



Tonga

INCOME TAX ACT

Chapter 26.08

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INCOME TAX ACT

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INCOME TAX ACT

AN ACT TO CONSOLIDATE AND MAKE PROVISION FOR INCOME TAX¹

Commencement [1 February 2008]²

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the Income Tax Act.

2 Interpretation

In this Act, unless the context requires otherwise —

“**amount**” includes an amount-in-kind;

“**annual gross turnover**”, in relation to a person, means the gross turnover of the person for a fiscal year;³

“**approved retirement fund**” means a retirement fund approved by the Minister in accordance with the regulations;

“**arm’s length transaction**” means a transaction between independent persons dealing with each other at arm’s length;⁴

“**associate**”, in relation to a person, means any other person who acts or may act in accordance with the directions, requests, suggestions, or wishes of the first-mentioned person, and the second-mentioned person shall be an associate of the first-mentioned person;

“**business**” includes any profession, trade, manufacture, or undertaking (including an undertaking in the nature of trade) conducted for pecuniary profit, but shall not include employment;

“**business asset**” means any asset, whether of a revenue or capital nature, used or held ready for use in a business, including goodwill, trading stock, a depreciable asset, or an intangible;

“**business income**” has the meaning in section 12;

“**business loss**” has the meaning in section 37(3);⁵

“**chargeable income**” has the meaning in section 10;

“**Chief Executive Officer**” means the Government chief executive officer responsible for revenue and customs;⁶

“**company**” means —

- (a) a body or association of persons corporate or unincorporate whether incorporated, created, or formed in Tonga or elsewhere;
- (b) a foreign association of persons that the Minister has declared to be a company for the purposes of this Act; or
- (c) a partnership,

but does not include a trust;

“**consideration received**”, in relation to the disposal of an asset, has the meaning in section 47;

“**consumption tax**” means the consumption tax imposed under the Consumption Tax Act;⁷

“**cost**”, in relation to an asset, has the meaning in sections 45 and 46;

“**debt**” means an amount owing, including accounts payable and amounts owing under a promissory note, bill of exchange, debenture, security, bond, or similar financial instrument;

“**depreciable asset**” has the meaning in section 27;

“**dividend**” means —

- (a) any distribution of profits by a company to a shareholder or a partnership to a partner;
- (b) any amount returned to a shareholder in respect of a share on a partial reduction in capital to the extent that the amount returned exceeds the amount by which the nominal value of the share was reduced; or
- (c) any amount distributed to a shareholder on redemption or cancellation of a share (including in liquidation) to the extent the amount distributed exceeds the nominal value of the share;

“**employee**” means an individual engaged in employment;

“**employer**” means a person who engages or remunerates an employee;

“**employment**” includes —

- (a) a directorship or other office in the management of a company;
- (b) a position entitling the holder to a fixed or ascertainable remuneration;
or
- (c) the holding or acting in any public office;

“**employment income**” has the meaning in section 13;

“**exempt income**” means income described as exempt income in this Act and as a consequence not included in gross income;

“**fair market value**” has the meaning in section 3;

“**financial institution**” has the meaning in the National Reserve Bank of Tonga Act;⁸

“**fiscal year**” means —

- (a) in the case of a company, the period of 12 months ending on the date of the annual balance of its accounts; or
- (b) in any other case, the period of 12 months ending on 30th June;

“**gross income**” means amounts defined as gross income in section 11 and other amounts included in gross income under this Act;

“**gross turnover**”, in relation to a person conducting a business for a tax period, means the total business income received by the person from the conduct of the business for the period without deduction of expenditures or losses, but not including the following –

- (a) exempt income;
- (b) an amount subject to taxation under section 6 or 7;
- (c) an amount for which withholding tax is a final tax under section 90;⁹

“**immovable property**” includes –

- (a) a mining right or mining information as defined in section 67A; or
- (b) a petroleum right or petroleum information as defined in section 67M;
¹⁰

“**income tax**” means any tax imposed under this Act and includes a seabed mining royalty or petroleum royalty;¹¹

“**insurance premium**” includes a premium in relation to reinsurance;

“**intangible**” means —

- (a) any patent, invention, design or model, secret formula or process, trademark, copyright, or other like property or right;
- (b) contractual rights with a benefit for a period of more than one year; or

- (c) any expenditure that provides an advantage or benefit for a period of more than one year, other than expenditure incurred to acquire any tangible movable or immovable property;

“**interest**” means —

- (a) an amount, described as interest, discount, premium, or otherwise, whether periodical or a lump sum, as consideration for the use of money or being given time to pay;
- (b) an amount that is functionally equivalent to an amount referred to in paragraph (a);
- (c) any amount treated as interest under section 43; or
- (d) a commitment, guarantee, service, or similar fee payable in respect of a debt or other instrument or agreement giving rise to interest under paragraphs (a), (b), or (c);

“**international financial reporting standards**” means the most recent International Financial Reporting Standards issued by the International Accounting Standards Board or any successor entity taking over the role of issuing International Financial Reporting Standards;¹²

“**liaison office**”, in relation to a person, means an office of the person the sole activity of which is representation;

“**member**”, in relation to a company, means a shareholder, partner in a partnership, or any other person with a membership interest in the company;

“**membership interest**”, in relation to a company, means a share, an interest of a partner in a partnership, and any other ownership interest in the company;

“**Minister**” means the Minister responsible for revenue and customs;¹³

“**natural resource amount**” means —

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

“**non-resident person**” has the meaning in section 4(2);

“**partnership**” means two or more persons carrying on business jointly for common profit;

“**permanent establishment**” means a fixed place of business through which the business of a person is wholly or partly carried on, and includes —

- (a) a place of management, branch, office, factory, warehouse, or workshop, other than a liaison office;

- (b) a mine, oil or gas well, quarry, or other place of extraction of natural resources;
- (c) a building site, or a construction, assembly or installation project, or supervisory activities connected with such site or project, but only if the site, project or activities continue for more than 90 days;
- (d) the furnishing of services, including consultancy services, by any person through employees or other personnel engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project within Tonga for a period or periods aggregating more than 90 days within any 12 month period;
- (e) a person (referred to as an “**agent**”) acting in Tonga on behalf of another person, if the agent —
 - (i) has and habitually exercises an authority to conclude contracts on behalf of the other person; or
 - (ii) habitually maintains a stock of goods or other merchandise from which the agent regularly delivers goods or merchandise on behalf of the other person; or
- (f) any substantial equipment used by a person;

“**person**” means an individual, trust, company, government, or public international organisation;

“**petroleum royalty**” means the petroleum royalty imposed by section 67N; ¹⁴

“**property income**” has the meaning in section 14;

“**quarter**” means a period of 3 months ending on September 30, December 31, March 31, or June 30;

“**received**”, in relation to a person, includes —

- (a) applied on behalf of the person either at the instruction of the person or under any law;
- (b) reinvested, accumulated, or capitalised;
- (c) credited to an account, or carried to any reserve, sinking, or insurance fund; or
- (d) made available to the person;

“**rent**” means any consideration for the use or occupation of, or the right to use or occupy any land or building, including any premium, fine, or like amount;

“**resident company**” has the meaning in section 4(6);

“**resident individual**” has the meaning in section 4(3) to (5);

“**resident person**” has the meaning in section 4(1);

“**resident trust**” has the meaning in section 4(7);

“**royalty**” means an amount, however described, whether periodical or a lump sum, as consideration for —

- (a) the use of, or right to use any patent, invention, design or model, secret formula or process, trademark, or other like property or right;
- (b) the use of, or right to use any copyright of a literary, artistic, or scientific work (including films or video tapes for use in connection with television or tapes in connection with radio broadcasting);
- (c) the receipt of, or right to receive, any visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;
- (d) the supply of any technical, industrial, commercial, or scientific knowledge, experience, or skill;
- (e) the use of or right to use any industrial, commercial, or scientific equipment;
- (f) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any property or right referred to in paragraphs (a) through (e); or
- (g) the disposal of any property or right referred to in paragraphs (a) through (e);

“**small business tax**” means the tax imposed under section 8; ¹⁵

“**seabed mining royalty**” means the seabed mining royalty imposed by section 67B; ¹⁶

“**taxable business income**” means business income included in gross income;

“**taxpayer**” means a person liable for income tax under this Act and includes a person who has a business loss for a fiscal year;

“**tax period**”, in relation to the small business tax, means –

- (a) for the computation of the annual gross turnover of a person, the fiscal year;
- (b) for a person subject to section 8(2), the fiscal year; or
- (c) for a person subject to section 8(3), the quarter; ¹⁷

“**technical services fee**” means an amount, however described, whether periodical or lump sum, as consideration for the rendering of any managerial, technical, or consultancy services, including the services of technical or other personnel, but does not include employment income;

“**trading stock**” means anything produced, manufactured, purchased, or otherwise acquired for manufacture, sale, or exchange for the purposes of producing taxable business income, and includes any materials or supplies to be consumed in the production or manufacturing process, and livestock;

“**trust**” means a trust established under statutory law or the laws of equity and includes a testamentary estate;

“**trustee**” includes the executor of a testamentary estate; and

“**turnover**”, in relation to a person for a fiscal year, means the gross revenue (including the gross proceeds from the disposal of a business asset) derived by the person during the year, but not including —

- (a) exempt income;
- (b) an amount subject to separate taxation under section 6 or 7; or
- (c) an amount for which withholding tax under section 90 is a final tax.

3 Fair market value

- (1) For the purposes of this Act, the fair market value of any asset, service, or benefit at a particular time shall be the ordinary open market value of the asset, service, or benefit at that time.
- (2) If the fair market value of any asset, service, or benefit cannot be determined under subsection (1), the fair market value shall be the amount determined by the Minister.

4 Residents and non-residents

- (1) A person shall be a resident person at a particular time if, at that time, the person is a resident individual, resident company, resident trust, or the Government.
- (2) A person who is not a resident person at a particular time shall be a non-resident person at that time.
- (3) Subject to subsections (4) and (5), an individual shall be a resident individual for a fiscal year if the individual —
 - (a) has his home in Tonga at any time during the year;
 - (b) is present in Tonga for a period of, or periods amounting in aggregate to, 183 days in any 12 month period that commences or ends during the year; or
 - (c) is an employee of the Government posted abroad at any time during the year.
- (4) An individual who is a resident individual under subsection (3) for a fiscal year, in this section referred to as the “current fiscal year”, but who was not a resident individual for the preceding fiscal year shall be treated as a resident individual in the current fiscal year only for the period commencing on the day on which the individual was first present in Tonga.
- (5) An individual who is a resident individual for the current fiscal year but who is not a resident individual for the following fiscal year shall be treated as a resident individual in the current fiscal year only for the period ending on the last day on which the individual was present in Tonga.

- (6) A company shall be a resident company for a fiscal year if the company —
- (a) is incorporated, created, or formed in Tonga;
 - (b) has the centre of its administrative management in Tonga at any time during the fiscal year; or
 - (c) is a partnership with a partner who is a resident person at any time during the year.
- (7) A trust shall be a resident trust for a fiscal year if —
- (a) the trust was settled or established in Tonga; or
 - (b) a trustee of the trust is a resident person at any time during the year.

PART 2 - IMPOSITION OF INCOME TAX

5 Tax on chargeable income

- (1) The Minister shall, with the approval of Cabinet by Order impose, revoke, suspend, reduce or increase income tax for each fiscal year on a person who has chargeable income for the year.¹⁸
- (2) The income tax imposed under subsection (1) for a fiscal year shall be computed by applying the rate or rates of tax applicable to the person under the Order to the chargeable income of the person for the year, and any tax credits allowed to the person for the year are subtracted from the resulting amount.
- (3) If a person is allowed more than one tax credit for a fiscal year, the credits are applied in the following order —
- (a) the foreign tax credit allowed under section 62; then
 - (b) the tax credits allowed under sections 89 and 91.
- (4) In lieu of taxation under subsection (1), certain classes of income (including the income of certain classes of persons) may be subject to —
- (a) income tax as provided in section 6,7 or 8; or¹⁹
 - (b) withholding tax as a final tax as provided in section 90.

6 Tax on certain payments to non-residents

- (1) The Minister shall, with the approval of Cabinet by Order impose, revoke, suspend, reduce or increase income tax on a non-resident person who has received Tongan-source —
- (a) interest income;
 - (b) royalties;
 - (c) technical services fees;

- (d) dividends;
 - (e) insurance premiums;
 - (f) rent; or
 - (g) natural resource amount.²⁰
- (2) This section does not apply to —
- (a) any interest if the debt claim or other instrument or agreement giving rise to the interest is effectively connected with a permanent establishment in Tonga of the non-resident person;
 - (b) any royalty, rent or natural resource amount, if the property, right, or supply giving rise to the royalty, rent or natural resource amount, is effectively connected with a permanent establishment in Tonga of the non-resident person;²¹
 - (c) any technical services fee or insurance premium if the services giving rise to the fee or premium are rendered through a permanent establishment in Tonga of the non-resident person; or
 - (d) any interest, royalty, technical services fee, dividend, or insurance premium that is exempt income of the non-resident person.
- (3) Any interest, royalty, rent or natural resource amount, technical services fee, or insurance premium described in subsection (2)(a), (b), or (c) shall be treated as income attributable to the permanent establishment and shall be taxable under section 5.²²
- (4) The tax payable under this section is discharged if the tax has been withheld from the payment of the income under section 79.

7 Tax on shipping and air transport income of a non-resident person

- (1) The Minister shall, with the approval of Cabinet by Order impose, revoke, suspend, reduce or increase income tax on a non-resident person operating a ship or aircraft.²³
- (2) This section does not apply to any amount that is exempt income.
- (3) The tax payable under this section is discharged if the tax has been paid in accordance with section 73 or 74.

8 Tax on small business²⁴

- (1) There is hereby imposed a small business tax for a tax period on a person, other than a company, who –
 - (a) conducts a business solely in Tonga;
 - (b) is not a taxable person for the purposes of the consumption tax; and
 - (c) has an annual gross turnover that is less than \$100,000.

- (2) If the annual gross turnover of a person is \$50,000 or less –
 - (a) the small business tax shall be paid by the person for a fiscal year; and
 - (b) the amount of small business tax payable by the person for a fiscal year shall be determined according to the Third Schedule.
- (3) If the annual gross turnover of the person is more than \$50,000 –
 - (a) the small business tax shall be payable by the person quarterly; and
 - (b) the amount of small business tax payable by the person for each quarter shall be 2% of the gross turnover of the person for the quarter.
- (4) In determining the annual gross turnover of a person for a tax period for the purposes of this section or the Third Schedule, the Chief Executive Officer may have regard to the annual gross turnover of an associate or associates of the person for the period.
- (5) A person to whom subsection (1) applies may apply, in writing, to the Chief Executive Officer for section 5 to apply instead of this section.
- (6) If the Chief Executive Officer is satisfied that a person who has lodged an application under subsection (5) will keep proper records, the Chief Executive Officer may grant the application subject to such conditions as the Chief Executive Officer may specify by notice in writing to the applicant.
- (7) An approval under subsection (6) for section 5 to apply to a person shall remain in force until the Chief Executive Officer, on application in writing, permits the person to be subject to this section.
- (8) An application under subsection (7) shall not be made within three years of the date of service of the notice granting the person permission for section 5 to apply.
- (9) In this section –

“**business**” does not include professional services; and

“**professional services**” means medical, dental, legal, accounting, financial, managerial, engineering, architectural, consulting, or other similar services.

9 General provisions relating to income taxes imposed under sections 6, 7 and 8 ²⁵

Subject to this Act, the tax imposed under sections 6, 7 and 8 on a person shall be a final tax on the income in respect of which it is imposed and —

- (a) the income shall not be included in gross income in computing the chargeable income of the person for any fiscal year;
- (b) no deduction shall be allowable under this Act for any expenditure incurred in deriving the income;
- (c) the amount on which tax is imposed shall not be reduced by any loss; and

- (d) the tax payable by the person under section 6, 7 and 8 shall not be reduced by any tax credits allowed under this Act.

PART 3 - COMPUTATION OF CHARGEABLE INCOME

DIVISION 1 - CHARGEABLE INCOME

10 Chargeable income

The chargeable income of a person for a fiscal year shall be the gross income of the person for the year reduced by the total amount of deductions allowed to the person for the year.

DIVISION 2 - GROSS INCOME

11 Gross income

- (1) Subject to this Act, the gross income of a person for a fiscal year shall be the total amount of —
- (a) business income;
 - (b) employment income;
 - (c) property income; and
 - (d) any other income,
- derived by the person during the year, other than exempt income.
- (2) For the purposes of subsection (1) —
- (a) the gross income of a resident person includes income derived from all sources within and outside Tonga; and
 - (b) the gross income of a non-resident person includes only Tongan-source income.
- (3) Unless the Act provides otherwise, the rules in Division 5 of this Part apply in determining when an amount is derived for the purposes of this Act.

12 Business income

- (1) Business income means —
- (a) the gross receipts, whether of a revenue or capital nature, arising from the conduct of business, including the gross proceeds from the disposal of trading stock and any consideration for accepting a restriction on the capacity to carry on business, but not including any amount taken into account in the computation of business income under paragraph (b) or (c);

- (b) any balancing charge under section 32; and
 - (c) any gain arising on the disposal of a business asset, other than an asset dealt with under paragraph (a) or (b), computed as the consideration received on disposal less the cost of the asset at the time of disposal.
- (2) In this section, “business asset” includes shares in a company, or an interest in a partnership or trust, if the shares or interest derive 50% or more of their value, directly or indirectly, from immovable property.²⁶

13 Employment income

- (1) Employment income means any amount, whether of a revenue or capital nature, arising from employment, including —
- (a) any salary, wages, or other remuneration provided to an employee, including leave pay, payment in lieu of leave, overtime pay, bonus, commission, fees, gratuity, or work condition supplements;
 - (b) the value of any benefit-in-kind, whether convertible to money or not, as determined under the First Schedule;
 - (c) the amount of any allowance provided by an employer to an employee, including a cost of living, subsistence, rent, utilities, education, entertainment, meeting, or travel allowance, but not including any allowance solely expended in the performance of the employee’s duties of employment;
 - (d) the amount of any expenditure incurred by an employee that is paid or reimbursed by the employer, other than expenditure incurred on behalf of the employer in the performance of the employee’s duties of employment;
 - (e) any amount as consideration for the agreement by a person to —
 - (i) enter into employment;
 - (ii) any conditions of employment or any changes to the employee’s conditions of employment; or
 - (iii) a restrictive covenant in respect of any past, present, or prospective employment;
 - (f) any amount received on termination of employment, whether paid voluntarily or under an agreement, including any compensation for redundancy or loss of employment and golden handshake payments; or
 - (g) any pension, annuity, or supplement to a pension or annuity received in relation to employment.
- (2) For the purposes of this Act, an amount shall be treated as arising from the employment of an employee regardless of whether it is paid or provided by —
- (a) the employer of the employee, an associate of the employer, or by a third party under an arrangement with the employer or an associate of the employer; or

- (b) a past employer or a prospective employer.

14 Property income

Property income means —

- (a) any dividend, interest, royalty, rent, natural resource amount, or other amount arising from the provision, use, or exploitation of property; or
- (b) any pension, charge, or annuity, or any supplement to a pension, charge, or annuity,

but does not include an amount that is business or employment income.

DIVISION 3 - EXEMPT INCOME

15 Exempt income of King

The income derived by His Majesty the King shall be exempt income.

16 Exemptions provided for in other legislation

- (1) The income derived by an individual entitled to privileges under the Diplomatic Privileges Act, Consular Conventions Act, Consular Relations Act and the Diplomatic Relations Act shall be exempt income to the extent provided in those Acts.²⁷
- (2) The income derived by an Organisation, State or Mission entitled to privileges under the Diplomatic Privileges Act, Consular Conventions Act, Consular Relations Act and the Diplomatic Relations Act shall be exempt income to the extent provided in those Acts.²⁸
- (3) The income derived by an individual or Organisation shall be exempt income to the extent provided in the Bretton Woods Agreements Act.²⁹
- (4) The income derived by the National Reserve Bank of Tonga shall be exempt income to the extent provided in the National Reserve Bank of Tonga Act.³⁰
- (5) No provision in any other law providing an exemption from any income tax imposed under this Act shall have legal effect unless also provided for in this Act.
- (6) The income derived by the European Investment Bank to the extent provided by Gazette No. 9 of 2006.³¹
- (7) The income derived by the Retirement Fund shall be exempt income to the extent provided in the Retirement Fund Act 1998.³²
- (8) The income derived by the Health Promotion Fund shall be exempt income to the extent provided in the Health Promotion Fund Act 2007.³³

- (9) The income derived by the National Retirement Benefits Scheme shall be exempt income to the extent provided in the National Retirement Benefits Scheme Act 2010.³⁴
- (10) Interest income derived from investment in securities issued by the Government of Tonga shall be exempt income.³⁵
- (11) The income derived by the Legislative Assembly Retirement Fund under the Legislative Assembly Retirement Benefit Scheme Act shall be exempt income to the extent provided in that Act.³⁶

17 Exemptions under international agreements

Any income derived by a person shall be exempt income to the extent provided for in an agreement between the Government and a foreign government or public international organisation for the provision of financial, technical, or administrative assistance to the Government.³⁷

18 Exempt income of non-profit organisations

- (1) In this section —
“**charitable purposes**” includes the relief of poverty, advancement of education or religion, or any other purpose beneficial to the community; and
“**non-profit organisation**” means an institution, body, or trust of a public character that the Minister has certified as conducting activities exclusively for charitable purposes.
- (2) The income (other than business income) of a non-profit organisation shall be exempt income.

19 Exempt pensions

- (1) A pension shall be exempt income if granted to —
 - (a) a member of the Tonga Defence Force for a disability suffered during any war; or
 - (b) a dependent relative of an individual referred to in paragraph (a) if the individual was killed or suffered a disability during any war.
- (2) A pension or gratuity shall be exempt income if paid to an individual under the Pensions Act, Retirement Fund Act, or Legislative Assembly Act, or any other pension or lump sum received from an approved retirement fund.³⁸

20 Exempt retirement and death gratuities³⁹

Any amount received by way of gratuity or lump sum from an approved retirement fund shall be exempt income if paid on the approved fund member ceasing service on the following grounds –

- (a) retirement;
- (b) death;
- (c) migration; or
- (d) medical reasons.

21 Exempt dividends

A dividend paid by a resident company to a member who is a resident person shall be exempt income.

22 Exempt income of approved retirement funds and life insurance companies⁴⁰

- (1) The income derived by an approved retirement fund shall be exempt income.
- (2) An amount contributed by an employer to an approved retirement fund for the benefit of an employee of the employer shall be exempt income of the employee.
- (3) Any premium derived by a life insurance company in respect of a life insurance policy shall be exempt income.

23 Exempt scholarships

Any scholarship granted to an individual to meet the cost of the individual's education shall be exempt income, other than if the scholarship is paid directly or indirectly by an associate.

24 Exempt maintenance payments

Any amount received as maintenance shall be exempt income.

DIVISION 4 - DEDUCTIONS**25 General principles of deductibility**

- (1) Subject to this Act, a person shall be allowed a deduction for —
 - (a) any expenditure to the extent incurred in deriving gross income;
 - (b) any balancing allowance under section 32;
 - (c) the cost of trading stock sold as determined under section 41; and

- (d) any loss on disposal of a business asset, other than an asset or intangible dealt with under paragraph (b) or (c), computed as the cost of the asset at the time of disposal reduced by the consideration received on disposal.
- (2) Subject to this Act, if the expenditure referred to in subsection (1) —
 - (a) is incurred in acquiring a depreciable asset or an intangible; or
 - (b) is preliminary expenditure,
 the expenditure shall be deducted in accordance with section 27, 28, 29, 30 or 33.
- (3) Unless this Act provides otherwise, the rules in Division 5 of this Part shall apply in determining when an amount is incurred for the purposes of this Act.

26 Deductions not allowed

- (1) No deduction shall be allowed for any —
 - (a) expenditure or loss to the extent to which it is of a domestic or private nature;
 - (b) expenditure or loss to the extent incurred in deriving employment income;
 - (c) capital withdrawn, or sum employed or intended to be employed as capital;
 - (d) expenditure or loss of a capital nature except as provided in this Division;
 - (e) amount carried to a reserve fund or capitalised in any way;
 - (f) expenditure or loss to the extent recoverable under a policy of insurance or contract of indemnity;
 - (g) income tax payable in Tonga or elsewhere, including any penalty, additional tax, or interest payable in respect of income tax due;
 - (h) fine or penalty imposed for violation of any law, rule, or regulation; or
 - (i) bribe, kickback, or similar amount.
 - (j) amount paid to a person who is not a tax agent for assisting in the preparation of a tax return or objections to taxation decisions or transacting business with the Minister under the revenue laws;
 - (k) amount paid as a donation exceeding \$1,000; or
 - (l) amount paid for sponsorship exceeding 10% of the gross income of the person.⁴¹
- (2) A person required to withhold tax from an amount paid by the person shall not be allowed a deduction for the amount until the withheld tax has been paid to the Minister.⁴²

27 General principles of depreciation

(1) In this section —

“**depreciable asset**” means any tangible movable property or structural improvement to immovable property, owned by a person that —

- (a) has a useful life exceeding one year;
- (b) is likely to lose value as a result of normal wear and tear, or obsolescence; and
- (c) is used wholly or partly by the person in deriving taxable business income; and

“**structural improvement**”, in relation to immovable property, includes any building, road, driveway, car park, pipeline, bridge, tunnel, airport runway, canal, dock, wharf, retaining wall, fence, power lines, water or sewerage pipes, drainage, landscaping, or dam.

- (2) A person shall be allowed a deduction (referred to as a “depreciation deduction”) for the amount by which the value of the person’s depreciable assets has declined during a fiscal year by reason of wear and tear from use in deriving taxable business income.
- (3) Subject to subsection (4), a person may elect for the depreciation deduction allowed under subsection (2) to be computed according to the straight-line method under section 28 or the diminishing value method under section 29 and an election so made shall apply to all depreciable assets owned by the person.
- (4) The straight-line method only shall apply to a depreciable asset that is a structural improvement to immovable property.
- (5) The cost of a structural improvement to immovable property does not include the cost of the land.
- (6) A person may apply, in writing, to the Minister for a change in the method of depreciation and the Minister may, by notice in writing to the applicant, approve the application subject to such conditions as the Minister may specify in the notice.
- (7) If a depreciable asset is used in a fiscal year partly in deriving taxable business income and partly for another use, the depreciation deduction for that year shall be the fair proportional part of the amount that would be allowed if the asset were wholly used to derive taxable business income.
- (8) If a depreciable asset is not used for the whole of the fiscal year in deriving taxable business income, the depreciation deduction for the year shall be computed according to the following formula —

$$A \times B/C$$

where —

- A is the depreciation deduction computed under section 28 or 29 after taking into account subsection (7);
- B is the number of days in the fiscal year the asset is used or available for use in deriving taxable business income; and
- C is the number of days in the fiscal year.

28 Straight-line depreciation

- (1) The depreciation deduction allowed to a person for a fiscal year in respect of a depreciable asset under the straight-line method shall be computed by applying the rate specified in the Second Schedule against the cost of the asset.
- (2) The total deductions allowed, or that would be allowed but for section 27(7), to a person under this section in respect of a depreciable asset for the current fiscal year and all previous fiscal years shall not exceed the cost of the asset.

29 Diminishing value depreciation

The depreciation deduction allowed to a person for a fiscal year in respect of a depreciable asset under the diminishing value method shall be computed by applying the rate specified in the Second Schedule against the written down value of the asset at the beginning of the year.

30 Amortisation of intangibles

- (1) In this section, “cost” means —
 - (a) in relation to an intangible referred to in paragraph (a) or (b) of the definition of “intangible” in section 2, the total expenditure incurred in acquiring, creating, improving, or renewing the intangible; or
 - (b) in relation to an intangible referred to in paragraph (c) of the definition of “intangible” in section 2, the amount of the expenditure.
- (2) A person shall be allowed a deduction (referred to as an “amortisation deduction”) computed in accordance with this section for the cost of an intangible wholly or partly used by the person in a fiscal year in deriving taxable business income.
- (3) Subject to this section, the amortisation deduction of a person for a fiscal year shall be computed according to the following formula —

$$\frac{A}{B}$$

where —

- A is the cost of the intangible; and

B is the useful life of the intangible in whole years.

- (4) An intangible —
- (a) with a useful life of more than 10 years; or
 - (b) that does not have an ascertainable useful life,
- shall be treated as having a useful life of 10 years.
- (5) If an intangible is used in a fiscal year partly in deriving taxable business income and partly for another use, the amortisation deduction for that year shall be the fair proportional part of the amount that would be allowed if the intangible were wholly used to derive taxable business income.
- (6) If an intangible is not used for the whole of a fiscal year in deriving taxable business income, the amortisation deduction for the year shall be computed according to the following formula —

$$A \times B/C$$

where —

- A** is the amortisation deduction computed under subsection (3) or (5), as the case may be;
 - B** is the number of days in the fiscal year the intangible is used or available for use in deriving taxable business income; and
 - C** is the number of days in the fiscal year.
- (7) The total amortisation deductions allowed, or that would be allowed but for subsection (5), to a person under this section in the current fiscal year and all previous fiscal years in respect of an intangible shall not exceed the cost of the intangible.

31 Written down value of depreciable assets and intangibles

- (1) Subject to subsection (2), the written down value of a depreciable asset or intangible of a person at the beginning of a fiscal year shall be —
- (a) if the asset or intangible was acquired during the year, the cost of the asset; or
 - (b) in any other case, the cost of the asset or intangible as reduced by the total depreciation or amortisation deductions allowed to the person in respect of the asset or intangible in previous fiscal years.
- (2) If section 27(7) applies to a depreciable asset or section 30(5) applies to an intangible for a fiscal year, the written down value of the asset or intangible shall be computed on the basis that the asset has been used solely to derive taxable business income.

32 Disposal of a depreciable asset or intangible

If a person disposes of a depreciable asset or an intangible in a fiscal year, there shall be no depreciation or amortisation deduction for that year and —

- (a) if the consideration received exceeds the written down value of the asset or intangible at the beginning of the year, the excess (referred to as a “balancing charge”) shall be business income included in the gross income of the person for that year; or
- (b) if the consideration received is less than the written down value of the asset or intangible at the beginning of the year, the difference (referred to as a “balancing allowance”) shall be allowed as a deduction in computing the chargeable income of the person for that year.

33 Amortisation of preliminary expenditure

- (1) In this section, “preliminary expenditure” means any expenditure incurred before the commencement of a business if the income to be derived by the business will be wholly and exclusively included in gross income, other than expenditure incurred in acquiring land, a depreciable asset or an intangible.
- (2) A person shall be allowed a deduction for preliminary expenditure in the fiscal year in which the expenditure is incurred and in the following 3 fiscal years.
- (3) The amount of the deduction allowed in each fiscal year shall be 25 per cent of the expenditure.

34 Interest

A person shall be allowed a deduction for any interest incurred by the person in a fiscal year to the extent to which the person has used the proceeds or benefit of the debt or other instrument or agreement giving rise to the interest to derive income included in gross income.

35 Contribution to approved retirement fund

- (1) Subject to subsection (2), an employer shall be allowed a deduction for a contribution made in a fiscal year to a retirement fund only if —
 - (a) the fund is an approved retirement fund; and
 - (b) the contribution is made in respect of an employee who is a resident individual.
- (2) The amount of the deduction allowed under subsection (1) shall not exceed 20 per cent of the employment income paid by the employer to the employee for the year.

36 Bad debts

- (1) A person shall be allowed a deduction for a bad debt written off in a fiscal year if the following conditions are satisfied —
 - (a) the amount of the debt —
 - (i) was previously included in the gross income of the person; or
 - (ii) is money lent by the person in the normal course of business for the purposes of deriving taxable business income;
 - (b) the debt or part of the debt is written off in the accounts of the person in the fiscal year; and
 - (c) there are reasonable grounds for believing that the debt is irrecoverable.
- (2) The amount of the deduction allowed under this section for a fiscal year shall not exceed the amount of the debt written off in the accounts of the person for that year.

37 Carry forward of business losses

- (1) If a person has a business loss for a fiscal year, the amount of the loss shall be carried forward to the following fiscal year and allowed as a deduction against the business income of the person for that following year.⁴³
- (2) If a business loss is not wholly deducted under subsection (1), the excess shall be carried forward to the next following fiscal year and deducted as specified in subsection (1) in that year, and so on until the loss is fully deducted.
- (3) A person has a business loss for a fiscal year if the total amount of deductions allowed to the person in deriving taxable business income for the year (other than the deduction allowed under this section) exceeds the total amount of that income, and the amount of the excess shall be the amount of the business loss.

DIVISION 5 - INCOME TAX ACCOUNTING**38 Method of accounting for income tax**

- (1) Subject to subsection (2), a person shall —
 - (a) account for business income and expenditures —
 - (i) in the case of a company, on an accrual basis; or
 - (ii) in any other case, on a cash or accrual basis, provided the same basis is used for both business income and expenditures; and
 - (b) account for any other income and expenditures on a cash basis.
- (2) The Minister may specify that any class of persons shall account for income tax purposes on a cash or accrual basis.
- (3) Subject to this Act, a person shall use generally accepted accounting principles in accounting for income tax.

- (4) A person may apply, in writing, for a change in the person's method of accounting and the Minister may, by notice in writing, approve the application but only if satisfied that the change is necessary to properly compute the chargeable income of the person.
- (5) Subject to subsection (6), if a person's method of accounting changes, the person shall make adjustments in the fiscal year of change to items of income, deduction, or credit, or to any other items affected by the change so that no item is omitted and no item is taken into account more than once.
- (6) If an amount is added to the chargeable income of a person solely by reason of the adjustments required under subsection (5), one-third of the amount shall be included in the fiscal year in which the change occurs and the balance shall be included equally in the following 2 fiscal years.

39 Cash-basis accounting

A person accounting for income tax purposes on a cash basis shall derive an amount when it is received and shall incur an expenditure when it is paid.

40 Accrual-basis accounting

- (1) A person accounting for income tax purposes on an accrual basis shall derive an amount when it is due to the person and shall incur an expenditure when it is payable by the person.
- (2) Subject to this Act, an amount is due to a person at the time the person becomes entitled to receive it even if the time for discharge of the entitlement is postponed or the amount is payable by instalments.
- (3) Subject to this Act, an amount is payable by a person when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance occurs.
- (4) For the purposes of subsection (3), economic performance shall occur —
 - (a) in the case of the acquisition of services or assets, at the time the services are provided or assets delivered;
 - (b) in the case of the use of assets, at the time the assets are used; and
 - (c) in any other case, at the time payment is made in full satisfaction of the liability.
- (5) If —
 - (a) a person has been allowed a deduction for any expenditure incurred in deriving gross income; and
 - (b) the person has not paid the liability or a part of the liability to which the deduction relates within one year of the end of the fiscal year in which the deduction was allowed,

the unpaid amount of the liability shall be included in the gross income of the person for the first fiscal year following the end of the one-year period.

- (6) An amount to which subsection (5) applies has the same character as the income to which the deduction relates.
- (7) If the amount of an unpaid liability is included in gross income under subsection (5) and the person subsequently pays the liability or a part of the liability, the person shall be allowed a deduction for the amount paid in the fiscal year in which the payment is made.

41 Trading stock

- (1) In this section —

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

“**average-cost method**” means the generally accepted accounting principle under which the valuation of trading stock is based on a weighted average cost of items of trading stock on hand;

“**direct labour costs**” means labour costs directly related to the manufacture or production of trading stock;

“**direct material costs**” means the cost of materials that become an integral part of the trading stock manufactured or produced, or which are consumed in the manufacturing or production process;

“**factory overhead costs**” means the total costs of manufacturing or producing trading stock, other than direct labour and direct material costs;

“**first-in-first-out method**” means the generally accepted accounting principle under which the valuation of trading stock is based on the assumption that trading stock is sold in the order of its acquisition;

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

“**variable factory overhead costs**” means those factory overhead costs that vary directly with changes in the volume of trading stock manufactured or produced.

- (2) A person shall be allowed a deduction for the cost of trading stock disposed of by the person in a fiscal year.
- (3) The cost of trading stock disposed of by a person in a fiscal year shall be computed in accordance with the following formula —

$$(A + B) - C$$

where —

- A is the opening value of the trading stock of the person for the year;
- B is the cost of trading stock acquired by the person in the year; and
- C is the closing value of trading stock for the year.
- (4) The opening value of trading stock of a person for a fiscal year shall be —
- (a) the closing value of the trading stock of the person for the previous fiscal year; or
- (b) if the person commenced business in the year, the value of any trading stock acquired by the person prior to the commencement of the business.
- (5) The value referred to in subsection (4)(b) shall be the lesser of —
- (a) cost of the trading stock; or
- (b) the fair market value of trading stock determined at the time the trading stock is brought into the business.
- (6) The closing value of the trading stock of a person for a fiscal year shall be the lower of cost or fair market value of the trading stock of the person on hand at the end of the year.
- (7) A person accounting for income tax purposes on a cash basis may compute the person's cost of trading stock under the prime-cost method or absorption-cost method, and a person accounting for income tax purposes on an accrual basis shall compute the person's cost of trading stock under the absorption-cost method.
- (8) If particular items of trading stock are not readily identifiable, a person may account for that trading stock on the first-in-first-out method or the average-cost method but, once chosen, a stock valuation method may be changed only with the written permission of the Minister and in accordance with any conditions that the Minister may impose.

42 Long-term contracts

- (1) In this section —

“long-term contract” means a contract for manufacture, installation, or construction, or, in relation to each, the performance of related services, which is not completed within the fiscal year in which work under the contract commenced, other than a contract estimated to be completed within 6 months of the date on which work under the contract commenced; and

“percentage of completion method” means the generally accepted accounting principle under which income and expenditures arising under a long-term contract are recognised by reference to the stage of completion of the contract, as modified by subsection (3).

- (2) A person accounting for income tax purposes on an accrual basis shall compute the income arising under a long-term contract under the percentage of completion method.
- (3) The percentage of completion of a long-term contract in a fiscal year shall be determined by comparing the total costs allocated to the contract and incurred before the end of the year with the estimated total contract costs as determined at the commencement of the contract.
- (4) Where, in the fiscal year in which a long-term contract is completed, there is a final year loss, the Minister may allow the loss to be carried back to the preceding fiscal years and applied against the amount included in business income in those years commencing with the year in which the contract was completed.
- (5) A person has a final year loss under a long-term contract if both the following conditions are satisfied —
 - (a) the total chargeable income estimated to be made under the contract for the purposes of the percentage of completion method exceeds the total actual chargeable income, if any, under the contract; and
 - (b) the amount of the excess under paragraph (a) exceeds the amount otherwise included in gross income under subsection (2) for the fiscal year in which the contract was completed,and the amount of the excess under paragraph (b) shall be the amount of the final year loss.

43 Financial leases

- (1) In this section —

“**blended loan**” means a loan under which payments by the borrower represent in part a payment of interest and in part a repayment of principal where the interest part is calculated on the principal outstanding at the time of each payment;

“**financial lease**” means —

- (a) a hire purchase agreement; or
- (b) any lease that is treated under international financial reporting standards as a financial lease and is so accounted for by the lessor in its financial accounts;⁴⁴

“**hire purchase agreement**” means an agreement for —

- (a) the hire of goods with an option to purchase; or
- (b) the purchase of goods by instalments (whether stated as rent, hire or otherwise), other than an agreement under which property in the goods passes at the commencement of the lease;

“**lease term**” includes any additional period of the lease under an option to renew;

“**lessee**” includes a hiree under a hire purchase agreement; and

“**lessor**” includes a hirer under a hire purchase agreement.

- (2) This section applies to an asset that is leased or hired under a financial lease.
- (3) If this section applies, this Act shall apply on the basis that —
 - (a) the lessee is the owner of the asset;
 - (b) the lessee acquired the asset at the commencement of the lease, except in cases where the lessee already was the owner of the asset; and
 - (c) the lessor has made a blended loan to the lessee at the commencement of the lease and each lease payment is in part repayment of principal and in part payment of interest under that loan.
- (4) The cost of the asset treated as owned by the lessee under subsection (3)(a) shall be —
 - (a) if the lessor and lessee are not associates and an amount is stated as the cost or value of the asset in the lease agreement, that amount; or
 - (b) if the lessor and lessor are associates or if no amount is stated as the cost or value of the asset in the lease agreement, the fair market value of the asset at the commencement of the lease.⁴⁵
- (5) The amount of the loan referred to in subsection (3)(c) shall be the amount determined under subsection (4) as the cost of the asset.
- (6) The interest part of each payment made under the loan shall be computed by reference to the interest rate implicit in the lease agreement.

DIVISION 6 - ASSETS

44 Disposal and acquisition of assets

- (1) In this section, “**personal asset**” means an asset held wholly for personal or domestic use.
- (2) Except as otherwise provided in this Act, this section establishes when an asset is disposed of or acquired for the purposes of this Act.
- (3) A person shall be treated as having made a disposal of an asset at the time the person parts with the ownership of the asset, including when the asset is —
 - (a) sold, exchanged, transferred, or distributed; or
 - (b) cancelled, redeemed, relinquished, destroyed, lost, expired, or surrendered.
- (4) A disposal includes the disposal of a part of an asset.

- (5) The transmission of an asset by succession or under a will shall be treated as a disposal of the asset by the deceased at the time the asset is transmitted.
- (6) The application of a business asset to personal or domestic use shall be treated as a disposal of the asset by the owner at the time the asset is so applied.
- (7) A person acquires an asset at the time the person begins to own the asset, including at the time the person is granted any right.
- (8) The application of a personal asset to business use shall be treated as an acquisition of the asset by the owner at the time the asset is so applied.⁴⁶

45 Cost

- (1) In this section, “**hedging agreement**” means an agreement entered into for the purpose of eliminating or reducing the risk of adverse financial consequences that may arise from a foreign currency exchange rate fluctuation in relation to another agreement.
- (2) Except as otherwise provided in this Act, this section establishes the cost of an asset for the purposes of this Act.
- (3) Subject to this section, the cost of an asset purchased by a person shall be the sum of the following amounts —
 - (a) the total consideration given by the person for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired;
 - (b) any incidental expenditure incurred by the person in acquiring or disposing of the asset; and
 - (c) any expenditure incurred by the person to alter or improve the asset.
- (4) Subject to this section, the cost of an asset produced or constructed by a person shall be the total of the costs incurred by the person in producing or constructing the asset plus any expenditure referred to in subsection (3)(b) and (c) incurred by the person.
- (5) No amount shall be included in the cost of an asset under subsection (3)(b) and (c) to the extent to which it has been allowed as a deduction under this Act.
- (6) If an asset has been acquired by a person and the price is denominated in a foreign currency, any increase or decrease in the price of the asset as expressed in Tongan pa’anga from the time of acquisition until the time at which the purchase price is paid is added to or deducted from the cost of the asset, as the case may be.
- (7) In determining whether the liability of a person has increased or decreased for the purposes of subsection (6), account shall be taken of the person’s position under any hedging agreement relating to the purchase price.⁴⁷

- (8) If a person disposes of a part of an asset, the cost of the asset shall be apportioned between the part of the asset retained and the part disposed of in accordance with their respective fair market values determined at the time the person acquired the asset.
- (9) The cost of an asset does not include the amount of any grant, subsidy, rebate, commission, or other assistance received or receivable by a person in respect of the acquisition of the asset, except to the extent to which the amount is included in the gross income of a person.
- (10) The reference to “other assistance” in subsection (9) does not include a loan repayable with or without interest.

46 Determination of cost in special cases

- (1) The cost of an asset treated as acquired under section 44(8) shall be the fair market value of the asset determined at the date it is applied to business use.
- (2) If the acquisition of an asset by a person is the derivation of an amount included in gross income, the cost of the asset shall be the amount included plus any amount paid by the person for the asset.
- (3) If the acquisition of an asset by a person is the derivation of exempt income, the cost of the asset shall be the exempt amount plus any amount paid by the person for the asset.

47 Consideration received

- (1) Except as otherwise provided in this Act, this section establishes the amount of consideration received on disposal of an asset for the purposes of this Act.
- (2) The consideration received by a person on disposal of an asset shall be the total amount received by the person for the asset, including the fair market value of any consideration received in kind determined at the time of disposal.
- (3) If an asset has been lost or destroyed by a person, the consideration received for the asset includes any compensation, indemnity, or damages received by the person as a result of the loss or destruction, including amounts received as a consequence of —
 - (a) an insurance policy, indemnity, or other agreement;
 - (b) a settlement; or
 - (c) a judicial decision.
- (4) The consideration received for an asset treated as disposed of under section 44(6) shall be the fair market value of the asset determined at the time it is applied to personal or domestic use.
- (5) If two or more assets are disposed of by a person in a single transaction and the consideration received for each asset is not specified, the total

consideration received by the person shall be apportioned among the assets disposed of in proportion to their respective fair market values determined at the time of the transaction.

48 Non-arm's length transaction

For the purposes of this Act, if an asset is disposed of in a non-arm's length transaction —

- (a) the person disposing of the asset shall be treated as having received consideration equal to the fair market value of the asset determined at the time the asset is disposed of; and
- (b) the person acquiring the asset shall be treated as having a cost equal to the amount determined under paragraph (a).

49 Gain or loss not recognised

- (1) For the purposes of this Act and subject to subsection (2), no gain or loss shall be taken to arise on the disposal of an asset —
 - (a) between spouses as part of a divorce settlement or under an agreement to live apart;
 - (b) by reason of the transmission of the asset on the death of a person to an executor or beneficiary; or
 - (c) by reason of the compulsory acquisition of the asset under any law if the consideration received for the disposal is reinvested by the recipient in an asset of a like kind (referred to as a “replacement asset”) within one year of the disposal.
- (2) Subsection (1) does not apply if the person acquiring the asset (including a replacement asset) is a non-resident person at the time of the acquisition.
- (3) If subsection (1)(a) or (b) applies, the person acquiring the asset shall be treated as acquiring an asset of the same character as the person disposing of the asset and —
 - (a) in the case of a depreciable asset or intangible, acquiring the asset or intangible for a cost equal to the written down value of the asset at the time of the disposal as determined under section 31; and
 - (b) in any other case, acquiring the asset for a cost equal to the cost of the asset for the person disposing of the asset at the time of the disposal.
- (4) A person's cost of a replacement asset or intangible referred to in subsection (1)(c) shall be —
 - (a) if the asset compulsorily acquired is a depreciable asset or intangible, the written down value of the asset or intangible at the time it is compulsorily acquired; or

- (b) in any other case, the cost of the asset at the time it is compulsorily acquired,
- plus the amount by which any consideration given by the person for the replacement asset exceeds the consideration received by the person for the asset or intangible compulsorily acquired.⁴⁸

DIVISION 7 - MISCELLANEOUS PROVISIONS RELATING TO INCOME AND DEDUCTIONS

50 Income of joint owners

- (1) For the purposes of this Act, if property is jointly owned by two or more persons, any income or expenditures relating to the property are apportioned among the owners according to their respective interests in the property.
- (2) If the interests of the owners of jointly owned property cannot be ascertained, the owners of the property are treated as having an equal interest in the property.

51 Apportionment of deductions

- (1) Subject to this Act, expenditure relating to —
- (a) the derivation of more than one class of income; or
 - (b) the derivation of a class of income and to some other purpose,
- shall be apportioned on any reasonable basis taking account of the relative nature and size of the activities or purposes to which it relates.
- (2) The following are treated as a “class of income” —
- (a) taxable business income;
 - (b) any other income included in gross income; and
 - (c) exempt income.

52 Recovered expenditure

If a person has been allowed a deduction for any expenditure or loss incurred, or bad debt written off, in a fiscal year in the computation of the chargeable income of the person for the year and, subsequently, the person has received, in cash or in kind, any amount as a reimbursement or recovery of, or an indemnity for the expenditure, loss, or debt, the amount received shall be —

- (a) included in the gross income of the person in the fiscal year in which it is received; and
- (b) treated as income of the same character as the income to which the deduction related.

53 Cessation of source of income

If —

- (a) any amount is derived by a person in a fiscal year from any business, activity, investment, or other source that had ceased before the amount was derived; and
- (b) had the amount been derived before the business, activity, investment, or other source ceased it would have been included in the gross income of the person,

this Act shall apply to the amount on the basis that the business, activity, investment, or other source had not ceased at the time the amount was derived.

54 Currency translation

- (1) An amount taken into account under this Act shall be expressed in Tongan pa'anga.
- (2) If an amount is in a currency other than Tongan pa'anga, the amount shall be translated to Tongan pa'anga at the National Reserve Bank of Tonga mid-exchange rate applying between the foreign currency and Tongan pa'anga on the date the amount is taken into account for the purposes of this Act.

PART 4 - APPLICATION OF INCOME TAX TO PERSONS**DIVISION 1 - INDIVIDUALS****55 Taxation of Individuals⁴⁹**

- (1) In this section –

“**net business income**” is gross business income less the total amount of deductions allowable under this Act to the individual in deriving taxable business income;

“**net property income**” is gross property income less the total amount of deductions allowable under this Act to the individual in deriving taxable property income; and

“**property loss**” for a fiscal year is where the total amount of deductions allowed to the person in deriving taxable property income for the year exceeds the total amount of that income and the amount of the excess shall be the amount of the property loss.

- (2) Subject to this Act, the chargeable income of an individual is computed separately and the total amount of gross income of an individual is the sum of the following

- (a) the gross amount of employment income;
 - (b) the net business income; or
 - (c) the net property income.
- (3) A business loss or property loss cannot be offset against employment income.
- (4) A property loss cannot be offset against net business income or a business loss.

DIVISION 2 - ENTITIES

56 Taxation of trusts

- (1) In this section, “**chargeable trust income**”, in relation to a fiscal year, means —
- (a) in the case of a resident trust, the gross income of the trust for the year reduced by the sum of the following —
 - (i) any part of that amount to which subsection (3) applies for the year; and
 - (ii) the total deductions allowed to the trust for the year under this Act, other than amounts to which subsection (4) applies; or
 - (b) in the case of a non-resident trust, the total amount of Tongan-source income derived by the trust for the year included in gross income reduced by the sum of the following —
 - (i) any part of that amount to which subsection (3) applies for the year and in respect of which the beneficiary has paid tax; and
 - (ii) the total deductions allowed to the trust for the year under this Act that relate to the derivation of such income, other than amounts to which subsection (4) applies.
- (2) Income derived by the trustee of a trust during a fiscal year shall be taxed, in that year, either to the trustee or the beneficiary of the trust in accordance with this section.
- (3) An amount derived by a trustee of a trust shall be treated as derived by a beneficiary of the trust (other than a beneficiary under a legal disability) if the beneficiary has a vested right to the income.
- (4) A beneficiary shall be allowed a deduction in accordance with this Act for any expenditure or loss incurred by the trustee in deriving income referred to in subsection (3) that is included in the gross income of the beneficiary.
- (5) Income to which subsection (3) applies —
- (a) retains its character and geographic source in the hands of the beneficiary; and
 - (b) is treated as derived by the beneficiary at the time the amount was derived by the trustee.

- (6) The trustee of a trust shall be liable for tax for a fiscal year on the chargeable trust income of the trust for the year.
- (7) The gross income of a resident beneficiary includes a distribution received by the beneficiary to the extent to which the distribution is foreign-source income derived by the trustee of the trust that was not taxed to the beneficiary under subsection (3) or the trustee under subsection (6) in the fiscal year in which it was derived by the trustee.⁵⁰

57 Taxation of companies

- (1) A company shall be liable for tax separately from its members.
- (2) A social club, trade association, mutual insurance company, or other similar membership organisation shall be liable for tax under this Act in respect of its dealings with members.
- (3) The total deductions allowed to a company referred to in subsection (2) for a fiscal year in respect of the supply of goods or services to members shall not exceed the gross income derived from the members (including membership contributions) for the year.
- (4) If any expenditure is not deducted in a fiscal year as a result of subsection (3), the expenditure shall be carried forward and treated as incurred in the following year and deducted in accordance with this section in that year, and so on until the expenditure is fully deducted.

58 Change in control of entity

- (1) In this section, —
 - “**carry forward loss**” means a business loss carried forward under section 37 or 57(4), or a foreign business loss carried forward under section 63;
 - “**entity**” means a trust or company;⁵¹
 - “**ownership interest**” means an interest of a beneficiary in a trust or membership interest in a company; and
 - “**underlying ownership**” in relation to an entity, means an ownership interest in the entity held, directly or indirectly through an interposed entity or entities, by an individual or by a person not ultimately owned by individuals.
- (2) If there is a change of 50 per cent or more in the underlying ownership of an entity, any carry forward loss incurred for a fiscal year before the change shall not be allowed as a deduction in a fiscal year after the change, unless the entity —
 - (a) carries on the same business after the change as it carried on before the change until the loss has been fully deducted; and

- (b) does not, until the loss has been fully deducted, engage in any new business or investment after the change if the principal purpose of the entity or the owners of the entity is to utilise the loss so as to reduce the income tax payable on the income arising from the new business or investment.

PART 5 - APPLICATION OF INCOME TAX TO SPECIAL INDUSTRIES

59 Short-term insurance business

The chargeable income of a company carrying on a short-term insurance business shall be computed in accordance with the Regulations.

PART 6 - APPLICATION OF INCOME TAX TO INTERNATIONAL TRANSACTIONS

DIVISION 1 - GEOGRAPHIC SOURCE OF INCOME

60 Geographic source of income

- (1) Employment income shall be Tongan-source income to the extent to which the income —
 - (a) is received from employment exercised in Tonga, wherever paid; or
 - (b) is paid by, or on behalf of, the Government, wherever the employment is exercised.
- (2) Business income derived by a resident person shall be Tongan-source income to the extent to which the income is derived from any business carried on in Tonga.
- (3) Business income derived by a non-resident person shall be Tongan-source income to the extent to which it is directly or indirectly attributable to —
 - (a) a permanent establishment of the non-resident person in Tonga;
 - (b) sales in Tonga of goods or merchandise of the same or similar kind as those sold by the person through a permanent establishment in Tonga; or
 - (c) any other business activity carried on in Tonga of the same or similar kind as that carried on by the person through a permanent establishment in Tonga.
- (4) If the business of a non-resident person comprises the rendering of independent services, the Tongan-source business income of the person shall

- include, in addition to any amounts treated as Tongan-source income under subsection (3), any remuneration —
- (a) paid by a resident person, except remuneration for services utilised in a business carried on by the resident person outside Tonga through a permanent establishment; or
 - (b) that is deductible expenditure of a permanent establishment in Tonga of a non-resident person.
- (5) Any gain from the disposal of an asset shall be Tongan-source income to the extent that the asset has been used in deriving business income that is treated as Tongan-source income under this section.
- (6) A dividend shall be Tongan-source income if it is paid by a resident company.
- (7) Interest shall be Tongan-source income if it is —
- (a) paid by a resident person, except when the debt or other instrument or agreement giving rise to the interest is utilised in a business carried on by the person outside Tonga through a permanent establishment; or
 - (b) deductible expenditure of a permanent establishment in Tonga of a non-resident person.
- (8) A royalty shall be Tongan-source income if it is —
- (a) paid by a resident person, except when the right, property, or supply giving rise to the royalty is utilised in a business carried on by the person outside Tonga through a permanent establishment; or
 - (b) deductible expenditure of a permanent establishment in Tonga of a non-resident person.
- (9) Rent shall be Tongan-source income if it is derived from —
- (a) the lease of land in Tonga; or
 - (b) the lease of a building or other structural improvement to land in Tonga.
- (10) A pension, charge, annuity, management fee, or insurance premium shall be Tongan-source income if it is paid by a resident person or is deductible expenditure of a permanent establishment in Tonga of a non-resident person.
- (11) A natural resource amount shall be Tongan-source income if it relates to the taking of minerals or a living or non-living resource from land in, or territorial waters of, Tonga.
- (12) An amount shall be Tongan-source income if the amount is derived on disposal of —
- (a) immovable property in Tonga; or
 - (b) shares in a company, or an interest in a partnership or trust, if the shares or interest derive 50% or more of their value, directly or indirectly, from immovable property in Tonga.

- (13) An amount of any kind not mentioned in the preceding subsections shall be Tongan-source income if it is paid by a resident person or is deductible expenditure of a permanent establishment in Tonga of a non-resident person.
- (14) If an amount may come within subsection (2) or (3) and another subsection, other than subsection (13), this section shall apply —
- (a) by first determining whether the amount is Tongan-source income under that other subsection; and
 - (b) if the amount is not Tongan-source income under that other subsection, then determining whether it is Tongan-source income under subsection (2) or (3).
- (15) An amount shall be foreign-source income to the extent it is not Tongan-source income. ⁵²

DIVISION 2 - TAXATION OF FOREIGN-SOURCE INCOME OF RESIDENT PERSONS

61 Foreign-source employment income of resident individuals

- (1) Any foreign-source employment income that is received by a resident individual shall be exempt income if the individual has paid foreign income tax in respect of the income.
- (2) A resident individual shall be treated as having paid foreign income tax in respect of foreign-source employment income if tax has been withheld from the income by the individual's employer.

62 Foreign tax credit

- (1) In this section —
- “**average rate of Tongan income tax**” in relation to a resident person for a fiscal year, means the percentage that the income tax payable by the person under this Act (before the allowance of any tax credit under this Act) is of the chargeable income of the person for the year;
- “**foreign income tax**” includes a foreign withholding tax, but does not include any penalty, additional tax, or interest payable in respect of any foreign income tax;
- “**net foreign-source income**” in relation to a resident person for a fiscal year, means the total taxable foreign-source income of the person for the year, as reduced by any deductions allowed to the person under this Act for the year that —
- (a) relate exclusively to the derivation of the foreign-source income; and

- (b) are apportioned to the derivation of foreign-source income in accordance with section 51 on the basis that foreign-source income is a separate class of income; and

“**taxable foreign-source income**” means foreign source income included in gross income.

- (2) If a resident person derives taxable foreign-source income in respect of which the person has paid foreign income tax, the person shall be allowed a tax credit (referred to as a “foreign tax credit”) of an amount equal to the lesser of —
- (a) the foreign income tax paid; or
- (b) the Tongan income tax payable in respect of the income.
- (3) For the purposes of subsection (2)(b), the Tongan income tax payable in respect of taxable foreign-source income derived by a resident person in a fiscal year shall be computed by applying the average rate of Tongan income tax applicable to the person for the year against the net foreign-source income of the person for the year.
- (4) The foreign tax credit of a resident person for a fiscal year shall be computed separately for foreign-source business income and the other foreign-source income of the person.
- (5) Where subsection (4) applies, deductions shall be apportioned for the purposes of paragraph (b) of the definition of “net foreign-source income” in accordance with section 51 on the basis that foreign-source business income and other foreign-source income are separate classes of income.
- (6) A foreign tax credit shall be allowed under this section only if the foreign income tax is paid within 2 years after the end of the fiscal year in which the foreign-source income to which the tax relates was derived by the resident person.
- (7) A foreign tax credit allowed under this section shall be applied in accordance with section 5(3).
- (8) Any foreign tax credit or part of a foreign tax credit allowed under this section for a fiscal year that is not credited under section 5(3) shall not be refunded, carried back to the preceding fiscal year, or carried forward to the following fiscal year.

63 Foreign losses

- (1) In this section,

“**foreign business loss**”, for a fiscal year, is the excess of deductions allowed to the person in deriving taxable foreign-source business income for the year over the amount of that foreign-source business income;

“**taxable foreign-source business income**”, in relation to a resident person, means foreign-source business income included in the gross income of the person; and

“**taxable foreign-source non-business income**”, in relation to a resident person, means foreign-source income (other than foreign-source business income) included in the gross income of the person.

- (2) Any amount that a resident person is allowed as a deduction under this Act in deriving taxable foreign-source business income shall be deductible only against that income.
- (3) If a resident person has a foreign business loss for a fiscal year, the amount of the loss shall be carried forward to the following fiscal year and allowed as a deduction against the person’s foreign-source business income derived in that following year.
- (4) If a foreign business loss is not wholly deducted in a fiscal year under subsection (3), the undeducted amount shall be carried forward to the next following fiscal year and applied as specified in subsection (3) in that year, and so on until the loss is fully deducted.
- (5) Any amount that a resident person is allowed as a deduction under this Act in deriving taxable foreign-source non-business income shall be deductible only against that income.
- (6) If the total amount of deductions referred to in subsection (5) for a fiscal year exceeds the person’s taxable foreign-source non-business income for the year, the amount of the excess shall not be carried forward to the following fiscal year.

DIVISION 3 - TAXATION OF NON-RESIDENT PERSONS

64 Taxation of non-residents with Tongan permanent establishments

- (1) Subject to this section, this Act applies to a non-resident person with a permanent establishment in Tonga on the basis that the permanent establishment is a separate person engaged in the same or similar activities under the same or similar conditions and dealing independently with that non-resident person.
- (2) The gross income of a permanent establishment in Tonga of a non-resident person for a fiscal year is the total Tongan-source income of the person for the year as determined under section 60.
- (3) Subject to subsection (4), no deduction is allowed for amounts paid or payable by the permanent establishment to its head office or to another permanent establishment of the non-resident person as —
 - (a) royalties, fees, or other similar payments for the use of any tangible or intangible asset;

- (b) compensation for any services, including management services, performed for the permanent establishment; or
 - (c) interest on moneys lent to the permanent establishment, except in connection with a banking business.
- (4) Nothing in subsection (3) prevents a deduction for an amount paid or payable by a permanent establishment as a reimbursement of actual expenditures incurred by the non-resident person to third parties if the reimbursement is otherwise deductible under this Act.

65 Foreign-source income of non-resident persons

The foreign-source income of a non-resident person shall be exempt income.

65A Thin Capitalisation⁵³

- (1) Subject to subsections (2) and (3), if a foreign-controlled resident company, other than a financial institution, has a debt-to-equity ratio in excess of 2 to 1 at any time during a fiscal year, a deduction is disallowed for the interest paid by the company during that year on that part of the debt that exceeds the 2 to 1 ratio for the period the ratio was exceeded.
- (2) If the debt-to-equity ratio of a foreign-controlled resident company exceeds 2 to 1 for a fiscal year, subsection (1) does not apply if, at all times, during the year, the amount of the debt of the company does not exceed the arm's length debt amount.
- (3) This section applies to a non-resident company that has a permanent establishment in Tonga on the basis of the following –
 - (a) the permanent establishment is treated as a foreign-controlled resident company; and
 - (b) the debt-to-equity ratio of the permanent establishment is computed by reference to –
 - (i) the debt obligations of the non-resident company attributable to the permanent establishment; and
 - (ii) the equity of the non-resident company attributable to the operations of the company conducted through the permanent establishment.
- (4) In this section –
 - “**arm's length debt amount**”, in relation to a foreign-controlled resident company, means the amount of debt that a financial institution that is not related to the company would be prepared to lend to the company having regard to all the circumstances of the company;
 - “**debt**” in relation to a foreign-controlled resident company, means the greatest amount, at any time during a fiscal year, of the debt obligations of the

company on which interest is payable as determined according to international financial reporting standards;

“**debt obligation**” means an obligation to make a repayment of money to another person, including an obligation arising under a promissory note, bill of exchange, or bond, but not including accounts payable or an obligation to make a repayment of money in respect of which no interest is payable;

“**equity**”, in relation to a foreign-controlled resident company, means the greatest amount, at any time during a fiscal year, of the equity of the company as determined according to international financial reporting standards and includes an obligation to make a repayment of money in respect of which no interest is payable; and

“**foreign-controlled resident company**” means a resident company in which fifty per cent or more of the beneficial ownership of the company is controlled by a non-resident person either alone or together with an associate or associates.

65A Tongan Source Income of Non-resident persons⁵⁴

Subject to this Act, a non-resident person receiving income for services performed in Tonga on a project, wherever paid, shall be subject to tax at the rate prescribed in the Order referred to in section 6 if the person is in Tonga for a period or periods aggregating less than ninety (90) days within any twelve month period.

PART 7 - ANTI-AVOIDANCE

66 Transactions between associates

- (1) The Minister may, in respect of any transaction between persons who are associates, distribute, apportion, or allocate income, deductions, or tax credits between the persons as is necessary to reflect the income that the persons would have realised in an arm’s length transaction.
- (2) In making any adjustment under subsection (1), the Minister may determine the geographic source of income and the nature of any income, payment, or loss as revenue, capital, or otherwise.

67 Tax avoidance schemes

- (1) In this section, “**tax avoidance scheme**” means any transaction if one of the main purposes of a person in entering into the transaction is the avoidance or reduction of any person’s liability to tax under this Act.
- (2) For the purposes of determining the liability to tax under this Act of any person, the Minister may —

- (a) determine the character of a transaction or an element of a transaction that was entered into as part of a tax avoidance scheme;
- (b) disregard a transaction that does not have substantial economic effect; or
- (c) determine the character of a transaction if the form of the transaction does not reflect the substance.

PART 7A – TAXATION OF MINING OPERATIONS⁵⁵

DIVISION 1 – INTERPRETATION

67A Interpretation⁵⁶

In this Part, unless the context otherwise requires –

“**commencement of commercial production**” means the first day of the first period of thirty (30) consecutive days during which the average level of production on the twenty-five (25) highest production days in the thirty-day period reaches a level as determined by the Chief Executive Officer with the advice of the Minister responsible for Lands;

“**farm-out agreement**” means an agreement to which section 67F applies;

“**licensed area**” means the area of land, including seabed, covered by a mining right;

“**licensee**” means a person who has been issued with a mining right;

“**minerals**” has the meaning in the Minerals Act, and includes seabed minerals, but excludes petroleum as defined in section 67M;

“**Minerals Act**” means the Minerals Act or any successor legislation dealing with mining;

“**mining additional profits tax**” means the mining additional profits tax imposed by section 67J;

“**mining development activities**” means authorised activities undertaken by a licensee in the extraction of minerals from their natural state pursuant to a mining development licence;

“**mining development expenditure**” means capital expenditure incurred by a licensee in undertaking development activities, other than expenditure incurred in acquiring a depreciable asset, and includes the following –

- (a) expenditure incurred in acquiring –
 - (i) an interest in a mining right, other than an interest referred to paragraph (a)(i) of the definition of “mining exploration expenditure”; or

- (ii) mining information, other than mining information referred to paragraph (a)(i) of the definition of “mining exploration expenditure”;
- (b) social infrastructure expenditure incurred in accordance with a mining development licence;

“**mining development licence**” means –

- (a) a mining licence issued under the Seabed Minerals Act; or
- (b) a mining lease issued under the Minerals Act;

“**mining exploration activities**” means authorised activities undertaken by a licensee in the search for minerals pursuant to a mining exploration licence;

“**mining exploration expenditure**” means capital expenditure incurred by a licensee in undertaking exploration activities, other than expenditure incurred in acquiring a depreciable asset, and includes the following –

- (a) expenditure incurred in acquiring –
 - (i) an interest in a mining exploration licence, but only when the licence is acquired from the Government or under a farm-out agreement; or
 - (ii) mining information related to mining exploration activities, but only when the information is acquired from the Government or under a farm-out agreement;
- (b) social infrastructure expenditure incurred in accordance with a mining exploration licence;

“**mining exploration licence**” means –

- (a) a prospecting permit or exploration licence granted under the Seabed Minerals Act; or
- (b) an exploration or prospecting licence granted under the Minerals Act;

“**mining information**” means information relating to a mining right; “**mining operations**” means mining exploration or mining development activities undertaken under a mining right;

“**mining right**” means a mining exploration licence or a mining development licence;

“**seabed minerals**” has the meaning in the Seabed Minerals Act; and “**Seabed Minerals Act**” means the Seabed Minerals Act 2014 or any successor legislation dealing with seabed minerals activities;

“**social infrastructure expenditure**” means capital expenditure that a licensee is required to incur under a mining right on the construction of a public school, hospital, road, or similar social infrastructure;

“**Tonga Seabed Minerals Authority**” means the Tonga Seabed Minerals Authority established under Seabed Minerals Act; and

“**uplift factor**” means 120%.

DIVISION 2 – SEABED MINING ROYALTIES

67B Imposition of seabed mining royalties⁵⁷

- (1) There is hereby imposed a seabed mining royalty on a licensee at the rate of 3% of the export value of seabed minerals recovered under a mining right or at such higher rate as may be specified in an agreement between the licensee and the Tonga Seabed Minerals Authority.
- (2) Seabed mining royalties are payable at the time of disposal of the recovered seabed minerals and shall be accounted for to the Chief Executive Officer on a monthly basis in accordance with section 67C(3).
- (3) The export value of seabed minerals recovered by a licensee shall be the free-on-board price received or receivable by the licensee for the seabed minerals.
- (4) If a seabed mineral is exported on the basis of a cost-insurance-freight price, the export value of the seabed mineral shall be the cost insurance freight price reduced by the cost of ocean freight and insurance.
- (5) The export value of seabed minerals recovered by a licensee but lost or destroyed before sale or other disposal is such amount as determined by the Chief Executive Officer.
- (6) If the Chief Executive Officer is satisfied that the price charged for seabed minerals is not consistent with the price charged in an arm’s length transaction, the Chief Executive Officer may substitute the price charged in an arm’s length transaction.
- (7) Section 66 shall apply, with the necessary changes made, in determining the price charged in an arm’s length transaction.
- (8) This section applies also to a person who recovers seabed minerals even though the person has no authority to recover such minerals.

67C Procedure relating to seabed mining royalties⁵⁸

- (1) A licensee liable for seabed mining royalties under section 67B shall lodge a seabed mining royalty return for each month stating the export value of seabed minerals disposed of during the month and the seabed mining royalties payable thereon.
- (2) A seabed mining royalty return for a month shall be lodged within 28 days after the end of the month and shall be in the form and manner prescribed in the Regulations.
- (3) Seabed mining royalties payable by a licensee for a month are due on the due date for lodging the licensee’s seabed mining royalty return for the month.
- (4) If a licensee lodges a seabed mining royalty return for a month –

- (a) the Chief Executive Officer shall be treated as having made an assessment of the export value of seabed minerals disposed of by the licensee during the month and the seabed mining royalties payable thereon equal to those respective amounts as specified in the return; and
 - (b) the seabed mining royalty return lodged under this section shall be treated for all purposes of this Act and the Revenue Services Administration Act 2002 as a notice of the assessment served on the licensee by the Chief Executive Officer on the day the return was lodged with the Chief Executive Officer.
- (5) If a licensee fails to lodge a seabed mining royalty return for a month –
- (a) the Chief Executive Officer may, based on any available information and according to the Chief Executive Officer's best judgment, make an assessment of the export value of seabed minerals disposed of by the licensee during the month and the seabed mining royalties payable thereon; and
 - (b) as soon as possible after making an assessment under paragraph (a), the Chief Executive Officer shall serve the licensee with a notice of the assessment stating the following –
 - (i) the export value of seabed minerals disposed of by the licensee for the month;
 - (ii) the amount of seabed mining royalties due;
 - (iii) the amount of any penalty and interest payable in respect of the seabed mining royalties due;
 - (iv) the time, place and manner of objecting to the assessment.
- (6) Section 71 shall apply to a seabed mining royalties assessment with the necessary changes made.
- (7) Section 92 shall apply to seabed mining royalties on the basis that the reference to “tax” includes a reference to “seabed mining royalties”.

DIVISION 2 – APPLICATION OF INCOME TAX TO MINING OPERATIONS

67D Taxation of licensees⁵⁹

- (1) A licensee shall be subject to income tax in accordance with this Act but subject to the modifications in this Part.
- (2) If there is an inconsistency in the taxation of a licensee under the income tax as between this Part and the other Parts of this Act, this Part shall prevail.
- (3) The rate of income tax applicable to a licensee is 25%.

67E Mining exploration and development expenditure⁶⁰

- (1) This Act shall apply to mining exploration expenditure incurred by a licensee in relation to a licensed area on the basis that it is an intangible with –
 - (a) a useful life equal to one year; and
 - (b) a cost equal to the amount of the expenditure.
- (2) Subject to subsection (3), this Act shall apply to mining development expenditure incurred by a licensee in relation to a licensed area on the basis that it is an intangible with –
 - (a) a useful life equal to the expected life of the mining development activities to which the mining development expenditure relates; and
 - (b) a cost equal to the amount of the expenditure.
- (3) If a licensee incurs mining development expenditure or expenditure to acquire a depreciable asset for use in mining development activities before the commencement of commercial production, this Act applies on the basis that the expenditure was incurred at the time of commencement of commercial production.
- (4) Subject to subsection (5), if a licensee disposes of an interest in a mining right (other than under a farm-out agreement), any gain arising on the disposal is reduced by any mining development expenditure relating to the right incurred by the licensee that has not been deducted or recouped by the licensee.
- (5) The reference in subsection (4) to “mining development expenditure” includes only such expenditure that is not included in the cost of an asset.
- (6) Subject to subsection 67H(7), if a licensee commenced mining operations before the commencement of the Income Tax (Amendment) Act 2015, this section applies from the commencement of those operations.

67F Mining farm-out agreements⁶¹

- (1) This section applies if the following conditions are satisfied –
 - (a) a licensee (referred to as the “transferor”) has entered into an agreement with a person (referred to as the “transferee”) for the transfer of an interest in a mining right; and
 - (b) the consideration given by the transferee for the interest wholly or partly includes the transferee undertaking some or all of the transferor’s work commitments in respect of the interest in the right retained by the transferor.
- (2) If this section applies:
 - (a) the value of any work undertaken by the transferee in relation to the part of the interest retained by the transferor is not included in –

- (i) the consideration received by the transferor for the transferred interest; or
 - (ii) the gross income of the transferor; and
- (b) the following applies to any amount in money received or receivable by the transferor for the transferred interest –
- (i) section 52 applies to the amount in money on the basis that it is a reimbursement or recovery by the transferor of any deductions allowed for expenditure incurred by the transferor in respect of the transferred interest; and
 - (ii) if the amount in money exceeds the amount of deducted expenditure to which section 52 applies, the excess is treated as consideration received for the transferred interest.

67G Contributions to a mining rehabilitation fund⁶²

- (1) A contribution made by a licensee to a rehabilitation fund as required under the terms of a mining right granted to the licensee shall be allowed as a deduction in the fiscal year in which the contribution was made.
- (2) Subject to subsection (3), expenditure incurred by a licensee in carrying out remedial work to a licensed area as required under a mining right granted to the licensee shall be allowed as a deduction in the fiscal year in which the expenditure is incurred.
- (3) A deduction shall not be allowed under subsection (2) to the extent that the remedial work is paid for, directly or indirectly, from money made available out of the licensee's rehabilitation fund.
- (4) Amounts accumulated in a rehabilitation fund or withdrawn from a rehabilitation fund to pay for remedial work as required under a mining right shall be exempt income.
- (5) Any surplus in a rehabilitation fund of a licensee at the time of completion of all mining operations to which the fund relates shall be included in the taxable business income of the licensee for the fiscal year in which the operations are completed.
- (6) In this section "rehabilitation fund" means a fund or account required to be established under a mining right to provide for the future payment of remedial work to the licensed area covered by the mining right and is managed jointly by the Minister responsible for Lands and the licensee.

67H Ring-fencing of mining operations⁶³

- (1) A deduction for expenditures incurred, wholly or partly, by a licensee in undertaking mining operations in a licensed area during a fiscal year shall be

allowed only against the gross income derived by the licensee from such operations in the licensed area during the year.

- (2) If the total amount of deductions allowed under the Act to a licensee in respect of mining operations undertaken by the licensee in a licensed area during a fiscal year exceed the gross income derived from such operations in the licensed area for the year, the excess shall be carried forward and allowed as a deduction against amounts included in the gross income of the licensee from mining operations in the licensed area in the next following fiscal year of the licensee.
- (3) In amount that is not deducted under subsection (2) shall be carried forward to the next following fiscal year of the licensee and allowed as a deduction in accordance with subsection (2) in that year and so on until the amount has been fully deducted or all mining operations of the licensee in the licensed area cease.
- (4) If a licensee has an excess carried forward under subsection (2) for a licensed area for more than one fiscal year, the excess of the earliest period shall be allowed as a deduction first.
- (5) If a licensee has ceased mining exploration activities in relation to a licensed area and the licensee has a loss under subsection (2) in relation to the licensed area, the loss may be transferred to a licensed area in which the licensee undertakes mining development activities if the licensed area covered by the mining development activities falls wholly within the licensed area covered by the mining exploration activities.
- (6) When –
 - (a) a licensee has ceased mining operations in a licensed area;
 - (b) the licensee has a loss under subsection (2) in relation to the licensed area; and
 - (c) subsection (5) does not apply to the licensed area, the licensee may elect, by notice in writing to the Chief Executive Officer, to treat the loss as a loss to which subsection (2) applies in relation to mining operations undertaken by the licensee in another licensed area.
- (7) If a licensee commenced mining operations before the commencement of the Income Tax (Amendment) Act 2015, this section applies from the commencement of those operations.

671 Disposal of an interest in an entity holding a mining right⁶⁴

- (1) This section applies if, during a fiscal year –
 - (a) company, or an interest in a partnership or trust;
 - (b) the shares or interest derive more than 50% of their value, directly or indirectly, from a mining right or rights held by a licensee; and (c)

the gain is Tongan-source business income under sections 12(1)(c) and 60(12).

- (2) If, as a result of a disposal referred to in subsection (1), there is a 10% or more change in the beneficial ownership of a licensee, the licensee shall immediately notify the Chief Executive Officer, in writing, of the change.
- (3) If a licensee has lodged a notice under subsection (2), the licensee shall be liable, as agent, for the income tax payable by the non-resident person in respect of the gain referred to in subsection (1).

DIVISION 4 – MINING ADDITIONAL PROFITS TAX

67J Imposition of mining additional profits tax⁶⁵

- (1) There is hereby imposed a mining additional profits tax on a licensee who has a positive cash balance in relation to mining operations in a licensed area for a fiscal year.
- (2) The mining additional profits tax payable by a licensee under subsection (1) for a fiscal year shall be 25% or such higher rate as may be specified in an agreement between the licensee and the Tonga Seabed Minerals Authority of the positive cash balance of the licensee for the licensed area for the year.
- (3) The mining additional profits tax payable by a licensee for a fiscal year is in addition to the income tax imposed on the chargeable income of the licensee for the year.

67K Mining cash balance

- (1) If a licensee has chargeable income in relation to mining operations in a licensed area for a fiscal year, the cash balance of the licensee for the licensed area for the year shall be the chargeable income of the licensee for the licensed area subject to the following adjustments –
 - (a) the following amounts are deducted from the chargeable income of the licensee –
 - (i) expenditure incurred by the licensee during the year in acquiring a depreciable asset to the extent that the asset is used in deriving taxable business income in relation to the licensed area;
 - (ii) expenditure incurred by the licensee during the year in acquiring an intangible (other than mining exploration expenditure) to the extent that the intangible is used in deriving taxable business income in relation to the licensed area;
 - (iii) income tax paid or payable by the licensee on the chargeable income in relation to the licensed area for the year; and

- (iv) the adjusted negative cash balance for the licensed area brought forward from the previous fiscal year as determined under subsection (3); and
- (b) the following amounts are added to the chargeable income of the licensee –
 - (i) the total depreciation deduction allowed in computing the chargeable income of the licensee for the year in relation to the licensed area;
 - (ii) the total amortisation deduction (other than for mining exploration expenditure) allowed in computing the chargeable income of the licensee for the year in relation to the licensed area;
 - (iii) the total deduction allowed for interest and other financial charges in computing the chargeable income of the licensee for the year in relation to the licensed area;
 - (iv) the total deduction allowed in relation to a derivative financial instrument or a foreign currency hedge in computing the chargeable income of the licensee for the year in relation to the licensed area; and
 - (v) any excess carried forward under section 37 in relation to the licensed area for the year.
- (2) If a licensee has a business loss for mining operations in a licensed area for a fiscal year, the cash balance of the licensee for the licensed area for the year shall be the business loss subject to the following adjustments –
 - (a) the business loss shall be increased by the amounts specified in subsection (1)(a); and
 - (b) the business loss shall be reduced by the amounts specified in subsection (1)(b).
- (3) If the cash balance of a licensee for a licensed area for a fiscal year is negative, the adjusted negative cash balance of the licensee for the licensed area for the year shall be the negative cash balance increased by the uplift factor.
- (4) If the cash balance of a licensee for mining operations in a licensed area for a fiscal year is a positive amount, the cash balance for that year is treated as zero for the purposes of computing the cash balance of the licensee for the licensed area for the next following year.
- (5) If a licensee commenced mining operations in a licensed area before the commencement date of the Income Tax (Amendment) Act 2015, the cash balance of the licensee for the licensed area for the first fiscal year of the licensee commencing on or after that date shall be calculated on the basis that this Division applied from the commencement of the mining operations.

67L Procedure relating to mining additional profits tax⁶⁶

- (1) A licensee shall lodge a mining additional profits tax return for a fiscal year by the same date as the income tax return is due for that year.
- (2) A licensee shall lodge a mining additional profits tax return in the form and manner prescribed in the Regulations.
- (3) The mining additional profits tax payable by a licensee for a fiscal year shall be due on the same date as the income tax is due by the licensee for that year.
- (4) If a licensee lodges a mining additional profits tax return for a fiscal year—
 - (a) the Chief Executive Officer shall be treated as having made an assessment of the licensee's positive cash balance and mining additional profits tax payable thereon, or negative cash balance, for the year equal to those respective amounts as specified in the return; and
 - (b) a mining additional profits tax return lodged under subsection (1) shall be treated for all purposes of the Act and the Revenue Services Administration Act 2002 as a notice of the assessment served on the licensee by the Chief Executive Officer on the day the return was lodged with the Chief Executive Officer.
- (5) If a licensee fails to lodge a mining additional profits tax return for a fiscal year —
 - (a) the Chief Executive Officer may, based on any available information and according to the Chief Executive Officer's best judgment, make an assessment of the licensee's positive cash balance and mining additional profits tax payable thereon, or negative cash balance, for the year; and
 - (b) as soon as possible after making an assessment under paragraph (a), the Chief Executive Officer shall serve the licensee with a notice of the assessment stating the following —
 - (i) the licensee's positive or negative cash balance for the year, as the case may be;
 - (ii) the amount of mining additional profits tax (if any) due;
 - (iii) the amount of any penalty and interest payable in respect of the mining additional profits tax due;
 - (iv) the time, place and manner of objecting to the assessment.
- (6) Section 71 shall apply to a mining additional profits tax assessment with the necessary changes made.
- (7) Section 92 shall apply to mining additional profits tax on the basis that the reference to "tax" includes a reference to "mining additional profits tax".

PART 7B – TAXATION OF PETROLEUM OPERATIONS

DIVISION 1 – PART 7B INTERPRETATION

67M Part 7B interpretation⁶⁷

- (1) In this Part, unless the context otherwise requires –

“**commencement of commercial production**” means the first day of the first period of thirty (30) consecutive days during which the average level of production on the twenty five (25) highest production days in the thirty-day period reaches a level as determined by the Chief Executive Officer with the advice of the Minister responsible for Lands;

“**contract area**” means the area of land covered by a petroleum right;
“**contractor**” means a person who has entered into a petroleum agreement with the Government;

“**cost petroleum**” means the share of petroleum that a contractor is permitted to take under a petroleum agreement to cover costs incurred in respect of petroleum operations;

“**development activities**” means authorised activities undertaken in the extraction of petroleum from its natural state under a petroleum agreement;

“**development expenditure**” means capital expenditure incurred by a contractor in undertaking development activities, other than expenditure incurred in acquiring a depreciable asset, and includes the following –

- (a) expenditure incurred in acquiring –
- (i) an interest in a petroleum right, other than an interest referred to in paragraph (a)(i) of the definition of “exploration expenditure”;
 - or
 - (ii) petroleum information, other than petroleum information referred to in paragraph (a)(ii) of the definition of “exploration expenditure”;
- (b) social infrastructure expenditure relating to development activities incurred in accordance with a petroleum right;

“**exploration activities**” means authorised activities undertaken in the search for petroleum under an exploration licence or a petroleum agreement;

“**exploration expenditure**” means expenditure incurred by a contractor in undertaking exploration activities, other than expenditure incurred in acquiring a depreciable asset, and includes –

- (a) expenditure incurred in acquiring –
- (i) an interest in an exploration licence, or an interest in a petroleum agreement under which the exploration activities were

undertaken, but only when the interest is acquired from the Government or under a farm-out agreement; or

- (ii) petroleum information related to exploration activities, but only when the information is acquired from the Government or under a farm-out agreement;

- (b) social infrastructure expenditure relating to exploration activities incurred in accordance with a petroleum right;

“**exploration licence**” means an exploration licence issued under the Petroleum Mining Act;

“**farm-out agreement**” means an agreement mentioned in section 67R;
 “**petroleum**” has the meaning in the Petroleum Mining Act;

“**petroleum additional profits tax**” means the petroleum additional profits tax imposed by section 67V;

“**petroleum agreement**” means a petroleum agreement entered into under the Petroleum Mining Act;

“**petroleum information**” means information relating to a petroleum right;

“**petroleum operations**” means exploration or development activities undertaken under a petroleum right;

“**petroleum right**” means an exploration licence or a petroleum agreement; and

“**uplift factor**” means 120%.

- (2) Subject to subsection (3), to the extent that there is any inconsistency between the operation of this Act and the terms of a petroleum agreement entered into before the commencement date of the Income Tax (Amendment) Act 2015, the petroleum agreement prevails.
- (3) For the avoidance of doubt, the requirement under a petroleum agreement entered into with a contractor prior to the commencement of the Income Tax (Amendment) Act 2015 that the Government’s share of petroleum under the agreement for a fiscal year is in full payment of the income tax payable by the contractor for the year does not apply to the following –
 - (a) the tax payable on any gain made by the contractor or any other person on a disposal, directly or indirectly, of an interest in an exploration licence or petroleum agreement;
 - (b) any tax that the contractor is liable to withhold from a payment made by the contractor.

DIVISION 2 – PETROLEUM ROYALTIES**67N Imposition of petroleum royalties⁶⁸**

- (1) Subject to this section, there is hereby imposed a petroleum royalty on a contractor at the rate of 10% or such higher rate as may be specified in a petroleum agreement of the export value of petroleum recovered under a petroleum agreement.
- (2) Petroleum royalties are payable at the time of disposal of the recovered petroleum and shall be accounted for to the Chief Executive Officer on a monthly basis in accordance with section 67O(3).
- (3) The export value of petroleum recovered by a contractor shall be the freeon-board price received or receivable by the person for the petroleum.
- (4) If petroleum is exported on the basis of a cost-insurance-freight price, the export value of the petroleum shall be the cost-insurance-freight price reduced by the cost of ocean freight and insurance.
- (5) The export value of petroleum recovered by a contractor but lost or destroyed before sale or other disposal is such amount as determined by the Chief Executive Officer.
- (6) If the Chief Executive Officer is satisfied that the price charged for petroleum is not consistent with the price charged in an arm's length transaction, the Chief Executive Officer can substitute the price charged in an arm's length transaction.
- (7) Section 66 shall apply, with the necessary changes made, in determining the price charged in an arm's length transaction.
- (8) This section applies also to a person who recovers petroleum even though the person has no authority to do so.
- (9) This section shall not apply if the petroleum agreement under which the petroleum is recovered provides for a limit on the annual amount of cost petroleum equal to 60% or less of the value of petroleum recovered for a year.

67O Procedure relating to petroleum royalties

- (1) A contractor liable for petroleum royalties under section 67N shall lodge a petroleum royalty return for each month stating the export value of petroleum disposed of during the month and the petroleum royalties payable thereon.
- (2) A petroleum royalty return for a month shall be lodged in the form and manner prescribed in the Regulations and shall be lodged within 28 days after the end of the month.
- (3) Petroleum royalties payable by a contractor for a month are due on the due date for lodging the contractor's petroleum royalty return for the month.

- (4) If a contractor lodges a petroleum royalty return for a month –
 - (a) the Chief Executive Officer shall be treated as having made an assessment of the export value of petroleum disposed of by the contractor during the month and the petroleum royalties payable thereon equal to those respective amounts as specified in the return; and
 - (b) the petroleum royalty return lodged under this section shall be treated for all purposes of this Act and the Revenue Services Administration Act 2002 as a notice of the assessment served on the contractor by the Chief Executive Officer on the day the return was lodged with the Chief Executive Officer.
- (5) If a contractor fails to lodge a petroleum royalty return for a month –
 - (a) the Chief Executive Officer may, based on any available information and according to the Chief Executive Officer's best judgment, make an assessment of the export value of petroleum disposed of by the contractor during the month and the petroleum royalties payable thereon; and
 - (b) as soon as possible after making an assessment under paragraph (a), the Chief Executive Officer shall serve the contractor with a notice of the assessment stating the following –
 - (i) the export value of petroleum disposed of by the contractor for the month;
 - (ii) the amount of petroleum royalties due;
 - (iii) the amount of any penalty and interest payable in respect of the petroleum royalties due;
 - (iv) the time, place and manner of objecting to the assessment.
- (6) Section 71 shall apply to a petroleum royalties assessment with the necessary changes made.
- (7) Section 92 shall apply to petroleum royalties on the basis that the reference in the section to "tax" includes a reference to "petroleum royalty".

DIVISION 3 – APPLICATION OF INCOME TAX ACT TO PETROLEUM OPERATIONS

67P Taxation of petroleum contractors⁶⁹

- (1) A contractor shall be subject to income tax in accordance with this Act but subject to the modifications in this Part.
- (2) If there is an inconsistency in the taxation of a contractor under the income tax as between this Part and the other Parts of this Act, this Part shall prevail.
- (3) The rate of income tax applicable to a contractor is 25%.

67Q Petroleum exploration and development expenditure⁷⁰

- (1) This Act shall apply to exploration expenditure incurred by a contractor in relation to a contract area on the basis that it is an intangible with –
 - (a) a useful life equal to one year; and
 - (b) a cost equal to the amount of the expenditure.
- (2) Subject to subsection (3), this Act shall apply to development expenditure incurred by a contractor in relation to a contract area on the basis that it is an intangible with –
 - (a) a useful life equal to the expected life of the development activities to which the development expenditure relates; and
 - (b) a cost equal to the amount of the expenditure.
- (3) If a contractor incurs development expenditure or expenditure to acquire a depreciable asset for use in development activities before commencement of commercial production, this Act applies on the basis that the expenditure was incurred at the time of commencement of commercial production.
- (4) If a contractor disposes of an interest in a petroleum agreement (other than under a farm-out agreement), any gain arising on the disposal is reduced by any development expenditure incurred by the contractor that has not been deducted or recouped by the contractor.
- (5) The reference in subsection (4) to “development expenditure” includes only such expenditure that is not included in the cost of an asset.
- (6) Subject to section 67T(7), if a contractor commenced petroleum operations before the commencement of the Income Tax (Amendment) Act 2015, this section applies from the commencement of those operations.

67R Petroleum farm-out agreements⁷¹

- (1) This section applies if the following conditions are satisfied –
 - (a) a contractor (referred to as the “transferor”) has entered into an agreement with a person (referred to as the “transferee”) for the transfer of an interest in a petroleum right; and
 - (b) the consideration given by the transferee wholly or partly includes the transferee undertaking some or all of the transferor’s work commitments in respect of the interest in the right retained by the transferor.
- (2) If this section applies –
 - (a) the value of any work undertaken by the transferee in relation to the part of the interest retained by the transferor is not included in:
 - (i) the consideration received by the transferor for the transferred interest; or

- (ii) the gross income of the transferor; and
- (b) the following applies to any amount in money received or receivable by the transferor for the transferred interest –
 - (i) section 52 applies to the amount in money on the basis that it is a reimbursement or recovery by the transferor of any deductions allowed for expenditure incurred by the transferor in respect of the transferred interest; and
 - (ii) if the amount in money exceeds the amount of deducted expenditure to which section 52 applies, the excess is treated as consideration received for the transferred interest.

67S Contributions to a petroleum decommissioning fund⁷²

- (1) A contribution made by a contractor to a decommissioning fund as required under the terms of a petroleum right granted to the contractor shall be allowed as a deduction in the fiscal year in which the contribution was made.
- (2) Subject to subsection (3), expenditure incurred by a contractor in carrying out decommissioning work to a contract area as required under a petroleum right granted to the contractor shall be allowed as a deduction in the fiscal year in which the expenditure is incurred.
- (3) A deduction shall not be allowed under subsection (2) to the extent that the decommissioning work is paid for, directly or indirectly, from money made available out of the contractor's decommissioning fund.
- (4) Amounts accumulated in a decommissioning fund or withdrawn from a decommissioning fund to pay for decommissioning work as required under a petroleum right shall be exempt income.
- (5) Any surplus in a decommissioning fund of a contractor at the time of completion of all petroleum operations to which the fund relates shall be included in the taxable business income of the contractor for the fiscal year in which the operations are completed.
- (6) In this section, "decommissioning fund" means a fund or account required to be established under a petroleum right to provide for the future payment of decommissioning work to the contract area covered by the petroleum right and is managed jointly by the Minister responsible for Lands and the contractor.

67T Ring-fencing of petroleum operations ⁷³

- (1) A deduction for expenditures incurred, wholly or partly, by a contractor in undertaking petroleum operations in a contract area during a fiscal year shall be allowed only against the gross income derived by the contractor from such operations in the contract area during the year.

- (2) If the total amount of deductions allowed under this Act to a contractor in respect of petroleum operations undertaken by the contractor in a contract area during a fiscal year exceed the gross income derived from such operations in the contract area for the year, the excess shall be carried forward and allowed as a deduction against amounts included in the gross income of the contractor from petroleum operations in the contract area in the next following fiscal year of the contractor.
- (3) An amount that is not deducted under subsection (2) shall be carried forward to the next following fiscal year of the contractor and allowed as a deduction in accordance with subsection (2) in that year and so on until the amount has been fully deducted or all petroleum operations of the contractor in the contract area cease.
- (4) If a contractor has an excess carried forward under subsection (2) for a contract area for more than one fiscal year, the excess of the earliest period shall be allowed as a deduction first.
- (5) If a contractor has ceased exploration activities in relation to a contract area and the contractor has a loss under subsection (2) in relation to the contract area, the loss may be transferred to a contract area in which the contractor undertakes development activities if the contract area covered by the development activities falls wholly within the contract area covered by the exploration activities.
- (6) When –
 - (a) a contractor has ceased petroleum operations in a contract area;
 - (b) the contractor has a loss under subsection (2) in relation to the contract area; and
 - (c) subsection (5) does not apply to the contract area, the contractor may elect, by notice in writing to the Chief Executive Officer, to treat the loss as a loss to which subsection (2) applies in relation to petroleum operations undertaken by the contractor in another contract area.
- (7) If a contractor commenced petroleum operations before the commencement of the Income Tax (Amendment) Act 2015, this section applies from the commencement of those operations.

67U Disposal of an interest in an entity holding a petroleum right⁷⁴

- (1) This section applies if, during a fiscal year –
 - (a) a non-resident person has made a gain on the disposal of shares in a company, or an interest in a partnership or trust;
 - (b) the shares or interest derive more than 50% of their value, directly or indirectly, from a petroleum right or rights held by a contractor; and
 - (c) the gain is Tongan-source business income under sections 12(1)(c) and 60(12).

- (2) If, as a result of a disposal referred to in subsection (1), there is a 10% or more change in the beneficial ownership of a contractor, the contractor shall immediately notify the Chief Executive Officer, in writing, of the change.
- (3) If a contractor has lodged a notice under subsection (2), the contractor shall be liable, as agent, for the income tax payable by the non-resident person in respect of the gain referred to in subsection (1).

DIVISION 4 – PETROLEUM ADDITIONAL PROFITS TAX

67V Imposition of petroleum additional profits tax⁷⁵

- (1) There is hereby imposed a petroleum additional profits tax on a contractor who has a positive cash balance in relation to petroleum operations in a contract area for a fiscal year.
- (2) The petroleum additional profits tax payable by a contractor under subsection (1) for a fiscal year shall be 25% or such higher rate as may be specified in a petroleum agreement of the positive cash balance of the contractor for the contract area for the year.
- (3) The petroleum additional profits tax payable by a contractor for a fiscal year is in addition to the income tax imposed on the chargeable income of the contractor for the year.

67W Petroleum cash balance⁷⁶

- (1) If a contractor has chargeable income in relation to petroleum operations in a contract area for a fiscal year, the cash balance of a contractor for the contract area for the year shall be the chargeable income of the contractor for the contract area subject to the following adjustments –
 - (a) the following amounts are deducted from the chargeable income of the contractor –
 - (i) expenditure incurred by the contractor during the year in acquiring a depreciable asset to the extent that the asset is used in deriving taxable business income in relation to the contract area;
 - (ii) expenditure incurred by the contractor during the year in acquiring an intangible (other than exploration expenditure) to the extent that the intangible is used in deriving taxable business income in relation to the contract area;
 - (iii) income tax paid or payable by the contractor on the chargeable income in relation to the contract area for the year; and
 - (iv) the adjusted negative cash balance for the contract area brought forward from the previous fiscal year as determined under subsection (3); and

- (b) the following amounts are added to the chargeable income of the contractor –
 - (i) the total depreciation deduction allowed in computing the chargeable income of the contractor for the year in relation to the contract area;
 - (ii) the total amortisation deduction (other than for exploration expenditure) allowed in computing the chargeable income of the contractor for the year in relation to the contract area;
 - (iii) the total deduction allowed for interest and other financial charges in computing the chargeable income of the contractor for the year in relation to the contract area;
 - (iv) the total deduction allowed in relation to a derivative financial instrument or a foreign currency hedge in computing the chargeable income of the contractor for the year in relation to the contract area; and
 - (v) any excess carried forward under section 37 in relation to the contract area for the year.
- (2) If a contractor has a business loss for petroleum operations in a contract area for a fiscal year, the cash balance of the contractor for the contract area for the year shall be the business loss subject to the following adjustments –
 - (a) the business loss shall be increased by the amounts specified in subsection (1)(a); and
 - (b) the business loss shall be reduced by the amounts specified in subsection (1)(b).
- (3) If the cash balance of a contractor for a contract area for a fiscal year is negative, the adjusted negative cash balance of the contractor for the contract area for the year shall be the negative cash balance increased by the uplift factor.
- (4) If the cash balance of a contractor for petroleum operations in a contract area for a fiscal year is a positive amount, the cash balance for that year is treated as zero for the purposes of computing the cash balance of the contractor for the next following year.
- (5) If a contractor commenced petroleum operations in a contract area before the date of commencement of the Income Tax (Amendment) Act 2015, the cash balance of the contractor for the contract area for the first fiscal year of the contractor commencing on or after that date shall be calculated on the basis that this Division applied from the commencement of the petroleum operations.

67X Procedure relating to petroleum additional profits tax⁷⁷

- (1) A contractor liable for petroleum additional profits tax shall lodge a petroleum additional profits tax return for a fiscal year by the same date as the income tax return is due for that year.
- (2) A contractor shall lodge a petroleum additional profits tax return in the form and manner prescribed in the Regulations.
- (3) The petroleum additional profits tax payable by a contractor for a fiscal year shall be due on the same date as the income tax is due by the contractor for that year.
- (4) If a contractor lodges a petroleum additional profits tax return for a fiscal year –
 - (a) the Chief Executive Officer shall be treated as having made an assessment of the contractor's positive cash balance and petroleum additional profits tax payable thereon, or negative cash balance, for the year equal to those respective amounts as specified in the return; and
 - (b) a petroleum additional profits tax return lodged under subsection shall be treated for all purposes of the Act and the Revenue Services Administration Act 2002 as a notice of the assessment served on the contractor by the Chief Executive Officer on the day the return was lodged with the Chief Executive Officer.
- (5) If a contractor fails to lodge a petroleum additional profits tax return for a fiscal year –
 - (a) the Chief Executive Officer may, based on any available information and according to the Chief Executive Officer's best judgment, make an assessment of the contractor's positive cash balance and petroleum additional profits tax payable thereon, or negative cash balance, for the year; and
 - (b) as soon as possible after making an assessment under paragraph (a), the Chief Executive Officer shall serve the contractor with a notice of the assessment stating the following –
 - (i) the contractor's positive or negative cash balance for the year, as the case may be;
 - (ii) the amount of petroleum additional profits tax (if any) due;
 - (iii) the amount of any penalty and interest payable in respect of the petroleum additional profits tax due;
 - (iv) the time, place and manner of objecting to the assessment. (Section 71 shall apply to a petroleum additional profits tax assessment with the necessary changes made.
- (6) Section 71 shall apply to petroleum additional profits tax on the basis that the reference to "tax" includes a reference to "petroleum additional profits tax".

- (7) Section 92 shall apply to petroleum additional profits tax on the basis that the reference to “tax” includes a reference to “petroleum additional profits tax”.

PART 8 - INCOME TAX PROCEDURE

DIVISION 1 - INCOME TAX RETURNS

68 Furnishing of income tax returns and small business tax returns⁷⁸

- (1) Subject to section 69, a taxpayer shall lodge an income tax return for each fiscal year within 4 months after the end of the year.⁷⁹
- (2) A person liable to small business tax must lodge a small business tax return –
- (a) for a person to whom section 8(2) applies, within four months after the end of the fiscal year; or
 - (b) for a person to whom section 8(3) applies, within 28 days after the end of the quarter.
- (3) An income tax return shall be lodged in the form and manner prescribed in the Regulations.
- (4) The Minister may, by notice in writing, require a taxpayer or the taxpayer’s representative to lodge an income tax or small business tax return for a fiscal year or quarter, as the case may be, return by the date specified in the notice that may be a date before the due date for the return for the fiscal year or quarter to which the return relates if —
- (a) the taxpayer has died;
 - (b) the taxpayer has become bankrupt or gone into liquidation;
 - (c) the taxpayer is about to leave Tonga permanently;
 - (d) the taxpayer is otherwise about to cease carrying on business in Tonga; or
 - (e) the Minister otherwise considers it appropriate to require such a return to be lodged.

69 Income tax return not required

A taxpayer shall not be required to lodge an income tax return under section 68 for a fiscal year if the only income derived by the taxpayer during the year is —

- (a) employment income from which tax has been withheld under section 76;
- (b) interest income from which tax has been withheld under section 77;

- (c) employment and interest income referred to in paragraphs (a) and (b);
or
- (d) income to which section 6 or 7 applies.

DIVISION 2 - INCOME TAX ASSESSMENTS

70 Income tax assessments

- (1) If a taxpayer lodges an income tax return under section 68 for a fiscal year, the Minister shall be treated as having made an assessment of the taxpayer's chargeable income and income tax payable thereon, or business loss for the year equal to those respective amounts as specified in the return.
- (2) An income tax return lodged under section 68 shall be treated for all purposes of the Act and the Revenue Services Administration Act⁸⁰ as a notice of the assessment served on the taxpayer by the Minister on the day the return was lodged by the taxpayer.
- (3) If a taxpayer fails to lodge an income tax return under section 68 for a fiscal year, the Minister may, based on any available information and according to the Minister's best judgement, make an assessment of the taxpayer's chargeable income and income tax payable thereon, or business loss, for the year.
- (4) As soon as possible after making an assessment under subsection (3), the Minister shall serve the taxpayer with a notice of the assessment stating —
 - (a) the amount of chargeable income or business loss of the taxpayer;
 - (b) the amount of any income tax, if any, due;⁸¹
 - (c) the amount of tax paid, if any;
 - (d) the amount of any penalty and interest payable in respect of the tax due; and
 - (e) the time, place, and manner of objecting to the assessment.

70A Small business tax assessments

- (1) If a person lodges a small business tax return for a tax period —
 - (a) the Chief Executive Officer shall be treated as having made an assessment of the person's gross turnover and small business tax payable for the period equal to those respective amounts as specified in the return; and
 - (b) the small business tax return lodged under section 68(2) shall be treated for all purposes of this Act and the Revenue Services Administration Act 2002 as a notice of the assessment served on the person by the Chief Executive Officer on the day the return was lodged with the Chief Executive Officer.

- (2) If a person fails to lodge a small business tax return for a tax period –
 - (a) the Chief Executive Officer may, based on any available information and according to the Chief Executive Officer’s best judgement, make an assessment of the person’s gross turnover and small business tax payable for the period; and
 - (b) as soon as possible after making an assessment under paragraph (a), the Chief Executive Officer shall serve the person with a notice of the assessment stating the following –
 - (i) the person’s gross turnover for the period;
 - (ii) the amount of small business tax due;
 - (iii) the amount of any penalty and interest payable in respect of the small business tax due;
 - (iv) the time, place and manner of objecting to the assessment
- (3) Section 71 shall apply to a small business tax assessment with the necessary changes made and, for the purposes of amending a small business tax assessment or requiring a revised small business tax return, the reference in section 71(2)(b), 71(4)(b), 71(5), and 71(8)(a) to “five years” shall be treated as a reference to 3 years.

71 Amendment of assessments

- (1) Subject to this section, the Minister may amend an assessment made or treated as made under section 70 by making such alterations or additions to the assessment as the Minister considers necessary to ensure that a taxpayer is liable for the correct amount of income tax for the fiscal year to which the assessment relates.
- (2) The amendment of an assessment under subsection (1) may be made —
 - (a) in the case of fraud or wilful neglect by or on behalf of the taxpayer, at any time; or
 - (b) in any other case, within 5 years of the date the Minister served or is treated as having served notice of the assessment on the taxpayer.
- (3) The Minister may require a taxpayer to lodge a revised return in accordance with section 3(2) of the Revenue Services Administration Act.
- (4) A notice under section 3(2) of the Revenue Services Administration Act requiring a taxpayer to lodge a revised return may be made —
 - (a) in the case of fraud or wilful neglect by or on behalf of the taxpayer, at any time; or
 - (b) in any other case, within 5 years from the date the taxpayer lodged the return.

- (5) A taxpayer may, on the taxpayer's own motion, amend an assessment treated as made under section 70(1) by lodging a revised income tax return within 5 years of the date the original return was lodged.
- (6) If a taxpayer lodges a revised return in accordance with subsection (3) or (5), the Minister shall be treated as having made an amended assessment of the taxpayer's chargeable income and tax payable thereon, or business loss, as set out in the revised return.
- (7) The taxpayer's revised return shall be treated for all purposes of this Act and the Revenue Services Administration Act as notice of the amended assessment served on the taxpayer by the Minister on the day the revised return was lodged by the taxpayer.
- (8) If a notice of assessment (hereinafter referred to as the "original assessment") has been amended under subsection (1) or (6), the Minister may further amend the original assessment within the later of —
 - (a) five years after the Minister has served or is treated as having served notice of the original assessment on the taxpayer; or
 - (b) one year after the Minister has served or is treated as having served notice of the amended assessment on the taxpayer.
- (9) As soon as possible after making an amended assessment under this section, the Minister shall serve the taxpayer with notice of the amended assessment stating —
 - (a) the amended chargeable income or business loss of the taxpayer;
 - (b) the amended amount of income tax due;⁸²
 - (c) the amount of income tax paid, if any;
 - (d) the amount of any penalty and interest payable in respect of the income tax due; and
 - (e) the time, place, and manner of objecting to the amended assessment.
- (10) An amended income tax assessment shall be treated in all respects as an income tax assessment for the purposes of this Act and the Revenue Services Administration Act, other than subsection (1).

DIVISION 3 - PAYMENT OF INCOME TAX

72 Due date for payment of income tax and small business tax⁸³

- (1) Subject to this Act, the income tax payable by a taxpayer for a fiscal year shall be due by the due date for lodging the taxpayer's income tax return for the year.
- (2) The small business tax payable by a person for a tax period shall be due by the due date for lodging the person's small business tax return for the period.⁸⁴

73 Collection of tax from non-resident ship owners or charterers

- (1) Subject to subsection (3), before the departure of a ship owned or chartered by a non-resident person from a port in Tonga —
 - (a) the master of the ship shall lodge with the Minister a return in the form and manner prescribed; and
 - (b) the Minister shall determine the amount of income tax due under section 7 in respect of the ship and, as soon as possible, notify the master, in writing, of the amount due.⁸⁵
- (2) The master of a ship shall be liable for the tax notified under subsection (1)(b) and the provisions of this Act and the Revenue Services Administration Act apply to such tax as if it were income tax due under an assessment.
- (3) If the Minister is satisfied that the master of a ship which is owned or chartered by a non-resident person is unable to lodge the return required under subsection (1) before the departure of the ship from Tonga, the Minister may allow the return to be lodged within 30 days after departure of the ship provided that the master of the ship has made satisfactory arrangements for the payment of the tax due under section 7 in respect of the ship.
- (4) The Chief Executive Officer shall not grant a port clearance for a ship owned or chartered by a non-resident person until satisfied that any tax due under section 7 in respect of the ship has been paid or that arrangements for its payment have been made to the satisfaction of the Minister.
- (5) This section does not relieve the owner or charterer of the ship who is a non-resident person from liability to pay any amount due under this section that is not paid by the master of the ship.

74 Collection of tax from non-resident aircraft owners or charterers

- (1) An owner or charterer of an aircraft liable for tax under section 7 shall lodge a return with the Minister for each calendar month within 28 days after end of each month.
- (2) The return shall be in the prescribed form and lodged in the prescribed manner.
- (3) Where a taxpayer lodges a return under subsection (1), the Minister is treated as having made an assessment of the amount on which tax is payable under section 7 for the month and the tax payable thereon, and to have served notice of the assessment on the day the return was lodged.⁸⁶
- (4) The tax payable by the non-resident person under section 7 shall be collected monthly and shall be due on the due date for furnishing the return for each month.
- (5) Sections 70(3) and (4), and 71 apply for the purposes of this section.

- (6) If the tax referred to in subsection (4) is not paid within 3 months of the due date, the Minister may issue to the Ministry of Civil Aviation a certificate specifying the name of the non-resident person and the amount of tax due, and the Ministry of Civil Aviation shall refuse clearance from any airport in Tonga to any aircraft owned or chartered by the person until the tax due has been paid.

75 Security

The Minister may, for the purposes of securing payment of any tax that is or may become due under this Act, require a person to give security in such amount and in such manner as the Minister thinks fit.

DIVISION 4 - WITHHOLDING TAX

76 Withholding of tax from employment income

- (1) An employer shall withhold tax from a payment of employment income to an employee as prescribed in the Regulations.
- (2) The obligation of an employer to withhold tax under subsection (1) —
- (a) shall not be reduced or extinguished because the employer has a right, or is otherwise obliged, to withhold any other amount from a payment of employment income; and
 - (b) shall apply notwithstanding any law that provides that the employment income of an employee is not to be reduced or subject to attachment.

77 Withholding of tax from interest

A resident company or permanent establishment in Tonga of a non-resident company paying interest to a resident person, other than a financial institution, shall withhold tax from the gross amount of the interest paid at the rate of 10 per cent.

78 Withholding of tax from income from land

If rent has been paid to the Minister of Lands in accordance with the Land Act⁸⁷ for the lease of land, the Minister shall withhold tax from the gross amount paid at the rate of 3 per cent.

79 Withholding of tax from payments to non-resident persons

- (1) In this section, “rent” does not include an amount to which section 78 applies.
- (2) A person paying a Tongan-source royalty, interest, technical services fee, dividend, natural resource amount, rent, management fee, or insurance

premium to a non-resident person shall withhold tax from the gross amount paid at the rate specified in the Order referred to in section 6 of this Act.⁸⁸

- (3) A person paying an amount of Tongan-source business income to a non-resident person rendering independent services other than services to which subsection (2) applies, shall withhold tax from the gross amount paid at the rate of 10 per cent.⁸⁹
- (4) A non-resident may appoint a representative to withhold and pay the withholding tax due under this section on behalf of the payer.⁹⁰

80 No withholding from exempt income

A person shall not withhold tax from an amount that is exempt income of the recipient.

81 Time of withholding

A person required to withhold tax under this Division from an amount paid by the person shall withhold the tax at the earlier of —

- (a) the time the amount is credited to the account of the recipient; or
- (b) the time the amount is actually paid.

82 Payment of tax withheld

Tax required to be withheld by a person under this Division shall be paid to the Minister within 28 days after the end of the month in which the person was required to withhold the tax.

83 Failure to pay tax withheld

- (1) If a person —
 - (a) fails to withhold tax as required under this Division; or
 - (b) having withheld tax fails to pay the tax to the Minister as required under section 82,the person shall be personally liable to pay the amount of tax to the Minister.
- (2) A person personally liable for an amount of tax under subsection (1) as a result of failing to withhold the tax shall be entitled to recover the tax from the recipient of the payment.

84 Recovery of withholding tax

- (1) If a person fails to withhold tax as required under this Division, the Minister may recover the tax from the recipient of the payment provided the total amount recovered does not exceed the tax that should have been withheld.
- (2) Notwithstanding the recovery of any tax under subsection (1), the person who failed to withhold the tax shall continue to be liable for —
 - (a) any other legal action in relation to the failure;
 - (b) the imposition of interest and penalty for the failure; and
 - (c) the disallowing of a deduction for the expenditure to which the failure relates under section 26(2).

85 Tax withholding certificate

- (1) A person withholding tax under this Division shall give to the recipient of the payment a tax withholding certificate as prescribed in the Regulations.
- (2) A person required to lodge an income tax return for a fiscal year shall attach to the return any tax withholding certificate as prescribed in the Regulations.

86 Withholding tax statements

- (1) In this section, “fiscal year” means the period of 12 months ending on 30th June.
- (2) A person withholding tax under this Division shall, within 2 months after the end of the fiscal year or within such further time as the Minister may allow by notice in writing, lodge with the Minister a withholding tax statement as prescribed in the Regulations.
- (3) In addition to the annual withholding tax statement required to be lodged under subsection (2), a person withholding tax may be required to furnish statements on a monthly, quarterly, or 6 monthly basis as may be prescribed in the Regulations.
- (4) An employer making a payment of employment income to an employee shall be required to lodge a withholding tax statement as may be prescribed in the Regulations even if no withholding tax is payable.⁹¹

87 Priority of tax withheld

- (1) Tax withheld from a payment under this Division —
 - (a) shall be held by the person in trust for the Government; and
 - (b) shall not be subject to attachment in respect of any debt or liability of the person.

- (2) In the event of the liquidation or bankruptcy of a person who has withheld tax under this Division, any amount withheld shall not form part of the estate of the person in liquidation or bankruptcy and the Minister has first claim for that amount before any distribution of property is made.
- (3) An amount that a person is required to withhold from a payment under this Division shall be —
 - (a) a first charge on the payment; and
 - (b) deducted prior to any other amount that the person may be required to deduct from the payment by virtue of an order of any court or under any other law.

88 Indemnity

A person who has withheld tax from a payment under this Division and remitted the tax to the Minister shall be indemnified against any claim by the recipient for payment of the withheld amount.

89 Credit for tax withheld

- (1) For the purposes of this Act, if tax has been withheld under this Division from income derived by a person, the amount of income included in the gross income of that person shall be the amount derived before the withholding of the tax.
- (2) Subject to subsections (3) and (4), if tax has been withheld under this Division from income derived by a person, the person shall be allowed a tax credit for that tax against the tax due by the person on the chargeable income of the person for the fiscal year in which the tax was withheld.
- (3) No tax credit shall be allowed if the tax withheld is a final tax on the income under section 9 or 90.
- (4) A tax credit allowed under this section shall be applied in accordance with section 5(3).
- (5) A tax credit or part of a tax credit allowed under this section for a fiscal year that is not credited under section 5(3) for the year shall be treated as overpaid tax and dealt with in accordance with section 92.

90 Withholding tax as a final tax

- (1) This section applies to tax withheld under —
 - (a) section 76 if section 69 applies;
 - (b) section 77 if the interest is paid by a financial institution and is derived by an individual;
 - (c) section 78 if the amount is derived by a non-resident; or

- (d) section 79.⁹²
- (2) If this section applies, the tax withheld shall be a final tax on the income in respect of which the tax has been withheld and —
 - (a) the income shall not be included in gross income in computing the chargeable income of the person who derives it for any fiscal year;⁹³
 - (b) no deduction shall be allowable under this Act for any expenditure incurred in deriving the income;
 - (c) the income shall not be reduced by any loss;
 - (d) the tax withheld shall not be reduced by any tax credits allowed under this Act; and
 - (e) there shall be no refund of the tax withheld.

DIVISION 5 - INSTALMENTS OF INCOME TAX

91 Instalments of income tax

- (1) A taxpayer shall pay instalments of income tax for a fiscal year.
- (2) Instalments shall be payable for the period of 3 calendar months ending on last day of the 3rd, 6th, 9th and 12th months of the fiscal year of a taxpayer.
- (3) Instalments of income tax shall be due on the 28th day after the end of the period to which they relate.
- (4) Instalments of income tax paid by a taxpayer in a fiscal year shall be —
 - (a) credited against the taxpayer's income tax liability on chargeable income for that year in accordance with section 5(3);
 - (b) any excess shall be credited against the taxpayer's minimum income tax liability for that year; and
 - (c) any further excess shall be treated as overpaid tax and dealt with in accordance with section 92.
- (5) The Minister may make regulations for the collection of Income Tax by instalment.

PART 9 - REFUNDS

92 Refunds

- (1) Subject to this Act, a taxpayer who has paid tax in excess of the amount for which the taxpayer is properly chargeable under this Act may apply to the Minister for a refund of the excess.

- (2) An application for a refund under subsection (1) shall be lodged in the form and manner prescribed in the Regulations –
 - (a) in relation to small business tax, within 3 years after the date on which the tax was paid; or
 - (b) in relation to any other tax, within five years after the date the tax was paid.⁹⁴
- (3) If the Minister is satisfied that tax has been overpaid, the Minister shall —
 - (a) apply the amount overpaid in reduction of any other tax due, including an instalment of tax due, by the taxpayer under this Act; and
 - (b) refund the remainder, if any, to the taxpayer.
- (4) The Minister shall serve the taxpayer with notice, in writing, of the decision on the application for a refund within 45 days of the application being lodged with the Minister.

PART 10 - MISCELLANEOUS

93 Regulations

- (1) The Minister may, with the consent of Cabinet, make regulations for —
 - (a) matters prescribed to be made by regulation under this Act; or
 - (b) the application and administration of this Act.
- (2) Without limiting the general effect of subsection (1), regulations made under that subsection may —
 - (a) contain provisions of a saving or transitional nature consequent upon the making of this Act; or
 - (b) prescribe penalties for the contravention of the regulations.
- (3) Transitional regulations made within 6 months after the commencement of this Act may provide that they take effect from the date on which the Act comes into force but only if this is to the benefit of taxpayers.

94 Repeal and transitional

- (1) The Income Tax Act (Cap. 68 of 1988 Revised Edition) is hereby repealed.
- (2) Notwithstanding subsection (1) and subject to the Revenue Services Administration Act,⁹⁵ the Income Tax Act (Cap. 68 of 1988 Revised Edition) shall continue to apply to any fiscal year of a taxpayer ending before the commencement of the taxpayer's first fiscal year under this Act.
- (3) Subject to subsection (4), sections 27 to 29, 31 and 32 shall apply to a depreciable asset acquired by a taxpayer before commencement of the

taxpayer's first fiscal year under this Act on the basis that the written down value of the asset at the beginning of that year shall be the cost of the asset less the total deductions allowed under section 6(2)(a) of the Income Tax Act (Cap. 68 of 1988 Revised Edition).

- (4) If section 27(7) applies to a depreciable asset referred to in subsection (3), the written down value of the asset at the commencement of the taxpayer's first fiscal year under this Act shall be computed on the basis that the asset was used solely to derive income subject to tax under section 4(a) of the Income Tax Act (Cap. 68 of 1988 Revised Edition).
- (5) Section 30 shall not apply to an intangible acquired by a taxpayer before the commencement of the taxpayer's first fiscal year under this Act.
- (6) Section 33 shall not apply to preliminary expenditure incurred by a taxpayer before the commencement of the taxpayer's first fiscal year under this Act.
- (7) Section 34 shall apply in respect of a debt or other instrument or agreement giving rise to interest whenever incurred by a taxpayer.
- (8) Where a debt —
 - (a) is written off by a taxpayer as a bad debt in a fiscal year; and
 - (b) the debt arose before the commencement of the taxpayer's first fiscal year under this Act, the reference in section 36(1)(a) to the amount of the debt being previously included in the gross income of a taxpayer shall include an amount included in assessable income under section 4 of the Income Tax Act (Cap. 68 of 1988 Revised Edition).
- (9) If, at the commencement of a taxpayer's first fiscal year under this Act, the taxpayer has a business loss carried forward under section 41(3) of the Income Tax Act (Cap. 68 of 1988 Revised Edition) the amount of the loss shall be allowed as a deduction under section 37.
- (10) Section 43 shall not apply to a financial lease entered into before the commencement of this Act.
- (11) A reference in section 52 to a deduction allowed for any expenditure or loss incurred, or bad debt written off in a fiscal year shall include any expenditure, loss, or bad debt deducted under the Income Tax Act (Cap. 68 of 1988 Revised Edition).
- (12) Income that would be exempt income under section 11(p) of the Income Tax Act (Cap. 68 of 1988 Revised Edition) shall continue to be exempt if it is derived before 1 July 2007.
- (13) Self-assessment under section 70 shall not apply to a taxpayer whose annual turnover is less than \$100,000, unless the Minister has specified by notice in the Gazette that the section shall apply to such taxpayer.
- (14) Where self-assessment does not apply to a taxpayer by virtue of subsection (13), the Minister shall, based on the taxpayer's income tax return for a fiscal year and on any other information available, make an assessment of the

chargeable income or the business loss of a taxpayer and any tax payable thereon for the year.

FIRST SCHEDULE*(Section 13)***VALUATION OF EMPLOYMENT BENEFITS**

1. In this Schedule —

“benchmark rate” means the National Reserve Bank of Tonga weighted average lending rate at the commencement of the fiscal year;⁹⁶

“cost” means –

 - (a) the actual cost to the employer in acquiring the motor vehicle in the first year;
 - (b) the depreciated cost in the 2nd to 4th years of ownership of the motor vehicle; and
 - (c) the fair market value of the vehicle in subsequent years;⁹⁷ and

“services” includes the making available of any facility.
2. The value of any benefit-in-kind included in the employment income of an employee under section 13(1)(b) shall be determined in accordance with this Schedule.
3. This Schedule shall not apply to any allowance or reimbursement referred to in section 13(1)(c) or (d).
4. If, in a fiscal year, a motor vehicle is provided by an employer to an employee wholly for the private use of the employee, the value of the benefit for the year shall be the amount computed in accordance with the following formula —

(20% of A) - B

where —

 - A** is the cost to the employer of acquiring the motor vehicle or, if the vehicle is leased by the employer, the fair market value of the vehicle at the commencement of the lease; and
 - B** is any payment made by the employee for the use of the motor vehicle or for its running costs.
5. If, in a fiscal year, a motor vehicle is provided to an employee partly for private use and partly for use in employment, the value of the benefit for the year shall be the amount computed in accordance with the formula in paragraph (4) reduced by the proportion of that amount representing use in employment.
6. If a motor vehicle referred to in paragraph 4 or 5 is not provided for the whole of the year, the value of the benefit computed under those paragraphs, as the

case may be, shall be based on the proportion of the year that the vehicle was provided.

7. If, in a fiscal year, the services of a housekeeper, driver, gardener or other domestic assistant is provided by an employer to an employee, the value of the benefit for the year shall be the total employment income paid to the domestic assistant in that year for services rendered to the employee, as reduced by any payment made by the employee for such services.
8. If, in a fiscal year, a loan is made by an employer to an employee, the value of the benefit for the year shall be the difference between the interest paid by the employee on the loan for the year, if any, and the interest which would have been paid by the employee on the loan for the year if the loan had been made at the benchmark rate for that year.
9. For the purposes of this Schedule other than paragraph 8, if the employee uses a loan referred to in paragraph 8 wholly or partly for the acquisition of property producing amounts included in gross income, the employee shall be treated as having paid an amount as interest equal to the benchmark rate on the loan or that part of the loan used to acquire the property.
10. If, in a fiscal year, an obligation of an employee to pay or repay an amount owing by the employee to the employer is waived by the employer, the value of the benefit shall be the amount so waived.
11. If, in a fiscal year, an obligation of an employee to repay an amount owed by the employee to another person is paid by the employer, the value of the benefit shall be the amount so paid.
12. If, in a fiscal year, property is transferred or services are provided by an employer to an employee, the value of the benefit shall be the fair market value of the property or services determined at the time the property is transferred or the services are provided, as reduced by any payment made by the employee for the property or services.
13. If, in a fiscal year, accommodation or housing is provided by an employer to an employee, the value of the benefit shall be —
 - (a) when the employer or an associate owns the accommodation or housing, the fair market rent of the accommodation or housing; or
 - (b) in any other case, the rent paid by the employer for the accommodation or housing,

as reduced by any payment made by the employee for the accommodation or housing.

14. If, in a fiscal year, an employer has provided an employee with a benefit not covered by paragraphs (4) to (13), the value of the benefit shall be the fair market value of the benefit determined at the time it is provided, as reduced by any payment made by the employee for the benefit.

SECOND SCHEDULE⁹⁸*(Section 28, and 29)***DEPRECIATION RATES**

1. The depreciation rates specified for the purposes of section 28 and 29 shall be —

Asset	Depreciation Rate	
	Diminishing value	Straight-line
Motor vehicles; buses and minibuses with a seating capacity of less than 30 passengers; goods vehicles with a load capacity of less than 7 tonnes; computers and data handling equipment; and construction equipment and earthmoving equipment	40%	25%
Buses with a seating capacity of 30 or more passengers; goods vehicles designed to carry or pull loads of more than 7 or more tonnes; specialised trucks; tractors; trailers and trailer-mounted containers; and plant and machinery used in manufacturing, mining development activities, petroleum development activities”,, or farming operations	30%	20%
Vessels, barges, tugs, and similar water transportation equipment; aircraft; specialised public utility plant, equipment, and machinery; office furniture, fixtures, and equipment; and any depreciable asset not included in another category	20%	12.5%
Structural improvements		5%
Plant and machinery that has its first use in undertaking mining exploration activities or petroleum exploration activities		100%

2. In this Schedule –

“**mining development activities**” has the meaning in section 67A;

“**mining exploration activities**” has the meaning in section 67A; “**petroleum development activities**” means development activities as defined in section 67M; and

“**petroleum exploration activities**” means exploration activities as defined in section 67M.

THIRD SCHEDULE⁹⁹*(Section 8)***SMALL BUSINESS TAX RATES**

The rates of small business tax for the purposes of section 8(2) are –

Annual Gross Turnover	Small Business Tax Payable
\$10,000 or less	\$100
\$10,001 - \$30,000	\$250
\$30,001 - \$50,000	\$500

ENDNOTES

¹ Act 10 of 2007

Amendments	Commencement
Act 2 of 2008	14 July 2008
Act 42 of 2010	24 July 2010
Act 20 of 2010	24 November 2010
Act 5 of 2012	30 July 2012
Act 12 of 2013	1 July 2013
Act 20 of 2013	11 November 2013
Act 9 of 2015	4 December 2015
Act 10 of 2015	19 November 2015

² G. 4/2008

³ Inserted by Act 20 of 2013

⁴ Inserted by Act 9 of 2015

⁵ Amended by Act 2 of 2008

⁶ Inserted by Act 5 of 2012 and Amended by Act 12 of 2013

⁷ Cap 26.02

⁸ Inserted by Act 9 of 2015

⁹ Inserted by Act 20 of 2013

¹⁰ Inserted by Act 9 of 2015

¹¹ Inserted by Act 20 of 2013

¹² Inserted by Act 9 of 2015

¹³ Inserted by Act 5 of 2012 and Amended by Acts 12 of 2013 and 9 of 2015

¹⁴ Inserted by Act 9 of 2015

¹⁵ Inserted by Act 20 of 2013

¹⁶ Inserted by Act 9 of 2015

¹⁷ Inserted by Act 20 of 2013

¹⁸ Amended by Acts 2 of 2008 and 42 of 2010 and impliedly by Act 20 of 2010

¹⁹ Amended by Act 20 of 2013

²⁰ Amended by Acts 2 of 2008 and 42 of 2010 and impliedly by Act 20 of 2010

²¹ Amended by Act 2 of 2008

²² Amended by Act 2 of 2008

²³ Amended by Acts 2 of 2008 and 42 of 2010 and impliedly by Act 20 of 2010

²⁴ Inserted by Act 20 of 2013

²⁵ Amended by Acts 2 of 2008 and 20 of 2013

²⁶ Amended by Act 9 of 2015

²⁷ Substituted by Act 12 of 2013

²⁸ Substituted by Act 12 of 2013

²⁹ Substituted by Act 12 of 2013

³⁰ Cap 38.20

³¹ Inserted by Act 2 of 2008

³² Inserted by Act 12 of 2013

³³ Inserted by Act 12 of 2013

³⁴ Inserted by Act 12 of 2013

³⁵ Inserted by Act 12 of 2013

³⁶ Inserted by Act 10 of 2015

³⁷ Amended by Act 12 of 2013

³⁸ Amended by Acts 2 of 2008 and 12 of 2013

³⁹ Substituted by Act 12 of 2013

⁴⁰ Amended by Act 2 of 2008

⁴¹ (j) – (l) Inserted by Act 12 of 2013

⁴² Amended by Act 2 of 2008

⁴³ Amended by Act 12 of 2013

⁴⁴ Amended by Act 2 of 2008

⁴⁵ Amended by Act 2 of 2008

⁴⁶ Amended by Act 2 of 2008

⁴⁷ Amended by Act 2 of 2008

⁴⁸ Amended by Act 2 of 2008

⁴⁹ Substituted by Act 12 of 2013

⁵⁰ Amended by Act 2 of 2008

⁵¹ Amended by Act 2 of 2008

⁵² Amended by Act 9 of 2015

⁵³ Inserted by Act 9 of 2015

⁵⁴ Inserted by Act 12 of 2013

⁵⁵ Inserted by Act 9 of 2015

⁵⁶ Inserted by Act 9 of 2015

⁵⁷ Inserted by Act 9 of 2015

- [58](#) Inserted by Act 9 of 2015
- [59](#) Inserted by Act 9 of 2015
- [60](#) Inserted by Act 9 of 2015
- [61](#) Inserted by Act 9 of 2015
- [62](#) Inserted by Act 9 of 2015
- [63](#) Inserted by Act 9 of 2015
- [64](#) Inserted by Act 9 of 2015
- [65](#) Inserted by Act 9 of 2015
- [66](#) Inserted by Act 9 of 2015
- [67](#) Inserted by Act 9 of 2015
- [68](#) Inserted by Act 9 of 2015
- [69](#) Inserted by Act 9 of 2015
- [70](#) Inserted by Act 9 of 2015
- [71](#) Inserted by Act 9 of 2015
- [72](#) Inserted by Act 9 of 2015
- [73](#) Inserted by Act 9 of 2015
- [74](#) Inserted by Act 9 of 2015
- [75](#) Inserted by Act 9 of 2015
- [76](#) Inserted by Act 9 of 2015
- [77](#) Inserted by Act 9 of 2015
- [78](#) Amended by Act 20 of 2013
- [79](#) Amended by Act 2 of 2008
- [80](#) Cap. 26.12
- [81](#) Amended by Act 2 of 2008
- [82](#) Amended by Act 2 of 2008
- [83](#) Amended by Act 20 of 2013
- [84](#) Inserted by Act 20 of 2013
- [85](#) Amended by Act 2 of 2008
- [86](#) Amended by Act 2 of 2008
- [87](#) Cap 46.02
- [88](#) Amended by Act 2 of 2008
- [89](#) Amended by Act 9 of 2015
- [90](#) Inserted by Act 12 of 2013
- [91](#) Inserted by Act 12 of 2013
- [92](#) Inserted by Act 12 of 2013

⁹³ Substituted by Act 2 of 2008

⁹⁴ Substituted by Act 20 of 2013

⁹⁵ Cap 26.14

⁹⁶ Amended by Act 2 of 2008

⁹⁷ Inserted by Act 2 of 2008

⁹⁸ Amended by Acts 12 of 2013 and 9 of 2015

⁹⁹ Inserted by Act 20 of 2013