of the amount of the assessable income of such person for such year of assessment.

82. Time limits for assessments

(1) Subject to this section, an assessment may be made in relation to any person at any time prior to the expiry of six years after the end of the year of assessment to which it relates.

(2) Where a return of income in respect of any year of assessment is furnished within ninety days following the end of the basis period of assessment, an assessment may be made at any time prior to the expiry of six years after the end of the year during which it is furnished.

(3) Where no return of income is furnished in relation to a year of assessment, an assessment may be made at any time.

(4) Where any fraud or wilful default has been committed in connection with tax for any year of assessment by or on behalf of any person an assessment in relation to such year may be made at any time.

(5) Where a person is deceased, notwithstanding the provisions of subsections (1), (2), (3) and (4), no assessment shall be made at any time after the expiry of three years from the end of the year in which such person died.

83. Notice of assessment

(1) Subject to subsection (2), a notice of assessment in respect of any person chargeable with tax or entitled to a refund of tax shall be made and issued to such person in such form as may be approved by the Comptroller.

(2) The Comptroller may not issue a notice of assessment to any person where—

(a) no liability to tax arises and the tax to be repaid does not exceed twenty-five dollars;

(b) liability to tax arises but the tax payable does not exceed twenty-five dollars,

unless the person makes a request for the issue of a notice of assessment or the Comptroller is of the opinion that such notice should be issued.

(3) In this section, “notice of assessment” includes a notice in respect of an additional assessment and a reduced assessment.

84. Record of assessments

The Comptroller shall maintain, in such manner as he or she thinks fit, a record of all assessments made in respect of each year of assessment.

85. Finality of assessment

(1) Subject to section 80, where, in relation to an assessment—

(a) no valid notice of objection has been given under section 86;

(b) subsequent to the determination of an objection, no valid notice of appeal has been given under section 89; or

(c) an appeal has been determined and there is no right of further appeal,

such assessment shall be final and conclusive.

(2) Nothing in subsection (1) shall prevent the Comptroller from making an additional assessment within such time limits as are permitted by section 82 for any year of assessment which does not involve re-opening any matter which has been determined on appeal for such year.

(3) Notwithstanding subsections (1) and (2) where any fraud or wilful default has been committed by or on behalf of any person in relation to his or her liability to tax for any year of assessment, the Comptroller may make an additional assessment for such year even though it may involve re-opening a specific matter which has been determined on appeal, but only in respect of a matter upon which no finding of fact was in dispute.

PART XI

Objections and Appeals

86. Objection to assessment

(1) Any person who is aggrieved by an assessment or a determination by the Comptroller made on him or her may, by notice in writing to the Comptroller within thirty days after the date of the notice of assessment or determination, or within such further time as the Comptroller may for good cause allow, object to the assessment or determination.

(2) Where the assessment is—

- (a) an additional assessment; or
- (b) a reduced assessment which in part imposes a fresh liability,

the person assessed shall have no further right of objection than he or she would have had if that assessment had not been made except to the extent to which that assessment has imposed a fresh liability on him or her.

(3) An objection shall specify particulars of the grounds on which it is made.

(4) Where the objection is against an assessment which has been made in the absence of a return, the notice of objection shall be sent together with a return duly made.

(5) Every objection which does not conform to the provisions of subsection (1), (3) or (4) shall not be valid.

(6) In this section, “aggrieved by an assessment or a determination” means aggrieved by—

- (a) the inclusion in an assessment of an amount as part of the assessable income;
- (b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the assessable income;
- (c) the determination by the Comptroller of the amount of an assessed loss;
- (d) the amount of tax set off under section 52, 62 or 93; or
- (e) *Repealed*
- (f) the determination by the Comptroller of any matter affecting a person’s liability to tax in circumstances where such determination has not involved the making of an assessment.

87. Decision by Comptroller on objection

(1) The Comptroller shall consider any valid objection made under section 86 and may either disallow it or allow it either wholly or in part and shall, by notice in writing, inform the objector of his or her decision.

(2) If a decision of the Comptroller in determining an objection requires the reduction of, or an increase in, an assessment, the Comptroller shall issue a notice of reduced or additional assessment to the person assessed, together with the notice of his or her decision or as soon as is practicable thereafter.

88. Appeal Commissioners

(1) For the purposes of this Part, there shall be a tribunal of Appeal Commissioners established and regulated in accordance with this section.

(2) The Appeal Commissioners shall comprise such persons as may be appointed by the Governor-General from time to time.

(3) The Governor-General shall appoint one of the Commissioners to be, and any meeting of the Appeal Commissioners shall comprise the Chairperson and two other members:

Provided that, in the absence of the Chairperson, or where for any reason he or she is unable to act, three other members shall constitute a quorum for a meeting and such members shall appoint from themselves one member to act as Chairperson.

(4) Every decision of the Appeal Commissioners shall be given under the signature of the Chairperson presiding at the meeting.

(5) The Permanent Secretary, (Finance) shall appoint a Secretary to the Appeal Commissioners and any notice or correspondence, other than decisions of the Commissioners, may be issued and signed by the Secretary.

(6) At any hearing by the Appeal Commissioners, in the event of a division of opinion, the decision of the majority shall prevail.

(7) The Appeal Commissioners shall have—

- (a) power to summon to attend at the hearing of an appeal any person who in its opinion is or might be able to give evidence respecting the appeal;
- (b) power, where any person is so summoned, to examine him or her on oath or otherwise;
- (c) power to require any person to produce any books or documents which are in his or her custody or under his or her control and which the Appeal Commissioners may consider necessary for the purpose of the appeal;
- (d) all the powers of a subordinate court with regard to the enforcement of attendance of witnesses, hearing evidence on oath and punishment for misconduct before the court;
- (e) power to admit or reject any evidence adduced, whether or not admissible under the provisions of any written law for the time being in force relating to the admissibility of evidence;
- (f) power to postpone or adjourn the hearing of an appeal where the Appeal Commissioners are satisfied that, for any reasonable cause, either party to the appeal has been prevented from attending on the date fixed for such hearing; and
- (g) power to determine the procedure to be followed in an appeal.

89. Appeal from decision by Comptroller

(1) Any person, (hereinafter referred to as “the appellant”), who is aggrieved by a decision of the Comptroller may, by notice of appeal, appeal therefrom to the Appeal Commissioners.

(2) A notice of appeal, a copy of which shall be lodged with the Comptroller, shall be made in writing and shall be lodged with the Secretary to the Appeal Commissioners within thirty days of the date of service of—

- (a) the Comptroller’s decision on the objection; or
- (b) the Comptroller’s determination in relation to any other matter from which an appeal may be made,

or within such further time as the Appeal Commissioners may for good cause allow.

(3) In this section, “aggrieved by a decision of the Comptroller” means aggrieved by a decision of the Comptroller upon an objection against—

- (a) the inclusion in an assessment of an amount as part of the assessable income;
- (b) the disallowance in an assessment of an amount claimed as a deduction in ascertaining the assessable income;
- (c) the determination by the Comptroller of the amount of an assessed loss;
- (d) the amount of tax set off under section 52, 53, 62 or 93;
- (e) *Repealed*
- (f) the disallowance by the Comptroller of a claim for relief under section 80;
- (g) any determination by the Comptroller of any matter affecting a person's liability to tax in circumstances not involving the making of an assessment.

90. Hearing by Appeal Commissioners

(1) Upon every hearing of an appeal, the Appeal Commissioners may confirm, increase or order the reduction of any assessment or make such other order as they think fit.

(2) Where the appellant enters into an agreement in writing with the Comptroller, before the appeal is determined by the Appeal Commissioners, to disallow the appeal or allow it either wholly or in part or to increase any assessment, the appeal shall be deemed to be determined in accordance with the agreement.

(3) On any appeal to which this section relates both the appellant and the Comptroller shall bear their own costs except where the Appeal Commissioners otherwise direct.

(4) On any appeal the burden of proof shall lie upon the appellant.

(5) At least fifteen days before the date fixed for the hearing of an appeal, the Secretary to the Appeal Commissioners shall, by notice in writing, advise the appellant and the Comptroller of the date on, and the place at which the appeal has been set down for hearing.

(6) At every hearing by the Appeal Commissioners the appellant and the Comptroller shall be entitled to appear in person or by a representative.

(7) The hearing of an appeal by the Appeal Commissioners shall not be public unless the Chairperson of the Appeal Commissioners so directs on application by the appellant and in any case where such a direction is made the obligation as to secrecy imposed by section 6 shall cease to apply.

91. Right of further appeal

(1) The Comptroller or the appellant may appeal to the High Court from any decision of the Appeal Commissioners which involves a question of law, including a question of mixed fact and law.

(2) The Comptroller or the appellant may appeal to the Court of Appeal from any decision of the High Court (being a decision of the High Court on an appeal from the Appeal Commissioners) which involves a question of law, including a question of mixed fact and law.

(3) On any further appeal to which this section relates the High Court or the Court of Appeal, as the case may be—

- (a) may confirm, increase or order the reduction of any assessment;
- (b) may make such other order as it thinks fit;
- (c) may make such order as to costs as it thinks fit.

92. Payment of tax not suspended by objection or appeal

The obligation to pay—

- (a) any tax chargeable under an assessment;
- (b) any penalty imposed in an assessment for failure to lodge a return or for failure to lodge a correct return; or
- (c) any interest imposed for late payment of any tax,

shall not be suspended by reason of any notice of objection or appeal having been given against an assessment, and the tax, penalty or interest charged may be recovered as if no such objection or appeal had been given, or the Comptroller may in his or her discretion and subject to such terms and conditions as he or she thinks fit to impose, suspend recovery ending determination of the objection or appeal.

PART XII

Payment, Recovery and Refund of Tax

93. Advance payment of tax

(1) This section shall apply to—

- (a) every resident company;
- (b) every other resident person, except an individual whose only source of income is from employment;
- (c) every non-resident person carrying on business in Grenada, except a non-resident person providing independent personal services in respect of which there is a liability to withholding tax.

(2) Subject to this section, every person to whom his or her section applies shall in respect of his or her liability to tax for any year of assessment make payment towards such tax in the manner provided by this section.

(3) Subject to subsection (4), every person to whom this section applies shall pay to the Comptroller on or before 30 April, 1996, and thereafter at the end of each calendar month in each year of assessment an instalment equal to one twelfth of the tax as ascertained by him or her on his or her estimated chargeable income for that year of assessment and the final instalment of any balance of tax upon filing his or her annual tax return within ninety days after the end of the basis period determined in accordance with section 11(2).

(4) (a) A person carrying on business with a basis period ending on a date other than 31 December as provided for in section 11, shall pay instalment tax for each year of assessment on or before the end of the first month in which the business commenced and thereafter on or before the end of each calendar month of the basis period.

- (b) Where liability of tax arises in relation to income other than from business unless otherwise provided in this Act shall be paid in accordance with the Third Schedule.

(5) For the purposes of subsections (3) and (4), the estimated chargeable income of any person for a year of assessment shall be taken to be the chargeable income for the preceding year of assessment.

(6) Where it is shown to the satisfaction of the Comptroller that the chargeable income of any person for the year of assessment is likely to be less than the chargeable income for the preceding year of assessment, the Comptroller may revise the estimated chargeable income of that person and the amount of tax chargeable thereon and payment shall be made accordingly.

(7) Where the chargeable income of any person for a year of assessment is likely to exceed or exceeds the chargeable income for the preceding year of assessment, the monthly instalments shall be paid by that person on an estimated chargeable income that includes the excess.

(8) Where a person to whom subsection (7) applies has paid monthly instalments for a year of assessment which include less than eighty per cent of the tax liability on the excess, the difference between eighty per cent of the tax liability on the excess and the tax paid on the excess shall also be subject to interest payable under section 95.

(9) Where an individual is in receipt in any year of assessment of remuneration within its meaning in the Fourth Schedule, from which tax has been deducted under section 54, the provisions of subsection (3) shall not apply to that individual in respect of the remuneration received by him or her but the instalments of tax payable under subsection (3) or (4) in respect of his or her income other than remuneration shall be at the appropriate rate as if the remuneration formed part of his or her chargeable income for the year of assessment.

(10) Where tax has been deducted under section 54 from remuneration received by an individual in a year of assessment and the remuneration from which tax has been deducted is not less than three quarters of his or her estimated chargeable income for that year of assessment, he or she shall on or before 31st December in that year of assessment pay to the Comptroller the remainder of the tax as ascertained by him or her.

(11) Any instalment of tax paid pursuant to this section in respect of a year of assessment shall be set off against the tax assessed under section 78 for that year of assessment.

94. When tax is due and payable

(1) Subject to this Part, where the Comptroller makes an assessment in pursuance of section 78 or an additional assessment in pursuance of section 79, the amount of tax payable under the assessment or addition tax payable under the additional assessment shall be due payable within thirty days of date of service of the notice of assessment.

(2) On application by the person assessed, the Comptroller may grant such extension of time for payment or permit payments to be made by such instalments and within such time as he or she considers the circumstances warrant and in that case the tax shall be due and payable accordingly, but nothing in this subsection shall be construed to extend the due date specified in subsection (1) in respect of any interest payable under section 95.

(3) Where, under subsection (2), any tax permitted to be paid by instalments and there is default in payment of any instalment, the whole of the balance of tax outstanding shall become due and payable forthwith.

95. Interest on unpaid tax

(1) Any tax, being the whole or part of an instalment of tax due and payable by any person under section 93, not paid by the date upon which such instalment becomes due and payable shall bear interest at the rate of one and one-half per cent per month or part thereof for the period during which it remains unpaid.

(2) Any tax, assessed on any person under section 78 or 79 and not paid by the due date shall bear interest at the rate of one and one-half per cent per month or part thereof for the period during which it remains unpaid.

96. When tax deducted from remuneration or certain other payments is due and payable

Any tax deducted or deductible—

- (a) from the payment of any income to a non-resident to which section 50 applies; or
- (b) *Repealed*
- (c) *Repealed*
- (d) *Repealed*
- (e) from the remuneration paid to an employee pursuant to section 54,

shall be due and payable within seven days after the end of the month during which that tax was deductible.

97. Interest on unpaid tax deductions

(1) Any tax deducted or deductible under section 46, 48, 50, 51, 51A, 52, 53 or 54 and not paid within the time specified shall bear interest at the rate of two per cent per month or part thereof for the period during which it remains unpaid.

(2) Any interest imposed on any person under subsection (1) shall be a debt due by that person and shall not be recoverable by him or her from the person in respect of whom the tax was deducted or should have been deducted.

98. Recovery of tax by court action

(1) Tax shall, when it becomes due and payable, be a debt due to the Government and payable to the Comptroller.

(2) Any tax unpaid may be sued for and recovered by the Comptroller in any court of competent jurisdiction.

(3) In any proceedings for the recovery of tax it shall not be competent for the defendant to enter a defence that—

- (a) the chargeable income is incorrect;
- (b) the tax charged is excessive; or
- (c) the assessment is the subject of objection or appeal.

(4) In this section, tax includes—

- (a) tax payable under sections 93 and 94; and
- (b) tax deducted or deductible under section 46, 48, 50, 51, 51A, 52, 53 or 54.

99. Recovery of tax by distraint

(1) Where any person fails to pay any tax when it becomes due and payable, whether—

- (a) under an assessment made on him or her; or
- (b) which he or she was required to deduct from payments made to any other person,

the Comptroller may file with the bailiff a warrant, certified by the Comptroller as correct, of the tax due and payable and unpaid.

(2) A warrant filed under subsection (1) shall be treated by the bailiff as having the same effect as a civil judgement given by a court of competent jurisdiction in favour of the Comptroller for a debt of the amount specified in the warrant, and the bailiff shall proceed to levy on the goods of the person named in the warrant to such extent as is necessary for the recovery of the unpaid tax and to meet any proper charges of the bailiff.

100. Recovery of monies from persons leaving Grenada

(1) Where the Comptroller has reason to believe that any person may leave Grenada owing monies or might upon assessment, owe monies under this Act, the Comptroller may, by notice in writing served on that person, require that he or she pay the amount owing or give security to the satisfaction of the Comptroller for the payment thereof, or to secure the amount which might be owing, as the case may be, within the time specified in the notice.

(2) If any person fails to pay any money owing or give satisfactory security as required under subsection (1), no exit certificate shall be issued to such person under the subsidiary legislation for the time being in force in relation to income tax exit clearances.

101. Recovery of tax from assets of certain dispositions

(1) So much of any tax due and payable by a disponor as is attributable to income accrued under a disposition but charged to tax in the name of the disponor under section 14, 15(5) or 16 may be recovered from the assets of the disposition.

(2) For the purposes of subsection (1), the tax attributable to income deemed to have accrued to a disponor under section 14, 15(5) or 16 means the amount by which the tax charged under section 56 has been increased by the inclusion of such income in the assessable income of the disponor.

(3) Where income is deemed to have accrued to the disponor under two or more dispositions the amount ascertained under subsection (2) shall be apportioned between those dispositions in such proportions as the chargeable income of each such disposition bears to the total chargeable income of all such dispositions.

102. Recovery of tax from representative taxpayer

(1) Where any individual dies, then in respect of any tax payable under an assessment—

- (a) made upon him or her prior to and remaining unpaid at his or her death;
- (b) made upon his or her executor under section 17 in respect of income accrued up to his or her death; or
- (c) made upon his or her executor under section 18 in respect of income accrued after death to the estate of the deceased person,

the amount of tax unpaid by that person in his or her lifetime or payable under an assessment made on his or her executor shall be a debt due and payable out of the estate of the deceased person.

(2) Where a company is being wound up, then in respect of any tax payable under an assessment—

- (a) made upon the company, prior to and remaining unpaid at the commencement of the liquidation;
- (b) made upon the liquidator in respect of income accrued prior to commencement of the liquidation; or
- (c) made upon the liquidator in respect of income accrued during the winding-up of the company,

the amount of tax unpaid by the company or payable by the liquidator shall be a debt due and payable out of the assets of the company.

(3) Where any person is chargeable to tax under section 15(1) as a trustee of a trust to the income of which there is no beneficiary immediately entitled, then any tax payable by the trustee shall be due and payable out of the assets of the trust.

(4) Where any person is chargeable to tax under section 19 or 20 as trustee for an insolvent or other legally disabled person, any tax payable by the trustee shall be due and payable out of the assets of that person.

(5) Where any person is chargeable to tax under section 22 as agent for a non-resident, any tax payable shall be due and payable out of the assets in Grenada of the non-resident.

103. Right of representative taxpayer to indemnity

Every person, who as a representative taxpayer pays any tax, shall be entitled to recover the amount paid from the person on whose behalf it was paid or to retain out of any monies that may be in his or her possession, or may come to him or her, in his or her representative capacity, an amount equal to the amount paid.

104. Personal liability of representative taxpayer

(1) Every representative taxpayer shall be personally liable for any tax payable by him or her in his or her representative capacity if, while it remains unpaid—

- (a) he or she alienates, charges or disposes of any income in respect of which the tax is charged; or
- (b) he or she disposes of or parts with any assets or money which is in his or her possession or comes to him or her after the date on which the tax is due and payable,

if the tax could legally have been paid out of such income, assets or money.

(2) Every trustee, liquidator and executor, shall be personally liable for the payment of any tax if, before distributing any assets under his or her control to the persons entitled thereto, he or she fails to obtain from the Comptroller a certificate showing that all tax which may be recovered from such assets has been paid.

105. Recovery of tax from person holding money for another person

(1) For the purposes of recovery of any tax due and payable by any person, the Comptroller may, by notice in writing, declare any other person—

- (a) from whom any money is due or may become due to the first mentioned person;
- (b) who holds or may subsequently hold money for or on account of the first mentioned person;
- (c) who holds money on account of some other person for payment to the first mentioned person; or
- (d) who has authority from some other person to pay money to the first mentioned person,

to be the agent of that person and to pay to the Comptroller within fifteen days of the date of service of the notice, or if on such date no money is due or held to which this subsection applies, within fifteen days of the date on which money becomes due or is held in any of the circumstances referred to in this subsection, the amount specified in the notice or, if the money due or held is less than the amount specified, the whole amount of the money due or held.

(2) The payment of any money to the Comptroller by any person under subsection (1) shall to the extent of such payment constitute the discharge of the original liability of that person to the person from whom tax was due and payable to the Comptroller.

(3) Where any person, declared to be an agent under subsection (1), fails to make any payment within the time specified in a notice under that subsection, the provisions of this

Act shall apply as if such amount were tax due and payable by the person declared to be an agent on the date by which he or she was required to make such payment to the Comptroller.

106. Deductions from certain payments or remittance held in trust for Comptroller

Notwithstanding anything contained in any other enactment, all amounts deducted or withheld by any person pursuant to the provisions of section 46, 48, 50, 51, 51A, 52, 53 or 54 shall be deemed to be held in trust by that person for the Comptroller and shall not be subject to attachment in respect of any debt or liability of that person and in the event of any liquidation, assignment or bankruptcy, the amounts shall form no part of the estate in liquidation, assignment or bankruptcy but shall be paid in full to the Comptroller before any distribution of the property is made.

107. Priority of tax debt upon bankruptcy or liquidation

Notwithstanding anything contained in any other enactment—

- (a) the trustee in bankruptcy of an individual; or
- (b) the liquidator of a company which is being wound up,

shall apply the assets of the bankrupt individual or the company, as the case may be, in payment of tax due under this Act (whether assessed before or after the date of bankruptcy or commencement of winding-up) as a privileged debt in priority over all debts of that individual or company, except law costs and any wages which constitute a privilege debt under the Protection of Wages Act, Chapter 260.

107A. Accountant-General may apply payment to tax owed

When the Accountant-General is about to make a payment to any person, other than a payment in respect of wages or salary, the Accountant-General may apply the whole or part of the payment in satisfaction in whole or in part to any amount owing under this Act by that person and shall notify that person accordingly.

108. Refund of tax overpaid

(1) Where the Comptroller is satisfied that any person has paid tax for any year of assessment by deduction or otherwise in excess of the amount finally determined to be payable under this Act for that year of assessment, that person shall, subject to section 80, be entitled to have the amount of the excess refunded.

(2) Notwithstanding subsection (1), where any amount is due and payable and unpaid in respect of any other year of assessment or any other tax or licence fee payable to the Government, the Comptroller may, instead of refunding the amount of the excess, apply that amount in payment of such other unpaid tax or licence fee and shall notify the person accordingly.

(3) In applying any amount of a refund under this Act, any payment made in respect of taxes owing under this Act or any amount refundable under any other act in satisfaction in whole or in part of any debt owing by any person under this Act, the Comptroller shall apply such amount firstly to any interest, then to any penalty and finally to any tax owed by that person.

109. Remission of tax

(1) The Minister may remit wholly or in part any tax payable by any person where he or she is satisfied that it is just and equitable to do so.

(2) Any decision made under subsection (1) shall be final and not subject to appeal.

(3) The Comptroller may remit any amount of tax unpaid by any person in respect of any year of assessment, where he or she is satisfied—

- (a) that such tax is irrecoverable by operation of law; or
- (b) that the cost of collection of such tax, not exceeding one hundred dollars in relation to any year of assessment, would exceed the amount outstanding.

(4) In this section, “tax” includes amounts of interest or penalty.

(5) The Comptroller may waive the amount of interest charged on all or part of a debt owing under this Act where he or she considers it necessary to facilitate the repayment of the debt, but in no case shall the aggregate of all amounts of such interest waived in a year in respect of a taxpayer exceed one thousand dollars.

PART XIII

Offences

DIVISION I

Civil Penalties

110. Penalties: general

(1) The penalties provided for by this Division of this Part shall be in addition to any right to institute criminal proceedings against any person for any offence under this Act, and any fine payable on conviction for an offence shall be in addition to the penalties provided herein.

(2) The penalties provided for by this Division of this Part may be imposed by the Comptroller.

111. Penalties: failure to furnish return of income

Where any person who is required to furnish a return of income for any year of assessment fails to do so within the prescribed time or any extended time allowed under section 77, he or she is liable to a penalty not exceeding ten per cent of the amount of tax for that year of assessment remaining unpaid at the time the return was due or one hundred dollars, whichever is greater.

112. Penalties: failure to furnish correct return of income

(1) Any person who fails to furnish a correct return of income for any year of assessment by reason of—

- (a) his or her failure to disclose any assessable income accrued to him or her from any source;
- (b) the deduction or set off by him or her of any amount which is not allowable as a deduction or set off;
- (c) the claim by him or her of an expenditure or loss of an amount which was not expended or lost; or
- (d) his or her failure to disclose any fact, the disclosure of which would result in an increase in his or her liability to tax,

is liable to a penalty in accordance with subsection (2) or (3).

(2) Where the incorrectness of the return of income or the information was attributable to—

- (a) neglect or carelessness, he or she is liable to a penalty not exceeding the amount of tax which would have been lost if he or she had been assessed on the basis of the incorrect return or information furnished by him or her; or
- (b) fraud or wilful default, he or she is liable to a penalty not exceeding three times the amount of tax which would have been lost if he or she had been assessed on the basis of the incorrect return or information furnished by him or her.

(3) If, for any year of assessment, determination of the chargeable income of any person results in an assessed loss, and the amount of such loss is less than it would have been if it had been calculated on the basis of the return of income or information furnished by him or her by reason of any of the circumstances specified in subsection (1) and such incorrectness of the return or information was due to neglect, carelessness, fraud or wilful default he or she is liable to a penalty not exceeding ten per cent of the difference between those amounts.

113. Penalties: failure to comply with notice to give information, produce documents or give evidence to Comptroller

Any person who fails within the specified time to comply with a notice issued under section 68(1) requiring him or her to—

- (a) furnish returns or information under paragraph (a);
- (b) produce books of account or documents under paragraph (b); or
- (c) attend the Comptroller for examination under paragraph (c),

of that section, whether in relation to himself or herself or any other person, is liable to a penalty not exceeding one thousand dollars.

114. Notice to be given of intention to impose penalty

Where any penalty is contemplated under section 113, the Comptroller shall, prior to the imposition thereof, notify the person concerned—

- (a) as to the nature of the breach of the Act which has occurred; and
- (b) as to the amount of penalty which it is proposed to impose,

and shall afford that person the opportunity of being heard thereon within such period as may be specified in the notice.

DIVISION II

Criminal Proceedings

115. Sanction for prosecution

(1) Subject to the powers of the Director of Public Prosecutions under the Constitution no criminal proceedings in respect of any offence under this Act shall be commenced except with the sanction of the Comptroller.

(2) Criminal proceedings under this Act shall be commenced in the name of the Comptroller.

116. Offences: breach of secrecy

Any person appointed under or employed in carrying out the provisions of this Act who, in contravention of the oath or declaration of secrecy made by him or her under section 6—

- (a) discloses to any unauthorised person any document, information or confidential instruction which has come into his or her possession or to his or her knowledge in the course of his or her duties; or
- (b) permits any unauthorised person to have access to any records in the possession or custody of the Comptroller,

is guilty of an offence and liable, on summary conviction, to a fine of two thousand dollars or to imprisonment for one year, or both.

117. Offences: failure to comply with requirements of the Act

(1) Any person who—

- (a) fails or neglects to furnish to the Comptroller any return or document as and when required under this Act;
- (b) fails to comply with the requirements of any notice in writing served on him or her under this Act;
- (c) refuses or neglects to answer truly and fully any question put to him or her or to supply any information required from him or her in relation to his or her assessable income or the assessable income of any other person;
- (d) fails to keep a proper record of his or her transactions or to preserve any books of account or documents as required under section 71;
- (e) fails to disclose in any return of income made by him or her any assessable income accrued to him or her or any material facts which should have been disclosed;
- (f) signs any return or document rendered to the Comptroller without reasonable grounds for believing that return or document or any part thereof to be correct; or
- (g) obstructs or hinders any person appointed or employed under this Act in the discharge of his or her duties,

is guilty of an offence and liable, on summary conviction, to a fine of two thousand dollars and to imprisonment for one year.

(2) Every person who, having been convicted under subsection (1) of failing to do anything required to be done by him or her under this Act, fails within any further period specified by the Comptroller in a notice served on him or her, to comply with the requirements of that notice is guilty of a further offence and liable for each day during which the offence continues to a fine of fifty dollars and to imprisonment for one month.

118. Offences: intent to evade liability to tax

(1) Any person who wilfully and with intent to evade assessment or liability to tax—

- (a) makes, causes or allows to be made any incorrect statement in any return lodged under this Act;
- (b) signs any document or any return lodged under this Act having reason to believe the contents of such document or return or any part thereof to be incorrect;
- (c) gives any incorrect answer, verbally or in writing, to any request for information made by the Comptroller;

- (d) prepares or maintains any incorrect books of account or other records or falsifies any books of account or other records;
- (e) authorises the preparation or maintenance of any incorrect books of account or other records; or
- (f) makes use of or authorises the use of any fraud whatever,

is guilty of an offence and liable, on summary conviction, to a fine of four thousand dollars and to imprisonment for two years.

(2) In any proceedings under this section, if it is proved that any incorrect statement or entry is wilfully made in any return, document, answer, books of account or other records by any person, he or she shall be presumed, until the contrary is proved, to have made, caused or allowed to be made that incorrect statement or entry with intent to evade assessment or liability to tax.

119. Offences: deduction of tax from certain payments

Any person who—

- (a) fails to deduct any withholding tax from a payment—
 - (i) to a non-resident to which section 46 applies or section 50, 51 or 51A and the Third Schedule apply, or
 - (ii) to any person to which section 48, 52 or 53 applies; or
- (b) within the prescribed time fails to pay to the Comptroller any amount deducted in accordance with those provisions,

is guilty of an offence and liable, on summary conviction, to a fine of two thousand dollars and to imprisonment for one year.

120. Offences: by employers or employees

Any person who being an employer—

- (a) within the prescribed time, fails to register as an employer, or to notify any change of address or to notify that he or she has ceased to be an employer;
- (b) within the prescribed time, fails to deduct any amount of tax from remuneration paid to an employee;
- (c) within the prescribed time, fails to pay to the Comptroller any amount of tax deducted from remuneration paid to an employee;
- (d) fails to comply with any direction issued by the Comptroller under the Fourth Schedule;
- (e) fails to maintain a record of remuneration paid to his or her employees and tax deducted therefrom;
- (f) within the prescribed time, fails to deliver to any employee a certificate of tax deducted from remuneration; or
- (g) within the prescribed time, fails to furnish to the Comptroller an annual return of tax deductions and remittances, and

is guilty of an offence and liable, on summary conviction, to a fine of two thousand dollars and to imprisonment for one year.

121. Offences: evasion of tax in relation to deduction of tax by employers

- (1) Any person who wilfully with intent to evade assessment or liability to tax—

- (a) furnishes to his or her employer or to the Comptroller an incorrect declaration of personal particulars or other information in relation to any matter affecting the amount of tax to be deducted from his or her remuneration;
- (b) issues, uses or causes to be issued or used any certificate of remuneration and tax deducted which is incorrect;
- (c) alters any certificate of remuneration and tax deducted issued by any other person, pretends to be the employee named in any such certificate or in any other way to his or her own advantage or benefit obtains credit with respect to or payment of the whole or any part of any amount of tax deducted from remuneration received by any other person; or
- (d) not being an employer and without being authorised by any person who is an employer, issues or causes to be issued any document purporting to be a certificate of remuneration and tax deducted,

is guilty of an offence and liable, on summary conviction, to a fine of four thousand dollars and to imprisonment for two years.

(2) In any proceedings under this section, if it is proved that any incorrect statement or entry is wilfully made in any return, document, answer, books of account or other records by any person, he or she shall be presumed, until the contrary is proved, to have made, caused or allowed to be made that incorrect statement or entry with intent to evade assessment or liability to tax.

(3) In this section, the words “employer”, “remuneration” and “employee” shall have the meaning given to them in the Fourth Schedule.

122. Offences: aiding or abetting

(1) Any person who—

- (a) wilfully makes or furnishes on behalf of another person; or
- (b) aids or abets another person to make or deliver,

an incorrect return, document, statement or any incorrect information relating to any matter affecting the tax liability of that other person is guilty of an offence and liable, on summary conviction, to a fine of two thousand dollars and to imprisonment for one year.

(2) Any person who wilfully and with intent to assist any other person to evade assessment to liability to tax does any of the matters referred to in section 118 or 121, is guilty of an offence and liable, on summary conviction, to a fine of four thousand dollars and to imprisonment for two years.

(3) In any proceedings under subsection (2), if it is proved that any incorrect statement or entry is wilfully made in any return, document, answer, books of account or other records by such person, he or she shall be presumed, until the contrary is proved, to have made such incorrect statement or entry with intent to assist such other person to evade assessment or liability to tax.

123. Mitigation of penalties and compounding of offences

(1) Where any person has committed a breach of the provisions of this Act for which a penalty is provided under Division I of this Part, then in relation to such breach, the Comptroller may mitigate any penalty either wholly or in part.

(2) Subject to the powers of the Director of Public Prosecutions under the Constitution, where any person had committed an offence against this Act for which criminal proceedings may be taken under Division II of this Part, then in relation to such offence, the Comptroller may, at any time prior to the commencement of the hearing by any court of the proceedings, compound the offence and order the person to pay such sum

of money as the Comptroller may think fit but not exceeding the maximum amount specified in Division II for such offence.

(3) The Comptroller shall not exercise his or her power to compound under subsection (2) unless the person who has committed the offence requests the Comptroller in writing to so deal with the offence.

(4) Where the Comptroller compounds any offence under this section and makes an order accordingly—

- (a) the order shall be made in writing and there shall be attached to it the request made under subsection (3);
- (b) the order shall specify the offence committed, the amount ordered to be paid and the date on which payment is to be made;
- (c) a copy of the order shall be given to the Director of Public Prosecutions and to the person who committed the offence, and that person shall not be liable to any criminal proceedings in respect of the offence;
- (d) the order shall be final and not subject to any appeal;
- (e) the amount ordered to be paid shall be recoverable as if it were tax due and payable.

124. Time limits for proceedings to be taken

Proceedings under this Division may be commenced—

- (a) where the offence alleged has involved the doing of any act, within three years after the discovery of the act;
- (b) where the offence alleged has involved the failure to do any act, within three years after the Comptroller has become aware of such failure;
- (c) where the offence alleged has involved the non-disclosure or incorrect disclosure by any person of any income or information relating to that person's liability to tax for a year of assessment, within three years after his or her correct liability to tax has become final for that year of assessment.

PART XIV

Miscellaneous

125. Forms of notices and returns

(1) Subject to this Act, the Comptroller may from time to time approve the form of any notice, return of income or other return required for the purposes of this Act, and where any form has been so approved such form of notice or return shall be used for such purposes.

(2) Any notice given by the Comptroller under this Act may be signed by the Comptroller or any officer authorised by him or her in that behalf and any notice purporting to be signed on behalf of the Comptroller shall, unless the contrary is proved, be presumed to have been signed by an officer so authorised.

(3) Every form, notice or other document issued, served or given by the Comptroller under this Act shall be sufficiently authenticated if the name or title of the Comptroller or the name or title of the officer authorised in that behalf, is printed, stamped or written thereon.

126. Service of notices or documents

(1) Where, under this Act, any notice or other document is required or authorised to be served on or given to any person by the Comptroller, such notice or other document shall be sufficiently served—

- (a) in case of a person other than a company or a partnership if—
 - (i) personally served on him or her,
 - (ii) left at his or her address for service of notices, or
 - (iii) sent by post to such address for service of notices;
- (b) in the case of a company if—
 - (i) personally served on the principal officer of the company,
 - (ii) left at or sent by post to the company's address appointed under section 73 for service of notices under this Act, or
 - (iii) where no address for service of notices has been appointed, left at or sent by post to any office or place of business of the company;
- (c) in the case of a partnership if—
 - (i) personally served on the precedent partner or agent of the partnership,
 - (ii) left at or sent by post to the partnership's address appointed under section 74 for service of notices under this Act, or
 - (iii) where no address for service of notices has been appointed, left at or sent by post to any office or place of business of the partnership;
- (d) in the case of a body of persons if left at or sent by post to the address for service of notices of that body.

(2) Where any notice is served on any person—

- (a) requiring the personal attendance of that person before the Comptroller, pursuant to section 68; or
- (b) appointing that person the agent of some other person for the payment of tax, pursuant to section 105,

the provisions of subsection (1) relating to service by post shall be construed as service by registered post.

(3) Any notice served by post in accordance with this section shall be deemed to have been served in the case of—

- (a) a person resident in Grenada, seven days; and
- (b) a non-resident person, thirty days,

after the date on which such notice was posted.

127. Change of address for service of notices

(1) Every person who has given an address for service of notices, whether in a return of income or otherwise and who subsequently changes such address shall, within one month after such change, notify the Comptroller in writing of his or her new address for service of notices.

(2) The address for service of notices last given to the Comptroller by any person shall, for all purposes of the Act, be his or her address for service of notices.

(3) Where no address for service of notices has been given, or where the Comptroller's records disclose that any person has changed his or her address and has failed to notify the Comptroller of such change, then the address of such person as

described in any record in the Comptroller's possession shall be a sufficient address for service of notices.

(4) In any criminal proceedings which may be taken for failure to furnish a return of income against any person liable to furnish such a return it shall be no defence by such person that he or she has not received from the Comptroller—

- (a) a form for the return of income; or
- (b) any notice calling upon him or her to furnish such return.

(5) In any criminal proceedings which may be taken against any person for failure to comply with any other request or notice by the Comptroller it shall be no defence by such person (who has failed to notify the Comptroller of a change of address) that he or she has used a different address in any correspondence with or application to the Comptroller after such change of address has occurred.

128. Amendment of Schedules, variation of rates of tax, etc., by order

(1) The Minister may by order published in the *Gazette*—

- (a) amend the Schedules;
- (b) increase, delete, reduce, vary or make changes to the rates of tax specified in the Fifth Schedule or in any other provision of the Act;
- (c) vary any sum or figure in any provision of the Act.

(2) An order under subsection (1) shall be subject to negative resolution.

129. Regulations

The Minister may make regulations for the better carrying out of the purposes of this Act and without prejudice to the generality of the foregoing, the regulations—

- (a) may prescribe all matters which are required or permitted to be prescribed;
- (b) may provide for the issue of exit certificates, fix a charge therefor and impose conditions for persons leaving Grenada;
- (c) may provide for the imposition by a court of a fine not exceeding five hundred dollars and a term of imprisonment not exceeding three months for any breach of the regulations; and
- (d) may provide for appeals to the Appeal Commissioners against decisions of the Comptroller made under the regulations.

130. Repeal and saving

(1) The Business Levy Act, No. 5 of 1987, shall cease to have effect from 1st January, 1995.

(2) Nothing in subsection (1) shall affect any liability or any obligation arising in respect of any levy period prior to 1st January, 1995, and in respect of such liability or obligation the Business Levy Act, No. 5 of 1987, shall continue in force.

(3) The National Debt Service Levy Act, No. 35 of 1990, shall cease to have effect from 1st October, 1994.

(4) Nothing in subsection (3) shall affect any liability or any obligation arising in respect of levy deductible from salary paid or payable prior to 1st October, 1994, and in respect of such liability or obligation the National Debt Service Levy Act, No. 35 of 1990, shall continue in force.

131. Transitional

(1) The person who holds office as the Comptroller of Inland Revenue on the date on which the Act is passed shall be deemed to have been appointed under and for the purposes of the Act on 1st January, 1994.

(2) Any amount of levy paid by any person in accordance with the provisions of the Business Levy Act, No. 5 of 1987, in respect of levy payable for the levy period 1st January, 1994, to 31st December, 1994, shall be set off against the tax charged under this Act on that person for the year of assessment commencing on 1st January, 1994.

(3) Any amount of levy deducted in accordance with the provisions of the National Debt Service Levy Act, No. 35 of 1990, from the salary payable to any person for any period after 1st January, 1994, and paid to the Comptroller shall be set off against the tax charged under this Act on that person for the year of assessment commencing on 1st January, 1994.

(4) After the set off has been effected in accordance with subsections (2) and (3)—

- (a) if an amount of tax charged under this Act remains unpaid, sections 98, 99 and 105 shall apply only to that amount;
- (b) if the amount set off is in excess over the tax charged under this Act on the person, the Comptroller shall refund the excess to that person or apply the excess towards such other unpaid levy under the Business Levy Act, 1987, or the National Debt Service Levy Act, 1990, as he or she thinks fit, and notify the person accordingly.

(5) Section 95 shall not apply to any instalment of tax payable under section 93 for the year of assessment commencing on 1st January, 1994, except for the final instalment of any balance of tax payable on or before 31st March, 1995.

(6) The Comptroller may remit wholly or in part any penalty or interest payable by any person in respect of the year of assessment commencing on 1st January, 1994, where he or she is satisfied that it is just and equitable to do so.

(7) Where any person carries on business with a basis period ending on a date other than 31st December, as provided for in section 11, the assessable income of that person from that business for the year of assessment commencing on 1st January, 1994, shall be ascertained by reference to the accounts of that business for the twelve months ending on such other date in that year of assessment.

132. Apportionment of taxes for the 1996 year of assessment

(1) Notwithstanding the provisions of section 7(1) of the Act requiring an assessment to be made on the chargeable income of a person for a period of twelve (12) months, in respect of the year 1996 tax shall be charged on the chargeable income for the period January 1 to December 31, 1996.

(2) In computing the tax liability for the year of assessment 1996 total amount of credits to be allowed shall not exceed one-quarter ($\frac{1}{4}$) of the amount to which an individual is entitled under the provisions of sections 58, 59, 60, 61 and 61A.

(3) In ascertaining the chargeable income of an individual for the year of assessment 1996 the income accrued for the period 1 April to December 31, 1996, there shall be allowed as a deduction under the provisions of section 42A amount not exceeding three-quarters ($\frac{3}{4}$) of the amount allowable under section 42A.

(4) Any refund of tax or payment of tax due for the year of assessment 1996 shall be computed at the end of the year.

133. Saving

Nothing in this Act contained shall take away or interfere with the right of the Government or the Comptroller of Inland Revenue to recover any tax which was recoverable before the coming into operation of this Act.

First Schedule

INCOME TAX ACT

Value of Trading Stock

[Section 30.]

ARRANGEMENT OF PARAGRAPHS

1. Value of trading stock to be included in return of income.
2. Value of trading stock at beginning of basis period.
3. Value of trading stock at end of basis period.
4. Value of trading stock on cessation of business.
5. Cost price of trading stock.
6. Deemed value of certain trading stock.
7. Adjustments to be made where trading stock incorrectly valued.

1. Value of trading stock to be included in return of income

Every person carrying on business shall include in his or her return of income for each year of assessment the value of all trading stock held and not disposed of (hereinafter referred to as “the value of trading stock held”) at the beginning and end of the basis period for that year of assessment.

2. Value of trading stock at beginning of basis period

The value of trading stock held by any person at the beginning of any basis period shall be deemed to be—

- (a) where he or she carried on the business on the last day of the previous basis period, the value of trading stock held on that date; or
- (b) where he or she commenced business during the basis period for a year of assessment, the cost price to him or her of any trading stock acquired prior to the commencement of the business.

3. Value of trading stock at end of basis period

The value of trading stock held by any person at the end of any basis period shall be deemed to be the cost price to him or her unless the Comptroller is satisfied that the estimated realisable value of such stock to such person is less than cost.

4. Value of trading stock on cessation of business

Where any person ceases to carry on business but does not dispose of his or her trading stock at the time of cessation, such trading stock shall be brought to account at its estimated realisable value to him or her.

5. Cost price of trading stock

For the purposes of this Schedule but subject to paragraph 6, the cost price of any trading stock shall be—

- (a) the cost incurred in acquiring such trading stock; and

- (b) any further costs incurred in getting such trading stock into its then existing condition or location.

6. Deemed value of certain trading stock

Where any trading stock has been acquired or disposed of by any person—

- (a) for consideration which cannot be valued;
(b) not in the ordinary course of business; or
(c) otherwise than by way of a transaction at arm's length,

the trading stock shall be deemed to have been acquired or disposed of at an amount equal to the price which, in the opinion of the Comptroller, was the current market price of the stock on the date of the acquisition or disposal.

7. Adjustments to be made where trading stock incorrectly valued

Where, for any year of assessment, the Comptroller is of the opinion that the value of trading stock held does not comply with the basis of valuation specified in this schedule, the value of trading stock held—

- (a) at the beginning of the basis period shall remain unaltered; and
(b) at the end of that basis period shall be adjusted to comply with paragraph 3.

Second Schedule

INCOME TAX ACT

Capital Allowances

[Sections 26, 30 and 37.]

ARRANGEMENT OF PARAGRAPHS

PART I

Buildings

1. Annual allowance.
2. Disposal of building.
3. Meaning of building and qualifying business.

PART II

Plant and Machinery

4. Annual allowance.
5. Disposal of plant and machinery.
6. Replacement property.

PART III

Agricultural Expenditure

7. Deduction allowed.
8. Certificate to be furnished.
9. Deduction allowable on disposal.
10. Apportionment of deduction.
11. Meaning of capital expenditure on agricultural works.

PART IV

Interpretation

12. Interpretation.
 13. Application of Schedule to hire purchase transactions.
 14. Apportionment of consideration where assets sold for consolidated amount.
 15. Disposal of assets in certain transactions: value to be adopted.
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PART I

Buildings

1. Annual allowance

(1) In ascertaining the assessable income of any person for any year of assessment from the carrying on by that person or by a lessee from that person of any qualifying business (within the meaning of paragraph 3) there shall be deducted in respect of any building acquired by that person and used for the purpose of such a business carried on by that person or by a lessee an annual allowance of an amount equal to two and one-half per cent of the cost of the building until the total of the allowances granted equals the lower of the cost or the adjusted cost of such building.

(2) Notional allowances shall be calculated in accordance with subparagraph (1) and deducted from cost in order to ascertain the adjusted cost of a building—

- (a) for each year the building was owned by the person carrying on any qualifying business or leased for such business, before the coming into operation of this Act; and
- (b) for each year the building was not used for the purposes of a qualifying business after the coming into operation of this Act.

2. Disposal of building

(1) Where allowances have been granted to any person for previous years of assessment, in respect of a building and that building is disposed of in the basis period for any year of assessment, a balancing allowance or a balancing charge shall be made as provided in this paragraph.

(2) Where the lower of the cost or the adjusted cost of a building exceeds the aggregate of—

- (a) the allowances granted for previous years of assessment; and
- (b) the disposal value,

the amount of such excess (referred to in this Act as “a balancing allowance”) shall be allowed as a deduction for the year of assessment in the basis period for which the building is disposed of.

(3) Where the disposal value of a building exceeds the difference between—

- (a) the lower of the cost or the adjusted cost of such building; and
- (b) the allowances granted for previous years of assessment,

the amount of such excess (referred to in this Act as a “balancing charge”) shall be included in the assessable income of the person disposing of the building for the year of assessment in the basis period for which the building is disposed of:

Provided that the balancing charge shall not exceed the aggregate amount of the annual allowances actually given in respect of that building.

(4) For the purpose of this Part, the adjusted cost of a building means the cost of erection or purchase thereof less the amount of any notional allowances under of paragraph 1 (2).

(5) Where a person has been granted allowances in respect of a building, and such person ceases to carry on business prior to the disposal of such building, for the purposes of this paragraph he or she shall be subject to the provisions of this paragraph in the event of the subsequent disposal of the building.

3. Meaning of building and qualifying business

(1) For the purposes of this Part, a building means a building used for the purposes of carrying on any qualifying business, and includes a building provided by way of welfare facilities for employees but does not include a building used for residential purpose or as a retail shop, showroom or commercial office or ancillary thereto.

(2) Where part only of a building is to be used for qualifying purposes, and the capital expenditure incurred on that part of the building which is not to be so used—

- (a) does not exceed ten per cent of the total capital expenditure the whole of the building shall be deemed to be used for the purposes of a qualifying business;
- (b) exceeds ten per cent but does not exceed seventy five per cent of the total capital expenditure, then the portion of the expenditure qualifying for deduction under this Part shall be such proportion of the expenditure as the part of the building used for the purposes of a qualifying business bears to the entire building;
- (c) exceeds seventy five per cent, then the entire building shall be deemed not to be used for the purposes of a qualifying business.

(3) For the purposes of this Part, a “qualifying business” means—

- (a) a business carried on in a mill, factory or similar premises for the manufacture of goods or materials or their subjection to any industrial process;
- (b) the operation of a dock or a water or electricity undertaking;
- (c) the extraction of natural resources by mining or drilling;
- (d) the catching or taking of fish including shell fish; or
- (e) the cultivation of land, the rearing of livestock or the exercise of other forms of husbandry.

PART II

Plant and Machinery

4. Annual allowance

(1) In ascertaining the assessable income of any person for any year of assessment there shall be deducted an annual allowance in respect of expenditure incurred whether before or after the commencement of this Act, on the provision of plant and machinery acquired and brought into use by that person for the purpose of producing assessable income.

(2) The deduction allowable in any year of assessment shall, subject to subparagraphs (3), (4) and (5), be an amount equal to the following percentages of the cost of the plant and machinery—

- (i) office furniture and equipment, electrical appliances, light plant and machinery, fixed heavy plant and machinery, professional instruments and equipment, electrical wiring, plumbing fixtures and air conditioning plant and ducting, and any 10%

- other plant and machinery not specified in subclauses (ii) to (v)
- (ii) air conditioning units, computers, lifts, elevators, escalators, ships, boats, tugs, barges and other vessels..... 16²/₃%
- (iii) motor vehicles other than heavy vehicles 20%
- (iv) aircraft and equipment, heavy motor vehicles, vehicles used for public transport, heavy plant and machinery and earth moving equipment 25%

until the allowances so granted equal the lower of the cost or the adjusted cost of such plant and machinery.

(3) Where the Comptroller is satisfied that by reason of the use of plant and machinery on multiple shift work or in other circumstances there is abnormal wear and tear, he or she may authorise the deduction of such higher rate of allowance than is provided by subparagraph (2) as appears to him or her to be reasonable in the circumstances.

(4) Where the Comptroller is satisfied that a motor vehicle is substantially used for the transport of any director or other employee of a company or the proprietor of any other business in the course of his or her business activities the Comptroller may authorise the deduction of such lesser rate of annual allowance as appears to him or her to be reasonable in the circumstances.

(5) For the purposes of this Part, the “adjusted cost of plant and machinery” means expenditure incurred on plant and machinery purchased before the coming into operation of this Act, reduced by notional allowances calculated in accordance with subparagraph (2) for each year during which the plant and machinery was in use before the coming into operation of this Act.

(6) For the purposes of this Part, plant and machinery includes furniture, fixtures and fittings but does not include any implement, utensil or similar article.

5. Disposal of plant and machinery

(1) Where allowances have been granted to any person for previous years of assessment, in respect of plant and machinery and any such asset is disposed of in the basis period for any year of assessment, a balancing allowance or a balancing charge shall be made as provided in this paragraph.

(2) Where the lower of the cost or the adjusted cost of the plant and machinery exceeds the aggregate of—

- (a) the allowances granted for previous years of assessment; and
- (b) the disposal value,

the amount of such excess (referred to in this Act as a “balancing allowance”) shall be allowed as a deduction for the year of assessment in the basis period for which the asset is disposed of.

(3) Where the disposal value of the plant and machinery exceeds the difference between—

- (a) the lower of the cost or the adjusted cost of the plant and machinery; and
- (b) the allowances granted for previous years of assessment,

the amount of such excess (referred to in this Act as “balancing charge”) shall be taken into account in ascertaining the assessable income of the person disposing of the plant and machinery for the year of assessment in the basis period for which the plant and machinery is disposed of:

Provided that the balancing charge shall not exceed the aggregate amount of the annual allowances actually given in respect of the plant and machinery.

(4) Where a person has been granted allowances in respect of any plant and machinery and the person ceases to carry on business prior to the disposal of the plant and machinery, for the purposes of this paragraph, he or she shall be subject to the provisions of this paragraph in the event of the subsequent disposal of such plant and machinery.

6. Replacement property

(1) Where but for this paragraph the amount of any balancing charge would be taken into account in ascertaining the assessable income of any person for a year of assessment, that person may elect, by notice in writing given to the Comptroller when furnishing his or her return of income for that year that in lieu of the balancing charge being so taken into account it may be deducted, subject to subparagraphs (2) and (3), from expenditure incurred on any plant and machinery (hereinafter referred to as “the replacement property”) acquired by him or her during the basis period for the year of assessment to replace the plant and machinery disposed of.

(2) Where an election is made under this paragraph the expenditure incurred on the replacement property shall be reduced by the amount of the balancing charge referred to in subparagraph (1) for the purpose of determining the cost of the replacement property for the calculation of the annual allowances applicable thereto, but nothing herein shall affect the calculation of any balancing allowance or balancing charge by reference to the full amount of the expenditure incurred and the reduction of balancing charge made by subparagraph (1) in the event of the subsequent disposal of the replacement property.

(3) Where an election is made under this paragraph in relation to the disposal of plant and machinery giving rise to a balancing charge which exceeds the cost of the replacement property—

- (a) no annual allowance shall be granted in respect of the replacement property; and
- (b) the amount of the excess shall be included in the assessable income of the person disposing of the plant and machinery for the year of assessment in the basis period for which the plant and machinery is disposed of.

PART III

Agricultural Expenditure

7. Deduction allowed

Subject to this Part, where any person incurs capital expenditure on any agricultural works there shall be allowed as a deduction for the year of assessment in the basis period for which the expenditure was incurred and in the next succeeding four years of assessment an amount equal to one-fifth of such expenditure.

8. Certificate to be furnished

The deduction provided by this Part shall not be given until the person claiming such deduction furnishes to the Comptroller a certificate signed by the Chief Agricultural Officer stating that—

- (a) the agricultural works for which the deduction is claimed have been carried out; and
- (b) the expenditure incurred is fair and reasonable.

9. Deduction allowable on disposal

Where any person, who has incurred capital expenditure to which this Part relates, disposes of the property prior to the grant of the full amount of the allowances to which he or she would have been entitled had the disposal not taken place, he or she shall cease to be entitled to any further deduction and the balance thereof shall be allowed to the person who has acquired the property.

10. Apportionment of deduction

For the purposes of paragraph 3, where a property is disposed of on a date other than the end of a basis period or where part only of a property is disposed of, the Comptroller may apportion the deduction allowable as between the parties in such manner as appears to him or her to be reasonable.

11. Meaning of capital expenditure on agricultural works

In this Part, “capital expenditure on agricultural works” means capital expenditure incurred in respect of the clearing, draining or planting of land for agricultural purposes, soil conservation works, the provision of drains, wells, boreholes or dipping tanks and the cutting of new access roads to areas of production.

PART IV

Interpretation

12. Interpretation

In this Schedule—

“allowances granted”, in relation to previous years of assessment, means the sum of the annual allowances granted under a Part of this Schedule;

“cost to” or “expenditure incurred” by any person does not include such part of any expenditure incurred as is reimbursed to that person by way of subsidy or grant by the Government or some other person unless such subsidy or grant has formed part of his or her assessable income;

“disposal”, in relation to any asset, means the scrapping, loss or destruction, sale, exchange, compulsory acquisition or gift of such asset;

“disposal value” means, in relation to—

- (a) the scrapping of an asset, the scrap value thereof;
- (b) the loss or destruction of an asset, any amount received for the remains thereof together with any amount accrued as compensation or indemnity for such loss or destruction;
- (c) the disposal of an asset, by way of—
 - (i) sale, the net proceeds of sale,
 - (ii) exchange, the market value of any asset acquired through such exchange adjusted to take account of any monetary consideration made,
 - (iii) compulsory acquisition, the amount for which it was so acquired,
 - (iv) gift, the market value thereof,

but in any case where the amount accrued or the market value exceeds the cost, the disposal value shall be limited to the cost price or the adjusted cost, if applicable.

13. Application of Schedule to hire purchase transactions

Where under a hire purchase agreement or similar transaction, the use and enjoyment of an asset is obtained by a person to whom this Schedule applies for a period of time at the end of which the property in the asset will or may pass for no consideration or a nominal consideration he or she shall be deemed to have—

- (a) acquired the asset at the time the agreement or transaction was entered into; and

- (b) incurred expenditure thereon of an amount equal to the total amounts, excluding interest, payable under the agreement or transaction at the time referred to in paragraph (a).

14. Apportionment of consideration where assets sold for consolidated amount

Where any property, in respect of which allowances have been granted under this Schedule is disposed of together with other assets for a total consideration—

- (a) which does not allocate separate prices for the separate items; or
- (b) which allocates either a nominal consideration to some assets, or such consideration as, in the opinion of the Comptroller does not represent the true market value of those assets,

he or she may apportion the total consideration among the several assets in such manner as to arrive at a true market value of those assets in respect of which allowances have been granted and such value shall be taken to be the disposal value of such assets for the purposes of this Schedule.

15. Disposal of assets in certain transactions: value to be adopted

(1) Where any assets in respect of which allowances have been granted under this Schedule, are disposed of by the owner to a purchaser other than by way of a transaction at arm's length, subject to subparagraph (2) the assets shall be deemed to have been disposed of at market value and such value shall apply both to the vendor and the purchaser.

(2) Where pursuant to—

- (a) the amalgamation, reconstruction or merger of a company with another company and the transfer of assets to that other company; or
- (b) the transfer of assets from an individual to a company or to a relative,

there is a substantial identity between the former owner and the new owner, the assets shall in relation to both, be deemed to have been disposed of at an amount equal to the difference between—

- (i) the cost or, if applicable, the adjusted cost of the asset, and
- (ii) the allowances granted for previous years of assessment.

(3) For the purposes of subparagraph (2) there shall be deemed to be a substantial identity between the former owner and the new owner—

- (a) in a case to which subparagraph (2)(a) applies, where at the end of the basis period for the year of assessment in which the assets were transferred, shares in the company acquiring the assets, carrying—
 - (i) the right to exercise no less than eighty per cent of the voting power in the company,
 - (ii) the right to receive not less than eighty per cent of any dividends that might be paid by the company, or
 - (iii) the right to receive not less than eighty per cent of any capital distribution in the event of a winding-up or of a reduction in the share capital of the company,

were beneficially held by persons or relatives of such persons who at the time the assets were transferred beneficially held in the disposing company shares carrying rights of those kinds;

- (b) in a case to which subparagraph (2)(b) applies, where at the end of the year of assessment in the basis period for which the assets were transferred, in the case of a transfer to a company, shares carrying rights of the kind specified

in paragraph (a) were beneficially held by the vendor or relatives of the vendor.

- (4) In subparagraphs (2) and (3), “a relative” in relation to any person means—
- (a) the spouse of that person; or
 - (b) a lineal ancestor, child or other lineal descendant, brother, sister, uncle, aunt, nephew or niece of that person or of his or her spouse.

Third Schedule

INCOME TAX ACT

Deduction of Tax from Payments to Non-residents

[Section 50.]

ARRANGEMENT OF PARAGRAPHS

- 1. Application.
- 2. Deduction to be made by person making payment.
- 3. Rates of tax to be deducted.
- 4. Certificate and record of payments made and tax deducted.
- 5. Returns of deduction and remittances of tax.
- 6. Personal liability where failure to deduct tax.

1. Application

(1) Except otherwise provided in this Act, this Schedule applies to every person who makes any payment by way of—

- (a) interest or accounts;
- (b) rental, lease premium or licence;
- (c) royalty;
- (d) management charge;
- (e) commission or fee, not being in respect of an employment to which section 54 applies;
- (f) annuities or other periodic payments; or
- (g) any other payment, to any person including a non-resident, which the payer is entitled to deduct in computing the chargeable income for a basis period,

but subject to paragraph 2 a payment to which subparagraph (g) refers does not apply to other payments to a non-resident carrying on business in Grenada.

(2) This Schedule also applies to any payment to a non-resident person in respect of independent personal services performed in Grenada.

(3) Where the accounts of a business are maintained on an accrual basis, and during the basis period for a year of assessment any amount of the kind specified in subparagraphs (1) and (2) is charged as an expense but payment is not made, tax shall be deducted and paid to the Comptroller as if payment had been made on the last day of that basis period.

2. Deduction to be made by person making payment

Where any payment is made to which this Schedule applies, then such amount shall not form chargeable income of the person to whom the payment is made and the person making the payment shall deduct tax from the gross amount of the income from such source at the rate specified in paragraph 3.

3. Rates of tax to be deducted

Except otherwise provided under this Act, tax shall be deducted from the actual amount paid at the rate of fifteen per cent of every dollar of such payment and shall be the final liability in respect of such income.

4. Certificate and record of payments made and tax deducted

(1) Every person who has deducted any tax under this Schedule shall furnish to the person to whom payment is made a certificate showing the gross amount of the payment made and the tax deducted therefrom.

(2) Every person making any payment to which this schedule applies shall maintain a record showing in relation to each calendar year—

- (a) the nature of the payment to each payee;
- (b) the gross amount thereof;
- (c) the amount of tax deducted therefrom; and
- (d) the name and address of the payee,

and the record shall be kept available for examination by the Comptroller as and when required.

5. Returns of deduction and remittances of tax

(1) Every person shall, when making any payment under section 96, furnish a return in such form as the Comptroller may approve showing the amount of tax deducted and remitted, together with a copy of all certificates issued under paragraph 4 in respect of such deductions of tax.

(2) Every person to whom this Schedule applies, shall in respect of each calendar year, within two months after the end of such year or within such further time as the Comptroller may allow, furnish to the Comptroller a return in such form as he or she may approve showing the total of tax deducted by that person during such year and the total payments of such tax which have been made to the Comptroller.

(3) In the event of there being any deficiency between the total amount of tax deducted in any year and the total payments of such tax made to the Comptroller, that person shall be required to account to the Comptroller for such deficiency.

6. Personal liability where failure to deduct tax

(1) Where any person fails to deduct any tax under this Schedule he or she shall, in addition to any penalty for which he or she may be liable, be personally liable to pay to the Comptroller within the time specified in section 96 the amount which he or she has failed to deduct.

(2) Where any person pays to the Comptroller the amount of tax which he or she failed to deduct such amount shall be deemed to have been deducted under this Schedule.

(3) The person making any payment to the Comptroller under this paragraph shall be entitled to recover such amount from the person to whom payment was made.

(4) Where any person has failed to deduct tax as required under this Schedule but the Comptroller is satisfied that tax deducted from earlier or later payments is sufficient to meet the amount of tax which he or she has failed to deduct, the Comptroller may absolve such person from his or her liability under subparagraph (1).

Fourth Schedule

INCOME TAX ACT

Deduction of Tax by Employers

[Section 52 and 54.]

ARRANGEMENT OF PARAGRAPHS

1. Registration of employers.
2. Deduction of tax.
3. Payment to or recovery by Comptroller.
4. Payment of remuneration free of tax.
5. Certificate of remuneration and tax deducted.
6. Personal liability of employer and employee.
7. Employer to keep records.
8. Employer's monthly return of tax deductions and remittances.
9. Employer's annual return of tax deductions and remittances.
10. Duties and liabilities of representative employers.
11. Liability to deduct tax not abated by other rights or obligations.
12. Interpretation.

1. Registration of employers

(1) Every employer who pays or becomes liable to pay remuneration to any employee shall register as an employer with the Comptroller.

(2) Every person who being an employer on the day on which the Act is passed, shall register with the Comptroller in the prescribed form within thirty days after that day and every person who becomes an employer after the day on which the Act is passed shall so register within thirty days after the end of the month in which he or she becomes an employer.

(3) Every employer who changes his or her business address or ceases to be an employer shall notify the Comptroller accordingly within thirty days of such change of address or of his or her ceasing to be an employer, as the case may be.

2. Deduction of tax

(1) Subject to this paragraph the amount of tax to be deducted shall be at the rate of thirty per cent of the chargeable income.

(2) Where the accumulated remuneration of an employee or official during a basis period amounts to sixty thousand dollars the excess shall be subject to tax at the rate of thirty per cent thereof for the remainder of the basis period.

(3) Notwithstanding subparagraph (2) the Comptroller may direct an employer to deduct tax at any time during the basis period and in such amount as would satisfy the tax payable by an employee or official for a year of assessment.

(4) Where, during any calendar year any employee receives income from more than one source of employment at the same time, the amount of tax to be deducted shall be such amount as is directed by the Comptroller.

(5) Where, during any calendar year, an employee is a non-resident individual the amount of tax to be deducted shall be such amount as is directed by the Comptroller.

(6) In any circumstance not covered by the foregoing subparagraphs the Comptroller shall direct the amount of tax to be deducted.

3. Payment to or recovery by Comptroller

Any tax deducted under this Schedule shall—

- (a) be due and payable within the time specified in section 96; and
- (b) when it becomes due and payable, be a debt due to Government and, if unpaid shall be liable to interest at the rate specified in section 97 and may be recovered in the manner provided in section 98, 99 or 105.

4. Payment of remuneration free of tax

(1) Where any agreement between an employer and an employee provides for the employer to pay as remuneration to the employee an amount expressed to be free of tax, the amount to be paid under the agreement shall be deemed to be such an amount of remuneration as, after deduction of tax, would leave an amount equal to the remuneration paid free of tax.

(2) In any case to which subparagraph (1) applies—

- (a) the employer shall be liable to pay to the Comptroller an amount equal to the difference between the remuneration deemed to be paid and the amount of remuneration paid;
- (b) such amount shall be deemed to be the tax to be deducted under this Schedule; and
- (c) the employee shall be deemed to have received as income from employment the amount deemed to have been paid by the employer.

5. Certificate of remuneration and tax deducted

(1) Every employer who has deducted any tax under this Schedule in any calendar year shall furnish to an employee to whom remuneration has been paid, and to the Comptroller when requested by either party a certificate in the prescribed form the contents of which shall include—

- (a) the total remuneration accrued to that employee; and
- (b) the total of the amounts of tax deducted from such remuneration.

(2) The certificate referred to in subparagraph (1) shall specify the period of employment to which it relates and shall be furnished to the employee or former employee and to the Comptroller within seven days of the request to do so.

(3) Any employee who has not received a certificate within the time specified in subparagraph (2) shall notify the Comptroller of such failure by the employer to furnish the certificate.

(4) An employee, who is requested to furnish a return of income for any year of assessment, shall attach to such return the certificate furnished to him under this paragraph.

(5) The certificate to be furnished under this paragraph by an employer to an employee may be delivered—

- (a) by hand to such employee or his or her authorised agent;
- (b) by registered letter addressed to that employee at his or her usual or last known postal address; or
- (c) where the chargeable income of that employee is not chargeable to tax in his or her name, by hand or registered letter addressed to the person chargeable:

Provided that in the event of inability to deliver a certificate in the manner provided by this subparagraph the employer shall retain such certificate and forward it to the Comptroller.

6. Personal liability of employer and employee

(1) Where, in any calendar year, an employer fails to deduct any tax under paragraph 2 he or she shall, in addition to any penalty for which he or she may be liable, be personally liable to pay to the Comptroller within the time specified in section 96 the amount which he or she has failed to deduct.

(2) Where an employer pays to the Comptroller the amount of tax which he or she failed to deduct, such amount shall be deemed to have been deducted under this Schedule.

(3) The employer shall be entitled to recover from the employee any amount paid to the Comptroller under subparagraph (2).

(4) Where, in relation to any payment of remuneration an employer has failed to deduct tax under paragraph 2, but the Comptroller is satisfied that tax deducted under this Schedule from earlier or later payments or remuneration is sufficient to meet the amount of tax which he or she has failed to deduct, the Comptroller may absolve the employer from his or her liability under subparagraph (1).

(5) Where an employer pays an amount to the Comptroller under this paragraph, he or she shall not be required to include any such amount in a certificate under paragraph 8 unless and until he or she recovers the amount from the employee.

(6) Where any amount of tax which has been set off under section 62 pursuant to a certificate under paragraph 8 has not been deducted by the employer, the employer and the employee shall be jointly and severally liable to pay to the Comptroller the amount which has been so set off and such amount shall be recoverable under the Act:

Provided that where the Comptroller is satisfied that the employee alone was responsible for the incorrect amount being shown on his or her certificate under paragraph 8, the employer shall be absolved from liability under this subparagraph.

(7) Where it is proved to the satisfaction of the Comptroller that any amount of tax has been deducted from the remuneration of any employee, notwithstanding that the employer has failed to pay such amount to the Comptroller, no action shall be taken by the Comptroller for the recovery thereof from that employee.

7. Employer to keep records

Every employer shall, in respect of each of his or her employees, maintain a record showing in relation to each calendar year, the amounts of—

- (a) remuneration accrued to that employee; and
- (b) tax deducted from such remuneration,

and such record shall be kept available for examination by the Comptroller as and when required.

8. Employer's monthly return of tax deductions and remittances

Every employer shall, when making any payment under section 96 furnish a return showing the amount of tax deducted and remitted.

9. Employer's annual return of tax deductions and remittances

(1) Every employer shall, in respect of each calendar year—

- (a) within one month after the end of that year; or
- (b) where he or she ceases to be an employer during that year, within seven days after such cessation,

or within such further time as the Comptroller may allow, furnish to the Comptroller a return showing the total amount of tax deducted by him or her in respect of each of his or her employees during that year and the total payments of such tax made to the Comptroller.

(2) In the event of there being any deficiency between the total amount of tax deducted and the total payments of such tax made to the Comptroller, the employer shall be required to account to the Comptroller for such deficiency.

(3) The return referred to in subparagraph (1) shall be accompanied by copies of all certificates issued under paragraph 5(1).

10. Duties and liabilities of representative employers

(1) Every representative employer, in relation to any remuneration paid by him or her in his or her representative capacity to any employee shall be subject to the same duties and liabilities under this Schedule as if such remuneration had been paid by him or her in his or her personal capacity.

(2) Any tax which should be deducted by a representative employer under this Schedule, any interest due by him or her under section 97, or fine imposed under section 120 or 121 on him or her shall be recoverable from him or her but to the extent only of any assets of the person whom he or she represents which may be in his or her possession or may come to him or her while acting in his or her representative capacity.

(3) The executor of the estate of any deceased employer or the trustee of the estate of any bankrupt employer shall fulfil such obligations of that employer under this Schedule as were not fulfilled at the time of his or her death or bankruptcy.

11. Liability to deduct tax not abated by other rights or obligations

The liability of an employer to deduct tax under this Schedule shall not be abated or extinguished by reason of—

- (a) the fact that the employer has a right or is, otherwise than in terms of any law, under an obligation to deduct any other amount from the employee's remuneration and such right of obligation shall, notwithstanding anything to the contrary contained in any other law, be deemed to refer only to the balance of remuneration remaining after tax has been deducted; and
- (b) the provisions of any law which may provide that the amount of remuneration shall not be reduced or be subjected to attachment.

12. Interpretation

In this Schedule—

“employee” means any person who, in respect of an employment, as defined in section 2 of the Act, receives remuneration from an employer, and includes any person to whom remuneration accrues—

- (a) as a director of a company;
- (b) from a former employer or the trustee of a pension fund, as a consequence of a former employment;
- (c) as a dependent of a deceased person where such remuneration accrued to that dependent as a consequence of the former employment of that deceased person;

“employee of the Government of Grenada” means a person who in respect of an employment as defined in section 2 receives remuneration from the Government of Grenada but does not include an employee of a statutory body in Grenada;

“employer” means any person who pays remuneration to an employee, and includes—

- (a) the Government of Grenada;
- (b) a representative employer; and
- (c) the trustee of any pension fund;

“remuneration” means any amount accrued to an employee by way of employment income within the meaning of section 31 and includes any advance payment of remuneration or any payment on account of remuneration;

“representative employee” means—

- (a) in the case of a company, the principal officer or, where such company is in liquidation, the liquidator;
- (b) in the case of a partnership, the precedent partner;
- (c) where the employer is the Government, a local authority, a corporation or other authority established by statute or a body corporate or unincorporated (not being a company or partnership), the person responsible for paying remuneration on behalf of such employer;
- (d) in the case of an employer in respect of whose chargeable income a representative taxpayer is chargeable to tax, the representative taxpayer;
- (e) in the case of a non-resident employer, the agent having responsibility to pay remuneration on behalf of such employer,

but nothing in this definition shall be construed as relieving any employer from any duty or liability imposed upon him or her by this Schedule.

Fifth Schedule

INCOME TAX ACT

Rates of Tax

[Section 56.]

On the chargeable income of—

- (a) an individual 30 per cent
- (b) a company 30 per cent

CHAPTER 149

INCOME TAX ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
